BUILD, OWN AND OPERATE - AGREEMENT

RELATING TO CONDUCTION OF THE FULL TECHNICAL AND ECONOMIC FEASIBILITY STUDY, SOCIAL AND ENVIRONMENTAL IMPACT ASSESSMENT, DETAILED DESIGN STUDY, AS WELL AS FINANCING, CONSTRUCTION, TESTING, COMMISSIONING, OWNERSHIP, OPERATION AND MAINTENANCE OF ADJARISTSQALI CASCADE HYDRO POWER PLANTS

between

THE GOVERNMENT OF GEORGIA
REPRESENTED BY
THE MINISTRY OF ENERGY AND NATURAL REOURCES OF GEORGIA

CLEAN ENERGY INVEST AS

AND

ADJARISTSQALI LTD

10.06.11
BATUMI
THIS AGREEMENT relating to conduction of the full technical and economic feasibility study, environmental and social impact assessment, detailed design study, as well as financing, construction, testing, commissioning, ownership, operation of Adjaristsqali Cascade Hydro Power Plants in Adjara region in Georgia is made on June 10, 2011 between:

(1) **THE GOVERNMENT OF GEORGIA**, represented by the Ministry of Energy and Natural Resources of Georgia (the "GOG");

(2) **CLEAN ENERGY INVEST AS**, a limited liability company incorporated under the laws of Norway, registered in the company register of Brønneysund under registration number 995 144 409, having its registered office at Parkveien 33 b, 0258 Oslo, Norway (the "Company");

(3) **ADJARISTSQALI LTD**, incorporated under the laws of Georgia, with identification #404401438, having its registered office at #4 GudiaSvili, Tbilisi, Georgia (the "Project Company").

Each of the GOG, the Company and the Project Company shall be referred to individually as a "Party" and collectively as the "Parties".

**PREAMBLE**

**WHEREAS:** On the basis of the Expression of Interest announced by the Ministry of Energy of Georgia on 22 March 2010 for the purposes of implementation of the Adjaristsqali Hydropower Plants Project in Adjara region of Georgia, which envisages conduction of the full technical and economic feasibility study, environmental and social impact assessment, detailed design study, as well as financing, construction, testing, commissioning, ownership, operation and maintenance of a cascade of four (Zomleti, Vaio, Choromkheti and Chorokhi) hydropower plants by the person selected as the winner in the tender, on an exclusive basis; and

**WHEREAS:** On 23rd April, 2010, Clean Energy Invest AS, a limited liability company incorporated under the laws of Norway and a shareholder of the Project Company submitted a binding bid for the Expression of Interest (the "Company Bid"); and

**WHEREAS:** In accordance with the decree of the Government of Georgia No 527 dated 28th April, 2010 the Company was announced to be the winning participant of the Expression of Interest for construction of Adjaristsqali hydro power plants project consisting of following HPPs: Zomleti, Vaio, Choromkheti and Chorokhi.

**WHEREAS:** In November 26, 2010 Clean Energy Invest AS expressed interest to merge Adjaristsqali 1,2,3 hydro power plants as one power plant named Dandalo and to join it with Adjaristsqali Hydro Power Plants project.
WHEREAS: Parties have conducted negotiations and considered it expediently to ensure construction of Adjaristsqali Cascade which includes following HPPs: Zomleti, Vaio, Choromkheti, Chorokhi and Adjaristsqali 1, Adjaristsqali 2, Adjaristsqali 3. The total output of the power plants according to the Application from the 23 April 2010 was 128,8 MW and for the Adjaristsqali 1-3 was 46.3 MW which makes a total of approximately 175 MW capacity.

NOW, THEREFORE, the Parties entered into this Build, Operate and Own (Implementation) - Agreement on the following:

1. DEFINITIONS AND INTERPRETATION

1.1 DEFINITIONS

Whenever used in this Agreement, including the annexes hereto, unless the context otherwise requires, the following capitalized terms shall have the following meanings:

"Actual Final Completion Date" means the date when the construction works of the Plants is finished and is ready for operation.

"Affiliate" in respect of any legal entity mentioned herein means a legal entity which is directly or indirectly, through one or more intermediaries, Controlled by another legal entity.

"Agreement" means this Agreement relating to conduction of the full technical and economic feasibility study, environmental and social impact assessment, detailed design study, as well as financing, construction, testing, commissioning, ownership, operation and maintenance of the Plants in Adjara region in Georgia and all of its annexes, which shall be deemed to form an integral part hereof.

"Authorizations" means any consent, permission, license, authorization, approval or certificate, the obtaining or renewal of which is required in connection with the entering into and implementation of this Agreement.

"Base Amount" shall have the meaning defined in Article 8.4.2 (a).

"BOO" means Build, Operate and Own.

"Business Day" means all days of the week except Saturdays, Sundays and other national holidays of Georgia.

"Conceptual Design" means the design prepared by Gross Energy Group on behalf of the Company.

"Company Event of Default" means the events of defaults specified in Article 8.1.1 hereunder.

[Signature]
"Construction Agreement" means the construction agreement to be entered into between one or more contractors and the Project Company with the purpose of performance of Construction Works, which shall meet Good Industry Practice standards.

"Construction Phase" means the period of time elapsing from the start of the Construction Phase (i) to the Actual Final Completion Date, or (ii) in the event of earlier termination of this Agreement, until this Agreement is terminated in accordance with the terms hereof, during which the Company, irrespective of termination of this Agreement, shall perform all its Construction Phase obligations hereunder (including payment of the accrued liquidated damages).

"Construction Security" means the Contract Security according to Article 6.2, guaranteeing the proper and timely performance of the Company's obligations during the Construction Phase.

"Construction Works" means any works required for, and ancillary to, the construction and completion of the Plants, including all the necessary civil works and electro-mechanical installations, including but not limited to turbines, generators, powerhouse ancillary equipment, transformers, switchyard equipment and the Transmission Line.

"Contract Security" means, in respect of the Preconstruction Security and the Construction Security, a first-demand bank guarantee issued by a leading and internationally reputable bank acceptable to the GOG either licensed in Georgia or operating in OECD member states and securing the Company's performance of its obligations as further detailed in this Agreement, including Article 6.

"Control" used as a noun or as a verb means the power to elect a majority of the board of directors (or any other similar constituent body) or otherwise direct the management and policies of a legal entity, directly or indirectly, whether through the ownership of voting securities, ownership interest, by agreement or otherwise. Without limiting the foregoing, the Control shall in any event mean the direct or indirect holding of more than 50% of the capital of a legal entity as well as the power to influence decisions and/or actions of a legal entity in any respect.

"Detailed Design" means the detailed design proposal with respect to the Plants.

"Electricity Balance" means that portion of the annual electricity balance of Georgia, which reflects annual generation, as well as generation of the Project during the Winter Period and which is approved by the relevant authority.

"Effective Date" means the date that the Company presents the bank guarantee to the GOG in accordance with Section 6.1 of the Agreement.

"Environmental Attributes" means any and all current or future rights, benefits, titles or interests recognized by respectively authorized Entity associated partly or in its entirety with the reduction or avoidance of emissions of greenhouse gases or any other pollutant or with renewable or green sources of energy production of the Plants and with respect to electric energy.
or steam produced therewith. For the avoidance of doubt, Environmental Attributes shall include all rights to seek CER (certified emission reduction) certification of the associated gas project, any VER (verified emission reduction) and all right, title and interest in Plants CERs which are generated as a result thereof or associated therewith.

"Equity" means the capital (including statutory and voluntary reserves) of the Project Company attributable to the Shareholders in respect of their investment in the Project Company, provided that "Equity" shall not include any amount owing under any Shareholders Project Loan, except for any Shareholder Project Loans counting towards the Minimum Equity Investment pursuant to Article 4.3.2, which shall be deemed to be Equity.

"Equity Investment" shall have the meaning defined in Article 8.4.2 (b).

"ESCO" means Electricity System Commercial Operator, LLC.

"ESCO Agreement" means the agreement to be entered into between (1) ESCO and (2) the Project Company, in connection with the Project.

"ET" means Energo Trans LTD.

"ET Agreement" means the agreement to be entered into between (1) ET and (2) the Project Company, in connection with the Project.

"Expropriation Event" shall mean any compulsory transfer or taking of all or any part of the Project by any Government Entity, including, without limitation, any instance in which such Governmental Entity has (i) commenced any proceeding to condemn, nationalize, seize, attach, compulsorily acquire, confiscate or otherwise expropriate all or any material part of the Project or the assets or other property of the Project Company or the capital stock of the Project Company and such proceeding has not been withdrawn or dismissed within ninety (90) days after its commencement, (ii) assumed custody or control of such assets or other property or of the business or operations of the Project Company or of its capital stock, (iii) displaced the management of the Project Company, or prevented the Project Company or its officers from carrying on all or a substantial portion of its business or operations or (iv) imposed Taxes, enacted laws or regulations, or taken any other action that in any case is tantamount to a transfer or taking of all or any material part of the Project.

"Financial Closing" means the date when the Financing Documents covering the total capital cost of the Project other than the percentage to be funded by the Project Company’s own resources are signed and in full force and effect (or their entry into full force and effect is conditional only on the entry into force and effect of this Agreement).

"Financing Documents" means any loan agreements, notes, bonds, indentures, security agreements, registration or disclosure statements, subordination agreements (including, subject to Article 9.2 hereof, the Shareholders Project Loans), mortgages, deeds of trust, credit agreements, note or bond purchase agreements, participation agreements and other documents entered into by the Project Company and/or the Company and/or an Affiliate thereof relating to the financing of
implementation of the Project, including any modifications, supplements, extensions, renewals and replacements of any such financing.

"Financing Party" means any person or persons providing debt financing or refinancing under the Financing Documents to the Company or the Project Company for the financing of the implementation of the Project, as well as their permitted successors and assigns.

"Force Majeure Event" has the meaning set forth in Article 7.1.1.

"Good Industry Practice" means the practices, methods, standards, procedures and recommendations conforming to the Law generally followed in the hydroelectric power generation industry with respect to the design, construction, operation and maintenance of hydroelectric power plant, which can be reasonably expected from a skilled and experienced contractor, engineer or operator, as the case may be, under the same or similar circumstances, which practices, methods, standards and procedures shall include, without limitation, Georgian and international standards.

"Government Entity" means (i) the GOG or any ministry, department or subdivision thereof (ii) any other state or local governance entity, instrumentality, agency or authority of Georgia; and (iii) any other entity exercising public governance authorities inside Georgia.

"GOG Representative" means the Ministry of Energy and Natural Recourses of Georgia and/or any representative which the GOG may appoint to represent it in connection with the implementation of any of its rights under this Agreement (including as regards the construction, Performance Tests and acceptance of the Construction Works), provided that the GOG shall notify the Company promptly upon each appointment, termination, replacement or substitution of the GOG Representative.

"GSE" means Georgian State Electrosystem.

"Installed Capacity" means, the net electrical output measured in MW at the low voltage side of the step-up transformers.

"Law" any international treaty which is ratified by Georgia, Georgian national or local normative act or any individual administrative-legal act, which is issued by anybody or officer of public governance of Georgia, to the extent it has become effective, taking in view respective interpretations of competent Government Entities, as such may be in effect from time to time during the Term of this Agreement.

"Liquidated Damages" has the meaning set forth in Article 3.4.

"Material Adverse Effect" means any material adverse effect on (i) the ability of the Project Company or the Company to economically observe and perform any of its rights and obligations
under the Agreement under normal circumstances, and/or (ii) the legality, validity, binding nature or enforceability of the Agreement; and/or (iii) any Authorizations obtained, or required to be obtained, by the Company.

"Material Adverse Action" has the meaning set forth in Article 7.2.

"Non-Political Force Majeure Event" has the meaning set forth in Article 7.1.2 (b).

"Off-Take Agreement" means the agreement on supply of electricity, entered into by the Project Company and ESCO, under which the Project Company agrees to sell, and ESCO agrees to purchase, volumes of electricity corresponding to the Electricity Balance for the respective year during the Winter Period, on a take-or-pay basis.

"Operations Phase" means (i) the period commencing from the Actual Final Completion Date and continuing throughout the life time of the Plants, or (ii) in the event of earlier termination of this Agreement, to the date of termination of this Agreement in accordance with the terms hereof, during which the Company, irrespective of termination of this Agreement, shall comply with all of the Operations Phase obligations prescribed hereunder (including payment of the accrued liquidated damages).

"Plants" means collectively, the Adjaristsqali cascade hydro power plants, consisting of, Zomleti, Vaio, Choromkheti, Chorokhi, and Adjaristsqali 1, Adjaristsqali 2, Adjaristsqali 3 as set forth in in Annexes 1-5 respectively, as long as this is not changed according to Article 3.1.2.1.

"Preconstruction Security" means the Contract Security according to Article 6.1. guaranteeing the proper and timely performance of the Company's obligations during the Preconstruction Phase.

"Preconstruction Phase" means the period of time elapsing from the Effective Date of this Agreement (i) to the start of the Construction Phase, or (ii) in the event of earlier termination of this Agreement, to the date of termination of this Agreement in accordance with the terms hereof, during which period the Company, irrespective of termination of this Agreement, shall comply with all of its Preconstruction Phase obligations in accordance with the terms of this Agreement (including payment of accrued liquidated damages).

"Project" means conduction of the full technical and economic feasibility study, environmental and social impact assessment, detailed design study, as well as financing, construction, testing, commissioning, ownership, operation and maintenance of a cascade of Adjaristsqali hydro power plants: Zomleti, Vaio, Choromkheti, Chorokhi and Adjaristsqali 1, Adjaristsqali 2, Adjaristsqali 3.

"Project Company" means the special-purpose entity formed by the Company and constituted under the Laws of Georgia for the purposes of implementation of the Project and funded by the Company in accordance with this Agreement.
"Quality Assurance System" means the quality assurance system referred to in Article 3.2.6.

"Remedial Plan" means the report notified by the Company to the GOG Representative following a Company Event of Default in accordance with Article 8.2.1.2, which shall spell out in reasonable detail (i) which reasonable actions the Company plans to take to remedy the Event of Default; and (ii) how much of reasonable time is required to implement and complete such actions.

"Return on Equity" has the meaning set forth in Article 8.4.2 (c).

"Right of Way" means the right of passage over and under, and of access and egress to and from the Site, the Plant and any part thereof without undue interference by any third party for the purpose of implementing this Agreement.

"Scheduled Final Completion Date" means the last of the forty eight (48) months from the Effective Date.

"Shareholder" means any person directly or indirectly holding Equity in the Project Company.

"Shareholders Loan Provider" means any Shareholder or Affiliate thereof that enters into a Shareholders Project Loan.

"Shareholders Project Loan" means any debt financing made available to the Project Company by the Shareholders.

"Site" means the site located around the Adjaristaqali River in Adjara region for the implementation of the Project.

"Surplus Electricity" means, for any Winter Period, (i) any volume of electricity provided by the Project in excess of the applicable Electricity Balance for such period, and (ii) any portion of the Electricity Balance that the Company makes available to ESCO during such period, which ESCO cannot take for any reason whatsoever.
"Taxes" means any present or future taxes, withholding obligations, duties and other charges of whatever nature levied by any Government Entity.

"Term" means a term of validity of the Agreement commencing on the Effective Date and continuing during the entire period of the Operations Phase.

"Termination Date" means the date of actual termination of the Agreement as specified in a Termination Notice, which shall be no sooner than thirty (30) days following the date of such Termination Notice.

"Termination Invoice" shall have the meaning defined in Article 8.4.3.

"Termination Notice" means, in respect of the GOG or the Company, as applicable, a notice from one Party to the other Party stating that this Agreement shall be terminated following (i) a Company Event of Default or a GOG Event of Default, as applicable, which has not been cured within the relevant timeframe provided in this Agreement (to the extent applicable) or (ii) any other event expressly provided in this Agreement, which shall specify the reason for termination and the date of actual termination of this Agreement, which shall be no sooner than thirty (30) days following such notification.

"Transfer Date" shall have the meaning defined in Article 8.4.4 (a).

"Transferrable Assets" shall have the meaning defined in Section 8.4.

"Winter Period" shall mean the period comprising the months of December, January and February.

1.2 INTERPRETATION

Unless the context of this Agreement otherwise requires:

(i) Words of any gender include each other gender;
(ii) Words using the singular or plural number also include the plural or singular number, respectively;

The terms "hereof", "herein", "hereby", "hereto" and similar words refer to this entire Agreement and not to any particular article, clause, annex, exhibit, appendix or schedule or any other subdivision of this Agreement;

The Preamble and the annexes, exhibits and appendices to this Agreement shall form an integral part hereof and references to annexes, exhibits and appendices shall be references to annexes, exhibits and appendices to this Agreement.

References to any enactment includes any amendment to or re-enactment of that enactment and any rules or regulations made pursuant to that enactment; and reference to a Law means reference to such Law as may be amended or re-enacted;

The words "include" or "including" shall be deemed to be followed by "without limitation" or "but not limited to" whether or not they are followed by such phrases or words of like import;

References to "this Agreement" or any other agreement or document shall be construed as a reference to such agreement or document as amended, modified or supplemented and in effect from time to time and shall include a reference to any document which amends, modifies or supplements it, or is entered into, made or given pursuant to or in accordance with its terms;

Whenever this Agreement refers to a number of "days", such number shall refer to calendar days unless Business Days are specified;

Any reference to a "month" or a "year" shall be construed as a reference to a calendar month or year;

In the event of any inconsistency between any capitalized word, defined term, phrase or abbreviation set forth in Article 1.1 and any provision, capitalized word, term, phrase or abbreviation set forth elsewhere in this Agreement, any annex, appendix or any attachment to any appendix, the meaning set forth in Article 1.1 shall take precedence over the meaning set forth in any annex, appendix or any attachment to any appendix unless the context of this Agreement otherwise requires;

In the event of a conflict between the body of this Agreement and the annexes or appendices, the Parties shall endeavor, in the first instance to resolve the conflict by reading this Agreement as a whole and the provision that is more specific shall govern. If the conflict continues to exist notwithstanding the Parties' good faith efforts to resolve it as provided in the preceding sentence, the provisions of the body of this Agreement - shall govern.

The headings of articles in this Agreement are inserted for convenience and reference purposes only and shall not in any way affect the interpretation of this Agreement.
2. SUBJECT MATTER OF THE AGREEMENT

2.1 OBLIGATIONS OF THE COMPANY

2.1.1 The Company hereby undertakes to implement the Project, which includes delivery of a feasibility study, an environmental and social impact assessment report, conduction of a detailed design study, as well as financing, building, testing, commissioning, owning and operating of the Plants in accordance with the terms hereof.

2.1.2 The company's obligation under this agreement is to develop hydropower projects on the Adjaristsqali river with an installed capacity of at least 175 MW within the time frame set in this contract.

2.1.3 The Company shall implement the Project at its own expense or by application of financing procured by the Company.

2.1.4 The Company shall, at its own expense or by application of financing procured by the Company, obtain, maintain and renew at all times such Authorizations, as shall be required for the purposes of implementing the Project.

2.1.5 By the end of each year of the Term the Company shall submit to the GOG annual audited reports containing evaluation of investments made in the Project for the previous year. The abovementioned reports must be prepared by one of the independent audit companies.

2.2 OBLIGATIONS OF THE GOG

2.2.1 The GOG shall, within the scope of its authority and in accordance with the Law, support the Company and the Project Company in implementation of the Project, including by way of: rendering assistance to the Company, the Project Company, and their contractors and subcontractors in obtaining of the Authorizations, documents and information, necessary for implementation of the Project.

2.2.2 Throughout the Term, the GOG hereby, within the scope of its authority and in accordance with the Law, grants the Company and the Project Company the right to:

(a) implement the Project in general, on an exclusive basis;

(b) harness, utilize, divert and release water resources from the Adjaristsqali River required by the Project Company for the operation of the Project at the planned level of installed capacity;

(d) use the Environmental Attributes that could be generated by the Project on an exclusive basis, including but not limited to CER certificates.
2.2.3 The GOG will support an application for Clean Development Mechanism that may be submitted by the Company and/or the Project Company to the relevant authorities, provided that the GOG shall not be deemed liable in case of failure to obtain the same.

2.2.4 The GOG shall submit to the President of Georgia a proposal for providing the necessary land plots for the Project with nominal price to the Company and/or the Project Company; furthermore, the GOG within the scope of its authority and in accordance with the Law will take all necessary measures that any land required for the Project that is currently not subject to privatization due to its status as agricultural land or other statutory protection (including based on cultural, environmental or other significance) can obtain the required clearance, if legally feasible, to allow it to be used for the Project.
(c) in the event that the GOG desires to grant a Water Use Right upstream of the Site, it shall first consult with, and take all reasonable measures requested by, the Company and/or the Project Company to avoid an Adverse Affect.

2.2.7 Access to Infrastructure

The GOG shall ensure that the Company and the Project Company have access without interference or interruption to the Site as well as all existing national and district roads, bridges or other such infrastructure and grant the Company and the Project Company the right, at the Company's or Project Company's cost, to construct and/or maintain any such temporary or permanent infrastructure necessary or desirable for the construction and/or operation of the Project. The Company and/or the Project Company shall have the authority to restrict access and use of the relevant infrastructure to personnel authorized by the Company and/or the Project Company in the interests of safety and catchment management.

2.2.8 Foreign Exchange

The GOG shall:

(a) ensure the prompt availability, conversion and remittance outside of Georgia of foreign currencies at prevailing market rates for the payment by the Company and/or the Project Company of their foreign-currency denominated debts and obligations, including for the payment of dividends, debt service, proceeds from any liquidation or capital reduction of the Company and/or the Project Company and any other form of distribution of capital to their respective shareholders, and for the purchase of spare parts, materials, equipment and services necessary or desirable for the construction, operation and maintenance of the Project;

(b) permit the Company and the Project Company to open and maintain bank accounts within or outside Georgia and retain on deposit therein any Georgian or foreign currency earned by the Company and/or the Project Company on the sale of electrical power and energy, or from buyout payments or any other source; and

(c) ensure that the Project Company's shareholders may enforce, as third party beneficiaries, the Project Company's rights to the availability, conversion and remittance of foreign currency in respect of the Project Company's obligation to pay dividends and other distributions of capital.

2.2.9 Business Visas

The GOG shall promptly cause the relevant Government Entity to:

(a) in the preconstruction phase, construction phase and operation phase, (i) issue business visas to expatriate representatives of the Company or the Project Company, as well as senior management and other employees of the Company or the Project Company, their
contractors at any tier and consultants or advisors of the Company or the Project Company or their lenders and other project related technical and managerial staffs, and (ii) issue such work permits to any of the foregoing parties, in each case in the number and tenure, required by the Company or the Project Company in their absolute discretion from time to time without limitation; and

(b) thereafter, issue such non-tourist visas and work/residence permits for expatriate staff as the Company or the Project Company may request from time to time.

3. PROJECT PHASES

3.1 PRECONSTRUCTION PHASE

3.1.1 Obligations of the Company

(a) Within a period of twelve (12) months following the Effective Date, the Company shall provide or procure the delivery to the GOG of:

(i) Final environmental and social impact assessment report for approval by the GOG, provided, however, that the Company shall initiate the proceedings for preparation of the environmental and social impact assessment report within two (2) months from the Effective Date, in accordance with the Law as well as international standards;

(ii) Feasibility study for the Project according to international standards.

(b) Within no later than fifteen (15) months from the Effective Date, the Company shall:

(i) Obtain (and subsequently maintain and renew to the extent applicable) all Authorizations, including Plants construction permit (according to annexes), required for the purposes of the Construction Works and provide or procure the delivery of certified copies thereof to the GOG Representative;

(ii) Provide or procure the delivery to the GOG Representative of an original certificate (or equivalent) from the Financing Parties confirming that Financial Closing has occurred;
(iii) Acquire all the necessary land rights to any land parcel of the Site, insofar it is possible without court proceedings, including Right of Way, which may be necessary for the design, construction, operation, ownership and maintenance of the Plant and overall implementation of the Project (the “Land Rights”);

(iv) Provide or procure the delivery to the GOG Representative of the final draft versions of the Construction Agreement and before execution incorporate therein the comments provided by the GOG Representative, if any.

(c) During the preconstruction phase the Company shall submit to the GOG every three months all information relating to the progress of the implementation of the Project.

3.2 CONSTRUCTION PHASE
3.2. **Construction Phase**

The start of the Construction Phase shall be deemed the first day of the sixteenth (16) months after the Effective Date, or any other date agreed between the parties according to article 3.2.6. The Construction Phase ends on the Actual Final Completion Date.

3.2.2 **Design and Construction**

(a) The Company shall, at its own risk and expense, undertake the engineering, procurement, construction and Performance Tests for the Plants in accordance with this Agreement and Good Industry Practice, including:

(i) The Conceptual Design;

(ii) The Detailed Design;

(iii) Milestone Dates given in Annex 4 (Milestone Schedule).

(iv) The comprehensive and detailed technical specifications to be submitted to the GOG Representative three (3) months prior to the beginning of the Construction Works, which shall be reviewed by the GOG Representative and if the GOG Representative has comments to thereto, such comments shall be incorporated therein.

(b) The Company shall build the Transmission Line connecting the Plants to the other networks at its own risk and expense and shall be liable for all the Construction Works. The construction completion date of the Transmission Line shall not be later than the Actual Final Completion Date.

3.2.3 **Responsibility of the Company**

The Company shall be responsible for any deficiency in the design of the Plants. The failure of the GOG or the GOG Representative to object to any design, design drawing or specification or any change thereto shall not be construed as a waiver by the GOG of any of its rights under this Agreement or consent of the GOG or the GOG Representative in respect thereto, nor shall it in any way relieve the Company of its obligations and liabilities hereunder. In furtherance of the foregoing, the Company:

(i) Accepts that no review and examination conducted by the GOG or the GOG Representative with respect to the design of the Plants will relieve the Company of any of its obligations or liabilities under this Agreement, and that the GOG and the GOG Representative undertakes no responsibility as to the quality of design, engineering or construction of the Plants, - or any component thereof;

(ii) Shall in no way represent or imply to any third party that, as a result of any review by the GOG, the GOG is responsible for the engineering or construction soundness of the design of the Plant, the Plant or any component thereof; and

(iii) Acknowledges that it shall be solely responsible for the technical feasibility, operational capability and reliability of the design of the Plant, the Plant and each component thereof.
3.2.4 Report on Obstacles

If any obstacle, not caused by the Company, occurs that would result in a delay in the performance of the Construction Works or in achieving the Scheduled Final Completion Date, the Company must send a report to the GOG Representative within ten (10) Business Days of discovery of the obstacle outlining the reasons that led or will lead to such delay, and the measures that shall be taken by the Company to avoid or minimize the delay in finalizing the Construction Works by the Scheduled Final Completion Date. This Article shall be without prejudice to any extension of the Scheduled Final Completion Date afforded to the Company in accordance with Article 3.2.6.

3.2.5 Construction Progress Reports

During the Construction Phase, on the first Business Day of each month following the start of the Construction Phase, the Company shall provide a construction progress report to the GOG, detailing (i) the item of the Construction Works both completed and in progress for the preceding month (except for the month preceding the start of the Construction Phase), (ii) the Construction Works anticipated to be completed during that month, (iii) the estimated time until completion of the Construction Works, taking in view the Scheduled Final Completion Date, (iv) any event or circumstance reasonably likely to hinder or delay the achievement of the Scheduled Final Completion Date, and (v) any other matters as the GOG may reasonably request.
3.2.7 Monitoring and Inspection of the Construction of the Plants

(a) In addition to any monitoring and inspection by the relevant Government Entities (including the GOG Representative) in accordance with the Law or this Agreement, the GOG or GOG Representative may monitor and inspect the construction during the Construction Phase in the presence of the Company upon reasonable prior notice to the Company; provided, however, that such monitoring and inspection does not cause any unreasonable impediment or interfere with the construction progress or unduly disrupt the construction.

(b) The GOG or the GOG Representative must bear the costs of monitoring and inspection of the construction of the Plants by the GOG or the GOG Representative (travel, accommodation, etc), unless the monitoring and inspection shows any material deficiencies in construction, materials, equipment or machinery, in which case the Company must bear such costs.

3.2.8 Other Duties

The Company must:

(a) Ensure that the GOG and the GOG Representative have access to the Plants and the Site, provided that such access does not interfere with or disrupt the construction and subject to the Company’s reasonable prior notice;

(b) Provide copies of any drawings and design documents at the reasonable request of the GOG Representative. Such documents shall be deemed confidential and only used by the GOG for this project;

(c) Prevent and/or control any environmental pollution caused by any Construction Works;

(d) Take all required safety measures in respect of the Site;

(e) Dispose of construction waste and project debris in accordance with the Law and Good Industry Practice;
(f) Not cause remove or carry out any other actions in respect of any existing pipelines, cabling or conduits on the Site, unless approved by the GOG;

(g) Deal with all problems or issues which arise as a result of the Detailed Design, engineering, procurement, construction and performance tests of the Plants in the manner or in accordance with this Agreement and Good Industry Practice and submit information in relation to such problems to the GOG and the GOG Representative.

3.2.9 Commissioning Procedure

The Company shall conduct the commissioning and performance testing of the Plants.

3.2.10 Post Completion Obligations

(a) Delivery of Drawings and Technical Materials

Within no more than four (4) months after the Completion Date for each of the power plants, the Company must deliver to the GOG Representative the following materials:

(i) All technical data related to the design and construction of that plant (including design report, calculation and design documents), both in hard copy and software format to be specified by the GOG Representative prior to delivery of the abovementioned data, including all necessary software instructions, each in two (2) copies;

(ii) Technical materials and drawings of equipment, including the original drawings (including the "as constructed" drawings), documents, instructions and quality certificates, installation records and inspection record both in hard copy and software format to be specified by the GOG Representative prior to delivery of the abovementioned materials, including all necessary software instructions, each in two (2) copies; and

(iii) Any other technical documents or materials related to that plant as reasonably requested by the GOG Representative, both in hard copy and software format to be specified by the GOG prior to delivery of the abovementioned materials or documents, including all necessary software instructions, each in two (2) copies.

The above mentioned documents shall be deemed confidential and only used by the GOG for this project

(b) Intellectual Property Rights

The Company warrants to the GOG that it has the ownership or right to use any of the documents used for the design and construction of the Plants which are the subject matter of intellectual property rights. The Company shall indemnify and hold the GOG harmless in connection with any damage, cost, expense or liability arising out of or resulting from infringement of intellectual property rights by the Company whether intentionally or by negligence.
3.2.11 Abandonment and Collecting under the Construction Security

3.2.11.1 Abandonment or Deemed Abandonment

The construction of the Plants shall be deemed to be abandoned by the Company, unless such delay is caused by one of the circumstances listed in article 3.2.6, if the Company:

(a) Notifies the GOG of its decision to abandon all or part of the Construction Works;

(b) Does not resume construction of all or part of the Construction Works within sixty (60) days after the end of a Force Majeure Event;

(c) Stops construction of all or substantially all of the Construction Works for a continuous period of sixty (60) days; or

(d) Withdraws directly or through action taken by the construction contractor all, or substantially all, personnel from the Site, before the Scheduled Final Completion Date, provided that:

(i) Such withdrawal results in a complete stop of the Construction Works, and

(ii) A replacement construction contractor is not appointed to continue construction within sixty (60) days from the date the construction stopped.

The date of abandonment or deemed abandonment shall correspond in the case contemplated in paragraph (a) above, to the date of the notification and in the cases contemplated in paragraphs (b) to (d) inclusively, to the day immediately following the date on which the respective grace periods referred to therein have expired.

3.2.11.2 GOG's Right to Collect under the Contract Security

If the Company abandons or is deemed to have abandoned the construction in accordance with Article 3.2.11.1, the GOG shall be entitled to call any amount up to the amount remaining under the Construction Security. This right shall further be without prejudice to the GOG's right to seek damages in excess of the amounts called under the Construction Security.

3.2.12 Equipment and Furnishing, Construction Works Warranties

The Company guarantees that all equipment used or included in the Construction Works shall be in operational condition, and conforms with any applicable provisions of the Law including environmental laws, as well as generally accepted standards applicable to hydroelectric power projects of a size and type comparable to the Plants consistent with international standards provided that any standards so selected by the Company shall be consistent with Good Industry Practice, unless otherwise agreed by the Parties.
3.3 OPERATIONS PHASE

3.3.1 Company Obligations

During the Operations Phase, the Company shall be obligated to:

a) Start of the operation of the Plants no later than 48 months after the Effective Date

b) Operate and maintain the Plants;

c) Repair or restore the Plants to an operational condition in order to meet the Minimum Technical Requirements within reasonable time, in the event that all or the part of the Plants is demolished;

d) Comply with requirements set out in Article 3.3.2 and 3.3.3 below;

e) Fulfill its obligations related to operation and maintenance of the Plants in accordance with the Law, Good Industry Practice, and compliance with Minimum Technical Requirements;

f) Provide to the GOG (i) a copy of the audited annual financial accounts of the Company and (ii) an annual report on any scheduled and unscheduled maintenance works of the Plants as well as (iii) a notification on any Project related significant emergency events, in particular as regards health, environment and security issues, whereas the reports under (i) and (ii) shall be provided by the end of each year for the previous year, the notification under (iii) shall be provided within ten (10) Business Days after the event.

3.3.3 Operation and Maintenance Expenses

The Company shall ensure operation and maintenance of the Plants at its expense as well as pay any fees and taxes payable in relation with operation and maintenance of the Plants in accordance with the applicable Law.
4. **OTHER OBLIGATIONS**

4.1 **OBLIGATIONS AND RESPONSIBILITIES OF THE PROJECT COMPANY**

The Project Company undertakes all the Company’s obligations and responsibilities, with the Company towards the GoG, remaining jointly and separately liable for the same obligations and responsibilities, and the obligations and responsibilities of the Company herewith means the obligations and responsibilities of the Project Company.

4.2 **COMPANY COVENANTS**

The Company hereby covenants that without the prior written consent of the GOG (which shall be discretionary), the Project Company shall not engage in any other business other than the Project, which may obstruct or render, whether directly or indirectly, performance by the Company of its obligations hereunder impossible.

4.3 **IFC Performance Standards**

The Parties shall jointly develop project guidelines to ensure that the construction, operation, maintenance, management and monitoring of the Project complies with the requirements of the IFC Performance Standards, dated April 30, 2006, and the requirements according to the Georgian legislation.

5. **OWNERSHIP TITLE TO THE PLANT**

5.1 The Project Company shall hold the ownership title to the Plants.

5.2 The Project Company hereby undertakes the obligation to maintain ownership title over the Plants during the Term of this Agreement and not to sell or otherwise transfer the plants, unless

(a) transfer of ownership occurs in accordance with the terms of the Financing Documents or,

(b) otherwise permitted by a written consent of the GOG (which shall be discretionary),

and provided that:
(i) the acquirer of the Plants executes a binding document under which the transferee assumes all of the obligations of the Project Company hereunder; and

(ii) the Project Company, the transferee of the Plants and the GOG enter into a legally binding transfer instrument, which shall become effective only after the execution and effective date of the document referred in (i) above.

5.3 Sale or other form of transfer of the Plants by the Project Company in violation of the requirements of Article 5.2 shall not have legal force and shall constitute a material breach of this Agreement.
The Construction Security shall secure the proper and timely performance of all of the Company's obligations hereunder during the Construction Phase.

The Company shall renew the Construction Security on an annual basis during the Construction Phase and shall provide each renewed Construction Security to the GOG no later than thirty (30) Business Days before the expiry of the then outstanding Construction Security. Under any circumstances (including collection under the existing Construction Security), the Company shall ensure availability of a valid Construction Security during the entire Construction Phase period.

If the Company fails to deliver the first or any subsequent Construction Security to the GOG as aforesaid, the GOG shall be entitled to call the Contract Security then in force (including, in the event of failure to present the first Construction Security – call the Preconstruction Security).

The GOG shall release the Construction Security in full upon the Actual Completion Date, or upon earlier termination of this Agreement in accordance with the terms hereof, unless the GOG collects under the Construction Security in accordance with the terms of this Agreement.

7. **FORCE MAJEURE AND MATERIAL ADVERSE ACTION**

7.1 **FORCE MAJEURE**

7.1.1 A "Force Majeure Event" means any circumstance not within the reasonable control, directly or indirectly, of the Party affected ("Affected Party") resulting in or causing a total or partial failure of the Affected Party in the fulfillment of any of its obligations under this Agreement (other than the payment of money), but only if and to the extent that:

(a) Such circumstance, despite the exercise of reasonable diligence, cannot be or could not have been prevented, avoided or removed by the Affected Party;

(b) The Affected Party took or has taken all reasonable precautions, due care and reasonable alternative measures in order to avoid the effect of such event on the Affected Party's ability to perform its obligations under this Agreement and to mitigate the consequences thereof;

(c) The event is not, or was not, the direct or indirect result of the breach by the Affected Party of any of its obligations under this Agreement; and

(d) The Affected Party has given the other Party ("Non-Affected Party") notice as soon as practicable, but in any event within five (5) Business Days from the date of occurrence of respective Force Majeure Event, subject to further official confirmation by the Chamber of Trade and Commerce of Georgia if so requested by the Non-Affected Party.
7.1.2 Force Majeure Events include the following circumstances, provided that they meet the criteria spelled out in the definition of Force Majeure Event above:

(a) events of political force majeure (each, a "Political Force Majeure Event"), which shall include:

(i) Acts of war, invasion or act of foreign enemy, or acts of terrorism, acts of rebellion, riot, and civil commotion;

(ii) Blockade, embargo, rationing, or strikes of a political nature;

(iii) Any public agitation which prevents construction or operation activities of the Project for a continuous period exceeding fourteen (14) days;

(b) events of non-political force majeure (each, a "Non-Political Force Majeure Event"), which shall include:

(i) Fire, explosion or flood, whether caused by natural calamity or otherwise, earthquake, lightning, storm, typhoon, tornado or other natural calamity;

(ii) Epidemic or plague; and

(iii) Any act of sabotage, strikes or works to rule or go-slows (in each case other than by employees of the Affected Party or of any shareholders of such Party, or by employees of any Affiliate of any shareholder of such Party).

7.1.3 The Affected Party shall be excused from performance and shall not be construed to be in default in respect of the Agreement for so long as, and to the extent that, such failure to perform is due to a Force Majeure Event. Any period within which a Party shall, pursuant to this Agreement complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure Event.

7.1.4 The following shall apply to the extent the Company is the Affected Party in relation to a Force Majeure Event:

(a) To the extent that the consequences of a Force Majeure Event fall within the risks covered under the insurance agreements executed by the Company on voluntary basis, the Company shall forthwith make the appropriate claims thereunder and shall apply the corresponding proceeds for rectification of the effects of such Force Majeure Events.

(b) If an insured Force Majeure Event demolishes all or part of the Plant, the Company shall apply the insurance proceeds and, where such proceeds are insufficient, shall additionally
apply its own financial resources to repair or restore the Plant within the time-frames agreed with the GOG to an operational condition in order to meet the Minimum Technical Requirements.

(e) Upon the occurrence of an uninsured Force Majeure Event, possible to insure according to Good Industry Practice, resulting in partial or entire demolition of the Plant, the Company shall be obligated to repair or restore the Plant within the time-frame agreed with the GOG to an operational state in order to meet the Minimum Technical Requirements.
9. **FINANCING**

9.1 The GOG acknowledges that the Company will finance the Project through (i) third party loans or (ii) Shareholders Project Loans and/or (iii) Equity.

9.2 To the extent the financing is done through Shareholders Project Loans, these shall be entered into on an arm's length basis, subject to each Shareholders Loan provider representing and warranting that the terms and conditions of the Shareholders Project Loan to which it is party reflects typical market provisions (including with respect to term, prepayment costs, breakage costs, cancellation fees, and other amounts payable, including in case of acceleration).
9.3 Information on the Financing Parties shall be provided to the GOG by Financial Closing. This schedule shall be subject to amendment.

9.4 The Financing Documents may be amended by the parties thereto without any approval or consent of the GOG. The Company shall notify the GOG or the GOG Representative of any such amendment.
11. ASSIGNMENT

11.1 Neither Party shall sell, encumber, assign or otherwise transfer its rights or obligations under or pursuant to this Agreement without the prior written consent of other party, provided that the Company may without the GOG's consent (i) assign, or create a security interest in, its rights under this Agreement to the Financing Parties and (ii) propose the GOG to enter into an agreement with each Financing Party and their representative in form and substance similar to the Form of Direct Agreement.

11.2 Any actual, attempted or purported sale, encumbrance, assignment or other transfer by a Party of any of its rights or obligations or interests in, under or pursuant to this Agreement that does not comply with the terms of Article 11.1 shall be considered material breach of the Agreement.

11.3 This Agreement shall bind the legal successors and permitted assignees of the Parties.

12. INDEMNIFICATION

Subject, for the avoidance of doubt, to the limitation on liability set forth in Article 21 (Consequential Damages) hereof:
(a) The Company shall defend, indemnify the GOG and its ministers, officers and employees against, and hold the GOG and its ministers, officers and employees harmless from, at all times after the date hereof, any and all Losses incurred, suffered, sustained, or required to be paid, directly or indirectly, by, or sought to be imposed upon, the GOG and its ministers, officers and employees for personal injury or death to persons or damage to property arising out of the negligent or intentional act or omission of the Company in connection with this Agreement.

(b) The GOG shall defend and indemnify the Company and its directors, officers and employees against, and hold the Company and its directors, officers and employees harmless from, at all times after the date hereof, any and all damages, costs, expenses and liabilities ("Losses") incurred, suffered, sustained, or required to be paid, directly or indirectly, by, or sought to be imposed upon, the Company and its directors, officers and employees for personal injury or death to persons or damage to property arising out of the negligent or intentional act or omission of the GOG in connection with this Agreement.

(c) In the event that any Loss results from the joint or concurrent negligent or intentional acts or omissions of the Parties, each Party shall be liable under this indemnification in proportion to its relative degree of fault.

13. LANGUAGE

This Agreement is in English language. Any communications and notices between the Parties in relation thereto shall be in Georgian and/or English languages.

14. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of Georgia.

15. COMPANY'S LIABILITY FOR ACTS OF THE COMPANY AND OF THE RELATED PARTIES

The Company shall be liable to the GOG for any of its acts or omissions as well as any acts or omissions under the Construction Agreement or of any of its related parties in connection with the performance of this Agreement, and in accordance with the Law. For avoidance of any doubt, the Company shall at all times remain fully liable to the GOG for any acts or omissions of the Project Company as well as contractors, subcontractors, employees or any third parties which the Company may employ/retain with the purpose of fulfilment of any of its obligation hereunder.

16. GOG'S POSITION AS GOVERNMENT ENTITY

16.1 Subject to article 7.2 and 8.1.3 this Agreement does not restrict or otherwise affect the GOG's discretion to use its regulatory and other public governance powers, provided,
however, that the powers are exercised in accordance with the Law.

16.2 The GOG shall perform its obligations provided under this Agreement only within the limits of its authority and in compliance with the Law.

17. DISCOVERY OF FOSSILS AND ANTIQUITIES

Without prejudice to the Company's rights to any extension of the Scheduled Final Completion Date in accordance with Article 3.2.6, the Company shall, upon discovery or suspected discovery of any fossils or antiquities (on-Site and off-Site), immediately notify the GOG to cease Construction Works on the Site and comply with the applicable Law.

18. NOTICES

18.1 Any notice or other communication from one Party to the other Party which is required or permitted to be made under the provisions of this Agreement shall be: (i) made in writing; (ii) delivered personally (by hand delivery) or sent by pre-paid registered mail or by courier to the address of the other Party which is provided below or to such other address as the other Party shall by notice require, or sent by facsimile transmission (with receipt of transmission confirmation) to the facsimile number of the other Party which is shown below or to such other facsimile number as the other Party shall by notice require; and (iii) marked for the attention of the person(s) designated below or to such other person(s) as the other Party shall by notice require.

18.2 Any notice or other communication sent in accordance with Article 18.1 by one Party to the other Party to the below specified address of the other Party or other address of the other Party as may be notified by such Party shall be deemed to be received by the other Party, if delivered by hand delivery - on the day of its delivery, , if sent by pre-paid registered mail or by courier - seventy two (72) hours from the date of posting, or if sent by facsimile transmission - as provided above.

The GOG:

Ministry of Energy and Natural Resources of Georgia

-------------

Attn: His Excellency, The Minister

The Company:

-------------
Attn: The Management Board

The Project Company:

--------------

Attn: The Management Board

19. VALIDITY OF THIS AGREEMENT

If any term or provision of this Agreement is held invalid or unlawful or unenforceable, the remaining provisions of the Agreement shall not be affected.

20. CONSEQUENTIAL DAMAGES

Neither Party shall be liable to the other for any indirect, special, punitive, exemplary or consequential damages or losses (whether foreseeable or not at the date of the Agreement), including damages for lost revenue, lost product, lost profit, lost business or lost business opportunities.

21. ENTIRE AGREEMENT

This Agreement, including the annexes attached hereto, represents the entire agreement entered into between the Parties in relation to the Project and supersedes any or all previous agreements or arrangements, whether oral or written, between the Parties.

This Agreement shall enter into force on the Effective Date.

IN WITNESS WHEREOF, this Agreement has been signed by duly authorized representative of the Parties hereto on the day, month and year first above written.
THE GOVERNMENT OF GEORGIA, REPRESENTED BY THE MINISTRY OF
ENERGY AND NATURAL RESOURCES OF GEORGIA

By: 
Name: Alexander Khelaguri
Title: Minister

THE COMPANY

By: 
Name: Bård Mikkelsen
Title: Chairman of the Board

THE PROJECT COMPANY

By: 
Name: Bjørg Brandtzaeg
Title: Director

ARTICLES 1.1, 3.3.2 AND 8.2.2 (C) OF THIS AGREEMENT APPROVED AND
ADHERED TO BY:

ELECTRICITY SYSTEM COMMERCIAL OPERATOR, LLC

By: 
Name: Irina Malorava
Title: General Director

ARTICLES 1.1, 2.2.5 AND 8.2.2 (C) OF THIS AGREEMENT APPROVED AND
ADHERED TO BY:

ENERGOTRANS LLC

By: 
Name: Kakha Sekhniashvili
Title: Director

ARTICLES 1.1 AND 8.2.2 (C) OF THIS AGREEMENT APPROVED AND ADHERED
TO BY:

GEORGIAN STATE ELECTROSYSTEM LLC

By: 
Name: Sul’khan Zumbriadze
Title: Chairman of the Management Board

38