

# **POWER PURCHASE AGREEMENT**

**Between**

**NEPAL ELECTRICITY AUTHORITY**

**And**

**MANANG MARSHYANGDI HYDROPOWER PVT.  
LTD.**

**Concerning the**

**Manang Marsyangdi Hydropower Project (135 MW)  
(PROR)**



**October 2019  
Kathmandu, Nepal**



# TABLE OF CONTENTS

Contents	Page
POWER PURCHASE AGREEMENT .....	6
PREAMBLE .....	6
ARTICLE 1.....	7
DEFINITION AND INTERPRETATION .....	7
1.1 DEFINED TERMS .....	7
"LETTER OF CREDIT" SHALL MEAN AN ON DEMAND, IRREVOCABLE, UNCONDITIONAL, REVOLVING LETTER OF CREDIT IN FAVOUR OF COMPANY IN A FORM AND SUBSTANCE SATISFACTORY TO COMPANY. ....	12
1.2 INTERPRETATION .....	15
1.3 SCHEDULES.....	16
ARTICLE 2.....	17
SALE AND PURCHASE OF ENERGY' .....	17
2.1 ENERGY .....	17
2.2 EXCESS ENERGY .....	17
2.3 OTHER SALES OF ENERGY .....	17
2.4 WHEELING OF POWER.....	17
2.5 FIRST RIGHT TO PURCHASE POWER .....	17
ARTICLE 3.....	18
TERM AND TERMINATION.....	18
3.1 TERM OF AGREEMENT .....	18
3.2 COMPANY EVENTS OF DEFAULT .....	18
3.3 NEA EVENTS OF DEFAULT .....	20
3.4 NOTICE OF DEFAULT.....	21
3.5 CONSEQUENCES OF SUSPENSION.....	21
3.6 CONSEQUENCE OF TERMINATION .....	22
3.7 CONTINUING OBLIGATION; RIGHT TO DISCONTINUE SERVICE.....	23
3.8 OTHER TERMINATION CONDITIONS .....	24
ARTICLE 4.....	25
PRE-OPERATION PERIOD.....	25
4.1 PERMITS, LICENSES AND APPROVALS .....	25
4.2 DOCUMENTS .....	25
4.3 CONSTRUCTION .....	25
4.4 OPERATING PROCEDURES AND OPERATING COMMITTEE.....	26
4.5 DELAYS AND PENALTY PROVISIONS .....	27
4.6 NEA'S OBSERVATION VISITS .....	28
4.7 CONSTRUCTION, OPERATION AND MAINTENANCE OF PROJECT: APPOINTMENT OF CONTRACTORS.....	28
ARTICLE 5.....	30
CONTROL AND OPERATION OF THE PROJECT.....	30
5.1 PROJECT OPERATION .....	30
5.2 SCHEDULED AND MAINTENANCE OUTAGES .....	30
5.3 REPORTING AND SCHEDULING REQUIREMENTS .....	31
5.4 DISPATCH .....	31
5.5 EMERGENCY PLANS AND PROCEDURES .....	31
5.6 DELIVERY DURING EMERGENCY.....	32
5.7 COORDINATING COMMITTEE MEMBERSHIP AND DUTIES .....	32
5.8 MAINTENANCE OF RECORDS.....	33
5.9 AVAILABLE CAPACITY .....	33
5.10 RIGHT TO WORK OR INTERFERE IN EMERGENCY CONDITIONS .....	34

5.11	ACCESS TO PROJECT .....	34
5.12	SAFETY .....	35
<b>ARTICLE 6.....</b>		<b>36</b>
<b>INTERCONNECTION FACILITIES.....</b>		<b>36</b>
6.1	COMPLETION OF INTERCONNECTION FACILITIES .....	36
6.2	NEA INTERCONNECTION FACILITIES .....	36
6.3	CONSTRUCTION OF NEA INTERCONNECTION FACILITIES .....	36
6.4	COMPANY INTERCONNECTION FACILITIES .....	36
6.5	CONSTRUCTION OF THE COMPANY INTERCONNECTION FACILITIES .....	36
6.6	MAINTENANCE OF COMPANY'S INTERCONNECTION FACILITY .....	37
6.7	PROTECTION DEVICES .....	37
6.8	CHANGES AFFECTING PROTECTION COMMUNICATION DEVICES .....	37
6.9	TESTING.....	37
6.10	NEA DISCONNECTION OF THE FACILITY .....	38
6.11	MODIFICATIONS .....	38
<b>ARTICLE 7.....</b>		<b>39</b>
<b>RATES AND CHARGES .....</b>		<b>39</b>
7.1	ELECTRICAL OUTPUT .....	39
7.2	DEEMED GENERATION .....	39
7.3	LIMITATION ON DEEMED GENERATION .....	40
7.4	ELECTRICAL OUTPUT PURCHASE REQUIREMENTS .....	40
7.5	EXCESS ENERGY .....	40
7.6	ROYALTIES, TAXES, ETC.....	40
7.7	CHARGES AND LIQUIDATED DAMAGES.....	40
7.8	PURCHASE OF ENERGY FROM NEA.....	41
7.9	TEST GENERATION.....	41
7.10	REVISION OF PURCHASE PRICE.....	41
<b>ARTICLE 8.....</b>		<b>42</b>
<b>BILLING AND PAYMENT PROCEDURE.....</b>		<b>42</b>
8.1	DELIVERY OF INVOICES .....	42
8.2	TIME OF PAYMENT.....	42
8.3	DISPUTES .....	42
8.4	CURRENCY OF PAYMENT.....	43
8.5	NEA LETTER OF CREDIT.....	43
8.6	HEDGING .....	43
<b>ARTICLE 9.....</b>		<b>44</b>
<b>FORCE MAJEURE .....</b>		<b>44</b>
9.1	DEFINITION OF FORCE MAJEURE .....	44
9.2	NOTIFICATION OBLIGATIONS .....	45
9.3	DUTY TO MITIGATE .....	46
9.4	DELAY CAUSED BY FORCE MAJEURE EVENT.....	46
9.5	TERMINATION DUE TO FORCE MAJEURE.....	47
<b>ARTICLE 10.....</b>		<b>48</b>
<b>REPRESENTATIONS, WARRANTIES AND COVENANTS.....</b>		<b>48</b>
10.1	NEA'S REPRESENTATIONS .....	48
10.2	COMPANY'S REPRESENTATIONS .....	48
10.3	COMPLIANCE WITH LAWS .....	49
<b>ARTICLE 11.....</b>		<b>50</b>
<b>LIABILITY AND INDEMNIFICATION .....</b>		<b>50</b>
11.1	LIMITATION OF LIABILITY .....	50
11.2	COMPANY INDEMNITY .....	50
11.3	NEA INDEMNITY .....	50
11.4	NOTICE OF PROCEEDINGS .....	50



DRAFT PPA Document Letter.

S.N.	CAUSE / ARTICLE	Issue	Recommendation
1	PREAMBLE		
2	CERTALS - Part 1 Article 1 Definition and Interpretation	Refered to schedule 1, but schedule 1 is empty Term construction still date Refers to schedule 10 (Project construction schedule) but nothing the schedule 10 is empty. ECOD date not mentioned Project cost in USD	ADD details in schedule 1 ADD details in schedule 10  Fix the ECOD date and insert as appropriate  shall be replaced with "Company shall pay to WEA a Wharfing charge in an amount determined by Commission"
3			
4			
5	Article 2 Sale and Purchase <del>Clause 2</del>		
6	2.4	Wharfing of Power ..... Company shall pay to WEA a Wharfing ..... created in field	



11.5	CONDUCT OF PROCEEDINGS.....	51
11.6	REPRESENTATION.....	52
<b>ARTICLE 12.....</b>		<b>52</b>
<b>INSURANCE.....</b>		<b>52</b>
12.1	INSURANCE TO BE MAINTAINED.....	52
12.2	CERTIFICATE OF INSURANCE.....	53
12.3	REVIEW AND REVISION.....	53
12.4	ADDITIONAL INSURED.....	54
<b>ARTICLE 13.....</b>		<b>54</b>
<b>GOVERNING LAW; RESOLUTION OF DISPUTES.....</b>		<b>54</b>
13.1	GOVERNING LAW.....	54
13.2	DISPUTE RESOLUTION BY MUTUAL AGREEMENT.....	54
13.3	NOTICE OF ARBITRATION.....	54
13.4	ARBITRATION OF DISPUTES.....	55
13.5	RULES OF ARBITRATION.....	55
13.6	NUMBER OF ARBITRATORS AND APPOINTMENT.....	55
13.7	PLACE OF ARBITRATION.....	55
13.8	LANGUAGE OF ARBITRATION.....	55
13.9	FINALITY AND ENFORCEMENT OF AWARD.....	55
13.10	JUDGMENT CURRENCY.....	55
13.11	COST OF ARBITRATION.....	55
<b>ARTICLE 14.....</b>		<b>56</b>
<b>NOTICE.....</b>		<b>56</b>
14.1	NOTICE.....	56
14.2	NEA'S AUTHORIZED REPRESENTATIVE.....	56
14.3	COMPANY'S AUTHORIZED REPRESENTATIVE.....	56
<b>ARTICLE 15.....</b>		<b>57</b>
<b>MISCELLANEOUS PROVISIONS.....</b>		<b>57</b>
15.1	ASSIGNMENT.....	57
15.2	AMENDMENTS.....	57
15.3	WAIVER.....	57
15.4	HEADINGS.....	57
15.5	BENEFIT.....	58
15.6	INDEPENDENT CONTRACTORS.....	58
15.7	SURVIVAL.....	58
15.8	CONFIDENTIAL INFORMATION.....	58
15.9	ENTIRETY.....	58
15.10	EXPENSES AND FURTHER ASSURANCES.....	59
15.11	LANGUAGE.....	59
15.12	SEVERABILITY.....	59
15.13	PERMITS & LICENSES.....	59
15.14	AUDITED FINANCIAL REPORT.....	59
15.15	GOOD FAITH.....	59
<b>SCHEDULE 1: PROJECT DESCRIPTION.....</b>		<b>61</b>
<b>SCHEDULE 2: PERMITS AND AUTHORIZATIONS.....</b>		<b>62</b>
<b>SCHEDULE 3: TECHNICAL LIMITS.....</b>		<b>63</b>
<b>SCHEDULE 4: CONSTRUCTION REPORTS.....</b>		<b>63</b>
<b>SCHEDULE 5: METERING STANDARDS AND TESTING.....</b>		<b>63</b>
<b>SCHEDULE 6: COMMISSIONING AND TESTING.....</b>		<b>64</b>
<b>SCHEDULE 7: CONNECTION AGREEMENT (ATTACHED).....</b>		<b>66</b>
<b>SCHEDULE 8: POWER AND ENERGY TABLE.....</b>		<b>67</b>

INSTALLED CAPACITY (KW) .....	67
RATED TURBINE EFFICIENCY .....	67
DESIGN DISCHARGE (M <sup>3</sup> /S) .....	67
RATED GENERATOR EFFICIENCY .....	67
MIN RELEASE (M <sup>3</sup> /S) .....	67
RATED TRANSFORMER EFFICIENCY .....	67
GROSS HEAD (M) .....	67
COMBINED EFFICIENCY .....	67
OUTAGE - LOSSES + SELF CONSUMPTION (H <sup>00</sup> /MONTH) .....	67

SCHEDULE 9: PURCHASE PRICE .....	68
----------------------------------	----

SCHEDULE 10: PROJECT CONSTRUCTION SCHEDULE .....	68
--	----

SCHEDULE 11: PROJECT FINANCIAL STATEMENTS (ATTACHED) .....	69
--	----

*[Handwritten signature]*

*[Handwritten mark]*

# POWER PURCHASE AGREEMENT

## PREAMBLE

THIS POWER PURCHASE AGREEMENT is made in Kathmandu, Nepal, as of ... .., 2019 [BS 2076 ...];

BETWEEN

Nepal Electricity Authority (hereinafter referred to as "NEA"), constituted under the Nepal Electricity Authority Act 2041, having its registered office at Durbar Marg, Kathmandu, Nepal;

AND

Manang Marshyangdi Hydropower Pvt. Ltd. (hereinafter referred to as "Company"), a private limited company duly incorporated and registered under the laws of Nepal, having its registered office in Baluwatar, Kathmandu-4, Nepal;

## RECITALS

WHEREAS, Company (this and all other capitalized terms used herein are defined, and shall be interpreted in the manner set forth in Article 1), has entered into the Power Purchase Agreement (PPA) with Nepal Electricity Authority pursuant to which Company shall develop a hydroelectric generation facility known as the Manang Marshyangdi Hydropower Project (PROR) (hereinafter referred to as the "Project") to be located on the Marshyangdi River in Manang District of Nepal and consisting of 2 (Two) turbine generators with combined nominal rating of 135 MW (to be finally determined by DoED) with related power delivery facilities and other associated facilities, as more specifically described in Schedule 1;

WHEREAS, Company wishes to sell and deliver to NEA and NEA wishes to purchase from the Company at the Delivery Point, the electric energy generated by the Project, under the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of these premises and of the mutual covenants and agreements hereinafter set forth, NEA and Company agree to the following:





# ARTICLE 1

## DEFINITION AND INTERPRETATION

### 1.1 Defined Terms

Wherever the following terms appear in this Agreement, whether in the singular or in the plural, or in the present or the past tense, they shall have the respective meanings specified below:

"**Affiliate**" shall mean any Person that is directly or indirectly (through one or more intermediaries) controlled by or under common control with the Person specified. For purposes of this definition, control of a Person means the power, direct or indirect, to cause or determine the direction of the management and policies of such Person (whether by ownership of securities, contract otherwise). Notwithstanding anything in this definition to the contrary, any Person owning 10% or more of the voting securities of another Person shall be deemed to control such Person.

"**Agreement**" shall mean this Power Purchase Agreement, including, all schedules hereto for the purchase of electric energy, dated as of the date first above written, as the same may be amended, supplemented or modified from time to time in accordance with terms and conditions hereof.

"**Alternative Energy Cost**" shall mean the amount per kWh equal to 100% of the Purchase Price as applicable to Dry Months and 50% of the Purchase Price as applicable to Wet Months.

"**Applicable Law**" shall mean any law, legislation, statute, rule, order, treaty, regulation, court decision or published practice or any interpretation thereof enacted, issued or promulgated by any of Governmental Authority and applicable to NEA, the Project, the Financing Parties, or the Company.

"**Available**" shall mean that the Project is able to comply with a Dispatch Instruction and to deliver electric energy at the Delivery Point within the limitation of Technical Limits.

✓ "**Available Capacity**" shall mean, at any time in a Contract Month, such amount of net aggregate capacity which the Project is able to generate and deliver at the Delivery Point and which is derived as described in Article 5.9.

✓ "**Availability Declaration**" for a Contract Month shall mean the declaration submitted by Company to Load Dispatch Center of NEA at least fourteen (14) Business Days before the Contract Month specifying the net aggregate generating and delivery capacity and energy (kW and kWh) of the Project for the period; provided, however, that the capacity so declared shall not exceed the Installed Capacity of the Facility at any time.

✓ "**Black Start**" shall mean the capability of Project, in the event of disconnection of Project from NEA Grid, to generate power with the help of its own auxiliary generator or other means and to supply power at the Delivery Point at specified voltage level.

✓ "**Business Day**" shall mean any Day on which the offices of NEA are authorized to be open or are not required to close in Kathmandu, Nepal.

**"Commercial Operation Date"** shall mean the date specified in a certificate delivered by the Independent Engineer stating

- (i) that installation and testing of all Units and Company Interconnection Facilities have been completed and have satisfied and successfully demonstrated performance in accordance with the requirements of Schedule 6 and the Connection Agreement, and
- (ii) that the Project has been generating & delivering power at the Delivery Point satisfactorily for a minimum of 15 (fifteen) Days from the first Unit Delivery Date.

Commercial Operation Date is scheduled as of the date hereof as the Required Commercial Operation Date.

**"Construction Contracts"** shall mean, collectively, the contract to be entered into by Company with its contractors for the design, engineering, procurement and construction of the Project, copies of which shall be furnished to NEA.

**"Contract Energy"** shall mean the energy at delivery point expressed in kWh per month specified in column 'H' for each Contract Month of Table II of Schedule 8 (POWER AND ENERGY TABLE) commencing with the Commercial Operation Date until the termination of this PPA.

**"Contract Month"** shall mean each Bikram Sanjbat calendar month commencing with the Commercial Operation Date until the termination of this PPA.

**"Contract Year"** shall mean the period beginning on the Commercial Operation Date and ending on the following Ashadh (mid-July), and each succeeding twelve (12) month period thereafter beginning on 1<sup>st</sup> of Shrawan (mid-July), and ending on last day of the following Ashadh (mid-July); provided that the last Contract Year shall begin on 1<sup>st</sup> of Shrawan and end on the date that is thirty (30) years from the Commercial Operation Date.

**"Connection Agreement"** shall mean the Memorandum of Understanding dated January 8 of 2019 [BS 2076 9 24], including its attachments and amendments, signed by the authorized representatives of Company and the Grid Owner for the connection of Project with the NEA System.

**"Connection Point"** shall mean 220 kV busbar of 220 kV proposed Dharapani Switching Station of NEA at Dharapani, Manang.

**"Coordinating Committee"** shall have the meaning specified in Article 5.7 (Coordinating-Committee Membership and Duties).

**"Company Event of Default"** shall have the meaning specified in Article 3.2 (Company Events of Default).

**"Company Interconnection Facilities"** shall mean all the facilities, wherever located, to be installed by Company to enable NEA to safely and reliably receive electric power, from the Project at the Delivery Point, including all metering equipment, transformers and associated equipment, relay and switching equipment, protective devices and safety equipment, communications telemetering equipment and transmission line, as more particularly described in Schedule 7 (CONNECTION AGREEMENT).

**"Company Termination Notice"** shall have the meaning specified in Article 3.4 (Notice of Default) (c) (1).



**"Construction Start Date"** shall mean the date after financial closure, verified by the Coordinating Committee, from which date the construction of the first major civil component of the Project as indicated in the Schedule 10 (Project Construction Schedule) is materially initiated by the Company.

**"Day"** shall mean the 24-hour period beginning at 00:00 hours Nepalese standard time.

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

**"Deemed Generation"** shall mean the energy, which a generating station is capable of generating but cannot generate due to the conditions of grid or power system beyond the control of generating station resulting in spillage of water.

**"Default Rate"** shall mean the weighted average annual default rate of interest specified in the Financing Documents which shall not be greater than 10 (ten) percent.

**"Delivery Point"** shall mean the 220 kV busbar of the 220 kV proposed Dharapani Switching Station of NEA at Dharapani, Manang, at which electric energy from the Project is delivered to NEA as particularly described in the Connection Agreement.

**"Designated Account"** shall mean a deposit account of Company maintained at a bank in Kathmandu, notice of which Company shall give to NEA in writing prior to the Commercial Operation Date.

**"Dispatch Instruction"** shall mean NEA's instructions to Company from the Load Dispatch Center to schedule and control the generation of the Project in order to commence, increase, decrease or cease the Electrical Output delivered to the NEA System or provide Reactive Power support or to Black Start or operate the Project under Off-grid Mode Operation subject to the Technical Limits.

**"Dry Months"** shall mean each Bikram Sambat Calendar months from 16<sup>th</sup> Mangsir to 15<sup>th</sup> Jestha, inclusive.

**"Due Date"** shall have the meaning specified in Article 8.1 (Delivery of Invoices).

**"Electrical Output"** shall mean for any period, after the Commercial Operation Date, the electric energy delivered by the Project and metered at the Delivery Point, in accordance with Schedule 5 (METERING STANDARDS AND TESTING) and expressed in kWh.

**"Emergency"** shall mean a condition or situation which in the reasonable judgment of NEA materially and adversely affects or will materially and adversely affect NEA's ability to meet its obligations to maintain safe, adequate and continuous electric service to NEA's customers or presents an imminent physical threat of danger to life, health, plant or equipment relating to the Project or the NEA System.

**"Equity"** shall mean the amounts that the Lenders permit to be included within the meaning of equity for the purpose of calculating debt to equity gearing under the Financing Documents including any shareholder loans subordinated to debt. The equity portion of investment shall not be less than 20% of the total investment.



**"Excess Energy"** shall mean for any contract month, capacity higher than specified under column E of Table II or the energy expressed in kWh above the Contract Energy for such contract month specified under column H of Table II of Schedule 8, which the Project may be able to generate and deliver to NEA pursuant to a Dispatch Instruction, provided, however, that Excess Energy for any Month shall not be greater than the product of Installed Capacity and number of hours in the Month less the Contract Energy specified in Column H of Schedule 8.

**"Financial Closure Date"** shall mean the date of closure of Shareholders' Agreement for equity investment of at least 20% of the Project Cost and the date of closure of debt financing for the remaining portion of Project Cost, whichever is later to occur.

**"Financing Documents"** shall mean the loan agreements, notes, indentures, security agreements and other documents (*inter alia* equity subscription agreement) relating to the construction and permanent financing (including, without limitation, refinancing) of the Project or any part thereof, copies of which shall be furnished to NEA.

**"Financing Parties"** shall mean the lenders, export credit agencies, multilateral institutions, equity providers and others providing financing or refinancing to or on behalf of Company, for the development, ownership, operation and maintenance of the Project or any portion thereof, or any trustee or agent acting on behalf of any of the foregoing.

**"Fiscal Year"** shall mean the year starting from the first day of Bikram Sambat calendar month of Shrawan and ending at the last day of Ashadh, or the year as informed by NEA to the Company.

**"Force Majeure Events"** shall mean the events and circumstances described in Article 9 (FORCE MAJEURE).

**"Forced Outage"** shall mean any inability of a Unit or Units (after the Commercial Operation Date) to deliver any required Electrical Output that is not due to a Scheduled Outage or Maintenance Outage.

**"Government Approval"** shall mean any authorization, permit, clearance, license, consent, exemption or approval from or required by any Governmental Authority for the development, financing, ownership, construction, operation and maintenance of the Project.

**"Government Authority"** shall mean any GON Authority, any Local Authority, any Legal Authority or any other authority with jurisdiction over either Party, the Project or the NEA System.

**"Grid Owner"** shall have the respective meaning as defined in the NEA Grid Code.

**"GON"** shall mean Government of Nepal, inclusive of all ministries and agencies duly constituted by GON.

**"GON Authority"** shall mean any national or regional authority or regulatory department, body, commission, instrumentality, agency, ministry or administrative body or taxing authority thereof, in any case, having jurisdiction over either party, the Project or the NEA System.

**"Hedging Fund"** shall mean the same as defined in the "Hedging-related Rules, 2075" issued by Government of Nepal.

**"Independent Engineer"** shall mean the independent firm of reputed consulting engineers acceptable to NEA, Company and the Financing Parties for the purposes defined by terms of reference acceptable to NEA, Company and the Financing Parties, including without limitation, monitoring and certifying the commissioning and testing of the Project and such other purposes as specified in Article 5.7 (Coordinating-Committee Membership and Duties) (d). Independent Engineer shall be appointed, for the purpose of Commercial Operation Date certification, at least one month before 1st Unit Delivery Date with prior written consent of NEA. Term of Reference shall be developed mutually by the Company and NEA. Except as expressly provided in this Agreement, Company shall bear all the expenses relating to Independent Engineer.

**"Installed Capacity"** shall mean the maximum output of the facility as determined in the Performance Test, which capacity shall not be greater than the capacity specified in the Preamble of this PPA.

**"Invoice"** shall have the meaning specified in Article 8.1 (Delivery of Invoices).

**"Invoice Notice"** shall have the meaning specified in Article 8.3 (Disputes) (a).

**"Judicial Authority"** shall mean any court, tribunal or other judicial authority, in any case, having jurisdiction over either Party, the Project or the NEA System.

**"kW"** means kilowatt.

**"kWh"** means kilowatt hour.

**"Lenders"** shall mean any lenders, export credit agencies, multilateral institutions and others providing financing or refinancing to or on behalf of Company, for the development, ownership, operation and maintenance of the Project or any portion thereof, or any trustee or agent acting on behalf of any of the foregoing.

**"Load Dispatch Center"** shall mean the Load Dispatch Center of NEA located in Kathmandu or such other load dispatch center as NEA shall specify in writing to the Company.

**"Maintenance Outage"** of either Party shall mean an interruption or reduction of the Project's generating and delivering capacity, other than a Schedule Outage or Forced Outage, that has been undertaken by the Party in accordance with Article 5.2 (Scheduled and Maintenance Outages) for the purpose of performing work on specific components.

**"MW"** means megawatt.

**"NEA Event of Default"** shall have the meaning specified in Article 3.3 (NEA Events of Default).

**"NEA Interconnection Facilities"** shall mean all the facilities, described in Schedule 7 (Connection Agreement), to be installed for NEA to enable NEA to receive Electrical Output or to Wheel Power at the delivery point in accordance with this Agreement which may include, without limitation, transmission lines and associated equipment, relay and switching equipment, communication equipment and protective devices and safety equipment, plus the metering system, as particularly described in the Connection Agreement.



"Letter of Credit" shall mean any credit demand, irrespective of form, which is issued by a bank or other financial institution in favour of Company in a form and substance satisfactory to Company.

"NEA System" shall mean the power network controlled or used by NEA for the purpose of generating, transmitting and distributing electricity to NEA's customers, including without limitation, the NEA Interconnection Facilities.

"NEA Grid Code" shall mean the prevailing grid code approved by the NEA Board.

"NEA Termination Notice" shall have the meaning specified in Article 3.4 (Notice of Default) (c) (ii).

"Non-dispatch Condition" shall mean the condition under which the Project is required to generate and deliver power energy less than the Available Capacity pursuant to a Dispatch Instruction.

"Operating Procedures" shall have the meaning specified in Article 4.4 (Operating Procedures and Operating Committee).

"Off-grid Mode Operation" shall mean the generation from the Project and delivery of electric power at Delivery Point during the period when the Project is not connected to the NEA Grid.

"Off Peak Hours" shall mean the hours in a Day other than the Peak Hours.

"Parties" shall mean Company or NEA or both.

"Performance Test" shall mean the test to determine the performance of the Project including but without limitation to, the determination of Installed Capacity of the Project, Black Start or Off-grid Mode Operation capabilities of the Project and other tests as mentioned in Schedule 6 (COMMISSIONING AND TESTING).

"Person" shall mean any individual, corporation, partnership, joint venture, trust unincorporated organization or government (or any agency, instrumentality or political subdivision thereof).

"Peak Hours" shall mean the hours specified for each Contract Month by Load Dispatch Center of NEA as the period of high demand in the Day; provided, however, that such period shall not exceed a total of six hours in a Day.

"Project Contracts" shall mean each of the Project Agreement, the Financing Documents, the Construction Contracts and any other material contract to which Company is a party related to the development, construction, operation or maintenance of the Project, copies of which shall be furnished to NEA in the English Language.

"Project Cost" shall mean US\$ 322.95 Million, this being the estimated total cost required for the completion of the project construction including working capital and other costs required till the due date of payment of the first invoice submitted by Company against the sale of power to NEA pursuant to this Agreement.

"Prudent Utility Practices" shall mean the practices, methods, techniques and standards, as changed from time to time, that are generally accepted internationally for use in electric utility industries, taking into account conditions of Nepal, and commonly used in electric



utility engineering and operations to design, engineer, construct, test, operate and maintain equipment of a type and size similar to the Project or the NEA Interconnection Facilities lawfully, safely and efficiently and generally conforming to the manufacturers' operation and maintenance guidelines.

**"Purchase Price"** shall have the meaning as specified in Schedule 9 (PURCHASE PRICE).

**"Reactive Power"** shall mean the watt-less component of the product of voltage and current which the Project shall provide to or absorb from the NEA System and which is measured in MVAR.

**"Reduced Output"** shall mean, for each Contract Month, a reduction of or interruption to the Project's generating and delivering output capacity that is not the result of any act of or event or condition caused by NEA or attributable to an event or condition on the NEA System including any Emergency, NEA declared Force Majeure Event or other curtailment or reduction pursuant to Article 5.5 (Emergency Plans and Procedures).

**"Required Commercial Operation Date"** shall mean *[To be finalized before Signing]*; such date may be extended by the occurrence of a Force Majeure Event pursuant to a recommendation from the Coordinating Committee.

**"Rupees" or "Rs"** shall mean the lawful currency of Nepal.

**"Scheduled Commercial Operation Date"** shall mean the date advised by Company to NEA as the date on which the Project is expected to achieve the Commercial Operation Date, as such date may be revised from time to time based upon the construction program for the Project, scheduled as of the date of this Agreement to be Required Commercial Operation Date.

**"Scheduled Outage"** shall mean a planned interruption of the electric generating and delivering capability of the Project, other than a Maintenance Outage or Forced Outage, that has been scheduled in accordance with Article 5.2 (Scheduled and Maintenance Outages) for inspection, testing, preventive maintenance, corrective maintenance, repairs, replacement, or improvement.

**"Scheduled Synchronization Date(s)"** shall mean with respect to each Unit, the date identified by Company in a written notice received by NEA at least 120 Days prior to such date, as being the date on which Company will attempt to cause such Unit (or multiple Units if so elected by Company) to be electrically synchronized and connected to the NEA System; provided, however, that such date shall be no earlier than *[To be finalized before Signing]*, unless otherwise agreed by the Parties.

**"Site"** shall mean the land, spaces, waterways, roads and any rights acquired or to be acquired by Company for the purposes of the Project on, though, above or below the ground on which or any part of which the Project is to be built (including, without limitation, any working areas required by Company, Company's contractors, villages, townships and camps for the accommodation of the employees of Company and its contractors; and all rights of way and access from public highways where applicable).

**"Synchronization Date(s)"** shall mean with respect to each Unit, the date on which such Unit is electrically synchronized and connected to the NEA System for the first time.



**"Taxes"** shall mean any tax, charge, impost, tariff, duty or fee of any kind charged imposed or levied, directly or indirectly, by any Governmental Authority in Nepal applicable to Company or the Project, including, without limitation, any such corporate income tax, value-added tax, stamp duty, import duty, withholding tax (whether on dividends, interest payments, fees, equipment rentals or otherwise), tax on foreign currency loans or foreign exchange transactions, excise duties, property tax, registration fee or license fee, water tax or environmental tax.

**"Technical Limits"** shall mean the technical limits of the Project set forth in Schedule 3.

**"Test Generation"** shall mean the electric energy of specified quality generated, in coordination with NEA, from one or multiple Units of the Project and delivered to the Delivery Point from the first Unit Delivery Date until the Commercial Operation Date.

**"Term"** shall have the meaning specified in Article 3.1 (Term of Agreement).

**"Termination Date"** shall have the meaning specified in Article 3.6 (Consequence of Termination) (a).

**"Third Party Purchasers"** shall mean consumers outside the NEA system.

**"Transmission Line"** shall mean the transmission line and appurtenant facilities to receive electrical output from the Project as specified in Schedule 7 (Connection Agreement).

**"Unit"** shall mean any of the approximately 67.5 MW (nominal net) turbine generator units incorporated into the Project.

**"Unit Capacity"** shall mean as to any Unit for any period, amount of net electricity generating capacity of such Unit as demonstrated by the performance tests conducted under Schedule 6 for such Unit.

**"Unit Delivery Date"** shall mean for each Unit, the date from which Test Generation is commenced from the Unit.

**"Wet Months"** shall mean any Contract Month that is not a Dry Month.

**"Wheeling of Power"** or **"Wheel Power"** shall mean the use of NEA's transmission facilities for the carriage of electric energy generated by Project from one particular point to another.



## 1.2 Interpretation

Unless the context of this Agreement otherwise requires:

- (i) the headings and paragraph numbering are for convenience of reference only and shall be ignored in construing this Agreement;
- (ii) words of either gender include either or both genders;
- (iii) words using singular or plural number also include the plural or singular number respectively;
- (iv) the term "hereof", "herein", "hereto" and similar words refer to this Agreement and not to any particular Article, Section or Schedule or any other subdivision of this Agreement;
- (v) references to "Article", "Section" or "Schedule" are to this Agreement unless specified otherwise;
- (vi) references to any statute, regulation, notification or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or re-enacted and, unless otherwise specified, shall be construed as references to Nepalese statutes, regulation, notifications or statutory provisions;
- (vii) reference 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 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;
- (viii) in the event of a conflict between any Bikram Sambat calendar date and a Gregorian calendar date in brackets following such Bikram Sambat calendar date, the Bikram Sambat Calendar date shall prevail;
- (ix) references to any Person shall be construed as a reference to such Person's successors or permitted assigns, if applicable; and
- (x) in the event of any inconsistency between the amount expressed in words and their numbers given under parenthesis, then that given in words shall be considered as the true expression.



### 1.3 Schedules

All attached Schedules, form an integral part of this Agreement and this Agreement shall be construed in light of such Schedules, provided that in the event of any inconsistency in the terms of the main body of this Agreement and the terms of the Schedules, the terms of the main body of this Agreement shall prevail. This Agreement includes the following attached Schedules:

- Schedule 1: Project Description
- Schedule 2: Permits and Authorization
- Schedule 3: Technical Limits
- Schedule 4: Construction Reports
- Schedule 5: Metering Standards and Testing
- Schedule 6: Commissioning and Testing
- Schedule 7: Connection Agreement
- Schedule 8: Power and Energy Table
- Schedule 9: Purchase Price
- Schedule 10: Project Construction Schedule
- Schedule 11: Project Financial Statements

## ARTICLE 2

### SALE AND PURCHASE OF ENERGY

#### 2.1 Energy

Subject to and in accordance with the terms and conditions of this Agreement, Company shall make available to NEA at the Delivery Point, and NEA shall pay for, in accordance with Article 7 (RATES AND CHARGES), Electrical Output for each Contract Month from and after the Commercial Operation Date.

#### 2.2 Excess Energy

In each Contract Month, Company shall deliver to NEA in accordance with a Dispatch Instruction, the Excess Energy for such Contract Month. If NEA does not deliver a Dispatch Instruction to the Company for the delivery of the Excess Energy in any Contract Month, then Company shall be entitled to sell and transmit such Excess Energy to any Third Party Purchasers.

#### 2.3 Other Sales of Energy

If and for so long as Company shall ~~have~~ suspended the provision of sales of Electrical Output in accordance with Article 3.4 (Notice of Default) (c) (i) (A), Company shall be entitled to sell and transmit any portion of the Electrical Output to any Third Party Purchasers on terms and conditions as may be agreed by Company and such Third Party Purchasers subject to the provision of Article 3.5 (Consequences of Suspension).

#### 2.4 Wheeling of Power

NEA shall (within the technical capability of the NEA System) wheel any Electrical Output pursuant to Articles 2.2 (Excess Energy) and 2.3 (Other Sales of Energy). Company shall pay to NEA a wheeling charge in an amount to be agreed between the Company and NEA or determined by the regulatory entity of Nepal if such an entity is created in future.

#### 2.5 First Right to Purchase Power

After the expiration of the terms of this Agreement, NEA shall have first right to purchase the energy generated from this project.



## ARTICLE 3

### TERM AND TERMINATION

#### 3.1 Term of Agreement

- (a) This Agreement shall become effective from the date of signing by the duly authorized representatives of the Parties hereto and execution and delivery by Company of conditions stipulated in Article 3.1 (c).
- (b) The Agreement shall have a term from the date hereof until the date that is 30 (Thirty) years from the Commercial Operation Date subject to the provisions of this PPA or as stipulated in the Generation License whichever comes earlier.
- (c) The obligations of NEA under this Agreement shall become effective on the date specified in a notice from NEA to Company stating that the following conditions precedent have been fulfilled to NEA's satisfaction:
  - (i) NEA shall have received copies of letters issued by Nepal Rastra Bank regarding permission for the Company to bring foreign currency into Nepal through banking channel for the development of the Project.
  - (ii) NEA shall have acknowledged a performance guarantee, submitted before signing this Agreement, with validity up to ninety (90) Days after the Required Commercial Operation Date drawn in favor of NEA from a reputed local bank, and in case of international bank, counter guaranteed by a local bank acceptable to NEA and of the amount equal to Nepali Rupees ("NRs") 135 million (One hundred and thirty five million).
    - a. The performance guarantee shall cover the event of failure of Financial Closure Date to occur on or prior to 24 (Twenty four) months from the date of signing of PPA or the date as mentioned in the Generation License for concluding the financial closure; provided however if a letter is issued from concerned GON Authority and is submitted by Company to NEA within seven (7) Days from the date of issue, stating that the process for extension of Financial Closure Date is under consideration, then if not otherwise decided to the contrary by GoN, the performance guarantee shall not be forfeited for one (1) year from the date of submission of the said letter. However, if the timeline for extension of financial closure as stated in the Generation License is extended by the decision of Government of Nepal (GoN) in future, then such extended Financial Closure Date shall apply to this Agreement.
    - b. The performance guarantee shall cover the event of failure of commercial operation to occur on or prior to the Required Commercial Operation Date.

#### 3.2 Company Events of Default

Each of the following events shall be an event of default by the Company (each a "Company Event of Default"), which, if not cured within the time period permitted (if any) to cure, shall give rise to the right on the part of NEA to terminate this Agreement pursuant to Article 3.4 (Notice of Default); provided, however, that no such event shall be an Event of Default by the



Company (i) if it results from a breach by NEA of this Agreement, or (ii) if it occurs as a result of or during a Force Majeure Event:

- (a) the failure of Company to achieve Construction Start Date with respect to the Project within two (2) years after the signing of this Agreement;
- (b) after Construction Start Date but prior to the Commercial Operation Date, the abandonment of the Project by the Company or the failure of the Company to execute the Project in accordance with applicable standards and in a diligent manner for a period of sixty (60) consecutive Days without prior notice to, and the prior written consent of, NEA, provided, however, that after the commencement of on-Site construction of the Project, the Company shall not be deemed to have abandoned its construction of the Project (and therefore its execution of the Project) so long as it is using all reasonable efforts to regain control of the Project or reinstate such construction;
- (c) after the Commercial Operations Date, the abandonment by the Company of the generation and delivery from the Project for a consecutive period of seven (7) Days without prior notice to, and the prior written consent of NEA;
- (d) the incurrence of cumulative operating losses (determined in accordance with generally accepted accounting practices in Nepal consistently applied without taking into account any depreciation) in an amount greater than or equal to the sum of (A) fifty percent (50%), of the amount of the equity funds committed at Financial Closing and (B) any equity contribution by the shareholders of the Company in excess of the equity funds committed at Financial Closing;
- (e) except for the assignment to and by the Lenders contemplated under Article 15.1 (Assignments) of this Agreement, (A) the assignment or transfer of the Company's rights or obligations without obtaining the prior written consent of NEA, or (B) the transfer, conveyance, loss, or relinquishment of the Company's right to own and or operate the Project or any material part thereof or to occupy the Site to any Person (other than NEA pursuant to Power Purchase Agreement) without the prior written approval of NEA;
- (f) except<sup>2</sup> for the purpose of amalgamation or reconstruction (provided, that such amalgamation or reconstruction does not affect the ability of the amalgamated or reconstructed entity, as the case may be, to perform its obligations under this Agreement), the occurrence of any of the following events: (A) the passing of a resolution by the shareholders of the Company for the winding up the Company after notice to the Company and due hearing, which appointment has not been set aside or stayed within ninety (90) Days of such appointment; (B) the making by a court with jurisdiction over the Company of an order winding up the Company that is not stayed or reversed by a court of competent authority within thirty (30) days;
- (g) any statement, representation or warranty by the Company in this Agreement or in any certificate or other instrument delivered by the Company in connection herewith providing to have been incorrect, in any material respect, when made or when deemed to have been made and such incorrect statement, representation, or warranty having a material and adverse effect on the rights or obligations of NEA hereunder or the Company's ability to perform its obligations under this Agreement;
- (h) any material breach by the Company of this Agreement that is not remedied within thirty (30) Days after notice by NEA, respectively, stating that a material breach of such

agreement has occurred that could result in the termination of the agreement, identifying the material breach in question in reasonable detail, and demanding remedy thereof:

- (i) any failure by Company to make any payment or payments required to be made to NEA under this Agreement within forty five (45) Days after the due date for such payment;
- (j) the failure of Company to respond to a material Dispatch Instruction and the failure of Company to remedy any circumstance within its control to permit it to respond to such Dispatch Instruction, which failure continues unremedied for a period of seven (7) Days after written notice from NEA (provided, however, that NEA shall be entitled to recover damages specified in Article 3.7 (Continuing Obligation; Right to Discontinue Service) after such failure continues unremedied for a period of more than thirty (30) Days after written notice from NEA); provided, however, that no such failure shall give rise to a Company Event of Default if such failure arises out of (A) any act or omission of NEA or (B) during a Scheduled Outage, Maintenance Outage or Forced Outage, but only if such Forced Outage is due to or during a Force Majeure Event;
- (k) the partial non-availability of the Project leading to Electrical Output of less than seventy five (75) percent but greater than sixty percent (60%) of the monthly Contact energy (Schedule 8) which occurs for seven (7) months on a continuous basis or ten (10) months within a one full Contract Year period, or the total non-availability or partial non-availability of the Project leading to Electrical Output of less than sixty percent (60%) of the monthly Contact energy per month (Schedule 8) which occurs for four (4) months on a continuous basis or seven (7) months within a one full Contract Year period; provided, however, that no such non-availability shall give rise to a Company Event of Default if such failure arises (A) out of any act or omission of NEA or (B) during a Scheduled Outage, Maintenance Outage or Forced Outage, but only if such Forced Outage is due to or during a Force Majeure Event;
- (l) the failure of Company to submit to NEA a performance guarantee pursuant to Article 3.1(c)(ii) by a date specified by NEA in writing to Company; and
- (m) the failure of Company to achieve commercial operation on or before Required Commercial Operation Date.

### **3.3 NEA Events of Default**

Each of the following events shall be an event of default by NEA (each a "NEA event of Default"), which, if not cured within the time period permitted (if any) to cure, shall give rise to the right on the part of the Company to terminate this Agreement pursuant to Article 3.4 (Notice of Default); provided, however, that no such event shall be an Event of Default by NEA (i) if it results from a breach by the Company of this Agreement or the Project Agreement if any, or (ii) if it occurs as a result of or during a Force Majeure Event:

- (a) the dissolution, pursuant to law, of NEA, except for (A) the privatization of NEA's power stations or distribution area boards, where, in the case of privatization of NEA's distribution area boards, all of NEA's obligations under this Agreement are assigned pursuant to law to or contractually assumed, through a novation or otherwise, by one or more entities, each of which has legal capacity and appropriate commercial function to perform such obligations or (B) an amalgamation, reorganization, reconstruction, or further privatization of NEA where GON without interruption guarantees the performance of the succeeding entity or entities on the same terms and conditions as the GON



Guarantee, or such other equivalent commercial security provided for the obligations under this Agreement are assigned pursuant to law to or contractually assumed, through a novation or otherwise, by one or more entities, each of which has the legal capacity and appropriate commercial function to perform its obligations:

- (b) the transfer of either (i) the rights and or obligations of NEA hereunder or (ii) all or a substantial portion of the assets or undertakings of NEA except in cases where (A) all of NEA's obligations under this Agreement are assigned pursuant to applicable law, or contractually assumed through a novation or otherwise, by an entity that has the legal capacity, financial ability and appropriate commercial function to perform such obligations and (B) the Project Agreement, if any, remains in full force and effect without interruption;
- (c) any failure by NEA to make any payment or payments required to be made to Company under this Agreement within forty five (45) days after the due date for such payment; and
- (d) any failure by NEA to perform any of its other material obligations under this Agreement, which failure continues unremedied for a period of sixty (60) Days after written notice thereof has been delivered by Company to NEA.

### **3.4 Notice of Default**

- (a) Upon the occurrence of a Company Event of Default or an NEA Event of Default as the case may be, NEA or Company, as the case may be, may deliver a notice to the other (a "Notice to Default") which shall specify in reasonable detail the Company Event of Default or NEA Event of Default, as the case may be, giving rise to the Notice of Default.
- (b) Following the giving of notice of Default, the Parties shall consult for a period up to sixty (60) Days (or such longer period as they may agree) as to what steps shall be taken to mitigate the consequences of the relevant event giving due regard to all circumstances.
- (c) At the expiry of the sixty (60) Day period set forth in the preceding sub-paragraph (b) of this Article 3.4 and unless the Parties shall have otherwise agreed or the Event of Default giving rise to the Notice of Default shall have been remedied, the Party having given the Notice of Default may:
  - (i) if such Party is Company, immediately (A) suspend sales of Electrical Output to NEA by notice to NEA without prejudice to Company's right to terminate this Agreement, whereupon Article 3.5 (Consequence of Suspension) shall apply, or (B) terminate this Agreement by delivering a notice of termination of this Agreement (a "Company Termination Notice") to NEA, whereupon Article 3.6 (Consequence of Termination) (b) shall apply; or
  - (ii) if such Party is NEA, terminate this Agreement by delivering a notice of termination of this Agreement (a "NEA Termination Notice") to Company whereupon Article 3.6 (Consequence of Termination) (a) shall apply.

### **3.5 Consequences of Suspension**



- (a) If this Agreement is suspended by Company pursuant to Article 3.4 (Notice of Default), NEA shall transmit or cause to be transmitted as much of the Electrical Output as Company may direct to any Third Party Purchaser selected by Company, subject to the technical capability of the NEA System and payment of wheeling charge as applicable. The Company shall be entitled to enter into agreements having terms of as long as 12 months for sale of up to all the Electrical Output with such Third Party Purchasers and NEA's right to receive and purchase Electrical Output hereunder shall be subject and subordinate to such third-party agreements during the term thereof. The Terms of such agreements may extend Month to Month unless NEA (i) cures all outstanding NEA Events of Default and (ii) pays Company the difference between the amount equal to what NEA would have owed to Company, pursuant to this Agreement, and the amount that Company receives from Third Party Purchasers up to the time of cure. Company agrees to enter into discussions with NEA with a view towards entering into power sales agreements with such Third Party Purchaser as may be identified by NEA. In the event that Third Party Purchaser identified by NEA is willing to enter into agreement with Company with better price than the one selected by Company, then NEA need not pay to Company more than the difference between the amount equal to what NEA would have owed to Company, pursuant to this Agreement, and the amount that Company would have received from Third Party Purchasers identified by NEA up to the time of cure. The purpose of third party sales pursuant to this Article 3.5 is to mitigate damages owed by NEA to Company and it is not intended that Company will be entitled to receive any extra amounts from such sales in excess of the amounts NEA would have paid to Company hereunder if this Agreement had not been suspended pursuant to Article 3.4(c) (i).

### 3.6 Consequence of Termination

- (a) In the event that NEA gives a NEA Termination Notice to Company, the following procedures and cure period shall be observed and shall have expired, respectively, prior to this Agreement actually being terminated and of no further effect (the date of such termination being the "Termination Date"):
- (i) Company may within ninety (90) days, from the date it receives the NEA Termination Notice either (A) cure to the satisfaction of NEA, the Company Event of Default which gave rise to the NEA Termination Notice (in which case the NEA Termination Notice shall be deemed withdrawn) or (B) subject to the prior consent of GON, transfer, sell and/or assign the Project to NEA or any third party purchaser, in which case, if such sale is effected (with the consent of NEA, which consent will not be unreasonably withheld), then such new owner of the Project shall have a period of sixty (60) days from the date of transfer to such new owner to cure the Company Event of Default to the satisfaction of NEA. If such new owner fails to so cure the Company Event of Default within such one hundred fifty (150) day period, the Termination Date shall occur. If, under this Article 3.6 (Consequence of Termination) (a)(i), the Company fails to cure the Company Event of Default within the ninety (90) Days period or the Third Party Purchaser fails to cure within its sixty (60) Days period, the termination date shall occur;
  - (ii) at all times during the continuance of a Company Event of Default and during which Company maintains actual possession and control over the Project, Company shall use its reasonable efforts to operate and maintain the Project as generally required hereunder. Subject to the prior written consent of the

Financing Parties and GON, Company and NEA shall agree to allow NEA, or its designee, to temporarily undertake operation and maintenance of the Project at any time after the one hundred and eighty (180) Days after Company receives the NEA Termination Notice in such terms and conditions as Company and NEA may agree; and

- (iii) Company shall compensate NEA for any monetary damages incurred by NEA as a direct result of a Company Event of Default, which shall include (A) reasonable attorneys fees and expenses in connection with the termination and (B) if such Company Event of Default occurs after achieving Commercial Operation Date, Company agrees to pay liquidated damages for lost Electrical Output equal to the product of the Alternative Energy Cost and the applicable deemed generation amounts (calculated on the basis of column H of Table II of Schedule 8) for such months within forty-five (45) Days of the date the notice from NEA is received by Company of Company Event of Default and applicable compensation claims against Company. However, the Company may set-off from its payment of damages to NEA an amount equal to any outstanding payments owed by NEA to the Company.
- (b) In the event that Company gives a Company Termination Notice to NEA, then NEA shall compensate Company or the Financing Parties (in case of foreclosure) for any monetary damages incurred by Company or the Financing Parties (in case of foreclosure) as a direct result of an NEA Event of Default less (A) any amount Company shall have received from sales of electric energy to Third-Party Purchasers following an NEA Event of Default and pending Company's exercising its remedies) and (B) in case foreclosure shall have been exercised by the Financing Parties, any amounts received by Company and the Financing Parties from any other sources including without limitation, any sale of the Project through foreclosure or otherwise.

### **3.7 Continuing Obligation; Right to Discontinue Service**

- (a) In the event of the occurrence of any Company Event of Default referred to in Article 3.2 (Company Events of Default) and until this Agreement is terminated in accordance with the provisions hereof, (i) neither Party shall be relieved of any of its liabilities or obligations hereunder, including without limitation, NEA's obligation to purchase Electrical Output and Contract Energy and (ii) NEA shall have the right to recover any monetary damages it shall incur as a consequence of a Company Event of Default under Article 3.2 (Company Events of Default).
- (b) In the event of the occurrence of any NEA Event of Default referred to in Article 3.3 (NEA Events of Default), and until this Agreement is terminated in accordance with the provisions hereof, (i) neither Party shall be relieved of any of its liabilities or obligations hereunder, including without limitation, NEA's obligation to purchase Electrical Output and Contract Energy, and (ii) Company shall have the right to recover any monetary damages it shall incur as a consequence of an NEA Event of Default under Article 3.3 (NEA Events of Default).
- (c) Notwithstanding, the provision of Article 3.7 (Continuing Obligation; Right to Discontinue Service) (b), the recovery of revenues from the energy sales to Third Party Purchasers shall be the responsibility of Company.

### 3.8 Other Termination Conditions

- (a) This Agreement may be terminated any time by mutual consent of both Parties.
- (b) This Agreement may be terminated in the event of Force Majeure pursuant to Article 9.5.
- (c) This Agreement shall be terminated in the event of termination of Project Agreement, if any, signed between GON and Company.
- (d) This Agreement shall be terminated in the event of cancellation of generation license issued for the Project.
- (e) If the Company does not possess any valid survey license and has not yet received the Generation License at the time of PPA, the Company must submit the Generation License within 9 (nine) months from the date of signing PPA. In the event that the Company fails to submit Generation License within 9 (nine) months from the date of signing this PPA, the Performance Guarantee submitted by the Company shall be forfeited and the PPA shall be terminated.

DRAFT





## ARTICLE 4

### PRE-OPERATION PERIOD

#### 4.1 Permits, Licenses and Approvals

Company shall apply for in a timely manner, and shall maintain in proper form and in accordance with all necessary Laws, all Governmental Approvals that shall be necessary or advisable and in a timely manner for the construction, operation and maintenance of the Project, and NEA shall make reasonable efforts to support and assist in Company's efforts to obtain and renew all Governmental Approvals that shall be necessary or advisable.

#### 4.2 Documents

The following documents (six copies of each) shall be submitted by Company to NEA no later than the date indicated next to the corresponding item:

- (a) a copy of Company's plan for the operations and maintenance of the Project (as soon as reasonably practicable but not later than three (3) months before the Commercial Operation Date);
- (b) synchronization and test schedule for the Project (not later than one hundred twenty (120) Days prior to the Scheduled Synchronization Date of the first Unit);
- (c) copies of any manufacturers' specifications, schedules of protection schemes and protective relay settings (not later than one hundred twenty (120) Days prior to the Scheduled Synchronization Date of the first Unit);
- (d) copies of manufacturer's operation and maintenance manuals (as soon as reasonably practicable but not later than six (6) months after the Commercial Operation Date);
- (e) signed and sealed copies of as-built drawings for the project, including the civil and architectural works (as soon as reasonably practicable but not later than twelve (12) months after the Commercial Operation Date); and
- (f) Company shall provide to NEA quarterly progress reports of the Project during pre-operation period including the status of the physical and financial progress of the Project.

#### 4.3 Construction

- (a) Company shall be responsible for the design, construction, commissioning and testing of the Project and the Company's Interconnection Facilities in accordance with the provisions of this Agreement and Connection Agreement and in that connection, Company intends to achieve the Commercial Operation Date by the Scheduled Commercial Operation Date.
- (b) Company shall notify NEA of any anticipated material delays in the construction, commissioning and or testing of any Unit of the Project or in achieving the

Synchronization Date of such Unit or Scheduled Commercial Operation Date and shall report to NEA the progress and status of the construction of the Project, on a quarterly basis during the period from the Financial Closure Date to the Commercial Operation Date.

- (c) Company shall make its own arrangement for construction power and permanent power.
- (d) NEA shall cooperate to the extent possible to assist in granting or causing to be granted to the Company, for its access and use by any of the Company's contractors or other representatives, all necessary easements, licenses, rights-of-way and other similar property rights for the purpose of engineering, designing, financing, constructing, erecting, operating and maintaining the Project in, on or through any property owned or otherwise controlled by NEA, the Project area, until the termination of this Agreement. NEA shall grant to the Company adequate and continuing rights for the purposes set forth in this Article 4.3 (Construction) (d) to enter such property during regular business hours subject only to the Company's giving prior notice to NEA. Prior to the construction by the Company of the Project, NEA, with respect to property owned or controlled by NEA and at the Company's cost, shall execute such deeds, easements, rights-of-way, licenses and other documents, each in recordable form, as the Company may reasonably require to record any and all of the above rights. Insofar as it shall be consistent with the Laws of Nepal, all deeds, easements, rights-of-way, licenses and other rights hereunder shall survive termination or expiration of this Agreement, provided, however, that any license or analogous right ranged under a lease held by NEA shall terminate upon the expiration of such lease. Without limiting the provisions of Article 11.1 (Limitation of Liability), the Company shall indemnify and hold harmless NEA and its officers, directors, agents and employees against any loss, cost, expense and liability (excluding any direct or consequential damages) incurred by any such indemnified party as a result of an exercise of the Company's right of access under this Article 4.3 (Construction) (d).

#### **4.4 Operating Procedures and Operating Committee**

- a) Company shall provide to NEA no later than ninety (90) Days prior to the Scheduled Synchronization Date of the first Unit a copy of a draft written operating procedures to serve as the basis for the written operating procedures to be mutually developed by Company and NEA (the "Operating Procedures"). The scope of the draft written operating procedures shall meet the requirements of the Operating Procedures as described in Section 4.4(b).
- b) Company and NEA shall mutually develop the Operating Procedures no later than sixty (60) Days prior to the Scheduled Synchronization Date of the first Unit. The Operating Procedures shall be based on NEA System, the designs of the Project, and the Interconnection Facilities and the draft procedures provided by Company. Operating Procedures shall be consistent with Prudent Utility Practices, the Technical Limits and this Agreement, and shall address all operation interfaces between NEA and Company, including but not limited to the method of day-to-day communication, Availability Declaration, dispatching procedures, shutdown placement and clearances practices, Emergency plans, outage scheduling, capacity and energy reporting, Operating log and Reactive Power Support and the creation of an Operating Committee whose members will consist of two senior representatives of each Party.



- c) The duties and responsibilities of Operating Committee formed pursuant to Clause (n) above shall include but not limited to the following:
- (i) implement and administer the Operating Procedures;
  - (ii) recommend amendments on Operating Procedures;
  - (iii) review and revise protection schemes and devices;
  - (iv) review of Emergency plans;
  - (v) co-ordinate the operation and maintenance of the interconnection facilities including the Maintenance Outages;
  - (vi) safety matters; and
  - (vii) any other matter affecting the operation of the Project as referred to by the Coordinating Committee.
- d) The chairmanship of the Operating Committee shall rotate each one (1) year between the Parties with the first chairman being nominated by Company. Other procedures related to the Operating Committee meetings shall be developed by the Committee itself as required.
- e) In case of matters not resolved by consensus (unanimous agreement of the Parties), the Operating Committee or either Party may refer the matters to the Coordinating Committee (Article 5.7) for further consideration.
- f) Except otherwise mentioned in the Connection Agreement, Company and NEA shall mutually develop an inter-tripping schedule no later than thirty (30) Days prior to the Scheduled Synchronization Date of the first Unit. Such inter-tripping schedule shall be based on a proposed schedule submitted to Company by NEA.
- g) Expenses related to Operating Committee meetings shall be borne by the Company.

#### **4.5 Delays and Penalty Provisions**

- (a) In the event that Commercial Operation Date fails to occur on or prior to the Required Commercial Operation Date and if such failure is caused by the inability of NEA to complete the NEA Interconnection Facilities by the Scheduled Synchronization Date of the first Unit for any reason other than any of the events specified in Article 6.3 (Construction of NEA Interconnection Facilities), then NEA shall pay to Company in the same currency as that of Purchase Price, as penalty an amount equal to the sale of forty five (45) percent of the total Contract Energy for the delay period derived on the basis of column H of Table II of Schedule 8 and applicable Purchase Price.
- (b) In the event that Commercial Operation Date fails to occur on or prior to the Required Commercial Operation Date and if such failure is caused by the inability of Company to complete the Project and Company Interconnection Facilities in accordance with this Agreement and Connection Agreement by the Scheduled Synchronization Date of the first Unit for any reason other than any of the events specified in Article 6.5 (Construction of Company Interconnection Facilities), then Company shall pay to NEA in the same currency as that of Purchase Price, as penalty an amount equal to the sale of forty five (45) percent of the total Contract Energy for the delay period derived on the basis of column H of Table II of Schedule 8 and applicable Purchase Price.



- (c) In the event that Financial Closure Date fails to occur on or prior to the date specified in Article 3.1(c) (ii), the performance guarantee submitted by Company in favour of NEA pursuant to Article 3.1 shall be forfeited.

#### **4.6 NEA's Observation Visits**

Upon prior notice (except that no notice shall be required in an Emergency) to Company and during regular business hours, representatives of NEA shall have the right to observe the progress of the construction of the Project, the commissioning of the Project and the operation of the Project. Company shall comply with all reasonable requests of NEA for, and assist in arranging any such observation visits to the Project. All Persons visiting the Project on behalf of NEA shall observe all safety and other rules and regulations of Company and its contractors and shall comply with the reasonable instructions and directions of Company or its contractors.

#### **4.7 Construction, Operation and Maintenance of Project; Appointment of Contractors**

- (a) Due Diligence  
The Company shall give due diligence in the construction, operation and maintenance of the Project.
- (b) Construction, Operation and Maintenance of the Project  
The Company shall design, construct, install, commission, operate and maintain the Project; provided, however, that the company may contract with the Construction Contractor to design, construct, install, and commission the Project and the Operation and Maintenance Contractor to operate and maintain the Project; provided further, that the appointment of the Construction Contractor and the Operation and Maintenance Contractor by the Company shall not relieve the Company of any of its obligations or potential liability regarding the design, financing, insuring, acquisition, construction, completion, operation or maintenance of the Project.
- (c) Construction Contract; Construction Contractors  
NEA shall acknowledge the Company's appointment of Construction Contractors. The Company shall deliver to NEA a certificate of a duly authorized officer of the Company setting out the name and nationality of the Contractors and each and every subcontractor thereto supplying a major piece of machinery or equipment and the nation of origin of such machinery or equipment not later than thirty (30) Days prior to the execution of any proposed Construction Contract. The Company shall provide NEA with a certificate of a duly authorized officer of the Company setting out any proposed amendment (a "Proposed Material Amendment") to the Construction Contract that would result in (i) a change in the Construction Contractor, or (ii) a change in a major piece of machinery or equipment as to either its company or country of manufacture, not later than fifteen (15) Business Days prior to the execution thereof setting forth the proposed changes. NEA shall then have the right, but not the obligation, to review the certificate, and may notify the Company prior to the proposed execution date that it objects to the Construction Contract or Proposed Material Amendment because in its sole reasonable discretion the proposed

Construction Contractor or the company or country of manufacture of a major piece of machinery or equipment is adverse to the interests of NEA System; provided, however, that by not objecting to the Construction Contract or the Proposed Material Amendment NEA shall not be construed as having approved of the Construction Contract or the Proposed Material Amendment nor as in any way having relieved the Company of its obligation under this Agreement. If NEA does not object to the certificate on or before the end of thirty (30) Days or fifteen (15) Business Days period provided for herein, as the case may be, NEA shall be deemed not to object to the particular Construction Contract or Proposed Material Amendment. Within 30 Days after execution of the Construction Contract and any Proposed Material Amendment, the Company shall (i) deliver to NEA a copy of the Construction Contract and each such Proposed Material Amendment with information that is confidential or proprietary deleted there from and (ii) make available to NEA during normal business hours and upon reasonable notice, at the Company's offices at Kathmandu, a complete copy of the Construction Contract and all Proposed Material Amendments.

(d) Operation and Maintenance Agreement: Operation and Maintenance Contractor

The Company shall deliver to NEA a certificate of a duly authorized officer of the Company describing any proposed Operation and Maintenance Agreement and setting out the name and nationality of the Operation and Maintenance Contractor and any major subcontractor not later than thirty (30) Days prior to the execution thereof. NEA shall then have the right, but not the obligation, to review the certificate, and may notify the Company prior to the proposed execution date that it objects to the Operation and Maintenance Contractor because in its sole but reasonable discretion the appointment of the proposed Operation and Maintenance Contractor would be adverse to the interest of NEA System; provided, however, that by not objecting to the Operation and Maintenance Agreement NEA shall not be construed as having approved of the Operation and Maintenance Agreement nor as in any way having relieved the Company of its obligations under this Agreement. If NEA does not object to the certificate on or before the end of the fifteen (15) Business Day period provided for herein, NEA shall be deemed not to object to the particular Operation and Maintenance Agreement. Within thirty (30) Days after execution of the Operation and Maintenance Contract and any material amendment, (i) the Company shall deliver to NEA a copy of the Operation and Maintenance Contract and each such material amendment; and (ii) make available to NEA during normal business hours and upon reasonable notice, at the Company's offices at Kathmandu within Nepal, a completed copy of the Operation and Maintenance Contract and material amendments.

(e) Operation and Maintenance of the Project by the Company

Notwithstanding anything contained in this Article 4.7 to the contrary, the Company shall be entitled to engage its own personnel and operate and maintain the Project or, in the case where the Operation and Maintenance Agreement then in effect has been terminated by the Company in accordance with its terms, engage some or all of the personnel of the former Operation and Maintenance Contractor and operate and maintain the Project, in either case without prior notice to NEA.





## ARTICLE 5

# CONTROL AND OPERATION OF THE PROJECT

### 5.1 Project Operation

- (a) Company shall operate and maintain the Project in accordance with the Operating Procedures and Prudent Utility Practices and within the Technical Limits. NEA shall not be obligated to purchase or to take delivery of Electrical Output if the Project is not maintained and operated in a manner consistent with Prudent Utility Practices.
- (b) Except as expressly provided in this Agreement and to the extent not in contradiction to the provisions of this Agreement, the construction, operation and maintenance of Project and Interconnection Facilities shall be governed by the Prevalent Grid Code.

### 5.2 Scheduled and Maintenance Outages

- (a) Company shall (i) at least sixty (60) Days prior to the Commercial Operation Date submit its desired schedule of Scheduled Outage periods to NEA for the first Contract Year and (ii) by the following 1 Shrawan (mid July) and each succeeding 1 Shrawan (mid July) of each Contract Year, submit to NEA in writing its desired schedule of Scheduled Outage periods for the following Contract Year.
- (b) Before the Commercial Operation Date and on or prior to the following 1 Shrawan and each succeeding 1 Shrawan of each Contract Year, the Coordinating Committee shall discuss and finalize Schedule Outage plan for the following Contract Year duly taking into account the maintenance needs of both Parties.
- (c) The procedures for requesting and finalizing Scheduled Outages shall be described in the Operating Procedures.
- (d)
  - (i) When the need arises for a Maintenance Outage, the concerned Party shall advise the other Party of such need: including a description of work required and of the earliest start time and latest finish time for such work at least fifteen (15) Days before the date on which the outage is desired. Upon receipt of such written request for Maintenance Outage, the receiving Party shall allow the requesting Party to schedule such Maintenance Outage within a period of time reasonable under the circumstances, but in any event at such time as would not cause the Project to exceed the Technical Limits or to be operated in manner which is inconsistent with Prudent Utility Practices. NEA and Company as the case may be, shall confirm its respective communications under this Article 5.2 (d) in writing within seven (7) Days.
  - (ii) Notwithstanding anything written in Article 5.2 (d) (i) above, Maintenance Outage shall not be allowed during Peak Hours and system Emergencies.
  - (iii) No Party shall be allowed to undertake more than two instances of Maintenance Outages and cumulative maintenance outage hours shall not exceed ten (10) hours in each Contract Month.



(iv) The details of Maintenance Outage procedures shall be described in the Operating Procedures based on the provisions specified in this Agreement.

### 5.3 Reporting and Scheduling Requirements

The Company shall at its expense obtain and maintain telecommunications facilities suitable to NEA to provide communications with NEA's dispatchers for the transmission of operating information and instructions as required by NEA. The operating information and instructions shall include, but not be limited to, normal operations, synchronization or separation, scheduled and unscheduled outages, equipment clearances, and information as covered below.

The Company shall provide NEA on a daily basis, upon request of NEA, and at the Company's expense, the following: (1) the instantaneous kW output from the Facility; (2) the integrated kWh from the Facility for each hour; (3) the integrated net output from the Facility for the previous twenty-four (24) hour period; and (4) any other data as may reasonably be requested by NEA. A copy of the Facility log listing such hourly data and such other data as may be reasonably requested shall be forwarded to the NEA's dispatcher daily, if requested by NEA.

The Company at its expense and upon request of NEA shall provide a recording device acceptable to NEA, which will record information such as the integrated hourly kWh output from the Project. The information so recorded shall be made available on a schedule and in a manner to be reasonably determined by NEA.

### 5.4 Dispatch

- (a) Commencing with the first Unit Delivery Date, Company shall submit Availability Declaration to the Load Dispatch Center in accordance with the requirements of Article 5.3 (Reporting and Scheduling Requirements) and the Operating Procedures.
- (b) Commencing with the first Unit Delivery Date, NEA shall have the right to direct Company's generating plant operator with regard to the operation of the Project Pursuant to a Dispatch Instruction.
- (c) Company acting through their Facility incharge shall ensure that the Dispatch Instructions are followed to the extent allowed by the Technical Limits of the Project.

### 5.5 Emergency Plans and Procedures

NEA shall provide the Company with prompt oral notification by telephone of Transmission System Emergencies that may reasonably be expected to affect the Company's operation of the Facility, and the Company shall provide NEA with prompt oral notification by telephone of generation and interconnection equipment Emergencies that may reasonably be expected to affect NEA's operations. Said telephone notifications shall be followed with written notification using best efforts to provide the written notification by the close of the next Business Day. The written notification shall describe the extent of damage or deficiency, anticipated length of outage and the corrective action.

If a Party determines in its good faith judgment that an Emergency endangers or could endanger life or property, the Party recognizing the problem shall take such action as may be



reasonable and necessary to prevent, avoid, or mitigate injury, danger, or loss. If, however, the Emergency involves transmission or distribution electrical equipment, the company shall notify NEA prior to performing any switching operations.

Company shall cooperate with NEA in establishing from time to time emergency plans including recovery from a local or widespread electrical blackout, voltage and frequency reduction in order to effect load curtailment, and other similar plans, which may be necessary.

## 5.6 Delivery during Emergency

Company shall, during an Emergency, supply such electric energy as the Project is able to generate and NEA is able to receive consistent with Prudent Utility Practices and within the Technical Limits. If any Scheduled Outage occurs or would occur coincident with an Emergency, Company shall make all good-faith efforts to reschedule such Scheduled Outage or, if such Scheduled Outage has begun, to expedite the completion or temporary curtailment thereof.

## 5.7 Coordinating Committee Membership and Duties

- (a) The Parties shall establish a Coordinating Committee comprised of four members. Company and NEA shall each appoint two members. The Coordinating Committee shall be responsible for the coordination of construction and operation of the NEA Interconnection Facilities and the Project and Transmission Line, and their coordination with the NEA System. Without limiting the generality of the foregoing, the power and duties of such representatives shall include:
- (i) the coordination of the respective programs of the Parties for the construction and commissioning of any and all related NEA Interconnection Facilities, the Transmission Line and the Project, and agreement, where necessary, on the respective commissioning procedures;
  - (ii) the discussion of the steps to be taken on the occurrence of any Force Majeure Event, or the shutdown or reduction in capacity for any other reason of the NEA Interconnection Facilities or the Project;
  - (iii) consultation on the insurance program to be undertaken by Company for the purposes of this Agreement;
  - (iv) the development, finalization and amendments of Operating Procedures;
  - (v) safety matters affecting all the Parties or the contractors;
  - (vi) finalization of Scheduled Outage plan in Contract Year basis;
  - (vii) any other mutually agreed matter affecting the construction and operation of the Project.
- (b) The Coordinating Committee may agree upon procedures for the holding of meetings, and the recording of meetings including of the allowances & other expenses that may be required in course of discharge of the duties & responsibilities by the representatives and the invitees pursuant to this Agreement. The chairmanship of the Coordinating Committee shall rotate each Contract Year between the Parties with the first chairman being one of the representatives from the Company's side.
- (c) Company shall bear the expenses associated with the Coordinating Committee meetings.



reasonable and necessary to prevent, avoid, or mitigate injury, danger, or loss. If, however, the Emergency involves transmission or distribution electrical equipment, the company shall notify NEA prior to performing any switching operations.

Company shall cooperate with NEA in establishing from time to time emergency plans including recovery from a local or widespread electrical blackout, voltage and frequency reduction in order to effect load curtailment, and other similar plans, which may be necessary.

## 5.6 Delivery during Emergency

Company shall, during an Emergency, supply such electric energy as the Project is able to generate and NEA is able to receive consistent with Prudent Utility Practices and within the Technical Limits. If any Scheduled Outage occurs or would occur coincident with an Emergency, Company shall make all good-faith efforts to reschedule such Scheduled Outage or, if such Scheduled Outage has begun, to expedite the completion or temporary curtailment thereof.

## 5.7 Coordinating Committee Membership and Duties

- (a) The Parties shall establish a Coordinating Committee comprised of four members. Company and NEA shall each appoint two members. The Coordinating Committee shall be responsible for the coordination of construction and operation of the NEA Interconnection Facilities and the Project and Transmission Line, and their coordination with the NEA System. Without limiting the generality of the foregoing, the power and duties of such representatives shall include:
  - (i) the coordination of the respective programs of the Parties for the construction and commissioning of any and all related NEA Interconnection Facilities, the Transmission Line and the Project, and agreement, where necessary, on the respective commissioning procedures;
  - (ii) the discussion of the steps to be taken on the occurrence of any Force Majeure Event, or the shutdown or reduction in capacity for any other reason of the NEA Interconnection Facilities or the Project;
  - (iii) consultation on the insurance program to be undertaken by Company for the purposes of this Agreement;
  - (iv) the development, finalization and amendments of Operating Procedures;
  - (v) safety matters affecting all the Parties or the contractors;
  - (vi) finalization of Scheduled Outage plan in Contract Year basis;
  - (vii) any other mutually agreed matter affecting the construction and operation of the Project.
- (b) The Coordinating Committee may agree upon procedures for the holding of meetings, and the recording of meetings including of the allowances & other expenses that may be required in course of discharge of the duties & responsibilities by the representatives and the invitees pursuant to this Agreement. The chairmanship of the Coordinating Committee shall rotate each Contract Year between the Parties with the first chairman being one of the representatives from the Company's side.
- (c) Company shall bear the expenses associated with the Coordinating Committee meetings.



- (d) In case of matters not resolved by consensus (unanimous agreement of the Parties), the Coordinating Committee or either Party may refer the matters referred to in Article 5.7 (a) to the chief executives of NEA and Company for further consideration. At any time after the Coordinating Committee fails to meet consensus on any matters referred to in Article 5.7 (a), then either Party may refer the matter for resolution by the Independent Engineer and the Independent Engineer shall resolve such matter (the "Independent Engineer's Resolution") and the Party that referred such matters to the Independent Engineer shall bear all fees, costs and expenses of the Independent Engineer in connection with such Independent Engineer's Resolution; provided, however, that if either Party does not agree with the Independent Engineer's Resolution, (i) such Party may require that the subject matter of such resolution be ultimately resolved by the Parties pursuant to Article 13.2 (Dispute Resolution by Mutual Agreement) (the "Final Resolution"), (ii) pending Final Resolution, unless otherwise agreed by the Parties, the Independent Engineer's Resolution shall be followed by the Parties on a provisional basis and (iii) upon issuance of or agreement on the Final Resolution, the Final Resolution shall, if different, apply from and after the date of such issuance or agreement and the Independent Engineer's Resolution shall no longer apply.

## 5.8 Maintenance of Records

Each Party shall keep complete and accurate records and all other data required by each of them for the purposes of proper administration of this Agreement. Among other records and data required hereby or elsewhere in this Agreement, Company shall maintain an accurate and up-to-date operating log, at the Project with records of:

- (a) Active and Reactive Power production for each clock hour and 220 kV bus voltage at all times (for this purpose Company shall install two strip chart recorders, one at the Company's Interconnection Facilities and the other at delivery point in accordance with Schedule 7 (CONNECTION AGREEMENT), which shall make continuous readings of (i) the electrical energy produced by the Project (including the active power and Reactive Power parameters thereof) and (ii) the Electrical Output, and such data shall be recorded on such magnetic media or equivalent as determined by the coordinating committee;
- (b) changes in operating status, Scheduled Outages, Maintenance Outages, Emergencies or Forced Outages; and
- (c) any unusual conditions found during inspections.

All such records shall be maintained for a minimum of sixty (60) months after the creation of such record or data provided, however, that the Parties shall not dispose of or destroy any such records after such sixty (60) month period without thirty (30) Days prior written notice to the other Party. Either Party shall have the right, upon reasonable prior notice to the other Party, and at reasonable times, to examine the records and data of the other Party relating to this Agreement or the operation of the Project within the NEA System at any time during normal office hours during the period such records and data are required hereunder to be maintained.

## 5.9 Available Capacity

- (a) Except as otherwise set forth in this Agreement, Available Capacity and energy for each hour in any Contract Month shall be the value of kW and kWh per hour specified for the contract month under columns E and H specified in Table II of Schedule 8 respectively, or that specified in the Availability Declaration submitted by the Company for the same period pursuant to Article 5.4 (a), whichever is lower.
- (b) For the Non dispatched Condition or Forced Outage period (except caused by Force Majeure Condition), the generation and delivery by the Project to NEA at the clock hour immediately preceding the outage or the Non dispatched Condition, as the case may be, shall be considered as the Available Capacity, provided that the outage or non-dispatched period, as the case may be is not of greater duration than twenty-four (24) hours. If the outage or non-dispatched period is greater than 24 hours, the average of generation and delivery by the Project to NEA over the same number of hours preceding and same number of hours subsequent to the outage or non-dispatched period shall be considered as the Available Capacity for the period of non-dispatched Condition or Forced Outage (except caused by Force Majeure Condition).
- (c) Available Capacity at any time shall not be greater than the Installed Capacity and shall be expressed in kWh per hour.

### **5.10 Right to Work or Interfere in Emergency Conditions**

- (a) If Company or any of its employees or agents willfully work on or interfere with the NEA Interconnection Facilities without the prior written consent of NEA then Company shall repair or remedy, or reimburse to NEA the cost of repairing or remedying, the damage caused by such work or interference. Company may work on or interfere with NEA's Interconnection Facilities without prior written consent of NEA only where such actions are taken to prevent immediate injury, death or property damages. Company shall promptly inform NEA of any such work or interference.
- (b) If NEA or any of its employees or agents willfully work on or interfere with the Project without the prior written consent of Company, then NEA shall repair or remedy, or reimburse to Company the cost of repairing or remedying, the damage caused by such work or interference. NEA may work on or interfere with the Project without prior written consent of Company only where such actions are taken to prevent immediate injury, death or property damages. NEA shall promptly inform Company of any such work or interference.

### **5.11 Access to Project**

Company shall permit representatives of NEA to have access to the Project, upon reasonable prior notice during normal business hours and subject to Company safety rules and regulations, as may be reasonably necessary for the operation and maintenance of the NEA System. In exercising its right of access, NEA shall use due care to avoid or minimize damage to any property or person and shall cause as little disturbance and inconvenience as possible to Company, its officers, directors, agents and employees. Without limiting the provisions of Article 11.2 (Company Indemnity), NEA shall indemnify and hold harmless Company and its officers, directors, agents and employees from and against any loss, cost, expense incurred by any such indemnified party as a result of an exercise of NEA's right of access under the Article 5.10 (Right to Work or Interfere in Emergency Conditions).



## 5.12 Safety

The parties agree to be solely responsible for and assume all liability for the safety and supervision of their own employees, agents, representatives and subcontractors. The parties agree that all work performed by either party which could reasonably be expected to affect the operations of the other party shall be performed in accordance with all applicable laws, rules, and regulations pertaining to the safety of persons or property.

DRAFT

VP



## ARTICLE 6

### INTERCONNECTION FACILITIES

#### 6.1 Completion of Interconnection Facilities

The Company shall design, finance, own, construct, operate and maintain, in accordance with Prudent Utility Practices, and Schedule 7, all Interconnection Facilities on or prior to the Scheduled Synchronization Date of the first Unit.

#### 6.2 NEA Interconnection Facilities

NEA shall be responsible for the design, construction, installation, and commissioning of the NEA interconnection Facilities in accordance with the terms of this Agreement and Prudent Utility Practices. NEA shall own, operate and maintain all of the NEA Interconnection Facilities described in Schedule 7 (CONNECTION AGREEMENT).

#### 6.3 Construction of NEA Interconnection Facilities

NEA shall complete the construction of NEA Interconnection Facilities prior to the Scheduled Synchronization Date of the first Unit. Failure by NEA to complete the NEA Interconnection Facilities, as mentioned in the Minutes of Meeting of Connection Agreement, by such date, the Company shall not claim any financial compensation from NEA for such delay in construction.

#### 6.4 Company Interconnection Facilities

- (a) Company shall be responsible for designing, constructing, installing and maintaining all Company Interconnection Facilities up to the Delivery Point as provisioned in the Connection Agreement. But, if and when necessary for NEA to use this system, Company shall allow NEA to use this system without charges and enter into agreement with NEA for transferring of this system to NEA. After the transfer of such system, NEA will then operate and maintain such system.
- (b) Company shall be responsible for designing, constructing, installing, testing, commissioning, operating and maintaining all Company Interconnection Facilities as provisioned in the Connection Agreement. Unless otherwise mentioned in the Connection Agreement, if and when necessary for NEA to use this system, Company shall allow NEA to use this system without charges and enter into agreement with NEA for transferring of this system to NEA. After the transfer of such system NEA will then operate and maintain such system.

#### 6.5 Construction of the Company Interconnection Facilities

Company shall complete the construction of Company Interconnection Facilities prior to the Scheduled Synchronization Date of the first Unit; provided, however, that such date shall be extended in the event that NEA notifies Company of a delay in the completion of NEA Interconnection Facilities. Failure by Company to complete the Company Interconnection Facilities by the Scheduled Synchronization Date of the first Unit or such date as extended due to NEA notification of a delay in the completion of NEA Interconnection Facilities, shall

not be considered a Company Event of Default, if and for as long as such failure is directly caused by any of the following:

- (a) the failure by NEA to provide Company on a timely basis with any technical data, available to NEA and reasonably requested by Company relating to the Project and necessary for Company to undertake the design, construction, installation, commissioning, maintenance and operation of the Company Interconnection Facilities, provided, however that Company shall have requested such technical data in a timely manner; or
- (b) the occurrence of Force Majeure Event.

## **6.6 Maintenance of Company's Interconnection Facility**

- (a) The Company shall maintain the Company Interconnection Facilities connected to NEA System and NEA shall maintain NEA Interconnection Facilities connected to the Company's Facility in accordance with Prudent Utility Practices.
- (b) The Company shall furnish NEA with preliminary annual generator maintenance schedules and a five year projected maintenance schedule thirty (30) Days prior to end of each Contract Year for the subsequent Contract Year and subsequent five Contract Years, respectively. However schedule of maintenance may be changed with concurrence from NEA.
- (c) Upon reasonable request by NEA, the Company shall test, calibrate, verify or validate the telemetering, data acquisition, protective relay, control equipment or systems or other equipment or software pursuant to Prudent Utility Practice and consistent with the Company's obligation to maintain its equipment and Facilities, or for the purposes of trouble-shooting problems on Interconnection Facilities. The Company shall be responsible for all costs to test, calibrate, verify or validate customer's equipment or software.
- (d) Pursuant to Article 6.6 (c), the Company shall supply NEA, at no cost to NEA, with copies of inspection reports, installation and maintenance documents, test and calibration records, verifications and validations of the telemetering, data acquisition, protective relay, or other equipment or software connected to NEA's system.

## **6.7 Protection Devices**

Except as provided in the Connection Agreement, protection devices shall be approved by NEA (which devices shall conform to NEA's system requirements) on or prior to the Financial Closure Date. After the Financial Closure Date for construction financing, subject to giving Company reasonable notice, NEA may require Company to modify or expand the requirements for protection devices.

## **6.8 Changes Affecting Protection/Communication Devices**

Each Party shall notify the other Party in advance of any changes to either the Project or the NEA System that may affect the proper coordination of protection/communication devices between the two systems.

## **6.9 Testing**

The Parties shall cooperate in testing the NEA Interconnection Facilities connected to the Company's Facility prior to the Scheduled Synchronization Date of the first Unit and at such other times thereafter as either Party may reasonably require. All such testing shall be carried out on a timely basis.



not be considered a Company Event of Default, if and for as long as such failure is directly caused by any of the following:

- (a) the failure by NEA to provide Company on a timely basis with any technical data, available to NEA and reasonably requested by Company relating to the Project and necessary for Company to undertake the design, construction, installation, commissioning, maintenance and operation of the Company Interconnection Facilities, provided, however that Company shall have requested such technical data in a timely manner; or
- (b) the occurrence of Force Majeure Event.

## **6.6 Maintenance of Company's Interconnection Facility**

- (a) The Company shall maintain the Company Interconnection Facilities connected to NEA System and NEA shall maintain NEA Interconnection Facilities connected to the Company's Facility in accordance with Prudent Utility Practices.
- (b) The Company shall furnish NEA with preliminary annual generator maintenance schedules and a five year projected maintenance schedule thirty (30) Days prior to end of each Contract Year for the subsequent Contract Year and subsequent five Contract Years, respectively. However schedule of maintenance may be changed with concurrence from NEA.
- (c) Upon reasonable request by NEA, the Company shall test, calibrate, verify or validate the telemetering, data acquisition, protective relay, control equipment or systems or other equipment or software pursuant to Prudent Utility Practice and consistent with the Company's obligation to maintain its equipment and Facilities, or for the purposes of trouble-shooting problems on Interconnection Facilities. The Company shall be responsible for all costs to test, calibrate, verify or validate customer's equipment or software.
- (d) Pursuant to Article 6.6 (c), the Company shall supply NEA, at no cost to NEA, with copies of inspection reports, installation and maintenance documents, test and calibration records, verifications and validations of the telemetering, data acquisition, protective relay, or other equipment or software connected to NEA's system.

## **6.7 Protection Devices**

Except as provided in the Connection Agreement, protection devices shall be approved by NEA (which devices shall conform to NEA's system requirements) on or prior to the Financial Closure Date. After the Financial Closure Date for construction financing, subject to giving Company reasonable notice, NEA may require Company to modify or expand the requirements for protection devices.

## **6.8 Changes Affecting Protection/Communication Devices**

Each Party shall notify the other Party in advance of any changes to either the Project or the NEA System that may affect the proper coordination of protection/communication devices between the two systems.

## **6.9 Testing**

The Parties shall cooperate in testing the NEA Interconnection Facilities connected to the Company's Facility prior to the Scheduled Synchronization Date of the first Unit and at such other times thereafter as either Party may reasonably require. All such testing shall be carried out on a timely basis.



## 6.10 NEA Disconnection of the Facility

NEA agrees to permit the Company to interconnect the facility to the NEA System as long as the Company continues to operate and maintain such facility pursuant to Prudent Utility Practices and is not in material default that has not been cured under this Agreement. "Material" for the purpose of this provision shall mean of such a nature as to cause an Emergency condition, or create an adverse impact on the service, or interfere with the safe and reliable operation of NEA System, as reasonably determined by NEA or any breach of a provision of this Agreement under which NEA has the right to discontinue, interrupt or suspend interconnection. NEA's disconnection of the facility for any of the reasons mentioned in this Article 6.10 shall not serve as a Force Majeure Event for the Company and shall not trigger Deemed Generation provisions.

## 6.11 Modifications

- (a) NEA may undertake additions, modifications, or replacements of its system or NEA Interconnection Facilities. If such additions, modifications or replacements might reasonably be expected to affect the Company's operation of the Facility, in NEA's sole reasonable judgment, NEA shall, if the circumstances permit, provide thirty (30) Days written notice to the Company prior to undertaking such additions, modifications, or replacements; provided, however, that the outages so caused by such additions, modifications, or replacements shall not trigger Deemed Generation for a total period of up to 168 hours calculated in prorata basis of Installed Capacity in each Contract Year in addition to the similar provisions elsewhere in the Agreement.
- (b) The Company shall modify, at its own cost and expense, the Company Interconnection Facilities (including its telemetering, communication and protection system) and related facilities and the Facility as may be required by NEA to conform with changes required by Prudent Utility Practice or to conform with additions, modifications or replacement of NEA System or NEA Interconnection Facilities which addition, modification, or replacement is consistent with Prudent Utility Practices.
- (c) Before the Company may install, construct or modify the facility of the Company Interconnection Facilities in any manner that could reasonably be expected to affect NEA's ability to perform the transmission and distribution function, as determined by NEA in its sole discretion exercised in a not unduly discriminatory manner, the Company shall be required to (i) provide NEA with all drawing, plans, schematics, specifications and all other documentation associated with the proposed change for review at least thirty (30) Days prior to the date upon which the customer would like to implement such installations, construction or modification; and (ii) receive NEA's prior written approval, which approval shall not be unreasonably withheld.
- (d) Notwithstanding anything written to the contrary in Article 3.2 (Company Events of Default), any inability of the Company to deliver power and energy as per Schedule 8 arising out of NEA undertaking additions, modifications or replacements of its system or NEA Interconnection Facilities shall not be considered as Company Event of Default.

# ARTICLE 7

## RATES AND CHARGES

### 7.1 Electrical Output

- (i) NEA shall pay to Company each Contract Month an amount equal to the product of:
  - (a) the aggregate Electrical Output during such Contract Month, multiplied by
  - (b) the applicable Purchase Price as per Schedule 9 (PURCHASE PRICE).

### 7.2 Deemed Generation

If any reduction or interruption occurs in the delivery of electric energy at the Delivery Point (at the maximum net electrical output which the Project is capable of delivering at such time) during any Contract Month, then, in addition to the amounts payable by NEA pursuant to Article 7.1 (Electrical Output) NEA shall pay to Company for such Contract Month an amount equal to the product of:

- (a) the aggregate Deemed Generation during the reduction or interruption for such Contract Month (in accordance with Schedule 8), multiplied by
- (b) the applicable Purchase Price,

provided, however, that the Deemed Generation shall not be earned with respect to any such reduction or interruption:

- (i) to the extent that the Project is not available during such reduction or interruption as a result of:
  - (a) Scheduled Outages or Maintenance Outages
  - (b) partial or total outage of NEA System attributed to the Company;
  - (c) the occurrence of a Reduced Output; or,
  - (d) the occurrence of a Force Majeure Event.
- (ii) A reduction or interruption in the delivery of energy resulting from an outage in the NEA System, other than those mentioned in 7.2 (i) above, that impairs or precludes the ability of NEA to connect to the facility will trigger NEA's obligation to pay Deemed Generation to the Company. However, such an obligation will not arise until greater than one hundred and sixty eight (168) hours of such reduction or interruption have occurred in any Contract Year. This 168 hours shall be calculated on the prorata basis based on the Installed Capacity.
- (iii) If the project is commissioned by F/Y 2084/85 BS, NEA shall purchase 90% energy of availability declaration up to the contract energy of each month from Ashad to Kartik. Remaining 10% of energy considered as Reserve Margin may be purchased as per the instruction of Load Dispatch Centre of NEA, if required. NEA shall not be obliged to pay any penalty to the Company on account of the energy considered as Reserve Margin while operating the plant as per the instruction of Load Dispatch Centre of NEA.

If the project is not commissioned by F/Y 2084/85 BS, A reduction in the delivery of generation/energy resulting from dispatch instructions of the Load Dispatch Center of NEA as per Minutes of Meeting, Sr. No. 12 (12.1.2), of Connection Agreement.



### 7.3 Limitation on Deemed Generation

If the kW capacity submitted by the Company in Availability Declaration for any period is less than the amount specified in Schedule 8 (column E) for the period, then irrespective of whatever values are given under column E of Schedule 8, the minimum of these two values shall be used for the calculation of Deemed Generation.

### 7.4 Electrical Output Purchase Requirements

NEA need not take delivery of and pay for any Electrical Output that exceeds the Contract Energy amounts set forth in Column H of Schedule 8 in any Contract Month unless such energy is delivered pursuant to a dispatch instruction.

### 7.5 Excess Energy

Excess Energy shall be charged at the rate of fifty (50) percent of the applicable rate specified in Schedule 9 (PURCHASE PRICE).

### 7.6 Royalties, Taxes, Etc.

Company, its shareholders and its contractors shall be responsible for paying its royalties, taxes, duties, fees, octroi, levies, etc. to be paid to Government Authorities, as provided in the Electricity Act 2049, and the Electricity Rules, 2050 and other Applicable Laws in force.

### 7.7 Charges and Liquidated Damages

(a) Company shall be liable for payment of charges or liquidated damages for the non-delivery of energy from the Project in any Contract Month in the following manner:

- (i) in the event of Electrical Output in any Contract Month being less than 80% of the Contract Energy for that month as specified under Column H of Schedule 8 for that month, Company shall pay additional liquidated damage to NEA which will be calculated using the formula given below:

Additional liquidated damage =

$$[0.8 \times \text{Contract Energy for the Contract Month} - \text{Electrical Output in the Contract Month}] \times \text{Purchase Price}$$

- (b) Notwithstanding anything written in Article 7.7 (a) above, Company shall not be liable for payment of liquidated damage or additional liquidated damage, if the reduction in Electrical Output is caused by the Dispatch Instructions, Scheduled Outage, Maintenance Outage, Force Majeure Event or from any act or omission of NEA.
- (c) Liquidated damages payable by the Company to NEA according to this Article 7.7 shall be calculated for each Contract Month and shall be paid within forty five (45) Days of the settlement of liquidated damages claims which settlement shall not be delayed unreasonably. NEA may deduct the amount of liquidated damages payable by the Company while making payments of the monthly invoices.
- (d) Despite the dry season energy mentioned as 30% or more in Power Purchase Agreement, if the Company fails to supply at least 30% of energy in dry season after the plant comes into operation, NEA shall not pay any amount as a penalty to the Company for the



energy supplied more than the total annual energy calculated on the basis of 30% dry season energy. In case such payment has already been made to the Company, the same shall be adjusted in the monthly bill of next fiscal year. The penalty shall be determined as follows:

Amount to be adjusted on account of penalty Rs:

= [Total energy supplied - (energy supplied in dry season 0.30) x Power purchase rate for the energy supplied in wet season of the same fiscal year]

However, if the dry season energy is less than 30%, the amount which one is higher out of the penalty amount calculated as above or the annual penalty amount for not supplying the monthly contract energy shall be adjusted.

While calculating the total energy supplied as per the above formula the total energy shall not be more than the total energy mentioned on Schedule 8 (column H).

## 7.8 Purchase of Energy from NEA

Company shall pay to NEA for any use of energy from NEA by the Project as metered at the Delivery Point. The Company will be charged as a normal hour commercial category consumer of NEA at appropriate voltage level for such energy use (no demand charge will be levied after Commercial Operation Date).

## 7.9 Test Generation

NEA shall not be required to pay to Company for the Test Generation of 15 successive successful days of generation.

## 7.10 Revision of Purchase Price

- (i) The Purchase Price is based on 17% Return on Equity (RoE). However, once COD has been achieved, the Company shall submit all the audited financial relevant documents to NEA. If the RoE after COD is greater than 17%, the Purchase Price shall be reduced so as to maintain RoE at 17%. The Schedule 9 (PURCHASE PRICE) shall be revised accordingly.
- (ii) The value of the percentage of foreign loan in total investment of the Project shall be adjusted at the time of COD based on actual proportion of foreign loan in total investment provided that it shall not exceed the proportion as agreed at the time of PPA in Schedule 9 (PURCHASE PRICE).

## ARTICLE 8

### BILLING AND PAYMENT PROCEDURE

#### 8.1 Delivery of Invoices

Commencing with the first full Contract Month to occur after the Commercial Operation Date, Company shall render to NEA a monthly billing statement (each, an "Invoice") showing the amount payable by NEA to Company under this Agreement. Each Invoice shall show its due date as the date that is forty-five (45) Days after the receipt by NEA of such Invoice (as to each such amount, its "Due Date"). Each Invoice shall include detailed calculations of such amount in accordance with this Agreement and the procedures determined by the Coordinating Committee. Other charges or fees payable by NEA hereunder, and reimbursement of which is not already included in an Invoice, and for which NEA shall be liable to Company, shall be billed separately and paid within fifty (50) Days of receipt of such separate billing by NEA (as to each such amount, its "Due Date").

In the event adjustments to billing statements are required as a result of corrected measurements made with respect to inaccurate meters, the Parties shall use the corrected measurements described in Schedule 5 (Metering Standards and Testing) to re-compute the amounts due from or to NEA for deliveries of energy (and Deemed Generation) sold under this Agreement during the period of inaccuracy. If the total amount, as recomputed, due from a Party for the period of inaccuracy varies from the total amount due as previously computed, and payment of the previously computed amount has been made, then, following agreement by the Company and NEA on the amount due as a result of the re-computation, the Company shall promptly issue an adjusted Invoice. The owing Party shall pay as required within forty five (45) Days of the issuance of the billing statement. If the owing Party is the Company, NEA may at its option set off the amount owed against any payment then due from NEA to the Company. If the owing Party is NEA, NEA may at its option pay that amount with the amount owed under the next Invoice.

#### 8.2 Time of Payment

Unless specified otherwise, all amounts payable by NEA under this Agreement shall be remitted to Company on or before the Due Date thereof unless the Due Date is not a Business Day, in which case such payment shall be remitted by the immediately succeeding Business Day. Such remittance shall be made in immediately available funds to the Designated Account. If any payment of the undisputed portion of the Invoice is not remitted and received in full on the Due Date thereof, NEA shall pay to Company interest on the amount of such payment at the Default Rate until such payment is paid in full.

#### 8.3 Disputes

- (a) In the event of any dispute as to all or any portion of any Invoice, the Party asserting such dispute shall nevertheless (i) pay the undisputed amount of the disputed charges when due, and (ii) give written notice of the dispute as soon as reasonably possible after the asserting Party discovers the grounds giving rise to such dispute. At any time prior to ninety (90) Days after the receipt of an Invoice, either Party may serve notice (an "Invoice Notice") on the other party that the amount of any one or more Invoices delivered within such ninety (90) Day period is in dispute. Such Invoice Notice shall specify the Invoice(s) concerned, the amount of the dispute and the basis thereof. If the



Party receiving the Invoice Notice agrees with the contentions in the Invoice Notice, it shall, in the case of Company, adjust the relevant Invoice (if NEA has not yet paid) or refund the amount within fifteen (15) Days (if NEA has paid), or in the case of NEA, pay the additional amount within fifteen (15) Days.

- (b) If the Parties do not resolve a dispute arising under sub- section (a) above within fifteen (15) Days of the receipt of an Invoice Notice, either Party may initiate the procedures set forth in Article 13. All amounts due shall accrue interest as determined in accordance with Article 13.10 (Judgment Currency).

## 8.4 Currency of Payment

All payments to be made by NEA hereunder shall be denominated in Nepalese Rupees.

## 8.5 NEA Letter of Credit

- (a) NEA, at its own expense, will issue and maintain an irrevocable letter of credit in favor of the Company by one or more banks in Kathmandu, Nepal acceptable to the Company with a Nepalese Currency denominated face amount equal to the bill payment corresponding to two months having the highest and the second highest contract energy of the Fiscal year during the period from the Commercial Operation Date till the period during which NEA is obliged to make payment. The Company shall provide a list of at least 6 (six) banks in Kathmandu acceptable to the Company no later than 2 (two) months before the Commercial Operation Date.
- (b) Such letter of credit shall be in the form and substance satisfactory to the Company and the Financing Parties and shall contain the following terms:
- i. Such letter of credit shall require that, in case NEA fails to make its payment to the Company, the issue thereof shall unconditionally pay to the Company the full amount that NEA owes to the Company (up to the Company the full amount then available for drawing thereunder) upon the demand of the Company without requiring any evidences from the Company other than the Company's notice to NEA specifying NEA's failure in its payment due to the Company.
  - ii. Such letter of credit shall be immediately replenished upon any payment thereunder to the Company by an amount equal to such payment. And shall be renewed upon its expiration without any interruption thereof.
  - iii. Such letter of credit shall have the longest commercially available term.
  - iv. Such letter of credit shall allow the Company to transfer it to or for the benefit of Financing Parties or their assignees or designees, or to the Company's successors or permitted assigns.

## 8.6 Hedging

Regarding the Foreign Currency exchange risk, it shall be as per the Hedging-related Rules, 2075 issued by Government of Nepal.



# ARTICLE 9

## FORCE MAJEURE

### 9.1 Definition of Force Majeure

A "Force Majeure Event" shall mean any event or circumstance or combination of events or circumstances beyond the reasonable control of a Party and that on or after the Financial Closure Date, materially and adversely affects the performance by that Party of its obligations under or pursuant to this Agreement; provided, however, that such material and adverse effect could not have been prevented, overcome, or remedied in material and adverse effect could not have been prevented, overcome or remedied in whole or in part by the affected Party through the exercise of diligence and reasonable care, it being understood and agreed that reasonable care includes acts or activities to protect the Project from a casualty event, which are reasonable in light of the likelihood of such event, the probable effect of such event if it should occur, and the likely efficacy of the protection measures. "Force Majeure Events" hereunder shall include each of the following events and circumstances, but only to the extent that each satisfies the above requirements:

- (a) political events that occur inside or directly involve Nepal ("Special Force Majeure Events"), including, but not limited to:
  - (i) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion, act or campaign of terrorism, sabotage;
  - (ii) radioactive contamination or ionizing radiation originating source in Nepal or resulting from other political Force Majeure Event; or
  - (iii) strikes, works stoppage or go-slows that extend beyond the Project, are widespread or nationwide, or are of a political nature, such as, by way of example and not limitation, labor actions associated with or directed against a Nepal political party, or those that are directed against the Company (or its contractors) as part of a broader pattern of labor actions against companies or facilities with foreign ownership or management.
- (b) other events beyond the reasonable control of the affected Party, including, but not limited to:
  - (i) uncontrollable events, including, but not limited to:
    - (A) lightning, fire, earthquake, flood, storm, cyclone, typhoon, or tornado;
    - (B) fire, explosion or chemical contamination (other than resulting from an event described in Article 9.1 (a), in which case it shall be a Special Force Majeure Event);
    - (C) epidemic, or plague; or
    - (D) any Force Majeure Events under the Project Agreement, if any.

- (iii) political events that occur outside Nepal and do not directly involve Nepal, including, but not limited to:
  - (A) any act or war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion, or act of terrorism, or sabotage;
  - (B) radioactive contamination or ionizing radiation originating from a source outside Nepal and not falling within Article 9.1 (a) (ii);
  - (C) strikes, works stoppage, or go-slows that are widespread or nationwide.
- (c) Force Majeure Events shall expressly not include the following conditions, except and to the extent that they result directly from a Force Majeure Event:
  - (i) late delivery of machinery, equipment, materials, spare parts or consumables;
  - (ii) a delay in the performance of any contractor or supplier; or
  - (iii) normal wear and tear or random flaws in materials and equipment or breakdowns in equipment.

## 9.2 Notification Obligations

- (a) If by reason of a Force Majeure Event a Party is wholly or partially unable to carry out its obligations under this Agreement, the affected Party shall (i) give the other Party notice of the Force Majeure Event(s) as soon as practicable, but in any event, not later than seven (7) Business Days after the affected Party becomes aware of the occurrence of the Force Majeure Event(s) and (ii) give the other Party a second notice, describing the Force Majeure Event(s) in reasonable detail and, to the extent that can be reasonably determined at the time of the second notice, providing a preliminary evaluation of the obligations affected, a preliminary estimate of the period of time that the affected Party will be unable to perform the obligations or will be impaired in its performance of such obligations, and other relevant matters as soon as practicable, but in any event, not later than seven (7) Business Days after the initial notice of the occurrence of the Force Majeure Event(s) is given by the affected Party. When appropriate or when reasonably requested to do so by the other Party, the affected Party shall provide further notices to the other Party more fully describing the Force Majeure Event(s) and its cause(s) and providing or updating information relating to the efforts of the affected Party to avoid and/or to mitigate the effect(s) thereof and estimates, to the extent practicable, of the time that the affected Party reasonably expects it will be unable to carry out any of its affected obligations due to the Force Majeure Event(s).
- (b) The affected Party shall also provide notice to the other Party of (i) with respect to an ongoing Force Majeure Event, the cessation of the Force Majeure Event, and (ii) the affected Party's ability to recommence performance of its obligations under this Agreement. Such notice shall be provided as soon as possible, but in any event, not later than seven (7) Business Days after the occurrence of each of (i) and (ii) above.
- (c) Failure by the affected Party to give notice of a Force Majeure Event to the other Party within the seven (7) Business Days period required by Article 9.2(a) shall not prevent the affected Party from giving such notice at a later time; provided, however, that in



such case, the affected Party shall not be excused pursuant to Article 9.4 for any failure or delay in complying with its obligations under or pursuant to this Agreement until the notice required by Article 9.2(a)(i) has been given. If such notice is given within the seven (7) Business Days period as required by Article 9.2(a) (i), the affected Party shall be excused for such failure or delay pursuant to Article 9.4 from the date of commencement of the relevant Force Majeure Event.

### 9.3 Duty to Mitigate

The Parties shall use their reasonable efforts to mitigate the effects of any Force Majeure Event and to cooperate to develop and implement a plan of remedial and reasonable alternative measures to remove the Force Majeure Event; provided, however, that no Party shall be required under this provision to settle any strike or other labor dispute it considers to be unfavorable to it.

### 9.4 Delay Caused by Force Majeure Event

The events described in Article 9.1 (Definition of Force Majeure) shall constitute Force Majeure Events, and to the extent provided in this Article 9.4, the affected Party shall not be liable for any failures or delays in complying with its performance obligations under or pursuant to this Agreement to the extent that such failure has been caused, or contributed to by one or more Force Majeure Events or its or their effects or by any combination thereof, and the period allowed for the performance by such Party of its obligations hereunder and the Required Commercial Operation Date and the Term shall be extended on the condition that:

- (a) the non-performing Party gives the other Party written notice describing the particulars of the Force Majeure Event in accordance with Article 9.2 (Notification Obligations);
- (b) the suspension of performance and extension of the Term is of no greater scope and of no longer duration than is required by the Force Majeure Event;
- (c) the Term shall be extended by a Force Majeure Event only to the extent that Company shall not have received payments in respect of the full amount of the Deemed Generation due under Article 7.2 (Deemed Generation) (or proceeds of business interruption or advance loss of profits insurance in an amount equal to the full amount of Deemed Generation due under Article 7.2 (Deemed Generation)) during the period of such Force Majeure Event subject to extension of the Project Agreement, if any;
- (d) the non-performing Party uses its best commercially reasonable efforts to remedy its inability to perform;
- (e) when the non-performing Party is able to resume performance of its obligations under this Agreement, it shall give the other Party written notice to that effect pursuant to the requirement of Article 9.2 (Notification Obligations); in no event shall a Force Majeure Event excuse the obligations of a Party that are required to be completely performed prior to the occurrence of a Force Majeure Event; and
- (f) unless otherwise provided in the Agreement, the obligation of the Parties to pay moneys due hereunder shall not be excused as a result of any Force Majeure Event; provided, that Deemed Generation shall not be payable with respect to a Force Majeure Event.



## 9.5 Termination due to Force Majeure

If any Force Majeure continues for longer than three hundred and sixty five (365) consecutive days from the date of notice of such Force Majeure, the Party whose performance has not been adversely affected by Force Majeure may terminate this Agreement by providing written notification of such termination to the other Party.

DRAFT

\_\_\_\_\_

\_\_\_\_\_

## ARTICLE 10

# REPRESENTATIONS, WARRANTIES AND COVENANTS

### 10.1 NEA's Representations

NEA hereby represents and warrants to Company as of the date hereof as follows:

- (a) NEA is statutory body under the Nepal Electricity Authority Act, 2041, and is duly incorporated, validly existing and in good standing under the Laws of Nepal and NEA has all requisite power and authority to execute and deliver, and to perform its obligations under this Agreement.
- (b) The execution, delivery and performance by NEA of this Agreement have been duly authorized by all necessary action, and do not and will not (i) require any consent or approval of the NEA's governing authority other than those which have been obtained, or (ii) violate any provision of, result in any breach of or constitute a default under NEA's bylaws or other organic documents, any indenture, contract or agreement to which it is a Party or by which it or its properties may be bound, or any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to NEA.
- (c) No authorization or approval by any governmental or other official agency is necessary for the due execution, delivery and performance by NEA of this Agreement as in effect on the date hereof.
- (d) This Agreement is a legal, valid and binding obligation of NEA, enforceable against NEA in accordance with its terms.
- (e) To the knowledge of NEA, there is no pending or threatened action or proceeding affecting NEA before any court, governmental agency or arbitrator that could reasonably be expected to affect materially and NEA adversely the financial condition of operations of NEA or the ability of NEA to perform its obligations under, or which purports to affect the legality, validity or enforceability of, this Agreement.
- (f) NEA has no reason to believe that the balance sheet of NEA as at the end of its last fiscal year and the related statement of income of NEA for such fiscal year (which have been delivered to Company), certified by the Auditor General of Nepal or the duly appointed registered external auditor to NEA, (i) are not true and fair and do not fairly present the financial condition and results of operations of NEA as at the date of said balance sheet and for the period then ended and (ii) were not prepared in accordance with generally accepted accounting principles in effect in Nepal. Except as otherwise disclosed in writing to Company, since the date of said balance sheet, there has been no material adverse change in the financial condition of NEA from that set forth in said balance sheet.
- (g) This Agreement is in proper form for enforcement in the courts of Nepal.

### 10.2 Company's Representations



Company represents and warrants to NEA as of the date hereof as follows:

- (a) Company is a company duly incorporated, validly existing and in good standing under the Laws of Nepal and Company has all requisite power and authority to conduct its business, own its properties and execute, deliver and perform its obligations under this Agreement.
- (b) The execution, delivery and performance by Company of this Agreement have been duly authorized by all necessary corporate action, and do not and will not (i) (except as disclosed in writing to NEA) require any consent or approval of Company's Board of Directors or shareholders, other than that which has been obtained, or (ii) violate any provision of, result in a breach of, or constitute a default under the Company's corporate bylaws or other organic documents, any indenture, contract or agreement to which it is a party or by which it or its properties may be bound, or any law, rule, regulation, order writ, judgment, injunction, decree, determination or award presently in effect having applicability to Company.
- (c) Company is not in default under its corporate bylaws or other organic documents or other material indentures, contract or agreements to which it is a party or by which its property may be bound.
- (d) This Agreement is a legal, valid and binding obligation of Company, enforceable against Company in accordance with its terms.
- (e) To the knowledge of the Company, there is no pending, or threatened action or proceeding affecting Company before any court, governmental agency or arbitrator that could reasonably be expected to affect materially and adversely the financial condition or operations of Company or the ability of Company to perform its obligations under, or which purports to affect the legality, validity or enforceability of, this Agreement.
- (f) Company has no reason to believe that there has been any material adverse change in the financial or business condition of Company or its major shareholders since its date of incorporation.
- (g) Neither this Agreement, nor any other agreement, document or instrument executed or delivered in connection therewith must be notarized, filed, recorded, registered or enrolled in any court, public office or elsewhere in Nepal, nor must any stamp, registration or similar tax or charge be paid in Nepal, to ensure the legality, validity, enforceability or admissibility in evidence of this Agreement, or any other agreement, document or instrument executed or delivered in connection therewith.
- (h) This Agreement is in proper form for enforcement in the courts of Nepal.

### 10.3 Compliance with Laws

Each Party shall, at all times, comply with all material Laws applicable to it, unless, in the event of any non-compliance, it shall be diligently contesting any such Law in good faith and such non-compliance has no material adverse effect on the ability of such Party to perform its obligations under this Agreement (including, without limitation, Company's obligations under Article 5.1 (Project Operation)). Company hereby accepts and shall comply with all Laws of Nepal.

# ARTICLE 11

## LIABILITY AND INDEMNIFICATION

### 11.1 Limitation of Liability

Except as provided in Articles 11.2 and 11.3, neither Party shall be liable to the other Party in contract, tort, warranty, strict liability, or any other legal theory for any indirect, consequential, incidental, punitive, or exemplary damages. Neither Party shall have any liability to the other Party except pursuant to, or for breach of this Agreement; provided, however, that this provision is not intended to constitute a waiver of any rights of one Party against the other with regard to matters unrelated to this Agreement or to any activity not contemplated by this Agreement.

### 11.2 Company Indemnity

Company agrees to defend, indemnify and hold harmless NEA, its officers, directors, agents, employees and Affiliates (and their respective officers, directors, agents and employees) from and against any and all claims, liabilities, actions, demands, judgments, losses, costs, expenses (including, without limitation, reasonable attorneys' fees) suits and damages arising by reason of bodily injury, death or damage to property sustained by third parties that are caused by an act of negligence or the willful misconduct of or a breach of this Agreement, by Company, or by an officer, director, subcontractor, agent or employee of Company, except to the extent such injury, death or damage is attributable to the willful misconduct or negligence of, or breach of this Agreement by NEA, or by an officer, director, subcontractor, agent, employee or Affiliate of NEA.

### 11.3 NEA Indemnity

NEA agrees to defend, indemnify and hold harmless Company, its officers, directors, shareholders, agents, employees and Affiliates (and their respective officers, directors, agents and employees) from and against any and all claims, liabilities, actions, demands, judgments, losses, costs, expenses (including, without limitation, reasonable attorneys' fees), suits and damages arising by reason of bodily injury, death or damage to property sustained by third parties that are caused by an act of negligence or the willful misconduct of, or a breach of this Agreement by, NEA, or by an officer, director, subcontractor, agent or employee of NEA except to the extent such injury, death or damage is attributable to the willful misconduct or negligence of, or breach of this Agreement by Company, or by an officer, director, subcontractor, agent, employee or Affiliate of Company.

### 11.4 Notice of Proceedings

Each Party shall promptly notify the other Party of any claim, action, suit or proceeding in respect of which it is entitled to be indemnified under this Article 11. Such notice shall be given as soon as reasonably practicable after the relevant Party becomes aware of such claim, action, suit or proceeding.



## 11.5 Conduct of Proceedings

Each Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against it arising out of any matter in respect of which it is entitled to be indemnified hereunder, and the reasonable costs and expenses thereof shall be subject to the said indemnity: the indemnifying Party shall be entitled, at its option, to assume and control the defense of such claim, action, suit or proceeding at its expense: provided that it gives prompt notice of its intention to do so to the indemnified Party and reimburses that Party for the reasonable costs and expenses previously incurred by it prior to the assumption of such defense by the indemnifying Party. Neither Party shall settle or compromise any claim, action, suit or proceeding in respect of which it is entitled to be indemnified by the other Party without the prior written consent of that Party, which consent shall not be unreasonably withheld or delayed.

## 11.6 Representation

The indemnified Party shall have the right to employ its own counsel, and such counsel may participate in such claim, action, suit or proceeding, but the fees and expenses of such counsel shall be at the expense of such indemnified Party, when and as incurred, unless:

- (i) the employment of counsel by such indemnified Party has been authorized in writing by the indemnifying Party.
- (ii) the indemnified Party shall have reasonably concluded that there may be a conflict of interest between the indemnifying Party and the indemnified Party in the conduct of the defense of such action.
- (iii) the indemnifying Party shall not in fact have employed independent counsel reasonably satisfactory to the indemnified Party to assume the defense of such action and shall have been so notified by the indemnified Party, or
- (iv) the indemnified Party shall have reasonably concluded and specifically notified the indemnifying Party either that there may be specified defense available to it which are different from or additional to those available to the indemnifying Party or that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement.

If clause (i), (ii), (iii) or (iv) of this Article 11.6 (Representation) shall be applicable, then counsel for the indemnified Party shall have the right to direct the defense of such claim, action, suit or proceeding on behalf of the indemnified Party and the reasonable fees and expenses of such counsel shall be reimbursed by the indemnifying Party.



# ARTICLE 12

## INSURANCE

### 12.1 Insurance to be maintained

Company shall take out and maintain or procure, in accordance with applicable Laws, the following policies of insurance from and after the Financial Closure Date for construction, financing and throughout the Term of the Agreement:

(a) prior to the Commercial Operation Date:

Contractor's all risk, Erection all risk Insurance (including marine, land and air cargo) and comprehensive third party liability with coverage limits no less than the full physical replacement value of the Project;

- i. employees' compensation and other similar insurance;
- ii. general liability insurance, which shall include either comprehensive general liability or commercial general liability insurance coverage for all operations by or on behalf of Company;
  - A. such liability insurance shall have a primary limit of not less than the amount, as per prudent practices, per accident; and
  - B. such liability insurance shall include excess liability coverage with a combined per accident/annual aggregate limit as per prudent practices.
- iii. advance loss of profits cover; and
- iv. such other insurance coverage as may be required by Law.

(b) after Commercial Operation Date:

- i. comprehensive third party liability, comprehensive structure, plant and equipment (property damage including consequential loss following machinery breakdown) with coverage limits no less than the full physical replacement value of the Project;
- ii. general liability insurance, which shall include either comprehensive general liability or commercial general liability Insurance coverage for all operations by or on behalf of Company;
  - A. such liability insurance shall have a primary limit of not less than the amount, as per prudent practices, and
  - B. such liability insurance shall include excess liability coverage with a combined per accident/annual aggregate limit as per prudent practices.
- iii. employees' compensation and other similar insurance;
- iv. business disruption insurance; and
- v. such other insurance coverage as may be required by Law.

### 12.2 Certificate of Insurance



No later than thirty (30) Days following the first Day of each Contract Year, Company shall cause its insurers or agents to provide NEA with certificates of insurance evidencing the policies and endorsements listed above. Failure by Company to obtain the insurance coverage or certificates of insurance required by this Article 12 shall not relieve Company of the insurance requirements set forth herein or in any way relieve or limit Company's obligations and liabilities under any other provision of this Agreement. Company shall not cancel, fail to renew or change the terms of any of the insurance described in Article 12.1 (Insurance to be Maintained) without the prior written consent of NEA. If Company shall fail to procure or maintain any insurance required pursuant to this Article 12, then NEA shall have a right, upon delivering reasonable prior written notice to Company to procure and maintain such insurance in accordance with the requirements of this Article 12 at full cost to Company. Furthermore, NEA shall have the right, but not the obligation, to pay the insurance deductibles for any loss covered under the policies required by this Article 12 at full cost to the Company.

### 12.3 Review and Revision

All amounts and insurance requirements where applicable for the insurance coverage expressed by this Article 12 shall be updated every 3 years based on coverage which are customary, in accordance with Prudent Utility Practices, for private power generation projects similar in nature to the Project, and that are available on commercially reasonable terms for a private power generation project in Nepal, and based on the then current market conditions.

### 12.4 Additional Insured

All liability insurance policies taken out and maintained by the Company, as described above in Article 12.1 (Insurance to be Maintained) as applicable, shall include provisions or endorsements naming NEA, its directors, officers and employees as additional insured.

## ARTICLE 13

### GOVERNING LAW; RESOLUTION OF DISPUTES

#### 13.1 Governing Law

This Agreement shall be interpreted, construed and governed by the laws of Nepal, without regard to the principles of conflict of laws.

#### 13.2 Dispute Resolution by Mutual Agreement

- (a) Each of NEA and Company shall designate in writing to the other Party a representative who shall be authorized to resolve any dispute arising under this Agreement in an equitable manner and, unless otherwise expressly provided herein, to exercise the authority of the Parties hereto to make decisions by mutual agreement.
- (b) If the designated authorized representatives are unable to resolve a dispute under this Agreement within thirty (30) Days of the commencement of discussions, such dispute shall be referred by each such representative to the respective senior officer designated by the Company and the senior official designated by NEA, as the case may be, to be resolved within sixty (60) Days of the commencement of discussions.
- (c) The Parties hereto agree to attempt to resolve all disputes arising hereunder promptly, equitably and in a good-faith manner. The Parties further agree to provide each other with reasonable access during normal business hours to any and all records, information and data pertaining to any such dispute other than any confidential communication between any Party and its legal advisor(s) or any such record, information or data which any Party has agreed with any third party to keep confidential.

#### 13.3 Notice of Arbitration

Either NEA or the Company may, within thirty (30) Days of the acknowledgement by either Party that the dispute cannot be resolved between the Parties, give notice to the other Party of its intention to commence arbitration, as herein provided, as to the matter of the dispute, and no arbitration in respect of this matter may be commenced unless such notice is given. Any dispute of which notice of intention to commence arbitration has been given shall be finally settled by arbitration.

#### 13.4 Arbitration of Disputes

In the event that any dispute is unable to be resolved between the Parties pursuant to Article 13.2 (Dispute Resolution by Mutual Agreement) hereof, such dispute shall be settled exclusively and finally by arbitration. It is specifically understood and agreed that any dispute that cannot be resolved between the Parties, including any matter relating to the interpretation of this Agreement, shall be submitted to arbitration irrespective of the magnitude thereof the amount in dispute or whether such dispute would otherwise be considered justifiable or ripe for resolution by any court or arbitration tribunal. This Agreement and the rights and obligations of the Parties shall remain in full force and effect pending the award in such arbitration proceeding, which award shall determine whether and when termination of this Agreement, if relevant, shall become effective.

2

3



### **13.5 Rules of Arbitration**

Each arbitration shall be conducted in accordance with the rules of arbitration of UNCITRAL (United Nations Commission on International Trade Law) as in effect on the date of signing of this Agreement except as such rules conflict with the provisions of this Article 13, in which event the provisions of this Article 13 shall prevail.

### **13.6 Number of Arbitrators and Appointment**

Each arbitration tribunal shall consist of three arbitrators. Each Party shall appoint one arbitrator for each arbitration, and the court of arbitration of UNCITRAL shall appoint the third arbitrator. No arbitrator shall be a present employee or agent of, or consultant or counsel to, either Party or any affiliate of either Party.

### **13.7 Place of Arbitration**

Each arbitration shall be conducted in Kathmandu, Nepal.

### **13.8 Language of Arbitration**

The language to be used in each arbitration shall be English and all written documents to be provided in each arbitration shall be in English.

### **13.9 Finality and Enforcement of Award**

Any decision or award of an arbitration tribunal appointed pursuant to this Article 13.9, shall be final and binding upon the Parties. NEA and the Company each waive, to the extent permitted by law, any rights to appeal or any review of such award by any court or tribunal of competent jurisdiction. NEA and the Company each agree that a judgment upon any arbitration award may be entered into by any court of competent jurisdiction thereof.

### **13.10 Judgment Currency**

All arbitration awards shall be denominated in Rupees. Interest on the amount to be paid in accordance with an arbitration awards at a rate equal to six percent (6%) per annum shall be due and payable to the Party in receipt of arbitration award from the date the amount in dispute was first due until the date of payment.

### **13.11 Cost of Arbitration**

Each Party shall bear its own costs of arbitration, including, without limitation, the remuneration of the arbitrator appointed by it. The administrative costs and the remuneration of the third arbitrator shall be shared equally by the Parties.



# ARTICLE 14

## NOTICE

### 14.1 Notice

Any notice or communication required to be in writing hereunder shall be given by courier or hand delivery, registered or certified mail, postage prepaid or facsimile. Such notice or communication shall be sent to the respective Parties at their addresses listed below or at such other address as they may from time to time provide to one another in accordance with this Article 14.1. Except as expressly provided herein, any notice shall be deemed to have been given (i) if sent by courier or hand delivery upon delivery at the address of the relevant Party and (ii) if sent by facsimile, when dispatched but only if the sender's transmission report shows the entire facsimile to have been received by the recipient and only if the transmission was received in legible form and the original shall have been delivered within fourteen (14) Days.

#### In the case of NEA to:

Nepal Electricity Authority  
Durbar Marg  
Kathmandu  
Nepal  
Facsimile: +977-1-4153111  
Telephone: +977-1-4153007, 4153109, 4153110  
Attn: Managing Director

#### In the Case of Company to:

Manang Marshyangdi Hydropower Pvt. Ltd.  
Baluwatar, Kathmandu-4, Nepal.  
Telephone: +977 9844040118, 9741286805  
Attn: Board Director

### 14.2 NEA's Authorized Representative

NEA's Managing Director (or such other Person as the Managing Director shall notify Company in writing may act on his behalf) shall represent NEA in all matters related to the administration of this Agreement.

### 14.3 Company's Authorized Representative

Company's Chairman (such other Person as the Project Director shall notify NEA in writing may act on his behalf) shall represent Company in all matters related to the administration of this Agreement.



## ARTICLE 15

### MISCELLANEOUS PROVISIONS

#### 15.1 Assignment

- (a) Neither Party shall assign this Agreement or any portion hereof without the prior written consent of the other Party, such consent not be unreasonably withheld; provided that any assignee shall expressly assume the assignation's obligations hereunder.
- (b) NEA shall consent to the assignment by Company of its rights herein to the Financing Parties and their successors and assigns in connection with any financing or refinancing related to the construction, operation and maintenance of the Project and shall enter into a direct agreement with the Financing Parties if requested by Company to evidence such consent and the other rights and remedies of the Financing Parties in connection with this Agreement. In furtherance of the foregoing, NEA acknowledges that the Financing Documents may provide that upon an event of default by Company under the Financing Documents, the Financing Parties may under certain circumstances assume the interests, rights and obligations of Company thereafter arising under this Agreement. Notwithstanding any such assumption by the Financing Parties, Company shall not be released and discharged from and shall remain liable for any and all obligations to NEA arising or accruing hereunder prior to such assumption, or after such assumption for obligations which expressly survive the termination or expiration of this Agreement. NEA further acknowledges that the Financing Documents will provide that upon an event of default by Company under the Financing Documents, the Financing Parties may, in addition to the exercise of their rights as set forth in this Article 15.1 (b) and pursuant to the requirements of Article 11.2 (Company Indemnity) of this Agreement, cause Company to sell or lease the Project and cause any new lessee or purchase of the Project to assume all of the interests, rights and obligations of Company thereafter arising under this Agreement.

#### 15.2 Amendments.

- (a) This Agreement including, without limitation, the Schedules hereto, may be amended only by agreement between the Parties in writing.
- (b) NEA may accept any modification by Company in project parameters described in Schedule 1 provided that such modifications do not result in (i) the increase of Purchase Price, (ii) difficulties in performance of NEA's obligation pursuant to prevailing Acts and Regulations and this Agreement, (iii) reduction in Dry Months Contract Energy than those specified in Schedule 8 (Power and Energy Table).

#### 15.3 Waiver

The failure of either Party to insist in any one or more instance upon strict performance of any provisions of this Agreement, or any delay in enforcing or any waiver with respect to any default or any other matter hereunder, shall not be construed as a waiver with respect to any subsequent performance, default or matter.

#### 15.4 Headings

The headings contained in this Agreement are used solely for convenience of reference and do not constitute a part of this Agreement between the Parties, nor should they be used to aid in any manner in the construction of this Agreement.

### **15.5 Benefit**

This Agreement is intended solely for the benefit of the Parties. Nothing in this Agreement shall be construed to create any rights, duty, liability, or standard of care with reference to any Person, not a Party.

### **15.6 Independent Contractors**

The Parties are independent contractors. This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party in respect of the period after the expiration of the Term. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

### **15.7 Survival**

Cancellation, expiration or earlier termination of this Agreement shall not relieve the Parties of their obligations under Article 11 (LIABILITY AND INDEMNIFICATION) and Article 15.8, which shall survive such cancellation, expiration or termination.

### **15.8 Confidential Information**

Subject to the provisions of this Article 15.8, each Party shall not disclose to any third party the contents of this Agreement, any information provided to such Party by the other Party pursuant to this Agreement or relating to the negotiations or performance of this Agreement or any aspect of the business or operations of the other Party. Upon the request of the providing Party and to the extent reasonably practicable to do so, the receiving Party shall return all written or electronic information covered by these confidentiality provisions. Notwithstanding the above the Parties acknowledge and agree that such information may be disclosed to the Financing Parties suppliers and potential suppliers of major equipment to the Project and other third parties as may be necessary for NEA and Company to perform their obligations under this Agreement and the other Project Contracts. To the extent that such disclosures are necessary, each Party shall endeavor in disclosing such information to seek to preserve the confidentiality of such disclosures. This Article 15.8 shall not prevent either Party from disclosing any confidential information received from the other Party if and to the extent (i) required to do so by law or any court, governmental or regulatory authority; (ii) disclosed to the professional advisors or auditors of such Party or its Affiliates; (iii) disclosed to the existing or potential lenders, shareholders, partners and equity investors of such Party or its Affiliates; (iv) such information has come into the public domain through no fault of such Party; or (v) the other Party has given its prior written consent to such disclosure.

### **15.9 Entirety**

*VS*

*X*



The Agreement is intended by the Parties to be the final expression of their agreement and is intended also as a complete and exclusive statement of the terms of their agreement with respect to the electric energy sold and purchased hereunder. Other than the Project Agreement, if any, all prior written or oral understandings, offers or other communications of every kind pertaining to the sale of electric energy hereunder to NEA by Company are hereby abrogated and withdrawn.

### **15.10 Expenses and Further Assurances**

Each Party shall pay its own costs and expenses in relation to the negotiation, preparation, execution and carrying into effect of this Agreement. Each Party shall, from time to time on being requested to do so, and at the cost and expense of the other Party, do all such acts and or execute and deliver all such instruments and assurances as are reasonably necessary for carrying out or giving full effect to the terms of this Agreement.

### **15.11 Language**

All notices, demands, requests, statements, instruments, operating manual specifications, contract documents, certificates or other communications given, delivered or made by, or on behalf of, either Party to the other under or in connection with this Agreement shall be in English.

### **15.12 Severability**

Any provision hereof which is prohibited or unenforceable in any jurisdiction shall as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof and without affecting the validity or enforceability of any provision in any other jurisdiction.

### **15.13 Permits & Licenses**

It shall be the responsibility of Company to acquire all the permits, licenses and authorizations required by the Law for the construction and operation of the Project.

### **15.14 Audited Financial Report**

Company shall provide NEA the copies of audited financial report for each Fiscal Year.

### **15.15 Good Faith**

- (a) The Parties undertake to act in good faith in relation to the performance and implementation of this Agreement and to take such other reasonable measures as may be necessary for the realization of its objectives.
- (b) The Parties recognize that circumstances may arise which the provisions of this Agreement not have foreseen in which event they undertake to consult each other promptly and in good faith in an effort to reach agreement as to what should be done.

- (c) The Parties consider the terms of this Agreement to be fair at the date of this Agreement but if during the Term of this Agreement either Party believes that this Agreement has become grossly unfair to that Party, it will notify the other and the Parties will use reasonable efforts to agree on such action as may be necessary to remove the cause or causes of the unfairness, but failure to agree shall not be submitted to the dispute resolution procedures set forth in Article 13.

IN WITNESS WHEREOF, the Parties hereto acting through their duly authorized representatives have caused this Agreement signed in four copies in the English language at Kathmandu, Nepal as of ..... of 2019 [BS 2076 .../...].

Signed on behalf of

**Manang Marshyangdi Hydropower Pvt.Ltd.**

Name:

Designation:

Signature:

Date:

Witnessed By:

Name:

Designation:

Signature:

Date:

(Office Seal)

Signed on behalf of

**Nepal Electricity Authority**

Name:

Designation:

Signature:

Date:

Name:

Designation:

Signature:

Date:

(Office Seal)





# SCHEDULE 1: PROJECT DESCRIPTION

Salient Features of the Project

DRAFT

✓

A

## SCHEDULE 2: PERMITS AND AUTHORIZATIONS

The following governmental Approvals are required under applicable Laws:

(a) Prior to Financial Closure Date under the Financing Documents

- (i) the Project Agreement, if any;
- (ii) the Generation License, as required pursuant to the Electricity Act, 2049, and the Electricity Rules, 2050;
- (iii) permits for foreigners to invest in a Nepalese company and to borrow from Foreign Lenders;
- (iv) permit to open and maintain bank accounts in foreign currency inside and outside Nepal;
- (v) an exemption from loan registration fees (including mortgage fees);
- (vi) permit to mortgage assets or pledge shares to foreign lenders;
- (vii) all approvals as per the Electricity Act, 2049, and the Electricity Rules, 2050, and other relevant Laws applicable to this type of project; and

(b) as and when required during construction of the Project:

- (i) permit to fell trees and the additional necessary permits with respect to timber excavation;
- (ii) permits to import, transport and store explosives;
- (iii) permits to use roads for heavy loads;
- (iv) an approval for import, installation and use of communications systems at the Site;
- (v) work permits and appropriate visas to employ foreigners;
- (vi) land lease and/or land acquisition agreement.



## **SCHEDULE 3: TECHNICAL LIMITS**

- 1. Turbine**
- 2. Generator**
- 3. Main Power Transformer**
- 4. Segregated Phase Bus**
- 5. Generator Circuit Breaker**

## **SCHEDULE 4: CONSTRUCTION REPORTS**

Manang Marshyangdi Hydropower Pvt. Ltd. will provide NEA with a Construction program and on the first day of each quarter period following commencement of construction of the Project and continuing until the Commercial Operation Date, Manang Marshyangdi Hydropower Pvt. Ltd. shall provide NEA with quarterly construction reports on the status of the construction of Project.

As a minimum, the quarterly construction report shall contain the following:

- Executive Summary
- Status of Permits and Approvals
- Discussion on any major problems which could affect the Construction Schedule
- Pre-Commissioning activities, start-up and performance testing

## **SCHEDULE 5: METERING STANDARDS AND TESTING**

1. Main and Check Meters (including the associated instrument transformers and accessories) required for the Facility shall be owned and operated by Company, and shall be maintained in accordance with Prudent Utility Practices. Such equipment shall include capability for hourly and monthly readings and data storage facilities for minimum of 45 Days and download facilities. The Company shall provide such metering results to NEA in accordance with Prudent Utility Practices.
2. The monthly meter readings (both Main Meter and Check Meters) shall be taken jointly by the Parties concerned on the first Day of the following month at 12 noon.
3. All the Main Meters and Check Meters (export and import) installed at the Delivery Point shall be of 0.1 % accuracy class. They shall be jointly inspected and sealed on

behalf of the Parties concerned and shall not be interfered with by either Party except in the presence of the other Party or its accredited representative.

4. The Main Meters and Check Meters shall be test checked for accuracy every year. Each such meter shall be deemed to be working satisfactorily if the errors are within specification for such Meter of 0.1 % accuracy class. The consumption registered by the Main Meters alone will hold good for the purpose of billing as long as the error in the Main Meter is within the permissible limits.
5. If during the annual test checks, any of the Main Meters is found to be within the permissible limit of error and the corresponding check meter is beyond the permissible limits, then billing will be as per the Main Meter as usual. The Check Meter shall, however, be calibrated immediately.
6. If during the annual test checks, any of the Main Meters is found to be beyond permissible limits of error, but the corresponding Check Meter is found to be within permissible limits of error, then the billing for the month up to the date and time of the calibration of the Main Meter shall be as per the Check Meter. There will be no revision in the bills for the preceding months. The Main Meter shall be calibrated immediately and billing for the period thereafter until the next monthly reading shall be as per the calibrated Main Meter.
7. If during the annual test checks, the Main Meters and the corresponding Check Meters are found to be beyond the permissible limits of error, both sets of meters shall be immediately calibrated and the correction applied to the consumption registered by the Main Meter to arrive at the correct consumption of energy for billing purposes for the period of the month up to the time of calibration of the Main Meter. Billing for the period thereafter until the next monthly meter reading shall be as per the calibrated Main Meter.
8. For any reason whatsoever, if Main Meter readings are found faulty or giving readings beyond the specified error limit, then billing for such period shall be based on the Check Meter till the time Main Meter is replaced or the error rectified.

## **SCHEDULE 6: COMMISSIONING AND TESTING**

### **1. Unit Commissioning**

Each Unit shall be commissioned by Manang Marshyangdi Hydropower Pvt. Ltd. in accordance with Prudent Utility Practices, the Technical Design Specifications, and other requirements set forth in this Agreement. Manang Marshyangdi Hydropower Pvt. Ltd. shall provide NEA with at least one hundred twenty (120) Days prior written notice of the scheduled Synchronization Date. Manang Marshyangdi Hydropower Pvt. Ltd. shall direct the operation of each unit after its Synchronization Date in such a manner to maximize the electrical energy output of each unit in a manner consistent with Prudent Utility, Practices, and the Performance tests as set forth in paragraph 3 of Schedule 4, the Technical Design Specification, other requirement set forth in the Agreement and all Applicable Laws.

### **2. Performance Test**

(a) Once each unit is sufficiently complete so that the unit and all Project systems associated with it are capable of safe operation in accordance with Applicable Laws, Prudent Utility Practice and the Technical Design Specifications, Manang Marshyangdi Hydropower Pvt. Ltd. shall perform a performance test (the "Performance Test"). The Performance Test is to be conducted in accordance with accepted test



guidelines in the Technical Design Specifications Manang Marshyangdi Hydropower Pvt. Ltd. shall give at least seven (7) Days prior written notice to NEA, the date on which the Performance Test will commence.

(b) The Performance Test shall be conducted on each unit to establish the following:

(i) Rated Output Capacity of each Unit.

(ii) Confirmation of unit characteristics in accordance with Schedule 3. The Performance Test shall include the operation of unit for a suitable period, including the operating of each Unit's association of each unit for a suitable period, including the operating of each Unit's associated Project system concurrently with each other Project system (which may be required for operation of such unit alone) for this period. The Performance Test shall define all generator, turbine and auxiliary system parameters to include machine operating temperatures, machine characteristics, load rejection tests, equipment vibrations and possible other parameters defined in the Technical Design Specifications. Manang Marshyangdi Hydropower Pvt. Ltd. and NEA shall designate and make available qualified and authorized representative to observe the test to monitor the recording of measurements to determine the level of achievement. NEA or Manang Marshyangdi Hydropower Pvt. Ltd. may declare the performance test a failure only if any of the electrical output characteristics do not meet the requirements of the Technical Design Specifications. Manang Marshyangdi Hydropower Pvt. Ltd. shall then be allowed to repeat the test until such electrical characteristics are in compliance.

### **3. Disposition of Output**

NEA shall not be required to pay for electric energy delivered by Unit at all times during start-up, preliminary testing or the Performance Test, or other operations of each Unit or Project systems in furtherance of the Performance Test, or other tests required under the construction contracts. NEA shall be required to pay for Electrical Output from any unit after the Unit Delivery Date of such Unit.

### **4. Factory Tests**

Manang Marshyangdi Hydropower Pvt. Ltd., at its own cost, agrees to invite two representatives of NEA to witness the factory tests of the major equipments at the manufacturer's facility.



**SCHEDULE 7: CONNECTION AGREEMENT  
(ATTACHED)**

DRAFT

A

21

D	E	F	G
418.91	134,150	58,335,495	2,313,420
418.91	134,150	98,809,517	3,952,381
418.91	134,150	101,996,921	4,070,877
418.91	134,150	98,809,517	3,952,381
418.91	134,150	98,809,517	3,952,381
418.91	134,150	98,809,517	3,952,381
418.91	134,150	78,481,108	3,139,244
418.91	134,150	34,988,724	1,399,549
418.91	134,150	30,296,455	1,211,858
418.91	134,150	26,515,794	1,060,632
	134,150		

# SCHEDULE 8: POWER AND ENERGY TABLE

**Table I**

Installed Capacity (kW)	135,000	Rated Turbine Efficiency	91.50%
Design Discharge (m <sup>3</sup> /s)	36.78	Rated Generator Efficiency	97.00%
Min Release (m <sup>3</sup> /s)	10% of	Rated Transformer Efficiency	99.00%
Gross Head (m)	430.20	Combined Efficiency	87.87%
Outage + Losses + Self Consumption (%)		4%	

**Table II**

Month	No. of Days	River Discharge (m <sup>3</sup> /sec)	Power Generation (kW)	Peaking Operation	Net Head (m)	Power (kW)	Monthly Generation before Outage & Losses (kWh)	Outage Including Losses (kWh)	Total Contract Energy (kWh)			
	A	B	C	hrs/day	D	E	F	G	H = F-G			
									Peak	Non Peak	Wet	Total
Baishakh	31	24.13	36.78	1.66	418.91	134,150	58,335,495	2,333,420	6,560,952	49,441,123		56,002,075
Jestha	31	54.10	36.78	1.66	418.91	134,150	98,809,517	3,952,381				94,857,136
up to 15th	15								3,174,654	42,723,060		
16 <sup>th</sup> onward	16										48,958,522	
Ashadh	32	121.27	36.78		418.91	134,150	101,996,921	4,079,877			97,917,044	97,917,044
Shrawan	31	156.38	36.78		418.91	134,150	98,809,517	3,952,381			94,857,136	94,857,136
Bhadra	31	131.74	36.78		418.91	134,150	98,809,517	3,952,381			94,857,136	94,857,136
Ashwin	31	76.86	36.78		418.91	134,150	98,809,517	3,952,381			94,857,136	94,857,136
Kartik	30	33.54	36.78		418.91	134,150	78,481,108	3,139,244			75,341,864	75,341,864
Mangsir	29	15.47	36.78	1.66	418.91	134,150	34,988,724	1,309,549			17,373,711	33,589,175
up to 15th	15										48,958,522	
16 <sup>th</sup> onward	14								2,963,011	13,252,453		
Paush	30	12.95	36.78	1.66	418.91	134,150	39,296,455	1,211,858	6,349,308	22,735,288		29,084,597
Magh	29	11.72	36.78	1.66	418.91	134,150	28,515,794	1,060,632	6,137,665	19,317,497		25,455,162
Fagun	30	10.97	36.78	1.66	418.91	134,150	28,668,220	1,026,729	6,349,308	18,292,183		24,641,491
Chaitra	30	13.13	36.78	1.66	418.91	134,150	30,717,629	1,228,705	6,349,308	23,139,615		29,488,924
<b>Total</b>	<b>365</b>						<b>782,238,411</b>	<b>31,289,536</b>	<b>37,884,206</b>	<b>188,902,120</b>	<b>524,162,549</b>	<b>750,948,875</b>

**Table III**

Dry Season (Months) Energy	226,786,326	30.20%
Wet Season (Months) Energy	524,162,549	69.80%
Total Annual Energy	750,948,875	100.00%

If the number of days in any Contract month is different than that mentioned in Table II then, Contract energy in any Contract Month shall be calculated on prorata basis to the number of Days.

If Commercial Operation Date is not the first Day of a Bikram Sambat calendar month, then contract energy shall be calculated on prorata basis to the number of Days remaining for the first Contract Month.



## SCHEDULE 9: PURCHASE PRICE

*[To be determined by Electricity Regulatory Commission]*

Whatever, the daily peaking hour mentioned in the Power purchase agreement of peaking run of river hydropower project: Power purchase rate for peaking energy shall be applicable as per actual daily peaking hour approved by System Operator at specified time once in a year after commissioning.

## SCHEDULE 10: PROJECT CONSTRUCTION SCHEDULE

The construction of the project shall be carried out as per the following basic construction schedule.

DRAFT



## SCHEDULE 11: PROJECT FINANCIAL STATEMENTS (ATTACHED)

DRAFT



*[Handwritten signature]*