

*Draft*

Note to bidder: This draft project implementation agreement (PIA) is subject to potential modifications through negotiation with the winning bidder, under the premise that the final implementation agreement will be substantially based on this draft PIA.

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**PROJECT IMPLEMENTATION AGREEMENT**

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**Between**

**The Government of Georgia**

**represented by**

**The Ministry of Economy and Sustainable Development of Georgia**

**[Investor]**

**And**

**Gardabani 3 TPP LLC**

**[●] 2024**

**Tbilisi**

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The present Project Implementation Agreement (the “**Agreement**” or “**Implementation Agreement**”) is entered into on [●] 2024 (the “Effective Date”) by and between the following parties:

- (1) **The Government of Georgia**, represented by the Ministry of Economy and Sustainable Development of Georgia (the "GoG");
- (2) **[Investor]** and
- (3) **Gardabani 3 TPP LLC** a limited liability company organised and existing under the laws of Georgia, with identification number: 406322536, having its registered office at No. 21 Kakheti highway, Isani district, Tbilisi, Georgia (the “**Project Company**”);

Each of the GoG, [the Investor,] and the Project Company, shall be collectively referred to as the “**Parties**” and individually as a “**Party**”.

Recitals:

- A. Gardabani TPP3 LLC is a limited liability company incorporated in Georgia, the sole shareholder of which is a Georgian joint stock company - Georgian Oil and Gas Corporation (identification number 20623749) (“**GOGC**”).
- B. On 30 June 2023, GOGC announced the Request for Proposals (“**RfP**”), according to which, GOGC invited proposals to select a purchaser for the acquisition of the GOGC’s 100% share in its subsidiary company - Gardabani TPP 3 LLC on the condition that the purchaser would build the Gardabani 3 Combined Cycle Gas-Fired Thermal Power Plant in Gardabani Municipality, Georgia;
- C. On [●], the Investor submitted its proposal on the acquisition of the GOGC’s 100% share in Gardabani TPP 3 LLC in accordance with the RfP and provided the total sum of capital expenditure for the construction of the Gardabani 3 Combined Cycle Gas-Fired Thermal Power Plant and the price per 1 MW (“**Proposal**”).
- D. On [●], GOGC and the Investor executed the Agreement for the Sale and Purchase of the Shares of Gardabani TPP 3 LLC (“**SPA**”);
- E. The concept of the Project (as defined below) was approved by the GoG with the decree No. [●] dated [●];
- F. After the submission of the full Feasibility Study (as defined below), the Project was approved by the GoG on [●]; and
- G. On [●], the GoG adopted the Decree No.[●] on approving the conclusion of the present Implementation Agreement.

Therefore, the Parties have entered into this Agreement on the following terms and conditions:

## 1. Terms and Definitions

1.1. The following words have the following meaning:

<b>Applicable Law</b>	means laws of Georgia consisting of legislative normative and subordinate normative acts of Georgia, as well as individual administrative acts, ordinances, decrees, orders, codes or regulations enacted or issued by the relevant authority of Georgia; directives (to the extent having the force of law in Georgia), international treaties or agreements in force in Georgia, as any of them may be amended, supplemented, replaced or otherwise modified from time to time;
<b>Authorizations</b>	means any consent, permission, license, authorization, approval, certificate, permit or registration, the obtaining/granting or renewal of which is required under the Applicable Law in connection with the entering into and implementation and operation of the Project, this Agreement and the rights and obligations of the Project Company and the other Parties;
<b>Bank Guarantee</b>	means an unconditional and irrevocable first demand bank guarantee to be issued by a licensed commercial bank (the “Guarantor”) in the State or by a bank licensed in an OECD member country for the benefit of the GoG (the “Beneficiary”) at the request of the Project Company in accordance with Clause 4, under which the Guarantor must undertake an unconditional and irrevocable obligation to pay on a first demand a sum of money to the Beneficiary upon the submission of the written demand by the Beneficiary;
<b>BOO Basis</b>	means build, own, and operate, i.e. to design, construct, finance, own, implement, operate and maintain the Plant for indefinite term;
<b>Business Day</b>	means a day, other than Saturday, Sunday, and other than public holiday in Georgia and on which banks in Georgia are generally open for business;
<b>Capital Expenditure Budget</b>	The capital expenditures (as defined by IFRS (International Financial Reporting Standards)) for construction of the Gardabani 3 Combined Cycle Gas-Fired Thermal Power Plant and a total price per 1 MW as indicated in the Proposal by the Investor.
<b>Commencement of Construction</b>	means commencement of the Construction Works of the Plant in accordance with the Applicable Law, within the deadlines as prescribed in the Agreement, including the commencement of any Construction Works on the Site aimed towards construction of the Pant as well as the relevant preparatory works;

<b>Commencement of Operation</b>	means the date on which (i) the Plant is constructed and (ii) the Generation License is obtained; and (iii) the Plant is registered as a Market Participant in accordance with the Applicable Law;
<b>Construction Permits</b>	means all the necessary construction permits required under the Applicable Law for the construction of the Plant, transmission infrastructure, and access roads in accordance with the Agreement, Applicable Law and terms hereof;
<b>Construction Works</b>	means any works, including but not limited to construction, testing, maintaining, implementing, and commissioning required for, and ancillary to, the construction and completion of the Plant, transmission infrastructure, and the access roads associated with the Plant;
<b>Day</b>	means any calendar day(s);
<b>Distributions</b>	means any dividend or other distribution (whether in cash or in kind) or any return of capital, including (without limitation) by way of reduction of capital, redemption or repurchase of shares or other securities, or payments of Shareholder Loan of the Project Company.
<b>Direct Agreement</b>	means agreements as defined under Clause 12.11;
<b>Effective Date</b>	means the date of the execution (signing) of the Agreement by all the Parties;
<b>Emergency</b>	means an event causing or, in the reasonable opinion of the GoG, threatening to cause death or injury to any individual, or serious disruption to the lives of a number of people or extensive damage to property, or contamination of the environment, in each case which prevents: (a) the normal operation of the Plant; and/or (b) the Service operating under normal circumstances; and, in each case, requires the mobilization of the emergency services;
<b>Equity Investment</b>	means the subscribed and paid in capital of the Project Company plus the outstanding Shareholder Loans as of the Termination Date;
<b>Equity Premium</b>	means the amount, expressed in US Dollars, that equals the net present value, as of the Termination Date, of the Distributions that the Project Company would make to the Shareholder(s) from and after the Termination Date up until the end of the Guaranteed Capacity Period discounted using a reasonable, country specific discount rate determined by one of the Big 4 audit companies or any other audit company mutually agreed by the Parties. For the avoidance of doubt one of these audit companies shall prepare the financial model to determine the Equity Premium;

<b>ESCO</b>	JSC “Electricity System Commercial Operator”, a joint stock company organized and existing under the laws of Georgia, with identification number 205170036.
<b>Fair Market Value</b>	means the price that would be received by Investor to sell the 100% shares in the Project Company in an orderly transaction between market participants at the Termination Date.
<b>Feasibility Study</b>	means the study of the Project prepared by the Project Company and/or Investor and submitted to the Ministry on [●];
<b>Financing Agreements</b>	means loan agreements and all related notes, indentures, security agreements, guarantees, documents under loan agreements, agreements or other instruments providing security to the Lenders and other documents (including hedging documents) entered into by the Project Company in relation to financing (including any refinancing) of the Project (or any part thereof), as amended from time to time;
<b>Guaranteed Capacity Source</b>	means the source of capacity of an electricity production facility reserved to ensure the stability, safety and reliability of the electricity system, including the balance of supply and demand in accordance with the Law of Georgia on Energy and Water Supply;
<b>Guaranteed Capacity Period</b>	[●-year] period starting from the date of Commencement of Operation;
<b>Generation Licence</b>	means the licence which shall be granted by GNERC to the Project Company to operate the Plant and generate the electricity through the Plant in accordance with the Applicable Law;
<b>GNERC</b>	means the Georgian National Energy and Water Supply Regulatory Commission;
<b>Grid Connection Agreement</b>	Means grid connection agreement concluded between the Project Company and GSE on [●];
<b>Grid</b>	means the national transmission system of Georgia and the distribution system network(s) as applicable;
<b>GSE</b>	means JSC Georgian State Electrosystem which as of the date of this Agreement is acting as the transmission system operator and GSE Substitute;
<b>Intangible Assets</b>	means intangible assets prepared and/or acquired by the Project Company for purposes of the Project, including but not limited to the Feasibility Study and the environmental impact assessment study, technical and financial reports, designs, projects and drawings related to the Project;

<b>Lenders</b>	means private or public finance institutions, corporations, funds, banks, parties to the Financing Agreements, or subsequent entities that become parties to the Financing Agreements, and in each case providing the financing on a non-recourse basis for the implementation of the Project, together with their respective successors and assigns;
<b>Losses</b>	means, in respect of any matter, event or circumstance, all direct actual loss, damage, liability, payment, cost and expense, as well as loss of profit or revenue during and for the period of the effective term of the Implementation Agreement.
<b>Market Participant</b>	means the eligible entities which are authorized to participate in the wholesale trade in accordance with the Applicable Law.
<b>Material Project Asset</b>	means Project Asset if its initial acquisition value is higher than USD [●] (being understood that all acquisitions of the Project Assets shall be made on arm's length basis) or it is essential to the normal operations of the Plant and/or implementation of the Project. In any case, Material Project Asset includes a gas turbine (GT), steam turbin (ST) and a heat recovery steam generator (HRSG).
<b>Ministry</b>	means the Ministry of Economy and Sustainable Development of Georgia;
<b>Outstanding Debt</b>	means the principal and accrued interest of a debt that must be paid by the Project Company to the Lenders under the Financing Agreements.
<b>Plant</b>	means the Combined Cycle Thermal Power Plant (CCTPP) with the installed capacity of 350-430 MW that is to be constructed and operated through the implementation of the Project.
<b>Project Assets</b>	means jointly the Plant, the Intangible Assets, movable and immovable assets (including any land, buildings, structures, equipment, machinery, vehicles, materials, spare parts, inventories) and all rights (including limited property rights and leasehold property, etc, if any) related with the Project, owned by the Project Company;
<b>Project</b>	means construction and operation of a 350-430 MW Combined Cycle Gas-Fired Thermal Power Plant by the Purchaser in Gardabani, Georgia on the non-agricultural land plot with cadastral code: 81.15.20.432 (which is the Project Company's property) as per the SPA, the Implementation Agreement and pursuant to the PPP (Public Private Partnership) procedure prescribed by the Applicable Law;
<b>Public Authority</b>	means: (i) the GoG or any ministry, department or subdivision thereof; (ii) any other state or local governance entity, instrumentality, regulatory or judicial body, commission, agency or authority of Georgia; and (iii) any other entity or minister that has the authority to, or does, exercise

	public governance authorities inside Georgia (including but not limited to the entities exercising governance functions in the electricity sector of Georgia including GNERC, GSE and ESCO) and their shareholders;
<b>Service</b>	operation of the Plant as a Guaranteed Capacity Source and/or other type Market Participant (if the status of Guaranteed Capacity Source is not extended) and generation and provision of electricity in accordance with this Agreement and Applicable Law;
<b>Shareholders</b>	means any person, company, and/or institution holding share(s) in the capital of the Project Company;
<b>Shareholder Loan</b>	means principal amount, as well as interest in respect of the loan issued by Shareholder to the Project Company;
<b>Technical Parameters</b>	means the location, installed capacity and estimated annual production of the Plant as provided in Annex [●] of the Agreement;
<b>Term</b>	means the period starting from the Effective Date and until the expiry of [25-year] period from the Commencement of Operation date;
<b>Termination Date</b>	means the date on which this Agreement terminates;
<b>Site</b>	means site where the Plant shall be constructed and operated in accordance with this Implementation Agreement as depicted in Annex [●].

1.2. In this Agreement, unless otherwise specified or the context otherwise requires:

- 1.2.1. words importing the singular only shall include the plural and vice versa.
- 1.2.2. reference to a Recital, Clause or Annex is to the relevant recital or clause or annex of this Agreement.
- 1.2.3. any reference to a Party is to a Party to this Agreement and includes a reference to that Party's successors, permitted transferees and permitted assigns;
- 1.2.4. a reference to a person includes any individual, company, firm, partnership, unincorporated association, organisation, foundation, trust, government, state or agency of a state, in each case whether or not having separate legal personality;
- 1.2.5. words importing the whole shall be treated as including a reference to any part thereof.

1.3. The Recitals and Annexes form part of this Agreement and have the same full force and effect as if expressly set out in their entirety in the operative part of this Agreement.

1.4. The phrase 'to the extent that' shall, unless the context requires otherwise, be taken to indicate an element of degree and is not synonymous with the word 'if'.

1.5. The words "include" or "including" shall be deemed to be followed by "without limitation" whether or not they are followed by such phrase or words of like import;



- 1.6. Reference to “this Agreement” or “this Implementation Agreement” or any other document shall be construed as a reference to such agreement or document as amended, modified or supplemented and in effect from time to time and shall include a reference to any document which amends, modified or supplements it, or is entered into, made or given pursuant to or in accordance with its terms;
- 1.7. Headings used in this Agreement shall not affect its construction or interpretation.

## **2. Purpose and Subject-Matter of the Agreement**

The Project Company hereby undertakes to implement the Project, including to design, finance, acquire, construct, complete, test and commission the Combined Cycle Thermal Power Plant (CCTPP) with the installed capacity of 350-430 MW and to own, operate, and maintain the Plant, on a BOO basis, in each case, in accordance with the Applicable Law and this Agreement.

## **3. Obligations of the Project Company and the Investor**

3.1. The Project Company shall have the following obligations:

- 3.1.1. Implement the Project and at all times comply and ensure that its employees, directors, agents, contractors comply with all Applicable Laws.
- 3.1.2. Procure all the necessary equipment and works required for the implementation of the Project in accordance with the Applicable Laws and this Agreement.
- 3.1.3. Ensure that all applications (whether initial or renewal applications) for all permits and licenses necessary for the implementation of the Project are made in a timely manner, in the prescribed procedures within the prescribed deadlines to the appropriate authorities and shall diligently pursue all such applications. The information supplied in the applications shall be complete and accurate and shall satisfy the requirements of the Applicable Law.
- 3.1.4. Obtain the Construction Permit for the Plant in accordance with the Applicable Law within [8] months from the Effective Date.
- 3.1.5. Commence the Construction Works within [1] month from the date of obtaining the Construction Permit for the Plant.
- 3.1.6. Ensure that the Commencement of Operation occurs within [30] months after the Commencement of Construction and in any case not later than 4 (four) years after signing of the SPA with the GOGC.
- 3.1.7. Construct the Plant in accordance with the security, environmental and other standards defined by the Applicable Law.
- 3.1.8. Provide full and free access to the GoG and/or the Ministry or any person or body designated by them to the Site and the Plant for the purposes of monitoring the construction and operation of the Plant at any time.
- 3.1.9. Ensure the Plant to be constructed in accordance with the technical requirements prescribed by the №7558/17 letter of JSC Georgian State Electrosystem, dated 21 December 2022 provided under Annex [●] (GSE Technical Requirements) and other applicable requirements

- under this Agreement and Applicable Law, and maintain the Plant within these technical parameters;
- 3.1.10. Ensure that the Plant's net efficiency considering actual configuration of the Plant is no less than 56%.
  - 3.1.11. Buy the gas turbine from one of the following vendors (1) General Electric; (2) Siemens or (3) Ansaldo Energia. The vendors for the generators for gas turbines and the vendors for gas turbines shall be the same. Each part and equipment of the Plant shall be new.
  - 3.1.12. Ensure that redundancy for the Plant's critical equipment is envisaged to ensure uninterrupted and reliable work of the Plant. The percentage of redundancy for critical equipment shall be calculated so that damage or malfunction of one device shall not cause full or partial reduction of productivity. Herewith, a gas turbine (GT), steam turbine (ST) and a heat recovery steam generator (HRSG), shall not be considered as part of critical equipment.
  - 3.1.13. Secure and safeguard the Site including the Plant and all necessary infrastructure at its own cost and expense and report any event of unlawful interference by any third parties to the GoG as soon as practicable.
  - 3.1.14. obtain appropriate insurances (with adequate covering) to protect the Project and insure the risks such as property damage, accidental damage, workers' compensation, and third-party liabilities. Upon request of the GoG, the Project Company immediately but no later than [5] Business Days from such request, shall provide the GoG with relevant insurance policies in a form satisfactory to the GoG. Upon request of the GoG, the Project Company shall cause the GoG to be listed as an additional insured on any applicable insurance policies.
  - 3.1.15. The Project Company shall require all contractors and consultants to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect the GoG and the Project Company's interests in the Project. The Project Company shall require such contractors and consultants to cause GoG and the Project Company to be listed as additional insured persons with respect to liability insurance.
  - 3.1.16. Ensure, at its own expense the decommissioning of the Plant above the ground level in accordance with Applicable Law, after the full lifespan of the Plant is exhausted;
  - 3.1.17. To remove all fossils, coins, articles of value or antiquity, and structures and other remains or items of geological or archaeological interest, man-made and other physical obstructions found on the Site and in coordination with and at the expense of the GoG in accordance with the Applicable Law;
  - 3.1.18. Once granted the status of the Guaranteed Capacity Source, comply with all obligations and requirements applicable to such status under the Applicable Law;
  - 3.1.19. To ensure necessary financing for the effective implementation of the Project;
  - 3.1.20. Obtain written consents from the GoG before execution of loan, collateral and Financing Agreements with the Lenders and/or making any material changes therein.

- 3.1.21. The Project Company shall not: (a) sell, mortgage, lease out, alienate, otherwise encumber or dispose of the non-agricultural land plot (cadastral code: 81.15.20.432) on which the Project shall be implemented without prior written consent from the GoG; and/or (b) sell, pledge, lease out, alienate, otherwise encumber or dispose of any Material Project Asset without the GoG's prior written consent. In any case, the Project Company shall ensure that any disposal of Project Asset does not adversely affect the operation, maintenance, safety, security, quality, reliability or efficiency of the Plant and/or implementation of the Project, or the Project Company's ability to fulfil its obligations and responsibilities under this Agreement and Applicable Law.
  - 3.1.22. The Project Company shall not create, cause or permit to exist any lien, tax mortgage/pledge and/or public law restriction/charge over the Project Asset(s);
  - 3.1.23. The Project Company shall promptly notify the GoG of any actual or threatened lien, charge/restriction, mortgage, pledge, or other encumbrance over any of the Project Asset, and shall take all necessary steps to remove or discharge it as soon as possible;
  - 3.1.24. Fulfill other obligations and/or requirements provided by this Agreement.
- 3.2. [The Investor shall have the following obligations:
- 3.2.1. Shall not sell, pledge, alienate, otherwise encumber or dispose of the shares directly or indirectly in the Project Company without prior written consent from the GoG.
  - 3.2.2. Shall not merge, liquidate, or reorganize the Project Company without prior written consent from GoG.
  - 3.2.3. Shall ensure that the Project Company complies with the Clauses 3.1.21, 3.1.22, 3.1.23.]
- 3.3. The Project Company may, at its cost, construct and/or maintain any such temporary or permanent infrastructure necessary or desirable for the construction and/or operation and/or maintenance of Project and the construction of the roads, so long as they do so in accordance with the Applicable Law.
- 3.4. The Project Company shall not be entitled to receive any compensation/reimbursement from the GoG or from any other Public Authority, including as part of the guaranteed capacity fee, for any expenditures above the Capital Expenditure Budget. For the avoidance of doubt, if the actual capital expenditure is lower than Capital Expenditure Budget, ESCO will pay guaranteed capacity fee to the Project Company only based on the actual capital expenditure in line with the Applicable Law.
- 3.5. If the Capital Expenditure Budget indicated in the Proposal and calculated in US Dollar will be converted to Georgian Lari when the guaranteed source payment is paid, neither GoG, nor ESCO shall be responsible for any costs incurred by the Project Company in converting Georgian Lari to US Dollar (including but not limited to any exchange rate differences) and the Project Company shall not be entitled to claim any compensation in this regard.
- 3.6. The Project Company may use a third party or third parties through sub-contracting to implement the Project only after the approval of the GoG. The appointment of a sub-contractor shall not be subject to the GoG's prior written approval, if the aggregate costs of works, goods or services to be provided by a sub-contractor does not exceed USD [●] within any [3 (three)] consecutive year period. The terms of any sub-contract shall in all material respects reflect the relevant provisions of this Agreement and be subject to the prior written notification and delivery of a copy of the relevant contract to the GoG, provided that

the engagement of a third party shall not release the Project Company from any of its obligations under this Agreement and Applicable Law.

#### **4. Bank Guarantee and Penalty**

- 4.1. The Project Company shall deliver to the GoG a Bank Guarantee as a security for performance of its obligations to: (i) obtain the Construction Permit for the Plant, (ii) commence the Construction Works and (iii) Commence operation of the Plant within the set deadlines, as well as performance of other obligations as provided in the Implementation Agreement.
- 4.2. The Project Company is obliged to submit the Bank Guarantee for the benefit of the GoG no later than within 30 (thirty) days after the Effective Date of this Agreement according to the installed capacity of the Plant in the amount of [20,000.00 (twenty thousand)] US Dollars or equivalent in Euro (according to the National Bank of Georgia exchange rate at the date of submission of the bank guarantee) for each MW, the validity of which shall be 6 (six) months longer than [the date of Commencement of Operation of the Plant]. The amount of the Bank Guarantee shall not exceed 15% of the issuer bank's equity capital. Due to the failure to provide the Bank Guarantee by the Project Company in accordance with this Clause and within the set deadline, this Agreement shall be terminated automatically pursuant to Clause 11.1.1 (b).
- 4.3. In case of the failure by the Project Company to fulfil any obligation(s) duly and within the deadlines set under the Agreement, the GoG shall be entitled to impose a penalty on the Project Company in the amount of 0.5% of the total amount of the Bank Guarantee for each day of delay accrued from the first day of such delay. The Project Company shall pay any such penalty in full in no later than 15 (fifteen) Days from the date of the receipt of the relevant notice from the GoG. In case the Project Company fails to pay such penalty, the GoG shall be entitled to encash the corresponding amount from the Bank Guarantee. The GoG shall send the copy of the request on such encashment simultaneously to the Project Company and the bank. In case of encashment from the Bank Guarantee by the GoG the Project Company shall replenish the Bank Guarantee within 30 (thirty) Days from the date of the relevant encashment in the manner such that the aggregate value of the Bank Guarantee equals to the required value as per Clause 4.2 above.
- 4.4. For the avoidance of doubt, the GoG shall not have the right to charge the Project Company with the penalty under Clause 4.3 if the Project Company's failure is due to the acts or omissions of the Public Authority, GoG and/or any party under the direct control of the GoG according to the Applicable Law.

#### **5. Progress and Financial Reporting Obligations of the Project Company**

- 5.1. The Project Company shall prepare and submit to the GoG, [in accordance with the reporting schedule set out in Annex [●],] the following reports:
  - (i) a monthly progress report, containing a detailed description of the activities, milestones, achievements, challenges, risks and mitigation measures related to the design, construction, commissioning, operation and maintenance of the Project and Plant;

- (ii) a quarterly financial report, containing a summary of the revenues, expenditures, cash flows, financing sources, debt service, taxes and fees, and any other financial information relevant to the Project;
  - (iii) an annual audited financial report, containing the audited financial statements of the Project Company, prepared in accordance with the applicable accounting standards and audited by any of the Big 4 firms (PwC, EY, Deloitte, KPMG);
  - (iv) any other reports that the GoG may reasonably request from time to time, in relation to the performance, compliance, quality, safety, environmental and social aspects of the Project.
- 5.2. The Project Company shall ensure that the reports submitted under this clause are accurate, complete, timely and consistent with the requirements of this Agreement and the Applicable Law.
- 5.3. The GoG may review the reports submitted by the Project Company and provide its comments, feedback, approval, or rejection, as applicable. The GoG may also conduct inspections, audits, tests or verifications of the Project, the Project Company and its records, as it deems necessary, to verify the accuracy and completeness of the reports and the compliance of the Project Company with this Agreement and the Applicable Law.
- 5.4. The Project Company shall cooperate with the GoG and provide it with all the necessary information, documents, access, and assistance, as required, for the purposes of reviewing, inspecting, auditing, testing, or verifying the reports and the Project.
- 5.5. The Project Company shall promptly rectify any errors, omissions, discrepancies or non-compliances identified by the GoG in the reports or the Project and provide evidence of such rectification to the GoG.
- 5.6. The Project Company shall maintain and preserve all the records, documents, data and information related to the Project and the reports, in a secure and accessible manner, for at least ten (10) years after the expiry or termination of this Agreement, or for such longer period as required by the Applicable Law or agreed by the Parties.
- 5.7. The Parties shall treat the reports and the information contained therein as Confidential Information, subject to the provisions of Clause 16 (Confidentiality and Transparency).

## **6. GoG Obligations**

- 6.1. The GoG shall have the following obligations:
- 6.1.1. The GoG shall within its competence use its best endeavors to assist with the implementation of the Project, which may include assistance in obtaining required permits, licenses and Authorizations for the construction and operation of the Plant in a timely fashion considering the deadlines set under this Agreement, subject to the condition that the Project Company meets the relevant requirements in accordance with the Applicable Law.
  - 6.1.2. The GoG shall within its competence use its best endeavors to prevent any lengthy delay in importing any equipment or material to Georgia for the purposes of the Project, provided that the Project Company has met the relevant requirements in accordance with the Applicable Law.

- 6.1.3. The GoG shall within its competence and subject to the Applicable Law use its best endeavors for the Project Company to be granted unlimited and free access to the Site.
- 6.1.4. Upon the construction and commissioning of the Plant in compliance with the terms outlined in the Agreement and in accordance with all relevant Applicable Laws, grant to the Plant the status of the Guaranteed Capacity Source for an initial period of two years from Commencement of Operation. After the expiration of this initial two-year period, the GoG shall, to the extent possible based on the system's need for guaranteed capacity volume, extend the status of the Guaranteed Capacity Source for the maximum duration allowed by Applicable Law. Such extension efforts by the GoG shall be exercised for any subsequent revision period for the entire Guaranteed Capacity Period.
- 6.1.5. Provided the Plant complies with all the respective Applicable Law requirements, ensure that GSE connects Plant to its electricity transmission network in accordance with the Grid Connection Agreement.
- 6.1.6. If GSE or ESCO becomes subject to insolvency, bankruptcy, liquidation or any similar procedure, or if GSE or ESCO becomes unable to fulfil its obligations under any relevant contracts with the Project Company, then the GoG, within shortest possible time shall transfer or cause any Public Authority to transfer any and all rights and obligations of GSE or ESCO in respect of the Project to another entity and/or public authority (the "GSE Substitute" or "ESCO Substitute")) so that Project Company will be paid and is not affected by such insolvency, bankruptcy, liquidation or any similar procedure, or inability of GSE or ESCO to fulfil its obligations under the relevant agreements, and GSE Substitute or ESCO Substitute as the case may be, shall be responsible for any and all acts and obligations of GSE or ESCO determined in the relevant agreements, and the GoG shall procure that such GSE Substitute or ESCO Substitute accedes to and is bound by the terms of the relevant agreements in the same capacity as the original GSE or ESCO.

## **7. Representation and Warranties**

### **7.1. The Project Company's [and Investor's] Representation and Warranties**

#### **7.1.1. The Project Company represents and warrants to GoG, that:**

- (i) the Project Company is duly organized and validly existing under the laws of Georgia and has all requisite legal power and authority to execute this Agreement and to carry out the terms, conditions and provisions included in this Agreement;
- (ii) this Implementation Agreement has been duly authorized, executed and delivered by the Project Company and constitutes the valid, legal and binding obligation of the Project Company enforceable in accordance with its terms;
- (iii) none of the execution, delivery, or performance by the Project Company of this Implementation Agreement, the compliance with the terms and provisions of this Agreement, and the carrying out of the transactions contemplated by this Agreement, conflicts or will conflict with or result in a breach or violation of any of the terms, conditions, or provisions of any agreement entered into by the Project Company,

Applicable Law or any applicable Authorization, or any order, writ, injunction, judgment, or decree of any Public Authority against/in relation to the Project Company;

- (iv) there are no actions, suits or proceedings pending or threatened, against or affecting the Project Company before any court or administrative or quasi-judicial body or arbitration tribunal that might materially adversely affect the ability of the Project Company to meet and carry out its obligations under this Implementation Agreement;
- (v) as at the Effective Date, the Project Company has been compliant with applicable anti-corruption, anti-money laundering, anti-terrorism, economic sanction and anti-boycott laws of Georgia and no prohibited payments or illegal activities have been made or carried out by the Project Company or its management officers in order to obtain, retain, or direct business under the Implementation Agreement.
- (vi) The authorized representatives of the Project Company have visited the Site and, conducted a thorough examination of the Site, and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect the Project.
- (vii) The Project Company is familiar with and is satisfied as to all Applicable Laws and that may affect the Project.

7.1.2. The representations and warranties in Clause 7.1.1 above are given throughout the period during which GoG has rights or the Project Company has obligations under the Agreement by reference to the facts and circumstances existing at such time.

## 7.2. [The [Investor's] Representation and Warranties

7.2.1. The [Investor] represents and warrants to GoG that:

- (i) It is duly organized and validly existing under the laws of [ ] and has all requisite legal power and authority to execute the Agreement and to carry out the terms, conditions and provisions included in this Agreement;
- (ii) This Implementation Agreement has been duly authorized, executed and delivered by the Investor and constitutes the valid, legal and binding obligation of the Investor enforceable in accordance with its terms;
- (iii) None of the execution, delivery, or performance by the Investor of this Implementation Agreement, the compliance with its terms and provisions, and the carrying out of the transactions contemplated by it, conflicts or will conflict with or result in a breach or violation of any of the terms, conditions, or provisions of any agreement entered into by the Investor, Applicable Law or any applicable permit, or any order, writ, injunction, judgment, or decree of any Public Authority against the Investor;
- (iv) There are no actions, suits or proceedings pending or threatened, against or affecting the Investor before any court or administrative or quasi-judicial body or arbitration tribunal that might materially adversely affect the ability of the Investor to meet and carry out its obligations under this Implementation Agreement;
- (v) as at the Effective Date, the Investor is compliant with applicable anti-corruption, anti-money laundering, anti-terrorism, economic sanction and anti-boycott laws of Georgia

or laws of its incorporation country and no prohibited payments or illegal activities have been made or carried out by it or its management officers in order to obtain, retain, or direct business under this Agreement;

(vi) The authorized representatives of the Investor have visited the Site and, conducted a thorough examination of the Site, and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect the Project; The Investor is familiar with and is satisfied as to all Applicable Laws and that may affect the Project.

7.2.2. The representations and warranties in Clause 7.2.1 above are given throughout the period during which GoG has rights or the Investor has obligations under the Agreement by reference to the facts and circumstances existing at such time.]

7.3. [The Investor and] the Project Company represent and warrant that:

7.3.1. They have the capacity to develop, build and operate the Project/Plant in accordance with this Agreement and Applicable Law by the Project Company or through its contractors which contractors have experience in the development, building and operation of projects of a similar nature;

7.3.2. They have sufficient immediately available funds or committed financing as at the Effective Date to: (i) complete all required feasibility studies; (ii) complete the preliminary design; (iii) complete the environmental impact assessment according to the requirements of the Applicable Law; (iv) obtain the Bank Guarantee in compliance with the Clause 4 of this Agreement.

7.4. Representation and Warranties of GoG:

7.4.1. The GoG represents and warrants to the Project Company and [Investor] that:

(a) the rights to the Project which this Implementation Agreement grants or purports to grant to the Project Company have been validly granted and this Implementation Agreement has been validly awarded and executed by the GoG;

(b) this Agreement has been duly authorized, executed and delivered by it and constitutes its valid, legal and binding obligation, enforceable in accordance with its terms;

(c) none of the execution, delivery, or performance by it of this Agreement, its compliance with the terms and conditions of this Agreement, and the carrying out by it of the transactions contemplated by any such the Agreement, conflicts or will conflict with or result in a breach or violation of any of the terms, conditions, or provisions of any agreement entered into by it, Applicable Law or any applicable permit, or any order, injunction, judgement, or decree of any Public Authority in relation to it;

(d) no third party has any valid rights that conflict with the rights granted to the Project Company under this Implementation Agreement.

7.4.2. The representations and warranties in Clauses 7.4.1 above are given throughout the period during which the Project Company and [Investor] has rights or GoG has obligations under the Implementation Agreement by reference to the facts and circumstances existing at such time.



## 8. Change in Law

### 8.1. Change in Law

- 8.1.1. The “Change in Law” shall mean, after the submission of the Proposal, the enactment of any new and/or amendment of the Applicable Law, which:
- (a) is not/is not related to and/or is not a result of: (1) changes in the elements constituting the Weighted Average Cost of Capital (WACC) set by the GNERC for the purposes of calculation of guaranteed capacity fee; or (2) any increase in costs or reduction of revenues that will be compensated/reimbursed as part of the guaranteed capacity fee or otherwise by any Public Authorities of Georgia; or (3) complying with and/or fulfilling the requirements under the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part; approximation of Georgian legislation with the *acquis communautaire* (EU *acquis*); granting Georgia the European Union membership candidate status; and/or Georgia’s integration with the European Union; or (4) any criminal and/or administrative offence, tax violation, any other violation and/or incompliance with any Applicable Law (including but not limited to construction laws and regulations, health and safety requirements, Law of Georgia on Energy and Water Supply, GNERC normative and individual administrative acts, etc.) and/or with this Agreement committed by the Project Company, Investor, their officers, managers, employees, directors, contractors and/or any person under the control of the Project Company or the Investor; (5) court decision, court order, and/or other act issued by any judicial body against or in connection with the Project Company and/or Investor, as well as any act in relation with the enforcement of such decisions, orders, and acts;  
and
  - (b) has not already been adopted as of the date of the submission of the Proposal, irrespective whether they have entered into force or not and/or has not published as a draft law in the Legislative Herald of Georgia “Matsne”, official websites of the Georgian Parliament, official website of the GNERC, official website of the Georgian Energy Exchange or was not on any other publicly available source;  
and
  - (c) has material adverse effect on the Project Company or the Project such that the sum of each events directly causes an increase in total costs of operating and maintaining the Plant or reduction of annual revenues by at least [1.5%] (one point five percent) (the “**Change in Law Threshold**”) annually in respect of each calendar year (or such lower pro rata amount for the first and last calendar year since the date of Commencement of Operation).
- 8.1.2. Increase in costs or reduction of revenues above the Change in Law Threshold shall be compensated by the GoG to the Project Company subject to the provisions of this Clause below.

- 8.1.3. If a Change in Law occurs then the Project Company, within [thirty (30)] Business Days starting from the day it was aware (or should have been aware) of the Change in Law, notify the GoG in writing about the Change in Law, and express an opinion on likely effects of the Change in Law (the “**Change in Law Notice**”). The Change in Law Notice shall provide for the following details:
- (a) description of Change in Law;
  - (b) any necessary change to the terms of Implementation Agreement;
  - (c) whether relief from compliance with obligations is required;
  - (d) whether any deadline under the Implementation Agreement should be postponed;
  - (e) estimated negative effect/change of revenue and/or costs of the Project that has been or will be directly resulted from the relevant Change in Law (provided at all times the Project Company and the Investor were/are seeking to mitigate such expenditure/Loss by using best endeavors) and the aggregate estimated amount of the compensation claimed by the Project Company.
- 8.1.4. The Change in Law Notice shall be submitted to the GoG together with the report of an independent audit company namely: Deloitte, Ernst & Young (EY), PricewaterhouseCoopers (PwC), and KPMG. The compensation amounts requested by the Project Company under the Change in Law Notice shall be confirmed by one of the mentioned independent audit company.
- 8.1.5. If the notice, audit report and relevant information are not provided within the period referred to under Clause 8.1.3 above, the Project Company shall not be entitled to any compensation or relief from its obligations under the Implementation Agreement [in respect of the period for which the information is delayed].
- 8.2. Discriminatory Change in Law
- 8.2.1. The GoG agrees that it shall not initiate or propose any Change in Law (including taxes or other similar duties to be imposed), the terms of which expressly and adversely affects and applies solely to (a) the Project and not to similar projects; and/or (b) the Investor and not to other persons; and/or (c) the Project Company and not to other persons (the “**Discriminatory Change in Law**”).
- 8.2.2. The GoG acknowledges that in case a Discriminatory Changes in Law becomes implemented on the basis of which only the Project Company and/or the Project (and not other similar project or person) suffers an increase in costs or other financial burden, reduction in revenue, Losses, liability or damage in connection with its development, implementation or operation of the Project, the Project Company shall be entitled to serve the written notification to the GoG requesting compensation and respective time extension (the “Discriminatory Change in Law Notice”). The Discriminatory Change in Law Notice shall provide the details and shall meet the requirements set under Clause 8.1.3 and 8.1.4.
- 8.3. As soon as practicable and in any event within 120 Days after receipt of Change in Law Notice and/or Discriminatory Change in Law Notice from the Project Company, the Parties shall discuss and agree

the matters referred to in Clause 8.1 and 8.2 above and any ways in which the Project Company could and can mitigate the effect of the Change in Law.

8.4. If the Parties have followed the procedure set out under Clauses 8.1, 8.2 and 8.3 above, then:

- (a) the Project Company shall be excused from the performance of its obligations under the Agreement to the extent it is prevented, hindered or delayed in such performance by reason of the Change in Law and/or Discriminatory Change in Law;
- (b) if the Change in Law has occurred before the date of Commencement of Operation, the scheduled date of the Commencement of Operation shall be postponed to take into account the effect of such Change in Law and/or Discriminatory Change in Law; and
- (c) the Parties shall agree on the amount and payment of the compensation to reflect the estimated increase in costs or reduction in annual revenues above Change in Law Threshold adjusted to take into account (to the extent possible) the actual increase in costs or reduction in annual revenues reasonably incurred as a result of the Change in Law. For the avoidance of any doubt, the Parties hereby agree that the Project Company shall have the right to serve the Discriminatory Change in Law Notice without having the obligation to comply with the Change in Law Threshold.

8.5. If the Parties cannot agree on the existence, effects of the Change in Law/Discriminatory Change in Law, or on the amount of the compensation requested by the Project Company the matter shall be referred for determination in accordance with Clause 15.

8.6. Unless otherwise agreed by the Parties, and if the GoG becomes obliged to compensate the Project Company for the Change in Law or Discriminatory Change in Law, the GoG shall pay the compensation amount within 60 (sixty) days upon the reaching an agreement by the Parties on the effects of the Change in Law/Discriminatory Change in Law and the amount of respective compensation.

## 9. Force Majeure Event

9.1. In this Implementation Agreement, a “**Force Majeure Event**” means any event or circumstance or combination of events or circumstances: (a) beyond the reasonable control of the Party affected by such event, circumstance or combination of events or circumstances (the “**Affected Party**”); (b) which was not foreseeable or, if foreseeable, could not have been prevented or avoided or overcome by the Affected Party having taken all reasonable precautions and due care; (c) which directly causes the Affected Party to be unable to comply with all or a material part of its obligations under this Implementation Agreement; (d) which is not the direct result of a breach by the Affected Party of its obligations under this Implementation Agreement;

9.2. Force Majeure Events include but are not limited to the following circumstances, provided that they meet the criteria set forth in Clause 9.1 above:

- (a) plague, epidemic and natural disaster, such as but not limited to, storm, cyclone, typhoon, hurricane, tornado, blizzard, earthquake, landslide, tsunami;
- (b) fire, explosion, or nuclear, biological or chemical contamination (other than caused by the negligence of the Project Company, its contractors, or any sub-contractor, supplier or vendor);

- (c) war, armed conflict (including but not limited to hostile attack, blockade, military embargo), hostilities, invasion, act of a foreign enemy, act of terrorism, sabotage or piracy;
  - (d) civil war, riot, rebellion and revolution, military or usurped power, insurrection, civil commotion or disorder, mob violence, act of civil disobedience; or
  - (e) general labor disturbance such as boycotts, strikes and lock-outs, goslow, occupation of factories and premises, excluding similar events which are unique to the Project and specific to the Project Company or to its sub-contractors and occurring outside Georgia.
- 9.3. If a Force Majeure Event has occurred, the Affected Party shall be entitled to relief from its obligations under the Agreement if it meets the requirements of Clause 9.1 and 9.4.
- 9.4. To obtain relief under Clause 9.3 above, the Affected Party must:
- (a) as soon as practicable, and in any event within 30 Days after it became aware that the Force Majeure Event has caused or is likely to cause a breach of an obligation under this agreement, give to the other Party a written notice of its claim for relief from its obligations under the Agreement, including (i) satisfactory evidence of the existence of the Force Majeure Event; (ii) full details of the nature of the Force Majeure Event; (iii) the date of occurrence; (iv) its likely duration; and (v) details of the measures taken to mitigate the effect of the Force Majeure Event;
  - (b) within 15 Days of receipt of the notice referred to in clause (a) above, give to the other Party full details of the relief claimed, as well as information on all actions being taken by the Affected Party to mitigate the consequences of the Force Majeure Event;
  - (c) demonstrate to the other Party that: (i) the Affected Party, and its contractors, could not have avoided such occurrence or consequences by steps which they might reasonably be expected to have taken, without incurring material cost; (ii) the Force Majeure Event directly caused the need for the relief claimed; (iii) the relief claimed could not reasonably be expected to be mitigated by the Affected Party, including recourse to alternate sources of services, equipment and materials and construction equipment, without incurring material cost; and (iv) the Affected Party is using all reasonable endeavors to perform its affected obligations under this Agreement.
- 9.5. The Affected Party shall be exempt from its liabilities due to the failure to fulfil the obligations under the Implementation Agreement or, in each case, improper performance, if the Affected Party has complied with its obligations under Clause 9.4 above, to the extent it is prevented, hindered or delayed in such performance by reason of the Force Majeure Event. Otherwise, the Affected Party loses the right to indicate the mentioned events and circumstances as basis for release from the liability for the failure to fulfil the obligations under the Agreement or, in each case, improper performance.
- 9.6. The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with the applicable obligations under this Agreement. Following such notification this Agreement shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.
- 9.7. If a Force Majeure Event subsists for a continuous period of more than 360 calendar days (“**Prolonged Force Majeure Event**”), either Party may in its discretion terminate this Agreement by issuing a written termination notice to the other Party which shall take effect thirty (30) calendar days after its receipt. If, at the end of this thirty (30)-day period, the Force Majeure Event continues, the Agreement

shall be terminated pursuant to Clause 11 and the Project Company shall be entitled to the compensation set out under Clause 11.1.5. (Fair Market Value of the shares in the Project Company)

## **10. Extension of Time**

- 10.1. The Project Company will be granted upon its request the extension of deadline by the GoG for fulfilment of any of its obligations under this Implementation Agreement should any of the following events cause a delay in the implementation of the Project, for a period equal to such delay unless otherwise agreed in this Implementation Agreement (the “Extension Event”):
  - 10.1.1. Public Authority acting in breach of its authority, failing to act, or not fulfilling its obligations (fully or partially) or any delays attributable to the GoG or any state or local self-governing bodies of Georgia; or
  - 10.1.2. if the Project Company cannot access to the Site to perform necessary works despite Project Company having met relevant requirements in accordance with the Applicable Law; or
  - 10.1.3. if the customs clearance of the necessary equipment and materials takes more time than established under the Applicable Law, provided that the Project Company has met all legal requirements;
  - 10.1.4. if fossils, coins, articles of value or antiquity, and structures and other remains or items of geological or archaeological interest, man-made and other physical obstructions are found on the Site; or
  - 10.1.5. if the connection to the Grid is delayed due to reasons attributable to GSE provided that the Project Company complied with the requirements of the Applicable Law and this Implementation Agreement.
- 10.2. The extension of deadlines by the GoG in case of Force Majeure Event and Change in Law is subject to Clauses 8 and 9 respectively.
- 10.3. The Project Company shall serve a notice on the GoG as soon as reasonably practicable after becoming aware of the Extension Events, which notice shall specify:
  - 10.3.1. the existence and nature of the Extension Events;
  - 10.3.2. the consequences of the Extension Events, and justification if any deadline under the Implementation Agreement should be postponed.
- 10.4. As soon as reasonably practicable after receipt of a notice from the Project Company, the Parties shall discuss and agree on the extension of time for the fulfilment of the respective obligations provided that if the Parties fail to reach an agreement, the matter shall be referred for determination in accordance with Clause 15.

## **11. Termination**

- 11.1. Termination by the GoG

- 11.1.1. The GoG is entitled to immediately terminate the Implementation Agreement unilaterally by serving 30 Days written notice to the Project Company and the Investor, for any of the following reasons::
- (a) the Project Company and/or Investor fails to fulfil any obligation under the Implementation Agreement (including if the Project Company [or Investor] breaches any of the representations or warranties which it makes under this Implementation Agreement) and fails to remedy its breach within 90 (ninety) Days; or
  - (b) the Project Company fails to deliver the Bank Guarantee or replenish the Bank Guarantee in accordance with Clause 4 of this Implementation Agreement and within the deadlines set therein; or
  - (c) the amount of penalty imposed on the Project Company under Clause 4.3 reaches 50% (fifty percent) of the total amount provided for by the Bank Guarantee. If the Implementation Agreement is terminated under this ground, the GoG may seize the full Bank Guarantee amount; or
  - (d) the Project Company becomes bankrupt or insolvent; or
  - (e) any other reason specified in this Agreement or in the Applicable Law as a ground for termination.
- 11.1.2. The GoG shall not have the right to terminate this Implementation Agreement on the grounds listed in Clause 11.1.1 above if any of such grounds results from:
- (a) a breach by the GoG of this Implementation Agreement; or
  - (b) the occurrence of a Force Majeure Event, provided that they meet the criteria set forth in Clause 9 above and to the extent that the Force Majeure Event affects the ability of the Project Company to perform its obligations under this Implementation Agreement. This is without prejudice to the GoG's right to terminate the Agreement on the ground of Prolonged Force Majeure Event in accordance with Clause 9.7 of this Implementation Agreement.
- 11.1.3. The right of the GoG to terminate this Agreement under Clause 11.1.1. shall be subject to the obligation of the GoG to comply with the Lenders' Step-in Rights in accordance with Clause 12.
- 11.1.4. The termination of this Implementation Agreement by the GoG shall cause the following:
- (a) The Project Company shall be deprived of the right to implement the Project immediately upon termination of the Implementation Agreement;
  - (b) The Investor shall return 100% of shares in the capital of the Project Company to the GOGC;
- 11.1.5. In case the GoG terminates the Implementation Agreement pursuant to Clause 11.1.1 above, subject to Clauses 11.6, 11.7, and 11.8 , the GoG shall compensate the Investor the Fair Market Value of the 100% shares in the Project Company based on the valuation by any of the Big 4 accounting firms (PwC, EY, Deloitte, KPMG).

## 11.2. Termination by the Project Company

- 11.2.1. The Project Company is entitled to immediately terminate the Implementation Agreement unilaterally by serving 30 days written notice to the GoG wholly or partially, if:
- (a) the GoG commits a material breach of any of its obligations listed in this Implementation Agreement (including if the GoG breaches any of the representations or warranties which it makes under this Implementation Agreement) and such breach is not remedied within 90 (ninety) Days following the receipt of Project Company's written notification of the breach;
  - (b) The Grid Connection Agreement is terminated due to default of the GSE and if within [●] the GoG and/or GSE could not take the necessary measures to ensure connection of the Plant to the Grid.
- 11.2.2. The termination of this Implementation Agreement by the Project Company under Clause 11.2.1 shall cause the following:
- (a) The Project Company shall be deprived of the right to implement the Project immediately upon termination of the Implementation Agreement;
  - (b) The Investor shall return 100% of shares in the capital of the Project Company to the GOGC;
  - (c) In case of termination of this Implementation Agreement under Clause 11.2 the Bank Guarantee (in the amount as at the time of return of the Bank Guarantee) shall be returned to the Project Company within 30 (thirty) days following delivery of the termination notice.
- 11.2.3. In case the Project Company terminates this Implementation Agreement on the grounds listed in Clause 11.2.1, then the GoG subject to Clauses 11.6, 11.7, and 11.8, shall:
- (a) Compensate the Project Company's Outstanding Debt to the Lenders at the termination date; and
  - (b) Compensate Equity Investment made by the Investor less any Distributions as of the termination date, plus an Equity Premium [determined by one of the Big 4 accounting firms (PwC, EY, Deloitte, KPMG) based on net present value as of the termination date of the future Distributions that the Project Company would make to the Investor from and after the termination date up until the end of the Term discounted using a reasonable, country specific discount rate.]
- 11.3. The Implementation Agreement may be terminated by mutual agreement of the Parties.
- 11.4. Any payments to be made by the GoG under Clause 9.7 or this Clause 11 should be made within [3 (three) months] from the termination of this Implementation Agreement.
- 11.5. The GoG may pay the Outstanding Debt directly to the Lenders. To the extent permitted under the Applicable Law, any payments under Clause 9.7 or this Clause 11 should be made in US Dollars.
- 11.6. Without prejudice to any other legal remedies that the GoG may have under Applicable Law, any compensation to be made by the GoG to the Project Company in case of termination of this Agreement under Clause 11.1.5 and 11.2.3 ("Termination Compensation") shall be subject to the following adjustments (provided that no adjustment shall be made for any item that is already

reflected or contemplated in the calculation of the compensation, to avoid any double counting or double adjustment of such item):

- 11.6.1. if, at the time of termination, any part of the Project Assets is alienated, transferred, sold, leased, mortgaged, pledged, or otherwise encumbered in violation of this Agreement, the Termination Compensation shall be reduced by the fair market value of such part of the Project Asset as of the date of termination;
  - 11.6.2. if, at the time of termination, any part of the Project Asset is damaged, destroyed, or lost by the Project Company or any of its subcontractors due to their negligence, willful misconduct, or breach of this Agreement and/or Applicable Law, the Termination Compensation shall be reduced by the cost of repairing, replacing, or restoring such part of the Project Assets as of the date of termination;
  - 11.6.3. the Termination Compensation shall be further reduced by: (a) any amounts payable by the Project Company and/or Investor to the GoG under this Agreement or any other agreement in relation to the Project, including any penalties, damages, indemnities, or claims; and (b) insurance proceeds paid or payable to the Project Company (other than to compensate third parties).
- 11.7. The payment of the Termination Compensation, if any, by the GoG to the Project Company shall be subject to: (i) the return of 100% shares in the Project Company to the GOGC; and (ii) providing the GoG with a respective certificates/extracts and/or waivers/consents/releases evidencing that there are not or there will not be any pledge, mortgage, restriction or other encumbrance in respect of the Project Assets and the shares of the Project Company in the form and substance satisfactory to the GoG. The GoG shall not be liable to the Project Company, Investor and/or its Lenders or any other person for any Loss, damage, cost, expense, or liability arising out of or in connection with the termination of this Agreement, except for the payment of the Termination Compensation, if applicable, in accordance with this clause.
- 11.8. Upon termination of this Agreement for any reason, the Project Company [and the Investor] shall:
- (i) cooperate with the GoG and its representatives in the orderly handover of the Project and all the Project Assets, including all documents, records, and data, to the GoG or its nominee;
  - (ii) remove all their personnel, sub-contractors, and third parties from the Site and the Plant unless otherwise instructed by the GoG;
  - (iii) execute and deliver to the GoG or its nominee all necessary consents, waivers, releases, and other documents to effect the handover of the Project and Project Assets to the GoG or its nominee free and clear from all pledges, mortgages, charges/restrictions or any other encumbrances;
  - (iv) provide the GoG or its nominee with all information, assistance, and access required for the operation and maintenance of the Project and the Project Assets;
  - (v) comply with any other obligations or directions of the GoG in relation to the termination of the Agreement and the handover of the Project.



- 11.9. Notwithstanding the termination of this Agreement, in the event of any breach of this Agreement by the Project Company [and/or Investor], (including breach of Clause 3.1.21, 3.1.22, 3.1.23, 3.2.1, 3.2.3), the breaching Party shall be liable to pay to the GoG and/or GOGC (upon the request of the GoG) any Loss, damage, expense, cost and/or penalty provided under the Agreement. The payment of such amount shall not prejudice or affect any other rights or remedies that the GoG may have under this Agreement or under Applicable Law.

## **12. Lender's Step in Rights**

- 12.1. The GoG agrees that it shall not exercise its right to terminate this Agreement in accordance with Clause 11.1.1(a) (termination due to the Project Company's breach) before complying with the procedure specified in this Clause 12 (Lender's Step in Rights). For avoidance of doubt, this Clause 12 shall be applicable only if and after the Project Company concludes the Financing Agreements with the Lenders.
- 12.2. If at any time the GoG intends to exercise its right to terminate this Agreement pursuant to Clause 11.1.1(a) (termination due to the Project Company's breach), then along with serving a notice of termination to the Project Company, the GoG shall serve a written notice of its intention to terminate the Agreement to the Lender (a "Termination Notice").
- 12.3. GoG shall not terminate the Agreement pursuant to Clause 11 without giving to the Lender:
- (a) at least the Required Period (the period starting on the date of Termination Notice and ending 90 days later).
  - (b) a notice containing: (i) the proposed Termination Date; and (ii) the grounds for termination in reasonable detail; and
  - (c) a notice containing details of any amount owed by the Project Company to the GoG, and any other existing liabilities or unperformed obligations of which the GoG is aware (having made reasonable enquiry): (i) at the time of the Termination Notice and/or (ii) which will fall due on or prior to the end of the Required Period, under the Agreement.
- 12.4. Within the Required Period, provided that the Lenders ensure protection of the financial rights and interests of the Project Company, the Lenders shall have the right to nominate, by serving a written notice (a "Substitution Notice") to the GoG, an entity (the "Substitute Entity"), which shall step-in to this Agreement and continue the construction and/or the operation of the Project, within the deadlines and other terms and conditions set out in this Agreement. The Substitution Notice shall contain all information that may be necessary for the GoG to decide whether or not the proposed Substitute Entity is acceptable.
- 12.5. Any Substitute Entity nominated by the Lender pursuant to this clause shall meet all the requirements that were applied to the Project Company and [Investor] in the selection process and the execution of this Agreement, including but not limited to the technical, financial, legal and environmental qualifications, the shareholding structure, the key personnel and the subcontractors. The Lender shall provide the GoG with sufficient evidence of such compliance before nominating the Substitute Entity.
- 12.6. The GoG shall inform the Lenders whether it accepts the nomination of the Substitute Entity within 30 (thirty) Business Days following receipt of the Lender's notification issued in accordance with this

Clause 12.4. The GoG shall not unreasonably withhold or delay its decision on whether the proposed Substitute Entity is acceptable.

- 12.7. In any case, the nomination shall be subject to the condition that the Substitute Entity pays for the unpaid penalties, as well as any amount referred to Clause 12.3(c) and provide the Bank Guarantee to the GoG in accordance with Clause 4, within 30 (thirty) Days following the nomination of the Substitute Entity.
- 12.8. If the Lenders fail to send the Substitution Notice defined in Clause 12.4. or if the GoG refuses substitution, it shall be deemed that the Agreement is terminated according to the Clause 11 with the effect from next day of expiration of time period for issuance of the Substitution Notice.
- 12.9. The Agreement shall be deemed terminated and Clause 11 shall apply if the Bank Guarantee is not provided to the GoG as required under Clause 12.7 above.
- 12.10. The Parties agree and acknowledge that this Clause 12 shall be applicable only if and after: (i) the Project Company concludes the Financing Agreements with the Lenders in the form approved by the GoG and (ii) the Project Company, [Investor], Lender and GoG conclude a Direct Agreement, which shall incorporate the terms of Lender's Step-in Rights set out in this Clause 12 and such other provisions reasonably required the Parties (the "Direct Agreement").

### **13. GOG's Step In Rights**

- 13.1. If the GoG reasonably believes that it needs to take action in connection with the Project and/or Service:
  - (i) due to material breach of any obligations by the Project Company and/or the Investor; and/or
  - (ii) because a serious risk exists to the health or safety of persons or property or to the environment; and/or
  - (iii) because an Emergency has arisen; and/or
  - (iv) in any other instance where this is required for operation of the Plant and/or provision of Services and/or for a public interest,then the GoG shall be entitled to take action or designate a Public Authority to take action in accordance with Clauses 13.2 to 13.8 below.
- 13.2. If Clause 13.1 applies, the GoG or Public Authority designated by the GoG may take such action and any consequential ancillary action as it reasonably believes is necessary (together, the "Required Action") without prior notice to the Project Company and/or the Investor, provided that, where reasonably practicable, it shall notify the Project Company in writing in advance and in any event as soon as practicable. Such notice shall include the following: (i) the action the GoG or designated Public Authority wishes to take; (ii) the reason for such action; (iii) the date it wishes to commence such action; (iv) the time period which it believes will be necessary for such action.
- 13.3. The Project Company and the Investor shall give all reasonable assistance to the GoG or its designated Public Authority while it is taking such Required Action, including:
  - (i) granting such access rights as are necessary and take all action that is necessarily required by the GoG or Public Authority to assist them in exercising their rights under Clause 13.2;

- (ii) providing sufficient resources, including personnel, to assist the GoG/Public Authority in exercising its rights under Clause 13.2;
  - (iii) and not doing anything to hinder, disrupt or prevent the GoG/Public Authority in exercising its rights under Clause 13.2;
- 13.4. If the GoG or its designated Public Authority are exercising the right under Clause 13.2 due to the breach by the Project Company and/or the Investor of their obligations under the Implementation Agreement and/or due to any other reasons attributable to any of them, the costs and expenses for the conducting any Required Actions shall be borne by the Project Company.
- 13.5. Where the GoG or designated Public Authority has exercised its rights under Clause 13.2 as a consequence of an event which is a Force Majeure Event, the exercise of those rights will be a Force Majeure Event and Clause Force Majeure shall apply.
- 13.6. For the avoidance of any doubt, the Project Company and the Investor acknowledge and agree that the GoG and/or the designated Public Authority is not obliged to exercise the rights under this Clause 13.2 and, if it exercises its rights under this Clause 13.2 it is not obliged to cure any breach, or to overcome or mitigate the event (or any of the consequences of the event) that gave rise to such exercise.
- 13.7. The GoG or its designated Public Authority may cease to exercise its rights under this Clause 12.11 in whole or part upon giving a minimum of [five (5)] Business Days' notice to the Project Company and shall use reasonable endeavors to provide as much advance notice as is reasonably practicable.
- 13.8. If the GoG or its designated Public Authority ceases to exercise its rights under this Clause 12.11 in accordance with Clause 13.7, the Project Company immediately within [5] Business Days recommence performing any obligations suspended due to the exercise by the GoG or its designated Public Authority of those rights and the GoG or its designated Public Authority must give reasonable assistance to the Project Company to ensure that the transition is effected as smoothly as possible (at the Project Company's cost and expense in the case of a step-in as a result of Project Company's breach or reasons attributable to it).

#### **14. Indemnification**

- 14.1. Subject to Clause 14.1 below, each Party (the Indemnifying Party) shall on demand compensate in full and hold harmless each other Party, its affiliates, and their respective directors, officers, employees, consultants, agents and representatives (each an Indemnified Person) from and against any and all claims and expenses, in any such case arising out of, based upon or in connection with, any death, injury or loss or damages to property suffered by an Indemnified Person or by a third party, to the extent arising from any negligent act or omission, willful misconduct or fraud of the Indemnifying Party, its affiliates, and their respective directors, officers, employees, consultants, agents and representatives.
- 14.2. The compensation in Clause 14.1 above shall not apply to the extent that any claim or expense results directly from joint or concurrent negligence, intentional acts or omissions of the Parties, fraud or willful default on the part of an Indemnified Person. Each Party shall be liable for compensation in proportion to its relative degree of fault.

#### **15. Governing Law and Dispute Resolution**

### 15.1. Governing Law

15.1.1. This Implementation Agreement shall be governed by the laws of Georgia.

### 15.2. Negotiation

15.2.1. Within 14 (fourteen) Days of a Party delivering a notice to another Party or Parties of a dispute, the Parties shall attempt to settle the dispute through direct negotiations. If the Parties are unable to reach an agreement within 30 (thirty) Days of the delivery of such a notice, any Party to the dispute may refer the dispute to arbitration in accordance with Clause 15.3 (Arbitration).

### 15.3. Arbitration

15.3.1. Subject to Clause 15.2 (Negotiation), all disputes arising out of or in connection with the present Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (the "Rules") by three arbitrators appointed in accordance with the said Rules.

15.3.2. The Rules are incorporated by reference into this Clause 15 and capitalized terms used in this Clause 15 which are not otherwise defined in this Implementation Agreement have the meaning given to them in the Rules.

15.3.3. The tribunal shall consist of 3 (three) arbitrators. The claimant(s) and the respondent(s) shall each nominate an arbitrator respectively. The third arbitrator, who shall be the president of the tribunal, shall be nominated by the two (2) party-nominated arbitrators. If the Parties to the Dispute do not agree to extend such term, or where the arbitrators nominated by the Parties to the Dispute are unable to agree on the nomination of the third arbitrator within 60 days from the confirmation or appointment of the co-arbitrators, the third arbitrator shall be appointed by the international Chamber of Commerce in accordance with the Rules.

15.3.4. The seat of the arbitration shall be Paris, France.

15.3.5. The language used in the arbitral proceedings shall be English. All documents submitted in connection with the proceedings shall be in the English language, or, if in another language, accompanied by an English translation.

15.3.6. Each Party to this Agreement further acknowledges and agrees that any award of the arbitral tribunal would be given effect to in their respective jurisdictions in accordance with (and subject to the limitations contained in) the 1958 New York Convention on Recognition and Enforcement of Foreign Arbitral Awards.

15.3.7. The Parties agree to keep confidential all matters relating to the arbitration, including its existence and that of any related arbitration proceedings, to the greatest extent practicable.

### 15.4. Consolidation of Disputes

15.4.1. In this Clause 15.4 (Consolidation of Disputes), "Linked Contract" means the Direct Agreement and any other agreement as agreed by the Parties (if any) other than:

- a. this Agreement; and

- b. any Financing Agreement, provided that the Direct Agreement shall be a Linked Contract.
- 15.4.2. The ICC International Court of Arbitration may, at the request of a Party, order the consolidation of any 2 (two) or more arbitrations commenced under this Implementation Agreement and any Linked Contract or under one or more Linked Contracts into a single arbitration and the Parties hereby provide their consent to such consolidation. For the avoidance of doubt, this agreement is without prejudice to the ICC International Court of Arbitration 's authority to decide on consolidation, in accordance with Article 10 of the ICC Rules. In an arbitration commenced under one Linked Contract, the ICC International Court of Arbitration or the arbitral tribunal may allow a Party to make a claim based on any Linked Contract.
- 15.4.3. Each Party to this Implementation Agreement acknowledges and agrees that the arbitration provisions of Clause 15.3. are valid and binding on them and agrees not to argue to the contrary.

## **16. Confidentiality and Transparency**

### **16.1. Public Relations and Publicity**

- 16.1.1. The Project Company and [Investor] shall not by its directors, officers, employees or agents, and shall procure that its sub-contractors shall not, communicate with representatives of the press, television, radio or other communications media on any matter concerning the Agreement without the prior written approval of the GoG.
- 16.1.2. The Project Company and [Investor] may not represent the views of the GoG or its designated Public Authority on any matter, or use the name of the GoG or its designated Public Authority in any written material provided to third parties, without the prior written consent of the GoG.

### **16.2. Publication of the Agreement in the public domain**

- 16.2.1. The Parties agree that the provisions of this Agreement subject to Clause 16.3 below, may not be treated as Confidential Information by the GoG and may be disclosed by the GoG without restriction.
- 16.2.2. The Project Company and [the Investor] acknowledges that the GoG subject to Clause 16.3 below, is entitled to: (a) publish this Agreement on a website; and (b) publish (on the internet or otherwise) a summary of the Agreement [and any associated transaction document] which shall include (i) the terms and conditions of these documents and (ii) any document or information arising out of or connected to the Agreement and any associated transaction document].
- 16.2.3. The Parties agree that information in respect of any direct or indirect change in ownership of the Project Company and or the Investor which has actually taken place shall not be treated as Confidential Information.

### **16.3. Confidentiality**

- 16.3.1. For purposes of this Agreement, “Confidential Information” means information (however it is conveyed or on whatever media it is stored) the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, commercially sensitive intellectual property rights and know-how of either Party, including all personal data and sensitive personal data.
- 16.3.2. Clause 16.2.1 and 16.2.2 above shall not apply to Confidential Information which shall, subject to Clause 16.3.4 below, be kept confidential for the periods [●]
- 16.3.3. The Parties shall keep confidential all Confidential Information received by one Party from the other Party relating to this Agreement or the Project and shall use all reasonable endeavors to prevent their employees and agents from making any disclosure to any person of any such Confidential Information.
- 16.3.4. Clauses 16.3.3 and 16.3.2 above shall not apply to:
- (a) any disclosure of information that is reasonably required by any person engaged in the performance of their obligations under the Agreement for the performance of those obligations;
  - (b) any matter which a Party can demonstrate is already, or becomes, generally available and in the public domain otherwise than as a result of a breach of this Clause [Confidentiality];
  - (c) any disclosure to enable a determination to be made under Clause [Dispute Resolution clause];
  - (d) any disclosure which is required pursuant to Applicable Law, as well as any other statutory, legal (including any order of a court of competent jurisdiction) obligation;
  - (e) any disclosure of information which is already lawfully in the possession of the receiving Party, prior to its disclosure by the disclosing Party;
  - (f) any provision of information to: (i) the Parties’ own professional advisers or insurance advisers; and/or (ii) the Lenders or the Lenders’ professional advisers or insurance advisers or, where it is proposed that a person should or may provide funds (whether directly or indirectly and whether by loan, equity participation or otherwise) to the Project Company to enable it to carry out its obligations under the Agreement, or may wish to acquire shares in the Project Company in accordance with the provisions of this Agreement to that person or their respective professional advisers but only to the extent reasonably necessary to enable a decision to be taken on the proposal.
  - (g) any disclosure by the GoG of information relating to the design, construction, operation and maintenance of the Project and such other information as may be reasonably required for the purpose of conducting a due diligence exercise, to any proposed new private partner, its advisers and Lenders, should the GoG decide to re-tender the Agreement or undertake any market testing;
  - (h) any registration or recording of the required Authorizations and property registration;

- (i) any disclosure of information by the GoG to any other relevant authority or their respective advisers or to any person engaged in providing services to the GoG for any purpose related to or ancillary to the Agreement; or
- (j) any disclosure for the purpose of: (i) the examination and certification of the Project Company's accounts; (ii) any examination pursuant to any auditing obligations for public contracts of the economy, efficiency and effectiveness with which the GoG has used its resources; (iii) complying with a proper request from either Party's insurance adviser, or insurer on placing or renewing any insurance policies.

16.3.5. When disclosure is permitted under Clause 16.3.4 above, other than Clauses 16.3.4 (b), (d), (e), (h) and ( j), the Party providing the information shall ensure that the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this Agreement.

## **17. Assignment and Change of Control**

- 17.1. The Project Company and/or [Investor] shall not sell, encumber, assign or otherwise transfer its rights or obligations under or pursuant to this Implementation Agreement without the prior written consent of the GoG.
- 17.2. During the term of the Implementation Agreement, any sale, and/or transfer of shares in the Project Company shall be subject to the prior written consent of the GoG.
- 17.3. During the term of the Implementation Agreement, any change, sale, and/or transfer of shares [10% or more] in the capital of the direct or indirect shareholders of the Project Company to any other person or entity through single or series of the transactions, shall require prior written consent of the GoG.

## **18. Notices**

- 18.1. Any notice or other communication from one Party to other Parties, which is required or permitted to be made under the provisions of this Agreement shall be: (i) made in writing; (ii) delivered personally (by hand delivery) or sent by pre-paid registered mail or by courier to the address of the other Party which is provided below or to such other address as the other Party shall by notice require or by electronic mail to the e-mail address of the other Party which is provided below or to such other e-mail address as the other Party shall by notice require; and (iii) marked for the attention of the person(s) designated below or to such other person(s) as the other Party shall by notice require.
- 18.2. Notice or other communication sent in accordance with Clause 18 by one Party to other Parties to the below specified addresses or other address of the other Party as may be notified by such Party shall be deemed to be received by the other Party, if delivered by hand delivery - on the day of its delivery, if sent by pre-paid registered mail or by courier from the date of receipt or, if sent by electronic mail, upon receipt of confirmation of delivery by the same electronic mean.

The Project Company: "Gardabani 3 TPP" LLC

Address:

Receiver:

Telephone:

Email:

The GoG: The Government of Georgia represented by the Ministry of Economy and Sustainable Development of Georgia

Address:

Receiver:

Telephone:

Email:

[The Investor:

Address:

Receiver:

Telephone:

Email: ]

## **19. Amendments to the Agreement**

- 19.1. This Implementation Agreement may be amended by written and duly signed agreement from time to time between the Parties.
- 19.2. The Parties acknowledge that the Project will be financed by the Lenders on a non-recourse basis. As a result, the Parties agree to consider in good faith any amendments which the Lenders reasonably request in writing to this Implementation Agreement in order to assist the Lenders to achieve financial close under the Financing Agreements, but subject always to Applicable Law.

## **20. Survival**

Upon expiration or termination of this Implementation Agreement, the Parties shall have no further obligations hereunder except for obligations that arose prior to or arise upon such expiration or termination,



and obligations that expressly survive such expiration or termination pursuant to this Implementation Agreement, provided, however, that notwithstanding anything to the contrary in this Implementation Agreement, the rights and obligations set out in this Clause 11 (Termination), Clause 15 (Governing Law and Dispute Resolution), Clause 18 (Notices), Clause 16 (Confidentiality), Clause 14 (Indemnification) shall survive any termination or expiration of the term of this Implementation Agreement, until all provisions are fulfilled and all funds payable hereunder by the Parties.

## **21. Miscellaneous Provisions**

- 21.1. The Implementation Agreement enters into the force as of the Effective Date and shall continue to be in full force and effect until expiry of the Term or the full performance of the obligations in this Implementation Agreement by the Parties, whichever occurs later, save for occurrence of the termination in accordance with the Implementation Agreement.
- 21.2. No provision of this Agreement creates a partnership between the Parties or makes a Party the agent of the other Parties for any purpose. Neither Party has authority to bind, to contract in the name of or to create a liability for the other Party in any way or for any purpose and neither Party shall hold itself out as having authority to do the same.
- 21.3. If any provision of this Implementation Agreement becomes invalid or unenforceable, the validity of other provisions shall not be affected.
- 21.4. The Implementation Agreement is executed in Georgian and English language in [4 (four)] identical and equally binding copies. In case of discrepancy between the two versions, English version shall prevail.
- 21.5. This Implementation Agreement constitutes the entire agreement among the Parties and supersedes all prior agreements, letters of intent and understandings etc. among the Parties with respect to the subject matter hereof.

### **Signatures**

**The Government of Georgia**

**Represented By**

**The Ministry of Economy and Sustainable  
Development of Georgia**

**Gardabani 3 TPP LLC**

Name:

Name:

Title:

Title:

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

**[Investor]**

Name:

Title:

Signature: \_\_\_\_\_