

AGREEMENT  
BETWEEN  
THE GOVERNMENT OF GEORGIA  
And  
LLC "HYDROLEA"  
And  
LLC "DARCHI"  
And  
JSC "ELECTRICITY SYSTEM COMMERCIAL OPERATOR"

DATE: 17 February 2014

TBILISI, GEORGIA

The present agreement is signed on February 17, 2014 by and between the following parties:

The Government of Georgia (hereinafter referred to as "Government") represented by the Minister of Energy of Georgia Mr. Kakha Kaladze;

LLC "Hydrolea", identification code 406073029, (hereinafter referred to as "Company") represented by the authorized representative, Radoslav Dudolenski;

LLC "Darchi", identification code 406107047, ( hereinafter referred to as "Project Company") represented by the authorized representative, Radoslav Dudolenski;

JSC "Electricity System Commercial Operator" (hereinafter referred to as "ESCO") represented by General Director, Vakhtang Ambokadze;

The parties sign the present Agreement (hereinafter referred to as: "Agreement") on follows:

## I. PREAMBLE

Whereas, the Government of Georgia and Hydrolea LLC (a legal successor of Hydro 2 LLC) have signed the Memorandum of Understanding on August 23, 2012 (hereinafter referred to as: "Memorandum of Understanding") on the preparation of feasibility study/analyze of the hydropower projects;

Whereas, the Company has made decision on construction the Darchi HPP without finalizing the feasibility study according to the Memorandum of Understanding signed on August 23, 2012, the Company and the Government agree to terminate the Memorandum of Understanding signed on August 23, 2012 within the part of Darch HPP and to enter into this Agreement on new terms relating to finalization of the feasibility study and other additional rights and obligations as defined in this Agreement including the rights and obligations to implement the Project on BOO basis.

Now therefore, for the purpose of implementation of the Projects, the Parties are willing to agree on binding terms and conditions of the present Agreement, according to which the Company and the Project Company shall have right to implement the Project on BOO basis.

## II. DEFINITIONS

1. The following defined terms shall be used in the present Agreement:

1.1 "Agreement" means the present Agreement.

- 1.2 "Bank Guarantee" means Preconstruction Security and/or Construction Security;
- 1.3 "Construction Security" means bank guarantee provided by the Company/Project Company for the purpose of securing of fulfillment of its obligations under Construction Phase;
- 1.4 "Facility" means Hydro Power Plant defined by the Annex N1 of this Agreement.
- 1.5 "Feasibility Study" means the study/report prepared by the Company, which includes all document and/or data and/or information which confirms whether or not the Project is technically, economically, financially and legally feasible.
- 1.6 "Guaranteed Power Purchase Agreement" means the direct agreement that shall be signed between the Company and ESCO in accordance with article 13 of the Agreement;
- 1.7 "Preconstruction Security" means bank guarantee provided by the Company for the purpose of securing of fulfillment of its obligations under Preconstruction Phase;
- 1.8 "Parties" means the Government, Company, Project Company and ESCO jointly;
- 1.9 "Project" means implementation of the Preconstruction Phase and Construction Phase under the present Agreement, including, but not limited to the preparation of the Environmental and Social Impact Assessment of the Darchi HPP;
- 1.10 "State" means Georgia;
- 1.11 "Technical Parameters of the Facility" means the location, installed capacity and annual production as provided in Annex N1;
- 1.12 "GSE" means JSC "Georgian State Electrosystem";
- 1.13 "ET" means LLC "Energo Trans";
- 1.14 "Sakrusenergo" means JSC "Georgian Russian Energy Company";

### III. PURPOSE

2. The purpose of the Agreement is the implementation of the Project by the Company/Project Company under the applicable laws and regulations of Georgia and the terms and conditions set out herein.

### IV. PRECONSTRUCTION PHASE

3. The Company through Project Company is obliged to:
  - 3.1 Finalize and submit to the Government the Feasibility Study (Sites and main parameters definition; Topographical surveys and preparation of maps; geological, geophysical investigations; Seismic analysis; Meteorological and hydrological studies; Hydraulic studies; Power Generation and Utilization; Transmission system; Economic analysis; Financial analysis (Detailed estimate)) and the Environmental and Social Impact Assessment Report, and present it to the Ministry of Environmental and Natural Resources Protection of Georgia and to the Ministry of Energy of Georgia no later than 1 February 2018;
  - 3.2 Conduct the public hearings and present the results to the Ministry of Environmental and Natural Resources Protection of Georgia and to the Ministry of Energy of Georgia;
  - 3.3 Not later than 1 June, 2018 obtain construction permit necessary for construction of the Facility in accordance with Georgian legislation;
  - 3.4 Obtain permits for the temporarily and permanent connections to the grid of GSE and local distribution licensee;
  - 3.5 Raise necessary funds for the effective implementation of the Project and reach and execute agreement with relevant Lenders;
  - 3.6 Sign the relevant agreements with ESCO, ET, GSE, Sakrusenergo, which shall ensure the right of the Project Company (i) regarding utilization of the Transmission Grid for the transmitting electricity generated by the Facility within Georgia and/or for export purposes, (ii) regarding guaranteed purchase of electricity by ESCO as provided in this Agreement.
  - 3.7 Submit to Government information relating to the progress of the project implementation on a quarterly basis.
4. For the purpose of securing fulfillment of obligations of the Company/Project Company under the Preconstruction Phase, within the 30 days after execution of the present Agreement the Company/Project Company shall provide the Government with the Preconstruction Security in an amount of 84 500.00 USD. The Preconstruction Security provided by the Company shall remain in force until 1 September 2018.
5. The Government is entitled to redeem the Preconstruction Security, claim and receive the full or partial amount under the Preconstruction Security in following cases:

- 5.1 The Company/Project Company has violated the term of obtaining of construction permit in accordance with article 3.3. for more than 30 days (other than the reason for not fulfillment of this obligation is the negative conclusion of the Ministry of Environmental and Natural resources Protection of Georgia regarding environmental and social impact assessment prepared by the Company/Project Company in accordance with Georgian legislation) – in an amount of 50 % of the Preconstruction Security;
- 5.2 The Company/Project Company has violated the term of obtaining of construction permit in accordance with article 3.3. for more than 60 days (other than the reason for not fulfillment of this obligation is the negative conclusion of the Ministry of Environmental and Natural resources Protection of Georgia regarding environmental and social impact assessment prepared by the Company/Project Company in accordance with Georgian legislation) – in a full amount of Preconstruction Security.
6. The Company until 1 June, 2018 may unilaterally terminate the Agreement by serving first written notification to the Government, if the Company during the implementation of the obligations defined by the Preconstruction Phase considers that by any reason it cannot: (i) obtain construction permit in accordance with article 3.3.; and/or (ii) obtain permits for the temporarily and permanent connections to the grid of GSE and local distribution licensee in accordance with article 3.4.; and/or (iii) Raise necessary funds for the effective implementation of the Project and reach and execute agreement with relevant Lenders in accordance with article 3.5. and/or (iv) achieve execution of the agreements in accordance with article 3.6.;
7. In case of termination of the Agreement in accordance with article 6 the Government shall return to the Company/Project Company the Preconstruction Security.

## V. CONSTRUCTION PHASE

8. The Company through the Project Company is obliged to:
  - 8.1 Commence construction of the Facility based on the construction permit until 1 August, 2018;
  - 8.2 Complete construction and commence operation of the Facility until 31 December, 2020;
  - 8.3 Ensure the construction in accordance with the technical parameters defined under Annex N1 of the Agreement, legal, security and environmental and other standards defined by the Georgian legislation;

- 8.4 Submit to Government information regarding the progress of the Project implementation on a quarterly basis.
9. For the purpose of securing fulfillment of obligations of the Company/Project Company under the Construction Phase, Company/Project Company within 30 days after obtaining construction permit shall provide the Government with the Construction Security in an amount of 1 690 000.00 USD. The Construction Security provided by the Company/Project Company shall remain in force until 30 May 2021.
10. The violation, by the Company/Project Company of any term of articles 8.1 or 8.2 of the Agreement shall cause the penalization of the Company/Project Company, in an amount of 0,5 % of the full Construction Security amount, for each delayed day. Herewith the imposed fine shall be paid by the Company/Project Company within the 15 days from receiving the request from Ministry of Energy of Georgia. In case fine is paid by the Company/Project Company, the Construction Security shall be reduced in accordance with the amount paid by the Company/Project Company.
11. The Government is entitled to redeem the Construction Security, claim and receive the full or partial amount under the Construction Security in following cases:
- 11.1 The Company/Project Company does not pay the fine imposed on it according to article 10 of the Agreement – in an amount of unpaid fine.
- 11.2 Government terminates the Agreement according to any sub article of Article 19 of this Agreement – in full amount of existing Construction Security.
12. In case of reasonable request the Company/Project Company, at its own expenses is obliged to ensure the full and free access of the representatives of Government of Georgia, Ministry of Energy of Georgia, Ministry of Environmental and Natural Resources and Environmental Protection of Georgia and/or any entitled government entity for the purpose of monitoring the construction process and if requested the Company/Project Company, at its own expense is obliged to ensure the quality and security monitoring of the construction materials.

## VI. GENERAL CONDITIONS

13. For the first ten years of operation, beginning from the date of commencement of operation of the Facility (the „Initial Operation Period“), the full power output of the Facility during the winter months of each year, (being the months of December, January and February (the „Winter Months“) shall be sold exclusively in accordance with the Guaranteed Power Purchase Agreement to be signed with ESCO with a tariff of 5.00 USD Cent per KWh at the inter connection point.

14. Other than the Winter Months of the Initial Operation Period mentioned in the article 13 of the Agreement the Project Company shall have the right to choose at which market (either local or export) to sell electricity (power) generated by the Facility.
15. Where the Feasibility Report provides that maximum and efficient utilization of the hydro-potential of the river within the elevations as specified in the Annex 1 of the Agreement, cannot be achieved (meaning that the Technical Parameters of the Facilities cannot be realized by the Company/Project Company and/or that the information or document provided by the Government or any other third party and assumptions made, or data created by the Company and/or Project Company, on basis of such information and documents are incorrect) this shall not be considered a breach of the terms of this Agreement and the Parties shall have the right to modify the number, design and/or capacity of the Facilities.
16. In case if the Government or any public sector entity expropriates, compulsorily esquires, nationalizes or otherwise compulsorily procures Facility, any share Capital or any assets of the Company and/or Project Company whether in whole or part the Company shall be Compensated with relevant fair market value at that time.

#### VI. GOVERNMENT'S LIABILITIES

17. For the purposes of implementation of the Project, the obligations of the Government are as follows:
  - 17.1 The Government shall use its best endeavors to assist the Company/Project Company with the implementation of the Project in any manner within its power and authority as contemplated by this Agreement, which shall include the issuance of required permits and licenses, providing the Company/Project Company meets the relevant requirements under the Georgian legislation.
  - 17.2 The Government shall ensure that the rights on the state owned land plots necessary for implementation of the Project shall be transferred to the Project Company according to the Georgian legislation.
  - 17.3 In case if the Company/Project Company applies for permits/licenses and has met relevant requirements under the Georgian legislation and permits/licenses are not issued by the State authorities within the time frames given under Georgian legislation, Government agrees that Company shall be entitled to a relevant time extension for fulfillment of its obligations under this Agreement, provided that the Company/Project Company shall ensure relevant time extension of the Bank Guarantee.

#### VII. TERMINATION OF THE AGREEMENT

18. This Agreement shall be terminated in following cases:

18.1 By agreement of the Parties – from the date of agreement on termination.

18.2 In case if the Company/Project Company does not fulfil its obligations under the Article 4 of this Agreement – automatically on the date of expiration of the term defined under article 4.

18.3 If the Notification defined by the Article 6 of this Agreement is delivered to Government within the time period defined under article 6 – automatically on the date of receiving such Notification.

18.4 In case if the Company/Project Company does not fulfil its obligations under the Article 9 of this Agreement – automatically on the date of expiration of the term defined under article 9.

19. The Government may terminate the Agreement unilaterally, by serving first written notice to the Company, in following cases:

19.1 The Company/Project Company has not obtained construction permit on the date falling 60 days after the expiration of the term defined under article 3.3;

19.2 An amount of fine, applied to the Company/Project Company according to the article 10 for violation of the term defined under article 8.1 reaches 50% or more of the full amount of the Construction Security.

19.3 An amount of fine, applied to the Company/Project Company according to the article 10 for violation of the term defined under article 8.2 reaches 50% or more of the full amount of the Construction Security.

19.4 The Company/Project Company has essentially violated any term of the Agreement and/or its Annexes, as a result of which the Agreement loses its initial meaning.

19.5 According to the information/documentation received from the Company/Project Company and/or obtained by the Government it is clear, that the necessary actions, for fulfilling the obligations under the Agreement, are not conducted by Company/Project Company.

20. The termination of the Agreement shall cause the following:

20.1 The rights (including ownership rights) on the land plots necessary for implementation of the Project shall be transferred to the State.

20.2 The company/Project Company shall be deprived the right to implement the Project.



20.3 Exclusive ownership rights of the Feasibility Study and the environmental and social impact assessment reports, as well as all other documents and drawings related to the Project which may be in possession of the Company/Project Company (including new documents developed by the Company/Project Company) shall be transferred to the Government for free.

#### VIII. DISCRIMINATORY CHANGE IN LAW AND TAX

21. The Government agrees that it shall not initiate or propose any changes in the law of Georgia or approve or otherwise allow any regulations which would apply discriminatorily and expressly to:

21.1 The Project and not to similar projects procured under an agreement with the Government.

21.2 The Company/Project Company and not to other persons. and/or

21.3 Any contractors or operators with whom the Company/Project Company has entered into contractual arrangements in connection with the Project and not to other persons.

22. The Government may not initiate any regulation or amendment to the law in respect of any discriminatory taxes or other similar duties to be imposed, which would apply expressly to:

22.1 The Project and not to similar projects procured under an agreement with the Government;

22.2 The Company/Project Company and not to other persons. and/or

22.3 Any contractors or operators with whom the Company/Project Company has entered into contractual arrangements in connection with the Project and not to other persons.

#### IX. AMENDMENTS OF THE AGREEMENT

23. Amendments

23.1 This Agreement may be amended by written agreement between the Parties.

23.2 If any provision of this Agreement becomes invalid or unenforceable, the validity of other provisions shall not be affected.

#### X. NOTIFICATIONS

24. A notice under or in connection with this Agreement (a "Notification"):

24.1 Shall be in writing, in Georgian language and is effective when actually received.

24.2 Shall be delivered personally or sent by first class post (and air mail if overseas) courier, or fax (with original to follow) to the Party due to receive the notice at its address set out in this Agreement or to another address, person, telex or fax number specified by that Party by written notice to the other Party.

## XII. GOVERNING LAW AND DISPUTE RESOLUTION

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

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

27. Any dispute which cannot be settled amicably within 30 days after receipt by one Party of the other Party's written request to do so shall be submitted by either Party to The Common Courts of Georgia according to the Georgian legislation.

## XIII. FORCE MAJEURE

28. Force Majeure shall mean any event beyond the reasonable control of either the party, the occurrence of which could not have been reasonably foreseen at the date of signing the Agreement, including but not limited to, war (whether declared or not), revolution, riot, insurrection, general and illegal strikes, strikes of employees of the third companies, civil commotion, invasion, armed conflict, hostile act of a foreign enemy, blockade, embargo, act of terrorism, sabotage, civil disturbance, radiation, biological or chemical contamination, ionizing radiation, explosion, fire, epidemic, cyclone, tidal wave, landslide, lightning, earthquake, flood, volcanic eruption, other natural disaster or calamity of any kind and any other similar event.

29. If any Party hereto is affected by Force Majeure as defined in previous article, it shall give written notice as soon as reasonably practicable after becoming aware thereof to the other Party. The affected Party shall likewise immediately notify the other Party in writing and, in any event, within 20 business days of the date Force Majeure event ceases. A detailed report elaborating the reasons and consequences of the Force Majeure event will be provided by the Company to the Government.

30. If a Force Majeure event shall prevent the total or partial performance of any of the obligations of either Party under the Agreement, then the Party claiming Force Majeure shall be excused from whatever performance is prevented thereby to the extent so affected and the other Party shall not be entitled to terminate this Agreement except as otherwise provided herein. Notwithstanding the Force Majeure event, the Party claiming Force Majeure shall use commercially reasonable efforts to continue to perform its obligations under this Agreement and to minimize any adverse effects of such event of Force Majeure.

#### XIV. ADDITIONAL CONDITIONS

31. The present Agreement enters into force on the day of execution (signing).

32. On the date of execution of the Agreement the Memorandum of Understanding signed on August 23, 2012 between the Government of Georgia and Hydrolea LLC (a legal successor of Hydro 2 LLC) shall be terminated within the part of Darchi HPP.

33. The present Agreement is made in English language, into 4 (four) equally binding copies.

#### XV. SIGNATORIES

The Government of Georgia

Kakha Kaladze

LLC "Hydrolea"

Represented by the authorized representative,

Radoslav Dudolenski

LLC "Darchi"

Represented by the authorized representative,

Radoslav Dudolenski

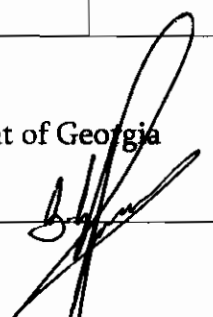
JSC "Electricity System Commercial Operator"

Vakhtang Ambokadze

## ANNEX N1

#	NAME	LOCATION	RIVER ELEVATION		ANNUAL PRODUCTION	CAPACITY
1	Darchi-Ormeleti	Mestia Municipality, village Lukhi	935 masl	701 masl	93.6 GWh	16.9 MW

The Government of Georgia

Kakha Kaladze 

LLC "Hydrolea"

Represented by the authorized representative,

Radoslav Dudolenski 

LLC "Darchi"

Represented by the authorized representative,

Radoslav Dudolenski 

JSC "Electricity System Commercial Operator"

Vakhtang Ambokadze 