

## AGREEMENT

**On Amending of the Implementation Agreement between the Government of Georgia, Dariali Energy JSC, Energotrans Ltd. and Electricity System Commercial Operator Ltd. dated May 19 2011**

Tbilisi

11 July, 2014.

This Agreement on Amending of the Implementation Agreement between the Government of Georgia, Dariali Energy JSC, Energotrans Ltd. and Electricity System Commercial Operator LTD dated May 19 2011 (the "**Amendment Agreement**") is entered into between the following parties:

- (1) **Government of Georgia**, represented by the Minister of Energy of Georgia, Kakha Kaladze, (the "**GOG**");
- (2) **JSC Electricity System Commercial Operator**, represented by its General Director, Vakhtang Ambokadze ("**ESCO**");
- (3) **Dariali Energy JSC**, represented by its Director, Zurab Alavidze, having its registered seat at # 8 Chachava St., Tbilisi, Georgia (the "**Company**"); and
- (4) **LLC Energotrans**, represented by its Director Kakha Sekhniashvili, ("**ET**").

(GOG, ESCO, the Company and ET each a "**Party**" and together the "**Parties**").

### WHEREAS:

- (A) On 19 May 2011 the Parties entered into the Implementation Agreement concerning construction and operation on BOO (Build, Own, Operate) basis of the Dariali Hydro Power Plant on the river Tergi as amended on 18 November 2011, 13 February 2012, 20 February 2012, 10 May 2012, 24 August 2012 (the "**Implementation Agreement**");
- (B) The Parties wish to amend the Implementation Agreement as to reflect the final understanding reached between them in connection with the subject matter of certain provisions of the Implementation Agreement;

**Now, therefore,** in consideration of the provisions and mutual rights and obligations herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

### **Article 1. Amendments**

1.1. With effect from and including the Effective Date, date of execution of this Amendment Agreement, the Implementation Agreement shall be amended as set out as follows:

**Paragraph 1.1(3) shall be read as follows:**

“Electricity (Power) Balance” shall mean the annual electricity balance of Georgia as determined and approved in accordance with Georgian laws.”

**Paragraph 1.1(25) shall be added to Paragraph 1 with the following content:**

“Tentative Annual Generation Forecast” shall mean the forecast of the amount of electricity to be tentatively generated by the Facility for any Operating Year.”

**Paragraph 3.1 (b) shall be read as follows:**

“complete construction of the Dariali Hydro Power Plant not later than in 60 (sixty) months from obtaining of construction permit.”

**Paragraph 4.7 shall be read as follows:**

*“The total amount of penalties imposed upon the Company by GOG pursuant to section 4.6 above shall not in any case exceed USD 600,000 in aggregate (the “Penalty Cap”). Without limiting the rights of the GOG on damage compensation, the penalties accrued in accordance with section 4.6 up to and within the Penalty Cap, shall be GOG’s remedy and the Company’s sole liability in relation to any delay of the timelines determined under Section 3.1.”*

**Section 4.9 (e) shall be added to Paragraph 4.9 with the following content:**

*“(e): by any other breach or delay that is not resulting from any act or failure to act by the Company”.*

**Paragraph 4.12 shall be read as follows:**

*“For the purposes of implementation of the Project, subject to the terms of this Agreement and the applicable legislation of Georgia, the GOG and ESCO (where applicable):*

*(a) Shall within its competence assist the Company with the implementation of the Project within its authority as contemplated by this Agreement, and GOG shall assist the Company and, if required, its contractors, or subcontractors, in acquiring the relevant licenses and permits, which includes but is not limited to water usage and environment impact permit and/or ecological expertize conclusion, license/permit for storing and using explosives, collection, crushing and using boulders, river bed materials and rock from quarries, etc., provided that the Company and/or its contractors/subcontractors meet the relevant requirements under Georgian legislation.*

*(b) shall within its competence assist the Company in obtaining relevant permits (including ecological expertize conclusion) and authorizations to construct roads, bridges, culverts and other infrastructure as considered necessary for the Project and shall ensure that the Company and, if required, its contractors and subcontractors, have at all times undisturbed access to any and all existing types of road infrastructure leading to the Site according to Georgian legislation.*

*(c) in case if the 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 timeframes given under Georgian legislation, GOG shall grant to the Company a relevant time extension for fulfilment of its obligations under this Agreement.*

*(d) shall within its competence ensure that within 60 (sixty) days from the date of execution of this Amendment Agreement the Georgian State Electrosystem JSC and the Company sign commitment agreement according to which Georgian State Electrosystem JSC will fulfil its obligations under Government Decree N259 dated February 13, 2014 (construction of a new 500 kV Line) and the Company shall ensure commitment to rehabilitate and upgrade the technical properties of the existing 110 kV lines (without requesting any compensation for such charges and/or for transferring them to ownership of the transmission Company), so as to make this*

*transmission lines capable of transfer of the entire electricity, which the Facility is capable of generation with its full capacity.*

*(e) shall not restrict conversion and remittance outside of Georgia of foreign currencies for payment by the Company of its foreign currency denominated debts and obligations (including payment of obligations to the Lenders), as well as for payment of dividends, proceeds from capital reduction of the company and for purchase of equipment, materials and services necessary for construction, operation and maintenance of the Project.*

*(f) shall ensure that the necessary Georgian visas are issued to foreign employees, managers, shareholders, as well as other Project-related consultants and advisers of the Company and/or of its contractors and subcontractors, provided that all preconditions required under Georgian law for obtaining a visa are fully satisfied. On the other hand the Company shall ensure at least 60% of total hired employees during construction and operation stage shall be Georgian citizens.*

*(g) shall within its competence assist the Company to secure the closure of relevant Agreements with ET and ESCO.*

*(h) shall ensure that the Contract on the Guaranteed Purchase of Electricity entered into between the Company and ESCO on 13 August 2012 (as amended, the "ESCO Contract") is registered with Georgian State Electrosystem JSC ("GSE" or the "Dispatch Licensee") in line with the requirements of Georgian law;*

*(i) shall ensure that the Company is registered as a qualified enterprise and as a wholesaler with ESCO in line with the requirements of Georgian law, provided that the Company has duly complied with all preconditions thereunder for such registration.*

*(j) until the total amount outstanding to the Lenders under the relevant financing documents are paid by the Company fully, shall ensure within its competence that the Tentative Annual Generation Forecast in respect of the Facility duly furnished by the Company is included into the Electricity (Power) Balance, provided that*

*the Company has duly applied and complied with all preconditions thereunder as determined under Georgian law.*

*(k) shall ensure to sell the necessary state owned land parcel for construction of Dariali Hydro Power Plant construction to the Company in accordance with Georgian legislation, subject to completion of implementation of the Project by the Company (the "Transferred Assets"). The Company shall be allowed to assign to, dispose, or create a security interest in favour of Lenders in its rights and interests. In order for the Company to exercise such rights on assignment, disposal and/or creating security interests, it shall obtain prior written approval from the GOG. After commencement of the Commercial Operation of the Facility, the foregoing limitation shall cease and the Company shall have the right to freely assign, dispose, or create a security interest over the Transferred Assets.*

*(l) in the event the Transferable Assets (or any part thereof) are at any time expropriated by the GOG, the GOG shall pay the Company within 60 (sixty) days from the date of expropriation an amount equal to the purchase price determined in accordance with Section 6.3 hereof for the expropriated Transferable Assets (or their part). In the event the Transferable Assets (or any part thereof) are at any time expropriated by any third person (other than the GOG) in accordance with Georgian law on expropriation adopted by the parliament of Georgia in July 23, 1999 N2349-RS or any other law which replaces this law, the GOG shall pay the Company within 60(sixty) calendar days from the date of expropriation an amount equal to the difference between the purchase price calculated in accordance with Section 6.3 hereof for the expropriated Transferable Assets (or their part) and the actual compensation received by the Company from such expropriating third person for such Transferable Assets.*

*(m) In case of insolvency, bankruptcy, liquidation of ESCO and of assignment of its functions to any other entity due to change of laws of otherwise, GOG shall ensure within its competence that the rights and obligations of ESCO under this Agreement and the ESCO Agreement are assigned or otherwise transferred to the new entity (entities, if applicable), which under relevant Georgian legislation will be wholly or partially carrying out the functions of the ESCO in the energy sector of Georgia."*

**Paragraph 5.1 shall be read as follows:**

*"5.1 This Agreement shall enter into force from the Effective Date and shall remain in full force and effect for 20 years (the "Validity Term"). For the avoidance of any doubt, the expiry of the Validity Term, and also in case of suspension/termination of this Agreement as a result of Force Majeure Event pursuant to Section 15 of this Agreement, shall have no impact on the ownership, usage, operation or legal and trading rights (including sale and export of the electricity generated by the Facility) of the Company with respect to the Project, subject to article 15.5. Upon expiration of the Validity Term, the Company shall freely own and operate the Facility, generate electricity and sell and/or export all the electricity generated or acquired by the Company on its own trading terms in accordance with applicable international agreements of Georgia, the constitution of Georgia and Georgian legislation."*

**Section 5.3 shall be added to Paragraph 5 with the following content:**

*"5.3 The provisions of articles 4.12 (b), 4.12 (e), 4.12 (f), 4.12 (l), 14.1, 14.3, 8.1, and 16.4 shall survive, and remain binding and enforceable, and notwithstanding expiry of this Agreement"*.

**Paragraph 6.3 shall be read as follows:**

*"6.3 In the event the Company terminates the Agreement in accordance with Section 6.2 or the ESCO Contract is terminated pursuant to Clause 9(b)2 (Event of Default), the default that led to such termination continues after the GOG has been given an additional cure period running from the date of termination and equal to the time periods described in clauses (i) and (ii) of Clause 9(b)2 (as applicable), the GOG shall purchase from the Company and the Company shall sell to the GOG the Transferred Assets together with all movable and immovable assets belonging to the Facility located thereon (the "Transferable Assets") for a purchase price denominated in US Dollars equal to the sum of:*

*(a) the total amount outstanding to the Lenders under the relevant financing documents, including all unpaid principal, accrued interest and all other fees and expenses owing to such Lenders as of the transfer date (the "Base Amount");*

*(b) the total amount of all damages, penalties, and expenses caused by termination or buyout of contracts to which the Company is a party and which are terminated or breached by the Company as a result of termination of the Agreement or sale to the*

*GOG of the Transferable Assets, plus any costs incurred by the Company in securing the Company's release from all past, present and future liability under contracts included within the Transferable Assets;*

*(c) the Equity in the Company as of the Transfer Date (the "Equity Investment"); for the purposes of Section 6.3, "Equity" shall mean the capital of the Company attributable to its shareholders in respect of their investment in the Company;*

*(d) a gross-up amount that allows the Company to pay the Base Amount and to distribute dividends to its shareholders in an aggregate amount after payment of all applicable taxes on the sale and purchase transaction, realization of profit by the Company and distribution of dividends by the Company, that equals the aggregate dividend amount that such shareholders would have received had no such taxes been payable (the "Tax Gross-Up Amount"); and*

*(e) the purchase price set forth in this Section 6.3 shall be paid by GOG on the basis of an invoice submitted by the Company (the "Termination Invoice") within ninety (90) days following the date of delivery of the Termination Invoice.*

*(f) The Company shall transfer the Transferable Assets to the GOG or its designee free and clear of any encumbrances promptly upon payment in full by GOG of the Termination Invoice as determined under Section 6.3 (e).*

*The present obligation of the GOG as described under this article 6.3 shall be valid until the total amount outstanding to the Lenders under the relevant financing documents are fully paid by the Company."*

**Paragraph 6.4 shall be read as follows:**

*"6.4 In case of termination of this Agreement by the GOG pursuant to section 6.1, the Transferred Assets shall be: (i) either transferred to the GoG without compensation and the GOG confirms that this property shall remain subject to security granted in favour of the Lenders and shall not be released until all amounts outstanding to the Lenders have been paid in full. - In that case the Company shall have the right to dismantle the movable and immovable assets located on such Transferred Assets; or (ii) the GoG may at its sole discretion pay in full to the Company the Base Amount (as*

*defined in paragraph 6.3.a) and the Company shall transfer to the GoG the Transferable Assets clear of any encumbrances promptly upon payment in full by the GOG to the Company of the Base Amount.”*

**Paragraphs 7.3 -7.4 shall be read as follows:**

*“7.3 Following receipt by the Lenders of the Notice of Termination Right, provided that the Lenders ensure protection of the financial rights and interests of the Company, the Lenders shall have the right to nominate an entity (the “Substituted Entity”), which shall continue project implementation and ensure completion of the construction of the Facility within the time-lines set out in Section 3.1.*

*7.4 The Lenders shall be entitled to effect such substitution within six (6) months of receipt of the Notice of Termination Right by sending a notification of their/its intention to the GOG (the “Substitution Notice”) and providing to the GOG all information that may be necessary for the GOG to verify that the conditions specified in this Section are satisfied.”*

**Section 9 shall be amended as follows:**

*“Section 9. Discriminatory Change in Law and Tax*

*9.1 The GoG agrees that it shall not initiate or propose any changes in the legislation of Georgia (including in respect of any taxes or other similar duties) which applies expressly to:*

*(a) any energy generation projects that export most of their energy outside of Georgia and/or hydro power generation projects and not to other energy generation projects (including energy generation projects that only sell electricity in Georgia) or other similar projects under agreements with a government entity;*

*(b) any energy generation producers that export most of their electricity outside of Georgia and/or hydro power generation producers and not other persons; and/or*

*(c) any contractors or operators that have entered into contractual arrangements in connection with an export energy generation project and/or hydro power generation project and no other persons.*



*Provided that, in each case, such changes have or may have a material adverse effect on the ability of the Company to comply with its obligations to the Lenders.”*

9.2 *To the extent any such change in legislation according to 9.1 is implemented, the Company shall have the right to terminate this Agreement and the GOG shall within 60 (sixty) calendar days from the date of such termination by the Company pay the Base Amount and the Transferable Assets shall be transferred to the GoG free of all encumbrances. Within 90 (ninety) calendar days from the date of transfer of the Transferable Assets, the Company and GoG shall discuss and agree upon the compensation of the price of the Transferable Assets based on their fair market value. With respect to any payments to be made under this paragraph by the GoG, the GoG shall pay any Tax Gross-Up Amount.*

*The present obligation of the GOG as described under this article 9.2 shall be valid until the total amount outstanding to the Lenders under the relevant financing documents are fully paid by the Company.”*

**Paragraph 13.2 shall be read as follows:**

*“13.2 Notice given under Section 13.1 is effective when received. Any notice shall be deemed to be received by the other Party, if delivered by hand delivery - on the day of its delivery, if sent by pre-paid registered mail or by courier - seventy two (72) hours from the date of posting, or if sent by facsimile transmission upon receipt of transmission confirmation.”*

**Paragraph 14.2 shall be read as follows:**

*“The Parties shall use their best efforts to settle amicably any dispute, controversy or claim arising out of or in connection with this Agreement, or the breach, termination, invalidity or interpretation of, this Agreement. The Parties agree that their duly authorized representatives shall regularly meet during the term of this Agreement for the purpose of amicably settling any and all disputes then in existence between them. Any such settlement shall take effect only if it is in writing and signed on behalf of the Parties to whom the settlement is to apply.”*

**Paragraph 14.3 shall be read as follows:**

*“14.3 Any dispute that cannot be amicably settled within thirty (30) days after receipt by one Party of the other Party’s written request to do so shall be settled by*

*arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force. There shall be one arbitrator and the appointing authority shall be LCIA (London Court of International Arbitration). The seat and place of arbitration shall be London, England and the English language shall be used throughout the arbitral proceedings. The decision of any such arbitral tribunal shall be final and binding on the Parties."*

**Paragraph 15.1 shall be read as follows:**

*"15.1 Definition of Force Majeure*

*Force Majeure Events include the following circumstances, provided that they are beyond the reasonable control of either parties and it affects the fulfillment of the obligation of the either parties:*

*(a) events of non-physical force majeure (each, a "Non-Physical Force Majeure Event"), which shall include:*

- (i) Acts of war, invasion or act of foreign enemy;*
- (ii) Acts of terrorism, acts of rebellion, riot, and civil commotion;*
- (iii) Blockade, embargo, rationing, or strikes of a political nature;*
- (iv) Any public agitation which prevents construction or operation activities of the Project for a continuous period exceeding fourteen (14) days;*

*For avoidance of any doubt, court ruling and/or court proceedings shall not be considered as Non Physical Force majeure, except for the court rulings related to items 15.1 (a) (ii) and (iii).*

*(b) events of physical force majeure (each, a "Physical Force Majeure Event"), which shall include:*

- (i) Fire, explosion or flood, whether caused by natural calamity or otherwise, earthquake, lightning, storm, typhoon, tornado or other natural calamity;*
- (ii) Epidemic or plague;*
- (iii) Any act of sabotage, strikes or works to rule or go-slows (in each case other than by employees of the affected party or of any shareholders of such party and*

*(iv) The discovery of archaeological cultural relics, fossils, burial mounds and memorial sites, artistic history remains and any other articles with archaeological, geological and historical significance on the Site, resulting in public works interfering with the completion of the relevant construction site."*

**Paragraph 15.4 shall be read as follows:**

*"15.4 If a Force Majeure event shall occur and continue for an aggregate period of six (6) months to have any of the effects described in this Section 15.3 then either Principal Party shall have the right to terminate this Agreement."*

**Paragraph 15.5 shall be added to the Agreement:**

*"15.5 If any Non-Physical Force Majeure Event both prevents, or could reasonably prevent with the lapse of time, a Party from performing an obligation under this Agreement and/or ESCO Contract for an aggregate period of more than three hundred and sixty (360) days, then the Company shall have the right to terminate this Agreement and the GOG shall within 60 (sixty) calendar days from the date of such termination by the Company pay the Base Amount and the Transferable Assets shall be transferred to the GoG free of all encumbrances. Within 90 (ninety) calendar days from the date of transfer of the Transferable Assets, the Company and GoG shall discuss and agree upon the compensation of the Equity Amount. With respect to any payments to be made under this paragraph by the GoG, the GoG shall pay any Tax Gross-Up Amount.*

*The present obligation of the GOG as described under this article 15.5 shall be valid until the total amount outstanding to the Lenders under the relevant financing documents are fully paid by the Company.*

*For avoidance of any doubt, the compensation payable to the Company according to the article 15.5, which is caused by the circumstances described in article 15.1 (a) (i) ("Acts of war, invasion or act of foreign enemy") is only payable, in case these circumstances are caused by the offensive action of the State of Georgia."*

**Paragraph 16 "16 Entire AGREEMENT" shall be renamed as "Section 16. Miscellaneous" and the following sections 16.3 and 16.4 shall be added:**

*"16.3 The terms and conditions of this Agreement are binding upon the parties and their respective legal successors and assignees and the obligations of each party under*

*this Agreement shall continue to apply notwithstanding any change of ownership and control of such party.*

*16.4 The rights and obligations under this Agreement may not be assigned to a third party without the written consent of the other parties. Notwithstanding the foregoing the GOG, ESCO and ET hereby acknowledge that the Company intends to obtain secured financing for the development of the Facility and that in connection with such secured financing the Lenders may require assignment of Company's rights and obligations under this Agreement and it they therefore expressly consent to such assignment of this Agreement and the Companies rights and obligations hereunder to the Lenders."*

1.2. The amount of the estimated investment determined in Annex # 3 to the Agreement shall be reduced to USD 105,000,000 and accordingly the Annex N3 of the Agreement shall be amended and read as enclosed edition to this agreement;

1.3. The provisions of the Implementation Agreement shall, save as amended by this Agreement continue in full force and effect.

## **Article 2. Miscellaneous Provisions**

2.1 The parties hereby agree, that the Company will not sell, assign, provide as a security and/or transfer any or all of their assets, which are used for the purposes of electricity production and/or operation of the Facility to any person or entity other than Lenders without written consent of the GOG. The GOG will not unreasonably withhold such written consent. The present obligation of the Company as described under this article shall be valid until the total amount outstanding to the Lenders under the relevant financing documents are fully paid by the Company.

2.2 The Shareholders of the Company solely and jointly take the obligation, that until the total amount outstanding to the Lenders under the relevant financing documents are fully paid by the Company, the total amount of the shares directly or indirectly held by them together shall not be less than 51 % of the entire share capital of the Company without GOG's written consent. For the avoidance of any doubt, any transfer of shares by LLC "Peri", LLC "Energy" and Robbins Company" which will and/or may cause reduction of the total amount of shares owned by them jointly below 51 % of the entire share capital of the Company, shall be subject of prior written consent of the GOG. The GOG will not unreasonably withhold such written consent. The present obligation of the Shareholders as

described under this article shall be valid until the total amount outstanding to the Lenders under the relevant financing documents are fully paid by the Company.

2.3 This Amendment Agreement shall enter into force as of the date of signing of it by the Parties.

2.4 This Amendment Agreement shall be governed by and construed in accordance with Georgian laws.

2.5 Each party represents and warrant that all requisite internal consents in connection with the execution of this Amendment Agreement have been obtained by such party and the persons, signing this Amendment Agreement on its behalf is duly authorized to do so.

**IN WITNESS WHEREOF**, the parties hereto, acting through their duly authorized representatives, have caused this Agreement to be signed in their respective names as of the date first above written:

**Government of Georgia**

  
\_\_\_\_\_ Kakha Kaladze

**JSC Electricity System Commercial Operator**

  
\_\_\_\_\_ Vakhtang Ambokadze

**LLC Energotrans**

  
\_\_\_\_\_ Kakha Sekhniashvili

**JSC Dariali Energy**

  
\_\_\_\_\_ Zurab Alavidze

**ARTICLES 2.1 AND 2.2 OF THIS AGREEMENT APPROVED AND ADHERED TO BY**

LLC "Peri"

LLC "Energy"

LLC "Robbins Company"

**Annex 3**

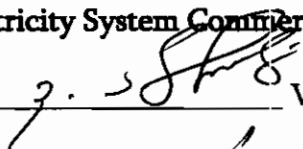
**Estimated Investments**

N	Name	Investment in USD
1	Dariali	105 000 000.00

**Government of Georgia**

\_\_\_\_\_ Kakha Kaladze

**JSC Electricity System Commercial Operator**

  
\_\_\_\_\_ Vakhtang Ambokadze

**LLC Energotrans**

  
\_\_\_\_\_ Kakha Sekhniashvili

**JSC Dariali Energy**

  
\_\_\_\_\_ Zurab Alavidze