

THE GOVERNMENT OF THE REPUBLIC OF RWANDA

and

ADRE HYDROPOWER & ENERGIHOTEL LTD

**CONCESSION AND
IMPLEMENTATION
AGREEMENT**



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THIS CONCESSION AND IMPLEMENTATION AGREEMENT (the "Agreement") is made on 26th August 2015

BETWEEN:

- (1) The Government of the Republic of Rwanda, represented by the Ministry of Infrastructure, whose registered physical address is KG 7 Avenue, P.O. Box 24 Kigali, Rwanda ("GoR"); and
- (2) Adre Hydropower & Energicotel a company duly incorporated under the Laws of Rwanda with registration number whose registered physical address is House number 8, Nyarutarama, Kigali, Rwanda ("ProjectCo"),

together the "Parties" and each a "Party".

BACKGROUND:

- A GoR wishes to develop the energy sector in Rwanda and hereby grants a concession to ProjectCo to upgrade, finance, operate, maintain and transfer a hydropower generation plant (the "Plant") of 2.2 MW at the Project Site (the "Project").
- B GoR has constructed the Plant in the form and specifications set forth in the PPA.
- C ProjectCo intends to upgrade, finance, operate, maintain and transfer the Plant.
- D EUCL intends to purchase the electricity generated by ProjectCo pursuant to a PPA.
- E Concurrent with the signing of this Agreement, GoR and ProjectCo will sign the PPA and Land Lease Agreement, in respect of the Project (as hereinafter defined);
- F This Agreement sets out the terms and conditions on which (1) GoR grants ProjectCo the right to develop the Project (as defined below) and (2) ProjectCo has agreed to undertake the Project.

IT IS AGREED AS FOLLOWS:

I. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the context otherwise requires, the following capitalized terms shall have the meanings set forth below. If a capitalized term is not defined in this Agreement, but is defined in the PPA, the term shall have the meaning set forth in the PPA.

"Abandonment" has the meaning set forth in the PPA;

"Affiliate" means when used with reference to a specific entity, any entity that, directly or indirectly, or through one or more intermediaries, owns or controls, is owned or controlled by, or is under common ownership or common control with, such specific entity; and as used herein, "ownership" means the beneficial ownership of 50% or more of the voting equity securities of the entity;

"Agreement" shall mean this agreement as amended from time to time;

"Business Day" means any day other than a Saturday or a Sunday, on which business by and between banks may be carried out and which is not a national public holiday in Rwanda;



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“Commercial Operation Date” has the meaning set forth in the PPA;

“Confidential Information” means the information described in Clause 13.11;

“Construction” means the investigation, surveying, design and construction of the upgrade, engineering, procurement, installation, testing and commissioning of the Plant and each part thereof;

“Construction Contract” has the meaning set forth in the PPA;

“Contractor” has the meaning set forth in the PPA;

“Day” means any twenty-four (24) hour period beginning and ending at 12:00 midnight in Rwanda time;

“Default” means a ProjectCo Default or a Government Default, as defined in Clause 11;

“Development Rights” means the rights set out in Clause 3.4.2;

“Dispute” has the meaning given to it in Clause 15.1;

“Effective Date” has the meaning set forth in the PPA;

“Environmental Regulations” means any Law which has as its purpose or effect the protection or the prevention of harm or damage to the environment or to provide remedies in relation to harm or damage to the environment;

“EUCL” means Energy Utility Corporation Limited;

“Excepted Assets” shall mean (i) assets or property owned by the Government or any of its agencies or instrumentalities not used for a commercial activity, and (ii) (a) property of the National Bank of Rwanda or other central monetary authority held for its own account, (b) property to be used in connection with military activity that is of military character or is under the control of a military authority or defence agency of the Government, and (c) property of the Government subject to the Vienna Convention on the Diplomatic Relations or the Vienna Convention on Consular Relations that is being used for diplomatic or consular purposes;

“Financial Year” means a financial year of the Company ending on 31 December or any other financial year agreed in accordance with this Agreement;

“Government Authority” means any nation or government of any state, municipality, locality or other political subdivision thereof and any entity, body, agent, commission or court, whether foreign, domestic, regional or multi-national exercising, executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any executive official thereof;

“Government Default” has the meaning given to it in Clause 11.2;

“Handover Report” has the meaning set forth in the PPA;

“Insolvency Event” means the winding-up, dissolution, administration, insolvency or reorganisation of ProjectCo, or any resolution of it or its shareholders to commence any such steps, or the appointment of any receiver or liquidator or administrator in respect of it or a material part of its assets;

“Land Lease Agreement” has the meaning set forth in the PPA;

“Law” means the national, provincial and local laws of Rwanda all orders, rules, regulations, executive orders, decrees, policies, judicial decisions, notifications or other similar directives made pursuant thereto, as such laws, orders, rules, regulations, decrees, policies, judicial decisions and notifications or other similar directives may be amended from time to time;

“Lenders” means the lenders party to the Loan Documents and the persons who, from time to time, make other credit facilities available to ProjectCo, together, in each case, with their respective successors and permitted assigns;

“Loan Documents” has the meaning set forth in the PPA;

“Month” means a calendar month according to the Gregorian calendar beginning at 12:00 midnight on the last day of the preceding month and ending at 12:00 midnight on the last day of that month;

“Operations” means the operation and maintenance of the Plant and the conduct of any works or operations and any other activities (including insurance) of ProjectCo (and/or any Contractor) in relation to the Plant, including any renewal, upgrade or enhancement, and including the management and performance by ProjectCo of its obligations, and the exercise of its rights, under the Transaction Documents;

“Permits” has the meaning set forth in the PPA;

“Plant” has the meaning set forth in the recitals;

“PPA” means the Power Purchase Agreement entered into by EUCL and ProjectCo;

“Project” has the meaning set forth in the recitals;

“ProjectCo Share” has the meaning set forth in Clause 4.1;

“Project Costs means (without double counting) the following costs, expenses and liabilities which are accrued, paid or payable by ProjectCo in respect of the Project:

- (i) all costs, expenses and liabilities in respect of the Construction (whether or not of a capital nature);
- (ii) financing costs and interest, fees and expenses payable that are directly related to the Project;
- (iii) taxes that are directly related to the Project; and
- (iv) premium payments for insurance policies taken out in relation to the Project;

“Project Documents” has the meaning set forth in the PPA;

“Project Site” means the site of the Project located at Keya river in Rubavu District on which the Plant and ancillary infrastructure is to be constructed, and as more specifically set forth in the Handover Report in the PPA.

“ProjectCo Default” has the meaning given to it in Clause 11.1.7;



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“Revenue Share” has the meaning given to it in Clause 4.1;

“Revenue Share Statement” means:

a Revenue Share statement submitted in accordance with Clause 5.4.5 which contains the following information, and any other information that the State may reasonably request:

- (a) the revenue (net of VAT) generated from the Operations;
- (b) a calculation in reasonable detail of the total amount of the Revenue Share payable by ProjectCo during the applicable Month;

“Required Commercial Operation Date” has the meaning set forth in the PPA;

“Security Agent” means any bank or other institution appointed to act as an agent or trustee for and on behalf of all or any of the Lenders;

“Signing Date” means the date of execution of this Agreement;

“Term” has the meaning given to it in Clause 2.1;

“Transaction Documents” means the Project Documents and the Loan Documents; and

1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- 1.2.1 terms not herein defined shall have the meanings ordinarily ascribed thereto in the Oxford English Dictionary;
- 1.2.2 references to any document (including this Agreement) are references to that document as amended, consolidated, supplemented, novated or replaced from time to time, and to all annexes, schedules, attachments, supplements and the like which form part thereof;
- 1.2.3 terms defined in any number, gender or tense shall have the correlative meaning when used in any other number, gender or tense;
- 1.2.4 all references herein to time are to Rwanda time;
- 1.2.5 the words “include”, “including” and “in particular” indicate examples or emphasis only and shall not be construed as limiting the generality of any preceding words;
- 1.2.6 the words “or other” or “otherwise” shall not be construed as limiting the generality of any preceding words where a wider interpretation is possible;
- 1.2.7 reference to persons means any individual, association, trust, joint venture, unincorporated association, consortium, partnership (whether or not having separate legal personality), corporation, firm, government, including GoR and any Government Authorities, party to this Agreement wherever organised or incorporated and whether or not having separate legal personality; and references to any person, including any Party hereto, shall include that person's successors in title, permitted assignees, transferees, delegates, sub-delegates or appointees (unless the transfer to the successor in title or transferee was in breach of this Agreement);

- 1.2.8 where this Agreement defines a word or expression, related words and expressions have a consistent meaning;
- 1.2.9 all periods of time and dates shall be based on and computed according to the Gregorian calendar and times of Day are times of the Day in Rwanda;
- 1.2.10 in the computation of periods of time from a specified Day to a later specified Day, from means from and including and until or to means to and including;
- 1.2.11 references to any Clause, paragraph, Part, schedule or recital are to those contained in this Agreement;
- 1.2.12 the expression "this Clause", unless followed by the number of a specific part of the Clause, refers to the whole Clause in which it occurs;
- 1.2.13 the table of contents and Clause headings are inserted for convenience only and shall not affect the interpretation or construction of this Agreement; [and
- 1.2.14 "written" or "in writing" includes faxes but not email]

1.3 The Schedule shall form part of this Agreement.

2. TERM

2.1 Commencement and duration of Agreement

This Agreement shall come into force and effect on the Signing Date and shall, unless terminated earlier in accordance with its terms, continue in full force and effect for a period of twenty five (25) years from the Commercial Operation Date of the Project (the "Term").

2.2 Expiration without prejudice

The expiration (or earlier termination) of this Agreement shall be without prejudice to all rights and obligations of the Parties accrued under this Agreement prior to such expiration (or earlier termination) but otherwise the Parties shall have no further obligations hereunder following such expiration (or earlier termination) except for obligations which are expressed to survive such expiration (or earlier termination) pursuant to this Agreement.

3. RIGHT TO DEVELOP THE PROJECT

3.1 Grant of Concession

In consideration of ProjectCo's undertaking to carry out the Project and payment the of Concession Fee in accordance Clause 4, GoR hereby grants ProjectCo for the Term and subject to the terms of this Agreement:

- 3.1.1 the right to finance, design, engineer, construct the upgrade, test, commission, manage and insure the Plant and to operate and maintain the same;
- 3.1.2 the right to generate power at the Plant; and
- 3.1.3 the right to own, use and exploit benefits from the Plant including the right to sell power generated by the Project pursuant to the PPA.

3.2 Ownership of Plant

The ownership of the Plant shall remain vested in GoR for the duration of the Term.

3.3 Application for Permits

3.3.1 ProjectCo shall make or cause to be made as soon as practicable after the Signing Date, all applications (whether initial or renewal applications) for the Permits in the prescribed form and with the prescribed fee to the appropriate Government Authority and shall diligently pursue all such applications. The information supplied in the applications shall be complete and accurate and shall satisfy the substantive and procedural requirements of the applicable Laws.

3.3.2 ProjectCo shall provide to GoR and EUCL, one week prior to the Commercial Operation Date, a report setting out the status of all applications for Permits.

3.4 Development Rights

3.4.1 GoR agrees to use reasonable endeavours to provide such assistance as ProjectCo may reasonably require and as GoR considers appropriate (in accordance with applicable Law) in obtaining any Development Rights which may be required in connection with the Project.

3.4.2 For the purposes of this Clause 3.4, Development Rights means any or all of the following:

- (i) any necessary interest over the real property on which the Plant has been built;
- (ii) the grant of wayleaves and/or grant of easements and other rights (including, to the extent necessary, procuring the grant of wayleaves, easements and other rights by relevant third parties) necessary for the operation of the Plant unless use of the relevant property for the purpose of the Operations is prohibited by law or would otherwise be contrary to public policy;
- (iii) subject to Clause 8.1.12, the right freely to engage any Contractor for the purposes of conducting the Operations, provided that no such engagement shall relieve ProjectCo from any of its obligations under the Project Documents;
- (iv) subject to Clause 8.1.12, in respect of employment of personnel for the Project, the right, to be exercisable by ProjectCo, to employ such persons on such terms as ProjectCo considers necessary or appropriate in accordance with the Laws of Rwanda; and

4. CONCESSION FEE

4.1 Subject to Clause 4.4 and clause 4.5, ProjectCo shall retain sixty four percent (64%) of the gross monthly revenue (net of VAT) ("ProjectCo Share") that is generated by the Plant, and the Project and GoR shall retain thirty six percent (36 %) of the monthly gross revenue

(net of VAT) (the ‘Concession Fee’) that is generated by the Plant (collectively, ‘Revenue Share’).

- 4.2 ProjectCo must pay all liabilities, damages, expenses, taxes and other costs in respect of the Plant, Operations and the Project from the amounts received by it following calculation of the Revenue Share under Clause 4.1.

ProjectCo shall receive a deferment on the Concession Fee for a period of four years after the Commercial Operation Date of the Plant (‘Deferment Period’). During the Deferment Period, ProjectCo shall not pay any portion of the Concession Fee to GoR. At the end of the Deferment Period, ProjectCo shall immediately commence paying the Concession Fee and shall continue to do so for the duration of the Term.

- 4.3 The Concession Fee shall be paid by ProjectCo on a monthly basis to GoR. The Concession Fee shall be deducted from energy payments due to ProjectCo after GoR has provided an invoice to ProjectCo for the Concession Fee.

5. ACCOUNTING AND PAYMENTS

- 5.1 ProjectCo must deliver to GoR its audited financial statements for each of its Financial Years.
- 5.2 All financial statements must be delivered as soon as they are available and in the case of ProjectCo’s audited financial statements, within ninety (90) days of the end of each Financial Year; and
- 5.3 ProjectCo must ensure that each set of financial statements supplied under this Agreement gives (if audited) a true and fair view, or (if unaudited) fairly represents the financial condition (consolidated or otherwise), of the relevant company as at the date to which those financial statements were drawn up.
- 5.4 The audited financial statements must:
- 5.4.1 be prepared by a firm of international external auditors (in accordance with IFRS) that are acceptable to GoR;
 - 5.4.2 include a detailed break-down of the Project Costs;
 - 5.4.3 include a detailed break-down of any VAT withheld from the Revenue Share;
 - 5.4.4 specify the existing and projected payment obligations under any maintenance programme for the Project Site;
 - 5.4.5 include the Revenue Share Statements for the preceding twelve Months;
 - 5.4.6 specify the aggregate gross and net income that is generated by the Operations and received by ProjectCo in respect of the Operations during the Term;
 - 5.4.7 include details of any Loan Documents entered into by ProjectCo in respect of the Project;
 - 5.4.8 include details of any businesses or operations undertaken by ProjectCo, its Subsidiaries or any related entity in Rwanda; and
 - 5.4.9 include any other information that is reasonably requested by GoR.

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- 5.5 ProjectCo must notify GoR of any change to the manner in which its audited financial statements are prepared.
- 5.6 ProjectCo must enter into Loan Documents or other contracts on bona fide arm's length commercial terms and the counterparty to any Loan Document must not be an Affiliate.
- 5.7 GoR must notify ProjectCo of its consent or any objections to any details or calculations set out in the audited financial statements within thirty (30) Business Days of receiving the relevant audited financial statements. Any objections submitted by GoR will immediately be referred as a Dispute. The parties must resolve any objections and agree to the final amounts that are due for payment by, or to, either party (including, without limitation, the amounts due under the Revenue Share).
- 5.8 . Payment of the Revenue Share shall be made in accordance with the amount set forth in the Revenue Share Statement for such applicable Month by methods set out in Clause 4.4 or other form of payment acceptable to GoR, accompanied by the Revenue Share Statement.
- 5.9 ProjectCo and GoR shall each establish and, for so long as required by applicable laws, maintain true and correct records in respect of amounts due to be paid to the other in accordance with this Agreement.
- 5.10 The documents of each party referred to in this Clause shall, to the extent that disclosure of any such document or its contents will not cause that party to be in breach of any confidentiality undertaking with or to a third party, be available at all reasonable times for inspection and audit by the other party.

6. PROJECTCO REPRESENTATIONS AND WARRANTIES

- 6.1 ProjectCo represents and warrants to GoR as at the date hereof that:
- 6.1.1 it is duly incorporated and validly existing in its jurisdiction of incorporation;
- 6.1.2 it has the full power, authority and legal right to enter into this Agreement and each of the Project Documents to which it is a party and to perform its obligations under this Agreement and each of the Project Documents to which it is a party;
- 6.1.3 it has taken all necessary corporate action to authorise the execution, delivery and performance of this Agreement and each of the Project Documents to which it is a party;
- 6.1.4 this Agreement and each of the Project Documents to which it is a party entered into at the date hereof constitute the legal, valid and binding obligations of ProjectCo subject to any general principles of law limiting such obligations;
- 6.1.5 the execution, delivery, and performance of this Agreement or any of the Project Documents does not, and will not, constitute a violation of (a) any statute, judgment, order, decree or regulation or rule of any court, Government Authority or arbitrator of competent jurisdiction applicable or relating to ProjectCo, its assets or its businesses, or (b) ProjectCo's Articles of Association or other constitutional documents or any contract or agreement to which it is a party or by which it or its property may be bound;
- 6.1.6 there are no outstanding judgments against ProjectCo, and, to the best knowledge of ProjectCo, no action, claim, suit or proceeding is pending or threatened against ProjectCo before any court, Government Authority or arbitrator of competent jurisdiction that could reasonably be expect to affect materially and adversely the

financial condition or operations of ProjectCo or the ability of ProjectCo to perform its obligations under this Agreement or any other agreement relating to any aspect of the Project or which purposes to affect the legality, validity or enforceability of this Agreement;

- 6.1.7 ProjectCo is not in default under any agreement to which it is a party or by which it or its property may be bound, nor in any default of any technical or financial obligation, which could have a material adverse effect on the ability of ProjectCo to perform its obligations under this Agreement or any Project Document; and
- 6.1.8 no information given by ProjectCo in relation to this Agreement contains any misstatement of fact or omits to state a fact which would be materially adverse to the enforcement of the rights and remedies of GoR or which would be necessary to make any statement, representation or warranting contained therein or therein true and correct in all material respects.

7. GOR REPRESENTATIONS AND WARRANTIES

- 7.1 Without prejudice to any warranties or conditions implied by Law, GoR represents and warrants as at the date of this Agreement that:
 - 7.1.1 it is not aware of any person having any rights which conflict, or are incompatible with, the rights granted in Clause 3.1;
 - 7.1.2 it has the full power, authority and legal right to enter into this Agreement and to perform its obligations under this Agreement;
 - 7.1.3 it has taken all necessary action to authorise the execution, delivery and performance of this Agreement; and
 - 7.1.4 this Agreement constitutes the legal, valid and binding obligations of GoR enforceable against GoR in accordance with the terms of this Agreement and that each of the Project Documents to which GoR is a party will, when executed, constitute legally binding and enforceable obligations of GoR.

8. PROJECT OBLIGATIONS

8.1 ProjectCo Obligations

Subject to the occurrence of the Effective Date, ProjectCo shall:

- 8.1.1 make, in a timely fashion, applications for all Development Rights and Permits;
- 8.1.2 register itself as a company in accordance with the Laws of Rwanda;
- 8.1.3 adhere to the terms and conditions of the Revenue Share as set forth in Clause 4;
- 8.1.4 undertake the implementation of the Project in accordance with this Agreement, the PPA, the Development Rights, the Permits and all Laws.
- 8.1.5 construct the upgrade and commission the Plant in accordance with this Agreement, the PPA, the Development Rights, the Permits and all Laws;

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- 8.1.6 operate the Plant in accordance with this Agreement, the PPA, the Development Rights, the Permits and all Laws;
- 8.1.7 adhere to and observe at all times standards and practices concerning the protection of health and safety and the Environmental Regulations which are then in force and are legally binding in Rwanda;
- 8.1.8 not abandon or cancel any part of the Project (except in accordance with ProjectCo's rights set out in this Agreement and/or any Project Document);
- 8.1.9 subject to the occurrence of any event of Force Majeure and to the terms of the Project Documents, be responsible for the economic and technical feasibility, operational capacity and reliability of the Plant; afford and facilitate access by GoR representatives, at reasonable times following prior notice, to relevant parts of the Project Site, for the purpose of allowing those GoR representatives to observe and inspect the program of construction of the Plant;
- 8.1.10 be responsible for solid and liquid waste management in accordance with Prudent Utility Practice and all applicable Laws;
- 8.1.11 keep complete and accurate records and all other data required for the purposes of proper administration of this Agreement, and report regularly to GoR and the Government Authorities as provided herein and in the PPA;
- 8.1.12 ensure that within four(4) years after the Signing Date at least seventy percent (70 %) of the employees are Rwandan citizens; and
- 8.1.13 ensure that the Rwandan employees required to be employed by ProjectCo as specified in Clause 8.1.11 above receive training and capacity building relevant to their positions throughout their respective periods of employment in order to provide a transfer of knowledge.

8.2 GoR Support Obligations

GoR shall in accordance with Law perform its obligations and take all necessary actions contemplated under this Agreement in a timely manner so as not to delay the Construction or any other Operations, including the Commercial Operation Date of the Plant.

8.3 Insurance

- 8.3.1 From the Effective Date, ProjectCo shall take out and maintain in full force and effect throughout the Term such insurance policies and coverage with respect to the Plant with internationally reputable underwriters or insurance companies to such extent and against such risks as prudent companies engaged in businesses similar to those of ProjectCo normally insure, and any other insurances as may be required by the Laws of Rwanda and/or the Project Documents, in each case to the extent available on reasonable commercial terms.
- 8.3.2 ProjectCo shall provide to GoR annually and upon request certificates evidencing that the insurance policies are in force and effect in accordance with the foregoing.

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9. CREATION OF SECURITY

9.1 For the purpose of financing the Project, ProjectCo may assign to, or grant a security interest in favour of, the Security Agent in respect of ProjectCo's rights and interests under or pursuant to this Agreement.

9.2 Upon notification by the Security Agent to GoR of the occurrence and continuance of an event of default under the Loan Documents, GoR shall have the right (at its sole discretion) to:

9.2.1 cure the event of default; and/or

9.2.2 nominate a third party to assume the rights and obligations of ProjectCo under the Transaction Documents,

within thirty (30) days' of receipt of such notice from the Security Agent. In the event that GoR does not exercise such rights within the specified time, the Lenders shall have the right, among other things, to take possession and control of the Project, prior to the Commercial Operation Date of the Project, complete Construction, and undertake the Operations.

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10. FORCE MAJEURE

10.1 In the event of the occurrence of a Force Majeure Event, the Affected Party shall:

10.1.1 notify as soon as reasonably practicable, but no longer than three (3) Days, the other Party in writing of such Force Majeure;

10.1.2 give the other Party a second notice, describing the Force Majeure Event(s) in reasonable detail and, to the extent that can be reasonably determined at the time of the second notice, provide a preliminary evaluation of the obligations affected, a preliminary estimate of the period of time that the Affected Party will be unable to perform the obligations, and other relevant matters as soon as practical, but in any event, not later than ten (10) Days after the initial notice of the occurrence of the Force Majeure Event(s) is given by the Affected Party;

10.1.3 not be entitled to suspend performance under this Agreement for any greater scope or longer duration than is required by the Force Majeure;

10.1.4 use all reasonable efforts to remedy its inability to perform and to resume full performance hereunder as soon as practicable;

10.1.5 keep such other Party apprised of such efforts on a continuous basis;

10.1.6 provide written notice of the cessation of the Force Majeure Event as soon as practicable; and

10.1.7 thereafter, resume performance hereunder.

Notwithstanding the occurrence of a Force Majeure Event, the Parties shall perform their obligations under this Agreement to the extent the performance of such obligations is not impeded by the Force Majeure Event.

10.2 Consequences of Force Majeure

10.2.1 Subject to delivery of notice as required by Clause 15.4.1, neither Party shall be responsible or liable for, or deemed in breach hereof because of, any failure or delay in complying with its obligations under this Agreement which it cannot perform due solely to one or more Force Majeure Events or its or their effects or by any combination thereof, and the periods allowed for the performance by the Parties of such obligation(s) shall be extended on a day-for-day basis for so long as one or more Force Majeure Events continue(s) to affect materially and adversely the performance of such Party of such obligation(s) under or pursuant to this Agreement.

10.2.2 Notwithstanding Clause 15.5.1 above:

- (i) no relief shall be granted to the Party claiming Force Majeure pursuant to this Clause 15.5 to the extent that such failure or delay would have nevertheless been experienced by that Party had such Force Majeure Event not occurred; and
- (ii) the non-affected Party may immediately terminate this Agreement upon thirty (30) Days' written notice if a Force Majeure Event prevents the Affected Party from performing its obligations under this Agreement for a period greater than one hundred and eighty (180) consecutive days.

11. DEFAULT, TERMINATION AND REMEDIES

11.1 ProjectCo Default

Each of the following events or circumstances shall be a "ProjectCo Default" for the purpose of this Clause 11 unless it occurs as a result of: (i) a breach by GoR of this Agreement; (ii) any Government Default; or (iii) an event of Force Majeure:

- 11.1.1 failure to achieve the Commercial Operation Date of the Project within ninety (90) days after Required Commercial Operation Date;
- 11.1.2 breach by ProjectCo of its obligations under this Agreement or any Project Document which breach has been notified to ProjectCo by the GoR and has not been remedied within a period of thirty (30) Days of that notification, or such longer period as GoR shall in its reasonable discretion allow for the remedy of such breach;
- 11.1.3 failure by ProjectCo to make any payment within forty five (45) Days of its due date under any Project Document, unless such failure is caused by an administrative or technical error and payment is made within ten (10) Business Days of the due date;
- 9.1.5 any representation or warranty made by or deemed to be made by ProjectCo under or in connection with any Project Document is or proves to have been incorrect or misleading in any material respect when made or deemed to have been made;
- 11.1.6 if ProjectCo assigns or otherwise purports to transfer or delegate in whole or in part its rights and/or obligations under this Agreement otherwise than pursuant to Clause 9 or with consent pursuant to Clause 13.9;

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- 11.1.7 in the event of Abandonment by ProjectCo;
- 11.1.8 upon the occurrence of an Insolvency Event in respect of ProjectCo;
- 11.1.9 failure by ProjectCo to obtain and have in full force for the Term any required approval, consent, decree, Permit, licence, waiver, or any filing with, or notice to, any Government Authority relating to the performance of any of its obligations under this Agreement; and
- 11.1.10 termination of any of the Project Documents as a result of a default by ProjectCo.

11.2 Government Default

Each of the following events or circumstances shall be a ‘Government Default’:

- 11.2.1 failure by GoR to perform any of its material obligations under this Agreement or any Project Document, which failure is not remedied within sixty (60) Days of the time by which such obligation was required to be fulfilled;
- 11.2.2 failure by GoR or any Government Authority to make any payment within forty five (45) Business Days of its due date under any Project Document, unless such failure is caused by an administrative or technical error and payment is made within ten (10) Business Days of the due date;
- 11.2.3 any representation or warranty made by or deemed to be made by GoR under or in connection with any Project Document is or proves to have been incorrect or misleading in any material respect when made or deemed to have been made.

11.3 Remediation and termination rights

- 11.3.1 No act, event or circumstance referred to in Clause 11.1 or 11.2 shall constitute a ProjectCo Default or a Government Default (as the case may be) until five (5) Business Days following the delivery of a notice to the defaulting Party of such breach (the ‘Event of Default Notice’) to the defaulting Party, specifying in reasonable detail the ProjectCo Default or Government Default, as the case may be, giving rise to such Event of Default Notice. Except where a different cure period is provided in Clause 11.1, the defaulting Party shall have sixty (60) Days from receipt of the Event of Default Notice (or such other period as to which the Parties may mutually agree) to cure the Event of Default (the ‘Cure Period’). The defaulting Party shall furnish to the non-defaulting Party during the Cure Period weekly reports on its progress in curing the Event of Default. During the Cure Period following the Event of Default Notice, the Party in default may continue to undertake efforts to cure the default, and if the default is cured at any time prior to the delivery of a Notice of Termination sent in accordance with Clause 18.5, then the non-defaulting Party shall have no right to terminate this Agreement in respect of such cured default.
- 11.3.2 Upon expiration of the Cure Period, if the applicable ProjectCo Default or Government Default has not been cured and the Parties have not agreed in writing to extend the Cure Period, the Party that gave the Event of Default Notice may terminate this Agreement by delivery of a written notice of termination (a ‘Termination Notice’) to the other Party, whereupon this Agreement shall terminate on the date specified for termination in such Termination Notice.

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11.3.3 No Cure Period shall be required for a ProjectCo Default in connection with Clauses 11.1.1 and Error! Reference source not found, above, and GoR shall be able to deliver a notice of termination to ProjectCo pursuant to Clause 18.5 specifying the date it wishes to terminate this Agreement.

11.4 Other Remedies

The exercise of the right of a Party to terminate this Agreement, as provided herein, does not preclude the Party from exercising other remedies that are provided herein or are available at law. Remedies are cumulative, and the exercise of, or failure to exercise, one or more remedies by a Party shall not limit or preclude the exercise of, or constitute a waiver of, other remedies by that Party.

11.5 For the avoidance of doubt, the Parties recognize and acknowledge that the termination of this Agreement will result in the termination of the PPA and vice versa, and that the termination and compensation provisions set out in the PPA shall apply in such event.

12. LOSSES

12.1 Consequential Losses

In no case, shall any Party be liable to the other in contract, tort, warranty, strict liability or any other legal theory for any indirect, consequential, incidental, punitive or exemplary losses or damages.

12.2 Mitigation

A Party suffering any cost, expense, loss or damage for which the other Party shall ultimately be liable shall take all reasonable steps to mitigate the same, and any claim brought shall be subject to any defence or counterclaim of the other Party at Law.

13. MISCELLANEOUS

13.1 Waiver

No failure or delay in exercising any right or remedy under this Agreement shall constitute a waiver of such that right or remedy and no waiver of any breach of this Agreement shall be deemed to be a waiver of any breach. No single or partial exercise of any right or remedy under this Agreement shall preclude or restrict the further exercise of any such right or remedy.

13.2 Entire Agreement

This Agreement represents the entire agreement and understanding between the Parties in relation to the subject matter hereof, and supersedes any and all previous agreements or arrangements between the Parties in respect of this Agreement (whether oral or written). The Parties confirm that they have not entered into this Agreement (or the documents referred to in it), on the basis of any representation that is not expressly incorporated into this Agreement (or the documents referred to in it).

13.3 Severability

If any provision of this Agreement: (a) is held not to be valid if part of the wording were deleted or modified, then that provision applies with all necessary modifications to make it enforceable; or (b) is or becomes illegal, invalid or unenforceable in any jurisdiction, such illegality,

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invalidity or unenforceability shall not affect: (i) the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement or (ii) the legality, validity or enforceability in any other jurisdiction of that or any other provision of this Agreement.

13.4 Counterparty

The Parties may execute this Agreement in any number of counterparts and this shall have the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

13.5 Variations in Writing

This Agreement may not be altered, amended, modified or otherwise changed in any respect except in writing duly executed by each Party.

13.6 Notices

13.6.1 The Parties shall give each notice or other communication under this Agreement in writing in English and, unless otherwise provided, by fax or letter. Any notice or communication given by one Party to another under this Agreement shall (unless one Party has by five Days' notice to the other Party given another address) be given to that other Party at the respective addresses below.

(a) ProjectCo

Address: Avenue De Poids Lourds
BP 1576
Kigali
Rwanda

Attention: Ferdy Turasenga

(b) GoR

Ministry of Infrastructure
P.O. Box 24
Kigali, Rwanda
Attention: Minister of State in Charge of Energy and Water

13.6.2 Any notice or other communication given by a Party is deemed to have been received: (a) if sent by fax, with a confirmed receipt of transmission from the receiving machine, on the Day it was transmitted; (b) in the case of a notice given by hand, on the Day of actual delivery; and (c) if posted, on the fifth Business Day following the Day it was posted by first class mail postage prepaid, on condition that a notice given but received on a Day which is not a Business Day or after normal business hours is deemed to have been received on the next Business Day.

13.7 Third Parties

Save where otherwise provided in this Agreement, no person who is not a Party has any right under the Contracts Act of Rwanda (Law No 45/2011 of 25/11/2011 Governing Contracts) to enforce or enjoy the benefit of any term of this Agreement.

13.8 Relationship of the Parties

This Agreement shall not be interpreted or construed to create an association, joint venture, partnership or agency between the Parties or to impose any partnership obligation or liability upon any Party. No Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Parties. ProjectCo shall be solely responsible for the payment of salaries, wages and mandatory fringe benefits of its employees, which will not have any relationship of any kind with GoR.

13.9 Assignment

A Party may not assign or otherwise transfer any of its rights or obligations or subcontract or delegate in whole or in part the performance of any of its obligations under this Agreement to any person without the prior written consent of the other Parties. If written consent is given for any assignment, the assignor shall remain jointly and severally liable with the assignee for the full performance of the assignor's obligations under this Agreement, unless the Parties otherwise agree in writing. Any prohibited assignment in violation of this Clause 13.9 shall be null and void *ab initio* and the non-assigning Party shall have the right, without prejudice to any other rights or remedies it may have hereunder or otherwise, to terminate this Agreement effective immediately upon notice to the Party attempting such assignment.

13.10 Language

The language of this Agreement shall be English. All documents, notices, waivers and all other communication written or otherwise between the Parties in connection with this Agreement shall be in English.

13.11 Confidential Information

Each Party shall keep confidential any information whether written or oral, concerning the other Party or their directors, officers or employees, or the Project, which that Party shall receive from the other Party and which is marked (if the information is delivered in written form) or otherwise designated as or indicated to be "confidential" at the time of disclosure or which must be understood to be confidential by reason of the circumstances applicable to its disclosure and shall not divulge the same to any third party (save insofar as may be necessary for the purpose of carrying out this Agreement) and save in respect of disclosure:

13.11.1 to any Party's professional advisers or the Contractors;

13.11.2 to the extent required by Law;

13.11.3 to any Government Authority lawfully requesting such information;

13.11.4 to any court of competent jurisdiction acting in pursuance of its powers; or

13.11.5 if it was or is in the public domain other than through its fault or the fault of any person to whom such Confidential Information has been disclosed as permitted by this Clause 13.11.

13.12 Survival

13.12.1 The provisions of Clauses 11, 13.11 and 15 shall survive the expiry, cancellation or termination of this Agreement (however arising) and shall continue in full force and

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effect until all of the Parties' obligations and liabilities under them have been performed and discharged in full.

13.12.2 Without prejudice to the generality of Clause 13.12.1, the cancellation, expiry or termination of this Agreement or any arbitration of disputes shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration or termination, including warranties, remedies, promises of indemnity and confidentiality.

13.13 Successors and Assigns

This Agreement shall inure to the benefit of, and be binding upon, the Parties hereto and their respective successors and permitted assigns.

13.14 No Liability for Review

No review or approval by GoR of any agreement, document, instrument, drawing, specifications or design proposed by ProjectCo shall relieve ProjectCo from any liability that it would otherwise have had for its negligence in the preparation of such agreement, document, instrument, drawing, specifications or design or from failure to comply with the applicable Laws with respect thereto, nor shall GoR be liable to ProjectCo or any other person by reason of its review or approval of an agreement, document, instrument, drawing, specification, or design. Furthermore, GoR shall not be liable to ProjectCo or any other person by reason of its observation or inspection of, or any suggestions relating to, the construction, testing, operation or maintenance of the Plant.

13.15 Affirmation

ProjectCo and GoR declare and affirm that neither Party has paid nor has it undertaken to pay and that it shall in the future not pay any bribe, pay-offs, kick-backs or unlawful commission and that it has not in any other way or manner paid any sums or in any other manner given or offered to give any gifts and presents in Rwanda or abroad to any person or company to procure this Agreement, and ProjectCo and GoR undertake not to engage in any of the said or similar acts during the term of and relative to this Agreement. ProjectCo and GoR declare and affirm that neither Party is in breach of the provisions related to good conduct as set out in the provisions of (i) [the United States Foreign Corrupt Practices Act] (ii) [the UK Bribery Act] and (iii) [other sanctioning regimes as applicable]; (iv) Organic Law n° 01/2012 of 02/05/2012 instituting the Penal Code, especially in its articles from 633 up to 651 stipulated in its Part II, Title III, Chapter III, Section 6 on 'prevention and punishment of corruption and related offenses' and other related offences for Rwandan companies.


13.16 Waiver of Sovereign Immunity

GoR unconditionally and irrevocably:

13.16.1 agrees that the execution, delivery and performance by it of this Agreement constitute private and commercial acts rather than public or governmental acts;

13.16.2 agrees that, should any proceedings be brought against it or its assets other than Excepted Assets in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity from such proceedings shall be claimed by or on behalf of itself or with respect to its assets (other than Excepted Assets); and

13.16.3 consents generally in respect of the enforcement of any judgment against it in any such proceedings in any jurisdiction to the giving of any relief or the issue of any process in



connection with such proceedings (including the making, enforcement or execution against or in respect of any property whatsoever, intended use).

13.17 Currency

All amounts due and owing under this Agreement shall be denominated and paid in Rwandan Francs.

14. GOVERNING LAW

14.1 This Agreement and any dispute or claim arising out of or in connection with it or its formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of Rwanda.

15. RESOLUTION OF DISPUTES

15.1 Mutual Discussions

If any dispute or difference of any kind whatsoever ("Dispute") shall arise between GoR and ProjectCo in connection with, or arising out of, this Agreement, the Parties shall attempt in good faith to settle such Dispute in the first instance by mutual discussions between authorised representatives of each Party. The Parties shall commence such discussions within seven (7) days of a request by either Party.

15.2 Referral to an Expert

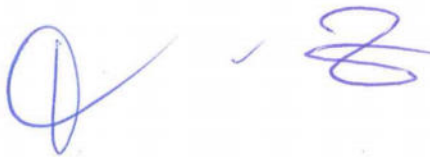
In the event that (i) the Parties are unable to reach an agreement within twenty (20) Days or such longer period as they may agree; or (ii) a Party fails to commence discussions within fifteen (15) days of a request by the other Party, then the Parties may jointly appoint an impartial expert to review and give the Parties a final determination, on any technical, commercial or any other issue (or combination of issues) in dispute, in such time and at the sole or agreed joint cost of either or both Parties. In the event that the Parties are unable to agree on the appointment of an impartial expert within thirty (30) days of a request from either Party to do so, the provisions of Clause 15.3 shall apply.

15.3 Arbitration

15.3.1 Any Dispute arising out of or in connection with this Agreement that has not been resolved following the procedures set forth in Clause 15.1 and 15.2 shall (regardless of the nature of the Dispute but without prejudice to the provisions of this Agreement requiring any matter to be referred to an expert for final determination) be referred to arbitration and finally settled in accordance with the Kigali International Arbitration Center ("KIAC") Rules (the "Rules") which Rules are deemed incorporated into this Agreement and the Parties hereby consent to arbitration thereunder.

15.3.2 In any arbitration conducted pursuant to Clause 15.3.1:

- (i) the number of arbitrators shall be three (3), to be appointed in accordance with the Rules;
- (ii) the place of arbitration shall be Kigali;
- (iii) the language to be used in the arbitral proceedings shall be English; and
- (iv) the case shall be administered by KIAC.



- 15.3.3 The arbitration tribunal may consolidate an arbitration arising out of or relating to this Agreement with any arbitration arising out of or relating to the PPA and the Land Lease Agreement if the subject matter of the disputes relates to essentially the same facts or transactions. Such consolidated arbitration shall be determined by the arbitration tribunal appointed for the arbitration proceedings that was commenced first in time.
- 15.3.4 The Parties undertake as a general principle to keep confidential all awards and orders in the arbitration, as well as all materials created for the purpose of the arbitration and documents produced by another party in the arbitration not otherwise in the public domain, save and to the extent that a disclosure may be required of a Party by legal duty, to protect or pursue a legal right or to enforce or challenge an award in bona fide legal proceedings before a state court or other judicial authority.
- 15.3.5 Each Party hereby agrees to be bound by any final decision or award of any arbitrators duly appointed under this Agreement.
- 15.3.6 Except as awarded by the arbitrators, each Party shall be responsible for its own costs incurred by it in connection with an arbitration hereunder.

[Signature Pages Follow.]

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IN WITNESS WHEREOF, the Parties hereto have executed and delivered this Agreement as of the date and year first above written.

Signed by Minister Germaine Kamayirese for)
and on behalf of the MINISTRY OF)
INFRASTRUCTURE OF THE REPUBLIC)
OF RWANDA:)

Signature



Signed by Ferdy Turasenga] for and on behalf)
of PROJECTCO:)
)
)
)

Signature



Acknowledged by Francis Gatare for and on)
behalf of RWANDA DEVELOPMENT)
BOARD:)
)
)
)

Signature

