

**Project agreement** between his majesty's Government of Nepal and SMEC West Seti hydroelectric corporation limited June 1997 Kathmandu, Nepal

## WEST SETI HYDROELECTRIC PROJECT PROJECT AGREEMENT

THIS AGREEMENT is made at Kathmandu, Nepal on the Twenty Seventh day of June 1997

BETWEEN His Majesty's Government of Nepal ("HMGN") AND SMEC WEST SETI HYDROELECTRIC CORPORATION LIMITED ("SMEC") HAVING ITS REGISTERED OFFICE IN Kathmandu District Kathmandu Metropolitan Ward No. 3 Maharajgunj.

### PREAMBLE

#### WHEREAS:

- A. HMGN and SNOWY MOUNTAINS ENGINEERING CORPORATION LIMITED ACN 008 654 224 (THE "Sponsor") signed a Memorandum of Understanding (the "MOU") on 7 July 1994, relating to the development of the West Seti Hydroelectric Project as described in clause 2.1 of this Agreement, near Dhunggad on the Seti River in the Far Western Development Region of Nepal.
- B. HMGN and the Sponsor since 7 July 1994 have been undertaking the activities under the MOU and the Survey License duly issued by HMGN, which include the preparation of the Detailed Engineering Report (the "DER") to be submitted by SMEC, a public limited company established by the Sponsor in Nepal for the purposes of the project.
- C. HMGN and SMEC, pursuant to the Electricity Act, 2049 have entered into an Export Agreement on 11 May 1997 with the implication that this Export Agreement will be an integral part of this Agreement.
- D. HMGN and SMEC now wish to describe the necessary detail so as to proceed with the objective of implementing the Project on the terms and conditions set out herein.

NOW THEREFORE the parties have agreed as follows:

#### 1. GENERAL

##### 1.1 Definitions

In this Agreement, words and phrases have the following meaning unless specifically provided otherwise:

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"Capacity Royalty" means the royalty charged on the installed capacity of each generating unit at the Power Station, being:

- (a) 100 Rupees per annum per kilowatt of installed capacity of each generating unit during the first 15 years following that generating unit's Unit Delivery Date; and
- (b) 1,000 Rupees per annum per kilowatt of installed capacity of each generating unit thereafter.

"Change in Law" means the occurrence after the date of signing of this Agreement of any of the following events:

- (a) the commencement or implementation of a new Law,
- (b) a change in or repeal of an existing Law;
- (c) a change in the application or interpretation of an existing Law; or
- (d) a cancellation or non-renewal of or a change in the conditions of any Government Approval granted to SMEC or otherwise relating to the Project.

"Court" means any court, tribunal or other judicial authority of Nepal having jurisdiction over SMEC, the Project or any action or transaction contemplated thereby.

"DER" means the Detailed Engineering Report of the Project prepared or to be prepared pursuant to the Survey Licence.

"Dollars" or "\$" means the legal currency of the United States of America

"EIA" means the Environmental Impact Assessment of the Project prepared as part of the DER in accordance with the National Environmental Impact Assessment Guidelines, 2050, the Environment Protection Act, 2053 and any relevant rules and guidelines made thereunder.

"Energy Royalty" means the royalty payable being:

- (a) 2% of the average tariff per kilowatt hour during the first 15 years following the first Unit Delivery Date; and
- (b) 10 % of the average tariff per kilowatt hour thereafter

Pursuant to the Electricity Act, 2049, and the electricity Regulations, 2050

"Export Agreement" means the Export Agreement in the form of the document attached as Annexure B executed by HMGN and SMEC pursuant to the Electricity Act, 2049.

"Financial Closing" means the date on which all Financing Documents have been signed by all parties to those documents.

"Financial Document" means each material document relating to the construction financing and long term financing (including debt and equity) of the Project.

"Force Majeure Event" means any event or circumstance or combination of events and circumstances which is beyond the control of the party affected thereby ("Affected Party") which causes or results in a default or delay in the performance

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by the Affected Party of any obligation or prevents or restricts the Affected Party from exercising any right under this Agreement where both:

- (a) such default delay or inability to exercise rights and
- (b) the occurrence and the effects or such event or circumstance

could not have been prevented overcome or remedied by the exercise by the Affected Party of a standard of foresight, care and diligence consistent with that of a prudent and competent person under the circumstances, which standard will include, where appropriate, good Electricity Industry Practice. Such events or circumstances include:

(x) fire, lightning, explosion, flood, earthquake, storm, cyclone, drought, action of the elements, riots, civil commotion, malicious damage, natural disaster, sabotage, act of a public enemy, act of God, war (declared or undeclared), blockage, revolution, radioactive contamination, toxic or dangerous chemical contamination or force of nature; and

(y) except as provided in paragraph (i) below, strikes, lock-outs, industrial and/or labour disputes and/or difficulties, work bans, blockages or picketing.

A Force Majeure Event will not include:

(i) strikes, lock-outs, industrial disputes, Industrial difficulties, work bans, blockages, picketing or similar action which is specific to the Project involving employees at the Project relating to Project issues: or

(ii) Mechanical or electrical breakdown and failure of equipment despite the compliance by the Affected Party with good operating practice unless such breakdown or failure has been caused by any one or more of the Force majeure Events examples of which appear in paragraph (x) or (y) above.

"Foreign Currency" means any currency other than Rupees.

"Generation Licence" means the licence for the generation of electricity as amended or supplemented from time to time.

"Good Electricity Industry Practice" means the exercise of that degree of skill, diligence, prudence and foresight that reasonably would be expected from the builders or operators of facilities for the generation and transmission of electricity in accordance with internationally accepted hydropower utility practices under conditions comparable to those applicable to the Project, consistent with applicable Laws and taking into account factors such as the use of hydroelectric/technology and the relative size, duty, age and technology of the Power Station.

"Government Agency" means any national, regional, local or municipal authority or regulatory department, body, commission, instrumentality, ministry, agency or administrative body or taxing authority in Nepal having jurisdiction over SMEC,

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the Project or any action or transaction contemplated in connection with this Agreement in Nepal.

"Government Approval" means any authorization permit, licence, consent, exemption or approval issued or required under any Law by or form HMGN or any Government Agency in connection with the Project.

"Law" means:

- (a) statutes of the Kingdom of Nepal and all rules, regulations, by-laws or other subordinate legislation or directions made under those statutes or otherwise which have the force of law.
- (b) guidelines, policies, binding requirements and mandatory approvals, including conditions, or HMGN or a Government Agency which have the force of law; and
- (c) principles of law or equity as established by decision of the Courts of the Kingdom of Nepal

"Lease Area" means the area leased or to be leased by HMGN to SMEC for the purposes of the Project pursuant to clause 10.3 (a)

"Power Station" means the power station to be constructed as part of the project including all fixtures, fitting, plant, machinery and equipment associated with the power station, details of which are set out in clause 2.1.

"PPA" means each power purchase agreement entered or to be entered into by SMEC for amongst other things the sale of electrical energy to be generated by the power station.

"Project" means the project described in clause 2.1 and Annexure A.

"Project Area" means the geographical area within which the Project will be developed, constructed and operated and includes the Right of Way between the Power Station and the Nepalese border with India over which the high voltage transmission lines will be constructed.

"Project Commissioning" means the Unit Delivery Date of the electricity generating unit at the Power Station which is last to commence commercial operation.

"Project Roads" means all roads constructed by SMEC within the Project Area.

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"Right of Way" means any easement or other right of way which is required to construct, operate and maintain high voltage transmission lines emanating from the Power Station.

"Rupees" means the legal currency of the Kingdom of Nepal.

"Survey Licence" means the Licence to Conduct Survey for the Production of Electricity number EDC/051/52/EPS004 issued by HMGN on 30 September 1994 to the Sponsor.

"Task Force" means the task force to be established under clause 5.

"Taxes" or "Tax" means taxes, levies, imposts, deductions, royalties, rates, charges, withholdings and duties (including stamp duties and transaction duties) together with any related interest, penalties, fines and other charges imposed under a Law in connection with the Project or this Agreement.

"Transmission Licence" means the licence for transmission of electricity as amended or supplemented from time to time.

"UNCITRAL" means the individual dated determined by SMEC on which each of the electricity generating units at the Power Station is first available for commercial operation at its rated capacity.

### Interpretation

In this Agreement unless the contrary intention appears:

- (a) a reference to this Agreement or a reference to another instrument includes any variation or replacement of either of them.
- (b) a reference to a statute, ordinance code or other law includes regulations and other instruments made under it and consolidations, amendments re-enactments or replacements or any of them,
- (c) a reference to a statute, regulation, ordinance, code or other law is a reference to a statute, regulation, ordinance, code or other law of the Kingdom of Nepal.
- (d) the singular includes the plural and vice versa;
- (e) one gender includes the other genders;
- (f) the word "person" include a firm a body corporate an unincorporated association, a Government Agency and an authority
- (g) a reference to a person includes a reference to the person's executors administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (h) if a period of time is specified and the period:

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- (i) dates from a given day of the day of an act or event, then it is to be calculated exclusive of that day; or
- (ii) is specified as commencing on a given day or the day of an act or event then it is to be calculated inclusive of that day;
- (i) if a word or phrase is specifically defined in this Agreement, than other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (j) headings are for ease of reference only and do not affect interpretation;
- (k) the terms 'including' and 'include' means including or include (as applicable) without limitation and
- (l) in interpreting this Agreement a construction that would promote the purpose or object underlying this Agreement must be preferred.

### Governing Law

This Agreement will be governed by the Law in force in Nepal

### Immunity

HMGN acknowledges and agrees that the activities contemplated by this Agreement are commercial in nature rather than government or public and therefore acknowledges and agrees that the right of immunity does not and will not arise with respect to such activities or in any legal action or processing arising out of or relating to this Agreement in respect of itself and its properties.

### Financing Closing

- (a) If Financial closing does not occur by 28 February 1999 and the failure was not caused by any action or inaction of HMGN or a Government Agency, than SMEC will provide to HMGN detailed reasons within 1 month as to why the target date was not achieved. If HMGN, acting reasonably is satisfied with the detailed reasons, then the target date will be extended to a mutually agreed date. If HMGN is not so satisfied, it will give SMEC a further notice requiring SMEC to achieve the target date within a further 6 months. If SMEC does not do so, HMGN may terminate his Agreement.
- (b) SMEC will, promptly after Financial Closing, provide HMGN with evidence that Financial Closing has occurred and a copy of each Financing Document.

## 2 THE PROJECT

### 2.1 Project Description

The Project will be a storage type project giving seasonal regulation with an installed capacity of 750 megawatts giving an annual average energy production of 3,137 gigawatt hours ("GWh") comprising 2,215 GWh primary energy and 922 GWh secondary energy. The Power Station will be underground and will have five

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units consisting of 150 MW Francis-type turbines. The reservoir will cover an area of 2,750 hectares. The dam will be a concrete faced graded full type with a height of 187 meters from the level of the river bed and with a crest length of 450 meters. It will have a total reservoir capacity of 1,604 million m<sup>3</sup>. The energy generated by the Power Station will be transmitted through double circuit transmission lines of 400 KV. Further details of the Project are set out in Annexure A. The final technical details of the Project will be subject to the results of the DER.

## 2.2 Project Viability

If after consultation with HMGN, SMEC determines on or before 28 February 1998 that on technical, economic or financial grounds the Project is not viable, SMEC will promptly notify HMGN from which time the parties will no longer be bound by this Agreement and the parties obligations under this Agreement will cease.

## 3. PPA TERMS

### 3.1 Terms

SMEC intends to exports energy generated by the Project on the terms set out in the Export Agreement. SMEC will promptly notify HMGN of each PPA after it is executed providing a copy of each signed PPA.

### 3.2 Variations

SMEC will promptly notify HMGN of any variation, modification or replacement to a PPA.

## 4. DER AND EIA

(a) HMGN and SMEC acknowledge that the DER is currently being prepared in accordance with the Survey Licence and will when completed, further report on the technical, economic and financial viability of the Project. The parue acknowledge that the completion of the DER is contingent on a number of mattes including the preparation of the EIA which is an integral part of the DER.

(b) The following works or event are proposed for completion in accordance with the dates indicated below.

(i) Execution of PPA	30 November 1997
(ii) Submission of DER (excluding the EIA)	31 December 1997
(iii) Approval of DER (excluding the EIA)	31 March 1998
(iv) Submission of EIA	30 June 1998
(v) Application for Generation Licence	25 September 1998
(vi) Application for Transmission Licence	25 September 1998
(vii) Approval of EIA	25 September 1998
(viii) Grant of Generation Licence	37 January 1999

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(ix) Grant of Transmission Licence

31 January 1999

SMEC and HMGN will use all reasonable endeavours to ensure these target dates are achieved. Should SMEC fail to submit the DER by 31 December 1997 or the EIA by 30 June 1998 and the failure was not caused by any action or inaction of HMGNA or a Government agency then HMGN may give SMEC notice requiring SMEC to provide detailed reasons within 30 days as to why the target date was not achieved. If HMGN acting reasonably is satisfied with the detailed reasons, then the target date will be extended to a mutually agreed date. If HMGN is not so satisfied it may give SMEC notice if SMEC does not do so. HMGNE may terminate this Agreement. Where target dates are extended under this clause, then HMGN and SMEC will review all target dates specified in paragraph (b) and extend these where necessary to take account of the impact of extension on EIA target dates.

#### 5. ESTABLISHMENT OF TASK FORCE

(a) HMGN will establish a task force (the "Task Force") in accordance with the clause within 30 days from the signing of this Agreement. The working procedures of the Task Force may be prescribed by HMGN and notification to that effect will be communicated to SMEC.

(b) The Task Force will be comprised of senior representatives from relevant ministries of HMGN

(c) The main objective of the Task Force is to facilitate and expedite communication and to facilitate and expedite the process for the making of decisions affecting the Project by the relevant ministries and HMGN will ensure that the Task Force meets and performs expeditiously to most effectively achieve this objective.

(d) SMEC may appoint 1 person (and at its discretion, any substitute) as an observer to communicate with and participate in the operations of the Task Force. The observer will be present at all meetings of the Task Force and the Task Force will notify the observer (other than in an emergency) at least 14 days in advance of such meetings.

#### 6. APPROVALS

(a) Either party may at any time give the other party notice setting out:

- (i) any act, matter or thing which it requires to be done, issued or approved by the other party pursuant to this Agreement or a Law and
- (ii) the terms and conditions on which it requires such act, matter or thing to be done, issued or approved consistent with this Agreement and the Law,

(b) If the other party has not, by the date which is 30 days from the date on which it receives the notice

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- (i) done, issued or approved the act, matter or thing referred to in the notice on the terms and conditions set out in the notice or such other terms and conditions as may be agreed by the party giving the notice: and
- (ii) notified the party giving the notice that it will not do, issue or approve the act, matter or thing referred to in the notice on the terms and conditions set out in the notice.

then as between the parties, such act, matter or thing will be deemed to have been done, issued or approved on the date as specified and on the terms and conditions set out in the notice.

- (c) if the party, receiving the notice, notifies the party giving the notice in accordance with paragraph (b) (ii) that it will not do issue or approve the act, matter or thing referred to in the notice on the terms and conditions set out in the notice, then the parties will negotiate expeditiously in good faith to resolve the outstanding issues which have caused the party receiving the notice not to do issue or approve the act, matter or thing.
- (d) This clause does not apply where a separate period of time is prescribed by Law or by this Agreement or where the act, matter or thing must be done, issued or approved by the Council of Ministers of HMGN.
- (e) When communicating under this clause, either party must refer expressly to this clause in the notice.

## 7. LICENCES FOR DEVELOPMENT, CONSTRUCTION AND OPERATION

### 7.1 Grant of Licences

HMGN will pursuant to the Law promptly grant all licences to SMEC which are required for the development, construction, ownership and operation of the Project.

### 7.2 Generation Licence

(a) Subject to paragraph (b) the Generation Licence will be for a period of 30 years from the date of issue of the licence on accordance with the Electricity Act, 2049 and the Electricity Regulations, 2050

(b) The validity period of the Generation Licence may be extended by HMGN on the review of the financial analysis of the Project. SMEC will provide all financial data necessary for HMGN to undertake the financial analysis of the Project.

(c) HMGN will notify SMEC of the result of its financial analysis based on the financial data received from SMEC or other sources by 30 July 1997.

(d) In accordance with Rule 20 of the Electricity Regulation 2050, the Generation Licence will confer on SMEC the right of the uninterrupted flow of the West Seti River to the Project. HMGN will not issue and will ensure that no Government Agency issues, any other licence or permit for use of the water in the catchment area that substantially impairs the flow of such water.

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### 7.3 Transmission Licence

(a) Subject to paragraph (b) the Transmission Licence will be for a period of 30 years from the date of issue of the licence in accordance with the Electricity Act, 2049 and the Electricity Regulations, 2050.

(b) If the validity period of the Generation Licence is extended pursuant to clause 7.2 (b) then HMGN will extend the validity period of the Transmission Licence by a period of time equal to such extension.

### 7.4 Local Licences and Permits

HMGN will promptly, if requested by SMEC, provide assistance to SMEC in its discussions with Government Agencies (including local bodies such as district and village development committees and municipalities) for obtaining any necessary licence, consent, permit, authorization or approval in connection with the Project.

### 7.5 Communication Permits

(a) HMGN will, in accordance with prevailing Laws, promptly issue necessary permits to SMEC to import, install and use suitable radio communication systems including satellite communication equipment and "walkie-talkies" during the construction phase of the Project as well as during regular operation's as required to maintain contact internally within the project as well as externally to existing and future systems

(b) Any system connection with either the national telecommunications system or directly with any international system will be subject to approval from the Ministry of Communications, Nepal Telecommunication Corporation or any other related agency.

### 7.6 Explosive

HMGN will assist SMEC in making the necessary arrangement under prevailing Laws with relevant Government Agencies to obtain permission to import transport, store and use explosives as are required for the Project construction work and to prepare blasting slurry at the Project site.

### 7.7 Security

Upon request from SMEC, HMGN will make necessary arrangement for security during the term of the Generation Licence as specified in section 31 of the Electricity Act, 2049.

## 8. SURVEY

HMGN will assist SMEC in the completion and verification of the surveys for the Project SMEC will coordinate these services.

## 9. ENVIRONMENTAL IMPACT ASSESSMENT

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(a) HMGN will approve the EIA or will advise SMEC of any areas of the EIA with which it is not satisfied within 90 days of SMEC providing the EIA to HMGN.

(b) If HMGN advises SMEC that it is not satisfied with any aspect of the EIA then the parties will negotiate expeditiously in good faith to resolve those aspects of the EIA advise by HMGN.

(c) The approved EIA is to be an integral part of the detailed design, construction commissioning, operation and maintenance of the Project.

(d) SMEC will use reasonable endeavors to ensure that the Project is carried out with due to ecological, environmental and social factors.

(e) SMEC will comply with and promptly rectify any non-compliance with the environmental, occupational, health and safety requirements detailed in the EIA and as required by the National Environmental Impact Assessment Guidelines, 2050, the Environment Protection Act, 2053 and any relevant rules and guidelines made thereunder.

## 10. LAND AND WATER

### 10.1 Strategic Plan

SMEC will develop a strategic plan for land acquisition in compliance with the Land Acquisition Act, 2034, to ensure satisfactory and timely resettlement and compensation where necessary within the Project Area.

### 10.2 Acquisition, Compensation and Resettlement

SMEC will prepare formal arrangements for resettlement or compensation of persons affected by the Project before construction of works for the Project begins. Where this is not possible, HMGN will, under prevailing Law, compulsorily acquire such land and property as may be required by SMEC for the Project and SMEC will promptly pay fair and reasonable compensation for the land and property so acquired.

### 10.3 Land and Water owned by HMGN

(a) HMGN will make available to SMEC all necessary land, structures, buildings and utilities owned by third parties for the construction of the Project in accordance with section 33 of the electricity Ace. 2049. If the land is already owned by HMGN, the land will be made available in lease. With either a reasonable annual rent or such other rent as may as be required by applicable Law. For period of the Generation Licence for land needed for permanent use, or for such shorter period as may be necessary for temporary use.

(b) In respect of land and water owned by HMGN, HMGN will provide to SMEC, its employees, contractors, subcontractors and advisers unrestricted access to forest land, river beds, river banks and water, without substantially affecting the environment, in order to:

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- (i) construct and use all necessary buildings and other structures, roads, ropeways, rail lines and transmission lines;
- (ii) open tunnel adits and dump spoil from tunnels in mutually agreed designated areas.
- (iii) lay pipelines to take water from springs;
- (iv) during the construction period, open quarries, take out or deposit stone, sand and earth thereon; and
- (v) perform any other activity necessary for the construction, operation and maintenance of the Project and the generation of energy from the Project.

HMGN will not charge any payment for activities permitted pursuant to clause 10.3 (b) in respect of the Lease Area, nevertheless SMEC will pay any charges imposed pursuant to the Forest Act, 2049 and the Forest Regulations, 2050, with respect to forest area. SMEC may exclude any person from areas to which SMEC has access under his clause, where necessary or desirable in the interests of safety.

#### 10.4 Transmission Line

If HMGN, pursuant to section 20 of the Electricity Act, 2049, specifies that the transmission line built and owned by SMEC is a national transmission line or part of the national grid of Nepal, then HMGN or its duly appointed authority will enter into a separate agreement with SMEC with respect to the terms and conditions for the use of such transmission line prior to the time of such action. provide that SMEC will at all times have priority use of such transmission line.

#### 10.5 Roads to Project Site

- (a) HMGN will make available to SMEC all existing roads.
- (b) HMGN will allow SMEC, its employee, contractors, subcontractors and advisers the use of existing roads for necessary transport in connection with the construction and operation of the Project, including without any cost to HMGN the right to modify, improve and strengthen roads and bridges, temporarily or permanently, as may be necessary for transport of heavy equipment.
- (c) SMEC will repair of cause to be repaired any damage to existing roads or bridge caused by SMEC's use in such a manner as to ensure that any such damaged roads or bridges are returned to substantially the same condition they were in immediately prior to such damage. SMEC will use reasonable efforts to minimize the obstruction of traffic during any repair contemplated by this paragraph.
- (d) HMGN will allow SMEC, its employees, contractors, subcontractors and advisers to construct temporary and permanent roads, tracks, bridges and ropeways as required within a Project Area to permit the mobilization of heavy construction and power equipment. Such facilities will be constructed and such temporary facilities will be dismantled and disposed of by SMEC in

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accordance with section 24 of the Electricity Act 2049, the environmental conditions provided in the Generation Licence and Transmission Licence and all other applicable environment Laws. SMEC will obtain the prior consent of HMGN for these construction works within forest areas as referred to in the Forest Act, 2049 and the Forest Regulations, 2050.

#### 10.6 Project Area

SMEC will have control over access to the Project sites including the dam. Power Station, lake and lake foreshore and the use of all Project Roads, with the authority to restrict access and use to personnel authorized by SMEC in the interests of safety and catchments management. SMEC will allow local residents free and unfettered access to the lake and lake foreshore.

### 11. ENGAGEMENT OF NEPALESE LABOUR AND PROFESSIONAL SERVICES

#### 11.1 Use of Local Skills

SMEC, as much as possible and to the extent qualified, will use and maximize the use of the available local skills and labour crafts, local institutions, consulting firms, professionals, individuals, contractors and suppliers for the development and operation of the Project pursuant to the Labour Act, 2048, and the Labour Regulations, 2050. SMEC is entitled to determine all human resource procedures required to administer these services.

#### 11.2 Technology and Training

- (a) Throughout the construction, operation and maintenance of the Project. SMEC will perform the transfer off technology and skills for the purposes of section 4 of the Hydropower Development Policy, 2049, through the systematic job-related training of local personnel engaged by SMEC and through the introduction of modern management methods and practices in accordance with prudent utility practice.
- (b) SMEC will employ Nepalese citizens to the extent possible to receive the transfer of technology and skills as refereed to in clause 11.2(a) and will ensure that to the extent possible, its contractors and subcontractors also employ Nepalese citizens, where qualified.
- (c) SMEC acknowledges that the objective of the transfer of technology and skill as referred to in clause 11.2(a) is to build the technical and managerial competence of local personal, and to establish a system for quality management in hydropower design, construction, operation and maintenance.

### 12. PROCUREMENT AND ENTRY REQUIREMENTS

#### 12.1 Port of Entry and Transport Arrangements.

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(a) HMGN will facilitate the import of plant, construction materials and equipment required for the Project at the point of entry into Nepal and their transportation to the Project Area.

(b) HMGN will issued all necessary import licences for plant, construction materials and equipment imported for the purposes of the Project.

(c) HMGN shall, if necessary, make representation to concern parties with a view to facilitate expeditious access of all plant, construction materials and equipment necessary for the project while they are in traffic-in-transit from India to Nepal.

## 12.2 Diesel Fuel

In the event of shortage in the supply of diesel fuel during construction of the Project, HMGN will use its best endeavours to ensure the supply of diesel fuel during construction of the Project on a priority basis.

## 12.3 Visas

(a) HMGN will promptly issue appropriate visas and permits in accordance with applicable Laws to expatriate personnel and their dependents whom SMEC considers are needed in Nepal in connection with the Project.

(b) SMEC will furnish to HMGN, to the extent possible, prior notifications and details, including timing, job description and qualifications of the personnel to be assigned to the Project.

## 13. INFRACTURE

HMGN will facilitate the construction and operation of the Project, and in particular the following infrastructure requirements.

(a) education facilities ;

(b) medical and emergency medical evacuation facilities; and

(c) a helipad and landing strip

## 14. REPATRIATION AND ACCOUNTS

### 14.1 Export

SMEC intends to export primary energy generated by the Project to Indian pursuant to PPAs to be negotiated with Indian state electricity boards. However the Project will, during certain times of year, generate secondary energy, which SMEC will endeavour to sell either in India or Nepal on a spot basis, depending on demand. Accordingly SMEC will need HMGN to provide Foreign Currency facilities to the extent that SMEC makes sales of such energy in Nepal.

### 14.2 Foreign Currency and Repatriation

In accordance with section 13 of the Electricity Act, 2049 will promptly on request by SMEC provide or will ensure the availability or all necessary Foreign Currency at prevailing market rates of exchange, and will permit at no charge in accordance

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with the Foreign Investment and Technology Transfer Act, 2049, the repatriation of moneys received from time to time by SMEC, from the sale of secondary energy in Nepal.

#### 14.3 Bank Accounts

HMGN will permit SMEC to maintain bank accounts outside Nepal for the deposit of revenues received from the sale of energy generated by the Project.

### 15. PAYMENT PROPORTION

SMEC will make payments to HMGN on account of the Energy Royalty, export tax and the amount equivalent to 10% of energy required under clauses 18.2 and 18.4(b), in the same Foreign Currencies and in the same proportions of each Foreign Currency, as for PPA receipts after satisfaction of debt servicing requirements under the Financing Documents.

### 16. TAXES

#### 16.1 Income Tax Exemption

- (a) In accordance with section 12 of the Electricity Act, 2049, SMEC will be exempt from payment of income tax for a period of 15 years from the first Unit Delivery Date.
- (b) After the 15 year period referred to in paragraph (a), SMEC will pay income tax in accordance with relevant Laws, when is at any time 10% less than the corporate income tax on other Nepalese industrial public limited companies imposed by HMGN under such Laws, in accordance with section 12(2) of the Electricity. Act 2049
- (c) In accordance with section 12 (6) of the Electricity Act, 2049, if SMEC reinvests capital in order to
  - (i) diversify the project
  - (ii) expand the installed capacity of the Power Station by 25% or more
  - (iii) modernize the technology of the Project or
  - (iv) develop a subsidiary industry

then SMEC may deduct 50% of any amount so invested from its taxable income as a lump sum deduction or by installments over the period of 3 years.

SMEC will notify HMGN of its intention to make such investment by providing a description of the intended work, the starting date and the estimated completion date. One the work has been completed, SMEC will notify HMGN of completion and the final cost of the work. Nothing contained in this clause 16.1 will be construed as approval for works that would otherwise be governed by existing Laws.

#### 16.2 Tax Depreciation of Project Costs

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(a) SMEC will be entitled to depreciate any item of plant, machinery or equipment procured during the construction period by straight line depreciation in equal deductions each year from the date of commissioning of the item over the term of the Generation licence and Transmission Licence.

(b) SMEC may adjust its taxable income by amortising all Project costs and expenses in accordance with international standard accounting practices (including all costs and expenses incurred in providing the principle features of the Project set out in clause 2.1 and interest and finance charges capitalized during the construction period).

### 16.3 Contract Tax

(a) The parties acknowledge that:

(i) SMEC intends to undertake the project through a single turnkey engineering procurement and construction contract with a single head contractor.

(ii) such a constructor would provide for all construction costs including capitalized interest and finance charges on the construction financing, premiums for performance guarantees and any cost escalation during construction and

(iii) the contract tax payable on such a contract under the contract. Tax Act, 2023, would be considerably higher than if SMEC were to separately contract the supply of goods and materials (whether to be imported or to be procured locally, in the case of goods and materials which are produced locally, both being exempt under section 8A(a) and (e) of that Act) from the supply of labour and services.

(b) Accordingly, HMGN will resume that the contract tax payable on the Project contract by SMEC will not be levied on the value of the goods and materials component of the contract which would be exempt under sections 8A(a) and (e) of that Act, provided such goods and materials are used exclusively in connection with the Project.

(c) HMGN may inspect the inventory records for the goods and materials to satisfy itself that they are being used exclusively for the Project.

### 16.4 Tax Exemption for Bond

(a) SMEC may issue power bonds to the public in Nepal in accordance with applicable Laws for financing or refinancing all or any portion of the construction costs (including interest and finance charges capitalized during the construction period) of the Project.

(b) If SMEC issues any such power bonds in accordance with applicable Laws, HMGN may grant to the holders of such power bonds an exemption from income tax payable on interest income from such power bonds.

### 16.5 Customs and Import Duties

(a) HMGN will provide an exemption from import licence fees and sales tax and impose customs duty of 1% on plant, machinery and equipment including spare

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parts imported into Nepal for the purposes of the Project (in accordance with section 12(7) of the Electricity Act, 2049).

(b) HMGN will provide a facility to SMEC to import equipment and other items (excluding consumable goods) on a re-export basis no later than 3 months from the date of Project Commissioning and no import licence fees, sales tax or customs duty will be levied by HMGN on such items. Such items to be imported may include equipment such as 4×4 vehicles, helicopters and aircraft. If required by HMGN, SMEC will lodge a bank guarantee for this facility for the amount of the import licence fees, sales tax and customs duty. HMGN will promptly release the bank guarantee on receipt of confirmation that the items have been re-exported.

(c) SMEC will furnish a list of required equipment and other items (excluding consumable goods) under this re-export scheme to HMGN before the commencement of construction of the Project and it is agreed that the list may be revised every 6 months, if required.

#### 16.6 Export Tax

(a) Pursuant to section 22(3) of the Electricity Act, 2049, SMEC will pay to HMGN an amount per annum on account of export tax as prescribed by HMGN taking into consideration all relevant factors by 30 July 1997.

(b) payments for export tax will be made at the same time as payments are made under clause 16.7 (b) (ii).

#### 16.7 ... to HMGN

Energy Royalty and Capacity Royalty will be paid by SMEC to HMGN in accordance with paragraph (b) and section II of the Electricity Act, 2049, and the electricity Regulations, 2050.

Royalty payments will be made as follows:

- (i) Capacity Royalty will be paid quarterly in advance, irrespective of energy generation. The first such quarterly payment will be paid within 30 days of the first Unit Delivery Date and will thereafter continue to be paid on the quarterly anniversary of that date.
- (ii) Energy Royalty will be paid quarterly in arrears on the same date as the Capacity Royalty is paid, other than on the first payment date for the Capacity Royalty.

#### 16.8 Land Tax

SMEC will pay land Tax at the rates prevailing upon signing of this Agreement or any land (or rights over land) acquired for the Project. Notwithstanding anything contained in clause 27, if there is an increase in the rate of land Tax than the rate payable by SMEC will be increased by an amount equal to 50% of any such increase up to a maximum amount which is equal to 1.5 times the rate prevailing upon signing of this Agreement.

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### 16.9 No Income Tax on Interest and Dividends

No income tax will be imposed on interest or finance charges payable to foreign investors pursuant to section 5 (1) of the Foreign Investment and Technology Transfer 'Act. 2049. No income tax will be imposed on dividends earned on any investment pursuant to section 15 (0) of the Industrial Enterprises Act. 2049

### 16.10 Staff Bonus and Housing

HMGN assures SMEC that it will review the application of the requirements for staff bonus and staff housing under the Electricity Regulations, 2050, given the extent and nature of the Project, so as to make them reasonable.

### 16.11 Local Taxes

HMGN will assist SMEC in discussions with local bodies regarding the payment of local Taxes for local construction materials such as stone, gravel, sand, clay and the like and tolls for all goods, plant, materials and equipment transported to the Project Area in order to ensure that the effect of such Taxes and tolls is fair and equitable.

### 16.12 Loan Registration Fees

HMGN will grant an exemption from any loan document registration fees which might otherwise be imposed on or **theured** by SMEC in connection with the finance provided by non-Nepalese debt participants (including registration fees imposed in connection with any loan or mortgage document for the Project).

## 17. PROJECT DEVELOPMENT

### 17.1 SMEC Responsibilities

(a) SMEC will be solely responsible for:

- (i) planning, scheduling, monitoring, reporting and cost control;
- (ii) procedures for drawings, specifications and technical documents to be prepared by contractors, sub-contractors, equipment manufacturers and other persons;
- (iii) conceptual construction contract packages for turnkey implementation and project management and administration procedures;
- (iv) arranging financing for the Project;
- (v) site supervision;
- (vi) quality assurance;
- (vii) obtaining performance guarantees by equipment suppliers of individual equipment items;
- (viii) monitoring overall performance of the Project; and
- (ix) liaising between HMGN and SMEC's employees, contractors, subcontractors and advisers.

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(x)

(b) During construction of the Project, SMEC will submit semi-annual reports to HMGN in accordance with the Electricity Regulations, 2050.

(c) HMGN will deal exclusively with SMEC in making arrangements for providing all right granted under his Agreement to SMEC's employees, contractors, sub-contractors and advisers.

#### 17.2 Submission of Documentation

(a) SMEC will at its own cost submit 3 hard copies of the design drawings, construction drawing, as built drawing and other engineering details to HMGN. In addition SMEC will provide a microfilm of the as built drawings.

(b) HMGN may at its own cost inspect the Project works to satisfy itself that the work is being performed in accordance with the Generation on Licence, the Transmission Licence and Good Electricity Industry Practice.

(c) It is the responsibility of SMEC to inform HMGN of any material changes in the design construction of engineering details within a reasonable time after any such change is made.

#### 17.3 HMGN Assistance and Costs

HMNG agrees to make a available to SMEC all available documents, data, information and all other reports, studies and papers relevant to the study of the Project including copies of all investigations and studies carried out since the inception of the Project. The modality of recovery by HMGN of the cost of such study reports, documents and the like supplied by HMGN to SMEC will be mutually agreed at the time of issue of the Generation Licence.

#### 17.4 Future Power Connections:

SMEC will design the Project to enable HMGN to take a supply of energy from the Project into the national grid. The terms and conditions on which the connection will be made will be mutually agreed at the time.

#### 17.5 Insurance

(a) SMEC will during construction of the Project take out and maintain appropriate levels of insurance a required for projects of this nature, having due regard for local conditions.

(b) SMEC will be responsible for insuring the Project against all risks (for which insurance is available on reasonable commercial terms) during operation of the project.

(c) SMEC will be responsible for developing, monitoring and controlling an insurance program for all insurances required for the Project.

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(d) SMEC will provide HMGN with copies of all policies of insurance or policy certificates taken out and maintained under this clause 17.5.

## 18 SALE AND EXPORT OF ELECTRICITY

### 18.1 HMGN Review

(a) HMGN will have the option of receiving 10% of power and energy generated from the Power Station free of charge or an amount equivalent to that portion of energy HMGN will advise SMEC whether it wishes to exercise this option following a review of the viability of the Project.

(b) This review of the viability of the Project will be based on the financial analysis of the Project incorporate all necessary financial data to be provided by SMEC.

(c) HMGN will notify SMEC of the result of its review based on the financial data received from SMEC or other sources by 30 July 1997.

### 18.2 Payment

Subject to clauses 18.1 and 18.4

(a) SMEC will pay to HMGN an amount equivalent to 10% of the energy; and

(b) payment by SMEC to HMGN under paragraph (a) will be made at the same time as payments are made under clause 16.7 (b) (ii).

### 18.3 Royalties

Energy Royalty will not be payable by SMEC to HMGN in respect of the energy to be provided by SMEC to HMGN free of charge or an amount equivalent to that energy, as the case may be.

### 18.4 Priority

(a) Money payable from time to time by SMEC to debt participants or for operating costs in connection with the Project will have priority in payment over moneys payable to HMGN under this Agreement. Following payment to debt participants and of operating costs in connection with the Project, if, due to the failure by power purchasers under any PPA to pay on time moneys payable to SMEC, there are insufficient moneys to pay HMGN, the obligation to pay HMGN will be deferred until SMEC has sufficient funds to make payment.

(b) During any such period of deferment of payment.

(i) Interest will accrue on such deferred payments at a rate equal to the greater of 6 percent per annum and the US\$ Dollar London Inter Bank Offer Rate (LIBOR) for 3 month advances quoted on the Reuters screen page British Bankers Association LIBOR at the start of the period when such payments are due, and such interest will be payable by SMEC when such deferred payments are made to HMGN, and

(ii) no distributions may be made to equity participants in the Project.

## 19 OPERATION AND MAINTENANCE

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### 19.1 Procedures, Manuals and Reports

(a) SMEC will develop, prepare and update as necessary from time to time, procedures manuals and drawings for the safe and efficient operation and maintenance of the Project.

(b) SMEC will provide 3 hard copies of all procedures, manuals and drawings prepared under paragraph (a) to HMGN within a reasonable time after Project Commissioning.

(c) During the operation and maintenance of the Project, SMEC will submit to HMGN annual reports including audit reports and operation and maintenance details in accordance with the Electricity Regulations, 2050.

### 19.2 Power Station Operation Arrangements

(a) SMEC will ensure that the Project is developed and operated in collaboration with the Snowy Mountains Hydroelectric Authority of Australia.

(b) SMEC may engage substitute qualified entities or organizations to collaborate in the operation and maintenance of the Project with the prior approval of HMGN.

## 20. PROJECT HANDOVER

SMEC will operate and maintain the Project in accordance with Good Electricity Industry Practice until the expiration of the Generation Licence and the Transmission Licence, and will hand over the Project to HMGN in good running condition, free of cost to HMGN.

## 21 ASSIGNMENT AND MORTGAGE

### 21.1 Assignment or Mortgage by SMEC

(a) SMEC may for the purposes of arranging or re-arranging financing for the Project, assign or otherwise transfer all or any part of its rights or benefits (but not its obligations) under this Agreement to any bank or financial institution (whether domestic or international) providing financing for the project.

(b) Upon an assignment or transfer under paragraph (a), the assignee or transferee will be vested with all the rights and benefit assigned or transferred to in provided that such assignment or transfer will not increase HMGN's financial obligations under this Agreement.

(c) SMEC will promptly give HMGN written notice of any assignment or transfer under paragraph (a) and HMGN will promptly acknowledge in writing such assignment.

(d) SMEC may mortgage or otherwise give security over its assets and undertaking including any lease, licence or other interest granted by HMGN pursuant to this Agreement to any bank or financial institution (whether domestic or international) providing financing for the Project.

### 21.2 Assignment by HMGN

HMGN may not assign or transfer its rights or obligations under this Agreement to any other person or entity.

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## 22. VALIDITY

This Agreement becomes effective when it is signed by both parties and will terminate on the expiration of the Generation Licence and the Transmission Licence unless terminated earlier pursuant to the provisions of this Agreement.

## 23. COMPLIANCE WITH LAW

SMEC and its employees, together with their contractors and sub-contractors involved in the Project will abide by the Laws of Nepal

## 24. RESOLUTION OF DISPUTES

### 24.1 Dispute Resolution By Consultation

(a) Each of HMGN and SMEC will designate in writing to the other party a representative who will be authorized to resolve any dispute or difference arising out of this Agreement in an equitable manner.

(b) The parties agree to attempt to resolve all disputes or differences promptly equitably and in a good-faith manner.

(c) The parties further agree to provide each other with reasonable access during normal business hour to any and all records, information and data pertaining to any such dispute or difference other than any confidential communications between any party and its legal advisers or any such records, information or data which any party has agreed with any third party to keep confidential.

(d) If a party (the "Notifying Party") wishes a dispute or difference under this Agreement to be settled under this clause 24.1, it must give the other party notice of the dispute or difference. Within 15 days of receipt of such notice, the other party's designated representative to attempt to resolve the dispute or difference in accordance with paragraph (b).

(e) If the designated representatives are unable to resolve a dispute under this Agreement within 60 days of the Notifying Party giving a notice under paragraph (d) such dispute will be referred to arbitration in accordance with clause 24.2

### 24.2 Dispute Resolution by Arbitration

a) In the event that any dispute of difference is unable to be resolved between the parties pursuant to clause 24.1, then such dispute or difference will be settled exclusively and finally by arbitration irrespective of the magnitude of the dispute or difference, the amount to with the dispute or difference related or whether such dispute or difference would otherwise be considered justiciable or suitable for resolution by any court or arbitral tribunal.

b) This Agreement and the rights and obligations of the parties will remain in full force and effect pending the award in such arbitration proceeding, which award will determine whether and when termination of this Agreement if relevant, will become effective.

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- c) Each arbitration will be conducted in accordance with the Rules of Arbitration of UNCITRAL as in force at the time of registration of the dispute except insofar as such Rules of Arbitration conflict with the provisions of this clause 24.2 in which event the provisions of this clause 24.2 will prevail.
- d) Each arbitral tribunal will consist of 3 arbitrators. Each party will appoint one arbitrator for each arbitration and the third arbitrator will be appointed by the London Court of International Arbitration ("LCIA") in accordance with the Arbitration Rules of the LCIA. No arbitrator will be a present employee or agent of or consultant or counsel to, either party or any affiliate of either party.
- e) Each arbitration will be conducted in Kathmandu, Nepal and the parties agree to exclude any right of application to any court or tribunal of competent jurisdiction in connection with any question of law arising in the course of any arbitration in connection with this Agreement.
- f) The language to be used in each arbitration will be English, and all written documents to be provided in each arbitration will be in English.
- g) Any decision or award of an arbitral tribunal appointed pursuant to this clause 24.2 will be final and binding upon the parties. Each of HMGN and SMEC waives, to the extent permitted by Law, any rights to appeal or any review of such award by any court or tribunal of competent jurisdiction. Each of HMGN and SMEC agrees that a judgment upon any arbitration award may be entered as a judgment in any court of competent jurisdiction.
- h) The costs of each arbitrator appointed by the parties will be borne by the party appointing him or her and costs of the third arbitrator will be equally shared by the parties.
- i) All arbitration awards will be denominated in the currency to which such dispute relates, Dollars or Rupees.
- j) Where the arbitral tribunal determines to make an award for the payment of money (whether on a claim for a liquidated or an unliquidated amount), the arbitral tribunal will have power to include in the sum for which the award is made interest at a rate of 10 % or such other rate as the arbitral tribunal may direct on the whole or any part of the money for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.
- k) Interest on the amount to be paid in accordance with an arbitration award at a rate of 10% or such other rate as the arbitral tribunal may direct will be due and payable to the prevailing party from the date on which the award is made up to and including the date of payment.

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## 25. CONFIDENTIALITY AND INFORMATION

### 25.1 Disclosure of Confidential Information

- (a) Each party will not divulge any trade, commercial or technical secrets or confidential matters, reports, documents, data, information (including the DER) of another party to any third party except:
- (i) as required by law;
  - (ii) with the consent of such other party;
  - (iii) to such of its officers, employees and those of its related bodies corporate as need to know of such matter for the ordinary business purposes of the party, provided that it must also use its best endeavours to ensure that all matters divulged are kept confidential;
  - (iv) to any of its consultants, banks, financiers, insurers or other advisers (other than advisers of the kind referred to in paragraph (v)); or
  - (v) to any accountant or legal adviser.
- (b) Before a party discloses any information in the circumstances described in paragraph (a)(iv), it will:
- (i) notify the other party of its intention to make such disclosure; and
  - (ii) procure the execution and delivery to that other party of an undertaking by the person to whom the disclosure is proposed to be made being in the same terms (with necessary changes) as the undertakings contained in this clause.

### 25.2 Provision of Information

Each of the parties will provide to the other party within a reasonable time of request such information as that party has available which is or may be necessary or useful to enable such other party to perform its obligations under this Agreement.

## 26. FORCE MAJEURE

### 26.1 Effect on Performance of Obligation

- (a) Subject to clause 26.2 (b) and in compliance with clause 26.3, if a party (the "Affected Party") is unable wholly or partly:
- (i) to exercise any right; or
  - (ii) to perform, or to perform on time and as required, any obligation (not being an obligation to pay money).

Under this agreement by reason of the occurrence of a Force Majeure Event, that right (the "Affected Right") or obligation (the "Affected Obligation") will be extended or suspended (as the case may be), so far as the Affected Party's ability to exercise or perform it is affected by that Force Majeure Event

- (b) Without limitation, if the occurrence of a Force Majeure Event results in any period of delay in the time planned by SMEC for Project Commissioning, or any inability to generate or transmit energy for a

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period of time after Project Commissioning, then HMGN will , upon receipt of an application by SMEC extend the Generation Licence and the Transmission Licence in accordance with the Electricity Act, 2049, and the Electricity Regulations, 2050, for an amount of time equal to that period or the aggregate of such periods. HMGN acknowledges that this provision applies even if the Force Majeure Event occurs in the last 12 months of the validity period of the licences.

## 26.2 Obligation to Mitigate

- (a) If a Force Majeure Event occurs, the Affected Party will as soon as practicable after the occurrence of that Force Majeure Event, use reasonable endeavours to:
  - (i) mitigate the consequences of that Force Majeure Event; and
  - (ii) minimise any resulting delay in the exercise of the Affected Right or the performance of the Affected obligation.

The consequence of a failure by the Affected Party to comply its obligation under this paragraph (a) to minimize delay is limited to reduction in the period and extent of the extension or suspension in accordance with paragraph (b).

- (b) The period of extension or suspension under clause 26.1 will exclude any delay in the exercise of the Affected Right or performance of the Affected Obligation which is attributable to a failure by the Affected Party to comply with paragraph (a).

Furthermore, the extent to which obligations are suspended under clause 26.1 will be reduced to the extent that the Affected Party's inability to perform the obligation is attributable to a failure by the Affected Party to comply with paragraph (a).

- (c) Despite anything in this clause to the contrary, an Affected party will not be obliged to incur any expenditure insofar as a Force Majeure Event is caused by a breach of this Agreement by the other party (other than a breach involving a failure to pay any amount under this Agreement),,
- (d) The Affected Party will bear the onus of proving that it has complied with its obligations under paragraph (a).

## 26.3 Obligation to Notify

- (a) If an Affected Party reasonably considers that a circumstance has arisen which constitute or result in a Force Majeure Event in relation to it, the Affected Party will as soon as reasonably practicable thereafter give the other party notice:
  - (i) of that circumstance; and
  - (ii) of the rights or obligations of the Affected Party under this Agreement which have been or will be or are likely to be, affected by that circumstance.

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- (b) In the case of a Force Majeure Event which prevents the Affected Party from performing an obligation under this Agreement the Affected Party will keep the other party informed both at reasonable intervals and upon request by the other party, as soon as practicable following the receipt of that request, of:
- (i) the Affected Party's estimate of the likely duration of the Force Majeure Event;
  - (ii) the action taken and the action proposed to be taken by the Affected party in complying with its obligations under clause 26.2(a);
  - (iii) the cessation of that Force Majeure Event or the successful mitigation or minimization of the effects of that Force Majeure Event; and
  - (iv) any other matter which the other party may reasonably request in connection with the occurrence of Force Majeure Event and the matters referred to in this clause 26.3.

#### 26.4 Termination on Force Majeure Event

If a Force Majeure Event occurs which prevents the Affected Party from exercising a material right or performing a material obligation under this Agreement, and that Force Majeure Event continues for a period of 24 Months from the day on which notice was given by the Affected Party under clause 26.3, then, at the expiration of that period, either party may, by 6 months notice, terminate this Agreement.

#### 27. CHANGES IN LAW

If there is any change in Law which leads or might be likely to lead to:

- (a) nationalisation of, or other compulsory acquisition of or interference with any of SMEC's rights or interest in or relating to the Project (including all land, buildings, structures and equipment) or any part of it prior to the expiry of the Generation Licence and Transmission Licence;
- (b) the imposition of Tax on SMEC which SMEC was not or would not have been obliged to pay as at the date of this Agreement;
- (c) a change in the way or rate at which any Tax is calculated or imposed to the extent that such a change result in an increase in any amount which SMEC is or would be obliged to pay; or
- (d) the imposition of any other obligation on SMEC which:
  - (i) relates directly to the construction, operation or maintenance of the Project or the equipment required for those purposes; and

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(ii) which requires SMEC to pay any money or incur any costs in order to comply with such obligation, then HMGN will negotiate in good faith with SMEC to agree on and pay appropriate compensation.

## 28. REPRESENTATIONS AND WARRANTIES

### 28.1 HMGN Representations and Warranties

HMGN represents and warrants to SMEC that:

- (a) it has the power to execute, deliver and perform fully all its obligations under this Agreement and each Government Approval, and that all necessary action has been taken to authorise the execution, delivery and performance by it of this Agreement and each Government Approval;
- (b) the execution, delivery and performance by it of its obligations under this Agreement and each Government Approval is in accordance with existing Law; and
- (c) this Agreement and each Government Approval has been duly issued or executed and delivered on behalf of HMGN and constitutes a valid obligation of HMG, legally binding on it and enforceable in accordance with its terms.

### 28.2 SMEC Representations and Warranties

SMEC represents and warrants to HMGN that:

- (a) it has the power to execute, deliver and perform fully all its obligations under this Agreement and to authorise performance of its liabilities under each Government Approval, and that all necessary action has been taken to authorise such execution, delivery and performance;
- (b) the execution, delivery and performance by it of its obligations under this Agreement and the performance by it of its obligations under each Government Approval is in accordance with existing Law; and
- (c) this Agreement has been duly executed and delivered on behalf of SMEC and it, and each Government Approval, constitutes a valid obligation of SMEC, legally binding on it and enforceable in accordance with its term.

### 28.3 No Untrue Statements or Omissions

Each party to this Agreement represents and warrants to the other party that no written information supplied by it or on its behalf to the other party relating to the Project or to any transactions contemplated by this Agreement contains any untrue statement or omissions in relation to material fact or applicable Law.

## 29. REQUESTS FOR AMENDMENTS

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If, in finalising the detailed arrangements for the Project, SMEC needs to request amendments to this Agreement, then:

- (a) SMEC may make requests to HMGN to amend this Agreement; and
- (b) they will consult with each other and negotiate in good faith to amend this Agreement in accordance with those requests.

### 30. ADDITIONAL FOREIGN SHAREHOLDERS

SMEC may, for the purposes of arranging or re-arranging financing for the Project, issue shares to, or otherwise accept equity investments from, additional foreign shareholders providing financing for the Project.

### 31. NOTICES

Any communication or document given, made or sent by either party to the other party pursuant to this Agreement must be in writing and will be deemed to have been duly given, made or sent to the party to which it is addressed at the time of its delivery by mail, facsimile or delivery, at the following addresses:

#### HMGN

Address: Ministry of Water Resources  
Singha Durbar  
Kathmandu  
NEPAL

Facsimile No. 977 1 227 536

Address: Electricity Development Center  
P.O Box 2507  
Exhibition Road  
Kathmandu  
NEPAL

Facsimile No. 977 1 227 537

#### SMEC

Address: Sallaghari, Maharajgunj  
P.O.Box 3338  
Kathmandu,  
NEPAL

Facsimile No. 977 1 373012

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Either party may change address by prior notification to the other party in accordance with this clause.

32. VARIATION OF AGREEMENT

The provisions of this Agreement may only be amended by the mutual consent of the parties in writing

33. WAIVER

A right granted under this Agreement may not be waived, except in writing signed by the party granting the waiver.

34. APPROVALS AND CONSENTS

HMGN and SMEC must each act reasonably in making a decision or giving or withholding approval or consent under any provision of this Agreement.

35. FURTHER ASSURANCES

Each party will at its own expense do everything reasonably necessary to give effect to this Agreement.

36. RELATIONSHIP OF PARTIES

Nothing contained or implied in this Agreement:

- (a) constitutes or is to be taken as constituting a party as the partner, agent or legal representative of the other party for any purpose whatsoever; or
- (b) creates or is to be taken as creating any partnership, agency or trust.

37. PERFORMANCE GUARANTEE

SMEC will, on the date of the grant of the Generation Licence, provide and irrevocable and unconditional performance guarantee acceptable to HMGN amounting to \$650,000. HMGN will release the performance guarantee on Financial Closing. If this Agreement is terminated for failure to achieve Financial Closing pursuant to clause 1.5(a), HMGN will have the unconditional right to draw on the performance guarantee.

38. GOOD FAITH

- (a) The parties undertake to act in good faith in relation to the performance and implementation of this Agreement and to take such other reasonable measures as may be necessary for the realisation to its objectives.

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- (b) The parties recognize that circumstances may arise which the provisions of this Agreement may have not foreseen in which event the parties undertake to consult each other promptly and in good faith in an effort to reach agreement as to what should be done.
- (c) The parties consider the terms of this Agreement to be fair at the date of this Agreement, but if during the term of this Agreement either party believes that this Agreement has become grossly unfair to that party, it will notify the other and the parties will use reasonable efforts to agree on such action as may be necessary to remove the cause or causes of the unfairness, but failure to agree will not be submitted to the dispute resolution procedures set out in clause 24 hereof.

39. ETHICAL STANDARDS

In the development of the Project and the conduct of all actions under this Agreement, HMGN and SMEC will each conduct itself in accordance with the highest ethical standards and observe the spirit of all applicable Laws.

40. SEVERABILITY

Any provision of this Agreement which is illegal, void or unenforceable will be ineffective to the extent only of such illegality, voidness or unenforceability, without invalidating the remaining provisions of this Agreement.

41. MEMORANDUM

The Memorandum entered into on 11 May 1997 between HMGN and SMEC will become null and void on the signing of this Agreement.

IN WITNESS WHEREOF the undersigned acting on behalf of the respective parties have signed this Agreement in ten originals in the English language and affixed their seals.

\_\_\_\_\_  
On behalf of SMEC  
WEST SETI HYDROELECTRIC  
CORPORATION LIMITED

William R. Bultitude  
Managing Director  
SMEC West Seti  
Hydroelectric Corporation Ltd.  
Kathmandu, Nepal.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
On behalf of  
HIS MAJESTY'S  
GOVERNMENT OF  
NEPAL

Vijaya S. Shrestha  
Director General  
Electricity Development Center  
Ministry of Water Resources  
Kathmandu, Nepal

\_\_\_\_\_  
Witness

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## ANNEXURE A

### THE PROJECT

The West Seti Hydroelectric Project will be located in the far west region of Nepal in the Karnali River Basin. The topography and precipitation in the region makes the location a technically feasible and potentially viable site for the Project. The dam will be built across the West Seti River immediately downstream of the confluence of the Seti and Chama Gad rivers.

Due to the proximity of the Project to the Nepal/India border, it is intended that energy from West Seti will be exported to India pursuant to long term power purchase agreements with selected persons in India.

#### Features and Capacity

The main project features are:

- (a) a storage capacity of 1, 322 million cubic metres of water with a reservoir surface area of 2, 750 hectares;
- (b) a 220 m high concrete faced gravel fill storage dam on the Seti River with twin 12.8 m diameter diversion tunnels, a concrete lined spillway and a bottom outlet for sediment sluicing;
- (c) a 10 m diameter, 7.35 km long headrace tunnel with an intake 5 km upstream of the dam leading to a 163 m long vertical pressure shaft, which divides into five 3 m diameter pressure conduits, one for each turbine-generator unit;
- (d) an underground power station housing five 150 MW turbine-generator units;
- (e) a 420 m long tailrace tunnel discharging the flow back into the Seti River; and
- (f) a switching station and a 77 km long 400 KV double circuit transmission line conveying the energy to the Nepal-India border.

#### Energy Availability, Reliability and Seasonality

The natural topography of the West Seti site is ideally suited to hydropower production as it flows the construction of a high dam. A storage basin exists in the valley formed by the influence of the West Seti River and three major tributaries at the dam site. These features will combine with a high wet season discharge to give high hydropower potential.

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Computer simulation has used measured river flows supplemented by estimated flows based on rainfall over the catchment over the eighty year period from 1915 to 1994. West Seti River flows over a pronounced seasonal pattern with high inflows during July to October and low inflows during January to June.

The Project will generate an annual average energy production of 3,137 GWh, comprising 2, 215 GWh primary energy and 922 GWh secondary energy.

### Salient Features

The Salient features of the Project are set out in the following table:

A. Hydrology			
	i.	Catchments area	4,250 sq km
	ii.	Design flood discharge	14,600 m <sup>3</sup> /sec
	iii.	Mean annual flow	5,610 million m <sup>3</sup>
B. Dams			
	i.	Type	Concrete faced gravel fill
	ii.	Crest length	450 m
	iii.	Height (above foundation level)	220 m
	iv.	Top level embankment	EL 1, 280 m
	v.	Top level parapet wall	EL 1, 281.2 m
	vi.	Average river bed level	EL 1,093 m
	vii.	Deepest foundation level	EL 1,055 m
	viii.	Pond level	EL 1,276 m
	ix.	Minimum drawdown level	EL 1,180 m
	x.	Maximum water level	EL 1,280.6 M
	xi.	Road width	7.0 M
	xii.	Live storage	1,322 million m <sup>3</sup>
	xiii.	Annual sediment inflow	7 million m <sup>3</sup>
	xiv.	Diversion tunnels	2 × 12.8 m horseshoe
	xv.	Bottom outlet	2 sluices, 2 m × 3 m plus 2 sluices, 1 m × 1m with invert at EL 1,095.7m
C. Spillway			
	i.	Type	Ogee shaped concrete spillway
	ii.	Design discharge	11, 280 m <sup>3</sup> /sec
	iii.	Crest level	EL 1,259 m
	iv.	Length	61.1 m
	v.	Number of bays	3
	vi.	Size of bays	17.7 m × 17 m
	vii.	Gate size	3 No. radial gates, each 17.7 m × 17 m
	viii.	Energy dissipation system	Flip buckets of 30 m radius

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<b>D. Headrace Tunnel</b>			
	i.	Shape	Horseshoe concrete lined
	ii.	Length	7.35 km
	iii.	Diameter	10.0 m
	iv.	Design discharge	312.5 m <sup>3</sup> /sec
	v.	Velocity	4 m/sec
	vi.	Invert level of tunnel(upstream end)	EL 1170 m
	vii.	Tunnel slope	1 in 390
<b>E. Surge Tank</b>			
	i.	Type	Restricted orifice type surge located at the end of the headrace tunnel
	ii.	Diameter	23.2 m
	iii.	Maximum upsurge level	EL 1,314.5 m
	iv.	Top of surge tank	EL 1,320 m
	v.	Adit to surge shaft	7 m × 7 m at EL 1,150 m
<b>F. Pressure Shaft and Conduits</b>			
	i.	Type	Concrete lined vertical pressure shaft 163 m deep
	ii.	Size and number	10.0 m dia dividing into 5 No. 150 m long steel lined pressure conduits, 3 m dia to feed five units of 150 MW
<b>G. Power House</b>			
	i.	Type	Underground
	ii.	Size	105 m long × 22.3 m wide
	iii.	Size of transformer hall	84 m long × 14.6 m wide
	iv.	Size of downstream chamber	65 m × 12 m
	v.	Access tunnel	300 m long 7 m horseshoe
	vi.	Type of turbine	Francis type
	vii.	Net head	270 m
	viii.	Number and capacity of generating unit	5 units of 150 MW
	ix.	Unit spacing	14 m max
	x.	Maximum tailwater level	EL 1,005 m
	xi.	Tailrace tunnel	9.6 m by 420 m
	xii.	Annual primary energy production	2,215 GWh
	xiii.	Annual secondary energy production	922 GWh
<b>H. Transmission System</b>			
	i.	West Seti to Nepal-India border	77 km of 400 kV double circuit line

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Operation Entity (SMEC and SMHA)

The Project is termed a Build Own Operate Transfer type project where SMEC will Build, Own and Operate the West Seti Project over the period of the Generation Licence; after which it will be Transferred to HMGN.

The project will be operated by a collaboration arrangement involving SMEC and SMHA (Snowy Mountains Hydroelectric Authority of Australia)

SMHA is the Australian Government's hydropower authority and is the owner and operator of the 3, 740 MW Snowy Mountains Scheme in south eastern Australia. SMHA was established in 1949 to own and operate the Snowy Mountains Scheme which entailed the construction of 16 major dams, 90 miles of tunnels, and eight power and pumping stations.

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## WEST SETI HYDROELECTRIC PROJECT

### EXPORT AGREEMENT

THIS AGREEMENT is made at Kathmandu, Nepal on the 11<sup>th</sup> day of May 1997

BETWEEN HIS MAJESTY'S GOVERNMENT OF NEPAL ("HMGN")

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AND  
LIMITED  
Kathmandu

SMEC WEST SETI HYDROELECTRIC CORPORATION  
("SMEC") having its registered office in Kathmandu District  
Metropolitan Ward No. 3 Maharajgunj.

#### PREAMBLE

#### WHEREAS:

- A. HMGN and SNOWY MOUNTAINS ENGINEERING CORPORATION LIMITED ACN 008 654 224 (the "Sponsor") signed a Memorandum of Understanding (the "MOU") on 7 July 1994, relating to the development of the West Seti Hydroelectric Project (the "Project") near Dhunggad on the Seti River in the Far Western Development Region of Nepal.
- B. HMGN and the Sponsor since 7 July 1994 have been undertaking the activities under the MOU and the Survey Licence duly issued by HMGN, which include the preparation of the Detailed Engineering Report to be submitted by SMEC, a public limited company established by the Sponsor in Nepal for the purposes of the Project.
- C. HMGN and SMEC now wish to describe the necessary details so as to enable SMEC to proceed with the objective of concluding the necessary power purchase agreements with any person for the export of energy under the provisions and the spirit of the relevant laws of Nepal.

NOW THEREFORE the parties have agreed as follows:

#### 1. GENERAL BASIS FOR ENERGY EXPORT

- (a) Upon SMEC being granted licences for the generation and the transmission of electricity pursuant to the Electricity Act, 2049, HMGN authorizes SMEC to export the energy derived from the Project up to 750 megawatt of installed capacity.
- (b) Subject to paragraph (c), this Agreement will continue in full force and effect for 30 years from the date of issue of the licences referred to in paragraph (a).
- (c) If the validity period of the licences referred to in paragraph (a) are extended, then the term of this Agreement will be extended by the same period of time.

#### 2. HMGN RECOGNITION

HMGN recognises that SMEC is empowered to negotiate, finalise and enter into agreements for the export of energy generated by the Project with legal entities in reliance upon this Agreement.

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### 3. GOOD FAITH

- (a) The parties undertake to act in good faith in relation to the performance and implementation of this Agreement and to take such other reasonable measures as may be necessary for the realisation of its objectives.
- (b) The parties recognize that circumstances may arise which the provisions of this Agreement may have not foreseen in which event the parties undertake to consult each other promptly and in good faith in an effort to reach agreement as to what should be done.
- (c) The parties consider the terms of this Agreement to be fair at the date of this Agreement, but if during the term of this Agreement either party believes that this Agreement has become grossly unfair to that party, it will notify the other and the parties will use reasonable efforts to agree on such action as may be necessary to remove the cause or causes of the unfairness, but failure to agree will not be submitted to the dispute resolution procedures set out in clause 6 hereof.

### 4. ETHICAL STANDARDS

In the development of the Project and the conduct of all actions under this Agreement, HMGN and SMEC will each conduct itself in accordance with the highest ethical standards and observe the spirit of all applicable laws of Nepal.

### 5. REPRESENTATIONS AND WARRANTIES

#### 5.1 HMGN Representations and Warranties

HMGN represents and warrants to SMEC that:

- (a) it has the power to execute, deliver and perform fully all its obligations under this Agreement and each government approval, and that all necessary action has been taken to authorise the execution, delivery and performance by it of this Agreement and each government approval ;
- (b) the execution, delivery and performance by it of its obligations under this Agreement and each government approvals in accordance with existing laws of Nepal; and
- (c) this Agreement and each government approval has been duly issued or executed and delivered on behalf of HMGN and constitutes valid obligation of HMGN, legally binding on it and enforceable in accordance with its terms.

#### 5.2 SMEC Representations and Warranties

SMEC represents and warrants to HMGN that

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- (a) it has the power to execute, deliver and perform fully all its obligations under this Agreement and to authorise performance of its liabilities under each government approval, and that all necessary action has been taken to authorise such execution and performance;
- (b) the execution, deliver and performance by it of its obligations under this Agreement and the performance by it of its obligation under each government approval is in accordance with existing laws of Nepal; and
- (c) this Agreement has been duly executed and delivered on behalf of SMEC and it, and each government approval, constitutes a valid obligation of SMEC legally binding on it and enforceable in accordance with its terms.

## 6. RESOLUTION OF DISPUTES

### 6.1 Dispute Resolution by Consultation

- (a) Each of HMGN and SMEC will designate in writing to the other party a representative who will be authorised to resolve any dispute or difference arising out of this Agreement in an equitable manner.
- (b) The parties agree to attempt to resolve all disputes or differences promptly, equitably and in a good-faith manner.
- (c) The parties further agree to provide each other with reasonable access during normal business hours to any and all records, information and data pertaining to any such dispute or difference other than any confidential communications between any party and its legal advisers or any such records, information or data which any party has agreed with any third party to keep confidential.
- (d) If a party (the "Notifying Party") wishes a dispute or difference under this Agreement to be settled under this clause 6, it must give the other party notice of the dispute or difference. Within 15 days of receipt of such notice, the other party's designated representative to attempt to resolve the dispute or difference in accordance with paragraph (b).
- (e) If the designated representatives are unable to resolve a dispute under this Agreement within 60 days of the Notifying Party giving a notice under paragraph (d), such dispute will be referred to arbitration in accordance with clause 6.2.

### 6.2 Dispute Resolution by Arbitration

- (a) In the event that any dispute or difference is unable to be resolved between the parties pursuant to clause 6.1, then such dispute or difference will be settled exclusively and finally by arbitration irrespective of the magnitude of the dispute or difference, the amount to which the dispute or difference relates or whether such dispute or difference would otherwise be considered justiciable for resolution by any court or arbitral tribunal.

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- (b) This Agreement and the rights and obligations of the parties will remain in full force and effect pending the award in such arbitration proceeding, which award will determine whether and when termination of this Agreement, if relevant, will become effective.
- (c) Arbitration will be conducted in accordance with the Rules of Arbitration of UNCITRAL as in force at the time of registration of the dispute except insofar as such Rules of Arbitration conflict with the provisions of this clause 6.2 in which event the provisions of this clause 6.2 will prevail.
- (d) Each arbitral tribunal will consist of 3 arbitrators. Each party will appoint one arbitrator for each arbitration, and the third arbitrator will be appointed by the London Court of International Arbitration ("LCIA") in accordance with the Arbitration Rules of the LCIA. No arbitrator will be a present employee or agent of, or consultant or counsel to, either party or any affiliate of either party.
- (e) Each arbitration will be conducted in Kathmandu, Nepal and the parties agree to exclude any right of application to any court or tribunal of competent jurisdiction in connection with any question of law arising in the course of any arbitration in connection with this Agreement.
- (f) The language to be used in each arbitration will be English, and all written documents to be provided in each arbitration will be in English.
- (g) Any decision or award of an arbitral tribunal appointed pursuant to this clause 6.2 will be final and binding upon the parties. Each of HMGN and SMEC waives, to the extent permitted by law, any rights to appeal or any review of such award by any court or tribunal of competent jurisdiction. Each of HMGN and SMEC agrees that a judgment upon any arbitration award may be entered as a judgment in any court of competent jurisdiction.
- (h) The costs of each arbitrator appointed by the parties will be borne by the party appointing him or her and the costs of the third arbitrator will be equally shared by the parties.
- (i) All arbitration awards will be denominated in the currency to which such dispute relates. United States Dollars or Nepalese Rupees.
- (j) Where the arbitral tribunal determines to make an award for the payment of money (whether on a claim for a liquidated or an unliquidated amount), the arbitral tribunal will have power to include in the sum for which the award is made interest at a rate of 10% or such other rate as the arbitral tribunal may direct on the whole or any part of the money for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.
- (k) Interest on the amount to be paid in accordance with an arbitration award at a rate of 10% or such other rate as the arbitral tribunal may direct will be due and payable to the prevailing party from the date on which the award is made up to and including the date of payments.

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7. ASSIGNMENT AND TRANSFER

Neither party may assign or transfer its rights or obligations under this Agreement.

8. PROVISION OF INFORMATION

Each of the parties will provide to the other party within a reasonable time of a request such information as that party has available which is or may be necessary or useful to enable such other party to perform its obligations under this Agreement.

IN WITNESS WHEREOF the undersigned acting on behalf of the respective parties have signed this Agreement in two originals in the English language and affixed their seals.

\_\_\_\_\_  
On behalf of SMEC  
WEST SETI HYDROELECTRIC  
CORPORATION LIMITED

William R. Bultitude  
Managing Director  
SMEC West Seti  
Hydroelectric Corporation Ltd.  
Kathmandu, Nepal.

\_\_\_\_\_  
On behalf of HIS MAJESTY'S  
GOVERNMENT OF  
NEPAL

Mr. Bidur Bidur Bahadur Karki  
Director General  
Electricity Development Center  
Ministry of Water Resources  
Kathmandu, Nepal

\_\_\_\_\_  
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AMENDMENTT No.1

to

THE Project Agreement

BETWEEN

HIS MAJESTY'S GOVERNMENT OF NEPAL

AND

SMEC WEST SETI HYDROELECTRIC CORPORATION LIMITED

concerning

West Seti Hydroelectric Project

December 1998  
Kathmandu, Nepal

AMENDMENT NO.1

TO

THE PROJECT AGREEMENT

BETWEEN

HIS MAJESTY'S GOVERNMENT OF NEPAL ("HMGN")

AND

SMEC WEST SETI HYDROELECTRIC CORPORATION LIMITED  
("SMEC")

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Having its registered office in Kathmandu District, Kathmandu Metropolitan Ward No. 3,  
Maharajgunj

AMENDMENT No.1 (The "Amendment") TO THE PROJECT AGREEMENT is made in Kathmandu, Nepal on the Eleventh day of December 1998. This Amendment amends the Project Agreement concluded on 27 June 1997 between HMGN and SMEC in accordance with the terms and provisions set forth below.

## PREAMBLE

### WHEREAS:

HMGN and SMEC signed a Project Agreement (the "Agreement") on 27 June 1997 relating to the development of the West Seti Hydroelectric Project located near Dhunggad on the Seti River in the Far Western Development Region of Nepal as described in clause 2.1 of the Agreement.

HMGN and SMEC since 27 June 1997 have been undertaking the activities under the Agreement and the Survey License duly issued by HMGN.

HMGN and SMEC now wish to change certain provisions of the Agreement in accordance with the terms and conditions set out in this Amendment.

In consideration of these premises and of the mutual covenants and agreements hereinafter set forth, HMGN and SMEC agree to following:

### DEFINITIONS

Capitalized term used in this Amendment, unless otherwise defined herein, shall have the definition assigned to such term in the Agreement, and all such definitions shall be interpreted in accordance with Section 1.1 of the Agreement.

### 2. REPRESENTATIONS AND WARRANTIES

HMGN and SMEC each hereby represents and warrants to the other that each representation and warranty by such party contained in the Agreement is true and correct as at the date hereof with respect to this Amendment, the Amendment No. 1 and the Agreement with the same force and effect.

### 3. AMENDMENTS

With effect from the date hereof, the Agreement shall be amended as follows:

- 3.1 Delete the date "28 February 1999" from Clause 1.5(a) and insert "31 December 2000" in its place:

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3.2 Delete clause 4(b) and insert the following as clause 4(b):

The following works or events are proposed for completion in accordance with dates indicated below:

- |        |                                       |                  |
|--------|---------------------------------------|------------------|
| (i)    | Submission of DER (excluding the EIA) | 31 December 1997 |
| (ii)   | Approval of DER (excluding the EIA)   | 30 January 1999  |
| (iii)  | Submission of EIA                     | 31 August 1999   |
| (iv)   | Approval of EIA                       | 30 December 1999 |
| (v)    | Execution of PPA                      | 30 June 2000     |
| (vi)   | Application for Generation Licence    | 31 July 2000     |
| (vii)  | Application for Transmission Licence  | 31 July 2000     |
| (viii) | Grant of Generation Licence           | 30 November 2000 |
| (ix)   | Grant of Transmission Licence         | 30 November 2000 |

3.2 Delete the date "30 June 1998" from Clause 4(c) and insert "31 August 1999" in its place.

AMENDMENT NO 2  
TO  
THE PROJECT AGREEMENT  
BETWEEN  
HIS MAJESTY'S GOVERNMENT OF NEPAL ("HMGN")  
AND  
SMEC WEST SETI HYDROELECTRICT CORPORATION LIMITED  
("SMEC")

having its registered office in Kathmandu District, Kathmandu Metropolitan Ward  
No. 3, Maharajgunj.

THIS AMENDEMENT NO. 2 (the "Amendment") TO THE AGREEMENT is made at Kathmandu, Nepal on the fifth day of November 1999. This Amendment amends the Project Agreement concluded on 27 June 1997 between HMGN and SMEC in accordance with the terms and provision set for the below.

PREAMBLE

WHEREAS:

- A. HMGN and SMEC have signed the Project Agreement (the "Agreement") on 27 June 1997 relating to the development of the West Seti Hydroelectric Project located near Dhunggad on the Seti River in the Far Western Development Region of Nepal as described in clause 2.1 of the Agreement. The Agreement since then has been amended as Amendment No. 1 (The "Amendment No. 1") by HMGN and SMEC on 11 December 1998.

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- B. HMGN and SMEC since 27 June 1997 have been undertaking the activities under the Agreement and the Survey Licence duly issued by HMGN.
- C. HMGN and SMEC now wish to again change certain provisions of the Agreement in accordance with the terms and conditions set out in this Amendment.
- D. In consideration of these premises and of the mutual covenants and agreements hereinafter set forth, HMGN and SMEC agree to the following.

## 1. DEFINITIONS

Each capitalized term used in this Amendment, unless otherwise defined herein, shall have the definition assigned to such term in the Agreement, and all definitions shall be interpreted in accordance with Section 1.1 of the Agreement.

## 2. REPRESENTATIONS AND WARRANTIES

HMGN and SMEC each hereby represents and warrants to the other that each representation and warranty by such party contained in the Agreement is true and correct as at the date here of with respect to this Amendment and the Agreement with the same force and effect.

## 3. AMENDMENTS

With effect from the date here of the Agreement shall be amended as follows:

Insert the following new definition between the definitions of "Rupees" and "Survey Licence" in clause 1.1.

"Special Force Majeure Event" means a Force Majeure Event with results in the reservoir inflow in any hydrological year (commencing from the date of Project Commissioning) being less than 75% exceedance flow. The 75% exceedance flow is defined as that annual flow in a hydrological year, which is exceeded by 75% of the annual flows on record. For this purpose reservoir inflow will be determined by:

- (a) measurement of the flow of the West Seti River Immediately downstream of the reservoir.
- (b) calculation of reservoir volumes based on reservoir water surface levels; and
- (c) measurement of reservoir outflows through the Power Station, spillway and outlet works."

Delete clause 7.2(b) and (c) and insert the following as clause 7.2 (b):

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"If a Special Force Majeure Event occurs:

- (i) within five (5) years following Project Commissioning, or
- (ii) in the period commencing five (5) years following Project Commissioning and ending ten (10) years after Project Commissioning,

then HMGN will, upon receipt from SMEC of an application supported by evidential documentation, extend the Generation Licence in accordance with the Electricity Act, 2049 and the Electricity Regulations, 2050 for a period of time equal to, in occurrence of the event within the period specified in paragraph (i) above (2) years for each such occurrence and in occurrence of the event within the period specified in paragraph (ii) above, one (1) year For each such occurrence. Any extension or extensions of the Generation License under this clause will be up to a maximum of six (6) years in total."

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Amendment No. 8

to

The Project Agreement

BETWEEN

GOVERNMENT OF NEPAL (GON)

AND

WEST SETI HYDRO LIMITED (WHS)

concerning

West Seti Hydroelectric Project

October 2006

Kathmandu, Nepal

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AMENDMENT NO.8

THE

THE PROJECT AGREEMENT

BETWEEN

GOVERNMENT OF NEPAL ("GON")

AND

WEST SETI HYDRP LIMITER ("WSH")

having its registered office in Kathmanu District, Kathmandu Metropolitan Ward  
No. 4, Maharajgunj

THIS AMENDMENT NO. 8 (the "Amendment") TO THE PROJECT AGREEMENT is made at Kathmandu, Nepal on the Twenty ninth Day of October, 2006. This Amendment amends the Project Agreement concluded on 27 June 1997 between HMGN, hereinafter referred to as "Government of Nepal" ("GON") and SMEC, hereinafter referred to as "West Seti Hydro Limited" ("WSH"), in accordance with the terms and provisions set forth below.

PREAMBLEE

WHERE AS:

- A. GON and WSH have signed the Project Agreement (the "Agreement") on 27 June 1997 relating to the development of the West Seti Hydroelectric Project located near Dhunggad on the Seti River in the Far Western Development Region of Nepal as described in clause 2.1 of the Agreement. The Agreement since then has been amended as Amendment No. 1 (The "Amendment No 1") by GON and WSH on 11 December 1998, as Amendment No. 2 (The "Amendment No. 2") by GON and WSH on 5 November 1999, as Amendment No 3 (The "Amendment No. 3") by GON and WSH on 20 June 2001, as Amendment No. 4 (The Amendment No. 4") by GON and WSH on 7 May 2002, as Amendment No. 4, (The "Amendment No. 5") by GON and WSH on 8 January, 2004, as

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Amendment No. 6") by GON and WSH on 8 February, 2005, as Amendment No. 7 (The "Amendment No. 7") by GON and WSH on 1 March, 2006.

- B. GON and WSH since 27 June 1997 have been undertaking the activities under the Agreement and the Survey Licence duly issued by GON.
- C. GON and WSH now wish to again change certain provisions of the Agreement in accordance with the terms and condition set out in this Amendment.
- D. In consideration of these premises and of the mutual covenants and agreements hereinafter set forth. GON and WSH agree to the following

## 1. DIFINITIONS

Each capitalized term used in this Amendment, unless otherwise defined herein, shall have the definition assigned to such term in the Agreement and all such definitions shall be interpreted in accordance with Section 1.1 of the Agreement.

## 2. REPRESENTATION AND WARRANTIES

GON and WSH each hereby represents hereby represents and warrants to the other that each representation and warranty by such party contained in the Agreement is true and correct as at the date here of with respect to this Amendment. Amendment No. 1, Amendment No. 2, Amendment No. 3, Amendment No. 4, Amendment No. 5, Amendment No. 6, Amendment No. 7 and the Agreement with the same force and effect.

## 3. AMENDMENTS

With effect from the date here of the Agreement shall be amended as follows:

Delete the date "31 September 2006" from Clause 1.5(a) and insert "31 December 2008" in its place.

Delete clauses 4(b) (ix) and insert the following

- (v) Execution of PPA 31 July 2008
- (vi) Application for Generation Licence 31 May 2008
- (vii) Application for Transmission Licence 31 May 2008

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- (viii) Grant of Generation Licence 30 August 2008
- (ix) Grant of Transmission Licence 30 August 2008

3. Add the following new sentence at the end of clause 15:

"Such payments will be protected from the impact of devaluation of Indian currency in the same manner as may be agreed upon by SMEC in its Power Purchase Agreement(s) (PPA's) and/or any other agreements to minimize the effect of such devaluation on its revenues."

4. Delete clause 16.6 and substitute new clause as follows:

"16.6 Export Tax

- (a) Pursuant to section 22(3) of the Electricity Act 2049, SMEC will pay to HMGN, on account of Export Tax, an amount per annum of 0.05 per cent (0.05%) of the total annual revenue from sales of power and energy from the Power Station net of payments made to HMGN under clause 18.1.
- (b) Payment for export tax will be made at the same time and in the same manner as payments are made under clause 16.7(b)(ii)"

5. Delete clause 18.1 and substitute new clause as follows:

"18.1 HMGN Revenue Share

HMGN will receive free of charge per annum the amount equivalent to ten percent (10%) of the gross annual revenue received from sale of power and energy generated from the Power Station."

6. Delete clause 18.2 and substitute new clause as follows:

"18.2 Payment

Payment by SMEC to HMGN under clause 18.1 will be made at the same time and in the same manner as payments are made under clause 16.7(b)(ii)."

7. Add the following new paragraph at the end of clause 26.4:

"HMGN and SMEC acknowledge that this clause does not apply to a Special Force Majeure Event.

IN WITNESS WHERE OF the undersigned acting on behalf of the respective parties have signed this Amendment in ten originals in the English language and affixed their seals.

On behalf of

On behalf of

.....  
Government of Nepal

.....  
West Seti Hydro Limited

Jaya Keshar Mackay

Himalaya Bahadur Pande

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Director General  
Department of Electricity Development  
Ministry of Water Resources  
Kathmandu Nepal

Director  
West Seti Hydro Limited  
Kathmandu Nepal

Witness

.....  
Sriranjan Lacoul  
Deputy Director Genral  
Department of Electricity Development  
Ministry of Water Resources  
Kathmandu Nepal

Witness

.....  
Gopal Prasad Singh  
West Seti Hydro Limited  
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