



IMPLEMENTATION AGREEMENT

relating to the development, financing, construction, ownership and operation of
an 80 MW Hydro-Electric Power Generation Project at Rusumo on River Kagera
at the Common Boundary of the Republic of Rwanda and the United Republic of Tanzania

Among

THE GOVERNMENT OF THE REPUBLIC OF BURUNDI

AND

THE GOVERNMENT OF THE REPUBLIC OF RWANDA

AND

THE GOVERNMENT OF THE UNITED REPUBLIC OF TANZANIA

AND

RUSUMO POWER COMPANY LIMITED

dated as of 17th Sept. 2013

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THIS IMPLEMENTATION AGREEMENT (this "Agreement") is made as of 17th day of September 2013,

AMONG:

1. THE GOVERNMENT OF THE REPUBLIC OF BURUNDI ("BURUNDI"), represented by its Ministry of Energy and Mines, of P.O. Box _____ Bujumbura, Burundi; and
2. THE GOVERNMENT OF THE REPUBLIC OF RWANDA ("RWANDA"), represented by its Ministry of Infrastructure of P.O. Box 24 Kigali, Rwanda; and
3. THE GOVERNMENT OF THE UNITED REPUBLIC OF TANZANIA ("TANZANIA") represented by its Ministry of Energy and Minerals of P.O. Box 2000 Dar es Salaam; and
4. RUSUMO POWER COMPANY LIMITED, (the "Company") a limited liability company incorporated under the laws of Rwanda with company number 102957444 having its principal office at Kigali, Rwanda, and of P.O. Box 6759, Kigali, Rwanda.

(collectively, the "Parties," and each a "Party" and each of Burundi, Rwanda and Tanzania where appropriate, collectively referred to as "Governments" and each a "Government");

WHEREAS:

- A. In March 2005, the Nile Council of Ministers responsible for water affairs endorsed the preparation of a project identified as the Regional Rusumo Falls Hydroelectric Power Project (the "Generation Facility").
- B. In March 2005, the Ministers of Burundi, Rwanda and Tanzania responsible for electricity affairs committed to jointly develop the Generation Facility and other activities within the framework of the broader Kagera Basin Multipurpose Development Program.
- C. In December 2005, the Ministers of Burundi, Rwanda and Tanzania responsible for electricity affairs approved inter alia the development of the Generation Facility as a priority project in the Indicative Power Master Plan of the Nile Equatorial Lakes Subsidiary Action Program (NELSAP).
- D. In March 2006, the Governments signed a Joint Project Development Agreement where they committed to jointly develop a schedule and budget for the development of the Generation Facility;
- E. In February 2012, the Governments signed a Tripartite Agreement to demonstrate their continued commitment to implement the development of the Generation Facility and agreed to incorporate the Company and to jointly hold their equity interests for the development, financing, ownership, operation and maintenance of the Generation Facility;
- F. On April 11th 2013, the Governments incorporated the Company.
- G. The Parties are entering into this Agreement to set out the terms and conditions under which the

Governments will through the Company design, finance, insure, construct, own, acquire the rights to operate and maintain the Generation Facility.

- H. The Company has been mandated by the Governments in their capacity as its Shareholders to design, develop, construct, own, operate and maintain the Generation Facility at Rusumo on River Kagera, as more particularly described in Schedule 1 (*Generation Facility Location and Description*);
- I. In connection with the development, construction, ownership, operation and maintenance of the Generation Facility, the Company desires to: (i) obtain the support of the Governments for the development, construction, ownership, operation and maintenance of the Generation Facility; (ii) lease from each of the Governments of Rwanda and Tanzania certain parcels of land required for the Site pursuant to long term leasehold agreements, and (iii) sell directly to the Utilities all, or substantially all of the electrical energy to be produced by the Generation Facility under long term power sales and purchase agreements to be entered into with each of the Utilities;
- J. In furtherance of the foregoing and to ensure the successful financing and development of the Generation Facility, the Company and the Governments desire to enter into this Agreement to provide for their mutual obligations for the development, financing, ownership, operation and maintenance of the Generation Facility;

NOW, THEREFORE, in consideration of the mutual benefits to be derived and the representations and warranties, conditions and promises herein contained, and intending to be legally bound, the Parties hereby agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.01 Definitions. In this Agreement, the following words and expressions shall have the meaning stated


"**Adverse Effect**" has the meaning defined in Clause 4.07 (*Riparian Protocols and Development Upstream of the Site*).

"**Agreement**" means this Implementation Agreement, dated as of the date hereof between the Governments and the Company.

"**Applicable Law**" means, with respect to any Person, any constitution, treaty, statute, law, rule, regulation, ordinance, judgment, order, decree, governmental consent or approval or any published directive, guideline, requirement or other governmental restriction, which in any jurisdiction has the force of law, or any determination by, or interpretation of any of the foregoing by, any judicial authority, binding on such Person or its property whether in effect as of the date hereof or thereafter.

"**Authorizations**" means consents, approvals, authorizations, notifications, concessions, acknowledgements, licenses, permits, decisions and similar items.

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"Burundi" means Government of the Republic of Burundi.

"Business Day" means any day of the week other than a Saturday or Sunday or a day that is not a national public holiday under Applicable Law or a day on which banks must close pursuant to Applicable Law or executive order, *provided however*, that in the event such a law or executive order results in banks being closed for more than three weekdays or non-holidays in succession, the next weekday (that is not a Saturday or a Sunday) following such three days, shall be deemed to be a Business Day.

"Central Bank" means, in the case of Burundi, Banque de la République de Burundi, in the case of Rwanda the National Bank of Rwanda and in the case of Tanzania the Bank of Tanzania.

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

- a. the enactment of a new Applicable Law;
- b. the amendment, alteration, modification, revocation, repeal or re-enactment of any existing Applicable Law;
- c. the commencement of any Applicable Law which has not yet entered into effect prior to the date of execution of this Agreement;
- d. a change in the interpretation or application of any Applicable Law by any Relevant Authority having direct authority for its interpretation or application;
- e. the imposition or modification by a Relevant Authority of a requirement for any Authorization which did not exist on the date of this Agreement;
- f. after the date of the grant of any Authorization a change in the terms and conditions attaching to the Authorization or the attachment of new terms or conditions which are materially less favourable to the Company or its employees or agents or the Contractors than those attached to the Authorization as originally granted;
- g. any Authorization not being granted on a timely basis on application therefore having been duly made;
- h. any Authorization as has been granted ceasing to remain in full force and effect or, if granted for a limited period, not being renewed on a timely basis on application there for having been duly made, or being renewed on terms and conditions materially less favorable to the Company or its employees or agents or the Contractors; or
- i. the enactment or change in interpretation of any provision of Applicable Law or policy dealing with currency exchange whether it be a change in the way the exchange rate is allowed to be computed or determined or a change in the ability of the Company to maintain foreign currency account(s) or to freely convert any currency legal tender of any of the Governments to US Dollars or vice versa or the ability of the Company to freely repatriate its profits, earnings and or its capital,

in case any of the above establishes either a material increase in cost or material reduction in revenue as a consequence of any requirement for the construction, ownership, operation or maintenance of the Generation Facility that is materially more restrictive than the most restrictive requirements (i) in effect as of the date hereof, or (ii) specified in any applications, or other documents filed in connection with such applications for any Authorization, except, in the case of (g) and (h) above, to the extent such circumstances arose as a result of any default or neglect on the part of Company or its employees, agents, or contractors.

"Closing Date" shall mean the date on which all the Shareholders shall have collectively fully subscribed to their respective shares in the Company in accordance with the Shareholders' Agreement.

"Commercial Operation Date" means the last "Commercial Operation Date" to occur under (and as defined in) each Power Purchase Agreement.

"Company" means the Rusumo Power Company Limited, a limited liability company incorporated under the laws of Rwanda.

"Company Event of Default" has the meaning defined in Clause 10.01 (*Termination by Governments*).

"Contractors" means any Person with whom the Company contracts for the supply or provision of goods or services related to the development, construction, operation and maintenance of the Generation Facility, including but not limited to any of the direct sub-contractors integrally involved.

"Dispute" has the meaning defined in Clause 12.01(a) (*Amicable Settlement of Disputes*).

"Environmental Impact Study" means a study conducted in accordance with Applicable Law on the impact of the construction, operation and maintenance of the Generation Facility on the environment and the local communities.

"Force Majeure" has the meaning defined in Clause 9.01(a) (*Definition of Force Majeure*).

"Generation Facility" means the 80 MW hydro-electric power generation facility, together with all associated facilities, to be constructed at Rusumo on River Kagera.

"Government Event of Default" has the meaning defined in Clause 10.02 (*Government Event of Default*).

"Interconnection Point" means each "Interconnection Point" as defined in each Power Purchase Agreement.

"Investment Incentives" means the incentives, exemptions and benefits as provided under Applicable Law (including the investment laws of each of the Governments).

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"Lapse of Authorization" means any Authorisation;

- (a) that is revoked by the Relevant Authority which issued it;
- (b) that is not issued, renewed or, having lapsed, is not re-issued, within 180 days of application by the Company for that Authorisation to be issued, renewed or reissued, as the case may be, and as a result the Company's ability to perform its obligations under the Transaction Documents is materially affected; or
- (c) that is made, subject, subsequent to its grant, upon renewal or otherwise, to any terms or conditions which materially and adversely affect the Company's ability to perform its obligations under the Transaction Documents,

except in each of the above circumstances where such circumstance has arisen due to the Company's failure to make any application for the issuance, renewal or re-issuance, as the case may be, of the Authorisation.

"Lease" means the lease(s), substantially in the form Exhibit A-1(for the land required in Tanzania for the power station) and A-2(for the land required in Rwanda for the substation) granting the Company, for the term of the Lease (s), the right to occupy the Site for the purposes of fulfilling the Company's obligations under this Agreement and each Power Purchase Agreement.

"Lenders" means the banks and other financial institutions party to the Loan Agreements.

"Loan Agreements" means each of the definitive agreements entered or to be entered into among the Shareholders(whether jointly and or severally) and the Lenders, allowing for the provision of funds to the Company by the Shareholders for financing the design, engineering, procurement, construction, commissioning, operation and maintenance of the Generation Facility.

"Nile Basin Initiative" means the transitional institutional mechanism established by Nile Basin States at the meeting of their Council of Ministers held in Dar-es-Salaam, Tanzania, on 22nd February 1999 to foster cooperation and sustainable development of the River Nile for the benefit of the inhabitants of those countries, pending a cooperative framework agreement to advance the Nile Basin Strategic Action Program.

"NELSAP" refers to the Nile Equatorial Lakes Subsidiary Action Program of the Nile Basin Initiative established as a body corporate under the agreement between Rwanda and the Nile Basin Initiative/Nile Equatorial Lakes Subsidiary Action Programme Coordination Unit with a date of 27th August 2008.

"Notice of Intent to Terminate" has the meaning defined in Clause 10.03(b) (*Termination Notices*).

"Other Force Majeure" has the meaning defined in Clause 9.01(b) (*Definition of Force Majeure*).

"Parties" has the meaning defined in the preamble.

"Payment Security" has the meaning ascribed thereto in each Power Purchase Agreement.

"Person" means an individual, corporation, partnership, joint venture, trust, unincorporated organization, Relevant Authority or other governmental body or authority, or any other legal entity.

"**Political Force Majeure**" has the meaning defined in Clause 9.01(c) (*Definition of Force Majeure*).

"**Power Purchase Agreement**" means each of the Power Purchase Agreements entered or to be entered into between the Company and each of the Utilities for the sale of electric power from the Generation Facility.

"**Project Implementation Support Agreement**" means an agreement entered or to be entered into between NELSAP and the Company delegating to NELSAP the responsibility to offer certain management and supervisory services to the Company during the construction of the Generation Facility.

"**Relevant Authority**" means: (i) each of the Governments, and includes any of their subdivision or any local governmental authority or any other authority thereof, (ii) any of its courts or tribunals, and (iii) any department, tax authority, instrumentality, agency or judicial body of any of the Governments, or of any of their respective subdivisions or local governmental authority.

"**Rwanda**" means the Government of the Republic of Rwanda.

"**Shareholders**" means Burundi, Rwanda and Tanzania and any other Person who becomes a party to this Agreement (other than the Company) and "**Shareholder**" shall mean any one of them.

"**Shareholders' Agreement**" means the Shareholders' Agreement entered or to be entered into between the Company and its Shareholders.

"**Site**" means the land, comprised primarily of land in which the Company has or will have a leasehold interest pursuant to the Lease(s), on, under or over which the Generation Facility is to be constructed, to be offered by Rwanda and Tanzania on each side of their respective boundaries as approximately shown on the plan set out in Schedule 1 (*Generation Facility Location and Description*).

"**Specified Consents**" means those Authorizations set forth in Schedule 2 (*Specified Consents*).

"**Tanzania**" means the Government of the United Republic of Tanzania.

"**Terminal Substations**" means the substations in Gitega (in Burundi), Shango (in Rwanda) and Nyakanazi (in Tanzania) to which power will be supplied via a 220kV from the Interconnection Point through the Transmission Lines.

"**Transaction Documents**" means (i) this Agreement, (ii) the Shareholders' Agreement, (iii) the Project Implementation Support Agreement, (iv) the Power Purchase Agreements, and (v) the Loan Agreement(s).

"**Transmission Lines**" means the new 220kV transmission lines that will evacuate power from the Interconnection Point to each of the Terminal Substations as the case may be.

"**US Dollars**" means the lawful currency of the United States of America.

“Utilities” means the national power utilities owned by the Governments: namely, Régie de production et de Distribution d’Eau et d’Electricite (REGIDESO) of Burundi, Energy Water and Sanitation Authority (EWSA) of Rwanda and Tanzania Electric Supply Company Limited (TANESCO) of Tanzania.

1.02 Rules of Interpretation. In this Agreement:

- (i) the headings are for convenience only and shall be ignored in construing this Agreement;
- (ii) the singular includes the plural and vice versa, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organizations or other entities (whether or not having separate legal personality except where the context requires otherwise);
- (iii) reference to Annexes, Clauses, Exhibits, Sections and Schedules are, unless the context otherwise requires, reference to Annexes, Clauses, Exhibits, Sections and Schedules to this Agreement, and any reference to this Agreement includes the Exhibits and Schedules attached hereto;
- (iv) reference to any agreement (including to this Agreement), deed, Specified Consent, license or other Authorization shall be construed, at a particular time, as a reference to the agreement, deed, Specified Consent, license or other Authorization as it might have been amended, modified, supplemented, suspended or novated;
- (v) reference to any law or regulation shall be construed, at a particular time, as including a reference to any amendment, modification, supplement, or re-enactment thereof and to all instruments, orders, directives or regulations then in force and effect and made under or deriving their validity from the relevant law or regulation;
- (vi) capitalized terms used, and not otherwise defined herein, have the meanings defined in the Power Purchase Agreement(s);
- (vii) references to "construction" includes, unless the context otherwise requires, survey, design, procurement, delivery, installation, completion, testing, commissioning and other activities incidental to the process of construction;
- (viii) references to a month shall mean a calendar month, references to a day or days shall mean calendar days; and
- (ix) each Party shall have an implied obligation of good faith in carrying out its obligations and duties under this Agreement.

2. **TERM OF AGREEMENT.**

This Agreement shall commence and be effective upon and after the date of execution hereof, and shall, unless terminated earlier in accordance with the terms hereof, continue in full force and effect for the term of the last to expire or to be terminated of the Power Purchase Agreements, including any extension, replacement or renewal thereof.

3. IMPLEMENTATION OF THE PROJECT.

3.01 Company Obligations.

- a. The Company shall design, develop, construct, finance, insure, own, operate and maintain the Generation Facility.
- b. In furtherance of the foregoing, the Company may delegate its responsibilities for (i) the implementation of procurements and the provision of certain supervision services of the construction of the Generation Facility to NELSAP in accordance with the Project Implementation Support Agreement, (ii) the construction of the Generation Facility to one or more Contractors, and (iii) the operation and maintenance of the Generation Facility to one or more Contractors, *provided that*, in each case, the Company shall at all times remain liable for the performance of its obligations under this Agreement. The Company shall cause the Contractors to comply with the terms and conditions of applicable Specified Consents and Applicable Law. The Company will inform the Governments of the person(s) delegated to be the Contractors under (i) herein on the date of execution of this Agreement, under (ii) herein within 30 days prior to the Closing Date and, under (iii) within 60 days prior to the Commercial Operation Date.

3.02 Land Acquisition for the Generation Facility.

- a. The Parties hereby acknowledge that the construction of the Generation Facility will necessitate the acquisition of the Site
- b. Each of the Governments of Rwanda and Tanzania shall, pursuant to Applicable Law and to the extent necessary, acquire and convey (or procure the acquisition and conveyance in form of a lease, license or otherwise) to the Company the Site and those land rights within its territory necessary to construct, operate and maintain the Generation Facility (including land from which the Company or the Contractors will extract stone aggregate, sand and any other construction materials necessary for the construction of the Generation Facility) *provided, however*, that the Company undertakes to identify all the suitable lands so required and, where necessary, to pay all costs of compensation to Persons from whom the land rights are acquired, at prices consistent with Applicable Law.
- c. In furtherance of the foregoing each of the Governments of Rwanda and Tanzania undertakes to cause the Relevant Authorities, (i) to grant to the Company, within a reasonable period after the execution of this Agreement (but in any event no later than 120 days after the execution of this Agreement), a leasehold interest of all those lands under their respective jurisdictions and forming all or a part of the Site by entering into the applicable Lease (or any other form acceptable under the Applicable Law) and, (ii) to maintain such leasehold interests in place for as long as any of the Power Purchase Agreements (or any replacement thereof) shall remain in force.

3.03 Employment, Training and Use of Local Resources.

- a. Subject to Applicable Law relating to immigration, and provided the Company and the Contractors submit timely applications in appropriate form and pay applicable fees, each of the Governments undertakes to expeditiously grant applications submitted by the Company and the Contractors for work permits, employment passes, visas and other permits, as may be required, for their personnel to enter and work within the territories of the Governments in respect of the Generation Facility. The Company shall endeavor, to the greatest extent possible, to employ nationals of the Governments in its operations; *provided however that*, such nationals shall be in possession of the necessary expertise and experience and shall be recruited through an open, competitive and transparent process.
- b. Subject to compliance with Applicable Law, the Company and the Contractors shall be entitled to import without restriction all items of plant and machinery and equipment as may be necessary or appropriate for the construction, operation or maintenance of the Generation Facility, including spare parts and replacements to spare parts inventory, *provided that*, and subject to the procurement requirements of the Lenders, the Company shall give preference to the purchase of goods and materials necessary for the construction, operation and maintenance of the Generation Facility produced by nationals of the Governments so long as these goods and materials are of a quality acceptable to the Company and the Contractors and are available on commercially competitive terms.
- c. Subject to compliance with Applicable Law, the Company and the Contractors shall be entitled to export without restriction any items of plant and machinery and or equipment previously imported by it or them in connection with the construction, operation and maintenance of the Generation Facility, which export is for the purpose of the repair or refurbishment of the same outside the territories of each of the Governments and to re-import it back as the case may be.
- d. Each of the Governments shall cause the Relevant Authorities under its jurisdiction (including tax authorities) to issue in a timely manner all Authorizations that may be necessary for the implementation of Clauses 3.03 (b) and 3.03 (c).

3.04 Environment and Social Impact Mitigation Measures.

- a. The Parties acknowledge that the development, construction, operation and maintenance of the Generation Facility could have certain ascertainable environmental and social impacts, as established under the Environmental Impact Study, and might necessitate the resettlement of human communities currently living alongside the proposed Site.
- b. The Company undertakes to implement the necessary and appropriate mitigation measures (including the voluntary resettlement of any communities affected by the construction of the Generation Facility and other actions as set out under the Environmental Impact Study) in compliance with Applicable Law, Lender requirements and internationally accepted standards.

- c. The Company shall support such community development programmes for the benefit of the communities affected by the construction of the Generation Facility, as are set out under the Environmental Impact Study and as may be further agreed with the relevant local government authorities.
- d. In order to enable the Company to implement the necessary environmental mitigation measures, each of the Governments agrees to provide all assistance (excluding financial assistance other than the financial assistance to be offered to the Company under the Shareholders' Agreement) as shall reasonably be necessary to enable the Company and other third parties acceptable to the Governments to implement the mitigation measures.

3.05 Security Protection. The Company shall provide security for the day-to-day reasonable protection and security of the Generation Facility and the Site. From time to time, the Company may request, and each of the Governments undertakes whenever requested by the Company to provide, at the Government's cost, such additional security personnel as are necessary to meet any unusual security requirements at the Site. All additional security personnel shall remain under the exclusive control, maintenance and direction of the Government so requested.

3.06 Construction of Access Roads and Support of Construction Activities.

- a. Each of the Governments shall facilitate the Company and or the Contractors to obtain any Authorizations required to allow the Company and the Contractors (i) easement user rights necessary for the construction, operation and maintenance of the Generation Facility, (ii) the use of existing roads and bridges for necessary transport in connection with the construction, operation and maintenance of the Generation Facility, and (iii) the right to modify, improve and strengthen any existing roads and bridges, temporarily or permanently, as may be necessary and appropriate for the transport of heavy equipment or materials to and from the Site for the construction of the Generation Facility.
- b. Each of the Governments shall facilitate the Company or the Contractors to obtain any Authorizations required to permit the Company and the Contractors to construct temporary and permanent roads and bridges as may be required to bring to and remove from the Site heavy equipment, electro mechanical equipment and materials necessary for the construction of the Generation Facility. The Company shall, and shall procure that the Contractors dismantle and dispose of any temporary facilities erected at the Site in accordance with Applicable Law.
- c. Each of the Governments shall, at the request of the Company and to the extent permitted by Applicable Law, ensure that the Company and the Contractors have unhindered access to: (i) the Site for the construction, operation and maintenance of the Generation Facility, and (ii) such other locations as may be necessary to obtain quarry rock, construction sand and other construction materials.



4. SUPPORT OF GOVERNMENTS.

4.01 Rights to the Generation Facility. Subject to the terms and conditions of this Agreement, the Lease and the Specified Consents, each of the Governments irrevocably grants to the Company for the term of this Agreement the exclusive right to develop, finance, construct, own, operate and maintain the Generation Facility. The Company's breach of the terms and conditions of this Agreement, the Lease, or any Specified Consent will not result in the loss by the Company of its exclusive right to develop, finance, construct, own, operate and maintain the Generation Facility under this Clause 4.01 prior to the termination of this Agreement.

4.02 Support for the Company Obligations. Upon written request by the Company, each of the Governments shall use reasonable efforts (and shall cause any Relevant Authority, including its Utility, to do everything reasonably within their power) to facilitate and handle expeditiously and with appropriate diligence, all reasonable requests by the Company for assistance in the performance of its obligations to develop, construct, finance, insure, operate, own, operate and maintain the Generation Facility. This support includes each of the Governments providing to the Company such assistance as the Company may by notice request for the provision of any ancillary services, including access to power, water and telecommunication services necessary for the construction and operation of the Generation Facility. The foregoing Governments' obligation shall not relieve in any way, the Company of its obligations or potential liability under any other agreement.

4.03 Support to the Utilities for the Obligation to Timely Completion of the Construction of the Transmission Lines. In order to ensure the synchronised completion of the construction and commissioning of the Generation Facility with the Transmission System of each of the Utilities, each of the Governments shall use its good offices and shall do everything reasonably within its power (including ensuring the provision of all necessary financial support and ensuring the issuance to its Utility of the necessary Authorisations by its Relevant Authorities), to cause its Utility to develop, finance, construct and timely commission the Transmission Line(s). On their part each of the Governments of Rwanda and Tanzania shall to the greatest extent possible, provide all the necessary assistance (including availing land and the issuance and maintenance of all the necessary Authorisations) as shall be required to allow for the development and construction through their territories of the Transmission Line from the Interconnection Point to Burundi and the operation and maintenance thereof as shall be required thereafter.

4.04 Support to Operate and Maintain The Transmission Lines. Each of the Governments:

- (a) shall, to the maximum extent possible, ensure that where any of the Utilities (and the personnel or contractors employed by the Utility) shall require access to the Transmission Line owned by the Utility but passing through the territory of that Government, that such Utility shall have unhindered access rights to the territory of that Government to allow the Utilities to construct, operate, and maintain the Transmission Line(s), and other associated facilities; and to the extent necessary the Parties shall enter into bilateral agreements to give effect to the foregoing.

(b) acknowledges that the Transmission Line(s) and the energy owned by the Utility transmitted there through but passing through the territory of that Government, are entirely the property of the Utility owner thereof, and

(c) guarantees compliance by its Utility with the Power Purchase Agreement obligations to complete, operate and maintain the Utility's Transmission Lines.

4.05 Existence of the Utilities. Each of the Governments will cause its Utility to remain in existence and to carry out its business as such Utility conducts as of the date hereof; *provided however*, that any of the Governments may privatize or restructure its Utility. In the event of such privatization or restructuring such a Government shall ensure that the successor to the Utility is able to undertake all the obligations of the Utility, as the case may be, under the Transaction Agreements.

4.06 Acquisition, Transportation and Use of Explosives. The Parties acknowledge that the construction of the Generation Facility will require the use of explosives. To that effect, each of the Governments shall facilitate the Company and the Contractors to obtain the necessary Authorizations to transport, store and use explosives needed during the construction of the Generation Facility subject to their compliance with Applicable Law.

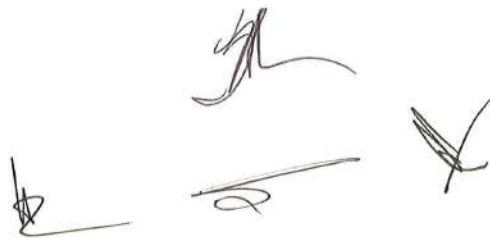
4.07 Trans-boundary Support.

a. The Parties acknowledge that the Site extends across the international boundary of Rwanda and Tanzania.

b. The Governments shall support the Company as follows:

(i) Each of Rwanda and Tanzania shall use its good offices to do everything reasonably within its power to assist the Company for the purposes of the development, construction, operation and maintenance of the Generation Facility to: (A) obtain all necessary Authorizations and other user rights under the Applicable Law as the case may be, and (B) acquire such rights to land in Rwanda and Tanzania as may be required for the purposes of developing, constructing, operating and maintaining the Generation Facility;

(iii) Each of the Governments shall facilitate the free movement and regular border crossing of personnel, vehicles and materials employed, owned or operated by the Company and the Contractors, as the case may be, across the joint boundary for the purposes of the development, construction, operation and maintenance of the Generation Facility.

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4.08 Riparian Protocols and Developments Upstream of the Site.

- a. Upon or prior to the Closing Date, each of the Governments shall have granted and or obtained all consents necessary or given all notices required under any operating understandings or treaties between such Government and any other riparian state to the River Kagera in respect of water rights granted or to be granted to the Company for the development, construction, operation and maintenance of the Generation Facility.
- b. The Parties acknowledge that in future there may be further developments upstream of the Site. To that extent, no Government shall grant and each Government shall ensure that none of its Relevant Authority grants any rights to harness, utilize, divert or release water resources upstream of the Site where the grant of these rights could have the effect (each an "Adverse Effect") of (i) reducing the average daily, seasonal or annual flow at the Generation Facility below the flow or volume required for the operation of the Generation Facility to produce electricity at the planned level of installed capacity, or (ii) otherwise adversely affecting the operation and maintenance of the Generation Facility.
- c. Each of the Governments shall ensure that no third party shall engage in any activity upstream of the Site on or adjacent to, or in the watershed area of River Kagera that could have an Adverse Effect.
- d. In the event that any of the Governments desires to grant any rights (whether water rights or otherwise for the development or use of the land adjacent to or in the watershed area of the River Kagera) upstream of the Site, that Government shall first consult with, and take all reasonable measures as may be requested by the Company to avoid an Adverse Effect.

4.09 Related Agreements.

- a. The form of the Shareholders' Agreement is appended hereto as Exhibit B (*Form of Shareholders' Agreement*).
- b. The form of the Power Purchase Agreement is appended hereto as Exhibit C (*Form of Power Purchase Agreement*).
- c. Each of the Governments acknowledges knowledge of the terms and conditions of this Agreement and further undertakes to cause its Utility to enter into the applicable Power Purchase Agreement within thirty (30) days after the date hereof.

5. **PERMITS AND APPROVALS.**

5.01 Application by the Company for Authorizations.

- a. The Company shall make or cause to be made, in a timely fashion, applications (whether initial or renewal applications) for all Authorizations and shall diligently pursue the issuance of the Authorizations.

- b. The Company shall complete each application for any Authorization in the form (if any) required and by providing all required information and data as may be prescribed by Applicable Law (or for any modification or renewal thereof) and shall pay the charge or fee (if any) as prescribed by Applicable Law to the appropriate Relevant Authority.
- c. Any information or data supplied by the Company in the application for the issuance or renewal of any Authorization shall be complete and accurate, and the Company shall be obligated to satisfy the substantive and procedural requirements of Applicable Law applied in a "non-discriminatory" manner when providing, describing or identifying any designs, structures, undertakings, activities, and other matters in the application for the issuance or renewal of any Authorization.
- d. Subject to the Company's compliance with its obligations under Clauses 5.01(a) through and inclusive of Clause 5.01(c) above, each of the Governments shall grant or issue, or cause the Relevant Authority to grant or issue the Authorizations that may be required from time to time for the purposes of the development, construction, operation and maintenance of the Generation Facility.

5.02 Conditions to Authorization.

- a. Each of the Governments (including any of its Relevant Authority) may attach such non-discriminatory terms and conditions to the issuance or renewal of any Authorizations, as are reasonably required to ensure compliance with Applicable Law, and the attachment of those terms and conditions shall not in and of itself constitute a breach of this Agreement by the Government or a Government's Event of Default under Clause 10.02(ii) (*Termination by Company*).
- b. A Government shall not terminate, cancel, withdraw, refuse to renew or otherwise disavow any Authorization, whether obtained before or after the date of this Agreement, provided that a Government shall not be in breach of this obligation if, to the extent, and for so long as any Authorization ceases to be in force and effect due to the breach thereof by the Company, its employees or agents, or the Contractors of any of the terms or conditions of such Authorization.
- c. The termination, withdrawal or failure to renew an Authorisation by a Relevant Authority, whether or not such termination, withdrawal or failure to renew the Authorisation shall be due to the failure by the Company or any of the Contractors to comply in any material way with any material term or condition of any Authorization, shall not of itself constitute a breach of this Agreement by the Government or a Government Event of Default pursuant to Clause 10.02(ii) (*Termination by Company*).
- d. No Authorization shall be construed to include, grant or convey any concessions or exemptions from Applicable Law, unless such concessions or exemptions are expressly granted to the Company pursuant to the terms of this Agreement, in any Authorization, or in

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any other written instrument issued by a Relevant Authority relating to this Agreement or any Authorization.

5.03 Support to Obtain Authorizations.

a. Each Government shall designate a liaison officer who shall serve as the single point of contact through whom the Company may communicate for all purposes relating to issuance of all Authorizations and recommendations (including customs clearance matters and any tax exemptions) in relation to the Generation Facility and to liaise between the Company and each of the Governments wherever necessary for the purposes of the development, construction, operation and maintenance of the Generation Facility.

b. Upon request by the Company and subject to the Company's compliance with its obligations under Clauses 5.01 (a) through and inclusive of Clause 5.01 (c) above, each of the Governments shall use all reasonable efforts to ensure that its Relevant Authority expedite the consideration and granting of the Company's applications for any issuance or renewal of any Authorization. The Company shall accompany any request for support under this Clause 5.03 (b) by providing to the particular Government copies of the application for the Authorization, any notice that the issuance or renewal of the Authorization was denied or deferred, and a statement of the Company's efforts in obtaining the issuance or renewal of the Authorization.

5.04 Grant of Investment Incentives and Exemptions. Each of the Governments shall grant to the Company and the Contractors all Investment Incentives as are available under its Applicable Laws for the purposes of the development, construction, ownership, operation and maintenance of the Generation Facility.

6. ADDITIONAL COVENANTS OF EACH GOVERNMENT.

6.01 Assurance Against Discriminatory Action. Each of the Governments shall not take and shall ensure that no Relevant Authority takes any discriminatory action which materially prejudices the Company's, the Lenders' or any Contractor's respective rights or the performance of their respective obligations under this Agreement and the other Transaction Documents or any agreement between the Company or any Contractor in connection with development, construction, operation or maintenance of the Generation Facility, or any other agreement or instrument entered into in connection herewith or therewith.

6.02 Compulsory Acquisition of the Company Shares or Assets. Each of the Government undertakes to the Company that neither it nor any of its Relevant Authorities will expropriate, confiscate, nationalize or otherwise compulsorily acquire: (i) any share capital in the Company, or (ii) any assets or property relating to or directly derived from the Generation Facility or the Company which materially prejudices the Company's rights, the enjoyment of its benefits, or the performance of its obligations under this Agreement and the other Transaction Documents.

6.03 Utility Payment Security. If any of the Utilities (the "Defaulting Utility") fails to meet its obligations to maintain, renew or replace the Payment Security in accordance with the requirements of Clause 8.06 (*Payment Security*) of the applicable Power Purchase Agreement (the "*Payment Security Clause*"), the



Government owning the Defaulting Utility shall cause the Defaulting Utility to comply with such obligations to renew or replace the Payment Security within a period of thirty (30) days after receiving a demand thereof from the Company. If, following the expiry of such period, the Defaulting Utility has not rectified such failure then the Government owning the Utility shall replace the Payment Security in such amount and form as required by the Payment Security Clause, unless and until the Defaulting Utility meets its obligations under such clause. If the Government owning the Utility fails to replace the Payment Security in accordance with the foregoing, then the Company shall not be obligated to make repayments under the on-lending or subsidiary agreement between the Government and the Company to the extent of such failure to replace the Payment Security.

6.04 Implementation Difficulties. The Company may from time to time inform any of the Governments of any difficulties encountered in securing any assistance in relation to the activities from the Government (or a Relevant Authority of the Government) as is required to be performed under Article 5 ("Permits and Approvals") and or this Article 6 ("Additional Covenants of Governments") and if any such difficulties create (in the Company's opinion) a significant possibility that the Company will be prevented or materially impaired in meeting its obligations under any of the Transaction Documents, then, upon the request of the Company, that Government shall take such action as is reasonable under the circumstances to enable the Company to secure the necessary assistance within thirty (30) Business Days of receiving the request.

7. TAXATION AND FOREIGN CURRENCY EXCHANGE.

7.01 Taxation of the Company.

- a. Each of the Government acknowledges and agrees that the Company and its Contractors shall be exempted from all taxes (including customs, duties, income tax, value added tax and stamp duty on materials, plant and machinery, equipment and provision of services) that would otherwise be applicable to the Company and or the Contractors for the design, development, construction, financing, insurance, ownership, operation and maintenance of the Generation Facility. The Government of Rwanda on its part further undertakes to exempt the other Governments and their Utilities from all taxes (including income taxes and Value Added taxes) that would otherwise be applicable under the tax laws of Rwanda for the design, development, construction, financing, insurance, operation and maintenance of the Generation Facility and the taxes that would otherwise be imposed for purchase by the Utilities of electric power from the Generation Facility.
- b. Notwithstanding the provisions of Clause 7.01 (a) above, the Company and or any of the Contractors shall where so required by Applicable Law, make or cause to be made, all applications for exemption from taxes in accordance with the procedures established under Applicable Law.
- c. To further facilitate the implementation of the provisions set forth above, each Government shall do the following:
 - (i) designate a liaison officer in its tax agency who shall serve as the single point of contact through whom the Company may communicate for all purposes relating to

tax exemption and other tax matters relating to the Generation Facility and for the resolution of disputes with tax assessing officers; and

- (ii) undertake to promptly refund, or obtain the prompt refund from the tax agency or other Relevant Authority, of any taxes, duties or other impositions assessed, imposed, or claimed against and paid by the Company or any Contractor contrary to the provisions of this Clause 7.01 or Applicable Law.

7.02 Foreign Currency Exchange and Bank Accounts

- a. The conversion of any of legal tender of any of the Governments into foreign currencies and remittance of foreign currencies outside either of the Governments of monies related to the Generation Facility shall be governed by Applicable Law.
- b. Notwithstanding the provisions of Clause 7.02 (a) above:
 - (i) The Company may apply foreign currency received from the Governments as Shareholders to pay Contractors or vendors in respect of imported services provided or materials and equipment purchased, without conducting the payments through bank accounts located in Rwanda or in the territories of any of the other Governments;
 - (ii) The Company may retain in bank accounts located outside Rwanda, without receiving the payments through bank accounts located in Rwanda, foreign currency received by the Company in respect of successful claims made by the Company under insurance policies maintained by the Company with insurance companies located outside Rwanda;
 - (iii) Rwanda shall not impose any restrictions on the prompt availability, conversion and remittance outside of Rwanda of foreign currencies at prevailing market rates for the payment by the Company of its foreign-currency denominated debts and obligations, including for the payment of dividends, debt service, proceeds from any liquidation or capital reduction of the Company and any other form of distribution of capital to the Shareholders, and for the purchase of spare parts, materials, equipment and services necessary or desirable for the construction, operation and maintenance of the Generation Facility; and
 - (iv) Each of the Governments shall, where necessary and upon proper application being made by the Company or the Contractors, as the case may be, permit the Company to open and maintain bank accounts within or outside Rwanda and retain on deposit therein foreign currency earned by the Company on the sale of electrical power and energy, provided that nothing herein contained shall prevent the Company from opening or maintaining bank accounts within or outside Rwanda or retaining monies therein in foreign currencies to the extent permitted under Applicable Law.

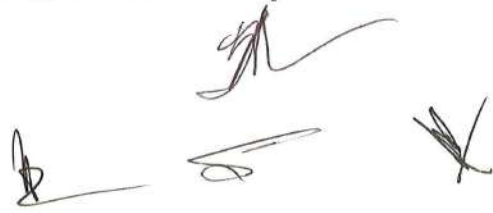


- c. The Governments shall ensure that each of the Governments as Shareholders may enforce, as third party beneficiaries, the Company's rights to the availability, conversion and remittance of foreign currency in respect of the Company's obligation to pay dividends and other distributions of capital.

8. REPRESENTATIONS AND WARRANTIES.

8.01 Company Representations and Warranties. As at the date of this Agreement, the Company hereby represents and warrants to each of the Governments that:

- a. it is a duly incorporated limited liability company, validly existing in accordance with laws of the jurisdiction of its incorporation and has all requisite corporate power to own or lease and operate its properties and to carry on its business as proposed to be conducted;
- b. it has full corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder;
- c. this Agreement has been duly executed and delivered by it and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, subject to (A) bankruptcy, insolvency, reorganization, moratorium, or other similar laws now or hereafter in effect relating to creditors' rights, and (B) general principles of equity;
- d. the execution, delivery, and performance of this Agreement does not, and will not, constitute a violation of (A) any Applicable Law or any judgment, order, decree or regulation or rule of any Relevant Authority or arbitrator of competent jurisdiction applicable or relating to it, its assets or its business, or (B) its Organizational Documents, or (C) any indenture, contract or agreement to which it is a party or by which it or its property may be bound;
- e. there are no outstanding judgments against it, and, to its best knowledge, no action, claim, suit or proceeding is pending or threatened against it before any court, governmental authority or arbitrator of competent jurisdiction that could reasonably be expected to affect materially and adversely its financial condition or operations or its ability to perform its obligations under this Agreement or any other agreement relating to the development, financing, construction, ownership, operation and maintenance of the Generation Facility or which purports to affect the legality, validity or enforceability of this Agreement;
- f. it is not in default under any agreement to which it is a party or by which it or its property may be bound, nor in any default of any technical or financial obligation, which could have a material adverse effect on its ability to perform its obligations under this Agreement; and
- g. no information given by it in relation to this Agreement contains any misstatement of fact or omits to state a fact which would be materially adverse to the enforcement of the rights and remedies by any of the Governments or which would be necessary to make any statement, representation or warranty contained herein true and correct in all material respects.

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8.02 Governments Representations and Warranties. As at the date of this Agreement, each of the Governments severally and on its own part hereby represents and warrants to the Company and to the other Governments that:

- a. its respective Minister signatory to this Agreement has full power and authority to execute and deliver this Agreement on behalf of the respective Government, and the respective Government has full power and authority to perform its obligations hereunder;
- b. the execution, delivery and performance of this Agreement by the Government (A) has been duly authorized by all requisite legal action on the part of the Government, and no other proceedings on the part of the Government or any other person are necessary for such authorization, and (B) will not (x) violate Applicable Law or (y) violate, be in conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any indenture, agreement for borrowed money, bond, note, instrument or other agreement to which the Government is a party or by which the Government or its property is bound, excluding defaults or violations that would not individually or in the aggregate, have a material adverse effect on the Government's ability to perform its obligations hereunder;
- c. this Agreement constitutes a legal, valid and binding obligation of the Government, enforceable against it in accordance with its terms, subject to general principles of equity;
- d. no filing or registration with, no notice to and no permit, authorization, consent or approval of any Person is required for the execution or delivery of performance of this Agreement by the Government, or of its obligations hereunder, except for the permits, authorizations, consents and approvals that have been obtained;
- e. the Government is not in default under any agreement or instrument of any nature whatsoever to which it is a party or by which it is bound in any manner that would have a material adverse effect on its ability to perform its obligations hereunder or the validity or enforceability of this Agreement; and
- f. there is no action, suit, proceeding or investigation pending or, to the Government's knowledge, threatened, against the Government which, if adversely determined, would have a material adverse effect on its ability to perform its obligations hereunder or the validity or enforceability of this Agreement.

8.03 Legal Opinion. Each Government will deliver a legal opinion to the other Parties in respect of the matters as set out in Clause 8.02 (Governments Representations and Warranties).

9. **FORCE MAJEURE.**

9.01 Definition of Force Majeure.

- a. For the purposes of this Agreement the term "*Force Majeure*" means any event or circumstance or combination of events and circumstances, referred to in Clauses 9.01 (b) or 9.01 (c), which affects a Party and which is not within the reasonable control of the affected Party exercising reasonable skill and care in the performance of its obligations, and which, or any consequences of which, results in the failure or inability of the affected Party to perform its obligations under this Agreement (including a delay in the performance of its obligations hereunder).
- b. Events or circumstances which (except to the extent they constitute events or circumstances of Political Force Majeure) constitute other force majeure ("*Other Force Majeure*") include the following:
- (i) earthquakes, volcanic activities, floods, storms, drought, landslides, cyclones or typhoons, tornados or other unusual or extreme adverse weather or environmental conditions, fire, explosion or chemical or radioactive contamination;
 - (ii) strikes, works to rule or go-slows, or other industrial action or labor disputes involving any of the Parties or its contractors, or their respective sub-contractors, employees or agents, in all cases employed in the execution of work or the supply of goods and services within Burundi/or Rwanda/or Tanzania or (where the affected party is the Company) involving any Contractor or its or their employees or agents, but only insofar as they materially and adversely affect the development and construction of the Generation Facility;
 - (iii) any loss or damage to marine cargo in the course of marine transit and intended for incorporation into the Generation Facility prior to the Commercial Operation Date;
 - (iv) epidemic or plague;
 - (v) acts of God;
 - (v) any event or circumstance of a nature analogous to any of the foregoing.
- c. Events or circumstances that occur inside or involve Burundi/or Rwanda/or Tanzania which constitute political force majeure ("*Political Force Majeure*") include the following:
- (i) strikes, works to rule or go-slows, or other industrial action or labor disputes that extend beyond the facilities of any of the Parties, are widespread or nationwide, or that are of a political nature;

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- (ii) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, bombs, or civil commotion, in each case directly involving any of the Parties;
- (iii) campaign of terrorism, sabotage or threats of such acts in each case involving any of the Parties;
- (iv) any Change in Law;
- (v) a Lapse of Authorization.

d. The Parties acknowledge that it is their intent that all events or circumstances of force majeure shall be classified as either Other Force Majeure or Political Force Majeure, according to their nature, but that, notwithstanding Clauses 9.01 (b) and 9.01 (c) above, none of the following matters or their consequences shall be capable of constituting or causing Force Majeure:

- (i) failure to make any payment hereunder when due, a lack of funds due to any commercial, economic or financial reason such as, but not limited to, a Party's inability to make a profit or achieve a satisfactory rate of return due to the provisions of this Agreement, or changes in market conditions (although the inability to make any payment or to use available funds, , and lack of funds due to non-availability of facilities to convert currency, in each case due to any reason set out in Clause 9.01 (a) above, shall be regarded as Force Majeure);
- (ii) normal wear and tear or random flaws in materials and equipment or breakdown in equipment;
- (iii) any full or partial curtailment in the electric output of the Generation Facility that is caused by, or arises from, the acts or omissions of any third party (other than a Utility) including any vendor, materials supplier, customer, or supplier of the Company, except, and to the extent, such acts or omissions are themselves caused by any event, circumstance or combination of events or circumstances which constitutes Force Majeure; or
- (iv) changes in market conditions that affect demand or price on the part of any Utility for electric output from the Generation Facility.

9.02 Effects of Force Majeure.

a. If a Party claims relief on account of Force Majeure then the rights and obligations of that Party with respect to any of the other Parties shall be suspended and the Party so affected shall not be liable in breach of contract for delay or non-compliance with that obligation for the duration of the event or circumstance of Force Majeure provided the Party so affected:

- (i) promptly notifies the other Parties as soon as practicable, but in any event not later than 48 hours after the Party claiming Force Majeure becomes aware of the same, giving full particulars and satisfactory evidence in support of its claim (and in the event of a breakdown of communication rendering it impracticable to give notice of Force Majeure, the Party claiming Force Majeure may give the notice as soon as practicable, but not later than 24 hours, after the reinstatement of communication);
 - (ii) keep the other Parties reasonably informed periodically, but no less than weekly, in respect of its progress in overcoming the event or circumstance of Force Majeure; and
 - (iii) use all reasonable endeavors to overcome the consequences of the event or circumstance of Force Majeure.
- b. When the event or circumstance of Force Majeure has been eliminated or no longer affects a Party, the relevant rights and obligations of the Parties under this Agreement shall recommence forthwith (and the applicable period for the performance of the obligation shall be extended by a period equal to the duration of the event or circumstance of Force Majeure).

10. COMPANY AND GOVERNMENT EVENTS OF DEFAULT.

10.01 Company Events of Default. Each of the following events shall be an event of default by the Company (each a "*Company Event of Default*") which, if not cured within the time period permitted (if any) to cure, shall give rise to the right on the part of any of the Governments (each an "*Enforcing Government*") to enforce the remedies as established under this Agreement pursuant to Clause 10.04 (*Remedies*):

- (i) any breach by the Company of this Agreement that is not remedied within 180 days after notice from the Enforcing Government giving reasonable details of the breach by the Company (with a copy to each of the other Governments) and demanding remedy thereof, *provided, however*, that for breaches requiring more than one hundred and eighty (180) days to cure, the Company may have such additional time to cure any such breach under this Agreement if, prior to the end of the initial 180 day period, the Company provides satisfactory evidence to the Enforcing Government (with a copy to each of the other Governments) that (A) it has commenced and is diligently pursuing a cure, and (B) more than 180 days is reasonably required to effectuate a cure of the breach.
- (ii) The Company or any of its representatives makes a misrepresentation or warranty under this Agreement that was incorrect or materially misleading on the date made or deemed made, and if capable of being cured, the incorrect or materially misleading representation or warranty shall have continued uncured for a period of 60 days after receipt by the Company of notice thereof from any of the Governments.

- (iii) any Relevant Authority revokes any Authorization pursuant to Applicable Law, due to an omission or violation there under by the Company and all appeals in relation thereto have been exhausted; or
- (iv) the Power Purchase Agreements are terminated by all (and not less than all) of the Utilities in consequence of a Company Event of Default there under;

provided, however, that no such event shall be a Company Event of Default if it results from any of the following: (A) a breach by any of the Governments of this Agreement, (B) a breach by a Utility under the Power Purchase Agreement, (C) the revocation of any Authorization by a Relevant Authority because of any event other than a failure by Company to comply with the terms thereof, (D) any event or circumstance of Force Majeure, or (E) any combination of the foregoing.

10.02 Government Event of Default. Each of the following events shall be an event of default by a Government (each a "*Government Event of Default*") which, if not cured within the time period permitted (if any) to cure, shall give rise to the right to enforce the remedies pursuant to Clause 10.04 (*Remedies*);

- (i) any breach by a Government of this Agreement that is not remedied within one hundred and eighty (180) days after notice from the Company (with a copy to each of the other Governments) giving reasonable details of the breach by a Government and demanding remedy thereof; *provided, however,* that for breaches requiring more than 180 days to cure, the Government may have additional time to cure any such breach under this Agreement as the Government estimates may be necessary to cure such breach if, prior to the end of the 180day period, the Government provides satisfactory evidence to the Company (with a copy to each of the other Governments) that (A) it has commenced and is diligently pursuing a cure, and (B) more than one hundred and eighty (180) days is reasonably required to effectuate a cure of the breach;
- (ii) A Government or any of its representatives makes a misrepresentation or warranty under this Agreement that was incorrect or materially misleading on the date made or deemed made, and if capable of being cured, the incorrect or materially misleading representation or warranty shall have continued uncured for a period of 60 days after receipt by the Government of notice thereof from the Company;
- (iii) any expropriation, compulsory acquisition or nationalization or similar action by a Government or any Relevant Authority of (A) any ordinary share capital of the Company, or (B) any property or asset (including the Generation Facility) or right of the Company;
- (iv) any Change in Law;
- (v) any action by a Government relating to the privatization and or restructuring of its Utility that would not be in conformity with the requirements and undertakings of the Government under Clause 4.04 (*Existence of Utility*);

- (vi) any failure or neglect by a Government to (A) support the Company to obtain Authorizations as provided for under Clause 5.03 (*Support to Obtain Authorizations*), or (B) grant to the Company (or renew) of any Specified Consent;
- (vii) any failure or unreasonable delay by a Government or any Relevant Authority to renew or extend any material Authorization required by its Utility to carry out its business as it is currently being conducted, including the Utility's business to transmit electrical energy; or
- (viii) any failure by a Government to comply with its obligations to replace and maintain the Payment Security pursuant to Clause 6.04 (*Utility Payment Security*),

provided, however, that no such event shall be a Government Event of Default if it results from (A) a failure by the Company to comply with the terms of this Agreement, or with any Authorization, (B) any event or circumstance of Other Force Majeure, or (C) any combination of the foregoing.

10.03 Notice of Intent to Enforce Remedies.

- a. For the avoidance of doubt, any dispute by a Party as to whether any event qualifies as a Company Event of Default or a Government Event of Default shall be finally resolved under Clause 12 (*Resolution of Disputes*) of this Agreement.
- b. Upon the occurrence of a Company Event of Default or a Government Event of Default, as the case may be, that is not cured within the applicable period for cure, any non-defaulting Party may, at its option, initiate remedies under this Agreement by delivering a notice (with a copy to the other Parties) (a "*Notice of Intent to Enforce Remedies*") of its intent to enforce the remedies under this Agreement. The Notice of Intent to Enforce Remedies shall specify in reasonable detail the Company Event of Default or the Government Event of Default, as the case may be, giving rise to such notice.
- c. In the event of a Company Event of Default, any Government not in default shall deliver a copy of the Notice of Intent to Enforce Remedies to the Lenders in the manner as shall be specified in the Loan Agreement.
- (d) Following the delivery of a Notice of Intent to Enforce Remedies, the Parties shall consult in good faith to seek to resolve the default and the Party in default may continue to undertake efforts to cure the default, in each case for a period (commencing on the delivery of such notice) of 180 days (or such longer period as the Parties may mutually agree), and unless the Parties shall have otherwise agreed or the Company Event of Default or Government Event of Default, as the case may be, giving rise to the Notice of Intent to Enforce Remedies shall have been remedied or the events or circumstances giving rise to the default shall have ceased to exist, the Parties undertake to assist and give all necessary support to each other to enforce the remedies under this Agreement as provided for in Clause 10.04 (*Remedies*).



10.04 Remedies

- (a) In the event of a Company Event of Default that cannot be cured in accordance with Clause 10.03 (*Notice of Intent to Enforce Remedies*), the Parties shall be under an obligation (and not only a right) to form a new company and as Shareholders shall transfer or cause the transfer, without exception, of all the assets, rights, interests and liabilities as shall at the time of transfer be held by or in the Company to the newly formed company. Immediately after the completion of the transfer processes the Parties shall cause the liquidation of the Company in accordance with Applicable Law.
- (b) In the event of a Government Event of Default that cannot be cured in accordance with Clause 10.03 (*Notice of Intent to Enforce Remedies*), the Government in default shall be suspended from exercising its rights (but not its obligations) available to that Government under the Implementation Agreement and the Shareholders' Agreement (including its right to vote and or to share a dividend there under) until such a time as that Government Event of Default shall have been cured.

11. **LIMITATION ON LIABILITY.**

- a. Except as specifically provided herein, no Party shall be liable to the other Party in contract, tort, warranty, strict liability or any other legal theory for any indirect, consequential, incidental, punitive or exemplary damages.
- b. No Party shall have any liability to the other Party except pursuant to, or for breach of, this Agreement; *provided, however*, that this provision is not intended to constitute a waiver of any rights of one Party against the other Party with regard to matters unrelated to this Agreement or to any activity not contemplated by this Agreement.

12. **RESOLUTION OF DISPUTES.**


12.01 Amicable Settlement of Disputes.

- a. In the event of any dispute, difference, controversy or claim directly or indirectly arising out of, or relating to, this Agreement or the breach, termination or invalidity of this Agreement (a "*Dispute*"), the Parties shall attempt to amicably settle the Dispute in the first instance within 30 days or within an agreed time frame by mutual discussion.
- c. Upon completion of the 30day period, or such additional period as may be agreed, either Party may commence arbitration of the Dispute in accordance with Clause 12.02 (*Expert Determination*) or refer the Dispute to arbitration in accordance with Clause 12.03 (*Arbitration*).

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12.02 Expert Determination.

- a. If the Parties (or either of the Parties) agree that a Dispute between them should be resolved by an expert, any Party may so request as provided in this Clause 12.02 (*Expert Determination*).
- b. If the Parties agree to refer a Dispute to an expert for determination pursuant to Clause 12.02 (a) above, the Parties shall endeavour to agree a single expert to whom the matter shall be referred. If, within 14 days after receipt of the request, the Parties have failed to agree an expert, then the Party requesting the determination shall immediately refer the matter to the International Chamber Commerce Centre for Expertise (*the Centre*), which shall, in accordance with the International Chamber of Commerce Rules of Expertise, appoint an expert to determine the matter within 30 days of receipt of a referral.
- c. The expert shall have demonstrated expertise in the area to which the Dispute relates and shall not be an agent, employee or contractor (or a former agent, employee or contractor) of either Party to the Dispute. The expert shall speak the English language fluently and shall not be a national of any of the Party.
- d. The expert determination shall be conducted in accordance with the International Chamber of Commerce Rules for Expertise, except as modified herein. The expert so appointed shall promptly fix a reasonable time and place for receiving submissions or information from the Parties and may make such other enquiries and require such other evidence as the expert deems necessary for resolving the matter. All information and data submitted by either Party as confidential shall not be disclosed by the expert to third parties. All the Parties shall have the opportunity to make presentations to the expert, *provided that*, any Party may elect not to be a party to the Dispute except that it may be compelled to participate by either of the other Parties. Unless all Parties to the Dispute agree to an extension of time, the expert shall issue a written determination within 90 days of his or her appointment. The determination shall state the conclusions of the expert and the findings of fact on which they are based.
- e. The fees and cost of the expert shall be borne equally by the Parties to the Dispute unless the expert shall determine otherwise, in which case the Party that shall be ordered to pay the costs shall do so in accordance with the order of the expert.
- f. If any Party refuses to comply with the determination of the expert within 15 days after receipt thereof, at the request of any Party, the Dispute shall be referred to binding arbitration under Clause 12.03 (*Arbitration*).
- g. If the expert is not timely appointed in accordance with Clause 12.02 (b) or the expert has not rendered a timely determination in accordance with Clause 12.02 (d), then, prior to its receipt of the expert's determination, any Party may refer the Dispute to binding arbitration *de novo* in accordance with Clause 12.03 (*Arbitration*).

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12.03 Arbitration.

- a. On the request of any Party (*the Claimant*), any Dispute shall be finally settled by arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law (the "Arbitration Rules") except as modified herein. The Dispute shall be arbitrated before a panel of three arbitrators, each of whom shall speak the English language fluently. There shall be three arbitrators, one of whom shall be nominated by the Claimant and the other jointly by the other Parties to the Dispute in accordance with the Arbitration Rules. The two party appointed arbitrators shall have thirty (30) days from the confirmation of the nomination of the second arbitrator to agree on the nomination of a third arbitrator who shall serve as chair of the arbitral tribunal. On the request of any Party, any arbitrator not timely appointed in accordance with this Agreement, shall be appointed by the London Court of International Arbitration in accordance with the Arbitration Rules. The chair of the arbitral panel shall not be a national of any of the Parties. All arbitrators shall be and remain at all times wholly impartial and, after being appointed, no arbitrator shall have any *ex parte* communication with any party to the Dispute concerning the arbitration or the underlying Dispute other than communications directly concerning the selection of the presiding arbitrator. The arbitration proceedings and hearings shall be held in the English language in Port Louis, Mauritius.
- b. The Parties authorize the arbitrators to order, in accordance with such provisions as they deem appropriate, limited discovery proceedings, including depositions, interrogatories, requests for admission, and orders for the examination of documents, persons, and things. These orders shall be binding on the Parties. If any Party fails to comply with a discovery order, the arbitrators may assume that the evidence that would have been produced by compliance with the order would have been unfavourable to the Party that failed to comply with the order.
- c. The Parties hereby waive any rights and otherwise agree to exclude any right of appeal to any other court which would otherwise have jurisdiction in connection with any question of law arising in the course of the arbitration or in connection with any review of an arbitration award on the merits. The Parties may make an application to any court for enforcement of any arbitration award and for the obtaining of any evidence (whether by discovery of documents, interrogatories, affidavits, or testimony of witnesses or otherwise) which the arbitrators shall order to be provided in connection with the arbitral proceedings.
- d. If a Party fails or refuses to appear at and participate in an arbitration hearing after due notice, the arbitrators may hear and determine the controversy on evidence produced by the Party that does appear. All notices required for any arbitral proceeding shall be deemed properly given if sent in accordance with Clause 13.01 (*Notices*).
- e. The arbitral tribunal may consolidate an arbitration arising out of or relating to this Agreement with any arbitration arising out of or relating to this Agreement and the Transaction Documents, if the subject matter of the disputes arise out of or relate to essentially the same facts or transactions. Such consolidation shall be determined by the arbitral tribunal appointed for the arbitration that was commenced first in time.

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- f. The Arbitration shall be governed by the Arbitration Rules and, where the Arbitration Rules are silent, the laws of England. The award of the arbitrators shall be final, binding and non-appealable, and judgement upon the award rendered may be entered in any other court of competent jurisdiction.
- g. Each of the Parties (i) agrees that, should any proceedings for enforcement of any arbitral award rendered hereunder be brought against it or its assets, other than excluded assets as defined below ("*Excluded Assets*"), in any jurisdiction, that Party is not entitled to any immunity on the basis of sovereignty or otherwise in respect of such award, and no immunity from such proceedings (including, without limitation, immunity from service of process from suit, from the jurisdiction of any court, from an order or injunction of such court or the enforcement of same against its assets) shall be claimed by or on behalf of that Party or with respect to its assets, other than Excluded Assets; (ii) waives, in any proceedings, to the fullest extent permitted by law, any right of immunity which it or any of its assets, other than Excluded Assets, now has or may acquire in the future in any jurisdiction; consents generally in respect of the enforcement of any judgment or award against it in those proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with those proceedings (including, without limitation, pre-judgment attachment, post judgment attachment, the making, enforcement or execution against or in respect of any assets whatsoever, (other than Excluded Assets), irrespective of their use or intended use of any order or judgment that may be made or given in connection therewith); and (iii) specifies that, for the purposes of this provision, "Excluded Assets" shall mean assets or property belonging to the public domain of any of the Governments and not attachable or transferable according to Applicable Law, including but not limited to (A) property of the Central Bank of any of the Governments held for its own account, (B) property to be used in connection with military activity that is of military character or is under the control of the military authority or defence agency of any of the Governments, and (C) "premises of the mission" as defined in the Vienna Convention on Diplomatic Relations signed at Vienna, April 18, 1961, "consular premises" as defined in the Vienna Convention on Consular Relations signed in 1963.
- h. Each Party shall initially pay all its costs, expenses and fees, of whatever nature incurred in connection with the arbitration of Disputes including (without limitation) all costs, filing fees, expenses and fees for attorneys, expert witnesses, travel expenses, and production of records and documents, if any. The arbitrators shall apportion the costs, expenses and fees between the Parties in the arbitral award, with the costs of the arbitration being borne by the non-prevailing Party or Parties.
- i. All arbitration awards shall be made and payable in US Dollars, free of any tax or other deduction. Any monetary award shall include interest from the date of any breach to the date on which the award is paid at a rate determined by the arbitral tribunal.
- j. Notwithstanding the submission of a Dispute to arbitration or expert determination, no Party shall interrupt or cease performance of this Agreement, or engage in or abet any disruptive activity for any reason and each Party shall undertake all possible means to prevent

or conclude any such activity. The submission of a Dispute for arbitration or expert determination shall not in and of itself constitute a breach of this Agreement or failure to perform. The arbitrators or expert may at any Party's request order any protective measure.

- k. The Parties hereby declare that they have the capacity, and have obtained all necessary authorisations and/or approvals to submit all their future differences and disputes to arbitration pursuant to the provisions of this Article 14.03, and hereby waive any right to claim lack of capacity. The lack of capacity to submit to arbitration on the part of any of the Parties shall in no way affect the validity of the arbitration clause, which shall remain in force and binding on the Parties.

13. MISCELLANEOUS PROVISIONS.

13.01 Notices.

- a. Except as otherwise expressly provided in this Agreement, all notices or other communications to be given or made hereunder shall be in writing, shall be addressed for the attention of the individuals indicated below and shall either be delivered personally or sent by courier, registered or certified mail. The addresses for service of the Parties and their respective addresses and facsimile numbers are as follows:

To: THE GOVERNMENT OF THE REPUBLIC OF BURUNDI

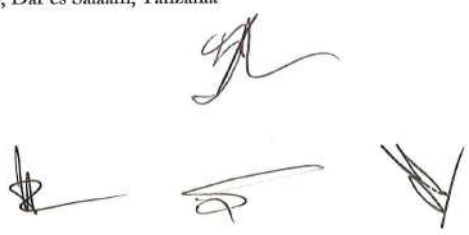
Attention: The Permanent Secretary
Physical Address: Ministry of Energy and Mines
Postal Address: P.O. Box 745. Bujumbura, Burundi

To: THE GOVERNMENT OF THE REPUBLIC OF RWANDA

Attention: The Permanent Secretary
Physical Address: Ministry of Infrastructure
Postal Address: P.O. Box 24, Kigali, Rwanda

To: THE GOVERNMENT OF THE UNITED REPUBLIC OF TANZANIA

Attention: The Permanent Secretary
Physical Address: Ministry of Energy and Minerals
Postal Address: P.O. Box 2000, Dar es Salaam, Tanzania

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To: THE COMPANY:

Attention: The Managing Director
Physical Address: Rusumo Power Company Limited,
Postal Address: P.O. Box 6759, Kigali, Rwanda

- b. All notices shall be deemed delivered (i) when delivered by hand, or (ii) upon receipt when delivered to a courier for overnight or express delivery, addressed to the receiving Party, at the Party's address. Any notice given by facsimile shall be confirmed in writing, but the failure to so confirm shall not void or invalidate the original notice if it is in fact received by the Party to which it is addressed.
- c. Any Party may by notice change the address number to which notices and communications to it are to be delivered or mailed.

13.02 Amendment. This Agreement can be amended, modified or supplemented only by agreement between the Parties in writing.

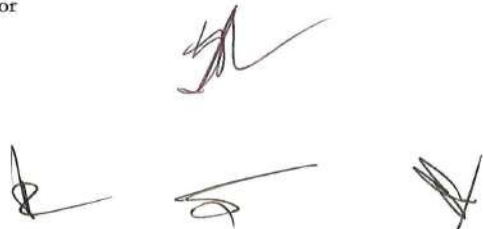
13.03 Expenses. Subject to Clause 12.03(*Arbitration*), each Party shall be solely liable for its own fees and expenses (including the fees of any lawyers, accountants, advisors, agents or other representatives engaged by the Party) incurred in connection with this Agreement and the transactions contemplated hereby, whether or not the transactions contemplated hereby are consummated.

13.04 Severability. If any one or more of the provisions of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions of this Agreement will not be affected thereby, and the Parties will use their reasonable efforts to substitute one or more valid, legal and enforceable provisions which, insofar as practicable, implement the purposes and intent hereof. To the extent permitted by Applicable Law, each Party waives any provision of Applicable Law, which renders any provision of this Agreement invalid, illegal or unenforceable in any respect.

13.05 No Third Party Rights. This Agreement is intended solely for the benefit of the Parties, including any permitted assigns, and, nothing in this agreement shall be construed to create any rights in, duty to, standard for care to, or any liability to any Person not a Party to this Agreement.

13.06 No Waiver.

- a. No waiver by either Party of any defaults by the other Party in the performance of any of the provisions of this Agreement:
 - (i) shall operate or be construed as a waiver of any other or further default or defaults whether of a like or different character, or



(ii) shall be effective unless given in writing duly executed by an authorized representative of that Party.

- b. Neither the failure by a Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement nor time or other indulgence granted by one Party to the other Party shall act as a waiver of any breach, an acceptance of any variation or the relinquishment of that right or any other right hereunder.

13.07 Relationship of the Parties. This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind the other Party.

13.08 Survival. The expiration or earlier termination of this Agreement shall not relieve the Parties of the obligations that are expressly provided to survive termination in Clause 10.03 (*Termination Notices*), any warranties, remedies, or promises of indemnity and confidentiality or such other provisions as are by their nature intended to survive the cancellation, expiration or termination of this Agreement.

13.09 Language. This Agreement is being executed and delivered in the English language and all modifications, amendments and waivers of any provision of this Agreement and all other written documents between the Parties in connection with this Agreement (including any arbitration) shall, except as otherwise agreed by the Parties, be in the English language.

13.10 Governing Law. This Agreement and the rights and obligations of the Parties hereunder shall be governed by and interpreted and construed in accordance with the laws of England and Wales.

13.11 Entirety of Agreement. The Parties intend this Agreement as the final expression of their agreement on the matters contained herein and also as a complete and exhaustive statement of their agreement with respect to the subject matter contained herein. This Agreement supersedes any previous agreements or understanding between the Parties on the subject matter hereof.

13.12 Confidentiality.

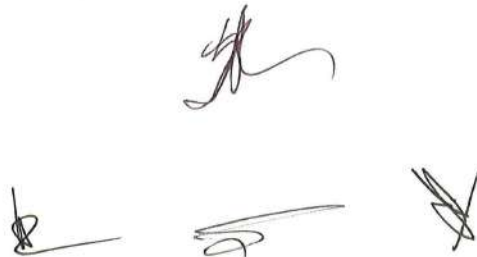
- a. Each of the Parties and their contractors (including the Contractors), consultants and agents shall hold in confidence all documents and other information, whether technical or commercial, supplied to it by or on behalf of the other Party relating to the financing, construction, insurance, operation and maintenance of the Generation Facility and all other information and documents obtained by it in the course of any inspection of the Generation Facility or Site performed in accordance with the terms of this Agreement, and shall not, save as required by law or appropriate regulatory authorities or by prospective lenders to the Company and their professional advisers, publish or otherwise disclose or use the same for its own purposes otherwise than as may be required to perform its obligations under this Agreement.

- b. The provisions of paragraph (a) above shall not apply to information in the possession of the receiving Party thereof prior to its publication or disclosure, or which is not obtained under any obligation of confidentiality.

13.13 Successors and Assigns. This Agreement shall be binding upon and enure to the benefit of the Parties and their respective successors and permitted assigns.

13.14 Counterparts. This Agreement may be executed in four or more original copies and each copy may be executed by each of the Parties in separate counterparts, each of which copies when executed and delivered by the Parties shall constitute an original, but all of which shall together constitute one and the same instrument.


[SIGNATURES APPEAR ON THE NEXT PAGE]

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

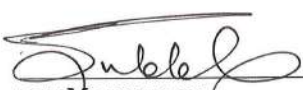
THE GOVERNMENT OF THE REPUBLIC OF BURUNDI

By:


Hon. Gise Ndirakobuca
THE MINISTER OF ENERGY AND
MINES

THE GOVERNMENT OF THE REPUBLIC OF RWANDA

By:

 (Prof. Stanis Lwambamba)
THE MINISTER OF
INFRASTRUCTURE


THE GOVERNMENT OF THE UNITED REPUBLIC OF TANZANIA

By:


THE MINISTER OF ENERGY AND
MINERALS
Prof. SOSPETER M. MUHONGO

RUSUMO POWER COMPANY LIMITED

By:

 JOHN I. KABADI

AUTHORISED SIGNATORY



SCHEDULE 1: - GENERATION FACILITY LOCATION AND DESCRIPTION

1.1 MAP SHOWING LOCATION OF THE PROJECT

The location of the Regional Rusumo Hydropower Generation Facility is shown in the following drawings below:

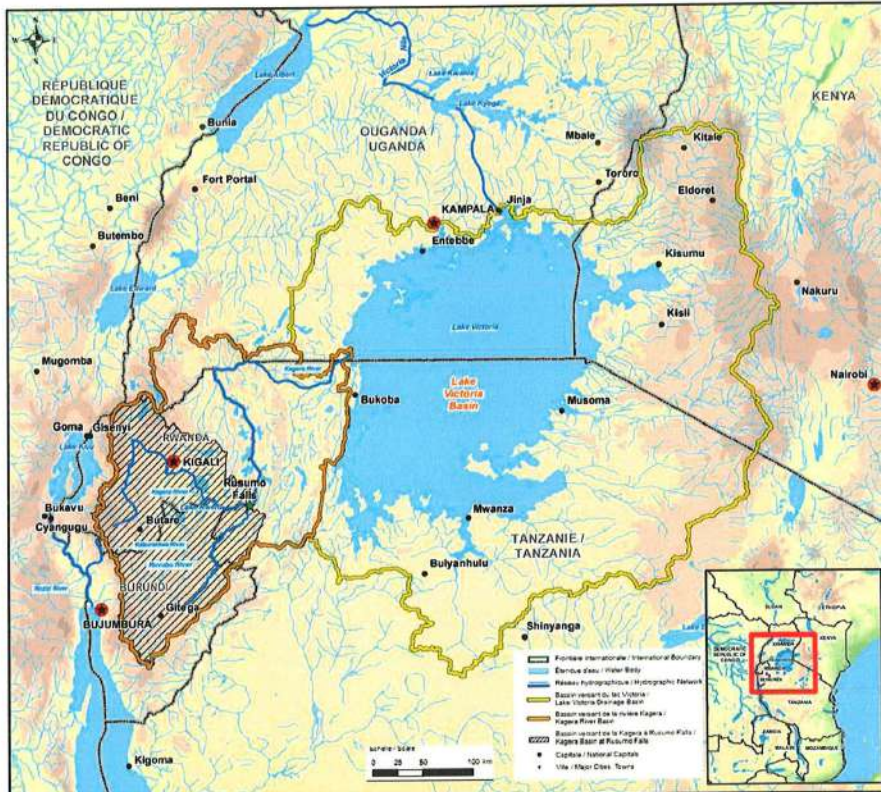


Figure 1: Map Showing the Regional Geographical Location of the Rusumo Falls

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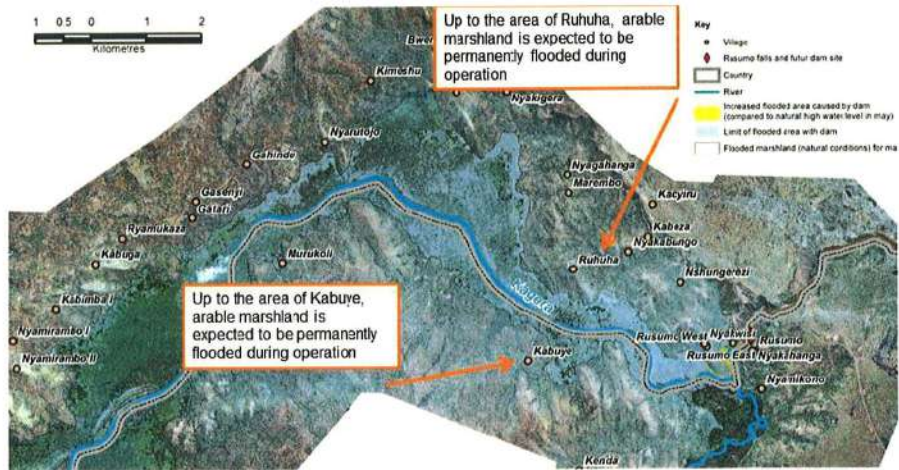


Figure 3: Overview on Project Affected Area (actually and potentially affected villages)

Project Overview

GENERAL DESCRIPTION AND IMPACT OF THE PROJECT

The Proposed Project is a joint development undertaking by the Governments of Burundi, Rwanda and Tanzania. The Project will be located at the Kagera River on the common border of Tanzania and Rwanda. It is located in the districts of Kirehe (Rwanda) and Ngara (Tanzania) as shown on the maps (Figure 2) above.

The morphology of the landscape is characterized by gentle hillsides gradually converging into marshlands. A transitional zone ("the intermediate zone") between marshlands and hillside lands is usually observed in much of the project impacted area. The intermediate zone can be occasionally flooded in the rainy or high water season. The existence and extension of this zone depends on the slope of the hillside lands bordering the marshland. The marshland is colonized by a specific type of natural vegetation such as *Cyperus papyrus* and *Echinochloa pyramidalis*, associated with other species.

The substation and the diversion tunnel will be built on the Rwandan side while the generation facilities will be located in Tanzania.

In Rwanda, from the 18.7 hectares of land needed for construction, 8.9 hectares will be needed temporary and 9.8 hectares will be permanently acquired while in Tanzania from the 43.3 hectares of land needed for construction, 4.9 hectares will be needed temporarily and 38.4 hectares will be permanently acquired.

The proposed project will supply the generated electricity to the three Utilities owned by the three Governments, namely; Régie de production et de Distribution d'Eau et d'Electricite (REGIDESO) of

Burundi, Energy, Water and Sanitation Authority (EWSA) of Rwanda and Tanzania Electric Supply Company Limited (TANESCO) of Tanzania. Each of the three utilities will through financing provided to them by their respective owner Governments construct, own, operate and maintain 220kv Transmission lines connecting from the Main Sub-Station of the power plant up to the respective national grids (Rusumo Falls – Gitega (Burundi) 161 km, Rusumo Falls – Birembo / Kigali (Rwanda) 109 km, and, Rusumo Falls – Nyakanazi (Tanzania), 98km).

CONSTRUCTION METHODS – TECHNICAL DESCRIPTION

The civil works will involve mainly rock excavation, back filling and disposal of excess material, crushing and screening of aggregate formwork placing and dismantling, reinforced steel placing, supplying and placing concrete, structural steel exertion, architectural works and finishing. The electrical and mechanical works will consist of fabrication, supply and installation of standard equipment (Kaplan turbines, 30MW generations, 70 MVA transformers, 220kv equipment, etc.)

EXISTING INFRASTRUCTURE

Two main asphalted roads cross the project area. The first road goes eastward from Kigali and then turns southward from Kayonza, continues near Kibungo, before crossing the Akagera and the Rwanda -Tanzania border at the Rusumo Falls Bridge. The road then proceeds to the South-East of Tanzania towards the town of Nyakahura. The second road, which is being rehabilitated, also starts in Kigali and follows a north-south axis through Nyabarongo and then the Bugesera district near the town of Kirundo in Burundi. There is also an extensive and well distributed network of dirt tracks that link all public services and most villages.

GENERATION FACILITY STRUCTURE DESCRIPTION

CONSTRUCTION ACTIVITIES


During the construction of the dam the following activities are anticipated:

Diversion works and construction of the cofferdam: A total temporary diversion of the river will be necessary for the duration of the construction of the upstream structures. A temporary diversion channel will be constructed on the left bank (Rwandan side of the river) and will comprise of a 265 metre long channel and a 167 metre long cofferdam. The intake for the diversion channel will be located 150 metres upstream from the falls while the outlet will be located just past the downstream rapids. The temporary diversion channel will cut off the international road leading to the existing bridge. Therefore, a temporary bridge spanning approximately 60 metres over the diversion channel will be required to make possible for the traffic to continue passing between Rwanda and Tanzania during construction.

Construction of the closure dike: To prevent water from flowing through the diversion channel following completion of the powerhouse a closure dike will have to be constructed. The construction of the closure dike will require a cofferdam combined with dewatering systems to ensure dry working conditions. The cofferdam will be located in the upstream part of the diversion channel.

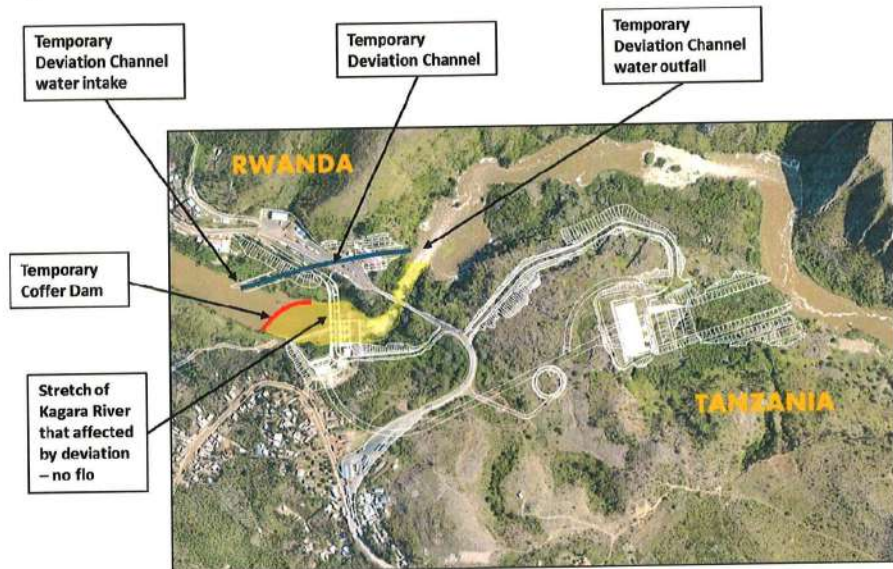
Construction of the tail race cofferdam: In order to proceed with the excavation of the powerhouse and the tailrace channel in dry conditions, a cofferdam will need to be constructed.

Construction of the access tunnel: A tunnel is planned during construction to access the headrace tunnel and remove excavated material. The proposed access tunnel is located on the right bank of the Kagera River and extends from the rock cliff near the access road to the headrace tunnel. The total length is approximately 215 m.



Manpower requirements: The Rusumo Project will create up to about 1,000 temporary jobs during the construction period.

Figure 3: Overview of the construction site layout



The tentative project implementation schedule can be summarized by the following milestones:

- Construction works is expected to start in Q1 2014 and continue through to the end of 2017;
- Manufacture of the electromechanical plant estimated to start in Q1 2016 and installation is expected to start in Q3 2016 and continue through up to the end of 2017;
- Commissioning is anticipated to in 2018.

The area downstream from the future dam is not expected to be affected by the project (other than the risk of change in sediment transport).

PRINCIPAL STRUCTURES OF THE POWER PLANT

The principal structures that will be constructed to establish the Power Plant are summarised in the following paragraphs:

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Dam structure (spanning between Rwanda and Tanzania): The dam will be 15 metres in height creating a hydraulic head of about 32 metres at maximum water level estimated at 1,320 metres above sea level. The dam will be either a fixed crest overflow weir, or a gated system. The dam will be located just upstream of the falls and oriented perpendicular to the Kagera River channel. The structure will operate as a run-of-river, which means that there will be no storage of water and creation of a reservoir upstream from the dam.

Water intake: The water intake will be located on the right bank of the Kagera River (Tanzania side). A rock face will be excavated to develop the headrace tunnel portal and the concrete structure will be built in this excavation.

Head race tunnel: The headrace tunnel will be constructed on the Tanzania side of the river. It will have a length of approximately 600 metres.

Manifold and penstocks: A concrete manifold will make the transition between the headrace tunnel and the three penstocks.

Surge chamber: A surge chamber upstream of the powerhouse will be excavated.

Powerhouse: The powerhouse will be located on the Tanzania side of the river on the south side of the rapids. The powerhouse will comprise three turbines (Kaplan units) and three generators. Access to the powerhouse is provided by a roadway which is located on the downstream side of the powerhouse adjacent to the tailrace.

Tail Race Channel: The tailrace canal will be located downstream of the powerhouse. The total length of the tailrace will be around 250 metres, the width will decrease from 55 to 45 metres.

The power facilities, except for the substation, are located entirely on the right bank of the Kagera River in Tanzania, while the river diversion works are located on the left bank, in Rwanda. The main power features comprise: an intake structure, a headrace tunnel, a surge tank, a tunnel trifurcation, a surface powerhouse, and a tailrace channel.

Figure 4: Rusumo HPP Generation Facility area overview

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As shown in the Figure above the dam and power station would be situated at the Rusumo Falls where the Kagera River forms the boundary between Tanzania and Rwanda about 2 kilometres downstream of the river's confluence with the Ruvubu River.

An environmental flow of 23 cubic metres per second is proposed. This flow represents 10% of the average flow (230 cubic metres per second) of the River.

THE RUSUMO FALLS HYDRO-ELECTRIC POWER PLANT DATA SHEET

Data	Unit	Value
Storage Reservoir		
Full Supply Level (FSL) at the dam	Meters above sea level	1,320
Powerhouse		
Number of Units		3
Type		Kaplan, vertical axis
Rated Discharge	m ³ /s	TBD
Speed	Rpm	TBD
Generators		
Number of Units		TBD
Rated Power	MW	TBD
Power Factor		TBD
Out Voltage	kV	TBD

	Energy/ Power	
Maximum Plant Total discharge	M ³ /s	- 250
Installed Capacity	MW	Between 75 – 80
Average Power	MW	- 45
Firm Energy	GWh/year	- 250
Secondary Energy	GWh/year	- 140
Average Energy	GWh/year	- 400
Capacity Factor	%	- 60

Source SLII: Preliminary design for Run of River.

TBD: To be determined during the detailed design studies.

THE POWER HOUSE

The powerhouse is of the surface type. It is located on the south side of the rapids on the right bank of the Kagera River in the rock cliff that overlooks the Mitako basin. The powerhouse will be seated on sound rock. The powerhouse will comprise three turbines (Kaplan units) and three generators with a total maximum capacity of 80 MW. The powerhouse will also accommodate the service bay, mechanical and electrical equipment, oil room, cable and piping galleries, control room and offices. The overall dimensions of the building are around 90 metres by 30 metres. Access to the powerhouse will be through a roadway which is located on the downstream side of the powerhouse adjacent to the tailrace. The two transformers are of three-phase oil immersed outdoor type with natural/forced air cooled. The transformers are separated from each other by firewalls. The transformers are equipped with a retention bund capable of containing the totality of the transformer oil. The oil recuperation basin of each transformer should be connected to a common oil/water separation pit in order to recuperate the spilled oil and avoid environmental damage.

THE TAIL RACE CANAL

The tailrace canal will be located in the Mitako basin and is oriented N-NE. The total length of the tailrace will be around 250 metres. The width will decrease from 55 to 45 metres.

THE SUBSTATION

The projected site for the substation is located in Rwanda on a summit plateau overlooking Kagera River left bank, downstream of the falls. The substation represents the point of interface with the Transmission Lines component of the Rusumo Falls Hydroelectric Project.

CONSTRUCTION MATERIALS

IMPERVIOUS MATERIALS

A source of low permeability material constituted of clay silt (with an average clay suitable for the construction of water retaining earth fill structures) is located in Rwanda along the international road connecting Kigali and Tanzania, at a distance of 1 kilometre from the border at the Project site. The area of interest stretches parallel to the existing road; it is approximately 200 metres by 100 metres; and it is covered by sparse to moderately thick vegetation.

COARSE AGGREGATE

A site, located at Kiyanzi (Rwanda), approximately 8 kilometres North West of the Rusumo Falls, is considered as a potential quarry. This potential quarry appears to be mostly constituted of quartzite and presents the advantage of being located sufficiently far away from the main road, thus limiting possible environmental and social impacts related to the site development.

FINE AGGREGATE

A source of fine aggregate is located in Rwanda along an existing murrum road, approximately 2 kilometres South-West of the international border at Rusumo Falls and 350 metres North of the Kagera River left shoreline.

THE SUB STATION

The new 220 kV Rusumo HPP substation will be erected on the Rwandan side of the Akagera River. This substation will be linked to the Rusumo Falls Hydroelectric generation plant and will be the starting point for the planned transmission lines in Burundi, Rwanda and Tanzania. The foreseen substation site can be seen on Photo 3. It is located on the hill in the background and consists mainly of pasture land and a few trees at the fringe. Also mobile phone masts at the moment found on the selected land.



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**SCHEDULE 2:
SPECIFIED CONSENTS**

- Licenses for the generation and sale of electricity as may be required from each of the Governments or their respective agencies.
- Licenses for the export and import of electricity as may be required by Applicable Law.
- Lease Agreement (s) or equivalent from Tanzania and Rwanda.
- Investment Licenses covering relevant incentives.
- Company Registration Documentation.
- Import and export exemptions as may be permitted by law.
- Construction and Excavation Permits.
- Water use Permits.
- Permits to transport explosives.
- Permits to transport Hazardous Waste.
- Environmental Authorizations.
- Easements Registrations.
- Riparian Country Consents.
- Labor Permits

EXHIBIT A-1: FORM OF THE LEASE FROM TANZANIA

[TO BE ATTACHED]

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EXHIBIT A-2: FORM OF THE LEASE FROM RWANDA

OFFICE OF THE REGISTRAR OF LAND TITLES

CONTRACT OF EMPHYTEUTIC LEASE N° [●]

IN ACCORDANCE WITH the Organic Law N° 08/2005 of 14/7/2005 Determining the Use and Management of Land in Rwanda and the Ministerial Order N°001/2008 of 01/04/2008 Determining the Requirements and Procedures for the Land Lease;

BETWEEN The Republic of Rwanda, here represented by the Registrar of Land Titles (hereinafter referred to as "the Landowner") of one part,

AND the following person/s (hereinafter together referred to as "the Lessee") of the other part:

Lessee: **Rusumo Power Company Limited** Company Reg. No. 102957444

Share: 1500

P.O. Box 6759, Kigali, Rwanda

IT IS AGREED AS FOLLOWS:

Article 1: Right of Emphyteusis

The Landowner grants to the Lessee, who accepts, the right of emphyteusis for a term of [99] years on the parcel of land described as follows:

Province: [●]
District: [●]
Sector: [●]
Cell: [●]
Village: [●]

Plot/Parcel N°: [●]
Area: [●]
Term: [●]
Term expires: [●]
Land Use: [●]

Article 2: General Conditions

The right of emphyteusis is granted to the lessee on the general conditions of the Ministerial Order N° 001/2008 of 01/04/2008 Determining the Requirements and Procedures for Land Lease and on the special conditions listed below.

Section One: Basic Rights of the Lessee

Article 3: Payment of annual rent



1. The annual rent is fixed at [●] Rwandan Francs. The rentable value is payable in one installment for the entire term.
2. The annual rent is payable to the district where the land is located in advance, without the need for any request by the Registrar.
3. In default of payment by the fixed expiry date, the Lessee must pay interest on the sums due, calculated in arrears, at the same rate that is applicable for personal taxes and taxes on revenues etc, without prejudice to all other rights.

Article 4: Liability for Property Taxes

The Lessee must pay the taxes and other charges, if any, payable with respect to the land and/or immovable property incorporated into the land when they fall due.

Article 5: Beneficial Occupancy

The Lessee must beneficially occupy the land within the term of the lease and is bound at all times to maintain good standards and practices, so as to maintain and improve the land and any immovable property incorporated with or attached to the land. The Lessee shall comply with the rules and regulations applicable to the land, take all necessary steps to keep the boundary to neighbouring land visible, control pests, diseases and weeds on the land, take all reasonable steps to prevent soil erosion, pollution or waste, or obstruct the flow of water in any river, stream or channel and shall remedy any defect therein, during the continuance of this lease.

Article 6: Land Use

The Lessee may not change the land from the prescribed use without obtaining written authorization in accordance with the Ministerial Order N°001/2008 of 01/04/2008 determining the requirements and procedures for Land Lease. In case of non-compliance with this Article, the Lessee must pay to the landowner, by way of a penalty, a sum double the annual rent fixed by the present contract, without prejudice to all other rights and without the Landowner having proved any kind of damages.

Article 7: Consent for Transactions

If real rights to the land are shared by the members of a family, the representative of the family may not grant such rights, by sale, donation or exchange, nor enter into any mortgage, emphyteutic lease or contract of tenancy, nor establish any conventional real servitude, without obtaining the written consent of all the members of the family specified in Article 36 of the Organic Law N°08/2005 of 14/07/2005 Determining the Use and Management of Land in Rwanda.

Article 8: Building Control

The Lessee must obtain any permission that is required before any permanent structures are erected and must not erect such permanent structures buildings until such permissions have been so obtained.

Article 9: Inspection

The Lessee must allow any officer of the District Land Bureau or person duly authorized by the National Land Centre to enter upon the land at such time as may be reasonable to inspect the use of the land to ensure compliance with the obligations under which this lease is held.

Section Two: Basic Obligations of the Lessee

Article 10: *Right to possession and full enjoyment*

So long as the Lessee pays the rent, taxes and other charges payable, and observes and performs his/her obligations contained or implied in this lease, the Lessee has the right to possession and full enjoyment of the land and to all the products (except minerals) of the land during the term of the lease, without any disturbance from or by the Landowner or any person rightfully claiming through the Landowner.

Article 11: *Dispositions*

1. Subject to the registration of such transactions in accordance with the provisions of the Ministerial Order N° 002/2008 of 01/04/2008 determining the modalities of Land Registration, the Lessee may:

1. Alienate the right of emphyteusis, by sale, gift, exchange or any other lawful means;
2. Hypothecate the land for the duration of the emphyteusis; or
3. Burden the land with servitudes for the duration of the emphyteusis; and

2. Subject to the provisions of Articles 39 to 53 of the Organic Law, the Lessee may sublet the leased lands or any part of the lands, whether under an emphyteutic lease or a simple contract of tenancy for any term shorter than the remainder of the term under this lease, provided that there is no change in use.

Section Three:

Article 12: *Mining Land*

The Lessee has no right to mines on or underground and shall not act against the person who is entitled to enter in his/her land or the part of it for research purpose or extraction of minerals, however, in accordance with laws, the lessee shall obtain compensation for any property that has been damaged in the process.

Basic Obligations of the Landowner,

Article 13: *Land to be materially fit*

The Landowner will not use, or permit any adjoining or neighbouring land of which it is the owner or occupier or which is under its control to be used, in anyway which would render the leased land or any buildings on that land unfit or materially less fit for any purpose for which they were leased or for which they may be used under the lease.

Article 14: *Compensation*

Where in accordance with the provisions of the Organic Law or any other law dealing with compensation for the loss of the leased land or a diminution in the value of the leased land, fair compensation is payable to the Lessee by the State, that compensation must be paid promptly. No compensation will be

paid on repossession of the land if it is requisitioned in accordance with the provisions of chapter VI of the organic Law.

Section Four: Reservation of Landowner's Rights

Article 15: Resumption of portion of land for public purposes

The Landowner reserves the right to resume up to five percent (5%) of the land leased for any roadway, canal, power station or transmission line, telecommunications station or antenna, or for any other public purpose, without payment of any compensation for the land resumed. Where any part or parts of the land hereby leased is or are disposed of or repossessed, the lease shall immediately be revised to reflect the change and the rents shall be proportionately reduced. In all purposes the Landowner shall not interfere in any way with the use of the land leased, to the detriment of the lessee.

Section five: Termination of Agreement

Article 16: Covenant by the Landowner

The Lessee paying the rent hereby reserved and performing and observing the several covenants and stipulations herein on its part contained shall hold peaceably and quietly enjoy the Demised Property during the term of the Lease without any interruption, disturbance or molestation by the Lessor.

Done at on the of

At the Office of the Registrar

Signed by

Lessee:

Rusumo Power Company Limited

Lessor

[•]

Registrar of Land Titles

EXHIBIT B: FORM OF THE SHAREHOLDERS' AGREEMENT

Handwritten signatures and marks are present at the bottom of the page. There are three distinct signatures: one on the left, one in the center, and one on the right. The central signature is the most prominent and appears to be a stylized name. There are also some scribbles and lines below the signatures.

EXHIBIT C:

FORM OF POWER PURCHASE AGREEMENT

