

4.1.2 SMALL HYDRO ELECTRIC PROJECTS (SHEPs) UP TO 5 MW

887 Small Hydro-Electric Projects (100 KW- 5 MW) with capacity of 2004.40 MW have been allotted for development through Private/Public Sector participation. Out of these, 112 projects of 362.12 MW capacity stand commissioned.

The projects shall be allotted for a period of 40 years on BOOT/BOT basis. The agreement shall remain in force up to a period of 40 years from the SCOD of the project. Thereafter, the project shall revert to the State Government free of cost and free from all encumbrances and liabilities. After completion of 40 years, State may either extend the agreement on mutually agreed terms & conditions or may go for competitive bidding under Renovation and Modernisation (R&M) mode for next thirty years; however, the royalty payable to state for the extended period in any case will not be less than 30 %.

4.1.2.1 Small Hydro Power Development Programme in Himachal Pradesh

A. Private Sector Participation

The State Government has taken several policy initiatives to encourage Private Sector participation in small hydro power.

The process of harnessing of potential in small hydro sector through private sector participation began during 1995-96. Since then, the allotment of project sites has been a continuous process.

B. Projects to be offered for Private Sector participation

i. Projects Identified by HIMURJA

ii. Projects Identified by the Project Developers designated as Self Identified Projects

a) General conditions applicable to the projects under B (i&ii) above:

- i. The Small Hydro-Electric Projects up to 2 MW capacity are exclusively reserved for bonafide himachalis. Co-operative Societies, Companies, Voluntary Societies, Trusts,**

Partnership Concerns and Sole Proprietorship Concerns comprising wholly of bonafide himachalis will be eligible for allotment in this category.

- ii. While allotting the projects above 2 MW and up to 5 MW, preference will be given to the bonafide himachalis and this includes Co-operative Societies, Companies, Voluntary Societies / Trusts, Partnership concerns; Sole Proprietorship concerns comprising wholly of bonafide himachalis. If there is more than one himachali applicant then preference shall be accorded to applicant from the relevant area and district by way of providing additional / preferential marks.
- iii. While allotting the projects, implementation track record of the project developer will be considered. Technical and financial evaluation will be carried out as per **Annexure-VII**.
- iv. If project developer is financially & technically capable of developing more than one project then projects up to total capacity of 50 MW may be allowed to project developer under implementation and allotment category subject to the Net Worth of project developer as defined in annexure above.

b) Minimum requirements to apply projects under Self-Identified Category:-

To ensure proper identification of projects under self-identified category and to avoid cascading of the projects and to make SHEPs more environment friendly, the project developers are advised to meet the following minimum requirements before putting in an application for self-identified project:

- i. Applicants should clearly mention the following information in their project proposal to be attached with the application:
 - a. Coordinates of weir site, power house and tailrace along with elevations.
 - b. Name of stream(s).
 - c. Basin.
 - d. Copy of topo-sheet indicating the co-ordinates & elevations.
 - e. Elevations of upstream & downstream projects on the same stream, if any.
- ii. The project developer and the Directorate of Energy / HIMURJA shall ensure minimum horizontal distance of 250 m or elevation difference of 50 m as the case may be, between two projects, depending upon the topography and terrain of the area to have visible flow of water in the original stream. However, the Domain Change Committee constituted by the State Government on case to case basis may allow relaxation of this condition considering the technical, design, socio-economic & topographical aspects.
- iii. The project developer shall fix the elevations with reference to Survey of India bench mark or some authenticated reference point already established. Some sort of identification mark need to be put at site and photographs of weir site and power house location need to be attached with the proposal. Proposals submitted without photographs shall be rejected.
- iv. No proposal/application shall be accepted on the streams and elevations for which applications received in the past and are held up due to court cases. For clarifications the applicants may consult HIMURJA.

- v. Applications for elevations & streams clashing with already allotted, identified or under investigation schemes by HIMURJA/DoE/HPSEBL/ by any other Government agency shall be rejected and application fee shall stand forfeited. It will be the responsibility of the project developer to check with the record of concerned agency before putting in an application.
- vi. Applications not found fit from an environmental / ecological view point shall be rejected.
- vii. No applications will be entertained for projects on major rivers such as Satluj, Beas, Ravi, Chenab, Yamuna and also on Tirthan river & its tributaries in Kullu district.
- viii. Pre-Feasibility Report to be attached with the proposal.
- ix. Reputed experts / consultants having vast experience in the field of hydro power sector and having provided consultancy during implementation of minimum three projects will be registered with the department and the department will notify the terms & conditions for such engagement, which will be duly determined in transparent manner. The private project developers shall engage experts / consultants out of the empanelled experts/ consultants for the preparation of proposal in respect of self-identified projects.

C. Guidelines for Private Investors:

- i. Any private investor whether himachalis or outsiders such as Private Ltd. Company / Public Ltd. Company / Partnership concern/Sole Proprietary and Cooperative Societies/Voluntary Societies/Trusts comprising wholly of bonafide himachalis is eligible to apply for the allotment of these SHEPs. The applications for the HIMURJA identified projects / self-identified projects shall be received after advertisements issued by Government / HIMURJA in Giri Raj and in leading newspapers. Applications shall be scrutinized by HIMURJA and approved by the Government.
- ii. As the potential sites have been identified on the basis of preliminary reconnaissance only, the interested project developers should, in their own interest, visit the sites for verifying various project related parameters viz. discharge, head, water availability, habitation etc. HIMURJA shall not be responsible for any kind of variation. The project developers shall also ensure that the project components do not fall in the wild life sanctuaries, national parks, eco protection zones etc. and also do not interfere / overlap with the existing and proposed Hydro-Electric Projects of State, SPSUs / CPSUs HIMURJA, Joint CPSUs and private project developers, before submitting their offers on the prescribed format. In case, DPRs and some of the clearances have already been obtained in respect of some projects and projects are allotted, the allottee will have to settle and bear the cost of DPR and other expenditure incurred, if any, and interest thereon within a year.
- iii. The application shall be accepted on the prescribed format and should accompany the application fee & requisite documents. The application shall include the information regarding name of the stream / nallah, estimated capacity, assessed head and assessed design discharge, project layout sketch showing the elevations of the main project components, names of the projects already allotted upstream/downstream of the proposed site, if any etc. Application with the same name as that of the project already allotted upstream / downstream will not be allowed. The joint inspection in case of self-identified

projects shall be carried out by HIMURJA / committee comprising of officials of all concerned departments like HIMURJA, Revenue, Jal Shakti, Public Works, Forest, Fisheries etc. including upstream / downstream project representatives as notified by Government of Himachal Pradesh to ascertain the interference, if any, with the existing projects along with the elevation / horizontal distance as prescribed and other aspects of concerned departments related to development of project. The Project Officer, HIMURJA of concerned area will be Member Secretary of the committee and he will ensure the joint inspection of the site and report thereof.

- iv. If a project developer is interested to apply for more than one project, separate application for each project shall be submitted along with application fee.
- v. The application must be complete in all respects, supported with the requisite documents accompanied with a non-refundable application fee and Earnest Money Deposit (EMD) as prescribed. EMD is chargeable per MW and the fraction of MW on pro rata basis. EMD is refundable in case of unsuccessful applicant and in case of successful applicant the same will be adjusted against the security deposit. Financial appraisal of the application shall be done on the basis of "Net Worth" of the applicant. The application shall be assessed on the basis of various parameters viz. financial strength, technical strength and project development experience of the applicant as prescribed in **Annexure-VII**. If the project developer makes application for multiple Projects and qualifies, then the financial and technical capabilities shall be assessed cumulatively while considering allocation of multiple projects as eligible. No interest shall be paid on the EMD to be refunded or adjusted against security.
- vi. For the projects up to 2 MW capacity reserved for himachalis, the applicant should have Net Worth of Rs.75 lakhs (Seventy Five Lakhs) per MW to become eligible for further processing of application, failing which the proposal shall be rejected out rightly, whereas for the projects above 2 MW & up to 5 MW Net Worth of Rs.1 crore (One Crore) per MW shall be required by himachali applicant to become eligible. In the eventuality of non-meeting of these conditions, such proposals will be rejected out rightly.
- vii. For non-himachali, Net Worth of Rs 2 Cr (Two Crore) per MW shall be required to become eligible for further processing the application, failing which, the proposal shall be rejected out rightly.
- viii. After qualifying the eligibility criteria mentioned in clause vi & vii above, further assessment shall be done as per the prescribed formula.
- ix. If a project developer enhances the capacity of already allotted project after TC / signing of IA then the project developer shall be required to furnish the processing fee afresh on the prescribed rates.
- x. State reserves the right to reject any or all offers without assigning any reason(s).
- xi. The project developer will acknowledge receipt of Consent Letter within one month and furnish affidavits, security charges, processing fee, upfront premium within one month from the date of issue of Consent Letter. A Letter of Allotment shall accordingly be issued after receipt of confirmation to the Consent Letter, deposit of 1st installment of upfront premium and processing fee. In case, project developer's confirmation is not received or upfront premium, security, processing fee and other relevant essential documents are not deposited by the due date, it shall be presumed that project developer

is not interested in taking up the project and Consent Letter shall be withdrawn.

- xii.** Furnishing of Security Deposit at prescribed rate which shall be used as Performance Security for achieving different milestones and adjusted against extension charges that may become due and are not paid in case of cancellation of project at any stage.
- xiii.** Furnishing of non-refundable Processing Fee per project as prescribed for different categories in **Annexure-VIII**.
- xiv.** Upfront Premium (non-refundable), shall be charged at following rates:
 - a)** For projects up to 2 MW capacity: Nil.
 - b)** For projects above 2 MW up to 5 MW capacity: Upfront premium will be charged @ Rs 1,00,000/- per MW in two stages i.e. @ Rs. 50,000/- per MW at the time of allotment of the project to be deposited within one month from the date of issuance of Consent Letter and @ Rs. 50,000/- per MW at the time of signing of IA.
 - c)** If after enhancement of capacity, the capacity of the project remains up to 5 MW the project developer shall have to pay upfront premium @ Rs 1,00,000/- per MW on whole capacity as capacity enhancement charges.
 - d)** If after enhancement of capacity, the capacity of project exceeds 5 MW, the category of the project shall change and shall be governed by appropriate conditions as applicable under the provisions of this policy document.
- xv.** Following milestones shall be required to be achieved by the project developer, failing which, consequential action as mentioned below will be taken by the Government:

MILESTONES FOR PROJECT IMPLEMENTATION

Sr. No.	Milestones	Time Period	Consequential Action
1.	Upfront premium above 2 MW and up to 5 MW: 1 st installment	Within 1 month of issue of Consent Letter.	Withdrawal of Consent Letter and forfeiture of all deposits.
2.	Processing fee	Within 1 month of issue of Consent Letter	
3.	Issuance of letter of allotment	On receipt of 1 st installment of upfront premium & processing fee and furnishing of confirmation to the Consent Letter.	
4.	Signing of Memorandum of Understanding (MoU)	Within 1 month from date of issuance of Letter of Allotment.	Extension up to a maximum 1 month for the reasons beyond the control of project developer. If project developer fails to sign the

			MoU even within extended time, allotment of project shall be cancelled with forfeiture of all deposits.
5.	Submission of Detailed Project Report (DPR) as per guidelines at Annexure-II or CWC guidelines.	Within 24 months from the date of signing of MoU. (Additional 6 months for projects in Lahaul & Spiti, Pangi of Chamba district and Dodra Kwar of Shimla).	Extension up to a maximum period of 12 months for the reasons attributable to the project developer subject to deposit of an extension fee @ Rs.20,000 per MW per month {extension for the period of delay on account of reasons beyond the control of project developer shall be allowed without imposition of extension fee subject to satisfaction of department}, failing which, allotment of project shall be cancelled with forfeiture of all deposits.
6.	Grant of Technical Concurrence (TC)	Within 5 months from the date of acceptance of DPR.	Timelines for processing of DPRs for timely grant of TC are at Annexure-III . If the timelines are exceeded on account of non-response of project developer towards observations on DPR, the allotment of the project shall be cancelled with forfeiture of all deposits. Relaxation up to 6 months time will be given if the observations are beyond the control of the project developer.
7.	Signing of Implementation Agreement (IA)	Within 2 months of grant of TC.	Extension up to a maximum of 1 month for the reasons beyond the control of project developer. If project developer fails to sign the IA even within extended time, allotment of project shall be cancelled with the forfeiture of all deposits.
8.	Application for connectivity & Long Term Open Access (LTOA) Agreement with HPPTCL/HPSEBL	Within 1 month from the date of signing of IA	Extension up to a maximum of 1 month for the reasons beyond the control of project developer. If project developer fails to achieve the milestone even within extended time, allotment of project shall be cancelled with the forfeiture of all deposits.
9.	Signing of Connectivity Agreement & Long Term Open Access (LTOA) Agreement	Within 4 months from the date of signing of IA.	Extension up to a maximum of 3 months for the reasons beyond the control of project developer. If project developer fails to

	with HPPTCL/HPSEBL		achieve the milestone even within extended time, allotment of project shall be cancelled with the forfeiture of all deposits.
10.	Achieving Zero date (start of construction period)	Within 6 months from the date of signing of IA.	Extension up to a maximum period of 6 months for the reasons attributable to the project developer subject to deposit of an extension fee Rs.20,000 per MW per month {extension for the period of delay on account of reasons beyond the control of project developer shall be allowed without imposition of extension fee subject to satisfaction of department}, failing which, allotment of project shall be cancelled with forfeiture of all deposits.
11.	Scheduled Commercial Operation Date (SCOD) of the project	Zero date plus construction period allowed as per TC plus extension of time granted by State, if any.	Delays during construction period on account of the reasons beyond the control of project developer shall be considered if applied with full justification within six months from the COD of project and shall be condoned / adjusted only after satisfaction of the appropriate competent authority within six months from the receipt of application. SCOD of the project shall not be revised beyond synchronization of any one unit.
12.	Commercial Operation Date (COD) of the Project	Actual date when last unit of the project commences commercial operation.	Incentive / Disincentive as per Clause 4.1.1.1 A (xlii & xliii).
13.	Handing over of the Project to the Government	The date determined on completion of 40 years from the Scheduled Commercial Operation Date (SCOD).	Action as deemed fit.

Notes:

- a. In case the project developer is unable to achieve financial closure within the time limit specified above, the project developer agrees to start construction work on the project positively within the time limit specified above by investing from its equity component. The financial closure shall be concluded within six months of start of the construction work on the project after achieving Zero Date.
- b. In case of unit wise construction schedule approved is different for units of the project then unit

wise SCOD may be considered and it will be for calculation of disincentive / penalty only and it will not redefine the project SCOD as defined above. The project developer shall not be entitled for any benefit with respect to transfer of project after completion of the agreement period by referring unit wise SCOD.

- c. HIMURJA is authorized to re-define the milestones afresh where 100% equity transfer is permitted by the State Government by entering into revised agreement for the stalled projects.
- d. A technical cell will be created under DoE to be headed by Chief Engineer (Design) for time bound processing of DPRs as specified in milestones table for accordance of TC, this cell will provide necessary technical assistance and guidance to project developers for preparation of DPRs and sorting out the technical matters. This cell will also be responsible for physical monitoring of the projects during the construction and operation stage of the projects.
- e. Reasons for condonation of delay in achieving various milestones not attributable to the project developer shall be considered and decided by the head of the department (HIMURJA) after approval of Administrative Department.

xvi. All stages of project implementation for the purpose of grant of extension where delays are not attributable to the project developers shall be allowed on the grounds as summarized below:-

- a. Delay in submission of DPR will be condoned on the following grounds:-
 - i) Delay due to domain change / relocation of project components or any discrepancies observed in allotted domain.
 - ii) Delay in obtaining clearance from the National Board of Wildlife, where applicable.
 - iii) Law and order issue in the project area.
- b. Delay in achieving Zero Date in view of non-obtaining of various statutory clearances from various Government departments on the following grounds:
 - i) Delay in diversion of Forest / Government land due to non-finalization of committees under FRA.
 - ii) Delay in acquisition & lease of Forest land due to reasons not attributable to the project developers subject to the satisfaction of HIMURJA / Government.
 - iii) Delay in signing of Connectivity Agreement & Long Term Open Access (LTOA) agreement in view of non-finalization of power evacuation arrangements by HPPTCL & HPSEBL.
 - iv) Delays caused due to hurdles created by locals/NGOs by way of illegal strikes, unethical demands, and threats to projects management.
 - v) Delay in acquisition of private land not attributable to the project developer subject to satisfaction of HIMURJA / Government.
- c. Delay in achieving Commercial Operation Date (COD):

Delays during construction period on account of the reasons beyond the control of project developer shall be considered separately on case to case basis if applied with full justification within 6 months from the COD and shall be condoned / adjusted only after the satisfaction of the appropriate competent authority within 6 months from the receipt of application. SCOD of the project shall not be revised beyond synchronization of any one unit.

- d.** In case of the projects falling in protected Wild Life Sanctuary / National Parks, delay in obtaining permission from competent authority needs to be exempted from levy of extension charges provided that the project developer has applied for the respective Clearance / NOC / Lease of Government land in all respects within the stipulated time frame correspondent to respective milestone(s).
- xvii.** The project developer shall be required to obtain all the non-statutory / statutory clearances / NOCs / approvals required for the implementation of project from various departments including Gram Panchayats as may be specified by the Government.
- xviii.** Self attested copies of NOCs obtained from different departments shall be submitted to HIMURJA. The project developer is required to furnish an affidavit on Rs. 50/- stamp paper duly notarized, to the effect that “all the conditions in the NOCs obtained from the different departments and Gram Panchayat shall be abided by them”.
- xix.** Once the construction activities in connection with project start at any of the site after due vetting and clearance by all the authorities concerned, no authority or any regulatory body will pass any order regarding stoppage of the work at site. If any local body, regulatory authority or department finds during inspection that the project authorities are not adhering to any safeguards relating to workers safety, protection of environment, landscape, forest and flora & fauna or conservation of minerals etc, such violation shall be immediately brought to the notice of HIMURJA for issuing necessary directions to the concerned project authorities for ensuring the compliance of such regulations, laws or guidelines. HIMURJA after evaluating all the aspects will ensure the compliance in time bound manner and resort to stoppage of work in the rare cases of continuous violation after obtaining approval of the Government since there are huge implications of such stoppages in terms of time and cost overrun which affect adversely the interest of State Government as well as project developer.
- xx.** The project developer shall set up its office within Himachal Pradesh after signing of IA and furnish the proof thereof to HIMURJA.
- xxi.** The validity of MoU shall be up to signing of IA.
- xxii.** The project developer shall submit monthly hydrological and meteorological data observed at the project site and monthly progress reports to HIMURJA on the prescribed format.
- xxiii.** The department of Energy shall create a hydrological and meteorological data bank in respect of different river basins with currently available data and that to be provided by the project developers on monthly basis for its use by various project developers for utilization for hydrological studies with respect to project development.

- xxiv.** The project developer shall fix the elevations with reference to Survey of India benchmark or some authenticated reference point already established.
- xxv.** DPR submission date shall be reckoned only after it has been found that the report is in conformity with Central Electricity Authority (CEA) / Central Water Commission (CWC) guidelines and within allotted / approved elevations & stream. The reports and studies shall be prepared by empanelled consultants. HIMURJA, after scrutiny will forward the DPR to Directorate of Energy, for according TC.
- xxvi.** The project developer will be permitted to withdraw from the project after the conveyance of non-feasibility of the project during the preparation of the DPR, if the State Government is satisfied that the project developer has sufficient ground to establish that the project is not techno-economically viable, without any liability on the Government of Himachal Pradesh for the expenditure incurred by the project developer in this period for any purpose related to the project other than amount deposited by the project developer on account of upfront premium. This amount will be refunded to the project developer without interest.
- xxvii.** The project developer will approach the HIMURJA during the preparation of DPR with complete proposal for re-defining of domain on account of discrepancy, if any, found in allotted domain after transfer of Survey of India benchmark at the project site as control point and verification of coordinates.
- xxviii.** The project developer shall develop project in the domain allotted by the government. The project developer and the Directorate of Energy / HIMURJA shall ensure minimum horizontal distance of 250 m or elevation difference of 50 m as the case may be, between two projects, depending upon the topography and terrain of the area to have visible flow of water in the original stream. However, the Domain Change Committee constituted by the State Government on case to case basis may allow relaxation of this condition considering the technical, design, socio-economic & topographical aspects.
- xxix.** Cases of domain change will be placed before the following domain change committee along with recommendations given by concerned agencies:-

Sr. No.	Designation	Member
1.	Additional Chief Secretary/Principal Secretary (MPP & Power)	Chairperson
2.	Director, Energy.	Member
3.	Chief Executive Officer, HIMURJA.	Member
4.	Director (Civil), HPSEBL.	Member
5.	Chief Engineer (Energy) / Head (Allotment Cell), Directorate of Energy	Member Secretary

- xxx.** The project developer shall have no claim on any project upstream or downstream of the allotted project. There shall be a stream / basin wise coordination committee of various project developers of concerned stream/ basin under the chairmanship of Director Energy to resolve any issue arising with the upstream and downstream project with respect to construction, water availability, transmission, sharing of cost/ obligation/ benefit etc. as referred.

xxxi. The projects will be allotted on the basis of tentative capacity as mentioned in the Notice Inviting Proposal / LoA / MoU. However, in case the capacity of a project increases / decreases upon firming up of the potential by the competent authority, the project developer shall be required to sign the Revised Capacity Agreement (Supplementary MoU / SIA) with the Government within a period of 30 days from the date of communication of approval.

The competent authority for approval of the capacity enhancement/reduction in respect of the projects up to 25 MW will be Directorate of Energy if the increase / decrease is within 20% of the allotted capacity. Beyond this the approval of Administrative Department will be required. Such cases in respect of projects up to 5 MW will be routed by project developer through HIMURJA,

Following provisions shall be applicable with regard to approval of capacity addition / reduction:

- a) The Capacity Addition Charges shall be payable by the project developer for the capacity enhanced in a single installment at the time of signing of Revised Capacity Agreement.
- b) No additional free power in lieu of capacity enhancement shall be levied in all future enhancement approvals. However, it shall not affect projects where capacity enhancement has already been approved and agreed.

Already agreed and signed commitments with respect to additional free power will not be affected. For the future reference with respect to addition / reduction in capacity, the capacity last approved for which IA/ SIA signed before the policy notification will be considered as benchmark for the calculation of capacity addition/reduction.

- c) If the capacity reduction is more than 20% of allotted capacity, the project developer will have the option of surrendering the project, with refund of security deposit without interest, within a maximum period of 2 years from date of issue of Consent Letter. The project developer may however opt to retain the project.
- d) If the capacity reduction is within the 20% limit of the allotted capacity, no concession or adjustment in upfront premium shall be permitted.
- e) Processing fee @ Rs.10,000 per MW for processing the proposal of addition/reduction in capacity of project will be levied on the increased/decreased capacity.
- f) No fresh NOCs / consultations required from Gram Panchayats in case allotted installed capacity is enhanced within the allotted domain or if approved redefined domain falls in same panchayat.
- g) If the capacity addition/reduction amounts to change in category of the project, the policy applicable to such category after enhancement or reduction of the capacity shall prevail.

xxxii. The project developer shall pay all taxes and duties or other levies etc. to the GoI / GoHP as per the statutory rules in force from time to time.

xxxiii. The agreement shall remain in force up to a period of 40 years from the Scheduled Commercial Operation Date of the project. Thereafter, the project shall revert to the State Government free of cost and free from all encumbrances and liabilities. The project assets would be maintained by the project developer in a condition that would ensure rated efficiency of the project and residual life of civil, mechanical and electro-mechanical components at any point of time. During the 10th, 20th, 30th, 35th & 40th years of operations, the Government of Himachal Pradesh or one of its appointed agencies would carry out mandatory inspection of the project in this regard. After the inspection at 35th year decision will be taken with respect to transfer / extension / maintenance of the project within 2 years of the inspection.

If during such inspections it is found that the project capacity or life is being undermined by inadequate maintenance, the Government of Himachal Pradesh reserves all the rights to terminate the agreement at any time.

xxxiv. The project developer shall carry out the investigations/execution/operation & maintenance of the project keeping in view all quality control and safety measures as per relevant IS Codes / adopted standards and O & M Manual. The project developer shall allow access to the authorized representative(s) of the Government of Himachal Pradesh to all the locations of the project to inspect compliance in this respect at all stages during the agreement period.

xxxv. The project developer shall ensure release of minimum environmental flow (e-flow) immediately downstream of the diversion structure of the project throughout the year. The e-flow shall not be less than the threshold value of 15% of minimum inflow observed in the lean season in line with the State Pollution Control Board notification.

In case of violation by the project developer, action will be taken by Department and by appropriate authority in line with the prevailing guidelines and laws.

xxxvi. State reserves the right to abandon or reduce capacity / discharge of any identified project for meeting the commitment towards social / environmental concerns.

xxxvii. In case any existing facilities including but not limited to, irrigation systems, water supplies, roads, bridges, buildings, communication system(s), power systems and water mills are adversely affected because of the implementation of the project, the project developer shall be responsible for taking remedial measures to mitigate such adverse effects. The cost of the above remedial measures shall become a part of the project cost. Such facilities shall be mutually identified and agreed upon between the project developer and the State Government. The project developer shall not interfere with any of the existing facilities till an alternate facility, as identified, is created.

xxxviii. The project developer shall ensure to protect the water rights of the local inhabitants for drinking and irrigation purposes etc. by verifying the revenue entries and activities of Jal Shakti department so as to ensure that such rights are not infringed upon. Any dispute in the matter shall be referred to a committee to be appointed by the State Government involving Jal Shakti and Revenue departments. However, the decision of the State Government shall be final and binding on all the parties. The Government of Himachal Pradesh shall have the right for withdrawal of water from the river course for the consumptive use of pumping or by gravity for the purpose of potable water supply and irrigation to the affected villagers.

- xxxix.** The project developer shall take appropriate steps, as may be required, for the protection of fish culture as per environmental requirements and give an undertaking to the Fisheries department of the local area that wherever feasible, rearing of fish shall be promoted by the project developer in consultation with the Fisheries department in the project area at the time of implementation of the project.
- xi.** The State agencies – HPPTCL or HPSEBL as the case may be, shall create the required evacuation infrastructure for all the projects as per the terms and conditions of the connectivity agreement strictly as per the CERC/HPERC regulations. HPERC shall so fix the norms for interconnection that the average cost for creation of such system is duly accounted for, while fixing the generic tariff for different categories.
- xli.** The provision under the Himachal Pradesh Transfer of Land (Regulation) Act, 1968 in Tribal Areas shall be adhered to.
- xlvi.** The provisions regarding employment to bonafide himachalis shall be governed by Clause No.4.1.1.1.A (xxxvii).
- xliii.** The project developer shall inform the local police station and the labour office about the details of the work force engaged from within the state or outside regularly.
- xliv.** In respect of safety, quality control and water management the project developer shall be governed by the provisions contained under Chapter XIV regarding policy provisions for private project developers implementing projects above 5 MW capacity, wherein an authority under DoE shall be governing body of State.
- xlvi.** Various issues faced by project developers during the implementation of the project will be addressed by the department. State Level Committee under the chairpersonship of Hon'ble Power Minister of Himachal Pradesh as per **Annexure-V** shall review the progress from time to time.
- xlvi.** The project developer, in respect of various local area development activities and local area development fund, shall be governed by the provisions contained under **Chapter V**.
- xlvi.** The declaration of Commercial Operation Date of the projects shall be governed by the provisions contained under clause 4.1.1.1 A (xxxvi) regarding policy provisions for private project developers implementing projects above 5 MW capacity.
- xlvi.** Incentives on early commissioning and dis-incentives on delayed commissioning of the project shall be governed by clause No 4.1.1.1 (A) (xlii & xliii).
- xlix.** The project developer shall provide royalty in the shape of free power from the project during the entire agreement period to the Government of Himachal Pradesh at the rate agreed in their respective agreements (IA/SIA) of the deliverable energy of the project, from the date of synchronization of first unit whereas, the projects allotted in future shall provide royalty in the shape of free power @ 12% uniformly.

In addition to above, the project developer shall contribute additional 1% Free Power over and above the agreed rates of normal free power royalty component to the State Government towards LADF. The balance energy, after adjustment of free energy, may be used/sold by the project developer in the following manner:

- a. Made available at the interconnection point to the HPSEBL, wherein HPSEBL will mandatorily purchase the entire power generated from the projects up to 5 MW capacity at the HPERC determined tariff:

Solid tap connectivity at the nearest 11 kV or 22 kV line up to 2 MW generation capacity will be allowed, with appropriate protection.

No wheeling/transmission charges shall be payable for free energy from the generating station to the interconnection point.

- b. Make captive use within the state or evacuate power for captive use or third party sale outside the state:

For sale/captive use of power outside the state, the HPSEBL shall levy wheeling charges prevailing from time to time in line with the provisions of this policy.

- I. Any change in the name and consortium of the project developer shall not be allowed from the date of allotment except as allowed against clauses mentioned herein under. It shall be mandatory for a project developer to submit an affidavit stating therein that no change in consortium and name of directors/ promoters have been made. In case of default on the part of project developer, allotted projects shall be liable for cancellation, except the project developer follows the provisions laid down in clauses mentioned herein under and submit their request and other necessary documents required for effecting any change in name and consortium of the project.

I. Transfer of equity

A. In case of Non-Himachalis

The project developers (*Non-Himachalis*) implementing Hydro-Electric Projects are permitted to transfer the ownership by way of selling their equity stakes up to 100% during the implementation of the project in the name of any third party at any stage which is possessing equivalent or higher technical and financial strengths. However, there will be no restriction in respect of transfer of the project after commissioning. This provision will be applicable to projects of all sizes up to 5 MW.

In lieu of allowing change in name / transfer equity of Principal Promoters, a fee as per **Annexure-VIII** is to be deposited at the time of signing of Tripartite Agreement for transfer of project along with all liabilities/responsibilities in the name of new entity.

B. In case of Himachalis:

(a) Transfer of shares from Himachali to Himachali promoters:-

In case of Bonafide Himachalis/Co-operative Societies/Companies/Voluntary Societies/Trusts/Partnership Concerns/Sole Proprietorship concerns comprising wholly of Bonafide Himachalis to whom projects up to 2 MW and above 2 MW up to 5 MW capacity are allotted, the Government may consider the request of the promoters to transfer ownership wholly or partially to any other Bonafide Himachalis/Co-

operative Societies/ Companies/Voluntary Societies/Trusts/Partnership concerns/ Sole Proprietorship Concerns comprising wholly of Bonafide Himachalis, at any stage after allotment.

(b) Transfer of shares from Himachali to Non-Himachali promoters:-

In case of bonafide himachalis to whom projects up to 5 MW capacity are allotted, the Government may consider the request of promoters to sell/transfer 74% equity shares during implementation of project to Non-Himachalis which is possessing equivalent or higher technical and financial strengths and full disinvestment after commissioning.

In lieu of allowing sale/transfer of equity shares from Himachali promoters to Non-Himachali and change in name of the company, a fee as prescribed in **Annexure-VIII**, shall be charged at the time of signing of Tripartite Agreement for transfer of project in the name of new entity.

- (c) The fee shall be charged every time the project developer, both Himachalis & Non-Himachalis, changes the shareholding/changes name of entity.
- (d) In case the project developer changes the name of the company/change shareholding within permissible limit without prior approval of the Government, penalty as per **Annexure-VIII** for each change shall be payable by the project developer.
- (e) In case of death of any of the promoters the shares will be transferable to his legal heir (s) after approval of the Government.
- (f) Transfer of equity shares by Himachali to Non-Himachali / Himachali together, is allowed within the percentage as prescribed herein above.

- ii. Such projects where project developers have not met the milestones and terms and conditions of the MoU shall be reviewed on monthly basis by the committee under the chairmanship of Administrative Secretary, MPP & Power, GoHP for recommending appropriate action as deemed fit as per the merit of the case to the State Government.
- iii. The project developer shall be allowed to set up temporary aerial ropeways / cable ways of any type for transporting material, men & machinery without the requirement of NOC of Gram Panchayat subject to adherence of safety parameters as per prevailing rules and regulations.
- liii. HPSEBL shall provide electricity connection for the construction power required on priority basis wherever feasible. The required system for the same will be created by HPSEBL as per the prevailing regulations timely to ensure expeditious execution of the project.
- liv. The project developer shall be allowed to use the muck / mineral generated during the execution of the project work and to set up captive stone crusher in the project area as per the HP Minor Mineral Rules provided project developer adheres to the prevailing environmental safe guards. The royalty on the usage of such minerals shall be payable to the State Industry department as per rules.

The project developer shall use such material for the project as may be found suitable for the construction and the remaining material shall be allowed to be used by other development departments of the state, subject to the prevailing Rules and Regulations.

The project developer shall ensure that the material excavated from the site shall be dumped in the area duly approved by the Ministry of Environment, Forest & Climate Change (MoEF & CC), GoI and State Pollution Control Board.

- iv.** The State shall encourage the up-gradation of existing water mills and installation of the new water mills both for mechanical and electrical application by the bonafide himachalis. For this purpose, the Government of Himachal Pradesh shall provide technical and financial assistance, besides, availing the corresponding subsidies / incentives notified by MNRE. The beneficiaries shall include the bonafide himachalis of the area because they are well conversant with the local terrain, topography and other socio-economic conditions of the people. First preference shall be given only to the owners of sites of such traditional gharats, then to the residents of the village, the district, the rest in that order. The owners of the existing water mills who are willing to install new water mills at the potential sites shall have to obtain necessary approvals from the competent authorities as per the requirements of the scheme. In case of water mills providing the electrical and mechanical output, the power so generated shall be utilized by the owner for his own captive use or otherwise as permitted by the law. However, such project developers are exempted from the payment of 1% development charges for local areas.
- lvi.** The project developers shall be at liberty to erect common dedicated transmission lines for joint evacuation of power from two or more projects by way of suitable consortium agreements. HPSEBL/HPPTCL, as the case may be, will ensure availability of evacuation arrangement before commissioning of the project.
- lvii.** The tariff in respect of projects up to 5 MW shall be determined by HPERC with respect to date of achieving COD of project instead of the date of signing of IA, only if project is completed within the stipulated time period as approved in TC after achieving the zero date except force majeure conditions or reasons not attributable to the project developers.
- lviii.** Any incentives announced in respect of different categories by various Ministries of Government of India from time to time providing central financial assistance for development of Micro & Small hydro programme in the Country shall be applicable as per the policy.
- lix.** The project developer shall ensure that the land is used exclusively for the activities related to the project. Any land exceeding the bonafide requirement of the project shall be surrendered to the State Government.
- lx.** The following amendments made in the Hydro Policy by the State Government vide Notification dated 15.05.2018 shall not be applicable to the Projects which will be commissioned beyond 31st December, 2028:
 - a)** In case of already allotted (but not commissioned) projects, the free power quantum to be received on account of free power share of the state will be deferred for the critical period of initial 12 years from the date of achieving SCOD or COD of the project, whichever is earlier. The quantum to be deferred shall be recovered during

the balance agreement period in a uniform percentage rate for all the ongoing private sector projects which are under construction and at various stages of clearances. The project developers shall be liable to sign revised MoU / IA / SIA, as the case may be.

- b) The entire power generated from the projects having capacity up to 25 MW will be mandatorily purchased by HPSEBL at the HPERC determined tariff. The same shall be applicable to the projects which shall be commissioned after 15.05.2018.
- c) No open access charges for the use of intra-State transmission network shall be payable by hydro-electric projects having capacity up to 25 MW which shall be commissioned after 15.05.2018.

lxi. Any other issue not appearing herein, in relation to development of projects of any capacity and any energy source shall be addressed by Directorate of Energy.

lxii. Any difference and/or disputes arising at any time between the parties out of the MoU / IA / SIA or interpretation thereof shall be resolved by the parties hereto by mutual negotiations, failing which, the matter shall be referred to a two-tier grievance redressal process. The matter shall be addressed by the departmental Grievance Redressal Committee constituted under the Chairpersonship of Chief Executive Officer, HIMURJA, Shimla. In case the issue remains unresolved to the satisfaction of the project developer, the matter shall be referred to a state government level committee. If the project developer is still not satisfied with the verdict, the dispute shall be subject of the jurisdiction of civil courts of Himachal Pradesh.

CHAPTER - V

LOCAL AREA DEVELOPMENT FUND

5.0 BACKGROUND

Hydro Power development though is a source of green and clean source of power, the minimal careful planning on the environment and socio-economic well being of the affected population, also need to be addressed. Similarly, the multi-purpose projects which have major objective of irrigation, flood moderation, drinking water needs etc. and a low component of hydro power generally responsible for a wider scale of displacements and consume huge submergence areas. As such, the provisions of local area development shall be applicable for the hydro power development as well as multi-purpose projects, which gives the feeling of ownership to the local communities. The mitigation measures must have adequate provision in the project design and cost. These provisions are towards Environment Management Plan (EMP), Catchment Area Treatment (CAT) Plan, restoration of loss of environment through Compensatory Afforestation (CA) and Net Present Value payment, Rehabilitation and Resettlement (R & R) Plan, infrastructure and capacity development in the area etc..

For local area development and to address of the impacts of hydro project execution, various local development activities need to be carried out in the local area surrounding the project. For this purpose, the initiative of the State Government was the first in the country with an eye on welfare of the local communities. A special provision of Local Area Development Fund (LADF) from the projects was made by the State Government in its Hydro Power Policy - 2006, so as to ensure visible additional benefit to local communities in the project area as part of the cost of a project. The people of the affected area were aimed to be made aware of the allocation likely to flow to them so that on one hand gainful infrastructure and local area development activities can be planned well in advance and on the other hand local communities develop an interest in expeditious completion of projects. Accordingly, a provision of 1.5% of the final cost of projects above 5 MW capacity and 1% for projects up to 5 MW capacity was made mandatory to be made by the project developer toward LADF.

In order to make the long term provision for sustainable development of hydro projects which have long life, introduction of Post-Commissioning LADF funded through revenue generation from 1% of power generated, in the form of an annuity over the entire life of the project, was made by the Government of India in its Hydro Power Policy 2008.

In order to administer LADF and to manage such development activities, the Hydro Power Policy, 2006, provided the constitution of a district level Local Area Development Committee (LADC) comprising of various stakeholders including Government departments, project developers and public representatives/ nominated members from Project Affected Areas, in respect of hydro electric projects being implemented in each river valley of the state, by the various agencies in Power Sector in the state viz. State Sector/Joint Sector/Central Sector/Private Sector.

5.1 COMPOSITION OF LADF

The LADF shall comprise of contribution by Project i) amount based on final project cost and ii) as additional free power after commissioning as envisaged in the State and National Hydro

Power Policies. The project developers in the state shall contribute towards LADF in two stages.

5.1.1 Pre-Commissioning LADF:

The project developer shall contribute a minimum of 1.5% of the final project cost for projects of capacity more than 5 MW and a minimum of 1% for projects of capacity up to 5 MW towards LADF for financing local area development activities during the execution of project.

5.1.2 Post Commissioning LADF:

The project developer shall contribute additional 1% free power over and above the agreed rates of normal free power royalty component to the State Government. The revenue generated from sale of such 1% free power from the project will be assigned to the LADF for providing regular stream of revenue for income generation to the Project Affected Families in the form of annuity over the entire life of the project. This additional 1% free power share of the host state will be a pass through in tariff.

5.2 ADMINISTRATION AND MANAGEMENT OF LOCAL AREA DEVELOPMENT FUND (LADF)

5.2.1 DEFINITIONS:

5.2.1.1 PROJECT AFFECTED FAMILY (PAF):

Means a family whose land or house or other property or source of livelihood has been partly or fully affected by the development of a hydro electric project and resident family whose name have entry in the Parivar Register of the Gram Panchayat(s) / local bodies of the Project Affected Area on the date of allotment of the project.

5.2.1.2 PROJECT AFFECTED AREA (PAA):

Means the area where actual project components including submergence area/muck dumping area, mine/quarry area, infrastructure including project roads, project's dedicated township, offices, construction facilities, welfare facilities and any other facility directly related to project implementation are located. Townships and offices such as design office or head office not directly connected with the particular project site are excluded. Unit for declaring PAA would ordinarily be the Gram Panchayat (GP), However, in the case of projects up to 5 MW capacity, where component(s) pertains only to specific wards and do not impact the rest of the Gram Panchayat then those wards shall be separately enumerated and considered as PAA.

In case of projects involving resettlement, the area for resettlement shall also be covered as PAA.

5.2.1.3 PROJECT AFFECTED ZONE (PAZ):

Means the area surrounding such PAA where impact of the project on the lives of people is considerable even if no direct project activity is taking place there. The categorization of PAZ on the basis of project size will be as under:

- a) **For projects of capacity up to 5 MW:** Only such contiguous wards/ panchayats to PAA as are considered to be impacted by the project.
- b) **For projects of capacity from 5 MW to 100 MW:** All the contiguous panchayats to PAA as are considered to be impacted by the project, in the same or adjoining district(s).
- c) **For projects of capacity above 100 MW:** Entire-block or all such contiguous panchayats to PAA as are considered to be impacted by the project in the same or adjoining district(s).

5.2.1.4 Declaration of Project Affected Families / Areas:

- a) PAF in all cases shall be declared by the concerned Deputy Commissioner before the signing of the IA mandatorily.
- b) PAA & PAZ for projects up to 100 MW will be declared by the concerned Deputy Commissioner. For projects over 100 MW will be declared by Government of Himachal Pradesh on the recommendation of concerned Deputy Commissioner. In case of a project falling in more than one district the PAA & PAZ will be declared by Government of Himachal Pradesh. No expenditure will be incurred till the PAA and PAZ are notified.
- c) The declaration of PAA & PAZ shall be completed prior to signing of IA. The project developer will submit the proposal to the Deputy Commissioner within 2 (two) years of signing of MoU/PIA.
- d) In case of scattered and isolated PAA e.g. mining and dumping areas etc., the PAZ will be only such adjoining panchayats to PAA as are considered to be impacted by the project.

5.3 STANDARD GUIDELINES TO ADMINISTER AND MANAGE LADF

The standard guidelines to administer and manage LADF in an objective, transparent and efficient manner are as under:

5.3.1 Pre-Commissioning LADF

- a) Initially the pre-commissioning LADF will be worked out on the basis of the project cost as per TC of the project for depositing with Government of Himachal Pradesh. After completion of the project, the LADF will be worked out on the final completed cost of the project. However, for the projects upto 25 MW capacity, LADF will be worked out on the basis of capital cost considered by HPERC while determining the generic tariff.
- b) The project cost will be as approved by Central Electricity Authority (CEA)/GoI / GoHP and includes IDC, CAT, R&R expenses etc. Escalation will be included at the time of approval of revised cost. The LADF contribution made on the basis of Project cost as per TC initially, shall be adjusted and payable on the final completion cost of the project as per cost to completion arrived at the time of COD (Actual expenditure made plus estimated cost of balance ongoing works) to be confirmed after completion of all works of the project as submitted and approved by Directorate of Energy.
- c) The balance amount of LADF worked out on final project cost shall be deposited by the project developer within 6 months of the COD after getting approval/confirmation of final project cost by the Directorate of Energy subject to the entitlement defined under clause (a) above.

- d) For proper management and account specially keeping in view the pending liabilities and interest due against LADF, a centralized LADF account will be managed by nodal agency/department. Nodal agency will transfer the amount on account of LADF to the concerned district immediately.

5.3.2 Post Commissioning LADF:

The project developers of projects of all capacities shall contribute 1% free power for LADF over and above the rates of royalty agreed to be paid to the State in the IA/ SIA, as the case may be. This additional 1% free power provided to the host state will be a pass through in tariff. The revenue collected, by the nodal agency i.e. Directorate of Energy from sale of such 1% free power contribution from the project developer will be transferred to the concerned LADC.

5.4 REALIZATION OF LADF CONTRIBUTION

5.4.1 Pre-Commissioning LADF:

- a) The payment schedule of pre-commissioning LADF shall be as under :
- i) 1st installment comprising 25% of total payable LADF is to be deposited at the time of signing of IA along with the Bank Guarantee (BG) of the 2nd & 3rd installments of LADF amount, which shall be returned immediately after receipt of amount against the due installments.
 - ii) 2nd installment of 25% will be paid within one year of Zero Date and 3rd installment of 50% will be paid within two years from achieving of Zero Date. The balance amount worked out on the basis of total completed cost within six months after achieving COD of the project. The completed cost will be settled at the time of allowing COD of the project.
- b) In case of failure to adhere to the time lines as prescribed under (i) and (ii) above, the project developer shall be levied interest on the due amount of LADF @ 12 %.
- c) In case of failure to deposit pre-commissioning LADF dues by the project developer, the recovery of the amount due along with interest component shall be carried out in terms of energy to be computed as an uniform percentage of the deliverable energy, six month after COD of the project. The quantum of deduction shall be worked out on the basis of average sale rate corresponding to the previous year realization on account of sale of free power by Directorate of Energy and the same shall be recovered within next one year in 12 equal installments. This provision will be incorporated in the IAs / SIAs. This provision will also apply to the commissioned projects which are defaulting in the payment.

5.4.2 Post Commissioning LADF:

The 1% free power contribution to LADF shall be sold by the State Government along with its share of normal free power. The amount equivalent to average net realization per unit multiplied by the number of units for which 1% is to be paid will be placed at the disposal of LADC annually. The average price per unit will be worked out on the basis of net proceeds of total free power sale by the State Government divided by total number of units involved, after

allowing Two (2) paisa per unit to be retained by the State Government as the expenses of Directorate of Energy.

5.5 INSTITUTIONAL ARRANGEMENT FOR ADMINISTRATION OF LADF

5.5.1 There shall be a State Level Committee headed by Additional Chief Secretary/Principal Secretary (MPP & Power) to monitor the operation of the LADF arrangements, adherence to guidelines and time lines for deposit in the fund at various stages. The State Level Committee is empowered to clarify any un-addressed issues and remove any difficulties to facilitate smooth functioning in implementation of these guidelines. The Directorate of Energy will be the nodal agency at state level and will keep a record of the LADF activities, amounts to be deposited by each project developer and manage the allocation of revenue generation from 1 % additional free power to the concerned LADC to be constituted as described hereafter. The amount to be deposited by each project developer will be kept in a single account in Directorate of Energy and the State Level Committee is empowered to utilize the interest generated from the amount deposited and the revenue generated by retaining two (2) paisa per unit as expenses of Directorate of Energy.

5.5.2 State government will notify LADCs time to time.

5.6 FUNCTIONS, RESPONSIBILITIES OF THE LADC

- a) Overall management, control and administration of LADF including documentation and maintenance of accounts.
- b) Scrutiny of the proposed schemes to ensure adherence to guidelines contained herein.
- c) Approval of shelf of schemes and finalization of Annual Action Plan (AAP) in respect of each hydro electric project and allotment of funds to executing agencies. Each scheme included in the shelf or AAP shall be only on the basis of recommendation of Gram Panchayat of the concerned PAA or PAZ as the case may be. The committee will not thrust any scheme from PAA/PAZ share into the shelf/AAP at its level and ensure no in-eligible scheme is sanctioned by it.
- d) Monitoring and supervision of implementation of schemes approved under LADF.
- e) Review the progress of all administrative and statutory clearances with a view to remove local hurdles, if any, and settle local issues to facilitate timely execution of the hydro power projects.
- f) Assessment of work shall be done as per the standard guidelines of Public Works, and Rural Development departments etc.
- g) Executive agency shall be Public Works, Rural Development, Jal Shakti departments etc. or any other Government department/agency as decided by LADC.

5.7 INTIMATION ON AMOUNT OF CONTRIBUTION TO LADF

The Directorate of Energy will intimate the concerned LADCs about the signing of IA and the tentative amount due from the project developer against LADF. This amount in turn will be intimated to the Gram Panchayats/Blocks/District during the first meeting of the concerned

LADC, enabling the concerned body to prepare their shelf of schemes as per the allocation expected by each of them.

5.8 PARAMETERS FOR ALLOCATION OF FUNDS

5.8.1 Pre Commissioning LADF:

Allotment of funds for local area development works shall be made strictly in accordance with the following norms:

Sr. No.	Category of HEPs	Norms for allocation of LADF during the construction			
		Project Affected Area (PAA)	Project Affected Zone(PAZ)		
			Project Affected Panchayat(s)	Project Affected Block(s)	Project affected District(s)
1.	Up to 5 MW Capacity	70%	30%	-	-
2.	>5-100 MW Capacity	60%	20%	10%	10%
3.	> 100 MW Capacity	50%	20%	15%	15%

5.8.1.1 Further allocation of funds amongst the panchayats in PAAs shall be determined on the basis of a formula that assigns weightage to the following parameters in respect of 50% of the funds proposed to be allocated for PAA at para 5.8.1 above:

- a) Extent of private land used for project components including submergence of land - 45%.
- b) Extent of land affected above underground components- 15%.
- c) Extent of land used for infrastructure-roads, colony, warehouses etc.)- 20%
- d) Affected stretch of river/stream on both banks in respect of diversion structure and power house- 20%

Note: These ratios will be finalized by the LADC Chairman in consultation with the project developer based on factual details and ground realities. In case the project involves families to be displaced and relocated somewhere else, funds shall also be allocated to the host Gram Panchayats in the ratio of number of PAFs displaced to total PAFs. Till the host Gram Panchayat is identified this amount shall not be distributed.

5.8.1.2 The balance 50% of the funds to be allocated for PAA at para 5.8.1 above, shall be allocated on the basis of ratio of population of each concerned GP to the total population of the entire area in PAA as on 1st January of the year of allotment of the project.

5.8.1.3 Funds amongst GPs in the PAZ shall be allocated as per ratio of population of each GP to the population of all GPs in the PAZ.

5.8.1.4 Allocation of funds for schemes out of the amount kept for block or district level shall not be made for Panchayat Level Schemes. In other words, schemes out of these funds must result in benefits to the block or district as the case may be. These funds may be allocated to a road, water supply, education or health institution serving more than one GP or block or entire district and not to a scheme restricted to a GP area.

5.8.2 Post Commissioning LADF:

5.8.2.1 The State Government through the Directorate of Energy will provide revenue received from the 1% additional free power component for each project to the LADF. The amount so received shall be allotted by the LADC in the form of a cash transfer to all the PAFs, every year, during the entire life span of the project as below:

- a) 50% of the total amount of LADF will be divided amongst the Gram Panchayats in proportion to the land acquired in each Gram Panchayat for equal distribution among the PAFs.
- b) Balance 50% of the total amount of LADF to be divided to all the families in PAA equally.

5.8.2.2 If a Project faces stoppage of work on account of law and order problem or public agitation by the locals, the provision regarding post- commissioning LADF will not be applicable for such number of days immediately after commissioning of project as recommended by district authorities and approved by State Level Committee resulting in deprivation of the PAFs of this benefit.

5.8.2.3 A mechanism to address the grievances arising out of disbursement and management of LADF is as follows:

The grievances would be addressed by the Sub Divisional Magistrate of the concerned area who would be designated as Grievance Officer. Any person who is aggrieved with the decision of the Grievance Officer can prefer an appeal before District Magistrate/ Additional District Magistrate of the concerned district, who will be designated as Redressal Officer. Any further appeal shall be with the Additional Chief Secretary/Principal Secretary (MPP & Power) to the GoHP, whose decision shall be final and binding.

5.9 PREPARATION OF SHELF OF SCHEMES

5.9.1 The Member Secretary, LADC will, after approval of the Chairman, inform the concerned Panchayat about the tentative amount that will be available for each Project Affected Panchayat in accordance with provisions in para 5.4.1 above.

5.9.2 A comprehensive shelf of schemes for the entire amount would then be prepared by the concerned panchayat/block/district and approved by the LADC along with a yearly plan. The annual plan may be discussed again in the Gram Sabha/LADC every year and altered if required. The shelf so approved would then be sent to the Member Secretary of concerned LADC & nodal agency, Directorate of Energy.

5.9.3 Eligibility of schemes for preparation of shelf of schemes shall be based on the following parameters:

- i) Facilities meant for a panchayat only will be considered as panchayat level schemes like cement concrete internal paths connecting streets of village and main roads, ropeway benefiting masses, street lights benefiting masses, sanitation, rain water harvesting for whole village or panchayat, construction of building for mahila mandal, community hall, school buildings, playground, sports complexes, panchayat bhawan, rain shelter, construction of crematorium bhawan, providing drinking water supply for

village, irrigation scheme for village / panchayat, renovations/ repair of any other public building / assets.

- ii) Facilities serving more than one panchayat will be considered as block level schemes e.g. school, cement concrete path, village link road, primary health centre etc.
- iii) Facilities for district level infrastructure like bus stand, hospital, college, training institutes, fire tenders, ambulances etc. or any other district level infrastructure as determined by LADC.

5.10 The following schemes/activities will not be covered under LADF allocations:

- i) Kachha paths/Project roads.
- ii) Purchase of any kind of vehicles associated with monitoring of the LADF activities.
- iii) Renovation/repairs/maintenance of individual houses (if compensation has been received or is being made available out of any other budget head).
- iv) Activities of recurring expenditure or allowance or grant to any individual.
- v) Deployment of manpower on regular, contract basis, daily wage basis.
- vi) Purchase of any consumable articles such as dresses for cultural activities, kitchen utensils for mahila mandal, communities, societies, transportation and travelling charges etc.

5.11 IMPLEMENTING AGENCY

The implementing agency for sanctioned schemes can either be a Gram Panchayat or a Government department. The decision on choice of agency for panchayat level schemes shall lie with the Gram Panchayat. For schemes beyond panchayat level, the LADC shall decide the implementing agency.

5.12 EXECUTION AND MONITORING

5.12.1 The funds for sanctioned schemes would be released by the LADC to the implementing agency based on the progress of schemes/actual utilization/after receipt of the bills from the executing agency.

5.12.2 The executing agency shall furnish accounts along with Utilization Certificate and Completion Certificate to the LADC.

5.12.3 The progress of financial allocation and implementation of schemes shall be monitored regularly by LADC. Appropriate reporting arrangements will be made by the LADC to submit online information on a web based programme as to be specified by the State Level Committee.

5.12.4 While a Government agency executing the scheme would have their own mechanism for mandatory inspections for assessment of works, the LADC may also use Engineering staff of any Government department for this purpose. LADC will be entirely responsible for quality and quantity of various works and suggest improvement required, if any.

5.12.5 The LADCs will send annual report to Directorate of Energy on the prescribed performa devised by the Directorate of Energy.

5.13 MANAGEMENT OF FUNDS AND UTILIZATION OF INTEREST AMOUNT

- 5.13.1** The funds of LADF would be kept in a joint account in any scheduled bank. The deposits will be managed efficiently to secure best interest income. The account of LADC shall be operated jointly by the Chairman and Member Secretary of the concerned LADC. The LADF would be subject to audit and instructions of State Government as issued from time to time.
- 5.13.2** Member Secretary shall be responsible for the maintenance of LADF accounts and preparation of resolutions and minutes of the LADC meetings. LADC shall meet at least twice a year at such time and venue as decided by the Chairman.
- 5.13.3** The assets created under LADF shall belong to the institutions for which they are constructed or to local body as the case may be, which will be responsible for all operation and maintenance of such assets.
- 5.13.4** The interest earned on the funds deposited in LADF will become part of LADF. The interest earned to the extent of 10% may be used by LADC to cover cost of organizing LADC meetings, monitoring, office expenses including purchase of furniture or to hire services of experts for quality assurance, dispute resolution, hiring vehicles for inspection of works by Chairman or Member Secretary. Directorate of Energy, however, will be competent to allow expenditure up to 25% of annual interest on case to case basis as per actual requirement.
- 5.13.5** For managing LADF by LADC, the personnel will be hired on outsource basis with prior permission of the Directorate of Energy.

5.14 ADJUSTMENT OF EXPENSES INCURRED BY DEVELOPERS UNDER LADF

- 5.14.1** No project developer will release / spend any funds directly to the local public or for public works on their demand.
- 5.14.2** The expenditure incurred by the project developer on various activities executed on the demands of local villages / PAA / PAZ shall be liable for adjustment against the dues of LADF subject to:
- (i)** The work / activity is completed / likely to be got completed within the amount eligible under the share of the concerned project affected village / block / zone / district inline with the norms fixed at Para 5.8 above.
 - (ii)** The work / activity should have public utility and duly verified and recommended by the Deputy Commissioner / Directorate of Energy for adjustment, provided that the project developer properly submits all relevant details including demand of Gram Sabha / Gram Panchayat in the shape of resolution passed by the concerned Gram Sabha / Gram Panchayat and that shall be acceptable to the LADC.
 - (iii)** In case the total expenditure incurred on such activities which are being executed on the public demand of PAA / villages, on completion of the work, exceeds the limit of share as defined at Para 5.8 above, the project developer shall pay the balance amount from own resources and the amount beyond the limit of respective share shall not be chargeable to LADF.

5.15 FREE ELECTRICITY TO PROJECT AFFECTED FAMILIES

5.15.1 As per the National Hydro Power Policy- 2008, in respect of the projects commissioned after 31.03.2008, incentive in terms of 100 units of free electricity to all the eligible PAFs shall be provided for 10 years from the date of COD of respective Project.

5.15.2 The project developer shall deposit an equivalent amount of 100 units of electricity to the PAFs as per the applicable subsidized tariff determined by HPERC from time to time, with concerned LADCs and the balance amount equivalent to the quantum of subsidy with Directorate of Energy. This shall be done annually.

5.16 AUDIT

The Directorate of Energy will shortlist a panel of auditors for carrying out the audit of LADF in respect of all the LADCs.



Development of Community Playground at Ullansa Panchayat of Project Affected Area



CHAPTER-VI

SINGLE WINDOW CLEARANCE SYSTEM FOR ENERGY PROJECTS

6.0 A Single Window Clearance System for energy projects shall be introduced for ease of business to the project developers by providing a single touch point for all clearances at the State level, with a charter of time for all clearances aimed at reducing the gestation period of hydro, solar and other projects. The concerned departments which are to provide the clearances shall formulate the “improved processes” in order to reduce the hierarchical levels for examination and clearance of cases within the time lines provided in the charter. Wherever possible a mechanism of deemed clearance shall be introduced.

The clearances required from the State Government to be provided to the project developers include: Environmental Clearance, Forest Clearance, Consent to Establish, Mining Clearance, Catchment Area Treatment Plan, Land for Compensatory Afforestation, Rehabilitation and Resettlement (R&R) Plan, NOCs from Public Works, Jal Shakti, Wild Life, Fisheries and Revenue departments etc. However, it shall remain the responsibility of the project developer to submit applications after thoroughly checking the check list and providing supporting documents wherever asked for, to ensure that the applicant is not non-responsive. All the state agencies / departments shall endeavour to stick to the time lines and grant clearances expeditiously.

Any grievance of the project developer may be brought to the State Level Committee under the chairpersonship of Hon’ble Power Minister of Himachal Pradesh as per **Annexure-V** shall review the progress from time to time.

6.1 The applications for the above clearances and NOCs shall be made online on the portal, which shall be made operational within six months of the policy notification. It will be independent and hosted with Directorate of Energy, Government of Himachal Pradesh Portal.

6.2 Timelines for accordance of various NOCs / clearances will be as under:

Sr. No.	Department	Action/Timeline
1.	NOC of Jal Shakti, Public Works, Revenue, Fisheries and Wildlife Departments.	<ul style="list-style-type: none"> ➤ The project developer will apply at Single Window platform and the application shall be submitted to concerned departments for the necessary time bound action. ➤ Stages will be defined with the timeline for the approval of the NOCs of the various departments. ➤ For accordance of NOCs of various departments concerned Deputy Commissioner shall convene a meeting of all concerned departments on the basis of reports and shall ensure issuance of required approvals / NOCs within 30 days period in the form of Single Window Clearances. ➤ If issues pertain to more than one department then joint inspection committee under the chairmanship of Sub-Divisional Magistrate will be constituted at sub-divisional level and it will
2.	NOC of Gram Panchayat.	

		be reviewed at the district level committee under the chairmanship of Deputy Commissioner notified by the State Government.
3.	Panchayat NOCs	Gram Panchayat shall issue NOC or pass-reasoned order within one month of filing application directly with Gram Panchayat or through Single Window, as the case may be, failing which, concerned BDO will decide the same within 15 days. Gram Panchayat, if agreed shall file an appeal within 15 days before Deputy Commissioner who will decide the same within a month and the decision of Deputy Commissioner shall be final.
4.	Forest Right Act (FRA)	FRA Rights in all districts on pattern of District Chamba & Mandi will be settled on priority within a year so that FRA Certificate issuance can be smoothened.
5.	<ol style="list-style-type: none"> 1. Environment Clearance 2. Forest Clearance 3. Consent to establish 4. Mining Clearance 5. R&R Plan 6. Any other issues / clearances. 	Link of various departments shall be hosted on the Single Window Clearance System portal for making application. The check list for rendering application complete shall be shared on the portal. The timelines for various levels and categories for approvals shall be finalized after due consultations with the concerned departments for expeditious disposal.
6.	Department Level Issues	
	1. DoE	<ol style="list-style-type: none"> i. Technical Concurrence (TC) – 5 months ii. Revalidation of TC – 3 months iii. Approval of Construction schedule – 1 month iv. Essentiality Certificate (EC) – 15 days v. Letter of Comfort / Assurance – 15 days vi. Approval for capacity enhancement – 2 months vii. Approval for equity change / name change – 1 month viii. Signing of IA / SIA – 2 months ix. Domain Change – 3 months x. Permission for declaration of COD – 2 ½ months xi. Extension of SCOD – 6 months xii. Extension of other various milestones – 2 months.
	2. HPSEBL / HPPTCL	<ol style="list-style-type: none"> i. Confirmation of evacuation arrangement for grant of TC – 1 month ii. Signing of Connectivity Agreement – 3 months iii. Signing of Long Term Open Access Agreement (LTOA) – 3 months iv. Signing of Power Purchase Agreement (PPA) – 6 months v. Report on Power House design for COD – 15

		days vi. Report on evacuation of power with respect to COD – 7 days vii. Bills settlement – 1 month
	3. HPSLDC	i. NOC with respect to COD – 7 days ii. Settlement of various charges – 1 month iii. Any other issue – 1 month
	4. Chief Electrical Inspectorate	i. Report on electrical installation with respect to COD – 15 days ii. Any other electrical system safety report – 1 month
	5. HIMURJA	i. Report of safety up to 5 MW capacity – 1 month ii. Domain Change – 3 months iii. Essentiality Certificate (EC) – 15 days iv. Issuance of letter of comfort / Assurance – 15 days v. Approval for Capacity Enhancement – 2 months vi. Approval for Equity Change / Name Change – 1 month vii. Signing of IA / SIA – 2 months viii. Extension of SCOD – 6 months ix. Extension of other various milestones – 2 months.

6.3 Services will be brought under Public Service Guarantee Act.

6.4 Frame work for Single Window Mechanism

- i.** Developed IT platform with trained manpower.
- ii.** Assistance of consultants.
- iii.** IT / digital infrastructure.
- iv.** Nodal department / Officers.
- v.** Monthly review / review mechanism from top to bottom.
- vi.** District Level Committee.
- vii.** State Level Committee review.
- viii.** Earmarked funding / budget.
- ix.** Integration of all departments – single dashboard



Lahal Sub-Station 400 kV, Chamba

CRITERIA FOR EVALUATION OF FINANCIAL AND TECHNICAL CAPABILITY FOR SMALL HYDRO PROJECTS (0-5 MW)

Sr. No.	Description	Marks (Proposed)
1	Criterion for allotment:	
	(A) Himachali:	
	(a) Financial	50
	(b) Technical	30
	(c) Preferential marks as Himachali	20
	(B) Non Himachalis:	
	(a) Financial	50
	(b) Technical	30

(A) FINANCIAL EVALUATION:

The following marking pattern shall be followed:-

Capacity MW	Up to 2 MW	above 2MW up to 5
	(Exclusively reserved for Himachalis)	
a) Financial Capability		
Net worth	50 marks	50 marks
b) Preferential Marks to Himachali/Co-operative Society/ Voluntary Society/Firms/Trusts/Company promoted by the people of:		
i) Local Panchayat	20 marks	-----
ii) Local District	15 Marks	-----
iii) Himachali	10 Marks	20 Marks

ILLUSTRATION OF (b) ABOVE:

If a Co-operative Society/Firms/NGO/Company are promoted by the people of Local Panchayat /Local District and Other Himachalis, the marks are to be awarded by adding total marks of Local Panchayat/Local District/Other Himachalis, the marks shall be awarded on prorata basis. For example: if there are 6 persons in a Firm/Society/NGO/company promoted by people of Himachalis i.e. 2 from local Gram Panchayat, 3 from Local District and 1 other Himachali, the marks shall be calculated/awarded as under:

(a) 2 from Local Gram Panchayat = $2 \times 20 = 40$

(b) 3 from Local District = $3 \times 15 = 45$

(c) Other Himachali = $1 \times 10 = 10$

Total = 95 Divided by total number of Persons
 $95/6 = 15.33$ marks
i.e. 15.33 marks out of 20.

- Preference will be given to Himachali having better financial capability in case two or more Himachali applicants getting equal marks.
- Preference will be given to Himachali in case Himachali and Non Himachali getting equal marks.
- Preference will be given to the Non Himachali having better financial capability than other non Himachalis, in case both non Himachali applicants getting equal marks..
- In case of individual, property of Parents/Grand Parents and other relatives shall not be considered for evaluation.
- NRI and its property outside the country shall not be considered.
- Property of Himachali applicant outside the State shall be considered for evaluation.

Private Investors claiming themselves to be resident(s) of a particular Panchayat, where the project is being located, should attach proof of their permanent residence from the Secretary of that particular Panchayat and countersigned by concerned BDO/Tehsildar. The applicant(s) should also submit their Bonafide Himachali Certificate (s) along with. Similarly Private Investors claiming themselves resident of the district/Himachal should attach the Bonafide Himachali Certificate issued by Executive Magistrate of that area. In the absence of these certificates claim of the Private Investor for resident of a Panchayat/District/Himachal shall not be considered.

FINANCIAL EVALUATION:

1. The financial capability of the investors is to be assessed on the basis of Audited Accounts/Published Accounts /un audited financial statements and net means in the case of individuals/newly formed entities. The Balance sheets of the Private Investors pertaining to the last accounting period as supplied by the Private Investors because of variation in Accounting period or otherwise, is to taken into consideration.
2. In case of newly formed entities such as companies, Partnership concerns, Co-operative Societies, Voluntary Societies/Trusts, if the above criteria could not fulfilled, the means of each member/promoter will be evaluated jointly for this purpose. The proof/ documents in support of the above shall be submitted by the individual/ promoters.
(New Entity shall include the Companies, The Cooperative Societies, Voluntary Societies, Trusts, Partnership Concerns formed within recent year or registered in the preceding years but could not raise Net worth because of non performance of any activities)
3. In case of new entities Weightage shall be assigned on the basis of financial standing of the promoters and of the applicant company. Prorata share of each partner/member shall be calculated as applicable.

4. Since, financial strength is the Prime factor in execution of Projects; the following assumptions have been made:
- The probable cost of the Project as per the market rate has been considered as Rs. 11 Crores per MW.
 - The capacity of the project shall be considered for calculation of financial strength for qualification/ evaluation.

5. DEFINITION OF FINANCIAL TERMS

Following definitions have been adopted for different financial terms used in the evaluation of financial strength.

Net Worth	Paid up Capital + Reserves created out of profit/loss account – intangible assets.
Non cash items of Balance sheet	Depreciation on assets etc. accounted for in the books only but physical cash is not available.
Reserves created Out of Profit/Loss account.	Net profit after tax (-) Dividend to Share Holders (-) interest on debentures etc.
Paid up Capital	It is the capital generated by the Company by way of equity shares.
Intangible Asset	Accumulated Losses & Misc. Expenditure (to the extent not written off or adjusted)
Market Value	The value of an assets (Land, Building, Jewellery etc.) duly approved by the approved valuer (latest evaluation certificate)

6. Net Worth calculation in the case of individual/Societies shall be based on following information:-

Cash in hand/Bank	Name of the bank, nature of Account & account No./F.D.R. No./amount invested/date of maturity (with proof).
Detail of Assets owned	Full description of property, purchase price, market value, details of title deed, whether free from encumbrance. (Land, Building and other immovable assets) (with proof)
Details of investments, if any	Name of the Company/No. of Shares/Units/Bonds etc. with face value/Present market Value /NSCs Jewellery etc. (with proof)
Loans & Advances	Loans/advances given which can be realized in ordinary course. (with proof)
Insurance policies on own Life held.	Policy No., amount insured, surrender value, date of commencement/maturity, annual premium, whether encumbered. (with proof)
Other assets valued at Movable Depreciated cost/ market Value & Unencumbered	Fixed assets, Car, security deposits etc. with complete details and proof thereof.

Less:-

Details of borrowings	Amount of loans /borrowing, from whom borrowed, Security offered, when payable.
Details of personal Guarantees given, if any	Amount of guarantee given, in whose favour, purpose of guarantee.
Any other liabilities if any	Give complete details.
Total Income	Copy of IT returns for the last three years to be enclosed in case of income Tax payee.

7. Marks shall be allotted for screening/evaluating financial strength as follow:-

For projects up to 2.00 MW:

- i) Minimum net worth of Rs. 75 lakhs per MW would be required to become eligible for evaluation.
- ii) The marks shall be awarded as per the following formula:-

$$\frac{\text{Net worth} \times 50}{1100}$$

**(Where 50 stands for total financial marks fixed and 1100 is cost per MW in lakhs)
For projects above 2MW and up to 5MW**

- i) Minimum net worth of Rs. 100 lakhs per MW for Himachali and Rs. 200 lakh per MW for non Himachalis would be required to become eligible for evaluation.
- ii) The marks shall be awarded as per the following formula:-

$$\frac{\text{Net worth} \times 50}{1100}$$

Note: The above provisions are for 1 MW, which shall be further considered/computed/adjusted on pro-rata basis for various capacity of projects other than 1 MW (Plus/Minus).

8. Considerations relating to existing (in hand) projects and applications for more than one project

- a) Net Worth of the applicant/developer shall be adjusted first against projects in hand/under implementation and remaining portion only shall be used for evaluation against fresh application.
- b) In the case of projects applied by a applicant are more than one, the applicant/developer shall indicate the net worth clearly for each project for allocation of financial strength for evaluation purpose, otherwise the net worth shall be considered against each applied project in proportionate to their capacity.

(B) EVALUATION OF TECHNICAL CAPABILITY:

<p>Criterion for assessing Technical eligibility for allotment</p>	<p>Total Marks for Technical Strength=30</p> <p>Minimum Technical marks for qualifying=15</p> <p>Allocation of Marks:</p> <ul style="list-style-type: none">(i) Applicants having experience of commissioning of aggregate capacity 10MW= 30 Marks(ii) Applicants having experience of Commissioning of less than 10 MW, the marks will be allocated on prorata basis of capacity commissioned.(iii) In case of partnership in the commissioned capacity of 10 MW the marks will be allotted on the basis of Percentage (%) of equity share of each partner.(iv) Long Terms MoU up to COD of the applied project signed with reputed Consultant Firm or Reputed Technical Experts/ Consultants having experience of minimum 10 years in Hydro Power development, subject to the condition that the Consultant Firm or Reputed Technical Expert/Consultants shall not be part of any other applicant, applied for the same project. =10 marks. (MoU with the applicant shall be allowed for maximum 3 projects)
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STRUCTURE OF FEE TO BE TAKEN AT DIFFERENT LEVELS DURING IMPLEMENTATION OF THE SMALL HYDRO ELECTRIC PROJECTS UP TO 5 MW CAPACITY.

Sr. No.	Description	Rate
1	Application fee at the time of applying for allotment of project	Rs 10,000/- (per application)
2	EMD to be furnished while applying for allotment of the project.	Rs 50,000/- per MW
3	Processing fee to be deposited within one month of issuance of consent letter: a) Himachalis (i) For Himachali up to 2MW (ii) Above 2 MW up to 5MW b) Non Himachalis	Rs. 50,000/ per project Rs. 1.00 lakh per project Rs. 3.00 lakh per project
4	Upfront Premium within one month of issuance of consent letter: (i) up to 2 MW (ii) above 2MW up to 5 MW	Nil Rs 1,00,000/- per MW (in two installments of Rs. 50,000/-)
5	Security Charges	Rs. 50,000/ per MW
6	Capacity enhancement charges (by way of upfront premium)	Rs. 1,00,000/- per MW on whole capacity.
7	Fee on account transfer of shares/change in name of entity (All Cases)	Rs,50,000/- per MW(SIA to be signed)
8	Penalty on account of change in shareholding within permissible limit / name of entity without prior approval of Govt.	Rs 20,000/- per MW
9	Extension fee where applicable.	Rs. 20,000/- per MW
10	Per MW cost assumed for assessing Financial strength of the applicants to draw merit	Rs - 11 Crore.
11	Fisheries Development funds (i) up to 2 MW (ii) Above 2 MW up to 5 MW	Nil Rs. 50,000 per MW on whole capacity.

MEMORANDUM OF UNDERSTANDING (MoU)
For _____ SMALL HYDRO – ELECTRIC PROJECT (_____ MW)
IN DISTRICT-----, HIMACHAL PRADESH

This agreement executed on this _____ day of the month of _____ Two Thousand and _____ between the Governor of Himachal Pradesh through Special Secretary (NES)-cum- Chief Executive Officer, Himurja, on behalf of Government of Himachal Pradesh having its office at _____ –Shimla–(H.P)_____ - (hereinafter referred to as the “First Party”), which expression, unless repugnant to the context or meaning thereof, shall include its successor(s), administrator(s) or permitted assigns) of the **FIRST PART**.

AND

M/s. _____, having its registered office at _____ (hereinafter referred to as the “Second Party”), which expression shall, unless repugnant to the context or meaning thereof, include its holding company, subsidiaries, associates, successor(s), administrator(s), and permitted assigns) through _____ who has been duly authorized by the Second Party vide their resolution dated _____ to execute this agreement, of the **SECOND PART**.

WHEREAS, the First Party has decided in accordance with the provisions of Hydro Power Policy/Energy Policy of GoHP to allow power generation in the Private Sector and has invited proposals for private investments in such Projects, inter alia _____ Hydro Electric Project in _____ District (Himachal Pradesh) of the capacity of _____ MW, (hereinafter referred to as the “Project”); and

WHEREAS, the Second Party is desirous of setting up _____ Hydro-electric Power Project (_____ MW) in District _____, Himachal Pradesh on river/stream _____; within elevation range of-----; and

WHEREAS, the First Party vide Letter of Allotment dated: __ has allotted _____ Hydro-electric Project (_____ MW), in favour of the Second Party for detailed investigations, techno-economical studies and implementation of the said Project and are desirous of reducing in writing the terms and conditions of the said *Agreement*, and

WHEREAS the Second Party has deposited the First installment of the upfront premium amounting to Rs. _____ vide Demand Draft No.----- dated----, processing fee amounting to Rs.-----vide demand draft No.-----dated----- and Security Charges (adjusted from EMD) amounting to Rs----- vide Demand Draft No.----- dated-----,with the First Party and shall deposit the balance upfront premium with the First Party at the time of signing of Implementation Agreement.; and

WHEREAS, the Second Party has agreed to contribute and provide to the First Party a minimum of 1% of Final Project Cost towards LADF for financing local area development activities during execution of Project as per schedule of payment mentioned below:

- i) 1st installment comprising 50% of total payable LADF at the time of signing of Implementation Agreement along with the Bank Guarantee (BG) of the 2nd & 3rd instalments of**

LADF amount which shall be returned by the First Party immediately after receipt of amount against the due installments to the Second Party.

- ii) 2nd installment of 25% will be paid within one year of Zero date and 3rd installment of 25% will be paid within two years from the date of achieving of Zero date. The balance amount worked out on the basis of total completed cost of the project within six months after achieving Commercial Operation Date of the Project. The completed cost will be settled at the time of allowing Commercial Operation Date of the Project.

In case of failure to adhere to the time lines as prescribed under (i) and (ii) above, the Second Party shall be levied interest on the due amount of LADF @ 12 %; and

WHEREAS, the Second Party is allowed to charge Pre-Commissioning LADF to any Head other than Project Cost Heads; and

WHEREAS, in case the Second Party fails to deposit Pre-Commissioning LADF dues, the First Party shall recover the amount due along with interest component in terms of energy to be computed as an uniform percentage of the deliverable energy, six month after Commercial Operation Date of the Project. The quantum of deduction shall be worked out on the basis of average sale rate corresponding to the previous year realization; and

WHEREAS, the Second Party shall contribute additional 1% Free Power over and above the agreed rates of normal free power royalty component to the State Government towards LADF

WHEREAS, the Second Party has incorporated a Special Purpose Vehicle (SPV) for the implementation of the project with its registered office in Himachal Pradesh as per provisions of Energy policy of the State.

NOW THIS MEMORANDUM OF UNDERSTANDING BETWEEN THE PARTIES HERETO WITNESSETH AS FOLLOWS:

1. The equity participation in implementation of the Project as under:

Any change in the name and consortium of the Second Party shall not be allowed from the date of allotment except as allowed against clauses mentioned herein under. It shall be mandatory for Second Party to submit an affidavit stating therein that no change in consortium and name of directors/ promoters have been made. In case of default on the part of Second Party, allotted projects shall be liable for cancellation, except the Second Party follows the provisions laid down in clauses mentioned herein under and submit their request and other necessary documents required for effecting any change in name and consortium of the project.

I. Transfer of equity

A. In case of Non-Himachalis

The Second Party (*Non-Himachalis*) implementing Hydro-Electric Projects are permitted to transfer the ownership by way of selling their equity stakes upto 100% during the implementation of the project in the name of any third party at any stage which is possessing equivalent or higher technical and financial strengths. However, there will be no restriction in respect of transfer of the project after commissioning.

In lieu of allowing change in name / transfer equity of Principal Promoters, a fee as per **Annexure-VIII** is to be deposited at the time of signing of Tripartite Agreement for transfer of project along with all liabilities/responsibilities in the name of new entity.

B. In case of Himachalis:

(a) Transfer of shares from Himachali to Himachali promoters:-

In case of Bonafide Himachalis/Co-operative Societies/Companies/ Voluntary Societies/Trusts/Partnership concerns/Sole Proprietorship concerns comprising wholly of Bonafide Himachalis to whom projects up to 2 MW and above 2 MW up to 5 MW capacity are allotted, the Government may consider the request of the promoters to transfer ownership wholly or partially to any other Bonafide Himachalis/Co-operative Societies/ Companies/Voluntary Societies/Trusts/Partnership concerns/ Sole Proprietorship concerns comprising wholly of Bonafide Himachalis, at any stage after allotment.

(b) Transfer of shares from Himachali to Non-Himachali promoters:-

In case of Bonafide Himachalis to whom projects up to 5 MW capacity are allotted, the Government may consider the request of promoters to sell/transfer 74% equity shares during implementation of project to Non-Himachalis which is possessing equivalent or higher technical and financial strengths and full disinvestment after commissioning.

In lieu of allowing sale/transfer of equity shares from Himachali promoters to Non-Himachali and change in name of the company, a fee as prescribed in **Annexure-VIII**, shall be charged at the time of signing of Tripartite Agreement for transfer of project in the name of new entity.

(c) The fee shall be charged every time the Second Party, both Himachalis & Non Himachalis, changes the shareholding/changes name of entity.

(d) In case the Second Party changes the name of the company/change shareholding within permissible limit without prior approval of the Government, penalty as per **Annexure-VIII** for each change shall be payable by the Second Party.

(e) In case of death of any of the promoters the shares will be transferable to his legal heir (s) after approval of the First Party

f) Transfer of equity shares by Himachali to Non Himachali / Himachali together, is allowed within the percentage as prescribed herein above.

2. The Second Party is desirous of and has submitted its proposal to the First Party for investigations and implementation of the proposed _____ Hydro-electric Power Project (_____ MW) in _____ District of Himachal Pradesh.

3. The First Party has accepted the proposal of the Second Party and has agreed, in principle, to allow them to investigate the Project subject to fulfillment of terms and conditions of this Memorandum of Understanding by the Second Party.

4. Following milestones shall be required to be achieved by the Second Party failing which consequential action as mentioned below be taken by the First Party. The Second Party shall be

61. The Second Party assures the First Party that there is no misrepresentation in the information supplied by it to the First Party as a part of their proposal or during the subsequent selection process. The First Party reserves the right to cancel the Memorandum of Understanding after giving an opportunity to the Second Party in case it is found that there was some such misrepresentation by the Second Party and/or in the event of breach of any of the provisions of this Memorandum of Understanding. The Second Party shall abide by the provisions as contained in the Hydro Power/Energy Policy of First Party.
62. Any violations of the above mentioned issues concerning policy parameters, MOU may result into monetary penalty including cancellation of the Project and its subsequent amendments issued from time to time.
63. Any difference and/or disputes arising at any time between the parties out of this MOU or interpretation thereof shall be endeavored to be resolved by the parties hereto by mutual negotiations, failing which the matter shall be referred to a two tier Grievance Redressal Process. The matter shall be addressed by the Departmental Grievance Redressal Committee constituted by the First Party under the Chairmanship of Chief Executive Officer, Himurja, Shimla. In case the issue remains unresolved to the satisfaction of the Second Party, the matter shall be referred to a State Level Committee. If the Second Party is still not satisfied with the verdict, the dispute shall be subject to the jurisdiction of Civil Courts in Himachal Pradesh.
64. Any other terms and & conditions deemed necessary shall form integral part this MOU as per the provisions thereto.

IN WITNESS WHEREOF the parties hereto have set their hands unto this on the day, month and year first above written in the presence of:

**For & on behalf of the
Government of Himachal Pradesh**
(Name-----)

**For and on behalf of
M/s**

**The Special Secretary (NES)-cum- Chief
Executive Officer, Himurja (H.P. Energy
Development Agency)**

Authorized signatory

WITNESSED BY:

- 1.
- 2.

WITNESSED BY:

- 1.
- 2.

IMPLEMENTATION AGREEMENT
 (For Projects upto 5 MW)
FOR SMALL HYDRO-ELECTRIC PROJECT (MW)

IN DISTRICT -----, HIMACHAL PRADESH

This Agreement executed on this ____ day of the month of _____ two thousand _____ between the Governor of Himachal Pradesh, through Special Secretary (NES)-cum- Chief Executive Officer Himurja, Government of Himachal Pradesh, having its office at _____ Shimla _____, (hereinafter referred to as “**First Party**”), which expression unless repugnant to the context or meaning thereof, shall include its successor(s), administrator(s) or permitted assigns, of the **FIRST PART**;

AND

M/s _____, having its registered office at _____, (hereinafter referred to as “**Second Party**”) which expression shall, unless repugnant to the context or meaning thereof, include its successor(s), administrator(s) or permitted assigns, through _____ who has been duly authorized by the Second Party vide their resolution dated _____ to execute this agreement, of the **SECOND PART**.

WHEREAS, the First Party in accordance with its Energy Policy had entered into a Memorandum of Understanding on _____ in the year _____ with the Second Party to carry out detailed investigations, techno-economic studies, submission of a Detailed Project Report (DPR) for the implementation of _____ Hydro Electric Project (HEP), _____ MW installed capacity, located in District _____, of Himachal Pradesh hereinafter referred to as the “Project”); **and**

WHEREAS, the Second Party has deposited the First installment of the upfront premium amounting to Rs. _____ on _____ with the First Party and has deposited the balance upfront premium amounting to Rs--- vide Demand draft No.--- dated -----as per provisions in the signed MOU; **and**

WHEREAS, the Second Party has agreed to contribute and provide to the First Party a minimum of 1% of Final Project Cost towards LADF for financing local area development activities during execution of Project as per schedule of payment mentioned in the signed MOU; **and**

WHEREAS, in case the Second Party fails to deposit Pre-Commissioning LADF dues, the First Party shall recover the amount due along with interest applicable as per policy and recovery provisions; **and**

WHEREAS, the Second Party has agreed to provide to the First Party the royalty in the shape of free power as per provisions in the signed MOU/as per the Energy policy provisions , as the case may be; **and**

WHEREAS, the Second Party has agreed to contribute additional 1% Free Power over and above the agreed rates of normal Free Power Royalty Component to the First Party as per the policy provisions; **and**

NOW, THEREFORE, in consideration of the promises and mutual covenants and conditions set forth herein, it is agreed by and between the parties hereto as follows:

1. INTERPRETATIONS AND DEFINITIONS:-

1.1. INTERPRETATIONS:-

- 1.1.1** The nomenclature of this agreement, headings and paragraph numbers are for convenience of reference only and shall be ignored in construing or interpreting this agreement.
- 1.1.2** References to persons and words denoting natural persons shall include bodies corporate and partnerships, joint ventures and statutory and other authorities and entities.
- 1.1.3** References to any enactment, ordinance or regulation or any provision thereof shall include any amendment thereof or any replacement in whole or in part.
- 1.1.4** Reference to Recitals, Articles, Clauses, Sub-Clauses or Annexures shall unless the context otherwise requires, be deemed to include the Recitals, Articles, Clauses, Sub-Clauses or Annexures of this Agreement.
- 1.1.5** The words importing singulars shall include plurals and vice versa as may be necessary.
- 1.1.6** Terms beginning with capital letters and defined as per Clause 1.2 of this agreement shall have the same meaning ascribed thereto and the terms defined in the Annexures, if any and used therein shall have the meaning ascribed thereto in the Annexures, if any.
- 1.1.7** The Annexures and Schedules, if any, to this agreement form an integral part of this agreement and shall be in full force and effect as if they were expressly set out in the body of this agreement.
- 1.1.8** Any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference provided that this Clause shall not operate so as to increase liability or obligations of any Party hereunder or pursuant hereto in any manner whatsoever.
- 1.1.9** Any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this agreement from or by any Party shall be valid and effectual only if it is in writing and under the hands of duly authorized representative of such Party in this behalf and not otherwise.
- 1.1.10** Any reference to any period commencing “from” a specified day or date and “till” or “until” a specified day or date shall include both such days and dates.

1.2 DEFINITIONS:- In this Agreement, the following words and expressions, unless repugnant to the context or meaning thereof, shall have the meanings hereinafter respectively as assigned to them as under:-

1.2.1 “Act” means the Electricity Act, 2003 and its amendments;

1.2.2 “Acquired Land” shall have the meaning set forth in Clause 4.3;

- 1.2.3 **“Agreement”** means this agreement together with all its Appendices and Annexures, if any and any amendments thereto made in accordance with the provisions herein contained;
- 1.2.4 **“Agreement Period”** shall have the meaning as specified in Clause 3;
- 1.2.5 **“CEA”** means the Central Electricity Authority as defined under section 2 (6) of the Electricity Act, 2003 or its successors;
- 1.2.6 **“Central Transmission Utility (CTU)”** means any Government Company which the Central Government has notified under sub-section (1) of section 38 of the Act;
- 1.2.7 **“Commercial Operation”** means the state of Unit/Project when Unit/Project is capable of delivering Active Power and Reactive Power on a regular basis after having successfully completed the commissioning tests as per Prudent Utility Practices;
- 1.2.8 **“Commercial Operation Date (COD)” in relation to generating unit:** means the date declared by the generating company with the permission of the State Authority on which the Commercial Operation of Unit/Project as the case may be is achieved by the Second Party;
- 1.2.9 **Commercial Operation Date (COD)” in relation to the project means the date of commercial operation of the last generating unit of the project.**
- 1.2.10 **“Company”** means _____ a generating company within the meaning of section 2 (28) of the Electricity Act, 2003 and registered under Companies Act, 1956;
- 1.2.11 **“Contractor”** means any person, firm or body corporate engaged by the Second Party for the implementation of the Project;
- 1.2.12 **“Control Centre” or “ State Load Despatch Centre”** located at Shimla or such other control center designated by the First Party from time to time from which the despatch instructions will be issued to the Second Party at the Station;
- 1.2.13 **“Debt”** means the amount of any loan, non-convertible debenture or other similar obligation, contracted or raised and received by the Second Party under the Financing agreements, and actually expended (or to be expended) for the Project and which shall not be greater than the principal amount of debt specified in the applicable currency in the estimate of Capital Cost of the Project;
- 1.2.14 **“Deliverable Energy”** means the electrical energy generated at the Station, as measured at generator(s) terminals less the summation of the following:-
- (i) actual auxiliary consumption for the bonafide use of auxiliaries, lighting and ventilation in the Power Station and Intake Works and the transformation losses (from generation voltage to transmission voltage) of the step up transformers at the power house switchyard; and
 - (ii) transmission losses at actuals, which shall be the difference of the electrical energy measured at sending and receiving ends of the transmission line (i.e. the power station end and the Interconnection Point);

For this purpose and subject to above, the energy meter reading shall be taken on monthly basis at the Interconnection Point;

- 1.2.15 “Despatch”** means to schedule and control the generation of the Project in order to commence, increase, decrease or cease the electrical output as delivered to the Grid System in accordance with the instructions from the HPSLDC/ Control Centre in conformity with the agreement and Prudent Practices;
- 1.2.16 “Despatch Instruction”** shall mean an instruction issued by the HPSLDC/ Control Centre to the Second Party for the despatch of power by message/fax/email to be confirmed in writing by HPSLDC/Control Centre as per the operating procedure developed by the Parties to operate the Project in accordance with the terms of this agreement and technical limits and Prudent Utility Practices including-
- (a) an instruction to target active/reactive power output to be maintained by the Project;
 - (b) an instruction to synchronise or de-synchronise a generating unit at a particular time;
 - (c) an instruction to defer or cancel a scheduled outage or maintenance outage; and
 - (d) an instruction for backing down the active/reactive power due to Grid conditions;
- 1.2.17 “Detailed Project Report (DPR)”** means the Project Report submitted by the Second Party and as approved by the competent authority;
- 1.2.18 “Disincentive Energy”** shall have the meaning set forth in Clause 5.31;
- 1.2.19 “Dispute”** shall have the meaning as specified in Article 11;
- 1.2.20 “Effective Date”** means the date of signing of the Implementation Agreement;
- 1.2.21 “Equity”** means the aggregate of all subscribed and paid up share capital of the Second Party in different currencies as converted into Rupees, by application of the procedure approved by the Authority/GoI, as invested in the Project and held by one or more shareholders in the Second Party, which shall be in accordance with the financial plan;
- 1.2.22 “Financial Closure”** means the first business day on which substantial funds are made available to the Second Party under the terms of the Financing Agreement;
- 1.2.23 “Financing Agreement”** means the loan agreements, notes, indenture, security agreements, letters of credit and other documents relating to the financing (including refinancing) of the Project and the capital cost of any part thereof, as amended, supplemented or modified from time to time and approved by the First Party;
- 1.2.24 “Force Majeure”** shall have the meaning as described thereto in Article-7;
- 1.2.25 “Government”** means the Government of Himachal Pradesh;
- 1.2.26 “GoI”** means the Government of India;
- 1.2.27 “Grid/Grid System”** means the network of power system interconnecting different Power Generating Stations, Transmission Lines and Sub-Stations for transmitting the electrical output from the Interconnection Point upto main load Centre(s);

- 1.2.28 **“HPSEBL”** means Himachal Pradesh State Electricity Board Limited.
- 1.2.29 **“HPERC”** and **“State Regulatory Commission”** means the Himachal Pradesh Electricity Regulatory Commission;
- 1.2.30 **“HPPTCL”** means Himachal Pradesh Power Transmission Corporation Limited;
- 1.2.31 **“HPSPCB”** means Himachal Pradesh State Pollution Control Board;
- 1.2.32 **“ Himurja”** means Himachal Pradesh Government Energy Development Agency.
- 1.2.33 **“Incentive Energy”** shall have the meaning set forth in Clause 5.30;
- 1.2.34 **“Interconnection Facilities”** means all the facilities which shall include without limitation, switching equipment, communication, protection, control and metering devices etc. at the Interconnection Point(s) to be installed and maintained at the cost of the Second Party to enable evacuation of power output from the Project in accordance with this agreement;
- 1.2.35 **“Interconnection Point(s)”** shall mean the physical touch point at sub-station(s) of the HPSEBL/State Transmission Utility/Central Transmission Utility where the Project’s transmission line for evacuating the power from the Project is connected to the Grid;
- 1.2.36 **“Local Area Development Committee (LADC)”** shall mean the Committee constituted by the Government and entrusted with the function as specified in Clause 4.16;
- 1.2.37 **“Local Area Development Fund (LADF)”** shall mean the i) Pre –Commissioning LADF-fund to be deposited by the project at pre-commissioning stage for its utilization towards local area development and ii) Post-Commissioning LADF - fund received from sale of 1% deliverable energy share at post commissioning stage to be distributed amongst all the Project Affected Families as per policy provisions.
- 1.2.38 **“Law”** means any Act, rule, regulation, notification, order or instruction having the force of Law enacted or issued by any competent legislature, Government or statutory authority in India;
- 1.2.39 **“MoEF & CC”** means Ministry of Environment, Forest and Climate Change, Government of India or its successor authority/agency;
- 1.2.40 **“Month”** means English Calendar month;
- 1.2.41 **“Net Saleable Energy”** means the electrical energy in KWh, delivered by the Second Party at the Interconnection Point, less the First Party Supply;
- 1.2.42 **“NRLDC”** means “Northern Regional Load Despatch Centre” or its successor entity;
- 1.2.43 **“PGCIL”** means Power Grid Corporation of India Limited.;
- 1.2.44 **“Parties”** refer to the First Party and the Second Party collectively;
- 1.2.45 **“Party”** shall refer to the Government and/or the Company individually;

- 1.2.46 “Permanent Works”** means the permanent works forming part of the Project that are required to be constructed/installed and maintained as such for the implementation of the Project for at least the Agreement Period and shall also include housing facilities for staff to be engaged for Operation & Maintenance of the Project;
- 1.2.47 “Power Purchase Agreement (PPA)”** means a contractual agreement to be signed by the Second Party with a party for sale of power from the Project to that party;
- 1.2.48 “Project Affected Area (PAA)”** shall have the meaning as set forth in Energy Policy.
- 1.2.49 “Project Affected Family (PAF)”** shall have the meaning as set forth in Energy Policy.
- 1.2.50 “Project Affected Zone (PAZ)”** shall have the meaning as set forth in Energy Policy.
- 1.2.51 “Project”** means _____ Hydro-Electric Project proposed to be established on _____ river in the _____ District of Himachal Pradesh, India including complete hydro-electric power generating facilities along with all associated infrastructure.
- 1.2.52 “Prudent Utility Practices”** means those practices, methods, techniques and standards that are generally accepted internationally from time to time by electric utilities for the purpose of ensuring safe, efficient and economic design, engineering, construction, commissioning, testing, operation and maintenance of various components of the Project of the type specified in this agreement and which practices, methods and standards shall be adjusted as necessary to take account of:-
- (i) Installation, Operation & Maintenance guidelines recommended by the manufacturers of plant and equipment to be incorporated in the Project; and
 - (ii) The requirements of Indian Law; and
 - (iii) Physical conditions at the Site.
- 1.2.53 “Royalty”** shall have the meaning set forth in Clause 5.3;
- 1.2.54 “Scheduled Commercial Operation Date”** means the date by which the Second Party shall have achieved the Commercial Operation of the project and approved by appropriate Authority.
- 1.2.55 “Site”** means the site of Project appurtenances, generating plant including land, waterways, roads and any rights acquired or to be acquired by the Second Party for the purposes of the Project;
- 1.2.56 “State”** means Himachal Pradesh ;
- 1.2.57 “Station”** means the ----- for generating electricity, including any building and plant with step up transformer, switchgear, switchyard, cables or other appurtenant equipments, if any, used for that purpose;
- 1.2.58 “State Transmission Utility (STU)”** means HPPTCL / HPSEBL (the Government Company specified as such by the First Party under sub-section(1) of section 39 of the Electricity Act,2003);

- 1.2.59 “Temporary Works”** means all temporary works of any kind required for the implementation of the Project and that are incidental and ancillary to the design, engineering and construction of the Project and are constructed/installed and maintained till the Commercial Operation Date of the Project, and will not form part of Permanent Works;
- 1.2.60 “Transmission Licensee”** means a licensee authorized by the Appropriate Electricity Regulatory Commission to establish or operate transmission lines;
- 1.2.61 “Unit”** means one hydro turbine generator including ancillary equipment and facilities thereto; and
- 1.2.62 “Works”** means all works of civil, electrical and mechanical nature and including design, engineering, services, supplies and other work activities required and necessary for the implementation of the Project and shall also include the Permanent Works and the Temporary Works.

ARTICLE 2

2. UPFRONT PREMIUM:-

Upfront Premium (non-refundable), shall be charged at following rates:

- a) For projects up to 2 MW capacity: Nil.
- b) For projects above 2 MW upto 5 MW capacity, the Second Party shall deposit Upfront Premium @ Rs. 50,000/- per MW at the time of signing of IA.
- c) If after enhancement of capacity, the capacity of the project remains up to 5 MW the Second Party shall have to pay upfront premium @ Rs 1,00,000/- per MW on whole capacity as capacity enhancement charges.

ARTICLE 3

3. TERM OF THE AGREEMENT:-

3.1 Effectiveness: - This Agreement shall come into force on the Effective Date.

3.2 Agreement Period:-

- (a) This Agreement shall remain in force upto a period of 40 years from the Schedule Commercial Operation Date of the Project, (Agreement Period) unless terminated earlier in accordance with the provisions of this agreement.
- (b) On completion of the Agreement Period, the Project shall revert to the First Party free from all encumbrances together with all land, buildings, plant, machinery, spare parts and all assets of the Project. After completion of 40 years, the First Party may either extend the agreement period on mutually agreed terms or may go for competitive bidding under Renovation and Modernization mode for next 30 years. The royalty for the extended period payable to First party will not be less than 30%.

- 3.3 **Survival:** - The termination or expiry of this agreement shall not affect the accrued rights, obligations and liabilities of either Party under this agreement, nor shall it affect any continuing obligations which this agreement provides, whether expressly or by necessary implication.

ARTICLE 4

4. OBLIGATIONS OF THE FIRST PARTY

- 4.1 **Granting Consents/Permissions and Assistance in Obtaining Clearances:-**The First Party hereby agrees to grant to the Second Party, all consents, permissions, statutory/non-statutory clearances, within its purview as required by the Second Party to undertake, establish, operate, maintain and transfer the Project. The First Party shall assist the Second Party for expediting the various statutory/non-statutory clearances required for the implementation of the Project, from various competent authorities of the First Party/Central Government or State Power Utilities. The First Party shall forward all relevant proposals received from the Second Party to the GoI/Government authorities and shall assist so that all sanctions are accorded/got accorded from the competent authority within the prescribed period.
- 4.2 **Subsidiary Company:** - The First Party may provide possible assistance to the Second Party in the incorporation of the new subsidiary Company provided that the registered office of such a Company is within Himachal Pradesh.
- 4.3 **Use of Materials:** - The First Party shall permit the Second Party, in accordance with the Law to collect and use boulders, stones, shingles, limestone and other building materials, except precious and semi-precious materials, from the river beds, and/or from the land acquired for or transferred to or leased out to the Second Party for the project, on payment of royalty in accordance with the Government rules/rates in force from time to time.
- 4.4 **Acquisition and transfer of land:-**
- (a) The First Party shall acquire, at the request and expense of the Second Party, and in accordance with the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (RFCTLARR Act, 2013) and other applicable laws, such private lands within the State of Himachal Pradesh as may be required by the Second Party for Permanent Works. The Second Party shall at its own risk also be allowed to acquire such land through direct negotiations with the owners in accordance with the prevailing laws, rules and regulations in the State.
- (b) The First Party shall provide necessary assistance to the Second Party in obtaining permission of the competent authority for the removal of trees standing on the Acquired/leased Land and on the Government lands which in its reasonable opinion are required to be felled or removed for the Implementation of the Project.
- 4.5 **Rehabilitation and Resettlement Plan:-** The First Party shall, subject to the approval of the competent authority, prepare a rehabilitation and re-settlement plan in association with the Second Party for local residents likely to be adversely affected or displaced, if any, due to construction of the Project at the Site as on the Effective Date. The cost of preparation and implementation of the above plan shall be borne by the Second Party.

- 4.6 Upgradation of Roads and Bridges:** - The First Party may, at the request and cost of the Second Party, construct, widen and strengthen such roads and bridges within the State of Himachal Pradesh as are considered reasonably necessary by the First Party. The First Party permits the Second Party to construct roads, bridges, culverts as considered necessary for the Project in the Project lands. The First Party may also permit the Second Party to construct roads, bridges, culverts as are considered reasonably necessary by the First Party in the interest of the Project on a case-to-case basis.
- 4.7 Other Approvals:** - If any approval is required under the Law by the Second Party, the lenders, or Contractor(s) with respect to the Project, upon application therefore being made by the Second Party, First Party may take all reasonable and appropriate steps within its administrative power and as permissible by Law, to ensure that such approval is granted in a time bound manner mutually agreed between the parties.
- 4.8 Communication:-** The First Party shall provide due assistance to the Second Party to obtain, in accordance with the prevailing Law and regulations, necessary permits to install and use suitable radio communication systems, including Satellite communication equipment and walkie-talkies. Any system connecting with the National Telecommunication System or any International Telecommunication System will be subject to the approval/license from the relevant authorities, for the issuance of which First Party shall assist.
- 4.9 Explosives:-** The First Party shall provide due assistance to the Second Party, under the Law and regulations, to obtain permission to procure, store and use such explosives which are required for the execution of Project; provided that the responsibility of obtaining such a clearance and making the necessary arrangements rests with the Second Party.
- 4.10 Import License:-** The First Party shall provide due assistance to the Second Party in obtaining all necessary import licenses for the Project from the relevant GoI authorities to the extent permissible by Law. The Second Party shall submit a list of such equipment required to be imported for the Project to the First Party for approval.
- 4.11 Upstream/Downstream Projects:** - The First Party, through its Departments/Boards or IPPs shall be entitled to survey, investigate and implement any River Valley Power Generation Scheme upstream or downstream of the Project. The First Party shall, as and when required, put in place a Committee comprising of experts from the relevant field for determining the impact, if any, on the existing Project due to allotment of any upstream and/or downstream Project. In the event of a dispute, the decision of First Party in the matter shall be final and binding on all the parties.
- 4.12 Commitment towards Social/Environmental concerns:** First Party reserves the right to reduce capacity/discharge or abandon the project for meeting the commitment towards social / environmental concerns.
- 4.13 Monitoring Committee:** - First Party shall review and address various issues faced by the Second Party during the implementation of the project. State Level Committee under the chairpersonship of Hon'ble Power Minister of Himachal Pradesh shall review the progress from time to time.
- 4.14 Authority of Hydro Project Safety, Quality Control & Water Management:** - First Party has constituted an Authority for Hydro-Electric Project's Safety, Quality Control & Water

Management at Directorate of Energy, GoHP. The authority shall be entrusted with roles and responsibilities for developing monitoring mechanism for the safety, quality and management of water flows of HEPs ensuring long term generation capability and residual life of Hydro-electric projects as per the guidelines provisioned in the State Energy Policy.

- 4.15 Declaration of Date of Commercial Operation (COD):** First Party will grant permission for declaration of COD of the generating unit/project, as the case may be, by the Second Party after ensuring successful trial run of the project and fulfillment of codal formalities and procedures laid down by the appropriate authorities, in line with the guidelines defined as per provision under Clause 4.1.1.1A of the State Energy Policy.
- 4.16 Local Area Development Committee:** - First Party shall constitute Local Area Development Committee (LADC) under the chairmanship of Deputy Commissioner of concerned District immediately after signing of the Implementation Agreement in line with the provisions of Energy Policy to administer Pre- commissioning LADF and Post -commissioning LADF as per provisions contained in the Energy Policy of the State.
- 4.17 Infrastructure Development Works:-**The Second Party shall build such infrastructural development works in the vicinity of the Project area that may be essentially required for the benefit of local population. The expenditure on such works shall be incurred by the Second Party. These developmental works may be mutually decided with the First Party.
- 4.18 Trees in the Land transferred to the Second Party:-** The First Party shall be responsible for felling and removing of the trees which are necessarily required to be felled or damaged trees during the execution of project on receiving the payment by Forest Department from Second Party on account of price of such trees at prevailing market rates as may be notified by the First Party from time to time. The net sale proceeds of the trees shall be made over to the Second Party.
- 4.19 Aerial Ropeway:** - The First Party shall allow the Second Party to set up temporary aerial ropeways / cable ways of any type for transporting material, men & machinery without the requirement of NOC of Gram Panchayat subject to adherence of safety parameters as per prevailing rules and regulations.
- 4.20 Construction Power:-** The First Party through HPSEBL shall provide electricity connection for the construction power required for execution of Project to the Second Party on priority basis wherever feasible
- 4.21 Evacuation Arrangement:-**The First Party through State Utilities – HPPTCL or HPSEBL as the case may be, shall create the required evacuation infrastructure for the project as per the terms and conditions of the connectivity agreement strictly as per the CERC/HPERC regulations.
- 4.22 Recruitment of Staff:** - The implementation of the provisions in respect of recruitment of staff on the Project made under Clause 5.4 of this agreement shall be monitored strictly by the Labour Commissioner and Director, Employment as well as by the Department of Labour & Employment and in case of infringement of provisions of employment Clauses by the Second Party, the Labour and Employment Department shall initiate any stringent legal action as they may deem fit.

- 4.23 **Comprehensive Insurance:** - The First Party/Department of Labour and Employment shall monitor from time to time, the validity of the Comprehensive Insurance executed by the Second Party during the construction and O&M stage of the Project.

ARTICLE 5

5. OBLIGATIONS OF THE SECOND PARTY

1. The equity participation in implementation of the Project as under:

Any change in the name and consortium of the Company (Second Party) shall not be allowed from the date of allotment except as allowed against clauses mentioned herein under. It shall be mandatory for Second Party to submit an affidavit stating therein that no change in consortium and name of directors/ promoters have been made. In case of default on the part of Second Party, allotted projects shall be liable for cancellation, except the Second Party follows the provisions laid down in clauses mentioned herein under and submit their request and other necessary documents required for effecting any change in name and consortium of the project.

I. Transfer of Equity

A. In case of Non-Himachalis

The Second Party (*Non-Himachalis*) implementing Hydro-Electric Projects are permitted to transfer the ownership by way of selling their equity stakes upto 100% during the implementation of the project in the name of any third party at any stage which is possessing equivalent or higher technical and financial strengths. However, there will be no restriction in respect of transfer of the project after commissioning.

In lieu of allowing change in name / transfer equity of Principal Promoters, a fee as per **Annexure-VIII** is to be deposited at the time of signing of Tripartite Agreement for transfer of project along with all liabilities/responsibilities in the name of new entity.

B. In case of Himachalis:

(a) Transfer of shares from Himachali to Himachali promoters:-

In case of Bonafide Himachalis/Co-operative Societies/Companies/ Voluntary Societies/Trusts/Partnership concerns/Sole Proprietorship concerns comprising wholly of Bonafide Himachalis to whom projects up to 2 MW and above 2 MW up to 5 MW capacity are allotted, the Government may consider the request of the promoters to transfer ownership wholly or partially to any other Bonafide Himachalis/Co-operative Societies/ Companies/Voluntary Societies/Trusts/Partnership concerns/ Sole Proprietorship concerns comprising wholly of Bonafide Himachalis, at any stage after allotment.

(b) Transfer of shares from Himachali to Non-Himachali promoters:-

In case of Bonafide Himachalis to whom projects up to 5 MW capacity are allotted, the Government may consider the request of promoters to sell/transfer 74% equity shares during implementation of project to Non-Himachalis which is possessing equivalent or higher technical and financial strengths and full disinvestment after commissioning.

In lieu of allowing sale/transfer of equity shares from Himachali promoters to Non-Himachali and change in name of the company, a fee as prescribed in **Annexure-VIII**, shall be charged at the time of signing of Tripartite Agreement for transfer of project in the name of new entity.

- (c) The fee shall be charged from the Second Party, both Himachalis & Non Himachalis, for changes in the shareholding/name of entity.
- (d) In case the Second Party changes the name of the company/change shareholding within permissible limit without prior approval of the Government, penalty as per **Annexure-VIII** for each change shall be payable by the Second Party.
- (e) In case of death of any of the promoters the shares will be transferable to his legal heir (s) after approval of the First Party.
- (f) Transfer of equity shares by Himachali to Non Himachali / Himachali together, is allowed within the percentage as prescribed herein above.

5.1 MILESTONES

5.2.1 Milestones achieved till date

Sr. No	Milestones	Details of achievement
1.	Deposit of 1 st Instalment of Upfront Premium	Deposited on-----
2.	Deposit of Processing fee	Deposited on-----
3.	Allotment Letter	Issued on -----
4.	Signing of Memorandum of Understanding (MOU)	Signed on -----
5.	Submission of DPR	Submitted on -----
6.	Grant of Technical Concurrence (TC)	Granted on-----

5.2.1 Milestones To Be Achieved

The Second Party agrees to implement the Project strictly as per the milestones stipulated by the First Party.

Following milestones shall be achieved by the Second Party, failing which consequential action as mentioned shall be taken by the First Party:-

Sr. No	Milestones	Time Period	Consequential Action
1.	Date of Signing of this Agreement (Implementation Agreement)	(Date) -----	-----.

2.	Application for connectivity & Long Term Open Access (LTOA) Agreement with HPPTCL.	Within 1 month from the date of signing of IA.	Extension up to a maximum of 1 month for the reasons beyond the control of Second Party. If the Second Party fails to achieve the milestone even within extended time, allotment of Project shall be cancelled with the forfeiture of all deposits.
3.	Signing of Connectivity Agreement & Long Term Open Access (LTOA) Agreement with HPPTCL.	Within 4 months from the date of signing of IA.	Extension up to a maximum of 3 months for the reasons beyond the control of project developer. If project developer fails to achieve the milestone even within extended time, allotment of project shall be cancelled with the forfeiture of all deposits.
4.	Achieving Zero Date.	Within 6 months from the date of signing of IA	Extension up to a maximum period of 6 months for the reasons attributable to the Second Party subject to deposit of an extension fee Rs 20,000 per MW per month (extension for the period of delay on account of reasons beyond the control of Second Party shall be allowed without imposition of extension fee subject to satisfaction of the First Party) failing which, allotment of Project shall be cancelled with forfeiture of all deposits.
5.	Scheduled Commercial Operation Date (SCOD) of the Project	Zero Date plus construction period allowed as per TC plus extension of time granted by First Party, if any.	Delays during construction period on account of the reasons beyond the control of Second Party shall be considered if applied with full justification within 6 months from COD of the Project and shall be condoned / adjusted only after satisfaction of the appropriate competent authority of the First Party within six months from the receipt of application. SCOD of the project shall not be revised beyond synchronization of any one unit.
6.	Commercial Operation Date (COD) of the Project	Actual date when last unit of the project commences commercial operation.	Incentive / Disincentive as per Clause No.....

7.	Handing over of the Project to the Government	The date determined on completion of 40 years from the Scheduled Commercial Operation Date (SCOD)...	Action as deemed fit
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Notes:

- a) In case, the Second Party is unable to achieve Financial Closure within the time limit specified above for achieving zero date, the Second Party agrees to start construction work on the project positively within the time limit specified above by investing from its equity component. The Financial Closure shall be concluded within six months of start of the construction work on the project after achieving Zero Date.
- b) In case, unit-wise construction schedule approved is different for different units of the project, then unit wise SCOD will be considered and it will be for calculation of disincentive / penalty only and it will not redefine the project's SCOD as defined above. The Second Party shall not be entitled for any benefit with respect to transfer of project after completion of the agreement period by referring to unit wise SCOD.
- c) Reasons for condonation of delays in achieving various milestones not attributable to the Second Party shall be considered and decided by the First Party.

5.3 Submission of reports/documents:- The Second Party shall submit the following reports and documents to the First Party at the time of start of construction, during construction and at O&M stage of the Project:

5.3.1 At the time of start of construction:

- i) Project related agreements including in particular the Construction Contracts / EPC Contract, if any, the Financing Documents and the O&M Contract, if any, in a soft copy.
- ii) The Second Party shall ensure that these Project related agreements do not in any way hold the First Party liable to the Second Party or any Contract in any manner whatsoever and shall be without prejudice to the rights of the First Party.
- iii) Documents on Quality Plan and Safety measures to be adopted at site indicating the procedure, organization charts depicting the hierarchy of personnel deployed for Safety, QA and QC with their designated role both internal and an independent third party. The third party inclusion is particularly required in respect of hydro-mechanical components (Gates, Hoisting Arrangement etc.), Steel Liner & Penstock w.r.t. Ultra-Sonic/Radiographic, DPT (Dye Penetration Test), Spectroscopy and Hardness Test etc. and for Electro-mechanical components.
- iv) Important design parameters/specifications for civil works of the project.

5.3.2 During Construction Stage:

- i) Monthly hydrological and meteorological data at the end of every calendar month.

- ii) Quarterly Status of Employment at the end of every calendar quarter on the prescribed format.
- iii) Quarterly physical and financial progress report at the end of every calendar quarter on the prescribed format along with videography covering various construction activities of the Project in that quarter. Such progress report and video recording shall be provided not later than fifteen days after the close of each quarter.
- iv) Quarterly reports on quality and safety measures undertaken / adopted, supported with documentary proofs in the form of photographs, videography and test reports etc. at the end of every calendar quarter.
- v) Inventory of hydro mechanical and electromechanical equipment with manufacturer manuals indicating the specifications to be followed strictly during construction, Operation & Maintenance stage.

5.3.3 O&M stage:

- i) Monthly Discharge data at the end of every calendar month on the prescribed format.
- ii) Monthly report on release of environmental flow at the end of every calendar month.
- iii) Quarterly Status of Employment at the end of every calendar quarter on the prescribed format.
- iv) Pre & Post Monsoon mandatory safety inspection/ audit reports in case of large Dam project.

5.4 EMPLOYMENT TO HIMACHALIS

- 5.4.1 The project developer shall have to provide employment to bonafide himachalis in respect of all the unskilled / skilled staff and other non-executives as may be required for execution, operation and maintenance of the project. However, the first preference will be given to oustees. In the event of non-availability of the requisite skilled manpower at various levels with requisite qualification and experience, the project developer will be free to recruit such persons from outside the state.
- 5.4.2 The project developer shall satisfy that the contractors/sub-contractors engaged by them for the project shall give employment to local people / himachalis for appointment as supervisors, workmen and labourers / workers in the project. The engagement of minimum himachalis in the project shall be as per the Industrial Policy of the State Government.
- 5.4.3 In regard to direct recruitment of engineers and other executives, other things being equal in terms of eligibility criteria, qualification, experience etc., the project developer shall give preference to the candidates well conversant with customs, culture, language and dialects of Himachal Pradesh.
- 5.4.4 The project developer shall ensure that during the deployment of himachalis in respect of executive/non-executive/workmen (skilled / unskilled) categories at any stage of the project implementation, if it is not possible to recruit 100% staff from himachalis for justifiable reasons, only then the project developer shall maintain not less than 80% of the total employees/officers/executives from bonafide himachalis persons as per State Industry Policy.
- 5.4.5 The project developer shall provide employment as per the provision of R&R plan duly approved by the competent authority.

- 5.4.6 The petty contracts of the road work, retaining walls, buildings construction, carriage of construction material like sand, aggregate, cement, steel etc, engagement of all categories of other service providers, taxis for the staff deployed to the sites, engagement of other light and heavy vehicles, running of canteens / mess engagement of security personnel through ex-servicemen shall normally be awarded to locals / Himachalis.
- 5.4.7 The project developer shall also provide training programme to the locals affected by the project so that they are in a position to get employment in respect of various technical/administrative jobs in the Project.
- 5.5 **Rehabilitation and Resettlement Plan:-** The Second Party shall execute the Rehabilitation and Resettlement Plan prepared by the First Party, pursuant to Clause 4.6 at its cost and also pay for the cost of preparation of the same to the First Party as stipulated under Clause 4.6. The amount so incurred shall form part of the Project cost.
- 5.6 **Consultancy:** - The Second Party agrees to contract engineering services of a reputed design consultancy organization to oversee the Project planning, its layout design of various project components and quality of construction to ensure safety of the project components/structures during execution and operation of the project in such a way that there is no loss of human life, property of the people, energy generation etc.
- 5.7 **Free Flow/Riparian distance:-** The Second Party shall develop project in the domain allotted by the First Party. The Second Party and the First Party shall ensure minimum horizontal distance of 250m or elevation difference of 50m as the case may be, between two projects, depending upon the topography and terrain of the area to have visible flow of water in the original stream. However, the Domain Change Committee constituted by the First Party on case to case basis may allow relaxation of this condition considering the technical, design, socio-economic & topographical aspects.
- 5.8 **Site investigations:-** The Second Party shall be deemed to have conducted a due diligent exercise in respect of all the aspects of the Project, including a detailed survey of the site. The failure to investigate fully the Site or sub-surface conditions shall not relieve the Second Party from its responsibility for successfully implementing the Project.
- 5.9 **Compensatory Afforestation:-** The Second Party shall pay to the First Party the cost of raising compensatory afforestation and its maintenance for a period and the extent of area, as may be determined by MoEF& CC, GoI.
- 5.10 **Water requirement for construction:-** The Second Party shall ensure that the water requirement for construction of the Project including potable water shall be generally arranged and harnessed by them from the river source.
- 5.11 **Maintaining Ecological Balance:-** The Second Party shall be responsible for maintaining the ecological balance by preventing deforestation, water pollution and defacement of natural landscape in the vicinity of Works. The Second Party shall take all reasonable measures to prevent any unnecessary destruction, scarring or defacement of the natural surroundings in the vicinity of the Works.
- 5.12 **Existing / Alternative facilities:-** In case any existing facilities including, but not limited to, irrigation systems, water supplies, roads, bridges, buildings, communication system(s), power systems and water mills are adversely affected because of the implementation of the Project, the Second Party shall be responsible for taking remedial measures to mitigate such adverse

effects. The cost of the above remedial measures shall become a part of the Project cost. Such facilities shall be as mutually identified and agreed upon between the Second Party and the First Party. The Second Party shall not interfere with any of the existing facilities till an alternate facility, as identified, is created.

The Second Party shall make suitable financial provisions for mitigation of degradation of environment due to disturbance of eco-system in watershed area, at the cost of project.

The Second Party shall be responsible for mitigation of degradation of environment due to disturbance of eco-system in watershed area. The cost of the same will be entirely borne by the Second Party.

- 5.13 Improvement of Existing Roads:** - The Second Party shall bear the cost of improvement/widening of the existing roads in the vicinity of the project area which are essentially required to be used for the construction of the Project.
- 5.14 Consumptive Use of Water:** - The First Party shall have the right for withdrawal of water from the river course for the consumptive use by pumping or by gravity for the purpose of potable water supply and irrigation to the affected population.
- 5.15 Local Area Development:-** The Second Party shall build such infrastructural development works in the vicinity for the project area that may be essentially required for the benefits of local population. The expenditure on such works shall be incurred by the Second Party. These developmental works may be mutually decided with the First Party.
- 5.16 Police Station/Chowki and Labour Office:-** The Second Party shall inform the local Police Station/Chowki and the Labour Office about the details of the work force engaged from within the State or outside regularly.
- 5.17 Protection of water rights:** - The Second Party shall ensure protection of the water rights of the local inhabitants for drinking and irrigation purposes etc. by verifying the revenue entries and activities of Jal Shakti department so as to ensure that such rights are not infringed upon. Any dispute in the matter shall be referred to a committee headed by Deputy Commissioner to be appointed by the First Party involving Jal Shakti and Revenue departments. Thereafter, the decision of the First Party shall be final and binding on all the parties.
- 5.18 Upstream and Downstream Projects:** - The Second Party shall have no claim on any project upstream or downstream of the allotted project. There shall be a stream / basin wise coordination committee of various project developers of concerned stream/ basin under the chairmanship of Director Energy to resolve any issue arising with the upstream and downstream project with respect to construction, water availability, transmission, sharing of cost/ obligation/ benefit etc. as referred.
- 5.19 Dumping of Excavated Material:-**
- 5.19.1** The Second Party shall be allowed to use the muck / mineral generated during the execution of the project work and also shall be allowed to set up captive stone crusher in the project area as per the HP Minor Mineral Rules provided the Second Party adheres to the prevailing environmental safe guards. The royalty on the usage of such minerals shall be payable to the State Industries department as per rules.

5.19.2 The Second Party shall be required to follow environmental related regulations concerning disposal of muck and soil etc. The Second Party shall use such material for the project as may be found suitable for the construction and the remaining material shall be allowed to be used by other development departments of the State etc. subject to the prevailing Rules and Regulations.

5.19.3 The Second Party shall ensure that the material excavated from the site shall be dumped in the area duly approved by the MoEF& CC, GoI/HPSPCB.

5.20 Project inspection:-

5.20.1 The First Party shall carry out periodic inspections to the project site during construction stage, after studying and analyzing the information supplied by the Second Party.

5.20.2 In case of notice of any deviation during inspection to the project site by the inspection team so deputed by the First Party, in relation to the approved norms including the size and location of various components such as Diversion Structure, Water Conductor System, Penstock, Power House, Electro-Mechanical installations etc. Inspection team shall seek a report from the Second Party to explain the reasons of such deviation. The inspection team shall examine the report so received and analyse each deviation noticed and clearly determine the reasons thereof including the compelling circumstances, such as geological surprises, designs constraints, environmental and local issues etc., if any, and make a comprehensive report.

5.20.3 The deviations undertaken without any compelling reasons or with mala-fide intentions shall invite levy of penalty to be computed by DoE in each case subject to maximum of the cost in proportion to the deviation of the respective components apart from imposing appropriate cost on the Second Party in consonance with the adverse impacts on social or community infrastructure.

5.20.4 Provided where the deviation is such that it affects or encroaches upon the domain of the upstream or downstream projects in any manner, the State Government may cancel the allotment of project after affording the opportunity of being heard.

5.20.5 Provided further that First Party may depending upon the circumstances of each case direct the Second Party to restrict to particular domain apart from levying penalty as laid down in the preceding Para.

5.21 The Second Party shall, at all times, afford access to the Site to the authorized representatives of the First Party and to the persons duly authorized by any Governmental Agency having jurisdiction over the Project, including those concerned with safety, security or environmental protection to inspect the Project Site and to investigate any matter within their authority and upon reasonable notice, the Second Party shall provide to such persons reasonable assistance/necessary information to carry out their respective duties and functions with minimum disruption to the construction, operation and maintenance of the Project consistent with the purpose for which such persons have gained such access to the Site.

5.22 Safety measures:-

5.22.1 The Second Party shall share the detailed engineering drawings of the Project and equipment installed whenever directed by the First Party to do so, to ensure transparency, safety, quality control and timely remedial action in case of operational problems.

- 5.22.2** The Second Party shall ensure proper quality control and safety measures during investigations / execution / Operation & Maintenance of the project keeping in view all quality control and safety measures as per relevant IS Codes / adopted standards and O&M Manual. Second Party shall also ensure essential first aid facilities at all Project sites.
- 5.22.3** The Second Party shall ensure that the residential camps for all categories of manpower are situated at safer locations by taking into consideration the occurrence of probable flash floods and other eventualities like cloudbursts etc. The Second Party shall also ensure the well interconnectivity of the whole Project area through effective communication and transportation arrangements.
- 5.22.4** The Second Party shall ensure that all the Project vehicles and the access to roads are properly maintained and fully safe for use.
- 5.22.5** The Second party shall be entirely responsible for detailed designs and working drawings of project components with regard to their structural, hydrological and mechanical performance & safety and ensure its compliance during execution of the Project.
- 5.23 Project Performance:-** The Second Party shall ensure that the execution, operation and maintenance of the Project is in conformity with the Project concept as per Detailed Project Report (DPR), Prudent Utility Practices and the manufacturer's specifications. The Project/Unit(s) shall be capable of meeting the load despatch requirements. The Second Party shall follow the directives of the HPSLDC/Control Centre in the interest of integrated grid operation. Any dispute with reference to the directives of the HPSLDC/ Control Centre shall be referred to State Electricity Regulatory Commission whose decision in such a matter shall be final. Pending the decision of State Electricity Regulatory Commission, HPSLDC's/Control Centre's directives shall prevail in the interest of smooth operation of the grid.
- 5.24 Free Power Royalty:**
- 5.24.1** Provisions as per signed MOU, as the case may be, plus 1% additional free power towards LADF.
- 5.24.2** In case the First Party levies any duty/tax on generation and supply of power, the same shall be borne by the Second Party except for free power royalty which shall be borne by the First Party.
- 5.25 Maintenance of Project:-**
- 5.25.1** The agreement shall remain in force up to a period of 40 years from the Scheduled Commercial Operation Date of the project. Thereafter, the project shall revert to the First Party free of cost and free from all encumbrances and liabilities. The project assets would be maintained by the Second Party in a condition that would ensure rated efficiency of the project and residual life of civil, mechanical and electro-mechanical components at any point of time. During the 10th, 20th, 30th, 35th & 40th years of operations, the First Party would carry out mandatory inspection of the project in this regard. After the inspection at 35th year decision will be taken by the First Party with respect to transfer / extension / maintenance of the project within 2 years of the inspection.
- 5.25.2** If during such inspections it is found that the project capacity or life is being undermined by inadequate maintenance, the First Party reserves all the rights to terminate the agreement at any time.

5.25.3 Ensuring Flow of Water: - The project developer shall ensure release of minimum environmental flow (e-flow immediately downstream of the diversion structure of the project throughout the year. The e-flow shall not be less than the threshold value of 15% of minimum inflow observed in the lean season in line with the State Pollution Control Board notification.

The Second Party shall provide necessary arrangement/ mechanism in the civil structure including discharge measurement system for the release of laid down minimum flow immediately downstream of the diversion structure.

In case of violation by the project developer, action will be taken by Department and by appropriate authority in line with the prevailing guidelines and laws.

5.29 Protection of Fish Culture: - The Second Party shall take appropriate steps, as may be required, for the protection of fish culture as per environmental requirements and promotion of rearing of fish, wherever feasible in the project area. The Second Party shall enter into a separate agreement on protection of fish culture with the First Party, if it is considered necessary by the Fisheries Department of the Government of Himachal Pradesh.

5.30 Use of Facilities: - Subject to availability, security, safety, law and order and operational factors being met, the Second Party shall permit free use, by the First Party and the general public, of all service roads/bridges constructed and maintained by it. Other facilities like hospitals, post offices, schools etc. shall also be extended to the local public in this regard based on the objective of providing such facilities.

5.31 Revalidation of TC: - In case the Second Party fails to achieve the zero date and to start the construction work within 3 years of granting TC, the re-validation of the TC shall be mandatory keeping in view the latest hydrological data and permissible limit of CUF.

5.32 Declaration of COD:- After the Second Party ensures the successful trial run of the project and fulfillment of Codal formalities and procedures laid down by the appropriate authorities for declaration of COD of the project, the First Party shall grant permission for declaration of COD to the Second Party as per the guidelines provisioned in the State Energy Policy.

5.33 Mode of sale of power: - The Second Party shall be free to dispose of power from the project(s), after allowing royalty in the shape of free power to the First Party in any manner they like in accordance with the provisions contained in the Electricity Act, 2003 and amendments thereof and the rules and regulations made there under.

5.34 Incentive For Early Commercial Operation of The Project:- In case the Commercial Operation Date (COD) of the project is achieved prior to the Scheduled Commercial Operation Date (SCOD) of the project, the Second Party shall be entitled for incentive as under:-

5.34.1 From COD of the project upto the SCOD of the project, such percentage of project deliverable energy as agreed in respective agreements two tenth (0.2) percentage points for each period of seventy three (73) days (or part thereof) falling between the COD and SCOD of the project generating units.

5.34.2 Incentive will be calculated and will be given in the form of energy with free power energy delivery and it will be decided within 6 months of the COD of the Project/ Generating Unit and will be adjusted in next 12 months in twelve equal installments.

- 5.36 Disincentive For Delayed Commercial Operation of The Project:-** In case the Commercial Operation Date (COD) of the project is delayed beyond the Scheduled Commercial Operation Date (SCOD) of the project, the Second Party shall be liable for dis-incentive as under:-
- 5.36.1** Dis-incentive shall not be imposed in the event that Synchronization of unit(s) achieved prior to Scheduled Commercial Operation Date (SCOD) subject to the condition that other generating unit(s) of the project shall achieve Commercial Operation Date of respective generating units within 3 months from the date of synchronization of first generating unit.
- 5.36.2** From SCOD of the respective generating units and upto the COD of the respective generating units, such percentage of project deliverable energy as agreed in respective agreements, two tenth (0.2) percentage points for each period of seventy three (73) days (or part thereof) falling between the COD and SCOD of the respective units.
- 5.36.3** Dis-incentive will be calculated and will be given in the form of energy with free power energy delivery and it will be decided within 6 months of the COD of the Project/ Generating Unit and will be adjusted in next 12 months in twelve equal installments.
- 5.37 Usage of Land:** - The Second Party shall ensure that the land is used exclusively for the activities related to the project. Any land exceeding the bonafide requirement of the project shall be surrendered to the First Party.
- 5.38 Common dedicated transmission system:-**The project developers shall be at liberty to erect common dedicated transmission lines for joint evacuation of power from two or more projects by way of suitable Consortium Agreements. HPSEBL/HPPTCL, as the case may be, will ensure availability of evacuation arrangement before commissioning of the project.
- 5.39 Fishing, Recreational and Navigational Rights:-** The fishing, recreational and navigational rights in the river, water, channels, reservoirs, lakes shall remain vested in the First Party subject only to such restrictions as may be necessary for the operational requirements, safety and security of the Project.
- 5.40 Precious material found during execution of Project:-** During the implementation of the Project, in case any object of archaeological importance is found by the Second Party or by any of its employees/ Contractors, the Second Party shall arrange to hand over the same to the First Party free of cost, provided that, in case any precious or semi-precious material is located, the Second Party shall inform the First Party immediately and shall then abide by the instructions of the First Party which shall be communicated within a period of two (2) months from the date of receipt of such intimation from the Second Party.
- 5.41 Adherence to laws:-** The Second Party shall follow all the relevant laws, including, but/ without limitation, all labour laws, and shall also provide for safety provisions as per the Electricity Act, 2003, Factories Act, 1948, Mines Act, 1952 and such other statutory provisions relating to the safety of the Projects and any subsequent amendments made thereto.
- 5.42 Trees in the Land transferred to the Second Party:-** The Second Party shall pay to the Forest Department of the First Party, the price of the trees as are required to be felled or are damaged in the execution of the Project, at prevailing market rates as may be notified by the First Party from time to time.

- 5.43 Tax Deduction at Source:** - The Second Party shall ensure that it makes the payments for works within the State of Himachal Pradesh and deposits the tax deducted at source with the offices of the Income Tax Department located within the State of Himachal Pradesh.
- 5.44 Indemnity:** - The Second Party shall be fully responsible for any damage or loss arising out of the construction, operation or maintenance of the Project to any property or person.
- 5.45 Misrepresentation:-** The Second Party assures the First Party that there is no misrepresentation in the information supplied by it to the First Party at any stage. The First Party reserves the right to cancel the IA after giving an opportunity to the Second Party in case it is found that there was some such misrepresentation by the Second Party and/or in the event of breach of any of the provisions of this IA.
- 5.46 Comprehensive Insurance:** - The Second Party shall be bound to execute total comprehensive insurance of the whole Project covering loss of human life, property etc including third party losses, during construction and O&M of the Project.
- 5.47** The Second Party agrees to abide by the provisions as contained in the Energy Policy of the Government of Himachal Pradesh.

ARTICLE 6

6. TERMINATION AND TAKING OVER OF THE PROJECT:-

- 6.1** The First Party reserves the right to terminate the agreement if the Second Party fails to achieve the milestone as stipulated in Clause 5.1.
- 6.2** In the event it is eventually confirmed as impossible or impractical to start construction work on the Project on or before the expiry of period mentioned in Clause 5.1 of this agreement, for the reasons other than those solely attributable to the First Party, the First Party reserves the right to terminate the agreement.
- 6.3** In the event of continuous stoppage of construction on the main Project components by the Second Party for a period of more than three months for reasons not covered under Force Majeure and for reasons attributable to the Second Party, the First Party shall, after giving due opportunity to the Second Party, have the right to terminate this agreement. All deposits shall stand forfeited and the site shall revert to and vest in the name of First Party without any compensation. Notwithstanding any investment in the First Party under this Clause, the Second Party shall be liable to pay all the dues owed to the First Party by the Second Party in pursuant to this agreement.

ARTICLE 7

7. FORCE MAJEURE:-

- 7.1** For the purpose of this agreement, "Force Majeure" shall mean an event which is unforeseeable, beyond the control of the Second Party and not involving the Second Party fault or negligence. Such events may include acts of the First Party /GoI either in its sovereign or its contractual capacity, war, civil war, insurrection, riots, revolutions, fires, floods, epidemics, quarantine restrictions, freight embargoes, radioactivity and earthquakes.

- 7.2 If a Force Majeure situation arises, the Second Party shall promptly inform the First Party in writing of such conditions and the cause thereof. Unless otherwise directed by the First Party in writing, the Second Party shall continue to perform its obligations under the agreement, as far as is reasonably practical, and shall seek all reasonable alternative means for performance, not prevented by the Force Majeure event.
- 7.3 In the event, a Party is rendered unable to perform any obligation required to be performed by it under this agreement by Force Majeure, the particular obligations shall, upon information to the other Party be suspended for the period of Force Majeure. The time for performance of the relative obligations suspended by Force Majeure shall be extendable by the period of delay which is directly attributable to Force Majeure.

ARTICLE 8

8. CONFIDENTIALITY:-

Each Party hereto agrees that it shall not divulge any trade, commercial or technical secrets or confidential matters of one another to any third party, except for the purpose of implementation, operation and maintenance of the Project.

ARTICLE 9

9. GOVERNING LAW:-

The rights and obligations of the Parties under or pursuant to this Agreement shall be governed by and construed according to Law. This Agreement shall be subject to the jurisdiction of the competent courts of Himachal Pradesh.

ARTICLE 10

10. VIOLATION PENALTY:-

Any violations of the above mentioned issues concerning Policy parameters, IA may result into monetary penalty including cancellation of the Project.

ARTICLE 11

11. RESOLUTION OF DISPUTES:-

- 11.1 The Parties shall attempt to resolve any dispute in relation to, arising out of or in connection with the agreement (hereinafter referred to as the Dispute) by mutual discussions.
- 11.2 Any difference and/or disputes arising at any time between the parties out of this IA or interpretation thereof shall be endeavored to be resolved by the parties hereto by mutual negotiations, failing which the matter shall be referred to a two tier Grievance Redressal Process. The matter shall be addressed by the Departmental Grievance Redressal Committee constituted by the First Party under the Chairmanship of Chief Executive Officer, Himurja, Shimla. In case the issue remains unresolved to the satisfaction of the Second Party, the matter shall be referred

to a State Level Committee. If the Second Party is still not satisfied with the verdict, the dispute shall be subject of the jurisdiction of Civil Courts in Himachal Pradesh.

- 11.3** During the pendency of the such proceedings, both Parties shall continue to perform their respective obligations under this agreement, unless the performance of such obligation itself is subject of such proceedings.
- 11.4** No party shall be considered to be in default under this IA for any breach of any of the terms thereof due to the imposition of restrictions and onerous regulations by any Government or statutory authority or agency or other cause beyond its reasonable control.
- 11.5** All legal proceedings arising in connection with this agreement shall be subject to the jurisdiction of the Himachal Pradesh High Court and its subordinate courts in the State of Himachal Pradesh irrespective of the place of performance/execution of the Agreement.

ARTICLE 12

12. ASSIGNMENT AND AMENDMENTS:-

The Second Party may, only for the purpose of arranging or rearranging finance for the Project, assign or otherwise transfer all or any portion of its rights and benefits with prior written approval of the First Party, but not its obligations under the agreement to any other person or entity. No amendment or waiver of any provision of the agreement, and no consent to any departure by either Party here from, shall in any event be effective unless the same is in writing and signed by each of the parties.

ARTICLE 13

13. COMMUNICATION:-

13.1 Any communication/notice by one Party to the other Party under this agreement shall be deemed to have been served if sent by cable, fax or Email followed by a confirmation letter delivered by hand or by mail to the respective addresses.

13.2 Communication should be addressed as below:-

If to the Company

If to the Government

Chief Executive Officer,
Himurja,
H.P. Govt. Energy Development Agency
Shimla-171009, H.P. India.
Tele- Fax No.-----

13.3 Either Party may change the address and/or addresses to which such communications/notices are to be delivered or mailed by duly informing the other Party.

Any other terms and & conditions deemed necessary shall form integral part of this Implementation agreement as per the provisions thereto.

In witness whereof, the Parties hereto have executed and delivered this agreement at Shimla, Himachal Pradesh on the date first written above.

**For and on behalf of the
Government of Himachal Pradesh**

(Name---)
**(Special Secretary (NES) –cum-
Chief Executive Officer
Himurja, Shimla-171009, H.P.**

**For and on behalf of Company
M/s _____**

WITNESSED BY:

1.

2.

WITNESSED BY:

1.

2.