

हिमाचल प्रदेश HIMACHAL PRADESH

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IMPLEMENTATION AGREEMENT
FOR
BAROD HYDRO ELECTRIC PROJECT (1.00 MW)
DISTRICT KULLU, HIMACHAL PRADESH

THIS IMPLEMENTATION AGREEMENT executed on the 1st day of the month of March, 2021 (Two Thousand Twenty One) BETWEEN THE GOVERNMENT OF HIMACHAL PRADESH through the Special Secretary (NES), to the Government of Himachal Pradesh-cum-Chief Executive Officer, HIMURJA, having its office at Block 8-A. URJA Bhawan, SDA Complex, Kasumpti, Shimla (H.P.)-171009, (hereinafter referred to as the "First Party") which expression shall unless repugnant to the context or meaning thereof include its successors, assigns and legal representatives of the FIRST PART;

AND

M/s Dani Maha Mai Hydro Power Project; a partnership firm having its Registered/Head Office at Broad at Allu Ground, PO -Kalath, Tehsil- Manali, Distt. Kullu-175131 and site office at Village Barod, Tehsil Manali, Distt. Kullu in Himachal Pradesh at (hereinafter referred to as the "Second Party") which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators and assigns, through Mr. Chhakinder Thakur, Managing Partner, who is duly authorized by the competent authority of the Concern vide resolution No. nil dated 11.2.2021 to execute this agreement, of the OTHER PART.

Special Secretary (NES)
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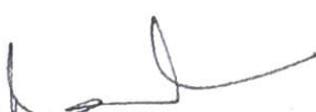
WHEREAS the First Party in accordance with the policy guidelines of the Government of Himachal Pradesh (hereinafter referred to as "GoHP") had issued Consent Letter on 26.7.2009 (APPENDIX "A") to the Second Party to carry out detailed investigations of the Barod (1.00MW) capacity, located in District Kullu Himachal Pradesh (hereinafter referred to as "Project") and

WHEREAS the project is envisaged on Barod Khad, a tributary of Beas River in Beas Basin in District Kullu between the allotted elevations range $\pm 2155\text{ M}$ to $\pm 1872\text{ M}$; and

WHEREAS the Second Party has carried out necessary detailed investigations for the Project and submitted a DPR for 1.00 MW project capacity to the First Party within the stipulated period from the date of issuing consent letter and both the parties have satisfied themselves about the techno economic feasibility of the Project; and

WHEREAS the competent authority has accorded Techno Economic Clearance (TEC) to the project for 1.00 MW capacities vide their letter No. DoE /CE/TEC-Barod/2015-9943-51 dated 23.1.2015; and

WHEREAS it is deemed necessary and expedient to enter into a detailed agreement between the parties hereto incorporating the terms and conditions of this agreement arrived at for the implementation of the Project; and


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NOW THEREFORE THE PARTIES DO HEREBY AGREE AND AFFIRM
HEREUNDER AS FOLLOWS:-

1 STATEMENT OF IMPLEMENTATION OF PROJECT

Both the parties agree that the Project shall be implemented, subject to the terms and conditions mentioned in this Agreement.

2. DEFINITIONS. -

2.1 In this Agreement, the various terms shall have the following meanings, except where the context otherwise requires, definitions and other terms expressed in the singular shall also include the plural and vice versa, namely:-

- (a) "agreement" shall mean this agreement together with all its appendices and annexures and any amendments thereto made in accordance with the provisions herein contained;
- (b) "concession period" shall mean the duration for which the First Party allows the Second Party to build, own and operate the Project.;
- (c) "commercial operation date" (COD) shall mean the date on which Second Party synchronizes the First unit of the Project with the grid;
- (d) "construction schedule" means the schedule of construction attached as "APPENDIX-B";
- (e) "contractor" means any person, firm or body corporate engaged by the Second Party for the implementation of the Project;
- (f) "deliverable energy" shall mean the electrical energy generated by the project, as measured at the interconnection point;
- (g) "effective date" means the date on which this agreement is signed by the parties hereto;
- (h) "energy/power" shall mean the electrical energy/power in Kwh/MW;
- (i) "force majeure" shall have the meaning as described thereto in Clause 15.2 hereunder;
- (j) "Implementation of project" shall mean an act to establish, own, operate and maintain the Project;
- (k) "HIMURJA" means the Himachal Pradesh Energy Development Agency;
- (l) "Inter-connection Point" shall mean the physical touch point(s) where the Project shall be interfaced by constructing 2 Kms long 33kV line including 33 kV bay and terminal equipment with 33kV sub-station at Prini subject to the conditions as per Clauses-xvi (a) & (b), xvii & xviii of TEC.
- (m) "month" shall mean the English Calendar month;

- n) "permanent works" means the permanent works forming part of the Project and shall include housing facilities for staff to be engaged for operation and maintenance of the Project;
- (o) "plant" shall mean imported and indigenous machinery, equipment, spares and other items required for and which form part of the permanent works of the Project;
- (p) "Power Purchase/Wheeling Agreement(s)" shall mean the agreement(s) to be signed between the Second Party and HPPTCL/concerned party (ies) as per **Clauses 12.3 & 12.4** hereunder;
- (q) "Project Affected Areas" shall mean areas/ villages surrounding/ falling in the catchment/ watershed areas extending from the Reservoir/Diversion Weir to the Tail Race of the Project;
- (r) "project cost" shall mean the actual capital expenditure on the Project incurred upto the completion of the Project including all costs incurred by the Second Party in complying with the terms of this Agreement, unless mentioned otherwise, but not exceeding the approved Project cost in the DPR as per techno economic clearance accorded by the competent authority, as the case may be. Where the actual expenditure exceeds the approved Project cost, the excess expenditure as approved by the Competent Authority shall be deemed to be part of the actual capital expenditure;
- (s) "scheduled commercial operation date" shall mean the date by which the Second Party shall have synchronized the first unit of the Project with the Grid as per the Construction Schedule;
- (t) "site" shall mean the site of Project appurtenances, generating Plants including land, waterways, roads and any rights acquired or to be acquired by Second Party for the purposes of the Project;
- (u) "State" shall mean the State of Himachal Pradesh;
- (v) "temporary works" means all temporary works of any kind required in connection with the execution of the works of the Project and not forming part of permanent works; and
- (w) "works" means all works inclusive of the temporary works and permanent works including design, engineering services, supplies and other work activities required ad necessary for the completion of the Project;
- (x) "competent authority" will be the Director Energy, the Government of Himachal Pradesh or such entity as may be notified in this behalf by the Government of HP from time to time.

2.2 Any term used in this agreement but not defined under this Clause shall have the same meaning as assigned to it under the Electricity Act, 2003.

3. SECURITY CHARGES

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And whereas the Second Party has furnished security charges (EMD); by way of Demand Draft bearing No. 623452 dated 24.8.2009 and 254220 dated 10.2.2021

amounting to Rs. 25,000/- (Rupees Twenty five thousand) each only @ Rs.50,000/- per MW (refundable) in favour of Director, HIMURJA, payable at Shimla, based on capacity in MW as per approved TC. The amount of Security Deposit shall be treated as Performance Guarantee after the commissioning of the Project, which shall be refunded to the Second Party only after successful operation of the project for 6 (six) months from COD of project.

4. GRANT OF PROJECT CONCESSION BY STATE GOVERNMENT

4.1 The First Party agrees to permit the Second Party, for the project Barod (1.00MW) capacity, to establish, own, operate and maintain the Project for a period of 40 (forty) years and the date shall be reckoned after 30 months(thirty) months from the date of the signing of the Implementation Agreement or from the date till which extension in SCOD is granted by the First Party. After the expiry of the Implementation Agreement period of 40 (forty) years, the project shall revert to the First Party free of cost and free from all encumbrances. However, the First Party would have the option to grant a further extension for a period mutually agreed upon between the First Party and the Second Party after re-negotiations of terms and conditions of the already signed Agreement.

4.2 The Project assets would be maintained by the Second Party in a condition that would ensure a residual life of the project at the rated capacity for at least concession period. During the 10th, 20th, 30th & 35th years of operations, the First Party or one of its appointed agencies would carry out a mandatory inspection of the Project site to ensure that the Project assets are maintained to the required standards to ensure the specified generation capability and residual life of the plant.

If such inspections find that the project capacity and/or life are being undermined by inadequate maintenance, the First Party shall be entitled to seek remedial measures from the Second Party. If the Second Party fails to comply with the requirement, the First Party would have the right to take over the commercial operation of the project and shall have full right upon the sale of power including Second Party share. The cost on account of suggestive remedial measures shall be deducted from the sale of Second Party's share of metered power including the operation & maintenance cost for such a period till the project's assets are restored to the requisite standards to ensure the specified generation capability and residual life of the Project as specified above. Thereafter, the Project shall be handed over to the Second Party.

5. STARTING DATE OF PROJECT.

5.1 Within six months from the effective date of signing of this agreement, the Second Party shall start the construction of the Project after meeting the following major requirements, namely:-

- a)
- (i) Obtaining non-statutory/statutory clearances listed below:-
NOCs from the departments viz; PW, I&PH, Wild Life, Fisheries and Revenue.
- (ii) NOC from Gram Panchayat.
- (iii) FRA Certificate.

The Second Party shall submit the proposal to the concerned Deputy Commissioner for obtaining approvals/NOCs from different departments including Gram Panchayat. Deputy Commissioner shall forward the same to concerned departments within seven days. Deputy Commissioner shall convene a meeting of all concerned departments on the basis of reports and ensure issuance of required approvals/NOCs within 30 days period in the form of single window clearances.

- (iv) Forest Land Clearance
- (v) Private Land Transfer (Permission under Section 118)
- (vi) PCB
- (vii) Essentiality Certificate: Above mentioned NOCs/clearances shall not be required for issuing EC. EC should be only for maximum quantum of land required for the purpose at project site without mentioning Khasra Number because actual forest land and lease land at site will be decided by forest and Revenue Departments based on ceiling under EC
- b) Finalize Power Purchase/Wheeling Agreement(s).
- c) Such other clearances as may be specified by the First Party subsequent to the signing of this agreement.

Extension in time period for commencement of construction activities (achieving zero date for commencement of construction activities) shall be granted without levying any extension fee/charges where delays are not attributable to the project developers on the grounds as elaborated in the notification No. MPP-F(1)2/2005-XIII dated 07.03.2019.

Provided that the Second Party has applied for the respective Clearances/NOCs Lease of Government land complete in all respects within the stipulated time frame corresponding to respective milestones.

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Where applicable extension fee/charges will be levied @ Rs. 10,000/- per MW per month.

5.2

HIMURJA shall monitor the progress of the Project periodically and shall also monitor the progress of steps taken/being taken by the Second Party for obtaining the statutory/non-statutory clearances mentioned in Clause 5.1 above and commence the construction work within the time frame specified in Clause 5.1

above. At the end of each quarter, the Second Party shall be required to submit quarterly progress report to the First Party. The first party will be at liberty to cancel the Implementation Agreement (IA), after affording due opportunity to the Second Party, in case the First Party is not satisfied about the progress made by the Second Party.

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CAPACITY ADDITION:-

6.1

If the Second Party enhances the capacity of the project at any stage after allotment then the Second Party shall be required to furnish the up-front premium as applicable at the rates notified by the H.P. Government from time to time.

6.2

Second Party shall have to deposit processing fee and security charges afresh for signing of Supplementary Implementation Agreement (SIA) on account of enhanced capacity after accordance of TEC and signing of IA; at the rates applicable at the time of signing of IA.

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No fresh NOCs/clearances required from the concerned Gram Panchayats in case allotted installed capacity is enhanced within the allotted domain. However, the

Second Party shall be liable to deposit requisite fee/charges in accordance with the revised capacity in line with the prevailing norms of the respective authorities/departments.

7. TERMINATION OF AGREEMENT

7.1 In the event of 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. In such event, the Performance Guarantee, furnished by the Second Party in the shape of Demand Draft as per Clause 3 of the agreement, shall stand forfeited and the Site shall revert to and shall vest in the First Party without any compensation. Notwithstanding any vestment 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 pursuance to this agreement.

7.2 During the operation of the Project, the Second Party shall ensure free energy to the First Party as per Clauses 12.1 & 19.2 hereafter. In the event of the Second Party (i) not being able to provide free power as per Clauses 12.1 & 19.2 to the First Party for reasons other than transmission failure, or (ii) abandons the Project, the First Party shall have the right to terminate this agreement after serving a notice to the Second Party.

8. LAND

8.1 The First Party shall acquire, at the request and expense of the Second Party within the provisions of Land Acquisition Act., 1894, such private lands within the State of Himachal Pradesh as may be required by the Second Party and as considered appropriate by the First Party for the implementation of the Project. The Second Party shall 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.

8.2 Land whether private or Government except for permanent structures relating to the Project such as water conductor system, power houses building, switchyard area etc. shall be taken only on lease basis at the rates approved by the Government for the agreement period. The First Party shall acquire the land for the permanent structures by invoking the compulsory provisions under the Land Acquisition Act, 1894 in order to expedite the execution of Projects.

8.3 The First Party shall arrange for the short term lease for a period as per the actual requirement not exceeding five years, of Government land required by the Second Party for temporary works for the construction of the Project as considered appropriate by the First Party on such terms, conditions and rates as may be prescribed/fixed by the Government from time to time.

8.4 Lease and Lease money to be regulated as per lease Rules of the State Government as notified from time to time.

8.5 Private Land of any person/farmers are acquired for the purpose of setting up of power project(s) in the state and concerned beneficiaries claim/opt for exchange of Govt. land instead of money compensation and if the exchange of Govt. land is approved by the First Party on availability of land, the cost of Govt. land will be paid/recovered from the Second Party/exchanging person.

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PROTECTION OF ENVIRONMENT

9.1 The Second Party shall make suitable financial provisions in the Project Cost for the Catchment Area Treatment Plans, if required and as may be determined by the GOI, MOEF/State Government. The cost involved on this account shall be paid by the Second Party to the First Party.

9.2 The Second Party shall be responsible to maintain ecological balance by preventing deforestation, water pollution and defacement of natural landscape in the vicinity of works area. 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 Project.

9.3 The Second Party shall give an undertaking to the Fisheries Department of the local area that wherever feasible, rearing of fish shall be promoted by the Second Party in consultation with Fisheries Department in the project area at the time of final implementation of the Project. No charges for projects upto 2.00 MW. The projects above 2.00 MW upto 5.00 MW, the Fisheries Department will charge compensation @ 0.50 Lac per MW. Whereas any development conservation projects of Fisheries Department are impacted, separate charges as per Fisheries Department proposal. It will be mandatory to utilize this amount on the same stream/nallah or elsewhere and formulate schemes accordingly.

9.4 The Second Party shall ensure that the material excavated from the site shall be dumped in the area duly approved by the Ministry of Environment & Forests, the Government of India/State Pollution Control Board.

9.5 In case any existing facilities such as irrigation, water supplies, roads, bridges, buildings, communication systems, power systems and water mills are adversely affected because of the implementation of the Project, the cost of replacement thereof or of the remedial measures, as the case may be, shall be included in the Project cost. Though such facilities shall be mutually identified, listed and finally fixed within four (4) months of signing of this Agreement, the Second Party shall be responsible to make good the loss or provide remedial measures as are necessary even during Implementation of the Project. The Second Party shall not interfere with any of the existing facilities, till alternate to the facility as is finally decided for replacement, is not created.

9.6 The Second Party, "if ROR Project, shall ensure minimum flow of 15% water immediately downstream of the diversion structure of the Project throughout the year. For the purpose of determination of minimum discharge, the threshold value of not less than 15% of the minimum inflow observed in the lean seasons shall be considered. This minimum discharge is required keeping in mind the serious concerns of the State Government on account of its fragile ecology & environment and also to address issues concerning riparian rights drinking water, health aquatic life, wild life, fisheries, silt and even to honour the sensitive religious issues like cremation and other religious rites etc. on the river banks".

9.7 The Second Party shall ensure that the water requirement for construction of the Project including domestic needs for its residential colonies be arranged and harnessed by them from the river sources only and the local sources of water supply shall not be disturbed.

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9.8 The First Party shall have the right for withdrawal of water from the river course for consumptive use by pumping or by gravity for the purpose of potable water supply and irrigation to the affected villagers.

10. REHABILITATION/ RESETTLEMENT:-

The Second Party shall prepare Rehabilitation and Resettlement Plan as per model R&R plan annexed to this agreement for people residing at site as on the effective date and likely to be adversely affected or displaced due to construction of the Project.

11. EMPLOYMENT TO HIMACHALIS

The Second Party shall ensure to employ at least seventy percent of its total manpower, employed whether on regular /contractual/ Sub contractual/ daily basis or employment through any other mode from amongst the bonafide Himachalis at all levels in 'A' 'B, & 'C, category of Blocks respectively. The employment condition shall not be applicable to Projects employing only one employee, located anywhere in the State and in the self employed ventures where the owner is running the unit without employing any manpower. In case of violation of this condition at any point of time during the period of construction of the project and during operation & maintenance of the project, the Second Party shall be penalized and the Second Party shall be liable for further stringent action, including refusal of accepting supply by HPSEB Ltd./any other licensee from the commissioned projects. Labour Department will monitor the employment position

at site as per the provision of Industrial Act. Any violation noticed by Labour Department or HIMURJA will be communicated to the Second Party for rectification. If the Second Party fails to rectify the same within three months, penalty @ Rs. 1000/- per MW for each percentage of shortfalls of violation shall have to be paid by the Second Party. If the violation is repeated for 6 months the penalty amount shall be doubled.

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The Second Party shall be required to provide mandatory employment related information to the Labour Department of the Himachal Pradesh Government as well as concerned HIMURJA's Project Officer on the lines of instructions issued by the First Party in this regard within one month of signing of the IA and thereafter on monthly basis.

12. ROYALTY TO GOVERNMENT

12.1 Projects upto 2.00 MW capacity:-

i) Royalty in the shape of free power, in respect of sale of power within the State (captive use or sale to HPSEB Ltd.), to the State from Barod (1.00 MW) SHEP will be @ 2% for a period of 12 years reckoned after thirty months (30) months from the date of signing of IA of the Project or from the date till which extension in SCOD is granted by the First Party. Beyond 12 years, royalty shall be @ 12% for next 18 years and beyond that @ 18% upto the date of taking over of the project by First Party referred to in Clause 4.1 of this agreement.

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Note: 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 Scheduled Commercial Operation Date (SCOD) or Commercial

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Operation Date (COD) 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 various stages of clearances.

ii) If Second Party makes captive use of Power outside the State or make third party sale, the above rates of royalty shall be 12%, 15% and 24% respectively reckoned from the date the Second Party actually Start making captive use of power outside the State or third party sale.

12.2 The balance energy, after adjustment of free energy, may be used/sold by the Second Party in the following manner:-

(a) Balance energy shall be made available by the Second Party at the interconnection point to the HPSEBL, wherein HPSEBL will mandatorily purchase the entire power generated from the project at the HPERC determined tariff. This shall be applicable to the projects commissioned after the notification No. MPP (F)-2/2005-XIII dated 10.10.2018.

(b) Make captive use or negotiate Third Party within the State of evacuate power for captive use or sale outside the State, no open access charges for the use of interstate transmission network shall be payable by hydro projects having capacity upto 25 MW.

12.3 Royalty rates for capacity addition

Continuation of 2006 policy i.e. for project upto 5 MW, capacity will be as determined at Feasibility Report (F.R.) approval and TC and no additional free power will be payable. Normal Upfront premium @ Rs.90,000/- per MW on total capacity is payable.

If any project, where the allotted capacity is upto 5.00 MW and after capacity addition by way of optimization, it gets shifted to above 5.00 MW category, 3% Additional Free Power shall be levied over & above the rates of Normal Free Power Royalty as per the Policy applicable to Projects above 5.00 MW category at the time of approval of capacity enhancements.

12.3 Wheeling charges required to be paid for power to be transmitted within and outside the State shall be determined as per policy of HPSEB Limited/SERC/HPPTCL at that time. Commission will rationalize wheeling tariff to make it equitable so as to provide level playing field to all generators across the State.

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

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

13 OBLIGATIONS OF THE PARTIES

Obligations of the Second Party.

13.1 Subject to availability, security, and operational factors being met, the Second Party shall permit free use by the First Party and the general public of all service roads constructed and maintained by it for the project. The Second Party shall

bear the cost of any of the existing roads required to be improved/ widened for the construction of the project and also bear the incremental maintenance cost.

- 13.2 The Second Party shall undertake the implementation of the Project, keeping in view all stipulated quality control and as well as safety standards and the physical as well as financial parameters of the approved DPR. The Private Investor shall allow access to the authorized representative(s) of the Himachal Pradesh Government/HPSEB Ltd./HIMURJA/any other Agency authorized by Himachal Pradesh Government to all location of the Project to ensure compliance in this regard.
- 13.3 The Second Party shall ensure that the execution, operation and maintenance of the Project is generally in accordance with the DPR approved by the HPSEB Ltd./First Party. The First Party shall ensure that the Planning/Design/Construction of any other Hydro-electric Project upstream/downstream of the Project shall not affect the annual energy generation at the Project adversely. The Second Party shall also have no claim on account of development of any upstream and downstream Project in future, which may be constructed with the approval of the First Party unless such development adversely affects the scope of the Project.
- 13.4 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 and also undertake to indemnify the First Party on such account subject to force majeure. The First Party shall then hold the Second Party accountable for any such damage or loss.
- 13.5 The Second Party shall pay all taxes and duties or other levies etc. to the Government of India/Himachal Pradesh Government as per statutory rules in force from time to time.
- 13.6 The Second Party shall abide by the provisions contained in the Hydro Power Policy of the Government of Himachal Pradesh.

Obligations of the First Party:-

13.7

If any approval is required under the laws of India for the Second Party, the lenders, or any Contractor with respect to the Project, upon due and timely application therefore being made by the Second Party, First Party shall take all reasonable and appropriate steps within its administrative power, as permissible by law, to ensure that such approval is granted expeditiously, if such grant is permissible under the law.

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14. POWER EVACUATION

- 14.1 Evacuation of power from the Project upto the HPSEB Ltd./HPPTCL/ Regional Grid Sub-station, as provided in the TC shall be the responsibility of the Second Party and shall be a part of the Project.
- 14.2 The transmission system covered under this Project may be used for evacuation of power from other projects on the directions of the State Transmission Utility. In such situation the wheeling charges for common transmission system shall be as decided by HPERC.

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14.3 The Second Party shall follow the directives of State Load Dispatch Centre (SLDC) in the interest of the integrated grid operation. Any dispute with reference to the integrated operation will be referred to the competent authority whose decision shall be final. Pending the decision of the competent authority the SLDC's directions shall prevail in the interest of smooth operation of the grid.

15. FORCE MAJEURE

15.1 Notwithstanding the provisions of the **Clauses 3, 7.1 and 7.2** above, the Second Party shall not be liable for the forfeiture of its Performance Guarantee or termination for default, if the non-performance or the delay in the discharge of its obligations under this agreement is the result of an event of force majeure.

15.2 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's fault or negligence. Such events may include war, civil war, insurrection, riots, revolutions, fire, floods, epidemics, quarantine restrictions, freight embargoes, radioactivity, earthquakes, cloudbursts, landslides and excessive snow.

15.3 If a Force Majeure situation arises, the Second Party shall promptly intimate the same to 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.

16. ARBITRATION:-

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 the Arbitrator to be appointed as per the provisions of the Arbitration & Conciliation Act, 1996. However, all disputes shall be settled within the jurisdiction of Courts of Himachal Pradesh.

17. TRANSFER OF PROJECT TO SUBSIDIARY GENERATING COMPANY

17.1 In case of bonafide Himachalis/Co-operative Societies/Companies/Voluntary Societies/ Trusts/Partnership concerns/Sole Proprietorship concerns comprising wholly of bonafide Himachalis to whom project upto 2.00 MW and above 2.00 MW upto 5.00 MW capacity is allotted, the Government may consider the request of the promoters to transfer ownership wholly or partially to any other Himachalis/Co-operative Societies/ companies/Voluntary Societies/Trusts/ Partnership concerns/ Sole Proprietorship concerns comprising wholly of bonafide Himachalis, at any stage after allotment.

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17.2 Change in name/dilution of shares by Himachali allottee to Non-Himachalis is allowed to the extent of maximum of 49% at any stage after allotment and full disinvestment after **two years** of actual date of commissioning of the project. In the event of any contravention, the First Party shall terminate the IA forthwith at any stage.

18. MISCELLANEOUS

18.1 Save as provided aforesaid none of the parties hereto shall assign their respective rights and obligations under this agreement without the prior consent in writing of the other party to the agreement.

18.2 Each party agrees that it shall not divulge any trade, commercial or technical secrets or confidential matters of one another to any third party save for the purpose of Implementation of the Project.

18.3 The Second Party agrees to have its corporate/business office within the State of Himachal Pradesh.

19. **COMPOSITION OF LADF:-** The LADF shall comprise of contribution by project based on project cost and free power after commissioning as envisaged in the State and National Hydro Power Policies. The hydro project developer's in the State shall contribute towards LADF in two stages.

19.1 Prior to Commissioning of the Project

19.1.1 The Second Party shall contribute a minimum of 1.5% of final cost of the Project for projects of more than 5.00 MW capacity and a minimum of 1% for projects of capacity upto 5.00 MW. While the project authorities have to contribute minimum of 1.5% or 1% (as the case may be) of the project cost to LADF, they may contribute more, if they so desire. Initially, the LADF will be worked out on the basis of the Project cost as per DPR for depositing with the concerned Deputy Special Secretary (NES) to the Govt. of H.P. Commissioner (DC). After completion of the Project, the LADF will be worked out on the final completion cost.

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19.1.2 The Project cost will be as approved by CEA/State Govt. and include IDC, CAT, R&R expenses etc. Escalation will be included when the revised TEC is given. As the entire cost is included in calculating tariff for PPAs as per regulatory guidelines, it would be appropriate to follow the same guidelines for calculating the LADF contribution. Therefore, the total cost as per TEC will be taken as basis for calculating LADF contribution. It would be adjusted as and when TEC is revised in the course of project construction/completion.

19.1.3 The balance amount of LADF worked out on final cost shall be deposited by the Second Party within one year of Commercial Operation Date (COD) of the Project.

19.2 After Commissioning of the Project

Second Party shall contribute 1% free power for LADF over and above the rates of royalty agreed to be paid to the State Government in the Implementation Agreement/ Supplementary Implementation Agreement, as the case may be. This additional power, over and above the royalty component

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provided to the host State will be a pass through in tariff. The revenue collected by the Nodal Agency (Directorate of Energy from sale of such 1% free power (contribution from the Second Party) will be transferred to the Local Area Development Fund for such project.

19.3 REALIZATION OF LADF CONTRIBUTION

19.3.1 Prior to Commissioning of the Project

Contribution to be made prior to commissioning of the Project shall be released by Second Party in the following manners:-

- 25% amount within twenty four (24) months of signing of Implementation Agreement (IA) i.e. at the time of achieving zero date after obtaining all statutory and non-statutory clearances and achieving financial closure.
- Balance 75% amount in three equal annual installments during construction period of the project. The first installment will be paid within three months of Zero date as given in the IA or 31st December, whichever is later and thereafter by 31st December on annual basis.

19.3.2 If Second Party wishes to make a contribution in advance of this schedule, it will be accepted.

19.3.3 In case of failure to adhere to the time lines as prescribed under a) and b) above, the Second Party shall be liable to pay interest on the due amount of LADF @ 12% per annum.

19.3.4 The expenditure incurred by the developer on various activities executed on the demands of local villages/Project Affected Area/Zone, shall be liable for adjustment against the dues of LADF as defined in the Notification No. MPP-F(1)2/2005-XI, dated 17th August, 2016 (amended from time to time).

19.4 After Commissioning of the Project

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The 1% free power contribution to LADF shall be sold by the State Government alongwith its share of 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 GOHP divided by the total number of units involved, after allowing 1 paisa per unit to be retained by the State government as the expenses of Directorate of Energy. The provision for disbursement of the amount to be received against sale of 1% Additional Free Power on account of Local Area Development Fund (LADF) as under:-

- 50% of the total amount of LADF to be divided to all families in PAA equally subject to BPL families getting higher amount as per the policy notified on 05/10/2011.

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(b) Balance 50% of the total amount of LADF to be divided between the families in ratio of the land acquired in their respective Panchayat subject to BPL families getting higher amount as per the policy notified on 05/10/2011.

20.

Tariff Determination:-

The tariff shall be determined by HPERC with respect to date of achieving COD of the project instead of the date of signing of IA. However, this condition shall be applicable only if the project is completed within the stipulated time period as approved in Technical Concurrence (TC) after achieving the zero date except force majeure conditions or reasons not attributable to the developers.

21

NOTICE. - Any notice required to be given to either party under this agreement shall be deemed to be served if sent by Cable, Fax or Telex followed by a confirmation letter delivered by hand or sent by registered post to their respective addresses.

ADDRESSES

For First Party/HIMURJA

Addl. Chief Secretary (NES),
to the GoHP,
Himachal Pradesh Secretariat,
Shimla (H.P.)-171002

For Second Party

M/s. Dani Maha Mai Hydro Power Project
Barod, P.O. Kalath,
Tehsil Manali, Distt. Kullu-175131.

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Special Secretary (NES), to the GoHP-cum-
Chief Executive Officer, HIMURJA,
Block-8A, SDA Complex,
Kasumpti, Shimla (H.P.)-171009
FAX NO. 0177-2622635

Either Party may change the address at which notice is to be delivered by duly informing the other party in writing.

22 GOVERNING LAWS

The rights and obligations of the parties under or pursuant to this agreement shall be governed by and constituted according to Indian Law. This agreement shall be subject to the jurisdiction of the Himachal Pradesh High Court at Shimla.

Any violations of the above-mentioned issues concerning policy parameters, IA may result into monetary penalty including cancellation of the project.

24 Second Party agrees to pay outstanding amount, if any to the First Party, within a month from the date of communicating the same to the Second Party.

25 Second Party agrees that if at a later stage, it is found that some information has been suppressed or false documents have been supplied by them at the time of submission of application or subsequently, the whole responsibility will be theirs and Govt. will be at liberty to take legal action against them.

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