

provisions of this Agreement. However, the period of the Agreement may be extended by mutual consent of the Parties.

### 3. PROJECT PREMIUM

3.1 Project Premium comprises the following:

- (a) Threshold premium of Rs. two crores and twenty five lacs.
- (b) Premium above threshold of Rs. Thirty Five Lacs, which consists of cash payment of Rs. Thirty Five Lacs, and Bank Guarantee of Rs. Nil.

3.2 The Bank Guarantee provided as stipulated in the preceding paragraph shall be valid upto the term of this Agreement and the Company shall be responsible for the payment of any taxes, charges and fees in connection with the Project Premium and Bank Guarantee.

3.3 The Government shall not be liable to refund part or whole of the project premium in case the capacity of the Project as determined after the DPR comes out to be different from that estimated in the pre-feasibility report.

### 4. SALE OF POWER AND ROYALTY ENERGY

#### 4.1 Disposal of Power

4.1.1 The Company shall have the option to dispose off Power from the Project, after allowing for Royalty Energy, in any one or more of the following modes:

- (i) Sell power to the UPCL, and such sales shall be mutually negotiated between the UPCL and the Company and approved by the UERC; and/or
- (ii) Sell power to new industrial consumers in the State of Uttaranchal for their captive use; and/or
- (iii) Sell power to any consumer outside the State of Uttaranchal.

4.1.2 The detailed terms and conditions for usage of UPCL's system for transfer of power upto the appropriate delivery point/interstate point and/or for sale of power by the Company to the UPCL, as the case may be, shall be incorporated in a separate agreement to be executed by the Company with the UPCL.

4.1.3 UPCL will specify the conditions under which any consumer or group of consumers is deemed to be a captive user.

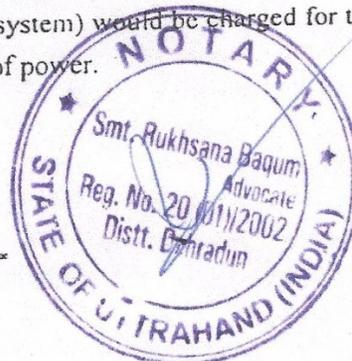
4.1.4 All the sales of the energy generated by the Project would be approved, as may be required, by the UERC.

#### 4.2 Royalty Energy

4.2.1 Royalty energy to be supplied to the Government shall be as under:

- (i) A royalty in the shape of free power @ 12% of net energy wheeled (after deducting wheeling charges) or Deliverable Energy (in case of direct supply to consumers without using UPCL's system) would be charged for the first 15 years after COD in all cases of sales of power.

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(ii) A royalty of 18% of net energy wheeled or Deliverable Energy (in case of direct supply to consumers without using UPCL's system) shall be charged beyond the 15<sup>th</sup> year of operation after COD in all cases of sale of power.

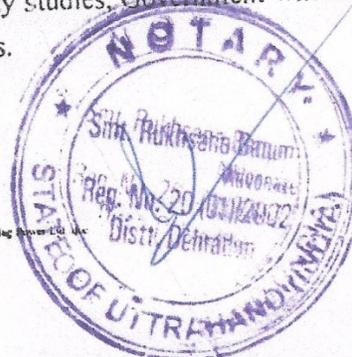
- 4.2.2 For computation of Royalty Energy, the Deliverable Energy shall be taken as the basis in case of direct supply to the consumers, and Net Wheeled Energy shall be taken as the basis in case of supply of power through UPCL's system.
- 4.2.3 Modalities for providing the Royalty Energy shall be mutually agreed between the Company and the Government.

## 5. OBLIGATIONS

### 5.1 Obligations of the Company

- 5.1.1 The Company shall carry out the requisite studies and investigations (confirmatory survey and investigation as per prevailing regulations/norms) and identify the transmission system for evacuation of power from the Project in consultation with the Government/UPCL keeping in view the integrated system requirement. The Company shall carry out the Techno-Economic Studies of the Project and submit a Detailed Project Report (hereinafter called the "DPR") to the Government/UJVNL within 36 months of the Effective Date.
- 5.1.2 The Company shall carry out the investigations of the Project keeping in view all stipulated quality control requirements as well as safety standards as per prudent utility practices. The Company shall obtain the requisite applicable permits from the concerned authorities for meeting its obligations under this Agreement.
- 5.1.3 The Company shall allow access to the authorised representative(s) of the Government/UJVNL to the Project Site.
- 5.1.4 The Company shall furnish to the Government/UJVNL quarterly reports on the progress of the investigations and confirmatory surveys of the Project.
- 5.1.5 The Company, after carrying out the confirmatory surveys/requisite detailed investigations and on being satisfied about the Techno-Economic Viability of the Project and convinced that they can obtain all Statutory Clearances from the competent authorities, shall intimate the Government accordingly while submitting the DPR. The Company shall also intimate to the Government/UJVNL that the Company is ready to undertake the Implementation of the Project and they are ready to sign the Implementation Agreement for implementation of the Project. The Implementation Agreement shall be signed between the Government and the Company within thirty (30) days of submission of DPR.
- 5.1.6 The Company shall bear all the costs associated with preparation of DPR and undertaking Techno-economic Viability studies; Government will not, in any case, be responsible or liable for any such costs.

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## 5.2 Obligations of the Government

The Government will provide to the Company, at its request, the copies of all available documents, data, information, reports relating to the Project including copies of all investigations and studies carried out since the inception of the Project to enable them to use this information in the best interest of the implementation of the Project.

## 5.3 Mutual Obligations

5.3.1 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, save and except for the purpose of implementing the understanding reached in this Agreement.

5.3.2 Both the parties hereto shall do and execute all such acts, deeds, assurances and things, as may be necessary and proper for carrying out the terms of this Agreement. The parties agree to negotiate and enter into such agreements as may be required to give effect to the understanding reached herein.

## 5.4 Surrender of Project

If on completion of the DPR, the Company establishes to the Government that the Project is not techno-economically viable, it may surrender the Project back to the Government and the Agreement shall be terminated as per Clause 7.1.

## 5.5 Incentive for Early Completion of DPR

In case the Company completes the DPR and indicates its willingness to undertake the Project before 36 months, then the time so saved in preparation of DPR (36 months minus actual time taken in months for preparation and submission of DPR) will be credited to the period of achieving Scheduled Commercial Operation Date of the Project (66 months + time saved in months).

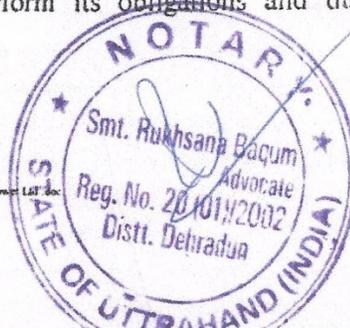
## 6. REPRESENTATIONS AND WARRANTIES

### 6.1 Representations and Warranties of the Company

The Company represents and warrants that as of the date hereof:

- (a) The Company is a company duly registered and validly existing under the laws of India and has all requisite legal power and authority to execute this Agreement and carry out the terms, conditions and provisions hereof;
- (b) It is subject to civil and commercial laws of India with respect to this Agreement and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof;
- (c) It has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect on its financial condition or its ability to perform its obligations and duties under this Agreement;

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- (d) There are no actions, suits or proceedings pending or, to the Company's knowledge, threatened, against or affecting the Company before any Court or administrative body or arbitral tribunal that might materially or adversely affect the ability of the Company to meet and carry out its obligations under this Agreement;
- (e) The Company has duly paid all rents, royalties and all public demands, including provident fund dues, gratuity dues, employees State Insurance dues, income tax, sales tax, corporation tax and all other taxes and revenues due and outstanding and that no attachments or warrants have been served on the Company in respect of sales tax, income tax, Government/GOI Revenue and other taxes;
- (f) The execution and delivery by the Company of this Agreement has been duly authorised by all requisite corporate or partnership action, and will not contravene any provision of, or constitute a default under any other agreement or instrument to which it is a party or by which it or its property may be bound; and
- (g) No representation or warranty by the Company contained herein or in any other document furnished by it to, or to any Governmental Agency in relation to clearances and approvals contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading.

**6.2 Representations and Warranties of the Government**

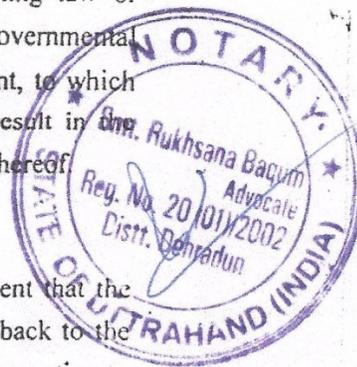
- (a) The Government is validly existing under the Laws of India and has all requisite legal power and authority to execute this Agreement and to carry out the terms, conditions and provisions hereof; and
- (b) The execution and delivery of this Agreement by the Government of this Agreement, will not violate any court, provision of any existing law or notification or regulation or order or decree of any court, governmental authority, or agency or of any contract, undertaking or agreement, to which Government is a party/ binding on Government and will not result in imposition or creation of any lien, charge or encumbrance or part thereof.

**7. TERMINATION**

**7.1 Termination**

If on completion of the DPR, the Company establishes to the Government that the Project is not techno-economically viable, it may surrender the Project back to the Government. On such surrender, the premium above threshold premium amounting to Rs. thirty five lacs including a Bank Guarantee of Rs. Nil shall be refunded to the Company by the Government and the Agreement shall then stand terminated.

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## 7.2 Notice of Termination

7.2.1 This Agreement may be terminated on serving a thirty days advance notice (Notice of Termination) by:

- (i) The Government, in case the Company fails to prepare and submit the DPR and indicate its willingness to undertake the implementation of the Project within 36 months from the Effective Date and sign the Implementation Agreement with the Government within one month thereafter.
- (ii) The Company, in the event of enactment of any law or regulation or any subsequent act of any Governmental authority, which makes the performance of this Agreement impossible for any Party.

7.2.2 On the expiry of the Notice of Termination, the party that served the Notice of Termination shall be entitled to terminate this Agreement under intimation to the other Party, unless the event leading to the Notice of Termination has been rectified or complied with to the satisfaction of the Party which issued the Notice of Termination.

## 7.3 Consequences of Termination

7.3.1 In case of Termination of this Agreement under Clause 7.2.1 (i), the Bank Guarantee submitted by the Company as per Clause 3.1(b) shall be encashed and the amount thereunder and the premium amount shall be forfeited, and no compensation shall be payable to the Company.

7.3.2 In case of Termination of this Agreement under Clause 7.2.1 (ii), the premium above threshold premium amounting to Rs. thirty five lacs including a Bank Guarantee of Rs. Nil shall be refunded to the Company by the Government. However, no compensation shall be payable to the Company.

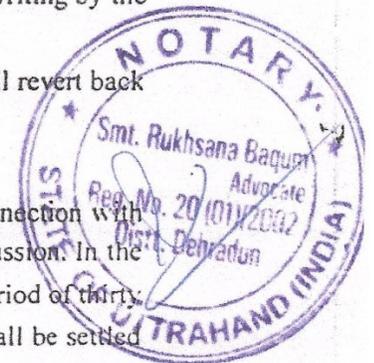
7.4 Termination of the Agreement shall be without prejudice to the accrued rights and liabilities of the Parties, as on the date of the termination, unless waived in writing by the Parties.

7.5 In the event of termination of this Agreement, all rights of the Company shall revert back to the Government.

## 8. RESOLUTION OF DISPUTES

8.1 The Parties shall attempt to resolve any dispute, arising out of or in connection with this Agreement (hereinafter referred to as the "dispute"), by mutual discussion. In the event that any dispute cannot be resolved between the Parties within a period of thirty (30) days of the commencement of the discussions, then such dispute shall be settled in terms of the provisions of the Arbitration Act. The arbitration shall be conducted at Dehradun, India in the English language. Any award given by arbitrators shall be final and binding on the Parties.

8.2 During the subsistence of the arbitration proceedings both Parties shall continue to perform their respective obligations under this Agreement, provided that the right of



*Shivani*

either Party to terminate this Agreement in accordance with the provisions thereof shall not be affected by the subsistence of arbitration proceedings.

8.3 The Agreement shall be subject to the jurisdiction of competent courts of Uttaranchal.

9. MISCELLANEOUS

9.1 Governing Law

The rights and obligations of the Parties under or pursuant to the Agreement shall be governed by and construed in accordance with the Law of India.

9.2 Language

The language of this Agreement shall be English. All notices required to be given by one Party to the other Party and all other communications, documentation and proceedings which are in any way relevant to the Agreement shall be in writing and in English language.

9.3 Amendments

This Agreement cannot be amended except by written consent of both the parties.

9.4 Exclusion of Implied Warranties

The Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties or any representation by either Party not contained in a binding legal agreement executed by both Parties.

9.5 Assignment

This Agreement is exclusive to the Parties hereto and neither of them shall assign its rights and benefits hereunder except with mutual consent.

9.6 Indemnity

The Company shall be fully responsible for any damage or loss, arising during the process of carrying out the investigations and confirmatory surveys for the Project, to any property or persons and also undertakes to indemnify the Government on such account.

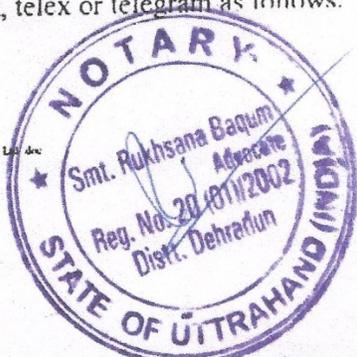
9.7 Survival

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.

9.8 Communication

(i) Except as otherwise expressly provided in the Agreement, all notices and other communications which are required or permitted hereunder shall be in writing and considered as adequately served if delivered personally (under acknowledgement) or sent by registered or certified mail, telefax, telex or telegram as follows:

*Shusha*



*[Handwritten signature]*

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(a) If to the Company : Sunflag Power Ltd.,  
34, Niranjapur, Dehradun, Uttaranchal - 248 001

With Copy to : Sunflag Power Ltd., 33, Mount Road, Sadar,  
NAGPUR 440 001

Phone No. 0712-2524661

Fax No. 0712-2520360

(b) If to the Government : Principal Secretary,  
Government of Uttaranchal, Secretariate,  
4, Subhash Road, Dehradun, Uttaranchal - 248 001

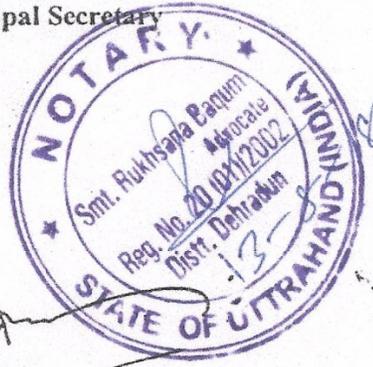
Phone No. 0135-2712057

Fax No. 0135-2712803

- (ii) Any Party may by notice of at least fifteen (15) days to the other Party, change the address and/or addresses to which such notices and communications are to be delivered or mailed.
- (iii) The Party sending the notice shall also send a copy to the designated officer, if any, of the Party specified in respect of that notice.

Signed and Delivered by within named Government of Uttaranchal by the hand of Shri S. Krishnan, the authorised person, for and on behalf of the Governor of the State of Uttaranchal in the presence of

*S. Krishnan*  
(S. Krishnan)  
Principal Secretary



- 1. *[Signature]* Ananda B. Giri
- 2. *[Signature]* A.R. AGARWAL

Signed and Delivered by within named M/s Sunflag Power Ltd. by the hand of Shri Ravi Bhardwaj, Chairman, the authorized person, for and on behalf of the M/s Sunflag Power Ltd. in the presence of

(Ravi Bhardwaj)  
Chairman

Attested True Copy

Smt. RUKHSANA BAGUM  
Advocate  
NOTARY, Dehradun

- 1. Mr. T.R. Sud, Director, Sunflag Power Ltd. *[Signature]*
- 2. Mr. Carl Sabberwal, *[Signature]*