



हिमाचल प्रदेश HIMACHAL PRADESH
IMPLEMENTATION AGREEMENT

08AA 828597

FOR

HURLA TOP HYDRO ELECTRIC PROJECT (3.50 MW)

DISTRICT KULLU, HIMACHAL PRADESH

THIS IMPLEMENTATION AGREEMENT executed on the 30th day of the month of December, 2014 (Two Thousand Fourteen) 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 Ashapuri Hydro Power Private Limited, a Company incorporated and registered under the provisions of Companies Act, 1956; having its Registered/Head Office at VPO Hurla, District Kullu (H.P.)-175125 and office 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. Rajender Singh, Director, who is duly authorized by the competent authority of the Company vide letter No. Nil, dated 05/02/2014, to execute this Agreement, of the OTHER PART.

Special Secretary (NES)
to the Govt. of H.P. -
cum - CEO HIMURJA
Shimla - 171009

M/s. Ashapuri Hydro Power (P) Ltd.
Director



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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 **26/07/2009** (APPENDIX"A") to the Second Party to carry out detailed investigations of the **HURLA TOP** Hydro-electric Project of **1.00 MW** capacity and located in District **Kullu**, Himachal Pradesh (hereinafter referred to as "Project") and Second Party has submitted, within the stipulated period from the date of issuing of Consent Letter, a Detailed Project Report (DPR); and

WHEREAS the Second Party has carried out necessary detailed investigations for the Project and submitted a DPR for **3.50 MW** project capacity to the First Party 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 **3.50 MW** capacity vide their letter No. **DOE/CE(TEC)/TEC-Hurla Top/2013-3067-75**, dated **12/08/2013**; and

WHEREAS the First Party has approved enhancement of capacity from **1.00 MW to 3.50 MW**, on dated **05/09/2013** between the elevations from **± 2458 M to ± 2240 M** on Hurla Nallah (Hamka Nallah), a tributary of Beas River in Beas Basin, District **Kullu (H.P.)**; 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

Special Secretary (NES)
to the Govt. of H.P. -
Shimla - 171009
Sum - CEO HIMURJA

M/s. Ashapuri Hydro Power (P) Ltd.
Director

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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 at 33 kV line with MANIHAR (2.00 MW) SHEP from where the Power of HURLA TOP (3.50 MW) SHP, MANIHAR (2.00 MW) SHP and PANCHIA (1.50 MW) SHP shall be evacuated in joint mode upto 33 kV THELA Sub-Station and further to 132/33 kV BAJAURA Sub-Station through 33 kV D/C line. The cost on account of this joint evacuation arrangement shared by all the IPPs on proportionate basis; subject to the approval of HPERC as per **Clauses-XIV & XVI of TEC.**

Special Secretary (HES)
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Director

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- 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 and 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.

Special Secretary (NES)
to the Govt. of H.P.
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Shimla - 171009

W.S. Arunpuri Dy. Secy. (NES)

Director

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3. SECURITY CHARGES

And whereas the Second Party has furnished security charges (EMD) by way of a Demand Draft bearing No. **847643**, dated **05/02/2014**, amounting to **₹ 1.75 Lac (Rupees One Lac Seventy Five Thousand Only) @ ₹ 50,000/- per MW (refundable)** in favour of Director, HIMURJA, payable at Shimla, based on capacity in MW as per approved TEC. 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 **HURLA TOP (3.50 MW)** capacity, to establish, own, operate and maintain the Project for a period of 40 (forty) years and the date shall be reckoned after **Thirty (30)** 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) Obtaining non-statutory/statutory clearances listed below:-

- (i) NOCs from PWD, I&PH, Wild Life, Fisheries and Revenue not required. Clearances and compliance of norms and conditions shall be ensured by the developer before and during execution.
- i) Forest Land Clearance
- ii) Private Land Transfer (Permission under Section 118)
- iii) PCB

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M/s. Ashapuri Hydro Power (P) Ltd.

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- iv) 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) Effective consultation with Gram Panchayat (s) and their objections and suggestion shall be heard and decided by the SDM by way of a reasoned speaking order. Aggrieved parties have right to appeal before Deputy Commissioner (DC) and thereafter Pr. Secretary (Power), to the GOHP.
- c) Finalize Power Purchase/Wheeling Agreement(s) ;
- d) Such other clearances as may be specified by the First Party subsequent to the signing of this Agreement.

Extension charges will not be applicable for grant of extension where delay is not attributable to the developer on account of the following clearances only:-

- (i) Forest clearance, including Forest Rights process at Panchayat levels.
- (ii) PCB clearances.
- (iii) Lease of Govt. land.

Provided that all applications complete in all respects based on check list, are applied for immediately after signing of Implementation Agreement and time of addressing queries will be one month. Serious developers will be incentivized. Delay in start of actual physical work shall be charged at lower rate initially, with increasing rate of greater delays.

- (a) Extension charges for start of work shall be ₹ 10,000/- per month per MW.
- (b) Extension charges for delay in completion after start of work shall be @ ₹ 1000/- per MW for first month doubling in successive months subject to maximum of ₹ 10,000/- i.e. 1st month ₹ 1,000/-, 2nd month ₹ 2,000/-, 3rd month ₹ 4,000/- & 5th month ₹ 10,000/-. This part of charges will be payable upfront or with interest, at project borrowing rates, after commissioning.

Provided further that if project is completed within the normal time line of completion, charges paid for any extensions in the interim shall be refunded.

- 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.

6. CAPACITY ADDITION

- 6.1 If the Second Party enhances the capacity of the project at any stage then prior approval of the First Party will be mandatory for enhanced capacity and the Second Party shall be required to furnish the up-front premium etc. as applicable at the rates notified by the H.P. Government from time to time.

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

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/executive agency of the project.

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9. 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 and for project above 2.00 MW upto 5.00 MW, the Fisheries Department will charge compensation @ ₹ 0.50 Lac per MW. Where 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.
- 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.

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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 @ ₹ 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.

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. FREE POWER TO GOVERNMENT

12.1

Projects above 2.00 MW & upto 5.00 MW capacity:-

- i) Royalty on water usage in respect of sale of power within the State (captive use or sale to HPSEB Ltd.), will be @ 6% in the shape of free power (energy) to the State from HURLA TOP (3.50 MW) SHEP for a period of 12 years reckoned after Thirty (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 @ 15% for next 18 years and beyond that @ 24% upto the date of taking over of the project by First Party referred to in Clause 4.1 of this agreement.

- 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 after Thirty (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.

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M/s. Ashapuri Hydro Power (P) Ltd.

Director

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

(a) Free energy shall be made available by the Second Party at the interconnection point to the HPSEBL, wherein HPSEBL will buy power from SHPs upto 2.00 MW, if the developer so choose, provided that free power to the State is also as per 2006 Policy and the metering shall be done at this point. For SHPs above 2.00 MW upto 5.00 MW, HPSEBL will formulate an objective, prudent and transparent power purchase policy, keeping in view load centre, evacuation cost, line losses, hydrology etc.

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

To ease Liquidity, Commission will determine two sets of levelized tariff i.e. one for first 5 to 10 years, which may be higher and 2nd set for balance period

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

(b) Make captive use or negotiate Third Party sale within the State or evacuate power for captive use or sale outside the State. The wheeling or transmission charges in this regard will be set by the HPERC based on petitions by the parties.

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.

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Shimla - 171009

M/s. Ashapuri Hydro Power (P) Ltd.
Director

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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 DOE/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.

14. POWER EVACUATION

14.1 Evacuation of power from the Project upto the HPSEB Ltd./HPPTCL/ Regional Grid Sub-station, as provided in the TEC 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.

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.

Special Secretary (NES)
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Director

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- 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 bonafied Himachalis/Co-operative Societies/Companies/Voluntary Societies/Trusts/Partnership concerns/Sole Proprietorship concerns comprising wholly of bonafied Himachalis to whom project upto 2.00 MW and above 2.00 MW upto 5.00 MW capacity is allotted, the Government may considers 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 bonafied Himachalis, at any stage after allotment.

- 17.2 In case of bonafide Himachalis to whom Projects above 2.00 MW upto 5.00 MW capacity are allotted, the First Party may consider the request of promoters to sell 49% equity shares to Non-Himachalis at any stage after allotment of a project. However, transfer/dilution of shares by Himachalis allottee to Non-Himachalis will be subject to the condition that the original allottee shall retain the controlling interest i.e. 51% equity in the new entity upto **six months** after actual commissioning of 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.

Special Secretary (NES)
to the Govt. of Himachal Pradesh
cum - CEO HIMURJA
Shimla - 171009

M/s. Ashapuri Hydro Power Co. Pvt. Ltd.
Director

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 Commissioner (DC). After completion of the Project, the LADF will be worked out on the final completion cost.

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 1% (one percent) free power, over and above the royalty component 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

Prior to Commissioning of the Project

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

- 10% amount within three months of signing of Implementation Agreement (IA).
- 15% amount within 18 months of signing of IA.
- 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), b) and c) above, the Second Party shall be liable to pay interest on the due amount of LADF @ 12% per annum.

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19.4

After Commissioning of the Project

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 paise 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:-

- (a) 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.
- (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

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

For Second Party

Principal Secretary (NES), GOHP
Himachal Pradesh Secretariat,
Shimla (H.P.)-171002

M/s Ashapuri Hydro Popwer (P) Ltd.,
VPO Hurla, District Kullu (H.P.)-175125

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.

21

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.

22

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

23

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.

Special Secretary (NES)
to the Govt. of H.P.
cum - CEO HIMURJA
Shimla - 171009

M/s. Ashapuri Hydro Power (P) Ltd.

Director

24

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.

25

Second Party agrees that in case of any inadvertent omission or commission or mistakes, appearing in the Implementation Agreement (IA), are liable to be rectified at any time on or after commissioning of the project to bring the terms and conditions in accordance with the extent of Hydro Power Policy/Rules and Guidelines of the State Government that may be enforced from time to time.

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE CAUSED THESE PRESENTS TO BE SIGNED, SEALED AND DELIVERED BY THEIR DULY AUTHORISED REPRESENTATIVES ON THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN.

For and on behalf of

Government of Himachal Pradesh

(BHANU PRATAP SINGH)
Special Secretary (K&E)
to the Govt. of H.P. -
cum - CEO HIMURJA
Shimla - 171009

For and on behalf of

Ashapuri Hydro Popwer (P) Ltd.,

M/s. Ashapuri Hydro Power (P) Ltd.
(RAJENDER SINGH)
Director

WITNESSED BY:

1. (PRADEEP BHANOT)
Sr. Project Officer,
HIMURJA, Shimla (H.P.)

2. (DINESH KHACHI)
Asstt. System Analyst,
HIMURJA, Shimla (H.P.)

WITNESSED BY:

1. (RAJENDER SINGH)
Director
S/o. Sh. Surinder Thakur
D/o. Viji. Andri
Lower Commercial Shimla - 5

2. (Tehal Singh)
S/o. Mohinder Singh
VPO Hudra Teh. Bhudker
Dist. Kullu (H.P.)