



हिमाचल प्रदेश HIMACHAL PRADESH

00AA 898036

WHEREAS the First Party has decided to allow Hydro-electric Power Generation Projects in the Private Sector and has invited proposals for private investments in such Projects, interalia **Banu** Project in **Kangra District** (Himachal Pradesh) of the capacity of **2.00 MW**; and

WHEREAS the Second Party is desirous of setting up the Hydroelectric Power Project in pursuance to the notice at **Banu** in **Kangra District** (Himachal Pradesh) as well as the arrangement for synchronizing with the grid associated therewith; and

WHEREAS if the Second Party considers necessary to incorporate a new Public/Private Limited Company for the implementation and operation of the said Project, then the Registered office of the new Company shall be in Himachal Pradesh and all rights and obligations under this agreement shall stand transferred to the new Company;

WHEREAS the First Party and the Second Party have held discussions and reached an understanding for investigations and preparation of Detailed Project Report (DPR) and are desirous of reducing in writing the terms and conditions of the said understanding;

*(Signature)*

JAYA ENTERPRISE  
Skipton Vihar, SHIMLA

*(Signature)*

Principal Secretary (N.E.S.)  
Govt. of Himachal Pradesh



हिमाचल प्रदेश HIMACHAL PRADESH

01AA 734205

MEMORANDUM OF UNDERSTANDING BETWEEN GOVERNMENT OF HIMACHAL PRADESH AND M/S JAYA ENTERPRISES, SKIPTON VILLA, NEAR RITZ CINEMA, SHIMLA, DISTRICT SHIMLA, HIMACHAL PRADESH-171001 FOR PREPARATION OF DETAILED PROJECT REPORT FOR BANU HYDRO ELECTRIC POWER PROJECT (2.00 MW) IN DISTRICT KANGRA, HIMACHAL PRADESH.

This Memorandum of Understanding (MOU) executed on this day \_\_\_\_\_ in the year two thousand **Eight** between the Government of Himachal Pradesh, through the Pr. Secretary (Non Conventional Energy Sources) to the Government of Himachal Pradesh (hereinafter referred to as the "First Party") which expression shall unless repugnant to the context or meaning thereof, shall include his successors in office of the FIRST PART;

AND

M/s Jaya Enterprises, Skipton Villa, Near Ritz, Shimla-171001, Himachal Pradesh, a Company incorporated and registered under the provisions of Companies Act, 1956 or Himachal Pradesh Co-operative Societies Act, 1968 or Indian Partnership Act 1932 or Sole Proprietor having its registered office at Skipton Villa, Near Ritz, Shimla, District Shimla, Himachal Pradesh-171001, and Corporate office in Himachal Pradesh at Skipton Villa, Near Ritz, Shimla, District Shimla, Himachal Pradesh-171001, (hereinafter referred to as the "Second Party") through its authorised signatory Sh. Atul Pandit (Sr. Vice President) duly authorized by the Second Party by its Resolution No. Nil dated 30-07-07 of the OTHER PART.

*Atul Pandit*  
JAYA ENTERPRISE  
Skipton Villa, SHIMLA.

*[Signature]*  
Principal Secretary (N.E.S.)  
Govt. of Himachal Pradesh

NOW THIS MEMORANDUM OF UNDERSTANDING BETWEEN THE PARTIES HAVE BEEN ARRIVED AT AND WITNESSETH AS FOLLOWS: -

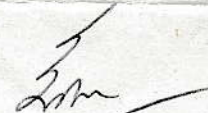
1. The Second Party is desirous of and has submitted its proposal to the First Party for investigation, preparation of Detailed Project Report and implementation of the proposed **Banu** Hydro Electric Power Project in **Kangra District** of Himachal Pradesh (hereinafter referred to as "the Project").
2. The First Party has accepted the offer of the Second Party and has accepted, in principle, to allow them for Investigation and preparation of Detailed Project Report (DPR) of the Project. In case of any conflict about a site, due to other allotments on the same stream/nallah etc., the First Party shall have the right to take the decision about the MOU and this decision shall be final and binding on the concerned parties.
3. The First Party has appointed and delegated its function to H.P. Energy Development Agency (HIMURJA) vide Notification No. STE (S&T) A (9) 1/94, dated 10th Oct., 1995 as specified therein.
4. The Second Party has furnished security charges in the shape of Demand Draft bearing No. **088234** dated **27-04-2007**, **730357 & 730357**, dated **30-04-2007** amounting to **Rs. 25,000/- (Rupees Twenty Five Thousand only) @ Rs. 25,000/- per project upto 2.00 MW capacity in favour of Director, HIMURJA, Himachal Pradesh, payable at Shimla.** It is stipulated that in case of breach of this MOU or any part thereof, the security shall be forfeited by Director, HIMURJA on behalf of First Party -

The Second Party has also paid the processing fee amounting to Rs. 25,000/- (Rupees Twenty Five Thousand only) @ Rs. 25,000/- only in the shape of DD bearing No. **240040** Dated **31/01/2006** for the project of 2.00 MW in favour of Director, HIMURJA, Himachal Pradesh, payable at Shimla. adjusted from the EMD submitted by the firm with the application.

If the Second Party enhances the capacity of this project after TEC then the Second Party shall be required to furnish the processing fee afresh at the rate as applicable as per above.

5. Up-front premium, processing charges and other security deposits shall not form part of the project cost and shall be borne by the Second Party out of his own income sources.
6. The First Party will stop all activities, if any, being done on investigations and other works of the Project with the signing of this Memorandum of Understanding and the responsibility for carrying out further works/ investigations thereafter shall be that of the Second Party.
7. The Second Party shall carry out the requisite detailed investigations and techno-economic studies of the Project and shall submit a Detailed Project Report to the First Party within a period of 24 months from the date of signing of this Memorandum of Understanding. The Second Party shall submit quarterly progress reports to Himurja on the proforma supplied by them. Failure to do so shall be a breach of the Memorandum of Understanding (MOU). The First Party shall periodically monitor the progress of the Second Party on a quarterly basis. If the Second Party i.e. **M/s Jaya Enterprises, Skipton Villa, Near Ritz, Shimla-171001, Himachal Pradesh**, does not take effective steps to undertake Survey & investigation within a period of 3 (three) months from the date of signing of MOU and after finding the site feasible, does not prepare DPR after incorporating discharge data for two lean seasons, the MOU shall be automatically terminated (except to force majeure conditions as per Clause 16), after forfeiting the Bank Guarantee and the site will be allotted to some others applicant.

*Shud Pandey*

  
Principal Secretary (N.E.S.)  
Govt. of Himachal Pradesh


8. Following milestones shall be achieved by the company failing which Consequential Action as mentioned will be taken by the First Party. The Second Party shall be required to submit Monthly Progress Report to the First Party.

Sr. No.	Milestones	Time Period	Consequential action
1	Submission of Detailed Survey & Investigation Report (DSI)	Incorporating monthly discharge data of the stream by including two lean seasons (November to March) after signing of MOU.	Cancellation of MOU
2	Submission of Detailed Project Report (DPR)	Within 24 months from the signing of MOU or on the request of the Second Party The extension in time for submission of DPR will only be given upto 6 (six) months beyond 24 months after signing of MOU for valid reasons after charging requisite fee as mentioned in the MOU as per Clause 9. The Techno-Economic clearance (TEC) shall be accorded by HPSEB on behalf of the First Party before signing of IA.	Cancellation of MOU.
3	Obtain Techno-Economic viability from Government/HPSE B	IPP shall attend the observations of Government/HPSEB within thirty days from the date of conveying such observations.	Cancellation of MOU.
4	Signing of IA	Within sixty days after accordance of TEC or 30 months after signing of MOU.	Cancellation of MOU.

The Second Party shall stick to the time schedule for the investigation of the project and submission of the DPR. They shall submit Bar Chart/CPM/PERT or any other modern techniques in this respect to HIMURJA for scrutiny and monitoring. The progress achieved in this regard shall be reviewed by a Committee constituted by First Party for the purpose on quarterly basis. In case of default, the First Party shall be at liberty to cancel the Memorandum of Understanding (MOU) and forfeit the security and allot the project for further investigation to any other party or take it over itself without paying any compensation to the Second Party.

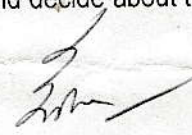
9. In the event of the Second Party being unable to submit the DPR within 24 months from the signing of this MOU, the Second Party can seek extension in time beyond 24 months for submission of DPR for varied reasons that may not be covered under force majeure such as war, civil war, insurrection, riots, revolutions, fires, floods, epidemics, quarantine, restrictions, freight embargoes, radioactivity, earthquakes, cloudbursts, landslides and excessive snow and which can be allowed by levying an extension fee of Rs. 10,000/- per MW per month. The maximum time limit for allowing extension shall be six months failing which the First Party shall be at liberty to forfeit the security deposited in favour of First Party and the First Party will make alternative arrangements as it may deem fit.

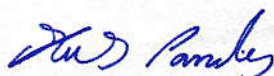
The extension fees shall be in the name of Director, Himurja and be deposited in Himurja accounts. In case of failure of the IPP to adhere to the bench marks as per MOU resulting in extension of time, the liquidated damages be made payable to the Director, Himurja and be deposited in Himurja accounts.

  
Principal Secretary (N.E.S.)  
Govt. of Himachal Pradesh



10. The First Party, on the receipt of Detailed Project Report (DPR) within the stipulated period from the Second Party, will scrutinize the DPR to assure techno-economic viability of the project and point out the defects and deficiencies in terms of techno-economic viability and if the Second Party fails to remove the defects or deficiencies as pointed out by the First Party through HIMURJA within 30 days from the receipt of the communication, the First Party shall be at liberty to terminate the MOU and forfeit the Bank Guarantee/Demand Draft, deposited with the HIMURJA and make alternative arrangements as it may deem fit. Also the First Party reserves the rights to modify, delete or add any of the conditions, criteria at its own discretion and shall be at liberty to cancel the application at a later stage if it is found that some information has been suppressed or false information has been supplied by the Second Party about the Project and the firm.
11. The First Party shall not pay any compensation, expenditure incurred by the Second Party in the preparation of DPR, if the MOU has been terminated by the First Party for the violation of any of the clauses of this MOU by the Second Party.
12. In case of bonafide Himachalis to whom Projects upto 5.00 MW capacity is allotted, the First Party may consider the request of promoters to sell equity shares to the bonafide Himachalis who have been living in Himachal Pradesh from generation to generation. The Promoter(s) shall be allowed to sublet/transfer its right by way of merger, by way of change of management, by way of Power of Attorney, by transfer, lease, mortgage or any other such possible means accrued under the Memorandum of Understanding (MOU)/Implementation Agreement (IA) to any other Himachalis living in Himachal Pradesh from generation to generation or cooperative societies comprising of such Himachalis at any stage i.e. before and after commissioning of the Project so as to facilitate the execution of the project by taking technical or financial support from Cooperatives, Associations, NGOs, Companies, Individuals, Himachalis who have technical or financial means available to support the project(s).
13. This MOU shall remain in force for a period of 24 months from the date of signing of the MOU or till such time extension is granted by the First Party on valid reasons and both the parties shall fully cooperate with each other and extend full support and assistance as may be required.
14. The First Party agrees not to entertain any proposal in respect of the Project, which is subject matter of this MOU, till such period the MOU is in force.
15. Both parties hereto agree that it shall not divulge any trade, commercial or technical secrets or confidential matters of one another to any third party.
16. If the performance of this MOU or of any obligation of either party is prevented, restricted or interfered with for any reasons of; fire, explosion, epidemic, cyclone, earthquake, flood, unforeseen natural calamity, war, revolution, requirement of any Government or any sub-division, authority or representative of any such Government; or any other act whatsoever, whether similar or dissimilar to those enumerated, beyond the reasonable control of the parties hereto; the party so affected upon giving prompt notice to other party shall be excused from such performance to the extent of such prevention, restriction of interference for the period it persists provided that the party so affected shall make its best efforts to avoid or remove causes of non-performance, if possible, and shall continue performance hereunder with the utmost dispatch whenever such causes are removed. If the force majeure such as war, civil war, insurrection, riots, revolutions, fires, floods, epidemics, quarantine, restrictions, freight embargoes, radioactivity, earthquakes, cloudbursts, landslides and excessive snow persists for continuous period of the MOU or more, the parties shall meet and decide about the further course of action.

  
Principal Secretary (N.E.S.)  
Govt. of Himachal Pradesh



17. In case the First Party does not find the Project to be feasible from techno-economic considerations or from any other aspect, the Second Party shall hand over to the First Party all the Project Reports and any other connected documents etc. as may have been collected and/or prepared by the Second Party during the course of investigations. The First Party shall have exclusive rights and the authority to take back all relevant documents and Project Reports etc. without any compensation.

18. Any difference and/or disputes arising at any time between the parties out of this MOU or interpretation thereof shall be endeavored to be resolved by the parties hereto by mutual negotiations, failing which the matter shall be referred to 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.

19. The First Party after having concluded that the Project is techno-economically viable shall enter into an Implementation Agreement with the Second Party within a period of 30 months from the date of signing of MOU for the execution of project on such terms and conditions as may be mutually agreed upon.

20. The Second Party agrees to provide 70% employment to bonafide Himachalis whose names are registered on live register of any Employment Exchange located in the State of Himachal Pradesh, in respect of all the unskilled/skilled staff and other non-executives as may be required for execution, operation and maintenance of the Project, through the local Employment Exchanges or from other than such live registers from any where within the state or out side the state who are bonafide Himachalis or through the Central Employment Cell at Shimla. However, the first preference shall be given to oustees. In the event of non-availability of the requisite skilled manpower at various levels with requisite qualification and experience, non-availability certificates shall be obtained from the Labour Commissioner/Director Employment, Himachal Pradesh and only thereafter the Second Party will be free to recruit such persons from outside the State of Himachal Pradesh.

The Second Party agrees that the contractors/ sub-contractors engaged by them for the Project shall give employment to local people/Himachalis for appointment as supervisors, workmen and labourers/ workers in the Project.

In regard to direct recruitment of executives, other things being equal in terms of eligibility criteria, qualification, experience etc. the Second Party shall give preference to the candidates well conversant with customs, culture, language and dialect of Himachal Pradesh. The advertisement regarding employment shall be issued by the Second Party in two English & three Hindi dailies papers having wide circulation within Himachal Pradesh, besides advertising through Prasar Bharati & Giriraj.

The Second Party shall provide employment to one member of each of the displaced families or adversely affected as a result of the acquisition of land for the Project, during construction of the project. During the operation and maintenance of the project, the Second Party shall give preference to members of the displaced families for employment in the Project.

The Second Party shall associate a representative of the Department of NES, Government of Himachal Pradesh, in the process of recruitment for all categories of employees to be recruited for the Project.

  
Principal Secretary (N.E.S.)  
Govt. of Himachal Pradesh



The petty contracts of the road work, retaining walls, building construction, carriage of construction material like sand, aggregate, cement, steel etc. engagement of all categories of other service providers, taxis for the staff deployed to the sites, engagement of other light and heavy vehicles, running of canteens/mess, engagement of security personnel through ex-serviceman shall normally be awarded by the Second Party to locals/Himachalis.

The Second Party shall provide training programme to the locals affected by the project so that they are in a position to get employment as various technical/administrative jobs in the Project.

The Second Party shall inform the local police station and the Labour Office about the details of the Labourers and other work force engaged who are both from within the State, country or outside the country, regularly.

The Second Party shall provide mandatory employment related information to the Labour Department of the Himachal Pradesh Government on the lines of instructions issued by the Government in this regard within one month of signing of the IA and thereafter on monthly basis.

21. In the event of this project being awarded to the Second Party for implementation, a separate agreement shall be executed by the Second Party with the First Party for supplying the royalty on water usage in shape of free power (energy) as per below:-

Royalty on water usage in respect of sale of power within the state in the shape of free power to the State from Small Hydel Projects having installed capacity upto (5.00MW), is waived off for a period of 12 years reckoned after 30 months from the date of signing of IA of the project (irrespective of extension in time period of IA granted to the Second Party on any account). Beyond 12 years the royalty shall be @ of 12% for next 18 years and beyond that @ 18%. The 12 years relaxation in royalty shall however not be applicable to the projects which make captive use of power outside the State or make third party sale outside the State. In that case royalty @ of 12% reckoned after 30 months from the date of signing of IA of the project (irrespective of extension in time period of IA granted to an Second Party on any account.) shall be applicable.

22. The Second Party shall apply directly to the MNES/GOI/Government of Himachal Pradesh, as the case may be, for the various incentives/subsidies, as admissible, from time to time in the case of the project, after obtaining necessary recommendations from the Himachal Pradesh Government/HIMURJA upto 5.00 MW. The final decision of the actual capacity of the Project shall rest with the First Party.

23. HPSEB shall have the first option to purchase the whole or part of the remaining power generated @ Rs.2.50 per unit. For the purchase of power, a Power Purchase Agreement (PPA) shall be entered into between HPSEB and the Second Party thereafter.

24. Wheeling charges of generated power by the IPP within and outside the state shall be determined as per the policy of HPSEB/SERC at that time.

25. Third party sale within the state shall be allowed in case of those project proposals where cost generation is above Rs. 2.50/- per unit. However, it shall be obligatory on the part of the IPP to submit the third party power sale proposal within the state, wherever, peak load demand exists, duly approved by HPERC along with the DPR for accordance of TEC. However, the final tariff rates shall be determined by the HPERC after the financial closure.

*(Signature)*

*(Signature)*  
Principal Secretary (N.E.S.)  
Govt. of Himachal Pradesh

26. The Second Party agrees to have its corporate office within State of Himachal Pradesh after the allocation of the project and furnish the proof thereof.
27. Subject to security and operational factor, the Second Party shall permit free use by the State Government and the general public, of all service roads, constructed and maintained by it for the Project. Other facilities like hospitals, post offices, schools etc. shall also be made available to the general public as per policy of the Second Party. However, the needs and requirements of local people will be kept in view. 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.
28. 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.
29. 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, Government of India/State Pollution Control Board.
30. The Second Party shall have no claim on any project upstream and downstream of the project.
31. The Second Party, 'if ROR project', shall ensure minimum flow of 15% water immediately downstream of the diversion structure of the project all the times including lean seasons from November to March keeping in mind the serious concern of the State Govt. on account of its fragile ecology & environment and also to address issue concerning riparian rights, drinking water, health, aquatic life, wild life, fisheries, silt and even to owner the sensitive religious issues like cremation and other religious rites etc. on the river banks.
32. The Second Party shall build such infrastructural development works in the vicinity of the project area that may be essentially required for the benefit of local population. The expenditure on such works shall be incurred by the Second Party to tune of 1% of the project cost. These developmental works may be mutually decided by the Second Party with the local authorities. If the aggregate capacity of the projects to a single developer exceeds 5.00 MW being developed in the cascade then the expenditure on such works shall be 1.5% of the project cost. The amount on account of local area development shall be paid by the developer to Deputy Commissioner of the Project Affected Areas (Chairman LADC) in equal annual installments starting from the date of signing of the IA till the date of commercial operation but not beyond the date of milestones as stipulated in the IA.
33. The Second Party shall carry out the Environmental Impact Assessment (EIA) studies. The Developer shall be required to strictly adhere to the stipulation put by the authorities while issuing forest, wild life, environmental and aquatic life clearances etc. The minimum flow /releases of water as specified in the environmental/other statutory clearances shall be ensured by the Second Party during the life of the project as specified in the Clause 31 above.
34. The Second Party shall abide by the provisions contained in the Hydro Power Policy of Government of Himachal Pradesh.

*Dr. Pandey*

*[Signature]*  
Principal Secretary (N.E.S.)  
Govt. of Himachal Pradesh

35. The above allotted project shall be restricted within the parameters as submitted by Second Party at the time of joint inspection i.e. in **between EL ± 2000m & EL ± 1600m on the Left Bank of Banu Khad**, on which this project is envisaged unless & otherwise approved by the H.P. Government. The H.P. Govt. shall be at liberty to cancel the MOU if any violation on this account is discovered at a later stage.

36. The Second Party shall abide by the interim orders of the Hon'ble Court time-to-time and final decision of the Civil Writ Petition No.361/2006, Ajay Shyam V/s State of H.P. & others.

37. The Second Party shall abide by the provisions contained in the Hydro Power Policy of Government of Himachal Pradesh "that not more than three projects including this project exists with the firm" In the event of any contravention, the Government of H.P. shall terminate the MOU forthwith at any stage.

38. Any violations of the above mentioned issues concerning policy parameters, MOU may results into monetary penalty including cancellation of the Project

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

For and on behalf of  
Government of Himachal Pradesh

For and on behalf of  
M/S

*[Handwritten signature]*

*[Handwritten signature]*

Pr. Secretary (NES),  
to the Government of H.P.  
**Principal Secretary (N.E.S.)**  
Govt. of Himachal Pradesh

WITNESSES  
Skipton Vihar SHIMLA  
Witnesses :

1. *[Handwritten signature]*  
00 00000000  
*[Handwritten signature]*  
Govt. of H.P.

*[Handwritten signature]*  
1. DINESH KUMAR ADVOCATE  
yadgar Tuth  
Shimla 171011

2. *[Handwritten signature]*  
DIRECTOR (HIMURJA)

*[Handwritten signature]*  
2. SHASHI PANDIT  
Advocate  
Sunny Side, Solan City  
H.P.