

TEN RUPEES

दश रुपया



दश रुपया
Sl. No.

095951

₹ 52

AGREEMENT

This Deed of Agreement is made on this the 29th day of March 2012 (two thousand and twelve) at Gangtok, Sikkim;

BETWEEN

the Governor of Sikkim, through the Principal Chief Engineer cum Secretary to the Government of Sikkim, Energy and Power Department, hereinafter referred to as the "Government", (which expression shall, unless excluded by or repugnant to the context and meaning thereof, be deemed to mean and include its successors, administrators and permitted assigns) of the **FIRST PART**,

AND

M/s Sikkim Engineering Private Limited, a Company incorporated under the Indian Company Act, 1956, having its registered office at HIG Tower 04/052, Uttarayan, Matigara -734010, Siliguri, District - Darjeeling hereinafter referred to as the "Company", (which expression shall, unless excluded by or repugnant to the context and meaning thereof, be deemed to mean and include its successors, administrators and permitted assigns) of the **SECOND PART**.

WHEREAS the Company submitted a written proposal for development of 25 Mega Watt Rahi Kyoung Hydro Electric Power Project in Sikkim;

AND WHEREAS, the Government had issued the "Letter of Intent" for development of the project to the Company vide its letter No SPDC/645/2010-11/2313 dated 21.4.2011;



Principal Chief Engineer
Energy & Power Department
Government of Sikkim

SUB-REGISTRAR
NORTH SIKKIM, MANGAN

Behalf of
Sikkim Engineering Pvt. Ltd.

AND WHEREAS, the broad terms for such development are as follows:-

- (a) the Company shall develop 25 Mega Watt Rahi Kyoung Hydro Electric Power Project as joint venture with the Government, who will have the option of subscribing, at their own cost up to 11% Share in the Project;
- (b) the Project shall be with the Company for a period of 35 (thirty five years) years from the Commercial Operation Date (COD);
- (c) the Company shall supply power free of cost to the Government @12% (twelve percent) of the electricity generated at the Interconnection Point(s) from the Project for the first 15 (fifteen) years of operation and @ 15 % (Fifteen percent) thereof from 16th (Sixteenth) to 35th (Thirty Fifth) year from the Commercial Operation Date (COD) of the Project;
- (d) the Company shall supply additional 1% (one percent) free power of the electricity generated at the Interconnection Point(s) from the Project for the entire period of 35 (Thirty Five) years from the Commercial Operation Date (COD) of the Project towards Local Area Development Fund as per the Hydro Power Policy 2008 of the Government of India;

AND WHEREAS The Rajiv Gandhi Grameen Vidyutikaran Yojana Scheme allows the State Government to have financial allocation in the form of 90% grants and 10% loan. The Company shall bear the 10% (Ten Percent) share of the State Government within the surface distance of 2.0 Kilometers from the Project site, as per the Hydro Policy 2008 of the Government of India. The expenses borne shall form part of the Rehabilitation and Resettlement Policy of the Project.

AND WHEREAS, the Government has agreed to render co-operation and assistance to the Company in development of the Project, including but not limited to acquiring and providing land to the Company for the Project and obtaining necessary permissions and clearances thereof from the Union of India and other agencies;

AND WHEREAS, each party assures the other party that it has all necessary power, authority and capacity to enter into this Agreement and to perform its obligations under this Agreement and the parties acknowledge that performance by a party of its obligations is dependant on the due performance by the other party of its obligations ;

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

Article 1

INTERPRETATIONS AND DEFINITIONS

1. INTERPRETATIONS:

- 1.1.1 The nomenclature of this Agreement, headings and paragraph numbers are only for the convenience of reference and shall be ignored in construing or interpreting this Agreement.
- 1.1.2 Reference to persons and words denoting natural persons shall include bodies, corporate, partnerships, joint ventures, statutory and other authorities and entities.



PCE-Admin-Secretary
Energy & Power Department
Government of Sikkim

SUB-REGISTRAR
NORTH SIKKIM, MANGAN

Behalf of
Sikkim Engineering Pvt. Ltd.

- 1.1.3 Reference to any enactment, ordinance or regulation or any provision thereof shall include any amendment thereof or any replacement in whole or in part.
- 1.1.4 Reference to recitals, articles, clauses, or sub-clauses shall unless the context otherwise requires, be deemed to include the recitals, articles, clauses, or sub-clauses of this Agreement.
- 1.1.5 The words importing singular shall include plurals and vice-versa, as the case may be.
- 1.1.6 Terms beginning with capital letters and defined as per Clause 1.2 of this Agreement shall have the same meaning ascribed thereto.
- 1.1.7 Any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference provided that this Clause shall not operate so as to increase liability or obligations of any Party hereunder or pursuant hereto in any manner whatsoever.
- 1.1.8 Any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effectual only if it is in writing and under the hands of duly authorized representative of such Party in this behalf and not otherwise.
- 1.1.9 Any reference to any period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include both such days or dates.

1.2 DEFINITIONS.

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

- 1.2.1 **"Acquired Land"** shall have the meaning set forth in Clause 3.3;
- 1.2.2 **"Agent"** means the Board or such other Authority as may be appointed by the Government for the purpose of this Agreement;
- 1.2.3 **"Agreement"** means this implementation agreement together with all the Annexures and Schedules hereto as amended from time to time in accordance with the provisions contained in this behalf in this agreement.
- 1.2.4 **"Agreement Period"** shall have the meaning as specified in Article 2;
- 1.2.5 **"Appropriate Commission"** shall mean the Central Electricity Regulatory Commission or SERC, as the case may be, constituted under the Electricity Act 2003, or such other succeeding authority or commission as may be notified by the Government of India or Government from time to time.



Joint-Secretary
Energy & Power Department
Government of Sikkim

SUB-REGISTRAR
NORTH SIKKIM, MANGAN

Behalf of
Sikkim Engineering Pvt. Ltd.

- 1.2.6 **"CEA" or "Central Electricity Authority"** means the Central Electricity Authority constituted under section 3 of the Electricity (Supply) Act, 1984 or its successors, administrators or assigns;
- 1.2.8 **"Commercial Operation"** means the state of Unit/Project when Unit/Project is capable of delivering Active Power and Reactive Power on a regular basis after having successfully completed the commissioning tests as per Prudent Utility Practices;
- 1.2.9 **"Commercial Operation Date (COD)"** means the date on which the Commercial Operation of Units/Project, as the case may be, is achieved by the Company;
- 1.2.10 **"Company"** means M/s Sikkim Engineering Private Limited ;
- 1.2.11 **"Contractor"** means any person, association of persons, firm or body corporate engaged by the Company in the process of the implementation of the Project;
- 1.2.12 **"Control Centre" or "State Load Dispatch Centre" or "SLDC"** means the Government's State Load Dispatch Centre located at Gangtok;
- 1.2.13 **"Debt"** means the amount of any loan, non convertible debenture, lease or other similar obligation including raised and received by the Company under the Financing Agreements and actually expended (or to be expended) for the Project;
- 1.2.14 **"Deliverable Energy"** means the electrical Energy generated by the Project, as measured at the Interconnection Point(s) at the switchyard of the Power Station;
- 1.2.15 **"Department"** means the Energy and Power Department, Government of Sikkim;
- 1.2.16 **"Dispute"** shall have the meaning as specified in Article 10;
- 1.2.17 **"Effective Date"** means the date of signing of this Agreement;
- 1.2.18 **"Detailed Project Report" (DPR)** means the Detailed Project Report to be submitted by the Company and to be approved by the competent authority;
- 1.2.19 **"Equity"** means the aggregate of all subscribed and paid up share capital of the Company in different currencies as converted to Rupees, including preferential equity by application of the procedure approved by the Authority/Government of India as invested in the Project and held by one or more shareholders in the Company which shall be in accordance with the financial plan as may be prepared by the Company
- 1.2.20 **"Financial Closure"** means the date on which the Financing Agreements have been duly executed and the Company has access to such funding under the Financing Agreements;
- 1.2.21 **"Financing Agreement"** mean the loan agreements, notes, indentures, security agreements, letters of credit, equity arrangements and other documents relating to the financing (including



P.C.E. - Secretary
Energy & Power Department
Government of Sikkim

SUB-REGISTRAR
NORTH SIKKIM, MANGAN

Behalf of
Sikkim Engineering Pvt. Ltd.

refinancing) of the Project and the capital cost or any part thereof, as amended, supplemented or modified from time to time and approved by the competent authority, if applicable;

- 1.2.22 **"Force Majeure"** shall have the meaning as ascribed thereto in Article 6;
- 1.2.23 **"Government"** means the Government of Sikkim;
- 1.2.24 **"GOI"** means the Government of India;
- 1.2.25 **"Government Supply"** shall have the meaning set forth in Clause 4.1 and 4.2;
- 1.2.26 **"Grid/Grid System"** means the network of power station interconnection with different power generating stations, transmission lines and sub-stations for transmitting the electrical output from the Interconnection Point up to main load centre(s);
- 1.2.27 **"SSERC"** means Sikkim State Electricity Regulatory Commission;
- 1.2.28 **"Interconnection Facilities"** means all the facilities which shall include, without limitation, switching equipment, communication, protection, control and metering devices, etc. at the Interconnection Point(s) in the switchyard of the generating station to be installed and maintained by the Company to enable evacuation of Power output from the Project in accordance with this Agreement;
- 1.2.29 **"Interconnection Point"** means the physical touch point at the switchyard of the Power Station where the Project Line(s) and the allied equipments forming a part of the Interconnection Facilities are connected to the Out Going Feeder;
- 1.2.30 **"Law"** means any Act, rule, regulation, notification, order or instruction having the force of Law enacted or issued by any competent legislature, Government or statutory authority in India;
- 1.2.31 **"MoEF"** means Ministry of Environment and Forests, Government of India or its successor Authority/Agency;
- 1.2.32 **"Month"** means the English Calendar month;
- 1.2.33 **"Net Saleable Energy"** means the electrical energy in KWh delivered by the Company at the Interconnection Point less the Government Supply;
- 1.2.34 **"ERLDC"** means "Eastern Regional Load Dispatch Centre" or its successors, administrators or assigns;
- 1.2.35 **"PGCIL"** means Power Grid Corporation of India Limited;
- 1.2.36 **"Parties"** mean the Government and the Company collectively;
- 1.2.37 **"Party"** means the Government and/or the Company individually;



PCE- Civil Secretary
Energy & Power Department
Government of Sikkim

SUB-REGISTRAR
NORTH SIKKIM, MANGAN

5
Behal of
Sikkim Engineering Pvt. Ltd.

- 1.2.38 **"Permanent Works"** mean the permanent Works forming part of the Project that are required to be constructed/installed and maintained as such for the implementation of the Project for at least the Agreement Period and shall also include housing facilities for staff to be engaged for operation and maintenance of the Project;
- 1.2.39 **"Power Purchase Agreement (PPA)"** means a contractual agreement to be signed by the Company with an electricity consumer, trader or any other parties permitted under the statute to purchase the power;
- 1.2.40 **"Project"** means the 25 MW Rahi Kyong Hydro Electric Project proposed to be on Rahi river in the North District of Sikkim, India including complete hydroelectric power generating facility covering all components such as dam, intake works, water conductor system, power station, generating units, Project roads, bridges, offices, residential facilities, stores, guest houses, security office and other connected facilities including the Interconnection Facilities;
- 1.2.41 **"Prudent Utility Practices"** means those practices, methods, techniques and standards that are generally accepted internationally from time to time by electric utilities for the purpose of ensuring safe, efficient and economic design, engineering, construction, commissioning, testing, operation and maintenance of various components of the Project of the type specified in this Agreement and which practices, methods and standards shall be adjusted as necessary to take account of,
- (a) installation, operation and maintenance guidelines recommended by the manufacturers of plant and equipment to be incorporated in the Project;
 - (b) the requirements of Indian Law; and
 - (c) physical conditions at the site;
 - (d) practices, methods, techniques and standards as changed from time to time that are generally accepted internationally for use in electric utility and for power generation in India.
- 1.2.42 **"Scheduled Commercial Operation Date"** means the date by which the Company shall have achieved the Commercial Operation of the above mentioned Project, which shall be 60 (sixty) months from the date of signing of this agreement unless and otherwise extended by the Government due to reasons of Force Majeure or conditions beyond the control of the Parties.
- 1.2.43 **"Site"** means the site of Project appurtenances, generating plant including land, waterways, roads and rights acquired or to be acquired by Company for the purposes of the Project;
- 1.2.44 **"State"** means the State of Sikkim;
- 1.2.45 **"Stations"** means the 25 Mega Watt Rahi Kyong Hydro Electric Power Station;
- 1.2.46 **"Temporary Works"** mean all temporary works of any kind required in connection with the implementation of the Project and that are incidental and ancillary to the design, engineering and construction of the Project and are constructed/installed and maintained till the Commercial Operation Date of the Project, and not forming part of Permanent Works.



Joint-Secretary
Energy & Power Department
Government of Sikkim

SUB-REGISTRAR
NORTH SIKKIM, MANGAN

Signature
Sikkim Engineering Pvt. Ltd.

- 1.2.47 "**Unit**" means one/more hydro generator(s) including ancillary equipment and facilities thereto;
- 1.2.48 "**Works**" means all works of civil, electrical and mechanical nature and including design, engineering, services, supplies and other works activities required and necessary for the implementation of the Project and shall also include the Permanent Works and the Temporary Works;
- 1.2.49 "**Saving period**" means the difference in the period between the actual commercial operation date (COD) of the plants and the scheduled commercial operation dates of the Project as mentioned under clause 1.2.42 of this agreement;
- 1.2.50 "**Construction Power**" shall have the meaning as prescribed in Article 4.27;
- 1.2.51 "**SNT**" means Sikkim Nationalized Transport;
- 1.2.52 "**Arbitrator**" shall have the meaning as prescribed to it in Article 10.1;
- 1.2.53 "**Arbitration**" shall have the meaning as prescribed to it in Article 10.1;
- 1.2.54 "**Arbitral Tribunal**" shall have the meaning as prescribed to it in Article 10.2;

Article 2

TERM OF THE AGREEMENT

2.1 Effectiveness

This Agreement shall commence from the date of signing of this Agreement.

2.2 Agreement Period

2.2.1 This Agreement shall remain in force for a period of 35 (thirty five) years from the Commercial Operation Date of the Project unless terminated earlier in accordance with the provisions of the Agreement.

2.2.2 This Agreement may be extended further at the sole discretion of the Government on mutually agreeable terms.

2.2.3 In the event this Agreement is not extended in terms of Clause 2.2.2, the Permanent Works, as defined in Clause 1.2.38, along with the land on which the Permanent Works are created, irrespective of the land ownership, shall stand transferred to the Government at the end of the Agreement period, free of cost and in good operating condition.

2.3 Survival

The termination or expiry of this Agreement shall not affect the accrued rights, obligations and liabilities of either Party under this Agreement nor shall it affect any continuing obligations, which this Agreement provides whether expressly or impliedly.



PCE-CHS-Secretary
Energy & Power Department
Government of Sikkim

SUB-REGISTRAR
NORTH SIKKIM, MANGAN

7
Behalf of
Sikkim Engineering Pvt. Ltd.

Article 3

OBLIGATIONS OF THE GOVERNMENT

3.1 Granting Consents, Permissions and Assistance in Obtaining Clearances

The Government shall grant (those within their ambit / purview) and also assist and co-operate with the Company for expediting the various statutory/non-statutory clearances required for implementation, establishing, operating and maintaining the Project, from various competent authorities of the State Government/Central Government or the Board. The Government shall promptly forward all relevant proposals received from the Company to the concerned Government authorities. The responsibility of applying for obtaining these approvals/clearances shall, however, rest with the Company only.

3.2 Use of materials

The Government shall permit the Company, in accordance with the Law to collect and use boulders, stones, shingles, limestone and other building materials, except precious and semi-precious materials, from the river beds, and/or from the land acquired or transferred to or leased out to the Company for the Project, on payment of royalty in accordance with the Government rules/rates in force from time to time.

3.3 Acquisition and transfer of land

- (a) The Government shall assist the Company in acquiring the land required for the Project at the cost of the Company and lease out the same to the Company, such lease/s being for the period of 35 (thirty five) years from the Commercial Operations Date (COD). The Company is required to pay service charge/facilitation fee @1.5% of the total cost of the compensation. The entire lands acquired for the Project shall be registered in the name of Government and then same shall be leased out to the Company at an annual lease rent of Rs. 25,000/- (Rupees Twenty Five Thousand) only per annum.
- (b) The Government shall provide necessary assistance to the Company in obtaining permission of the competent authority for removal of trees standing on the acquired land and on the government lands which in Company's reasonable opinion are required to be felled or removed for implementation of the Project.

3.4 Lease of Land for Permanent Works

Upon the request of the Company and subject to the provisions of laws in force, the Government shall, on such terms and conditions and rates prescribed by the Government from time to time provide for, on a long term lease being for the period of 35 (thirty five) years from the Commercial Operations Date (COD), including the Government lands and lands already acquired for the Project. The Company shall pay the compensation of the land and other standing properties of such lands to the Government as per the prevailing rates prescribed by the Government.

3.5 Lease of land for Temporary Works

Upon the request of the Company and subject to the provisions of laws in force, the Government shall provide, on such terms and conditions and rates as may be prescribed by



12
Energy & Power Department
Government of Sikkim

SUB-REGISTRAR
NORTH SIKKIM, MANGAN

Behalf of
Sikkim Engineering Pvt. Ltd.

the Government from time to time, on a short term lease for a period not exceeding 15 (fifteen) years, such Government land required for Temporary Works, as is considered reasonably necessary by the Government.

3.6 Rehabilitation and Resettlement Plan

The Company shall, wherever required and subject to the approval of the competent authority, prepare a rehabilitation and re-settlement plan in coordination with the Government for local residents that might be adversely affected or displaced due to construction of the Project at the Site as on the Effective Date. The cost of preparation and implementation of the above plan shall be borne by the Company and implemented under the supervision of the Government and the Government shall render all assistance and co-operation to the Company for acquiring lands required for rehabilitation and resettlement at cost of the Company.

3.7 Up-gradation of Roads and Bridges

The Company, by fulfilling the requirements of the different Departments/Agencies, shall, at its costs construct, widen and strengthen such roads or bridges within the State of Sikkim as are considered reasonably necessary by the Company for the implementation of the Project. Alternatively, the Government shall, at the cost of the Company, construct, widen and strengthen such roads or bridges within the State of Sikkim as are considered reasonably necessary by the Company for the implementation of the Project.

3.8 Approvals for Sale/Use of Energy

- (1) The Company shall have the option and be entitled in its absolute discretion to dispose off power from the Project, after allowing for Government Supply, in any one or more of the following modes:-
 - (i) to make captive use for the industry to be set up in the State of Sikkim; and/or
 - (ii) to sell power outside the State of Sikkim; and/or
 - (iii) to make third party sale within the State of Sikkim with the approval of the Competent Authority, if any and as applicable.
- (2) Upon application being made if any by the Company, the Competent Authority shall, in accordance with the Laws, promptly issue any approval if required to be obtained from it in connection with disposal of power as per the modes specified in clause 4.1 hereafter provided that all requirements and conditions for the grant of such approvals have been duly and timely met by the Company.
- (3) Upon application thereof being made, the Competent Authority shall, in accordance with the Law, promptly issue any approval required to be obtained from it in connection with the Power Purchase Agreement(s)/captive use, provided that all requirements and conditions for the grant of such approvals have been duly and timely met by the Company.

3.9 Evacuation of Power

The responsibility of evacuation of power from the Power Station to the point of consumption lies with the Company. The Company shall make necessary arrangements for the same. However, in case the Government develops the transmission system on its own or in consortium, the Company can transmit the power by making payment of transmission charges as approved by the Competent Authority.



Ry
FCU-Company
Energy & Power Department
Government of Sikkim

[Signature]
SUB-REGISTRAR
NORTH SIKKIM MANGAN

[Signature]
Behalf of
Sikkim Engineering Pvt. Ltd.

3.10 Other Approvals

If any approval is required under the Law by the Company, the lenders or Contractor(s) with respect to the Project, upon application being made by the Company, the Government shall grant (those within their ambit / purview) and take all reasonable and appropriate steps within its administrative power and as permissible by Law, to ensure that such approval is granted expeditiously.

3.11. Communication

The Government shall provide due assistance to the Company to obtain, in accordance with the prevailing Law and regulations, necessary permits to install and use suitable radio communication systems including satellite communication equipment and walkie-talkies. Any system connecting with the national telecommunication system or any international telecommunication system will be subject to the approval/license from the relevant authorities for the issuance of which Government shall assist and co-operate.

3.12. Explosives

The Government shall provide due assistance and co-operation to the Company under the Law and regulations, to obtain permission to procure, store and use such explosives which are required for the Project. Provided that the responsibility of obtaining such a clearance and making the necessary arrangements shall rest with the Company. All the responsibilities of safe storing, using and proper accounting of the explosives in accordance with the relevant provisions of the Explosive Act shall rest with the Company.

3.13. Import License

The Government shall provide due assistance to the Company in obtaining all necessary import licenses for the Project from the relevant Government of India authorities to the extent permissible by Law. The Company shall submit a list of such equipments required to be imported for the Project to the Government for approval.

3.14. Upstream/Downstream Project

The Government or its any other designated agencies shall be entitled to survey, investigate and implement any river valley power generation scheme, upstream or downstream of the Project. However, the Government shall ensure that the planning, design, construction of any other power Project upstream or downstream of the Project shall not be materially/adversely detrimental to the Project and to the annual energy generation from the Project.

3.15. Monitoring Committee

The Government shall constitute a multi-disciplinary Committee comprising representatives of the Company and representatives from various Departments of the Government to monitor the issues arising during the implementation of the Project, without prejudice to the rights and entitlements of the Company. The Committee shall meet at such intervals, preferably quarterly at such places as may be decided by it. The Committee or any of its members shall have no authority to alter, amend or modify in any manner whatsoever the terms and conditions of this Agreement or create fresh obligations on the parties hereto or curtail their rights and entitlements hereunder.



[Signature]
ICE-Gen-Secretary
Energy & Power Department
Government of Sikkim

[Signature]
SUB-REGISTRAR
NORTH SIKKIM, MANGAN

[Signature]
Behalf of
Sikkim Engineering Pvt. Ltd.

3.16. Construction Power

The Government shall provide adequate construction power to the Project at the cost of the Company. The construction power shall be supplied at the Government's prevalent tariff as applicable from time to time. However, the Government makes no commitment to ensure uninterrupted power supply. However, if any additional infrastructure is required, Government shall provide the same at the cost of the Company.

3.17. Police Post

At the request of the Company, the Government shall provide Police protection to the Company, its assets, its personnel and its representatives and also establish a Police Post to maintain law and order in the Project Areas for such period as may be requested by the Company and the Company shall bear the establishment, operation and maintenance cost on this account.

3.18. Project Level Welfare Committee

The Government shall constitute a Project Level Welfare Committee consisting of the Local Politicians, Gram Panchayat, Village Representatives, Local Administrators and Company Representatives to look after the welfare of the local people in respect of socio-economic development and employment opportunities etc. The Committee or any of its members shall have no authority to alter, amend or modify in any manner whatsoever the terms and conditions of this Agreement or create fresh obligations on the parties hereto or curtail their rights and entitlements hereunder.

3.19. Mortgaging of Land

The Government agrees to permit mortgaging of Government and Private land acquired/diverted for the Project in favour of Financial Institutions. However, the forest land diverted for the Project shall not be permitted to be mortgaged.

3.20. Change in the Capacity of the Project

The Company with the prior approval of Government, if warranted by design parameters, may increase/decrease the installed capacity of the Project.

3.21 Incentives given by Government

Any incentives given by the Government in future to the Independent Power Producers (IPPs) in the State of Sikkim shall be extended to the Project also.

3.22 Imposition of Tax/Duty

The Government shall impose an Environment Cess, according to law, which shall be @1 (One) paise per unit of electricity sold by the Company and shall be collected at source for the amount of electricity generated by the Company and sold to its customers.

In addition to the above, labour cess under the provisions of "Buildings and Other Construction Workers' Welfare Cess Act, 1996, shall be recoverable from the Company



YCS-Commissionary
Energy & Power Department
Government of Sikkim

SUR-REGISTRAR
NORTH SIKKIM, MANGAN

11
Behalf of
Sikkim Engineering Pvt. Ltd.

3.23 Co-operation by the Government

The Government will extend all necessary help and co-operation to the Company and assist the Company in obtaining the Restricted Area Permits for its employees, contractors, agents and representatives.

3.24 Equity Contribution

Government shall have the right to subscribe upto 11% of the Equity of the Company pursuant to a Share Subscription Agreement to be executed between the Company and the Government. The Share Subscription Agreement to be executed between the Company and Government shall include provisions relating to First Right of Refusal of the Company to buy 11% Equity of Government in the Company, if the Government decides to sell its equity.

Article 4

OBLIGATIONS OF THE COMPANY

4.1 Mode of Sale of Power

The Company shall have the option and be entitled in its absolute discretion to dispose of power from the Project after allowing for Government Supply in any one or more of the following modes:

- (i) to make captive use for the industry to be set up in the State of Sikkim; or
- (ii) to sell power outside the State of Sikkim; and
- (iii) to make third party sale within the State of Sikkim with the permission of the Competent Authority, if any and as applicable

The Company shall pay the necessary wheeling charges including charges on account of transmission losses prevalent at that time towards the energy transmitted, incase the Company uses the Sikkim's Transmission/distribution system for transfer of power up to the appropriate delivery point/interstate point as per (i) to (iii) above, as the case may be.

4.2 Government Supply

4.2.1 The royalty in the form of free power shall be levied @ 12% (twelve percent) of the Deliverable Energy (Net generation measured at the Interconnection Point) of the Project for the first 15 (fifteen) years of operation and @ 15 % (fifteen percent) for the period from 16th (sixteenth) to 35th (thirty fifth) year for the period starting from the date of COD of the Project and at such times as may be mutually agreed upon for the period that may be extended in terms of Clause 2.2.2

4.2.2 The Company shall supply additional 1% (one percent) free power of the electricity generated at the Interconnection Point(s) from the Project for the entire period of 35 (thirty five) years from the Commercial Operation Date (COD) of the Project towards Local Area Development Fund as per the Hydro Power Policy 2008.



PCB-Consent
Energy & Power Department
Government of Sikkim

SUB-REGISTRAR
NORTH SIKKIM, MANGAN

Behalf of
Sikkim Engineering Pvt. Ltd.

- 4.2.3** The Rajiv Gandhi Grameen Vidyutikaran Yojana Scheme allows the State Government to have financial allocation in the form of 90% grants and 10% loan. The Company shall bear the 10% (ten percent) share of the State Government within the surface distance of 2.0 Kilometers from the Project site, as per the Hydro Policy 2008 of the Government of India. The expenses borne shall form part of the Rehabilitation and Resettlement Policy of the Project.

4.3 Project Performance

The Company shall ensure that the execution, operation and maintenance of the Project is in conformity with Prudent Utility Practices and the manufacturer's specifications.

4.4 Rehabilitation and Resettlement Plan

The Company shall prepare rehabilitation and resettlement plan in co-ordination with the Government and implementation thereof shall be done under the supervision of the Government at the cost of the Company pursuant to Clause 3.6 and 4.2.3. The amount so incurred shall form part of the Project cost.

4.5 Safety measures

The Company shall ensure proper quality control and safety measures during implementation of the Project including any geological study, construction and testing at the sites. The Government shall have the right to institute an appropriate mechanism to ensure the compliance by the Company in this regard.

The cost involved in any studies of basin development/protection like Dam Break Analysis, etc to be carried out by the State Government shall be shared by the Company in proportion to the installed capacity of the project. For these studies, cost of establishment/running hydrological stations or instruments shall also be shared by the Company.

4.6 Catchment Area Treatment Plan

The Company shall make suitable financial provisions in the Project cost for the catchment area treatment plans as determined by the State Forests, Wild Life and Environment Management Department of the Government and as approved by the Ministry of Environment and Forests, Government of India. The cost involved on this account shall be paid by the Company to the concerned authorities of the Government.

4.7 Commissioning of the Project

The Company shall commission the project as per Clause 1.2.42 of this agreement. In the event of failure on the part of the Company to commission the project within the stipulated period, the Company shall be liable to pay penalty @Rs.10,000.00 (Rupees Ten Thousand) per MW per month to the Government of Sikkim.

In case the Company is able to commission the Project within the stipulated period as mentioned above, the 'saving period' thus obtained shall be added to the agreement period as given in the clause 2.2.1.

4.8 Environmental Impact Assessment (EIA) Studies

The Company shall carry out the Environmental Impact Assessment (EIA) Studies and prepare Environment Management Plan (EMP) as required under the Environmental (Protection) Act, 1986, and obtain the consent of the State Pollution Control Board as well as Ministry of Environment and Forests, Government of India and the Government shall render all necessary assistance and co-operation to the Company thereof.



PCE-Chief Secretary
Energy & Power Department
Government of Sikkim

SUB-REGISTRAR
NORTH SIKKIM MANGAN

13
Benefit of
Sikkim Engineering Pvt. Ltd.

4.9 Maintaining Ecological Balance

The Company shall be responsible for maintaining the ecological balance by preventing deforestation, water pollution and defacement of natural landscape in the vicinity of works. The Company shall take all reasonable measures to prevent any unnecessary destruction, scarring or defacement of the natural surroundings in the vicinity of the works.

4.10 Project Roads

If the Company desires to entrust the job of constructing the various Project roads to the Government, the Government will undertake to construct the road at the cost of the Company.

4.11 Ensuring Flow of Water

The Company shall ensure such minimum flow of water immediately downstream of the weir/barrage/dam for downstream requirements as specified in the environmental clearance.

4.12 Fishing, Recreational and Navigational Rights

The fishing, recreational and navigational rights in the river, water, channels, reservoirs, lakes shall remain vested in the Government subject only to such rights of the Company as may be necessary for the operational requirements, safety and security of the Project.

4.13 Water requirement for construction

The Company shall ensure that the water requirement for construction of the Project including potable water shall be generally arranged and harnessed by them from the river source. The local sources of water supply may be utilized by the Company only to the extent as such it does not adversely affect the local people.

4.14 Dumping of Excavated Material.

The Company shall ensure that the materials excavated from the site shall be dumped in the area duly approved by the State Pollution Control Board.

4.15 Recruitment of Staff/Labour

The Company as well as its contractors shall ensure all the unskilled/skilled manpower other than executives as may be required for implementation of the Project shall be recruited through Employment Cell of Government of Sikkim at Gangtok, Sikkim. Whenever the Employment Cell to whom the vacancies have been notified in pursuance of the provisions of this clause of the agreement, fails to sponsor suitable candidates and confirms in writing for the post so notified within four weeks of receipt of the request, then the Company may resort to other modes of recruitment on a temporary basis till such time the local manpower is available.

The Inter-State Migrant Workmen (Regulation) of Employment and Conditions of Service Act, 1979 and the Sikkim Protection of Labour Act, 2005 shall be strictly complied with by the Company as well as its contractors.



PCE-Can
Energy & Power Department
Government of Sikkim

SUB REGISTRAR
NORTH SIKKIM, MANGAN

14
Sikkim Engineering Pvt. Ltd.

4.16 Displaced Families

The Company shall provide employment to one member of each of the displaced families or adversely affected as per their qualifications and capabilities, as a result of the acquisition of land for the Project covered in the Rehabilitation Plan referred to in Clause 3.6 and 4.4 above in the process of the construction of the Project.

4.17 Use of Facilities.

Subject to availability, security, safety, law and order and operational factors being met, the Company shall permit free use by the Government and the general public of all service roads constructed and maintained by it for the Project after they have been commissioned. Other facilities like hospitals, post offices, schools, etc. shall also be extended to the local public as per the guidelines of the Company in this regard based on the objective of providing such facilities.

4.18 Evacuation of Power

The responsibility of evacuation of power from the Power Station to the point of consumption lies with the Company. The Company shall make necessary arrangements for the same. However, in case the Government develops the transmission system on its own or in consortium, the Company can transmit the power by making payment of transmission charges as approved by the Competent Authority.

Notwithstanding the above, the Company shall be entitled to build / construct / install by itself or use the transmission system of any other person for the purposes of the sale of the power from the Project.

4.19 Usage of Land

The Company shall ensure that the land is used only for the Project and activities ancillary to the Project, including for Permanent Works and Temporary Works.

4.20 Use of Materials

During the implementation of the Project, in case any object of archaeological importance is found by the Company or by any of its employees/contractors, the Company shall arrange to hand over the same to the Government free of cost; provided that, in case any precious or semi-precious material is located, the Company shall inform the Government immediately and shall then abide by the instructions of the Government which shall be communicated within a period of 2 (two) months from the date of receipt of such intimation from the Company.

4.21 Adherence to Laws.

The Company shall follow all the relevant laws, including, without limitation, all labour laws and shall also provide for safety provisions as per the Indian Electricity Act, 2003. Any other relevant Act(s), Laws or Policies notified by the Government of India/the Government of Sikkim from time to time after the signing of this agreement shall also be binding on the Company.



PCE-001 Secretary
Energy & Power Department
Government of Sikkim

SUL REGISTRAR
NORTH WAKUL MANGAN

Behal of
Sikkim Engineering Pvt. Ltd.

4.22 Standing Properties in the Land transferred to the Company.

The Company shall pay to the Government the cost of the standing crops as are required to be removed or damaged in the execution of the Project at prevailing market rates as may be notified by the Government from time to time.

4.23 Project Maintenance.

The Company shall ensure that the Project are in good working condition as per the Prudent Utility Practices during the Agreement Period.

4.24 Tax Deduction at source.

The Company shall ensure that the taxes deducted at source according to law/rules/regulations, for the payments made for the works within the State of Sikkim, are deposited with the competent authority.

4.25 Responsibility.

The Company 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.

4.26 Site investigation.

The Company shall conduct a due diligence exercise in respect of all the aspects of the Project, including detailed survey and investigations of the Project Sites. The failure to investigate fully the Sites or sub-surface conditions shall not relieve the Company from its responsibility for successfully implementing the Project.

4.27 Construction Power.

The Company shall have the right to install its own source of Construction Power to carry out speedy construction of the Project. However, the Company may request the Government to provide Construction Power. In case of such request, the Company shall pay to the Government of Sikkim for the Construction Power (including service line charges) in accordance with the Department's standard terms and conditions for such construction power at the Energy and Power Department's tariff rates applicable from time to time for bulk supply consumers, or at the Company's option, use alternate sources of construction power at no cost to the Department.

4.28 Protection of Fish Culture

The Company shall take appropriate steps, as may be required, for the protection of fish culture as per environmental requirements.

4.29 Sharing of Data

The Company shall share with the Government of Sikkim or its designated agencies all the data of the studies made by them in the Project upon the same being required by the Government or its designate agencies to be shared.



PCB, Civil Secretary
Energy & Power Department
Government of Sikkim

SUB REGISTRAR
NORTH SIKKIM, MANGAN

16

Behalf of
Sikkim Engineering Pvt. Ltd.

4.30 Approval of Detailed Project Report

The Company shall submit the Detailed Project Report (DPR) and obtain the approval of the Government of Sikkim or the Government of India, as the case may be. In the event of submission of the DPR to the Government, Government shall accord approval of the Detailed Project Report provided the Government finds the DPR in order.

4.31 Transfer/Sale of Project

The Company shall not be permitted to transfer or sell the Project without obtaining the prior permission of the Government.

4.32 Renaming of Project Area

The Company shall not name/rename any of the localities in the vicinity of the Project. In case the Company desire to name a locality, then it shall request the Government, which shall decide on a name in accordance with the local culture and tradition. The Company shall also ensure that the buildings in its Project are constructed reflecting the Sikkim's traditional style of buildings.

4.33 Utilisation of SNT Trucks

The Company shall give first preference in transportation of Goods for the Project to Sikkim Nationalized Transport (SNT).

4.34 4.34 Non-Refundable Processing Fee

The Company shall deposit a sum of Rs.2,50,000.00 (Rupees Two Lakh and fifty Thousand) only @Rs.10,000.00 per Mega Watt of the installed capacity of the project towards non-refundable processing fee by demand draft in favour of the PCE cum Secretary, Energy & Power Department, Government of Sikkim within a period of 30 (thirty) days from the date of signing of this agreement. If there is any enhancement in the installed capacity of the project, the Company shall pay the processing fee for the enhanced capacity as well.

4.35 Business and Contract Opportunity to the Locals:

The Company shall provide business and contract opportunities to the local bonafide residents of Sikkim according to their capability and strength except the major contracts for tunneling, dam, power house, surge shaft, electro-mechanical, hydro-mechanical and supply of construction materials, etc as per the policy of the Government. Place of tendering for works such as approach roads, quarters, colonies, buildings other than power house shall be the Project areas and preference shall be given to the capable local contractors so that the local people get benefits from such works of the Project.

Article 5

TERMINATION AND TAKING OVER OF THE PROJECT

5.1.

In the event of failure on the part of the Company to start the construction of the Project within 6 (six) months from the date of obtaining all the clearances, the Government reserves the right to terminate the Agreement.

17



PCE Cum Secretary
Energy & Power Department
Government of Sikkim

SUB-REGISTRAR
NORTH SIKKIM, MANGAN

Behalf of
Sikkim Engineering Pvt. Ltd.

- 5.2. In the event of stoppage of construction on the main Project components by the Company, for a period of more than twelve months for reasons not covered under Force Majeure and for reasons specifically attributable to the Company and/or abandonment of the Project by the Company, the Government shall, after giving due opportunity to the Company to rectify the same, have the right to terminate this Agreement. In the event of termination of this Agreement under this clause, the Government shall have the option to take over the Project after assessing the actual value of assets created by the Company till the date of termination through mutually appointed reputed consultant. The Government shall suitably compensate the Company the value so assessed.

Article 6

FORCE MAJEURE

- 6.1. For the purpose of this Agreement, "Force Majeure" shall mean an event, which is unforeseeable, beyond the control of the Company and not involving the Company's fault or negligence. Such events may include without limitation, acts of the Government/Government of India either in its sovereign or its contractual capacity, war, civil war, acts of terrorism, insurrection, political/public agitations, riots, resolutions, fires, floods, epidemics, quarantine restrictions, freight embargoes, radioactivity and earthquakes or any other act of nature or God, or any other event analogous to the foregoing.
- 6.2. If a Force Majeure situation arises, the Company shall promptly notify the Government in writing of such conditions and the cause thereof. Unless otherwise directed by the Government in writing, the Company 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.
- 6.3. In the event a Party is rendered unable to perform any obligation required to be performed by it under this Agreement by Force Majeure, the particular obligations shall, upon notification to the other Party, be suspended for the period of Force Majeure. The time for performance of the relative obligations suspended by Force Majeure shall be extendable by the period of delay, which is directly or indirectly attributable to Force Majeure.

Article 7

CONFIDENTIALITY

- 7.1. 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 implementation, operation and maintenance of the Project or disclosing such Confidential Information only to those of its employees, consultants and bona fide professional advisers who need to have such information for the purposes of this Agreement and purposes incidental

18



PCB-Conf. Secretary
Energy & Power Department
Government of Sikkim

SUB-REGISTRAR
NORTH SIKKIM, MANGAN

Behalf of
Sikkim Engineering Pvt. Ltd.

thereto or those that may be required to be disclosed by any Court or Tribunal or any authority or authorities.

- 7.2. The above provisions of this clause shall not apply to:
- a) any information in the public domain otherwise than by breach of this Agreement.
 - b) information in the possession of the receiving party thereof before disclosure by the disclosing party.
 - c) information lawfully obtained without restriction from a third party.

Article 8

FURTHER ASSURANCES AND ASSISTANCES

- 8.1 The Parties shall, with all reasonable diligence do all such things and provide all such reasonable assurances and assistances as may be required to consummate the transactions contemplated by this Agreement and each Party shall provide such further documents or instruments required by the other Party as may be reasonably necessary or desirable to effect the purpose of this Agreement and carry out its provisions.

Article 9

GOVERNING LAW

- 9.1. The rights and obligations of the Parties under or pursuant to this Agreement shall be governed by and construed according to Law. This Agreement shall be subject to the jurisdiction of the competent Courts of Sikkim.

Article 10

ARBITRATION

- 10.1 All matters, questions, disputes or difference whatsoever arising between the parties in respect of construction, meaning, operation or effect of the contract or relating to the contract of breach thereof shall be settled by way of Arbitration in accordance with the provision of Arbitration and Conciliation Act, 1996 including any statutory modification or variation thereof, by reference to a single arbitrator in case the Parties agree upon one, and in the absence of such Agreement by reference to 3 (three) Arbitrators, one to be appointed by the Government and one to be appointed by the Company. The 2 (two) Arbitrators, appointed as aforesaid, shall appoint the third Arbitrator. In case both the Arbitrators appointed by the parties fail to arrive at an Agreement as to the appointment of the Third Arbitrator, the Third Arbitrator shall be appointed by High Court of Sikkim from the panel of names to be submitted by the Indian Council of Arbitration. All expenses of such Third Arbitrator to be appointed by the Court of Sikkim/jointly by the Arbitrators shall be borne and paid by the parties in equal proportion. The Arbitrators will give a speaking Award.




PCE-Conf Secretary
Energy & Power Department
Government of Sikkim


SUB-REGISTRAR
NORTH SIKKIM, MANGAL


Behalf of
Sikkim Engineering Pvt. Ltd.

- 10.2 The Arbitral Tribunal such constituted, as above shall not have the Powers of issuing/granting any injunction/ restrain/ prohibitory order or any other interim order which is in the nature of injunction/ restrain/ prohibition including the order of Appointment of Receiver and any other order of the like nature.
- 10.3 The award rendered in any Arbitration commenced hereunder shall be final and binding. The Parties agree that neither party shall have any right to commence or maintain any legal action nor proceedings concerning a dispute until the dispute had been determined in accordance with the Arbitration Procedure.
- (a) During the pendency of any Arbitration the Parties shall continue to perform their respective obligations as detailed in this Agreement unless such performance cannot be reasonably continued.
 - (b) The Arbitration Proceedings shall take place in Sikkim only and the High Court of Sikkim shall alone have jurisdiction to this purpose.
 - (c) The right to Arbitrate disputes under this Agreement shall survive the expiry of term or the Termination of this Agreement.

Article 11

ASSIGNMENT AND AMENDMENTS

- 11.1 The Company shall be allowed to promote/incorporate new or use existing public/private Limited Company as SPV (Special Purpose Vehicle) for the implementation of the Project. All rights and obligations under this Agreement shall thereafter be transferred to the new Company with the prior intimation to the Government.
- 11.2 The Company may, only for the purpose of arranging or rearranging finance for the Project, assign or otherwise transfer all or any portion of its rights and benefits but not its obligations under the Agreement to any other person or entity.
- 11.3 No amendment or waiver of any provision of the Agreement, and no consent to any departure by either Party here from, shall in any event be effective unless the same shall be in writing and signed by each of the Parties.

Article 12

COMMUNICATION

- 12.1 Any communication/notice by one Party to the other Party shall be in English under this Agreement and shall be deemed to be served if sent by cable, fax or E-mail followed by a confirmation letter delivered by hand or by registered mail to the respective addresses.



Secretary
Energy & Power Department
Government of Sikkim

SUB-REGISTRAR
NORTH MANGAL MANGAN

20

Signature of
Sikkim Engineering Pvt. Ltd.

IN WITNESS whereof, the parties hereto have set and subscribed their respective hands and seals, the day, month and year herein above mentioned.

Witness

1.

2.

(P.O. Chakma)
SENIOR MANAGER (CIVIL)
Sikkim Power Dev. Corporation Ltd.
Government of Sikkim

(A.K. Giso)
Signature of the Executant
Principal Chief Engineer cum Secretary
Energy & Power Department
Government of Sikkim
Gangtok-737101.



For and on Behalf of the Governor of Sikkim
First Party

Witness

1.

2.

Execution is witnessed by
who is identified by

(T.S. Prakash Rao)
Witness

(Anura Shetty B.S.)
Witness

(Kaden Lepcha)
Signature of the Executant

M/s Sikkim Engineering Private Limited.
Pentok, Mangan, North Sikkim.

Behalf of
Sikkim Engineering Pvt. Ltd.

For and on Behalf of M/s Sikkim Engineering Private Limited.
Second Party

Registration Fee Rs. 100 / 100000
One Hundred
Stamp Fee Rs. 32.9
Dated 12/04/12

20
Twenty
affixed on this document



Presented for Registration on 23.06.12
The Office of the Sub-Registrar, Mangan by *(Kaden Lepcha)*

(Kaden Lepcha)
Signature of Applicant

RECORDED IN THE Office of the Sub-Registrar

Book No. 1

Vol No. XV

Item No. 2

In the Year 2012-13 / 18 JAN

SUB-REGISTRAR
NORTH SIKKIM, MANGAN