

DETAILED TERMS AND CONDITIONS

The Government of India ("Gol) has launched the "50,000 MW Hydro-electric Initiative" with the objective of increasing the hydro power capacity in India (Country) out of which more than half the capacity has been identified in the State of Arunachal Pradesh ("State") itself. GoAP has earmarked certain Projects for allocation to private developers for development of hydropower Projects in the State, which will generate economic activity in the State leading to its growth and will also serve as an engine to achieve the objective of promoting all round development of the State

The Govt shall enter with Memorandum of Agreement with the Selected bidder for the implementation of the Project. The important general terms and conditions of the Agreement are enumerated below:

- 1 The State Govt. shall grant permission to the Selected bidder to undertake preliminary investigations for preparation of the Pre- feasibility Report, detailed investigation for DPR preparation, and subsequent implementation, operation and maintenance of **Hydro Electric Project** for which Expression of Interest/Bid has been invited.
- 2 The Project shall be implemented on BOOT (Build, Own, Operate and Transfer) for a lease period of 40 (Forty) years from the Commercial Operation Date (COD). The Project shall be reverted to the State Govt. on expiry of the said period of 40 (forty) years free of cost, in good working condition.
- 3 The entire cost of investigation, DPR preparation, Project implementation and subsequent operation and maintenance of the Project will be borne by the Selected bidder.
- 4 The Project shall be developed in tune with the State Govt. policy to develop the Projects in the most environment, eco, and people friendly manner.
- 5 The PFR and the DPR of the Project shall be submitted to the State Govt. prior to commencement of implementation of the Project for their review which shall not be unreasonably delayed.
- 6 All clearances as required from the Central Govt. in connection with the Project implementation shall be arranged by the Selected Bidder itself. The state Govt. shall accord necessary clearances under its purview within a reasonable period. The State Govt. shall extend all need based assistance in obtaining such clearances including licenses, approvals, sanctions, permits etc. as may be required for the Project.
- 7 The Selected Bidder shall make available information regarding water discharge regularly to the State Govt.

- 8 The State Govt. or its agents or a person authorized by the State Govt. in that behalf shall be free to investigate, survey and implement other Projects of any nature either upstream or downstream of the Project, provided that it shall not have any adverse impact on implementation, operation, maintenance and financial interest of the Project.
- 9 The Selected Bidder shall allow the State Govt., its officers/staffs or authorized agents to use the roads and facilities such as Post Office, School and Dispensary etc., that may be provided by the Selected Bidder as part of the Project. The State Govt. and its authorized agents shall be allowed to inspect the Project and its site(s).
- 10 The Selected Bidder shall not incur any kind of financial liabilities in the name of the State Govt., in the execution and subsequent operation and maintenance of the Project.
- 11 The Selected Bidder will not be allowed to sell and transfer the Project and/or the power plant to any other party/parties without the prior permission of the State Govt. However, the Selected Bidder shall be allowed to mortgage the Project to the Lenders for availing financial assistance to meet the cost of the Project.
- 12 The Selected Bidder shall ensure that the execution, operation and maintenance of the Project is in conformity with Prudent Utility Practices and the manufacturer's specifications.
- 13 The Selected Bidder shall ensure proper quality control and safety measures during implementation of the Project including any geological study, construction and testing at sites. The State gov't. shall have the right to institute an appropriate mechanism to ensure the compliance by the Selected Bidder in this regard.
- 14 The Selected Bidder shall make suitable financial provision in the Project cost , if required, for the catchments area treatment plans in consultation with the State Forest & Environment and Wild Life Management Department as approved by the Ministry of Environment & Forests, Govt. of India. The cost involved on this account shall be paid by the Selected Bidder to the concerned authorities of the Govt.
- 15 The Selected Bidder shall carry out Environmental Impact Assessment (EIA) in association with the State Environment & Forest Department and Wildlife Department as required under the Environment (Protection) Act, 1986 through consultant(s) drawn from a reputed organization and obtain the consent of State Pollution Control Board.
- 16 The Selected Bidder shall be responsible for maintaining the ecological balance by preventing deforestation, water pollution and defacement of natural landscape in the vicinity of works. The Selected Bidder shall take all reasonable measures to prevent any unnecessary destruction, scarring or defacement of the natural surroundings in the vicinity of the works.
- 17 The Selected Bidder shall ensure such minimum flow of water immediately downstream of the dam/barrage for downstream requirements as shall be specified in the environmental

- clearance. The Selected Bidder shall take appropriate steps as may be required for the protection of fish culture as per environmental requirement.
- 18 The Selected Bidder shall ensure that the water requirement for the construction of the Project including potable drinking water shall be generally arranged and harnessed by them from the river source. The local sources of water supply may be utilized by the Selected Bidder only to the extent it does not adversely affect the local people.
 - 19 The Selected Bidder shall ensure that the materials excavated from the site shall be dumped in the area duly approved by the State Pollution Control Board.
 - 20 The Selected Bidder shall ensure that the land is used only for the Project and activities ancillary to the Project.
 - 21 The Selected Bidder shall ensure that the taxes as per law are deducted at source from the payments made to the contractors and deposit the same with the Appropriate Authority.
 - 22 The Site required for the construction, operation and maintenance of the project and for the associated works and facilities as will be assessed by the Selected Bidder shall be transferred by the state Govt. to the Selected Bidder on lease basis against payment of land revenue as per approved rate of State Govt. The period of lease will cease with the project getting reverted to the State Govt. The Selected Bidder shall be entitled to mortgage the land to the lenders/financers of the project subject to the condition that such period of mortgage shall not exceed the lease period. The State Govt. shall acquire for the Selected Bidder under the land acquisition Act, 1894 as in force and as per Bengal Eastern Frontier Regulation, 1873 (5 of 1873) at the expense of the Selected Bidder such private lands within the State of Arunachal Pradesh, as may be required from time to time by the Selected Bidder for the construction, operation and maintenance of the project.
 - 23 The Selected Bidder shall strictly comply with the following statutory regulations of the Central Govt. and the State Govt. while implementing the Project.
 - 24 The Selected Bidder shall strictly comply with the provision of the Forest (Conservation) Act 1980. The Selected Bidder shall also pay the cost of raising the Compensatory Afforestation including payment of the Net Present Value (NPV) of the forest land being diverted for non-forest purpose under the Forest (Conservation) Act, 1980. The Selected Bidder shall also pay the royalty on the forest produces such as timber, ballies, and all river bed materials etc as per prescribed rates of the State Govt. in force from time to time. If any precious and semi-precious minerals/stone etc is found from the river beds and/or from the land acquired for and transferred to or leased out to the Selected Bidder for the purpose of construction and maintenance of the Project or in case any object of archeological importance is found by the Selected Bidder or any of its employees/ contractors/ sub-contractors during the course of construction/operation of the Project, the Selected Bidder shall hand over the same to the Govt. of Arunachal Pradesh.

- 25 The provision relating to labour welfare existing as in force under the labour Laws/ Acts shall be strictly adhered to by the Selected Bidder during the implementation/operation and maintenance of the Project.
- 26 The provisions of the Electricity Act, 2003 will be diligently adhered to during implementation and subsequent operation and maintenance of Hydro-electric station.
- 27 The fishing, recreational and navigational rights, tourism prospects in the river, water channel, reservoir, lake etc. shall remain vested in the Govt. of Arunachal Pradesh subject only to such restrictions as may be necessary for the operational requirements and safety and security of the Project and the general guidelines of the Govt. of Arunachal Pradesh.
- 28 The Selected Bidder shall comply with the Hydro Electric Power Policy of the State as would be in force at the relevant point of time, during the course of implementation and subsequent operation and maintenance of the hydel station, subject to the condition that it is not inferior to the present policy in favour of the Selected Bidder.
- 29 From the Commercial Operation Date the State Govt. shall be given free power by the bidder in lieu of the distress caused. The free power shall be calculated at the bus bar and all taxes, duties, levies and costs in respect of the free power and towards its evacuation shall be borne by the State Government. The bidder should quote their offer of free power for the entire period of operation. Preference shall be accorded to the bidder quoting higher royalty in the shape of free power.
- 30 Over and above the free power, the State Govt. will have the first right to purchase the power generated from the project if the State Govt. so desire on mutually agreed terms and conditions. The State Govt. shall exercise its aforesaid right within 90 days of the receipt of such offer from the Selected Bidder after the DPR is approved from all angles. A separate Power Purchase Agreement (PPA) will be entered into for such purchase of the power between the State Govt. and the Selected Bidder on mutually agreed terms and conditions. In case the Selected Bidder and the State Govt. do not arrive at a mutually agreed terms and conditions for the said PPA within 90 days of receipt of the offer, the Selected Bidder shall be entitled to sell the power from the project to any other Party at its discretion.
- 31 The Selected Bidder shall be responsible for developing evacuation system for the Project and liaise with the appropriate authorities for the evacuation of the power from the generating point. However, in the event of utilizing the infra-structure of the State Govt., necessary charges as mutually agreed shall be paid to the State Govt. The entire cost of grid interfacing, if so required, including cost of maintenance of the evacuation system will be the responsibility of the Selected Bidder. However, in case the power generated from the Project is purchased by the State Govt., the State Govt. shall be responsible for evacuation of power from the bus bar onwards at its own cost.

- 32 The Selected Bidder shall allow the State Govt. to use its evacuation system and other infrastructures to the extent feasible, after accounting for the Selected Bidder's requirements for evacuation of power generated from the Project(s), if required by the State Govt. on payment of necessary charges by the State Govt. Such charges shall be mutually decided subsequently and a separate agreement entered into.
- 33 It shall be the responsibility of the Selected Bidder for the trading and sale of the power generated from the Project. The State Govt. will not be in any manner responsible for the sale and trading of the power on behalf of the Selected Bidder.
- 34 The Selected Bidder shall re-imburse duly certified and verifiable expenditures already incurred by any Agency for the survey and investigation works and the cost of DPR preparation against the Project or any other bonafide expenditure incurred against the Project on mutually agreed terms and conditions between the Selected Bidder and the Agency. Reasonable assistance shall be provided by the State government in the process of re-imbursement.
- 35 The Selected Bidder shall reserve 50 % of the Managerial/Professional post and 50% of Ministerial/Clerical post Skilled jobs , Unskilled jobs of posts against the Project to be filled up by the local tribal people, subject to the incumbents fulfilling the job requirements and considered suitable by the Selected Bidder.
- 36 The Selected Bidder shall give preference to the local contractors subject to fulfilling the eligibility criteria in the award of the works except for the specialized jobs.
- 37 The Selected Bidder shall earmark a reasonable amount for the social works in accordance with the National Policy on Rehabilitation & Resettlement – 2003 (NPRR – 2003). The Selected Bidder shall also adhere/conform to the local laws of the State.
- 38 Rehabilitation & Resettlement plan if any, of the oustees from the Project/Project affected families shall be executed by the State Government as per the approved rehabilitation and resettlement plan at the cost of the Selected Bidder, keeping in view the latest guidelines issued by Govt. of India on the subject. The R&R plan shall in any case be not inferior to the National Policy on Rehabilitation & Resettlement-2003 of the Central Govt.
- 39 The State Government would make arrangement to maintain general law and order in and around Project area for security and safety of properties of the Project, protection of life of the workers and experts/ Engineers/Officers during execution, commissioning and subsequent operation and maintenance. However, if any special arrangement including establishment of new police outpost / Police Station with manpower is required by the Selected Bidder within or in the vicinity of the project site, such arrangements shall be made by the State Govt. at the cost of the Selected Bidder.

- 40 The Selected Bidder 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 the Selected Bidder shall also undertake to indemnify the Govt. of Arunachal Pradesh on such account.
- 41 The widening, strengthening and construction of the National Highways, State Highways and Bridges and other roads, if required by the Selected Bidder, shall be executed by the appropriate State Govt. or Central Govt. agency at the cost of the Bidder. If any damage to the road and other Govt. and/or public property is done for which only the Selected Bidder is responsible, it shall be got repaired by the Selected Bidder at its own cost.
- 42 The Selected Bidder shall be liable and responsible for all its acts, neglects, omissions and commissions and for the neglects, omissions and commissions of its contractors and employees.
- 43 Either party shall not be responsible in any manner for the losses arising out of the Force Majeure situation such as earth quake, flood, fire, explosion, epidemic, cyclone, external invasion, civil commotion, riots, landslide etc., which are beyond the reasonable control of the affected party. However, the party so affected, upon serving notice thereof to the other party setting out therein particulars thereof shall be excused from performance of its obligations to the extent prevented, delayed or interfered with for the period Force Majeure conditions persist. The party so affected shall make its best efforts to remove such cause of Force Majeure as expeditiously as possible and shall continue performance hereunder with due dispatch whenever such cause(s) is removed.
- 44 The Selected Bidder shall achieve the financial closure within a period of 12 (twelve) months from the date of receipt of Techno-economic clearance (TEC) from the Central Electricity Authority (CEA), approval from Ministry of Environment and Forest (MOEF) and other Statutory Clearances. In the event that it is confirmed as impossible or impractical to achieve Financial Closure or if the Financial Closure is not achieved on or before the expiry of twelve months from the aforesaid date, for the reasons other than those attributable to the Government of Arunachal Pradesh, the Govt. of Arunachal Pradesh reserves the right to terminate the agreement.
- 45 In the event of stoppage of the construction works of the Project by the Selected Bidder, for a period of more than 12(twelve) months for reasons not covered under Force Majeure or for reasons attributable to the Selected Bidder and/or abandonment of the Project by the Selected Bidder, the State Govt. shall, after giving due opportunity to the Selected Bidder to resume the work, have the right to terminate the agreement. In the event of termination of the agreement under this clause, the Govt. of Arunachal Pradesh shall have the right to take over the Project on "As is where is" basis and no claim of the Selected Bidder shall be entertained. The Govt. of Arunachal Pradesh shall also have the exclusive right to re-allot such Project to any other developer.

46 In case the Selected Bidder does not commence implementation of the project within a period of 4(four) years from the date of signing of this agreement or within a period of 1 (One) year from the date of receipt of all the statutory clearances, such as Forest & Environment, Techno-economic clearance etc, whichever is later, the project shall be reverted to the State Govt. on "As is where is" basis alongwith all the reports, other documents etc., free of cost. However, the above time period shall be automatically extended by the aggregate of the period during which the Selected Bidder could not take steps to commence implementation by reason of Force Majeure conditions. Thereafter, the State Govt. shall have the exclusive right to re-allot the project to any third party for further development of the project.

47 In the event of any difference / dispute arising between the Parties, the same shall be resolved in accordance with the provisions of the Arbitration and Conciliation Act, 1996, unless the same has not been resolved amicably by mutual consultations within 90(Ninety) days of the reference of dispute by either Party. The venue of the arbitration shall be Guwahati. The language of arbitration shall be English. The cost of arbitration shall be shared equally. In case of any litigation, the Gauhati High Courts shall have the sole jurisdiction.

48 Each party shall undertake to agree 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.

49 The Selected Bidder shall make non-refundable upfront premium payment including processing fee of not less than as given below :-


Project capacity	Minimum Upfront premium
100 MW – 499 MW	Rs 1.50 lakhs per MW
500 MW- 999 MW	Rs. 2.00 lakhs per MW
Above 1000 MW	Rs. 3.00 lakhs per MW

The amount of upfront premium payment shall be calculated based on per MW of the proposed installed capacity and shall be deposited in form of Demand Draft payable at Itanagar, with the Govt. of Arunachal Pradesh at the time of signing of this Memorandum of Agreement. The payment shall be made by demand draft drawn in favor of the Secretary (power), Govt. of Arunachal Pradesh. Preference shall be accorded to bidders quoting higher upfront premium.

50 The Selected Bidder shall commission the project within a period of 5 (Five) years from the date of receipt of all statutory clearances from State/Central Govt. agencies/authorities, achieving Financial Closure and availability of land required for the project. In the event of failure on the part of the Selected Bidder to commission the project within the targeted period, the Selected Bidder shall be liable to pay penalty @ Rs. 40,000/-(Rupees Forty thousand) per MW per month to the Govt. of Arunachal Pradesh for the extended period of commissioning, except when such delay is caused by Force Majeure events.

- 51 The State Govt. shall incorporate a Power Corporation or any other appropriate State Govt. authority, for the purpose of overseeing the progress of the Project and sort out the difficulties and issues that could arise with respect to implementation of the Project. The Selected Bidder shall be represented by a senior executive of the Selected Bidder or its associate companies.
- 52 The Selected Bidder shall allocate *(to be specified by the bidder in percentage)* of the SPV/Selected Bidder's equity share to the State Govt. by way of execution of an equity subscription agreement between the Selected Bidder and the State Govt., which shall be executed within 3(three) months from the date of signing of this MoA. Upon execution of such an equity subscription agreement the Selected Bidder shall on request from the State Govt., without the requirement of Sovereign guarantees from the State or Central, arrange the funding for equity participation of State Govt. in the project.
- 53 The Selected Bidder shall be permitted to incorporate a Special Purpose Vehicle (SPV) for the purposes of this Agreement and the implementation of the Project under this Agreement. However, the rights and obligations of the respective parties shall remain unaltered and each party shall continue to perform their obligations diligently.
- 54 The proceeds from such sale of Free Power and the dividends in respect of Government's equity in the Project would be utilized for repayment of due amount of the funding arranged by the Selected Bidder for financing the equity participation of the State Govt., and the State Govt. shall execute all the necessary agreements as desired by the providers of such funding.
- 55 If the State Govt. arranges its own equity and / or through its authorized agency, then the State Govt. and / or such agency shall be allowed to do so, provided that such arrangement shall not be detrimental to the Selected Bidder's interest and the equity subscriptions shall be made pro-rata with the other equity participants.
- 56 The Govt. of Arunachal Pradesh hereto recognizes that the project being a run-off-the- river Project shall utilize the flowing water of the river to generate electricity. Such right to utilize water available upstream of the Project are granted by the Govt. of Arunachal Pradesh for non-consumptive use only without charging any royalty, duty, cess or levy of any kind of such use of water.
- 57 The tariff/or the energy generated at the Project during pre-commissioning stage shall be fixed as per the specific guidelines of Govt. of India for such energy for hydro-electric Projects.
- 58 The State Govt. shall provide due assistance to the Selected Bidder 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 approval/license from the relevant authorities for the issuance of which the State Govt. shall assist.

- 59 The State Govt. shall provide due assistance to the Selected Bidder 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 Selected Bidder.
- 60 The State Govt. shall provide due assistance to the Selected Bidder in obtaining all necessary import licenses for the Project from the relevant Central Govt. authorities to the extent permissible by Law. The Selected Bidder shall submit a list of such equipments required to be imported for the Project to the State govt. for approval. The State Govt. shall provide necessary need based assistance in obtaining the concessions and incentives given by the Central Govt. for setting up of Projects in North Eastern States.
- 61 The selected Bidder shall have to contribute not less than one paise per unit of electricity sold for Local Area Development Trust which shall be enhanced with enhancement of tariffs on pro-rata basis. Preference shall be accorded to the bidders quoting higher contribution.
- 62 The State Govt. can impose an environment cess, which may be one paise or more per unit of electricity sold, according to the Law, and shall be collected at the source by the Selected Bidder and deposited with the State Govt. No other taxes/duties/cess will be levied on the sale of electricity by the Selected Bidder within the State or outside the State.
- 63 Save and except as provided aforesaid the Selected Bidder shall not assign its rights and obligations hereunder without prior consent in writing of the State Government.
- 64 The Selected Bidder shall be governed and bound by the guidelines as may be notified by the Govt. of India or the State Govt. under the relevant Acts from time to time.
- 65 The Selected Bidder hereby covenants that on demand from the Govt. of Arunachal Pradesh, it shall pay the amounts, if any payable hereunder by it to the Govt. of Arunachal Pradesh failing which the Govt. of Arunachal Pradesh may recover the same from the Selected Bidder in any manner as advised under the Law.
- 66 The tariff will be finalized as per the Government of India policy, State/ Central Electricity Regulatory commission.
- 67 The Bidder may specify any other additional benefit / incentive to be offered to the State Govt.


Secretary (Power),
Govt. of Arunachal Pradesh
Itanagar.