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**Implementation Agreement (Annexure 21)**

for

Competitive Bidding Process for Development of Small Hydro Power Stations in the  
state of Jharkhand, India

Signed between



**Jharkhand Renewable Energy Development Agency (“JREDA”)**

and

**Independent Power Producer (.....)**

Date:

## ANNEXURE 21

### Implementation Agreement

#### IMPLEMENTATION AGREEMENT FOR SMALL HYDRO POWER PLANTS

This Implementation Agreement (the Agreement) made on this \_\_\_\_\_ day of the \_\_\_\_\_ 2016 Two Thousand and Thirteen

BETWEEN

The **Jharkhand Renewable Energy Development Agency**, an agency governed by the Department of Energy, Government of Jharkhand having its office at \_\_\_\_\_, acting through Shri \_\_\_\_\_, Director, (hereinafter referred to as “JREDA” which expression unless repugnant to the context or meaning thereof, shall include its successors, administrators or permitted assigns), of the FIRST PART;

AND

M/s \_\_\_\_\_ an entity registered under Companies Act / a Partnership Firm registered under \_\_\_\_\_ / a proprietary concern having its office at *{strike off whichever is not applicable}* \_\_\_\_\_ (herein after referred to as the Independent Power Producer (IPP) which expression shall unless repugnant to the context or meaning thereof, include its successors, administrators or permitted assigns), acting through \_\_\_\_\_ who has been duly authorized by the IPP vide their resolution /authorization dated \_\_\_\_\_ to execute this Agreement, of the SECOND PART.

WHEREAS both the parties shall be individually referred to as “Party” and collectively as “Parties”

WHEREAS

- A. JREDA is the nodal agency entrusted with the responsibility of development of Small Hydro Power Plants up to a capacity of 25 MWs in the State of Jharkhand;
- B. JREDA conducted a competitive bidding process for selection of IPP’s for development of Fourteen (14) Small Hydro Power Projects more particularly described in the RfP **dated** \_\_\_\_\_ issued by JREDA;

- C. The IPP has been declared as Successful Bidder and has been allotted the Project vide issuance of a Letter of Intent dated \_\_\_\_\_
- D. The Successful Bidder has submitted the acceptance of Letter of Intent issued by JREDA dated \_\_\_\_\_
- E. The IPP has submitted the Performance Guarantee to JREDA equivalent to Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_) as per the terms of RfP;
- F. The IPP is now desirous of undertaking the implementation of the project in accordance with the conditions set forth in this Agreement.

**NOW THEREFORE IN CONSIDERATION OF THE PREMISES AND MUTUAL COVENANTS AND CONDITIONS SET FORTH HEREIN, THE AGREEMENT WITNESSETH AS FOLLOWS:**

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## 1. ARTICLE-1: DEFINITIONS & INTERPRETATIONS

### DEFINITIONS

In this Agreement, the following words and expressions shall have the respective, meanings set forth below, unless the context otherwise requires:

- 1.1 **"Agreement"** shall mean this Agreement together with all its annexures and any amendments thereto made in accordance with the provisions contained herein;
- 1.2 **"Applicable Laws"** shall mean all laws as are in force for the time being and applicable in the state of Jharkhand including rules and regulations made there under, and judgments, decrees, injunctions, writs and orders of any court of record, during the subsistence of this Agreement;
- 1.3 **"Applicable Permits"** shall mean all clearances, permits, authorizations, consents and approvals required to be obtained or maintained under Applicable Laws in connection with the design, engineering, financing, procurement, construction, operation and maintenance of the Project/Site during the subsistence of this Agreement;
- 1.4 **"Commercial Operation Date (COD)"** shall mean the date on which all the units of the Project have been commissioned;
- 1.5 **"Concession Period"** shall mean a period of Forty (35) years beginning from the date of achievement of Commercial Operations;
- 1.6 **"Effective Date"** shall mean the date of signing of this Agreement by all the Parties.
- 1.7 **"Energy"** means the electrical output in kilowatt hours (kWh).
- 1.8 **"Equity" shall mean**
  - a) In case of a Company, the aggregate of all subscribed and paid up share capital
  - b) In case of a Partnership Firm, the sum total of partners' Capital
  - c) In case of a Sole proprietorship entity, the proprietor's Capitalas invested in the Project and held by one or more shareholders/partners in the IPP, in accordance with the financial plan.
- 1.9 **"Financial Closure"** shall mean the date on which the Financing Documents providing for funding by the Lenders have become effective and the IPP has unconditional access to such funding under the Financing Documents.
- 1.10 **"Force Majeure"** shall have the meaning as ascribed thereto in Article 7.

- 1.11 **"Free Power"** shall mean the quantum of Energy which an IPP is obligated to supply without any consideration as per Article 5.1
- 1.12 **"GoI"** shall mean the Government of India.
- 1.13 **"GoJ/Government"** shall mean the Government of Jharkhand.
- 1.14 **"Discom"** shall mean Jharkhand Bijli Vitran Nigam Limited (JBVNL) or a successor entity of JBVNL responsible for distribution of electricity in the state of Jharkhand as per the license issued by JSERC;
- 1.15 **"JSERC"** means Jharkhand State Electricity Regulatory Commission or its successor or its legal assignee.
- 1.16 **"MoEF"** shall mean Ministry of Environment & Forests, GoI or its successor authority/agency.
- 1.17 **"Project"** shall mean the \_\_\_\_\_ small hydro electric project having an installed capacity of \_\_\_\_\_ MW as per Detailed Project Report and proposed to be established on \_\_\_\_\_ stream/nallah/River, a tributary of \_\_\_\_\_ River of \_\_\_\_\_ Basin in the \_\_\_\_\_ District in the State of Jharkhand, India including complete hydroelectric power generating facility covering all components such as diversion, intake works, water conductor system, power station, generating units, project roads, bridges, offices, residential facilities, stores, guest houses and other connected facilities including the switchyard transmission line Interconnection Facilities.
- 1.18 **"Power"** means the electrical power in MWs.
- 1.19 **"RfP"** shall mean the Request for Proposal document including the Annexures there of issued by Jharkhand Renewable Energy Development Agency on <Enter Date> for conducting a Competitive Bidding Process for Development of Small Hydro Power Stations in the state of Jharkhand, India and shall include any revisions, modifications, amendments or alterations or clarifications thereto;
- 1.20 **"Site"** shall mean the site of Project appurtenances, generating plant including land, waterways, roads and any rights acquired or to be acquired by IPP for the purposes of the Project.
- 1.21 **"State"** shall mean the state of Jharkhand.
- 1.22 **"Station"** shall mean the designated hydel power station of the IPP.
- 1.23 **"Term of Agreement"** shall have the meaning as specified in Article 2.2;

**Note:** In the absence of availability of definitions in the foregoing references, the capitalized term shall be interpreted only for reference/guidance in accordance with the Electricity Act, 2003 or any other relevant electricity laws, rules or regulations prevalent in the state of Jharkhand.

## **2. ARTICLE 2: TERM AND TERMINATION OF THE AGREEMENT**

### **Effectiveness**

- 2.1 The Agreement shall come into force with effect from the Effective Date.

### **Term of Agreement**

- 2.2 The Agreement shall remain in force up to a period of Thirty Five (35) years from the achievement of Commercial Operations (CoD), unless terminated earlier in accordance with the provisions of this Agreement.

### **Transfer of Projects**

- 2.3 The allotment of the project shall remain valid till 35th anniversary of the day on which the project achieves Commercial Operations (CoD). At the end of 35th anniversary, the project shall revert back to the GOJ. Any decision with regard to an extension beyond 35 years shall be at the discretion and disposal of GOJ.

### **Termination of the Agreement**

- 2.4 This Agreement shall stand terminated upon occurrence of any of the following:
- (a) Thirty Fifth (35<sup>th</sup>) Anniversary from the date of issuance of Letter of Intent; or
  - (b) Events leading to early termination as stated in Article 4.1, Article 4.12, Article 6.5 and Article 7.11; or
  - (c) Mutual agreement between the Parties.

**3. ARTICLE 3: Minimum Equity Holding / Lock-in**

- 3.1 It is clarified that if any of the entity/entities (i.e. Parent and/or Affiliate, of the Bidding Entity/ any Member of the Bidding Consortium, whose technical and financial credentials have been provided in the Bid submitted in response to the RfP) make equity investment in the IPP, the minimum shareholding requirements shall apply to such entity/entities. It is also clarified that in case the Selected Bidder is a Bidding Consortium, then the members (other than the Lead Member) of such Bidding Consortium shall be allowed to divest their equity as long as the other remaining members (which shall always include the Lead Member) hold the minimum specified equity. It is further clarified that in case equity is held by the Affiliates or Parent, subject to the proviso below, the Selected Bidder shall be permitted to transfer its shareholding in the IPP to its Affiliate/s or Ultimate Parent. If any such shareholding entity, qualifying as an Affiliate/Ultimate Parent, is likely to cease to meet the criteria to qualify as an Affiliate/Ultimate Parent, the shares held by such entity shall be transferred to another Affiliate/Ultimate Parent.
- 3.2 Provided further, the Lead Member of the Consortium or Bidding Entity shall compulsorily hold at least twenty six percent (26%) of the total paid equity share capital of the IPP for at least five (5) years post COD of the Power Station, there after Lead Member or Bidding Entity shall have the right to disinvest its entire equity holding in the IPP. In case the Lead Member or Bidding Entity is holding equity through Affiliate/s or Parent, such restriction shall apply to such entities.
- 3.3 All transfers of shareholding of the IPP by any of the entities referred to above shall be after prior written intimation to JREDA, of at least thirty (30) days.
- 3.4 The Selected Bidder may invest in the equity share capital of the IPP through its Affiliate(s) or Parent. If the Selected Bidder so invests through any Affiliate(s) or Ultimate Parent or Parent, the Selected Bidder shall be liable to ensure that minimum equity holding/lock-in limits specified above are still maintained. For this purpose, the effective shareholding of such Selected Bidder in the IPP shall be considered as follows:-
- (a) For computation of effective Equity holding, the Equity holding of the Selected Bidder or its Parent in such Affiliate(s) or Parent and the equity holding of such Affiliate(s) or Parent in the IPP shall be computed in accordance with the example given below:
  - (b) If the Parent or the Ultimate Parent of the Selected Bidder A directly holds thirty percent (30%) of the equity in the IPP, then holding of Selected Bidder A in the IPP shall be thirty percent (30%);
  - (c) If Selected Bidder A holds thirty percent (30%) of the Affiliate and the Affiliate holds fifty percent (50%) in the IPP, then, for the purposes of ascertaining the minimum equity/equity lock-in requirements specified above, the effective holding of Selected Bidder A in the IPP shall be fifteen percent (15%), (i.e.  $30\% * 50\%$ );



**4. ARTICLE 4: Conditions subsequent to be fulfilled by IPP**

- 4.1 Prior to the Effective Date, the IPP shall have provided to JREDA a Performance Guarantee of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_) *{insert a value calculated at Rs. 7.50 Lakhs /MW}*. The said Performance Guarantee shall remain valid till three (3) months from CoD of the Project. In case the validity of Performance Guarantee is expiring before the validity period specified in this Article, the IPP shall at least thirty (30) days before the expiry of the Performance Guarantee replace the Performance Guarantee with another Performance Guarantee or extend validity of existing Performance Guarantee which is valid and in force till the validity period specified in this Article. JREDA shall have a right to invoke the Performance Guarantee available with JREDA and terminate this Agreement in case the IPP fails to extend the validity of the Performance Guarantee on or before thirty (30) days before the expiry of Performance Guarantee.

**Commissioning:**

- 4.2 The Project shall be commissioned as per the following timelines from the date of signing of Implementation Agreement between the Successful Bidder and JREDA.
- (a) Within 30 (Thirty) months for projects with capacity upto 5 MW;
  - (b) Within 36 (Thirty Six) months for the projects with capacity more than 5 MW & upto 12 MW; and
  - (c) Within 48 (Forty Eight) months for the projects with capacity more than 12 MW
- 4.3 Commissioning Schedule is subject to Force Majeure Conditions detailed in “Definitions”, Section 1.

**Delay in Commissioning**

- 4.4 In case of failure to achieve milestone as per Commissioning Schedule provided above in Article 4.2, JREDA shall have a right to encash the Performance Guarantee in the following manner:
- (a) For delay up to one month – JREDA will encash 20% of the total Performance Guarantee proportionate to the Capacity not commissioned.
  - (b) For delay of more than one month and up to two months - JREDA will encash 40% of the total Performance Guarantee proportionate to the Capacity not commissioned in addition to BG in clause above.
  - (c) For delay of more than two months and up to three months - JREDA will encash the remaining Performance Guarantee proportionate to the Capacity not commissioned in addition to BG in clause above.

4.5 In case the IPP does not executes PPA with the Discom, the following shall apply:

In case the commissioning of project is delayed beyond 3 (three) months, the IPP shall pay to Procurer the Liquidated Damages (LD) at the rate of Rs.1,00,000 per MW per day for the delay in such remaining Capacity which is not commissioned. The amount of liquidated damages worked out as above shall be recovered by Procurer from the payments due to the IPP on account of sale of Hydro power to Procurer. The maximum time period allowed for commissioning of the full Project Capacity with encashment of Performance Guarantee and payment of Liquidated Damages shall be limited to 18 months from the date of signing of PPA. In case of any further delay beyond the maximum time period allowed, the PPA capacity shall stand reduced / amended to the Project Capacity Commissioned and the PPA for the balance Capacity will stand terminated and shall be reduced from the Allocated Project Capacity.

4.6 In case the IPP executes PPA with the Discom, the provisions of PPA shall be applicable.

### **Financial Closure or Project Financing Arrangements**

4.7 The IPP shall report tie-up of Financial Arrangements for the projects within 12 months from the date of signing of Implementation Agreement. Further, the IPP should adhere to the milestones as provided in Article 4.9 of this agreement.

4.8 In case of delay in achieving above condition, as may be applicable, JREDA shall encash Performance Guarantees and shall remove the project from the list of the selected Projects.

### **Project Timelines**

4.9 The IPP is required to complete the following milestones on or before the timelines indicated against each of the milestone:

Milestone	Timelines (From the date of signing of the Implementation Agreement)		
	For projects with capacity upto 5 MW	For projects with capacity more than 5 MW & upto 12 MW	For projects with capacity more than 12 MW
Obtain all Statutory Clearances	8 Months	8 Months	8 Months
Achieve Financial Closure	12 Months	12 Months	12 Months
Achieve COD of the Project	30 Months	36 Months	48 Months

- 4.10 JREDA may at its sole discretion waive the achievement of or relax timelines for achievement of any of the milestones stated above however the milestone with respect to achievement of CoD of the Project shall not be relaxed under any circumstances except for an event of Force Majeure;
- 4.11 The IPP shall be responsible for the payment of any taxes, charges and fees in connection with the Performance Guarantee.

#### **Consequences of non-fulfilment of Conditions Subsequent**

- 4.12 In case the IPP fails to achieve any of the milestones as stated in Clause 4.1 to Clause 4.9 except for the reasons of Force Majeure, JREDA may at its sole discretion take all or any of the following actions:
- (a) Invoke and encash the Performance Guarantee;
  - (b) Cancel the land lease provided to the IPP;
  - (c) Terminate the Implementation Agreement by issuing a fifteen (15) days Notice of Termination; and
  - (d) Requests the discom to terminate the PPA (If applicable); and
  - (e) Takeover the assets in whatever form available at the Project site;
- 4.13 In case JREDA is satisfied that the IPP has rectified the event causing issuance of Notice of Termination within the allotted period of fifteen (15) days from such Notice of Termination, it may suitably withdraw the Notice of Termination.

## **5. ARTICLE 5: SALE OF POWER AND FREE POWER**

### **Sale of Power**

- 5.1 Bidders are required to quote the quantum of power, as a percentage of total power generated, they are willing to supply free of cost over and above the mandatory minimum of 4% free power.
- 5.2 The entire power shall be purchased by Jharkhand Discom and necessary steps shall be taken to have a binding arrangement between the project and Discom. The said arrangement shall be backed by proper security mechanisms like Escrow and Letter of Credit. Also these projects being renewable energy projects shall have a must run status. The electricity shall be purchased by Discom at a tariff determined by JSERC as per prevailing regulations.
- 5.3 However, the IPP is free to sell power to any their party other than the Discom if it wish to do so. For sale of power to any third party within or outside the state, the IPP shall be required to pay the open access charges, T&D losses as per the regulations issued by JSERC.
- 5.4 Not later than twelve (12) months from the signing of Implementation Agreement, the IPP shall, vide a written communication to Discom under a copy to JREDA indicate its willingness to supply power to the Discom. In case the IPP fails to indicate its willingness as per the timelines under this clause, the Discom shall be under no obligation to procure power from the Project.
- 5.5 **In case IPP wishes to sell power to the Discom, the following shall apply:**
- (a) The power proposed to be sold to the Discom will be purchased by the Discom at a tariff determined by JSERC as per prevailing tariff regulations;
  - (b) The IPP shall be required to execute a separate Power Purchase Agreement with Discom as per the standard format of Power Purchase Agreement / Wheeling Agreement used by the Discom;
- 5.6 **Grid Connectivity**
- (a) The project should get connected with the Power Substation or Grid Substation of Discom / STU. The responsibility of getting connectivity with the transmission system will lie with the IPP. The IPP shall be required to obtain an “in-principle” approval from the Discom / STU (as the case may be) regarding the proposed evacuation arrangement that is to be constructed by the IPP.

- (b) The projects should be connected with the Power Substation (Distribution Network) / Grid Substation (Transmission Network) as per the relevant regulations of the Central Electricity Authority. The IPP may use the existing substation or inject into the distribution network for better utilization of the available infrastructure. The IPP shall first explore the possibility of connecting to the Power Substation and only in case of its inability to connect to the Power Substation due to any constraint it may consider the option of injecting power into Grid Substation.
- (c) The requisite arrangement for the evacuation of the power from the generation plant to the allocated Interconnection Substation shall be developed by the IPP. The Government of Jharkhand shall reimburse the cost of such construction of power evacuation facilities from the project's generator switchyard to the interconnection point (injection point), up to a maximum length of 10 kms at the rates determined by JUSNL/JBVNL and such reimbursement shall not be considered for determination of tariff by both the parties. The cost of evacuation infrastructure beyond a distance of 10 kms, shall be borne by the IPP.

### **Mechanism for Dealing with Free Power**

- 5.7 In case where the IPP chooses to supply the power to Discom, the royalty / Free Power will be settled in the monetary terms as the revenue equivalent to the percentage of Free Power at the tariff determined by the Hon'ble Commission, in the following manner:
- 5.8 The IPP would deliver 100% of net power generated to Discom. Discom would in distribute the payment in following parts:
- (a) An amount equivalent to 2% of energy towards Local Area Development Fund;
  - (b) An amount to the account of JREDA as given below:  

*Quantum of Free Power quoted by the Bidder*  
*Plus*  
*2% out of the mandatory minimum of 4% of Free Power*
  - (c) Balance to the IPP.
- 5.9 In case where the IPP chooses NOT to supply the power to Discom, the royalty / Free Power will be settled in the monetary terms as the revenue equivalent to the percentage of Free Power at the tariff determined on the basis of applicable regulations promulgated by the Hon'ble Commission, in the manner outlined in clause 5.10.
- 5.10 The IPP would deliver such % of net power to Discom which is equivalent to the sum of mandatory minimum of 4% and the % of Free Power quoted by the Successful Bidder in the bid submitted in response to the RfP. Discom would in distribute the payment in following parts:

- (a) An amount equivalent to 2% of energy towards Local Area Development Fund; and
- (b) An amount to the account of JREDA as given below:

*Quantum of Free Power quoted by the Bidder*  
*Plus*  
*2% out of the mandatory minimum of 4% of Free Power*

*Explanation 1: For the purpose of this agreement the term “net power” shall mean power adjusted for auxiliary consumption as per the provisions of JSERC regulations.*

*Explanation 2: In case the IPP choses to supply a portion of power to Discom, the provisions of clauses 5.7 to clause 5.10 shall apply mutatis mutandis.*

## **6. ARTICLE 6: OBLIGATIONS OF PARTIES**

### **Obligations of the IPP**

- 6.1 The IPP shall carry out the necessary detailed investigations and confirmatory surveys, prepare and submit the Detailed Project Report (DPR) for Techno Economic Clearance (TEC), obtain all statutory clearances and approvals from the concerned authorities; and shall implement the project as per the schedule/milestones indicated in the RfP.
- 6.2 The IPP shall submit quarterly progress reports in respect of obtaining statutory clearances/approvals and achieving Financial Closure of the Project. The IPP shall also provide two copies each of the statutory clearances/approvals, as and when the same are obtained.
- 6.3 The IPP shall submit to JREDA two copies each of the Project related Agreements including in particular the Construction Contracts / EPC Contract, if any, the Financing Documents and the O&M Contract, if any. The IPP shall ensure that these Project related Agreements do not in any way hold the JREDA/GoJ liable to the IPP or any Contractor in any manner whatsoever and shall be without prejudice to the rights of GoJ/ JREDA hereunder.
- 6.4 **Monitoring and Supervision of the Project:**

The IPP shall

- (f) Submit to JREDA, monthly progress reports incorporating the copies of the permits / clearances / consents received from various departments / authorities, as applicable and documentary evidence for the achievement of the following milestones associated with the project:
  - (i) Approval from STU/ Discom regarding evacuation arrangement
  - (ii) Possession of Land
  - (iii) Financial Closure
  - (iv) Order placement for purchase of plant & machinery
  - (v) Construction at site
  - (vi) Commissioning & COD
- (g) During the Construction Period, the IPP shall provide videography to JREDA every calendar month, covering the construction of the Project in that quarter. Such video recording shall be provided no later than fifteen days after the close of each quarter.

- (h) JREDA may inspect the Construction Works and the Project. The IPP shall, at all times, afford access to the Site to the authorized representatives of JREDA and to the persons duly authorized by any Government agency having jurisdiction over the Project, including those concerned with safety, security or environmental protection to inspect the Project Site and to investigate any matter within their authority and upon reasonable notice, the IPP shall provide to such persons reasonable assistance/necessary information to carry out their respective duties and functions with minimum disruption to the construction, operation and maintenance of the Project consistent with the purpose for which such persons have gained such access to the Site.

The report shall also include any other relevant information which may affect the date of commissioning for project.

#### **6.5 Maintenance of the Project:**

- (a) “The Project assets would be maintained by the IPP in a condition that would ensure residual life of the project at the rated capacity for at least 20 years at any point. JREDA or its authorized agencies would carry out mandatory inspections on regular basis to ensure the same. The IPP shall provide unhindered access to JREDA to the project”.
- (b) If such inspections reveal that the plant capacity and/or residual life of the project are being undermined due to inadequate maintenance or insufficient capital infusion, JREDA shall order remedial measures to be taken by the IPP. If the IPP fails to comply with these directions, the JREDA shall be at liberty, after providing due opportunity of being heard to the IPP, to terminate the agreement. While doing so, a termination compensation value shall be determined on the basis of estimated net cash flows to equity shareholders for the next ten years or the residual period as determined by an independent agency appointed by JREDA or residual period of concession, whichever is less, discounted at a suitable rate. Both, the assessment of cash flows as well as the discount rate, would be as per the approval of JSERC which will also factor in the costs of recapitalization, refurbishment, renovation, repairs, etc. required to bring the project to the necessary standards.
- (c) The Assets shall be taken over by the JREDA / GoJ through any of its designated agency at the terminal compensation which shall be computed as per the aforementioned article

#### **6.6 Rights and Title over the Site:**

The IPP Shall



- (a) have exclusive rights to the use of the Site in accordance with the provisions of RfP and for this purpose it may regulate the entry and use of the Project by third parties.
- (b) not sublet any part or the whole of the Site save and except as may be expressly set forth in the RfP, provided however that nothing contained herein shall be construed or interpreted as restricting the right of the IPP to appoint contractors for the performance of its obligations hereunder including for operation and maintenance of all or any part of the Project including the Project Facilities.

**6.7 Execution of Upstream and Downstream Projects:**

The IPP shall not have any objection to the development of upstream or downstream hydro power projects including development / diversion of water for irrigation, flood control/ water supply etc. projects being/ to be developed by the GoJ or any of its agencies, provided however, the GoJ will ensure uninterrupted flow of water discharge to the extent as must have been earmarked and indicated in the design discharge by the GoJ and/or as may be permitted under clearances to be issued by the concerned Government departments.

**6.8 Rehabilitation and Resettlement Plan:**

The IPP shall execute the Rehabilitation and Resettlement Plan if required be prepared in consultation with the GoJ, duly vetted by the latter at its own cost and the cost so incurred shall form part of the Project Cost.

**6.9 Safety Measures:**

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

**6.10 Alternative Facilities:**

In case any existing facilities including, but not limited to, irrigation systems, water supplies, roads, bridges, buildings, communication system(s) power systems and water mills are adversely affected because of the implementation of the Project, the IPP shall be responsible and bear the cost of for taking remedial measures to mitigate such adverse effects. The cost of the above remedial measures shall become part of the Project Cost. Such facilities shall be as mutually identified and agreed upon between the IPP and JREDA. The IPP shall not interfere with any of the existing facilities till an alternate facility, as identified, is created.

**6.11 Usage of Forest Land:**

The IPP shall ensure that the land is used only for the Project. Use of Forest land, in case other alternative land is not available, shall be allowed strictly as per provisions of the applicable forest conservation acts and any subsequent relevant Act thereafter and the IPP shall have to fulfill all the conditions mentioned in the order issued by the competent authority in this behalf before taking up the work. However, use of Forest land under Wildlife Protected areas shall be as per the applicable wildlife acts and any subsequent relevant Act thereafter and Hon'ble Supreme Court orders in this behalf.

**6.12 Compensatory Afforestation:**

The IPP shall pay to the GOJ the cost of raising compensatory afforestation and its maintenance for a period and the extent of area, as may be determined by Ministry of Environment and Forests (MoEF), GoI and or the concerned department of the GoJ.

**6.13 Environment Clearance:**

The IPP shall be liable to obtain Environment clearance as required under the Environment (Protection) Act, 1986 and as per Environment Impact Assessment (EIA) Notification dated 14<sup>th</sup> Sept. 2006. This provision shall not be applicable if the project falls in exempt category of projects.

**6.14 Ensuring Flow of Water:**

The IPP shall ensure such minimum flow of water immediately downstream of the weir/barrage/dam for downstream requirements as specified in the environmental clearance issued by the GoJ or as may be directed by any other department of the GoJ or State Pollution Control Board.

**6.15 Protection of Fish culture:**

The IPP shall take appropriate steps, as may be required, for the protection of fish fauna in the project area. For this purpose necessary NOC is to be obtained from Fisheries Department by the IPP.

**6.16 Environment Impact Assessment:**

The IPP shall be liable to carry out Environmental Impact Assessment as required under the Environmental (Protection) Act, 1986 through consultant(s) drawn from a reputed organization and obtain the consent of State Pollution Control Board (SPCB) under the Water (Prevention and Control of Pollution) Act, 1974 or any other environment law(s) as may be applicable. This provision shall not be applicable if the project falls in exempt category of projects.

**6.17 Maintaining Ecological Balance:**

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

**6.18 Dumping of Excavated Material:**

The IPP shall ensure that the material excavated from the site shall be dumped in the area selected mutually by JREDA and IPP.

**6.19 Use of Facilities:**

Subject to availability, security, safety, law, order, and operational factors being met, the IPP shall permit free use, by the GoJ and the general public, of all service roads constructed and maintained by it for the Project after the project has been commissioned.

**6.20 Trees in the Land transferred to the IPP:**

Regarding compensation of trees on the Govt. lands and private land which are to be damaged or felled during the execution of the project shall be dealt as per the existing law in vogue. However, GoJ shall provide necessary assistance to the IPP in obtaining the permission of competent authority for removal of trees on the acquired land.

**6.21 Archaeological Findings, Treasures etc.:**

All fossils, coins, articles of value or antiquity and structures and other remains or things of geological or archaeological interest discovered on the Site shall be deemed to be the absolute property of the GoJ. The IPP shall take reasonable precautions to prevent his workmen or any other persons from damaging any such article or thing. The IPP shall arrange to hand over the same to the GoJ free of cost, provided that, in case any precious or semi-precious material is located, the IPP shall inform the GoJ immediately and abide by the directives of the GoJ which would stand communicated within a period of two (2) months from the date of receipt of such intimation from the IPP.

**6.22 Labour and compliance with labour /Industrial and other laws:**

- (a) IPP shall at its expenses, ensure due compliance with all applicable and governing laws industrial and labour laws and regulations and by-laws both of the GoI and GoJ and all other local authorities and shall keep the GoJ indemnified in respect thereof.

- (b) The IPP shall ensure due compliance with the provisions of the minimum wages Act, payment of wages Act, contract labour (regulations and abolition) Act, workman's compensation Act, EPF Act and other labour/industrial laws in force.

## **Obligations of the GoJ and JREDA**

### **6.23 Assistance in Obtaining Clearances**

JREDA shall assist the IPP in obtaining the various statutory clearances and approvals required for the implementation of the Project, from various competent authorities of the GoJ /GoI on best effort basis. The responsibility of obtaining these approvals/clearances shall, however, rest with the IPP only.

### **6.24 Acquisition of Land**

IPPs/Users societies who are awarded the project by JREDA are required to arrange land. However, JREDA will assist the IPP in procuring government land for implementation of a particular project. Procurement of Forest land will need to be done as per the Forest (Conservation) Act.

### **6.25 Lease hold assignment**

The GOJ shall permit mortgaging of land acquired/diverted for the Project as per rules and laws in force in favour of the Lenders.

**7. ARTICLE 7: FORCE MAJEURE**

7.1 In the event a Party is rendered unable to perform any obligations required to be performed by it under the Agreement by Force Majeure, the particular obligations shall, upon notification to the other Party, be suspended for the period of Force Majeure.

7.2 Subject to Section 6.6, Force Majeure shall mean any of the following events which is beyond the reasonable control of the Party claiming to be affected thereby (“Affected Party”) and which the Affected Party has been unable to overcome or prevent despite exercise of due care and diligence, and results in Material Adverse Effect shall constitute Force Majeure Event

- (a) Earthquake, flood, inundation and landslide;
- (b) Storm, tempest, hurricane, cyclone, lightning, thunder or other extreme atmospheric/ climatic disturbances;
- (c) Fire caused by reasons not attributable to the Developer or any of the employees, Developers or agents appointed by the Developer for purposes of the Project;
- (d) Acts of terrorism;
- (e) Strikes, labour disruptions or any other industrial disruptions not arising on account of the acts or omissions of the Developer or its assignees
- (f) Action of a Government Agency having Material Adverse Effect including but not limited to
- (g) Acts of expropriation, compulsory acquisition or takeover by any Government Agency of the Project Facility or any part thereof or of the Developer’s or its assignees rights in relation to the Project
- (h) Any judgement or order of a court of competent jurisdiction or statutory authority in India made against the Developer or its assignees in any proceedings which is non-collusive and duly prosecuted by the Developer, and
- (i) Any unlawful, unauthorised and without jurisdiction refusal to issue or to renew or the revocation of any Applicable Permits, in each case, for reasons other than Developer’s or its assignees breach or failure in complying with the Project requirements, Applicable Laws, Applicable Permits, any judgements or orders of a Governmental Agency or of any concession by which the Developer or its assignee may be bound.
- (j) War, hostilities (whether declared or not), invasion, act of foreign enemy, rebellion, riots, military action, civil war, ionising radiation, contamination

by volcanic eruptions, any failure or delay of a sub-Developer caused by the events mentioned in this sub-clause for which no offsetting compensation is payable to the Developer by or on behalf of the sub-Developer.

7.3 Upon the occurrence of an event of Force Majeure, the Party claiming that it has been rendered unable to perform any of its material obligations under the Agreement, shall notify the other Party in writing within five (5) days of the commencement thereof the Affected Party shall notify JREDA and inter alia, the following reasonable detail:

- (a) The nature and extent of the Force Majeure Event;
- (b) The estimated Force Majeure Period;
- (c) The nature of and the extent to which, performance of any of its obligations under this Agreement is affected by the Force Majeure Event;
- (d) The measures which the Affected Party has taken or proposes to take to alleviate/ mitigate the impact of the Force Majeure Event and to resume performance of such of its obligations affected thereby; and
- (e) any other relevant information concerning the Force Majeure Event, and/ or the rights and obligations of the Parties under this Agreement.

7.4 As soon as practicable and in any case within 5 days of notification by the Affected Party in accordance with the preceding clause (i), the Parties shall along with the JREDA, meet, hold discussions in good faith and where necessary conduct physical inspection/ survey of the Project Facility in order to:

- (a) Assess the impact of the underlying Force Majeure Event;
- (b) To determine the likely duration of Force Majeure Period and;
- (c) To formulate damage mitigation measures and steps to be undertaken by the Parties for resumption of obligations, the performance of which shall have been affected by the underlying Force Majeure Event.

- 7.5 The Affected Party shall during the Force Majeure Period provide to the other Party regular (not less than weekly) reports concerning the matters set out in the preceding clause (ii) as also any information, details or documents, which the other Party may reasonably require.
- 7.6 Upon termination of such event of Force Majeure, the affected Party shall, within twenty four (24) hours of its termination, intimate the other Party of such termination.
- 7.7 Time for performance of the relative obligations suspended by Force Majeure shall then stand extended by the period of delay which is directly attributable to Force Majeure. The Party giving, such notice shall be excused from timely performance of its obligations under the Agreement, for so long as the relevant event of Force Majeure continues and to the extent that such Party's performance is prevented, hindered or delayed, provided the Party or Parties affected by the event, of Force Majeure shall use reasonable efforts to mitigate the effect thereof upon its performance of the obligations under the Agreement.
- 7.8 Delay or non-performance by a Party hereto caused by the occurrence of an event of Force Majeure shall not:
- (a) Constitute a default or breach of the Agreement; and
  - (b) Neither Party hereto shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event.
- 7.9 Force Majeure shall expressly not include the following, except to the extent resulting from a "Force Majeure":
- (a) Unavailability, late delivery or changes in cost of plant, machinery, equipment, materials, spare parts, fuel or consumables for the Project;
  - (b) A delay in the performance by any contractor(s);
  - (c) Non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment; and
  - (d) Non-performance caused by, or connected with, non-performing Party's
    - (i) Negligent or intentional acts, errors or omissions,
    - (ii) Failure to comply with any of the Laws of India, and or the Government

(iii) Breach of, or default under the Agreement

**Prolonged Force Majeure**

- 7.10 In the event of a Force Majeure event occurring before the COD of the project and if such event continues beyond one (1) year from date of its occurrence or such other period as may be mutually agreed to by the Parties, the matter shall be resolved by the Parties in mutual consultation with each other.
- 7.11 Notwithstanding anything contained in Article 7.10, either Party, in case it is unable to perform any obligations required to be performed under this Agreement due to an event of Force Majeure occurring prior to COD for a continuous period of one (1) year, has a right to terminate this agreement by issuing a fifteen (15) days Notice of Termination.

**Consequences of termination due to prolonged Force Majeure**

- 7.12 In case this Agreement is terminated due to an event of prolonged Force Majeure, the following shall apply:
- (a) The Land lease provided to IPP shall stand cancelled;
  - (b) JREDA shall return the Performance Guarantee provided by the IPP;
  - (c) The IPP shall be allowed to demobilise the assets in whatever form from the Project site.



**8. ARTICLE 8: ADDRESSES AND ADDRESSEES**

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

(a) If to JREDA \_\_\_\_\_

(b) If to the IPP \_\_\_\_\_

8.2 Any Party may by notice of at least fifteen (15) days to the other Party, change the addresses and/or addressees to which such notices and communications are to be delivered or mailed.

8.3 The Party sending the notice shall also send a copy to the designated officer, if any, of the Party specified in respect of that notice in the Agreement.

## **9. ARTICLE 9: MISCELLANEOUS**

### **Levies, Taxes & Charges**

- 9.1 In case the IPP gets the supplies of the material from outside the State of Jharkhand, it shall be required to register itself as a Casual Dealer with the Commercial Tax Department, State of Jharkhand according to the prevailing rules and regulations.

### **Governing Law**

- 9.2 The rights and obligations of the Parties under or pursuant to the Agreement shall be governed by and construed in accordance with the Laws applicable in the State of Jharkhand.

### **Language**

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

### **Amendments**

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

### **Relationship of the Parties**

- 9.5 This Agreement shall not be interpreted or construed or create an association, joint venture or partnership between the parties or to impose any partnership obligation or right upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

### **No Waiver**

- 9.6 No waiver by either Party of any default by other Party in the observance and performance of any provision of or obligations of or under the Agreement:

shall operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under the Agreement.

shall be effect unless duly executed in writing by a duly authorized representative of such Party; and

- (a) shall affect the validity or enforceability of the Agreement in an manner.

- 9.7 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of the Agreement or any obligation there under nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

#### **Exclusion of Implied Warranties**

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

#### **Counterparts**

- 9.9 The Agreement may be executed in two (2) counterparts, each of which when executed and delivered shall constitute an original of the Agreement.

#### **Assignment**

- 9.10 The Agreement shall not be assigned by either Party except by mutual consent of the Parties in writing.

Notwithstanding the foregoing for the purpose of financing the Project, the IPP may assign or create security over its rights and interests under or pursuant to the Agreement. The holder of any security created under this Section shall not be prevented or impeded by JREDA from enforcing such security in accordance with its terms, including, without limitation, exercising any right it may have to reassign, the Agreement to a new qualified owner or operator of the Project. JREDA shall execute all such consents to assignment and/or acknowledgement of any security created in connection with this Section as are reasonably requested by the IPP to give effect to the foregoing.

#### **Indemnity**

- 9.11 The IPP shall be fully responsible for any damage or loss arising out of the construction, operation or maintenance of the Project to any property or persons and also undertakes to indemnify JREDA on such account.

#### **Severability**

- 9.12 If for any reason whatever any provision of the Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or, enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure

to agree upon any such provisions shall not be subject to dispute resolution under the Agreement or otherwise.

### **Survival**

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

### **Confidentiality**

- 9.14 Each of the Parties shall hold in confidence the agreements relating to the Project and all documents and other information, whether technical or commercial, which is of a confidential nature supplied to it by or on behalf of the other Party relating to the design, construction, insurance, operation, maintenance, management and financing of the Project and shall not, save as required by law or appropriate regulatory Authorities, the Lenders, investors in the IPP or by professional advisors of the Parties hereto or of the Lenders or investors as aforesaid, publish, otherwise disclose or use the same for its own purposes otherwise than as may be required to perform its obligations under this Agreement. These provisions shall not apply to:

any information in the public domain otherwise than by breach of this Agreement;

Information in the possession of the receiving party thereof before divulgence as aforesaid, and which was not obtained under any obligation of confidentiality;

Information obtained from a third party who is free to divulge the same, and which is not obtained under any obligation of confidentiality; and

Information relating to the Project after JREDA has acquired the Project from the IPP

Signed and Delivered by within named Jharkhand Renewable Energy Development Agency by the hand of Shri\_\_\_\_\_ authorized person, in the presence of;

1.

2.

In witness whereof the IPP has caused its Common Seal affixed hereto and to a duplicate thereof on the day, month and year herein above written in pursuant to the Resolution of its Board of Directors passed in that behalf on the \_\_\_\_day of \_\_\_\_in the presence of \_\_\_\_\_and \_\_\_\_\_ who have signed these presents in token thereof and \_\_\_\_\_has countersigned the same in token thereof.