

MEMORANDUM OF UNDERSTANDING between The Government of Nepal, represented by Ministry of Water Resources and Satluj Jal Vidyut Nigam Limited concerning the Execution of Arun-3 Hydropower Project in Nepal

This Memorandum of Understanding (hereinafter referred to as "MOU") is made and entered into as of this 2nd day of March 2008 by and between The Government of Nepal (hereinafter referred to as GoN) represented by Ministry of Water Resources (hereinafter referred to as "MOWR") and the Satluj Jal Vidyut Nigam, Ltd, a company incorporated under the Companies Act, 1956 of the Republic of India, a company having its Registered office at Himfed building, New Shimla, Shimla, Himachal Pradesh, India- 171009. (hereinafter referred to as "SJVN"), which expression shall unless repugnant to the context or meaning thereof, include its Members of the Consortium, successor(s), administrator(s) and permitted assignee(s) including a public / private company which shall be incorporated in Nepal for the purpose of executing the Arun-3 Hydropower Project as defined in the subsequent provisions contained herein.

WHEREAS, GoN has promulgated its Hydropower Development Policy, 2001 to enhance the development process of hydropower by creating investment friendly settings;

WHEREAS, MOWR on behalf of the GoN has been working for the promotion of hydropower development in the country in order to implement hydropower projects based on the concept of Build, Operate, Own and Transfer (BOOT);

WHEREAS, GoN solicited the Expression of Interest (EOI) to select the Proponent/Developer in order to implement the Arun-3 Hydropower Project with a minimum installed capacity of 402 MW and associated transmission system for evacuation of power and

energy up to India and access road required for the construction of the Project (hereinafter referred to as “Project”);

WHEREAS, SJVN had submitted its proposal and wishes to implement the Project and the GoN, after the careful evaluation of the proposals submitted by various other potential developers evaluated and established SJVN as the substantially responsive developer to implement the Project of such magnitude thereby invited SJVN to enter into this MOU;

WHEREAS, GoN appreciates that SJVN shall choose appropriate financial options, suppliers, credit options and technologies in the best interests of the Project, and

WHEREAS, MOWR and SJVN have held discussions and wished to formalize endeavor to expedite the execution of the Project; and

NOW, THEREFORE, MOWR and SJVN hereto hereby agree as follows:

1. Both the Parties acknowledge that the Project is export oriented. SJVN agrees to execute the Project, a Run-of- the River Project located in Arun-3 River in Sankhuwasabha District of Eastern Development Region of Nepal. The Project is more fully described in the report as studied by Nepal Electricity Authority (NEA). The brief description of the Project is attached herewith as Annex I for ready reference. SJVN shall receive all available information, documents, Reports within 8 (Eight) weeks and the acquired land for the purpose of the Project construction (camp, power house, dam site etc.), from NEA, within a time frame as required by SJVN, with two equal installments of payment amounting to total of NRs 45,14,00,000/- (Nepali Rupees Forty Five Crore and fourteen Lacs only), for the same to NEA. The first installment of such

payment shall be made within 8 (Eight) weeks before handing over the documents and the second installment shall be made within six months of signing of this MOU. List of documents to be provided, is enclosed as Annexure II. The detail of land acquired shall be provided within 8 (Eight) weeks from the date of signing of this MOU.

2. SJVN agrees to provide 21.9 (twenty one point nine) percent of monthly generated power and energy from the Project, net of auxiliary consumption and transformation losses, measured at the Bus-bar, free of costs from the date of the commencement of commercial generation in addition to the royalty and export tax (other than on free power and energy) applicable pursuant to the Hydropower Development Policy, 2001 and Electricity Act, 2049 respectively. The export tax shall not be exceeding 0.005% (Point Zero Zero Five Percent) of export sales revenue.
3. SJVN assures MOWR that the SJVN shall study the possibility of supply of power and energy generated from the Project to the markets of India / Nepal in order to allow the sales of the generated power and energy in an attractive rate wherever available in the Indian / Nepalese markets. SJVN shall ensure suitable arrangements for transmission and evacuation of Power from the Project in the most optimal manner.
4. The SJVN shall undertake studies, based on the required inputs from NEA, to examine and assess the technical requirements for evacuation of power meant for GoN, at the Project bus-bar/switch yard or at any appropriate point on the transmission line made by SJVN by paying applicable wheeling charge.
5. The Parties may mutually agree upon the schedule of supply of power and energy to be provided to the GoN, but the quantum of supply shall not be, in any case, less than 21.9 percent of the

monthly generation, as referred in Clause 2 above. The switchyard infrastructure required for such supply of power and energy to the GoN shall be constructed, operated and maintained by SJVN, free of cost.

6. SJVN shall carry further studies and investigations as may be required bringing the level of studies of the Project to Detailed Engineering Report ("DER") level so as to make the studies at par with internationally accepted pre-construction engineering level. The DER shall also include the access road and the transmission line study for evacuation of power and energy to India and switchyard infrastructure necessary for supply of power and energy to Nepal, as an integral part of the study.
7. SJVN shall carry out the Environmental Impact Assessment of the Project in accordance with the Environment Protection Act, 2053, Environment Protection Rules, 2054 and other relevant internationally accepted practices as an integral part of the DER.
8. SJVN shall apply for Survey License as required to undertake required studies and investigations as mentioned hereinabove with all particulars required therein in accordance with the Electricity Act, 2049 and the Electricity Regulation, 2050 within 120 (One hundred and twenty) days from the date of signing of MOU.
9. A non-refundable fee of NRs. 1,00,000/- (Nepali Rupees One Lac only) per MW of the proposed installed capacity shall be submitted in favour of Department of Electricity Development (DOED), Ministry of Water Resources before the application for survey licence is submitted.
10. GoN agrees to grant the Survey License to SJVN within 30 (Thirty) days of submission of complete application to DoED in accordance with the prevailing laws of Nepal. The validity of the

Survey License to carry out the necessary study/survey/investigation and completion of DER as well as concluding necessary agreement(s) and arranging finance for the development of the Project shall be for the period of thirty (30) months from the date of issuance of such license.

11. SJVN shall start the works within three (3) months from the date of issuance of the Survey License and duly inform the same to MOWR. The SJVN shall submit progress of its works to MOWR every six (6) months. The SJVN shall submit five copies of DER along with all relevant documents including data/maps at the end of the study/investigation.
12. In the event SJVN does not apply for the Generation License or fails to meet the requirements stipulated hereinabove for the purpose of grant of Generation License, all documents, reports including DER, Data /maps, etc. submitted to MOWR shall remain as the property of the GoN as per Hydropower Development Policy 2001 without any further obligation.
13. The SJVN shall conduct an Environmental Impact Assessment Study (EIA) and prepare a detailed EIA Report and an Environmental Management Plan for the Project. GoN agrees to provide any assistance requested by the SJVN during the time the EIA is conducted and prepared. GoN also agrees to use its best efforts to procure the grant of all environmental approvals and forest clearances from the concerned departments within six months after submission of review clarification.
14. SJVN agrees to arrange all necessary land, structures, buildings, and utilities owned by third party. In case SJVN fails to acquire such aforementioned land and structures, etc and if so requested, GoN shall make available such land and structures, owned by

third parties to SJVN for the construction of the project in accordance with Section 33 of the Electricity Act 2049 within the maximum period of one year after the submission of complete information of the same. If the land is already owned by GoN, the land shall be made available on lease, with either a reasonable annual rent or such other rent as may be required by applicable law, for the period of project license for land needed for permanent use or for such shorter period as may be necessary for temporary use. GoN shall make available such land to SJVN within 180 days after the submission of complete information of required land for the execution of the Project. For rehabilitation of displaced families, rehabilitation and resettlement arrangement would be facilitated by GoN and implemented by the SJVN as per prevailing guidelines and practices.

15. GoN shall grant to the SJVN such incentives and concessions as are provided in the relevant Policy and enactments in force. The GoN shall take necessary action to provide overall security as per applicable law without any charge. Any additional security arrangements as may be required by the SJVN for the Project, the same shall be provided by the GoN and the cost of the same shall be borne by the SJVN.
16. SJVN shall apply for Generation License and Transmission License along with relevant Power Purchase Agreement(s), approved EIA, financial commitment, etc. within the validity period of the Survey License in accordance with the Electricity Act, 2049 and Electricity Regulations, 2050.
17. SJVN shall be held responsible for the completion of the construction works within Sixty (60) months from the date of Financial Closure to Commissioning of the Project.

18. The SJVN while implementing the Project undertakes to comply with all statutory requirements in respect of laws, regulations and procedures governing establishment and operation of hydropower.
19. GoN agrees to grant the licenses for generation and transmission of Electricity to SJVN for the development and operation of the Project for a period of thirty (30) years from the date of issuance of such licenses on Build, Own, Operate and Transfer (BOOT) basis. During the validity period of the licenses, SJVN shall maintain and operate the Project according to generally acceptable prudent hydropower and electricity utility practices and handover the ownership of the Project to the GoN, free of cost, at the end of such period. At the time of handing over to the GoN, the Project shall be in a good running condition. GoN shall have an entitlement to inspect Project periodically. The Cost of such inspection and transferring cost, if any, shall be borne by the GoN.
20. GoN, in the course of issuing a Generation License, shall demand a Performance Security at the rate of NRs 5,00,000/- (Nepali Rupees Five Lacs only) per MW which shall be in the form of an unconditional Bank Guarantee issued by an international bank and counter guaranteed by a Nepalese Bank. GoN shall have the unconditional entitlement to forfeit such Performance Security, if SJVN fails to comply with any material terms and conditions prescribed in the Generation License.
21. The performance security shall be valid until the commissioning of the Project. No claim shall be made against such security after the commissioning of the Project.
22. SJVN shall develop the Project in accordance with the terms and conditions as agreed upon as well as within the purview of the

relevant laws of Nepal and shall be responsible for all taxes, duties, fees, levies etc. including royalties and export tax, to be paid to the GoN as provided in the applicable Nepalese policies and laws in force on the date of this MoU. However, in case of any reduction in taxes etc. as mentioned above, the benefit of such change shall be extended to the SJVN.

23. GoN shall facilitate all clearances and approvals. It also agrees to extend all privileges and facilities to SJVN according to the Electricity Act, 2049, the Electricity Regulations, 2050 and other prevailing laws of Nepal in relation to licenses, permissions, authorizations and assurances, etc for the preparation of DER and development and operation of the Project.
24. SJVN shall save harmless and indemnify the Government of Nepal in respect of all claims, proceedings, costs, damages, charges and expenses whatsoever arising out of, or in relation to, any such matter in so far as SJVN is responsible for the Project.
25. Each Party hereto agrees that it shall not divulge throughout the validity of the Survey License, any trade, commercial or technical secrets or confidential matters, reports, documents, data, information, including DER, of one another to any third Party save and except for the purpose of implementing the understanding reached in this MOU. However, any sharing of information between the Parties shall be subject to their respective policies on the disclosure of information.
26. Neither Party shall be liable for any default in performing activities hereunder beyond its control including but not limited to, acts of God, war, riots, civil disturbances/disobediences and acts of terrorism or suppression or any other cause beyond the reasonable control of the Party whose performance is affected.

27. SJVN agrees to utilize as much as possible and to the extent qualified, available local skills and labour crafts and shall maximize the use of local institutions, consulting firms, professionals, individuals and contractors for the preparation of DER and the development and operation of the Projects pursuant to the Labour Act, 2049 and the Labour Regulations, 2050.
28. SJVN shall ensure that their employees, contractors, advisers or any authorized person/body involved in the preparation of DER and the development and operation of the Project shall abide by the prevailing laws of Nepal.
29. Time is the essence for each and every provision of this MoU and the target dates mentioned herein shall form an integral part. Failure to accomplish the assignments as prescribed in this MoU within the stipulated time limit for reasons other than Force Majeure or the reasons attributed to SJVN shall lead this MoU null and void. However, in the event of any Force Majeure conditions or conditions beyond the control of any Party, time shall be extended, after evaluating the impact as per Hydropower Development Policy 2001.
30. Each Party to this MOU and each individual signing on behalf of each Party, hereby represents and warrants to the other that it has full power and authority to enter into this MOU and that both the Parties shall facilitate each other for the execution, delivery and performance of the terms of this MOU.
31. In addition to the actions specifically mentioned in this MOU, the Parties will each do whatever may reasonably be necessary to accomplish the transactions contemplated in this MOU including, without limitation, executing any additional documents reasonably necessary to effectuate provisions and purposes of this MOU. Both Parties shall enter into a detailed

Project Agreement for the development and operation of Project, within 18 (eighteen) months from the date of issuance of survey license. The content or contents of this MOU may be incorporated in the Project Agreement.

32. SJVN shall not assign responsibilities under this agreement without the prior approval of the GoN. The transfer of License shall not be allowed during the period of Survey License.
33. The terms and conditions prescribed at the time of solicitation of EOI and the offer made by SJVN shall be an integral part of this MOU. If any provision of EOI together with the SJVN's offer and MOU contradict each other, the provision of MOU shall prevail.
34. GoN shall ensure that the development, implementation and operation of upstream / downstream Projects by other developers shall not be detrimental in any way to the Project. GoN may accord due consideration on the allotment of such project to SJVN, if any.
35. This MOU constitutes the entire MOU and understanding of the Parties. This MOU may not be modified except in writing signed by both the Parties. Provided, however, no modification shall be made to Article 2 and 5 of this MOU.
36. If any provision or any part or parts of the provision of this MOU is held invalid or contrary to the prevailing laws of Nepal, the remaining provisions of this MOU shall remain valid and unaffected.
37. This MOU shall commence from the date of its signature. It shall remain valid up to the validity of the Survey License or the

Project Agreement, whichever is earlier, unless otherwise agreed between the parties in writing.

38. Any difference or dispute arising out of this MOU at any time between the Parties shall be resolved by mutual consultation and in good faith.

IN WITNESS WHEREOF, the Parties hereto, acting through their duly authorized representatives, have caused this Memorandum of Understanding signed on the date first above written at Kathmandu, Nepal.

On behalf of
The Government of Nepal,
Ministry of Water Resources

On behalf of
Satluj Jal Vityut Nigam Ltd, India

Mr. Anup Kumar Upadhyay
Joint Secretary

Mr. Sanjay Uppal
Deputy General Manager

Witnesses

1. Mr. Rajendra K. Kshatri
Joint Secretary
Water and Energy Commission
Secretariat

Witnesses

1. Mr. Manoj Dixit
Senior Manager
Satluj Jal Vityut Nigam
Ltd, India

2. Mr. Sunil B. Malla
Deputy Director General
Department of Electricity Development

