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INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE GOVERNMENT OF THE REPUBLIC OF INDIA AND
THE ROYAL GOVERNMENT OF BHUTAN
CONCERNING DEVELOPMENT OF JOINT VENTURE HYDROPOWER PROJECTS THROUGH
THE PUBLIC SECTOR UNDERTAKINGS OF THE TWO GOVERNMENTS

The Government of the Republic of India (GoI) and the Royal Government of Bhutan (RGoB) (hereinafter referred to as Parties),

BEARING IN MIND the friendly relations existing between the two countries and their peoples, and the mutual benefits achieved from the cooperation in development of the hydropower resources of Bhutan;

TAKING NOTE of the Agreement between the Royal Government of Bhutan and the Government of the Republic of India concerning cooperation in the field of hydroelectric power signed on 28th July 2006 and the subsequent Protocol to the Agreement signed on 16th March 2009 to achieve a minimum of 10,000 MW hydropower capacity addition by the year 2020;

PURSUANT TO the decisions of the two Governments to take up implementation of six projects under the Intergovernmental (IG) mode and four projects under the Joint Venture (JV) model; and

NOW THEREFORE, the two Governments have entered into this Intergovernmental Agreement to define the common precepts, provisions and obligations of the two Governments that would govern and be applicable to the four Joint Venture hydroelectric projects as agreed between the two Governments, as under:

1. JOINT VENTURE PARTNERS

1.1 The Central Public Sector Undertakings (CPSUs) of the GoI shall be the JV partners in the JV projects as below:

- SJVN Limited shall be the JV partner for the Kholongchhu and Wangchhu hydroelectric projects;
- NHPC Limited shall be the JV partner for the Chamkharchhu-I hydroelectric project; and

- THDC Limited shall be the JV partner for the Bunakha reservoir hydroelectric project.

1.2 Druk Green Power Corporation Limited (Druk Green), a Public Sector Undertaking of the RGoB, shall be the JV partner for all the four JV projects.

2. **CONCESSION TERMS**

i) **CONCESSION PERIOD**

The concession period for the JV projects shall be 30 years from the commercial operation date of the project. Any extension shall be as per the relevant laws and policies of RGoB.

ii) **REVERSION OF POWER PLANT**

At the end of the concession period, the entire project shall be transferred and vested in the RGoB at no cost and in good running condition.

iii) **ROYALTY ENERGY**

The JV Company shall provide 12% of the saleable energy (generated energy net of power plant auxiliary consumption) to the RGoB free of cost as Royalty Energy during the first 12 years of commercial operation of the project and 18% thereafter till the end of the concession period.

iv) **SHAREHOLDING**

The GoI CPSUs and Druk Green shall own equal shareholdings in the JV Company, which shall be registered in Bhutan under the Companies Act 2000 of the Kingdom of Bhutan.

v) **CONCESSION AGREEMENT/LICENSING**

A Concession Agreement shall be drawn between JV Company(s) and the RGoB in keeping with the Bhutan's Sustainable Hydropower Development Policy-2008 (SHDP) and other Policies and Laws of Bhutan.

The JV Company shall be required to obtain licenses from the Bhutan Electricity Authority (BEA) in keeping with the Electricity Act-2001 of Bhutan.

3. **FINANCING FOR THE PROJECT**

3.1 The JV partners shall enter into Shareholders' Agreement.

3.2 The project shall be financed under a debt equity ratio of 70:30.

3.3 The financing of the project shall be follows:

- The debt for the project shall be raised on the JVC;
- Indian CPSUs shall ensure the raising of loan as required for the project;
- The project assets shall be mortgaged;
- If required by the bankers, PPA shall also be concluded;

3.4 The GoI shall provide Druk Green's share of equity in the JV Company formed for each of the JV projects including ATS of the project as grant. The equity requirements from RGoB projects of Chukha, Tala and Wangchhu for cost apportionment on account of Bunakha and ATS shall also be provided by GoI as grant. Any additional equity requirement of Druk Green on account of cost escalation during project implementation phase shall also be provided by GoI as grant.

The estimated costs of the projects arrived at as per the DPRs submitted are as follows:

S.No.	Project Name	Hard Cost (Rs. Million)	Price level year
1	600 MW Kholongchhu HEP ✓	31,436.39	March, 2011
2	570 MW Wangchhu HEP	40,027.56	September, 2011
3	770 MW Chamkharchhu HEP	47,760.22	December, 2011
4	180 MW Bunakha HEP	24,926.42	August, 2011

3.5 The cost of Bunakha project excluding cost of power generating equipments will be apportioned with downstream projects of Chukha, Tala and Wangchhu in the proportion of additional energy benefits accrued to the downstream projects, as per methodology approved by CEA.

3.6 The equity of Druk Green shall be released by GoI through the RGoB.

4 MANAGEMENT OF THE JOINT VENTURE COMPANY

4.1 Both JV partners shall have equal representation in the Board of the JV Company, with each JV partner nominating three to five members on the Board including one representative each from GOI and RGoB. The Chairman of the Board shall be nominated by the RGoB but he/she will have no casting vote.

4.2 During the construction period, the Managing Director, Director (Technical) and Director (Finance) shall be nominated by the GoI CPSUs. The Joint Managing Director of the JV Company shall be appointed by Druk Green. All these appointments shall be subject to final confirmation by the Board.

4.3 The Board and the Management Structure for the Operation & Maintenance stage of the project shall be worked out by the JV partners at an appropriate time.

5 SALE OF POWER

5.1 70% of the saleable energy net of Royalty Energy may be sold under the long term Power Purchase Agreement route and the balance through market mechanism.

5.2 The RGoB shall have the first right of refusal on the saleable energy net of Royalty Energy at the PPA off-take rate applicable at the generating station bus bar. Energy over and above that is required for use in Bhutan shall be sold to beneficiaries in India by the JV Company.

5.3 The JV Company shall be obligated to sell, if desired by RGoB, a part or full Royalty Energy at the market rate to its buyers and remit the proceeds thereof to the RGoB within the same period of receipt of payment as agreed in the sales agreements between the JV Company and the buyers.

6 POWER EVACUATION SYSTEM

6.1 The JV Company shall arrange to construct respective Associated Transmission Systems (ATSs) (within Bhutan from switchyard of respective project to Indo-

Bhutan border). The ATS and its cost would be examined and determined by CEA.

6.2 The GoI shall ensure that grid reinforcement/ construction of EHV/HVDC Pooling Stations and transmission lines on the Indian side are taken up simultaneously with the construction of power evacuation system within Bhutan for smooth evacuation of power from Bhutan to regions in India.

7 OBLIGATIONS OF THE TWO GOVERNMENTS

7.1 The RGoB shall provide government land for the project in keeping with the relevant Rules and Regulations of the RGoB. In case the JV Company requires private land for this purpose, the RGoB shall acquire such land and the lease payment/the compensation in keeping with the norms of the RGoB shall be paid by the JV Company.

7.2 The JV Company shall ensure that the project complies with all statutory environmental legislation of Bhutan. The RGoB shall take up all resettlement of people and compensation at the cost of the project and in keeping with the norms of the RGoB.

7.3 The two governments shall govern taxes and duties for the JV projects during the construction stage as under:

i) The RGoB shall receive from the JV Company, royalty for timber, boulders, stone aggregates and other construction materials required from Bhutan for the project.

ii) The RGoB shall exempt taxes and levies/duties, except where exemption is not permitted by law, for plants, construction materials, equipment, machineries and services imported for direct use in the construction of the project until the date of commercial operation. Any procurement made under tax exemption basis shall be liable for tax payment in keeping with the Tax Act of the Kingdom of Bhutan, if disposed off in Bhutan or not deployed in the project.

iii) The RGoB shall not levy any income tax on any employee of the GoI or a State owned enterprise of the GoI employed directly or engaged in the project. However, employees other than employees of GoI or a state owned enterprise but engaged in the project, directly or not, shall be liable for Income Tax.

iv) Contractors, sub-contractors or consultants recruited in connection with the project will be liable for tax in Bhutan in keeping with the Income Tax Act of the Kingdom of Bhutan. Employees working under these contractors, sub-contractors or consultancy firms are also liable for Income Tax in keeping with the Income Tax Act of the Kingdom of Bhutan.

v) All contractors, sub-contractors or consultants engaged for the project shall be responsible for deducting and remitting Tax Deducted at Source (TDS) in keeping with the provision of the Income Tax Act.

vi) The GoI shall exempt from central excise duty any material/equipment exported to Bhutan for the project. Service Tax that may be applicable on services provided by Indian agencies involved in the project shall be reimbursed by the GoI and will not be incorporated in the overall project cost.

vii) No duty, surcharge or any other form of levy including sales tax will be charged by RGoB on the water used for generation of power , on the generation of power (except for Royalty energy) and on the sale of power by the Company within Bhutan or on it's export to India.

viii) No taxes, duties etc. shall be levied by the RGoB Bhutan on initial transfer of ownership of the Project from RGoB to the JV Company for execution on BOOT basis and its transfer back to RGoB after completion of the concession period.

7.4 After the commencement of commercial operation, the JV Company shall be liable for all types of taxes in keeping with the Taxation Laws of Bhutan.

7.5 To the extent possible, the RGoB will ensure supply of power at domestic rates during construction of the project according to the requirement of the project. However, the required transmission lines and sub-stations will be provided by the JV Company.

7.6 The two governments will facilitate the installation of communication lines, radio communications and construction/improvement of roads, bridges and other infrastructure facilities that are required for the construction and operation of the project at the cost of the project.

7.7 The RGoB shall facilitate the establishment by the JV Company of an appropriate school, hospital and other facilities in the project area for the benefit of the project, if required. These facilities shall be managed by the RGoB at the cost of the project.

7.8 The RGoB shall issue identity cards/permits without payment of security deposits to the concerned employees of the JV Company and the GoI agencies engaged in connection with the project and to the members of their families. However, such security deposits shall be payable for all labour and other personnel appointed by other contractors, subcontractors & consultants.

7.9 The RGoB shall issue/renew identity cards on payment of prescribed fees for all personnel employed for the project.

7.10 The RGoB shall issue, on recommendations of the JV Company, licenses to Indian contractors engaged for the construction of the project. Such licenses shall be valid for the duration of the contract for which the contractor or supplier has been engaged.

7.11 The two governments shall facilitate free movement of men, materials and transportation of machinery and equipment required for the project through their respective territories.

7.12 The personnel of the JV Company and the executing agency shall, at all times, respect the laws of the land. However, no suit, prosecution or legal proceedings shall be instituted against any person in the employment of the JV Company or executing agency for anything which is done in good faith, or purported to be done in good faith for the project.

7.13 The JV Company shall endeavor to develop the project under the Clean Development Mechanism or any other international mechanisms that may come into force in order to mitigate the institutional, technological, geological and financial risks associated with the projects. The ownership and proceeds of the Certified Emission Reductions or any other credits shall be in line with the provisions of the SHDP.

7.14 The two governments shall facilitate and support implementation of the projects including associated transmission systems and trade in electricity.

8 **EFFECTIVENESS OF THE AGREEMENT**

8.1 This Agreement shall enter into force upon signature by both Parties.

8.2 The JV partners shall immediately work to finalize the Shareholder Agreement and sign the same within three months from the date of signing of this Agreement.

8.3 Notwithstanding the interim period of negotiations of the Shareholder Agreement, the JV partners shall initiate mobilization of funds so as to start the construction of the required infrastructures, proceed with the financial closures, obtain statutory clearances, and issuance of bid documents for major works.

9 **SETTLEMENT OF DISPUTES**

Any difference regarding the interpretation or application of any provision of this Intergovernmental Agreement shall be resolved by mutual consultations between the two Governments.

IN WITNESS WHEREOF, we, the undersigned being duly authorized by our respective Governments, have signed the Intergovernmental Agreement.

Signed on the **22nd Day** in the Month of **April 2014** in **Thimphu** in two originals in the English language.

For the Government of the Republic of India	For the Royal Government of Bhutan
(Pradeep Kumar Sinha)	**(Sonam Tshering)**
Secretary, Ministry of Power	**Secretary, Ministry of Economic Affairs**