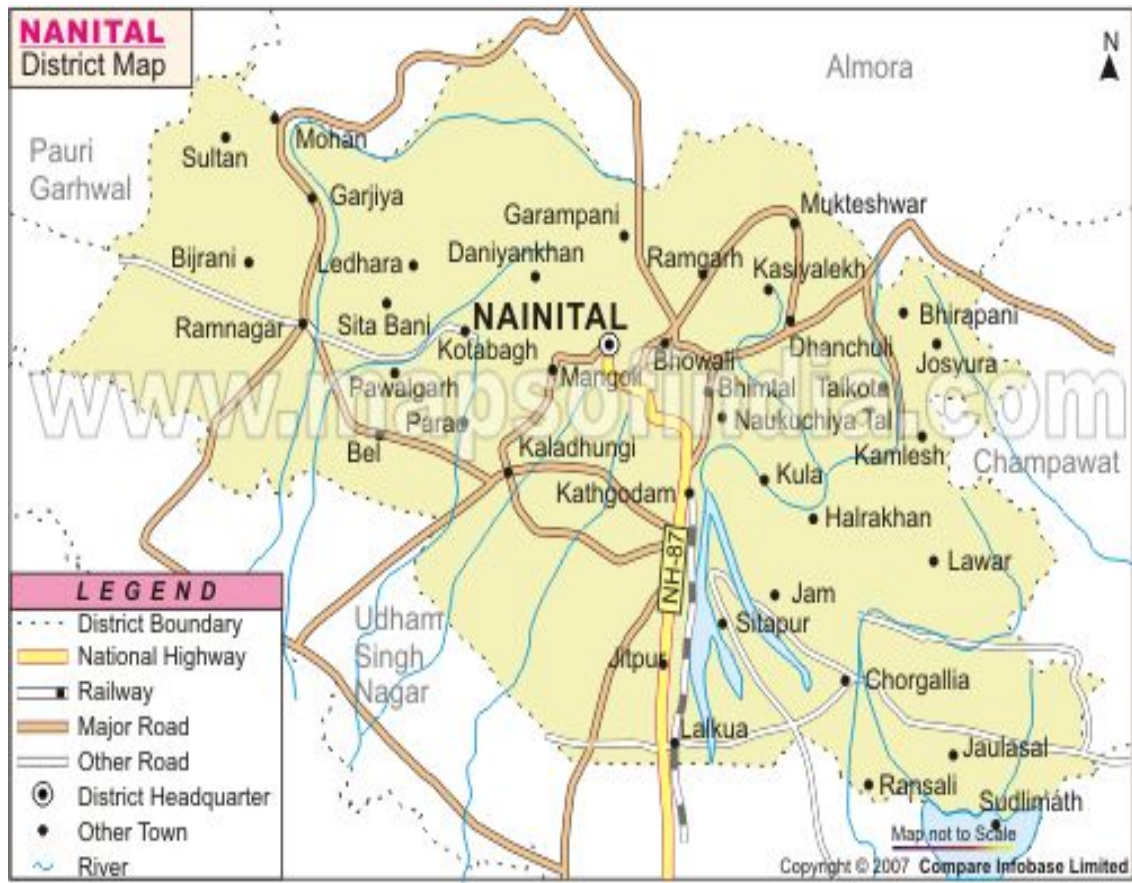


Bid Notice No - 02/D(O)/UJVNL/2009

RFQ-cum-RFP Document

Bawas small HEP in Kosi Valley, District Nainital

“On Build, Own, Operate and Transfer (BOOT) Basis”



<p><u>Issued by</u> Uttarakhand Infrastructure Project Company Pvt. Ltd. (UIPC Pvt. Ltd.)</p>	<p><u>Bids Invited By</u> Uttarkhand Jal Vidyut Nigam Limited (UJVNL) Ujjwal, Maharani Bagh, GMS Road, Dehradun</p>	<p><u>On Behalf of</u> Deptt of Energy, Government of Uttarakhand</p>
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March-2009

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Abbreviation

1. “BG” means Bank Guarantee
2. “BOO” means Build, Own and Operate
3. “BOLT” means Build, Own, Lease and Transfer
4. “BOOT” means Build, Own, Operate and Transfer
5. “CDM” mean Clean Development Mechanism
6. “DPR” means Detailed Project Report
7. “EOI” means Expression of Interest
8. “EPC” means Engineering Procurement and Construction
9. “GoU” means Govt. of Uttarakhand.
10. “IIDC” means IL&FS Infrastructure Development Corporation Limited
11. “IST” means Indian Standard Time
12. “JV” means Joint Venture
13. “MoU” means Memorandum of Understanding
14. “MNES” means Ministry of Nonconventional Energy Sources
15. “KVHCPL” means Kosi Valley Hydel Company Pvt. Ltd. (also referred as Company)
16. “NRRP” means The National Rehabilitation and Resettlement Policy-2007 issued by Government of India
17. “O&M” means Operation & Maintenance
18. “PPA” means Power Purchase Agreement
19. “RE” means Renewable Energy
20. “RFQ cum RFP” means Request For Qualification cum Request for Proposal (also referred to as Document)
21. “SPV” means Special Purpose Vehicle
22. “UERC” means Uttarakhand Electricity Regulatory Commission
23. “UJVNL” means Uttarakhand Jal Vidyut Nigam Limited
24. “UIPC” means Uttarakhand Infrastructure Project Company Pvt. Ltd.
25. “UPCL” means Uttarakhand Power Corporation Limited

DISCLAIMER

1. This Document does not purport to contain all the information that each Bidder may require and accordingly is not intended to form the basis of any investment decision or any other decision to participate in the bidding process for the selection of the Successful Bidder for these Project(s). Each Bidder should conduct its own investigations and analysis and check the accuracy, reliability and completeness of the information in this Document and obtain independent advice from appropriate sources.
2. Neither the Document nor anything contained herein shall form a basis of any contract or commitment whatsoever. Successful Bidder will be required to acknowledge in the Contract Agreement that he has not relied on or been induced to enter such agreements by any representation or warranty, save as expressly set out in such an agreement.
3. While the Document has been prepared in good faith, no representation or warranty, express or implied, is or will be made, and no responsibility or liability will be accepted by UIPC/ UJVNL, its employees or consultants/advisors or agents as to or in relation to the accuracy or completeness of the Document or any other oral or written information made available to any Bidder or its advisors at any time and any liability thereof is hereby expressly disclaimed.
4. This Document includes certain statements, estimates and Projections with respect to the anticipated future performance of the Project. Such statements, estimates and Projections reflect various assumptions concerning anticipated results; these assumptions may or may not prove to be correct. Neither UIPC nor UJVNL nor their employees nor Consultants / Advisors make any representation or warranty with respect to the accuracy of such statements, estimates and Projections and actual performance of neither the Project nor any opportunity, which may be materially different from that set forth in such statements, estimates and Projections.
5. Neither UIPC nor UJVNL nor their employees or Consultants/Advisors shall be liable to any Bidder or any other person under any law including the law of contract, distort, the principles of restitution or unjust enrichment or otherwise for any loss, expense or damage which may arise, or be incurred, or suffered, in connection with this Document, or any matter that may be deemed to form part of this Document, or the award of the contract, or any other information supplied by or on behalf of UIPC or their employees or Consultants or otherwise arising in any way from the selection process for the award of the contract for the Project.
6. No extension of time will be granted under any circumstances to any Bidder for submission of its bid on the grounds that the Bidder did not obtain a complete set of the Document.

7. UJVNL is not bound to accept any or all the Proposals. UJVNL reserves the right to reject any or all the Proposals at any stage without assigning any reasons. No Bidder shall have any cause for action or claim against either UJVNL or UIPC or their officers, employees, successors or assignees for rejection of his bid.
8. Failure to provide information that is essential to evaluate the Bidder's qualifications or to provide timely clarification or substantiation of the information supplied, may result in disqualification of the Bidder.

INVITATION TO BID

UIPC has identified and developed following small hydroelectric power project in the Kosi Valley under category of ‘Up to 25 MW’ for development on “Build, Own, Operate and Transfer” (BOOT) basis. Uttarakhand Jal Vidyut Nigam is now seeking bids from eligible non-GoU agencies for their implementation as per the “Policy for Harnessing Renewable Energy Sources in Uttarakhand with Private Sector / Community Participation-2008” and in accordance with terms and conditions contained in the Bidding Document:

1. Kosi Valley

S. No.	Name of Project	District	Estimated Potential in MW
1	Bawas SHP	Nainital	13.00

This Document is issued by UJVNL on behalf of Government of Uttarakhand for selection of the interested private sector parties in undertaking development of the above-mentioned hydro-power projects.

The scope of the work will include Financing, Design and Engineering, construction, commissioning and O&M of the projects for the concession period. UIPC has completed survey and investigations, identification of transmission system for evacuation of power, preparation of the Detailed Project Report (DPR).

The projects shall be offered for a period of forty years (40) from the date of the award, at the end of which they shall revert to the Government of Uttarakhand or extended further on mutually agreed terms, as per the decision of the GoU.

Applications are sought from non-GoU agencies, which include single firm / company / corporation, PSU, partnership firm, or Consortium of companies, of Indian or Foreign Origin, or Joint Venture of such entities who may individually or jointly commit to implement the project.

For any further details on the Document, information can be obtained from the following address:-

Mr S. K. Jain
Chief Project Officer,
Uttarakhand Infrastructure Project Company Pvt. Ltd.
A-24 Chandralok Colony, 101-Rajpur Road
Dehradun-248001
Phone No.-0135-2742410, 2742276, 2742575
Email. –sk.jain@ilfsindia.com,

Mr Manoj Kesharwani
Assistant Engineer,
Uttarakhand Jal Vidyut Nigam Limited (UJVNL)
Ujjwal, Maharani Bagh, GMS Road,
Dehradun-248001
Phone No.-0135-2523223, 2742276, 2742575
Email. –manoj1176@gmail.com,

Web Site: www.uttarakhandjalvidyut.com, www.uipcinfra.com, www.ilfsindia.com

The following selection procedure is being adopted for the projects and the bid process will proceed as follows:

- (a) The first step would be to evaluate the Technical Capability of the bid submitted for projects by the Bidding Firm/Consortium to ascertain their qualification.
- (b) The second step would be to evaluate the Financial Proposal of the bids submitted in the Bidding Documents. These bids shall be evaluated to select the Preferred Bidder for Development of the specific project.
- (c) Allotment of the projects shall be made as per the “Policy for Harnessing Renewable Energy Sources in Uttarakhand with Private Sector/Community Participation-2008” in the State of Uttarakhand at the time of execution of the Implementation Agreement. (Refer Section IV).

As part of Bidding Documents, Bidding Firm/Consortium would be required to submit their general and particular experience (development, construction and operation of hydro projects or other power sector experience or other Infrastructure Projects), technical capabilities and financial capacity to undertake the Development of the Hydro Power Projects. Bidding Firm/Consortium would be pre-qualified based on financial capacity, technical capability and past experience in development, construction and operation of Hydroelectric Power Projects / other power sector projects / Infrastructure projects. The Applicants will have to qualify on above counts to be pre-qualified for the competitive bidding process for project allotment.

The interested Bidders may obtain a copy of the Document on all working days between 10.00 hours to 18.00 hours from the Dehradun office of Uttarakhand Jal Vidyut Nigam Limited and UIPC Pvt. Ltd. as per the Schedule of Bid Process. The Document can also be obtained by Speed Post / Courier upon written request accompanied by a Demand Draft towards the cost of the Document. The Bid Documents can also be downloaded from the website of UJVNL & UIPC. However, the submission of such downloaded Bid Document should be accompanied by a Demand Draft towards the cost of the Document.

The Bid Document is priced at Rs. 25,000/- (Indian Rupees Twenty Five Thousand Only) or US\$ 650/- plus 12.5% trade Tax or as applicable which should be remitted in the form of a Demand Draft drawn in favour of "Uttarakhand Infrastructure Project

Company Pvt. Ltd.", payable at Dehradun and drawn on any Scheduled Bank in India or any International Bank having its operations in India.

A copy of the DPRs can be obtained upon payment of Rs 0.75 Lacs (Rs. Seventy Five Thousands Only) plus 12.5% Trade Tax or as applicable to be remitted in the form of a Demand Draft drawn in favour of "Uttarakhand Infrastructure Project Company Pvt. Ltd", payable at Dehradun and drawn on any Scheduled Bank in India or any International Bank having its operations in India.

Bidding Documents, duly filled in with relevant Documents should reach the following address up to 15.30 hours on the schedule date.

**The Director (Operations),
Uttarakhand Jal Vidyut Nigam Limited,
Ujjwal, Maharani Bagh, G M S Road
Dehradun-248001
Web site: www.uttarkhandjalvidyut.com,**

The bids (containing the Technical Proposal of the bid) will be opened as per the Bid Schedule at 16.00 hours in UJVNL office at Dehradun by the Committee constituted by Govt. of Uttarakhand, in presence of the bidders. The bids (containing the Financial Proposal of the bid) of the qualified bidders will be opened by the Committee constituted by Govt. Of Uttarakhand, on the Schedule Date at 1100 hours in UJVNL office at Dehradun in the presence of technically qualified Bidding Firm/Consortium representatives who wish to attend.

A site visit will be organized on the date mentioned in the Schedule of Bid Process from the address of UJVNL / UIPC as mentioned above.

A Pre-bid conference meeting will be held with interested parties on the date mentioned in the Schedule of Bid Process at Dehradun to answer prospective bidder's queries relating to the projects. Only those prospective bidders who have purchased the document / those who have downloaded the document from the website and have submitted the demand draft to UJVNL / UIPC will be eligible to participate in the pre-bid conference.

Nothing in this Document or in any communication issued by UJVNL / UIPC or any of their respective advisors or officers or employees shall be taken as constituting an agreement, offer, acceptance, warranty, covenant, confirmation or representation to the recipient of this Document or any other party.

The subsequent sections of the Bid Document provide:

- (a) Instructions for Submission of bid in response to the Document.
- (b) Schedule of Bidding Process,
- (c) Brief outline of the Projects.

- (d) Policy for Harnessing Renewable Energy Sources in Uttarakhand with Private Sector/Community Participation and other Information
- (e) RFQ structure and contents.
- (f) Evaluation Criteria.
- (g) Interpretations.
- (h) RFQ Structure and Content –Guidelines.
- (i) Formats for submission of Relevant Information: I-A, I-B, I-C, I-D, I-E, I-F, I-G, II-A, II-B, II-C, III-A, III-B, III-C, III-2A, III-2B, III-2C , III-2D and III-2E

Further, UJVNL reserves the right to accept/ reject any/all of the applications at any stage without assigning any reasons thereof.

SECTION – I

INSTRUCTIONS TO BIDDERS FOR SUBMISSION OF BID

1.1 Scope Of Application

1.1.1 UJVNL, on behalf of GoU, invites Applications from eligible Bidders (Refer Clause no. 1.3) to bid for the following Hydro Power Projects on “Build Own, Operate and Transfer” (BOOT) basis in accordance with the Terms and Conditions specified in this Document.

S. No.	Name of Project	District	Estimated Potential in MW
1	Bawas SHP	Nainital	13.00

1.1.2 The following project development activities have already been completed/Under Progress

- Surveys & Investigations,
- Detailed Project Report,
- DPR submitted to GoU for Technical Approval & is being pursued for clearance,
- Land Cases for acquiring Civil, Forest & Civil Soyam Land submitted to Competent Authorities & is being pursued for clearance,
- Cases for Statutory Clearances submitted to Concerned Authorities, few have been obtained & rest are being pursued for clearance,
- Community confidence building, participation and capacity building has been completed to the extent envisaged

1.1.3 The Applicants, need to submit detailed proposal in accordance with the terms and conditions stipulated in this Document in respect of hydro project in Kosi Valley. The project is proposed to be allotted to the bidder who emerges successful after the evaluation of the Financial Proposal of the qualified bids.

1.1.4 An Applicant will be responsible for:

- i) Undertaking detailed design, engineering, construction and operation of the facilities;
- ii) Arranging requisite finance for the successful implementation of the project;
- iii) Operation and maintenance of the facility(ies) during the entire contractual period;
- iv) Carrying out work with due diligence with regard to compliance to responsibilities under various applicable Central / State / other laws, rules, and ensure compliance with the same;

1.1.5 The projects shall be offered for a period of forty years (40) from the date of the award, at the end of which the projects shall revert to the Government of Uttarakhand or extended further on mutually agreed terms, as per the decision of the Government of Uttarakhand.

- 1.1.6 Interested Applicants are to demonstrate that they are capable of undertaking the Development and Operation of the Hydro Power Projects and have past experience with development, construction and operation of hydroelectric power projects / other power sector projects / infrastructure projects experience, as also financial capacity to mobilize required resources and bring in or raise their equity contribution. Further they should have good performance record of managing and completing projects without unnecessary litigation.
- 1.1.7 Throughout this Document, the terms Bid / Application, Bidder / Applicant and their equivalents should be treated as synonymous.

1.2 RFQ-cum-RFP

The Document contains the following:-

- | | | |
|-----|--|-------------|
| (a) | Instructions for Submission of bid | Section I |
| (b) | Schedule of Bidding Process (Qualification) | Section II |
| (c) | Brief outline of the projects | Section III |
| (d) | Policy on Hydropower Development by Private Sector in the State of Uttarakhand (upto 25MW)and other information | Section IV |
| (e) | RFQ structure and contents | Section V |
| (f) | Evaluation criteria | Section VI |
| (g) | Interpretations | Section VII |
| (h) | RFQ Structure and Content –Guidelines. | |
| (i) | Formats for submission of Relevant Information | |
| A | For qualification evaluation(Technical Proposal)
I-A, I-B, I-C, I-D, I-E, I-F, I-G, II-A, II-B, II-C, III-A, III-B, III-2A, III-2C, | |
| B | For financial proposal evaluation
III-2B, | |

- 1.2.1 The Bidders, who have purchased the Document, must verify that they have received the complete set. UJVNL / UIPC do not take responsibility for any shortfall in their receipt of the different parts of the Document. The Document signed on each page should be enclosed along with the application.

1.3 Eligible Bidders

- 1.3.1 The Applicant may be a Individual / single firm / company /corporation, PSU'S/ partnership firm of Indian or foreign origin or consortium / joint venture of such

entities who may individually or jointly commit to implement the project. The Applicant should not be a GoU agency. The term `Applicant' used hereinafter would therefore apply to both, an individual entity or a Joint Venture / Consortium.

Applications submitted should comply with the following:

- i) The ownership structure of each member of the Applicant entity must be in accordance with the extant laws in respect of capital, equity participation in a joint venture, nationality and registration with the relevant agencies. In case of participation by foreign companies, their respective Governments should accredit them, if required. The application should contain details of each member of the Consortium, as detailed in Section-V.
- ii) The number of members of a Consortium shall be limited to three.
- iii) The Application shall be considered only if any one of the members of the Joint Venture / Consortium has purchased the Document from UJVNL / UIPC.
- iv) In case the Document is downloaded from our web site the Applicant shall inform accordingly. An Applicant, who does not inform the same, shall not be considered as Eligible Applicant for communication of addendum.
- v) An individual Applicant or a member of a particular Consortium cannot be a member of any other Consortium applying for the same project. The manufacturers of Electro-Mechanical or any other Equipment may offer their equipments to multiple proposers but must not propose equity with more than one bidder.
- vi) Members of a Consortium shall nominate one of the members as a Lead Member as per the Format enclosed at-1F.
- vii) The Lead Member shall not have less than 51% equity in the Company.
- viii) On allotment of the project, the Consortium with the same initial members only, who would enter into agreement with GoU.
- ix) In case a joint venture company/ companies is / are established for the purpose of implementing the project/s, the lead member shall continue to hold a minimum equity stake equal to 51% of such company / companies until 2 years of Commencement of Operation date (COD).
Note: - Bidder to provide self declaration separately.
- x) Applicants shall not be under a declaration of ineligibility for corrupt and fraudulent practices issued by Government of India or any State Government or any of their agencies.

1.4 Cost of the Document

- 1.41 The Bid Document is priced at Rs. 25,000/-(plus 12.5% Trade Tax or as applicable), (Indian Rupees Twenty Five Thousand Only) or US\$ 650/- which should be remitted in the form of a Demand Draft drawn in favour of

"Uttarakhand Infrastructure Project Company Pvt. Ltd", payable at Dehradun and drawn on any Scheduled Bank in India or any International Bank having its operations in India.

1.4.2 A copy of all the DPR can be obtained upon payment of Rs. 0.75 Lac (Rs. Seventy Five Thousand only)(plus 12.5% Trade Tax or as applicable) to be remitted in the form of a Demand Draft drawn in favour of "Uttarakhand Infrastructure Project Company Pvt. Ltd", payable at Dehradun and drawn on any Scheduled Bank in India or any International Bank having its operations in India

1.4.3 Interested Applicants, who have downloaded the Document from the website, must inform UJVNL / UIPC of the same so that any changes or modifications in the RFQ Document can be intimated to them. However the Applicants who have downloaded the Document from the website would be required, at the time of submission of such downloaded Document, to submit a Demand Draft towards the cost of the Document.

1.5 Cost of Bidding

1.5.1 The Applicant shall bear all the costs associated with the preparation of the Document as well as the submission of the Document on his being qualified. UJVNL / UIPC will not, in any case, be responsible or liable for any such costs regardless of the conduct or outcome of the qualification process.

1.6 Clarifications

A prospective Applicant, who has purchased the Document or who has downloaded the Document from the web site of UJVNL / UIPC / IL&FS and has intimated to UJVNL / UIPC his particulars including address for communication by fax, email or post, may seek clarification(s) addressed in writing to UJVNL / UIPC at the address specified in Clause 1.4.1 above by the date mentioned in the Bid Schedule. These will be replied in pre-bid conference.

1.7 Pre-Bid Conference

1.7.1 The Pre-Bid conference would be held as per the schedule of Bidding Process given in Section-II of the bid document at Dehradun at 11:00 AM in the Office of UJVNL.

1.8 Amendment of the Document

1.8.1 At any time prior to the deadline for submission of Application, UJVNL may, for any reason whether at its own volition or in response to clarifications requested by Applicants, modify the Document by issuance of an Addendum.

1.8.2 Any Addendum, thus issued, will be sent in writing to all parties who have purchased the Document. It will also be communicated to such of the Applicants

who have downloaded the Document from the web site of UJVNL / UIPC / IL&FS and have intimated to UJVNL / UIPC their particulars including address for communication by fax, email or post. Addendum issued by UJVNL will also be available on UJVNL, UIPC's, IL&FS website.

1.9 Preparation and Submission of Bids

1.9.1 Language

The Application and all related correspondence shall be in the English language. Supporting Documents and printed literature furnished by an Applicant may be in any other language provided that these are accompanied by certified translations into English. The interpretation shall be only on the English version of the Documents submitted.

1.9.2 Terminology

The Applicants shall use clear terminology while submitting the proposals, with explanations wherever necessary.

1.10 Understanding the Terms & Conditions

The Bidders, in their own interest, are requested to study these terms and conditions in detail, which would be useful in preparation of the Application for Qualification.

1.11 Submission of Bidding Documents

1.11.1 The Application Form along with Documents as mentioned in Section-V shall be furnished by the Applicant. In order to maintain uniformity and completeness, the Applicants shall ensure that the information is submitted in the prescribed formats along with the associated Documents in accordance with instructions contained in Section-V.

1.11.2 Applicants shall attach clearly marked and referenced continuation sheets in the event, the space provided in the format is insufficient.

1.11.3 The Bidding Documents shall be submitted in duplicate. These shall be kept in separate envelopes and marked as Original and Copy. Further, the Applicant shall submit the Technical Proposal of the bid in a separate envelope and the Financial Proposal of the bid in a separate envelope clearly marking the outer cover of the envelope with the words "TECHNICAL PROPOSAL/RFQ" and "FINANCIAL PROPOSAL/RFP". For the sake of clarity each proposal shall be submitted in duplicate kept in separate envelopes and marked as "Original and Copy" as more particularly detailed in clause 1.11.5 herein below. In case of any discrepancy in the contents of "Original" and "Duplicate" documents the content of the "Original" set would be considered.

- 1.11.4 The Application and its copy shall be typed or written in indelible ink and the Applicant shall initial each page. All the alterations, omissions, additions, or any other amendments made to in the Application shall be initialed by the person(s) signing the Application.
- 1.11.5 The Original and the Copy shall then be sealed in an outer envelope. The envelopes shall clearly bear the following, as applicable:
- “Technical Proposal/RFQ” and “Financial Proposal/RFP”.(whichever is applicable): **UJVNL / *Kosi Valley Project**
 - Original/Copy.
 - Address (as indicated in Clause 1.11.8).
 - Applicant’s Name and Address.
* Name of the project(s)
- 1.11.6 If the envelope is not sealed and marked as instructed above, UJVNL assumes no responsibility for its misplacement or premature opening of the contents of the Bidding Document.
- 1.11.7 The Applicants may submit the bids by registered post / speed post / courier or in person at the address as specified below. Bids submitted in other modes will not be accepted. UJVNL shall not be responsible for any kind of postal delays or non-delivery of Documents sent either by the Bidders or by UJVNL.
- 1.11.8 The last date for receipt of Bidding Documents is mentioned in the Schedule of Bid Process up to 15.00 hours.

**The Director (Operations),
Uttarakhand Jal Vidyut Nigam Limited,
Ujjwal, Maharani Bagh, G M S Road
Dehradun-248001
Web site: www.uttarkhandjalvidyut.com,**

1.12 Extension of Last date for submission of Bidding Documents

- 1.12.1 UJVNL may, in exceptional circumstances, and at their sole discretion, extend the last date for submission of Bidding Document by issuing an Addendum, uniformly to all Applicants.

1.13 Bidding Documents submitted after the last date.

- 1.13.1 The Bidding Documents received after the deadline prescribed for submission of bids in Clause 1.11.8 will be rejected.

1.14 Process to be Confidential

1.14.1 At the opening of bids only the names of the Applicants and members of the Consortium will be announced and all other information relating to the bid evaluation process shall be confidential. Any effort by the Bidder to influence the concerned officials in the process of bid evaluation may result in the rejection of its bid.

1.15 Examination of Bids and Determination of Responsiveness

1.15.1 Prior to the detailed evaluation of bids, UJVNL will determine whether each bid:

- (i) meets the eligible Bidder criteria;
- (ii) has been properly signed;
- (iii) is accompanied by a demand draft of requisite amount as mentioned in Clause 1.4.1 in case the Bid Document is downloaded from the website of UJVNL, UIPC or IL&FS;
- (iv) is accompanied by the required Documents;
- (v) is substantially responsive to the requirements of the RFQ cum RFP (Document); and,
- (vi) Provides any clarification and/or substantiation that UJVNL may require pursuant to Clause 1.6.

1.15.2 A substantially responsive bid is one, which conforms to all the terms, conditions and specifications of the Document, without material deviation or reservation. A material deviation or reservation is one which (i) affects, in any substantial way, the scope of the qualification criteria; (ii) contains details which are inconsistent with the requirements of the Document; or (iii) the rectification of which would affect unfairly the position of other Bidders presenting substantially responsive bids.

1.15.3 If a Bid is not substantially responsive, it will be rejected and may not subsequently be made responsive by correction or withdrawal of the non-conforming deviation or reservation.

1.16 Evaluation

1.16.1 The valid bids opened on the due date shall be evaluated in accordance with the following criteria, further elaborated upon in Section - VI of this Document.

(j) **Responsiveness** as per Clause 1.15.

(ii) **Technical Strength / Project Development Experience**

This will be assessed based on the prior experience of Bidder as lead developer / co-developer / equity participant in the development/ implementation of hydroelectric power projects / other power sector projects

/ infrastructure projects besides other responsibilities taken up by the bidder such as design & engineering, civil construction, equipment supply, equipment erection, operation and maintenance etc.

(iii) Financial Strength

This will be based on assessment of the Bidder regarding their ability to raise equity and debt for the Project and their experience in arranging equity/loans either internally or from capital markets and the financial institutions / banks.

1.16.1 A The bidding company or a Consortium Member can take benefit of the financial strength, project development experience or the technical strength (as mentioned in clause 1.16.1 above) of its parent company or Affiliate for the purpose of bid evaluation.

For the purposes of this section "Affiliate" shall mean, in relation to the bidding company (in case of sole bidder) or a member in the bidding consortium (in case of bidding consortium), a company who controls, is controlled by, or is under the common control with the bidding company. (As used in this definition, the expression "control" means the ownership, directly or indirectly, of more than 51% of the voting rights of the other company.)

It is clarified that, in the event the bidding company or the member of a consortium claims benefit of the financial strength, technical strength or project development experience of its Affiliate, it shall only be entitled to claim the same from a single entity with respect to any of the above.

If a bidding company or a consortium member wishes to take benefit of its parent company or Affiliate in terms of the above, it will have to submit legally binding undertaking supported by the board resolution of its parent company or Affiliate to abide by all the commitments made by the bidding company or consortium member.

The bidding company or the consortium member shall have to provide a certificate stating the exact relationship with its parent company or Affiliate including details of their equity shareholding. Such certificate shall be certified by the Company Secretary and one of the Directors of the bidding company/consortium member.

1.16.2 The Bids for technical strength / project development experience parameters would be evaluated only if the hurdle criteria for financial strength as detailed in Section VI (Clause 6.4.3) are cleared.

1.16.3 The bidder shall score a minimum threshold of 50% points (in terms of the scoring parameters as detailed in Section VI (Clause 6.1.5), in aggregate, in technical strength /project development experience for qualifying.

1.17 Successful / Qualified Applicants

1.17.1 The successful Qualified Applicants would be:

- Advised of their Qualification in respect of project(s) pursuant to the evaluation of Technical Proposal of their Bidding Documents

-Eligible for the opening of Financial Proposal of the Bidding Document on the Bid Opening Date (for Financial Proposal)

1.17.2 Bids shall be invited for the project for a premium payable upfront (Upfront Premium) to GoU which shall be in addition to the (i) reimbursement of Allocated Expenses (ii) Development Premium. The term Upfront Premium includes the minimum threshold Premium payable to GoU @ Rs 5 lac per MW. The Project shall be awarded to the Bidder making the highest offer for the Upfront Premium.

1.17.3 The bid for the project shall be accompanied with a bid security of Rs. 107.00 lacs (Rs. One hundred seven lacs.), as per format attached as Format III-2C.

1.17.4 If there is more than one identical Bid which emerges as the best Bid for any project or SPV, a gradation list based on the aggregate score in Technical and Financial Strength as detailed in Section VI (Clause 6.1.5) shall be the basis of allotment.

1.17.5 If there is more than one identical Bidder in respect of upfront premium and aggregate score of technical and financial strength, the date of incorporation of firm / constituent partners of joint venture company shall be the basis of allotment

1.17.6 Project will be allotted to the bidders making the highest bids. The successful bidder shall be required to deposit the premium/other amount due within 30 days of issue of intimation regarding his bid being successful / Letter of Award, Otherwise his bid security will be forfeited without any further notice.

1.18 Changes in Composition of the Consortium

1.18.1 Any change in the composition of a Consortium may be permitted only till the last date of submission of Bid Documents as per Clause 1.11.8 and no change is permitted till the allotment of the project(s).

1.19 Disqualification of Bids

Bids can be disqualified and excluded from the selection process and dropped from further consideration, for the following reasons over and above as stated in Clause 1.15.

1.19.1 There are material inconsistencies in the information submitted by the Bidder.

- 1.19.2 Bidder willfully provides misrepresentations in the completed formats and supporting Documentation.
- 1.19.3 An individual Applicant or member of a Consortium is a member of any other Consortium applying for the same project, (vide Clause 1.3.3(v)). Any Applicant, who submits or participates in more than one Application for any given Project will be disqualified and will also cause the disqualification of the Consortium of which it is a member.
- 1.19.4 Change in the composition of Consortium (vide Clause no 1.18.1) or withdrawal of a member(s) of the Consortium.
- 1.20 **Amendment of Bid:** The Applicant shall be allowed to amend/modify the bidding documents submitted on or before the last date for the submission of the Bidding Documents. All such amendments/modifications would be required to be submitted in duplicate (Original and Copy) in separate envelopes clearly marking the outer cover of the envelope with the inscription “Amendment/Modification to the Original Bid dated-Technical Proposal/or Financial Proposal” (as the case may be). For the sake of clarity it is clarified that no request for amendment/modification shall be entertained by UJVNL after the last date fixed for the submission of the Bidding Documents.
- 1.21 **Withdrawal of Bid:** An Applicant shall be allowed to withdraw the bids submitted at any time upto one working day prior to the date fixed for the opening of the Financial Proposal of the bids by submitting a written intimation in this regard (Withdrawal Notice). The bid submitted by the Applicant, who has submitted the Withdraw Notice in terms of the provisions of this clause, shall not be eligible for consideration on the date fixed for the opening of the bid.
- 1.22 **Rehabilitation and Resettlement of Project Affected Families:** The bidder will be responsible for payment of benefits as are applicable under “The National Rehabilitation and Resettlement Policy – 2007 or / and any other Policy issued by Government of Uttarakhand in this regard, to the project affected families.

SECTION – II**SCHEDULE OF BIDDING PROCESS**

UJVNL would endeavor to adhere to the following schedule:

Event Description	Anticipated date
Sale of Documents	15 th March, 2009 to 26 th April, 2009
Site Visit	02nd April, 2009,
Last Date of Receiving Queries	10 th April, 2009
Pre-Bid Conference	16 th April, 2009
Reply to the Queries (in pre-bid Conference)	16 th April, 2009
Last date of submission of Bid	28 th April, 2009 (Till 15.00 hours)
Date of opening of Technical Proposal	28 th April, 2009 (From 15.30 hours onwards)
Date of opening of Financial Proposal	01 st May, 2009 (From 11.00 hours onwards)

SECTION –III

BRIEF OUTLINE OF THE PROJECT

3.1 Background

The State of Uttarakhand was made a separate State out of Uttar Pradesh in the year 2000. The State is predominantly a hilly State endowed with abundant water resources. Perennial rivers like Ganga and Yamuna, which are snow fed, originate in the high altitudes and transverse through. With high gradients and large discharge, these two rivers along with their tributaries form a formidable source of Hydropower in the County.

It has been realized by the GoU that the economic development of the State will be largely possible by harnessing the hydro power potential of the State, as the State is quite rich in water resource which is renewable every year. The development of the Hydropower in Uttarakhand will not only benefit the State but will also meet the power requirements of the neighboring States and also of the Northern region of the country.

The National Electricity Policy of Government of India envisages that peak and energy shortages should be completely eliminated by 2012. It is further envisaged that the quality and the reliability of power should improve. The policy lays emphasis on rationalization of tariffs, rural electrification and encouraging higher private sector participation. The policy also addresses key issues such as hastening the returns process by defining time lines for critical processes such as open access in each state, metering requirement, energy audits, intra state transmission tariffs and upgrading technology at regional level dispatch centers.

UIPC has been entrusted with the responsibility of development of various infrastructure projects including hydro power projects in the Uttarakhand. UIPC is a joint venture company between IL&FS and Govt. of Uttarakhand (GoU). Towards this end, UIPC has developed following small hydro power project in Kosi Valley in Nainital District.

- **Bawas SHP - 13.00MW**

3.2 Introduction to Project

The present project proposes to harness hydro energy available on the river Kosi located near the village Bawas in Ramnagar Tehsil, Distt. Nainital in Uttarakhand State. The site is approachable by metalled road. The village Bawas is well

connected by metalled road and the nearest railhead is at Ramnagar, which is around 250 km from Delhi.

- 3.2.1 The Kosi river, which is a major Tributary of river Ganga and traverses in south east direction through a number of forests before it meets Ramganga River near Rampur in Uttar Pradesh.
- 3.2.2 Bawas SHP (13.00 MW) is proposed to be developed on the Kosi river. Kosi river is being gauged at Ramganga barrage site and its discharge data is available for the period 1964 to 2004 with gaps.
- 3.2.3 UIPC has installed project specific G&D sites for the project. The discharge data is available since around two year and found in order. Sediment measurement has also been done and data is available.
- 3.2.4 UIPC has signed MoU for all the geological activities in the valley with the Geological Survey of India (GSI).
- 3.2.5 Geological and Geo-technical investigations has been completed for the Bawas HEP and reviewed by the GSI. The project is entitled for the CDM, which is not included in the Financial Model.
- 3.2.6 The total annual generation proposed to be evacuated from the Kosi Valley HEP at 33 KV to feed UPCL grid at its existing sub-station in Ramnagar town.
- 3.2.7 The electrical energy generated from the project would meet the power requirements of the state of Uttarakhand and the northern Grid which is facing shortage of power.
- 3.2.8 The small hydro electric project at Kosi Valley is proposed to be created on a Public-Private-Partnership format through the “Build, Own, Operate & Transfer” mechanism in which the private sector bidder is expected to design, finance, build, operate and manage the properties for a fixed number of years at the end of which the properties shall be transferred back to the State Government.
- 3.2.11 An SPV named as Kosi Valley Hydel Power Company Private Limited has been created for development of the hydro project. The ownership of the company shall be transferred to the successful bidder in proportion to the equity acquired by him/them.

SECTION –IV

POLICY FOR HARNESSING RENEWABLE ENERGY SOURCES IN UTTARAKHAND WITH PRIVATE SECTOR / COMMUNITY PARTICIPATION AND OTHER INFORMATION

Uttarakhand Government has issued Guide Lines for development of renewable sources through “Policy for Harnessing Renewable Energy Sources in Uttarakhand with Private Sector / Community Participation-2008”. The Applicants are advised to refer to the detailed policy guidelines prescribed by the GoU and the same can be obtained from the web site of Govt. of Uttarakhand or Uttarakhand Jal Vidyut Nigam Limited. The Hydro Policy has been issued vide Govt. order No.263 I (2)/2008-04(8)-96/2001 dated 29.01.08 and was published in GoU Gazette dated 9th February, 2008. Some of the salient features of the policy are as under.

4.1 OBJECTIVES:-

To create conditions conducive to Private Sector / Community participation in Power Projects based on RE Sources in the State. In particular:

- 4.1.1 To harness the environment friendly RE resources and enhance their contribution to the Socio-economic development of the State.
- 4.1.2 To meet and supplement minimum rural energy needs through sustainable RE projects.
- 4.1.3 To provide decentralized energy supply to agriculture, industry, commercial and household Sector.
- 4.1.4 To improve the quality of grid power through such projects, as a consequence of tail-end generation and feeding.
- 4.1.5 To enhance the use of energy sources that assist in mitigating environmental pollution.
- 4.1.6 To support efforts for developing, demonstrating and commercializing new and emerging technologies in the RE sector and, to this end, help establish linkages with National and International Institutions for active collaboration.
- 4.1.7 To create conditions conducive to the involvement of Private Investors in RE Projects
- 4.1.8 To create public awareness and involve users / local community along with their capacity building in establishing, operating and managing RE projects.
- 4.1.9 To create direct and indirect employment opportunities in the State.

4.2 INCENTIVES:

- 4.2.1 **Sale of Electricity-** On the sale of electricity generated by the RE projects, UPCL will have the first right of purchase; such purchases may be made in whole or part as per the requirement of UPCL. The price of electricity to be purchased by UPCL will be determined by UERC; the price so determined will be announced in

advance and will be uniformly applicable to all producers. The GOU will provide the guarantee for the payments to be made by the UPCL for such purchases.

4.3 **Wheeling of Electricity-** UPCL/PTCUL will undertake to transmit through its grid the power generated and make it available to the producer for its captive use or third party sale within / outside the State for which wheeling charges uniformly applicable to all producers would be announced in advance.

4.4 **Banking:-** UPCL would extend the facility of Banking to the Developers at mutually agreed terms.

4.5 For evacuating energy from the generating site, requisite network of transmission / distribution lines would be provided by UPCL / PTCUL.

4.6 **BENEFITS UNDER CLEAN DEVELOPMENT(CDM):**

Projects covered under this policy may not involve cheapest form of generating energy. However, keeping in view their environment friendly nature, the State would encourage projects to obtain the benefits under the Clean Development Mechanism (CDM).

4.7 **Eligibility and evaluation Criteria :**

Eligibility and Evaluation parameters shall be provided in the Request For Qualification (RFQ)/ Request for Proposal (RFP) bidding documents.

4.8 **Allotment Procedure:**

The Identified Projects would be advertised in order to seek bids; Selection of Developers would follow a two stage process.

- i. **Prequalification-** Firstly, the applicants would be evaluated on the basis of pre-qualification criteria laid down in the RFQ document which would be made available on payment of a prescribed fee. Broadly pre-qualification Criteria would be based on balance sheet, annual report, technical and financial capacity etc. After evaluation, a short list of successful applicants would be prepared.
- ii. **Financial Bid-** Applicants short listed on the basis of pre-qualification criteria would be invited to submit their financial bids based on the premium payable to the Government of Uttarakhand. For this purpose the following thresh-hold premium is prescribed (bids quoting premium below the thresh-hold would be rejected out rightly) :-

- ❖ Above 2MW & upto 5 MW : Rs.1,00,000/-per MW
- ❖ Above 5 MW & upto 25MW : Rs.5,00,000/-per MW

- iii. A project will be allotted to the short listed bidder who has offered the highest bid. The successful bidder shall be required to deposit the premium and other amount due within the time specified in the bid document.
- iv. Complete transparency in allotment of the projects shall be ensured. Comprehensive PFQ / RFP / bidding documents would be prescribed for inviting bids clearly enumerating technical and financial parameters.

4.9 MISCELLANEOUS:

- 4.9.1 Not more than three projects in each category namely- Hydroelectric Power, Co-generation, Biomass / Agro residue and waste, Urban, Municipal Waste and Industrial Liquid / Solid Waste, Solar Energy, Wind Power and Geothermal power will be allotted to a Developer.
- 4.9.2 Industrial Units located in Uttarakhand and willing to participate in the open competitive bid for the purpose of establishing RE projects for their captive use, would be given preference by accepting their bids provided these are not less than 80% of the highest bid.
- 4.9.3 The Government of Uttarakhand reserves its rights to allot a project to a State Owned enterprise.
- 4.9.4 If a feasible Micro / Mini Hydro project remains un-allotted on the basis of the procedure prescribed in this Policy, the same would be allotted to any developer through open competitive bidding, the procedure for which would be laid down separately.
- 4.9.5 In the event a Developer fails to achieve the various stages of completion of the allotted project as per the prescribed time schedule without valid reasons, the premium deposited shall be forfeited and the allotment would be cancelled.
- 4.9.6 Projects allotted before the date of publication of this Policy in the Official Gazette shall continue to be governed by the Policy under which they were allotted; these would not be eligible for incentives under this Policy.
- 4.9.7 In case of augmentation of capacity of self identified Projects due to any reason, the Developer would be required to pay additional premium of Rs. 1 Lakh per MW or fraction thereof for enhancement up to 5MW and Rs. 5 Lakh per MW or fraction thereof in case of enhancement beyond 5 MW along with the requisite amount to take into effect the inflation from the date the premium was paid. For State Identified Projects allotted on the basis of open competitive bidding, the extra premium to be paid would be calculated on the basis of a formulation to be specified separately.

- 4.9.8 In case any Developer, for any reason (before a project is commissioned), sells his project to some other Developer, the Developer selling the project shall be required to deposit an additional amount equals to the bid premium.
- 4.9.9 Projects would be offered for a period of 40 Years from the date of award at the end of which they shall revert back to the GOU or extended further on mutually agreed terms.

4.10 ROYALTY:-

- On Micro, Mini and other RE Projects governed by this Policy, no Royalty payment would be charged
- On Small Hydro Projects governed by this Policy, Royalty payment for first 15 Years of operation would be exempted. From 16th Year of Operation, a Royalty @ 18% of Energy generated would be charged.

(Note: - Full text of the Policy can be referred for further Information)

OTHER INFORMATION

4.11 GRID INTERFACING/TRANSMISSION LINE

- 4.11.1 The IPP shall be responsible for laying lines for connectivity to the nearest grid sub-station at the appropriate voltage, which will normally be 132 KV or 33 KV or 11KV depending on the capacity of the power station and the distance from the power station to the Grid sub-station. The UPCL will determine the specifications of the evacuation facilities required, including the inter-connection point and voltage and the same would be specified in the project information Document provided with the application form. On specific request from the IPP, the UPCL will carry out the implementation of evacuation facilities at charges to be mutually negotiated.

4.12 BANKING

- (a) The Generating Plants shall be allowed to bank power within a period of one calendar month, for the purpose of withdrawal of the banked power in the event of emergency or shut down or maintenance of the plant, subject to following conditions:
- (b) Banking of energy up to 100%, as agreed between the plant and the distribution licensee, shall be allowed during the period 17:00 hrs. to 22:00 Hrs. (specified as peak hours for this purpose).
- (c) Withdrawal of power shall be allowed only during the period other than 17:00 hrs. to 22:00 Hrs.

- (d) The plants shall provide ABT compliant Special Energy Meters and the monthly settlement of energy sales shall be done based on Power supplied during the peak hours as per SEM meter readings shall be considered as banked power and monthly settlement shall be done for the balance energy supplied by the plant at the rate specified for supply of electricity to distribution licensee.
- (e) Upon introduction of intra-state ABT in the State, the banking as well as withdrawal of banked energy shall be subject to day ahead scheduling.
- (f) The power withdrawn by the plant as ascertained by SEM readings, which could not be considered as withdrawal from banked power, shall be considered as power purchased by the plant.
- (g) The purchase of power by these plants under clause (e) or otherwise shall be charged for the maximum-recorded demand and the energy at rate specified in the Schedule of retail Tariff corresponding to the declared load by the generator. No minimum consumption guarantee or other charges shall be levied on such generators. Excess load over and above the declared load shall be billed according to the provision of the relevant Schedule of Tariff specified by the Commission. This shall apply only to those generators who have commissioned the supply of power under the PPA with the licensee.
- (h) A Generating Plant shall be allowed to withdraw power that was banked during a particular financial year in the same year or during the following financial year.
- (h) The banked power remaining unutilized on the expiry of the following financial year would be treated as sale and the financial settlement shall be made at the scheduled tariff for the year during which the power was banked. No banking charges shall be deducted from such unutilized banked energy.
- (i) Banking charges shall be 12.5% of the energy banked

The Banking of Power shall be governed as per the orders of “Uttarakhand Electricity Regulatory Commission (Tariff and other Terms for the Supply of Electricity from Non-Conventional and Renewable Energy Sources) Regulations-2008.”

4.13 DESPATCH

- 4.13.1 Priority will be accorded for dispatch into the grid by these IPPs ahead of merit or and any other source of supply, subject to any overall restrictions on the proportion of power that may be bought from such sources, which may be imposed by the Government/ Regulator in the interest of keeping the overall cost of power purchase within reasonable limits.

4.14 INCENTIVES BY STATE GOVERNMENT

The State Government will levy no entry tax on power generation, transmission equipment and building material for projects.

4.15 TIME LIMIT FOR EXECUTING THE PROJECT

4.15.1 The IPP shall achieve the financial closure within 9 months from the date of receipt of all statutory approvals and clearances given by the State and Central Governments. Financial closure would imply firm commitments for financing the entire project, with all pre-disbursement conditions having been fulfilled and the loan Documentation being complete.

The project shall be made operational within 48 months from the date of receipt of all statutory approvals and clearances by the IPP. Incentives for early commissioning will be extended.

The aforesaid timelines would also be suitably incorporated in the Implementation Agreement to be executed by the Preferred Bidder with the GoU

4.15.2 The failure to reach the milestone mentioned in 4.11.1 above will result in automatic cancellation of the allotment of the site, and forfeiture of Upfront Premium amounts. No compensation would be payable to the IPPs in such instance.

4.16 In case of failure to reach the milestone as in 4.11.1 above , the company shall be liable to pay Damages to the Government, which shall be an amount equal to Rs. 5000/- per. day (Rs. five thousand per day) for the period of delay. The company may be given a grace period of 30 days after the scheduled COD. If the Company fails to achieve COD, even after the expiry of one year of the schedule date, the State Government may forfeit the performance security along with the cancellation of the allotment of project. Further, as referred in clause 2.2 above, the delay in achievement of COD will not affect the Agreement period and thereby reduce the effective generation period for the Company. In case the project enjoys an exemption from royalty in the initial years, the duration of royalty exemption would be reduced by the period of delay.

4.17 EQUITY PARTICIPATION IN THE PROJECTS

A. By Local Population

The local population would have the first right but not the obligation to subscribe 5% of the total equity to the Company. In case of greater participation by the residents of the villages to the shares on offer, shares shall be allotted on pro-rata basis limited to maximum of 5% of the total equity issued.

B. By Land Owners

The owners of the land would have the first right to subscribe to the equity of the Company equivalent to 20% of the land compensation amount, whose land is being acquired by the Company for the construction of the Project. In case of greater participation by the residents of the villages to the shares on offer, shares shall be allotted on pro-rata basis limited to maximum of 2% of the total equity issued. The subscription of the equity will be at the sole discretion of the Land Owners for whom the equity is being offered.

The right to subscribe to the equity shares as referred to above in clause 4.12 (A), (B), by Local Population and the Land Owners shall be at the face value of the equity shares, and will have to be exercised on or before the date of Financial Closure of the Company.

4.18 REGULATORY OVERSIGHT

Aspects of this policy, that require Regulatory Approvals from the concerned regulator, would be subject to such approvals being given and would apply in the manner approved by the Regulator.

4.19 DUE DILIGENCE

The Applicant /IPP shall be responsible for carrying out due diligence with regard to his compliance responsibilities under various applicable Central/State/other laws, rules and regulations, and ensure compliance with the same.

4.20 POWER TO RESOLVE DIFFICULTIES

In the event of a dispute, the interpretation of these guidelines made by the Government of Uttarakhand shall be final. In all such matters, to the extent practicable, an opportunity shall be given to affected stakeholders to be heard before the Government takes any decision.

SECTION- V

BID STRUCTURE AND CONTENTS

The Bid to be prepared by the Bidders shall comprise the following:

5.1 GENERAL

The Bidder / lead member of Consortium shall furnish letter of application as per format **I-A**. The participation letter from each member of Consortium (wherever applicable) shall be furnished as per format **I-B**.

The Bidders shall furnish the information relating to particulars of the Company/ Consortium, names and addresses of lead and associate companies, their status as per format **I-C**. The company profile for each member shall be submitted as per format **I-D**. The Power of Attorney to the authorised signatory of the lead member company should be as per format **I-E** and the Power of Attorney to lead company from each member of JV/ consortium should be as per format **I-F**. The Bidder shall also furnish the information relating to submission of all the Documents as per format **I-G**.

5.2 TECHNICAL TRENGTH / ROJECT DEVELOPMENT EXPERIENCE

This will be judged on the basis of technical qualification and experience of the Bidder in implementation of hydroelectric power projects / other power sector projects / Infrastructure projects, in the area of design, engineering, civil construction, equipment supply, equipment erection, operation and maintenance etc.

The Bidders shall give the summary of completed works regarding the assignments carried out by them in the areas of design, engineering, civil construction, equipment supply, equipment erection, operation and maintenance etc. for hydroelectric power projects / other power sector projects / Infrastructure projects as per format **II-A** and details thereof as per format **II-B**. The details of assignments being carried out should be given as per the format **II-B**.

5.3 FINANCIAL STRENGTH

The Bidders shall submit the details to assess the financial strength of Bidder / Consortium member(s) in format **III-A**. The full names and addresses of all Bankers and Financial Institutions, with whom the Bidder / Consortium member(s) deals should be enclosed as per format **III-B**. The Bidder / Consortium members should fill the questionnaire regarding Financial Strength as per format **III-C**.

5.4 PROPOSAL

A. Technical Proposal

Technical proposal will consist of all formats as mentioned in clause no 1.2.1 (A). The commitment letter as per the Format III-2A and Bid Security of an amount of Rs. 107.00 lacs (Rs. One hundred seven Lacs) as per the Format III-2C will also be part of Technical proposal. The same will be refunded back to all unqualified bidders, within one month after financial opening of bid. The bid security of successful bidder shall be refunded only after receipt of due payments as per price proposal format and Performance Bank Guarantee as per format III-2D.

B. Financial Proposal

The bidder shall submit the price proposal as per Format III- 2B committing the Reimbursement of allocated expenses, Development premium and Upfront Premium that includes the Thresh-hold premium.

5.5 IMPLEMENTATION AGREEMENT

Implementation Agreement is to be signed for each project separately with the Government of Uttarakhand as per the format enclosed in the document.

SECTION- VI EVALUATION CRITERIA

6.1 General

6.1.1 The evaluation of Bids shall be done in the following manner:

Stage-I : Qualification stage (RFQ)

Stage-II : Financial Proposal stage (RFP)

6.1.2 The responsiveness shall be determined in terms of Clause 1.15 of Section-I and applications, which are found to be non-responsive, shall be rejected without any further evaluation.

6.1.3 The Bids for technical strength / project development experience parameters would be evaluated only if the hurdle criterion for financial strength as detailed in Clause 6.4.3 below is cleared.

6.1.4 The Bidder shall score a minimum threshold of 50% points in aggregate, in technical strength / project development experience for qualifying.

6.1.5 The Bidder shall be evaluated on a point system. The points assigned to technical strength / project development experience and financial strength for arriving at the overall score for gradation of the qualifiers for a particular project (Clause no. 1.17.3), would be as under:

	Particulars	Points
1	Technical Strength / Project Development Experience	50
3	Financial Strength	50
	Total	100

The breakup of Technical Strength / Project development Experience would be as under:

6.2 Technical Strength / Project Development Experience:

The marking shall be on the basis of cumulative value in the experience of Design & engineering/ construction / O & M of hydro electric projects / other power sector projects / infrastructure projects completed during last Ten Years and as under:-

- 1) Experience in site investigation, preparation of DPR, Design and execution of Renewable energy projects / other power sector projects / Infrastructure projects.
- 2) Experience of other Consultancy Services i.e. consultancy in civil construction, equipment supply and erection, turnkey contractor of Renewable Energy projects / other power sector projects / Infrastructure projects.

- 3) Experience in civil construction of Renewable Energy projects / other power sector projects / Infrastructure projects.
- 4) Experience in BOOT, BOO or other Public Private Partnership projects of Renewable Energy (RE) projects / other power sector projects / Infrastructure projects
- 5) Society / Firms having experience in providing technical training to local people / operators regarding RE Projects.

Note: - The cost of the projects should be minimum Rs.54.0 Crores. The Applicant will be considered to be technically qualified, if he fulfills any one of the above stated criteria and shall be awarded 50% marks earmarked for the technical evaluation. Additional 50% marks would be awarded on equitable basis for each of the rest of the Criteria's stated above.

6.3.1 In case of the Consortium, the technical / project development capability shall be judged on the basis of arithmetic sum of all the proposed partners. The financial capability shall be judged on the basis of arithmetic sum of all the proposed partners provided their individual equity in the Consortium is more than 10%.

6.3.2 For the purpose of calculation of costs of the various projects executed, the awarded value of the project and the year of award would be inflated @ 5% per annum to be brought to the level of the current year.

6.4 FINANCIAL STRENGTH

6.4.1 This will be based on assessment of the Bidders regarding their ability to raise equity and debt for the Project and their experience in arranging equity/loans either internally or from capital markets and the financial institutions / banks. In case of Consortium, the financial strength shall be judged on the basis of arithmetic sum of all the proposed partners, provided their individual equity in the Consortium is more than 10%. In the case of loss making members of Consortium, zero marking will be given for losses, if any, suffered by any member of the Consortium.

6.4.2 The points on Financial Strength would be judged on the basis of the following parameters:

- (1) Net worth
- (2) Net Cash Accruals.

- 6.4.3 The minimum net worth of the bidders should be Rs.27.00 Crores. (Rs. Twenty Seven Crores only) for FY07-08 and aggregate* net cash accrual should be Rs.13.0 Crores. (Rs Thirteen Crores only)

*Aggregate means the sum of net cash accruals for the previous three financial years. For the purpose of evaluation for a Consortium, the Net Worth and the Aggregate Net Cash Accruals would be taken as the aggregate of all the Consortium partners having more than 10% stake of the total equity of the Consortium.

Note:- If technical experience certificate / Project Development Experience are in any regional language, the certified translated copy of these certificates are also to be annexed with the original ones.

EVALUATION SHEET FOR RESPONSIVENESS

S.N.	Particulars	Correct Answer	Response		
			Yes	No	Responsiveness √ or X
I. Ownership Structure Criteria					
1.	Is the number of Consortium members more than two	No			
2.	Are all members of the Consortium registered and identified by a legal name	Yes			
3.	If any of the members of the Consortium is a foreign company, have they submitted authorisation by their government? a) Is it required? b) If 'Yes' have they submitted authorisation?	The response for (a) & (b) should be Yes/ Yes or No/ Not applicable.			

4	Documents				
	Have the following acceptable Documents been submitted?				
	a) Bid Document	Yes			
	b) Payment of cost of the Document	Yes			
	c) Application Letter	Yes			
	d) Participation Letter	Yes			
	e) Registration letter of the company	Yes			
	f) Memorandum & Articles of Association	Yes			
	g) MOU of Consortium	Yes			
	h) Power of Attorney in favour of signatory of lead member	Yes			
	i) Power of Attorney in favour of lead member from others	Yes			
	j) Balance Sheets	Yes			
	k) Income Tax Clearance certificate	Yes			
	l) Company Profile	Yes / No			
	m) Domicile Certificate, if required				
	n) Declaration by Bidder / Consortium member regarding any disqualification if any (vide Clause 1.3.1 (ix) of Section I)	Yes			
	o) Duly filled Price Proposal Format	Yes			
	p) Bid Security	Yes			
5	q) Performance Security DPRs purchased and reviewed	Yes			
II. Bid Documents					
6.	Have the details in Formats been furnished?	Yes			
7.	Have the Documents been signed by authorized signatory?	Yes			

SECTION VII INTERPRETATIONS

In this Document, unless the context otherwise warrants, the following words and expressions will have the meaning and will be interpreted as specified hereunder:

- a) **‘Bid/ Application’** refer to the submission or proposal made by a prospective developer-cum-operator (DCO) in the process of participation in the Bidding process for the project.
- b) **‘Bidder/Applicant’** means an entrepreneur who, with the intention of becoming a DCO, participates in the Bidding process for any of the project.
- c) **‘Build Own Operate Transfer (BOOT)’** means the contractual arrangement under which a private entrepreneur will participate in the creation of infrastructure facilities, owning and operating it for the contracted period and transferring the facilities to the GOU after the contracted period.
- d) **‘Memorandum of Understanding (MOU)’** means a formal understanding reached between member of a Consortium or Joint Venture defining the duties and responsibilities as well as rights and obligations of the constituent members.
- e) **‘Power of Attorney (PoA)’** means & signifies the legal Document executed by one or more parties, authorizing another party to act on his / their behalf.
- f) **‘Proposal Validity Period’** means the period till which the Proposal shall remain valid which shall not be less than 120 days from the last date of the submission of bid.
- g) **‘Project’** means the scheme for private sector participation in the development of hydro power project in the State of Uttarakhand.
- h) **‘Project Company’** means the Company formed for carrying out the Implementation of this Project.
- i) **‘Preferred Bidder’** is the bidder who has quoted highest premium for the Project and selected for the implementation of the Project.
- j) **‘Bid Documents/Bidding Documents’** shall include:
 - (a) **‘Technical Proposal:** the application made by a prospective Bidder, for being qualified for participation in the Bidding process regarding allotment of the projects.
 - (b) **‘Financial Proposal’:** the Document containing Commitment Letter, Price Proposal Format, Bid Security, Performance Security and Implementation Agreement attached.
- k) **‘Uttarakhand Infrastructure Project Company Limited (UIPC)’** refers to the JV between GoU and IL&FS as an agency for identification and development of projects on PPP format.
- l) **‘Uttarakhand Jal Vidyut Nigam Limited (UJVNL)’** refers to the nodal agency for bid process management.

DOCUMENT STRUCTURE AND CONTENT

GUIDELINES

1. This Document contains the Performa for Letter of Application and the Formats. The Applicants should note that details sought in the Formats are furnished in the same Performa (see para 1.11.1 of Instructions to Bidders) for uniformity.
2. The Applicant shall sign each page of the Formats.
3. The Applicants may please note that each member of the JV/Consortium has also to furnish details separately in FORMAT I-D, II-A II-B, II-C, III-A, III-B, and III-C besides Memorandum and Articles of Association, Copy of Registration Certificate, Income Tax Clearance Certificate, Balance Sheets for last 3 years, Experience certificates for each work from the respective clients, Declaration regarding any disqualification, if any, (Clause 1.3.3 (ix)) and Power of Attorney to lead company from each member of JV/Consortium in addition to the combined information given by lead member in the main application. The Documents shall be signed by the relevant members and also by the lead member submitting the application.
4. The checklist of Documents to be furnished is as under:

SN.	DESCRIPTION	FORMAT
Volume I		
1	Application Letter	Format I-A
2	Letter of participation from each member	Format I- B
3	Bidder's Organisation	Format I- C
4	Submission of Documents	Format I- G
5	Technical Strength (Summary of Completed Projects)	Format II-A
6	Technical Strength / Project Development Experience Data Sheet for completed Works	Format II-B
7	Technical Strength, Details of Works in hand	Format II-C
8	Experience Certificates for each work from the Respective clients	
9	Commitment Letter	III-2A
10	Bid Security	III-2C
11	Financial Statements	Format III-A
12	Bankers Information	Format III-B
13	Financial Strength Questionnaire	Format III-C

Volume II		
1	Company Profile.	Format I-D
2	Memorandum and Articles of Association	-
3	Copy of Registrations Certificate	-
4	Income Tax Clearance Certificates	-
5	Authorisation from respective foreign Governments, if required.	-
6	MOU within the members of Consortium	-
7	Power of Attorney to authorize signatory of Lead Member Company	Format I-E
8	Power of Attorney to lead company from each member of JV/Consortium	Format I-F
9	Balance Sheets for last 3 years	-
10	Declaration by Bidder / Consortium member regarding any disqualification, if any, (Clause 1.3.1 (ix) of Section I)	-
Volume III		
1	Financial Proposal/RFP	
A	Price Proposal Format	Format III-2B

FORMAT I-A

**PROFORMA LETTER OF APPLICATION
(On Lead Firm's Letter Head)**

To

**The Director (Operations),
Uttarakhand Jal Vidyut Nigam Limited,
Ujjwal, Maharani Bagh, G M S Road
Dehradun-248001**

(Applicant to provide date and reference)

Re: RFQ Cum RFP for Bawas small hydro Project in Kosi Valley,

Dear Sir,

We hereby submit an application for qualification for Bawas small hydro project in Kosi Valley. We are enclosing one Original and one Copy of the required Documents.

(In the case of other than a sole proprietorship firm add the following paragraph)

A Power of Attorney to sign and submit this letter is attached.

(In the case of a joint venture /consortium, add the following paragraph)

This application is submitted on behalf of a joint venture/Consortium (*delete as appropriate*) comprising..,, (Applicant to state the name of each member),.....and of which(insert name of leading member of joint venture/ consortium)has agreed to act as lead member. Each member has prepared a statement of Participation in relation to this application and these are enclosed.

Yours faithfully,

..... (Signature)

Name of signatory:

Designation of authorised signatory:

Name and address of Applicant (or of lead member if Applicant is a group)

FORMAT I-B

**PROFORMA LETTER OF PARTICIPATION FROM EACH MEMBER OF A GROUP
(On each Firm's Letter Head)**

To
The Director (Operations),
Uttarakhand Jal Vidyut Nigam Limited,
Ujjwal, Maharani Bagh, G M S Road
Dehradun-248001

(Applicant to provide date and reference)

Re: RFQ Cum RFP for Bawas small hydro Project in Kosi valley,

Dear Sir,

We wish to confirm that our Company/Firm (delete as appropriate) has formed/intends to form (delete as appropriate) a group with (insert names of all other members of the group)..... for purposes associated with **Bawas small hydro project in Kosi Valley.**

(Members who are not the lead member of the group should add the following paragraph).

The group is led by (insert name of lead member) whom we hereby authorise to act on our behalf for the purposes of applying for qualification.

(Member being the lead member of the group should add the following paragraph)

In this group we act as lead member and, for the purposes of applying for qualification, represent the group.

In the event of our Group being qualified and invited to bid for... ,we agree to be jointly with(names of other members of the group)..... and severally liable to GoU/UJVNL, its successors and assigns, for all obligations, duties and responsibilities arising from or imposed by any contract subsequently entered into between GoU/UJVNL and our Group.

Yours faithfully,

(Signature)
(Name of Signatory).....
(Designation of authorised Signatory).....

FORMAT I-C

BIDDERS ORGANISATION

1. **Structure of Bidder’s Organization:** Individual Company or *Joint Venture/ Consortium/Others (please specify)
 (*Delete if not applicable) enclose copies of company profile as per format I-D

2. **Legal Status of each Member****

SN.	Names of Members (lead member first)	Legal Status	Registered Address	Principal Place of Business	Country of Incorporation or Domicile
1.					
2.					
3.					

** Memorandum & Articles of Association and Copy of Registration Certificate of each member to be enclosed.

3. **Contact Person: (from lead member).**

Name :

Title :

Address :

Telephone :

Fax:

E-mail:

4. **Foreign Applicants**

- Have you enclosed authorisation from your Government, if necessary?

Y	N
---	---

If answer is `No' state reasons:

.....

- In case of lead partner, have you associated with an Indian partner?

5. **Bidders Team and Responsibility.**

Coverage of full scope of work and equity participation by each constituent member of Consortium / JV: Furnish details in the Performa given below:-

JV/CONSORTIUM PARTICULARS

S.N.	Name and Address (Company)	Equity	Scope, Role & Responsibility
A. JV/CONSORTIUM			
1.	Lead Partner	%	
2.	Member 2	%	
3	Member 3	%	

*The JV/Consortium must indicate the role of each member in the development / implementation / operation of the project and furnish details in column under 'Scope'.

FORMAT I-D
COMPANY PROFILE (EACH MEMBER)

1	Name of Company/ Organization	
2	Date of Incorporation	
3	Name of Parent/Group Company	
4	Relationship with the Main Company (Equity holding)	
5	Country, in which Incorporated	
6	Type of Organization: (Whether Sole Proprietary/Partnership/ Private Ltd./Public-Sector) Attach: i) Copy of Registration Certificate. ii) Memorandum and Article of Association of the Company.	
7	Communication Address	
8	Head Office Address	
9	Other Contact Means: Cable Address Telephone No. Telefax No. Electronic Mail	
11	(a) Corporate objective or purposes of the Company (b) Detailed description of the Company (c) Highlights of current activities	
12	Give the names & designations of all the Members of the Board of Directors	
13	Specify who is actively managing the affairs of the Company.	

FORMAT I-E

**FORMAT FOR POWER OF ATTORNEY (POA) FOR AUTHORISED
SIGNATORY ON BEHALF OF MEMBERS OF CONSORTIUM**

POWER OF ATTORNEY

(To be executed on non-judicial stamp paper of the appropriate value in accordance with relevant Stamp Act. The stamp paper to be in the name of the company who is issuing the power of Attorney)

Know all men by these presents, that We (Name of member of the consortium with the address of the registered office) do hereby constitute, appoint and authorise Mr./Ms.(name and residential address) who is presently employed with us and is holding the position of as our attorney, to do in our name and on our behalf, all such acts, deeds and things necessary in connection with or incidental to our bid for the Bawas small hydro project in Kosi Valley, including signing and submission of all Documents and providing information/responses to UJVNL, representing us in all matters before, and generally dealing with UJVNL in all matters in connection with our bid for the said project(s).

We hereby agree to ratify all acts, deeds and things lawfully done by our said Attorney pursuant to this Power of Attorney and affirm that all acts, deeds and things done by our aforesaid Attorney shall and shall always be deemed to have been done by us.

For _____

Accepted

.....(signature)

(Name, Title and Address of the Attorney)

.....(signature)

.....(signature)

(Name, Title and Address of the two Witnesses)

Note:

- ◆ *To be executed by all the members in case of a Consortium.*
- ◆ *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter Documents of the executants(s), and when it is so required the same should be under common seal affixed in accordance with the required procedure.*

FORMAT I-F

FORMAT FOR POWER OF ATTORNEY TO LEAD MEMBER OF CONSORTIUM

POWER OF ATTORNEY

(To be executed on non-judicial stamp paper of the appropriate value in accordance with relevant Stamp Act. The stamp paper to be in the name of the Company who is issuing the Power of Attorney)

WHEREAS, UJVNL has invited applications from interested parties for Qualification for Bawas small hydro power project in Kosi Valley.

WHEREAS, the members of the Consortium are interested in bidding for the Project(s) and implementing the Project(s) in accordance with the terms and conditions of the RFQ cum RFP (Document) and other connected Documents in respect of the said project(s), and,

WHEREAS, it is necessary under the RFQ cum RFP (Document) for the members of the consortium to designate one of them as the Lead Member with all necessary power and authority to do, for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium's bid for the Project(s) or, in the alternative, to appoint one of them as the lead member who would have all necessary power and authority to do all acts, deeds and things on behalf of the Consortium, as may be necessary in connection with the Consortium's bid for the Project(s).

NOW THIS POWER OF ATTORNEY WITNESSETH THAT:

We, M/s. M/s. and M/s. (furnish respective names and addresses of their registered offices) hereby designate M/s. being one of the members of the Consortium, as the lead member of the consortium, to do on behalf of the Consortium, all or any of the acts, deeds or things necessary or incidental to the Consortium's bid for the Project(s), including submission of application/ proposal, participating in conferences, responding to queries, submission of information/ Documents and generally to represent the Consortium in all its dealings with UJVNL or any other person or Government Agency, in connection with the Project until the culmination of the process of bidding and thereafter till the Concession Agreement is entered into with the GoU/UJVNL.

We hereby agree to ratify all acts, deeds and things lawfully done by the lead member acting as our Attorney pursuant to this Power of Attorney and affirm that all acts, deeds and things done by our aforesaid Attorney shall and shall always be deemed to have been done by US/Consortium.

Dated this the..... Day of

.....
(Executants)
(Name, Title and Address of the Attorney) (Signature)

(Name, Title and Address of two Witnesses)

.....

Note: To be executed by all members of the Consortium excluding the lead member. The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter Documents of the Executant'(s) and when it is so required the same should be under common seal affixed in accordance with the required procedure.

FORMAT I-G**SUBMISSION OF DOCUMENTS****Details of Document Enclosed:**

SN	Description	Yes	No
1	Application Letter Refer S. No.- ...Vol. I		
2	Letter of Participation from each member Refer S. No.- Vol. I		
3	Bidders Organization Refer S. No.- Vol. I		
4	Technical strength / Project Development Experience Data Sheet for Completed Projects Refer S. No.- Vol. I		
5	Technical Strength Data Sheet for works in Hand Refer S. No.- Vol. I		
6	Experience Certificate for each work from the respective Clients Refer S. No.- Vol. II		
8	Financial Statements Refer S. No.- Vol. I		
9	Bankers Information Refer S. No.- Vol. I		
10	Financial Strength Questioner Refer S. No.- Vol. I		
11	Bid Security Refer S. No.- Vol. I		
12	Commitment Letter Refer S. No.- Vol. I		
13	Company Profile Refer S. No.- Vol. II		
14	Memorandum and Article of Association of each Member Refer S. No.- Vol. II		
15	Copy of Registration Certificate of the each member Company Refer S. No.-Vol. II		
16	Memorandum of Understanding within the member Consortium Refer S. No.- Vol. II		
17	Latest Income Tax Clearance Certificates of each member Refer S. No.- Vol. II		
18	Power of Attorney to the authorised person from Lead Member Company Refer S. No.- Vol. II		

19	Power of Attorney from members of JV/Consortium to the lead Member Refer S. No.-Vol. II		
20	Balance Sheets for previous 3 years for each member Refer S. No.- Vol. II		
21	In case of participation by Foreign Companies, an Accreditation Certificate from the concerned Government, if required. Refer S. No.-Vol. II		
22	Declaration by Bidder / Consortium member regarding any disqualification if any (Clause 1.3.1 (ix) of Section I) Refer S. No.- Vol. II.		

Please tick against the one applicable.

FORMAT II-A**TECHNICAL STRENGTH****SUMMARY OF COMPLETED WORKS**

SN.	Type of Work	No. of Contracts completed in previous Ten years* (All contracts for which details are furnished in Format-II B)	Total Value

*Indicate your share of work, if in JV /Consortium.

❖ **FORMAT II- B-1**

TECHNICAL STRENGTH / PROJECT DEVELOPMENT EXPERIENCE
PROJECT DATA SHEET (SEPARATELY FOR EACH COMPLETED WORK)

1	Name of the Applicant or member of the Consortium who has executed the work	
2	Project Name	
3	Location (City & Country)	
4	Scope of Work	
5	Type of Contract (i) Design Services (ii) Consultancy Services (iii) Construction contract/EPC Contract (iv) Equipment Supply & Erection (v) O&M Contractor	
6	Date of start & finish.	
7	Total completed cost (Rs. in millions)	
8	Was the work carried out as member or as a group (Yes or No) If a group then indicate- (i) Participation (%) (ii) Areas of Participation	
9	Were any penalties imposed? If Yes Give details	
10	Was arbitration, litigation commenced? If Yes Give details	

* Only the value of Contract, as executed by the Applicant/Member in his own name should be indicated. Where a work is undertaken by a group, only that portion of the contract, which is undertaken by the concerned Applicant/member should be indicated and the remaining done by the other members of the Group be excluded.

** Please submit Certificate from clients for each work

FORMAT II- B-2**PROJECT DEVELOPMENT EXPERIENCE**

PROJECT DATA SHEET (Separately for Each completed Project)

Project Name		
Location (City & Country)		
Overall Capacity (MW)		
Type:(Hydro/Thermal/others)		
Date of Start & Finish		
Total Completed Cost		
Names of Companies that played the following roles on the Project including Bidders' Own		
	Description	Equity Provided (in percentage)
a) Lead Developer		
b) Co-Developer		
c) Equity Participant		
d) EPC Contractor		
e) Contractor (Mention component)		
f) O&M Contractor		
g) Equipment Supplier		

FINANCING DETAILS:

a) Total Equity	(Rs in Lacs/Crores)
b) Bidder's Equity	
c) Total Debt	
d) Bidder's Debt	
e) Time taken for Financial Closure (months)	

Were any penalties imposed? If Yes, Give details	
Was arbitration, litigation commenced? If Yes, Give details	

FORMAT II- C**TECHNICAL STRENGTH****DETAILS OF WORKS IN HAND**

Name of the Applicant or Member of Constituent Group
--

Applicants (each member of the Group) should provide information on their current commitments in respect of all contracts that have been awarded or for which a letter of intent or acceptance has been received or for contracts approaching completion but for which a Completion Certificate is yet to be issued.
--

Particulars of Contract	Name and Address of Client with telephone number	Brief Description	Total value of Contract*	Date of Start	Estimated Completion Date

* Indicate share of work, if in a JV/Consortium.

** Please submit Certificates from the respective clients for each work.

FORMAT III- A**FORMAT FOR FINANCIAL STRENGTH**

Name of Member:.....

(Equivalent Rs. Millions)

SN	Financial Information in Rupee equivalent, with Exchange Rate, at the end of Concerned Year			
		Year 1	Year 2	Year 3
1.	Total Assets			
2.	Current Assets			
3.	Current Assets + Loans & Advances			
4.	Total Liabilities			
5.	Current Liabilities			
6.	Current Liabilities & Provision			
7.	Turnover			
8.	Profit Before Interest and Tax			
9.	Profit Before Tax			
10.	Profit After Tax			
11.	Shareholder's Funds (Net Worth) = (Paid up equity + Reserves) - (Revaluation Reserves + Miscellaneous Expenditure not Written Off)			
12.	Depreciation			
13.	Debt / Equity Ratio			
14.	Current Ratio (2)/(5)			
15.	Profitability Ratio (10)/(7)			
16.	Net Cash Accruals = Profit After Tax + Depreciation			

This information should be extracted from the Annual Financial Statement / Balance Sheet which should be enclosed. Year 1 will be the latest year for which audited Financial Statement are available, Year 2 will be the Year immediately preceding the Year 1 and Year 3 shall be the year immediately preceding the Year 2. All figures quoted shall be certified by the Applicant's Auditors. In case the annual accounts for the latest financial year are not audited and therefore the applicant could not make it available, the applicant shall give an undertaking to that effect and the Statutory Auditor shall Certify the same. In such a case, the applicant may provide the unaudited accounts (with schedules) for the latest financial year. In any case, the audited annual financial statements for three year preceding the latest financial year would have to be provided, failing which the application will be rejected as Non-responsive.

Attachments:-

- (i). Attach two copies of Annual Reports and Audited Financial Statements for the aforesaid three years (for the individual Bidder or each Member of the Group).
- (ii). Companies owned by individuals, and partnerships, may submit their Balance sheets certified by Registered Accountants, and supported by copies of tax returns, in case audits are not required by the laws of their Countries of origin
- (iii). Income Tax Clearance Certificate for the last year.
- (iv) The Applicant should provide the financial Capability based on its own financial Statements. Financial Capability of the Applicants parent company or Associate Company (who are not members of Consortium) will not be considered for computation of the financial capability of the Applicant.

FORMAT III- B
BANKER'S INFORMATION

1. Name of Banker/Financial Institution:
2. Address:
3. Telephone
4. Contact Name and Title
5. Telex No.
6. Attachment:

A Letter of Authorisation by the Bidder to authorize the Bank/Financial institution to furnish such information as desired by the Government for assessing the credit-worthiness of the Bidder.

(Separate sheets for each Bank/Financial Institution be submitted)

FORMAT III-C
FINANCIAL STRENGTH (QUESTIONNAIRE)

Questionnaire

SN	Question	Yes	No
1	Has the Bidder as a Developer ever provided equity in any Independent Power Project?		
2	Has the Bidder as a Developer raised debt in any Independent Power Project?		
3	Has the Bidder defaulted in repayment of loans to any Financial Institutions during the last five years?		
4.	Has the Bidder or any of his Group Company (ies) been declared defaulter by any Bank or Public Financial Institution?		

FORMAT III- 2A**COMMITMENT LETTER**

(To be submitted by each Bidder or in case of a Consortium, by each Member, proposing financial support to the Project.)

(To be provided by Bidder on Letter Head of the respective firm)

From : -----

[Name and address of the Bidder or in case of a Consortium, by each Member]

To,

**The Director (Operations),
Uttarakhand Jal Vidyut Nigam Limited,
Ujjwal, Maharani Bagh, G M S Road
Dehradun-248001**

- (1) -----[Name of Bidder or Member in case of a Consortium], Bidder in response to a RFQ cum RFP (Document) issued by UJVNL/ UIPC, is submitting a Proposal dated (date to be inserted), to implement the “Design, Engineering, Finance, Construction, Development, Operation and Maintenance of ___ Hydro Power Projects in [insert the name of the Valley/River] on Build, Own, Operate and Transfer (BOOT) Basis”
- (2) ----- Name of Bidder or Member in case of a Consortium], with its registered office at (insert address), has agreed to commit the sum [insert the amount in Rupee] (the “Committed Sum”) in capital contributions and support to enable the Bidder/Consortium meet its obligations
- (3)

Form of Capital Contribution Support	Total for the Bidder	Member's Commitment	Percentage
Cash Contributions			
Contingent Cash Contribution			
Guarantees			
Grants			
Total			

- (4) The Committed Sum is subject only to the following conditions:
 - (i) Final Board approval of the Project Agreement and Financial Agreement;
 - (ii) Financial Closer; and
 - (iii) No material adverse change in the financial conditions of the Capital Provider
- (5) The Board of the Capital Provider (or a committee of the Board with delegated authority) has considered and approved:
 - (i) Financial Proposal; and
 - (ii) Financial Profile
 - a) The Board of the Capital provider (having made reasonable and diligent enquiry) believes that the Concessionaire would have the sufficient resources to meet the obligations
 - b) The Board of Capital Provider has considered and approved this letter

NAME OF [BIDDER or CONSORTIUM]

SIGNATURE -----
 NAME -----
 TITLE -----
 DATE -----

Note:

Format III-2B

PRICE PROPOSAL FORMAT
(On the Letter Head of the Bidder)

Authorised Signatory Name

**The Director (Operations),
 Uttarakhand Jal Vidyut Nigam Limited,
 Ujjwal, Maharani Bagh, G M S Road
 Dehradun-248001**

Sub: “Design, Engineering, Finance, Construction, Development, Operation and Maintenance of Bawas small Hydro Power Project in Kosi valley on Build, Own, Operate and Transfer (BOOT) Basis”

Being duly authorized to represent and act on behalf ----- and having reviewed and fully understood all requirements of bid submission provided in the RFQ cum RFP (Document) and subsequent clarifications provided in relation to Project, we hereby provide our Price Proposal

- | | |
|---|--|
| 1. Concession Period: | 40 years from the Agreement Date |
| 2. Reimbursement of Allocated Expenses | Rs. 146.19 Lacs (Rs. One hundred Forty Six Lacs and Ninteen Thousand only) + Service Tax as applicable + interest at SBI prime lending rate from 01.03.2009 till the date of payment of development charges |
| 3. Development Premium | Rs. 429.00Lacs (Rupees Four Hundred Twenty Nine Lacs only) |
| 4. Upfront Premium* | (to be filled in by the bidder) |

* This includes the minimum Threshold Premium payable to UJVNL/GoU @ Rs. 5.00 Lacs / MW detailed in Policy for harnessing renewable energy sources in Uttarakhand with Private sector / community participation-2008, clause no.7A (ii).

We confirm that we will submit the above Payments as specified in Points (2), (3) and complete other formalities within time frame as specified in the RFQ cum RFP (Document)

Unless and until a formal Agreement is prepared and executed, this Bid, together with your written acceptance thereof, shall constitute a binding contract between us.

Name of Bidder

Signature of the Authorised Person

Format III-2C**BID SECURITY****[To be issued by a Scheduled Bank]**

This deed of Guarantee is made on _____ day of _____, 200 at _____ by _____ a Scheduled Bank within the meaning of Reserve Bank of India having its Head Office / Registered Office at _____ and inter alia a branch office at _____ (hereinafter referred to as Bank / Financial Institution, which expression shall, unless it be repugnant to the subject or context hereof, being deemed to include its successors and assign) in favour of Uttarakhand Infrastructure Projects Company Pvt. Ltd. (UIPC Pvt. Ltd.), Dehradun, having their registered office at Dehradun (hereinafter referred to as UIPC Pvt. Ltd, which expression unless it be repugnant to the subject or context hereof, be deemed to include its Successors and Assigns

1.[Name of relevant Bidder] ("Bidder"), has in response to a RFQ cum RFP (Document) issued by the UJVNL / UIPC / IL&FS submitted a Proposal dated [dated to be inserted] for it to procure the Concession to implement the Project on Design, Engineering, Finance, Construction, Development, Operation and Maintenance on Built, Own, Operate and Transfer (BOOT) Basis. (the "Project")
2.[Name of the Bank/Financial Institution] with its registered office at..... absolutely unconditionally and irrevocably guarantees and undertakes to pay UIPC Pvt. Ltd upon first written demand the sum of Rs 107.00 Lacs (Rs. One hundred seven Lacs only) (the "Guaranteed Sum") subject to the conditions set out below.
3. [Bank/Financial Institution] undertakes to immediately pay UIPC Pvt. Ltd without any protest or demur the Guaranteed Sum upon receipt of the first written demand from UIPC Pvt. Ltd without UIPC Pvt. Ltd having to substantiate its demand provided that the demand states that the amount demanded is due as a result of the occurrence of one or more of the conditions referred to in Clause 4 below.
4. [Bank/Financial Institution] shall be liable to immediately pay to UIPC Pvt. Ltd the Guaranteed Sum without any deduction to UIPC Pvt. Ltd, if UIPC Pvt. Ltd notifies.[Name of the Bank/Financial Institution] in writing that:

- (a) The Bidder has withdrawn its Proposal on or after the date of Opening of Financial Proposal of the Bid and during the Proposal Validity Period.
 - (b) In case the Bidder fails to sign the Implementation Agreement or pay the Project Development Charges or Development Premium or Upfront Premium to UIPC Pvt. Ltd/GoU within the stipulated timelines as specified in the RFQ cum RFP (Document).
 - (c) In case bidder refuses to accept the corrections of errors in his Bid.
5. This Guarantee will remain in force for a period of 180 days from date of submission of Bidding Documents or it may be extended by UIPC Pvt. Ltd, notice of which extension to the [Bank/Financial Institution] is hereby waived
6. UIPC Pvt. Ltd is entitled to make any demand under this Guarantee not later than the day this Guarantee ceases to remain in force in accordance with Clause 5.
7. UIPC Pvt. Ltd is under no obligation to notify [Bank/Financial Institution] of any extension of the Validity Period of the Proposal or the selection of the Bidder as one of the qualified Bidder (s).
9. [Bank/Financial Institution] agrees that it will not assign its obligations under this Guarantee without the prior written consent of UIPC Pvt. Ltd, and UIPC Pvt. Ltd will not unreasonably withhold its consent if the Proposed Assignee is of at least equal financial standing to [Bank/Financial Institution] and the Assignee assumes in writing the obligations of [Bank/Financial Institution] under this guarantee in the same manner before the assignment.
10. This Guarantee shall be valid and effective upto _____ (Date of validity of the Bank Guarantee for Performance Security) for enabling UIPC Pvt. Ltd to lodge a claim for payment under the Guarantee till the date of expiry of the term of the Guarantee. The Guarantor shall be obligated to make payment upon the Guarantee forthwith on demand, if the claim is lodged within the Claim Validity Period and the obligation to pay is subject to normal limitation for payment of claims upon a Guarantee. Time is of essence for payment and in the event of failure to make payment, Guarantor shall be obligated to pay compound interest at 2% above the prime lending rate of the Guarantor institution, compounding quarterly in the event of the Guarantor's failure to make payment upon the Guarantee for any reason whatsoever. Payment of interest as provided is no excuse for delayed payment or non-payment of the Guaranteed Sum.

11. The Courts at Dehradun shall have jurisdiction over all matters arising out of or relating to this Guarantee and the same shall be governed by the laws of India.

In witness thereof the [Bank / Financial Institution] has executed this Guarantee on this _____ day of _____ and Year first herein above written.

Signed and Delivered by the above named _____ [Bank / Financial Institution] by its Authorized Signatory as authorized by Board Resolution passed on _____ / Power of Attorney dated _____.

Authorised Signatory

Name

Designation

In Presence of:

1).....

2)

Format III-2D**PERFORMANCE SECURITY**

(To be issued by a Scheduled Bank in India)

[Contract Package No. _____ under (BOT)]

From:

[Name of the Bank, and its Branch Address]

“UIPC vide Letter No. _____ dated _____ issued Letter of Acceptance (LOA) to M/s. _____ (the “Consortium”) for “Design, Engineering, Finance, Construction, Development, Operation and Maintenance of ___ Hydro Power Projects in [Insert the name of the Valley/River] on “Build, Own, Operate and Transfer (BOOT) Basis” (the “Project”). M/s. _____ has confirmed their acceptance to the said LOA of UIPC vide their Letter No. _____ dated _____. M/s. _____ (the “Concessionaire”) is to enter into the Concession Agreement for undertaking, inter alia, the Project and to perform and discharge all its obligations as laid out.

The Concessionaire is required to give (“Government of Uttarakhand”) a guarantee by a Nationalised/Scheduled/Foreign Bank based in India in the sum of Rs. 321.0Lacs only (Indian Rupees Three Hundred twenty one Lacs only) as security for compliance with its obligations under the Implementation Agreement during the Construction Period.

The Guarantor has agreed to give Government of Uttarakhand the abovementioned Guarantee on the terms set out herein.

GUARANTEE

1. We, _____ [Name of Bank] (the “Guarantor”) with its registered office at (Address of Head Office), unconditionally Guarantee to pay Government of Uttarakhand upon first written demand and without any deduction any sum claimed by Govt. of Uttarakhand upto a maximum of (the “Guaranteed Sum”) subject to the conditions set out below;

2. The Guarantor unconditionally and irrevocably promises to pay on demand the Guaranteed Sum, without protest or demur whatsoever upon the receipt of a written demand from Govt. Of Uttarakhand, which shall be final and conclusive as against the Guarantor requiring the Guarantor to make the payment to Govt. of Uttarakhand

3. The Guarantor waives any requirement that Govt. of Uttarakhand demand any debt or payment from the Concessionaire before presenting it with a demand under this Guarantee.
4. Govt. of Uttarakhand shall notify the Guarantor of its demand for payment of the Guaranteed Sum without any deduction of whatsoever nature and without reference to any claim or counter claim or set off, in accordance with the Concession Agreement. Such Notification by Govt. of Uttarakhand shall be conclusive and binding on the Guarantor.
5. Upon encashment and appropriation of the whole or any portion of the Guaranteed Sum by Govt. of Uttarakhand in accordance with the Concession Agreement, the Concessionaire shall be obliged to ensure the replenishment of the existing Guarantee or provide fresh guarantee of the Guaranteed Sum through the Guarantor within the time provided in the Concession Agreement for the same.
6. No underlying dispute as between Govt. of Uttarakhand and the Concessionaire nor any pending application for interim relief or arbitration proceedings or other legal proceedings shall constitute any ground for prevention, delay or obstruction for making payment to Govt. of Uttarakhand by the Guarantor and the existence of any disputes or differences or claims in arbitration or otherwise shall not constitute any ground for non-payment on this Guarantee.
7. This Guarantee is valid and effective from its date. This Guarantee and the Guarantor's obligations under it will terminate on the Commercial Operations Date of the Project as advised to the Guarantor in writing by Govt. of Uttarakhand.
8. The Guarantor agrees that its obligation to pay any demand made by Govt. of Uttarakhand before the termination of this Guarantee will continue until the amount demanded has been paid in full.
9. This Guarantee shall be valid and effective upto _____ (Date of validity of the Bank Guarantee for Performance Security) for enabling Govt. of Uttarakhand to lodge a claim for payment under the Guarantee till the date of expiry of the term of the Guarantee. The Guarantor shall be obligated to make payment upon the Guarantee forthwith on demand, if the claim is lodged within the Claim Validity Period and the obligation to pay is subject to normal limitation for payment of claims upon a Guarantee. Time is of essence for payment and in the event of failure to make payment, Guarantor shall be obligated to pay compound interest at 2% above the prime lending rate of the Guarantor institution, compounding quarterly in the event of the Guarantor's failure to make payment upon the Guarantee for any reason whatsoever. Payment of interest as provided is no excuse for delayed payment or non-payment of the Guaranteed Sum.
10. No change in the constitution of the Concessionaire or of the Guarantor shall be a ground for release of the Guarantee and no variation in the Concession Agreement made post selection of the bidder, or post making of the bid, shall constitute a variation, which

would, subject to the terms and conditions of this agreement, discharge the Guarantor. The Guarantor shall, notwithstanding such change, be bound to make payment upon the Guarantee on demand.

11. The Guarantor agrees that no change, addition to or other modifications to the terms of the Concession Agreement or to any documents, which have or may be made between Govt. of Uttarakhand and the Concessionaire, will in any way release it from any liability under this Guarantee and that it waives any requirement for notice of any such change, addition or modification.

12. The Guarantor agrees that it will not assign its obligations under this Guarantee without the prior written consent of Govt. of Uttarakhand. Govt. of Uttarakhand will not unreasonably withhold its consent if the proposed Assignee is of at least equal financial standing to the Guarantor and the Assignee assumes in writing the obligations of the Guarantor under this Guarantee at the same time or before the assignment.

13. All correspondence should be addressed and delivered to the office of Govt. Of Uttarakhand:

**The Secretary (Energy)
Government of Uttarakhand
Uttarakhand Secretariat
Subash Road,
Dehradun-248001
Phone No. 0135-2713553**

14. This Guarantee binds the Guarantor, its Successors and Permitted Assigns.

SEAL OF [THE BANK]

NAME OF [THE BANK]

SIGNATURE

NAME

TITLE

CODE NO.

DATE

PHONE NO

FAX NO

Format – III 2E

Section – 5

IMPLEMENTATION AGREEMENT

Implementation Agreements attached to be signed for the following project:-

(A) Bawas HEP (13MW)

(TO BE SIGNED FOR EACH PROJECT SEPARATELY)

IMPLEMENTATION AGREEMENT

FOR

_____ (Name of the Project ('UP TO 25 MW' CATEGORY)

This Implementation Agreement (the Agreement) made on this ___ day of the month of _____

BETWEEN

The Governor of the State of Uttarakhand through Shri P K Sarangi, Secretary, Department of Energy, Government of Uttarakhand at Dehradun – 248 001 (hereinafter referred to as Government which expression unless repugnant to the context or meaning thereof, shall include its successors, administrative or permitted assigns), of the **FIRST PART;**

AND

Kosi Valley Hydel Power Company (P) Ltd. a Company registered under the Companies Act, 1956 having its registered office at Core 4 B, 4th Floor, India Habitat Centre, Lodhi Road, New Delhi, 110003, India (hereinafter referred to as the **Company**) which expression shall unless repugnant to the context or meaning thereof, include its successors, administrators or permitted assigns) , ownership of the said company has been transferred to M/S.....(successful bidder) for the concession period, through Shri. -----, Director who has been duly

authorized by the Company vide their resolution dated to execute the Agreement, of the

SECOND PART

WHEREAS

- A. UIPC is a company promoted by Govt. of Uttarakhand and IL&FS on a 50:50 Joint venture basis with objective of promoting infrastructure projects in the State of Uttarakhand.
- B. UIPC has promoted the Company for development of hydro projects along the Kosi River, in Nainital district of Uttarakhand.
- C. The Company has carried out the necessary detailed investigations and confirmatory surveys, prepared and submitted the Detailed Project Report (DPR) for implementation of Project after having satisfied itself about the techno-economic viability of the Project and convinced that it can obtain all statutory clearances and approvals from the concerned authorities; and
- D. The Company is now desirous of undertaking the implementation of the Project in accordance with the conditions set forth in this Agreement.

NOW THEREFORE, INCONSIDERATION OF THE PREMISES AND MUTUAL COVENANTS AND CONDITIONS SET FORTH HEREIN, THE AGREEMENT WITNESSETH AS FOLLOWS

ARTICLE 1

DEFINITIONS & INTEPRETATIONS

1.1 DEFINITIONS

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

- 1.1.1 “**Agreement**” shall mean this Agreement together with all its annexure and any amendments thereto made in accordance with the provision contained herein.
- 1.1.2 “**Agreement Period**” shall have the meaning as specified in **Article II**.
- 1.1.3 “**Applicable Laws**” shall mean all laws, promulgated or brought into force and effect by Government of India or Government of Uttarakhand including regulations and rules made there under, and judgments, decrees, injunctions, writs and orders of any court of record, as may be in force and effect during the subsistence of this Agreement.
- 1.1.4 “**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 during the subsistence of this Agreement.
- 1.1.5 “**Arbitration Act**” means the Arbitration and Conciliation Act, 1996 and shall include modifications to or any re-enactment thereof as in force from time to time.
- 1.1.6 “**CEA/Authority**” shall mean the Central Electricity Authority constituted under

Subsection (i) of Section 70 of the Electricity Act, 2003 or its successors.

- 1.1.7 “**Commercial Operation**” shall mean the state of Unit/ Project when Unit/ Project is capable of delivering Active Power and Reactive Power on a regular basis after having successfully completed the commissioning tests as per Prudent Utility Practices.
- 1.1.8 “**Commercial Operation Date (COD)** ” shall mean the date on which the Commercial Operation of Unit/ Project as the case may be is achieved by the Company.
- 1.1.9 “**Company**” shall mean **Kosi Valley Hydel Power Company (P) Ltd.**, a Company registered under Companies Act, 1956 having its registered office at Core 4 B, 4th Floor, India Habitat Centre, Lodhi Road, New Delhi, 110003, India and shall, unless repugnant to the context or meaning thereof, also include their successors, administrators or permitted assigns.
- 1.1.10 “**Contractor**” shall mean any person, firm or body corporate engaged by the Company for the implementation/ operation of the Project.
- 1.1.11 “**Control Center**” or “**State Load Despatch Centre**” or “**SLDC**” shall mean the UPCL’s Load Despatch Centre located at Rishikesh or such other control centre designated by UPCL from time to time (but not more than one at a time) wherefrom Despatch Instructions shall be issued by UPCL to the Company/Station. The Control centre/ SLDC will work in close co-ordination with Northern Regional Load Despatch Centre (NRLDC).
- 1.1.12 “**Debt**” shall mean the amount of loan, non-convertible debenture or other financial facility, raised and received by the Company under the Financing Agreements, and actually expended (or to be expended) for the Project and which shall not be greater than the principal amount of debt specified in the applicable currency in the estimate of Project Cost as per the DPR.
- 1.1.13 “**Deliverable Energy**” shall mean the electrical energy generated at the Station, as measured at generator(s) terminals less the summation of the following:
- i. actual auxiliary consumption of the bonafide use of auxiliaries, lighting and ventilation in the Power Station and intake works and the transformation losses (from generation voltage to the transmission voltage) of the step up transformers at the power house switchyard;
 - ii. transmission losses at actual, which shall be the difference of the electrical energy measured at sending and receiving ends of the transmission line (i.e., the station end and interconnection point).
- For this purpose and subject to above, the energy meter reading shall be taken on monthly basis at the Inter Connection Point.
- 1.1.14 “**Despatch**” means to schedule and control the generation of the Project in order to commence, increase, decrease or cease the electrical output as delivered to the Grid System in accordance with UPCL’s instructions from the Control Centre in conformity with the Agreement and Prudent Utility Practices.
- 1.1.15 “**Despatch Instruction**” shall mean an instruction issued by the Control centre to the Company for the Despatch of power by message to be confirmed in writing / fax by

Control Centre in accordance with the operating procedure developed by the Parties to operate the Project in accordance with the terms of this Agreement, technical limits and Prudent Utility Practices including:

- a) An instruction to target active/ reactive power output to be maintained by the Project;
- b) An instruction to synchronize or desynchronize a unit at a particular time;
- c) An instruction to defer or cancel a scheduled outage or maintenance outage;
- d) An instruction for backing down the active/ reactive power due to Grid conditions.

1.1.16 **“Detailed Project Report”** shall mean the Project Report submitted by the Company after carrying out necessary detailed investigations/confirmatory surveys

1.1.17 **“Dispute”** shall have the meaning as specified in Article XII.

1.1.18 **“Effective Date”** shall mean the date of signing of this Agreement.

1.1.19 **“Equity”** shall mean aggregate of all subscribed and paid up share capital of the Company in different currencies as converted to Rupees, by application of the procedure approved by the applicable Authority/ Government of India, as invested in the Project and held by one or more shareholders in the Company, which shall be in accordance with the financial plan.

1.1.20 **“Financial Closure”** shall mean the date on which the Financing Documents providing for funding by the Lenders have become effective and the company has immediate access to such funding under the Financing Documents.

1.1.21 **“Financing Documents”** means the documents executed by the company in respect of financial assistance to be provided by the Lenders by way of loans, guarantees, notes, debentures, bonds and other debt instruments, security agreements, and other documents relating to the financing (including refinancing) of the Project and includes amendments or modifications made from time to time.

1.1.22 **“Financing Package”** means the financing package of the Project indicating the Project Cost and means of financing thereof as per the DPR.

1.1.23 **“Force Majeure”** shall have the meaning as ascribed thereto in Article IX.

1.1.24 **“GoU”** shall mean Government of Uttarakhand

1.1.25 **“GoI”** shall mean the Government of India.

1.1.26 **“Grid/ Grid System”** means the interconnected electrical transmission and distribution system of the State of Uttarakhand including the Interconnection Facility and all other transmission lines and other equipment in the State of Uttarakhand on UPCL’s side of the Interconnection point.

1.1.27 **“IL&FS IDC”** means IL&FS Infrastructure Development Corporation Ltd., a Company registered under the Companies Act, 1956 having its registered office at UG Floor, 2 A, Mahindra Towers, Bhikaji Cama Place, New Delhi – 110066.

- 1.1.28 “**Interconnection Facilities**” shall mean all the facilities which shall include without limitation, switching equipment, communication, protection, control and metering devices etc. at the Interconnection Point(s) to be installed and maintained at the cost of the Company to enable evacuation of power output from the Project in accordance with this Agreement.
- 1.1.29 “**Interconnection Point(s)**” shall mean the physical touch point at Sub-Station(s) of UPCL/ local grid/ rural power distribution entities where the Project’s transmission line for evacuating the power from the Project is connected to the Grid/ local grid/ rural power distribution entities.
- 1.1.30 “**MOEF**” shall mean Ministry of Environment & Forests, GoI or its successor authority/ agency.
- 1.1.31 “**NRLDC**” shall mean “Northern Regional Load Despatch Centre” or its successor entity.
- 1.1.32 “**Net Saleable Energy**” means the electrical energy in Kwh, delivered by the Company at the Interconnection Point, less the Royalty Energy.
- 1.1.33 “**Net Wheeled Energy**” means the deliverable energy less the wheeling charges as applicable form time to time.
- 1.1.34 “**Parties**” shall refer to the Government and the Company collectively.
- 1.1.35 “**Party**” shall refer to the Government and /or the Company individually.
- 1.1.36 “**Permanent Works**” shall mean the permanent works forming part of the Project that are required to be constructed/ installed and maintained as such for the Implementation/ operation of the Project for at least the Agreement Period and shall also include housing facilities for staff to be engaged for operation and maintenance of the Project.
- 1.1.37 “**Project**” shall mean the Bawas SHP (Name of the Project) having an installed capacity of 13 MW and proposed to be established on Kosi River, in the Nainital District in the State of Uttarakhand, 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, police station and other connected facilities including the Interconnection facilities.
- 1.1.38 “**Prudent Utility Practices**” shall mean those practices, methods; techniques and standards, as changed from time to time, that are generally accepted internationally by electric utilities for the purpose of ensuring safe, efficient and economic design, engineering, construction, commissioning, testing, operation and maintenance of various components of the Project of the type specified in this Agreement and which practices, methods and standards shall be adjusted as necessary to take into account:
- i) installation, operation and maintenance guidelines recommended by the manufacturers of plant and equipment to be incorporated in the Project;
 - ii) the requirements of Indian Law;
 - iii) conditions affecting the Grid System; and
 - iv) physical conditions at Site.

- 1.1.39 “**Resident**” shall mean a person who is having a valid photo ID card as issued by the Election Commission, Govt. of India.
- 1.1.40 “**Royalty energy**” shall have the metering set forth in Article IV.
- 1.1.41 “**Scheduled Commercial Operation Date**” shall mean the date by which the Company shall have achieved the Commercial Operation of the Project and shall be 48 months from the Effective Date.
- 1.1.42 “**SPCB**” means the State Pollution Control Board.
- 1.1.43 “**Site**” shall mean the site of Project appurtenances, generating plant including land, waterways, roads and any rights acquired or to be acquired by Company for the purposes of the Project.
- 1.1.44 “**State**” shall mean Uttarakhand.
- 1.1.45 “**Station**” shall mean the Kosi SHP Station.
- 1.1.46 “**Temporary Works**” shall mean all temporary works any kind required in connection with the implementation of the Project and that are incidental and ancillary to the design, engineering and construction of the Project and are constructed/ installed and maintained till the Commercial Operation Date for the Project and not forming a part of Permanent Works.
- 1.1.47 “**UERC**” means Uttarakhand Electricity Regulatory Commission.
- 1.1.48 “**UIPC**” shall mean Uttarakhand Infrastructure Projects Company Pvt. Ltd.,
- 1.1.49 “**UJVNL**” means Uttarakhand Jal Vidyut Nigam Ltd.
- 1.1.50 “**Unit**” shall mean one hydro turbine generator including ancillary equipment and facilities.
- 1.1.51 “**UPCL**” means Uttarakhand Power Corporation Ltd.
- 1.1.52 “**UJVNL**” means Uttarakhand Jal Vidyut Nigam Limited.
- 1.1.53 “**Villages**” shall mean the villages existing around the ----- (Name of the Project) Hydro Power Project as detailed in **Schedule A**.
- 1.1.54 “**Works**” shall mean all works of civil, electrical, mechanical, control and instrumentation in nature and including design, engineering, services suppliers and other work activities required and necessary for the implementation of the Project and shall also include the Permanent Works and Temporary Works.

1.2 INTREPRETATIONS

In this Agreement, unless the context otherwise requires:

- 1.2.1 Any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such information or re-enactment or

consolidation applies or is capable of applying to any transactions entered into hereunder.

- 1.2.2 The references to persons and words denoting natural persons shall include bodies corporate and partnerships, joint ventures and Statutory and other authorities and entities.
- 1.2.3 The nomenclature of the Agreement, headings and paragraph numbers are for the Convenience of reference and shall be ignored in construing or interpreting the Agreement.
- 1.2.4 Any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference provided that this Clause shall not operate so as to increase the liability or obligations of any Party hereunder or pursuant hereto in any manner whatsoever.
- 1.2.5 Any reference at any period commencing “from” a specified day or date and “till” or “until” a specified day or date shall include both such days or dates.
- 1.2.6 Unless otherwise expressly provided in this Agreement, any Documentation required be providing or furnishing by the Company to Government shall be provided free of cost and in three copies and if Government are required to retain two copies thereof.
- 1.2.7 The words/ expressions used in this Agreement shall bear the same meaning as assigned to them in the context in which these have been used in this Agreement provided that their respective meaning, if any, assigned to such undefined word/expression in the Electricity Act, 2003 shall also be taken into consideration for harmonious interpretation of the Agreement.

ARTICLE – II

TERMS OF THE AGREEMENT

2.1 Effectiveness

The Agreement shall come into force with effect from the date of signing of this Agreement.

2.2 Agreement Period

- 2.1 The Agreement shall remain in force up to a period of forty (40) years from the Effective Date (Agreement Period), unless terminated earlier in accordance with the provisions of this Agreement. This Agreement period shall include the period for the Financial Closure and Implementation of the Project and any delay/early commissioning of the Project shall not affect the Agreement Period.

2.3 Renewals

The Company may request the Government for extension of the Agreement Period, at

least one (1) year prior to the expiry of the Agreement period; the term of this Agreement could be extended on such terms and conditions as are mutually agreed between the Parties.

2.4 Transfer of Project

After the expiry of the Agreement Period, the Company along with the Project including its all assets and works shall be transferred to the Government or its nominated agency for a consideration of Rs.1.00 Only (Rupee one only). However, the ownership of the company shall automatically be transferred in favour of GoU or its nominated agency after the completion of Agreement Period. The Company would pass on all the material documents relating to consents and approvals, data, reports, books of accounts in its possession along with the project in a running condition to the GoU or its nominated agency

ARTICLE – III

DEVELOPMENT CHARGES AND PREMIUM

- 3.1 An upfront Premium (premium payable upfront) for Bawas small Hydro project in Kosi valley, of Rs. _____ (which includes the minimum threshold Premium payable to GoU @ Rs. 5 lacs per MW) which shall be in addition to the (i) reimbursement of allocated expenses and (ii) Development Premium, shall be paid in lump sum by the 'Preferred Bidder' to UIPC/ GoU1. The upfront Premium of the Project, for which the present agreement is entered into, is included in the aforesaid amount.

ARTICLE- IV

SALE OF POWER AND ROYALTY ENERGY

4.1 Disposal of Power

4.1.1 The Company shall dispose off power from the Project, after allowing for Royalty Energy, in the following mode: -

- (i) Sell power to the UPCL, and such sales shall be governed by the PPA signed between _____(the buyer) and the Company as approved by the UERC/appropriate agency.
- (ii) If the company and _____ (the buyer) so desire then the PPA, if it is already signed may be treated canceled on their mutually agreeing and in such the company will be free to sell energy as per the "Policy for Harnessing Renewable Energy Sources in Uttarakhand with Private Sector / Community Participation - 2008" issued by the Government of Uttarakhand for projects upto 25 MW/ The Electricity Act, 2003.

4.1.2 The detailed terms and conditions for usage of UPCL's system for transfer of power up to the appropriate delivery point/ interstate point and/ or for sale of power by the Company to the UPCL, as the case may be, shall be incorporated in a separate agreement to be executed by the Company with the UPCL.

- 4.1.3 All the sales of the energy generated by the Project would be approved, as may be required, by the UERC.

4.2 Royalty Energy

- 4.2.1 Royalty energy in the shape of free power to be supplied to the Government shall be as per “Policy for Harnessing Renewable Energy Sources in Uttarakhand with Private Sector / Community Participation - 2008”, the abstract is given below:-

- i - On Micro, Mini (i.e. up to 5MW) and other RE projects- no Royalty payment would be charged.
 - ii - On small hydro Projects(i.e. above 5MW and up to 25 MW)- Royalty Payment for the first 15 years of operation would be exempted. From 16th years of operation, a royalty @18% of energy generated would be charged.
- For other cases of sale of power, the guide lines of Govt. of Uttarakhand / UERC shall be applicable.

- 4.2.2 In case where disposal of power is to be made through two or more modes attracting different rates of royalty, energy shall be segregated on pro-rata basis.

- 4.2.3 Modalities for providing the Royalty Energy shall be mutually agreed between the Company and the Government.

- 4.3 The Company shall pay the Electricity duty, as applicable from time to time, on the sale of power to the consumer or for captive use.

ARTICLE V

OBLIGATIONS

5.1 Obligations of the Company

5.1.1 Financial closure

- i. The Company shall achieve the Financial Closure within 9 months from the Effective Date, including receipt of all statutory clearances and approvals for setting up the Project. It shall use all reasonable endeavors at its own cost to carry out the work necessary for obtaining Statutory clearances/ approvals and for achieving Financial Closure. Upon occurrence of the Financial Closure, it shall notify to the Government of the same. Failure to achieve Financial Closure within specified period shall result in termination of the Agreement.
- ii. The Company shall submit quarterly progress reports in respect of achieving Financial Closure of the Project.
- iii. The Company shall submit to the Government 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 Company shall ensure

that these Project related Agreement do not in any way hold the Government liable to the Company or any Contractor in any manner whatsoever and shall be without prejudice to the rights of Government hereunder.

5.1.2 Commercial Operation Date (COD)

The Company shall achieve COD within 48 months form the Effective Date

5.1.3 Incentives for Early Commercial Operation of the Project

In case the commercial operation of the project is achieved prior to the Scheduled Commercial Operation Date, the incentives shall be as under:

Milestone	Incentive
One Year early completion of the Project	(a) there shall be reduction of royalty energy @ 1% for one year after initial 15 years of operation (i.e., Royalty energy to be supplied for the 16th year shall be 17% instead of 18%)
Two years early completion of the Project	(b) there shall be reduction of royalty energy @2% for two after initial 15 years of operation (i.e., Royalty energy to supplied for the 16th and 17th year shall be 16% instead of 18%)

5.1.4 Disincentives for Delayed Commercial Operation of the Project.

In case of delay in the achievement of the COD, the company shall be liable to pay Damages to the Government, which shall be an amount equal to Rs. 5000/- per. day (Rs. five thousand per day) for the period of delay. The company may be given a grace period of 30 days after the scheduled COD. If the Company fails to achieve COD, even after the expiry of one year of the schedule date, the State Government may forfeit the performance security along with the cancellation of the allotment of project. Further, as referred in clause 2.2 above, the delay in achievement of COD will not affect the Agreement period and thereby reduce the effective generation period for the Company. In case the project enjoys an exemption of royalty in the initial years, the duration of royalty exemption would be reduced by the period of delay.

5.1.5 Monitoring and Supervision of the Project

The Company shall furnish to the GoU a quarterly progress report of actual progress of the Construction Works Comprised in the Project and shall give all such other relevant information as may be required by the Government.

During the Construction Period, the Company shall provide videography to GoU every calendar quarter, covering the construction of the project in that quarter. Such video recording shall be provided not later than fifteen days after the close of each quarter.

Government may inspect the Construction Works and the Project. The Company shall, at all times, afford access to the Site to the authorized representative of the Government and to the person duly authorized by any Governmental 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 with their authority and upon reasonable notice, the Company 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.

5.1.6 Rights and Title Over the Site

- i. The company shall have exclusive rights to use of the Site in accordance with the provisions of the Agreement and for this purpose it may regulate the entry and use of the Project by third parties.
- ii. The Company shall not sublet any part or whole of the Site, save and except as may be expressly set forth in the Agreement, provided however that nothing contained herein shall be construed or interpreted as restricting the right of the Company 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.

5.1.7 Execution of Upstream and Downstream Projects

The Company shall have no claim on any Project upstream and downstream of the Project.

5.1.8 Rehabilitation and Resettlement Plan

The Company shall execute the Rehabilitation and Resettlement Plan prepared in consultation with the Government, at its own cost and the cost so incurred shall form part of the Project Cost. The benefits to the project affected families shall be as per “The National Rehabilitation and Resettlement Policy – 2007” issued by GoI or / and any other Policy issued by Government of Uttarakhand in this regard.

5.1.9 Safety Measures

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

5.1.10 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 Company shall be responsible for taking remedial measures to mitigate such adverse effect. The cost of the above remedial measures shall become a part of the Project Cost. Such facilities shall be as mutually identified and agreed upon between the Company and the Government. The Company shall not interfere with any of the existing facilities till an

alternate facility, as identified, is created.

5.1.11 Compensatory Afforestation

The company shall pay to the Government / State Forest Department 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.

5.1.12 Catchment Area Treatment Plans

The Catchment area Treatment Plan of the project shall be prepared by the State Forest Department as may be determined by the MoEF, GoI.. The Company shall be responsible for the payment of cost of Catchment Area Treatment Plan to the State Forest Department, as per Forest and Environment Clearance accorded by the GoI.

5.1.13 Environment Impact Assessment

The company shall be liable to comply the guide lines as are required under the Environmental (Protection) Act, 1986 and shall comply the conditions imposed by the State Pollution Control Board (SPCB) under the Water (Prevention and Control Pollution) act, 1974 or any other environment law(s) as may be applicable.

5.1.14 Maintaining Ecological Balance

The Company shall be responsible for maintaining the ecological balance by preventing deforestation, water pollution and defacement of natural landscape in the vicinity of Works. The Company shall take all reasonable measures to prevent any unnecessary destruction, scaring of defacement of the natural surroundings in the vicinity of the Construction/ Physical Works. The Company shall have to follow the stipulations imposed by the Govt. of India, MoEF & the State Govt. after diversion of the forest land.

5.1.15 Ensuring Flow of Water

The Company shall ensure such minimum flow of water immediately downstream of the weir/barrage/dam for downstream requirements as per existing Guide lines issued by Government of Uttarakhand / Government of India or State Pollution Control Board in this regard or any other Guide lines that are issued in future.

5.1.16 Protection of Pisciculture

The company shall take appropriate steps, as may be required, for protection of fish culture as per environmental requirements. The Company shall enter into a separate agreement on protection fish culture with the Government if it is considered necessary by the fisheries department of the Government.

5.1.17 Fishing, Recreational and Navigational Rights

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

5.1.18 Dumping of Excavated Material

The Company shall ensure that the material excavated from the site is dumped in the already identified and acquired muck disposal areas only. The company may have to seek approval of muck disposal area from the MoEF/ SPCB, if required.

5.1.19 Use of Facilities

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

5.1.20 Usage of Land

5.1.21 Archaeological Findings, Treasures etc.,

The Company shall ensure that the land is used only for the Project.

During the Implementation of the Project, in case any object of archaeological importance is found by the company or by way of any of its employees/ Contractors, the Company shall arrange to hand over the same to the Government free of cost, provided that, in case any precious or semi-precious material is located, the company shall inform the Government immediately and abide by the directives of the Government.

5.1.22 Trees in the Land transferred to the Company

The trees standing on the forest land transferred to the Company shall be felled only if necessary by Uttarakhand Forest Development Corporation. If any tree/trees is damaged in the execution of the Project, the Company shall have to pay the cost of tree/trees to the Forest Department of the State at the market price.

5.1.23 Equity Contribution

A. By Local Population

Apart from the above, the local population would have the first right but not the obligation to subscribe 5% of the total equity to the Company. In case of greater participation by the residents of the villages to the shares on offer, shares shall be allotted on pro-rata basis limited to maximum of 5% of the total equity issued.

B. By Land Owners

The owners of the land would have the first right to subscribe to the equity of the Company equivalent to 20% of the land compensation amount whose land is being acquired by the Company for the construction of the Project. In case of greater participation by the residents of the villages to the shares on offer, shares shall be allotted on pro-rata basis limited to maximum of 2% of the total equity issued. The subscription of the equity will be at the sole discretion of the Land Owners for whom the equity is being offered.

The right to subscribe to the equity shares as referred to above in clause 5.1.23.

(A), (B), Local Population and the Land Owners shall be at the face value of the equity shares, and will have to be exercised on or before the date of Financial Closure of the Company.

5.1.24 Promoters' Equity in the Company

The Company shall be permitted to incorporate a new public/ private limited company for the implementation of the Project with its Registered Office within Uttarakhand. All rights and obligations under this Agreement shall thereafter be transferred to the new Company. Unless otherwise permitted by the Government, the aggregate equity contribution of the Company/ Promoters of the allottee Company/ consortium to which the Project was initially allotted shall not be less than 51% (fifty one percent) during the Construction Period and until 2 (two) years following the commencement of Commercial Operations.

5.2 Obligations of the Government

5.2.1 Assistance in obtaining Clearances

The Government shall assist the Company in obtaining the various Statutory Clearances and approvals required for the implementation of the Project, from various competent authorities of the State Government/ Central Government. The responsibility of obtaining these approvals/ clearances shall, however, rest with the Company only.

5.2.2 Use of Materials

The Government shall permit the Company, in accordance with the Law to collect and use boulders, stones, shingles, limestone and other building materials, except precious and semi-precious materials, from the river beds, and/ or from the land acquired for or transferred to or leased out to the Company for the Project on payment of royalty in accordance with the Government rules/rates in force from time to time. The approval for quarry site on forest land shall be obtained by the Company from the Central Government under Forest Conservation Act, 1980.

5.2.3 Acquisition and transfer of Land

- (ii) The Government shall assist in acquisition of private lands within the State of Uttarakhand as may be required by the Company for construction, operation and maintenance of the Project (Acquired Land). The Company shall also be allowed to acquire such land through direct negotiations with the owners in accordance with prevailing laws, rules and regulations in the State. In case the land is owned by the Government, it shall be leased out to the Company as per applicable laws.
- (iii) The Government shall provide necessary assistance to the Company in obtaining permission of the competent authority for the removal of trees standing on the Acquired Land and on the Government lands which in its reasonable opinion are required to be felled or removed for the implementation of the Project.

5.2.4 Lease of land for Permanent Works

Upon the request of the Company and subject to the provisions of laws in force, Government shall, on such terms and conditions and rates prescribed by the Government from time to time, provide for, on a long term lease, the Government land required for Permanent works, as may be necessary for the construction, operation and maintenance of

the Project.

5.2.5 Lease of land for Temporary Works

Upon the request of the Company and subject to the provisions of laws in force, the Government shall provide, on such terms and conditions and rates as may be prescribed by the Government from time to time, on a short term lease for a period not exceeding six (6) years, such Government land required for temporary works, as is considered reasonably necessary by the Government.

5.2.6 Up-gradation of Roads and Bridges

Government shall, at the request and cost of the Company, construct, widen and strengthen such roads or bridges within the State of Uttarakhand, as are considered reasonably necessary by the Government. The Government shall permit the Company to construct roads, bridges, culverts as considered necessary for the Project in the Project lands. The Government may also permit the Company to construct roads, bridges, culverts as are considered reasonably necessary by the Government in the interest of the Project on a case to-case basis.

5.2.7 Evacuation of Power

The Government shall provide necessary assistance to the Company in tying up the transmission systems for evacuation of power from the Project out of Uttarakhand through the transmission system of the UPCL.

5.2.8 Upstream/Downstream Projects

The Government shall be entitled to survey, investigate and implement any river valley power generation scheme upstream or downstream of the Project.

5.2.9 Mortgaging Land

As per Government of India, MoEF order no 11-10/2001 – FC dated 01.05.2001, the forest land cannot be mortgaged or assigned or leased out by the Project Authorities to any other agency. If required, and at the request of the Company, the Govt. of Uttarakhand may provide, for the purpose of facilitating financial closure of the Project, suitable undertaking for forest land and mortgage facility in respect on non forest land in favour of the lenders providing financial assistance to the Project.

5.2.10 Levies, Taxes and Charges

No entry tax will be levied by the Government on the Power generation/transmission equipment and building material for the Project.

ARTICLE VI

PLANT OPERATION AND MAINTENANCE

- 6.1 Subject to the Provisions of the Agreement, the Company shall operate and maintain, and if required, effect improvement (within the overall scope of the Project Implementation)

in the Project in accordance with:

- i) Prudent Utility Practices
 - ii) All applicable laws and directive;
 - iii) The Manuals, instructions, manufacturers guidelines, supplied by construction contractors, manufacturers of equipments / suppliers etc.
 - iv) The Grid Code
 - v) Despatch instructions; and
 - vi) Rated capacity subject to normal de-rating / deterioration.
- 6.2 The project / units shall be capable of meeting the load dispatch requirements. The Company shall follow the directives of the Control Centre /SLDC/ NRLDC in the interest of integrated Grid Operation.
- 6.3 Any Dispute with reference to the directive of the Control Centre/ NRLDC shall be referred to CEA /CERC whose decision in such a matter shall be final. Pending the decision of CEA / CERC, Control Center's / NRLDC's directives shall prevail in the interest of smooth operation of grid.

ARTICLE VII

REPRESENTATION AND WARRANTIES

7.1 Representations and Warranties of the Company

The Company represents and warrants that as of the date hereof:

The Company is a Company duly registered and validly existing under laws of India and has all requisite legal power and authority to execute this Agreement and carry out terms, conditions and provisions hereof;

It has the financial standing and capacity to undertake the Project;

It is subject to civil and commercial laws of India with respect to this Agreement and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof;

It has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect on its financial condition or its ability to perform its obligations and duties under this Agreement;

There are no actions, suits or proceedings pending or, to the Company's knowledge, threatened, against or affecting the Company before any Court or administrative body or arbitral tribunal that might materially or adversely affect the ability of the Company to meet and carry out its obligations under this Agreement;

The Company has duly paid all rents, royalties and all public demands, including provident and all other taxes and revenues due and outstanding and that no attachments or warrants have been served on the Company in respect of sales tax, income tax, Government/GoI Revenue and other taxes;

The execution and delivery by the Company of this Agreement has been duly authorized by all requisite corporate or partnership action, and will not contravene any provision of, or constitute a default under any other agreement or instrument to which it is a party or by which it or its property may be bound; and

No representation or warranty by the Company contained herein or in any other document furnished by it to, or to any Governmental Agency in relation to clearances and approvals contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading.

7.2 Representations and Warranties of the Government

(a) The Government is validity existing under the Laws of India and has all requisite legal power and authority to execute this Agreement and to carry out terms and conditions and provisions hereof; and

(b) The Execution and delivery of this Agreement by the Government of this Agreement, does not violate the provision of any existing law or notification or regulation or order or decree of any court, Governmental Authority, or agency or of any contract, undertaking or agreement, to which the Government is a party or which is binding on Government and any of the above does not result in the imposition or creation of any lien, charge or encumbrance on the assets of the Company or part thereof.

ARTCILE VIII

UNDERTAKINGS

8.1 Undertakings of the Company

The Company hereby covenants to and agrees with the Government to:

- (a) Make all efforts to collect required information and file necessary applications to the concerned authorities for obtaining the statutory clearances and approvals.
- (b) Use all reasonable efforts to obtain financing for construction and operation of the Project as contemplated in this Agreement;
- (c) Use all reasonable efforts to negotiate and execute financing documents in accordance with the terms and provisions Agreement;
- (d) Work with and co-operate in good faith with the Government with respect to all of the Governments obligations and rights hereunder;
- (e) Use all reasonable efforts to obtain all Governmental Authorizations/ applicable Permits;
- (f) Engage advisors, representatives and experts as are experienced in the development, construction and financing of power stations similar to the Project;
- (g) Design, construct and complete the Project in a good workman-like manner, only with the materials and equipment that are new and of international utility – grade quality, in such a manner that useful life of the Project will be at least equal to the terms of this Agreement and in accordance with
 - i. All applicable laws, rules, regulations, permits and licenses; and
 - ii. Sound engineering and construction practices, and prudent utility practices.

- (h) Engage contractors of repute that are internationally/ nationally recognized and that have significant experience in engineering, procurement and construction of hydel power generating stations of similar capacities;
- (i) Operate and maintain the Project in accordance with the despatch instructions and prudent utility practices;
- (j) Provide Government with copies of all publicity filed financial statements and reports;
- (k) Pay all amounts due to the government (including penalty) in accordance with the provisions of this Agreement;
- (l) Make arrangements at Company's cost for the laying lines of appropriate voltage for connectivity to the nearest grid sub-station including interconnection facility in consultation with UPCL so that these facilities are completed before the scheduled COD of the Project. The grid sub-station for inter-connection facility and technical specification of laying of lines for evacuation of power generated as well as inter-connection facility shall be determined by UPCL;
- (m) At the end of the Term of this Agreement, transfer the Project in good working condition to the Government as per provisions of this Agreement; and
- (n) Not to transfer/dispose off or otherwise alienate any asset of the Company without prior approval of the Government.

8.2 Undertakings of the Government

The Government hereby covenants to and agrees with the Company to:

- a. Provide such assistance and support as the Company may reasonable require in identifying and preparing the applications for Governmental authorizations and in interfacing with Governmental Authorities in connection with obtaining the same for the construction, completion and operation of the Project
- b. Provide through UPCL adequate construction power, subject to availability, to the Project work site at the cost of the Company. For availing of the construction power at the project site, the company shall enter into an agreement with UPCL and shall pay to UPCL all charges as per the UPCL's condition of supply and the tariff applicable from time to time. The Government shall not be liable to pay any damages/ compensation to the company in the event of non-supply of construction power beyond UPCL's control;
- c. Provide through UPCL arrangements to evacuate generated power beyond interconnection point, subject to availability of capacity in UPCL grid system at the cost of the Company. For evacuation of power beyond inter-connection point, the Company shall enter into an agreement with UPCL and shall pay to UPCL wheeling charges (for entire concession Period) amounting to 10% of net energy supplied at the inter-connection point or as may be determined by Uttarakhand Electricity Regulatory Commission (UERC) from time to time. The Govt. shall not be liable to pay any damages/ compensation to the company in the event on non evacuation of generated power beyond UPCL's control and
- d. Work with and co-operate in good faith with the company with respect to all of company's obligations and rights hereunder;

ARTICLE IX

FORCE MAJEURE

9.1 Force Majeure shall mean any event or circumstance or combination of events or circumstances that wholly or partly prevent or unavoidably delay the Party claiming Force Majeure (hereinafter referred to as the “ Affected Party”) in the performance of its obligations under this Agreement and which act or event:

- i. is beyond the reasonable control of and not arising out of the fault of the Affected Party;
- ii. the Affected Party has been unable to prevent by the exercise of due diligence and reasonable efforts, skill and care, including though expenditure of reasonable sums of money; and
- iii. has a materially adverse effect on the Project.

Such events may include acts of Government/GoI either in its sovereign or its contractual capacity, war, civil war, insurrection, riots, revolutions, fires, floods, epidemics, quarantine restrictions, freight embargoes, radioactivity and earthquakes.

9.2 Upon the occurrence of any force Majeure event,

- a. there shall be no termination except as provided in Article XI;
- b. the date for achieving the specific obligations shall be extended by the period for which such Force Majeure event shall subsist and the Agreement Period shall be extended accordingly ; &
- c. the parties shall bear their respective costs and no Party shall be required to pay to the other party any costs arising out of any Force Majeure Event.

9.3 Obligations

The Parties shall discharge the following obligations in relation to the occurrence of a Force Majeure Event:

- (a) The Affected party shall not claim any relief for or in respect of a Force Majeure event unless it shall have notified the other Party in writing of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event within 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence and the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under the Agreement.
- (b) Any notice pursuant to the above Clause 9.3 (a) shall include full particulars of:
 - i. The nature and extent of each Force Majeure Event which is subject of any claim for relief under this Article with evidence in support thereof;
 - ii. The estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party’s performance of its obligations under the Agreement;
 - iii. The measures which the Affected party is taking or proposes to take, to alleviate the impact of such Force Majeure Event; and
 - iv. Any other information relevant to the Affected Party’s claim.

- (c) For so long as the Affected Party continues to claim to be affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than fortnightly) written reports containing information as required by Clause 9.3 (b) and such other information as the other Party may reasonably request the Affected Party to provide.
- (d) The Parties shall co-operate and negotiate in good faith and will develop implementation plan of remedial and reasonable alternative measures to remove/remedy Force Majeure event to enable the Performance of the Affected Party provided, however, that no party shall be required under this provision to settle strike or other labour dispute.
- (e) In case of any Party not willing to implement the plan of remedial and reasonable alternative measures to remove/ remedy the Force Majeure event, it shall be construed as a default of such Party and then relevant provisions of Article XI shall apply.
- (f) Upon the occurrence and during the subsistence of any Force Majeure event, none of the parties shall be relieved of their liabilities/ obligations including liability for payments as per the Agreement.
- (g) If the Affected Party is rendered wholly or partially unable to perform its obligations under the Agreement because of a Force Majeure Event, it shall be excused from performance of such of its obligations to the extent it is unable to perform on account of such Force Majeure Event provided that:
 - i. The suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by Force Majeure Event;
 - ii. The Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and
 - iii. When the Affected Party is able to resume performance of its obligations under the Agreement, it shall give to the Other Party written notice to that effect and shall promptly resume performance of its obligations.

ARTICLE X

EVENTS OF DEFAULT

10.1 Government Event of Default

The Occurrence of and continuation of any of the following events shall constitute “Government Event of Default” unless such an event occurs as a result of a Company default, as defined in Clause 10.2 :

- i. Government repudiates this Agreement or otherwise evidences an intention not to perform its obligations under, or to be bound by, this Agreement;
- ii. The material breach by Government of any term of this Agreement other than with respect to sub-clause (i) above and
- iii. Government assigns all or part of its rights or transfers its obligations under this Agreement in violation of any of the provisions of this Agreement.

10.2 Company Event of Default

The occurrence of and continuation of any of the following events shall constitute “Company Event of Default” unless such an event occurs as a result of a Government default, as defined in Clause 10.1;

- i. The Company repudiates this Agreement or otherwise evidences an intention not to perform its obligations under, or to be bound by, this Agreement;
- ii. The Company fails to make payments in respect of its obligations under the Agreement for more than 90 days;
- iii. The Company assigns all or part of its rights or transfers its obligations under this Agreement in violation of any of the provisions of this Agreement;
- iv. The Company abandons the implementation of the Project including withdrawing all, or a substantial number of personnel from the Site for reasons other than Force Majeure for continuous period of more than ninety days, provided that the company shall not be deemed to have abandoned the Project so long as in the reasonable opinion of the Government, it is using its best efforts to regain control or to restart construction or operation of the Project as the case may be;
- v. The transfer (a) pursuant to law of either the Company rights and / or its obligations under this Agreement or all or a substantial portion of the Company’s assets or undertakings; or (b) the dissolution of the Company pursuant to law including, by way of merger or consolidation, liquidation and reconstitution or reorganization unless (i) transferee or successor of the Company expressly assumes the obligations of the Company under this Agreement and (ii) the transferee of successor in interest of the Company has a credit worthiness, in the reasonable opinion of the Government, atleast equal to that of the Company and is otherwise fully capable of performing obligations of the company under this Agreement; or;
- vi. The material breach by the Company of any terms of this Agreement other than with respect to sub-clauses (i) and (ii) of Clause 10.2 (v) above.

10.3 Cure Period

- i. Upon the occurrence of a Default by a Party (Defaulting Party) pursuant to clauses 10.1 or 10.2, the other party (Non-defaulting Party) has right to issue a Notice of Default specifying in reasonable detail the Event of Default giving rise to the Notice of Default.
- ii. On a receipt of the Notice of Default, the Defaulting Party shall take immediate steps to cure such a default within a period of ninety days from the receipt of the Notice of Default with due notice to the Non-defaulting Party of steps taken by its to cure the above default.
- iii. In the event the reasons leading to the Default have been cured to the reasonable satisfaction of the Non-defaulting Party, the Notice of Default shall cease to have any effect.
- iv. In event the Defaulting Party is unable to cure the Default to the reasonable satisfaction of the Non-defaulting Party is unable to cure the Default within the Period specified in sub-clause 10.3 (iii) above, the provisions of Clause 10.4 or 10.5, as the case may be, shall apply.

10.4 Remedies Available to the Company

Upon the occurrence and continuation of a Government Event of Default under Clause 10.1 above, and failure by the Government to cure such a default within the applicable cure periods, if any, specified in Clause 10.3, the Company shall have the right to terminate this Agreement by notice to the Government in accordance with the procedures set forth in Article XI.

10.5 Remedies Available to the Government

Upon the occurrence and continuation of a Company Event of Default under Clause 10.2 above, and failure by the Company to cure such a default within the applicable cure periods, if any, specified in clause 10.3, the Government shall have the right to terminate this Agreement by notice to the Company in accordance with the procedures set forth in Article XI.

ARTICLE XI**TERMINATION AND TAKING OVER OF THE PROJECT****11.1 Termination****11.1.1 Notice of Termination**

This Agreement may be terminated on serving a thirty days of notice (Notice of Termination) by:

- i. The Company, in case of a Government Event of Default pursuant to Clause 10.4;
- ii. The Government, in case of a Company Event of Default pursuant to Clause 10.5;
- iii. The Government, in case the Company fails to cause Financial Closure to occur on or before nine (9) months from the Effective Date;
- iv. Either Party, notwithstanding anything contained in Article IX, if either Party is unable to perform any obligations required to be performed under this Agreement due to Force Majeure for a continuous period of 6 months; and
- v. The Company, in the event of enactment of any law or regulation or any subsequent act of any Governmental Authority which makes the performance of this agreement impossible for any Party.

11.1.2 On the expiry of the Notice of Termination, the Party which served the Notice of Termination shall be entitled to terminate this Agreement under intimation to the other party, unless the event leading to the Notice of Termination has been rectified or complied with to the satisfaction of the Party which issued the Notice of Termination.

11.2 Termination of the Agreement shall be without prejudice to the accrued rights and liabilities of the parties, as on the date of termination, unless waived in writing by the parties.

11.3 In the event if this Agreement is terminated prior to the start of the Construction of the Project, all rights of the Company with regard to the project shall revert back to the Government.

11.4 Buy Out and Take Over

11.4.1 Buyout Events

For the purpose of this Agreement, a Buyout Event, shall be the occurrence of the termination as per the Clause 11.1.2 as a result of the Notice of Termination issued pursuant to Clause 11.1.1 (i), (ii), (iv) and (v).

11.4.2 Buyout Price

As a result of the Notice of Termination issued pursuant to Clause 11.1.1 (i), (ii), (iv), or (v), the buyout price for the Project shall be as under:

- i. If the Buyout event occurs after the commencement of construction but prior to the Commercial Operation of the Project, the Government shall take over the Project from the Company, for a consideration equivalent to 75% of the Realisable Value of Assets, or the Historical Depreciated Cost of the Project, whichever is lower, but at least equivalent to the Debt incurred and actually utilized on the Project by the Company and outstanding on the Date of Termination. The Buyout Price shall be determined by an independent registered valuation firm/valuer appointed by the Government
- ii. If the Buyout event occurs subsequent to Commercial Operation of the Project, the Government shall take over the Project from the Company, for a consideration equivalent to the Realisable Value of Assets, or Historical Depreciated Cost of the Project, whichever is lower, but at least equivalent to the Debt incurred and actually utilized on the Project by the Company and outstanding on the Date of Termination. The Buyout Price shall be determined by an independent registered valuation firm/ valuer appointed by the Government.

11.4.3 Take Over of the Project

As a result of the Notice of Termination issued pursuant to Clause 11.1.1(iii), the Project shall be taken over by the Government and the Agreement shall stand terminated; the Government shall not be liable to pay any compensation to the Company.

ARTCILE XII

RESOULTION OF DISPUTES

12.1 Good Faith Negotiations

In event of a dispute, disagreement or difference (a “Dispute”), arising out of or relating to the Agreement between the parties in respect of which a procedure for the resolution of the Dispute is not otherwise provided for in the Agreement, the following provisions shall apply:

- a. Either party shall give to the other a written notice setting out the material particulars of the Disputes and requiring an authorized Senior Executive Officer each from the Government and the Company, to meet personally at Deharadun, Uttarakhand, India or at any other mutually agreed place within 20 (twenty) workings days of the date of receipt of such notice by the relevant party to attempt, in good faith, negotiation and using their best

- endeavors at all time to resolve the Disputes; and
- b. If the Dispute is not resolved as evidenced by the terms of the settlement being reduced to writing and signed by the Senior Executive Officers of both the Parties within 30 (thirty) working days after the date of receipt of the Notice described in clause 12. 1 (a), the Provisions of Clause 12.2 shall apply, unless the above period is mutually extended.
 - c. The Chief Executive Officers of both the Parties shall meet at Dehradun or at any other mutually agreed place within 30 (thirty) working days after the expiry of period as mentioned in Clause 12.1 (b), to attempt, in good faith negotiations and using their best endeavors at all times to resolve the Dispute within a further period of 30 (thirty) days and if the Dispute is still not resolved as evidenced by the terms of the settlement being reduced to writing and signed by both the Chief Executive Officers, the Provisions of the Clause 12.2 shall apply, unless the said period is mutually extended.

12.2 Arbitration

- (a) Except as otherwise provided in this Agreement, all disputes arising out of or relating to this Agreement shall be referred to Arbitration if the dispute is not resolved during the settlement period as per Clause 12.1 above.
- (b) Arbitration Rules: The Arbitration shall be conducted in accordance with the “The Arbitration and Conciliation Act, 1996 or amendments thereof.
- (c) Number of Arbitrators: For each arbitration the Arbitral Tribunal shall consist of 3 (three) arbitrators. Each Party shall appoint one arbitrator, and the two appointed arbitrators shall appoint the third arbitrator who shall act as a presiding arbitrator or if the two arbitrators cannot agree the third arbitrator shall be appointed, on request of a party, by the Hon’ble Chief Justice of the High Court of Uttarakhand or by any person or institution designated by him. No arbitrator shall be present or former employee or Agent of, or consultant or counsel to, either Party or any affiliate of either Party, or in any way related to or closely connected with promoters, partners, or beneficiaries of the parties.
- (d) The Arbitration tribunal so constituted may use settlement, Mediation, Conciliation or other procedure at any time to encourage settlement of the Dispute. The Parties agree that Arbitration Tribunal may appoint an expert to determine any specific issues.
- (e) Place of Arbitration and Governing Law: The Arbitration shall be conducted in Dehradun, Uttarakhand, India. The Laws of India shall govern the validity, interpretation, provisions contained in this Agreement.
- (f) Language of Arbitration: the language to be used in the Arbitration shall be the English Language.
- (g) Judgment upon the award rendered in such Arbitration and/ or for any interim relief or direction or otherwise, during the pendency of Arbitration proceedings and upto the date of making of award in such Arbitration may be entered in any Court of competent jurisdiction, at Dehradun, having jurisdiction in respect of any application made for the filing of the Arbitration Agreement.

12.3 The Agreement shall be subject to the jurisdiction of competent courts of Uttarakhand.

12.4 No Arbitration of Buyout Price

Notwithstanding the generality of the provisions of Clause 12.1, 12.2 and 12.3, any determination of the Buyout Price as described in Article XI shall be made exclusively by the independent valuer in accordance with Clause 11.4 and neither Party shall have the right to cause any such determination to be resolved by arbitration or otherwise.

ARTICLE XIII

ADDRESSES AND ADDRESSEES

13.1 Except as otherwise expressly provided in the Agreement, all notices and other communication 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 the Company

Director,
Kosi Valley Hydel Power Company (P) Ltd
Core 4 B,
4th -Floor, India Habitat Centre, Lodhi Road,
NewDelhi-110003

(b) If to the Government:

Principal Secretary / Secretary
Energy
Government of Uttarakhand,
Secretariat,4–A,Subhash Road
Deharadun – 248 001

13.2 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.

13.3 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.

ARTICLE XIV

MISCELLANEOUS

14.1 Governing Law

The rights and obligations of the Parties under or pursuant to the Agreement shall be governed by and construed in accordance with the Law of India.

14.2 Headings

The headings contained in the Agreement are used solely for convenience and shall not be construed to assign any meaning to the Agreement not shall such headings be used in any manner to aid in the construing of the Agreement.

14.3 Language

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.

14.4 Amendments

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

14.5 Relationship of the Parties

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, to act as or be agent or representative of, or any liability to, otherwise bind, the other party.

14.6 Third Parties

This Agreement is intended solely for the benefits of the parties hereto. Nothing in this Agreement shall be construed to create any duty, to standard of care with reference to, or any persons not a party to this Agreement.

14.7 No Waiver

- a. No waiver by either a Party of any default by other Party in the observance and performance of any provision of or obligations of or under the Agreement:
 - i. shall operate or be construed as a waiver of any other or subsequent default there of or of other provisions of or obligations under the Agreement;
 - ii. shall be effective unless it is in writing and executed by a duly authorized representative of the Party; and
 - iii. shall affect the validity or enforceability of the Agreement in any manner.
- b. 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.

14.8 Exclusions of Implied Warranties

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.

14.9 Counterparts

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

14.10 Assignment

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 Company 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 the Government 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. The Government 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 company to give effect to the foregoing.

14.11 Indemnity

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

14.12 Severability

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 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.

14.13 Survival

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

14.14 Confidentiality

- a. 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 company or by Professional Advisors of the Parties hereto or of 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.
- b. The provisions of paragraph (a) above shall not apply to:
 - i. any information in the public domain otherwise than by breach of this Agreement.
 - ii. information in the possession of the receiving party thereof before divulgence as aforesaid, and which was not obtained under any obligation of confidentiality;
 - iii. information obtained from a third party who is free to divulge the same, and

- which is not obtained under any obligations of confidentiality; and
- iv. information relating to the Project after the Government has acquired the Project from the Company.

IN WITNESS THEREOF, THE PARTIES HERETO HAVE CAUSED THESE PRESENT TO BE SIGNED, SEALED AND DELIVERED BY THEIR DULY AUTHORIZED REPRESENTATIVES ON THE DATE, MONTH AND YEAR FIRST ABOVE WRITTEN

For and behalf of
Government of Uttarakhand

For and behalf of
M/s. Kosi Valley Hydel Power Company (P) Ltd.

Witnessed by

- 1.
- 2.

Witnessed by

- 1.
- 2.

Schedule A (Kosi Valley)

Bawas SHP

The following are the neighboring villages that have been considered for the purpose of clause 5.1.23.

There are no villages that are being affected by the construction of the project.