



असम ASSAM

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CONCESSION AGREEMENT

This **CONCESSION AGREEMENT** made on this 7th day of March, 2007 at Kokrajhar by and between:

1. The Bodoland Territorial Council (hereinafter referred to as the "BTC", which expression shall also mean and include successor governments) of the **FIRST PART**; and
2. Hayen Hydel Power Company Pvt Ltd , a company incorporated under the Companies Act, 1956, with its registered office at Delhi (hereinafter referred to as the "Company" or "HHPCPL" which expression shall, unless repugnant to or inconsistent with the context, mean and include its successors and permitted assigns) of the **SECOND PART**

(Each of the Parties of the **FIRST and SECOND PART** above are individually referred to as a "Party" and collectively to as the "Parties").

Signature

Signature

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- A. BTC is desirous of setting up hydro power projects at various potential locations in BTC including at existing irrigation schemes, for power generation in the interest of Bodoland infrastructural development and for that purpose had entered in to Memorandum of Agreement with Infrastructure Leasing and Financial Services Ltd (IL&FS) to evaluate suitable solutions and develop hydro projects and bid out a projects.
- B. IL&FS is a leading institution of India, promoted by Public sector Financial Institutions and Banks of India including UTI, Central Bank of India and HDFC among others, with an objective, inter alia, of developing projects in the infrastructure sector on commercial basis. IL&FS group companies have significant experience and expertise to render advice, develop projects, facilitate formulation of policy and related aspects for catalysing Public Private Partnership (PPP), identify prospective developers, undertake mobilisation of financial resources from both the domestic Financial Institutions and multilateral agencies and participate as a co-promoter in specific projects
- C. IL&FS pursuant to the MoA has developed small hydro project, through JVC, **Bodoland Infrastructure Development Company Limited (BIDC)** at existing Champamati Irrigation Scheme, Nagdalbari by utilising surplus water and suitable technology on BOT basis. JVC has incorporated **Hayen Hydel Power Company Pvt Ltd (HHPCPL)** as a special purpose company for implementing the above said project at Champamati irrigation scheme
- D. "JVC" is a joint venture established by BTC and IL&FS for the purpose of developing projects in various sectors i.e Tourism, Integrated Truck Terminus, Hydro Power and Irrigation etc. named as **Bodoland Infrastructure Development Company Pvt Ltd (BIDC)**
- E. The BTC considers the Project to be of significant importance to the BTC and the Project is feasible only with the BTC Support (as defined hereinafter) as a necessary pre-requisite;
- F. The BTC has therefore agreed to assist and support the **HHPCPL** in the due implementation of the Project;

NOW THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Concession Agreement (the "**Agreement**") and other consideration, the receipt, sufficiency and adequacy of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

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ARTICLE 1
DEFINITIONS AND INTERPRETATION

1.1 Definitions

1.1.1 Capitalised terms in this Agreement, shall, in so far as the context admits, have the meaning hereinafter respectively assigned to them:

- (1) **"Agreement"** means this Concession Agreement entered in to on the date hereof between the BTC and HHPCPL and all modifications, amendments or alterations which may be made to this Concession Agreement from time to time;
- (2) **"Business Day"** means any Day of the year, not including Sundays, on which Indian banks are required or authorized to be open for business in BTC.
- (3) **"Cause"** in relation to the action of any Indian Governmental Instrumentality means any fact or circumstance, including without limitation any action, inaction, default, neglect or failure to abide by any terms and conditions of Clearances, consents, permissions, agreements, applicable law, etc., which legally entitle the concerned Indian Governmental Instrumentality to take certain actions to the detriment of the Company.
- (4) **"Applicable Approvals"** means all the authorizations, licenses, clearances, permits, no objections, sanctions and consents as required by applicable laws, to be procured by HHPCPL in connection with the implementation of the project.
- (5) **"Company"** shall have the meaning ascribed thereto in the recitals to this Agreement;
- (6) **"Competent Authority"** means any agency, authority, department or public or statutory Person (whether autonomous or not) of or deriving jurisdiction from BTC or any administrative sub-division thereof, including any Bodoland Companies but not including independent regulatory authority or their successors in title or the Government of India or any agency, authority, department or public or statutory Person (whether autonomous or not) of or deriving jurisdiction from the Government of India;
- (7) **"Day"** means a period of twenty four (24) hours commencing at 12 a.m. and ending immediately prior to the commencement of the next Day;
- (8) **"Dispute"** shall have the meaning ascribed thereto in Article 4 of this Agreement;
- (9) **"Financial Close"** means the date on which the Financing Agreements, equity documents (if any) and documents in respect of

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debt, if any, have become effective and the Company has access to first draw down of funds committed thereunder;

- (10) **"Financing Agreements"** means, collectively, the agreements, instruments and other documents, entered into by the Company and the Lenders under which debt funding is extended to the Company;
- (11) **"BTC"** means the Bodoland Territorial Council including any department, executive council, ministry, authority, board, agency or other instrumentality of BTC including their respective successors thereof having duly constituted authority under any applicable statutes, rules and regulations in force from time to time;
- (12) **"Government of India"** means the Government of India including any department, ministry, authority, board, agency or other instrumentality of the Government of India and their respective successors thereof having duly constituted authority under any applicable statutes, rules and regulations in force from time to time.
- (13) **"Indian Governmental Instrumentality"** means the Government of India, BTC and any ministry, department, board, agency, authority or Competent Authority of the Government of India or the BTC;
- (14) **"Infrastructure Leasing and Financial Services Limited"** or **"IL&FS"** shall have the meaning ascribed thereto in the recitals to this Agreement;
- (15) **"Land Lease Agreement"** shall mean and refer to the agreement titled 'Land Lease Agreement' to be entered / entered in between the HHPCPL and the BTC or department, board, agency authority or competent authority of BTC in respect of the Company's rights over the Land;
- (16) **"Land"** means contiguous land measuring about 5 hectare as more fully defined and described, which BTC has or shall grant to the -- leasehold title in the Land, under and over which the Project is to be constructed;
- (17) **"Law"** means all applicable laws, by-laws, rules, regulations, orders, ordinances, protocols, codes, guidelines, policies, notices, directions, judgements, decrees or other requirements or official directive of any Indian Governmental Instrumentality or Person acting under the authority of any Indian Governmental Instrumentality and / or of any statutory authority in India, whether in effect on the date hereof or thereafter, as amended, replaces, modified or supplemented from time to time;
- (18) **"Lenders"** means, in respect of any Person, any and all banks, financial institutions, non banking financial companies registered with the Reserve Bank of India, government credit agencies or other Lenders providing or intending to provide to such Person, monies by way of debt (including guarantees, risk participation facility, hedges,

take-out facility and other forms of credit enhancement) for any purposes whatsoever and any trustee or agent acting on their behalf;

- (19) **"Lien"** means any mortgage, pledge, deed of trust, hypothecation, right of others, claim, security interest, encumbrance, burden, title defect, title retention agreement, lease, sublease, license, occupancy agreement, easement, covenant, condition, encroachment, voting trust agreement, interest, option, right of first offer, negotiation or refusal, proxy, lien, charge, *lis pendens* or other restrictions or limitations of any nature whatsoever, including but not limited to such liens as may arise under any contract;
- (20) **"MW"** means a megawatt;
- (21) **"Party"** or **"Parties"** shall have the meaning ascribed thereto in the recitals to this Agreement;
- (22) **"Person"** means any individual, sole proprietorship, unincorporated association, body corporate, corporation, company, partnership, limited liability company, joint venture, governmental authority or trust or any other entity or organisation;
- (23) **"Power Project"** shall have the meaning ascribed thereto in Article 1.1.1(27) of this Agreement
- (24) **"Project"** means the proposed ownership, design, financing, engineering, procurement, construction, operation, maintenance, repair, refurbishment, development and insurance of the:
 - (a) 2.25 MW hydro power plant by the Company (the **"Power Project"**);
 - (b) Power evacuation infrastructure for the off take of electricity; all associated transport, treatment, storage or other infrastructure facilities and / or related assets required for the efficient and economic operation of either one of the activities described in (a) or (b) above, whether contemplated presently, or not and if completed at any stage.
- (25) **"Security"** means any mortgage, pledge, lien, charge, security assignment, hypothecation, trust, encumbrance or any other agreement having the effect of conferring security;
- (26) **"Shareholders"** means Persons holding equity shares in the Company;
- (27) **"Tax"** means any Indian tax (including, without limitation, sales tax / value added tax, Octroi, entry tax, works contract tax charged, levied or imposed);
- (28) **Term** means the time period of Thirty Five years (35) commencing from the effective date and will also include such successive time periods by which the concession granted in this agreement may be renewed/extended as provided herein.

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- (29) **Royalty** means the revenue share payable to the BTC and HHPCPL in form of free power/Royalty on water or equivalent monetary amount
 - (30) **Technical consultant** is an agency selected for preparing the detailed project report.
 - (31) **Survey and investigation team** is an agency selected for doing the survey and investigation work at site.
 - (32) **Surplus water** means the water, which is flowing unutilized.
 - (33) **Access Road** mean the motorable approach road for access to site.

1.2 . Interpretation

1.2.1 In this Agreement:

- (1) The descriptive headings of Articles are inserted solely for convenience of reference and are not intended as complete or accurate descriptions of the content thereof and shall not be used to interpret the provisions of this Agreement;
- (2) Unless the context otherwise requires the use of the singular includes the plural and vice-versa and the use of the masculine includes the feminine and vice versa;
- (3) Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the Day on which the period commences and the Day on which the period ends and by extending the period to the following Business Day if the last Day of such period is not a Business Day;
- (4) Unless otherwise specified, all references to Articles, paragraphs, clauses and annexures in this Agreement are to Articles, paragraphs and clauses in, and annexures to, this Agreement;
- (5) Any reference to a document (including this Agreement) or Law shall be deemed a reference to such document or Law as it may be amended, supplemented, revised or modified from time to time;
- (6) The terms 'herein', 'hereof', 'hereto', 'hereunder' and words of similar purport refer to this Agreement as a whole and not to any particular provision of this Agreement;
- (7) Any reference to a time of Day refers to Indian Standard Time;
- (8) The words 'include' and 'including' are to be construed without limitation;
- (9) Any reference to an 'Article', 'Section' or 'Annexure' is one to an article or section hereof or to an annexure attached hereto;
- (10) Any reference to any Person shall be deemed a reference to such Person's permitted successors and assigns;

- (11) Terms capitalized other than for grammatical purposes that are defined in:
- (a) The preamble hereto; or
 - (b) The recitals hereof; or
 - (c) The succeeding Articles hereof shall have the meanings ascribed to them therein.
- (12) The Parties expressly agree that the rule of interpretation, which requires that an agreement be interpreted against the Person or Party drafting it, shall have no application in the case of this Agreement.
- (13) A reference to the 'Project' in this Agreement shall mean a reference to the 'Project' as a whole or to any component or sub part of the Project.

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ARTICLE 2
COMMENCEMENTS AND DURATION

2.1 Term

- 2.1.1 This Agreement shall be effective from the date first mentioned in the Agreement and shall remain in force for a period of 35 (thirty five) years.

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ARTICLE 3

BTC SUPPORT

3.1 Acknowledgement

- 3.1.1 The BTC acknowledges and agrees that the Project is feasible only with the support of the BTC and that the principal objective of this Agreement is support for the economic and timely completion and continued operation of the Project.
- 3.1.2 The BTC has therefore agreed to provide their support to the Company, as set out in this Agreement generally and this Article 3 in particular.

3.2 Clearances

3.2.1 The BTC during the term of this Agreement, both before and after the Financial Close for the whole or any part of the Project, assist and support all timely applications, permissible under applicable Indian Law, made by or on behalf of

- i. The Company; or
- ii. Other entity;

or otherwise sought in relation to the Project, for all Clearances required or otherwise sought in respect of the Project from the BTC or a Competent Authority and upon due and timely application being made by the Person requiring Clearances, endeavour that the same is granted in an expeditious manner, the aforementioned requesting Party's cost being the reasonable cost that the BTC would in accordance with its standard rules and procedures normally charge for the provision of such assistance and support.

- 3.2.2 If Clearances are required from a Indian Governmental Instrumentality, not being the BTC or a Competent Authority, or one under the jurisdiction or control of the BTC, the BTC shall recommend and otherwise provide assistance and support in obtaining the grant of such Clearances, provided however such grant, having regard to the facts and circumstances of the case the Project, is permissible under Law.

3 Land

- 3.3.1 The BTC agrees and warrants that it shall provide and handover physical, vacant, peaceful, obstacle free, unencumbered possession of the entire Land free from any and all Liens prior to Financial Close to the Company at one time land lease amount of Rs 2 lakh for the entire concession period. It is agreed that no separate land lease agreement would be signed.

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3.3.2 Without limiting the ambit and generality of the foregoing BTC obligation, the Land to be made available to the Company, as on the date of handing over possession, shall:

- (1) Be without over or underground power lines or pipelines;
- (2) Be without roads, highways, paths, and diversions of any kind; and
- (3) Be free from any environmental hazards;
- (4) Not be land reserved for any other purpose by any Indian Governmental Instrumentality or Competent Authority; and
- (5) Not be land otherwise ineligible for the purposes of the Project by virtue of applicable Law or otherwise.

3.3.3 The BTC agrees to provide and ensure and procure the provision of:

- (1) All rights of access and
- (2) Such other rights of access and / or property rights, as may be required by the Company or any of their contractors or sub contractors, in relation to the Project, on a continuous basis and in a timely manner.

3.3.4 The BTC shall, at its own cost, be responsible for the rehabilitation and resettlement of any affected and / or displaced Persons as a result of any land acquisition by the BTC in connection with the Project, including in relation to relocation of any residents, villages, hutments houses and colonies.

3.3.5 The BTC fully indemnifies the Company from all liabilities which may arise in connection with the land acquisition and / or lease of the Land to the Company or otherwise in relation to the Project.

3.4 Fiscal Incentives

3.4.1 BTC agrees to provide the following fiscal incentives in relation to the Project during construction as well as operation period for the term of this agreement:

- (1) Exempting all inputs, raw materials, commodities, plant and equipment and other resources required specially in relation to the Project from the requirement of paying any tax controlled by BTC/Assam on consumption, utilisation, import or transportation.
- (2) Exempting the first transfer of land from the BTC to the Company and all Project related agreements and arrangements registered in Bodoland from the requirement of payment of stamp duty, registration fees and any other BTC/Assam controlled Tax payable in relation to the same.

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3.5 External Infrastructure

3.5.1 Without limiting the ambit and generality of the other obligations included in this Agreement, the BTC agrees, that it, in accordance with the Project implementation schedule as notified to the BTC by the Company, shall:

- (1) Ensure the construction, upgradation and maintenance of the approach road to the project site .
- (2) Ensure and facilitate a continuous supply of electricity during the design, engineering, procurement, construction, testing and commissioning of the Project at a tariff and with associated charges no different to those applicable to similar industrial consumers. The electricity required to be supplied pursuant to the above shall be delivered at such voltage and in such quantities as the Company may notify the BTC or a nominated Competent Authority in advance.
- (3) The road coming from right bank of the Champamati River will have to be connected by making bridge over the existing project which will be developed by BTC under Rural Development .
- (4) For proper connectivity of existing barrage bridge, BTC shall make suitable bridge/approach over the proposed channel of the hydel project.

3.6. Power purchase

3.6.1 The BTC/ASEB acknowledges and covenants that it shall ensure and procure the offtake of 9.93 Billion units (Average Annual generation) of power from the Project in terms of the Memorandum of Understanding for the purchase of power to be signed / signed between ASEB and HHPCPL.

3.7 Water supply

- 3.7.1 The BTC acknowledges and covenants that it shall ensure the allocation of available additional water beyond irrigation requirement for the Project for the entire concession period.
- 3.7.2 HHPCPL gives due consideration to the gross irrigation requirement and agrees that only the surplus water would be utilised for the generation of power
- 3.7.3 BTC ensure that head works of Champamati Irrigation shall be made operational prior to the commissioning of the hydro project and the headworks shall be maintained and operated by Irrigation Department.

- 3.7.4 HHPPCL ensures that the existing designed pond level of the barrage shall not be exceeded in any circumstances.

3.8 Royalty on water/free power

- 3.8.1 The electricity required for the headworks of the irrigation scheme and power requirement (not exceeding 25 KVA) for the irrigation quarter near the barrage shall be made available free of cost by developer to BTC

3.8.2

- (a) Royalty payment for the first 15 years of operation period is exempted in all case of sale of power
- (b) Beyond 15 years of operation royalty of 7.5% per annum of net energy supplied directly or equivalent amount of money (as per tariff approved) will be made available to BTC free of charge by developer.

3.9 BTC best efforts

- 3.9.1 The BTC shall use its best efforts to provide any assistance requested by the Company in connection with the proposed Project, the performance of their obligations and enjoyment of their rights, including without limitation, assistance in relation to all developmental and pre commencement work, as long as such assistance is permissible under and in accordance with the Laws of India.

- 3.9.2 Without prejudice to the generality of the foregoing provision or this Agreement, the BTC specifically agrees that it shall, in accordance with the Laws of India:

- (1) Extend all the benefits of any applicable power and / or industrial policies to the business of the Company.
- (2) Provide such assistance in expediting the Project as it may, including, without limitation, by issuing, such policy directions to the BTC/Assam Electricity Regulatory Commission as may be required to meet the reasonable requirements of the Company, Lenders, Other Entities and otherwise in relation to the Project from time to time;
- (3) Issue instructions to the Competent Authority within thirty (30) Days of a request being made by the Company, permitting and requiring it to acquire, clear and part with the land required and earmarked for the purposes of the Project to the Company, free and clear of all encumbrances and on such terms as the Company, Other Entities and Equity Investors may reasonably request.

- (4) Extend all cooperation as may be required by the company to achieve the Financial Close within the time frame contemplated by the company as intimated.

3.10 Acknowledgement of Rights

- 3.10.1 The BTC hereby acknowledges the Company's right to own, develop, design, finance, construct, operate and maintain the Project in accordance with the terms and conditions of this Agreement and other agreements or arrangements which the Company or the Equity Investors may have entered into.
- 3.10.2 The BTC hereby acknowledges the right of Other Entities who may be involved with the Project in the future, to own, develop, design, finance, construct, operate and maintain the Project in accordance with the terms and conditions of this Agreement and other agreements or arrangements which may have been entered into in relation to the Project.

3.11 Safety & Security

- 3.11.1 The BTC shall ensure security and safety of the Project or Other Entities or employees, Personnel and consultants working during execution and /or operation for the Company or Other Entities or in relation to the Project. The security cover shall be free of cost during study, investigations, construction and operation phase.

3.12 Supply of Data

- 3.12.1 The BTC shall assist and support the Company or Other Entities involved with the Project at the Company's or such Other Entities' cost, to the extent permissible under and in accordance with applicable Law, in accessing the data available with its Competent Authorities or to be collected by Competent Authorities, relating to the Land, Surveys, Site, Data related to existing scheme (where development projects are envisaged) in form of DPR, drawings, Hydrological, Geological, Environmental and other Technical Aspects, required for the Project, the aforementioned Company's or Other Entities' cost being the reasonable cost that the BTC would in accordance with its standard rules and procedures normally charge for the provision of such assistance and support.

3.13 Ensure Compliance

- 3.13.1 The BTC shall support, assist and procure the performance by companies being BTC undertakings or those companies, which are under the control of the BTC and are Parties to any agreements or arrangements which the Company involved with the

Project may be Party to or whose actions are required for the purposes of implementing the Project.

3.13.2 Specially and without limitation, the obligation of the BTC under Article 3.12.1 shall apply in relation to the contents of Article 3.6 as well.

3.14 Execution of Documents

3.14.1 The BTC agrees to execute and deliver such consent, assignment undertakings, acknowledgements, agreements and / or any other documents that are reasonably requested by the Company, Equity Investors, Lenders or Other Entities who may be involved with the Project, which are consistent with the practices of the BTC or practices typically adopted by State Governments in India and appropriate statutes, if the execution and delivery of such consent, assignment undertakings, acknowledgements, agreements and / or any other documents is necessary for the Project, including for the procurement of financing.

3.15 Creation of Security

3.15.1 Mortgage in Favour of Lenders

The BTC hereby consents to any mortgage or other Security interests in the Project and related property being granted by the Company or Other Entities involved with the Project to Lenders pursuant to financing agreements which may be entered in to.

3.15.1 Assignment of Security by the Company

The BTC agrees to and otherwise authorises the Company or Other Entities who may be involved with the Project to assign or transfer any Security created under the agreements and arrangements relating to the Project, their revenues from the Project and any other property, rights and assets and interests in relation to the Project.

3.15.3 Enforcement of Security

- (1) The BTC and any Competent Authority shall not prevent or impede the holder of any Security created for or on behalf of any of the Lenders as contemplated by financing agreements, from enforcing such Security in accordance with the terms therein and all applicable Law.
- (2) The BTC shall use its best endeavours to ensure that no Indian Governmental Instrumentality, not being the BTC or a Competent Authority, or under the jurisdiction or control of the BTC will prevent or impede the holder of any Security created for or on behalf of any of the Lenders as contemplated by financing agreements, from enforcing such Security in accordance with the terms of such financing agreements and all applicable Law.

3.16 Compulsory Acquisition

3.16.1 The BTC or any Competent Authority under its control and jurisdiction shall not expropriate, confiscate, compulsorily acquire, require the compulsory divestment of or nationalise, and the BTC shall use its best endeavours to ensure that any Indian Governmental Instrumentality, not being the BTC or a Competent Authority, or under the jurisdiction or control of the BTC, does not expropriate, confiscate, compulsorily acquire, require the compulsory divestment of or nationalise:

- (1) any assets of the Company or any Other Entity relating to, or directly derived from, the Project; or
- (2) any shares or other securities convertible into shares issued by the Company or Other Entity related to or involved with the Project.

3.17 Discriminatory Action

3.17.1 The BTC or any Competent Authority under its control and jurisdiction shall not take any action or combination of actions which discriminate against the Company or Other Entities involved with the Project vis-à-vis other similarly placed generators of powers or investors:

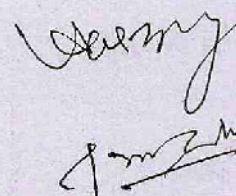
Provided that, nothing in this Article 3.16.1 shall prevent the BTC or any Competent Authority under its control and jurisdiction from lawfully exercising any rights arising under applicable Law or any remedy or sanction resulting from any breach by the Company or any such Other Entities involved with the Project of any Law of India, or the terms or conditions of any Clearance in force.

3.17.2 The BTC shall use its best endeavours to ensure that any Indian Governmental Instrumentality, not being the BTC or a Competent Authority, or under the jurisdiction or control of the BTC shall not take any action or combination of actions which discriminate against the Company or any other Entity which may be involved with the Project vis-à-vis other similarly placed generators of powers or investors:

Provided that, nothing in this clause 3.16.2 shall be interpreted as requiring the BTC to comply with the above obligation in respect of lawful exercise of rights arising under applicable Law or any remedy or sanction resulting from any breach by the Company or Other Entities of any Law of India, or the terms or conditions of any Clearance in force.

3.18 Action leading to termination of agreements

3.18.1 The BTC or any Competent Authority under its control and jurisdiction shall not take any action, except for Cause, which is capable of giving rise to or constituting any of the grounds set out in the agreements or

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arrangements which the Company or Other Entity is Party to, for events of default.

3.18.2 The BTC shall make reasonable endeavours to ensure that no Indian Governmental Instrumentality, not being the BTC or a Competent Authority, or under the jurisdiction or control of the BTC takes any action, takes any action, except for Cause, which is capable of giving rise to or constituting any of the grounds set out in the agreements or arrangements which the Company or Other Entity is Party to, for events of default

3.19 Interference with Project

3.19.1 The BTC or any Competent Authority under its control and jurisdiction shall not, discretionary or arbitrarily, prevent or impede the Company or Other Entity from performing any of its obligations and / or enjoying any of its rights under the agreements or arrangements to which they or the Company may be Party to in accordance with the terms therein. The BTC or such Competent Authority shall not give any, discretionary or arbitrary instructions to restrain, hinder, impede, suspend or cancel the Project, to the extent that the Company and aforementioned Equity Investors or Other Entities are in compliance with the Laws of India.

3.19.2 The BTC shall use its reasonable endeavours to ensure that no Indian Governmental Instrumentality, not being the BTC or a Competent Authority, or under the jurisdiction or control of the BTC will prevent or impede the Company, or Other Entity, arbitrarily, from performing any of its obligations and / or enjoying any of its rights under any agreements or arrangements which they or the Company may be Party to in accordance with its terms and shall not give any, discretionary or arbitrary instructions to restrain, hinder, impede, suspend or cancel the Project, to the extent that the Company or Other Entities are in compliance with the Laws of India. Article 4

COMPANY'S OBLIGATIONS

4.1 The Company's Obligations

The Company agrees and undertakes to:

- (1) Always be in compliance with the applicable Indian law and obtain and maintain in full force and effect all clearances required under the applicable Indian law, and if required by BTC, provide BTC with evidence that all such clearances have been duly obtained;
- (2) Use reasonable endeavours to obtain all permits/way leaves, necessary for the project;

- (3) Be fully responsible for suitability of the site where the project is proposed to be designed, constructed and operated;
- (4) Design, construct, complete, test, commission, maintain and operate the project in a professional manner adopting good workmanship, using equipment and material that is new and of good quality, always in accordance with prudent utility practices, and other legal requirements;
- (5) Appoint reputable contractors as the construction contractor for the purpose of construction of the project;

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ARTICLE 5

GOVERNING LAW AND DISPUTE RESOLUTION

5.1 Governing Law

This Agreement shall be interpreted, construed and governed by the Laws of India.

5.2 Dispute Resolution and Arbitration

5.2.1 Each Party shall designate in writing, to the other Party a representative who shall be authorised to resolve any dispute, controversy or claim arising out of or in relation to this Agreement, or the breach, termination or validity thereof (a "Dispute") in an equitable manner by mutual agreement.

5.2.2 If the designated representatives are unable to resolve the Dispute within 14 Days of such Dispute being brought to their notice, such Dispute shall be referred for settlement by arbitration, through a notice by any one of the Parties on another, in accordance with the provisions of Article 4.3 below.

5.3 Arbitration

5.3.1 In the event of the Parties being unable to resolve any Dispute under the provisions of Article 4.2 within the time stipulated therein, the Dispute shall be settled exclusively and finally by arbitration conducted in accordance with Indian Arbitration and Conciliation Act, 1996.

5.3.2 A notice of the intent ("Notice of Intent") to refer the Dispute to arbitration may be given by a Party or group of Party(s) ("Claimants") to the other Party or group of Party(s) ("Respondents"). The Disputes shall be referred to a sole arbitrator if the Parties agree upon a sole arbitrator, and failing such agreement, to an arbitration tribunal of consisting of three (3) arbitrators. Each of the Claimants and the Respondents shall be entitled to appoint one arbitrator. The third arbitrator, who shall act as Chairman of the arbitration tribunal, shall be nominated by the arbitrators appointed by the Claimants and the Respondents.

5.3.3 In the event of failure by the Claimants or Respondents to appoint their arbitrator(s), within 30 Days from the date of Notice of Intent, or failure of the two arbitrators appointed by Claimants and Respondents to appoint the third arbitrator, within 30 Days from their appointment, the said arbitrator(s) shall

be appointed by the High Court of Guwahati. The place of arbitration shall be Guwahati

- 5.3.4 The Arbitration shall be held in English. The Laws of India shall govern the validity, interpretation, construction, performance and enforcement of the arbitration agreement contained in this Article 5.3, the conduct of the arbitration (including any resort to the court for provisional remedy), the enforcement of any award and any other question of arbitration Law. The language to be used and all written documents provided in each arbitration shall be in English.
- 5.3.5 The award under this Article 5.3 shall be final and binding upon the Parties and shall be the sole and exclusive remedy between the Parties regarding all Disputes.

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ARTICLE 6
MISCELLANEOUS

6.1 Assignment

6.1.1 Without the prior written approval of the Company, the BTC may not assign or transfer all or any part of its rights or obligations under this Agreement.

6.1.2 Without the prior written approval of the BTC, the Company or Other Entity shall not assign or transfer all or any part of its rights or obligations under this Agreement:

Provided however, that the Company or Other Entity may assign or transfer all or any part of its rights or obligations thereunder to and for the benefit of its Lenders, and the BTC shall execute such acknowledgements and consents as may reasonably be requested in this connection.

6.1.3 In the event of any Competent Authority under the jurisdiction and control of the BTC, responsible for any obligations of the BTC under this Agreement, is dissolved or no longer remains under the jurisdiction and control of the BTC, the BTC shall in consultation with the Company, assign or transfer its rights and obligations under this Agreement, to the successor of such Competent Authority.

6.2 Benefit of this Agreement

Other than any Other Entities who may become subsequently involved with the Project and subject to Article 6.11.3, this Agreement shall not confer any right of suit or action whatsoever on any third Party, other than, for the avoidance of doubt, successors and permitted assigns of the Parties.

6.3 Sovereign Immunity

The BTC unconditionally and irrevocably:

- (1) waives any right of immunity which it or any of its assets (other than certain assets protected under Law) now has or may acquire in the future in any jurisdiction;
- (2) agrees that should any proceedings be brought against it or its assets in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity, sovereign or otherwise, from such proceedings shall be claimed by it or in respect of its assets; and
- (3) agrees that the execution, delivery and performance by it of this Agreement do not constitute sovereign acts;

6.4 **Amendments**

The terms of this Agreement may only be amended, supplemented, waived or modified in writing, signed by both the Company and the BTC.

6.5 **Notices**

- 6.5.1 Except as otherwise expressly provided in this Agreement, all notices and other communications, which are required and permitted hereunder, shall be in writing and sufficient if delivered Personally, or sent by registered or certified mail, telecopier, telex, or telegram addressed as follows:

BTC [BTC Secretariat, Kokrajhar-783370]

HHPCPL [C/o IL&FS IDC, Core 4 B, India Habitat Centre, Lodhi Road, New Delhi-110001]

6.5.2 **Notice Confirmation**

All notices or communications given by telecopier or telegram shall be confirmed by depositing a copy of the same in the post office in an envelope properly addressed to the appropriate Party for delivery by registered or certified mail or courier service, but any failure to so confirm shall not vitiate the original notice or communication. All notices sent by telecopier and telegram shall be deemed delivered upon receipt, and all notices sent by registered or certified mail and courier service shall be deemed delivered upon expiration of two (2) Business Days of depositing the same in the post office.

6.5.3 **Change of Address**

Any Party may by notice change its addresses and/or addressees to which or communications hereunder are to be delivered or mailed.

6.6 **Successors and Assigns**

This Agreement shall be binding upon, and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

6.7 **Severability**

If at any time any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the Laws of India, then, that shall not

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affect or impair the legality, validity or enforceability of any other provision of this Agreement.

6.8 Counterparts

This Agreement is signed in -- copies, equally authentic, in English, one each for BTC and the IL&FS, JVC and HHPCPL.

6.9 Waivers

A Party shall not be construed as having waived any right or remedy hereunder or any default by the other Party in the performance of the provisions of this Agreement, unless it is specifically waived in writing duly executed by an authorised representative of such Party. The failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or time or other indulgence granted by one Party to the other Party shall not thereby act as a waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder, which shall remain in full force and effect.

6.10 Administration

Notwithstanding the obligations of BTC to provide assistance and support to company and Other Entities, related to project, under this Agreement:

- (a) the Parties intend that this Agreement shall be administered by direct dealings and communications between the BTC and the Company to the maximum extent practicable;
- (b) all requests company or Other Entities for assistance and support by the BTC shall be made by and through the Company;
- (c) if there is a conflict of interest between the requirements of any Equity Investor and / or Other Entities and the Company in respect of this Agreement, the BTC shall give priority to the requirements of the Company over those of such Equity Investor.

6.11 Good Faith and further assurances

6.11.1 The Parties undertake to act in good faith in relation to the performance and implementation of this Agreement and to take such other reasonable measures as may be necessary for the realisation of its objectives.

6.12 Representations

Handwritten signatures:
Vasany
Amal

6.12.1 Each Party represents and warrants to the other Party that:

- (1) It has full power and authority to execute, deliver and perform this Agreement;
- (2) It has taken all necessary action to authorise the execution, delivery and performance of this Agreement;
- (3) This Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof.

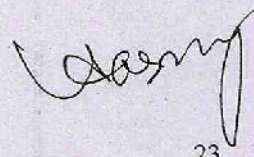

6.13 Confidentiality

6.13.1 The Parties to this Agreement shall keep confidential all matters relating to the Project or this Agreement and shall not make any disclosure, and shall use their best endeavours to prevent their employees, agents and contractors from making any disclosure, to any Person of any information, data, documents, secrets, dealings, transactions or affairs of or relating to the Project or this Agreement.

6.13.2 The confidentiality obligation of the Parties does not apply to the following:

- (1) Any matter which a Party can demonstrate is already generally available and in the public domain otherwise than as a result of a breach of this Article;
- (2) Any disclosure that may reasonably be required for the performance of that Party's obligations under this Agreement;
- (3) Disclosure of information that is required by any Law or the rules of any stock exchange or governmental or regulatory authority;
- (4) Disclosure of any information that is already lawfully in the possession of the receiving Party prior to its disclosure by the disclosing Party;
- (5) The provision of information to contractors, suppliers or subcontractors to the extent necessary to perform their contractual obligations provided similar obligations of confidentiality to those contained in this Agreement are imposed upon them before information is disclosed;
- (6) Provision of information to the shareholders, the Lenders or the Lenders' professional advisers and insurance advisers;

6.13.3 The provisions and obligations set out in this Article survive and remain in force in the event of the termination or expiry of this Agreement.


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6.14 No Partnership

6.14.1 Nothing in this Agreement nor any other agreement or arrangement of which it forms a part of or relates to, nor the performance by the Parties of their respective obligations under any such agreement or arrangement, shall constitute a partnership between the Parties. No Party shall have any authority (unless expressly conferred in writing by virtue of this Agreement or otherwise and not revoked) to bind any other Party as its agent or otherwise.

W. H. H. H.
1. 1. 1. 1.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement through their authorised representatives on the Day, month and year first above mentioned In the presence of:

For BTC

By

Carol Narzary : 7/3/07

Name

CAROL NARZARY

Designation

SECRETARY, BTL
Secretary,
Bodoland Territorial Council
Kokrajhar.

For HHPCPL

By

:

Pran Gopal Saha

Name

:

PRAN GOPAL SAHA

Designation

:

Consultant, IL&FS

Witnesses

1) VICTOR CARPENTER

Victor Carpenter
Assty BTL.

2) PRADYUT K. BORAH

Pradyut K. Borah
7/3/07
Sr. Officer, IL&FS.