

**MEMORANDUM OF UNDERSTANDING between The
Government of Nepal, represented by Ministry of Water
Resources and GMR-ITD Consortium, concerning the
Execution of Upper Karnali Hydropower Project in Nepal**

This Memorandum of Understanding (hereinafter referred to as "MOU") is made and entered into as of this 24th day of January 2008 by and between The Government of Nepal represented by Ministry of Water Resources (hereinafter referred to as "MOWR") and the GMR-ITD Consortium comprising of GMR Energy Limited (GEL), a company incorporated under the Companies Act, 1956 of the Republic of India, GMR Infrastructure Limited (GIL), a company incorporated under the Companies Act, 1956 of the Republic of India, both having their registered offices at Skip House, 25/1, Museum Road, Bangalore 560 025, India and Italian-Thai Development Public Company Limited (ITD), a company incorporated under the appropriate laws of Thailand and having its Registered office at 2034/132-161 New Petchburi Road, Bang Kapi, Huay Kwang, Bangkok 10320, Thailand (hereinafter referred to as "GMR-ITD"), which expression shall unless repugnant to the context or meaning thereof, include its Members of the Consortium, successor(s), administrator(s) and permitted assignee(s) including a public limited company which shall be incorporated in Nepal for the purpose of executing the Upper Karnali Hydropower Project as defined in the subsequent provisions contained herein.

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

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

WHEREAS, the Government of Nepal solicited the Expression of Interest (EOI) to select the Proponent/Developer in order to implement the Upper Karnali Hydropower Project with a minimum installed capacity of 300 MW and associated transmission system for evacuation of power and energy and access road (hereinafter referred to as “Project”);

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

WHEREAS, GMR-ITD is to involve Nepal Electricity Authority (hereinafter referred to as “NEA”), an entity constituted under the Nepal Electricity Authority Act, 2041, having its office at Durbar Marg, Kathmandu, as an equity partner in the execution of the Project;

WHEREAS, the Government of Nepal appreciates that GMR-ITD shall choose appropriate financial options, suppliers, credit options and technologies in the best interests of the Project, and

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

NOW, THEREFORE, MOWR and GMR-ITD hereto hereby agree as follows:

1. Both the Parties acknowledge that the Project is export oriented. GMR-ITD agrees to execute the Project, a peaking Run-of- the river Project located in Karnali River in Achham, Surkhet and Dailekh Districts of Far Western Development Region of Nepal. The Project is more fully described in the report as studied by NEA. The brief description of the Project is attached herewith as Annex I for ready reference. GMR-ITD shall receive, within a period of two weeks, all available information, document, and the Report etc., from NEA, with an one-time complete payment of NRs 80,000,000/- (Nepali Rupees Eight Crores only), for the same. List of documents to be provided, is enclosed as Annexure II.
2. For the purpose of developing the Project, GMR-ITD shall enter into an agreement with Nepal Electricity Authority to establish a Joint Venture Company in accordance with the Company Act, 2056 of Nepal. The Joint Venture Company, (hereinafter referred to as the "JVC"), shall be incorporated within ninety (90) days from the date of signing of this MOU. It is agreed that NEA shall be subscribed 27.00 (Twenty Seven point zero zero) percent of equity, free of costs, by GMR-ITD in the JVC. Provided, however, no financial obligation shall be imposed to NEA for being equity partner. The GMR-ITD consortium, through the JVC, will be responsible for the management and implementation of the Project.
3. GMR-ITD agrees to provide 12 (twelve) percent of monthly generated power and energy from the Project, net of auxiliary

consumption and transformation losses, measured at the Bus-bar, free of costs from the date of the commencement of generation in addition to the royalty and export tax applicable pursuant to the Hydropower Development Policy 2001 and Electricity Act, 2049 respectively. The export tax shall not be exceeding 0.005% (Point Zero Zero Five Per cent) of export sales revenue.

4. GMR-ITD assures MOWR that the JVC shall study the possibility of supply of power and energy generated from the Project to the markets of India in order to allow the sales of the generated power and energy in an attractive rate wherever available in the Indian markets. JVC shall ensure suitable arrangements for transmission and evacuation of Power from the Project in the most optimal manner, including through another affiliate Company / Third Party Company.
5. The JVC shall undertake studies, based on the required inputs from NEA, to examine and assess the technical requirements for evacuation of power meant for GoN, at the Project bus-bar/switch yard.
6. The Parties may mutually agree upon the schedule of supply of power and energy to be provided to the Government of Nepal, but the quantum of supply shall not be, in any case, less than 12 percent of the monthly generation, as referred in Clause 3 above. The switchyard infrastructure required for such supply of power and energy to the Government of Nepal shall be constructed, operated and maintained by GMR-ITD, free of cost.

7. GMR-ITD agrees that JVC shall carry further studies and investigations as may be required bringing the level of studies of the Project to Detailed Engineering Report ("DER") level so as to make the studies at par with internationally accepted pre-construction engineering level. The DER shall also include the access road and the transmission line study for evacuation of power and energy to India and switchyard infrastructure necessary for supply of Power and energy to Nepal, as an integral part of the study.
8. GMR-ITD further assures that JVC shall carry out the Environmental Impact Assessment of the Project in accordance with the Environment Protection Act, 2053, Environment Protection Rules, 2054 and other relevant internationally accepted practices as an integral part of the DER.
9. GMR-ITD shall ensure that the JVC shall apply for Survey License as required to undertake required studies and investigations as mentioned hereinabove with all particulars required therein in accordance with the Electricity Act, 2049 and the Electricity Regulation, 2050 within thirty (30) days from the date of establishment of JVC.
10. A non-refundable fee of NRs. 1,00,000/- (Nepali Rupees One Lac only) per MW of the proposed installed capacity shall be submitted in favour of Department of Electricity Development (DOED), Ministry of Water Resources before the application for survey licence is submitted.
11. The Government of Nepal agrees to grant the Survey License to JVC within 15 (Fifteen) days of submission of complete

application to DoED in accordance with the prevailing laws of Nepal. The validity of the Survey License to carry out the necessary study/survey/investigation and completion of DER as well as concluding necessary agreement(s) and arranging finance for the development of the Project shall be for the period of thirty (30) months from the date of issuance of such license.

12. GMR-ITD shall ensure that JVC shall start the works within three (3) months from the date of issuance of the Survey License and duly inform the same to MOWR. The JVC shall submit progress of its works to MOWR every six (6) months. The JVC shall submit five copies of DER along with all relevant documents including data/maps at the end of the study/investigation.
13. In the event JVC does not apply for the Generation License or fails to meet the requirements stipulated hereinabove for the purpose of grant of Generation License, all documents, reports including DER, Data /maps, etc. submitted to MOWR shall remain as the property of the Government of Nepal without any obligation, whatsoever.
14. The JVC shall conduct an Environmental Impact Assessment Study (EIA) and prepare a detailed EIA Report and an Environmental Management Plan for the Project. The Government of Nepal agrees to provide any assistance requested by the JVC during the time the EIA is conducted and prepared. The Government of Nepal also agrees to use its best efforts to procure the grant of all environmental approvals and forest clearances from the concerned departments within the minimum possible time for the Project.

15. GON shall make available all necessary land, structures, buildings and utilities owned by third parties to JVC for the construction of the project in accordance with section 33 of the electricity act 2049. If the land is already owned by GON, the land shall be made available on lease, with either a reasonable annual rent or such other rent as may be required by applicable law, for the period of project license for land needed for permanent use or for such shorter period as may be necessary for temporary use. For rehabilitation of displaced families, rehabilitation and resettlement arrangement would be facilitated by Govt. of Nepal and implemented by the JVC as per prevailing guidelines and practices.
16. The Government of Nepal shall grant to the JVC such incentives and concessions as are provided in the relevant Policy and enactments in force. The Government of Nepal shall take necessary action to provide overall security as per applicable law. Any additional security arrangements as may be required by the JVC for the Project , the same shall be provided by the Govt. of Nepal and the cost of the same shall be borne by the JVC
17. JVC shall ensure that JVC shall apply for Generation License and Transmission License along with relevant Power Purchase Agreement(s), Financial Closure, approved EIA, etc. within the validity period of the Survey License in accordance with the Electricity Act, 2049 and Electricity Regulations, 2050.
18. JVC shall be held responsible for the completion of the construction works within fifty four (54) months from the date of Financial Closure to Commissioning of the Project.

Provided that, in case JVC completes the work envisaged as in Clause 11 above, before 30 months, then the time so saved (30 months minus actual time taken in months) will be credited to the period from Financial Closure to Commissioning of the Project i.e., 54 months plus time saved in completing the works envisaged in clause 11 above.

19. The JVC while implementing the Project undertakes to comply with all statutory requirements in respect of laws, regulations and procedures governing establishment and operation of hydropower.
20. The Government of Nepal agrees to grant the licenses for generation and transmission of Electricity to JVC for the development and operation of the Project for a period of thirty (30) years from the date of issuance of such licenses on Build, Own, Operate and Transfer (BOOT) basis. During the validity period of the licenses, JVC shall maintain and operate the Project according to generally acceptable prudent hydropower and electricity utility practices and handover the ownership of the Project to the Government of Nepal, free of cost, at the end of such period. At the time of handing over to the Government of Nepal, the Project shall be in a good running condition. Government of Nepal shall have an entitlement to inspect Project periodically. The Cost of such inspection shall be borne by the Government of Nepal.
21. The Government of Nepal, in the course of issuing a Generation License, shall demand a Performance Security at the rate of NRs 5,00,000/- (Nepali Rupees Five Lacs only) per MW which shall be in the form of an unconditional Bank Guarantee issued by an international bank acceptable to

- MOWR and counter guaranteed by a Nepalese Bank. The Government of Nepal shall have the unconditional entitlement to forfeit such Performance Security, if JVC fails to comply with any material terms and conditions prescribed in the Generation License.
22. The performance security shall be valid until the commissioning of the Project. No claim shall be made against such security after the commissioning of the Project.
 23. GMR-ITD shall ensure that JVC shall develop the Project in accordance with the terms and conditions as agreed upon as well as within the purview of the relevant laws of Nepal and shall be responsible for all taxes, duties, fees, levies etc., to be paid to the Government of Nepal as provided in the applicable Nepalese laws in force on the date of this MoU. However, in case of any reduction in the taxes, duties, fees, levies etc., the benefit of such change shall be extended to the JVC.
 24. The Government of Nepal shall facilitate all clearances and approvals. It also agrees to extend all privileges and facilities to JVC according to the Electricity Act, 2049, the Electricity Regulations, 2050 and other prevailing laws of Nepal in relation to licenses, permissions, authorizations and assurances, etc for the preparation of DER and development and operation of the Project.
 25. JVC shall save harmless and indemnify the Government of Nepal in respect of all claims, proceedings, costs, damages, charges and expenses whatsoever arising out of, or in relation to, any such matter in so far as JVC is responsible for the Project.

26. Each Party hereto agrees that it shall not divulge throughout the validity of the Survey License, any trade, commercial or technical secrets or confidential matters, reports, documents, data, information, including DER, of one another to any third Party save and except for the purpose of implementing the understanding reached in this MOU. However, any sharing of information between the Parties shall be subject to their respective policies on the disclosure of information.
27. Neither Party shall be liable for any default in performing activities hereunder beyond its control including but not limited to, acts of God, war, riots, civil disturbances/disobediences and acts of terrorism or suppression or any other cause beyond the reasonable control of the Party whose performance is affected.
28. GMR-ITD agrees to ensure that JVC shall utilize as much as possible and to the extent qualified, available local skills and labour crafts and shall maximize the use of local institutions, consulting firms, professionals, individuals and contractors for the preparation of DER and the development and operation of the Projects pursuant to the Labour Act, 2049 and the Labour Regulations, 2050.
29. JVC shall ensure that their employees, contractors, advisers or any authorized person/body involved in the preparation of DER and the development and operation of the Project shall abide by the prevailing laws of Nepal.

30. Time is the essence for each and every provision of this MoU and the target dates mentioned herein shall form an integral part. Failure to accomplish the assignments as prescribed in this MoU within the stipulated time limit for reasons other than Force Majeure or beyond the control of any Party, shall lead this MoU null and void except for Article 9 above. However, in the event any Force Majeure conditions or conditions beyond the control of any Party, time shall be extended for such duration.
31. Provided that in the event of failure by GMR-ITD to accomplish the assignments as prescribed in this MoU, within the stipulated time limit or breach of any conditions in this MoU, due opportunity shall be provided to GMR-ITD to remedy any delay or fulfill any obligations within a period of not less than Ninety (90) days, after receipt of the notice.
32. Each Party to this MOU and each individual signing on behalf of each Party, hereby represents and warrants to the other that it has full power and authority to enter into this MOU and that both the Parties shall facilitate each other for the execution, delivery and performance of the terms of this MOU.
33. In addition to the actions specifically mentioned in this MOU, the Parties will each do whatever may reasonably be necessary to accomplish the transactions contemplated in this MOU including, without limitation, executing any additional documents reasonably necessary to effectuate provisions and purposes of this MOU. Both Parties shall enter into a detailed Project Agreement for the development and operation of Project, within the validity period of this MOU, where the

content or contents of this MOU may be incorporated in the Project Agreement.

34. GMR-ITD shall not assign responsibilities under this agreement without the prior approval of the Government of Nepal. The transfer of License shall not be allowed during the period of Survey License.
35. The terms and conditions prescribed at the time of solicitation of EOI and the offer made by GMR-ITD shall be an integral part of this MOU. If any provision of EOI together with the GMR-ITD's offer and MOU contradict each other the provision of MOU shall prevail.
36. GON acknowledges that due consideration may be accorded to GMR-ITD Consortium for the allotment of upstream / downstream project, if any.
37. GoN shall ensure that the development, implementation and operation of upstream / downstream Projects by other developers shall not be detrimental in any way to the Project.
38. If any provision or any part or parts of the provision of this MOU is held invalid or contrary to the prevailing laws of Nepal, the remaining provisions of this MOU shall remain valid and unaffected.
39. This MOU shall commence from the date of its signature. It shall remain valid up to the validity of the Survey License or the Project Agreement, whichever is earlier, unless otherwise agreed between the parties in writing.

40. This MOU constitutes the entire MOU and understanding of the Parties. This MOU may not be modified except in writing signed by both the Parties.
41. Any difference or dispute arising out of this MOU at any time between the Parties shall be resolved by mutual consultation and in good faith.

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

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

On behalf of
GMR-ITD Consortium

Mr. Anup Kumar Upadhyay
Joint Secretary

Mr. Avinash Shah
Sr. Vice President

Witnesses

Witnesses

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

1. Mr. Harvinder Manocha
Associate Vice President
GMR Energy Limited

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

2. Mr. Rajib Misra
General Manager
GMR Energy Limited

