

**MEMORANDUM OF UNDERSTANDING  
("MOU")**

**for**

**[\_\_\_\_\_]  
[HYDROELECTRIC]  
POWER PROJECT**

Vientiane Capital, Lao People's Democratic Republic

[\_\_\_\_\_] 20[\_\_\_\_\_]

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# MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) is made on [.....], in Vientiane Capital, Lao People's Democratic Republic (the "Lao PDR") by and between:

The **Government of the Lao People's Democratic Republic** (the "GOL"), represented jointly by the Ministry of Energy and Mines (MEM) and Ministry of Planning and Investment (MPI)

And:

....., a limited liability company incorporated under the laws of ....., and having its registered legal address at .....(the "**DEVELOPER**")

The GOL and the Developer are the "Parties" and each is a "Party".

## WHEREAS:

- A. On [.....] 20\_\_\_, the GOL approved the application of the Developer for the proposed development, on a build, own, operate and transfer basis, of a [hydroelectric] power project [on the [.....] River / at [.....]] in [.....] Province as described in Annexure6 hereto (the "Project").
- B. The Parties now wish to further cooperate in the effective and expeditious development of the ..... Hydroelectric power project, agreeing to enter into and to implement this MOU.

## NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

### ARTICLE 1: IMPLEMENTING BODY

- (a) Ministry of Energy and Mines (MEM) and Ministry of Planning and Investment (MPI), jointly represent and act on behalf of the Government of Lao PDR in signing and entering into this MOU.
- (b) Ministry of Energy and Mines, acting through its Department of Energy Business (DEB), is the Implementing Agency in exercising the GOL's rights and performing the obligations of GOL, jointly or singly as specified under this MOU.
- (c) The Implementing Agency:
  - a. has full power and authority:
    - i. to act on behalf of and otherwise to represent the GOL in implementing this MOU; and
    - ii. to make any and all decisions required or otherwise contemplated in this MOU to be made by the GOL; and
  - b. may coordinate with any other Relevant Authority, agency, department or office of the GOL to facilitate the performance by such Relevant Authority, agency, department or office of its responsibilities for matters connected with the performance of this MOU.

## **ARTICLE 2: PURPOSE**

- (a) MOU signing and implementation are intended to facilitate the conduct of key preliminary project development activities.
- (b) This MOU does not create, establish or grant to the Developer any concession rights or analogous rights in the Project.

## **ARTICLE 3: MANDATE PERIOD**

The mandate period under this MOU (the “Mandate Period”) shall commence upon MOU signing and be coterminous with the Term.

## **ARTICLE 4: MANDATE**

The GoL mandates the Developer to carry out the activities as specified in Article 6 of this MOU

This MOU neither creates nor grants to the Developer any right, title or interest whatsoever in the Project Development Agreement (PDA).

## **ARTICLE 5: EFFECTIVENESS**

This MOU shall become legally effective upon signing of this MOU.

## **ARTICLE 6: OBLIGATIONS OF DEVELOPER**

During the Mandate Period DEVELOPER shall:

- (a) Carry out a Pre-Feasibility Study (PFS) and Initial Environment Examination (IEE)
  - i) in accordance with Terms of Reference of Pre-Feasibility Study (PFS) and Initial Environment Examination (IEE) attached in Annexure 1 of this Agreement
  - ii) by a qualified engineering firm having experience in the design of hydroelectric power projects [and confirmed in writing to be acceptable to the Implementing Agency]
  - iii) taking into account and duly reflecting all technical, financial, economic, environment, social and other critical aspects of the Project
  - iv) in accordance with the law, decree, ministerial instructions, regulations, guidelines, requirements of Lao PDR Laws
  - v) in a manner which will ensure that the Project's development and implementation will be consistent with the policy objectives of the GOL including but not limited to Policy on Sustainable Hydropower Development (PSHD); and
  - vi) in accordance with LEPTS (Annexure 2) and international standards
  - vii) in accordance with good commercial practice, internationally recognized contract principles, all applicable standards and Good Electricity Industry Practice; and
  - viii) in good faith and expeditiously.
- (b) Prepare Potential Benefit Report in accordance with Annexure 7.
- (c) Submit the Pre-Feasibility Study (PFS), Initial Environment Examination (IEE) and Potential Benefit Report, not later than 30 (thirty) days before the expiry of the Mandate Period for review and approval.
- (d) obtain approvals / certificates of Relevant Authority with respect to Pre-Feasibility Study (PFS), Initial Environment Examination (IEE) and Potential Benefit Report.

In addition, the Developer shall take due account of any comments provided by Implementing Agency in order to finalize the Pre-Feasibility Study (PFS), Initial Environment Examination (IEE) and Potential Benefit Report to ensure the continued successful development of the Project.

- (e) On the final Business Day of each calendar quarter (i.e., end of March, June, September and December) during the Mandate Period, submit to Implementing Agency four (4) hard copies and one (1) soft copy of a Progress Report for the Project.
  - 1) Such Progress Report shall:
    - i. be prepared and signed by the Developer; and
    - ii. address in detail the topics specified in Annexure 3.
  - 2) Implementing Agency reserves the right to specify, and from time to time to adjust, the required format and contents to be adhered to by the Developer in the preparation of any Progress Report.
  - 3) If Implementing Agency rejects a Progress Report, the Developer shall immediately revise such Progress Report to correct such defect(s) and then re-submit it to Implementing Agency within 15 working days.
- (f) Commence works within 60 (sixty) days from the signing date of this MOU and complete its obligations under, and the activities described in, this MOU in accordance with the terms of this MOU and the Project development timetable set forth in Annexure “5” hereto;
- (g) Within 45 (Forty-five) days from the signing of this MOU, DEVELOPER shall introduce to Implementing Agency, an organization that will be conducting the Pre-Feasibility Study (PFS) and Initial Environment Examination (IEE) to inform about the work plan.

Any individual, legal entity organization hired or appointed by the DEVELOPER to undertake Pre-Feasibility Study(PFS) and Initial Environment Examination (IEE), shall be required to obtain a General Electricity Business License as per the Electricity Law.

- (h) Conduct necessary field investigations to determine the Project Site and to support the studies mentioned above;
- (i) Prior to entering the Project Site, DEVELOPER shall inform GOL by written request 10 (ten) days in advance. The GOL may appoint a representative to work with the DEVELOPER or its consultant at the Project Site;
- (j) Cover the travel expenses of the GOL officials that are directly related to implementation of this MOU, if required or requested by DEVELOPER. Such travel expenses including the cost of transportation, accommodation, meals and reasonable out-of-pocket expenses, which shall be paid by DEVELOPER in accordance with the Annexure “4” attached herewith;
- (k) Within 30 (thirty) days after signing this MOU, the DEVELOPER shall contribute to the Department of Energy and Mines in the Province where the project is located an amount of .....US dollars for the local development cost and amount of .....US dollars for project facilitation and monitoring cost;
- (l) To secure the Developer’s timely performance of its obligations under this MOU, within 30 (thirty) days after signing this MOU, the DEVELOPER shall transfer money in amount of ..... US Dollars to the GOL account as the security deposit for MOU period.

Any failure of the Developer to submit Progress Report for two consecutive quarters to Implementing Agency on the required submission date, it may trigger the issuance to the Developer by Implementing Agency, of a reminder notice. If the Developer fails to rectify such Progress Report

submission within ten (10) days of Developer's receipt of a reminder notice, then the security deposit will be confiscated and used by GOL as government revenue without any condition.

The DEVELOPER is entitled to withdraw the security deposit, with the approval of Implementing Agency, upon

- 1. submission of Guarantee as stipulated in PDA or
- 2. project not appearing feasible as per Pre-Feasibility Study (PFS) and/or Initial Environment Examination (IEE), as decided by the Relevant Authority

If the Mandate Period is extended in accordance with the terms of this MOU, the Developer shall ensure to contribute a new security deposit of the same amount to the GOL. For avoidance of doubt, in case of extension, the Developer shall forego the earlier security deposit which shall be kept by the GOL and the Developer would need to contribute a new security deposit of same amount within 30 days of approval of extension.

The GOL shall have the right to retain the security deposit upon early termination of this MOU.

- (m) During its mandate under this MOU, the DEVELOPER has no right to conduct any other activities other than conducting the Pre-Feasibility Study(PFS) and Initial Environment Examination (IEE) of the ..... hydropower project. For damages or losses caused by the DEVELOPER, it shall be legally responsible for such damage and losses.

**ARTICLE 7: OBLIGATIONS OF GOL**

During the Mandate Period GOL shall:

- (a) warrant to DEVELOPER that GOL shall not consider, discuss, negotiate or accept any other proposal or offer with or from any other person, apart from the Developer, concerning the development, ownership and/or operation of the Project;
- (b) Subject to Article 6.(i), authorize access for DEVELOPER to the Project Site and provide authorizations and secure working conditions for DEVELOPER for field activities on the Project Site;
- (c) Assist DEVELOPER in obtaining visas, permits, approvals, licenses or authorizations from central, provincial or local governments or communities in Lao PDR that may be necessary for the implementation of the mandate under this MOU. Provided that DEVELOPER has complied with Laws and regulations of Lao PDR;
- (d) Provide appropriate information, if available, to facilitate the Pre-Feasibility Study (PFS), Initial Environment Examination (IEE), Potential Benefit Report and DEVELOPER shall pay for the information at reasonable rate; and
- (e) Under financial assistance from the DEVELOPER, Implementing Agency shall hold a meeting at the province where the Project is located to introduce the DEVELOPER and the Project to local authorities.
- (f) have no obligation to compensate the Developer in any manner or amount if the Project is not developed or completed for any reason whatsoever, including due to the expiry of the Mandate Period or the Term or the earlier termination of this MOU by either Party for any reason.

**ARTICLE 8: OBLIGATION OF THE PARTIES TO NEGOTIATE IN GOOD FAITH**

Provided the Pre-Feasibility Study, Initial Environment Examination and Potential Benefit Report is approved by the Relevant Authority, the Parties shall finalize in good faith the terms of the PDA before the expiry of the Mandate Period.

- (a) The Project Development Agreement (PDA), if any, shall be based upon and duly reflect:
- 1) the contents of the latest model hydroelectric power project PDA and associated annexes (the "GOL Model PDA"), as prepared and updated from time to time by MEM, and provided that:
    - i. the Developer shall be responsible to request and obtain from Implementing Agency such latest GOL Model PDA;
    - ii. Implementing Agency shall be responsible for preparing the initial draft PDA, based upon the latest GOL Model PDA and reflecting such minor adaptations as may be necessary or appropriate for use with the Project, taking the Project's specific circumstances into consideration;
  - 2) any adjustments to the GOL Model PDA as are mutually agreed by the GOL and the Developer; and
  - 3) any terms of this MOU, to the extent deemed appropriate by the GOL.
- (b) The PDA shall also:
- 1) Confirm the terms of the exclusive mandate granted by GOL to DEVELOPER in order to enable the development and implementation of the Project on a build, operate and transfer basis ("BOT") with a concession period that according to the Electricity Law starts from the effective date of the Concession Agreement till not more than 25 (twenty five) years of operation;
  - 2) Confirm an agreement of the Parties to negotiate the necessary project documents in accordance with the principles agreed upon and set forth in the PDA in order to proceed to the financing, construction, operation and maintenance of the Project under the Project Company;
  - 3) Confirm and allocate specific tasks and responsibilities to the respective Parties to enable the project documents to be drafted, negotiated, approved, signed and for financial close to take place in accordance with a timetable determined in the PDA;
  - 4) Provide for DEVELOPER'S assistance to GOL to arrange (but with no obligation itself to provide) any requisite equity funding for the GOL, if requested by the GOL to do so which shall be subject to the terms of the PDA and final confirmation by GOL prior to signing the shareholders' agreement
  - 5) Comply with and be governed by the laws of Lao PDR;
  - 6) The following principles shall apply in respect of the development and negotiations of the PDA and other project documents:
    - i. GOL shall grant to DEVELOPER the right to negotiate with the Off-taker (Domestic) or Off-taker (Foreign) as the potential power buyer, such Power Purchase Agreement for the supply of power by the Project Company to the Off-taker (Domestic/Foreign) shall be approved by GOL;
    - ii. GOL shall agree to use all reasonable efforts to assist DEVELOPER in the negotiation and signing of a Power Purchase Agreement (hereinafter referred to as the "PPA") with the Off-taker (Domestic) or Off-taker (Foreign) which meets the reasonable requirements of GOL and DEVELOPER;
    - iii. The project documents to contain provisions giving preference to Lao nationals and to entities established in the Lao PDR in sourcing of materials, equipment, goods, services and labor in accordance with the Laws of Lao PDR;
    - iv. DEVELOPER or Project Company shall agree to pay royalties, income taxes and other taxes in accordance with Concession Agreement, Laws of Lao PDR or as the Parties may agree thereto;

- v. The Parties shall agree that the Project Company shall be available over the concession period to provide energy to local needs of the Lao PDR of the total generation at a tariff level to be negotiated in good faith.

#### **ARTICLE 9: COSTS AND EXPENSES**

The Parties agree that all costs and expenses incurred by each of the Parties in the performance of this MOU will be borne by the Party incurring the same. Neither of the Parties is authorized to incur any costs or expenses on behalf of the other, apart from the costs mentioned under 6(i) and Annexure 4.

Notwithstanding the foregoing, provided the Project appears feasible and enter into implementation, the costs and expenses incurred by DEVELOPER according to Article 6(a) and (i), after being audited and approved by the GOL, shall be incorporated in the Project Cost. When the Project Company is established, such costs and expenses shall be applied as part of the capital contribution by DEVELOPER into the Project Company. In case the Project appears not to be feasible or in case of rejection of costs and expenses by GOL, all costs and expenses shall be borne by DEVELOPER.

DEVELOPER acknowledges that if GOL had incurred some cost in the past for studies pertaining to the particular project, then such cost shall be incorporated into the Project cost. The cost will be considered as development cost of the Project incurred by GOL and will be converted to GOL's share in the Project Company. For avoidance of doubt such cost will be agreed by both parties.

#### **ARTICLE 10: INTELLECTUAL PROPERTY**

- (a) The Developer, freely acting on its own behalf, hereby grants to the GOL a license to the Project-related Intellectual Property of the Developer that is:
  - a. irrevocable,
  - b. perpetual,
  - c. royalty-free,
  - d. exclusive (except as to retained rights of the Developer, as the case may be),
  - e. fully assignable by the GOL to any third party(ies) without any restriction whatsoever, and
  - f. fully re-assignable by any assignee to any other third party(ies) without any restriction whatsoever.
- (b) Such license hereby authorizes and allows the GOL (and any third party assignees of the GOL or of any assignee) to:
  - a. possess,
  - b. use,
  - c. commercially exploit,
  - d. modify, and
  - e. otherwise wholly enjoy, with no limit or restriction whatsoeverany and all Project-related Intellectual Property of the Developer, for any and all GOL purposes and in the GOL's sole discretion (including, without limitation, the future development of the Project or any substitute project of the Project by the GOL, EDL or any third party).
- (c) In no event shall the GOL or any assignee of the GOL be requested or obliged to reimburse or compensate, in any amount or to any extent whatsoever, the Developer for or in respect of any cost, value or other aspect any Intellectual Property that has been licensed to the GOL in accordance with the terms of this MOU and regardless of the expiry of the Mandate Period or the Term or any earlier termination of this MOU by either Party for any reason.



- (d) If the Mandate Period expires without the PDA having yet come into legal force and effect, or this MOU is early terminated by either Party for any reason, the Developer shall neither attempt to interfere with nor lodge claim against the GOL, any Relevant Authority or any third party assignee of the GOL with respect to, or seeking compensation or other payment for, the possession, use, commercial exploitation, modification or other enjoyment by the GOL or any assignee of any and all Project-related Intellectual Property of the Developer that has been licensed to the GOL pursuant to this MOU.

#### **ARTICLE 11: CONFIDENTIALITY**

The MOU and all information disclosed or furnished by one Party to the other in connection with the MOU shall be deemed to be Confidential Information during the Mandate Period and 2 (two) months after the expiry of the Mandate Period or the termination of the MOU. This information shall not be disclosed or furnished to any third party except when appropriate for the purpose of development and implementation of the Project. The receiving party shall protect the information with the same confidentiality as applies to the Parties.

#### **ARTICLE 12: TERM**

This MOU shall be effective as of the date of its signature by GOL and DEVELOPER and shall remain valid and enforceable for a period of 24 months, subject to:

- (a) any extension made in accordance with Article 13, and
- (b) any earlier termination made in accordance with Article 14.

#### **ARTICLE 13: EXTENSION**

- (a) Not less than sixty (60) days prior to the date of expiration of the Term (or any previously granted extension thereof), the Developer may submit to Implementing Agency a formal written request seeking the extension (or further extension) of the Term. The Developer shall, simultaneously with the submission of such request, submit to Implementing Agency:
  - (i) a detailed written report clearly specifying progress of work, the reasons for the Developer's delay in performing the agreed obligations under this MoU, and
  - (ii) supporting evidence thereof clearly showing what prevented or materially adversely affected the performance of the obligations by Developer to the full satisfaction of GOL, etc..
- (b) The GoL shall determine if the Developer has achieved or completed, as on the date of extension request, two-third of the scope of work.

Two-third of the scope of work will be defined as completion to the satisfaction of GoL of

1. "Alternative Study on Project Scheme" in accordance with the approved Terms of Reference of Pre-Feasibility Study and
  2. data collection for one season for IEE study
- (c) The GOL shall have the right, in its absolute discretion, to decide whether to extend the Term:
    - (i) for any further period or periods;
    - (ii) subject to Article 13 (b) any conditions which the GOL may impose in connection therewith; and

- (iii) subject to the signing by the Parties of an amendment to this MOU to memorialize such extension and any applicable conditions thereto.
- (d) Extension may also be provided if the following conditions are valid
  - Progress of the activities impacted under events which are classified as Force Majeure.

#### **ARTICLE 14: TERMINATION**

- (a) This MOU:
  - (i) shall terminate upon a Party's failure to perform its obligations under this MOU amounts to a fundamental breach of agreement and the Party fails to rectify such breach within 60 (sixty) days after having received a written default notice from the other Party.
  - (ii) shall terminate automatically upon the expiry of the Term.
  - (iii) shall terminate upon replacement of this MOU by the PDA.
  - (iv) may be terminated unilaterally by the GOL upon sixty (60) days prior notice to the Developer, in any of the following circumstances:
    - i. the Pre-Feasibility Study, Initial Environment Examination and Potential Benefits Report submitted by the Developer in accordance with Article 6 (a), (b) and Annexure 1, 7 and is unsatisfactory to and/or not approved by:
      - a. the Relevant Authority and/or
      - b. Implementing Agency
    - ii. two (2) consecutive Progress Reports fail to demonstrate:
      - a. reasonable progress by the Developer to advance the implementation of this MOU, and/or
      - b. the expeditious development of the Project, and
      - c. the Developer's written justification (if any) for such failure is not satisfactory to Implementing Agency;
    - iii. any attempt being made by the Developer to terminate this MOU other than in accordance with its terms and conditions;
    - iv. actual or constructive abandonment of the Project by the Developer for more than ninety (90) days; and
    - v. insolvency of the Developer (or any analogous proceedings in which the Developer faces or seeks liquidation, winding-up, reorganization, dissolution, protection or relief from creditors) during the Term
  - (v) shall terminate automatically, when Developer carries out any transfer or assignment of, or any attempt to transfer or assign, any right or interest in the Project including any shareholding or other equity interest in it, without having first obtained the express written approval of the GOL, which shall be informed to Developer by Implementing Agency;

#### **ARTICLE 15: ASSIGNMENT**

- (a) The rights, obligations and interests of the Developer under this MOU and in respect of the Project are specific to the Developer. No right, obligation or other interest of the Developer under this MOU

or in respect of the Project shall be assigned or transferred to any third party without the prior written consent of the GOL.

- (b) The GOL has the absolute right, to be exercised in the GOL's sole discretion and without the need to provide any explanation, reason or justification, not to accept, approve and/or consent to any proposed transfer or assignment by the Developer of any right, obligation or other interest of the Developer under this MOU and/or of the Developer in respect of the Project to any third party. In no event shall the GOL allow any transfer or assignment under this MOU if such transfer or assignment is proposed to be made from the Developer to any entity which:
  - (i) has been blacklisted by the GOL; or
  - (ii) is regarded by the GOL as being a Paper Company.

#### **ARTICLE 16: GOVERNING LAW**

This MOU shall be governed and interpreted by the laws of Lao PDR.

#### **ARTICLE 17: DISPUTE RESOLUTION**

- (a) The Parties shall amicably discuss, and use their best efforts to resolve, any dispute, controversy or claim (a "Dispute") between the Parties arising under or in connection with this MOU, including without limitation any question regarding its existence, validity, implementation, interpretation, or termination.
- (b) Upon the written request of either Party, the Parties shall meet promptly in Vientiane Capital in an effort amicably to resolve any such Dispute.
- (c) If the Parties are unable amicably to resolve any Dispute, each Party shall have right to submit the Dispute to the Economic Dispute Resolution Committee for arbitration in Vientiane Capital, Lao PDR to decide in accordance with the provisions of this MOU and applicable Laws of Lao PDR.

#### **ARTICLE 18: FORCE MAJEURE**

- (a) Neither Party shall be liable for any non-performance of any of its obligations under this MOU where:
  - (i) such non-performance is attributable to an act of God, war, act of terrorism, riot, civil disturbance ("Force Majeure");
  - (ii) such excuse for a Party's non-performance shall not exceed that period of time which would have been required for the affected Party to remedy the occurrence and mitigate the effects of such Force Majeure (and promptly thereupon to resume performance of its affected obligations) had the affected Party properly and expeditiously acted to remedy and mitigate the effects of such Force Majeure; and
  - (iii) provided, always, that the affected Party has promptly notified the other Party in writing within five (5) days of the date of occurrence of the Force Majeure;
- (b) No extension of the Mandate Period or Term shall be made by reason of the occurrence of any event of Force Majeure affecting either Party (or affecting any third party or other entity), unless the Developer has, in respect of such Force Majeure, specifically requested an extension in writing and the GOL, in its sole discretion, has granted such extension.

**ARTICLE 19: LANGUAGE**

This MOU is made in Lao and English in two original documents of each version having the same contents and effectiveness. In the case of discrepancies the Lao version shall prevail.

**ARTICLE 20: INDEMNITY**

- (a) In case of the expiry of the Term or the earlier Termination of this MOU, the security will be kept by the GOL and the DEVELOPER
  - (i) shall not have any right or claim whatsoever against the GOL for any cost, loss, liability, damage or otherwise;
  - (ii) shall not be indemnified by GOL;
- (b) The Developer absolutely and irrevocably waives any right to bring any claim whatsoever against, or otherwise to seek any compensation, reimbursement or other relief whatsoever from, the GOL arising from or in connection with the expiry of the Mandate Period or the Term or the earlier termination of this MOU in accordance with its terms.
- (c) In no event shall the GOL be legally or financially liable or otherwise obliged to reimburse or compensate, in any amount or to any extent whatsoever, the Developer for or in respect of any damages, costs, expenses, opportunity cost, foregone benefit or any other aspect relating to or asserted or claimed to arise from the expiry of the Mandate Period or the Term or the earlier termination of this MOU by either Party for any reason.

**ARTICLE 21: LOCAL COORDINATION AND COOPERATION**

At all time, during the implementation of the MOU, DEVELOPER shall maintain good coordination and cooperation closely with local authorities as well as, pay respects to culture and custom of local people and of Lao PDR.

**ARTICLE 22: NOTICES**

Any notice given under this MOU:

- (a) must be
  - a. in writing;
  - b. addressed to the recipient at the address shown below, and
  - c. signed by a person duly authorized by the sending Party; and
- (b) shall be duly given or made (in the case of delivery in person or by post or fax) when delivered, received or left at the indicated address.
  - a. To the Developer:
 

Name	[_____]
Address	[_____]
Tel:	[_____]
Fax:	[_____]
Email:	[_____]

b. To the GOL:

- i. Any request, report, coordination or other communication under or relating to the MOU, and any Notice of Breach, shall be addressed to:

Ministry of Energy and Mines  
Department of Energy Business  
Nong Bone Road Vientiane, Lao PDR  
Telephone: (865-21) 452539  
Facsimile: (856-21) 415626  
E-mail: energy@deb.gov.la

- ii. Notices regarding extension / Notice of Termination of the MOU shall be addressed to:

Ministry of Planning and Investment  
Investment Promotion Department  
Luangprabang Rd, Vientiane 01001, Lao PDR  
Telephone: (856-21) 217005, 222689  
Facsimile: (856-21) 215491

with copy to:

Ministry of Energy and Mines  
Department of Energy Business  
Nong Bone Road Vientiane, Lao PDR  
Telephone: (865-21) 452539  
Facsimile: (856-21) 415626  
E-mail: energy@deb.gov.la

## ARTICLE 23: DEFINITIONS

In this MOU the following capitalized words have the meanings specified below:

“Build-Operate-Transfer (BOT)”	means a form of project financing, wherein a private entity receives a concession from the GOL to finance, design, construct, and operate a facility and transfer all asset to the GOL, without cost, after concession period.
“Business Day”	means a day on which offices of the GOL (including the Implementing Agency) are generally open to the public for the conduct of business.
“Confidential Information”	means all confidential information provided by either Party to the other Party in relation to the Developer, or the Project during the Term.
“Developer”	means [ ] and any proposed additional shareholder(s) that has been approved by the GOL.
“Dispute”	has the meaning set forth in Article 17(a).
“EDL”	means Electricité du Laos, a State enterprise organized and existing under Lao PDR Law or any successor or assign of that entity.
“Force Majeure”	is defined in Article 19(a).
“GOL”	means the government of the Lao PDR, including the lawful legislative, executive and administrative bodies of the Lao PDR, including its ministries, departments, government agencies, municipalities, local or statutory authorities or state enterprises, and all Relevant Authorities.
“Good Electricity Industry Practice”	means the exercise of that degree of skill, diligence, prudence, foresight and economic management, as determined by reference to good international practice, which would reasonably be expected from a skilled and experienced asset owner engaged in the construction, operation and management of an independent electricity generating facility and/or a transmission network under conditions comparable to those applicable to the implementation of such electricity generating facilities and/or the grid in the Lao PDR, consistent with applicable law, safety and environmental protection, and taking into account such factors as the relative size, duty, age and technological status such assets and applicable Lao PDR Law.
“Initial Environment Examination” (IEE)	means a written preliminary study/analysis of the Project in order to determine environmental and social feasibility of the Project and which: (i) has been prepared in accordance with, and meets the requirements of, Annexure 1 and Article 6(a) & 6(b); (ii) has been approved by the Relevant Authority; and (iii) has been accepted by Implementing Agency.
“Lao PDR Law”	means the constitution of the Lao PDR, treaties, all national, provincial and local laws, decrees, rules, regulations, orders, codes, directives, edicts, notices, decisions, orders, judgments, injunctions or other legally binding actions or enactments of the GOL as from time to time have been promulgated and are in force and effect including any

	resolution issued by the National Assembly or on its behalf by the Standing Committee, Prime Minister decree and any permit and/or approval of any Government office of Lao PDR, in each case as relates to the Project.
“LEPTS”	means the Lao Electrical Power Technical Standards issued by the Department of Electricity of the MEM.
“Mandate”	is defined in Article 4.
“Mandate Period”	has the meaning specified in Article 3.
“Memorandum of Undertaking” (“MOU”)	means this Memorandum of Undertaking and all Annexures hereto, as the same may from time to time be amended or supplemented.
“Off-taker (Domestic)”	means EDL or any other GOL-approved, Lao PDR-based off-taker of electricity for domestic sale within the Lao PDR, and any successor or assign thereof;
“Off-taker (Foreign)”	means [EGAT / EVN] or any other GOL-approved, international off-taker of electricity for export sale within any international market, and any successor or assign thereof;
“Paper Company”	means a corporate entity (other than the Project Company) established for any purpose in any jurisdiction, which is non-operating or thinly capitalized
“Parties”	mean collectively GOL and DEVELOPER and a Party means any of them as the context requires.
“Power Purchase Agreement”	<p>"PPA - Domestic" means the power purchase agreement to be entered into (after the Concession Agreement has been signed) by and between the Project Company and the Off-taker (Domestic), which will: (i) reflect certain agreements set forth in the Tariff MOU - Domestic, and (ii) detail the terms and conditions upon which the Project Company will sell electrical energy to the Off-taker (Domestic).</p> <p>"PPA - Foreign" means the power purchase agreement to be entered into (after the Concession Agreement has been signed) by and between the Project Company and the Off-taker (Foreign), which will: (i) reflect certain agreements set forth in the Tariff MOU - Foreign, and (ii) detail the terms and conditions upon which the Project Company will sell electrical energy to the Off-taker (Foreign).</p> <p>"PPA" means, as the context may require, either the PPA - Domestic, the PPA - Foreign, or both.</p>
“Pre-Feasibility Study” (“PFS”)	means a written preliminary study/analysis of the Project in order to determine technical economic, feasibility of the Project and which: (i) has been prepared in accordance with, and meets the requirements of, Annexure 1 and Article 6(a) & 6(b); (ii) has been approved by the Relevant Authority; and (iii) has been accepted by Implementing Agency.

“Progress Report”	means the written Progress Report periodically prepared / updated by the Developer and submitted to Implementing Agency in accordance with Article 6.
“Project”	means the development, implementation and operation of the.....Hydroelectric Power Project on the basis of BOT to be located on the Site.
“Project Company”	means the limited liability special purpose Company to be formed to complete the development and implementation of the Project in accordance with the requirements of the Concession Agreement and other Project Documents, being an association of the Developer and the GOL.
“Project Development Agreement” (“PDA”)	means an agreement for the development and implementation of the Project as contemplated by this MOU and subject to the conditions set forth in Article 8, to be concluded between the GOL and the DEVELOPER.
“Project Site”	means those facility and work areas necessary for implementing and operating the Project, including, but not limited to access roads, land for temporary facilities, sites for the power generating and transmitting facilities and right of ways, etc. The location of the project Site is attached as the Annexure 6.
"Relevant Authority"	means any particular entity (or entities) that comprise the GOL, including the lawful legislative body (the National Assembly and Standing Committee) and all relevant public authorities, State enterprises, governmental departments, ministries, commissions, boards, bureaux, agencies, instrumentalities, judicial, legislative and administrative bodies of the Lao PDR and any subdivisions of any of the foregoing, other than where any such State enterprise is acting in a commercial rather than governmental capacity (such as EDL in its capacity as off-taker under the domestic PPA, and any State enterprise in its capacity as shareholder in the Project Company).
“Tariff MOU - Domestic”	means the Memorandum of Understanding to be entered into between the Developer and the Off-taker (Domestic), which will set forth certain key terms and conditions (including the price of domestic energy) relevant to the successful conclusion of the Concession Agreement and the PPA that is intended to be signed with the Off-taker (Domestic).
“Tariff MOU - Export”	means the Memorandum of Understanding to be entered into between the Developer and the Off-taker (Foreign), which will set forth certain key terms and conditions (including the price of export energy) relevant to the successful conclusion of the Concession Agreement and the PPA that is intended to be signed with the Off-taker (Foreign).
“Term”	is defined in Article 12.



**IN WITNESS WHEREOF**, the Parties hereto have caused their duly authorized representatives to execute this MOU on the date first mentioned above:

*SIGNED FOR AND ON BEHALF OF  
The Government of the Lao People's  
Democratic Republic*

**MINISTRY OF ENERGY AND MINES**

\_\_\_\_\_  
Name:  
Title: Vice Minister

**MINISTRY OF PLANNING AND  
INVESTMENT**

\_\_\_\_\_  
Name:  
Title: Vice Minister

WITNESS

\_\_\_\_\_  
Name:  
Title: Provincial Department of Energy and Mines

*SIGNED FOR AND ON BEHALF OF  
The Developer*

[\_\_\_\_\_ COMPANY]

\_\_\_\_\_  
Name:  
Title:

WITNESS

\_\_\_\_\_  
Name:  
Title:

**ANNEXURE 1: TERMS OF REFERENCE OF PRE-FEASIBILITY STUDY AND INITIAL ENVIRONMENT EXAMINATION**

*(Note: To be attached)*

**ANNEXURE 2: LAO ELECTRIC POWER TECHNICAL STANDARDS AND GUIDELINES**

*(Note: To be attached)*

**ANNEXURE 3: TENTATIVE CONTENT OF QUARTERLY PROGRESS REPORT**

1) **Introduction:** A brief introductory section including below mentioned details:

- Description of the Project including maps
- Project Layout including transmission line route
- Energy for export and/or domestic sale

The Developer shall provide reasons in case any of the above changes in subsequent project progress reports.

2) **Summary of Progress Report:** It shall include brief of all major activities such as Pre-FS, IEE, Potential Benefit Analysis, etc. which developer is required to perform during MOU mandate period.

Tentative items to be included under each activities shall be

- What is the percentage of work completed?
- Budget allocated for every major activity/sub-activity
- What is the percentage of allocated budget spent?
- By how much is the activities are within or outside budget?
- List any changes made to the scope of work/ terms of reference of each activity
- Reasons for change in scope of work/terms of reference is any
- Does the change in scope of work/terms of reference have any financial implication?

Sample format below:

<b>Activities/Sub-Activities</b>	<b>% Completion (Actual)</b>	<b>% Completion (as per Implementation Schedule)</b>	<b>Reasons for delay</b>
<i>Pre-FS</i>			
<i>IEE</i>			
<i>Potential Benefit Analysis</i>			
<i>Etc....</i>			
<i>Overall</i>			

<b>Activities/Sub-Activities</b>	<b>Budget Allocated (USD)</b>	<b>Budget Spent (% and amount)</b>	<b>Reasons for deviation</b>
Same as above format			

<b>Activities/Sub-Activities</b>	<b>Details of change in ToR/Scope</b>	<b>Reasons for change</b>	<b>Budget Implication</b>
Same as above format			

- 1) **Detailed Progress of Major Activities** – It should include details of major activities/sub-activities undertaken in a particular quarter.

Sample format as below:

<b>Major activities/sub-activities undertaken in this Quarter</b>			
<b>Activities&amp;Sub-Activities</b>	<b>Start Date</b>	<b>Completion Date</b>	<b>Remarks, if any</b>
<b>Pre-Feasibility Study, IEE, Potential Benefit Analysis, etc.</b>			
List out sub-activities			
1			
2			
3			
4			
etc.			

Implementing Agency in consultation with Relevant Authority to decide on the major activities/sub-activities to be included above

- 2) Actual implementation status vs Implementation Schedule
- 3) Detailed justification for deviation with implementation schedule, if any, including all necessary evidence
- 4) Conclusions & Recommendations (including work plan and next quarter's activities)
- 5) Any other information that the Implementing Agency deems necessary

**ANNEXURE 4: GOL ACTIVITES TO BE FUNDED BY THE DEVELOPER**

*(Note: the Implementing Agency and Developer to discuss and agree)*

## ANNEXURE 5: PROJECT IMPLEMENTATION SCHEDULE

*(Note: the developer shall prepare and submit to Implementing Agency)*

**[Sample timetable is attached below]**

Sl No.	Description of Activities/Sub-Activities	Q1 2017	Q2 2017	Q3 2017	Q4 2017	Q1 2018	Q2 2018	Q3 2018	Q4 2018
1	Mobilization								
2	Pre-Feasibility Study								
3	Initial Environment Examination								
4	Potential Benefit Analysis								
5	Draft Final Pre-FS Report, IEE Report and Potential Benefit Report							▲	
6	Final Pre-FS Report, IEE Report and Potential Benefit Report								▲
7	Submission of Progress Report	▲	▲	▲	▲	▲	▲	▲	▲
8	Finalization of PDA Terms, if any								

Implementing Agency reserves full rights under this MOU to request for monthly schedule for the activities/sub-activities from the Project Developer.

**ANNEXURE 6: PROJECT LOCATION MAP**

*(Note: the Map shall be confirmed and approved by MEM after consultation with relevant agencies)*



## ANNEXURE 7: POTENTIAL BENEFITS REPORT

*(Note: the below content shall be confirmed and approved by GOL)*

Particulars of Potential Benefits Report to be submitted by Developer are:

1. Information to be provided by the legal entity for assessment of system benefits by Energy and Mines Sector during Stage-2 evaluation::

(Note: The legal entity to follow the information checklist specified in Annexure-7.1 to facilitate the Energy and Mines Sector in assessing the system benefits that can be derived from the project)

2. Qualitative and quantitative description of fiscal benefits to be provided by the project based on Pre-Feasibility Study:

(Note: The legal entity to consider the elements specified in Annexure-7.2 to demonstrate fiscal benefits that can be derived from the project)

3. Economic appraisal of the project using whole-of-life evaluation approach and calculation of economic internal rate of return based on findings of the Pre-Feasibility Study. To assume any parameters that are not yet explicitly known and all assumptions to be stated clearly for review by the Government:
4. Financial appraisal to determine affordability and cash flow position for the Government and the return of investment for the legal entity:

### **Annexure 7.1: Information to be provided by the legal entity for assessment of system benefits by Energy and Mines Sector**

- Nature of the project (Domestic IPP/ Export IPP)
- Technology employed
  - Hydro (Reservoir/pump storage / run of the river with pondage (to mention hours of pondage)/ run of the river hydro generating station)
  - Thermal – Coal/ gas/ fuel oil
- Project Capacity with unit wise break up
- Project location
- Generation profile: Plant Load Factor (PLF) and monthly generation schedule capturing seasonal variation
- Project construction period and expected unit wise commissioning schedule
- Generation voltage and step up voltage

- Base load/ Peaking
- Transmission system required for connectivity
- Details of nearest available substation (Voltage levels available, owner, distance in Km)
- Evacuation arrangement and any alternate arrangement to connect to EDL system or distributed load
- Fuel linkage (in case of thermal generation projects)
- Rating of Generator Units
- Maximum Import Capacity required. This is the amount of import capacity that the generation project will require during startup (MVA)
- Station house load during normal operating conditions (MW/MVAR)
- Generator Data for Fault (Short Circuit Studies)
- Dynamic Simulation Data
- Proposed financing structure
- Project capital cost and levelised cost of generation

**Annexure 7.2: Information to be provided by the legal entity for assessment of fiscal benefits by Energy and Mines Sector**

Description of all fiscal benefits to be provided by the project and explanation of how the benefits are higher than what is provided in the laws and regulations of Lao PDR:

**Note:**

The legal entity to consider the following elements to demonstrate fiscal benefits that can be derived from the project

- Profits to be earned in the form of dividends (in case it is envisaged that EDL will make equity investment)
- Royalties to be provided
- Envisaged corporate income tax (project company, contractors and sub-contractors)
- Envisaged value added tax
- Envisaged import taxes and duties
- Any other fiscal benefit to be provided to the Government