

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MoU) is made on this 9th day of April, 2010

BETWEEN

the Governor of Orissa represented by the Commissioner-cum- Secretary, Energy Department (hereinafter referred to as the Government) of the one part

AND

M/s. BGR Energy Systems Limited Company registered under the Companies Act 1956 having its Registered Office at **A-5, Pannamgadu Industrial Estate, Ramapuram Post, Nellore District, Andhra Pradesh-524401** and Corporate Office at **443, Anna Salai, Teynampet, Chennai-600018** Independent Power Producer (hereinafter referred to as "**BESL**" which expression shall, unless repugnant to the context or meaning thereof, include its permitted assignees) of the other part.

WHEREAS **BESL** is proposing to set up a Thermal Power Plant of **1320 (2x660) MW** at **Bhapur, Nayagarh** District in the State of Orissa with an estimated investment of about **Rs 6287.93 crores**;


AND WHEREAS for setting up the said Power Plant the following power generating facilities in the State of Orissa with proposed investment of about **Rs 6287.93** crores is necessary;

Sl. No	Project	Capacity in MW	Project Cost (Rs. Crores)	Time Schedule for Commissioning of the Project from the date of signing of MOU
1	IPP	1320	6287.93	60 Months

NOW THOSE PRESENT WITNESS AND THE PARTIES HERETO, HEREBY agree as follows:-


1. (i) Infirm power will be made available to the State at variable cost.
- (ii) A nominated agency(s) authorized by Government will have the right to purchase 14% of power sent out from the Thermal Power Plant(s) at variable cost if Coal Blocks are allocated to the IPP within the State, otherwise it will provide 12 % power at variable cost. Tariff for such power will be determined by the OERC.

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Chairman & Managing Director

- (iii) **BESL** will have the right to sell the balance power from the Thermal Power Plant(s) to any party outside or inside the State of Orissa subject to applicable laws and regulations, for which **BESL** may enter into contractual arrangement(s) with such buyer(s), the terms of which would be mutually agreed between **BESL** and such buyer(s).
- (iv) In case the Government or its nominated agency is unable to honour the terms of the Power Purchase Agreement (PPA) as mentioned in clause (ii) above, **BESL** will have the right to sell such power to any other party in or outside the State of Orissa.
- (v)
- (a) An annual contribution @ 6 paise per unit of the energy sent out from the Thermal Power Plant, during the relevant year to be made by **BESL** towards the Environment Management Fund.
- (b) The contribution as stated above will not be made for energy sold in the State of Orissa.
- (vi) **BESL** may set up its own transmission facility for evacuation of power to the point of off-take by the buyer(s) or may request the State Transmission Utility, (STU) and Central Transmission Utility (CTU) or any other Transmission Utility or Licensee for evacuation of power from the Thermal Power Plant and may enter into agreements for such purpose. The Government and its concerned agency shall assist **BESL** in the matters of the transmission facility for evacuation of power from the Thermal Power Plant. In case **BESL** evacuates power through State Transmission Utility or Central Transmission Utility, the entire capital cost for strengthening such transmission lines for evacuation of entire power of the Thermal Power Plant will be borne by **BESL**.
2. This MOU affirms the commitment of **BESL** to establish a Thermal Power Plant and assistance of the Government for providing land and recommending for captive coal mines or for coal linkages and acquiring major clearances/ approvals including rights of way and other project inputs like water etc. as per the existing Law and Rules.


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3. The work done by **BESL** till establishment of the Thermal Power Plant shall be treated as project.
4. Within three months of signing of this MOU, **BESL** shall prepare detailed milestones in the form of annual break-up of the physical and financial targets to be achieved by the Thermal Power Plant in consultation with the Secretary, Energy Department, Government of Orissa.
5. The areas of assistance and co-operation between the Government and **BESL** are listed below:

A. Land:

- (i) **BESL** will require land for the purpose of setting up the Thermal Power Plant and associated facilities (colony, coal transportation system, water transportation system, power evacuation system, ash disposal and other infrastructural facilities). Which should be subject to assessment by the competent authority and availability.
- (ii) **BESL** agrees to fully comply with the stipulations of the Government as per its policy in this regard. For rehabilitation of displaced families, Rehabilitation and Resettlement (R&R) package as notified by the State Government as well as any special stipulation relating to scheduled areas as applicable shall be followed.
- (iii) The Government agrees to acquire, the required land as per Clause (i) above and hand over the required land free from all encumbrances to **BESL** through Orissa Industrial Infrastructure Development Corporation (IDCO) for the project and allied facilities.
- (iv) **BESL** agrees to pay the cost of the land to IDCO in case the land is acquired for the purpose and to the Revenue authorities in case the land is Government land alongwith the rehabilitation costs and other related charges. In case the Project is abandoned for some reason or other, all required rehabilitation cost shall be borne by the **BESL** in the same manner as if the project has been implemented. All incidental charges paid by

3
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the **BESL** for such land acquisition paid to various authorities will stand forfeited.

B. Coal:

- (i) The Government agree to facilitate allotment of coal blocks for the purpose of mining to be utilized for the project and would provide all assistance for such allocation, in accordance with the provisions of applicable Law and Rules which would include but not be limited to recommendation to the Central Government authorities (like Ministry of Coal, Ministry of Power, Central Electricity Authority and any other entities within or outside the State).
- (ii) On allocation of coal block and sanction of the mining lease by Government of India (GoI) the Government will execute necessary mining lease and assist **BESL** in acquiring and handing over the required land for the captive coal mine and in accordance with the applicable Law and Rules in obtaining electric power for construction of the Thermal Power Plant and operation of such mine, forest and environment clearances and other statutory clearances, inputs like power and water, etc. for construction and operation of such mine.
- (iii) In case no coal block is allotted for the subject power station, as an alternative to captive mining facility, the Government will assist **BESL** to get the allocation of long term coal linkage of suitable quantity and quality to meet its requirement by recommending the proposal to the Ministry of Coal and such other entity, as may be necessary.

C. Water:

- (i) A suitable technical solution for drawal of water will be finalized by the Government through its nominated agency, the Orissa Industrial Infrastructure Development Corporation (IDCO) in consultation with **BESL** in accordance with the provisions of the applicable Law and Rules.
- (ii) IDCO will be directed by the Government to acquire land for head works and control mechanism and other related facilities

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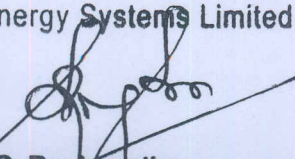
4


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and to make available land on long term lease to **BESL** for construction and operation of head works and control mechanism. The continuance of the lease agreement will be subject to the condition that **BESL** shall pay water charges covering prevailing water rate as fixed by the Government of Orissa from time to time and any other statutory dues as may be payable besides any charges levied by IDCO and the conditions indicated at sub-clause (iii) below.

- (iii) Advance payment of applicable water charges for a period of two years calculated from the date of signing this MOU on the water required by the **BESL**, will be guaranteed by **BESL** through issue of suitable bank guarantee to be renewed before two months of expiry of every such period as a continuing arrangement.
- (iv) IDCO will be directed by the Government to construct and operate the connecting water line to the power plant on behalf of the company or **BESL** may be allowed to construct and operate the same on mutually agreed terms and conditions.
- (v) Government may give direction to the IDCO that in case the water supply for **BESL** is to be made from a common source through a sharing mechanism such common infrastructure for drawal of water will be constructed, maintained and operated by IDCO and water will be supplied to **BESL** by IDCO through suitable long term commercial arrangements. The arrangements for the same will be subject to conditions indicated at sub-clause (iii) above.
- (vi) Hydro power loss, if any, on account of water drawn from upstream of Reservoir, wherever applicable is to be compensated by suitable quantum of power or by way of cash compensation as may be decided by the Government.
- (vii) Overall availability from **Mahanadi** River System will be considered from technical, commercial and environmental angle and appropriate location may be finalized with water either from that system or any other system as may be approved by Water Resources Department.

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- (viii) Water requirements should be subject to assessment by the competent authority and availability. The Company will have to abide by the conditions imposed by Water Resources Department with regard to water storage for lean season.

D. Power:

Construction Power: The Government shall see that power as required for the construction work of the Project up to commissioning is supplied by Orissa Power Transmission Corporation Ltd. or concerned Distribution Company from the nearest feasible source and at the tariff applicable for such power as determined by the Orissa Electricity Regulatory Commission (OERC).

E. Environment:

- (i) The Government agree to assist **BESL** in obtaining clearance from the Ministry of Environment & Forest (MoEF) as well as the "No Objection Certificate" (NOC) / Consent for Establishment (CFE) from the State Pollution Control Board for the construction and operation of the Thermal Power Plant, the housing colony, captive coal, etc. **BESL** shall abide by the instructions issued by the Ministry of Environment & Forest, GoI for utilization of fly ash. The Company will submit Fly ash management plan duly approved by Orissa State Pollution Control Board.
- (ii) **BESL** will arrange to conduct rapid Environment Impact Assessment (EIA) and detailed EIA study and prepare Environment Management Plan (EMP) for the project. The Government agree to assist **BESL** in this.

F. Statutory permits / clearances:

Government agree to assist **BESL** in obtaining all clearances/ permits / approvals from the Central Government, State Government departments or agencies, Regulatory Commissions and Local Bodies (Municipal, Panchayat, etc.).

G. Law & Order:

The Government and its concerned Departments or agencies will facilitate and assist **BESL** during various stages of the project as also

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6



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of the captive coal mine, in a smooth and unhampered manner by maintaining the law and order in the Project area and its vicinity.

H. Incentives and Concessions:

BESL understands that the Government would consider such incentives and concessions as are provided in the relevant Industrial Policy Resolution (IPR) of the State Government and applicable provisions & policies of the Union Government.

I. General Clauses:


- (i) The **BESL** shall submit Board Resolution(s) approving the debt and equity proposed for the project to be set up in Orissa.
- (ii) The **BESL** is a responsible corporate house with a high involvement in employee's welfare and social development. The Government, therefore, understand that **BESL** will bring this philosophy to the Power Plant being set up in **Nayagarh** District to ensure the well being of this District in particular and the people of Orissa in general. In the matter of employment, preference will be given to the people of Orissa as well as local persons subject to the need of the project and their possessing the necessary qualifications and **BESL** agrees to comply with policies of the State Government in this regard.

Employment to local people may be provided by the **BESL** in the following ratios for the project affected people and people of Orissa.

- Unskilled and Semiskilled:- A minimum 90% of total requirement from among the local people.
- Skilled Level :- A minimum 60% from among the local people.
- Supervisory Managerial: -A minimum 30% from among the local people.
- Senior Executives : -Open market based on merit.

The **BESL** shall be required to abide by the following:-

- (1) It shall submit employment status report to the Collector with a copy to the Department of Energy in every quarter.
- (2) The fulfillment of ratios for the local people by the **BESL** shall be reviewed by the Collector in every quarter.


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7

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B.G. Raghuopathy
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- (3) For the purpose of employment of locals in **BESL** "Locals" means all the project displaced and affected people on preference followed by the people domiciled in the State of Orissa.

BESL will make every effort to improve their skill levels, if necessary, through specialized training. For this purpose, Government will nominate a Nodal Agency or Officer to coordinate with the **BESL**. **BESL** also agrees to make suitable contribution towards augmenting the administrative and developmental infrastructure of the project area during the construction period in order to facilitate smooth implementation of the project. This will be decided jointly in consultation with the Government representatives in the Energy Department, IDCO and the district administration.

- (iii) As per the policy of the Government of Orissa the promoters of all the Thermal Power Projects, IPPs shall submit concrete investment proposal in other sectors for creation of employment opportunities for local people along with additional revenue generation of the State Government to the Energy Department/ IPICOL immediately.

Accordingly, **BESL** will give a commitment letter to bring the concrete investment proposal to the Department of Energy/ IPICOL.

- (iv) **BESL** will cooperate with GoO in fulfilling its obligation under the Apprentice Act and also assist in State level Manpower Planning by indicating its Medium and Long term requirements.
- (v) The Government appreciate that **BESL** will be entitled to induct suitable foreign and/or Indian Joint Venture partners, choose appropriate financial options, project structure, suppliers, credit options and technologies in the best interest of the project and the captive coal mines, in accordance with the applicable Law and Rules.
- (vi) **BESL** shall allow construction, erection and maintenance of any works during the development and operation stages in connection with supply of electric power and water by the Government or its instrumentality, within the land acquired for the Project.
- (vii) The MOU shall remain valid for a period of three years from the date of signing and may be further extended by Government on a request made by **BESL** in this regard. However, no such extension shall be considered unless **BESL** has made substantial progress on

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Deptt. of Energy


8


B.G. Raghupathy
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implementation of the project in terms of the project development activities covering land acquisition, statutory approvals of project contracts, etc.

- (viii) The MOU may be terminated by either party in the event of failure of the other party to fulfill the terms and conditions of the MOU or inadequate progress of implementation without any obligations to either party, by giving three months notice in writing. Further, during this period, the MOU can be terminated by mutual consent of the Parties if it is jointly agreed that due to certain insurmountable reasons, it is not possible to proceed further with the Project.
- (ix) **BESL** shall be required to produce document towards financial closure within 18 months from the signing of this MOU.
- (x) Declared milestones will be prepared by the **BESL** in consultation with the Government and the Government will consider the progress of implementation of these milestones like acquisition of land, establishment of water and coal linkage etc. while calculating the effective time available to the **BESL** for commissioning of the project.
- (xi) In the event of non-implementation of the project or part thereof, the corresponding support/commitment of the Government indicated in the MOU with regard to the Project and coal blocks/linked coal mines, incentives and concessions of the Government in particular shall be liable to be cancelled.
- (xii) It shall be obligatory for **BESL** to furnish information required by the Government relevant to planning, formulation, lay out, financing and implementation of the Project as well as the financial and management status and performance of the promoters to the Government or to its nominated agency as and when so required as expeditiously as possible.
- (xiii) To promote the ancillary and downstream industries within the state, **BESL** agrees to facilitate participation of local small and medium enterprises within the State for providing products and services required for the Project during its construction and implementation as well as operation phases to the extent practicable.
- (xiv) While implementing the Project, **BESL** undertakes to comply with all statutory requirements/clearances in respect of laws, regulations and procedures governing establishment and operation of industries in the state.

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9


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- (xv) **BESL** understands that the Government, in order to carry out the required environmental amelioration activities in a sustained manner, intend to set up an Environmental Management Fund. In view of the necessity to maintain a clean environment in the State in the vicinity of the Project and its hinterland **BESL** does hereby agree to support the efforts of the Government as referred to clause 1(v).


J. Address for Communication

Commissioner-cum-Secretary,
Energy Department, Government of Orissa,
Tel.: 0674 - 2536960, Fax: 0674 - 2393175

IN WITNESS WHEREOF the parties hereto have set their hands to this MOU on this 9th day of April, 2010

SIGNED BY:

the Officer acting in the
premises for and on behalf of
Government of Orissa


9.4.2010
Commissioner-cum-Secretary,
Department of Energy
Commissioner Cum Secty
Deptt. of Energy

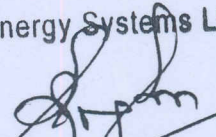
Witnesses :-

- (a) Name..... *Bhabagochi Mohapatra* (a)
Address..... *Asst. Secy. Energy Deptt.*
Govt. Department
- (b) Name..... *Prasulla Chandra Sahoo* (b)
Address..... *section officer*
Energy Deptt.

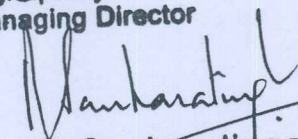
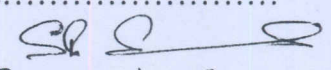
Section Officer
Department of Energy

Signed by the officer for
and on behalf of BESL

For BGR Energy Systems Limited


B.G. Raghupathy
Chairman & Managing Director

Witnesses:-

- Name.....
Address.....
- 
T. Sankaralingam
Managing Director
- 
Name..... *Swadhin Samantaray* (b)
Address..... *Dy. General Manager*
BGR Energy Systems Ltd