

## **MEMORANDUM OF UNDERSTANDING**

**THIS MEMORANDUM OF UNDERSTANDING ("MOU") IS MADE AND EXECUTED ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2012:**

### **BY AND BETWEEN:**

**The Governor of the State of Kerala**, acting through the Principal Secretary, Department of Power, Government of Kerala, having its principal office at Secretariat, Thiruvananthapuram, Kerala (hereinafter referred to as "**GoK**", which expression shall unless repugnant to the context thereof, include its successor and assigns) of the **FIRST PART**.

### **AND**

**The Kerala State Electricity Board**, having its principal office at Vidyuthi Bhavanam, Pattom, Thiruvananthapuram, Kerala, acting through its Chairman designated as Special Officer, Managing Committee (hereinafter referred to as "**KSEB**", which expression shall unless repugnant to the context thereof, include the successors and assigns), of the **SECOND PART**.

*"GoK" and "KSEB" are also individually referred to as **Party** and collectively referred to as **Parties**.*

**WHEREAS** KSEB is engaged in the activities of generation, transmission, distribution, procurement and supply of electricity in the State of Kerala;

**AND WHEREAS** GoK is committed to reform its power sector with a view to providing for reorganization and rationalization of electricity industry and augment the power supply in the State of Kerala;

**AND WHEREAS** the Government of Kerala vide GO(Ms) No. 37/2008/PD dated 25.9.2008 has notified the First Transfer Scheme for the purpose of vesting of functions, properties, interests, rights, obligations and liabilities of Board to State Government on the terms agreed to by Board and State Government and re-vesting thereof by State Government in a corporate entity and also for the transfer of personnel of the Board to the corporate entity and for determining the terms and conditions on which such transfers and vesting shall be made and to prepare a Transfer Scheme in exercise of powers conferred upon it under Section 131 of the Electricity Act, 2003 ("Act") for giving effect to the objectives set forth in the Act;

**AND WHEREAS** the Parties have had discussions in this regard and pursuant thereto have agreed to enter in writing their understanding on the matter, under a Memorandum of Understanding as per the provisions of sub-section (1) and (2) of Section 131 of the Electricity Act 2003.

**NOW THIS MEMORANDUM OF UNDERSTANDING WITNESSES THAT:**

1. **Definitions:**

- (a) **"Act"** means the Electricity Act, 2003 (36 of 2003)
- (b) **"Board"** means Kerala State Electricity Board constituted under Section 5 of the erstwhile Electricity (Supply) Act,

1948 (54 of 1948), of which all functions, properties, all interests, assets, liabilities and personnel were vested in the State Government in the name of "Kerala State Electricity Board" after the notification of transfer scheme dated 25.09.2008;

- (c) **"Company"** means a company incorporated under the Companies Act, 1956 (1 of 1956);
- (d) **"Date of the transfer"** means the date of notification of the transfer scheme in the official gazette of the Government of Kerala;
- (e) **"Existing Pensioner"** means all the persons eligible for the pension as on the date of re-vesting including that of the erstwhile Board and KSEB and shall include eligible family members of the personnel;
- (f) **"Kerala State Electricity Board (KSEB)"** means the undertakings of the Board vested in Government of Kerala through notification vide S.R.O.No.990/2008 dated 25/09/2008 by which State Government is administering the functions of the Board by appointing the Special Officer and a Managing Committee till the date of re-vesting of the functions, properties, interests, rights, liabilities, proceedings and personnel to the Transferee in accordance with the Act and the transfer scheme;
- (g) **"Kerala State Electricity Board Ltd."** means the Company incorporated under Companies Act, 1956(1 of

1956) wholly owned by the Government of Kerala, in which the Government will re-vest the functions, properties, interests, rights, liabilities, proceedings and personnel in accordance with sub-section (2) of Section 131 & Section 133 of Electricity Act, 2003 and this transfer scheme;

- (h) **“Liabilities”** include all liabilities, debts, duties, obligations and other outstandings including statutory liabilities and Government levies of whatever nature and contingent liabilities which may arise with regard to the dealings before the date of the re-vesting of the Undertakings of the erstwhile Board under the transfer scheme;
- (i) **“Master Trust”** means the Trust to be constituted to manage the funds and to disburse terminal benefits, pension etc. and ensure interests of the existing pensioners and the personnel transferred to the Transferee as on the date of re-vesting as regards payment of Terminal Benefits;
- (j) **“Personnel”** means workmen, employees, staff and officers of the erstwhile Board or KSEB by whatever name called and those on deputation from the erstwhile Board or KSEB to other organizations or institutions;
- (k) **“Proceedings”** means the proceedings of whatever nature including suits, appeals, complaints, petitions, applications, conciliatory, arbitration, whether civil or criminal or otherwise;

- (l) **“Property”** includes dams, power systems, plant, machinery, land, building, offices, stores, furniture, fixtures, vehicles, residential quarters, guest houses and amenities, inspection bungalows, circuit houses and installations pertaining and attached thereto and other movable and immovable assets, cash in hand, cash at bank, investments, book debts - corporeal and incorporeal, tangible and intangible assets, benefits, consents, authorities, licenses, concessions, grants, registrations, patents, trade marks and powers of every kind, nature and description whatsoever, privileges, liberties, easements, advantages and approvals, contracts, deeds, schemes, bonds, shares, agreements and other instruments and interest of whatever nature and wherever situated belonging to KSEB;
- (m) **“Strategic Business Units (SBUs)”** means the three Units of Kerala State Electricity Board Ltd. through which Kerala State Electricity Board Ltd. shall manage the activities of Transmission, Generation and Distribution.
- i) **SBU-T** means the Transmission Unit of Kerala State Electricity Board Ltd. to which the Transmission sub-undertaking are to be transferred in accordance with the transfer scheme;
- ii) **SBU-G** means the Generation Unit of the Kerala State Electricity Board Ltd. to which the Generation sub-undertaking are to be transferred in accordance with the transfer scheme;

**iii) SBU-D** means the Distribution Unit of the Kerala State Electricity Board Ltd. to which the Distribution sub-undertaking are to be transferred in accordance with the transfer scheme;

(n) **"State"** means the State of Kerala;

(o) **"State Government"** means the Government of Kerala;

(p) **"SERC"** means Kerala State Electricity Regulatory Commission;

(q) **"First Transfer Scheme"** means the Kerala Electricity First Transfer Scheme, 2008 notified vide S.R.O.No. 990/2008 dated 25.09.2008 via Kerala Gazette Vol. LIII, No. 2090 dated 25.09.2008;

(r) **"Terminal Benefits"** means the Kerala State Electricity Board's employee-related liabilities, payments of pension, gratuity, leave encashment, general provident fund and any other retirement benefits and other applicable benefits including the right to have appropriate revisions in the above benefits consistent with the practices that were prevalent in the erstwhile Board;

(s) **"Transferee"** means Kerala State Electricity Board Ltd;

(t) **“Undertaking”** means the functions, business, properties, interests, rights, liabilities, obligations, proceedings and personnel to the extent and in the manner specified as a part of the undertaking and such other properties, interests, rights, liabilities, obligations, and proceedings and wherever the context so admits shall include the Personnel as specified in the transfer scheme relevant to the functions;

**“Sub-undertaking”** means the functions, business and a block or blocks of properties, interests, rights to the extent and in the manner identified to belong to the functions of transmission, generation, distribution of the erstwhile KSEB and transferred in the transfer scheme to the respective SBUs;

(u) Words and expressions which are used in the MOU and also defined in the Act but not specifically defined in this MOU shall have the same meaning as assigned to them in the Act.

2. In exercise of the powers under section 131 and 133 of the Act, GoK shall prepare a scheme for providing and giving effect to the transfer of functions, properties, interests, rights, assets, liabilities, obligations, proceedings and personnel of KSEB to the Transferee company and for matters incidental and ancillary thereto (“Transfer Scheme”).

3. The said Transfer Scheme shall, *interalia*, provide for the provisions delineated hereunder:

(a) Transfer of Assets of KSEB to GoK.

- i. On and from such date of transfer as may be notified by GoK, all assets, interests, rights and liabilities of the KSEB, as may be decided by GoK, shall stand transferred to and vested in GoK. The Government of Kerala vide G.O.(Ms) No. 37/2008/PD dated 25.9.2008 has notified the first transfer scheme for the purpose of vesting of functions, properties, interests, rights, obligations and liabilities of Board to State Government. For the purpose of further re-vesting the same to the Transferee, the State Government intend to notify the Second Transfer Scheme on terms and conditions agreed between the Government of Kerala and KSEB.
- ii. Nothing in sub-clause 3(a)(i) above shall apply to rights, responsibilities, liabilities and obligations in respect of the personnel and personnel related matters including statutory dues such as salary, wages, gratuity, pension, provident fund, compensation, terminal and retirement benefits and the same shall be dealt with in the manner provided under Clause 6 of the transfer scheme.



- (b) Transfer of Undertaking by GoK to the Transferee company.
- i. The functions, business and undertakings on and from the date of transfer as may be notified by the State Government for the purpose, subject to the terms and conditions specified in the Act and the Transfer Scheme shall stand transferred to and vested in the Transferee.
  - ii. On such transfer and vesting of the functions, business and undertakings in terms of sub-clause 3 (b) (i) above and except as otherwise provided, the Transferee, shall be responsible for all functions, contracts, rights, deeds, schemes, bonds, agreements, proceedings and other instruments of whatever nature relating to the Undertakings transferred to it to which the KSEB was a party, subsisting or having effect on the date of the transfer, and the same shall remain in force and effect against or in favour of the Transferee company and may be enforced effectively as if the Transferee company had been a party thereto instead of the KSEB.
  - iii. The transfer value of the assets & liabilities of KSEB to Transferee company shall be taken at provisionally agreed values as detailed in sub-clause (e) (i) of clause 3 of this MOU. However, within a

period of 12 months from the effective date i.e. the date as may be specified by GoK under the Transfer Scheme, the final transfer value of the assets & liabilities would be notified and would be effected as if done before the effective date.

(c) Transfer of Personnel.

- i. The transfer of personnel shall be subject to the terms and conditions contained in section 133 of the Act.
- ii. From the date of the notification of the transfer scheme, the personnel of the KSEB shall stand assigned to the services of the Transferee and they will continue to officiate in the place where they are posted on the date of re-vesting and thereafter shall be under the disposal of the Transferee.
- iii. The Transferee shall absorb all permanent eligible personnel so transferred to it in its permanent services and the personnel shall form part of the services of the Transferee, in the post, scale of pay etc. in accordance with the orders that may be issued by the Transferee for this purpose, without any further act, deed or thing to be done by the State Government or the personnel and the State Government or the Transferee shall issue appropriate orders in the case of all other provisional,

contingent, part time, temporary personnel engaged by the Board or KSEB prior to the vesting.

- iv. All the employees shall remain on the rolls of Kerala State Electricity Board Ltd. who shall be responsible for their pay, benefits and other service conditions. The personnel needed by the SBUs shall be deputed to them and their cost shall be accounted as part of the cost of the SBUs. However, the responsibility of managing the personnel shall be with the Kerala State Electricity Board Ltd.
- v. Notwithstanding anything contained elsewhere, the Transferee and the State Government shall be jointly and severally responsible to duly make all such payments to the personnel in respect of the rights, responsibilities, liabilities and obligations and personnel related matters including the statutory dues such as salary, wages, gratuity, pension, provident fund, compensation, terminal and retirement benefits till the date of re-vesting and thereafter by the Transferee.
- vi. Subject to the provisions of the Act and the transfer Scheme, the Transferee shall be entitled to modify or frame new regulations governing the conditions of service of personnel transferred to the Transferee under the transfer Scheme, but the rank, scale of pay, salary, allowances and other pecuniary benefits

including terminal benefits after the effective date of transfer shall not in any way be inferior to those applicable to them immediately before the transfer.

- vii. In respect of all statutory and other schemes and employment related matters including the provident fund, gratuity, pension and any other superannuation fund or any other fund created or existing for the benefit of the personnel, the Transferee shall stand substituted for the erstwhile Board or KSEB for all intent, purposes, rights, powers and obligations of the erstwhile Board or KSEB and the services of the personnel shall be treated as continuing for the purpose of the above.
  
- viii. The State Government shall notify appropriate arrangements in regard to the funding of the terminal benefits to the extent they are unfunded on the date of the transfer of the Personnel from the erstwhile Board or KSEB. As per actuarial valuation carried out by registered valuer, the provisional figure of unfunded liability is approximately Rs. 7584 Crore as on 30.09.2011. Till such time arrangements are made, the Transferee and the State Government shall be jointly and severally responsible to duly make such payments to the existing pensioners as well as the personnel who retire after the date of transfer but before the arrangements are put in place.

- ix. The State Government will fund Rs. 3186 Crores over a period of next 10 years to Kerala State Electricity Board Ltd. on annual basis for meeting the unfunded terminal liabilities.

Kerala State Electricity Board Ltd will issue two series of bonds to a Master Trust: -

(i) 20 year bond with a coupon rate of 10% p.a. for Rs.5021 Crores

(ii) 10 year bond with a coupon rate of 9% p.a. for Rs. 2039 Crores

Bonds will be issued to the Master Trust to meet the liability of pension etc. in future from the interest and principal repayment from Kerala State Electricity Board Ltd. against the bonds issued in favour of the Master Trust. With these arrangements the Master Trust will have a liability towards pension etc. of Rs. 7584 Crores (approximately) as on 30.09.2011 with matching investments in securities issued by Kerala State Electricity Board Ltd. for Rs. 7060 Crores only.

Another Rs. 524 Crores will be funded by State Government through budgetary provision over next 10 years in equal installments as per GO (MS) No. 43/2011/PD. dated 3.11.2011.

State Government also agrees that the electricity duty collected by KSEB for the period from 01.04.2008 to 31.03.2012 will be retained in the Kerala State Electricity Board Ltd as its contribution for funding the terminal liability.

In addition to the interest on bonds and repayment of principal, Kerala State Electricity Board Ltd. will be paying the annual pension contribution based on actuarial valuation to the Master Trust in respect of personnel transferred to Kerala State Electricity Board Ltd.

- x. All proceedings including disciplinary proceedings pending against the personnel as on the date of vesting and initiated thereafter till re-vesting which relates to misconduct, lapses or acts of commission or omission committed before the date of transfer, shall not abate and may be continued by the Transferee.
- xi. The personnel transferred to the Transferee shall be deemed to have entered into an agreement with the Transferee to repay loans, advances and other sums due and perform obligations undertaken by them to the Board or KSEB which remain outstanding as on the date of the transfer in the same manner and on the same terms and conditions as existed prior to the re-vesting.
- xii. Nothing contained in this MOU shall apply to the

personnel of the State Government or other organisations who are on deputation to the Board or KSEB as on date of the re-vesting but such personnel shall continue on deputation to the Transferee till further orders of the Transferee or the Government.

- xiii. The employees of the Transferee will be allowed to raise grievance, if any, to the Committee for Redressal of Grievances (CRG), which will be constituted by the Government of Kerala to address such issues.
- xiv. The Committee for Redressal of Grievances (CRG) will consider the grievances of the employees of the transferee within a period of six(6) months from the date of issue of the notification of the transfer scheme.

(d) Pending suits, Proceedings, etc.

- i. All Proceedings of whatever nature by or against KSEB pending on the date of the transfer shall not abate or discontinue or otherwise in any way be prejudicially affected by reason of the transfer under the Transfer Scheme and the proceedings shall be continued, prosecuted and enforced by or against the Transferee in accordance with the Transfer Scheme and orders issued thereunder.
- ii. The proceedings covered under sub-clause 3(d)(i) above shall be continued in the same manner and to the same extent as it would or might have been

continued, prosecuted and enforced by or against erstwhile Board or KSEB as if the transfer specified in the Transfer Scheme had not been made.

(e) Financial Adjustments

- i. The Parties to this MOU agree that for the purpose of financial restructuring of KSEB, following adjustments need to be carried out in the balance sheet of KSEB as on 31st March 2011. After the adjustment the restructured Balance Sheet will be taken as opening balance for Financial Year 2011-12 of the Transferee Company: -

**RESTRUCTURING ACCOUNTS & CLEANED UP BALANCE SHEET OF KSEB (As on 31.03.2011)  
(Rupees in Lakhs)**

| Schedule  | Sl. No.  | Particulars                         | Balance Sheet as on 31.3.2011 | Restructuring Account | Opening Balance Sheet as on 1.04.2011 |
|-----------|----------|-------------------------------------|-------------------------------|-----------------------|---------------------------------------|
|           |          | <b>NET ASSETS</b>                   |                               |                       |                                       |
| 19        | (a)      | <b>Net Fixed Assets</b>             |                               |                       |                                       |
|           | 1        | Gross Block                         | 1121090.31                    | 400000.00             | 1521090.31                            |
|           | 2        | Less: Accumulated Depreciation      | 484875.41                     | 0.00                  | 484875.41                             |
|           | 3        | <b>Net Fixed Assets (1 - 2)</b>     | <b>636214.90</b>              | <b>400000.00</b>      | <b>1036214.90</b>                     |
| 21        | 4        | Capital Expenditure in Progress     | 97410.28                      | 0.00                  | 97410.28                              |
| 22        | 5        | Assets Not in Use                   | 0.00                          | 0.00                  | 0.00                                  |
| 23        | 6        | Deferred Costs                      | 4838.20                       | 0.00                  | 4838.20                               |
| 24        | 7        | Intangible Assets                   | 324.29                        | 0.00                  | 324.29                                |
| 25        | 8        | Investments                         | 1950.01                       | 0.00                  | 1950.01                               |
|           | (b)      | <b>Net Current Assets</b>           |                               |                       |                                       |
| <b>26</b> | <b>9</b> | <b>Current Assets</b>               |                               |                       |                                       |
| 26(a)     | (a)      | Stock                               | 39717.56                      | 0.00                  | 39717.56                              |
| 26(b)     | (b)      | Receivables against supply of power | 58356.44                      | (3.68)                | 58352.76                              |
| 26(c)     | (c)      | Cash and Bank Balance               | 69293.39                      | 0.00                  | 69293.39                              |



| Schedule | Sl. No. | Particulars  | Balance Sheet as on 31.3.2011 | Restructuring Account | Opening Balance Sheet as on 1.04.2011 |
|----------|---------|--|-------------------------------|-----------------------|---------------------------------------|
| 26(d)    | (d)     | Loans and Advances   | 13789.41                      | 0.00                  | 13789.41                              |
| 26(e)    | (e)     | Sundry Receivables   | 51879.29                      | (23542.29)            | 28336.99                              |
|          |         | Total Current Assets   | 233036.09                     | (23545.98)            | 209490.11                             |
|          |         | <b>Less: Total Current Liabilities</b>                             |                               |                       |                                       |
| 27       | 10      | Security Deposits from Consumers                                   | 139230.55                     | 0.00                  | 139230.55                             |
| 28       | 11      | Other Current Liabilities  | 439040.01                     | 0.00                  | 439040.01                             |
|          | 12      | Total Current Liabilities (10 + 11)                                | 578270.56                     | 0.00                  | 578270.56                             |
|          | 13      | <b>Net Current Assets (9 - 12)</b>                                 | <b>(345234.47)</b>            | <b>(23545.98)</b>     | <b>(368780.45)</b>                    |
| 29       | 14      | Subsidies Receivable from Government                               | 57058.00                      | (4658.00)             | 52400.00                              |
| 29(a)    | 15      | Net Subsidy Netted off to be Written Off                           | 120230.21                     | (120230.21)           | 0.00                                  |
|          | 16      | Contribution Receivable from State Govt. towards Pension Liability | 0.00                          | 250000.00             | 250000.00                             |
| 29(b)    | 17      | Regulatory Asset   | 339385.85                     | 0.00                  | 339385.85                             |
|          |         | <b>NET ASSETS (3 to 8 + 13 + 14 to 17)</b>                         | <b>912177.27</b>              | <b>501565.81</b>      | <b>1413743.08</b>                     |
|          |         | <b>FINANCED BY</b>   |                               |                       |                                       |
| 30       | 18      | Borrowings for Working Capital                                     | 31763.80                      | 0.00                  | 31763.80                              |
| 31       | 19      | Payments due on Capital Liabilities                                | 0.00                          | 0.00                  | 0.00                                  |
| 32       | 20      | Capital Liabilities  | 106650.24                     | 0.00                  | 106650.24                             |
| 33       | 21      | Funds from State Government  | 0.00                          | 0.00                  | 0.00                                  |
| 33 A     | 22      | Equity Capital   | 155300.00                     | 194600.00             | 349900.00                             |
| 34       | 23      | Contributions, Grants and Subsidies towards Cost of Capital Assets | 330849.42                     | (232653.75)           | 98195.67                              |
| 35       | 24      | Reserve and Reserve Funds  | 114924.40                     | (114924.40)           | 0.00                                  |
| 35 A     | 25      | Terminal Benefit Fund  | 0.00                          | 827233.37             | 827233.37                             |
|          | 26      | Surplus/(Deficit)  | 172689.41                     | (172689.41)           | 0.00                                  |

| <b>Schedule</b> | <b>Sl. No.</b> | <b>Particulars</b> | <b>Balance Sheet as on 31.3.2011</b> | <b>Restructuring Account</b> | <b>Opening Balance Sheet as on 1.04.2011</b> |
|-----------------|----------------|--------------------|--------------------------------------|------------------------------|--|
|                 |                | <b>TOTAL FUNDS</b> | <b>912177.27</b>                     | <b>501565.81</b>             | <b>1413743.08</b>                            |

(f) Transfer by operation of law.

The transfer under the Transfer Scheme shall operate and be effective pursuant to action of GoK by publishing in the Official Gazette, of the Transfer Scheme and Orders issued in terms of the Transfer Scheme and without any further act, deed or thing to be done by GoK, KSEB, Transferee or any other person, subject to the terms and conditions of the Transfer Scheme.

(g) Decision of State Government to be final.

1. If any doubt, dispute, difference or issue shall arise in regard to the transfers under Transfer Scheme subject to the provisions of the Act, the decision of GoK thereon shall be final and binding on all parties.

2. GoK may, by order published in the Official Gazette, amend the Transfer Scheme and make such provisions, not inconsistent with the provisions of the Act, as may appear to be necessary for removing the difficulties arising in implementing the transfers under the Transfer Scheme.

(h) The transfer under the Transfer Scheme and its implementation shall be exempted from all taxes, duties, levies of GoK and all its local bodies.

4. This MOU is intended to record the understanding between the Parties hereto regarding the transactions set out herein and is merely intended to serve as a basis for the Transfer Scheme, provided however, GoK shall be entitled to amend, vary, modify, add, reduce, delete or otherwise change terms and conditions of this MOU, in the Transfer Scheme as GoK may consider appropriate.
5. If any of the provisions of this MOU become invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
6. This MOU shall not be amended, supplemented or otherwise modified, except by an instrument in writing signed by all the Parties.
7. Neither Party shall assign any of its rights or obligations under this MOU to any other person without prior written consent of the other Party.

**IN WITNESS WHEREOF THE PARTIES HAVE SIGNED THIS MEMORANDUM OF UNDERSTANDING ON THE DAY, MONTH AND YEAR FIRST HEREINABOVE WRITTEN.**

| <b>FOR AND ON BEHALF OF THE GOVERNOR OF STATE OF KERALA</b>     | <b>FOR AND ON BEHALF OF THE KERALA STATE ELECTRICITY BOARD</b> |
|---|--|
|   |  |
| Name:   | Name:  |
| Designation: Principal Secretary (Power Department), Government | Designation: Chairman (Special Officer, Managing Committee),   |

|           |                                 |
|-----------|---------------------------------|
| of Kerala | Kerala State Electricity Board. |
|-----------|---------------------------------|

Witnesses:

1. \_\_\_\_\_

1. \_\_\_\_\_

2. \_\_\_\_\_

2. \_\_\_\_\_