

## NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement (this “**Agreement**”) made and entered into as of this \_\_\_ day of \_\_\_\_\_, 2022

BY AND BETWEEN

**ECL Finance Limited** a company incorporated in India registered under the Companies Act, 1956 with its registered address at Tower 3, 5th Floor, Wing B, Kohinoor City Mall Kohinoor City, Kiro Road, Kurla (West) Mumbai MH 400070 India (hereinafter referred to as “**Provider**” which expression unless repugnant to the context or meaning thereof be deemed to include each of its successors and permitted assigns).

**AND**

\_\_\_\_\_ a company incorporated in India registered under the Companies Act, 1956 with its registered address at .....(hereinafter referred to as “**Recipient**” which expression unless repugnant to the context or meaning thereof be deemed to include each of its successors and assigns)

The terms Provider and Recipient are collectively referred to as “Parties” and individually as “Party”

### **WHEREAS**

The Provider is considering a proposal involving the Provider and the Recipient (“Proposed Transaction”), as specified in detail in Schedule 1 hereto, for which the Provider will have to divulge information which at present is confidential and not in the public domain.

In consideration of the Provider agreeing to make available to the Recipient certain Confidential Information (as more particularly defined in clause 1 of this Agreement), the Recipient undertakes to the Provider in the terms set out below.

### **1. Definitions**

The following definitions apply for the purposes of this Agreement:

“**Confidential Information**” means in connection with the Proposed Transaction any business, financial, operational or other information or data relating to the Company or its affiliates, which is disclosed to or delivered in writing, visual or machine readable form or orally by the Provider to the Recipient after the date of this Agreement, but excludes information which:

- (i) at the time of disclosure under this Agreement or following disclosure under this Agreement, is or becomes publicly available, other than as a result of unauthorised disclosure by the Recipient or its Representatives; or
- (ii) was already in the Recipient’s or its Representatives’ possession prior to disclosure under this Agreement by the Provider; or

- (iii) following disclosure under this Agreement, becomes available to the Recipient or its Representatives from a source other than the Provider, who to the Recipient's knowledge, is not bound by a confidentiality obligation to the Provider with respect to such information; or
- (iv) is independently developed by the Recipient or its Representatives without violating confidentiality obligations under this Agreement.

**"Representatives"** means the Recipient's affiliates, its and its affiliates' respective partners, directors, officers, investment managers, limited partners, existing investors, co-investors, insurance carriers, consultants, contractors, employees, agents, legal, financial, accounting, investment and other advisers, potential debt and equity financing sources, including current and prospective investors in the funds and accounts under management by the Recipient or its affiliates, any other potential debt provider who may participate in the Proposed Transaction and any representative of any thereof (and each **"Representative"**, **provided that** no person shall be considered "Representative" hereunder unless such person receives Confidential Information from or on behalf of the Recipient).

## **2 Confidential Information**

**2.1** Subject to clause 5 of this Agreement, the Recipient shall:

- (i) keep the Confidential Information confidential and use the Confidential Information in relation to considering, evaluating, advising on or furthering the Proposed Transaction only; and
- (ii) not disclose any of the Confidential Information to any persons other than its Representatives (who can also make copies of the Confidential Information) who need to know the same in relation to considering, evaluating, advising on or furthering the Proposed Transaction.

**2.2** Without the prior consent of the Provider, except in accordance with clause 5 of this Agreement and except to Representatives as permitted hereunder, Recipient hereto will not disclose to any person the negotiations or discussions of any of the terms, conditions or other facts with respect to the Proposed Transaction, which shall be deemed Confidential Information hereunder.

## **3 Representatives of the Recipient**

The Recipient shall use commercially reasonable efforts to ensure that all of its Representatives to whom the Confidential Information is to be disclosed are fully aware of the confidential nature of Confidential Information and agree to comply with the confidentiality obligations of this Agreement applicable to such Representatives. The Recipient will be responsible for any breach of this Agreement by any Representative unless such Representative has entered into a confidentiality agreement with the Provider or the relevant Company on terms substantially similar the terms of this Agreement.

#### **4 Return and Destruction of the Confidential Information**

**4.1** The Recipient shall use commercially reasonable efforts to ensure that its Representatives who have received the Confidential Information under this Agreement will, :

- (i) return to the Provider all Confidential Information that was furnished to the Recipient by or on behalf of the Provider and is in the Recipient's or any of its Representatives' possession and control; and
- (ii) destroy or delete (to the extent technically practicable and except for archival back-up copies) all Confidential Information in the possession of the Recipient or any of its Representatives.

#### **5 Permitted Disclosure**

**5.1** The provisions of clause 2 of this Agreement shall in no way restrict any disclosure of the Confidential Information required by law or by any court of competent jurisdiction, the rules and regulations of any regulatory body or stock exchange, or any inquiry or investigation by any governmental, official or regulatory body.

Provided that the Recipient shall give the Provider a prior reasonable notice of such law or order and gives the Provider opportunity to oppose &/or attempt to limit such production unless, the law or court order prohibits giving such notice. . In the absence of a protective order we may, furnish that portion of such Confidential Information that is legally required to be furnished and will endeavor to obtain assurance from the court/tribunal, regulatory or governmental authority agency or other person to whom disclosure is being made that confidential treatment will be accorded to such Confidential Information.

**5.2** Notwithstanding any other provision of this Agreement and whether or not the Proposed Transaction is consummated, the Recipient may provide information relating to the Proposed Transaction (on a 'no names' basis) to actual or potential investors in the funds and accounts managed by the Recipient and/or any of its affiliates (each an "**Investor**") **provided that** each such Investor is under an obligation of confidentiality to the Recipient or any of its affiliates with respect to such information.

#### **6 Ownership of Confidential Information**

Subject to any agreements to be negotiated and entered into between the Provider (or the relevant Company, as applicable) and the Recipient, the Confidential Information shall not confer on the Recipient any rights (including any intellectual property rights) over the Confidential Information beyond those contained in this Agreement.

#### **7 No Commitment**

The Provider acknowledges that neither the Recipient nor any of its Representatives will be deemed to have made any representation or warranty or commitment with respect to the Proposed Transaction and that nothing in this Agreement will form the basis of any contract which will be constituted solely by any final agreement(s) to be negotiated and entered into between the parties to this Agreement.

## **8 No Representation and Warranty**

The Provider has disclosed the Confidential Information on an 'as-is-where-is' basis and it does not accept responsibility and make any representation, express or implied nor give any warranty with respect to the accuracy or completeness of the Confidential Information and/or any of the decisions made by the Recipient on the basis of the Confidential Information provided under and pursuant to this Agreement.

## **9 Insider Dealing and Market Abuse**

The Securities of the Provider and its Parent Company are listed on the stock exchanges. The Recipient will adhere to the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 as amended from time to time and the relevant provisions under the Companies Act, 2013 as applicable.

## **10 Duration**

The terms of this Agreement and the parties' obligations hereunder shall terminate with respect to all Confidential Information concerning each Proposed Transaction on the earlier of (a) of the execution of any definitive agreement relating to such Proposed Transaction and (b) the date falling one (1) year after the date of a Schedule executed in respect of such Proposed Transaction.

## **11 Remedies**

**11.1** Without prejudice to any other rights or remedies which either party to this Agreement may have, the Recipient acknowledges and agrees that damages may not be an adequate remedy for any breach of this Agreement and that the Provider shall accordingly be entitled to seek remedies of injunction, specific performance and other equitable relief for any breach of this Agreement.

**11.2** In no event shall the Recipient be liable to the Provider for any indirect, incidental, special or consequential damages of any nature whatsoever, whether based on contract, tort or otherwise, or for any punitive or exemplary damages in connection with this Agreement.

## **12 Variation**

No variation of this Agreement shall be effective unless in writing and signed by or on behalf of each of the parties. For the avoidance of doubt, the terms of this Agreement shall supersede any click-through disclaimers (or anything similar) used in connection with any Confidential Information provided via an electronic dataroom or other electronic means.

## **13 Severability**

If any provision of this Agreement is held to be illegal, invalid or unenforceable, in whole or in part, such provision (or part) shall to that extent be deemed not to form part of this Agreement and the remaining provisions shall remain legal, valid and enforceable to the fullest extent permitted by law.

**14 Counterparts**

This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same Agreement.

**15 Notices**

Unless otherwise provided herein, all notices or other communications to be given shall be made in writing and by letter (hand delivered), email or facsimile transmission (save as otherwise stated) and shall be deemed to be duly given or made, (i) in the case of personal delivery, when delivered; (ii) in the case of facsimile transmission, provided that the sender has received a receipt indicating proper transmission, when dispatched; (iii) in the case of email, where such email has been followed up with a facsimile or hand delivered letter; (iv) In case of mail, where 3 (Three) days have elapsed; or (v) in case of courier, on the 2<sup>nd</sup> (second) day after deposit with an overnight delivery service:

**For notices to the Provider:**  
**ECL Finance Limited**  
**Tower 3, 5th Floor,**  
**Wing B, Kohinoor City Mall Kohinoor City,**  
**Kirol Road, Kurla (West)**  
**Mumbai MH 400070 India**

**For notices to the Recipient:**

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**16 Entire Agreement**

This Agreement (including each applicable Schedule delivered pursuant hereto) embodies the entire understanding and agreement between the Parties with respect to all Confidential Information for each such Proposed Transaction and supersedes all prior understandings and agreements relating thereto as well as any “click-through” terms and conditions required in connection with accessing any electronic data room or anything similar.

**17 Governing Law and Jurisdiction**

This Agreement and any non-contractual obligations arising out of it or in connection with it shall be governed by and construed in accordance with the laws of India. Any dispute, controversy or claim arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be referred the courts of Mumbai.

*[signature page(s) follow]*

This Agreement is signed by duly representatives of the parties who agree to the terms of this Agreement set out above.

**[ Name of Recipient ]**

on behalf of Recipient

By: \_\_\_\_\_

Name:

Title: Authorized Signer

Dated: \_\_

**ECL Finance Limited**

on behalf of Provider

By: \_\_\_\_\_

Name:

Title:

**Schedule -1**

The Provider will be sharing information about an asset that is 40% Equity Shares of ALAKNANDA HYDRO POWER COMPANY LIMITED for which the Recipient has shown an interest in response to the REQUEST FOR PROPOSAL (RFP) published by the Provider on its official website.

*[signature page(s) follow]*



This Schedule to the Agreement is signed as of the date first written above by duly representatives of the parties who agree that the terms of the Agreement shall be applicable to the Proposed Transaction described in this Schedule.

[ ]

By: \_\_\_\_\_

Name:

Title:

**ECL Finance Limited**

By: \_\_\_\_\_

Name:

Title: