

# **JOINT VENTURE AGREEMENT**

## TABLE OF CONTENTS

|  |    |
|--|----|
| 1. Definitions .....   | 2  |
| 2. Formation of JVC.....   | 3  |
| 3. Business of JVC .....   | 4  |
| 4. Share Capital.....  | 4  |
| 5. Transfer of Shares to third Parties.....  | 5  |
| 6. Board of Directors and Management of the COMPANY.....                                 | 8  |
| 7. Board Meetings and Shareholder’s Meeting.....   | 14 |
| 8. Strategic Plans and Budgets.....  | 15 |
| 9. Dividends.....  | 15 |
| 10. Financial Year Auditors and Audit.....   | 16 |
| 11. Accounts, Records, Reports and Inspection.....                                       | 16 |
| 12. Confidentiality.....   | 17 |
| 13. Termination .....  | 20 |
| 14. Deadlock.....  | 21 |
| 15. Consequences of Termination .....  | 23 |
| 16. Damages.....   | 24 |
| 17. Force Majeure.....   | 25 |
| 18. Applicable law, Interpretation, Amendment &<br>Supplementation of the Agreement..... | 26 |
| 19. Settlement of Disputes.....  | 27 |
| 20. Communication.....   | 28 |
| 21. Miscellaneous.....   | 28 |
| 22. Assignment.....  | 28 |
| 23. Headings.....  | 29 |
| 24. Modifications.....   | 29 |
| 25. Waiver.....  | 29 |
| 26. Independent Parties.....   | 29 |
| 27. Representation and Authority.....  | 30 |
| 28. Counter Parts.....   | 30 |
| 29. Additional Documents.....  | 30 |
| 30. Entire Agreement.....  | 30 |
| 31. Conditions Precedent.....  | 31 |

## JOINT VENTURE AGREEMENT

This Joint Venture Agreement(hereinafter referred to as "Agreement") made and entered into at .....this .....day of .....200--.

BY AND AMONG

SEIL ENGINE INT'L LIMITED, a company registered in ----- under the ----- Offshore Business Activities Act 1992 and having its registered office at P.O. Box NO.----, -----(hereinafter referred to as "SEIL" which expression shall mean and include its successors and permitted assigns.),

GLOBAL POWERS LIMITED a company registered in ----- under the ----- Offshore Business Activities Act 1992 and having its registered office at P.O. Box No.----, ----- (hereinafter referred to as "GPL" which expressions shall mean and include its successors and permitted assigns)

AND

TRADE INT'L CORP., a company duly existing and organized under the laws of Korea, having its principal office at -----, Korea(hereinafter referred to as "TIC" which expressions shall mean and include its successors and permitted assigns)

WITNESSETH :

WHEREAS, SEIL is a subsidiary company of Korea Engineering Co., Limited, a leading Korean company having proven capabilities in the engineering, design and construction on a turn-key basis of power plants, and possessing facilities for the manufacture of equipment and machinery for power plants.

WHEREAS, GPL is an established ----- company having experience in diesel power projects including overseeing operation, maintenance and repair of diesel power plants, overall plant supervision, providing procurement and plant construction assistance and financing structure assistance

WHEREAS, TIC is a company having experience in procurement and international trade of equipment machinery and raw materials etc. foreign investment and project

financing.

SEIL, IPGL and TIC wish to form a Joint Venture Company (JVC) in ----- to jointly promote, own, operate and manage diesel power projects in -----.

SEIL, GPL and TIC have had discussions to finalize the terms and conditions of the participation of SEIL, GPL and TIC in the JVC, the manner in which the JVC will conduct business and its day to day management and operations and wish to record in writing the said terms and conditions mutually agreed upon by and among them and matters incidental and ancillary thereto.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, SEIL, GPL and TIC hereto agree as follows;

#### **ARTICLE 1. DEFINITIONS**

1. The terms stated below have the following respective meanings within this Agreement, unless the context results in a different meaning.
  - (a) "ACT" means the ----- Offshore Business Activities Act, 1992, as amended from time to time.
  - (b) "AFFILIATE" shall mean with respect to SEIL or IPGL or TIC, any entity (other than the JVC) which controls or is controlled by or is under the common control with SEIL or GPL or TIC respectively. An entity controls another when it owns or controls, directly or indirectly, more than fifty percent (50%) of the voting securities or voting interests of the said other entity or when it controls the composition of the board of directors of the said other entity.
  - (c) "BOARD" or "BOARD OF DIRECTIORS" shall mean the board of Directors of the JVC.
  - (d) "MEMORANDUM AND ARTICLES OF ASSOCIATION" refers to the document agreed among the Parties to this Agreement which stipulates the objective, the organizational principles and the methods of internal management and administration for the JVC in accordance with the principles laid down in this Agreement
  - (e) "PERMITTTED NOMINEE" means any "AFFILATE" of a Party who has been permitted by that Party to acquire share in the JVC.

- (f) "PARTY" and "PARTIES" shall mean SEIL, GPL and TIC individually and collectively as the context may require.
- (g) "JOINT VENTURE AGREEMENT" or "THIS AGREEMENT" shall mean this present Agreement and shall include any subsequent written modification and amendments thereto.
- (h) "JVC" means the Joint Venture Company to be jointly promoted by the PARTIES hereto in accordance with and as indicated in this Agreement.

## **ARTICLE 2. FORMATION OF THE JVC**

- 2.1 The JVC will be incorporated with the name of INTERNATIONAL POWER PROJECT INVESTMENT LIMITED or such other name as may be mutually agreed and approved by the regulatory authorities in ----- . The registered office of the JVC will be situated at such place as shall be mutually agreed.
- 2.2 The JVC will be a private company with liability by share in accordance with the laws of ----- . The liability of the shareholder in the JVC will be limited to their respective investments on this issued and paid-up capital.
- 2.3 The MEMORANDUM and ARTICLES OF ASSOCIATION of the JVC shall reflect the terms of this Agreement and be in such form as may be agreed among the PARTIES. It is agreed that as among the PARTIES this Agreement shall prevail and have an overriding effect, notwithstanding anything contained in the MEMORANDUM and ARTICLES OF ASSOCIATION of the JVC. In the event of any inconsistency between this Agreement and the MEMORANDUM and ARTICLES OF ASSOCIATION of the JVC, the PARTIES agree and confirm that this Agreement would prevail and that they would be bound by this Agreement and that they would forthwith take steps to amend the MEMORANDUM and ARTICLES OF ASSOCIATION of the JVC so as to remove such inconsistency.

## **ARTICLE 3. BUSINESS OF JVC**

### **3.1 JVC shall:**

- (a) carry on the business of promoting ,owning, operating, and maintaining power projects in India

- (b) operate efficiently and economically
- (c) attain maximum competitive position and strive for significant market share in India;
- (d) maximize profits and provide attractive return on investment to the Parties on an ongoing basis.

#### **ARTICLE 4. SHARE CAPITAL**

4.1 JVC will initially have an authorised share capital of ----. million divided into .....million Equity Share of ----.10(ten) each, which authorised share capital will be in stages increased to ----.....million or to such other amount as may be agreed among the PARTIES.

4.2 The initial issued, subscribed and paid-up share capital of the JVC will be ----. million divided into                   million Equity Share of ----.10 (ten) each. Such issued, subscribed and paid-up capital shall be subscribed for cash at par and paid-up and held by the PARTIES hereto as follows:-

(a) 60% of the issued and paid-up equity share capital of the JVC shall be subscribed and held by SEIL/PERMITTED NOMINEES.

(b) ()% of the issued and paid-up equity share capital of the JVC shall be subscribed and held by GPL / PERMITTED NOMINEES.

(C) ( )% of the issued and paid-up equity share capital of the JVC shall be subscribed and held by TIC/PERMITTED NOMINEES.

4.3 The issued, subscribed and paid-up equity share capital may by mutual agreement be increased. Such further issue of shares shall be made to the PARTIES in the proportion referred to in Clause 4.2 unless otherwise agreed in writing by the PARTIES. In the event a PARTY does not wish to subscribe to such further issue of share of JVC offered to it and required to finance the ongoing operation of the JVC's business, then the remaining PARTY shall have the right to take up such of the shares refused to be taken up by the first PARTY and the first PARTY shall have its holding in the equity share capital of JVC diluted accordingly.

4.4 In the event of PARTIES' mutual agreement to change the pattern of holding of the equity share capital of JVC to enable JVC to offer shares to public or any other

strategic investor, the respective shareholding of the PARTIES shall be changed in such proportion as the PARTIES may decide so however that the holding of GPL shall be not less than 29.55% and that of SEIL shall be not less than 29.55% of the paid-up equity capital of JVC and that of TIC shall be not less than ( )% of the paid-up equity capital of JVC. Such change in the shareholding pattern may be effected only on the terms and conditions which may be mutually agreed in writing among the PARTIES.

## **ARTICLE 5. TRANSFER OF SHARES TO THIRD PARTIES**

5.1 Any PARTY or PARTIES/ PERMITTED NOMINEES (Selling Shareholder) shall not be entitled to transfer /sell any of the shares held by it/them in JVC except in accordance with the provisions of this clause;

- (a) If any PARTY or its respective PERMITTED NOMINEES (hereinafter referred to as “Offeror”) desire to transfer any or all of its / their shares in JVC to any person or equity, it shall offer such shares in writing in the first instance to the other PARTIES hereto (hereinafter referred to as “Offeree” ). The Offeree shall be entitled to purchase the shares so offered or nominate any person or entity of its choice to accept the shares offered. Such Nominee shall be approved by the other PARTIES hereto, provided that such approval shall not be unreasonably withheld. Sale and purchase of such shares shall be at a Fair Price as defined hereinafter.

The Offeree shall be entitled to accept or reject such offer within a period of 90(ninety) days from the date of receipt of the offer or within a period of 30 (thirty) days from the date of fixation of Fair Price, whichever is later. If the Offeree or its nominees do not convey its / their acceptance in writing to the Offeror within such period, the offer shall be deemed to have been rejected by the Offeree.

Only if such offer is first rejected or is deemed to have been rejected by the Offeree, the Offeror shall be entitled to sell the shares to any third party or equity at the Fair Price or at a price higher than the Fair Price(hereinafter referred to as the “Opportunity Price”), provided, however, that once the Offeror identifies such third party the Offeror shall forthwith disclose to the other party the name of the third party and the Opportunity Price at which the shares are proposed to be transferred.

Upon such notification by the Offeror, the Offeree once again shall have the option to either purchase the said shares from the Offeror at the Opportunity Price or allow the Offeror to sell the said shares to the said third party at the

Opportunity Price; such option shall be exercised by the Offeree within 10 (ten) days of such notification.

Such right of the Offeror to sell the shares to any third party shall be exercised within a period of 60(sixty) days from the date when such offer is deemed to have been rejected.

The Offeree / its nominees shall have a right of first refusal as aforesaid only if it and / or its nominees agree to purchase all the shares offered by the Offeror.

- (b) Notwithstanding anything herein contained where a PARTY exercises its right to sell the shares to any third party consequent to the other PARTIES rejecting the second offer or such second offer being deemed to have been rejected as outlined in Clause (a) above, the exercise of such right will be subject to;
  - (i) the third party being acceptable to the other PARTIES
  - (ii) such third party agreeing in writing as a condition precedent to the transfer of share to it to be bound by the terms and conditions of this Agreement as though it was a signatory to this Agreement
- (c) Notwithstanding anything herein contained, should any PARTY /its PERMITTED NOMINEES accept the offer to purchase of the other PARTIES/its PERMITTED NOMINEE shares but be prevented from acquiring such shares by virtue of any Government restrictions or refusal of approval, the first PARTY/its PERMITTED NOMINEES shall have a right to nominate any party who is free to acquire such shares, and agree to abide by this Agreement, provided however that the other PARTIES to this Agreement has been consulted in this regard.
- (d) Notwithstanding any transfer, acquisitions of shares as contemplated in clauses (a) above, the PARTIES shall at all times be responsible and liable to discharge all their obligations to JVC and to each other so long as they are the shareholders in JVC.
- (e) Nothing contained in clause (a) above shall apply to transfer of shares by the PARTIES(hereinafter referred to as ""Transferor") to its PERMITTED NOMINEES (hereinafter referred to as ""Transferee"), provided that such nominee agrees in writing as a condition precedent to the transfer to be bound by the terms and conditions of this Agreement as though it was a



signatory to this Agreement and undertakes to re-transfer the shares to the Transferor in the event that the Transferee ceases to be the PERMITTED NOMINEE of the Transferor. Each of the PERMITTED NOMINEES holding shares of JVC pursuant to this clause shall be deemed to be a PARTY to this Agreement as if originally named herein.

- 5.3 “Fair Price” means the price to be determined by mutual agreement of the PARTIES within a period of 15(fifteen) days from the date of the offer being communicated to the other PARTIES. In the event of an agreement not being reached, the PARTIES shall within a maximum period of 5 (five) days appoint their auditors/chartered accountants (of their choice) to value the shares independently and require such valuation to be made within a maximum period of 30 (thirty) days from the date of appointment. In the event of there being a difference in the two valuations of less than 10 (ten)% of the higher value than the Fair Price shall be the average of both the valuations. If the difference in both valuation is more than 10 (ten) % of the higher value than in that event the aforesaid auditors/chartered accountants of the PARTIES shall within a period of 10 (ten) days of the later valuation mutually appoint in independent internationally reputed firm of chartered accountants to be the final valuers of the shares. Such valuers shall determine the Fair Price as an independent valuers within a period of 30 (thirty)days of the appointment and such valuation shall be final and binding upon the PARTIES. The auditors/chartered accountants shall act as valuers and not as arbitrators. The valuation shall be made on the basis of JVC being a going concern and taking into account the historic results of a representative period and reasonable projections of the future.

## **ARTICLE 6. BOARD OF DIRECTORS AND MANAGMENT OF THE JVC**

### **6.1**

- (a) The PARTIES shall be jointly responsible for the management of JVC
- (b) The Board of Directors of JVC(hereinafter referred to as “Board”) shall consist of ( ) directors of whom GPL shall be entitled to nominee/designate ( ) directors and SEIL shall be entitled to nominate/designate ( )directors (including the managing director) and TIC shall be entitled to nominate/designate ( ) directors. Any increase in the strength of the Board shall be in the same proportion.

Such rights of representation on the Board shall be enjoyed by a PARTY as long as it holds equity shares in the capital of JVC. All directors except the managing director shall be liable for retirement by rotation.

6.2 For the purpose of implementing this Agreement, the PARTIES hereto agree and undertake that they shall, at all times, exercise their respective voting rights as shareholders in the JVC in such manner and shall ensure that their respective representatives on the Board of the JVC shall so vote at the Board and shall so act so as to ensure the proper implementation and observance of the terms and provisions contained in and in the spirit of this Agreement.

6.3 GPL or, as the case may, SEIL or TIC shall be entitled to recommend the appointment of alternate directors in the event that directors appointed or nominated or designated by GPL or, as the case may be, SEIL or TIC are unable to attend the meetings of the Board. The Board shall accept such recommendations and forthwith appoint these alternate directors in accordance with the Act.

The Board shall, if so required by a non-resident director, appoint a person who is already a director or an alternate director of the JVC to be appointed as an alternate director for another director(s), in which event, the alternate director(s) so appointed shall have additional vote(s).

6.4 A vacancy on the Board shall be filled in as follows;

(a) In the case of a director who was nominated/designated for appointment by GPL vacating his office as a director, the person to be appointed to fill the vacancy shall be one nominated /designated by GPL.

(b) In the case of a director who was nominated/designated for appointment by SEIL vacating his office as a director, the person to be appointed to fill the vacancy shall be one nominated /designated by SEIL.

(c) In the case of a director who was nominated/designated for appointment by TIC vacating his office as a director, the person to be appointed to fill the vacancy shall be one nominated /designated by TIC.

6.5 In the event of appointment of additional directors any PARTY shall have the right to nominate such directors, subject to the provisions of Clause 6.1.

6.6 The cost of travel, lodging and boarding of the directors and other out of pocket expense incurred by them for attending the meetings of the Board shall be borne by the JVC.

6.7 Each director shall be paid such sitting fees for attending any meeting of the

Board as may be decided by the Board within the limits in this respect prescribed by the Act.

6.8 Any director shall also be entitled to receive such remuneration for service performed by him for JVC as the Board may decide and be approved by the shareholders of the JVC.

6.9 (a) Subject to clause (b) below, as long as SEIL holds shares in the equity share capital of JVC, it shall have the right to appoint /nominate the chairman of the Board of JVC after due deliberations and extensive consultations with the GPL and TIC.

(b) It is agreed and understood among the PARTIES that notwithstanding what is stated in Clause (a) above , the first chairman of the JVC shall be Mr. ...., who shall be entitled to continue to act as the chairman of the JVC, so long as SEIL or its PERMITTED NOMINEE is shareholder in the JVC.

6.10 SEIL shall have the right to appoint and nominate a managing director of JVC. The managing director shall be in charge of the day to day operations and management of JVC. The managing director shall be vested with substantial powers of management which he shall exercise subject to the overall superintendence, control and direction by the Board.

The managing director shall have the full responsibility and authority to manage the affairs of JVC within the framework of the business plan, and subject to the power required to be exercised by the Board or the shareholders under this Agreement or the provisions of the Act.

6.11 The representation of the PARTIES on any committee or sub- committee of the Board shall be in the same proportion and be computed in the same manner as their representation on the Board,

6.12 All matters shall be decided by the Board of JVC by a simple majority of votes. Provided that, the Board or any committee thereof (whether at its meeting or by circular resolution) or any executive/employee of the JVC or any person/committee under the power delegated by the Board shall not take any decision/action on the following matters involving the JVC except with the majority of directors which majority shall comprise of at least one affirmative vote of a director nominated /designated by GPL and one affirmative vote of a director nominated /designated by SEIL and one affirmative vote of a director nominated / designated by TIC.

- (a) to alter the provisions of the MEMORANDUM and ARTICLES of Association of the JVC;
- (b) to issue and allot new shares, debentures or any detachable warrants or coupons or other instruments which enables the holder to obtain share in the JVC, transfer of shares and such other securities (which includes transfer of shares and such other securities amongst the PERMITTED NOMINEES and AFFILIATES as defined in Clause 1 of this Agreement);
- (c) to engage in any activities other than those envisaged in this Agreement;
- (d) to fix remuneration of the directors;
- (e) to adopt accounts and reports to be laid before the members in General Meeting and decision in accounting policies of the JVC;
- (f) to join any other company or to invest in any other company;
- (g) to grant loans and / or credits other than those provided for in the business plan or approved in the annual budget, to assume any liabilities , guarantees or commitments to third parties other than those approved in the business plan and in the annual budget;
- (h) to change the total number of directors on the Board.
- (i) to issue debt instruments and borrowings in excess of Rs. ....million and/or for a term of more than.....months;
- (j) to dispose of assets other than those covered in the approved annual budget or disposal of assets exceeding Rs.....million and purchase of assets of a value exceeding Rs.....million and write off loans exceeding Rs.....million.
- (k) to declare dividends and appropriation of profits.
- (l) to delegate authorities to any committee of directors, managing director, manager, secretary or any other principal officer of JVC;
- (m) to appoint and remove key first level executives of the JVC;

- (n) to approve the annual budgets including capital expenditures, strategic plans , investment plans , business development plans, financial statements and balance sheet or any deviation therefrom and to undertake expenditure beyond approved budget;
- (o) to offer guarantees to financial institutions / banks
- (p) appointment / removal of auditors;
- (q) acquire from or grant to third parties by license or otherwise patents, trademarks, technology or other intellectual /industrial property rights;
- (r) to enter into transactions between the JVC and any of the principal shareholders of the JVC or in the case of corporate principal shareholders, their holding company, subsidiary or AFFILIATES;
- (s) to grant loans to directors;
- (t) initiation of, or an agreement to settle, any dispute, obligation, arbitration or other proceeding with any other third party, whether as petitioner /plaintiff / or respondent /defendant in respect of matters having a substantial bearing on JVC's activities;
- (u) to consent to a director or his relative or partner or firm or private company holding an office or place or profit in the JVC;
- (v) to make liability of any director or manager unlimited if so authorised by the ARTICLES OF ASSOCIATIONS ;
- (w) to appoint selling or purchasing agents or distributors;
- (x) to increase/dispose of any investment made in the equity shares of a company in India in the business of power projects;
- (y) to decide on the matter of increasing /reducing the stake in a company referred to in (x) above.

6.13 Wherever legally necessary, exercise of the powers of the Board shall be subject

to the approval/consent of the shareholders at a duly convened general meeting of the shareholders.

- 6.14 Any business which required approval of the general meeting of the shareholders by special resolution as per the law in force on the date of signing of this Agreement but might not require in future such special resolution as a result of change in law, then such business shall also be deemed to have been included in Clause 6. 12

#### **ARTICLE 7. BOARD MEETING AND SHAREHOLDERS' MEETING**

- 7.1 The quorum for a meeting of the Board shall be one-third of the total strength of the Board for the time being or three directors whichever is higher provided that, so long as GPL, SEIL and TIC are entitled to nominate / designate directors, the quorum for the Board Meetings or any meetings of committees thereof shall not be validly constituted unless at least one nominee director each of GPL, SEIL and TIC is present, unless such requirement is waived in writing by GPL, SEIL and TIC for the specific Board Meeting.

(a) At least 15 clear days notice in writing along with agenda mentioning the matters to be discussed and proposed to be decided at the Board Meeting shall be given to all the directors, whether in India or outside, such notices shall be sent to the business address of each such director. All notices given shall be given to all the directors with a copy to the Parties hereto by fax or other electronic communication and confirmed in writing sent by international airmail

(b) No decision at the Board Meeting on any item shall be taken which was not mentioned in the agenda of the Board Meeting unless all the directors or their alternate agree in writing otherwise.

(c) Board Meetings may be convened at the shorter notice if all the directors of the JVC agree in writing.

- 7.3 The quorum for the general meeting of the shareholders meeting shall be two persons present in person provided that, so long as GPL, SEIL and TIC are entitled to nominate / designate directors, the quorum for the general meeting of the shareholders shall not be validly constituted unless at least one representative each of GPL, SEIL and TIC is present at least at such meeting, unless such requirement is waived in writing by GPL or SEIL or TIC, as the case may be, for the specific general meeting of the shareholders.

- 7.4 Where at a general meeting of the shareholders any business requires approval of the shareholders by way of a special resolution (including business which as per the law in force on the date of signing this Agreement requires approval by way of special resolution but might not require in future such special resolution as a result of change in law), such approval in order to be valid and binding on the JVC would have to be by way of unanimous consent of all the shareholders.

#### **ARTICLE 8. STRATEGIC PLANS AND BUDGETS**

- 8.1 The managing director shall in consultation with the senior management personal prepare a strategic plan for each succeeding 5 year term at least 3 months before the expiry of each current strategic plan. The strategic plan shall be required to be approved by the Board. If the managing director considers it appropriate he may prepare a separate or modified strategic plan for a 5 year period at any time during the period of subsistence of any strategic plan. Such separate or modified strategic plan shall if approved by the Board replaces any existing strategic plan.
- 8.2 The managing director shall within the framework of the strategic plan (as approved by the Board) submit annually at least 1 month before the beginning of each financial year of JVC, a proposed annual budget of JVC to the Board for such financial year. Such annual budget shall be required to be approved by the Board.

#### **ARTICLE 9. DIVIDENDS**

- 9.1 Subject to the provisions of the Act, and the MEMORANDUM AND ARTICLES OF ASSOCIATION of the JVC and having regard to the future business requirements of JVC and commercial prudence the JVC for each financial year will declare the maximum possible dividend. Subject to the limits as aforesaid, the Board may declare by way of interim dividend and / or recommend to the annual general meeting of the shareholders of JVC dividend payment as the Board may feel expedient.

#### **ARTICLE 10. FINANCIAL YEAR AUDITORS AND AUDIT**

##### 10.1 Financial Year

The Parties agree that the financial year of JVC will be April 1<sup>st</sup> to March 31<sup>st</sup>.

## 10.2 Auditors

The first auditor shall be appointed by the Board as being nominated by SEIL in consultation with GPL and TIC and the appointment of the auditors shall in subsequent years be made in accordance with the relevant provisions of the Act by the shareholders of JVC based on the proposal of SEIL after consultation with GPL and TIC.

## 10.3 Annual Audit

An annual audit of the books of accounts, records and affairs of JVC at JVC's expense shall be made each year immediately following the close of the financial year by JVC auditors. A signed copy of the report of the annual audit shall be submitted to each member of the Board.

# **ARTICLE 11. ACCOUNTS, RECORDS, REPORTS AND INSPECTION**

## 11.1 Maintenance of Records

JVC will maintain separate , independent , accurate, complete, clear and satisfactory financial accounts for its business operations and shall keep records confirming to sound international practice in accordance with Indian law requirements, which accounts shall be audited at the expense of JVC but its Auditors.

## 11.2 Monthly Financial Statements

The Parties shall ensure and cause JVC to deliver to the Parties monthly financial statements which shall include a profit and loss statement and a balance sheet not later than the fifteenth (15) work day after the end of each month.

## 11.3 Inspections of Records

The Parties shall ensure that all the books and records of JVC including contracts, undertakings and all other documents executed by JVC, its directors or officers shall be open to inspection by the Parties and their authorised representatives at all reasonable times.

## 11.4 Special Audit

The Parties will have the right at any time to have special audit made of the books of accounts, records and affairs of JVC but any special audit shall be at the expenses of the requesting Party, and if material discrepancies in any of JVC's accounts, records or affairs are discovered as a result of such audit, the expenses for such audit shall be paid for by JVC.



## 11.5 Access

Each Party through its nominated directors or representative shall at its own expenses be entitled to have:

11.5.1 reasonable access at all reasonable times to inspect and obtain copies of books, records and documents under the control of JVC.

11.5.2 reasonable access at all reasonable times to observe and inspect operations of JVC as would be allowed under applicable laws stated in Clause 18.1.

## **ARTICLE 12. CONFIDENTIALITY**

### 12.1 Confidentiality of the information

During the subsistence of this Agreement, each Party and/or its Affiliate(s) shall receive and maintain all Confidential Information (as defined hereafter, however disclosed) in the strictest confidence.

### 12.2 Limit to Disclose

Each Party and/or its Affiliate(s) shall limit disclosure of any Confidential Information to those of its employees, agents, and representatives on a need -to-know basis. Either Party prior to making disclosure of any Confidential Information shall exert best efforts to cause the receiving entity(ies) to execute papers and documents to effect substantial compliance with the provisions of this Clause.

### 12.3 Legal Obligation to Disclose

In case either Party and/or its Affiliate(s) or any of their employee, agents or representatives, becomes legally compelled to disclose any Confidential Information, such Party shall give sufficient notice to the other Party so as to permit such other Party to seek a timely protective order or other appropriate relief. If such order or order relief cannot be obtained, the Party being compelled to make disclosure shall only make disclosure of that which is legally required and no more.

### 12.4 Information in public domain.

The obligation of confidentiality in respect of Confidential Information shall not apply to Confidential Information which is now in, or hereafter comes into, the public domain otherwise than by breach of this Agreement.

### 12.5 Copies

Each Party and/or its Affiliate(s) shall make only such notes, sketches, drawings, photocopies or other written or photographic records relating to all Confidential Information as are absolutely necessary. All such materials shall belong to the Party and/or its Affiliates to which the Confidential Information relates and, together with all other tangible expressions of Confidential Information held by any Party and/or its Affiliates(s) shall be returned to the owner forthwith upon the termination of this Agreement.

## 12.6 Confidential Information.

For the purpose of this clause, “Confidential Information shall mean

- 12.6.1 with respect to JVC, all information (verbal or documented) relating to the business or operations of JVC, which is specifically identified by JVC at the time of the disclosure as being confidential or proprietary; and
- 12.6.2 with respect to any Party, all information (verbal or documented) relating to the business or operations of such Party or any of its Affiliates which is specifically identified by such Party at the time of the disclosure as being confidential or proprietary.

The term “Confidential Information” shall specifically include any tangible expression of such information , including , without limitation, photographs, plans, drawings, renderings, journals, notebooks, computer programs, samples, models, prototypes and mock-ups relating thereto, and shall further include any confidential or proprietary information owned by any other person or entity and furnished by such other person or entity pursuant to an undertaking to maintain the same in confidence.

## 12.7 Exceptions

Notwithstanding anything contained in this Agreement to the contrary, the restrictions covered under this Agreement for the use or disclosure of Confidential Information shall not apply to any information.

- 12.7.1 which is independently developed by the receiving Party or any her Affiliate or lawfully received free of restriction from another source having the right to so furnish such information; or
- 12.7.2 after it has become generally available to the public without breach of this Agreement by the receiving Party or any Affiliate; or
- 12.7.3 which at the time of disclosure to the receiving Party was known to such Party or Affiliate free of restriction so long as such prior knowledge is

promptly disclosed in writing following disclosure of the information; or

12.7.4 which the disclosing Party agrees in writing is free of such restrictions.

#### 12.8 Inurement

Notwithstanding anything contained in this Agreement, the provisions of Clause 12.1 shall continue to be applicable to and to bind the Parties, without limit in point in time except and until such information enters public domain or is covered under Clause 12.7.

#### 12.9 Continued Use

Notwithstanding anything to the contrary contained in this Clause 12, in the event of termination of this Agreement by reason of any breach by a Party, the other Party shall be entitled to continue to use Confidential Information for the purpose of the activities of the JVC and such use of Confidential Information shall not be deemed to be a breach of the confidentiality obligation contained in this Article 12.

### **ARTICLE 13. TERMINATION**

13.1 Notwithstanding anything contained in this Agreement, either Party shall be entitled to terminate this Agreement in any of the following events;

- (a) either Party shall have the right to terminate this Agreement by giving 15(fifteen) days written notice to the other Parties if that other Party or Parties voluntarily or otherwise commits a material breach of any of the terms and conditions of this Agreement , provided that if the breach is remediable , the right aforesaid shall be exercisable only if the breach is not remedied within 45 (forty-five) days of a written notice requiring to remedy the same;
- (b) either Party shall be entitled to terminate this Agreement forthwith by giving a written notice to the other Parties in the event of the other Party or Parties being ordered to be wound up or entering into a compromise or arrangement with its creditors as a result of its bankruptcy or if a distress execution or other process shall be effected upon or if an encumbrancer shall take possession of or a receiver shall be appointed of substantial part of the assets or property of the other Party or Parties.
- (c) upon one Party giving notice to the other Party or Parties consequent upon the other Party or Parties or its PERMITTED NOMINEES ceasing to be the shareholders in the JVC.

- (d) upon one Party giving notice to the other Party or Parties consequent upon a change in the ownership or control of the other Party or Parties;

change of ownership or control in so far as a Party is concerned shall be deemed to be occurred if there is a change in the ownership of shares in the Party which has the result of operative control being directly or indirectly exercised by any other entity other than that which presently controls the said Party.

- (e) if the JVC's activities are seriously impeded as a result of force majeure for a period of more than 6 months as mentioned in Article 17 herein below.
- (f) if any one or more of the conditions precedent set forth in Article 31 have not been fully met within .....months from the date of this Agreement or such other extended date as may be mutually decided by the Parties.

13.2 During the period that the notice of termination is given by any Party until the time the issue is resolved or termination becomes effective the members of the Board shall function as trustees for the smooth and continued operations and functions of the JVC.

#### **ARTICLE 14. DEADLOCK**

14.1 The Parties and their respective PERMITTED NOMINEES expressly agree and confirm that in case of any major impasse / deadlock having arisen in the operation of the JVC which pertains and is material to the further or future operation of the business of JVC, the Parties shall cause their nominated directors to prepare and circulate to the other Party or Parties a memorandum or a statement setting out its position on the issue on which there is disagreement and its reasons for adopting such position. Each such memorandum or statement shall then be considered by the chairman of managing board of GPL, SEIL and TIC then holding office who shall use their best endeavours to resolve such an impasse / deadlock. Such process shall be completed within a period of 45 (forty-five) days of the impasse/deadlock having arisen, unless such period is extended by mutual agreement by three chairman. An impasses / deadlock arises on the date one Party receives a written communication from the other conveying the basis of such other Party coming to the conclusion of which the deadlock is and how it has arisen. Despite the aforesaid if the panel of the chairman is unable to resolve the impasse / deadlock, that the deadlock shall be deemed to be a major impasse / deadlock and in the event ultimate solution of any major impasses/deadlock shall be as provided hereinafter in this Clause. In the event any Party(hereinafter

referred to as “Selling Party”) desires to sell its shareholding in the JVC, the other Parties(hereinafter referred to as “Purchasing Parties”) shall have the first right to inquire it including its PERMITTED NOMINEES to sell its shareholding to themselves at a fair price which shall be determined in accordance with Clause 5.3 of this Agreement.

14.2 In case Purchasing Parties have notified Selling Party in writing that it or its PERMITTED NOMINEES do not wish to purchase the entire shareholding of Selling Party including its PERMITTED NOMINEES, in that event, Selling Party shall be entitled to sell all the share held by it/its PERMITTED NOMINEES to a third party at a price not less than the fair price referred to in Clause 14.1, provided that such a third party is acceptable to Purchasing Parties and agree in writing as a condition precedent to the transfer of share to it to be bound by the terms and conditions of this Agreement as though it was a signatory to this Agreement.

14.3 Once an impasses/ deadlock has deemed to have arisen till such time the impasses/ deadlock is resolved, the directors of the Board shall function as trustees for the smooth and continued operation and functioning of the JVC.

#### **ARTICLE 15. CONSEQUENCE OF TERMINATION**

15.1 It is expressly agreed by and among the Parties that in case of termination of this Agreement by any Party under Clause 13.1 <other than (e) and (f)>, SEIL shall have the right to require GPL including its PERMITTED NOMINEES to sell their entire shareholding in the JVC to SEIL and GPL/PERMITTED NOMINEES shall be obliged to sell their shares to SEIL at the price mutually agreed between the Parties failing which at the fair price determined in accordance with Clause 5.3.

15.2 In case Purchasing Parties has notified Selling Party in writing that they or their PERMITTED NOMINEES do not wish to purchase the entire shareholding of Selling Party including its PERMITTED NOMINEES, in that event, Selling Party shall be entitled to sell all the share held by it/its PERMITTED NOMINEES to a third party at a price not less than the fair price referred to in Clause 14.1, provided that such a third party is acceptable to Purchasing Parties and agrees in writing as a condition precedent to the transfer of shares to it to be bound by the terms and conditions of this Agreement as though it was a signatory to this Agreement.

15.3 No waiver of antecedent breach and no grant of time and indulgence shall prejudice any subsequent right to terminate this Agreement.

- 15.4 The termination shall not prejudice the right of non-defaulting Party or Parties against the defaulting Party that may have accrued prior to the date of termination or expiration of this Agreement.
- 15.5 On the termination of this Agreement the Parties hereto shall refrain from any acts, indications, publicity or advertisements which may mislead any third party into the belief that the Parties hereto still maintain business relationships with one another with reference to the JVC and neither Party hereto shall commit any act detrimental to the business or reputation of the other Parties; also the Parties shall ensure that the JVC shall not use the name of the outgoing shareholder in any manner either in publicity material or otherwise.
- 15.6 When this Agreement is terminated due to the circumstances set out in sub Clause (f) of Clause 13.1, if the JVC is in existence, Purchasing Parties shall have the right to require Selling Party including its PERMITTED NOMINEES to sell their entire shareholding in the JVC to Purchasing Parties and Selling Party /PERMITTED NOMINEES shall be obliged to sell their shares to Purchasing Parties at a mutually agreed price failing which at the fair price which shall determined in accordance with Clause 5.3 of this Agreement.

In case Purchasing Parties has notified Selling Party in writing that they or their PERMITTED NOMINEES do not wish to purchase the entire shareholding of Selling Party including its PERMITTED NOMINEES, in the event, Selling Party shall be entitled to sell all the share held by it/its PERMITTED NOMINEES to a third party at a price not less than the fair price referred to in Clause 14.1, provided that such a third party is acceptable to Purchasing Parties and agree in writing as a condition precedent to the transfer of shares to it to be bound by the terms and conditions of this Agreement as though it was a signatory to this Agreement. Where this Agreement is terminated under the said sub Clause neither of the Parties shall be entitled to claim compensation from the other Parties for any damage which may be incurred.

## **ARTICLE 16. DAMAGES**

- 16.1 In the event of breach of any obligation stipulated in this Agreement or the failure to duly fulfill an obligation in accordance with the provisions of this Agreement on the part of one of the Parties, the defaulting Party shall be obliged to compensate the non-defaulting Parties for the resultant damages incurred. Compensation for damages is to be paid in the currency of the United State Dollars.
- 16.2 The assertion of a claim for damages shall not affect the right to terminate this

Agreement in accordance with Clause 13.1.

## **ARTICLE 17. FORCE MAJEURE**

17.1 Each Party shall be released from the responsibility for the complete or partial non-fulfillment of an obligation arising from this Agreement, when such non-fulfillment results from an event of force majeure which occurs after signing of this Agreement and which the Party concerned could not have prevented by reasonable means.

17.2 Such events of force majeure shall include but are not limited to the following;

A ban on the export of products from a country or on importation into a country (embargo) , government decrees or orders issued by state bodies, including amendments to the imperative state economic plans, natural disasters, strikes, lockouts, riots, war, etc.

17.3 In the event of any one of the stated circumstances occurring, the Party affected shall promptly provide the other Parties with a written notification. This notification shall describe the events concerned and insofar as possible assess the effects of the events on fulfillment of the Party's obligations under this Agreement and state the estimated date of its ability to fulfill these obligations.

Upon requests of the other Parties, within a reasonable period the Party concerned shall forward a confirmation from the Chamber of Industry and Commerce in its country or from a comparable organization or any agency of government verifying that these circumstances do exist.

17.4 Upon cessation of the stated circumstances, the Party concerned shall promptly provide the other Parties with a written notification to this effect. This notification must specify a period within which the Party expects to fulfill its obligation under this Agreement affected by such force majeure.

Should the Party concerned culpably fail to send the necessary notification, or fail to forward them in good time, it shall be obliged to compensate the other Parties for the losses which are incurred as a result of the failure to send the notification or the delayed forwarding of the notifications.

17.5 In case of the event of force majeure occurring, fulfillment of the obligation of the Party concerned under this Agreement shall be postponed by the duration of these circumstances and their consequences. The Party shall, however, endeavor to expeditiously fulfill its obligations which were affected by such force majeure.

17.6 Should the circumstances of force majeure and their consequences continue for longer than 6 (six) months, thereby seriously impeding the JVC's activities , each Party shall be entitled to terminate this Agreement. In this case, neither of the Parties shall be entitled to claim compensation from the other Parties for any damage which may be incurred due to the force majeure.

#### **ARTICLE 18. APPLICABLE LAW, INTERPRETATION, AMENDMENT AND SUPPLEMENTATION OF THE AGREEMENT**

18.1 This Agreement shall in all respects be governed by and construed in accordance with the laws of -----.

18.2 In the event that any one or more of the provisions contained in this Agreement shall be invalid, illegal, unenforceable or incomplete in any respect under any applicable law, the validity, legality and enforceability of the reminding provisions contained herein shall not in any way be affected or impaired thereby. The vulnerable provision shall be replaced , amended or supplemented by such a provision which the Parties would have chosen so as to attain the intended economic objective of the Parties had they been aware of the vulnerability of the said provision.

18.3 Any amendments or supplements to this Agreement shall be effective and binding only when agreed among the Parties in writing and, where necessary , when the appurtenant licenses or registration certificates have been received from the state bodies.

#### **ARTICLE 19. SETTLEMENT OF DISPUTES**

19.1 The Parties shall endeavor to resolve by negotiation any difference of opinion and disputes which may arise from or in connection with this Agreement or with regard to the validity of this Agreement itself, in the course of operation of the JVC.

19.2 If it proves impossible to settle disputes within 30(thirty) days and legal proceedings appear unavoidable, such disputes are to be decided by a court or arbitration , without recourse to a general court of law.

19.3 The arbitration shall consist of three arbitrators. Each Party shall appoint one arbitrator. The chairman of the court of arbitration shall be decided by three



arbitrators among themselves. In the event that arbitrators or chairman of the arbitration court shall not be appointed, this chairman or these arbitrators shall be appointed by the court of arbitration.

19.4 The arbitration proceedings shall be conducted in accordance with the Rules of International Chamber of Commerce.

19.5 The cost of arbitration shall be decided by the Rules stated in Clause 19.4; and the interpretation of this Agreement shall be in accordance with the Mauritius Law; the arbitration language shall be English.

## **ARTICLE 20. COMMUNICATION TO THE PARTIES.**

Irrespective of whether this is expressly specified in each individual case , all communications which are necessary or permitted with regard to this Agreement and the JVC are to be affected in writing, i.e. via letter, telex or telegram. These communications are to be forwarded to the following addresses;

GPL.....

SEIL.....

TIC.....

Any change in the above addresses shall be communicated to other Parties in writing.

## **ARTICLE 21. MISCELLANEOUS**

21.1 The official language of this Agreement is English.

21.2 All documents and other papers of importance which relate to the JVC shall be drawn up in English language and shall be binding upon the Parties. Correspondence among JVC and the Parties in the course of daily business shall be conducted in the English language.

21.3 Each Party shall bear its own costs incurred in the establishment, registration and organization of the JVC, including consultation fees. The JVC shall bear those costs which are directly related to its registration and organization and any consultation costs which directly concern the JVC.

## **ARTICLE 22. ASSIGNMENT**

The rights and obligations under this Agreement are personal and shall not be assignable by any Party without the prior written consent of the other Parties which consent will not be unreasonably withheld. Notwithstanding anything to the contrary in this Agreement, any Party shall have the right to refuse permission to the other Parties or Party to assign this Agreement to a third party, where the assignee is a competitor or is likely to be a competitor of the first Party or its AFFILIATES.

## **ARTICLE 23. HEADINGS**

The headings of the sections of this Agreement have been inserted only to facilitate reference and shall not be taken as being of any significance whatsoever in the construction and interpretation thereof.

## **ARTICLE 24. MODIFICATIONS**

This Agreement shall not be altered, modified or supplemented except with the prior written approval of the Parties hereto.

## **ARTICLE 25. WAIVER**

The failure, with or without intent, of any Party to insist upon the performance (in strict conformity with the literal requirements) by the other Parties of any term or stipulation of this Agreement, shall not be treated or deemed to constitute a modification of any terms or stipulations of this Agreement.

Nor shall such failure or election be deemed to constitute a waiver of the right of the other Parties at any time whatsoever thereafter to insist upon performance by the other Parties strictly in accordance with any terms or provisions hereof.

All terms, conditions and obligations under this Agreement shall remain in full force and effect at all times during the substances of this Agreement except where otherwise amended or modified by them by mutual written agreement.

## **ARTICLE 26. INDEPENDENT PARTIES**

The Parties shall act in all matter pertaining to this Agreement as independent parties and nothing contained herein shall constitute either as the agent or as the partner of the other Parties and does not give any Party the power to represent the other Parties hereto.

#### **ARTICLE 27. REPRESENTATIONS AND AUTHORITY**

- 27.(a) Each Party represents and warrants that it is permitted by its respective corporate charter and incorporating documents to enter into this Agreement, and is not restrained, prevented or inhibited by any contract or arrangement to which it is a Party from entering into this Agreement or undertaking the obligations herein contained.
- (b) Each signatory to this Agreement represents and warrants that he is duly authorised by the Party for and on whose behalf he is signing this Agreement to execute the same in a manner binding upon the said Party and that all corporate approvals and procedures necessary for vesting such authority in him have been duly obtained and complied with.

#### **ARTICLE 28. COUNTER PARTS**

This Agreement shall be executed simultaneously in two counter parts each of which shall be deemed to be an original but both together shall constitute one instrument.

#### **ARTICLE 29. ADDITIONAL DOCUMENTS**

Each Party hereto shall promptly execute and deliver such additional documents as are reasonably required by the other Party or Parties hereto for the purpose of implementing this Agreement, provided that such documents shall be consistent with the provisions hereof.

#### **ARTICLE 30. ENTIRE AGREEMENT**

This Agreement sets forth the entire agreement and understanding among the Parties as to the subject matter hereof and supersedes all communications, negotiations, commitments and writings prior to the date hereof pertaining to the subject matter of this Agreement.

**ARTICLE 31. CONDITIONS PRECEDENT**

**31.1** This Agreement shall take effect only after all the following conditions precedent have been fully satisfied.

**31.2** This Agreement has been executed by the Parties and the following approvals have been obtained;

- (1) Approvals required for effecting investments by the Parties in the capital of the JVC.
- (2) Approvals required to enable the JVC to undertake activities contemplated by this Agreement.
- (3) Agreement has been approved by a formal Board resolutions of the Parties.

IN WITNESS HEREOF the Parties hereto have executed this Agreement on the day and year first hereinabove written.

SUPER ENGINE INT'L

GLOBAL POWER LIMITED

\_\_\_\_\_  
Name, Title

\_\_\_\_\_  
Name, Title

TRADE INT'L CORP

\_\_\_\_\_  
Name, Title

\_\_\_\_\_