AGREEMENT FOR FORMING JOINT VENTURE COMPANY

FOR

ALLOTMENT, DEVELOPMENT AND MINING OF COAL FROM

COAL MINES/BLOCKS OF PSEB & SUPPLY TO

POWER PLANTS IN THE STATE OF PUNJAB

Between

PUNJAB STATE ELECTRICITY BOARD (PSEB)

Name & Logo of Selected Bidder

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THIS JOINT VENTURE AGREEMENT made this _____ day of Two Thousand Nine BETWEEN

PUNJAB STATE ELECTRICITY BOARD, a statutory body established under Section 5 of the Electricity (Supply) Act 1948, having its Head Office at The Mall, Patiala 147001, (hereinafter referred to as PSEB which expression shall unless repugnant to the context of meaning thereof, include its successors and assigns) of the FIRST PART.

[Name and details of JV Partner]

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WITNESS AS FOLLOWS

Recitals

a) WHEREAS this agreement is Joint Venture Agreement signed between Punjab State Electricity Board and Name of the Selected JVC

b) WHEREAS PSEB is generating power through its thermal power stations and is in the process of setting up other thermal power stations, for whose operation it required coal.

c) AND WHEREAS pursuant to the policy of Government of India of leasing out coal mines to power generating agencies as captive coal mine(s) for their own consumption, PSEB expects to get allotment of mine block(s) in due course of time.

d) AND WHEREAS for ensuring the assured supply of quality at a reasonable price for its power stations, PSEB has decided to form a limited liabilities Company, (*Company) with a well established, experienced and financially sound parties / companies to form a joint venture company that will look after all affairs relating to Selection / Allotment / Development / Mining / supply of coal to Power Stations run by PSEB and / or power stations got developed by PSEB through competitive bidding / MOU from the Coal Mines / Blocks to be allotted to PSEB, for the purpose, by the Ministry of Coal, Govt. of India.

e) AND WHEREAS [Name of JV Partner] and PSEB shall at all times hold at least 49% and 51% respectively, of the paid equity capital of the Company.

f) AND WHEREAS for selection of the above *[[NAME OF JV PARTNER]]* for the Company for development of allotted coal mines, PSEB had invited tenders vide *[Tender number and date]*

g) AND WHEREAS in response to the said tender, *[[NAME OF JV PARTNER]]* submitted a tender along with *[number of bids received]* other bidders. Based on the details submitted by the bidders, PSEB in consideration of the experience and expertise of [Name of JV Partner] as well as rates quoted by *[[NAME OF JV PARTNER]]* being fair and reasonable has decided to accept the bid submitted by *[[NAME OF JV PARTNER]]*, on conditions set forth in this Agreement.

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I. DEFINITIONS AND INTERPRETATION

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter assigned to them:

"**Accounting Year**" means the financial year commencing from 1st April of any calendar year and ending on 31st March of the next calendar year.

"**Agreement**" means this Agreement hereto and any amendments thereto made in accordance with the provisions contained in this Agreement.

"**Applicable Laws**" means all laws, promulgated or brought into force and effect by GOI or GOWB including regulations and rules made there under, and judgments, decrees, injunctions, writs and orders of any court of record, as may be in force and effect during the subsistence of this Agreement.

"**Applicable Permits**" means all clearances, permits, authorizations, consents and approvals required to be obtained and/ or maintained under Applicable Laws in connection with design, engineering, financing, procurement, construction, operation, environmental, safety & maintenance of the Project during the subsistence of this Agreement.

"**Bank**" means a Scheduled bank incorporated in India and having a minimum net worth of Rs. 1 billion (Rupees one billion) and having a branch in Patiala or at any other place acceptable to PSEB.

"Base Price" means the price of coal in the area of the allotted mine(s) charged by Coal India Limited at the pit head of the mine which price shall be exclusive of all taxes, duties, levies, cess, royalty, sizing, and transportation charges.

"Coal Supply Agreement" means the agreement for supply of coal to be signed between PSEB and the Company.
"**Bid Documents**" means the documents in their entirety comprised in the bid submitted by *(name of JV Partner)* in response to the Tender Notice in accordance with the provisions thereof.

"Coal Supply Agreement" means the agreement for supply of coal to be signed between PSEB and the Company.

"**Change in Law**" means the occurrence of any of the following after the date of this Agreement:

i. the enactment of any new Indian law;

ii. the repeal, modification or re-enactment of any existing Indian law;

iii. the commencement of any Indian law which has not entered into effect until the date of this Agreement;

iv. a change in the interpretation or application of any Indian law by a court of record as compared to such interpretation or application by a court of record prior to the date of this Agreement; or

v. any change in the rates of any of the Taxes.

"**Force Majeure**" or "**Force Majeure Event**" shall mean an act event, condition or occurrence specified in Clause XV.

"**GOI**" means the Government of India.

"**GOP**" means the Government of Punjab.

"**Governmental Agency**" means GOI, GOP or any ministry, department, commission, board, authority, municipality, instrumentality or agency, under the control of GOI or GOP having jurisdiction over all or any part of the Project or the performance of all or any of the services or obligations of the Joint Venture Partner under or pursuant to this Agreement.

"Grade" means the grade of coal determined with respect to the useful heat value and other parameters of such coal. The Grade shall be defined as A to G basically on the basis of the following useful heat values :

Grade of Coal	Useful Heat Value in Kcal/Kg
A	Above 6200
B	Above 5600 and upto 6200
C	Above 4940 and upto 5600
D	Above 4200 and upto 4940
E	Above 3360 and upto 4200
F	Above 2400 and upto 3360
G	Above 1300 and upto 2400

"JOINT VENTURE COMPANY (JVC)" means the Company to be promoted by PSEB and the Joint Venture Partner.

"**Machinery or Equipment**" means all the equipment, machinery, structure, Spare Parts, tools, manuals- and other technical documentation and/or other materials which JVC is required to install at the allotted coal block under the Agreement.

"**Material Adverse Effect**" means material adverse effect of any act or event on the ability of either party to perform any of its obligations under and in accordance with the provisions of

this Agreement or on the legality, validity, binding nature or enforceability of this Agreement.

"**Parties**" means the parties to this Agreement collectively and "Party" shall mean any of the Parties to this Agreement individually.

"**PSEB Coal Mines**" means the coal mine(s) to be allotted to PSEB by Ministry of Coal, Government of India in which mining rights shall be given to the Company and which shall be developed/operated through the Company for captive use of PSEB.

"**Taxes**" means any Indian taxes including Sales tax, VAT, excise duties, customs duties and local taxes and any impost of like nature (whether Central, State or local) charged, levied or imposed on the goods, materials, equipment and services incorporated in and forming part of the Project, on the construction, operation and maintenance thereof and on the Project Assets, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever, and also any Income Tax or Corporate Tax and any interest, penalties and other sums in relation thereto.

"**Termination**" means the expiry or termination of this Agreement hereunder pursuant to a Termination Notice or otherwise in accordance with the provisions of this Agreement.

In this Agreement references to Coal India Limited (CIL) have been made, In case during the subsistence of this Agreement, CIL ceases to exist then both the parties shall agree for another entity as a substitute for CIL (hereinafter called the substitute entity(ies)). In such a case the term CIL referred to in this Agreement shall for all intent and purposed, mean and include such substitute entity(ies).

Reference to any statute or statutory provision shall include a reference to that statute or statutory provision for the time being in force and also to amendment, extension, modification, reenactment or repeal thereof.

The words and expressions not expressly defined in this agreement shall, as far as possible, bear the same meaning as is given to them by the Company Act 1956 or any statutory modification or re-enactment thereof in force in India at the time of entering into the Agreement.

References to Clauses and article shall be to Clauses and Articles of this agreement.

References to persons shall include companies, bodies corporate, unincorporated associations and partnerships.
Words importing the singular shall include the plural and vice and versa.

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Interpretation.

1. In this Agreement, unless the context otherwise requires,
   a) any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;

   b) references to Indian law shall include the laws, acts, ordinances, rules, regulations, or bye laws which have the force of law in any State or Union Territory forming part of the Union of India;

   c) the words importing singular shall include plural and vice versa, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organisations or other entities (whether or not having a separate legal entity);

   d) the headings are for convenience of reference only and shall not be used in and shall not affect the construction or interpretation of this Agreement;

   e) terms and words beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein and in terms and words defined in the Annexures and used therein shall have the meaning ascribed thereto in the Annexures;

   f) the words "include" and "including" are to be construed without limitation;

   g) any reference to any period of time shall mean a reference to that according to Indian Standard Time;

   h) any reference to day shall mean a reference to a calendar day;

   i) any reference to month shall mean a reference to a calendar month;

   j) the Annexures to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;

   k) any reference to any time to any agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference provided that this clause shall not operate so as to increase liabilities or obligations of *PSEB* hereunder or pursuant hereto in any manner whatsoever;

   l) references to Recitals, Articles, Clauses, Sub-Clauses, Paragraphs, or Annexures in this Agreement shall, except where the context otherwise requires, be deemed to be references to Recitals, Articles, Clauses, Sub-Clauses, paragraphs, and Annexures of or to this Agreement;

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m) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any party or the Independent Consultants shall be valid and effectual only if it is in writing under the hands of duly authorised representative of such Party or the Independent Consultants, as the case may be, in this behalf and not otherwise;

n) any reference to any period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include both such days or dates;

o) the damages payable by either Party to the other of them as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty or liquidated damages (the "Damages"); and

p) unless otherwise expressly provided in this Agreement any Documentation required to be provided or furnished by the Joint venture Partner to PSEB shall be provided free of cost and in three copies and if PSEB is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.

2. Measurements and Arithmetic Conventions

All measurements and calculations shall be in metric system and calculations done to 2 decimal places, with the third digit of 5 or above being rounded up and below 5 being rounded down.

3. Priority of documents and errors/discrepancies

The several documents forming this Agreement are to be taken as mutually explanatory to one another and, unless otherwise expressly provided elsewhere in this Agreement, the priority of the following documents shall in the event of any conflict between them be in the order they are set out:

i. this Agreement

ii. all other documents forming part of this Agreement

i.e. document at (i) above shall prevail over the documents at (ii) above.

4. In case of ambiguities or discrepancies within this Agreement the following shall apply:

i. between two Clauses of this Agreement, the provisions of the specific clause relevant to the issue under consideration shall prevail over those in other Clauses;

ii. Between the Clauses and the Schedules, the Clauses shall prevail.

iii. Between any value written in numerals and that in words, the latter shall prevail.

2. DURATION OF THE AGREEMENT

This Agreement shall come into force on the date of its execution by the Parties and shall continue in full force and effect for an initial period of 30 years from the date hereof or the period for which the mining leases is granted to the Company, subject to renewal on terms and conditions for further period(s) as may be mutually agreed to between the parties.

This Agreement shall ensure to the benefit of a Limited Company which maybe formed by the partners subject to the following conditions.

(a) [Name of JV Partner] shall hold 49% (forty nine) shares in the Limited Company and maintains their shareholders at all times.

(b) The Limited Company shall assume all the obligations of (name of JV Partner)

The partners shall also individually be responsible for the due performance of the obligations under this Agreement.

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3. THE COMPANY AND IT'S OBJECTIVES

1. The Parties of the First Part & Second Part shall form and incorporate the Company as a Public Limited Company under the Companies Act, 1956 having its registered office in New Delhi.

2. The Company shale be named (Name of the JV Company), or in case such name is not available, any other name which may be mutually acceptable to the Parties.

3. The main object of the Company shall be -

a) Study and identify the most suitable blocks of with **cumulative** minimum mining **proved reserve** 500 MMT for allotment by the Ministry of Coal, Govt. of India and shall take follow up action with Ministry of Coal, Coal India Ltd., Railways, GSI , State Government and other agencies. It shall obtain all permission and licenses from relevant authorities / offices.
b) Collection and analysis of geological or any other relevant data in respect of Blocks offered and other available block with Ministry of Coal, Coal India Limited, CMPDIL, Geological Survey of India, Railways, State Government and other agencies;
c) Land Acquisition and related issue of ownership and associated risks, if any ;

d) Exploration, if required.

e) Obtention of Mining Lease for the blocks;

f) Preparation of plans, obtention of approval of Site Clearance from Ministry of Environment & Forest Govt. of India.

g) Preparation of mining Plan and its approval from Ministry of Coal, Govt. of India.

h) Preparation of Environment Management Plan and its approval from Ministry of Environment & Forest Govt. of India.

i) Obtention of Industrial License and all other permissions or approvals required as per applicable laws :

j) Obtention of opening permission from Director General of Mine Safety and Coal Controller;

k) Arrangement of approval for coal linkage from PSEB Coal Mines to the power stations of PSEB;

l) Arrangement of railway siding nearest to the PSEB Coal Mines, if required
m) It shall under take any other requirement not specifically mentioned in the specifications but otherwise required for allotment / development of Blocks allocated to PSEB.
n) To do Engineering , Procurement & Construction (EPC) and operation & maintenance (O&M) for mining of coal from coal blocks / mines.
o) deploy all machineries & equipments and infrastructures required for development of mine with all capital investments.
p) install beneficiation plant or washery if required for supply of coal with ash contents below 34% to PSEB as per directions of Ministry of Environment.
q) Undertaking all other allied jobs for coal mining operations as given below:

i) Mining of Coal as per the approved Mine Plan
ii) a) Providing of HEMM and other mining machinery for mining coal and removing overburden commensurate with the mine plan
b) Providing all Underground mining machineries for development and mining of coal including mechanical ventilators, conveyors, shaft or other hoisting systems.

iii) Development of auxiliary equipments to support operation of HEMM & underground machineries
iv) Excavation of overburden (OB) and dumping of OB as per the mine plan, mining schedule and EIA/EMP document
v) Drilling and blasting of OB and coal
vi) Construction, maintenance and operation of mine dewatering plant, sump, and garland drains
vii) Construction and maintenance of all haul roads incline, adit, ladder ways, staple pits, conveyor roads etc.
viii) Construction and maintenance of workshops, stores.
ix) Construction and maintenance of canteen
x) Construction and maintenance of rest shelters, first aid centres
xi) Construction and maintenance of Effluent Treatment Plant (ETP) for water recycling
xii) Construction and maintenance of mine water discharge treatment
xiii) Stream diversion if required
xiv) Construction and maintenance of internal power supply arrangements
xv) Provision for mine illumination as per prevalent laws
xvi) Arrangement and use of explosives
xvii) Arrangement of petrol/diesel, oil and lubricants
xviii) Construction and maintenance of communication network for mine
xix) Observances of specific conditions under environment and other clearances with development and operation of Coal mine

xx) Any other activity incidental to construction, operation, maintenance and closure of the mine including back filing.
xxi) Raising coal and stacking the same on surface;
xxii) Sizing of coal into the required size;
xxiii) Dispatching coal with a size of 200 mm + 10 mm having an ash content of less than 34% to power stations of PSEB only by rail/road;
xxiv) Compliance with all applicable laws including the Mines Act and Safety Rules & Regulations thereof.

r) be responsible for supplying the required Man power without any liability of PSEB.
s) arrange coal linkage from Coal Mines / Blocks to PSEB Power houses. Any pilferage of coal during transportation of coal from Mines to Power Plant will be on account of JVC.
t) under take any other requirement not specifically mentioned in the specifications but otherwise required for mining/supply of coal to PSEB Thermal Plants.

Note:

The Coal mining will be in accordance with the provisions of Coal Mine (Nationalization) Act, 1973, The Mines & Minerals (Regulation & Development) Act 1957, Mineral Concession Rules 1960, The Coal Bearing Areas (Acquisition & Development) Act,1957, The Coal Mines (Conservation and Development) Act 1974, The Land Acquisition Act 1894, Forest (Conservation) Act including Rules 1980, Water (Prevention and Control of Pollution) Act including Rules 1974, Air (Prevention and Control of Pollution) Act including Rules 1981, Environmental (Protection) Act 1986, The Mines Act 1952, Mines Rule 1955, Coal Mines Regulation 1957, the Contract Labour (Regulation & Abolition) Act, 1970 and all other applicable mineral, environmental and labour laws and other prevalent Rules, Acts & Regulations of India.

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4. SHARE CAPITAL

1. The authorized and paid up share of the Company shall be Rs. 10 crores (Rupees five crores) divided into 100,00,000 (one hundred lacs) equity shares of a face value Rs. 10 (Rupees Ten) each.

2. PSEB's right on the PSEB Coal Mines shall be valued at 5.10 crores (Rupees five Crore, ten lacs only) and such value shall be treated as consideration for the allotment to PSEB of 51,00,000 shares of Rupees 10 each of the Company. Beyond this 51% of paid-up capital, PSEB will not make any investment in future.

3. The 51,00,000 equity shares stipulated in clause 2 above may be allotted to PSEB over a period (but not exceeding 3 months from the date of incorporation of the Company or such other period as may be agreed to by PSEB) provided PSEB shall at all times hold 51% of the paid equity capital of the company and *NAME OF jv pARTNER* shall at all times hold 49% the paid up equity capital of the company.

4. The authorized and paid up capital of the company may be increased from time to time as may be determined by the Board of Directors and/or the shareholder of the Company in accordance with the provisions of the Agreement. Provided that in the event of an increase in the paid-up equity capital, the additional shares issued shall be offered to the existing shareholders in proportion to their respective holding in the Company Further 51% of the additional shares issued shall at all times be allotted to PSEB.

5. For maintain PSEB's equity capital holding at 51% of the total paid up equity capital, if PSEB is to be allotted shares which will increase its total shareholding beyond 51,00,000 shares, then the consideration for allotment of such additional shares shall be brought in by [*NAME OF JV PARTNER]* and PSEB shall be allotted the 51% shares in the additional share capital being mobilized with equivalent voting rights.

6. PSEB shall not be required to make any financial contribution to the Company at any time.

7. The shares allotted to PSEB shall be free and clear of all liens, security interests, restrictions, and other adverse claims.

8. (Name of JV Partner) shall not transfer/sell their shares of the Company to any person, natural or juristic, without the written consent of the PSEB.

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5. MANAGEMENT OF THE COMPANY

1) A Steering committee of (four) persons shall be formed for the purpose of carrying out pre-operative activities required or considered necessary for undertaking the main objects or the Company as provided in article 3. The Steering Committee shall consist of 2 (two) nominees of [NAME OF JV PARTNER] and 2 (two) nominees of PSEB.

2) PSEB and [NAME OF JV PARTNER] shall have the right to change their respective nominees for the Steering Committee from time to time. The Steering Committee shall conduct its business strictly to give effect to the understanding between the parties as contained in this Agreement. All reasonable obligations entered into by or with the consent of the Steering Committee and/or sanctioned by the person or persons appointed or approved by the steering Committee shall be binding on the Company as and when formed subject to ratification of the Board of Directors of the Company. The decision of the Steering Committee would be based on a simple majority subject to at least 1 nominee of PSEB voting in favour of such decision. All expenses incurred by the Steering Committee shall initially be incurred by [NAME OF JV PARTNER] and shall be included as a part of the pre-operative expenses of the Company, as and when formed. The Steering Committee shall cease to function as soon as the Board of Directors of the Company is formed and shall furnish proper accounts and hand over all papers, documents, contracts, deeds etc. to the Company on its formation.

3) At all times, PSEB and [NAME OF JV PARTNER] shall have equal number of Directors in the Company. Initially, the Board of Directors of the Company shall comprise of a minimum of 8 (eight) Directors including the Chairman. The Chairman of the Company shall be a nominee of PSEB and shall be from amongst the 4 (four) Directors nominated by PSEB. [NAME OF JV PARTNER] shall have 4 (four) of its nominees as Directors including the Managing Director of the Company.

4) The Parties including their nominees and affiliates shall ensure that the individuals nominated by either of the Parties to be the Directors of the Company are duly elected and for this purpose shall use the voting rights attached to the respective shares held by them in favour of the election of such individuals as Directors.

5) The Parties shall be entitled from time to time to require the removal of their respective nominee directors and nominate others in place of the directors so removed.

6) All casual vacancies in the office of Directors on the Board shall be filled as follows :

a) In cases of a Director who has been appointed or designated by [Name of JV Partner] vacating his office as a Director for any reason, the person designated or selected by [Name of JV Partner] shall be appointed to fill the casual vacancy.

b) In case of Director who has been appointed or designated by PSEB vacating his office as Director for any reason, the person designated or selected by PSEB shall be appointed to fill the casual vacancy.

7) If a Director nominated by a party is unable to attend meetings of the Board of Directors of the Company, the concerned party, as the case may be, shall be entitled to nominate in his place an alternate director as per the provisions of section 313 of the Company shall duly appoint as alternate Directorate the person so nominated by the party concerned.

8) The Board of Directors of the Company shall meet from time to time (at least once each quarter in a year) for the purpose of determination and dealing with policy matters affecting the business and affairs of the Company.

9) Except when the exigencies of business otherwise warrant or otherwise a shorter notice is mutually agreed to, not less than 10 (Ten) clear days notice for a meeting of the Board shall be given to all directors.

10) All the Parties individually on their behalf and on behalf of their affiliates and nominees undertaken with each other as follows :

a) To exercise all voting rights and powers available to them in relation to the Company so as to give full effect to the terms and conditions of this agreement including, where appropriate, the carrying into effect of such terms as if they were embodied in the Company's Memorandum and Articles of Association.

b) To ensure that the directors nominated by them and other representatives shall support and implement all reasonable proposals which come before the general meetings, board meetings or committee meetings of the Company for the proper development and conduct of the business as contemplated in this agreement ; and

c) Generally to use all reasonable endeavours to promote the business and the interests of the Company.

11) If financial institutions/banks as a condition of lending to the Company require the appointment of their nominee as a Director for the period their loans are outstanding, the Parties hereby agree to appoint such nominee as an additional Director.

12) The Management of day-to-day affairs of the Company shall be vested with the Management Director under the supervision, direction and control of the Board. The Board shall be responsible for the overall policy matters and the supervision of the conduct of the business, affairs and operations of the Company.

13) Subject to the other provisions of this Agreement, the quorum for the meetings of the Board shall be at least two nominee directors from each of the Parties. Subject to the other provisions of this Agreement , if such quorum is not present the meeting shall be adjourned to the same day and the same time in the following week and in such adjourned meeting the directors may transact the business even if the quorum mentioned above is not present.

14) Subject to the other provisions of this Agreement, the decisions in the meetings of the Board of Directors shall be valid and effective if approved by majority of the directors present and voting in the meeting.

15) Each Director shall have one vote. However, in the event of a lie, the Chairman shall have a second or a casting vote at meetings of the Board or the meeting of the shareholders where the Chairman presides :

16) The Directors of the Company shall not be required to hold any qualification shares

17) Within ten days of the formation of the company, the Board of Directors shall recommend to the shareholders the passing of the following as a special resolution.

"IT WAS RESOLVED that the Articles of Association of the Company be and are hereby amended by adding the following as Article……

The provisions of the Agreement on Coal Mining Project Through A Joint Venture date of [ ] made between the principal shareholders of the Company, a copy of which is attached to this resolution and marked **appendix 'A'**, shall be read as part of the articles of association of the Company and in case of any conflict or inconsistency between the provisions of this agreement and the provisions of these Articles, the provisions of this agreement shall prevail".

18) The Parties shall exercise all voting rights and powers available to them in relation to the Company so as to give full effect to the above resolution within 10 days of the above recommendation.

19) The Parties undertaken with each other as follows :

a) To exercise all voting rights and powers available to them in relation to the company so as to give full effect to the terms and conditions of this Agreement, including where appropriate, the carrying into effect of such terms as if they were embodied in the Company's Memorandum and articles of Association.

b) To ensure that the directors nominated by them shall support and implement all reasonable proposals which come before the general meetings, board meetings or committee meetings of the Company for the proper development and conduct fo the business as contemplated in this Agreement;

c) Generally to use all reasonable endeavors to promote the business and the interests of the Company.

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6. BUSINESS OF THE COMPANY

1. To achieve the main objects of the Company as mentioned in Article 3 of this Agreement. [NAME OF JV PARTNER] shall assist the Company in obtaining mining lease(s) of the mine(s) from the concerned state Government where the mining block(s) are located. [NAME OF JV PARTNER] shall make all efforts to select a mine of Grade C or D.

2. [NAME OF JV PARTNER] shall also assist the Company in obtaining the requisite approvals from Government of India, for the achieving the main objects of the Company.

3. Except as the parties may otherwise agree in writing, the parties shall exercise their powers as shareholders and cause the exercise of the powers by their nominees in the Board Meetings so as to ensure that :-

   (a) The Company carries on and conducts its business and affairs in a proper and efficient manner ;

   (b) The Company transacts all its business on arm's length basis;

   (c) The Company does not enter into any agreement restricting its competitive freedom to take goods and services by such means and from such persons as it most efficient;

   (d) The business of the Company is carried on pursuant to the policies laid down from time to time by the Board of Directors;

   (e) The Company maintains proper and adequate insurance against all risks usually insured against by companies carrying on the same or similar business;

   (f) The Company undertakes the activities in accordance with the provisions of the applicable laws, rules, regulations, orders;

   (g) The Company keeps books of account and therein makes true and complete entries of all its dealings and transactions of and in relation to its business.

4. [Name of JV Partner] shall be responsible for allotment of mining block within six months from the date of formation of JVC. This period can be extended further upto six

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months. If the allotment of mining block is delayed from twelve months from the date of formation of JVC plus extension in period allowed by PSEB if any, [Name of JV Partner] shall have to pay penalty at the rate of Rs 10 Lacs (Ten Lacs) per month or part thereof for the delay period. If the allotment is further delayed, PSEB shall have the right to terminate the JV agreement without any liability to PSEB and the performance Guarantee submitted by the company towards security deposit shall be got en-cashed by PSEB and entire amount forfeited.

Similarly [Name of JV Partner] shall be able to start mining of coal within three years from the date of allotment of mining block. If the mining of the coal is delayed from three years, from the date of allotment of mining block the successful bidder shall have to pay penalty at the rate of Rs 10 Lacs (Ten Lacs) per month or part thereof for the delayed period.

5. [NAME OF JV PARTNER] shall submit monthly reports to PSEB (in the form to be mutually agreed to between the parties) on the progress of work on the PSEB Coal Mines.

6. [NAME OF JV PARTNER] shall ensure that the coal produced from PSEB Coal Mines of a size below 200 mm, having an ash content of less than 34% and with a Grade ranging from A to F ("Specified Coal") shall be supplied, transported and delivered wholly and exclusively to the power stations of PSEB. For this purpose, the requisite coal handling plant or any other equipment required shall be installed or otherwise procured by [NAME OF JV PARTNER] but without any implication on the price to be paid by PSEB to the Company for the coal supplied to it. Non-compliance of this clause shall be dealt with in accordance with the provisions of the Coal Supply Agreement.

7. Specified Coal shall be dispatched to the power stations of PSEB by Railway Wagons/Road, provided that beyond a distance of 20 Kms coal shall be transported only through rail. For this purpose, the railway siding and any other equipment required shall be arranged by [NAME OF JV PARTNER] but without any implication on the price to be paid by PSEB to the Company for the Coal supplied to it.

8. The freight shall initially be borne by the Company and then reimbursed by PSEB within 10 days of the raising of the bills by the Company which shall be equal to the amount of freight charged by the Railways for the distance between the point at which the coal was loaded on the rail and the point at which coal is delivered to the power stations of PSEB. The charges for transportation of coal by road shall be an integral part of the coal bills and shall be paid by PSEB as per the rates charged by Coal India for road transportation for the same distance subject to a maximum of 20 Kms. The bills for the rail freight shall be raised by the Company on the first day of the week. Any demurrage charges due to delay at Mines will be borne by JVC and that at Power Plant end will be

borne by PSEB. Any pilferage of coal during transportation of coal from Mines to Power Plant will be on account of JVC.

9. [NAME OF JV PARTNER] shall ensure that the coal raised from the PSEB Coal Mines shall not be supplied transported or delivered to any person/entity other than PSEB.

10. The Company shall provide an undertaking to the Ministry of Coal, Government of India that the coal produced from the PSEB Coal Mines shall be wholly and exclusively supplied, transported and delivered to PSEB.

11. [NAME OF JV PARTNER] shall ensure that the Company shall supply the Specified Coal to the power stations of PSEB without any interruption and shall maintain quality of supply as required.

12. PSEB shall purchase the entire quantity of Specified Coal supplied (subject to a maximum of 18 million tones per annum, which quantity can be increased upon mutual consent of the parties) to it at a price calculated in the following manner.

$P = \{BP_{CIL} (100-D)/100)\} + F + T + S$

Where,

P = the total price to be paid by PSEB to the Company for the Specified Coal supplied to it (expressed in Rs./tonne)

BP_{CIL} = the Base price (Expressed in Rs. /tonne) as on the date on which the coal was

delivered to PSEB, for the Grade of coal supplied to it at power plant end. The base price will be the base price of the grade of coal as stipulated by the CIL subsidiary, under whose controlling area the allotted block is falling.

D = the following discount factor to be allowed by the Company to PSEB on BPCIL for the Grade of coal supplied to PSEB (expressed as a number.)

Grade of Coal	Discount Factor
A	To be filled up
B	To be filled up
C	To be filled up
D	To be filled up
E	To be filled up
F	To be filled up

(Note: No 'G' Grade Coal will be accepted by PSEB)

F = the freight payable by PSEB to the Company for the coal supplied to PSEB which freight amount shall be determined as per the provisions of clause 7 of this Article (expressed in Rs./tonne)

T = the cess, royalty, taxes or duties (but excluding any tax on Income) levied on the coal produced, supplied, transported or delivered to PSEB from PSEB Coal Mines (expressed in Rs./tonne)

S = Sizzing charges specific to the coal size as per CIL norms * 0.85.

13. PSEB shall pay the price of Coal determined the Quantity and quality received as per the quantity and quality determined at the receiving end of the respective power stations of PSEB. The quantity and quality shall be determined as per joint sampling at the power station end, the procedure for which shall be laid down in the Coal Supply Agreement. Even if the JVC has to wash coal for improving the coal quality, the payment will be made by PSEB against receipt of coal at Power Plant end (both quality and quantity wise).

14. The Company shall submit bills related to the past supply of coal on the first day of every fortnight. 90% payment shall be made within 30 days from the date of submission of bills and balance 10% within a fortnight from the verification of quality and quantity of Specified Coal supplied.

    Note : The rail freight bills as per actual shall be paid separately as per clause 7 of this article.

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7. FUNDING

Subject to other provisions of this Agreement. [Name of JV Partner] as the selected bidder shall ensure that the Company raises capital and other finances required for the business of the Company. The [Name of JV Partner] shall not require PSEB to undertake or be a party to any guarantee obligation or otherwise give any security or assurance for such raising of finance or funds.

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8. MATTER REQUIRING CONSENT OF PSEB

The Company and the Board of Directors or Shareholders of the Company shall not give effect to any decision or resolution in respect of any of the following maters except upon the affirmative vote of PSEB in the shareholders meeting :

(a) Any amendment to the Memorandum or Article of Association of the Company or any charge or modification in the rights of the parties/shareholders.
(b) Dissolution, liquidation or winding up of the Company
(c) Commencement of any new business or any diversification from the core business of the Company.
(d) Merger or amalgamation with any other entity or split/division of the Company
(e) Closure of the business or activities of the Company or sale or transfer of any of its undertaking
(f) Entering into any new business arrangement
(g) Engagement into any new business arrangement
(h) Engagement of any agency/person for producing coal from PSEB Coal Mines or for supplying, transporting or delivering such coal to PSEB.
(i) Subscription for or acquisition of any shares, debentures or securities or interest in any , other entity
(j) Sale or disposal of the coal or waste produced from the PSEB Coal Mines which does not meet the specifications of Specified Coal
(k) Utilisation of the assets or interest of the Company for any purpose other than the business of the Company, and
(l) Giving Corporate Guarantee for any, person or business.

DRAFT

9. OBLIGATION OF THE PARTIES

The parties shall at their own cost and expense observe, undertake, comply with and perform in addition to and not in derogation of their obligations elsewhere set out in this Agreement, the following:

Obligation of PSEB

1. Observe and comply with its obligations set forth in this Agreement;

2. It shall apply to the Central and the relevant State Government for the allotment of the PSEB Coal Mines.

3. It shall purchase the Specified Coal supplied to it as per the terms agreed to in the Coal Supply Agreement.

Obligation of [NAME OF JV PARTNER]

1. The JOINT VENTURE PARTNER agrees, undertakes and assures *PSEB* that they will promote a JVC under the provision of Companies Act, 1956 in terms of this Agreement and the Bid Document submitted within 60 (sixty) days from the signing of this Agreement.

2. THE JOINT VENTURE PARTNER hereby agrees and undertakes to *PSEB* that upon formation of JVC all benefits, obligations and responsibilities including the benefits and obligations of the Bank Guarantees to be issued on behalf of the JOINT VENTURE PARTNER in favour of *PSEB* will be transferred and vested unto the JVC as if this Agreement has been entered into by and between JVC and *PSEB* and similarly *PSEB* will be entitled to enforce any of the provisions of this Agreement against JVC for fulfillment and performance by the JOINT VENTURE PARTNER and/or the JVC as the case may be in terms of this Agreement

   The JOINT VENTURE PARTNER hereby further agrees and undertakes that the JOINT VENTURE PARTNER will take all necessary actions to get the benefits, obligations and responsibilities transferred and vested unto the JVC in proper manner upon payment of Govt. duties, fees, taxes as applicable.

3. The JOINT VENTURE PARTNER hereby expressly agree that upon formation of the JVC all the terms, conditions, covenants and provisions contained in this agreement shall be applicable and enforceable by or against the JVC in its true spirit and context.

4. The JOINT VENTURE PARTNER hereby expressly agree that until formation of the JVC the financial and performance obligation and responsibility of the JOINT VENTURE PARTNER towards *PSEB* shall be joint and several notwithstanding anything contained in any of the internal agreement amongst the Joint Venture Partners in contrary to the terms of this Agreement.

5. The JOINT VENTURE PARTNER agrees, undertakes and assures that they shall not transfer their respective shares in the JVC in favour of any Third Party for any reason whatsoever. Provided however any of the Joint Venture Partners may transfer their shareholding in favour of others of them with prior approval in writing from *PSEB*.

6. The JOINT VENTURE PARTNER agrees and undertakes to *PSEB* that upon formation of the JVC if required by *PSEB*. The JOINT VENTURE PARTNER will cause to enter into supplemental or modified agreement/s by JVC to this effect.

7. It shall arrange for the identification of mining block(s), the acquisition of private land and allotment of vested lands by the State Government required for mining operation and PSEB will render assistance, if required.

8. It shall ensure that the best possible mining blocks get allotted in favour JVC and JVC should ensure supply of less than 34% ash content coal to PSEB power plants.

9. It shall incorporate the Company within one month of the date of signing of this Agreement or such other time as may be mutually agreed to between the parties, provided the [Name of JV Partner] shall obtain the prior approval of PSEB for the Memorandum and Articles of Association of the Company.

10. It shall be solely responsible for arranging the necessary finance required for the mining operations including capital investments and shall arrange to fund all losses of the Company.

11. It shall arrange for the manpower and the equipment required for meeting the objectives laid out under Article 3 of this agreement and shall have the sole responsibility of operation and control management, safety aspect, personnel employed and equipment deployed

except the employment of the statutory work personnel which will be done by the Company.

12. It shall ensure that the Company shall strictly adhere to the general instructions issued by the State Government or the Central Government from time to time in respect of production of coal from PSEB Coal Mines and supply, transport and delivery of such coal wholly and exclusively to PSEB.

13. It shall procure the necessary technical knowhow required for producing coal and shall obtain all necessary data, sanctions, and approvals and arrange for any other infrastructure required for the mining operation from the concerned agencies and authorities.

14. It shall not prefer any financial or other claim against PSEB in case the allotted mining block is found to be financially unviable at a later date. Provided further in such a case, PSEB shall be absolved of all responsibilities/liabilities;

15. Within one month of the date of signing of this Agreement, [NAME OF JV PARTNER] shall provide PSEB with a PERT chart indicating the various activities required and the time frame proposed for meeting the main objects of the Company as provided in the Article 3 of this Agreement. [NAME OF JV PARTNER] shall also submit monthly reports of PSEB (in the form to be mutually agreed to between the parties) on the progress of work on the PSEB Coal Mines;

16. It shall ensure that the supply of the required quantities of Specified Coal (as per the Coal Supply Agreement) to PSEB Coal Mines shall commence within a reasonable period but not exceeding 48 months after PSEB receives allotment of the mining block(s);

    [Name of JV Partner] shall be responsible for allotment of mining block within **6 months** (Extendable for another 6 months) from the date of formation of JVC and shall be able to start production of coal within **3 years** from the date of allotment of mining block.

17. It shall ensure that the coal produced from PSEB Coal Mines is supplied, transported and delivered wholly and exclusively to PSEB.

18. It shall ensure the uninterrupted supply of the required quantity of Specified Coal to PSEB;

19. It shall provide the necessary assistance to the Company for undertaking the list of activities as detailed in clause 4 of Article of this Agreement.

20. It shall ensure the compliance of all statutory laws related to Coal Mining activities including safely aspects viz. Labour Laws, Provident Laws, Protection & Environment Laws, Income Tax Laws and shall Indemnify PSEB in all aspects.

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10. WEIGHMENT OF COAL

The basis of measurement of Coal will be the measurement as recorded in the Weigh Bridge at Power Station. For billing purpose weighment will be done at power plant end. If JVC wants to depute any representative for recording of weighment of coal at Power Plant end, will be allowed to depute.

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11. ASSESSMENT OF QUALITY OF COAL

The basis of determination of grades of coal will be on as received basis at Power Plant end. The Coal sampling and testing will be done at power plant end following the procedures mutually agreed between JSEB and [*JV Partner*]. Otherwise, Coal Samples will be collected from all the rakes / trucks. All coal sampling will be done as per IS norm **(IS: 436 (Part I/ Sec I) – 1964 and subsequent amendments thereof)**. After collection of coal samples, the samples will be prepared through crushing, quartering and coning upto 72 mesh. Proximate Analysis will be done for all coal samples at Power plant end. If JVC wants, can depute their own representative to oversee the whole process at Power Station.

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12. PAYMENT FOR COAL PURCHASED BY PSEB

All payments against receipt of coal from JVC will be based on the quantity and quality of coal as received by PSEB at Power Stations.

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13. SECURITY

1. The Joint Venture Partner will furnish irrevocable un-conditional revolving performance guarantee of Rs.10 crores to PSEB before signing of JV agreement , as security for the performance of his obligation which shall remain valid and enforce at all times till the termination of the JV Agreement.

2. Failure of the Joint Venture Partner to provide the Bank Guarantee, shall entitle *PSEB* to terminate this Agreement Upon formation of the JVC, the JOINT VENTURE PARTNER shall take necessary steps with the bank to confirm that such guarantee will be continued on behalf of the JVC alternatively they will arrange to furnish a fresh Bank Guarantee in lieu of the existing Bank Guarantee.

3. In the event of Joint Venture Partner being in default in the due and faithful performance of its obligations under this Agreement and within the Development period and failing to remedy such default within the Cure Period, the *PSEB* shall without prejudice to its other rights and remedies hereunder be entitled to en-cash and appropriate this Development Bank Guarantee as Damages for such default Upon such encashment and appropriation of the Bank Guarantee, *PSEB* shall grant a period of 15 (fifteen) days to the Joint Venture Partner to provide fresh Bank Guarantee (amount of which will be decided subsequently) and the Joint Venture Partner shall within the time so granted furnish to *PSEB* such Bank Guarantee failing which *PSEB* shall be entitled to Terminate this Agreement.

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14. REPRESENTATIONS AND WARRANTIES

PSEB hereby represents and warrants to and agrees with Joint Venture Partneras follows and acknowledges and confirms that Joint Venture Partnerare relying on such representations and warranties in connection with the transactions described in this Agreement.

1. It has all requisite power authorizing and has been duly authorized to execute and consummate this Agreement.

2. This Agreement is enforceable against it in accordance with its terms.

3. The consummation of the transactions contemplated by this Agreement on the part of PSEB will not violate any provision of nor constitute a default under, nor give rise to a power to cancel any charter, mortgage, deed of trust or lien. Lease, agreement, license, permit, evidence of indebtedness, restriction, or other contract to which PSEB is a party or to which PSEB is bound which violation default or power has not been waived;

4. It shall agree to the modification of the terms and conditions of this agreement in case it is necessary to meet the requirement, if any, of the Central or State Governments ;

5. *PSEB* is duly organised and validly existing under the laws of India;

6. *PSEB* has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;

7. *PSEB* has taken all necessary action to authorise the execution, delivery and performance of this Agreement;

8. This Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof; and

9. *PSEB* is subject to civil and commercial laws of India with respect to this Agreement and it hereby expressly and irrevocably waives any sovereign immunity in any jurisdiction in regard to matter set forth in this Agreement.

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Joint Venture Partner here by represent and warrant to and agree with PSEB as follows and acknowledges and confirms that PSEB is relying on such representations and warranties in connection with the transactions described in the Agreement;

1. JOINT VENTURE PARTNER has all requisite power authorizing and has been duly authorized to execute and consummate this Agreement;

2. This agreement is enforceable against them in accordance with its terms;

3. The consummation of the transactions contemplated by this Agreement on the part of Joint Venture Partner will not violate any provision of nor constitute a default under, nor give rise to a power to cancel any charter, mortgage, deed of trust or lien, lease, agreement, license, permit, evidence of indebtedness, restriction or other contract to which JOINT VENTURE PARTNER is a party or to which Joint Venture Partner is bound which violation, default or power has nor been waived;

4. They shall fully comply within obligations laid down in this agreement.

5. They shall agree to the modification of the terms and conditions of this Agreement in case it is necessary to meet the requirement, if any, of the central or State Governments;

6. Joint Venture Partner have agreed to provide to the Company on an ongoing basis proper professional management and support and for this purpose Joint Venture Partner shall be bound by the representation given by them.

7. It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation;

8. It has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby:

9. It has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorize the execution, delivery and performance of this Agreement;

10. It has the financial standing and capacity to undertake the Project;

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11. This Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;

12. It is subject to civil and commercial laws of India with respect to this Agreement and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof;

13. All the information furnished in the Bid is, and shall be, true and correct as on the date of signing of this Agreement and the Balance Sheet and Profit and Loss Account of the Joint Venture Partner for each of its Accounting Years after this date furnished to *PSEB* shall give true and fair view of the affairs of the Joint Venture Partner.

14. It shall furnish a copy of the audited accounts of the Company within 120 (one hundred twenty) days of the close of its each Accounting Year after the Appointed Date and any material change subsequent to the date of such accounts shall be notified to *PSEB* by the Joint Venture Partner within 30 (thirty) days of its occurrence and warrants that the accounts and the information furnished as aforesaid shall be true and correct.

15. The execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Memorandum and Articles of Association of the Joint Venture Partner or any member of the consortium or any Applicable Laws or any covenant, agreement, understanding, decree or order to which, it is a party or by which it or any of its properties or assets is bound or affected.

16. There are no actions, suits, proceedings, or investigations pending or, to the Joint Venture Partner's knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi judicial or other authority, the outcome of which may result in the breach of or constitute a default of the Joint Venture Partner under this Agreement or which individually or in the aggregate may result in any Material Adverse Effect on its business, properties or assets or its condition, financial or otherwise, or in any impairment of its ability to perform its obligations and duties under this Agreement;

17. It has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Governmental Agency which may result in any Material Adverse Effect on its

financial condition or its ability to perform its obligations and duties under this Agreement.

18. It has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other Civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect on its financial condition or its ability to perform its obligations and duties under this Agreement;

19. No representation or warranty by the Joint Venture Partner contained herein or in any other document furnished by its to *PSEB* or to any Governmental Agency in relation to Applicable Permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading; and

20. It warrants that no sums, in cash or kind, have been paid or will be paid by or on behalf of the Joint Venture Partner, to any person by way of fees, commission or otherwise for securing the Contract or entering into of this Agreement or for influencing or attempting to influence any officer or employee of *PSEB*, GOI or GOP in connection therewith.

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15. FINANCIAL POLICY, ACCOUNTS AND AUDIT

1. [NAME OF JV PARTNER] shall cause the Company to prepare all financial, budgetary and operational accounts, reports and reviews in accordance with generally accepted accounting norms followed in India and as required by applicable Indian laws and regulations;

2. [NAME OF JV PARTNER] shall cause the Company to prepare its final accounts as required under the Companies act; 1956 in accordance with the Indian accounting standards ;

3. The financial year of the Company unless otherwise mutually agreed between the Parties, shall be from 1st April to 31st March every year;

4. The Parties hereto and the nominee Directors of the parties hereto on the Board of the Company shall receive quarterly financial statements relating to the operations and activities of the company including un-audited balance sheets, profit and loss statements and cash flow statements which are desired by the Board. Further, the Parties and their nominee Directors shall also receive monthly reports on the quantity of coal (separate details shall be provided for Specified Coal produced and other produce which was not Specified Coal) produced from the PSEB Coal Mines and the quantity of Specified Coal supplied to PSEB during the month.

5. The tax accounting practices adopted by the Company shall in determined by allocable Indian regulations including the Income Tax Law governing Limited Companies in India and customs and practices so as to secure the maximum benefit;

6. The Company shall duty pay taxes in accordance with the stipulations of Indian law and other relevant regulations;

7. PSEB shall have access to all the books of accounts of the Company at all times.

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16. PROFIT DISTRIBUTION

The Company shall declare dividend out of the net surplus profit after deductions of all relevant Income Tax and other taxes and after providing for such reserves and deductions as may be required by law or otherwise as may determined by the Board of Directors of the Company from time to time in accordance with prudent financial practices and business requirements.

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17. RELATIONSHIPS BETWEEN THE PARTIES

Nothing in this Agreement shall be deemed to constitute a partnership or agency relationship between the parties and neither party shall have any authority to bind or obligate the other party in any manner whatsoever in relation to third parties.

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18. ASSIGNMENT

1. PSEB shall at all times have the right to assign its rights, benefits and obligations under the Agreement and also convey, transfer and vest all the shares held by the PSEB in the Company together with all beneficial interest in the shares to any of entity or entities as PSEB may from time to time direct (hereinafter called the Successor entity(ies) as a part of re-organisation or restructuring of electricity industry in the State or otherwise as a part of the re-organisation of shareholding and/or interest held by government corporations, companies and bodies corporate in the state.

2. In case of assignment specified as above the term PSEB referred to in this Agreement shall for all intent and purposes, mean and include such successor entity(ies).

3. [NAME OF JV PARTNER] shall not be entitled to assign the rights, benefits and or/obligation's of this Agreement to any other person and shall not be entitled to transfer or vest the shares held by it in the Company to any other person/entity.

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19. DISCLAIMER

1. The Joint Venture Partner acknowledges that prior to the execution of this Agreement, the Joint Venture Partner has after a complete and careful examination made an independent evaluation of the site conditions and all the information provided by *PSEB* and has determined to the Joint Venture Partner's satisfaction the nature and extent of such difficulties, risks and hazards as are likely to arise or may be faced by the Joint Venture Partner in the course of performance of its obligations hereunder.

2. The Joint Venture Partner acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters and hereby confirms that *PSEB* shall not be liable for the same in any manner whatsoever to the Joint Venture Partner.

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20. FORCE MAJEURE

1. If the performance of either Party to this agreement or of any obligation hereunder is prevented by reason of force majeure such as ;

   I. War, revolution, blockade or the like;

   II. Any law, order, proclamation, regulation, ordinance, demand or requirement having legal effect of any government ; or

   III. Any other event beyond the reasonable control of the party affected

   then the party so affected shall upon giving prior written notice to the other be excused from such performance to the extent that such cause prevents, restricts or interferes with it provided that it shall use its best endeavour to avoid or remove such cause of non-performance hereunder whenever such causes are removed.

2. Upon such prevention, restriction or interference as aforesaid arising the Parties shall meet forthwith to discuss what modifications (if any) may be required to the terms of this agreement in order to arrive at an equitable solution.

3. The Parties hereby clarify and agree that the force majeure shall not in any manner absolve them from their subsisting financial obligations.

4. **Duty to Report:** The Affected Party shall discharge the following obligations in relation to reporting the occurrence of a Force Majeure Event to the other Party:

   a. The Affected Party shall not claim any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party in writing of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event within 7 (seven) working days after the Affected Party knew, or ought reasonably to have known, of its occurrence and the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

   b. Any notice shall include full particulars thereof;
      i. the nature and extent of each Force Majeure Event which is the subject of

any claim for relief.;

ii. the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;

iii. the measures which the Affected Party is taking or proposes to take, to alleviate the impact of such Force Majeure Event, and

iv. any other information relevant to the Affected Party's claim.

c. For so long as the Affected Party continues to claim to be affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) written reports containing information as required and such other information as the other Party may reasonably request the Affected Party to provide.

5. **Excuse from performance of obligations:** If the Affected Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure Event, it shall be excused from performance of such of its obligations to the extent it is unable to perform on account of such Force Majeure Event provided that:

a. The suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;

b. The Affected Party shall make all reasonable efforts to mitigate or limit damage t the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence, and

c. When the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party written notice to that effect and shall promptly resume performance of its obligations hereunder.

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21. CHANGE IN LAW

During the period of AGREEMENT if any new Act, Rule, Regulation and Order come into force, which is applicable to the Mine, The JOINT VENTURE PARTNER will be duty bound to implement the same without delay.

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22. COST AND EXPENSES

Unless mutually agreed otherwise, each party shall bear its own costs and expenses in connection with the agreement and steps taken in furtherance of the business contemplated by this agreement until the date of execution of this Agreement.

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23. MUTUAL CO-OPERATION

1. The Parties to this agreement shall exercise their rights and shall cause their representatives and nominees on the Board of Directors of the Company, to do and perform all acts, deeds and things as may be necessary or expedient to give effect to the terms of this Agreement.

2. Each of the parties hereto undertakes with the other

   a) To perform and observe and so far as it is able by the exercise of voting rights or otherwise so to do to procure that the Company will perform and observe all the provisions of this Agreements;

   b) To take all necessary steps on its part to give full effect to the provisions of this Agreement;

   c) Without prejudice to the generality of the foregoing to exercise and procure that every person for the time being representing it will exercise or refrain from exercising any voting rights at any meeting of the members or of the directors of the Company so as to ensure the passing of any and every resolution necessary or desirable to procure that the affairs of the Company are conducted in accordance with this Agreement and otherwise to give full effect to the provisions of this Agreement.

3. In entering into this Agreement, the parties recognize that it is impractical to provide for every contingency that may arise in the course of the performance thereof. Accordingly, the Parties declare it to be their intention that this agreement shall operate between them in accordance with terms and conditions laid down in the agreement and with fairness and without detriment to interest of any them and if in the course of the performance of this Agreement, unfairness to any party hereto shall be manifest, they will use their best endeavours to remove the cause or causes of the same under the scope of this Agreement.

DRAFT

24. LIABILITY AND INDEMNITY

1. General Indemnity

(a) The Joint Venture Partner will indemnify, defend and hold *PSEB* harmless against any and all proceedings, actions and, third party claims for loss, damage and expense of whatever kind and nature arising out of the design, engineering, construction, procurement, Operation, safety, environment, Maintenance and Closure of the Coal Block to be allotted, or arising out of a breach by Joint Venture Partner and/or its officers, servants agents, subsidiaries, sub Joint Venture Partners and other related parties of any of its obligations under this Agreement except to the extent that any such claim has arisen due to *PSEB* Event of Default. Upon formation of JVC, the JOINT VENTURE PARTNER ensures that JVC will execute similar indemnity in favour of *PSEB* in conformity with this clause.

(b) *PSEB* will indemnify, defend and hold harmless the Joint Venture Partner against any and all proceedings, actions, third party claims for loss, damage and expense of whatever kind nature arising out of defect in title and/or the rights of *PSEB* in the land comprised in the Site adversely affecting the performance of the Joint Venture Partner's obligations under this Agreement and/or arising out of acts done in discharge of their lawful functions by *PSEB*, its officers, servants, agents, subsidiaries and Joint Venture Partners ("*PSEB* Indemnified persons") including *PSEB* Events of Default except to the extent that any such claim has arisen due to a negligent act or omission, breach of contract or breach of statutory duty on the part of Joint Venture Partner, its Subsidiaries, affiliates, Joint Venture Partners, servants or agents including due to Joint Venture Partner Event of Default. Upon formation of JVC, the JOINT VENTURE PARTNER ensures that JVC will execute similar indemnity in favour of *PSEB* in conformity with this clause.

(c) The JOINT VENTURE PARTNER hereby agrees to indemnify and keep the *PSEB* safe and harmless from any loss or damage to the *PSEB* suffered by reason or any action of JOINT VENTURE PARTNER in connection with the mining work carried out by the JOINT VENTURE PARTNER in terms of these presents. Upon formation of JVC, the JOINT VENTURE PARTNER ensures that JVC will execute similar indemnity in favour of *PSEB* in conformity with this clause.

1. Indemnification Procedures:

(a) In the event any third party makes a claim or commences any action or proceeding against PSEB and the Company, with respect to any matter specified in clause 1 above as to which such party intends to seek indemnification, PSEB and the Company shall promptly notify [NAME OF JV PARTNER]& the Party of the Third Part from which such

indemnification is to be sought of the existence of such claim or the commencement of such action or proceeding;

(b) [NAME OF JV PARTNER] shall have the right, upon receipt of notice from PSEB and the Company of the existence of such claim or the commencement of any such third party action or proceeding , to undertake and direct the defense of such claim, action or proceeding at any time by delivering to PSEB or the Company, as the case may be ;

(i) Written notice of such undertaking;

(ii) Written admission of complete liability for indemnification with respect to any such claim, action or proceeding; and

(iii) Written consent to be joined as a party to any such action or proceeding or in any action or proceeding resulting from such claims.

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25. MISCELLANEOUS

Confidentiality

Unless required by Law, the parties hereto undertake not to disclose to anybody for whatsoever reasons details of operations and know-how and secret mining process or any other technical information during the period of subsistence of this Agreement without the expressed consent of the other parties concerned except, so far as it is necessary for the normal working of the company. All maps, drawings, processes, specifications & technical knowhow provided by the consultants or otherwise obtained shall become exclusive property of the company. After dissolution of the company, the said documents shall become exclusive property of PSEB.

Severability

If for any reason whatsoever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties shall negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under this Agreement or otherwise.

Waiver

a. Waiver by either Party of any default by other Party in the observance and performance of any provision of or obligations of or under this Agreement

    i. shall not operate or be construed as a waiver of any of other or subsequent default hereof or of other provisions of or obligations under this Agreement;

    ii. shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and

    iii. shall not affect the validity or enforceability of this Agreement in any manner.

b. Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation there under, nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach of acceptance of any variation or the relinquishment of any such right

hereunder.

Headings

The headings of the Articles and Clauses of this agreement are inserted for convenience only and shall not be deemed to constitute a part hereof.

Counterparts

More than one counterpart of this Agreement may be executed by the Parties or different counterparts may be executed by different Parties and all such counterparts shall be deemed originals and shall be deemed to be a single Agreement.

No Partnership etc.

Nothing in this Agreement and no action taken by the Parties pursuant to this Agreement shall constitute or be deemed to constitute a partnership between the Parties nor constitute any Party the agent or another Party for any purpose.

Language

All notices required to be given by one Party to the other Party and all other communications, documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.

Exclusion of Implied Warranties etc.

This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties or any representation by either Party not contained in a binding legal agreement executed by both Parties.

Entire Agreement:

This Agreement and the Annexures together constitute a complete and exclusive statement of the terms of the Agreement between the Parties on the subject hereof and no amendment or modification hereto shall be valid and effective unless expressly previously approved in writing by both Parties and executed by the person expressly authorised by a resolution or notification of both Parties in this behalf.

Amendments

All amendments to this Agreement shall be effective only if made in writing and mutually agreed by both parties.

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26. GOVERNING LAW AND JURISDICTION

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India and the Courts at Chandigarh, India only shall have jurisdiction over all matters arising out of or relating to this Agreement.

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27. Notices

(a) Any notice or other communication to be given by one party to another under, or in connection with the matters contemplated by this Agreement shall -

(i) be in writing, to be written in English language;

(ii) be delivered by hand and additionally sent by facsimile and/or by registered acknowledgment due prepaid post or recognised courier;

(iii) ontain the name of the person designated to whom such notice are to be addressed.

Notices shall be addressed as follows :

If to PSEB, to :
The Chief Engineer
Thermal Design
Punjab State Electricity Board
Thermal Shed – T-2
Near railway Crossing No. 22
Patiala 147001
Punjab, India

If to [NAME OF JV PARTNER], to :

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28. DISPUTE RESOLUTION AND ARBITATION

1. Amicable Resolution

a. Save where expressly stated to the contrary in this Agreement, any dispute, difference or controversy of whatever nature, howsoever arising under, out of or in relation to this Agreement including completion of the Trans Damodar Sector Coal Block Project between the Parties and so notified in writing by either Party to the other (the "Dispute") in the first instance shall be attempted to be resolved amicably in accordance with conciliation procedure set forth in Sub-clause (b) below.

b. In the event of any Dispute between the Parties, either Party may call upon to the Chairman of *PSEB* and the Managing Director or the Board or Directors of the Joint Venture Company, for the time being for amicable settlement. Upon such reference, the said two Chairman shall meet not later than 7 (seven) days of the date of such request to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the said period or the Dispute is not amicably settled within 15 (fifteen) days of such meeting between the said two Chairmen, either Party may refer the dispute to arbitration

c. If the Dispute is not resolved as evidenced by the signing of the written terms of settlement within 30 (thirty) working days of the aforesaid notice in writing or such longer period as may be mutually agreed by the Parties then the matter shall be referred to arbitration.

2. Arbitration

a. If any question, difference or objection, whatsoever shall arise in any way connected with or arising out of this instrument or the meaning of operation of any part thereof for the rights, duties or liabilities of either party then save in so far as the decision or any such matter is herein before provided and has been so decided every such matter including whether its decision has been otherwise provided for and / or whether ir has been finally decided accordingly, or whether the contract should be terminated or has been rightly terminated and as regards the rights and obligations of the parties as the result of such termination shall be referred, for sole arbitration for the nominee of the Board, who in case of dispute involving an amount not exceeding Rs. 50,000.00 shall give a reasoned award and his decision shall be final and binding and where the matter involves a claim for the payment or recovery or deductions of money, only the amount, if any, awarded in such arbitration shall be recoverable in respect of the matter so referred. If the matter is not referred to arbitration within 180 days of the date of completion of work or payment

of the final bill whichever later all the rights and claims under the contract shall be deemed to have been forfeited and absolutely barred.

b. Upon every and such reference, the cost of and incidental to the reference and award and respectively shall be in the discretion of the Sole Arbitrator so appointed who may determine the account thereof or direct the same to be taxed as between solicitor and client or as between party and party and shall direct by whom and to whom and in what manner the same is to be borne and paid.

c. The work under the contract shall be continued during the arbitration proceedings and no payment due or payable by the purchaser / board shall be withheld on account of such proceedings.

IN WITNESS WHEREOF THE PARTIES HAVE CAUSED THIS AGREEMENT TO BE EXECUTED BY THEIR RESPECTIVE DULY AUTHORISED OFFICERS AS OF THE DATE SET FORTH ABOVE.

Signed on behalf of
PUNJAB STATE ELECTRICITY BOARD

WITNESSES:

1) Director (Projects) and
Dy. Chief Engineer, Thermal Design
Punjab State Electricity Board
Thermal Shed – T-2
Near railway Crossing No. 22
Patiala 147001,
Punjab, India

1) Dy. Director (Electricals) and
Dy. Chief Engineer, Thermal Design
Punjab State Electricity Board
Thermal Shed – T-2
Near railway Crossing No. 22
Patiala 147001,
Punjab, India

Signed on behalf of
[NAME AND ADDRESS OF JOINT VENTURE PARTNER]

WITNESSES :
[NAME AND ADDRESS]
1.
2.

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