
AMENDED AND RESTATED JOINT VENTURE AGREEMENT

BY AND BETWEEN

SIMBHAOLI SUGARS LIMITED

AND

SINDICATUM CAPTIVE ENERGY SINGAPORE PTE LIMITED

AND

SIMBHAOLI POWER LIMITED

Dated: December 6, 2011 and amended and restated December 13, 2012







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 **THIS AMENDED AND RESTATED JOINT VENTURE AGREEMENT** is made and entered at ~~New Delhi on December 06, 2011 and amended and restated~~ on December 13, 2012, ~~Singapore~~

BY AND BETWEEN:

 **SIMBHAOLI SUGARS LIMITED**, a company registered under the Companies Act, 1913, and having its registered office at Simbhaoli 245 207, District Hapur, Uttar Pradesh, India and corporate office at C-11, Connaught Place, New Delhi 110001, India (hereinafter referred to as "**SSL**", which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successors and permitted assigns);

AND

SINDICATUM CAPTIVE ENERGY SINGAPORE PTE LIMITED, a private limited company registered under the laws of Singapore, and having its registered office at 391B Orchard Road, #15-02 Ngee Ann City Tower B, Singapore 238874 (hereinafter referred to as "**SCES**", which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successors and permitted assigns)

AND

SIMBHAOLI POWER LIMITED, a company registered under the Companies Act, 1956, and having its registered office at Kothi No. 1, Power Division Compound, Simbhaoli-245 207, District Hapur, Uttar Pradesh, India (hereinafter referred to as the "**Company**", which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successors and permitted assigns).

SSL, SCES and the Company are hereinafter referred to collectively as the "**Parties**" and singly as a "**Party**".

WHEREAS:

- (A) SSL is one of the largest integrated sugar refining companies in India, and owns and operates 3 (three) sugar complexes located at Simbhaoli, Chilwaria and Brijnathpur in the state of Uttar Pradesh, India, with an aggregate sugarcane crushing capacity of 19,500 (nineteen thousand and five hundred) tonnes of cane per day and the group has alcohol production capacities of 210 (two hundred and ten) kilo litres per day.
- (B) SSL has a power plant at each of the three sugar plants located at Simbhaoli, Chilwaria and Brijnathpur, which produce power from bagasse generated as a by-product of SSL's sugarcane crushing operations at the sugar plants, and which together meet the entire power and steam requirement of the sugar plants during the crushing season, and also produce certain amount of surplus power generated at the power plants located at Simbhaoli and Chilwaria, which SSL sells to Uttar Pradesh Power Corporation Limited ("**UPPCL**").
- (C) SCES is promoted by Sindicatum Sustainable Resources, an investor in and operator of, clean energy projects, as a majority-owned subsidiary for the purposes of investing in such projects in India.

- (D) In respect of the two power plants (the "**Power Plants**") located at the Chilwaria and Simbhaoli sugar plants (the "**Sugar Plants**") SSL and SCES wish to enter into a joint venture for the purposes of (i) owning and operating the existing and identified Power Plant undertakings (as more fully defined below, the "**Power Undertakings**"); and (ii) installing new power generating sets (as more fully defined below, the "**New Power Generating Sets**") at each of the Power Plants and with the generation capacities set out in **Schedule I** (the "**New Installation Project**"), such that the Power Plants continue to meet the entire power and steam requirement of the Sugar Plants and also generate additional power which can be sold to third parties (such business shall collectively be referred to, together with the New Installation Project, as the "**Business**").
- (E) SSL and SCES wish to conduct the Business through the Company as the joint venture company, and in reliance thereof SSL has established the Company as a wholly-owned subsidiary into which it proposes to transfer the Power Undertakings and into which SCES wishes to invest in accordance with the terms of this Agreement (as defined hereinafter).
- (F) SSL, the Company and SCES had entered into a joint venture agreement dated December 6, 2011 ("**Original Joint Venture Agreement**") setting out the terms and conditions of the joint venture. The Parties now wish to amend and restate the Original Joint Venture Agreement.
- (G) The Parties intend to record the terms and conditions of their understanding in this Agreement (which amends and restates the Original Joint Venture Agreement.) under which the Parties agree to carry on the Business through the Company and their rights and obligations as its shareholders and joint venture partners and of the Company in connection therewith.

NOW IN WITNESS WHEREOF, in consideration of the foregoing premises and the mutual covenants herein contained and the representations and warranties of the Parties as provided in this Agreement, the Parties hereto agree as follows:

1. DEFINITIONS; RULES OF INTERPRETATION

- 1.1 **Definitions.** In this Agreement, the following words shall unless the context otherwise requires have the following meanings:

"Abandon"	means discontinuation of operations in the Sugar Season (as defined in the Bagasse Conversion Agreements) in excess of 60 (Sixty) days (other than on account of Force Majeure or reason beyond the control of SSL) with the express or implied intention on the part of SSL not to resume the operations;
"Affiliate(s)"	in relation to any Person means and includes any other Person which directly or indirectly Controls or is Controlled by or is under direct or indirect common Control with the first mentioned Person, and where a Person is an individual, it includes his spouse and his lineal ascendants and descendants. It is clarified that the Company shall not be regarded as an Affiliate of any Shareholder;

"Agreement"	means this Amended and Restated Joint Venture Agreement entered into by the Parties, including the Annexures, Schedules or Exhibits hereto, and includes any written modification hereto mutually agreed by the Parties;
"Appraiser"	means an independent party who, unless otherwise agreed by the Shareholders, shall be the Affiliate in India of any of the following accounting firms in India, namely, Price Waterhouse Coopers, Ernst & Young, Deloitte, or KPMG, and the SEBI-registered investment banking / merchant banking divisions of any major financial institution mutually agreed by the Shareholders;
"Approvals"	means and includes any and all approvals, authorisations, consents, licences, permissions, waivers, releases, exemptions or other approvals required by or under any applicable Law or contract;
"Approved Auditor"	means the Affiliate in India of any of the following accounting firms: Price Waterhouse Coopers, Ernst & Young, Deloitte Haskins & Sells, or KPMG;
"Articles" / "Articles of Association"	means the articles of association of the Company as amended/alterd from time to time;
"Bagasse Conversion Agreements"	means the bagasse conversion agreements to be entered into by SSL and the Company in respect of the conversion of bagasse to steam and power by each Power Plant and executed substantially in the form attached hereto as Part C(i) of Schedule XI and "Bagasse Conversion Agreement" means each and any one of them;
"Bagasse Supply Agreements"	means the bagasse supply agreements to be entered into by SSL and the Company in respect of the supply of bagasse by SSL to the Company at each Power Plant and executed substantially in the form attached hereto as Part C(ii) of Schedule XI and "Bagasse Supply Agreements" means each and any one of them;
"Balance Shares"	has the meaning ascribed to it in Clause 11.1.7.3;
"Board"	means the board of directors of the Company as constituted from time to time;
"Brijnathpur Power Undertaking"	means the power generation undertaking of SSL located at the sugar plant at Brijnathpur;
"Business"	has the meaning ascribed to the term in Recital D;
"Business Day"	means a day (other than a Saturday, Sunday or public holiday) on which banks are generally open for normal business in Singapore and Delhi;
"Business Plan"	means the business plan(s) prepared by the management of the Company as per Clause 12.7.3 and approved and adopted by the Board, including any modifications thereto;

"Business Transfer Agreements"	means the Chilwaria BTA and the Simbhaoli BTA;
"Buy Out Notice"	has the meaning ascribed to it in paragraph 3 of Schedule VII ;
"Buyer"	has the meaning ascribed to it in Clause 11.3.5.1;
"Casetech"	means Integrated Casetech Consultants Private Limited, a company incorporated under the Companies Act, 1956 and having its office at E-13/29, Harsha Bhawan, Middle Circle, Connaught Place, New Delhi-110001, and being an Affiliate of SSL;
"CCDs"	means compulsorily convertible debentures issued by the Company upon the terms set out in Schedule XX and a "CCD" means any one of them;
"Change in Control of SCES"	means with regard to SCES, that it ceases to be Controlled (a) by Sindicatum Sustainable Resources Group Limited and (b) such change in Control occurs prior to the date falling 12 (Twelve) months after the Commissioning Date in respect of the Simbhaoli Power Undertaking; provided that a Change in Control of SCES does not occur in the event of an internal reorganisation, amalgamation or reconstruction of Sindicatum Sustainable Resources Group Limited (in which event references in this clause to Sindicatum Sustainable Resources Group Limited shall be deemed to be to its successor or assigns);
"Change in Control of SSL"	means with regard to SSL any of the following events: a. Mr. Gurmit Singh Mann and Mr. Guralp Singh along with their Relatives and Affiliates including their successors and assigns; collectively cease to be the single largest shareholder of SSL; or b. SSL ceases to own the Sugar Plants;
"Chilwaria BTA"	means the business transfer agreement to be entered into by SSL and the Company relating to the transfer of the Chilwaria Power Undertaking by SSL to the Company, and proposed to be executed substantially in the form attached hereto as Part A of Schedule XI ;
"Chilwaria Power Undertaking"	means the power generation undertaking of (as at the Restatement Date) SSL located at the Sugar Plant located at Chilwaria and to be transferred to the Company under the terms of the Chilwaria BTA;
"Closing"	means any of the First Closing or any Subsequent Closing and "Closings" shall be construed accordingly.

"Commissioning"	means, in respect of a Power Plant, delivery by the Company of a Commissioning Certificate to SSL and Casetech certifying that it is satisfied that (a) the installation of the New Power Generating Set for that Power Plant has been tested and completed for commercial production; (b) synchronisation of the New Power Generating Set with the UPPCL grid has occurred; and (c) power from the New Power Generating Set has been injected to the UPPCL grid for commercial purpose and specifying the date upon which the applicable Commissioning Date has occurred;
"Commissioning Certificate"	means, in respect of a Power Plant, the certificate issued by the Company to (a) SSL under the terms of the applicable Bagasse Supply Agreement and (b) Casetech under the terms of the applicable Operation and Maintenance Agreement, certifying that Commissioning of the applicable New Power Generating Set occurred on the Commissioning Date specified in such certificate;
"Commissioning Date"	means, in respect of a Power Plant, the date specified as such in the applicable Commissioning Certificate;
"Companies Act"	means the (Indian) Companies Act, 1956 with the rules and regulations framed there under from time to time, and any subsequent amendment or re-enactment thereof for the time being in force;
"Company Bank Accounts"	has the meaning ascribed to in Clause 12.7;
"Companies Rules and Forms"	means the Companies (Central Government's) General Rules and Forms, 1956;
"Company Disclosure Letter"	means a letter dated as of the Restatement Date, and as the same may be revised as of the First Closing Date in terms of Clause 5.1(h), together with the attachments thereto addressed by the Company to SSL and SCES declaring exceptions to the Company's Representations and Warranties as of the Restatement Date and as of the First Closing Date in the form as reflected in Part A of Schedule X ;
"Company's Representations and Warranties"	has the meaning ascribed to it in Clause 10.2;
"Competitor"	means any Person (other than a Person being a Party to this Agreement) who is engaged in, or is an Affiliate of any Person engaged in, the procurement of Other Biomass within a radius of 50 (Fifty) kilometres of any of the Power Plants;
"Commercial Terms"	means the commercial terms of each Project Agreement as agreed between the Parties on the Restatement Date in the form as reflected in Schedule XIX and shall be incorporated into each of the Project Agreements executed upon First Closing unless agreed otherwise in writing by SSL and SCES;
"Confidential Information"	has the meaning ascribed to it in Clause 21.1;

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"Control"	With respect to any corporation or company, includes (a) the ownership of more than 50% (Fifty percent) of the voting shares of the corporation or company including any shares which are voting only upon the occurrence of a contingency where such contingency has occurred and is continuing or, where that contingency is the exercise of an option or other right, where such option or other right, is presently exercisable; (b) the right to appoint or remove a majority of its board of directors; and (c) the ability, through any agreement, understanding or practice to exercise, whether alone or jointly with others, significant influence over such corporation or company and "Controlled" and "Controlling" shall be construed accordingly;
"Covenantor"	has the meaning ascribed to it in Clause 20.1;
"Debenture Holders"	means SSL, SCES and any transferee of the CCDs from them and "Debenture Holder" means any of them;
"De Minimus Loss"	has the meaning ascribed to it in Clause 25.2.1;
"Deadlock"	has the meaning ascribed to it in Clause 17;
"Deadlock Notice"	has the meaning ascribed to it in paragraph 2 of Schedule VII ;
"Director(s)"	means the director(s) on the Board from time to time;
"Disclosing Party"	has the meaning ascribed to it in Clause 21.1;
"Dispute"	has the meaning ascribed to it in Clause 26.1.1;
"Disputing Party" or "Disputing Parties"	has the meaning ascribed to it in Clause 26.1.1;
"Effective Date"	means the date of the Original Joint Venture Agreement, being December 06, 2011;
"Encumbrance"	means (i) any charge (whether fixed or floating), pledge, lien, hypothecation, assignment, mortgage, security interest or other encumbrance of any kind, (ii) any adverse claim as to ownership, title, possession or use, or (iii) any other agreement or arrangement having similar effect;
"Exercise Notice"	has the meaning ascribed to it in Clause 11.1.7.2;
"Facilities Agreement"	means the facilities agreement to be entered into by SSL and the Company pursuant to which SSL shall provide certain services and facilities to the Company and proposed to be executed substantially in the form attached hereto as Part B of Schedule XI ;
"FMV" or "Fair Market Value"	has the meaning ascribed to it in Clause 22.3.8;
"Fifth Closing"	means the completion of each of the transactions and actions set out in Clause 8 by each of the Parties concerned in respect of the subscription by SSL and SCES for the fifth tranche of Securities,

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	as referred to in Clause 4.3;
"Fifth Closing Conditions"	has the meaning ascribed to it in paragraph 5 of Schedule XVIII ;
"Final Commissioning Date"	means the date upon which (a) Commissioning at both Power Plants has been achieved; and (b) each New Power Generating Set at each Power Plant has individually achieved operation at the relevant Project Rated Power for a period of 7 (seven) continuous days as determined by the Company and notified in writing to SSL and SCES;
"Financial Controller"	has the meaning ascribed to it in Clause 12.5;
"Financial Year"	has the meaning ascribed to it in Clause 12.3;
"First Closing"	means the completion of each of the transactions and actions by each of the Parties concerned, as contemplated in Clause 7;
"First Closing Conditions"	has the meaning ascribed to it in Clause 5.1;
"First Closing Date"	means the date on which the First Closing occurs;
"First Party"	has the meaning ascribed to it in Clause 11.1.5;
"Fourth Closing"	means the completion of each of the transactions and actions set out in Clause 8 by each of the Parties concerned in respect of the subscription by SSL and SCES for the fourth tranche of Securities, as referred to in Clause 4.3;
"Fourth Closing Conditions"	has the meaning ascribed to it in paragraph 4 of Schedule XVIII ;
"Fuel Supply Agreements"	means the Bagasse Conversion Agreements, the Bagasse Supply Agreements, the Power Supply Agreements and the Risk Sharing Agreements and "Fuel Supply Agreement" means any one of them;
"Further Funding"	has the meaning ascribed to it in Clause 11.1.2;
"Government"	means any national, state, city and other local government and includes the President of India, the Government of India, the Governor and the government of any State or Union Territory in India, any ministry or department of the same, any local or other authority exercising powers conferred by Law; and shall include, without limitation any governmental agency, state, province, local body, or other political subdivision thereof, and any governmental, semi-governmental, quasi-governmental, executive, legislative, judicial, statutory or regulatory entity or authority, department, instrumentality, commission, board or statutory corporation of, or any corporation or other entity (including a trust), owned or controlled directly or indirectly by, any of the foregoing or similar body including, without limitation, any self-regulatory organisation established under any Law;
"HSE Standards"	has the meaning ascribed to it in Clause 19.14.1;
"Independent"	means an independent share valuation obtained by the Parties

Share Valuation"	from any one of the Appraisers, as approved by SCES, for the purposes of a Closing in accordance with the prevailing RBI guidelines applicable to an investment by a foreign investor;
"INR" or "Rs." or "Rupees"	means the lawful currency of India from time to time;
"Insolvency Event"	<p>in relation to any Person means the occurrence of any of the following events:</p> <p>(a) such Person enters into any arrangement or composition for the benefit of such Person's creditors excluding for the avoidance of doubt an amendment or variation to terms mutually agreed by such Person and any of its lenders in respect of its repayment, security and/or interest obligations;</p> <p>(b) the appointment of an administrator, liquidator, receiver, trustee, custodian or other similar official to manage the business affairs, business or substantial part of the property of such Person in an involuntary winding up petition, where such petition is not dismissed within a period of sixty (60) days of such appointment;</p> <p>(c) an adjudication that such Person is bankrupt or insolvent, or the grant of protection against creditors under any applicable Law;</p> <p>(d) the commencement by such Person of a voluntary case seeking liquidation, winding-up, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar Law now or hereafter in effect or seeking protection against its creditors, the appointment of a trustee, receiver, liquidator, custodian or other similar official of it on any substantial part of its assets or property, or consent to any such relief or to the appointment of or taking of possession by any such official in an involuntary case or other proceeding commenced against it; or</p> <p>(e) a government expropriation, nationalization or condemnation of all or substantially all of the assets or capital stock of such Person;</p>
"Intellectual Property"	means the legal rights, including intellectual property rights, moral rights or like rights or forms of protection, subsisting in patents, copyrights, trade secrets and trademarks, trade dress, service marks, designs, logos and other intellectual property rights under the Laws of India or any other jurisdiction and all registrations, applications for registration, renewals, extensions, continuators, dividends, re-examinations or reissues or equivalent of any of the foregoing;

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"IRR"	means the internal rate of return as shown in the applicable financial model;
"Insurance Program"	means the program of insurance to be effected and maintained by the Company and appended hereto as Schedule XVII , as may be amended from time to time in accordance with Clause 16.1(z);
"Issuance Price"	has the meaning ascribed to it in Clause 11.1.7.1;
"Issuance Shares"	has the meaning ascribed to it in Clause 11.1.7.1;
"Law"	means and includes all applicable statutes, enactments, acts of legislature or Parliament, laws, ordinances, rules, bye-laws, regulations, notifications, guidelines, policies, directions, circulars, press notes, directives and orders of any court, Government, statutory authority, board (in each such case whether preliminary or final), stock exchange and, if applicable, international treaties and regulations and all amendments thereto from time to time;
"Lease Deeds"	means the Lease Deeds to be entered into by the Company and SSL in respect of each Power Plant Site in substantially the form attached hereto in Part D of Schedule XI and "Lease Deed" means each and any one of them;
"Lender Directors"	has the meaning ascribed to it in Clause 14.2.6;
"Liquidation Event"	means and includes: (i) appointment of the liquidator; (ii) a liquidation, winding-up or dissolution of the Company; (iii) a consolidation or reorganization or any other transaction (including, without limitation, an acquisition of securities of the Company) of the Company upon the conclusion of which the Shareholders do not retain a majority of the voting power in the surviving entity; or (iv) a sale and/or license of all or substantially all of the Company's assets;
"Lock-in Period"	has the meaning ascribed to it in Clause 11.3.3.1;
"Losses"	has the meaning ascribed to it in Clause 25.1;
"Key Employee Terms"	means the key terms of employment of (i) the MD by the Company; and (ii) the Financial Controller by the Company as set out in Schedule XIII ;
"Key Management Team"	means Mr. A P Singh, Mr. Anshul Jain and Mr. Kamal Samtani;
"Management Accounts"	means the unaudited financial statements of the Company comprising the monthly balance sheets, profit and loss accounts and cash-flow statements prepared substantially in the form set out in Schedule XVI ;
"Management Committee"	has the meaning ascribed to it in Clause 14.3.2;
"Management Service Agreements"	means and includes (a) the Sindicatum Management Services Agreement and (b) the SSL Management Services Agreement;
"MD"	has the meaning ascribed to it in Clause 14.2.3;

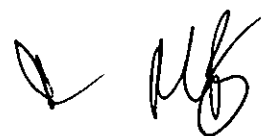
"Material Adverse Effect"	means any occurrence of any event, condition, fact or change that, is, or may reasonably be, materially adverse to the valuation, business, operations, financial condition, assets (including intangible assets) or liabilities of the Company, save and except for any adverse change, event, development or effect arising from or relating to or in connection with: (a) general business or economic conditions, (b) national or international political, economical or social conditions, (c) Indian or global financial, banking or securities markets, (d) Indian accounting standards and/or (e) changes in any applicable Law;
"Mediating Committee"	has the meaning ascribed to it in Clause 26.1.1;
"Memorandum"/ "Memorandum of Association"	means the memorandum of association of the Company as amended/alterd from time to time;
"Minimum Blended IRR"	has the meaning ascribed to it in Clause 19.15(a);
"New Installation Project"	has the meaning ascribed to it in Recital D;
"New Power Generating Set"	means, in respect of each Power Plant, the new power generating set to be installed at such Power Plant as part of the New Installation Project;
"Non-Transferring Shareholder"	has the meaning ascribed to it in Clause 11.3.4(a);
"Notice"	has the meaning ascribed to it in Clause 27.1.1;
"Offer Acceptance Notice"	has the meaning ascribed to it in Clause 11.3.4(b);
"Offer Period"	has the meaning ascribed to it in Clause 11.3.4(a);
"Offer Refusal Notice"	has the meaning ascribed to it in Clause 11.3.4(d);
"Operation and Maintenance Agreements"	means the operation and maintenance agreements between Casetech and the Company relating to the operation and maintenance services to be provided by Casetech to the Company in respect of each Power Plant and to be executed substantially in the form attached hereto as Part E of Schedule XI and "Operation and Maintenance Agreement" means each and any one of them;
"Original Joint Venture Agreement"	Has the meaning ascribed to it in Recital F;

"Other Biomass"	means (i) any bagasse procured from parties other than SSL for the purposes of supplementing the bagasse supplied by SSL under the Fuel Supply Agreements and (ii) biomass other than bagasse procured as fuel for generation of steam and power by the Power Plant(s);
"Person"	means and includes an individual, an association, a corporation, a partnership, a limited liability partnership, a joint venture, a venture capital fund, a trust, a co-operative society, an unincorporated organization or association, a joint stock company or other entity association or organization statutory or otherwise, including a Government or political subdivision, or an agency or instrumentality thereof and/or any other legal, statutory or other entity;
"Plant Usage Agreements"	means the plant usage agreements to be entered into by the Company and SSL in respect of the provision by SSL to the Company of certain equipment on a usage basis and to be executed substantially in the form attached hereto as Part F(i), in respect of the Simbhaoli Power Undertaking and Part F(ii), in respect of the Chilwaria Power Undertaking, of Schedule XI ;
"Power Plants"	has the meaning ascribed to it in Recital B;
"Power Plant Site"	means, in respect of each Power Plant, the land leased to the Company by SSL under the terms of the applicable Lease Deed and at which such Power Plant is located as marked in Annexure 2 of the applicable Lease Deed;
"Power Supply Agreements"	means the power supply agreements to be entered into by SSL and the Company in respect of the supply of imported and diesel generated power by each Power Plant to SSL and executed substantially in the form attached hereto as Part C(iii) of Schedule XI and "Power Supply Agreement" means each and any one of them;
"Power Undertakings"	means the Chilwaria Power Undertaking and the Simbhaoli Power Undertaking;
"Power Undertaking Transfer"	has the meaning ascribed to it in Clause 4.1.1;
"Pre-Emptive Notice"	has the meaning ascribed to it in Clause 11.1.7.1;
"Pre-Emptive Offer Period"	has the meaning ascribed to it in Clause 11.1.7.2;
"Pre-Emptive Right"	has the meaning ascribed to it in Clause 11.1.7;
"Project Agreements"	means collectively together with all their respective schedules (a) Business Transfer Agreements, (b) the Facilities Agreement, (c) the Fuel Supply Agreements, (d) the Lease Deeds, (e) the Operation and Maintenance Agreements, (f) Plant Usage Agreements and (g) the Project Implementation Agreements;

"Project Implementation Agreements"	means the project implementation agreements to be entered into by Casetech and the Company relating to certain project implementation services to be provided by Casetech to the Company in respect of each Power Plant and to be executed substantially in the form attached hereto as Part G of Schedule XI and "Project Implementation Agreement" means each and any one of them;
"Project Implementation Committee"	has the meaning ascribed to it in Clause 14.3.3;
"Pro Rata Share"	has the meaning ascribed to it in Clause 11.1.7.2;
"Project Rated Power"	means, for each Power Undertaking, the power generating capacity set out under "New Installation Project Project Rated Power" column in the table included in Schedule I ;
"Qualified IPO"	means the successful completion of an initial public offering of the equity shares of the Company at such a price per share as acceptable to SCES, by a reputable investment banking firm, approved by SCES on such recognised stock exchange(s) acceptable to SCES;
"RBI"	means the Reserve Bank of India;
"Receiving Party"	has the meaning ascribed to it in Clause 21.1;
"Registrar of Companies"	means the Registrar of Companies, Uttar Pradesh and Uttarakhand and/or any other Registrar of Companies under whose jurisdiction the Company's registered office is situated;
"Relatives"	has the meaning ascribed to it in the Companies Act;
"Request"	has the meaning ascribed to it in Clause 26.1.1;
"Reserve Account"	has the meaning ascribed to it in the SCES Shareholder Loan Terms;
"Reservation Side Letter"	means a side letter to be entered into between SSL and the Company regarding ability of the Company to withhold all amounts due and payable by the Company to SSL under certain Project Agreements to which they are a Party, such agreement to be executed in the form agreed by the Parties as a Condition Precedent to First Closing;
"Reserved Matter" and "Reserved Matters"	have the meaning ascribed to them in Clause 16.1;
"Resolution Period"	has the meaning ascribed to it in paragraph 2 of Schedule VII ;
"Restatement Date"	means the date when this amendment and restatement is executed by the Parties or the last of them;
"Right of First Refusal"	has the meaning ascribed to it in Clause 11.3.4(b);

"Risk Sharing Agreements"	means the risk sharing agreements to be entered into by SSL and the Company in respect of payments to be made by SSL and/or the Company to the other based on the performance of each Power Plant against certain baseline performance criteria and executed substantially in the form attached hereto as Part C(iv) of Schedule XI and "Risk Sharing Agreement" means each and any one of them;
"Sale Notice"	has the meaning ascribed to it in paragraph 4 of Schedule VII ;
"Sale Price"	has the meaning ascribed to it in Clause 11.3.4(a);
"Sale Shares"	has the meaning ascribed to it in Clause 11.3.4(a);
"SBI Base Rate"	means the base lending rate announced by the State Bank of India from time to time;
"SCES Directors"	has the meaning ascribed to it in Clause 14.2.1;
"SCES Indemnified Persons"	has the meaning ascribed to it in Clause 25.1;
"SCES Investment"	means the aggregate sum of the SCES Subscription Consideration, and any other investment made by SCES into the Company either by way of further subscription to Securities or by way of loan;
"SCES Royalty Agreement"	Means the technical royalty agreement to be entered into by SCES and the Company pursuant to which SCES shall provide certain technical know-how to the Company in consideration of the payment of a royalty fee by the Company, to be executed in the form agreed by the Parties as a condition precedent to First Closing and in accordance with the Commercial Terms;
"SCES Securities"	means the SCES Subscription Securities and any other Securities acquired by SCES;
"SCES Security Arrangements"	means each security document granted to SCES under the terms of the SCES Shareholder Loan Agreement;
"SCES Shareholder Loan"	means the loan from SCES to the Company in the amount and on the terms set out in the SCES Shareholder Loan Agreement;
"SCES Shareholder Loan Terms"	means the terms for SCES Shareholder Loan as agreed between SCES and the Company and as set out in Part A of Schedule XV ;
"SCES Shareholder Loan Agreement"	means the shareholder loan agreement between SCES and the Company substantially on the SCES Shareholder Loan Terms;
"SCES Subscription Consideration"	has the meaning ascribed to it in Clause 4.2.1;
"SCES Subscription Securities"	has the meaning ascribed to it in Clause 4.2.1;

"SCES Technical Know-How Agreement"	means the technical know-how agreement to be entered into by SCES and the Company pursuant to which SCES shall provide certain technical know-how to the Company in consideration of the payment of fees by the Company, to be executed in the form agreed by the Parties as a condition precedent to First Closing and in accordance with the Commercial Terms;
"Second Closing"	means the completion of each of the transactions and actions set out in Clause 8 by each of the Parties concerned in respect of the subscription by SSL and SCES for the second tranche of Securities, as referred to in Clause 4.3;
"Second Closing Conditions"	has the meaning ascribed to it in paragraph 2 of Schedule XVIII ;
"Second Closing Date"	Means the date on which Second Closing occurs;
"Senior Loan"	has the meaning ascribed to it in paragraph 2(b) of Schedule XVIII ;
"Senior Lender"	means any lender under the Senior Loan;
"Securities"	means the Shares, CCDs or any other security which is convertible into or exchangeable with Shares or which confer a right to subscribe to Shares at a later date proposed to be issued (for the avoidance of doubt, the SCES Shareholder Loan shall not be a security);
"Share"	means an equity share of the Company having the face value of INR 10 (Rupees Ten Only);
"Shareholders"	means SSL and SCES and any other holder for the time being of Shares and Securities of the Company and "Shareholder" means any of them;
"Simbhaoli BTA"	means the business transfer agreement to be entered into by SSL and the Company relating to the transfer of the Simbhaoli Power Undertaking by SSL to the Company, and proposed to be executed substantially in the form attached hereto as Part A of Schedule XI ;
"Simbhaoli Power Undertaking"	means the power generation undertaking of (as at the date of this Agreement) SSL located at the Sugar Plant located at Simbhaoli and to be transferred to the Company under the terms of the Simbhaoli BTA;
"Sindicatum's Anti-Corruption Principles"	means the Sindicatum Sustainable Resources group's anti-corruption principles as set out in Schedule XIV or as notified by SCES to the other Shareholder(s) and the Company from time to time;




"Sindicatum Management Services Agreement"	means the services agreement to be entered into by Sindicatum Carbon Capital India Pvt Limited and the Company pursuant to which Sindicatum Carbon Capital Pvt Limited shall provide certain services to the Company in consideration of the payment of a management fee by the Company, to be executed in the form agreed by the Parties as a condition precedent to First Closing and in accordance with the Commercial Terms;
"Sixth Closing"	means the completion of each of the transactions and actions set out in Clause 8 by each of the Parties concerned in respect of the subscription by SSL and SCES for the sixth tranche of Securities, as referred to in Clause 4.3;
"Sixth Closing Conditions"	has the meaning ascribed to it in paragraph 6 of Schedule XVIII ;
"SSL BTA Subscription Amount"	has the meaning ascribed to it in Clause 4.1.2;
"SSL BTA Subscription Securities"	has the meaning ascribed to it in Clause 4.1.2;
"SSL Directors"	has the meaning ascribed to it in Clause 14.2.1;
"SSL Disclosure Letter"	means a letter dated as of the Restatement Date, and as the same may be revised as of the First Closing Date in terms of Clause 5.1.8, together with the attachments thereto addressed by SSL to SCES declaring exceptions to SSL's Representations and Warranties as of the Restatement Date and the First Closing Date, in the form as reflected in Part B of Schedule X ;
"SSL Indemnified Persons"	has the meaning ascribed to it in Clause 25.13;
"SSL Management Services Agreement"	means the services agreement to be entered into by SSL and the Company pursuant to which SSL shall provide certain services to the Company in consideration of the payment of a management fee by the Company, to be executed in the form agreed by the Parties as a condition precedent to First Closing and in accordance with the Commercial Terms;
"SSL Technical/Operational Supervision Agreement"	means the agreement to be entered into by SSL and the Company pursuant to which SSL shall provide certain specified services to SPL in consideration of the payment of fees by the Company, to be executed in the form agreed by the Parties as a condition precedent to First Closing and in accordance with the Commercial Terms;
"SSL's Representations and Warranties"	has the meaning ascribed to it in Clause 10.6;
"SSL Shareholder Loan"	means the loan from SSL to the Company in the amount and on the terms set out in the SSL Shareholder Loan Agreement;

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"SSL Shareholder Loan Terms"	means the terms for SSL Shareholder Loan as agreed between SSL and the Company and as set out in Part B of Schedule XV ;
"SSL Shareholder Loan Agreement"	means the shareholder loan agreement between SCES and the Company substantially on the SSL Shareholder Loan Terms;
"Subsequent Closing"	means any of the Second Closing, the Third Closing, the Fourth Closing, the Fifth Closing and the Sixth Closing, and "Subsequent Closings" shall be construed accordingly;
"Subsequent Closing Date"	means any date on which a Subsequent Closing occurs and "Subsequent Closing Dates" shall be construed accordingly;
"Subsequent Closing Securities"	has the meaning ascribed to it in Clause 8.1.2;
"Sugar Plants"	has the meaning ascribed to it in Recital A;
"Sugar Season 2012-13"	means, the period from the date in 2012 on which cane crushing operations began at either Sugar Plant to the date in 2013 on which both Sugar Plants have closed their cane crushing operations, such date to be consistent with that stated in the applicable RT8Cs;
"Tag Along Right"	has the meaning ascribed to it in Clause 11.3.5.1;
"Tag Along Shares"	has the meaning ascribed to it in Clause 11.3.5.1;
"Third Closing"	means the completion of each of the transactions and actions set out in Clause 8 by each of the Parties concerned in respect of the subscription by SSL and SCES for the third tranche of Securities, as referred to in Clause 4.3;
"Third Closing Conditions"	has the meaning ascribed to it in paragraph 3 of Schedule XVIII ;
"Total Project Cost"	means the total cost incurred by the Company for the transfer of the Power Undertakings to the Company and the New Installation Project, including (a) the consideration to be paid by the Company to SSL for the transfer of the Power Undertakings under the Business Transfer Agreements, (b) the cost of formation of the Company, (c) initial working capital and (d) other expenses incidental to the New Installation Project;
"Third Party Buyer"	has the meaning ascribed to it in Clause 11.3.4;
"Third Party Claim"	has the meaning ascribed to it in Clause 25.2.4;
"Transaction"	means the subscription to the SSL BTA Subscription Securities and SCES Subscription Securities, by SCES and SSL at the Closings in accordance with the terms of this Agreement;

"Transaction Documents"	means collectively together with all their respective schedules, annexures and exhibits (a) this Agreement, (b) the Management Services Agreements; (c) the SCES Technical Know-How Agreement; (d) the SCES Royalty Agreement; (e) the SSL Technical/ Operational Supervision Agreement; (f) the SCES Shareholder Loan; (g) the SSL Shareholder Loan Agreement; (h) the Umbrella Arbitration Agreements; and (i) the Project Agreements;
"Transfer"	has the meaning ascribed to it in Clause 11.3.3.1;
"Transfer Notice"	has the meaning ascribed to it in Clause 11.3.4(a);
"Transferring Shareholder"	has the meaning ascribed to it in Clause 11.3.4;
"Transition Period"	means the period commencing on the First Closing Date and ending on the date that all power assets under the Business Transfer Agreements are transferred to the Company in accordance with their terms;
"Umbrella Arbitration Agreements"	means (a) the umbrella arbitration agreement between SSL, the Company and Casetech for the resolution of disputes in relation to the Project Agreements (other than the Business Transfer Agreements) by arbitration; and (b) the umbrella arbitration agreement between SSL, SCES and the Company for the resolution of disputes in relation to this Agreement, the SCES Shareholder Loan Agreement, SCES Security Arrangements, Sindicatum Management Services Agreement, SCES Royalty Agreement, SCES Technical Know-How Agreement and such other agreements to which SSL, the Company, SCES and/or any of its Affiliates are a party to, by arbitration in the form agreed as a condition precedent to the First Closing;
"Unanimous Consent Matter" and "Unanimous Consent Matters"	have the meaning ascribed to them in Clause 16.2; and
"UPPCL"	has the meaning ascribed to it in Recital B.

1.2 Rules of Interpretation.

In this Agreement:

- 1.2.1 References to statutory provisions shall be construed as references to the statutory provisions of India, unless otherwise specified, and in any event to those provisions as respectively amended, superseded or re-enacted or as their application is modified by any other provisions (whether made before or after the Effective Date) from time to time.
- 1.2.2 Any reference in this Agreement to par or face value in relation to any Security shall mean the value expressed on the face of the certificate representing the

Security, at the relevant point of time, irrespective of the actual price paid for that share by its holder.

- 1.2.3 References to 'Clauses', 'Annexures', 'Exhibits' and 'Schedules' are to 'Clauses' of or the 'Annexures', 'Exhibits' and 'Schedules' to this Agreement, and references to 'sub-clauses' are to 'sub-clauses' of the Clause in which the reference appears.
- 1.2.4 Any reference to "writing" includes printing, typing, lithography, email, facsimile and other means of reproducing words in permanent visible form.
- 1.2.5 Any reference to "day(s)" is to calendar days and not Business Days.
- 1.2.6 All references to documents in agreed form shall mean a document in a form agreed by the Parties and initialled by each of them for the purpose of identification.
- 1.2.7 The terms "include" and "including" shall mean "include without limitation".
- 1.2.8 The headings, sub-headings, titles, sub-titles to sections, sub-sections and paragraphs are for information only, shall not form part of the operative provisions of this Agreement or the Annexures, Exhibits and Schedules, and shall be ignored in construing the same.
- 1.2.9 The singular includes the plural and vice versa.
- 1.2.10 The words importing a gender include every gender, and references to any person(s) include bodies' corporate and unincorporated bodies.
- 1.2.11 In the event of any ambiguity, question of intent or interpretation, this Agreement shall be construed as if drafted collectively by the Parties, and no presumption or burden of proof shall arise favouring or disfavouring any Party by virtue of the authorship of any provision of this Agreement.
- 1.2.12 Defined terms used in this Agreement but not defined in Clause 1 but elsewhere, shall be deemed to be included in Clause 1.

2. FORMATION OF THE COMPANY

- 2.1 The Company has been incorporated in the name of 'Simbhaoli Power Limited', as a public limited company under the Companies Act having a Corporate Identity Number of U40300UP2011PLC045360 *vide* its certificate of incorporation dated June 21, 2011 issued by Registrar of Companies.
- 2.2 SSL covenants with SCES to procure that, during the period from the Effective Date until the completion of the Transition Period:
 - 2.2.1 the business and activities of the Company and the Power Undertakings of SSL shall be conducted in the ordinary course consistent with past practices, and the Company shall not do any act which would result in, or would reasonably be likely to

- result in, a breach of Company's and/or SSL's Representations and Warranties; and
- 2.2.2 the Company shall not, without the prior written consent of SCES, undertake any action which would require approval under Clause 16.1 or Clause 16.2 unless as agreed between the Parties or as is required to give effect to any actions required to be undertaken to comply with the First Closing Conditions.
- 2.3 SSL further covenants with SCES that during the period from the signing of this Agreement until the Transition Period, SSL shall take all reasonable steps to preserve and protect the Power Undertakings, and shall promptly inform SCES in writing of any Material Adverse Effect to the Power Undertakings.
- 2.4 During the period from the Restatement Date until the First Closing Date and the Transition Period, SSL shall procure that the Company shall:
- 2.4.1 maintain in full force and effect all insurance policies now in effect and not to default under any provision thereof, and duly give notice and present and maintain any claim under such insurance policies;
- 2.4.2 file any report required to be filed with any Government authority and otherwise comply with all Laws relating to the business operation or any of the assets of the Company;
- 2.4.3 comply with all loan agreements, leases and other contracts or instruments to which it is a party or to which any of its assets are bound; and
- 2.4.4 continue to defend and not settle or compromise any litigation, claim or proceedings to which it is a party.

3. INITIAL CAPITALIZATION OF THE COMPANY

- 3.1 As on the Effective Date and the Restatement Date, the authorised, subscribed and paid up share capital of the Company was and is INR 500,000 (Rupees Five Hundred Thousand only) divided into 50,000 (Fifty Thousand) Shares, all of which are held by SSL and its nominees.

4. SHARE SUBSCRIPTION

4.1 Subscription by SSL

- 4.1.1 Subject to the terms and conditions of this Agreement, SSL shall, on the First Closing Date, transfer each of the Power Undertakings to the Company by way of a slump sale on an as-is-where-is going concern basis for an aggregate consideration of Rs. 1,599,000,000 (Rupees one billion five hundred and ninety nine million) in terms of each of the Business Transfer Agreements ("**Power Undertakings Transfer**").
- 4.1.2 As a part consideration for the Power Undertakings Transfer and subject to the terms and conditions set forth in this Agreement, the Company shall, on the First Closing Date and Subsequent Closing Dates, issue and allot to SSL, Securities (the "**SSL BTA Subscription Securities**") with an aggregate value of Rs. 815,490,000

(Rupees eight hundred and fifteen million and four hundred and ninety thousand) (the **"SSL BTA Subscription Amount"**).

4.1.3 Subject to the terms and conditions set forth in this Agreement, the Company shall issue and allot the SSL BTA Subscription Securities to SSL in six tranches in accordance with Clause 4.3 below.

4.1.4 The Parties acknowledge and agree that, the balance amount of consideration of Rs. 783,500,000 (Rupees seven hundred and eighty three million five hundred thousand) shall be payable by way of cash in instalments in accordance with the terms of the SSL Shareholder Loan Agreement.

4.2 **Subscription by SCES**

4.2.1 Subject to the terms and conditions of this Agreement, SCES shall, on the First Closing Date and Subsequent Closing Dates, subscribe to Securities (the **"SCES Subscription Securities"**) for the aggregate consideration of an amount equal to INR 783,510,000 (Rupees seven hundred and eighty three million five hundred and ten thousand) (**"SCES Subscription Consideration"**).

4.2.2 Subject to the terms and conditions set forth in this Agreement, SCES shall subscribe to the SCES Subscription Securities in six tranches in accordance with Clause 4.3 below.

4.3 Subject to the terms and conditions set forth in this Agreement, the SSL BTA Subscription Securities and SCES Subscription Securities shall be subscribed for and issued in six tranches as follows:

Closing	Date of Closing	SSL BTA Subscription Amount applicable to the Closing (Rs.)	SCES Subscription Consideration payable at the Closing (Rs.)
First Closing	First Closing Date	51,204,082	54,000,000
Second Closing	Second Closing Date	342,959,388	329,510,000
Third Closing	Subject to satisfaction of the Third Closing Conditions, 90 days from the Second Closing Date	83,265,306	80,000,000
Fourth Closing	Subject to satisfaction of the Fourth Closing Conditions, 180 days from the Second Closing Date	83,265,306	80,000,000
Fifth Closing	Subject to satisfaction of the Fifth Closing Conditions, 270 days	83,265,306	80,000,000

	from the Second Closing Date		
Sixth Closing	Subject to satisfaction of the Sixth Closing Conditions, 360 days from the Second Closing Date	166,530,612	160,000,000
Total		815,490,000	783,510,000

provided that:

4.3.1 at First Closing:

- (a) against the SSL BTA Subscription Amount and the SCES Subscription Consideration applicable to the First Closing, the Company shall issue and allot to SSL and SCES respectively Shares, such Shares to be issued at a premium of Rs. 90 (Rupees ninety) per Share; and
- (b) immediately after SCES becomes a Shareholder, SCES shall provide the SCES Shareholder Loan to the Company under the terms of the SCES Shareholder Loan Agreement.

4.3.2 at Second Closing:

- (a) the Company shall issue and allot to SSL, Shares equivalent to Rs. 143,377,653 (Rupees one hundred and forty three million three hundred and seventy seven thousand six hundred and fifty three) of the SSL BTA Subscription Amount and CCDs equivalent to Rs. 199,581,735 (Rupees one hundred and ninety nine million five hundred and eighty one thousand seven hundred and thirty five) of the SSL BTA Subscription Amount;
- (b) the Company shall issue and allot to SCES, Shares equivalent to Rs. 137,755,000 (Rupees one hundred and thirty seven million seven hundred and fifty five thousand) of the SCES Subscription Consideration and CCDs equivalent to Rs. 191,755,000 (Rupees one hundred and ninety one million seven hundred and fifty five thousand) of the SCES Subscription Consideration, it being acknowledged that payment for such CCDs shall be satisfied first by the conversion of the SCES Shareholder Loan into CCDs, with the balance amount satisfied by way of cash consideration;

4.3.3 unless otherwise agreed by the Parties in writing, at each Subsequent Closing after the Second Closing, the Company will issue and allot Shares equivalent to 50% (Fifty per cent) of the applicable SSL BTA Subscription Amount and SCES Subscription Consideration and CCDs equivalent to 50% (Fifty per cent) of such amounts;

4.3.4 All Securities issued to SSL and SCES at Subsequent Closings under the terms of Clauses 4.1.1 and 4.3 above shall be issued at a mutually agreed price per Security and shall, for each class of Security be equal, provided that to the extent any

Securities are subscribed to by SCES, the subscription price shall be calculated as per the applicable Laws; and

4.3.5 At any time from the First Closing Date and until such time as all the SSL BTA Subscription Securities are issued and allotted to SSL in accordance with Clauses 4.1.2 and 4.3 above, the balance SSL BTA Subscription Amount outstanding against which no SSL BTA Subscription Securities have been issued shall be treated as a loan from SSL to SPL and SSL shall be entitled to charge interest in respect of such amount at a rate equal to the interest rate set out in the SSL Shareholder Loan Agreement.

4.4 The Parties agree that it is intended that:

4.4.1 immediately upon First Closing, SSL (and its nominees) and SCES will hold the percentage Shares in the Company issued by the Company as set out against their names in **Part A to Schedule II**; and

4.4.2 immediately upon each Subsequent Closing (Second Closing to Sixth Closing), SSL and SCES will hold the percentage Shares in the Company issued by the Company as set out against their names in **Part B to Schedule II**,

and further agree that if any Independent Share Valuation obtained by the Company in respect of a Closing differs from the valuations assumed under this Clause 4, the Parties shall make such amendments to this Clause 4 as are required to give effect to the shareholding proportions set out in **Schedule II** provided that such amendments shall not require any increase to the SCES Subscription Consideration.

4.5 For the purposes of calculation of shareholding proportion of each Shareholder, only the Shares issued to each Shareholder shall be considered.

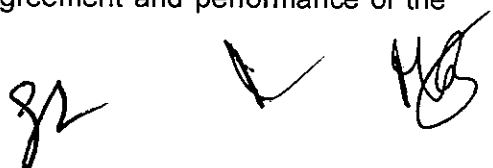
4.6 All the Shares shall have voting rights and shall rank pari-passu in all respects.

5. **CONDITIONS PRECEDENT TO FIRST CLOSING**

5.1 The obligation of SSL to complete the Power Undertakings Transfer and the obligation of SCES to subscribe to such amount of SCES Subscription Securities as are to be subscribed to at the First Closing in terms of Clauses 4.2 and 4.3 above, is subject to the fulfilment of the following conditions precedent ("**First Closing Conditions**"):

(a) SCES shall have completed (to its satisfaction and in its sole discretion) financial, legal, technological and accounting due diligence on the Company, the Power Undertakings, the Business and the New Installation Project, and SSL and the Company shall have resolved and implemented, to the satisfaction of SCES, all issues arising from the due diligence and recommendations made pursuant thereto;

(b) each of the Parties shall have obtained necessary corporate and regulatory Approvals for the execution and delivery of the Agreement and performance of the



acts contemplated herein, including for the subscription of the relevant Securities and taken all relevant action under applicable Law;

- (c) the Company's Board shall have passed resolutions convening an extraordinary general meeting of the Company to: (a) approve the amendment of the Memorandum to reflect the increase in the authorized share capital of the Company in order to issue the SSL BTA Subscription Securities, and SCES Subscription Securities; and (b) approve the issuance of the relevant number of Shares for the First Closing to SSL and SCES respectively (together, the "**First Closing Securities**"); (c) approve the SCES Shareholder Loan Terms and SSL Shareholder Loan Terms; and (d) approve the draft of Articles, in the form which has been mutually agreed to by the Parties, in accordance with the terms of this Agreement. Further, the Board shall have delivered an extract of the minutes of the relevant Board meeting with respect to the matters in (a) to (d) above, certified by any of the Directors, to each of the Shareholders;
- (d) the Company shall have held an extraordinary general meeting and passed special resolutions for: (a) the amendment of the Memorandum to reflect the increase in authorized share capital of the Company in order to issue the SSL BTA Subscription Securities and SCES Subscription Securities; (b) the issuance of the First Closing Securities to SSL and SCES; (c) approve the borrowings under the SSL Shareholder Loan Terms and the SCES Shareholder Loan Terms; (d) approve the creation of security in favour of SCES in accordance with the SCES Shareholder Loan Terms. Further, the Company shall have delivered an extract of the minutes of the said Shareholders' meeting with respect to the matters in (a) to (d) above, certified by any of the Directors;
- (e) the Company and SSL shall have duly applied for and obtained written consent from its lenders, if any, for the Transaction and approving all actions contemplated in the Transaction Documents. Further, SSL and Company shall have delivered a copy of each of the said consents, certified by any of their Directors, to the Shareholders;
- (f) each of the representations and warranties made by the Parties shall continue to be true and correct as on the First Closing Date. The Directors of the Company and the directors of SSL shall each provide a certificate to this effect in the form as attached in **Schedule VIII** hereto. It is clarified that changes to the status of the Company in the ordinary course of business or as a result of it taking steps to comply with its obligations hereunder shall not be considered to be a breach of the representations and warranties;
- (g) SCES shall have obtained (in a form satisfactory to SCES in its sole discretion) a legal opinion in relation to Indian law in respect of the enforceability of this Agreement and the other Transaction Documents;
- (h) neither SSL nor the Company shall have made, save and except with the prior approval of SCES, any revisions to the SSL Disclosure Letter or Company Disclosure Letter (as the case may be) submitted on the Restatement Date;
- (i) SSL and SCES shall have agreed to the Business Plan for the Company for the

period from the First Closing Date to March 31, 2014;

- (j) SSL and the Company shall have executed the Business Transfer Agreements;
- (k) all of the conditions precedent under the Business Transfer Agreements, including, but not limited to, the respective Valuation Reports (as defined under each Business Transfer Agreement), consents to the leasing of any land and other assets, grant of all Approvals including (without limitation) the approval of the shareholders of SSL under Section 293(1)(a) of the Companies Act shall have been obtained;
- (l) SSL shall provide to SCES a letter confirming that based on legal advice received, it confirms that this Agreement is in conformity with applicable Law and is therefore valid and binding;
- (m) the Company shall have obtained an Independent Share Valuation in respect of the Shares to be issued at the First Closing;
- (n) SCES and the Company shall have executed the SCES Shareholder Loan Terms and SSL and the Company shall have executed the SSL Shareholder Loan Terms, in each case in a form which is substantially in the form attached in **Schedule XV**;
- (o) the Company shall have obtained a certificate from a chartered accountant (approved by SCES and SSL) confirming that the borrowing or the availing of the SCES Shareholder Loan and the SSL Shareholder Loan would not cause any borrowing limit binding on the Company to be exceeded;
- (p) SPL shall have opened the requisite bank accounts required for the operation of its Business and as required under the terms of the Transaction Documents, including, without limitation, the Reserve Account;
- (q) the Company and SSL shall each have executed and delivered a 'No Objection Certificate' in favour of SCES in the form attached hereto as **Schedule IX**;
- (r) the SCES Technical Know-How Agreement, SCES Royalty Agreement; SSL Technical/ Operational Supervision Agreement and Management Services Agreements shall be in agreed form;
- (s) the Reservation Side Letter shall be in agreed form;
- (t) in respect of the Chilwaria Power Undertaking:
 - i. review and finalization of (existing and new) power plant design parameters and configuration, heat and mass balance diagram (HMBD) and plot plan;
 - ii. Development and finalization of a fuel mix strategy based on key parameters like quantity of external biomass available, seasonality of biomass available (biomass calendar), procurement cost of biomass and technical limitations of boiler and storage area;
 - iii. Finalization of major equipment specifications turbine generator inquiry documents, fuel & ash handling scheme and key electrical equipments like

transformers;

- iv. Preparation of broad project schedule in MS project or other suitable applications;
 - v. Preparation of list of applicable permits/clearances/no objection certificates required along with the time involved for obtaining it; and
- (u) the Parties shall have agreed the conversion formula for the CCDs.

5.2 Each of the Parties shall use all reasonable endeavours to procure (so far as it lies within their respective powers to do so) that all the aforesaid First Closing Conditions are duly fulfilled on or before the expiry of 30 (Thirty) Business Days from the Restatement Date or such extended period as agreed to by the Parties.

6. CONDITIONS PRECEDENT TO EACH SUBSEQUENT CLOSING

6.1 The obligation of SCES to subscribe to SCES Subscription Securities at each Subsequent Closing in accordance with the terms of Clauses 4.2 and 4.3 above, is subject to the fulfilment of the conditions precedent applicable to that Closing as set out in Schedule XVIII.

6.2 Each of the Parties shall use all reasonable endeavours to procure (so far as it lies within their respective powers to do so) that all the conditions precedent to each Subsequent Closing are duly fulfilled on or before the expiry of the relevant date set out in Clause 4.3 above or such extended period as agreed to by the Parties in writing.

7. FIRST CLOSING

7.1 First Closing shall occur at the registered office of the Company on the date mutually agreed by SSL and SCES, which shall not be more than 5 (five) Business days after the date on which the last of the First Closing Conditions has been satisfied (except those which have been waived in writing by the Parties other than the Party who is required to satisfy such condition, or such of those that such Parties agree to treat as a condition subsequent to First Closing), and at First Closing, the Parties shall take the following actions in the following order but more or less simultaneously:

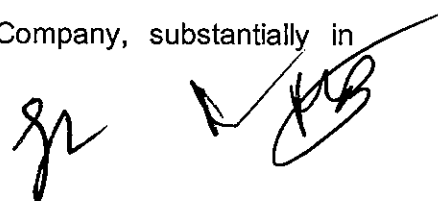
7.1.1 SSL and the Company shall take all actions for closing under each of the Business Transfer Agreements;

7.1.2 SCES shall pay to the Company the SCES Subscription Consideration due at First Closing in accordance with Clause 4.3 above in readily available funds;

7.1.3 the Company shall hold a meeting of the Board, in the manner required under the Companies Act, 1956 to:

(a) adopt the Business Plan for the period from the Closing Date to 31st March 2014;

(b) appoint A.P. Singh as the first MD of the Company, substantially in



accordance with the terms of employment attached hereto as **Part A of Schedule XIII**;

- (c) appoint Deloitte as the auditors of the Company;
- (d) adopt the bank account protocols set out under Clause 12.7 (below);
- (e) adopt an anti-corruption policy and health and safety policy in accordance with Clauses 19.13 and 19.14 respectively;
- (f) constitute a Management Committee in accordance with Clause 14.3.2 (below);
- (g) constitute a Project Implementation Committee in accordance with Clause 14.3.3 (below);
- (h) adopt the amended Articles giving effect to the terms of this Agreement, in the form which has been mutually agreed upon by the Parties and has approved in the earlier Board Meeting;
- (i) issue and allot the respective number of Shares to SSL and SCES; and
- (j) to the extent that they are not already Directors, appoint the SSL Directors and SCES Directors to the Board and seek resignation from all other Directors,

and shall deliver, immediately after the said meeting, to each of the Shareholders: (i) an extract of the minutes of the relevant Board meeting, certified by any one of the Directors, (ii) an extract of the updated register of directors reflecting the appointment of SCES Directors and SSL Directors on the Board and resignation of all other Directors, (iii) an extract of the updated register of members and register of allotment showing each of SSL and SCES as the legal and beneficial owner of such number of Shares as is issued to them, certified by any one of the Directors. Further, the Company shall deliver to each of SSL and SCES duly stamped, original Share certificates representing the Shares that are issued to them. All taxes including but not limited to the stamp duty payable on the First Closing Securities shall be borne by the Company. As an alternative to the issuance of Share certificates, the Shareholders may require the Company to deposit dematerialised the Shares that are issued to them into the Dematerialised Account of SSL and SCES. For avoidance of doubt, in the event, any of the Shareholder requires their Shares in dematerialised form; they shall intimate the Company 45 (Forty five) Business Days prior to the First Closing Date;

7.1.4 SCES and the Company shall have executed the SCES Shareholder Loan Agreement and SCES Security Arrangements in a form which is substantially on the terms attached in Part A of **Schedule XV**;

7.1.5 SSL and the Company shall have executed the SSL Shareholder Loan Agreement in a form which is substantially on the terms attached in Part B of **Schedule XV**;

- 7.1.6 SSL shall procure that (a) all Directors whose resignation is sought by the Company pursuant to Clause 7.1.3(i) (above) shall resign from the Board; and (b) that each such Director shall pursuant to his resignation, deliver to the Company a letter acknowledging that such Director has no claim outstanding for Director's fees or compensation for unfair or wrongful dismissal or any other claims or entitlement to any payment for redundancy or in respect of any other moneys or benefits due to him from the Company arising out of such resignation;
- 7.1.7 the Company shall hold a meeting of the Shareholders to approve, in the manner required under the Act and to the satisfaction of the Shareholders: (a) the appointment of the SSL Directors and SCES Directors on the Board (to the extent that they are not already Directors); (b) approve the amendment of the giving effect to the terms of this Agreement, in the form which has been mutually agreed upon by the Parties, in accordance with the terms of this Agreement and (c) all other matters specified under Clause 7.1.3 that require Shareholder approval under the applicable Law and shall deliver after the meeting to SCES:
- (i) an extract of the minutes of the relevant Shareholder meeting, certified by any of the Directors;
 - (ii) a copy of the relevant Form 5 and Form 23 of the Companies Rules and Forms filed with the Registrar of Companies along with the relevant receipt/challan, certified by any of the Directors, to each of the Shareholders;
 - (iii) an extract of the updated register of Directors, reflecting the appointment of Directors as provided in this Clause 7.1.5 and resignation of Directors as provided in Clause 7.1.4 above, certified by any of the Directors;
- 7.1.8 Sindicatum Carbon Capital India Pvt Limited and the Company shall execute the Sindicatum Management Services Agreement;
- 7.1.9 SCES and the Company shall execute the SCES Technical Know-How Agreement and the SCES Royalty Agreement;;
- 7.1.10 the Company and Mr. A.P. Singh shall execute an employment agreement substantially on the terms attached hereto as **Part A of Schedule XIII**;
- 7.1.11 SSL and the Company shall execute the SSL Management Services Agreement, the SSL Technical/ Operational Supervision Agreement, the Fuel Supply Agreements, the Facilities Agreement, the Lease Deeds and the Plant Usage Agreements in a form which is substantially in the forms attached in **Schedule XI** of this Agreement (or otherwise in the form agreed as a condition precedent to First Closing) each of which shall include the relevant Commercial Terms; and
- 7.1.12 Each of the Parties to them shall execute the Umbrella Arbitration Agreements.
- 7.2 First Closing shall not be deemed to have been completed unless and until all of the actions referred to in Clause 7.1 have been completed.

8. SUBSEQUENT CLOSINGS

- 8.1 Each Subsequent Closing shall occur, at the registered office of the Company on a date mutually agreed by SSL and SCES, which shall not (unless otherwise agreed by SSL and SCES) be more than 7 (Seven) Business Days after the date on which the last of the relevant conditions precedent to such Subsequent Closing has been satisfied (except those which have been waived in writing by the Parties other than the Party who is required to satisfy such condition, or such of those that such Parties agree to treat as a condition subsequent to such Subsequent Closing) in accordance with Clause 6.2 above, and at each Subsequent Closing, the Parties shall take the following actions in the following order but more or less simultaneously:
- 8.1.1 SCES shall pay to the Company the amount of the SCES Subscription Consideration payable to the Company in respect of such Subsequent Closing in accordance with Clauses 4.2 and 4.3 above in readily available funds, it being acknowledged, however, that on Second Closing SCES' payment obligation shall be satisfied in part by the conversion of the SCES Shareholder Loan into CCDs in accordance with Clause 4.3.2;
- 8.1.2 the Company shall hold a meeting of the Board, in the manner required under the Companies Act to issue and allot such number of SSL BTA Subscription Securities to SSL and SCES Subscription Securities to SCES as are to be issued at the relevant Subsequent Closing under the terms of Clause 4.3 above (together, the "**Subsequent Closing Securities**"); and shall deliver, immediately after the said meeting, to both the Shareholders: (a) an extract of the minutes of the relevant Board meeting, certified by any one of the Directors, (b) an extract of the updated register of allotment and register of members showing SSL and SCES as the legal and beneficial owner of such number of Shares as are issued to each of them in accordance with the foregoing; and (c) extract of register of debenture holders showing SSL and SCES as the legal and beneficial owner of such number of CCDs as are issued to each of them in accordance with the foregoing, certified by any one of the Directors;
- 8.1.3 the Company shall deliver to each of SSL and SCES duly stamped, original Share certificates representing the Shares issued to them under Clause 8.1.2 above and CCD Certificates representing the CCDs issued to them under Clause 8.1.2. All stamp duty payable on the Subsequent Closing Securities shall be borne by the Company. As an alternative to the issuance of Share certificates, the Shareholders may require the Company to deposit dematerialised Shares into the dematerialised account of the SSL and SCES. For avoidance of doubt, in the event, any of the Shareholder requires their Shares in dematerialised form; they shall intimate the Company, 45 (Forty five) Business Days prior to the First Closing Date;
- 8.2 A Subsequent Closing shall not be deemed to have been completed unless and until all of the actions referred to in Clause 8.1 in respect of such Subsequent Closing have been completed.

9. **CONDITIONS SUBSEQUENT TO CLOSINGS**

9.1 Conditions Subsequent to First Closing

As soon as possible after the First Closing Date, but not later than the respective date set out below, each Party shall cause the Company to perform each of the following obligations:

- 9.1.1 within 5 (Five) days of the First Closing Date, the Company shall deliver to each of the Shareholders copies of the following forms filed with the Registrar of Companies, along with the relevant receipts/challans: (a) a certified copy of Form No. 2 of the Companies Rules and Forms for the return on allotment of the Shares issued at First Closing to SSL and SCES; (b) a copy of the relevant Form 23 of the Companies Rules and Forms; (c) a certified copy of Form 32, for both the appointment of SSL Directors, SCES Directors and the MD and the resignation of the existing directors of the Company; (d) a certified copy of Form 25C of the Companies Rules and Forms, for the return on terms of appointment of the MD;
- 9.1.2 within 15 (Fifteen) days of the First Closing Date, a copy of the relevant Form 8 of the Companies Rules and Forms filed with the Registrar of Companies along with the relevant receipt/challan;
- 9.1.3 within 15 (Fifteen) days of the First Closing Date, the Company shall have obtained those insurances required to be effected by it by such date under the Insurance Program;
- 9.1.4 within 7 (Seven) days of the First Closing Date, the Company shall comply with all reporting requirements of RBI for receiving the foreign direct investment and deliver to SCES a copy of the report filed with the office of the RBI, certified by any Director;
- 9.1.5 within 7 (seven) Business Days of the First Closing Date, SSL and the Company shall deliver to SCES (in a form satisfactory to SCES in its sole discretion) a legal opinion in relation to Indian law in respect of the validity and enforceability of the registered Lease Deeds, from the lawyer responsible for registering the Lease Deeds in Uttar Pradesh along with a copy of each of the registered Lease Deed;
- 9.1.6 within 30 (Thirty) days of the First Closing Date, the Board shall have passed resolutions convening an extraordinary general meeting of the Shareholders to approve: (a) conversion of the Company from a public limited company to a private limited company; and (b) adopt the Articles substantially in the form as has been mutually agreed to, by the Parties, in accordance with the terms of this Agreement. Further, the Board shall have delivered an extract of the minutes of the relevant Board meeting, certified by any of the Directors, to each of the Shareholders;
- 9.1.7 within 30 (thirty) Business Days from the First Closing Date, Company shall deliver an extract of its Fixed Assets register, certified by the Managing Director, reflecting the transfer of the Power Undertakings;
- 9.1.8 within 30 (Thirty) Business Days of the First Closing Date, the Company shall comply with all reporting requirements of the RBI under the extant foreign exchange regulations, including but not limited to, filing of Form FC-GPR for issue and

allotment of the SCES Subscription Securities to SCES and deliver to SCES certified copies of such report and the Form FC-GPR filed with the authorised dealer;

- 9.1.9 within 7 (Seven) days from the date of the SCES Shareholder Loan Agreement, the Company shall comply with all the reporting and filing requirements under the External Commercial Borrowings guidelines issued by RBI, including but not limited to, filing of Form 83 for obtaining a Loan Registration Number;
- 9.1.10 within 30 (Thirty) days of the First Closing Date, the Company shall procure and, throughout the duration of the Transaction Documents, maintain, in each case on terms and with coverage satisfactory to the Shareholders, adequate directors & officers liability insurance cover for an amount approved by the Board of Directors for the MD;
- 9.1.11 within 30 (Thirty) days of the First Closing Date, the Company shall have held an extraordinary general meeting of the Shareholders and passed special resolutions for: (a) the conversion of the Company from a public limited company to a private limited company; and (b) adoption of the Articles of Association in the form as mutually agreed upon by the Parties. Further, the Company shall have delivered to each of the Shareholders: (a) an extract of the minutes of the said Shareholders' meeting, and (b) a certified copy of the relevant Form 23 of the Companies Rules and Forms filed with the Registrar of Companies along with the relevant receipt/challan;
- 9.1.12 within 5 (Five) days of the extraordinary general meeting held under Clause 9.1.11 above, the Company shall take all relevant steps as required by Law, for the conversion of the Company from public limited to a private limited company;
- 9.1.13 within 45 (Forty-Five) days from the First Closing Date, the Company shall have delivered to each of the Shareholders: (a) fresh certificate of incorporation subsequent to change of name from "Simbhaoli Power Limited" to "Simbhaoli Power Private Limited", certified by any of the Directors; and (b) copy of the amended Memorandum and Articles in the form as mutually agreed upon, by the Parties, certified by any of the Directors;
- 9.1.14 within 5 (Five) days from the date the name of the Company has changed from "Simbhaoli Power Limited" to "Simbhaoli Power Private Limited", intimate in writing all Person including but not limiting to Authorised Dealer Category-I bank for the SCES Shareholder Loan and all Government and statutory authorities related to the Business (excluding those which may be expressly agreed by the Parties in writing) regarding the change of name and deliver acknowledged copies of each of such intimation to the Shareholders;
- 9.1.15 within 90 (Ninety) days from the end of the Sugar Season 2012-13 or any other period acceptable to the Board, the Company shall have entered into new power purchase agreements with UPPCL in respect of the Chilwaria Power Undertaking and Simbhaoli Power Undertaking;
- 9.1.16 within 90 (Ninety) days from the First Closing Date or any other period acceptable to

the Board, the Company shall have obtained all Approvals required to carry out the New Installation Project and the Business and to own and/or operate the assets of the Company,

- 9.1.17 within 90 (Ninety) days from the First Closing Date or any other period acceptable to the Board, the Company shall make all requisite applications and filings and take all other action required under applicable Law in respect of the transfer of any employees to the Company under the terms of the Business Transfer Agreements;
- 9.1.18 within 90 (Ninety) Business Days from the First Closing Date, the Company shall have appointed the Financial Controller in accordance with Clause 12.5;
- 9.1.19 within 45 (Forty-Five) days from the First Closing Date, the Company shall execute the Project Implementation Agreements and the Operation and Maintenance Agreements with Casetech in a form which is substantially in the forms attached in **Schedule XI** of this Agreement; and

each Party shall take such other actions or steps that need to be performed by such Party to fulfil a Condition Precedent to the First Closing that has been waived in writing as a condition precedent and stipulated as a condition subsequent under Clause 7.1 above.

9.2 Conditions Subsequent to each Subsequent Closing

As soon as possible after each Subsequent Closing Date, but not later the respective dates set out below, each Party shall cause the Company to perform each of the following obligations:

- 9.2.1 within 5 (Five) days of such Subsequent Closing Date, the Company shall deliver to each of the Shareholders (a) a certified copy of Form No. 2 of the Companies Rules and Forms duly filed with the Registrar of Companies along with the relevant receipt/challan, certified by any of the Directors, for the return of allotment of the relevant Shares issued at such Subsequent Closing Date to SSL and SCES and (b) an extract of the updated register of allotment and register of members showing SSL and SCES as the legal and beneficial owner of such number of Shares as are issued to each of them in accordance with the foregoing and extract register of debenture holders showing SSL and SCES as the legal and beneficial owner of such number of CCDs as are issued to each of them in accordance with the foregoing, certified by any one of the Directors, and in the case of the Second Closing only, an extract of its Register of Loans and Charges certified by its Director, reflecting the Senior Loan;
- 9.2.2 to the extent applicable, within 5 (Five) days of each Subsequent Closing Date, the Company shall deliver to each of the Shareholders an extract of updated Register for Related Party Transactions, certified by the Managing Director, reflecting any change in loan given by SSL;
- 9.2.3 within 7 (Seven) days of the Second Closing Date, the Company shall report the conversion of SCES Shareholder Loan into CCDs to RBI;
- 9.2.4 within 7 (Seven) days of the each Subsequent Closing Date, the Company shall

comply with all reporting requirements of RBI for receiving the foreign direct investment and deliver to SCES a copy of the report filed with the office of the RBI, certified by any one Director;

- 9.2.5 within 30 (Thirty) days of each Subsequent Closing Date, the Company shall, file Form FC-GPR with the RBI for issue and allotment of the SCES Subscription Securities issued to SCES at such Subsequent Closing and deliver to SCES certified copies of such report and the Form FC-GPR filed with the authorised dealer in connection with the issue and allotment of such SCES Subscription Shares, certified by any Director; and

each Party shall take such other actions or steps that need to be performed by such Party to fulfil a condition precedent to such Subsequent Closing that has been waived in writing as a condition precedent and stipulated as a condition subsequent under Clause 8.1 above.

10. REPRESENTATIONS AND WARRANTIES

- 10.1 Each of the Parties hereby represents and warrants in respect of itself to the others that the statements set out in this Clause 10.1 are true and correct. Each of the representations and warranties in this Clause 10.1 are made by each Party on (a) the Effective Date; (b) the Restatement Date; and (c) each Closing Date. Each representation and warranty in this Clause 10.1 deemed to be made after the Effective Date shall be deemed to be made by reference to the facts and circumstances existing at the date the representation and warranty is deemed to be made.

10.1.1 Authority

It is a company/corporation duly incorporated, validly existing and in good standing under the relevant Laws under which it is incorporated. It has all the requisite power and authority to enter into this Agreement and the other Transaction Documents to which it is a party, to perform its obligations under this Agreement and the other Transaction Documents to which it is a party and to consummate the transactions contemplated hereby and thereby. This Agreement has been duly executed and delivered by it and constitutes a legal, valid and binding obligation enforceable against it in accordance with its terms.

10.1.2 No Conflicts

The execution and delivery of this Agreement and the other Transaction Documents to which it is a party does not, and the performance of this Agreement and the other Transaction Documents to which it is a party will not, conflict with or result in any violation or breach of or default (with or without notice or lapse of time or both) under any provision of (a) any material contract (including any contract that may impose any non-compete or non-solicitation obligation(s)) or by which any of its assets and properties are bound (b) its articles of association, memorandum of association, status, by-laws or other constitutional documents or (c) any Law, Approval or order applicable to it or its assets and properties.

10.1.3 Actions and Proceedings

There are no (a) outstanding judgments, orders, injunctions or decrees of any court, tribunal, Government authority, arbitration tribunal or other judicial or quasi-judicial authority against it; (b) lawsuits, claim, demand, actions or proceedings pending or threatened or reasonably likely to be initiated against it; or (c) investigations by any Government or other authority which are either pending or threatened or reasonably likely to be initiated against it; and which in respect of each of the foregoing, would affect its ability to consummate the transactions contemplated by this Agreement and the other Transaction Documents to which it is a party.

10.1.4 Approvals and Filings

All consents, Approvals, licenses, permits, orders or authorization of, or registration, declaration or filing with, any Government authority or Person as are required to be obtained or made by it in connection with the execution, delivery and performance of this Agreement, at the time of giving of this representation and warranty, have been so obtained and no other approvals besides the ones obtained are required to be obtained.

10.1.5 Anti-Corruption Warranty

Neither it nor its Affiliates have made and will not make any offer, promise to pay or authorization of the payment of any money, gift or any other inducement to any official, political party, employee of Government or any other person, in contravention with applicable Laws in connection with the execution of the Transaction Documents and performance of its obligations thereunder.

10.2 **Company's Representations and Warranties.**

With the knowledge and understanding that SCES has agreed to enter into this Agreement, relying on representations and warranties in **Schedule III**, as qualified by the Company Disclosure Letter, ("**Company's Representations and Warranties**") the Company and SSL hereby on (a) the Effective Date and (b) the Restatement Date, jointly and severally represent and warrant to SCES that:

- 10.2.1 each statement contained in the Company's Representations and Warranties is true, correct and complete in all material respects and shall continue to be so at the time of First Closing, and such representations and warranties by the Company are deemed to be repeated on each day up to and including the First Closing Date and any reference made to the date of this Agreement (whether express or implied) in relation to any representation or warranty hereunder shall be construed, in relation to any such repetition, as a reference to each such day;
- 10.2.2 each of the Company's Representations and Warranties is separate and independent and unless expressly provided, is not limited by reference to any other warranty or provision of this Agreement;
- 10.2.3 other than the disclosure in the Company Disclosure Letter, no information about the

Company of which SCES has knowledge and no investigation by or on behalf of SCES shall prejudice any claim made by it under the Company's Representations and Warranties.

- 10.3 SSL shall ensure that the Company does not do or omit to do anything which would, at any time before or at First Closing, be inconsistent with any of the representations or warranties, breach any representation or warranty or make any representation or warranty untrue or misleading.
- 10.4 SSL shall immediately disclose (prior to First Closing) to SCES, in writing so that SCES may be able to make an accurate assessment of the situation, any matter, thing or circumstance which arises before the First Closing (including any omission to act) which in SSL's reasonable opinion: (a) is a breach of any of its obligations or is inconsistent with any of the Company's Representations and Warranties or SSL's Representations and Warranties; or (b) has or is likely to have a Material Adverse Effect on the Company or on the Power Undertakings to be transferred to the Company under Clause 4.1.1. If requested by SCES, SSL shall use its best endeavours to prevent or remedy the notified occurrence.
- 10.5 If at any time before or at First Closing it becomes apparent that a representation or warranty, whether given by SSL or the Company, has been breached, is untrue or misleading, or that SSL or the Company has breached any other term of this Agreement that in either case is material to the Transaction, SCES may (without prejudice to any other rights it may have in relation to the breach):

(a) rescind this Agreement by notice to SSL; or

(b) proceed to First Closing;

provided however that in the event, SCES proceeds to First Closing with knowledge of the matters referred to in Clause 10.4 and 10.5, and if such matters have been disclosed in writing by Company or SSL, as the case maybe in the revised SSL Disclosure Letter or the Company Disclosure Letter, respectively, SCES will have no claims against SSL or the Company in respect of such matters.

10.6 **SSL's Representations and Warranties.**

SSL represents and warrants to SCES, with the knowledge and understanding that SCES has agreed to enter into this Agreement, relying on representations and warranties in **Schedule IV**, as qualified by SSL Disclosure Letter ("**SSL's Representations and Warranties**") as follows on (a) the Effective Date and (b) the Restatement Date:

- 10.6.1 each statement contained in SSL's Representations and Warranties is true, accurate and not misleading in all material respects and shall continue to be so at the time of First Closing and such representations and warranties by SSL are deemed to be repeated on each day up to and including the First Closing Date and any reference made to the date of this Agreement (whether express or implied) in relation to any representation or warranty hereunder shall be construed, in relation to any such

repetition, as a reference to each such day;

- 10.6.2 each of SSL's Representations and Warranties is separate and independent and unless expressly provided, is not limited by reference to any other warranty or provision of this Agreement;
- 10.6.3 SSL's Representations and Warranties shall be deemed to have been repeated by SSL immediately prior to First Closing by reference to the facts and circumstances then subsisting; and
- 10.6.4 other than the disclosure in the SSL Disclosure Letter, no information about the Company of which SCES has knowledge and no investigation by or on behalf of SCES shall prejudice any claim made by them under SSL's Representations and Warranties.

11. SHAREHOLDERS' RIGHTS

11.1 Further Funding and Anti-dilution Rights

- 11.1.1 The Parties agree that, save and except for any change in shareholding pattern of SSL and SCES in accordance with Clauses 11.1.7, 11.3.4, 11.3.5, 17 or 22.3, the shareholding of SSL and SCES (including their respective nominees and Affiliates) in the Company shall always be in the ratio 51:49.
- 11.1.2 As on the Restatement Date, the Parties estimate the Total Project Cost to be as detailed in **Schedule I**. If the Company requires, at any time prior to the Final Commissioning Date, funding beyond the SCES Subscription Consideration and the Senior Loan to enable the Commissioning of each Power Plant to take place ("**Further Funding**"), then the Company shall take all reasonable steps to meet such requirement through additional third party debt, failing which, SSL shall be bound and obliged to provide such Further Funding on such terms agreed to by SCES and SSL and acceptable to the Senior Lenders.
- 11.1.3 Not used.
- 11.1.4 All funding requirements of the Company following the Final Commissioning Date shall be met in accordance with the Business Plan or (unless otherwise agreed by SSL and SCES) shall, in so far as practicable, be procured from third party financing sources on terms to be agreed by SSL and SCES.
- 11.1.5 If after the Final Commissioning Date, the Board resolves that the Company requires additional funding and the Company is unable to raise such funding in accordance with the Business Plan or from third party financing sources as contemplated in Clause 11.1.4 above, then subject to the approval of the Board also to issue new Securities (as defined herein below), such additional funding shall be raised through a rights issue of Shares to the Shareholders. If any of the Shareholders do not subscribe to such rights issue, then the Shareholding of the Shareholder not subscribing to such rights issue shall stand diluted and such Shareholder shall have no right to object to such dilution. If however, a

Shareholder ("**First Party**") does not subscribe to such rights issue but is willing to bring its proportionate share of funding in the form of convertible securities or in some other manner, then subject to the other Shareholder agreeing to the terms and manner of such funding, the Company agrees to accept the money of the First Party and issue the First Party such paper/securities or execute such agreement with the First Party as may mutually be agreed by and between the First Party, the Company and the other Party. If any convertible paper issued as part of such agreement or debt advanced there under is agreed to be converted into equity at a later date then, unless specifically agreed otherwise by the other Party, the conversion shall happen at a price per share equal to the price per share paid by other Party pursuant to the rights issue. Pending such conversion the First Party shall not object to it being diluted. If the additional funding is provided in the form of debt, the First Party shall be entitled to interest equal to the proportionate extra dividend on a fully diluted basis received by the other Party every year. It is agreed between the Parties that, if the additional funding is provided as debt by a Party, then such debt shall be automatically converted into equity in the event of liquidation of the Company.

11.1.6 Not Used.

11.1.7 The Parties may agree mutually for the issue of additional Securities by the Company to any third party(s), at any time, provided that in such event the Shareholders shall have the pre-emptive right to subscribe to such Securities of the Company at par or as per applicable Law in proportion to their respective holdings in the Company on the basis of their then existing shareholding, on a fully diluted basis so that their shareholding percentage in the Company on a fully diluted basis is not reduced ("**Pre-Emptive Right**").

11.1.7.1 The Pre-emptive Right shall be offered by the Company by issuing a written notice to each Shareholder ("**Pre-Emptive Notice**"), setting forth in detail the terms of the proposed issuance price ("**Issuance Price**"), the date of closing of the proposed issuance, which shall not be less than 30 (Thirty) Business Days from the date of receipt of Pre-Emptive Notice, and the number of Securities proposed to be issued ("**Issuance Shares**").

11.1.7.2 If any Shareholder wishes to exercise its Pre-emptive Right, within 15 (Fifteen) Business Days from the date of receipt of Pre-Emptive Notice (the "**Pre-Emptive Offer Period**"), it shall give a written notice to the Company setting forth the maximum number of Issuance Shares to which it wishes to subscribe (including the number of Issuance Shares (if any) that such Shareholder would subscribe to if the other Shareholders do not elect to subscribe to their respective Pro Rata Shares) at the Issuance Price and on the terms and conditions set out in the Pre-Emptive Notice (an "**Exercise Notice**"). A Shareholder's "**Pro Rata Share**" shall mean the number of Shares held by such Shareholder *divided by* the total number of Shares then outstanding (in each case, assuming full conversion and/or exercise, as applicable, of all convertible securities). It is clarified that all Shareholders shall subscribe to Issuance Shares at the same price unless otherwise expressly agreed.

- 11.1.7.3 If the aggregate number of Issuance Shares applied for by the Shareholder(s) under Clause 11.1.7.2 above is less than the total number of Issuance Shares offered under Clause 11.1.7.1 above or none of the Shareholders exercise their Pre-emptive Right within the Pre-Emptive Offer Period, then the Company may issue and allot any Issuance Shares not subscribed for by any of the Shareholders under Clause 11.1.7.2 above (the "**Balance Shares**") to a third party subscriber at the Issuance Price and on the terms and conditions as mentioned in the Pre-Emptive Notice, *provided however*, that in such event, the Company shall issue the Balance Shares to such third party within a period of 3 (Three) months from the expiry of the Pre-Emptive Offer Period, and any issuances of Shares by the Company after such 3 (Three) months period shall be made only after issuing a fresh Pre-Emptive Notice to the Shareholders and following the procedure set out in this Clause 11.1.7.
- 11.1.7.4 Notwithstanding anything contained in this Clause 11.1.7 to the contrary, no Shareholder shall have any Pre-emptive Right with respect to: (i) Securities issued as a result of any bonus, stock split, stock dividend, reclassification or reorganization or similar event with respect to the Shares; (ii) Shares issued upon conversion of any convertible Security; (iii) Shares issued under any employee stock option scheme and (iv) any securities issued upon a Qualified IPO.

11.2 **Bonus Issue**

Any bonus issue of Shares shall, without exception, be offered or issued by the Company to all Shareholders, on a fully diluted basis, pro-rata to their respective shareholdings and otherwise on identical terms.

11.3 **Transfer of Securities**

11.3.1 Transfers to Affiliates

A Shareholder may transfer any of its Securities at any time to any of its Affiliates or may get an Affiliate to subscribe for any Securities that it is entitled to subscribe to, provided the following conditions are met:

- (a) such Affiliate is not a Competitor;
- (b) if at any time after the subscription or the transfer, such Affiliate ceases to be an Affiliate of the concerned Shareholder, then such Shareholder shall procure that such Affiliate shall, prior to it ceasing to be an Affiliate, forthwith transfer back to itself and/or to any other Affiliate, as it may choose at its sole option, all the Securities previously subscribed by or transferred to it;
- (c) the Shareholder will be deemed to be the shareholder in respect of such Securities for all purposes under the Agreement except for receiving dividends, which shall be paid to the registered holder of the Shares;
- (d) the Shareholder shall remain liable for the Affiliate complying with the terms of this Agreement; and

- (e) the Affiliate shall execute a deed of adherence prior to the subscription or the transfer in the form as annexed in **Schedule V** and shall undertake to be bound by all the terms and conditions stated in this Agreement in respect of the Securities so subscribed or transferred to by it, as if it were a party hereto.

11.3.2 Transfer by SCES to SSL

In the event of a Change of Control of SCES, SSL may require SCES to sell to SSL, at a price per Share equal to the FMV, such number of Securities held by SCES as would, increase the shareholding of SSL in the Company to more than 75% (Seventy-five percent) of its paid up share capital.

11.3.3 Limitations on Transfer

- 11.3.3.1 No Shareholder shall, without the prior written consent of the other Shareholder, sell, transfer, assign, gift, part with or otherwise dispose of any interest in or create any Encumbrance ("**Transfer**") over any of its Securities, directly or indirectly, for a period from the date such Shareholder acquires or subscribes for such Securities to the date falling 36 (Thirty-six) months after the Final Commissioning Date ("**Lock-in Period**").
- 11.3.3.2 After the expiry of the Lock-in Period, no Shareholder shall Transfer, directly or indirectly, any of its Securities without the prior written consent of the other Shareholder except by way of a sale of the entire legal and beneficial interest in all (but not less than all) its Securities in accordance with Clause 11.3.4 (*Right of First Refusal*) or Clause 11.3.5 (*Tag Along Right*).
- 11.3.3.3 For the avoidance of doubt, the restrictions of Clause 11.3.3.1 and 11.3.3.2 shall not be applicable to a transfer of Securities by a Shareholder to its Affiliate in compliance with the terms of Clause 11.3.1 (*Transfer to Affiliates*).

11.3.4 Right of First Refusal

Subject to the provisions of Clause 11.3.3 (*Limitation on Transfer*) above, a Shareholder ("**Transferring Shareholder**") may Transfer all (but not less than all) of its Securities to a third party ("**Third Party Buyer**"), after complying with the following conditions:

- (a) the Transferring Shareholder shall give an irrevocable written notice ("**Transfer Notice**") to the other Shareholder ("**Non-Transferring Shareholder**"), setting forth the details of the proposed Transfer, including: (i) the number of Securities ("**Sale Shares**"), (ii) the price at which the Sale Shares are being proposed to be sold ("**Sale Price**") to the Third Party Buyer, (iii) the identity of the Third Party Buyer, (iv) the proposed mode and terms of payment between the Transferring Shareholder and the Third Party Buyer, (v) the proposed closing date for such Transfer (which shall not be less than 90 (Ninety) days from the notice ("**Offer Period**")), and (vi) all other material terms and conditions of the Transfer;

- (b) the Non-Transferring Shareholder shall have the right ("**Right of First Refusal**"), exercisable at its sole discretion, to purchase, whether by itself or through any nominee, the Sale Shares at the Sale Price by serving upon the Transferring Shareholder a written notice in that regard within 30 (Thirty) days from receipt of the Transfer Notice ("**Offer Acceptance Notice**");
- (c) in the event the Non-Transferring Shareholder exercises its Right of First Refusal, it must pay the Sale Price, and the Parties must consummate the sale and purchase of the Sale Shares, within 30 (Thirty) days of the Offer Acceptance Notice;
- (d) subject to Clause 11.3.5(*Tag Along Right*), if however the Non-Transferring Shareholder does not exercise its Right of First Refusal or it states in writing that it does not wish to purchase the Sale Shares ("**Offer Refusal Notice**"), then the Transferring Shareholder may, not later than 30 (Thirty) days of the expiry of the Offer Period, Transfer to the Third Party Buyer all but not less than all of the Sale Shares provided that, the Transfer shall be at a price not less than the Sale Price and on the terms mentioned in the Transfer Notice;
- (e) any Transfer to the Third Party Buyer not completed within the time period stated in paragraph (d) above shall again be subject to a Right of First Refusal and the Transferring Shareholder will have to comply with the procedure set forth in Clause 11.3.4 (*Right of First Refusal*).

11.3.5 Tag Along Right

- 11.3.5.1 If SSL delivers a Transfer Notice to SCES pursuant to Clause 11.3.4 (*Right of First Refusal*) above, SCES shall have the right ("**Tag Along Right**"), exercisable in its sole discretion, to elect (as an alternative to the exercise of its Right of First Refusal under Clause 11.3.4) to Transfer all of its Securities ("**Tag Along Shares**"), to the Third Party Buyer to whom the sale is proposed to be made ("**Buyer**") at the Sale Price and on the terms mentioned in the Transfer Notice by serving upon SSL a written notice in that regard within 30 (Thirty) days of receipt of the Transfer Notice. SSL shall make reasonable efforts to ensure that the rights of SCES under this Clause 11.3.5 (*Tag Along Rights*) are given effect to.
- 11.3.5.2 If SCES elects to exercise its Tag Along Right, then SSL shall ensure that the Third Party Buyer purchases the Tag Along Shares along with the Sale Shares mentioned in the Transfer Notice (a) at the Sale Price and on the terms mentioned in the Transfer Notice and (b) with no requirement for SCES to grant any representations, covenants or indemnities to or in favour of the Third Party Buyer other than representations as to the ownership of such Tag Along Shares and the authority of SCES to enter into such transaction. Subject to the foregoing, if SCES elects to exercise its Tag Along Right, SCES shall take all steps required for the transfer of Tag Along Shares to the Third Party Buyer.
- 11.3.5.3 SSL shall ensure that the Third Party Buyer completes the purchase of the Tag Along Shares at the same time as completion of purchase of the Sale Shares and, if the Third Party Buyer does not so purchase SCES Shares, SSL shall

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either (a) purchase the Tag Along Shares from SCES at the Sale Price; or (b) be precluded from selling its Sale Shares to the Third Party Buyer.

- 11.3.5.4 If SCES does not exercise its Tag Along Right or does not serve a written notice upon SSL within the time period specified in Clause 11.3.5.1 above, then SSL may, subject to SCES not exercising its Right of First Refusal set out in Clause 11.3.4 (*Right of First Refusal*), sell the Sale Shares to the Third Party Buyer at the Sale Price and on the terms mentioned in the Transfer Notice, provided however, that such sale shall be consummated not later than 30 (Thirty) days of the expiry of the Offer Period mentioned in the applicable Transfer Notice, and Transfer by SSL after such period shall be made only after issuing a fresh Transfer Notice to SCES and following the procedure set out in this Agreement.

11.3.6 General Terms & Conditions applicable to all Transfer of Shares

- 11.3.6.1 No Transfer of Securities (other than transfers to Affiliates in accordance with Clause 11.3.1 and transfer from SCES to SSL in accordance with Clause 11.3.2) shall be registered unless the Person to whom such Securities are Transferred has executed and delivered to the other Parties, a deed of Novation and Release annexed as **Schedule VI** to this Agreement, agreeing to be bound by the terms of this Agreement as if it were a party to it.

- 11.3.6.2 The Parties shall co-operate and shall do and execute all other acts, deeds and things necessary to give effect to the provisions of this Agreement and the Articles concerning Transfers of Securities and the Parties shall (so far as it is within their capacity so to do) procure that a meeting of the Board is duly convened to approve and register each Transfer of Securities permitted or required by any provision of this Agreement or the Articles (subject to the same being duly stamped and duly executed).

- 11.3.6.3 A Party shall not Transfer any of its Securities to a Competitor.

11.3.7 Invalid Transfers

- 11.3.7.1 Any attempted Transfer made by any Shareholder in violation of this Agreement shall be null and *void ab initio*. Neither the Board nor the Shareholders shall approve or ratify any Transfer made in contravention of the obligations contained in Clause 11.3 (*Transfer of Shares*) or elsewhere in the Agreement and subject to applicable Law, the Company shall refuse to register any Transfer or other disposition of Securities purported to be made by any Shareholder in breach of any of the provisions herein contained. The Shareholders shall cause their nominees on the Board to cast their votes in such a manner as to ensure that the Company registers only Transfers made in accordance with this Clause 11.3 (*Transfer of Shares*).

- 11.3.7.2 Any breach of Clause 11.3 (*Transfer of Shares*) shall be deemed to be a material breach of this Agreement, and the aggrieved Party shall be entitled to claim reliefs provided for under this Agreement.

11.3.8 Legend on Share Certificates

All share certificates of the Company, if issued in physical form to any of the Shareholders, shall bear the following legend, as well as any other legends required under any applicable Laws or regulations:

"THESE SHARES ARE SUBJECT TO THE TERMS AND CONDITIONS OF THE AMENDED AND RESTATED JOINT VENTURE AGREEMENT DATED _____ BETWEEN THE COMPANY AND THE SHAREHOLDERS OF THE COMPANY NAMED THEREIN. A COPY OF SUCH AMENDED AND RESTATED JOINT VENTURE AGREEMENT IS ON FILE AT THE REGISTERED OFFICE OF THE COMPANY. THE SALE, TRANSFER OR OTHER DISPOSITION OF THESE SHARES IS SUBJECT TO THE TERMS AND CONDITIONS (INCLUDING CERTAIN RESTRICTIONS ON TRANSFERABILITY) OF THE AMENDED AND RESTATED JOINT VENTURE AGREEMENT AND SUCH SHARES ARE TRANSFERABLE ONLY UPON PROOF OF COMPLIANCE THEREWITH. ANY ATTEMPT TO SELL, TRANSFER OR OTHERWISE DISPOSE OF THESE SHARES OTHER THAN IN COMPLIANCE WITH THE AMENDED AND RESTATED JOINT VENTURE AGREEMENT SHALL NOT BE VALID AND THE PARTY AGGRIEVED SHALL BE ENTITLED TO SEEK ALL AVAILABLE LEGAL REMEDIES. THE SHARES ARE LOCKED-IN UNTIL A PERIOD OF 36 (THIRTY SIX) MONTHS FROM THE DATE OF FINAL COMMISSIONING DATE (AS DEFINED IN THE AMENDED AND RESTATED JOINT VENTURE AGREEMENT)."

11.3.9 Legend on CCD Certificate

All CCD certificate of the Company, if issued in physical form to any of the Debenture Holders, shall bear the following legend, as well as any other legends required under any applicable Laws or regulations:

"THESE COMPULSORILY CONVERTIBLE DEBENTURES ARE SUBJECT TO THE TERMS AND CONDITIONS OF THE AMENDED AND RESTATED JOINT VENTURE AGREEMENT DATED _____ BETWEEN THE COMPANY AND THE DEBENTURE HOLDERS NAMED THEREIN. A COPY OF SUCH AMENDED AND RESTATED JOINT VENTURE AGREEMENT IS ON FILE AT THE REGISTERED OFFICE OF THE COMPANY. THE SALE, TRANSFER OR OTHER DISPOSITION OF THESE COMPULSORILY CONVERTIBLE DEBENTURES IS SUBJECT TO THE TERMS AND CONDITIONS (INCLUDING CERTAIN RESTRICTIONS ON TRANSFERABILITY) OF THE AMENDED AND RESTATED JOINT VENTURE AGREEMENT AND SUCH COMPULSORILY CONVERTIBLE DEBENTURES ARE TRANSFERABLE ONLY UPON PROOF OF COMPLIANCE THEREWITH. ANY ATTEMPT TO SELL, TRANSFER OR OTHERWISE DISPOSE OF THESE SHARES OTHER THAN IN COMPLIANCE WITH THE AMENDED AND RESTATED JOINT VENTURE AGREEMENT SHALL NOT BE VALID AND THE PARTY AGGRIEVED SHALL BE ENTITLED TO SEEK ALL AVAILABLE LEGAL REMEDIES. THE COMPULSORILY CONVERTIBLE DEBENTURES ARE

LOCKED-IN UNTIL A PERIOD OF 36 (THIRTY-SIX) MONTHS FROM THE DATE OF THE FINAL COMMISSIONING DATE (AS DEFINED IN THE AMENDED AND RESTATED JOINT VENTURE AGREEMENT.”

12. ACCOUNTS, RECORDS AND INFORMATION

- 12.1 The auditors of the Company shall be the Person appointed pursuant to Clause 7.2.3(c) or any other Approved Auditor selected in accordance with Clause 16.1(q).
- 12.2 The Shareholders shall cause the Company to, and the Company shall maintain, complete, true and fair financial and accounting records as per the Indian accounting standards.
- 12.3 The financial year of the Company shall be the period commencing April 1 of every year to March 31 of the subsequent year or such other period as the Board may decide from time to time (“**Financial Year**”).
- 12.4 The Company shall prepare and provide to the Shareholders monthly Management Accounts (together with such other financial and operational information as the Shareholders may reasonably require), within 14 (Fourteen) days after the end of each month.
- 12.5 The Company shall appoint a financial controller (“**Financial Controller**”) in accordance with Clause 9.1.15, and execute an employment agreement with the Financial Controller, which shall incorporate the key employment terms set out in **Part B of Schedule XIII**. The Financial Controller shall be appointed by the Board on the recommendation of SCES.
- 12.6 The Shareholders and their authorized representatives shall be provided with unrestricted access during normal business hours to all books and records of the Company or any other information which the Shareholders may specially ask for regarding the Company, subject to the authorized representative being bound by the confidentiality obligations as per Clause 21 (*Confidentiality*) and provided that, such Shareholder and/or its authorized representatives have delivered prior written notice to the Company at least 24 (Twenty Four) hours prior to accessing such information and the normal functioning of the Company is not disrupted thereby.
- 12.7 The following specific protocols will apply to any transactions (including payments, transfers etc) undertaken on any bank accounts open and held by the Company (the “**Company Bank Accounts**”):
- 12.7.1 At least dual authorisations shall be required for all transactions from the Company Bank Accounts. The payment mechanism will be based on the following class of signatories:

Class A: SSL Directors;

Class B: SCES Directors (SCES directors may nominate alternates in New Delhi such that Class B signatories shall include total 3 individuals resident in

or near New Delhi)

Managing Director

Financial Controller

Class D: Respective Power Plant head and plant accounts head of the Company

Payment amounts	Signing Authorities
Payments up to Rs. 500,000 at each Power Undertaking	Two signatories from Class D
Transactions up to Rs 5,000,000	Two Signatories: Financial Controller with Either Class A or MD
Transactions equal to or greater than Rs. Rs 5,000,000	Three Signatories: One Class A and one Class B and <i>either</i> MD or Financial Controller

12.7.2 Maximum daily cash withdrawal limit of Rs. 200,000.

12.7.3 Within 30 days of the closing, the Company will issue for approval by the Board a manual of delegated authorities including the authorisations for approving the liabilities orders for purchases and services and employee expenses within its Accounts System.

13. BUSINESS PLAN

13.1 The Company shall conduct its business in accordance with a Business Plan. The first Business Plan of the Company shall be for the period from the First Closing Date to 31st March 2014. Thereafter, the MD shall, for each Financial Year, prepare a Business Plan, which shall be presented for Board's consideration and approval at least 2 (Two) months prior to the commencement of that Financial Year. In the event that the Business Plan is not approved prior to the commencement of the Financial Year for which it has been prepared, the Company shall be operated in accordance with the previous Financial Year's Business Plan, until a new Business Plan is approved. The Business Plan as approved shall be quarterly reviewed and may, with mutual consent, be modified/updated during the year keeping in view the changes in, *inter alia*, market scenario as well as conditions prevailing at that time. To the extent that any matter contained in, or proposed to be contained in, any such budget or business plan relates to a course of action which would, if implemented, be a Reserved Matter or a Unanimous Consent Matter, the provisions of Clause 16.1 or Clause 16.2 (as the case may be) shall apply. In case the approved business plan contain any action which differs from any specific approval given by the Board on the same subject, the approval given on a later date shall prevail.

13.2 The Business Plan shall include, amongst others, the following items:

- (a) the goals of the Company for the period to which the Business Plan relates;
- (b) the strategies to be employed to achieve those goals;
- (c) the areas and types of activities to be conducted and emphasized in achieving those goals;
- (d) an estimate of the financial results of the previous Financial Year, if available;
- (e) the operating budget of the Company, including cash flow and working capital;
- (f) the capital expenditure budget of the Company;
- (g) the estimated quantities of Specification Bagasse (as defined in the Fuel Supply Agreements) to be supplied by SSL to the Company pursuant to the Fuel Supply Agreements;
- (h) the estimated steam and power requirements of the Sugar Plants;
- (i) forecasted quantities of Raw Materials (as defined in the Fuel Supply Agreements) required to be supplied to the Company by SSL pursuant to the Fuel Supply Agreements;
- (j) estimated requirements for Fuel (as defined under the Operation and Maintenance Agreements) to be purchased by the Company from third parties other than SSL;
- (k) estimated exported electricity;
- (l) the preventative maintenance schedule for the Power Plants and any planned outages, shutdowns, capital upgrades, tear-downs or overhauls of equipment;
- (m) any new/replacement Approvals required for the operation of the Power Plants and/or the New Installation Project;
- (n) financial forecast for the entire year as well as for the next one year period commencing with the date of the plan, provided that for each then current year during such one year period, the financial forecast for the subsequent year(s) may be revised if appropriate and necessary based on the immediately preceding year's financial results;
- (o) any proposed distribution, reinvestment or other use of the Company's profits; and
- (p) the opportunities, risks and contingencies confronting the Company and the possible impact of and respective plan for such contingencies on the Company's strategies, proposed activities and budget.

14. BOARD OF DIRECTORS

14.1 Management of the Company

The Company shall be managed by the Board in accordance with the terms of this Agreement, the Articles and specifically in accordance with the provisions of this Clause 14.

14.2 Board Composition; Appointment & Removal of Directors

14.2.1 The Board shall comprise of a minimum of 3 (Three) Directors and a maximum of 12 (twelve) Directors. Subject to Clause 14.2.2, SSL shall be entitled to nominate for appointment 4 (four) Directors ("**SSL Directors**") and SCES shall be entitled to nominate 4 (four) Directors ("**SCES Directors**").

14.2.2 The Shareholders' right to appoint directors pursuant to Clause 14.2.1 shall be amended according to their respective shareholding in the Company as follows:

- (a) Any shareholder holding 10% or less shall not be entitled to appoint any director;
- (b) Any shareholder holding more than 10% but less than 20% shall be entitled to appoint 1 (one) director;
- (c) Any shareholder holding more than 20% but less than 30% shall be entitled to appoint 2 (two) directors;
- (d) Any shareholder holding more than 30% but less than 40% shall be entitled to appoint 3 (three) directors;
- (e) Any shareholder holding more than 40% but less than 60% shall be entitled to appoint 4 (four) Directors;
- (f) Any shareholder holding 60% or more but less than 70% shall be entitled to appoint 5 (five) Directors;
- (g) Any shareholder holding 70% or more but less than 80% shall be entitled to appoint 6 (six) Directors;
- (h) Any shareholder holding 80% or more but less than 90% shall be entitled to appoint 7 (seven) Directors; and
- (i) Any shareholder holding 90% or more shall be entitled to appoint 8 (eight) Directors.

14.2.3 The Company shall have a Managing Director ("**MD**") in addition to the SSL Directors and the SCES Directors. The MD shall be a power sector technical or managerial professional appointed by the Board on the nomination of SSL. Subject to Clause 16.1(w), the Board shall appoint the MD for such term and at such remuneration (whether by way of salary or commission or participation in profits or otherwise or partly in one way or partly in another) in accordance with the provisions of the

Companies Act. SSL shall have the right to replace the MD at any time with any other person as the MD provided that such person is a power sector technical or managerial professional with appropriate experience for the role. Notwithstanding anything above, the appointment and removal of the MD will be in consultation with SCES. The MD shall have full operational powers to manage the business and affairs of the Company subject to (a) the terms of this Agreement including, without limitation, the terms of Clause 16 (*Reserved Matters*) and the Articles; (b) the oversight of the Board and any committee constituted by the Board in accordance with the terms of this Agreement; and (c) the terms of the MD's employment agreement. The MD shall not have the right to vote on any matter concerning his appointment, removal or terms of employment.

- 14.2.4 All SSL Directors and SCES Directors shall be subject to retirement by rotation. The MD will not be subject to retirement by rotation.
- 14.2.5 A Shareholder may, by written notice to the Company, require the removal of any of its nominee Directors at any time and shall be entitled, by the same or a subsequent written notice, to nominate another nominee as a Director in place of the Director so removed.
- 14.2.6 It is acknowledged by the Parties that lenders to the Company may require representatives on the Board ("**Lender Directors**"), and if so the Parties agree to take such steps as may be required to appoint the Lender Directors on the Board.
- 14.2.7 In the event of the resignation, retirement or otherwise vacation of office of a Director nominated by any Shareholder, such Shareholder shall be entitled to re-appoint such Director or nominate another person as Director in place of such Director and the other Shareholder shall exercise its voting rights in such manner so as to cause the appointment of the representative nominated as aforesaid. If any Director, who is elected by a Party pursuant to this Clause 14.2 (*Board Composition; Appointment & Removal of Directors*), for any reason refuses to exercise his discretion in accordance with the terms of this Agreement, such Party shall forthwith take all action within its power or control to remove such Director. The appointment, removal or replacement of a Director will be the first item of business at the Board meeting or the general meeting, as the case may be, immediately following the receipt by the Board of a notice of nomination/removal.
- 14.2.8 The Shareholders shall exercise their respective voting rights at any general meeting of the Company in such manner so as to cause the appointment or removal, as the case maybe, of the nominees of the other as Directors in the manner set out in this Agreement.
- 14.2.9 Any Shareholder removing a director nominated by it (other than the MD) shall be responsible for and shall indemnify the other Shareholders and the Company against any claim by such director for unfair or wrongful dismissal or any other claims arising out of such removal.
- 14.2.10 Subject to (a) applicable Law, (b) Clauses 19.10 and 19.11 and (c) in the case of the MD, Clause 14.2.3 above, the Directors may vote on any matter in which they are

directly or indirectly interested provided they have first disclosed the nature of that interest. Subject to this obligation, a Director appointed by a particular Shareholder may have regard to, and act in the interests of, his appointing Shareholder.

14.3 Committees of the Board

14.3.1 The Board may constitute committees under the supervision and control of the Board for various purposes as may be required from time to time, provided that (unless otherwise agreed) such committee shall comprise of at least the MD, the Financial Controller, (as a non-voting member), 1 (One) SCES Director and 1 (One) SSL Director. Further, 1 (One) of the members shall be appointed by the Board as chairman of every such committee. Such committees shall draw up rules and procedures for their functioning. The committees may carry on their business and conduct meetings through tele-conferencing and video-conferencing in accordance with applicable Law. The provisions of Clause 14 (*Board of Directors*) (including without limitation, representation, notice and quorum requirements) shall apply, *mutatis mutandis*, to such committees as well.

14.3.2 The Parties agree that upon the First Closing, the Board shall constitute a management committee (the "**Management Committee**") in accordance with the terms of Clause 14.3.1 above. Such Management Committee shall comprise of one SSL Director, one SCES Director and the MD. The Financial Controller shall be permanent invitee to the Management Committee (save that the Financial Controller shall have no voting power on the Management Committee). The Management Committee shall meet at least once in a month unless the Board decides otherwise. The Management Committee shall review and, where appropriate, decide (subject to the terms of this Agreement, including without limitation to, Clause 16 (*Reserved Matters*)) on the following matters:

- (a) procurement of fuel materials and other major inputs;
- (b) monthly operating plan comprising expected generation, supplies to the Sugar Plants, captive consumption and exported power to UPPCL;
- (c) major Power Plant related activities to be carried out;
- (d) monthly budget and assessment of working capital requirement; and
- (e) any other matter as directed by the Board from time to time.

The presence of one SSL Director and one SCES Director shall be necessary to constitute a quorum for any meeting of the Management Committee and all decisions of the Management Committee shall require the approval of both the attending SSL Director and the attending SCES Director.

14.3.3 The Parties agree that upon the First Closing, the Board shall constitute a project implementation committee (the "**Project Implementation Committee**"). Such Project Implementation Committee shall comprise of the MD, one SCES Director and one SSL Director provided that, each Shareholder shall also have the right to

nominate in addition to such Director, an individual with the requisite technical expertise ("**Technical Member**") as a permanent invitee to the meetings of the Project Implementation Committee. The Project Implementation Committee shall meet at least once a month or as the Board may require. The quorum for a meeting of the Project Implementation Committee shall be the presence of one Director nominated by each Shareholder. However, if none of such Directors have technical expertise, the presence of a Technical Member in addition to such Directors will be necessary to constitute the quorum. The Project Implementation Committee shall have the following responsibilities:

- (i) implementation and monitoring of the progress of the Project and the conditions precedent to the Subsequent Closings;
- (ii) laying down specifications, evaluation, and selection of critical equipment,
- (iii) cash flow of the Company and funding requirements;
- (iv) to review the erection of the plant and supplies from the vendors;
- (v) to make the call from the Shareholders and agree to disbursement from the banks against the Senior Loan;
- (vi) approving broad payment plans, including monthly payment plans; and
- (vii) any other responsibility the Board may give to the Project Implementation Committee.

The Project Implementation Committee will be disbanded/dissolved upon the Final Commissioning Date.

14.4 No Qualification Shares, Fees of Directors

14.4.1 A Director need not hold any qualification Shares.

14.4.2 No director's sitting fees shall be payable to the SSL Directors and the SCES Directors for attending any meetings of the Board or its committees. All Directors, except the Lender Directors and the MD, attending meetings shall make their own arrangements and bear all accommodation, subsistence and travel expenses of attending meetings and the Company shall bear no such expense.

14.5 Vacation of Office by a Director

14.5.1 In addition to the grounds under Section 283 of the Companies Act, the office of a Director shall be vacated if:

- (a) such Director becomes bankrupt or makes any arrangement or composition with his creditors generally;
- (b) such Director becomes prohibited or disqualified from being a Director by reason of any order made under Section 274 or any other provisions of the Companies Act or applicable Law;
- (c) such Director resigns from his office by notice in writing to the Company;

- (d) such Director is removed by the Party nominating such Director;
- (e) in accordance with Clause 14.2.2 in the event that a Shareholder's shareholding in the Company falls below the relevant thresholds set out in that clause, provided that for the avoidance of doubt the nominating Shareholder shall have the right to determine which of its representative Directors shall be the resigning Director in such case; or
- (f) in the case of the MD, if he is removed by the Board or is in material breach of the terms of his employment contract with the Company.

14.6 Proceedings of the Board

14.6.1 Number of Board Meetings and Venue

The Board shall meet at least 4 (Four) times in every calendar year and at least once in every calendar quarter. Meetings of the Board shall be held at such place as the Board may decide. Subject to applicable Laws and Clause 14.4.2, no expenses or costs incurred for such meetings by the Board shall be borne by the Company and shall instead be borne by the relevant appointing Shareholder (save for any costs of the Lender Directors and the MD).

14.6.2 Convening Meetings of the Board

Any Director may, and the Company Secretary or any authorized officer, if so appointed, shall on the requisition of a Director, convene a meeting of the Board, in accordance with the notice and other requirements set out in Clauses 14.6.3 (*Notices for Board Meetings*) and 14.6.4 (*Quorum for Board Meetings*) below.

14.6.3 Notices for Board Meetings

At least 7 (seven) days prior written notice shall be given to each of the Directors of any meeting of the Board, either by way of a fax, e-mail, courier or registered post along with copy of an agenda setting out matters to be transacted at the meeting. Any notice or other information sent by facsimile or e-mail transmission shall be deemed to have been duly sent on the date of transmission. No business shall be transacted at any Board meeting which has not been explicitly mentioned in the agenda convening the meeting unless at least 1 (One) SSL Director and 1 (One) SCES Director resolve to the contrary.

A meeting of the Board may be held at shorter notice if agreed to in writing by at least 1 (One) SSL Director and 1 (One) SCES Director. As far as possible and practicable, 4 (Four) Board meeting dates for the year shall be agreed by the Parties at the beginning of each calendar year.

14.6.4 Quorum for the Board Meetings

- (a) The quorum for a Board meeting shall be 2 (Two) Directors comprising of at least 1 (One) SSL Director and 1 (One) SCES Director.

- (b) A meeting of the Board shall not be held or continued without the presence, at all times, of the quorum unless the Directors necessary to constitute quorum have expressly waived in writing the requirement for their presence. In accordance with applicable Law, a Director may participate in a Board meeting by means of teleconferencing or video-conferencing without the need for such Director to be in the physical presence of the other Directors and participation in a Board meeting pursuant to this Clause shall constitute presence in person at such meeting for the purposes of quorum. Any Director participating through teleconferencing or video-conferencing shall be entitled to give consent in respect of the Reserved Matters and Unanimous Consent Matters and such consent shall be deemed to be good consent for the purposes of Clauses 16.1 (Reserved Matters) and 16.2 (Unanimous Consent Matters).
- (c) If a quorum is not present within 30 (Thirty) minutes of the scheduled time for any meeting of the Board or ceases to exist at any time during the meeting, then the meeting shall be adjourned till the same day in the next week, at the same time and place. At such an adjourned meeting, at least 2 (two) Directors present shall constitute a valid quorum for the holding of a valid meeting without the requirement of the presence of at least 1(One) SSL Director and 1 (One) SCES Director, provided that none of the Reserved Matters or Unanimous Consent Matters, shall be considered, discussed or transacted at such adjourned meeting unless the quorum as stated in Clause 14.6.4.1 is satisfied.

14.6.5 Circular Resolutions

The Board may act by written circular resolution or in any other legally permissible manner, on any matter, except for matters, which by Law may only be acted upon at a meeting. Subject to any restrictions imposed by Law, no written circular resolution shall be deemed to have been duly adopted by the Board, unless such circular resolution shall have been approved by a requisite majority of Directors being not less than that are sufficient to form a quorum in accordance with the provisions of this Agreement and, in the case of any Reserved Matter or Unanimous Consent Matter, than are sufficient to comply with the requirements of Clause 16.1 (*Reserved Matter*) or 16.2 (*Unanimous Consent Matter*) (as the case may be). A Director may convey his acceptance of the circular resolution by signing the resolution and returning the same to the company secretary or the Director who proposed the resolution or by sending any other written communication by registered post / courier / fax / e-mail transmission. If a Director does not convey his acceptance or rejection of the proposed resolution within 5 (Five) Business Days from the date of receipt of the requisite documentation including explanatory statements and supporting documents, he shall be deemed to have rejected the resolution.

14.6.6 Decisions of the Board

Unless expressly stated otherwise in this Agreement or the Articles, all decisions of the Board shall be made by a simple majority of votes. Subject to Clause 14.2.10, each Director shall have one vote on the Board and, subject to the quorum requirements (as mentioned in Clause 14.6.4 (*Quorum for the Board Meetings*))

above) and the Articles, all decisions of the Board shall (unless expressly stated otherwise in this Agreement or the Articles) be taken on the basis of a simple majority of those Directors present or deemed to be present at that meeting. Subject to applicable Law, any Director appointed as an alternate Director on behalf of one or more of the Directors shall have as many votes as the number of Directors he is representing at that meeting (including himself).

14.7 Alternate Directors

The Board, at the request of any Director, may appoint an alternate Director nominated by such Shareholder which had nominated the original Director, to act in such Director's absence, in terms of the Companies Act. The alternate Director shall be entitled to receive notice of a meeting of the Board or committee thereof, along with all relevant papers in connection and to attend and vote thereat in place of the original Director and generally to perform all functions of the original Director in his absence, as stated hereinabove.

14.8 Chairman

One of the SSL Directors shall be appointed as the chairman of the Board. Mr. Gurmit Singh Mann shall be the first chairman of the Board. The Chairman shall not have a casting vote. The Chairman of the Board shall also preside over the Shareholders meetings.

15. SHAREHOLDERS MEETINGS

15.1 General Meetings

15.1.1 The annual general meeting of the Shareholders shall be held within such period so that not more than 15 (Fifteen) months shall elapse between the date of 1 (One) annual general meeting and of the next as provided under the Companies Act. Subject to the foregoing, the Board may convene an extraordinary general meeting of the Shareholders, whenever it deems appropriate. The general meeting may be conducted through tele-conferencing/video-conferencing in accordance with applicable Law.

15.2 Notices for General Meetings

15.2.1 Subject to applicable law, at least 10 (ten) days' prior written notice of every general meeting of Shareholders shall be given to all Shareholders whose names appear on the register of members of the Company. A meeting of the Shareholders may be called by giving shorter notice with the written consent of the minimum number of Shareholders as provided by the Companies Act.

15.3 Contents of Notice

15.3.1 The notice to Shareholders shall specify the place, date and time of the general meeting. Every notice convening a meeting of the Shareholders shall set forth in full and sufficient detail of the business to be transacted thereat, and no business shall be transacted at such meeting if the same has not been stated in the notice

convening the meeting unless at least 1 (One) representative each of SSL and SCES resolve otherwise.

15.4 Proxies

- 15.4.1 Any Shareholder may appoint another Person as his proxy (and in case of a corporate shareholder, an authorized representative) to attend a meeting and vote thereat on such Shareholder's behalf, provided that the power given to such proxy or representative must be in writing. A proxy may demand a poll and vote on a poll, in terms of the provisions of the Companies Act. A proxy shall have no right to speak at the meeting. Any Person possessing the requisite authorization in terms of the Companies Act, with respect to any Shares shall be able to speak and to exercise voting rights on such Shares as if such Person were a Shareholder.

15.5 Quorum for General Meetings

- 15.5.1 At least 2 (Two) Shareholders or such other minimum number as per applicable Law (provided that it is not less than 2 (two)), at least one of whom shall be SSL and one SCES each represented through its authorised representative and/or by proxy, shall be necessary to form a quorum for a valid general meeting. If, however, such quorum shall not be present or represented at any meeting within 30 (Thirty) minutes of the time scheduled for the meeting, the meeting shall be deemed to be automatically adjourned to the same day in the next week, at the same time and place or at such other time and place as the Board may determine. At such adjourned meeting, if a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally notified. If within an hour from the time appointed for holding such adjourned meeting, the quorum is not present, the members present shall be the quorum, provided that none of the Reserved Matters or Unanimous Consent Matters, shall be considered, discussed or transacted at such adjourned meeting unless the quorum as stated in this Clause 15.5.1 is satisfied.

16 RESERVED MATTERS

- 16.1 Notwithstanding any other provision of this Agreement, the Parties agree that no resolution concerning any matter listed in this Clause 16.1 (each a "**Reserved Matter**" and together the "**Reserved Matters**") can be validly passed at a Board and/or shareholders meeting or by a resolution passed by circulation, and no action shall be taken by the Company with respect to any such matter, unless the concerned matter has been approved by an affirmative vote of: (a) Shareholders holding not less than 75% (Seventy five per cent) of the Shares, if the matter is dealt with by the Shareholders, or (b) at least 1 (One) Director nominated by each Shareholder who together hold not less than 75% (seventy five per cent) of the Shares, if the matter is dealt with by the Board. Such affirmative vote shall be exercised by a vote, approving the Reserved Matter at the meeting at which the resolution for approving such matter is considered or by way of prior written consent in favour of such Reserved Matter, or by way of a circular resolution approving such Reserved Matter. The Reserved Matters are as follows:

- (a) any change, amendment or variation in the rights of any Securities or any class thereof issued by the Company, including a recapitalization or reclassification of any of the outstanding Securities;
- (b) any issue, consolidation, division or sub-division, conversion or cancellation of all or any of the share capital of the Company or any increase in the share capital of the Company, other than in accordance with the terms of this Agreement;
- (c) the amount and terms of the Senior Loan or any Further Funding;
- (d) any approval of the terms of any stock option plan for the employees or Directors of the Company;
- (e) effecting an acquisition of another entity or the sale, merger, consolidation or reconstitution of the Company or taking any decision to dissolve, liquidate, dispose of, sell, license, assign or transfer all or substantially all of or any material part of the assets or any intellectual property rights of the Company, including a sale or license to a third party and whether by a single transaction or by a series of transactions;
- (f) approving or varying (beyond the limits provided in the Business Plan) the Business Plan;
- (g) any incurrence or discharge of indebtedness by the Company in excess (excluding accounts payable and repayments of liabilities owed to the Company's lenders) of INR 5,000,000 (Rupees Five Million Only) in one or more transactions if such action is in accordance with the Business Plan or INR 1,000,000 (Rupees One Million Only) in one or more transactions if such action is not in accordance with the Business Plan;
- (h) the giving of any guarantee or comfort letter by the Company to or becoming a surety for any Person exceeding in aggregate INR 5,000,000 (Rupees Five Million Only) if such action is in accordance with the Business Plan or INR 1,000,000 (Rupees One Million Only) if such action is not in accordance with the Business Plan;
- (i) any change in the scope of Business, entry into a new line of business, suspension or cessation of Business or transfer of all or material portion of the Business, in each case if such action is not in accordance with the Business Plan;
- (j) related party transactions or any agreement or arrangement between the Company and/or any Shareholder, Director and/or their Affiliates other than transactions contemplated by this Agreement or any other matter specifically agreed by and between the Parties;
- (k) the creation of any security interest over any of the Company's assets involving an amount in excess of INR 5,000,000 (Rupees Five Million Only) if

such action is in accordance with the Business Plan or INR 1,000,000 (Rupees One Million Only) if such action is not in accordance with the Business Plan, other than in normal course of business in favour of the Company's bankers or other lenders;

- (l) creation or acknowledgement of Encumbrance by a Party on its Securities, other than as provided elsewhere in the Agreement;
- (m) the establishment or change of the dividend policy of the Company, the declaration of or setting aside of amounts for any dividend;
- (n) the acquisition or lease of items of tangible or intangible property involving estimated expenditure in excess of INR 5,000,000 (Rupees Five Million Only) if such action is in accordance with the Business Plan or INR 1,000,000 (Rupees One Million Only) if such action is not in accordance with the Business Plan;
- (o) subject to Clauses 19.10 and 19.11, any decision in relation to the conduct or defense of any material litigation or arbitration, otherwise than litigation or arbitration arising in the ordinary course of business;
- (p) factoring or assignment of any of Company's book debts other than in accordance with the Business Plan or in favour of the Senior Lenders;
- (q) change of the Company's auditors or Financial Year;
- (r) any material change in the accounting policies and principles adopted by the Company in the preparation of its audited and management accounts except for changes incorporated as per the applicable Law;
- (s) grant of any loan (otherwise than by way of deposit with a bank or other institution, the normal business of which includes the acceptance of deposits) or any credit (other than in the normal course of business) or any guarantee, bond, suretyship or indemnity (i) in excess of INR 5,000,000 (Rupees Five Million Only) if such action is in accordance with the Business Plan or INR 1,000,000 (Rupees One Million Only) if such action is not in accordance with the Business Plan or (ii) if such action is not in accordance with the Business Plan and would result in aggregate liabilities greater than INR 3,000,000 (Rupees Three Million only) for the current Financial Year or securing of the liabilities or obligations of any person or assumption of the obligations of any person;
- (t) entry into, amendment or termination of any Project Agreement or arrangement, contract or transaction (i) outside the normal course of its business or otherwise than on arm's length terms, (ii) involving liabilities for the Company in excess of INR 5,000,000 (Rupees Five Million Only) if such action is in accordance with the Business Plan or INR 1,000,000 (Rupees One Million Only) if such action is not in accordance with the Business Plan or (iii) for a term greater than 2 (Two) years;

- (u) any capital expenditure (including finance leases but excluding operating leases) involving a liability:
 - (i) during that Financial Year, in excess of INR 5,000,000 (Rupees Five Million Only) if such action is in accordance with the Business Plan or INR 1,000,000 (Rupees One Million Only) if such action is not in accordance with the Business Plan, for a single item of capital expenditure, and/or
 - (ii) during that Financial Year, in excess of INR 5,000,000 (Rupees Five Million Only) if such action is in accordance with the Business Plan or INR 1,000,000 (Rupees One Million Only) if such action is not in accordance with the Business Plan, in aggregate;
- (v) buy-back of the Shares and/or other Securities of the Company;
- (w) entry into or termination of any arrangement or agreement with or the making of any amendment to any of the terms of any agreement or arrangement of any Person who or is to become, an officer, employee, consultant or secondee of the Company at an annual remuneration in excess of Rs. 1,200,000 (Rupees One million and two hundred thousand) (or its equivalent in another currency) unless otherwise approved in the Business Plan;
- (x) grant to any person any option or right to call for the issue of any Shares or Securities;
- (y) any application for the admission of any part of the share capital or securities of the Company to a recognised stock exchange; and
- (z) any amendment to the Insurance Program, including the effecting of any new insurance or any amendment to or any cancellation of any insurance maintained by the Company other than as contemplated by the Insurance Program.

16.2 To the maximum extent permitted under applicable Law and notwithstanding any other provision of this Agreement, the Parties agree that no resolution concerning any matter listed in this Clause 16.2 (each a “**Unanimous Consent Matter**” and together the “**Unanimous Consent Matters**”) can be validly passed at a Board and/or shareholders meeting or by a resolution passed by circulation, and no action shall be taken by the Company with respect to any such matter, unless the concerned matter has been approved by an affirmative vote of: (a) Shareholders holding not less than 100% (one hundred per cent) of the Shares, if the matter is dealt with by the Shareholders, or (b) at least 1 (One) Director nominated by each Shareholder who together hold not less than 100% (one hundred per cent) of the Shares, if the matter is dealt with by the Board. Such affirmative vote shall be exercised by a vote, approving the Unanimous Consent Matter at the meeting at which the resolution for approving such matter is considered or by way of prior written consent in favour of such Unanimous Consent Matter, or by way of a circular resolution approving such Unanimous Consent Matter. The Unanimous Consent Matters are as follows:

- (a) any alteration to the rights of the Securities;
- (b) authorization, creation or issuance of any new class of shares or other securities;
- (c) acquisition of shares or other instruments whatsoever in, or assets of, another corporation, partnership or venture;
- (d) any public offering of the Company's securities;
- (e) restructuring, reorganizing or taking any other action that would cause the Company to become a partnership for tax purposes or become a pass-through entity for tax purposes;
- (f) any joint venture or partnership with any person or merger or amalgamation with any person to carry on the Business;
- (g) any amendments to the Memorandum or Articles, except when the Agreement is terminated; and
- (h) any resolution for the winding up of the Company or any petition for its administration.

17 DEADLOCK MECHANISM

For the purposes of this Agreement, a deadlock ("**Deadlock**") shall be deemed to have occurred, if the Board or the Shareholders are unable to, at any 2 (Two) consecutive meetings of the Board or Shareholders, as the case may be, reach a decision on any Reserved Matter or Unanimous Consent Matter either because of the absence of the requisite consent or lack of quorum as described in Clauses 14.6.4 and 15.5. In the event of a Deadlock situation, the same shall be resolved in accordance with the mechanism stated in **Schedule VII**.

18 DIVIDENDS POLICY

- 18.1 Subject to Clause 16.1(m) and the limitations imposed by the applicable Law, the Shareholders shall procure that the Company distributes to the Shareholders by way of dividend in respect of any Financial Year, such percentage of the consolidated total distributable profits (excluding any unrealized gains) of the Company in respect of that year in accordance with the dividend payout ratio adopted by the Board from time to time. The Shareholders agree that the dividend payout ratio shall initially be 90% (Ninety per cent.) of the distributable profits of the Company, subject to any covenants imposed by the Senior Lenders or any other third party lenders and final Board approval (in accordance with Clause 16.1(m)) of the same.
- 18.2 Subject to Clause 16.1(m), the dividend payout ratio may be varied by the Shareholders.

19 OBLIGATIONS AND UNDERSTANDING BETWEEN PARTIES WITH RESPECT TO THE BUSINESS

- 19.1 SSL and SCES are entering into this joint venture principally for the purposes of conducting the Business. Therefore, save and except as the Parties may otherwise agree in writing or save as otherwise herein provided or contemplated, the Company shall pursue solely the Business. Subject to the terms of this Agreement, the Business may be expanded or limited by mutual agreement between the Parties.
- 19.2 The Parties shall exercise their powers in relation to the Company so as to ensure that the Company carries on and conducts its Business and affairs in a proper and efficient manner.
- 19.3 Each Party covenants with the other to use all reasonable endeavours to promote and develop the Business to the best advantage in accordance with good business practice and the highest ethical standards.
- 19.4 All financial and commercial transactions between the Company on the one hand and any of the Shareholders on the other hand shall be at arm's length and shall be in conformity with the transfer pricing rules laid down under Indian tax Laws.
- 19.5 The Parties agree that all sums of moneys invested by any Shareholder towards the subscription of Securities under Clause 4 (*Share Subscription*) of this Agreement shall be expended wholly for meeting the Total Project Cost and for no other purpose.
- 19.6 The Company shall also employ its own personnel, whose sole responsibilities shall be to work towards the completion of the New Installation Project and to conduct the Business, and subject to Clause 11.1.3, the Company shall cover all its operating expenses, including the salaries, travel and other expenses of such personnel. Any cost of expatriate employees appointed at the request of a Party, in excess of the local salary of the equivalent position, whether as employee or in the capacity of a Director or otherwise shall be borne solely by the nominating Party. The Company shall bear the local salary of the equivalent position as well as the reimbursement of all expenses, including accommodation, subsistence and travel expenses, incurred in the ordinary and proper course of pursuit of the business of the Company in accordance with its travel policy with regard to expatriate employees. The Company undertakes to comply with all labour and employment Laws, including making requisite applications and filings under applicable Law, upon the transfer and/or appointment of employees pursuant to the Power Undertaking Transfer.
- 19.7 The Company hereby undertakes to comply with all applicable Laws, make all requisite filings and adhere to all reporting requirements under any applicable Law in timely manner, and maintain records and details and as prescribed under applicable Law, during the term of this Agreement.
- 19.8 The Company shall take all reasonable steps promptly to protect its Intellectual Property.

19.9 Project Agreements

- 19.9.1 In respect of those Project Agreements to which SSL is a party, SSL agrees to (i) act reasonably and in good faith towards the Company in the exercise of its rights and in the discharge of its obligations thereunder; and (ii) use its best endeavours to promptly remedy any breach by it of the terms of such Project Agreements.
- 19.9.2 In respect of those Project Agreements to which Casetech is a party, SSL agrees to procure, so far as it is able subject to all applicable Law, that Casetech shall (i) act reasonably and in good faith towards the Company in the exercise of its rights and in the discharge of its obligations thereunder; and (ii) use its best endeavours to promptly remedy any breach by it of the terms of such Project Agreements.
- 19.9.3 Each Party shall take all reasonable steps to procure that the Company fulfils its obligations under the Project Agreements.
- 19.10 SCES and any Lender Directors shall have the sole rights to determine the enforcement of the Company's rights or claims made in connection with or under any of the Project Agreements. If SCES determines such rights under the above named agreements are to be enforced, then the Board collectively shall be obligated to take appropriate action to enforce the Company's rights under the respective agreements and all the Shareholders shall support such action.
- 19.11 SSL and any Lender Directors shall have the sole rights to determine the enforcement of the Company's rights or claims made in connection with or under any agreement between the Company and SCES. If SSL and any Lender Directors determine such rights under the above named agreements are to be enforced, then the Board collectively shall be obligated to take appropriate action to enforce the Company's rights under the respective agreements and all the Shareholders shall support such action.
- 19.12 The Company specifically covenants to SCES that the Company shall take all necessary steps to procure and during the term of this Agreement maintain insurance in accordance with the Insurance Program.
- 19.13 The Company shall adopt and maintain an anti-corruption policy that is substantially consistent with Sindicatum's Anti-Corruption Principles.

19.14 Health and Safety

- 19.14.1 The Company shall adopt and maintain a health, safety and environment policy, manuals, rules and codes of practice as agreed between the Shareholders and the Company from time to time and that is compliant with the applicable Law and the best industry practice and the health and safety policy of SSL ("**HSE Standards**").
- 19.14.2 The Company shall, (i) within 9 (nine) months of the start of construction, (ii)

within 6 (six) months of the start of operations and (iii) then every 2 (Two) years thereafter, propose to the Board, the scope of work of an independent consultant to carry out a review of health and safety including a gap analysis against HSE Standards.

19.14.3 The Company shall after the receipt of each report, implement any corrective actions recommended in the report and the same would appear as actions in the monthly report, to be maintained by the Company, until each irregularity has been rectified.

19.14.4 In the event, the corrective action is not implemented in a timely manner and/or a serious incident such as including but not limiting to death or permanent disability of an employee, upon the request of either one SSL Director or one SCES Director, the Board can at any time prior to completion of 2 (two) years from the previous inspection, insist on conducting a review of health and safety including a gap analysis against HSE Standards.

19.15 Brijnathpur

To the extent that SSL intends to proceed with the setting up of a transmission line to connect the Brijnathpur Power Undertaking to the transmission Grid of Uttar Pradesh and/or to install new power generating sets at Brijnathpur (the "**Brijnathpur Project**") on a joint venture basis:

- (a) the Brijnathpur Project shall be first offered to SCES on terms that are, to the extent relevant, substantially in accordance with the terms set out in this Agreement and the other Transaction Documents or on such other terms as may be agreed between the Parties. The Parties acknowledge that the target blended IRR for SCES for the Business and the Brijnathpur Project shall be at an acceptable level ("**Minimum Blended IRR**") and agree to act reasonably and in good faith towards each other to achieve such Minimum Blended IRR;
- (b) subject to sub-paragraph (c) below, for a period from the First Closing Date to the earlier of (i) the date falling 12 (Twelve) months after the Commissioning Date in respect of Simbhaoli; and (ii) 36 months from the date of first closing (the "**Exclusivity Period**"), neither SSL nor any of its Affiliates, directors, officers, shareholders or agents will directly or indirectly discuss, negotiate, solicit, contact or deal with any other entity or encourage competing proposals for the execution of the Brijnathpur Power Project on a joint venture basis (and to the extent that the SSL is in negotiations or discussions with any third party at the Restatement Date, cease such negotiations or discussions);
- (c) to the extent that SSL has offered the Brijnathpur Project to SCES in accordance with paragraph (a) above and has submitted in writing a full proposal (including financial proposal) to SCES, but SCES has either (i) expressly declined such offer in writing; or (ii) failed to accept such offer by the later of (A) 90 (Ninety) days after receipt of the Proposal and (B) 30 September 2013, SSL shall have the right to offer such Proposal to a third party.

20 NON-COMPETE AND NON-SOLICITATION

- 20.1 Each Shareholder (for the purposes of this Clause, a "**Covenantor**") undertakes with the other Shareholder that it shall not, and that it shall procure that none of its Affiliates shall, either on its own account or in conjunction with or on behalf of any Person, during the period commencing on the Effective Date and ending on the second anniversary of the date such Shareholder or any of its Affiliates ceases to hold any Securities in the Company (for the purposes of this Clause, the "**Termination Date**"):
- 20.1.1 carry on or be engaged, concerned or interested (directly or indirectly and whether as principal, shareholder, director, employee, agent, consultant, partner or otherwise) in acquisition of Other Biomass within a radius of 50 (Fifty) kilometres of any Power Plant. Accordingly, the Company shall be the exclusive vehicle for SSL and SCES for engaging in the Business in the respective areas of the Power Plants; or
 - 20.1.2 solicit or endeavour to entice away from or discourage from being employed by or providing services to the Company any Person who was at the Termination Date an officer or employee of the Company (other than a Director nominated by the Covenantor in accordance with the provisions of this Agreement) whether or not such person would commit a breach of contract by reason of leaving service provided that the placing of an advertisement of a post available to a member of the public generally and the recruitment of a Person through an employment agency shall not constitute a breach of this Clause provided that the Covenantor does not encourage or advise such agency to approach any such Person; or
 - 20.1.3 employ or engage or attempt to employ or engage or negotiate or arrange the employment or engagement by any other Person engaged in any business which is the same as or similar to the Business and is conducted within a radius of 50 (Fifty) kilometres of any Power Plant of any Person who was at the Termination Date an officer or employee of the Company (other than a Director nominated by the Covenantor in accordance with the provisions of this Agreement).
- 20.2 Each Shareholder further acknowledges and agrees that any violation by it of the covenants and obligations with respect to non-compete and non-solicitation as set forth above shall cause the other Parties irreparable injury. Therefore, the Shareholders agree that the person aggrieved by the breach hereof shall be entitled to an interim injunction, restraining order or such other equitable relief as a court of competent jurisdiction may deem necessary or appropriate to restrain the breaching Party from committing any violation of the covenants and obligations contained in this Clause 20 (*Non-Compete*). These injunctive remedies are cumulative and are in addition to any other rights and remedies the Parties may have at Law or in equity.
- 20.3 The restriction as set out in Clause 20.1 above is separate and distinct and is to be construed separately from other such agreements. Each of the Shareholders acknowledges that it considers such restriction to be reasonable and that the duration, extent and application of such restrictions are no greater than is necessary

for the protection of the goodwill and of the business of the Company. However, if such restriction is found to be void or unenforceable, but would be valid or enforceable if some part of it were deleted or the period or area of application reduced, the Parties agree that such restriction shall apply with such modifications as may be necessary to make it valid.

21 CONFIDENTIALITY

21.1 Each Party ("**Receiving Party**") shall keep confidential (and ensure that its employees, agents, advisors, Affiliates and the employees, agents and advisors of such Affiliates, keep confidential) any and all information (collectively, together with the contents of this Agreement, the "**Confidential Information**") received from the other Party ("**Disclosing Party**") which it may acquire in relation to the Company or to any Party. As used herein, the term 'Confidential Information' shall include all technical, business, and research information, including but not limited to all technical know-how, processes, business plans, market information, distribution information, and marketing plans, disclosed in writing, orally, electronically or visually, pertaining to the subject matter identified above. The Receiving Party agrees that, save as otherwise provided herein it shall not, during the Term hereof and for a period of 3 (Three) years thereafter, use the Confidential Information for any purpose other than for this Agreement and shall not use or disclose any such Confidential Information except:

- (a) to an Affiliate of the Receiving Party or to a Receiving Party's professional advisers, in each case where such disclosure is for a purpose related to the operation of this Agreement;
- (b) with the written consent of the Disclosing Party;
- (c) as may be required by Law or by the rules of any Government, in which case the Receiving Party shall, if practicable, supply a copy of the required disclosure to the Disclosing Party before it is disclosed and incorporate any amendments or additions reasonably requested by the Disclosing Party in such disclosure and in the event such prior notification is not practicable, the Receiving Party shall give the same post disclosure to the third party;
- (d) information to the banks/financial institutions/other lenders and stock exchanges where the shares of the Parties (if a Party is listed) are listed;
- (e) where it has come into the public domain otherwise than by the breach by the Receiving Party of this Clause 21(*Confidentiality*);
- (f) is already known and in the possession of the Receiving Party on the date of the disclosure as evidenced by written records;
- (g) is independently developed by the Receiving Party without having access to the Confidential Information;

- (h) which the Receiving Party can show as received by it after the date of the disclosure from a third-party who did not receive such Confidential Information under an obligation of confidentiality;
 - (i) for the purposes of enabling any Shareholder to dispose of Securities to a third party in accordance with the terms of this Agreement provided that, the party making such disclosure shall, prior to making such disclosure, notify the other parties of the identity of the third party, the type of information to be disclosed to such third party and shall procure that such third party provides a confidentiality undertaking substantially on the same terms as this Clause 21(*Confidentiality*); and
 - (j) to a proposed purchaser, underwriter, sponsor or broker for the purposes of facilitating a sale or quotation or any listing of a Shareholder or Company provided that the party making such disclosure shall, prior to making such disclosure, notify the other parties of the identity of the third party, the type of information to be disclosed to such third party and shall procure that such third party provides a confidentiality undertaking substantially on the same terms as this Clause 21(*Confidentiality*).
- 21.2 The Parties shall use reasonable endeavours to procure that the Company and its Affiliates and their respective officers, employees and agents observe a corresponding obligation of confidence in respect of information about the Parties themselves.
- 21.3 The obligations of each of the Parties as set out in this Clause 21(*Confidentiality*) shall survive any termination of this Agreement for any cause, for a period of 3 (three) years from the date of Termination of this Agreement.
- 21.4 No announcement or publicity concerning the terms of this Agreement or the interests of any Party in the Company shall be made or issued by either Party without the prior intimation to the other Parties.

22 TERM AND TERMINATION

22.1 Term

This Agreement shall become effective from the Effective Date and shall continue to remain in force and effect until terminated in accordance with the provisions of this Clause 22 (*Term and Termination*). Any termination of this Agreement shall be without prejudice to any subsisting rights and obligations of the Parties, including any obligation on the Parties as contemplated under Clause 22.3 (*Option to purchase and sell*).

22.2 Termination Events

- 22.2.1 This Agreement shall automatically terminate with respect to a Shareholder, when such Shareholder (along with its Affiliates) ceases to be a shareholder of the Company.

22.2.2 This Agreement may be terminated by SSL or by SCES if the First Closing Date does not occur on or prior to 30 (thirty) days from the Restatement Date, unless the Parties have mutually extended this time limit in writing. In the event this Agreement is terminated pursuant to this Clause 22.2.2, no Party shall have any further liability or obligation to the other Party, provided that in the event that First Closing has failed to occur on account of any failure or breach attributable to a Party, such breaching Party shall reimburse to the other Party and the Company all expenses and costs incurred by the other Parties in connection with the transactions contemplated hereunder.

22.2.3 This Agreement may be terminated by SSL if:

- (a) SCES suffers an Insolvency Event; and/or
- (b) SCES is in material breach of this Agreement, and, if such breach is capable of remedy, has not remedied the breach within a period of 60 (Sixty) days from the date of the notice specifying such breach and requiring the remedying of such breach; and provided the breach is subsisting at the time of such termination and SSL is itself not in breach of this Agreement; or

22.2.4 This Agreement may be terminated by SCES if:

- (a) SSL suffers an Insolvency Event; and/or
- (b) the Second Closing Date does not occur on or prior to 31 March 2013, unless the Parties have mutually extended this longstop date in writing; and/or
- (c) SSL is in breach of this Agreement, and, if such breach is capable of remedy, has not remedied the breach within a period of 60 (Sixty) days from the date of the notice specifying such breach and requiring the remedying of such breach; and provided the breach is subsisting at the time of such termination and SCES is itself not in material breach of this Agreement; and/or
- (d) SSL Abandons any or all of the Sugar Plants and/or there has otherwise been a breach of this Agreement by SSL or any material breach of any Project Agreements by SSL and/or Casetech (as applicable) and such breach has gone unremedied for more than 60 (Sixty) days following notification of the breach by the Company and provided the breach is subsisting at the time of such termination and the breach is not caused by an act or omission of the Company. For avoidance of doubt, this sub Clause (c) shall not be applicable in case of any material breach of any Project Agreements by Casetech, if Casetech ceases to be an Affiliate of SSL; or
- (e) if there is a Change of Control of SSL.

22.2.5 This Agreement may be terminated by any Party upon the occurrence of any of the following events:

- (a) an Insolvency Event with respect to the Company provided that the Insolvency Event has not been caused by a breach of this Agreement by the Party seeking to terminate this Agreement; or
- (b) any direction or order from any Government authority in India, any binding court order or any change in applicable statutes, rules and regulations or Government policy which prevents or significantly impairs the implementation of this Agreement or directly or indirectly so restricts the scope and exercise of the right of any Party as concerns the Company so as to render its objectives effectively impossible.

22.2.6 Notwithstanding anything above, (a) in the event this Agreement is terminated pursuant to Clause 22.2 (*Termination Event*), the termination would be subject to and without prejudice to the provisions provided under Clause 22.3 (*Option to Purchase and Sell Shares*); and (b) the termination of this Agreement, for whatever reason, shall not relieve any Party of any obligation or liability as contemplated under Clause 22.3 (*Option to Purchase or Sell Shares*).

22.3 Option to Purchase or Sell Shares

22.3.1 In the event of the termination of the Agreement, in terms of Clause 22.2, SCES may at its sole discretion and option, require the Company to immediately convert all (but not less than all) the CCDs in the Company (including, for the avoidance of doubt, the CCDs held by SSL) in accordance with the terms of **Schedule XX** of this Agreement.

22.3.2 In the event this Agreement is terminated by SSL pursuant to Clause 22.2.3, SSL may, by a written notice given within 60 (Sixty) days of the occurrence of the termination event:

- (a) in the case of a termination pursuant to Clause 22.2.3(a), require SCES to sell all of its Securities in the Company to SSL or its nominee at a price per Security equal to the FMV or, in the alternative, may require that the Company be voluntarily dissolved and wound up and that its assets be liquidated and distributed to the Shareholders, in proportion to their respective shareholding as promptly as reasonably practicable; or
- (b) in the case of a termination pursuant to Clause 22.2.3(b), require SCES to sell all of its Securities to SSL or its nominee at a price equal to 80% (eighty percent.) of the FMV of the Securities.

22.3.3 In the event this Agreement is terminated by SCES pursuant to Clause 22.2.4, SCES may, by written notice given within 60 (Sixty) days of the occurrence of the termination event:

- (a) in the case of a termination pursuant to Clause 22.2.4(a), either (i) require SSL to purchase all of SCES's Securities at a price per Security equal to the FMV, (ii) require SSL to sell to SCES all of SSL's Securities at a price per Security equal to the FMV; or (iii) require that the Company be voluntarily

dissolved and wound up and that its assets be liquidated and distributed to the Shareholders in accordance with Clause 23; or

- (b) in the case of a termination pursuant to Clause 22.2.4(b), require SSL to purchase all of SCES's Securities at a price per Security equal to the lower of (i) FMV; and (ii) Rs. 42,660,000 (Rupees forty two million six hundred and sixty thousand); or
- (c) in the case of a termination pursuant to Clauses 22.2.4(c), (d) or (e) require SSL to purchase all of SCES's Securities at a price per Security equal to the FMV.

22.3.4 In the event this Agreement is terminated pursuant to Clause 22.2.5, the Company shall be voluntarily dissolved and wound up and all of its assets shall be liquidated and distributed to the Shareholders. Upon such voluntary dissolution, the Parties agree that the assets, technology and know-how, if any contributed to the Company without any consideration by each of them, if any, shall revert to such Party. The remaining assets and the equity of the Company will be distributed in accordance with Clause 23.

22.3.5 In the event of any termination of this Agreement, pursuant to Clauses 22.2.3 or 22.2.4, the Party which has suffered an Insolvency Event, or is defaulting Party, or has undergone a change in Control, respectively, in any case shall continue to be bound by its obligations under the Agreement and any other Transaction Document to which it is a party, until the terminating Party has effectively exercised its rights under this Agreement. The termination of this Agreement, for whatever reason, shall not relieve any Party of any obligation or liability accrued prior to the date of termination.

22.3.6 All stamp duty payable on the transfer of Securities pursuant to Clause 22.3.2 shall be borne by SCES. All stamp duty payable on the transfer of Securities pursuant to Clause 22.3.3 shall be borne by SSL.

22.3.7 All transfer of Securities pursuant to the rights exercised under Clause 22 shall be completed within 120 (One hundred twenty) days of delivery by SSL or SCES (as the case may be) of a written notice pursuant to Clause 22.3.2 or Clause 22.3.3 (as the case may be).

22.3.8 For the purpose of this Agreement, the fair market value or the FMV ("**Fair Market Value**" or "**FMV**") of the Securities, shall be determined, subject to applicable Law (including, for the avoidance of doubt, the prevailing Law and RBI guidelines in respect of foreign investment) as follows:

- (a) SSL and SCES may mutually agree upon the price per Security;
- (b) in the event however SSL and SCES fail to arrive at an agreement within 15 (fifteen) days of either SSL or SCES giving written notice to the other Shareholder, for determining such price, the price per Security shall be the fair market value of the Security determined on a discounted cash flow basis

by an Appraiser approved and appointed by both SCES and SSL. The FMV arrived at by the Appraiser shall be binding on both SSL and SCES. The cost and expenses of the Appraiser shall be borne by the seller;

- (c) in the event the parties do not agree on the appointment of an Appraiser, the matter may be referred by either Shareholder to the President at the time of the Indian Institute of Chartered Accountants who shall appoint (in consultation with each Shareholder) an independent Appraiser to assess the FMV of the Company. The FMV arrived at by the Appraiser shall be binding on both SSL and SCES. The cost and expenses of the Appraiser shall be borne by the seller.

22.4 Without Prejudice

- 22.4.1 Any termination or expiration of this Agreement shall be without prejudice to any accrued rights and obligations of the Parties.
- 22.4.2 The rights of the Parties provided in this Clause 22 (*Term and Termination*) are without prejudice and in addition to any other rights including damages, available to them whether under Law, equity, contract or otherwise.

23 LIQUIDATION PREFERENCE

- 23.1 In the event of an occurrence, at any time prior to the repayment by the Company of at least 50% (fifty percent) in value of the principal amount under the Senior Loan, of a Liquidation Event from an election by SCES pursuant to clause 22.3.3(a), the higher of the following amounts shall be payable to SCES, prior to any distributions or payments to any other Shareholder: (a) 100% (One Hundred percent) of such portion of the SCES Investment as is represented by the number of Securities held by SCES at the time of the occurrence of such a Liquidation Event, together with all accrued but unpaid interest and dividends thereon ("**Preference Amount**"), and (b) SCES's pro-rata share of proceeds of such Liquidation Event.
- 23.2 All amounts payable in respect of the SCES's Shares in connection with a Liquidation Event shall be made in cash and/or liquid securities at the closing of such Liquidation Event and only such amounts as are in excess of the Preference Amount may be placed in escrow or subject to any earn-out arrangement or other deferred or contingent consideration arrangement. Subject to the foregoing, if any portion of the consideration payable to the Shareholders of the Company in such Liquidation Event is placed into escrow or is subject to any earn-out arrangement or other deferred or contingent consideration arrangement, the definitive agreement governing such Liquidity Event shall provide that (a) the portion of such consideration that is not placed in escrow and not subject to any earn-out, deferral or contingencies (the "**Initial Consideration**") shall be allocated among the SCES Shares in accordance with Clause 23.1 above as if the Initial Consideration were the only consideration payable in connection with such Liquidation Event; and (b) any additional consideration that becomes payable to the Shareholders upon release from escrow or satisfaction of the earn-out, deferral or contingency arrangement (as the case may

be) shall be allocated among the Shares held by SCES after taking into account the previous payment of the Initial Consideration as part of the same transaction.

- 23.3 SSL acknowledges and agrees that upon a Liquidation Event, the total amount recovered and received by SSL as a shareholder of the Company and/or pursuant to any shareholder loan granted to the Company pursuant to a Liquidation Event on a percentile basis ("**SSL Recovered Amount**") should not exceed the equivalent amount received by SCES on such Liquidation Event on a percentile basis ("**SCES Recovered Amount**"). If on a percentile basis the SSL Recovered Amount exceeds on a percentile basis the SCES Recovered Amount, SSL shall pay the differential amount to SCES.

24 CAPITAL REDUCTION

- 24.1 The Shareholders agree that it is their common intention, at any time after a 36 (Thirty Six) months from the First Closing Date, to require the Company to reduce its capital by buying back the Shares of the Company from each of the Shareholders pro-rata to their shareholdings in the Company. SCES and SSL shall jointly deliver a written notice to the Company informing the Company of their intention to implement such capital reduction. Upon receipt of the abovementioned notice from the Shareholders, the Company shall do all such acts (subject to applicable Law and any restrictions placed upon it by its creditors) as may be necessary to consummate the buy back at FMV within 30 (Thirty) days as more particularly described in clause 24.2 below.
- 24.2 The Company shall initiate the process of the buy-back of such number Shares from Shareholders as allowed under the applicable Law. The Company shall do all such acts and things as may be necessary, including but not limited to, the procurement of all Consents and regulatory approvals, to effect the buy-back and to ensure the payment to both the Shareholders within 30 (Thirty) days of the receipt of either of the Shareholders' notice pursuant to Clause 24.1 by the Company or, if later, 5 (Five) Business Days after the final determination of Fair Market Value, against receipt of the applicable share certificates (if any) and duly executed share transfer forms.
- 24.3 The Company shall consummate the buy-back of Shares at FMV only upon receiving Shares from both Shareholders for the purpose of capital reduction.
- 24.4 The Company shall be responsible to complete any and/or all such acts as required under any applicable Law for the completion of buy back of Shares under this Clause 24 (Capital Reduction).

25 INDEMNIFICATION

- 25.1 SSL shall defend, protect and hold SCES and its Affiliates (and their respective directors, officers, employees, representatives, successors and assigns) ("**SCES Indemnified Persons**") harmless from and against all losses, claims, damages, proceedings, penalties, judgments, obligations, liabilities, liens, assessments, taxes, fines and expenses (including reasonable fees, disbursements and other charges of

counsel), or erosion or dilution of value of the SCES Investment in the Company, (each of the above, a "**Loss**" and collectively, "**Losses**"), which may be incurred by the SCES Indemnified Persons and which result from or arise out of:

- (a) any misrepresentation in, inaccuracy or breach of any of the Company's Representations and Warranties or SSL's Representations and Warranties, or
- (b) breach of any of the covenant, obligation or agreement as contained in this Agreement by the Company and/or SSL.

25.2 SSL's obligation for indemnification under Clause 25.1(a) of this Agreement shall, notwithstanding anything to the contrary contained in this Agreement, be subject to the following terms and conditions:

25.2.1 no indemnity shall be payable in respect of any single incident of Loss which is less than 5% (five percent.) in value of the SCES Investment (the "**De Minimus Loss**"), save that claims relating to a series of connected matters shall be aggregated for this purpose;

25.2.2 the total aggregate amount that SSL shall be obliged to indemnify for the Losses under Clause 25.1(a), to the SCES Indemnified Persons shall not exceed an amount equivalent to the SCES Investment;

25.2.3 No indemnity shall be payable unless SCES has notified prior to the Final Commissioning Date to SSL of the events or circumstances giving rise to the Loss for which such indemnification is claimed;

25.2.4 The limitations stated in this Clause 25.2 shall not be applicable to any Loss suffered by an SCES Indemnified Person as a result of a fraud or reckless misconduct of SSL and/or the Company, or a breach of the Company's Representations and Warranties in Paragraphs 1 – 4 of Schedule III, or a breach of the SSL's Representations and Warranties in Paragraphs 1 -4 of Schedule IV. If any Third Party notifies any SCES Indemnified Persons with respect to any matter ("**Third Party Claim**") that may give rise to a claim or proceeding likely to trigger the indemnification obligation of SSL pursuant to Clause 25.1, or if any SCES Indemnified Person otherwise becomes aware of any matter that may give rise to such a Third Party Claim, then SCES shall, in order to maintain the right to bring a Third Party Claim against SSL pursuant to Clause 25.1:

- (a) promptly notify in writing to SSL of the existence of such Third Party Claim and in no event later than 30 (Thirty) Business Days following the date on which the Third Party Claim has been brought to/comes to the SCES Indemnified Person's attention. Any such notice shall set forth with reasonable specificity the facts and circumstances of which an SCES Indemnified Person has received notice and shall specify the basis hereunder upon which the SCES Indemnified Person's claim for indemnification is asserted and shall be accompanied with all relevant documents and particulars relating to the Third Party Claim to the extent available with SCES;

- (b) if SSL has agreed to contest the Third Party Claim and has not lost the right to contest pursuant to Clause 25.2.4(h), give SSL or its duly authorized representatives, access to the personnel of SCES Indemnified Persons and to any relevant premises, accounts, documents and records within their respective power, to enable SSL, or its duly authorized representatives, to examine such Third Party Claim, premises, accounts, documents and records and to take copies or photocopies thereof.
- (c) The Parties agree to cooperate in good faith in connection with any contest, defense, litigation, negotiation or settlement of any Third Party Claim.
- (d) If SSL acknowledges within 7 (Seven) Business Days of the notification of the Third Party Claim by SCES, in writing to SCES, that the Third Party Claim notified to SSL, constitutes a Loss that is indemnifiable under this Agreement, the right to contest, defend, litigate, negotiate or settle such Third Party Claim shall, at the expense of SSL, rest with SSL.
- (e) If SSL is contesting a Third Party Claim pursuant to Clause 25.2.4(d) above and has not lost the right to contest pursuant to Clause 25.2.4(h), no SCES Indemnified Person shall make any admission of liability in relation thereto, without obtaining the prior written consent of SSL.
- (f) Any SCES Indemnified Person however may, at its own cost, participate in, without controlling, any such contest, defense, litigation, negotiation or settlement, provided such contest, defense, litigation, negotiation or settlement is in consultation with SSL. But in the event SSL loses the right to contest, defend, litigate, negotiate or settle the Third Party Claim pursuant to Clause 25.2.4(h), then the SCES Indemnified Persons shall be entitled to reimbursement for such cost.
- (g) Unless SSL has lost the right to contest pursuant to Clause 25.2.4(h), no SCES Indemnified Person may enter into any settlement of a Third Party Claim without the prior written consent of SSL. No such consent shall be unreasonably withheld by SSL and/or the Company, who shall be deemed to have consented to any proposed settlement if they do not respond in writing within 7 (Seven) Business Days following a written request for such consent by SCES. In the absence of such consent (expressed or implied), the SCES Indemnified Person shall not be entitled to any indemnification by SSL with respect to the Third Party Claim in respect of which an unauthorized settlement has been entered into.
- (h) SSL will, notwithstanding anything to the contrary stated in this Agreement, lose the right to contest, defend, litigate, negotiate or settle any Third Party Claim if it fails to diligently contest the Third Party Claim or if it fails to notify SCES within 7 (seven) days of the receiving a notification of the Third Party Claim from SCES as set out in Clause 25.2.4(d).

- 25.3 Notwithstanding anything contained hereinabove, in the event that any Taxes are or become payable with respect to any indemnification payments made by SSL to SCES Indemnified Person, such payments shall be grossed up such that the SCES Indemnified Persons receives no less than the full amount payable by SSL on account of any Losses envisaged under this Clause 25 (*Indemnification*).
- 25.4 A claim for indemnification under, and subject to the terms and conditions of, this Clause 25 shall, save and except for the remedy under Clause 22.2.4, be the sole and exclusive remedy of any SCES Indemnified Person for any Loss attributable to the matter referred to in Clause 25.1(a). For Losses attributable to the matter referred to in Clause 25.1(b), the rights accorded to SCES Indemnified Persons in Clause 25 shall be in addition to any rights or remedies that SCES Indemnified Persons may have under Law, in equity or otherwise.
- 25.5 SSL shall have no liability for any Loss to the extent that the same would not have occurred but for (i) any change in Law made applicable with retrospective effect or (ii) any change in accounting or tax policy, basis or practice of the Company introduced after the First Closing Date.
- 25.6 Simultaneously with the SCES Indemnified Persons realizing a claim from SSL pursuant to the provisions of this Agreement in respect of which claim a separate cause of action also lies against a third party, the SCES Indemnified Persons shall at no cost to SSL in accordance with Law, assign their rights in relation to such cause of action or claim against such third party.
- 25.7 The SCES Indemnified Persons shall not be entitled to recover from SSL under this Agreement more than once in respect of the same damage suffered.
- 25.8 SSL shall not be liable for any indemnification under this Clause 25 if the failure or breach giving rise to such indemnification obligation is capable of remedy and SSL and/or the Company have in fact remedied, within 60 (Sixty) days of the SCES giving notice to SSL of such failure or breach; provided however SSL shall, subject to the other provisions of Clause 25, be liable for any Loss suffered by the SCES Indemnified Person prior to such remedy.
- 25.9 SSL shall not be liable for any remote, special, indirect or consequential damages and losses (including but not limited to loss of profits, loss of revenue, loss of use, loss of production, costs of capital or costs connected with the interruption of operation), regardless of the legal theory on which the claim is based. For the avoidance of doubt, the Parties agree that any erosion in value of the SCES Investment as a result of a breach of this Agreement by SSL will not be regarded as a remote, special, indirect or consequential loss or damage.
- 25.10 SSL shall not be liable in respect of any claim to the extent that any Losses arising from such claim are covered by a policy of insurance in force on the date of this Agreement and to the extent payment in respect of the same is made by the insurer and received by the SCES Indemnified Persons or would have been made if the SCES Indemnified Persons was entitled to make a valid claim under such policy and if such a claim had been submitted under such policy.

- 25.11 SSL shall not be liable to pay any indemnification in connection with any Third Party Claim until such claim is actually paid by an SCES Indemnified Person. If SSL pays an amount in discharge of any indemnification obligation pursuant to Clause 25.1, and an SCES Indemnified Person subsequently recovers (whether by payment, discount, credit, relief or otherwise) from a Third Party a sum which is referable to the subject matter of the indemnification obligation, the Indemnified Person shall pay to SSL:
- (a) an amount equal to the sum recovered from the Third Party, less any reasonable out-of-pocket costs and expenses incurred by the SCES Indemnified Persons in recovering the same; or
 - (b) if the figure resulting under Clause 25.11(a) above is greater than the amount paid by SSL to the SCES Indemnified Persons in respect of the Loss, such lesser amount as shall have been so paid by SSL and/or the Company.
- 25.12 A SCES Indemnified Person shall take all reasonable steps to avoid or mitigate any Losses to the extent possible, which in the absence of mitigation might give rise to an indemnifiable claim under this Agreement.
- 25.13 SCES shall indemnify, defend, protect and hold, SSL and its Affiliates (and their respective directors, officers, employees, representatives, successors and assigns) ("**SSL Indemnified Persons**") harmless from and against any and all Losses suffered or incurred by any SSL Indemnified Persons and which arise out of or result from or are connected with any breach by SCES of its covenant, obligation or agreement as contained in this Agreement. The benefits and restrictions contained in Clauses 25.3, 25.5(i), 25.7, 25.8, 25.9, 25.10, and 25.12 shall apply to any indemnification by SCES to an SSL Indemnified Person and the reference to SSL and SCES Indemnified Person shall apply mutates mutandes to Clause 25.13.

26 **NEGOTIATION, ARBITRATION AND GOVERNING LAW**

26.1 **Negotiation in case of dispute**

- 26.1.1 In the event of any dispute, difference, claim or question (other than a dispute at the Board level, which shall be resolved by the Deadlock Resolution as set out in **Schedule VII**), ("**Dispute**") at any time arising between SSL and SCES (each a "**Disputing Party**" and together the "**Disputing Parties**") in relation to or arising out of this Agreement, such Dispute shall upon the written request ("**Request**") of any Disputing Party served on the other, be first referred to a "**Mediating Committee**". The Mediating Committee shall comprise of 1 (One) member nominated by SSL and 1 (One) member nominated by SCES. The Mediating Committee shall promptly meet and attempt to negotiate in good faith a resolution of the Dispute. A matter in relation to the Dispute shall not be deemed to be approved by the Mediating Committee unless the same is approved by both members of the Mediating Committee. In the event that the Mediating Committee fails to reach an amicable resolution within 30 (Thirty) days after service by a Disputing Party of a Request, then the Dispute shall be resolved in accordance with the provisions of Clause 26.2 (*Arbitration*) below. The

Parties agree that the arbitral proceedings shall be deemed to have commenced from the date of reference of the Dispute to the Mediating Committee as above.

26.2 Arbitration

26.2.1 In the event that the Mediating Committee fails to reach an amicable resolution of a Dispute within 30 (Thirty) days from the date of service of the Request as provided in Clause 26.1 (*Negotiation in case of dispute*) above, the Dispute shall be finally settled through arbitration under the Dubai International Arbitration Centre ("DIAC"). Any dispute arising out of the formation, performance, interpretation, nullification, termination or invalidation of this Agreement or arising therefrom or related thereto in any manner whatsoever, shall be settled by arbitration in accordance with the provisions set forth under the DIAC Arbitration Rules ("the Rules"), by a sole arbitrator appointed in compliance with the Rules. The seat, or legal place, of arbitration shall be Dubai. The language to be used in the arbitration shall be English. The award shall be final, conclusive and binding upon the Parties, and the Parties agree to be bound by the same. The successful Party may seek to enforce the award before a court having appropriate jurisdiction. The Parties hereto agree that the cost of arbitration proceeding including fees of arbitrator shall be borne equally by the Parties, unless otherwise decided by the arbitrator.

26.3 Governing Law & Jurisdiction

This Agreement shall be governed by the Laws of India.

27 MISCELLANEOUS

27.1 Notice

27.1.1 All notices, documents or communications under this Agreement shall be written in English and shall be sent by hand delivery, registered post with postage fully prepaid and with acknowledgment due, receipted courier, by facsimile transmission or by electronic mail to the applicable Party ("**Notice**") at the contact details indicated below or to such other address or facsimile number as a Party shall designate by similarly giving notice to the other Party:

If sent to **Simbhaoli Sugars Limited**
Address: C 11, Connaught Place
 New Delhi-110001
 India
Attention: Dr. G. S. C. Rao
Facsimile: +91 11 23413088

Email: gscrao@simbhaolisugars.com

If sent to **Sindicatum Captive Energy Singapore Pte. Limited**

Address: 391B Orchard Road, Ngee Ann City Tower B, Singapore,
238874

Attention: The Directors
Facsimile: +65 6732 9767
Email: Michael.Boardman@sindicatum.com

If sent to **Simbhaoli Power Limited**
Address: Simbhaoli, Ghaziabad-245207

Attention: Mr. A.P. Singh
Facsimile: +91 (0)11-23413088
Email: singhap@simbhaolisugars.com

27.1.2 Notice given under Clause 27.1.1 shall be deemed to have been received:

- (a) if delivered personally, on the day of delivery;
- (b) if sent by courier, on the day of delivery;
- (c) 5 (Five) Business Days after posting if transmitted by registered post (including airmail);
- (d) if sent by fax, on the day of transmission of the fax;
- (e) if sent by electronic mail, on the day of transmission of the mail ,

whichever shall first occur.

27.2 **Waiver**

No forbearance, indulgence or relaxation or inaction by any Party at any time to require performance of any of the provisions of this Agreement shall in any way affect, diminish or prejudice the right of such Party to require performance of that provision. Any waiver or acquiescence by any Party of any breach of any of the provisions of this Agreement shall not be construed as a waiver or acquiescence of any right under or arising out of this Agreement or of the subsequent breach, or acquiescence to or recognition of rights other than as expressly stipulated in this Agreement.

27.3 **Cumulative Rights**

All remedies of any Party under this Agreement, whether provided herein or conferred by statute, civil law, common law, custom, trade, or usage, are, save and

except as otherwise provided in this Agreement, cumulative and not alternative and may be enforced successively or concurrently.

27.4 Partial Invalidity

If any provision of this Agreement or the application thereof to any Person or circumstance shall be invalid or unenforceable to any extent for any reason including by reason of any Law or regulation or Government policy, the remainder of this Agreement and the application of such provision to Persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by Law. Any invalid or unenforceable provision of this Agreement shall be replaced with a provision, which is valid and enforceable and most nearly reflects the original intent of the unenforceable provision.

27.5 Amendments

No modification or amendment to this Agreement and no waiver of any of the terms or conditions hereof shall be valid or binding unless made in writing and duly executed by all Parties.

27.6 Costs

Each Party shall bear its own costs and expenses in connection with the preparation, negotiation, execution and delivery of the Agreement. Except as otherwise stated in this Agreement, all other expenses and costs, including stamp duty, if applicable, shall be borne by both Shareholders in proportion to their respective shareholding in the Company. .

27.7 Counterparts

This Agreement may be executed in one or more counterparts, each of which shall, upon its execution as herein by the Parties be deemed an original and all of which together shall constitute one instrument.

27.8 Survival of Rights and Obligations

The provisions of Clause 10 (*Representations and Warranties*), Clause 20 (*Non-Compete*), Clause 21 (*Confidentiality*), Clause 22.3 (*Option to Purchase and Sell*), Clause 26.2 and 26.3 (*Arbitration and Governing Law*), Clause 27.1 (*Notice*), and Clause 25 (*Indemnification*) shall survive any termination of this Agreement.


27.9 Restriction on Assignment and Change in Control

(a) The obligations, rights, title, benefits or entitlements of any Party under this Agreement shall not be assigned by the Party or, by any Person deriving any right, title or benefit through Party, to any third party, without prior written consent of all the other Parties hereto.

- (b) In case of change in Control of a Shareholder, such Shareholder is required to notify the other Parties of such change of Control within 14 (Fourteen) days from the date of such change or knowledge of such change, whichever is earlier. Failure of any Party to comply with this condition shall be deemed to be a material breach of this Agreement and shall thereby entitle the other Parties to rights and remedies available to it under Law and under Clause 22.3 (*Option to Purchase and Sell*) of this Agreement.

27.10 Force Majeure

For the purposes of this Agreement an event of Force Majeure shall mean an event beyond the control of the concerned Party, including without limitation riots, cyclone, fire, floods, earthquake, storm, terrorist activities, war, act of God, theft of goods in transit, civil disturbance of any nature whatsoever, any Governmental or municipal action, or any other event analogous to the foregoing. No Party shall be liable for non-performance or delay in performance of any obligation stipulated in this Agreement if such non-performance or delay is caused by an event of Force Majeure that materially impairs the ability of the affected Party to perform its obligations under this Agreement. The Party affected shall give prompt notice (together with any notice or information it has received regarding the Force Majeure event) and its likely duration to the other Party advising of the occurrence and effects of the event of Force Majeure and shall use all reasonable efforts to minimize any adverse consequences resulting from the event of Force Majeure.

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27.11 Further Assurances and Good Faith

27.11.1 Each of the Parties undertakes with each of the others to utilize their best efforts to ensure that the provisions as well as the spirit and intent of this Agreement are followed as fully and as consistently as possible and to act reasonably and in good faith towards each other in the exercise of their rights and in the discharge of their obligations hereunder with regard to the objectives of the Company as set out in the Business Plan.

27.11.2 Each of the Shareholders undertakes with each other(s) to ensure (a) that they, their representatives and their proxies representing them at the general meetings of the shareholders of the Company shall at all times exercise their votes, and (b) that they through their respective nominee Directors (or alternate directors) at Board meetings and otherwise, act in such manner so as to (i) comply with, and to fully and effectually implement the spirit, intent, objectives and provisions of this Agreement and (ii) ensure (so far as they are able) that the Company fully and promptly observes, performs and complies with its obligations under this Agreement.

27.11.3 If, following tax due diligence by SCES and/or SSL prior to the First Closing Date or a Change in Law, an alternative more tax efficient structure is available to that set out in this Agreement and/or the Project Agreements, the Parties agree to do and take such actions as may be reasonably required to implement such revised structure and to act reasonably and in good faith towards each other in the implementation of such revised structure provided it does not materially amend the commercial terms set out in this Agreement and the Project Agreements.

27.11.4 Subject always to the right to approve the terms of the Senior Loan as a Reserved Matter, each of the Parties undertakes with each other not to unreasonably withhold or delay its consent to any revisions in the terms of this Agreement and/or the Project Agreements as may be reasonably required by the Senior Lenders in connection with the Senior Loan, provided such revisions do not materially amend the commercial terms set out in this Agreement or the Project Agreements.

27.12 Entire Agreement

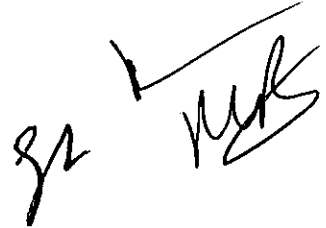
This Agreement, together with the other agreements referred to in this Agreement and required to be entered into pursuant to this Agreement, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all or any prior negotiations, representations, or agreements, either written or oral. In the event of any conflict, the provisions of this Agreement shall override the provisions of any other agreements.

27.13 Consistency of Memorandum and Articles of the Company with the Agreement

The Memorandum of Association and Articles of Association of the Company shall be made and executed in form and substance fully consistent with the provisions of this Agreement and shall incorporate the terms of this Agreement to the extent that such provisions may legally be provided for in the Memorandum of Association and Articles of Association. If any discrepancy is found between this Agreement and the

Articles of Association, the Shareholders, as far as legally possible, shall amend the Memorandum of Association and Articles of Association to bring the same in conformity with this Agreement. It is expressly agreed that whether or not the Memorandum of Association and Articles of Association fully incorporate and reflect the rights and obligations of the Parties specified herein, or any of them, the rights and obligations of the Parties shall, subject to applicable Laws, be governed by this Agreement, which shall, as between the Parties, prevail in the event of any inconsistency between the two.

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Handwritten initials 'SZ' and a signature.

IN WITNESS WHEREOF the Parties hereto have duly executed this Agreement on the day and year first above written.

For and on behalf of Simbhaoli Sugars Limited



Title: DEPUTY MANAGING

Name: GURPAL SINGH.

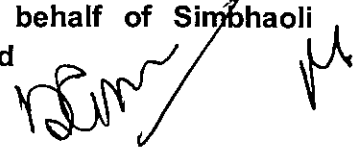
For and on behalf of Sindicatum Captive
Energy Singapore Pte. Limited



Title: DIRECTOR + CFO.

Name: FRANCESCO GIUSEPPE
MICHELE BOARDMAN.

For and on behalf of Simbhaoli
Power Limited



Title: DIRECTOR

Name: SANJAY TAPRIYA