

REQUEST FOR PROPOSAL FOR MOVEMENT OF 3 MMT OF IMPORTED COAL PER ANNUM FOR A PERIOD OF 10 YEARS THROUGH INLAND WATERWAYS TO NTPC POWER PROJECT LOCATED AT BARH, BIHAR



December, 2014

Request for Proposal

- (1) This document comprises of
Volume I: Instruction to Bidders
Volume II: Draft Tripartite Agreement including Draft Transport Agreement as Schedule I

The above documents are the integral part of the RFP document

The Bid document can be downloaded from the website of IWAI and IIDC Ltd as detailed in this RFP.

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The issuance of this RFP does not imply that NTPC or IWAI or both are bound to select and short-list pre-qualified Bids for Bid Stage (the “Bid Stage”) or to appoint the selected Bidder or Operator, as the case may be, for the Project[s] and IWAI and/or NTPC reserves the right to reject all or any of the Bids or Bids without assigning any reasons whatsoever. The issuance of this RFP by IWAI for and on behalf of NTPC does not imply that NTPC and/or IWAI is in any manner responsible or has any obligation to select the Bidder or be in any manner responsible for the Project.

The Bidder shall bear all its costs associated with or relating to the preparation and submission of its Bid including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by the IWAI and/or NTPC or any other costs incurred in connection with or relating to its bid. All such costs and expenses will remain with the Bidder and the IWAI and/or NTPC shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by a Bidder in preparation or submission of the bid, regardless of the conduct or outcome of the Bidding Process.

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Volume -I

Instructions to Bidders

1. Introduction

1.1 Background

- 1.1.1 NTPC Limited, India's largest thermal power generating company, was incorporated in 1975, as a public sector company wholly owned by Government of India, to accelerate power development in India.
- 1.1.2 NTPC is developing a super thermal power project at Barh, District Patna, Bihar ("**Barh STPP**") with a total capacity of 3300 MW. The power plant is under construction and first unit is commercialized in 2014-15. . NTPC requires around three million metric tonnes ("**3MMT**") of imported coal per annum for the operation of the Barh STPP.
- 1.1.3 The Barh STPP is situated near the banks of National Waterway-1 [National Waterway-1 means Ganga-Bhagirathi- Hooghly river system between Haldia (Sagar) and Allahabad (1620 Kms) declared as NW1 in October 1986] thereby providing a viable option for transportation of imported coal through waterway. Further, Inland Waterway Authority of India ("IWAI") is undertaking project developmental works on recently announced program of Government of India "Jal Marg Vikas" which is focused on the capacity augmentation of navigational infrastructure of National Waterway-1 between Haldia and Allahabad. This shall be achieved by developing and improving the navigational infrastructure and maintaining necessary depth (3.0 m) in the waterway in the river Ganga between Haldia and Allahabad.
- 1.1.4 Presently, NTPC imports coal on FOR destination basis through imported coal Supplier(s). However, in future NTPC may also procure imported coal either on Cost and Freight (CFR) / Free on Board (FOB) basis.
- 1.1.5 The selection of the imported coal Supplier(s) ("**Imported Coal Supplier(s)**") is done through a periodic coal procurement tender (the "**Coal Procurement Tender**"), for import and supply (to NTPC) of the quantities decided by NTPC based on its requirement for imported coal, keeping in view the gap in domestic supply of coal for meeting the demand of its power plants. One such **Coal Procurement Tender** will (in case NTPC intends to procure the desired quantities of coal through an Imported Coal Supplier(s)) be undertaken for selection and appointment of an Imported Coal Supplier(s), for meeting the imported coal requirements of NTPC's thermal power plant at Barh ("**Barh STPP**").
- 1.1.6 The Inland Waterway Authority of India ("IWAI") is a statutory authority created pursuant to the Inland Waterways Authority of India Act, 1985, and has been constituted for the regulation and development of inland waterways for purposes of shipping and navigation and for matters connected therewith.
- 1.1.7 IWAI is undertaking and managing this competitive bid process ("Bidding Process"), for and on behalf of NTPC, to identify and recommend an operator ("Operator") to NTPC, for final selection

and appointment by NTPC. The Operator, selected through this Bidding Process, would be responsible for unloading the coal from the Ocean Going Vessels (as defined in Draft Tripartite Agreement and Draft Coal Transportation Agreement) and thereafter moving the coal on its own Vessels [(means river sea vessels or any combination of coastal vessel/river sea vessels/inland vessel (Self propelled/Tug and barge combination)] capable of 24 hours and round the year operation, transporting the coal using National Waterway -1 and ensuring delivery of the imported coal, in accordance with identified specifications, at the coal stack yard of Barh STPP, for a period of ten (10) years (excluding the period of construction) (herein after collectively referred to as the “Project”).

- 1.1.8 IWAI has appointed IIDC Ltd as project development organization for Project development, structuring, Bid process management and assistance in final selection of an Operator.
- 1.1.9 The Successful Bidder, in case it is an existing company incorporated under the Companies Act 1956, may or may not incorporate a limited liability, special purpose vehicle, under Companies Act, 2013 (with the equity shareholding as prescribed herein) to act as the Operator. However, in case the Successful Bidder is not a company incorporated under Companies Act, 1956/Companies Act 2013 and/ or is a Consortium of entities, it shall be required to incorporate a limited liability company under Companies Act 2013 (with the equity shareholding as prescribed herein), as a special purpose vehicle (SPV), to act as the Operator and undertake the Project in terms of the Tripartite Agreement to be executed between NTPC, IWAI and the Operator (the “**Tripartite Agreement**”)
- 1.1.10 The Operator, selected pursuant to this Bidding Process, shall also be required to execute and enter into agreement(s) with the Imported Coal Supplier(s) and/or NTPC or their designated agency(ies), as the case may be for transportation and delivery of a minimum of 3 MMT(million metric tonne) of imported coal per annum from the Transfer Point (*as defined in Draft Tripartite Agreement*) to coal stack yard of Barh STPP (“**Coal Transportation Agreement**”, in the format annexed as Schedule I of Draft Tripartite Agreement), and correspondingly NTPC, shall ensure transportation of a minimum quantity of 3 MMT(million metric tonne) of imported coal per annum, by the said Operator, through the Imported Coal Supplier(s) and/or NTPC or their designated agency(ies), selected pursuant to the Coal Procurement Tender as the case may be (the “**Minimum Guaranteed Quantity**”). In the eventuality NTPC procures part or whole of the Minimum Guaranteed Quantity of coal in any particular year through an Imported Coal Supplier(s) and/or NTPC or their designated agency(ies), as the case may be for Barh STPP, then such Imported Coal Supplier(s) and/or NTPC or their designated agency(ies), as the case may be, shall inter-alia, under the Coal Procurement Tender be mandated to do the following: (i) to execute the Coal Transportation Agreement with the Operator and supply the agreed quantities of coal to NTPC, only through the Operator appointed pursuant to this Bidding Process and through no other entity (ii) to pay applicable Total Transportation Rate (*defined later*) Per Metric Tonne, to the Operator in terms of the Coal Transport Agreement. It is hereby clarified that the Total Transportation Rate Per metric Tonne shall be subject to escalation in accordance with the provisions of the Coal Transportation Agreement.
- 1.1.11 The Bidders, shall comply with all the Applicable Laws, rules and regulations of Central/State Government/ statutory bodies/ departments and agencies etc at all times during the Bidding Process

and during the performance of their obligations in connection with the Project, in terms of the Tripartite Agreement and the Coal Transportation Agreement, in case identified and selected as the Successful Bidder for the Project.

1.1.12 The Draft Tripartite Agreement, which is provided in Volume –II of this Request For Proposal (RFP) shall set forth the detailed terms and conditions for the implementation of the Project by the Operator, including the scope of the Operator’s services and obligations. Without prejudice to the generality of the foregoing, the scope of work of Operator in implementing the Project and its obligations, for a contract period/ term of thirteen (13) years (the “**Term**”), shall *inter alia*, include:

- (a) coal would be unloaded and transferred from Ocean Going Vessels (both Panamax and Capesize vessels) to the Operator’s Vessels at such locations as are identified by the Operator as being suitable for such unloading from the Ocean Going Vessels to the Vessels by the Operator (such location being referred to as the “**Transfer Point**”).
- (b) The Transfer points shall be identified and finalized by the Operator in accordance with the applicable laws and in consultation with the concerned port authorities including but not limited to the Kolkata Port Trust (KoPT) and/or Paradip Port Trust (PPT) and/or any other port authority.
- (c) design, create and procure suitable and adequate infrastructure and facilities for unloading and transferring of the coal from Ocean Going Vessels (both Panamax and Capesize vessels) to Operator’s Vessels at the Transfer Point (“**Transshipment Infrastructure**”)
- (d) procure and operate sufficient number of Vessels to meet movement schedule of imported coal
- (e) Operator shall act as facilitator and shall be responsible for timely land acquisition required for the development of Unloading Infrastructure and Material Handling System at Barh waterfront as determined in accordance with Schedule F of the draft Tripartite Agreement (**the “Unloading Point”**). It is hereby clarified that the land shall be acquired in the name of NTPC under Land Acquisition Act 1894 including its amendments if any, as may be enforced. The Operator shall liaison with District and State Administration for all land acquisition issues and interact with Project Affected Persons (PAPs) for disbursement of compensation on account of land.
- (f) design, construct, finance, operate and maintain, Unloading Infrastructure and Material Handling System including but not limited to the pipe conveyor system and other ancillary equipments at the Unloading Point, that would be used to unload coal from the Vessels for onward delivery of coal to coal stack yard of Barh STPP. The Unloading Infrastructure and Material Handling System including pipe conveyor system will be transferred and handed over to NTPC at Re 1/- at the end of the Term.
- (g) The pipe conveyor alignment for the carriage of coal from the Unloading Point till the Junction House (JH) 2 identified by NTPC within the coal stack yard of Barh STPP (hereinafter the “**JH 2**”) shall be developed in accordance with the applicable laws and guidelines, along the corridor finalized by the Operator in consultation with NTPC. The indicative pipe conveyor alignment is provided in Schedule G.
- (h) Pipe Conveyor system should have a discharge capacity of 1000 tonnes per hour (TPH).

- (i) Operator shall ensure the creation / procurement of Transshipment Infrastructure, Vessel and development of Unloading Infrastructure and Material Handling System, required for the purposes of discharge of its obligations in respect of the Project within a period of thirty six (36) months from the date of execution of the Tripartite Agreement.
 - (j) Complete on board stevedoring for discharge of coal from Ocean Going Vessel to Vessels and ensure a minimum unloading rate of 12000 Metric Tonne PDPRWWD SHINC (Per Day Pro-rata Working Weather Day Sunday Holiday Included). All expenses and cost with respect to wharfage, anchorage and tug charges, pilotage, mooring, fenders if any at the Transfer Point shall be borne by Operator
 - (k) bear and pay all cost, taxes, levies, cess, expenses and charges in connection with or incidental to the performance of the obligations under the Draft Tripartite Agreement and under the Coal Transportation Agreement;
 - (l) comply with all applicable laws and obtain all applicable permits or clearances and approvals in all material respects during the term of the Project.
 - (m) In addition to above obligations the Successful Bidder shall also require to comply with all the other obligations as detailed out in Draft Tripartite Agreement and Coal Transportation Agreement
- 1.1.13 For the purpose of this RFP, the “Total Cost of Coal” means the comparable cost of imported coal transported through railway mode upto coal stack yard including all applicable taxes and levies.
- 1.1.14 The payments in respect of total transportation cost to the Successful Bidder (Operator) shall be made by the Imported Coal Supplier(s) and/or NTPC’s designated agency(ies) in terms of the Coal Transportation Agreement (to be executed in the format set forth at Schedule I to the Tripartite Agreement). The Total Transportation Rate is adjusted against any change in Fuel prices, WPI and in the statutory charges in accordance with Draft Tripartite Agreement and Coal Transportation Agreement.
- 1.1.15 The shortfall/ excess, if any, in the Minimum Guaranteed Quantity of coal in any particular year, shall be adjusted and dealt with NTPC directly in accordance with the provisions of the Draft Tripartite Agreement as provided in Volume II of this RFP.
- 1.1.16 The Operator shall act as facilitator and shall be responsible for timely land acquisition required for the development of Unloading Infrastructure and Material Handling System at Barh waterfront as determined in accordance with Schedule F of the draft Tripartite Agreement **(the “Unloading Point”)**. It is hereby clarified that the land shall be acquired in the name of NTPC under Land Acquisition Act 1894 including its amendments if any, as may be in forced. The required notification shall be issued by NTPC and the payment for land acquisition shall be done by NTPC. The Operator shall liaison with District and State Administration for all land acquisition issues and interact with Project Affected Persons (PAPs) for disbursement of compensation on account of land.

- 1.1.17 The statements and explanations contained in this RFP are intended to provide a proper understanding to the Bidders about the subject matter of this RFP and should not be construed or interpreted as limiting in any way or manner the scope of services and obligations of the Operator set forth in the Tripartite Agreement or IWAI's rights to amend, alter, change, supplement or clarify the scope of work to be awarded pursuant to this RFP or terms thereof or herein contained. Consequently, any omission, conflicts or contradictions in the Bidding Documents including this RFP are to be noted, interpreted and applied appropriately to give effect to this intent, and no claims on that account shall be entertained by IWAI.
- 1.1.18 Bidders are encouraged to do a due diligence of all the applicable fiscal benefits available in the waterway sector for the purpose of the Project, availability or non availability of any such fiscal benefits at any time during the Term of the Tripartite Agreement shall not provide recourse to NTPC and / or IWAI and NTPC and/or IWAI shall not be liable in any manner whatsoever in respect thereof.

1.2 **Brief Description of the Bidding Process**

- 1.2.1 A single stage two envelope Bidding Process has been adopted for the evaluation of the bids ("Bids") under this RFP, wherein the Bidders shall be required to submit the following documents:

- (a) Documents to indicate preliminary responsiveness of the Bid that have to be placed in the Outer Envelope in accordance with Clause 2.13.2 and 2.20
- (b) Envelope 1: shall contain the technical bid (the "**Technical Bid**") and shall include

- (i) Details of Technical and Financial capability of the Bidders to demonstrate that the Bidders meet the Minimum Eligibility Criteria stipulated under Section 2.2 of this RFP and

Detailed Logistic solution (including drawings, photographs etc.) suggested by the Bidder to undertake the unloading and transportation of coal from Transfer Point to Barh STPP through Inland Water Transport (IWT) mode and meeting all the requirements of the Project as described in this RFP. The logistics solution submitted as part of the Technical Bid shall ensure compliance with applicable regulatory requirements, operational and safety standards of NTPC.

While devising the logistic solution, the Bidder is advised to take note that the stretch of river between Diamond Harbour and Kolkata is also being used by large number of deep drafted merchant vessels, inland vessels, ferry launches and fishing boats.

With the proposed project, there will be additional vessels which will be plying on the same channel and the chances for congestion cannot be ruled out. Bidders are therefore advised to take note of the above and conceptualize their logistic solution in a way through which number of vessels in the shipping channel of KoPT is minimized optimally.

- (c) Envelope 2: Financial Bid in the format as specified in Appendix VI to this RFP, providing the Total Transportation Rate per Metric Tonne of coal, at which the Bidder would be willing to undertake the implementation of the Project. In addition to Total Transportation rate per Metric Tonne, Bidders are also required to quote the handling and transit losses (in percentage) in their system upto a maximum of 0.2% (“% **Transit Loss**”), if any, on the quantity received at Transfer Point adjusted for quality variations if any. This % Transit Loss as quoted by the Successful Bidder shall be binding upon the Operator and shall be construed as the permissible limit of handling and transit losses, beyond which permissible limit, deductions from the payments of the Operator shall be made by the Imported Coal Supplier(s) and/or NTPC or their designated agency, as the case may be, for the actual handling and transit losses, in terms of the Coal Transportation Agreement.

1.2.2 The evaluation of the Bids would be carried out in two steps:

- (a) The first step would be Technical Stage; the Technical Proposal would be evaluated on “pass/fail” criteria.

The evaluation of the technical and financial capability shall be done to verify whether the bidder’s eligibility meet the minimum eligibility criteria set forth in section 2.2 of this RFP, and the evaluation of logistic solution shall be done in order to ascertain whether the suggested logistic solution is prima facie feasible and covers all the components of the Project as well as the scope of work of the Project as provided in this RFP. Only such Bidders who pass the Technical Bid evaluation stage would be eligible to have their Financial Bid opened.

- (b) The second step is the opening of the Financial Bid and in this step the Financial Bid of only those Bidders will be opened, who have passed the Technical Bid evaluation. For the evaluation of the Financial Bids, the % Transit Loss indicated by the Bidder in its Financial Bid shall be loaded (added) onto the Total Transportation Rate per Metric Tonne (PMT) quoted by the Bidder in the Financial Bid at a normative rate of Rs. 7000 PMT [i.e. the final Bid parameter (“**Evaluated Bid Price**”) shall be the Total Transportation Rate per Metric Tonne + (%Transit Loss* Normative rate of Rs. 7000 PMT].

1.2.3 Each Bidder is required to quote price, as per the format provided in Appendix VI (Financial Bid)

It is hereby clarified that the evaluation of Financial Bid shall be done on the basis of Total Transportation Rate Per metric tonne and the % Transit Loss in accordance with clause 1.2.2 (b). However, it should be noted that quoting the lowest Total Transportation Rate per Metric Tonne including the Transit Losses would not automatically qualify a Bidder for being declared as the Successful Bidder. The Total Transportation Rate per Metric Tonne including the Transit Losses quoted by the Bidder would be examined in the context of the Total Cost of Coal, as explained in Clause 1.1.13, before deciding whether the transportation rate quoted is found to be competitive from NTPC’s perspective or not. NTPC/IWAI reserves the right to reject any or all the Bids received under this RFP or annul the entire Bidding Process without assigning any reason thereof and without being liable in any manner to any of the Bidders as a result thereof.

On the basis of the evaluation of the Financial Bid, as per the evaluation process specified in this RFP, Letter of Award will be issued to the Successful Bidder.

- 1.2.4 In this RFP, the term “**Bidder**” refers to all those Bidders that have submitted Bid in response to this RFP. “**Successful Bidder**” refers to the Bidder selected to operate this Project pursuant to the bid evaluation process.
- 1.2.5 The terms used in this RFP and not defined herein shall have the meaning ascribed thereto in the Draft Tripartite Agreement that has been provided as a part of this RFP
- 1.2.6 Following the issue of the Letter of Award, the Successful Bidder in case it is not a Company incorporated under the Companies Act, 1956/Companies Act 2013, or in case it is a consortium, shall incorporate a limited liability company under the Companies Act, 2013, to act as the Operator for the execution of Tripartite Agreement with NTPC and IWAI, and the Successful Bidder shall act as the confirming party to the Tripartite Agreement. The equity holding of the Successful Bidder in the Operator would be as per the requirements of this RFP.
- 1.2.7 The principal contract between NTPC, IWAI and the Operator (with Successful Bidder as the confirming party, as the case may be) will be the Tripartite Agreement, (a draft of which is also provided in this RFP) and the Operator will be required to provide the coal transport services in accordance with the Coal Transportation Agreement.
- 1.2.8 The Bidders are required to submit their duly completed Bids comprising the Technical Bid and the Financial Bid (collectively the "Bid") in respect of the Project, in accordance with this RFP Document ("**Bidding Document**"). The Bidders can download the Bidding Documents (Volume I and Volume II of the RFP) from website of IWAI i.e www.iwai.nic.in or IIDC website www.iidcindia.co.in free of cost. However at the time of submission of the Bid, the Bidder shall, along with its Bid, submit a non-refundable fee of Rs 15,000/- (Rupees Fifteen Thousand Only) towards the RFP processing fee (the “**RFP Fee**”) through a demand draft drawn in favour of “Integrated Translog Development Company Limited IWAI-IIDC PDF” payable at New Delhi from any Scheduled/ Nationalized Bank. Bids unaccompanied with the RFP Fee shall be liable to be rejected.
- 1.2.9 A Bidder will be required to deposit, along with its Bid, a bid-security of Rs. 2,35,00,000/- (Rupees Two Crore and Thirty Five lacs only) in favour of “IWAI Fund”, Noida (the “**Bid Security**”). The Bid Security shall be refundable not later than 240 days from the Bid Due Date except in the case of the Successful Bidder, whose Bid Security shall be retained till it has provided a Performance Security and signed the Tripartite Agreement. The Bidders need to provide Bid Security in the form of a bank guarantee in the format provided in Appendix-III of this RFP document issued by a Nationalized Bank or a Scheduled Bank in India having a net worth of at least Rs 1000 crore (Rs one thousand crore) and the validity period of the bank guarantee, shall not be less than 240 (two Hundred and forty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between NTPC and/ or IWAI and the Bidder from time to time. In case any bidder refuses to extend the validity of bids, it will not be considered for further

evaluation. In case any Bidder fails to submit duly extended Bid Security such Bids will not be considered for further evaluation. In case the Bank Guarantee is issued by a foreign bank outside India, confirmation of the same by any nationalized bank in India is required. For avoidance of doubt, Scheduled bank shall mean a bank as defined under Section 2 (e) of the Reserve Bank of India, 1934. The bid security shall be furnished in separate envelope. Any bid not accompanied by an acceptable Bid security, in a separate sealed envelope shall be rejected as being non-responsive and returned to the bidder without being opened

- 1.2.10 The bid security of the bidders whose Technical bid has not been found acceptable shall be returned within 21 days after opening of financial bid or annulment of the bidding process as the case may be.
- 1.2.11 The bid security of the successful bidder (s) to whom the award is placed will be returned without any interest, when the said Bidder has signed the Draft Tripartite Agreement pursuant to ITB clause 3.3 and has furnished the required Performance Guarantee pursuant to ITB clause 3.4.2
- 1.2.12 The Bid Security shall be forfeited as Damages without prejudice to any other right or remedy that may be available to IWAI under the Bidding Documents and/ or under the Tripartite Agreement, or otherwise, under the following conditions:
- (a) If a Bidder submits a non-responsive Bid;
 - (b) If a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified and defined in this RFP or makes a misrepresentation or gives a false undertaking to IWAI/ NTPC during the Bidding Process;
 - (c) If a Bidder withdraws its Bid during the period of Bid validity as specified in this RFP and as extended by mutual consent of the respective Bidder(s) and IWAI;
 - (d) If the bidder does not accept the correction of arithmetic errors.
 - (e) If the bidder refuses to withdraw, without any cost to IWAI/NTPC any deviation found anywhere in the bid
 - (f) In the case of Successful Bidder, if it fails within the specified time limit
 - (i) to sign and return the duplicate copy of LOA;
 - (ii) to sign the Tripartite Agreement; or
 - (iii) to furnish the Performance Security as per clause 3.4.2 as per the terms defined herein; or
 - (iv) to pay the project success fee and / or the project development expenses as per clause 3.4.1.
- 1.2.13 Certificate regarding No Deviation
- (a) No deviation, whatsoever, is permitted by NTPC, to the provisions of the Bidding Documents. The bidders are advised that while making their Bid and quoting prices, all conditions may appropriately be taken into consideration
 - (b) The bidder is required to furnish a certificate as per Annexure-X indicating their compliance to the bid documents provisions

(c) Annexure-X duly signed, dated and stamped by the bidder, is to be furnished in separate sealed envelope, as detailed in clause 2.13.2 below. Any bid not accompanied by such certificate shall be rejected by NTPC and returned to the bidder(s) without being opened.

(d) Further, any deviations, if any found elsewhere in the Bid, save that pertaining to any rebates / discounts offered, shall not be given effect to.

1.2.14 Bidders are advised to examine the Project in greater detail and to carry out, at their cost, such studies and site visit as may be required for submitting their respective Bids for award of the Project.

1.2.15 Notwithstanding anything contrary contained in this RFP, the detailed terms specified in the draft Tripartite Agreement shall have overriding effect, provided, however, that any conditions or obligations imposed on the Bidder hereunder shall continue to have in addition to its obligation under the Tripartite Agreement. Bidders are advised to thoroughly peruse the Draft Tripartite Agreement and the Coal Transportation Agreement, prior to submission of their Bids

1.2.16 Any queries or request for additional information concerning this RFP shall be submitted in writing or by fax and e-mail to the officer designated in Clause 2.13.3 below. The envelopes/ communications bearing the following identification/ title shall reach the designated officer on or before 2nd January 2015.

"Queries: RFP for movement 3 MMTPA of imported coal for a period of 10 years through Inland Waterways to NTPC plant at Barh".

1.3 Schedule of Bidding Process

IWAI shall endeavour to adhere to the following schedule:

1. Uploading of Bid Documents to enable Bidders to download the same	On the day of issuance of RFP
2. Last date for submission of Queries/Clarification	2 nd January 2015
3. Pre-Bid Meeting at Barh	12 th January 2015 at 11.00 AM at NTPC Barh, (Bihar)
4. Bid Due Date(s)	23 rd January 2015 15.00 HRS
5. Bid Opening Date	On the Bid Due Date at 15.30 HRS
6. Intimation to Shortlisted Bidders whose Financial Bid would be opened	Within 30 days of Bid Due Date
7. Opening of Financial Bid of Shortlisted Bidders	Within 45 days of Bid Due Date
8. Issuance of Letter of Award	Within 21 days of Opening of Financial Bid
9. Validity of Bids	180 days from Bid Due Date
10. Submission of Performance Guarantee	Within 21 days from the date of issuance of LOA
11. Signing of Tripartite Agreement	Within 30 days from the date of issuance of LoA

The Bidders are requested to note that the above mentioned schedule is only indicative and is subject to change by IWAI.

2. Instruction to Bidders

2A. General

2.1 Scope of Bids

2.1.1 IWAI is inviting Bids (Technical and Financial Bids), for and on behalf of NTPC, in order to select experienced and capable Bidder for the operation of the Project.

2.2 Eligibility of Bidders

2.2.1 For determining the eligibility of Bidders for their Qualification hereunder, the following shall apply:

- (a) The Bidder may be a single entity or a group of entities (“**Consortium**”), coming together to implement the Project. A Bidder applying individually or as a member of a Consortium shall not be entitled to submit another Bid either individually or as a member of any Consortium, as the case may be. The term “Bidder” used in this RFP would apply to both a single entity and a Consortium.
- (b) A Bidder may be a natural person, private entity, government-owned entity or any combination of them under an agreement (Joint Bidding Agreement) to bid together in the form of a Consortium. A Consortium shall be eligible for consideration subject to the conditions set out in Clause 2.2.6 below.
- (c) A Bidder shall not have a conflict of interest (the “**Conflict of Interest**”) that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified. A Bidder shall be deemed to have a Conflict of Interest that affects the Bidding Process, if:
 - (i) the Bidder, its Member or Associate (or any constituent thereof) and any other Bidder, its Member or any Associate thereof (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding of a Bidder, its Member or an Associate thereof (or any shareholder thereof having a shareholding (as on the date of submission of Proposal) of more than 15% (fifteen per cent) of the paid up and subscribed share capital of such Bidder, Member or Associate, as the case may be) in the other Bidder, its Member or Associate is less than 15% (fifteen per cent) of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in section 4A of the Companies Act, 1956. For the purposes of this Clause 2.2.1 (c), indirect shareholding held through one or more intermediate persons shall be computed as follows: (aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled

intermediary in any other person (the “Subject Person”) shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (bb) subject always to sub-clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-clause (bb) if the shareholding of such person in the intermediary is less than 26% (twenty six per cent) of the subscribed and paid up equity shareholding of such intermediary; or

- (ii) a constituent of such Bidder is also a constituent of another Bidder; or
 - (iii) such Bidder, its Member or any Associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder, its Member or any Associate thereof or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Bidder, its Member or any Associate thereof; or
 - (iv) such Bidder has the same legal representative for purposes of this Bid as any other Bidder; or
 - (v) such Bidder, or any Associate thereof has a relationship with another Bidder, or any Associate thereof, directly or through common third party/ parties, that puts either or both of them in a position to have access to each others’ information about, or to influence the Bid of either or each other; or
 - (vi) such Bidder, or any Associate thereof has participated as a consultant to IWAI/NTPC in the preparation of any documents, design or technical specifications of the Project.
- (d) A Bidder shall be liable for disqualification and forfeiture of Bid Security if any legal, financial or technical adviser of IWAI/NTPC in relation to the Project[s] is engaged by the Bidder, its Member or any Associate thereof, as the case may be, in any manner for matters related to or incidental to the Project during the Bidding Process or subsequent to the (i) issue of the LOA or (ii) execution of the Tripartite Agreement. In the event any such adviser of IWAI/NTPC is engaged by the Successful Bidder, as the case may be, after issue of the LOA or execution of the Tripartite Agreement for matters related to or incidental to the Project, then notwithstanding anything to the contrary contained herein or in the LOA or Tripartite Agreement and without prejudice to any other right or remedy of IWAI/NTPC, including the forfeiture and appropriation of the Bid Security or Performance Security, as the case may be, which IWAI may have hereunder or otherwise, the LOA or the Tripartite Agreement, as the case may be, shall be liable to be terminated without IWAI/NTPC being liable in any manner whatsoever to the Successful Bidder for the same. This disqualification shall not apply where such adviser was engaged by the Bidder, its Member or Associate in the past

but its assignment expired or was terminated 6 (six) months prior to the date of issue of this RFP. Nor will this disqualification apply where such adviser is engaged after a period of 1 (one) year from the date of signing of the Tripartite Agreement

Explanation: In case a Bidder is a Consortium, then the term Bidder as used in Clause 2.2.1, shall include each Member of such Consortium.

2.2.2 To be eligible for qualification and short-listing, a Bidder's (Single Bidder/ Members of the Consortium) competence and capability is proposed to be established by the Technical Capability Criteria and Financial Capability Criteria of the Bidder.

Each Bidder, in the Technical Proposal (the sealed envelope marked as "Technical Bid"), is required to provide: (i) the details required to indicate compliance by the Bidder of the Technical Capability Criteria specified in this clause below in the format provided in Appendix IV (a) to this Volume I of the RFP along with admissible proof; (ii) the details required to indicate compliance by the Bidder of the Financial Capability Criteria specified in this clause below in the format in Appendix IV(b) to this Volume I of the RFP: and (iii) Details of the Eligible Projects supporting the Technical Capability Criteria of the Bidder, together with the certificate of the Statutory Auditor/Project Owner in the format provided in Schedule to Appendix IV(a) to this Volume I of the RFP (iv) details of suggested logistic solution along with estimated project cost as per format provided in Appendix V(a) and V(b)

For the purpose of this clause the term Project Owner means the client (agency/institution) who has awarded the work order and effected the payment against the services and materials provided/ supplied by the Bidder in respect of such work order.

(a) Technical Capability Criteria

For demonstrating technical capability and experience ("**Technical Capacity**"), the Bidder shall have following experience:

- (i) Operating and Maintaining, continuously for a minimum period of 2 years in last 7 years immediately preceding the Bid Due Date, any of the Eligible Projects as per clause 2.2.2 (a) (iii), in India or abroad either on its own or as a lead member of a consortium and the revenue received from such Eligible Projects should be a minimum of Rs. 60 Cr per annum.

OR

- (ii) Developed and/or implemented (Development Experience¹) at least 3 Eligible Projects either on its own or as a Lead Member of a consortium in the past 7 years

¹ Development for the purposes hereof shall mean the responsibility for financing/investing of a project; and planning, designing, constructing, commissioning etc. of the said project either directly or through a contractor

immediately preceding the Bid Due Date, with a minimum aggregate project cost (of such three projects) being not less than Rs.235 Cr.

(iii) **Eligible Projects** for the purposes of this Bid includes

- Transportation of cargo through Barge/River Sea Vessel/Ocean Going Vessel, Trans-loading Operations of Bulk Commodities, Stevedoring Operation
- Infrastructure (Port, Port Berth, Cargo terminal, ICDs/CFSs/Container train Operators, Coal Handling Plant)
- Investment in Barge/River Sea Vessel/Ocean Going Vessels/Coastal Vessels

(b) **Financial Capability Criteria:**

The Bidder shall have:

Average annual turnover during the past 3(three) financial years preceding the Bid Due Date of at least Rs 120 Cr.

Or

Average Net Worth during the past 3 (three) financial years preceding the Bid Due Date of at least Rs. 175 Cr.

(c) **Proposed Logistic Solution**

Bidder shall be required to provide the following details as per Appendix V (a) and V (b)

- (i) Detailed write up on proposed logistic solution along with detailed technical specifications of various project components including type, number and capacity
- (ii) Mode of procurement (hire/lease/own) of various components and estimated Project cost component wise.
- (iii) Milestones/Timelines for implementation of Project

In case of a Consortium, the combined technical capability and financial capability of those members of the Consortium, who shall have an equity share of atleast 26% (twenty six percent) each in the SPV/ Operator, should satisfy the above conditions of eligibility (i.e. The Technical Capability Criteria and Financial Capability Criteria); provided that each such member of the Consortium shall, for a period of 2 (two) years from date of commercial operation of the Project, hold not less than 26% (twenty six percent) of the subscribed and paid up equity of SPV. It is further clarified that technical or financial capability of Consortium members that will hold less than 26% in the SPV shall not be considered for the purposes of evaluation of the Bid.

2.2.3 Evaluation of Technical Proposal: The Technical Proposals shall be evaluated only on a “Pass/Fail” criteria as stipulated in clause 1.2.2 and on the details and supporting documents that are submitted by bidders as set forth in section 2.2.2. Bidders that do not meet the Technical/ Financial

Capability Criteria and/ or do not submit the logistic solution in compliance with the requirements of this RFP or the details and supporting documents as stipulated in section 2.2.2, shall be evaluated as having “Failed” and their Financial Bids shall be returned without opening within 21 days after opening of financial bid or annulment of the bidding process as the case may be.

2.2.4 The Bidder shall furnish the details of its Eligible Projects supporting the Technical Capability Criteria of the Bidder, together with documentary evidence including but not limited to the Concession Agreement(s) or legally enforceable contracts or Statutory Auditor Certificate (in case of private ownership projects) in the format provided in Appendix IV(a) and IV (b) to this Volume I of the RFP. The Bidder shall enclose with its Technical Proposal, the following:

- (a) Certificate(s) from its statutory auditors or the Project Owner stating experience of the Bidder in relation to the Eligible Project(s), during the past 7 years in relation to compliance by the Bidder with the Technical Capability Criteria. In case a particular job/ contract has been jointly executed by the Bidder (as part of a consortium), the Bidder should further support his claim for the share in work done for that particular job/ contract by producing a certificate from its statutory auditor or the Project Owner;
- (b) Copy of certificate of incorporation issued by the Competent Authority.
- (c) License issued by the relevant regulatory agency/ authority (in case of experience of Operation/Maintenance claimed by the bidder)
- (d) Certificate(s) from its statutory auditors specifying the Average net worth and Average Annual Turnover of the Bidder, as specified in clause 2.2.2 (b) above, and also specifying that the methodology adopted for calculating such net worth conforms to the requirements of this clause 2.2.4 (d); For the purposes of this RFP, “Net Worth” shall mean (Subscribed and Paid-up Equity + Reserves) less (Revaluation reserves + miscellaneous expenditure not written off + Deferred Tax Asset/ (liabilities)). The details required to indicate compliance by the Bidder of the Financial Capability Criteria specified in this clause should be as per the format in Appendix IV(b) to this Volume I of the RFP: and
- (e) The Bid must be accompanied by the Audited Annual Reports of the Bidder (or, in case the Bidder is a Consortium, of each member of the Consortium) for the last three (3) financial years, preceding the year in which the Bid is made; in case of public limited company, the first page of Annual report shall be stamped and initialed by the person signing the Bid in pursuance of the Power of Attorney referred to in clause 2.2.5 and in case of other companies each page of Annual report shall be stamped and initialed by the person signing the Bid in pursuance of the Power of Attorney referred to in clause 2.2.5
- (f) In case the annual accounts for the latest financial year are not audited and therefore the Bidder cannot make it available, the Bidder shall give an undertaking to the same effect and the statutory auditor shall certify the same. In such a case, the Bidder shall provide the

Audited Annual Reports for three years preceding the year for which the Audited Annual Report is not being provided.

- (g) In addition to above the bidder shall submit a copy of this RFP Document and also all addendums issued pursuant to this RFP with each page stamped and initialed by the person signing the Bid in pursuance of the Power of Attorney referred to in clause 2.2.5 herein below.

2.2.5 The Bidder should submit a Power of Attorney as per the format at Appendix-II (a), authorizing the signatory of the Bid to commit the Bidder. In the case of a Consortium, the Members thereof should submit a Power of Attorney in favour of the Lead Member as per format at Appendix-II(b)

2.2.6 The Successful Bidder in case it is not a Company under the Companies Act, 1956 shall be required to incorporate an SPV as a wholly owned, limited liability company under the Companies Act, 2013. In case the Bidder is a Consortium, it shall in addition to forming an SPV comply with the following additional requirements:

- (a) Number of members in a consortium should be limited to 6 (six);
- (b) The Bid should contain the information required for each member of the Consortium;
- (c) Members of the Consortium shall nominate one member as the lead member (the “Lead Member”), who shall hold an equity share capital of at least 51% (fifty one percent) of the SPV at all the times during the term of the Project. The nomination(s) shall be supported by a Power of Attorney, as per the format at Appendix-II (b), signed by all the other members of the Consortium;
- (d) the Bid should include a brief description of the roles and responsibilities of individual members, particularly with reference to financial, technical and O&M obligations;
- (e) An individual Bidder cannot at the same time be member of a Consortium applying for this RFP Bid. Further, a member of a particular Bidder Consortium cannot be member of any other Bidder Consortium applying for this bid;
- (f) Members of the Consortium shall enter into a binding Joint Bidding Agreement”, substantially in the form specified at Appendix-IX (the “**Jt. Bidding Agreement**”), for the purpose of making the Bid. The Jt. Bidding Agreement, to be submitted along with the bid, shall inter alia:
 - i. convey the intent to form an SPV (if selected for undertaking the Project) with shareholding/ ownership equity commitment(s) in accordance with this RFP, which would enter into the Tripartite Agreement and subsequently perform all the obligations of the Operator in terms of the Tripartite Agreement, in case the Project is awarded to the Consortium;

- ii. include a statement to the effect that all members of the Consortium shall be liable jointly and severally for all obligations under the Project.
 - iii. clearly outline the proposed roles and responsibilities, if any, of each member;
 - iv. commit the minimum equity stake to be held by each member;
 - v. commit that the members, whose Technical Capacity and / or Financial Capacity will be evaluated for the purposes of this RFP, shall hold equity share capital of not less than 26% (twenty six per cent) of the subscribed and paid up equity share capital of the SPV at the time of signing of Tripartite Agreement and shall continue to hold the same from the date of execution of the Tripartite Agreement up till the expiry of a period of two years from the date of commercial operation of the Project (**Lock in Period**);
 - vi. Lead Member shall hold a minimum of 51% of the subscribed and paid up equity share capital at all the times during the term of the Project.
 - vii. The Parties undertake that (if selected for undertaking the Project) they shall collectively hold 100% (Hundred per cent) of the subscribed and paid up equity share capital in the SPV as on the date of signing of Tripartite Agreement.
- (g) Except as provided under this RFP, there shall not be any amendment to the Jt. Bidding Agreement without the prior written consent of NTPC.
- 2.2.7 Any entity which has been barred by the Central/ State Government or PSU, or any entity controlled by them, from participating in any project (BOT or otherwise), and the bar subsists as on the date of Bid, would not be eligible to submit a Bid, either individually or as member of a Consortium.
- 2.2.8 A Bidder/ Consortium Member should, in the last three years, have neither failed to perform on any contract of Government and PSUs, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Bidder/Consortium Member, nor been expelled from any project or contract nor have had any contract terminated by any Central/ State Government or PSU, for breach by such Bidder/ Consortium Member.
- 2.2.9 In computing the Technical Capability and Financial Capability of the Bidder/members of the Consortium under this RFP, the Technical Capability and Financial Capability of their respective Associates would also be eligible hereunder. Provided, the relationship of the Bidder / Consortium member with such entity/ Associate shall have to be established and further such Associate shall be required to continue to be an Associate of such Bidder/ Consortium member throughout the Lock in Period

Explanation;

For purposes of this RFP, “Associate” means, in relation to the Bidder/Consortium Member, a person who controls, is controlled by, or is under the common control with such Bidder/ Consortium Member (the “**Associate**”). As used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise.

2.2.10 The following conditions shall be adhered to while submitting a Bid:

- (a) Bidders should attach clearly marked and referenced continuation sheets in the event that the space provided in the prescribed forms in the Appendix is insufficient. Alternatively, Bidders may format the prescribed forms making due provision for incorporation of the requested information;
- (b) Information supplied by a Bidder (or other constituent Member if the Bidder is a Consortium) must apply to the Bidder, Member or Associate named in the Bid and not, unless specifically requested, to other associated companies or firms.

2.2.11 While submission of Bids pursuant to this RFP is open to Bidders from any country, the following provisions shall be applicable:

- (a) Where, on the date of the Bid, not less than 15% (fifteen percent) of the aggregate issued, subscribed and paid up equity share capital in a Bidder or any of the constituents of a Consortium is held by persons resident outside India or where a Bidder or any of the constituents of a Consortium is controlled by persons resident outside India; or
- (b) if at any subsequent stage after the date of the Bid, there is an acquisition of not less than 15% (fifteen percent) of the aggregate issued, subscribed and paid up equity share capital or control (by persons resident outside India) in or of the Bidder or any of the constituents of a Consortium;

Then the Qualification of such Bidder or in the event described in sub clause (b) above, the continued Qualification of the Bidder shall be subject to approval of IWAI and/ or NTPC from national security and public interest perspective. The decision of IWAI and/ or NTPC in this behalf shall be final and conclusive and binding on the Bidder.

The holding or acquisition of equity or control, as above, shall include direct or indirect holding/ acquisition, including by transfer, of the direct or indirect legal or beneficial ownership or control, by persons acting for themselves or in concert and in determining such holding or acquisition, NTPC shall be guided by the principles, precedents and definitions contained in the Securities and Exchange Board of India (Substantial Acquisition of Shares

and Takeovers) Regulations, 1997, or any substitute thereof, as in force on the date of such acquisition.

The Bidder shall promptly inform the IWAI of any change in its shareholding, as above, and failure to do so shall render the Bidder liable for disqualification from the Bidding Process.

2.2.12 In the event that the Bid Due Date falls within three months of the closing of the latest financial year of a Bidder, it shall ignore such financial year for the purposes of its Bid and furnish all its information and certification with reference to the three years preceding its latest financial year;

2.2.13 Bidders from countries other than India, should have valid and existing RBI/FIPB approval and other applicable approvals and licenses to undertake investments or business operations in India.

2.3 Change in composition of the Consortium and Shareholding

2.3.1 Change in the composition of a Consortium will not be permitted by IWAI/ NTPC after the Bid Due Date

2.3.2 The Successful Bidder (individual entity, in case it is not a company incorporated under the Companies Act 1956/ Consortium as a whole) shall prior to execution of the Tripartite Agreement, incorporate a special purpose vehicle under the Companies Act, 2013, as its wholly owned company, to act as the Operator and to implement the Project in terms of the Tripartite Agreement.

2.3.3 The Successful Bidder shall hold 100% (hundred per cent) of the paid up and subscribed equity share capital of the Operator, from the date of its incorporation and until the expiry of the Lock in Period. After the Lock in Period till the end of the Term of the Project, the aggregate equity share holding of the Successful Bidder in the paid up and subscribed equity share capital of the Operator shall not be less than 51%.

2.3.4 In case of the Successful Bidder being a Consortium, the Lead Member of the Consortium shall continue to hold a minimum of 51% of the paid up and subscribed equity of the SPV at all times during the Term of the Project. Further, the Consortium member whose Technical and Financial Capability has been taken into consideration for the purposes of meeting the minimum eligibility criteria under this RFP, shall, throughout the Lock in Period as per clause 2.2.6 (f) hold equity share capital representing not less than 26% (twenty six per cent) of the subscribed and paid-up equity of the Operator; The Bidder acknowledges and agrees that the aforesaid obligation shall be the minimum, and shall be in addition to such other obligations as may be contained in the Tripartite Agreement, and a breach hereof shall, notwithstanding anything to the contrary contained in the Tripartite Agreement, be deemed to be a breach of the Tripartite Agreement and dealt with as such there under.

2.3.5 By submitting the Bid, the Bidder shall be deemed to have acknowledged and agreed that in the event an Associate(s) whose Technical and/ or Financial Capability shall be taken into consideration for the purposes of qualification under and in accordance with this RFP, ceases to be an Associate of

the Bidder/ of the Consortium member, shall be deemed to have knowledge of the same and shall be required to inform IWAI/NTPC forthwith along with all relevant particulars about the same and IWAI/NTPC may, in its sole discretion, disqualify the Bidder or withdraw the LOA from the Successful Bidder, as the case may be and the Bid Security of such a bidder shall be liable to be forfeited . In the event such change in control occurs during the Lock in Period as per clause 2.2.6 (f) after signing of the Tripartite Agreement, it would, notwithstanding anything to the contrary contained in the Tripartite Agreement, be deemed to be a breach of the Tripartite Agreement, and the same shall be liable to be terminated without NTPC being liable in any manner whatsoever to the Successful Bidder/ Operator. In such an event, notwithstanding anything to the contrary contained in the Tripartite Agreement, NTPC shall be entitled to forfeit and appropriate Performance Security, as Damages, without prejudice to any other right or remedy that may be available to NTPC under the Bidding Documents and/ or Tripartite Agreement or otherwise.

2.4 Number of Bids and costs thereof

- 2.4.1 No Bidder shall submit more than one Bid for the Project. A Bidder applying individually or as a member of a Consortium shall not be entitled to submit another Bid either individually or as a member of any Consortium, as the case may be.
- 2.4.2 The Bidders shall be responsible for all of the costs associated with the preparation of their Bid and their participation in the Bid process. IWAI will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bidding process.

2.5 Site visit and verification of information

- 2.5.1 Bidders are encouraged to submit their respective Bids after visiting the Project Site and ascertaining for themselves the site conditions, traffic, location, surroundings, climate, availability of power, water and other utilities for construction access to site, handling and storage of materials, weather data, applicable laws and regulations, custom procedures and any other matter considered relevant by them.

2.6 Acknowledgement by Bidder

- 2.6.1 It shall be deemed that by submitting the Bid, the Bidder has:
- (a) made a complete and careful examination of the Bidding Documents RFP (including the draft Tripartite Agreement);
 - (b) received all relevant information requested from IWAI;
 - (c) acknowledged and accepted the risk of inadequacy, error or mistake in the information provided in the RFP or furnished by or on behalf of IWAI relating to any of the matters referred to in Clause 2.5 above; and

- (d) agreed to be bound by the undertakings provided by it under and in terms hereof.
- (e) satisfied itself about all matters, things and information including matters referred to in Clause 2.5 hereinabove necessary and required for submitting an informed Bid, execution of the Project in accordance with the Bidding Documents and performance of all of its obligations there under;
- (f) acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Bidding Documents or ignorance of any of the matters referred to in Clause 2.5 hereinabove shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits etc. from the IWAI/NTPC, or a ground for termination of the Tripartite Agreement by the Operator;
- (g) acknowledged that it does not have a Conflict of Interest; and

2.6.2 IWAI, their consultants (including IIDC Ltd) and / or NTPC shall not be liable for any omission, mistake or error on the part of the Bidder in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to the RFP or the Bidding Process, including any error or mistake therein or in any information or data given by IWAI/ NTPC or their Consultants advisors, employees or representatives..

2.7 Right to accept or reject any or all Applications/ Bids

2.7.1 Notwithstanding anything to the contrary contained in this RFP, IWAI/NTPC reserves the right to accept or reject any Bid and to annul the Bidding Process and reject all Bids, at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons thereof. In the event that IWAI and/or NTPC rejects or annuls any or all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder or go for fresh bidding process or may not invite fresh bids at all. NTPC/ IWAI reserves the right to not proceed with the Bidding Process at any time, without notice or liability to any Bidder and without assigning any reasons thereof.

2.7.2 NTPC and/or IWAI reserve the right to reject any Bid and/ or Bids and forfeit the Bid Security if:

- (a) At any time, a material misrepresentation is made or uncovered, it may be noted that whether a misrepresentation is material or not shall be determined solely by IWAI/NTPC or
- (b) the Bidder does not provide, within the time specified by IWAI/NTPC, the supplemental information sought by IWAI/NTPC for evaluation of the Bid.

Such misrepresentation/ improper response shall lead to the disqualification of the Bidder(s). If the Bidder is a Consortium, then the entire Consortium and each Member may be disqualified/ rejected. If such disqualification/ rejection occur after the Bids have been opened and the lowest Bidder gets disqualified/ rejected, then NTPC and/or IWAI reserves the right to take any such measure as may

be deemed fit in the sole discretion of NTPC and/or IWAI, including annulment of the Bidding Process.

- 2.7.3 In case it is found during the evaluation or at any time before signing of the Tripartite Agreement or after its execution and during the period of subsistence thereof, that one or more of the pre-qualification conditions had not been met by the Bidder or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the Operator either by issue of the LoA or entering into of the Tripartite Agreement, and if the Bidder has already been issued the LoA or has entered into the Tripartite Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by NTPC/IWAI to the Bidder, without NTPC/IWAI being liable in any manner whatsoever to the Bidder and without prejudice to any other right or remedy which NTPC may have under this RFP, the Bidding Documents, the Tripartite Agreement or under applicable law against such Bidder/Operator. In such an event, the IWAI/ NTPC shall be entitled to forfeit and appropriate the Bid Security and/ or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to NTPC/IWAI under the Bidding Documents and/ or the Tripartite Agreement, or otherwise.
- 2.7.4 NTPC and/ or IWAI reserve the right to verify all statements, information and documents submitted by the Bidder in response to the RFP or the Bidding Documents and the Bidder shall, when so required by the NTPC/IWAI, make available all such information, evidence and documents as may be necessary for such verification. Any such verification or lack of such verification, by the NTPC/IWAI shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the NTPC/IWAI there under. Failure of IWAI and/or NTPC to undertake such verification shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of NTPC and/or IWAI there under.

2B. DOCUMENTS

2.8 *Contents of the RFP*

- 2.8.1 This RFP comprises the disclaimer set forth hereinabove, and will additionally include any Addenda issued in accordance with Clause 2.10. This document comprises of the following sections –
- (a) Instruction to Bidders and Bidding Formats- Volume-I
 - (b) Draft Tripartite Agreement- Volume-II

2.9 Clarifications

- 2.9.1 Bidders requiring any clarification on the RFP may notify IWAI in writing or by fax or e-mail in accordance with Clause 1.2.16. They should send in their queries before the date specified in the schedule of Bidding Process contained in Clause 1.3. Clarifications on written queries raised by Bidders shall be responded to pursuant to consultation with NTPC within the period specified

therein. However, NTPC and/or IWAI reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this Clause shall be taken or read as compelling or requiring the NTPC and/or IWAI to respond to any question or to provide any clarification.

- 2.9.2 IWAI pursuant to consultation with NTPC may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued shall be deemed to be part of the RFP. Verbal clarifications and information given by IWAI and/or NTPC or its employees or representatives shall not in any way or manner be binding on IWAI and/or NTPC

2.10 Amendment of RFP

- 2.10.1 At any time prior to the Bid Due Date IWAI pursuant to consultation with NTPC may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFP by the issuance of Addenda.
- 2.10.2 Any Addendum thus issued will be published on the websites of IWAI and IIDC Ltd. It is considered that the information contained therein have been taken into account by bidder in its bid.
- 2.10.3 In order to afford the Bidders a reasonable time for taking an Addendum into account, or for any other reason, the IWAI and/or NTPC may, in its sole discretion, extend the Bid Due Date.

2C. PREPARATION AND SUBMISSION OF APPLICATION

2.11 Language

The bid prepared by the Bidder(s) and all correspondence and documents related to the bid exchanged between the Bidder(s) and IWAI/NTPC shall be written in English language, provided that any printed literature furnished by the Bidder(s) may be written in another language, as long as such literature is accompanied by a translation of its potential passages in English language in which case, for purpose of interpretation of the bid, the translation shall govern.

“The English Translation of the documents shall be carried out by professional translators and the translator shall certify that he is proficient in both languages in order to translate the document and that the translation is complete and accurate. Further, translation shall be authenticated by the Indian Consulate located in the Country where the documents have been issued or the Embassy of that Country in India”

2.12 Format and signing of Bid

- 2.12.1 The Bidder shall provide all the information sought under this RFP. Only those Bids which have been received in the required formats and are complete in all respects as provided in this RFP shall be evaluated. Incomplete and /or conditional Bids shall be liable to rejection.

- 2.12.2 The Bidder shall prepare 1(one) original set of all the documents comprising the Bid (together with originals/ copies of documents required to be submitted along therewith pursuant to this RFP) and clearly marked “ORIGINAL”. In addition, the Bidder shall submit 2 (two) copies of the Technical Bid, marked “COPY”. In the event of any discrepancy between the original and the copies, the original shall prevail.
- 2.12.3 The Bid and its copies shall be typed or written in indelible ink and signed by the authorized signatory of the Bidder who shall also initial each page in blue ink. In case of printed and published documents, only the cover shall be initialed. All the alterations, omissions, additions or any other amendments made to the Bid shall be initialed by the person(s) signing the Bid. The Bid shall contain page numbers and shall be hard bound or spiral bound.
- 2.12.4 The pages and volumes of each part of the Bid shall be clearly numbered and stamped and the contents of the Bid shall be duly indexed.
- 2.12.5 The numbers contained in the Financial Bid (Price Bid Format – Total Transportation Rate Per Metric Tonne and the % Transit Loss quoted) should be covered with a clear/transparent adhesive tape. Any signs of tampering will lead to the rejection of the financial Bid. The numbers contained in the Financial Bid shall be written in numerals and also in words and incase of any inconsistency between the two, the figures in words shall prevail.
- 2.12.6 The Bid shall contain no alterations or additions in relation to the RFP including the Draft Tripartite Agreement, except those to comply with instructions issued by IWAI and/or NTPC or as necessary to correct errors made by the Bidder, in which case such corrections shall be initialed by the person or persons signing the Bid.

2.13 Sealing and Marking of Bids

- 2.13.1 The Bidder shall submit the Bid (Original and copies) containing the information and documents specified in this RFP in accordance with the formats, where specified in the Appendices to this RFP, and seal it in an envelope and mark the envelope in accordance with Clause 2.13.2 below.
- 2.13.2 The Bidder shall put two separate envelopes comprising the two parts of the Bid (i.e. Technical Bid and Financial Bid) in a single outer envelope and seal ALL the envelopes.
- (a) The outer single envelope shall be marked **Bid for movement of 3 MMTPA of imported coal for a period of 10 years through Inland Waterways to NTPC plant at Barh** and shall contain the following documents:
- (i) Demand Draft of Rs 15,000/- in favour of M/s Integrated Translog Development Company Ltd IWAI-IIDC PDF as specified in Clause 1.2.8
 - (ii) Bid Security in the form and manner as specified in Appendix –III in sealed separate envelope clearly marked “Bid Security”

- (iii) Certificate regarding Acceptance of No Deviation in the form and manner as specified in Appendix-X in sealed separate envelope clearly marked “Certificate regarding Acceptance of No Deviation”
 - (iv) An Undertaking in the form and manner as provided in Appendix VIII.
 - (v) Along with the above mentioned documents Outer Envelope shall contain two separate & distinct envelopes marked as ‘ENVELOPE 1’ and ‘ENVELOPE 2’.
- (b) Sealed Envelope 1 containing Technical Bid (one Original) shall be clearly marked “**Technical Bid**”. The Bidders shall seal and submit two copies of the Original Technical Bid, together with their respective enclosures, in separate envelopes duly marking the envelopes as “**COPY of Technical Bid- for movement of 3 MMTPA of imported coal for a period of 10 years through Inland Waterways to NTPC plant at Barh**”.
- (c) Sealed Envelope 2 containing Financial Bid (One Original only) shall be clearly marked as “**Financial Bid**”
- (d) Envelope 1 – **Technical Bid** and Envelope 2 - **Financial Bid** shall then be sealed in an outer envelope which shall also be marked in accordance with Clauses 2.13.2.

The Envelope marked “Technical Bid” shall contain the following

- (i) Cover letter in the prescribed format (Appendix-I)
- (ii) Power of Attorney for signing the Bid as per the format at Appendix-II(a);
- (iii) If applicable, the Power of Attorney for Lead member of Consortium as per the format at Appendix-II(b);
- (iv) Details of Bidder as per Annexure-I in Appendix-I
- (v) Statement of Legal capacity as per Annexure-II in Appendix-I
- (vi) Copy of the Jt. Bidding Agreement, in case of a Consortium;
- (vii) Copy of Memorandum and Articles of Association, of the Bidder/Consortium Member;
- (viii) Copies of Bidder’s/ each Consortium Member’s duly audited balance sheet and profit and loss account for the preceding three years;
- (ix) Appendix- IV(a) providing summary of technical capability of the Bidder
- (x) Documentary evidence such as certificate from statutory auditors/ project owner to support the Bidders claim for the Technical Capability
- (xi) Appendix IV (b) providing summary of Financial Capability of the Bidder.
- (xii) Appendix V(a) and V(b) detailing the logistic solution suggested by the Bidder to carry out the transportation of imported coal as described under the scope of this RFP and providing technical specification of Project Component and timelines for undertaking the Project
- (xiii) A copy of the RFP, Tripartite Agreement and Coal Transportation Agreement and all addendums with each page initialled by the person signing the Bid in pursuance of the Power of Attorney referred to in sub-clause (ii) & (iii) herein above.

The envelope marked “**Financial Bid**” shall be submitted in the format as per Appendix VI.

Each of the three Outer envelopes shall clearly indicate the name and address of the Bidder. In addition, the Bid Due Date should be indicated on the right hand top corner of each of the envelopes.

2.13.3 Outer envelope shall be addressed to:

Director (Traffic)
Inland Waterway Authority of India
A- 13, Sector-1, NOIDA, (UP), Pin - 201 301
Telephone no: 0120 – 2522971

2.13.4 If the envelopes are not sealed and marked as instructed above, IWAI assumes no responsibility for the misplacement or premature opening of the contents of the Bid submitted and consequent losses, if any, suffered by the Bidder.

2.13.5 Bids submitted by fax, telex, telegram or e-mail shall not be entertained and shall be rejected.

2.14 Bid Due Date

2.14.1 Bids should be submitted before 1500 hours IST on the Bid Due Date, at the address provided in Clause 2.13.3 in the manner and form as detailed in this RFP

2.14.2 IWAI pursuant to consultation with NTPC, in its sole discretion, may extend the Bid Due Date by issuing an Addendum in accordance with Clause 2.10.

2.15 Late Bids

Bids received after the specified time on the Bid Due Date shall not be eligible for consideration and shall be summarily rejected.

2.15A Validity of Bids

The Bids shall be valid for a period of not less than 180 (one hundred and eighty) days from the Bid Due Date. The bid valid for shorter period shall be rejected by IWAI/NTPC as being non-responsive.

In exceptional circumstances, IWAI/NTPC may solicit the Bidder's consent to an extension of the bid validity period. The request and responses thereto shall be made in writing by post or by telefax followed by post confirmation. If a Bidder accepts to extend the period of bid validity, the validity of bid security shall also be suitably extended. A Bidder may refuse the request without forfeiting its bid security. A Bidder granting the request will not be required nor permitted to modify its bid..

2.16 Modifications/ substitution/ withdrawal of Bids

- 2.16.1 The Bidder may modify, substitute or withdraw its Bid after submission, provided that written notice of the modification, substitution or withdrawal is received by the IWAI prior to Bid Due Date. No Bid shall be modified, substituted or withdrawn by the Bidder on or after the Bid Due Date.
- 2.16.2 The modification, substitution or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clause 2.13, with the envelopes being additionally marked “MODIFICATION”, “SUBSTITUTION” or “WITHDRAWAL”, as appropriate.
- 2.16.3 Any alteration/ modification in the Bid or additional information supplied subsequent to the Bid Due Date, unless the same has been expressly sought for by the IWAI and/NTPC, shall be disregarded.

2D. EVALUATION PROCESS

2.17 Opening and Evaluation of Bids

- 2.17.1 Outer envelope of the Bid will be opened on the date mentioned against the Bid Due Date at 1530 Hrs IST in the Schedule of Bidding Process in the presence of the Bidders who choose to attend at the place specified in Clause 2.13.3.
- 2.17.2 The following information will be announced on the Bid Due Date and recorded:
- (a) Preliminary responsiveness of the Bids in accordance with clause 2.20
 - (b) Bidder's names whose bids are received on or before the specified due date and time
 - (c) Name of Bidders from whom IWAI has received request to withdraw their proposal (if any)

It is hereby clarified that Technical Proposal shall not be evaluated on Bid Due Date. The Financial Bid shall not be opened at this stage.

- 2.17.3 Bids for which a notice of withdrawal has been submitted in accordance with Clause 2.16 shall not be opened.
- 2.17.4 Technical Bids of Bidders whose Bids are adjudged to be Preliminary responsive in terms of clause 2.20 below of this RFP, shall be subsequently examined in accordance with Clause 1.2.2 and 2.2.3 of this RFP.
- 2.17.5 The Financial Bid of only such Bidders whose Technical Bids “Pass” the Technical evaluation in terms of clause 1.2.2 (a) and clause 2.2.3 of this RFP (the “**Shortlisted bidders**”), shall be opened.
- 2.17.6 Envelope of ‘Financial Bid’ will be opened in the presence of the Shortlisted Bidder’ representatives who choose to attend. IWAI and NTPC will endeavour to open the Financial Bids on the date mentioned against the Date for Opening of Financial Bids in the Schedule of Bidding Process. The Financial Bids shall then be evaluated as per clause 1.2.2 and 1.2.3.

2.17.7 In the event the Evaluated Bid Price of two or more Bidders is found to be the same (“**Tie Bidders**”), IWAI may:

- (a) Invite fresh Financial Bids only from the Tie Bidders, however the Total Transportation Rate PMT and /or the % Transit Loss, quoted by the Tie Bidders in their fresh Financial Bids, should not be higher than the Total Transportation Rate PMT and /or the % Transit Loss already quoted by the Bidders in their original Bids

OR

- (b) Take any such measure as may deem fit in its sole discretion, including annulment of the Bidding Process

2.17.8 Bidders are advised that evaluation and selection of Bidders will be entirely at the discretion of IWAI and NTPC. Bidders will be deemed to have understood and agreed that no explanation or justification on any aspect of the Bidding Process or selection will be given.

2.17.9 Any information contained in the Bid shall not in any way be construed as binding on the IWAI and/or NTPC, its agents, consultants, successors or assigns, but shall be binding on the Bidder if the Project is subsequently awarded to it under the Bidding Process on the basis of such information.

2.17.10 After the Bid Opening, information relating to the examination, clarification and evaluation of Bids and recommendations concerning the Bids shall not be disclosed.

2.18 Non-Discriminatory and Transparent Bidding Proceedings

IWAI shall ensure that the rules for the Bidding process for the Project are applied in a non-discriminatory, transparent and objective manner. IWAI shall not provide to any Bidder information with regard to the Project or the bidding proceedings, which may have the effect of restricting competition.

2.19 Confidentiality

Information relating to the examination, clarification, evaluation, and recommendation for the Bidders shall not be disclosed to any person not officially concerned with the process. IWAI and/or NTPC will treat all information submitted as part of Bid in confidence and would require all those who have access to such material to treat the same in confidence. IWAI and/or NTPC will not divulge any such information unless it is ordered to do so by any authority that has the power under law to require its disclosure.

2.20 Tests of Preliminary responsiveness

2.20.1 Prior to evaluation of Bids, IWAI shall determine whether each Bid is responsive to the requirements of this RFP. A Bid shall be considered responsive only if:

- (a) it is received by the Bid Due Date including any extension thereof pursuant to Clause 2.14.2;
- (b) it has two separately sealed envelopes marked (1) Technical Proposal and (2) Financial Bid as stipulated in Clause 2.13;
- (c) It is accompanied by RFP fee, Bid security, certificate regarding acceptance of no deviation and Undertaking in the form and manner as provided in Appendix VIII

2.20.2 IWAI and/or NTPC reserves the right to reject any Bid which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by IWAI and/or NTPC in respect of such Bid.

2E. Confidentiality

2.21.1 Proprietary data

All documents and other information supplied by IWAI or submitted by a Bidder to IWAI shall remain or become the property of NTPC & IWAI. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. IWAI and/or NTPC will not return any Bid or any information provided along therewith.

2.21.2 Correspondence with the Bidder

Save and except as otherwise provided in this RFP, IWAI and/or NTPC shall not entertain any correspondence with any Bidder in relation to the acceptance or rejection of any Bid.

2.21.3 Contacts during Bid Evaluation

Bids shall be deemed to be under consideration immediately after they are opened and until such time the IWAI/NTPC makes official intimation of award/ rejection to the Bidders. While the Bids are under consideration, Bidders and/ or their representatives or other interested parties are advised to refrain, save and except as required under the Bidding Documents, from contacting by any means, the IWAI/NTPC and/ or their employees/ representatives on matters related to the Bids under consideration.

3. ISSUANCE OF LOA

3.1 Notification of Successful Bidder

The Successful Bidder would be notified after completion of the bid evaluation process and a Letter of Award (LOA) in duplicate shall be issued to the Successful Bidder and the Successful Bidder shall, within 7 (seven) days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof. In the event the duplicate copy of the LOA duly signed by the Successful Bidder is not received by the stipulated date, the Authority may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Bidder as Damages on account of failure of the Successful Bidder to acknowledge the LOA.

3.2 Acceptance and Rejection of Proposal

3.2.1 NTPC and/or IWAI reserve the right to accept or reject any or all of the Bids without assigning any reason and to take any measure as it may deem fit, including annulment of the bidding process, at any time prior to execution of the Tripartite Agreement, without liability or any obligation for such acceptance, rejection or annulment.

3.2.2 NTPC and/or IWAI reserve the right to invite fresh bids with or without amendment of the RFP at any stage without liability or any obligation for such invitation and without assigning any reason. Without prejudice to the generality of the foregoing NTPC and/or IWAI reserves the right to reject any Bid, if at any time, a material misrepresentation is made or uncovered for a Bidder or any of its members. This would lead to disqualification of the Bidder / Member for the Project. If the Bidder is a Consortium, then the entire Consortium would be disqualified/ rejected for the project. If such disqualification/rejection occurs after the Financial Bids have been opened and the Successful Bidder gets disqualified/ rejected, NTPC and/or IWAI reserves the right to take any such measure as may be deemed fit in the sole discretion of NTPC and/or IWAI, including annulment of the bidding process. Notwithstanding the above, NTPC and/or IWAI may debar / blacklist any of the Bidder(s) for their misleading or false representations in the forms, statements etc. for the period to be decided by NTPC and/or IWAI. Further in the event any such misrepresentation is made or discovered during the Bidding Process, IWAI shall, without prejudice to its other rights or remedies shall forfeit and appropriate the Bid Security of the relevant Bidder.

3.3 Execution of Tripartite Agreement

3.3.1 Within thirty (30) days from the date of issuance of the LoA, the Successful Bidder(s) shall after complying with the requirements set forth in clause 3.4 hereof and the LoA, execute and/ or cause the SPV, as the case may be, to execute, the Tripartite Agreement .

3.3.2 In case, the Tripartite Agreement does not get executed within thirty (30) days of issuance of LoA, due to reason attributable to Successful Bidder IWAI and/or NTPC reserves the right to annul the Bidding Process altogether and to invite fresh bids for the Project. In such a case the Bid Security submitted by the Successful Bidder shall be forfeited.

- 3.3.3 However, NTPC on receiving request from the Successful Bidder may at its absolute discretion, permit extension of the aforesaid period of fifteen (15) days for execution of the Tripartite Agreement.
- 3.3.4 IWAI will notify other Bidders that their Bids have been unsuccessful. Bid Security of the unsuccessful bidders will be returned as promptly as possible as and in any case not later than 240 days from the Bid Due Date or annulment of Bidding Process as the case may be.

3.4 Payments and Performance Security

- 3.4.1 Within 21 days of LOA and as a pre-requisite to the signing of the Tripartite Agreement, the Successful Bidder shall make the following payments:
- (a) non-refundable and irrevocable payment of the project development expense of Rs 50,00,000/- (Rupees Fifty lacs Only) plus applicable service tax and other levies, to “Integrated Translog Development Company Ltd IWAI-IIDC PDF” through a Demand Draft from a nationalized/ Scheduled Bank, payable at New Delhi;
 - (b) non refundable and irrevocable payment of Rs. 2,50,00,000/- (Rupees Two Crores Fifty Lacs only) plus applicable service tax and other levies to IL&FS IIDC Fund , through a Demand Draft issued by a nationalized/ Scheduled Bank, payable at New Delhi, towards the non refundable payment of Project success fee.
- 3.4.2 The Successful Bidder shall for due and faithful performance of its obligations furnish Performance Security by way of an irrevocable Bank Guarantee, in the format provided in Appendix VII herein, issued by a Nationalized Bank, or a Scheduled Bank in India having a net worth of at least Rs 1000 crore (Rupees One thousand crore), in favour of NTPC Ltd, equivalent to a sum of Rs 25,00,00,000/- (Twenty Five Crores only) (the “**Performance Security**”). The Operator shall provide the Performance Security to NTPC Limited within 21 days of issue of the LOA and as a pre requisite to the signing of the Draft Tripartite Agreement. The Bank Guarantee towards Performance Security shall have an initial validity period of three (3) years from the date of issuance and thereafter being renewed annually and shall be maintained in full force and effect by the Successful Bidder and or the Operator in accordance with the provisions of the Tripartite Agreement. Provided further, that the Operator shall, at least one month prior to the expiry of the existing Performance Security, furnish to NTPC a fresh Performance Security in accordance with the provisions of the Draft Tripartite Agreement.
- 3.4.3 Till such time the Operator provides to NTPC the Performance Security, the Bid Security of the Successful Bidder(s) shall remain in full force and effect. The Performance Security shall be released to the Operator as per the provisions of the Tripartite Agreement.
- 3.4.4 Failure of the Successful Bidder/Operator to comply with the requirements of this Clause 3.4 shall constitute sufficient grounds for the annulment of the LoA and forfeiture of the Bid Security. In such an event, IWAI and/or NTPC reserves the right to take any such measure as may be deemed fit in their sole discretion, including annulment of the Bidding Process.

4. FRAUD AND CORRUPT PRACTICES

- 4.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the LOA and during the subsistence of the Tripartite Agreement. Notwithstanding anything to the contrary contained herein or in the LOA or the Tripartite Agreement, IWAI and/NTPC shall reject a Bid, withdraw the LOA, or terminate the Tripartite Agreement, as the case may be, without being liable in any manner whatsoever to the Bidder if it determines that the Bidder or the Operator has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process. In such an event, the IWAI/NTPC shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the IWAI/NTPC under the Bidding Documents and/ or the Tripartite Agreement, or otherwise.
- 4.2 Without prejudice to the rights of IWAI and/or NTPC under Clause 4.1 hereinabove and the rights and remedies which the Authority may have under the LOA or the Tripartite Agreement, or otherwise, if a Bidder is found by IWAI and/or NTPC to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process or after the issue of the LOA or the execution of the Tripartite Agreement, such Bidder shall not be eligible to participate in any tender or RFP issued by the IWAI for and on behalf of NTPC during a period of 2 (two) years from the date such Bidder is found by the IWAI and/or NTPC to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as the case may be.
- 4.3 For the purposes of this Clause 4, the following terms shall have the meaning hereinafter respectively assigned to them:
- (a) “corrupt practice” means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the IWAI and/or NTPC and/or IIDC who is or has been associated in any manner, directly or indirectly with the Bidding Process or the LoA or has dealt with matters concerning Tripartite Agreement or arising there from, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of NTPC and/or IWAI, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LoA or after the execution of the Tripartite Agreement, as the case may be, any person in respect of any matter relating to the Project or the LoA or the Tripartite Agreement, who at any time has been or is a legal, financial or technical adviser of NTPC and/or IWAI in relation to any matter concerning the Project;

- (b) “fraudulent practice” means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, submission of forged documents, in order to influence the Bidding Process ;
- (c) “coercive practice” means impairing or harming or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Bidding Process;
- (d) “undesirable practice” means (i) establishing contact with any person connected with or employed or engaged by IWAI with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and
- (e) “restrictive practice” means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

5. PRE-BID CONFERENCE

- 5.1. A Pre-bid conference of the interested parties shall be held on the date mentioned in clause 1.3, Schedule of Bidding Process at the NTPC Power Plant at Barh.
- 5.2. During the course of Pre-Bid conference, the Bidders will be free to seek clarifications and make suggestions for consideration of the IWAI and NTPC. IWAI and NTPC shall endeavour to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.

6. MISCELLANEOUS

- 6.1. The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the Courts at Delhi shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.
- 6.2. The IWAI and NTPC , in their sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;
 - a) suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
 - b) consult with any Bidder in order to receive clarification or further information;
 - c) qualify or not to qualify any Bidder and/ or to consult with any Bidder in order to receive clarification or further information;

- d) retain any information and/ or evidence submitted to the IWAI and NTPC by, on behalf of, and/ or in relation to any Bidder; and/ or
 - e) independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Bidder.
- 6.3. It shall be deemed that by submitting the Bid, the Bidder agrees and releases the IWAI and NTPC , its employees, agents, consultants and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder and the Bidding Documents, pursuant hereto, and/ or in connection with the Bidding Process and waives to the fullest extent permitted by applicable law, and waives any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future.
- 6.4. Arithmetical errors, if any, will be rectified on the following basis:
If there is discrepancy between the unit price and total price, which is obtained by multiplying the unit price and the quantity, or between subtotals and the total price, the unit or subtotal price shall prevail, and the total price shall be corrected accordingly. If there is a discrepancy between words and figures, the amount in words will prevail. If the bidder does not accept the correction of errors, its bid will be rejected and the bid security may be forfeited.

Appendix I: Cover Letter of Bid

(To be submitted on the letterhead of the Bidder, Single Bidder or Lead Member in case of consortium)

Cover Letter of Bid

(Refer Clause 2.13.2)

Dated:

To,

Director (Traffic),
Inland Waterway Authority of India
A-13, Sector -1,
Noida (UP)

Sub: Movement 3 MMTPA of imported coal for a period of 10 years through Inland Waterways to NTPC plant at Barh

Dear Sir,

With reference to your RFP document dated -----, I/we, having examined the RFP document and understood its contents, hereby submit my/our Bid for the aforesaid project. The Bid is unconditional and unqualified.

- (1) All information provided in the Bid and in Appendix and Schedules is true and correct and all documents accompanying such Bid are true copies of their respective originals.
- (2) This statement is made for the express purpose of qualifying as a Bidder for the development and operation of the aforesaid Project.
- (3) We have perused/examined in detail and have understood the terms and conditions stipulated in the Bidding Document issued by IWAI and/or NTPC and in any subsequent communication sent by IWAI and/or NTPC. We have also perused the data/information furnished in the Bidding Documents [including this RFP] and conducted our due diligence, investigations and analysis and checked the accuracy, adequacy, correctness, reliability and completeness thereof before placing reliance on the same for preparation of our Bid; and shall have no claim whatsoever against the IWAI and/or NTPC and/or any of the consultant appointed by IWAI and/or NTPC, as the case may be, in this regard.
- (4) I/ We shall make available to IWAI and/or NTPC any additional information it may find necessary or require to supplement or authenticate the Bid.
- (5) I/ We acknowledge the right of IWAI and/or NTPC to reject our Bid without assigning any reason or otherwise and hereby waive our right to challenge the same on any account whatsoever.

- (6) I/ We certify, that in the last three years,we/any of the Consortium Members have neither failed to perform on any contract of Government and PSUs, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Bidder/Consortium Member, nor been expelled from any project or contract nor have had any contract terminated by any Central/ State Government or PSU, for breach by such Bidder/ Consortium Member.
- (7) I/ We declare that:
- I/ We have examined and have no reservations or deviations to the RFP document, including any Addendum issued by the Authority.
- (a) I/ We do not have any conflict of interest in accordance with Clauses 2.2.1(c) and 2.2.1(d) of the RFP document; and
- (b) I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 4.3 of the RFP document, in respect of any tender or request for Bid issued by or any agreement entered into with the NTPC and/or Iwai or any other public sector enterprise or any government, Central or State; and
- (c) I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Clause 4 of the RFP document, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
- (8) I/ We understand that you may cancel the Bidding Process at any time and that you are not bound to accept any Bid that you may receive, without incurring any liability to the Bidders, in accordance with clause 2.7 of the RFP document.
- (9) I/ We believe that we/ our Consortium satisfy(ies) the Technical and Financial Capability Criteria and meet(s) all the requirements as specified in the RFP document and are/ is qualified to submit a Bid.
- (10) I/ We declare that we/ any Member of the Consortium are/ is not a Member of a/ any other Consortium applying for the Bid.
- (11) I/ We certify that in regard to matters other than security and integrity of the country, we have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.
- (12) I/ We further certify that in regard to matters relating to security and integrity of the country, we have not been charge-sheeted by any agency of the Government or convicted by a Court of Law for any offence committed by us or by any of our Associates.

- (13) I/ We further certify that no investigation by a regulatory authority is pending either against us or against our Associates or against our CEO or any of our Directors/ Managers/ employees.
- (14) I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the provisions of this RFP; we shall intimate IWAI of the same immediately.
- (15) The Statement of Legal Capacity as per format provided at Annexure-II in Appendix-I of the RFP document, and duly signed, is enclosed. The power of attorney for signing of Bid and the power of attorney for Lead Member of consortium, as per format provided at Appendix II (a) and II (b) respectively of the RFP, are also enclosed.
- (16) Detail of Bidder as per format provided at Annexure-I in Appendix-I of the RFP document, duly filled and signed is enclosed.
- (17) I/ We, hereby irrevocably waive any right which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the IWAI and or NTPC in connection with the evaluation of Bids, selection of Operator, or in connection with the selection/ Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.
- (18) I/We agree to keep this offer valid for 180 (one hundred and Eighty days) from the Bid Due Date specified in the RFP.
- (19) Bid Security of Rs. 2,35,00,000/- (Rupees two crores thirty five lacs only) to IWAI in accordance with the RFP Document is enclosed.
- (20) Certificate regarding acceptance of no deviation in accordance with the RFP document is enclosed
- (21) Demand draft of Rs. 15,000/- (Rupees fifteen thousand) to Integrated Translog Development Company Ltd IWAI-IIDC PDF in accordance with the RFP document is enclosed
- (22) I/ We agree and undertake to abide by all the terms and conditions of the RFP document.
- (23) I/We hereby undertake to agree and abide with the compensation mechanism provided in Article 13.1 (c) of the Draft Tripartite Agreement in the event there is a default committed by NTPC and the same are accepted without any reservation or deviation whatsoever.

In witness thereof, I/We submit this Bid under and in accordance with the terms of the RFP document.

Yours faithfully,

(Signature of the Authorized Signatory)

Date:

Place:

(Name and designation of the Authorized Signatory)

(Name and Seal of the Bidder/ Lead Member)

Appendix I (Annexure I): Details of Bidder

Details of Bidder

1. Bidder
 - a) Name:
 - b) Country of incorporation:
 - c) Address of the corporate headquarters and its branch office(s), if any, in India:
 - d) Date of incorporation and/ or commencement of business:
2. Brief description of the Company including details of its main lines of business and proposed role and responsibilities in [this/ these Project(s)]:
3. Details of individual(s) who will serve as the point of contact/ communication for IWAI:
 - (a) Name:
 - (b) Designation:
 - (c) Company:
 - (d) Address:
 - (e) Telephone Number:
 - (f) E-Mail Address:
 - (g) Fax Number:
4. Particulars of the Authorized Signatory of the Bidder:
 - (a) Name:
 - (b) Designation:
 - (c) Address:
 - (d) Phone Number:
 - (e) Fax Number:
5. In case of a Consortium:
 - (a) The information above (1-4) should be provided for all the Members of the Consortium.
 - (b) A copy of the Jt. Bidding Agreement, as envisaged in Clause 2.2.6(f) should be attached to the Bid.
 - (c) Information regarding role of each Member should be provided as per table below:

S. No.	Name of Member	Role * {Refer Clause 2.2.6(d)}	% of Equity in the Consortium {Refer Clauses 2.2.6 (a) & (c)}
1.			
2.			
3.			
4.			
5.			
6.			

**The role of each Member, as may be determined by the Bidder, should be indicated as LM means Lead Member, TM means Technical Member, FM means Financial Member, OMM means Operation & Maintenance Member, OM means Other Member.*

(d) The following information shall also be provided for each Member of the Consortium:

S. No.	Criteria	Yes	No
1	Has the Bidder/ constituent of the Consortium been barred by the [Central/ State Government, or any entity controlled by them], from participating in any project (BOT or otherwise)		
2	If the answer to 1 is yes, does the bar subsist as on the date of Application		
3	Has the Bidder/ constituent of the Consortium paid liquidated damages of more than 5% of the contract value in a contract due to delay or has been penalized due to any other reason in relation to execution of a contract, in the last three years?		

6. A statement by the Bidder and each of the Members of its Consortium (where applicable) disclosing material non-performance or contractual non-compliance in past projects, contractual disputes and litigation/ arbitration in the recent past is given below (Attach extra sheets, if necessary):

Appendix I (Annexure II): Statement of Legal Capacity

Statement of Legal Capacity

(To be forwarded on the letterhead of the Bidder/ Lead Member of Consortium)

Ref. Date:

To,
Director (Traffic),
Inland Waterway Authority of India
A-13, Sector -1,
Noida (UP)

Dear Sir,

We hereby confirm that we/ our members in the Consortium (constitution of which has been described in the Bid) satisfy the terms and conditions laid out in the RFP document.

We have agreed that (insert member's name) will act as the Lead Member of our consortium.*

We have agreed that (insert individual's name) will act as our representative/ will act as the representative of the consortium on its behalf* and has been duly authorized to submit the RFP. Further, the authorized signatory is vested with requisite powers to furnish such letter and authenticate the same.

Thanking you,

Yours faithfully,

(Authorized Signatory
For and on behalf of)

**Please strike out whichever is not applicable.*

Appendix II (a): Power of Attorney for Signing of Bid

(On a Non-Judicial Stamp Paper of appropriate value)

(Refer Clause 2.2.5)

Know all men by these presents, We..... (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorize Mr/ Ms (name), son/daughter/wife of and presently residing at, who is presently employed with us and holding the position of, as our true and lawful attorney (hereinafter referred to as the “Attorney”) to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our Bid for pre-qualification and submission of our bid[s] for the ***** Project[s] proposed or being developed as described in the RFP including but not limited to signing and submission of all applications, bids and other documents and writings, participate in Pre-Bid and other conferences and providing information/ responses to IWAI, representing us in all matters before IWAI, signing and execution of all contracts including the Tripartite Agreement and undertakings consequent to acceptance of our bid[s], and generally dealing with IWAI in all matters in connection with or relating to or arising out of our bid for the said Project[s] and/ or upon award thereof to us and/or till the entering into of the Tripartite Agreement with NTPC and IWAI.

AND we hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things lawfully done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

IN WITNESS WHEREOF WE,, THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS DAY OF, 2.....

For

.....

(Signature)

(Name, Title and Address)

Witnesses:

1.

(Notarized)

2.

Accepted

.....

(Signature)

(Name, Title and Address of the Attorney)

Notes:

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- *Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*
- *For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention, 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Apostille certificate.*

Appendix II (b): Power of Attorney for Lead Member of Consortium

Power of Attorney for Lead Member of Consortium (On a Non-Judicial Stamp Paper of appropriate value)

(Refer Clause 2.2.6 (c))

Whereas IWAI (“the Authority”) has invited Bids for and on behalf of NTPC from interested parties for the Project of movement of 3 MMTPA of imported coal for a period of 10 years through Inland Waterway to NTPC plant at Barh (the “Project”).

Whereas,,, and
(collectively the “Consortium”) being Members of the Consortium are interested in bidding for the Project[s] in accordance with the terms and conditions of the Request for Proposal (RFP), and other connected documents in respect of the Project[s], and

Whereas, it is necessary for the Members of the Consortium to designate one of them as the Lead Member with all necessary power and authority to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium’s bid for the Project[s] and its execution.

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

We, having our registered office at, M/s².
having our registered office at and M/s. having our registered office at, (hereinafter collectively referred to as the “Principals”) do hereby irrevocably designate, nominate, constitute, appoint and authorize M/S having its registered office at, being one of the Members of the Consortium, as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the “Attorney”). We hereby irrevocably authorize the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Consortium and any one of us during the bidding process and, in the event the Consortium is awarded the development/contract, during the execution of the Project[s] and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the pre-qualification of the Consortium and submission of its bid[s] for the Project[s], including but not limited to signing and submission of all applications, bids and other documents and writings, participate in bidders and other conferences, respond to queries, submit information/ documents, sign and execute contracts and undertakings consequent to acceptance of bid[s] of the Consortium and generally to represent the Consortium in all its dealings with the Authority, and/ or any other Government Agency or any person, in all matters in connection with or relating to or arising out of the Consortium’s bid[s] for the Project[s] and/ or upon award thereof till the execution of the Tripartite Agreement.

AND hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things lawfully done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this

² Changes are to be made by bidder as per the number of companies in the consortium

Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us/ Consortium.

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS DAY OF20.....

For

(Signature)

.....

(Name & Title)

For

(Signature)

.....

(Name & Title)

For

(Signature)

.....

(Name & Title)

Witnesses:

- 1.
- 2.

.....

(Executants)

(To be executed by all the Members of the Consortium)

Notes:

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- *Also, wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*
- *For a Power of Attorney executed and issued overseas, the document will also have to be legalized by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney is being issued.*

Appendix III: Format of Bank Guarantee for Bid Security

(On a Non-Judicial Stamp Paper of appropriate value as per applicable rules of the issuing Bank)

B.G. No.

Dated:

[IWAI Address]

1. In consideration of you, Inland Waterways Authority of India (hereinafter referred to as the “IWAI”, which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns) having agreed to receive the Bid of _____[a Company registered under provision of the Companies Act, 1956] and having its registered office at _____[and acting on behalf of its Consortium] (hereinafter referred to as the “Bidder” which expression shall unless it be repugnant to the subject or context thereof include its/their executors administrators, successors and assigns), for the Project as defined pursuant to the RFP Document dated [●] issued in respect of the Project and other related documents (hereinafter collectively referred to as “Bidding Documents”), we [Name of the Bank] having registered office at _____ and of its branches at _____ (hereinafter referred to as the “Bank”), at the request of the Bidder, do hereby in terms of Clause 1.2.11 of Volume I of the RFP Document, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfillment and compliance of the terms and conditions of the Bidding Documents (including the RFP Document) by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to the IWAI an amount of Rs. [●](Rupees [●] only) as bid security (hereinafter referred to as the “Bid Security”) as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder if the Bidder shall fail to fulfill or comply with all or any of the terms and conditions contained in the said Bidding Documents.
2. Any such written demand made by the IWAI stating that the Bidder is in default of the due and faithful fulfillment and compliance with the terms and conditions contained in the Bidding Documents shall be final, conclusive and binding on the Bank.
3. We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of the IWAI is disputed by the Bidder or not merely on the first demand from the IWAI stating that the amount claimed is due to the IWAI by reason of failure of the Bidder to fulfill and comply with the terms and conditions contained in the Bidding Documents including failure of the said Bidder to keep its Bid open during the Bid validity period as set forth in the said Bidding Documents for any reason whatsoever. Any such

demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding Rs. [●] (Rupees [●] only).

4. This Guarantee shall be irrevocable and remain in full force for a period of 240 (two hundred and forty) days from the Bid Due Date inclusive of a claim period of 60 (sixty) days or for such extended period as may be mutually agreed between the IWAI and the Bidder, and agreed to by the Bank, and shall continue to be enforceable till all amounts under this Guarantee have been paid.
5. We, the Bank, further agree that the IWAI shall be the sole judge to decide as to whether the Bidder is in default of due and faithful fulfillment and compliance with the terms and conditions contained in the Bidding Documents including, inter alia, the failure of the Bidder to keep its Bid open during the Bid validity period set forth in the said Bidding Documents, and the decision of the IWAI that the Bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between the IWAI and the Bidder or any dispute pending before any Court, Tribunal, Arbitrator or any other Authority.
6. The Guarantee shall not be affected by any change in the constitution or winding up of the Bidder or the Bank or any absorption, merger or amalgamation of the Bidder or the Bank with any other person.
7. In order to give full effect to this Guarantee, IWAI shall be entitled to treat the Bank as the principal debtor. IWAI shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee from time to time to vary any of the terms and conditions contained in the said Bidding Documents or to extend time for submission of the Bids or the Bid validity period or the period for fulfillment and compliance with all or any of the terms and conditions contained in the said Bidding Documents by the said Bidder or to postpone for any time and from time to time any of the powers exercisable by it against the said Bidder and either to enforce or forbear from enforcing any of the terms and conditions contained in the said Bidding Documents or the securities available to IWAI, and the Bank shall not be released from its liability under these presents by any exercise by IWAI of the liberty with reference to the matters aforesaid or by reason of time being given to the said Bidder or any other forbearance, act or omission on the part of IWAI or any indulgence by IWAI to the said Bidder or by any change in the constitution of IWAI or its absorption, merger or amalgamation with any other person or any other matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of releasing the Bank from its such liability.
8. Any notice by way of request, demand or otherwise hereunder shall be sufficiently given or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein.
9. We undertake to make the payment on receipt of your notice of claim on us addressed to [name of Bank along with branch address] and delivered at our above branch who shall be deemed to have been duly authorised to receive the said notice of claim.

10. It shall not be necessary for IWAI to proceed against the said Bidder before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which IWAI may have obtained from the said Bidder or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealised.
11. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of IWAI in writing.
12. The Bank declares that it has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorised and has full power to execute this Guarantee for and on behalf of the Bank.
13. This Guarantee is governed by the laws of India.

Signed and Delivered by _____ Bank

By the hand of Mr./Ms _____, its _____ and authorised official.

(Signature of the Authorised Signatory)
(Official Seal)

Appendix IV (a): Technical Proposal: Technical Capability of the Bidder

Technical Capability of the Bidder @

(Refer to Clauses 2.2.2 (a))

Bidder type #	Name and Member Code*	Technical Capability	
		Revenue received by Bidder for operation, Maintenance of Eligible Project (refer clause 2.2.2 (a) (i)**	Project Cost (in Rs. Crs) of the Eligible Project developed and/or implemented by Bidder(refer clause 2.2.2 (a) (ii)**
Single Entity Bidder			
Consortium Member 1			
Consortium Member 2			
Consortium Member 3			
Consortium Member 4			
Consortium Member 5			
Consortium Member 6			
Total			

@ Provide details of only those projects that have been undertaken by the Bidder under its own name/Lead member of the consortium and/ or by an Associate specified in Clause 2.2.9.

A Bidder consisting of a single entity should fill in details as per the row titled Single entity Bidder and ignore the rows titled Consortium Member. In case of a Consortium, the row titled Single entity Bidder may be ignored. In case credit is claimed for an Associate, necessary evidence to establish the relationship of the Bidder with such Associate, in terms of Clause 2.2.9, shall be provided.

** Member Code shall indicate NA for Not Applicable in case of a single entity Bidder. For other Members, the following abbreviations are suggested viz. LM means Lead Member, TM means Technical Member, FM means Financial Member, OMM means Operation & Maintenance Member, OM means Other Member.*

***The total payments received/ made and/or revenues appropriated for each Eligible Project are to be stated for the project undertaken by Bidder/Consortium/Member on Operation & maintenance and also for the project developed & implemented by Bidder/consortium/Member. The figures to be provided here should indicate the break-up for the past 7 (seven) financial years. Year 1 refers to the financial year immediately preceding the Bid Due Date; Year 2 refers to the year before Year 1, Year 3 refers to the year before Year 2, and so on.*

For conversion of US Dollars to Rupees, the rate of conversion shall be as per rate applicable on the date 30 days prior to the Bid Due Date. In case of any other currency, the same shall first be converted to US Dollars as on the date 30 days prior to the Bid Due Date, and the amount so derived in US Dollars shall be converted into Rupees.

Schedule to Appendix IV (a): Technical Capability of the Bidder

Details of Eligible Projects

(Refer to Clauses 2.2.2(a))

Item (1)	Refer Instruction	
Title & nature of the project	3	
Name of member (in case of consortium) who claims experience of the project		
Year-wise (a) payments received/ revenues appropriated	5	
Entity for which the project was constructed/ developed	6	
Location of the Project		
Project cost	7	
In case bidder is consortium, indicate shareholding (%) of the member claiming experience of the project in the bidding consortium		
Date of commencement of project/ contract		
Equity shareholding (with period during which equity was held)	8	

Instructions:

- (1) Bidders are expected to provide information in respect of Eligible Projects in this Annexure. The projects cited must comply with the eligibility criteria specified in Clause 2.2.2 (a) of the RFP, as the case may be. Information provided in this section is intended to serve as a back-up for information provided in the Bid. Bidders should also refer to the Instructions below.
- (2) For a single entity Bidder, the Project Codes would be a, b, c, d etc. In case the Bidder is a Consortium then for Member 1, the Project Codes would be 1a, 1b, 1c, 1d etc., for Member 2 the Project Codes shall be 2a, 2b, 2c, 2d etc., and so on.
- (3) A separate sheet should be filled for each Eligible Project as the specified in 2.2.2 (a) (i) and 2.2.2 (a) (ii).
- (4) Member Code shall indicate NA for Not Applicable in case of a single entity Bidder. For other Members, the following abbreviations are suggested viz. LM means Lead Member, TM means Technical Member, FM means Financial Member, OMM means Operation & Maintenance Member; and OM means Other Member. In case the Eligible Project relates to an Associate of the Bidder or its Member, write “Associate” along with Member Code.

- (5) The total payments received/ made and/or revenues appropriated for each Eligible Project are to be stated for the project undertaken by Bidder/Consortium/Member on Operation & maintenance and also for the project developed & implemented by Bidder/consortium/Member. The figures to be provided here should indicate the break-up for the past 7 (seven) financial years. Year 1 refers to the financial year immediately preceding the Bid Due Date; Year 2 refers to the year before Year 1, Year 3 refers to the year before Year 2, and so on.
- (6) Particulars such as name, address and contact details of owner/ Authority/ Agency (i.e. development right grantor, counter party to PPA, etc.) may be provided
- (7) Provide the estimated capital cost of Eligible Project.
- (8) The equity shareholding of the Bidder, in the company owning the Eligible Project, held continuously during the period for which Eligible Experience is claimed, needs to be given (Refer Clause 2.2.2 (a)).
- (9) Experience for any activity relating to an Eligible Project shall not be claimed by two or more Members of the Consortium. In other words, no double counting by a consortium in respect of the same experience shall be permitted in any manner whatsoever.
- (10) Bidders shall provide statutory auditor certificate or client certificate to substantiate the claim mentioned above in Appendix IV (a)
- (11) Certificate from the client or the Bidder's statutory auditor must be furnished as per format below.

a) Certificate from the Statutory Auditor/Project Owner regarding projects

Based on its books of accounts and other published information authenticated by it, this is to certify that (name of the Bidder/Member/Associate) is/ was an equity shareholder in (title of the project company) and holds/ held Rs. cr. (Rupees crore) of equity (which constitutes%[€] of the total paid up and subscribed equity capital) of the project company from (date) to (date)[¥]. The project was commissioned on (date of commissioning of the project). We further certify that the total estimated capital cost of the project is Rs. cr., of which Rs. cr. of capital expenditure was incurred during the past six financial years as per year-wise details noted below: We also certify that the annual revenues collected and appropriated by the aforesaid project company in terms of Clause 2.2.2 (a) of the RFP during the past seven financial years were Rs. cr. as per year-wise details noted below:

..... Authorized Signatory

Name:

Designation:

Signature of the Authorized Signatory and date

**** Provide Certificate as per this format only. Attach Explanatory Notes to the Certificate, if necessary.**

¥ In case the project is owned by the Bidder company, this language may be suitably modified to read: “It is certified that (name of Bidder) constructed and/ or owned the (name of project) from (date) to (date).”

(12) It may be noted that in the absence of any detail in the above certificates, the information would be considered inadequate and could lead to exclusion of the Eligible project in evaluation of Technical Proposal.

- b) In case of experience of an Associate is considered for the purpose of meeting the Technical Capacity , a certificate from Statutory Auditor shall be submitted specifically in the below attached format**

Certificate from Statutory Auditor/ Company Secretary regarding “Associate”

Based on the authenticated record of the company, this is to certify that more than 50% (fifty per cent) of the subscribed and paid up voting equity of (name of the Bidder/Consortium Member/ Associate) is held, directly or indirectly, by (name of Associate/ Bidder/ Consortium Member). By virtue of the aforesaid share-holding, the latter exercises control over the former, who is an Associate in terms of Clause 2.2.9 of the RFP.

A brief description of the said equity held, directly or indirectly, is given below:

{Describe the share-holding of the Bidder/ Consortium Member and the Associate. In the event the Associate is under common control with the Bidder/ Consortium Member, the relationship may be suitably described and similarly certified herein. }

Name of the audit firm:

Seal of the audit firm: (Signature, name and designation of the authorised signatory).

Date:

Notes:

- *It may be noted that in the absence of any detail in the above certificates, the information would be considered inadequate and could lead to exclusion of the relevant project in computation of Technical Capacity.*
- *In the event that the Bidder/ Consortium Member exercises control over an Associate by operation of law, this certificate may be suitably modified and copies of the relevant law may be enclosed and referred to.*
- *In the case of indirect share-holding, the intervening companies in the chain of ownership should also be Associates i.e., the share-holding in each such company should be more than 50% (fifty percent) in order to establish that the chain of “control” is not broken.*

Appendix IV (b): Technical Proposal: Financial Capability

Financial Capability of the Bidder (Refer to Clauses 2.2.2(b) of the RFP) (In Rs Crore)

Bidder type ^{\$}	Member Code [€]	Average Net Worth [€]	Average Annual Turnover [€]
Single entity Bidder			
Consortium Member 1			
Consortium Member 2			
Consortium Member 3			
Consortium Member 4			
Consortium Member 5			
Consortium Member 6			

Name & address of Bidder's Bankers:

^{\$} A Bidder consisting of a single entity should fill in details as per the row titled Single entity Bidder and ignore the rows titled Consortium Members. In case of a Consortium, row titled Single entity Bidder may be ignored.

[€] Member Code shall indicate NA for Not Applicable in case of a single entity Bidder. For other Members, the following abbreviations are suggested viz. LM means Lead Member, TM means Technical Member, FM means Financial Member, OMM means Operation & Maintenance Member, OM means Other Member.

[€] The Bidder should provide details of its own Financial Capability as per clause 2.2.2 (b) or of an Associate specified in Clause 2.2.9.

Instructions:

- (1) The Bidder/ its constituent Consortium Members shall attach copies of the balance sheets, financial statements and Annual Reports for 3 (three) years preceding the Bid Due Date. The financial statements shall:
 - (a) reflect the financial situation of the Bidder and its Associates where the Bidder is relying on its Associate's financials;
 - (b) be audited by a statutory auditor;
 - (c) be complete, including all notes to the financial statements; and
 - (d) correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).
- (2) Net Worth shall mean (Subscribed and Paid-up Equity + Reserves) less (Revaluation reserves + miscellaneous expenditure not written off + Deferred Tax Asset/(liabilities)).
- (3) Year 1 will be the latest completed financial year, preceding the bidding. Year 2 shall be the year immediately preceding Year 1 and so on. In case the Bid Due Date falls within three months of the close of the latest financial year, refer to Clause 2.2.4.
- (4) In the case of a Consortium, a copy of the Jt. Bidding Agreement shall be submitted in accordance with Clause 2.2.6 (f) of the RFP document.
- (5) The Bidder shall also provide the name and address of the bankers of the Bidder.
- (6) The Bidder shall provide an Auditor's Certificate specifying the net worth of the Bidder and also specifying the methodology adopted for calculating such net worth in accordance with Clause 2.2.4 (d) of the RFP document.

Appendix V (a): Technical Proposal: Details of Proposed Waterway Based Logistic Solution

(Refer: Clause 2.2.2 (c))

I. Details of proposed Waterway Based Logistic solution

II. Format for the Estimated Cost of Implementation of Project

S. No.	Category	Estimated Cost in Rs
1.	Mechanism of Unloading of coal from Ocean Going Vessel and loading onto Vessels	
(a)		
(b)		
(c)		
(d)		
2.	Vessels	
(a)		
(b)		
(c)		
(d)		
3.	Unloading Infrastructure and Material Handling System	
(a)		
(b)		
(c)		
(d)		
	Sub-Total	
4.	Interest During Construction	
	Pre-operative Expenses	
	Contingencies	
5.	Total Project Cost (Landed Project Cost)	

Note: Detailed assumptions underlying each element of the above would be needed to be provided separately.

Appendix V (b): Technical Proposal: Specifications of Project Components

(See: Clause 2.2.2 (c))

- (1) Unloading Mechanism (Transshipment Infrastructure) from Ocean Going Vessel : Bidder shall provide the detail of
 - (a) Transfer Point-I (in Lat/long):
 - (b) Transfer Point-II (in Lat/Long) in case required by Bidder :
 - (c) Type (Fixed/Floating) :
 - (d) Capacity (storage in MT) :
 - (e) Capacity (Discharge in PDPRWWD SHINC)
 - (f) Mode of Procurement of Transshipment Infrastructure : Hire/Lease/Own
 - (g) Lead Time in Procurement for suggested Transshipment Infrastructure
 - (h) Number of Ocean Going Vessel envisaged to be handled per month
 - (i) Gap required in Handling of Two Ocean going Vessels
 - (j) Type of Ocean Going Vessel Proposed to handle at Transfer Point: Panama and Capesize
 - (k) Indicate the time taken to unload the Ocean Going Vessel:

- (2) Vessels: Bidder shall provide the following details
 - (a) Type
 - (b) Number
 - (c) Capacity (in MT)
 - (d) Mode of Procurement of vessels : Hire/Lease/Own
 - (e) Turnaround time of Vessels

(3) Unloading Infrastructure and Material Handling System

As per specification and standards set forth in RFP document. Bidder is required to provide the estimated cost of development of the above infrastructure and **enclose detailed system description alongwith equipments offered.**

In addition to above Bidder is also required to submit the timelines for procurement of Unloading Infrastructure and Material Handling System; however, it cannot be higher than as indicated in the RFP document

Bidder to Note

Bidders are required to add separate sheet in case the space provided in the format above is not sufficient.

Appendix VI: Format of Financial Bid

(On the letter head of the Bidder/Lead Member)

Operation of Coal Movement through Inland Waterways

Price Bid format

(Refer clause 1.2.3)

S.No	Particulars	Rate Per Metric Tonne of coal (in INR)	Service Tax (%)	Service Tax (Amount in INR)	Transportation Rate per MT (in INR)
(1)	(2)	(3)	(4)	(5)	(6)=(3) + (5)
(a)	Rate per Metric Tonne for unloading from Ocean Going Vessel using the Transshipment Infrastructure created / procured by the Bidder and loading onto the Operator's Vessels				
(b)	Rate per Metric Tonne for transportation of coal by Operator's Vessels through coastal waters				
(c)	Rate per Metric Tonne for transportation of coal by Operator's Vessels through inland waterways upto Barh Waterfront				
(d)	Rate per Metric Tonne for Unloading of coal from Operator's Vessels and Transportation of coal through conveyor Belt System to coal stack yard of Barh STPP				

Total Transportation Rate per Metric Tonne (a) + (b) + (c) + (d)		
Total Transportation rate per Metric Tonne (in Words)		

Maximum Handling and Transit Losses (% **Transit Loss**) _____ % (Bidder to note that this shall not exceed 0.2%)

.....Name of the Bidder / Consortium
Signature of the Authorized Person
Name of the Authorized Person

Bidder to note:

1. The Financial Bid is to be signed by the authorized person of the Bidder (In case of a Consortium , as per a valid power of attorney given by all members of the Consortium)
2. Bidders should specify the Total Transportation Rate per Metric Tonnes amount in the format set out above clearly indicating the amount in both figures and words in Indian Rupees. All payments under in respect of the Project shall be made in Indian Rupees only
3. The Rate per Metric Tonnes Amounts must include two places of decimals.
4. Bidders must note that the Total Transportation Rate per Metric Tonne (exclusive of service tax) is subject to price adjustment with change in Fuel price, WPI and on account of any change in Statutory charges as per the provision set forth in Draft Tripartite Agreement and Draft Coal Transport Agreement.
5. Rates per Metric Tonne quoted above in column 3 shall be inclusive of all applicable taxes (excluding service tax) & duties prevailing 7 days prior to the Bid Due Date. Service tax is to be quoted in percentage and amount in columns 4 and 5 above respectively.
 It may be noted that in case of any discrepancy between the Service Tax amount (quoted at column 5) and the service tax amount arrived at by multiplying the service tax rate (quoted at column 4) with the Rate per Metric Tonne of coal in column 3, the Service Tax amount arrived at by multiplying the service tax rate with the Rate per Metric Tonne of coal will prevail and Transportation Rate per Metric Tonne (column 6) will be adjusted accordingly.
 However, for the purpose of payment, service tax will be considered at the quoted rate or the actual rate (prevailing 7 days prior to the bid due Date), whichever is lower.
 Any subsequent revision in the service tax rate by GoI shall be proportionately increased / decreased for the purpose of payments.
6. All the definitions shall be as per the provisions of the RFP.
7. Bidders are advised to factor in all the obligations to be performed by the Operator in terms of the Draft Tripartite Agreement and the draft Coal transportation Agreement and the complete scope of work of the Operator, prior to making their Financial Bids

Appendix VII: Format for Performance Security

(To be issued by a Scheduled Bank's Branch in _____)

(On a Non-Judicial Stamp Paper of appropriate value as per Uttar Pradesh Stamp Act)

[NTPC Address]

WHEREAS:

- A. NTPC, [Authorised Representative], Inland Waterways Authority of India, and the M/s. _____, a sole proprietorship/ partnership/ company incorporated under the Companies Act, 1956 having its registered office at -----, hereinafter called **“the Operator”** have entered into a Tripartite Agreement dated (the “Agreement”) whereby the Operator has been selected to transport the coal from Transfer Point to Power plant at Barh, hereinafter called **“the Project”**.
- B. The Agreement requires the Operator to furnish a Performance Guarantee to NTPC in a sum of Rs. 25,00,00,000/- (Rupees Twenty Five Crores only) (the “Guarantee Amount”) as security for due and faithful performance (B of its obligations, under and in accordance with the Agreement.

We, through our Branch at (the “Bank”) have agreed to furnish this Bank Guarantee by way of Performance Guarantee.

NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees and affirms as follows:

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the Operators obligations under and in accordance with the Agreement, and agrees and undertakes to pay to the NTPC, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Operator, such sum or sums upto an aggregate sum of the Guarantee Amount as the NTPC shall claim, without the NTPC being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from NTPC that the Operator has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that NTPC shall be the sole judge as to whether the Operator is in default in due and faithful performance of its obligations under the Agreement and its decision that the Operator is in default shall be final, and binding on the Bank, notwithstanding any differences between NTPC and the Operator, or any dispute between them pending before any

court, tribunal, arbitrators or any other NTPC or body, or by the discharge of the Operator for any reason whatsoever.

3. In order to give effect to this Guarantee, NTPC shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Operator and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for NTPC to proceed against the Operator before presenting to the Bank its demand under this Guarantee.
5. NTPC shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/ or performance of all or any of the obligations of the Operator contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by NTPC against the Operator, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement, and the Bank shall not be released from its liability and obligation under these presents by any exercise by NTPC of the liberty with reference to the matters aforesaid or by reason of time being given to the Operator or any other forbearance, indulgence, act or omission on the part of NTPC or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by NTPC in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Operator under the Agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force till expiry of 3 years from the date of issuance hereof.
8. Upon request made by the Operator for release of Performance Guarantee along with the particulars required hereunder, duly certified by a statutory auditor of the Operator, NTPC shall release the Performance Guarantee forthwith provided the Operator is not in breach of this Agreement.
9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of NTPC in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice

was posted and a certificate signed by an officer of NTPC that the envelope was so posted shall be conclusive.

11. This Guarantee shall come into force with immediate effect and shall remain in force and effect till ____ date (date falling at the expiry of 3 years from the date of issuance of this Guarantee).

Signed and sealed this day of, 20..... at

SIGNED, SEALED AND DELIVERED

For and on behalf of

the BANK by:

(Signature)

(Name)

(Designation)

(Code Number)

(Address)

NOTES:

- (i) The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.
- (ii) The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.

Appendix VIII: Format for Letter of Undertaking

(On a Non-Judicial Stamp Paper of appropriate value)

Dated:
To,
Director (Traffic)
Inland Waterway Authority of India
A-13, Sector-1,
Noida (UP)

Sub: Movement 3 MMTPA of imported coal for a period of 10 years through Inland Waterways to NTPC plant at Barh

Dear Sir,

With reference to your RFP document dated -----, I/we, having examined the RFP document and understood its contents, hereby submit my/our Bid for the aforesaid project.

I/ We certify that, we are / any member of our Consortium is not presently barred/ blacklisted from participating in any project (BOT or otherwise) , as a result of a debarment notice/ order passed by the Central/ any State Government, PSUs or any entity/ department controlled by it.

We further undertake and certify that, in the last three years we/ any member of our Consortium have, not been barred by the Central/ State Government, PSUs, or any entity controlled by it, from participating in any project (BOT or otherwise).

Yours faithfully,

(Signature of the Authorized Signatory)

Date:

Place:

(Name and designation of the Authorized Signatory)

(Name and Seal of the Bidder/ Lead Member)

Appendix IX: Format for Joint Bidding Agreement in Case of Consortium

** Note: The same can be changed subject to factual*

(On Non – judicial stamp paper of Rs 100/- if in India or such equivalent document duly attested by Notary Public)

This Joint Bidding Agreement (JBA) entered into thisday of201_ at

AMONGST

1. {..... Limited, a company incorporated under the Companies Act, 1956} and having its registered office at (hereinafter referred to as the “First Part” which expression shall, unless repugnant to the context include its successors and permitted assigns) *

AND

2. {..... Limited, a company incorporated under the Companies Act, 1956} and having its registered office at (hereinafter referred to as the “Second Part” which expression shall, unless repugnant to the context include its successors and permitted assigns) *

AND

3. {..... Limited, a company incorporated under the Companies Act, 1956} and having its registered office at (hereinafter referred to as the “Third Part” which expression shall, unless repugnant to the context include its successors and permitted assigns) *

AND

4. {..... Limited, a company incorporated under the Companies Act, 1956} and having its registered office at (hereinafter referred to as the “Fourth Part” which expression shall, unless repugnant to the context include its successors and permitted assigns) *

AND

5. {..... Limited, a company incorporated under the Companies Act, 1956} and having its registered office at (hereinafter referred to as the “Fifth Part” which expression shall, unless repugnant to the context include its successors and permitted assigns) *

AND

6. {..... Limited, a company incorporated under the Companies Act, 1956} and having its registered office at (hereinafter referred to as the “Sixth Part” which expression shall, unless repugnant to the context include its successors and permitted assigns) *

The above mentioned Parties of the First and Second shall collectively be referred to as “the Parties“ and individually as “the Party”

WHEREAS Inland Waterway Authority of India, is a statutory Authority created pursuant to an IWAI Act, and on behalf of NTPC, (hereinafter collectively referred as the “**Authority**”) has invited Request for Proposal No....., dated(the RFP) for qualification and shortlisting of bidders for selecting the

Selected Bidder to undertake the Coal Movement through Inland Waterway to Barh STPP (herein after called the “**Project**”)

AND WHEREAS the Parties are interested in jointly bidding for the Project as members of a Consortium and in accordance with the terms and conditions of the RFP document and other bid documents in respect of the Project, and

AND WHEREAS it is a necessary condition under the RFP document that the members of the Consortium shall enter into a Joint Bidding Agreement (‘JBA’) and furnish a copy thereof with the Bid.

NOW IT IS HEREBY AGREED as follows:

1. Definitions and Interpretations

In this Agreement, the capitalised terms shall, unless the context otherwise requires, have the meaning ascribed thereto under the RFP/Tripartite Agreement.

2. Consortium

- 2.1 The Parties do hereby irrevocably constitute a consortium (the “**Consortium**”) for the purposes of jointly participating in the Bidding Process for the Project.

The Parties hereby undertake to participate in the Bidding Process only through this Consortium and not individually and/ or through any other consortium constituted for this Project, either directly or indirectly or through any of their Associates.

3. Covenants

The Parties hereby undertake that in the event the Consortium is declared the Successful Bidder and awarded the Project, it shall incorporate a special purpose Vehicle (the “**SPV/Operator**”) under the Companies Act, 1956, for executing the Tripartite Agreement with the Authority and for performing all its obligations as the Operator in terms of the Tripartite Agreement executed with respect to the Project.

4. Role of the Parties

The Parties hereby undertake to perform the roles and responsibilities as described below:

- (a) Party of the First Part shall be the Lead member of the Consortium and shall have the power of attorney from all Parties for conducting all business for and on behalf of the Consortium during the Bidding Process and until the end of Contract Period under the Tripartite Agreement when all the obligations of the Operator shall become effective;
- (b) Party of the Second Part shall be the Technical/O&M Member of the Consortium;
- (c) Party of the third part-----

(d) Party of the fourth part-----

(e) Party of the fifth part

(f) Party of the sixth part

5. Joint and Several Liabilities

The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project and in accordance with the terms of the RFP and the Tripartite Agreement, till Contract Period for the Project under and in accordance with the Tripartite Agreement.

6. Shareholding in the Licensee/SPV

6.1 The Parties agree that the proportion of shareholding among the Parties in the SPV shall be as follows:

First Party:

Second Party:

Third Party:

Fourth Party:

Fifth Party:

Sixth Party:

6.2 The Parties undertake that a 51 % (fifty one percent) of the subscribed and paid up equity share capital of the Operator shall, at all times commencing from the date of execution of the Tripartite Agreement until the expiry of the Term of the Project, be held by the Lead Member and the Other member of the Consortium whose technical and financial capacity will be evaluated for the purpose of this RFP, shall also hold at least 26% (twenty six) of the subscribed and paid up equity share capital of the for the period of two years from the date of commercial operation of the Project **(Lock in Period)**;

6.3 The Parties undertake that they shall collectively hold at least 100% (Hundred per cent) of the subscribed and paid up equity share capital as on the date of signing of Tripartite Agreement and thereafter up till the expiry of the Lock in Period.

6.4 The Parties undertake that they shall comply with all equity lock-in requirements set forth in the RFP and the Tripartite Agreement.

7. Representation of the Parties

Each Party represents to the other Parties as of the date of this JBA that:

- (a) Such Party is duly organised, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this JBA;
- (b) The execution, delivery and performance by such Party of this JBA has been authorised by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/ power of attorney in favour of the person executing this JBA for the delegation of power and authority to execute this JBA on behalf of the Consortium Member is annexed to this JBA, and will not, to the best of its knowledge:
 - (i) require any consent or approval not already obtained;
 - (ii) violate any Applicable Law presently in effect and having applicability to it;
 - (iii) violate the memorandum and articles of association, by-laws or other applicable organisational documents thereof;
 - (iv) violate any clearance, permit, concession, grant, or other governmental authorisation, approval, judgment, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or
 - (v) create or impose any liens, mortgages, pledges, claims, security interests, charges or Encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this JBA;
- (c) this JBA is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and
- (d) there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Affiliates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfillment of its obligations under this JBA.

8. Termination

This MoU shall be effective from the date hereof and shall continue in full force and effect until the subsistence of the Term for the Project under and in accordance with the Tripartite Agreement, in

case the Project is awarded to the Consortium. However, in case the Consortium is either not qualified for the Project or does not get selected for award of the Project, the MoU will stand terminated.

9. Miscellaneous

9.1 This JBA shall be governed by laws of India.

9.2 The Parties acknowledge and accept that this JBA shall not be amended by the Parties without the prior written consent of the Authority.

IN WITNESS WHEREOF THE PARTIES ABOVE NAMED HAVE EXECUTED AND DELIVERED THIS MOU AS OF THE DATE FIRST ABOVE WRITTEN.

SIGNED, SEALED AND DELIVERED
and on behalf of first Part:
(LEAD MEMBER) by:

SIGNED, SEALED AND DELIVERED For
For and on behalf of
SECOND PART by:

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

SIGNED, SEALED AND DELIVERED
and on behalf of Third Part by:

SIGNED, SEALED AND DELIVERED For
For and on behalf of Fourth part by:

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

SIGNED, SEALED AND DELIVERED
and on behalf of fifth Part by:

SIGNED, SEALED AND DELIVERED For
For and on behalf of sixth part by:

(Signature)

(Name)

(Designation)

(Address)

(Signature)

(Name)

(Designation)

(Address)

(Designation)

(Address)

(Designation)

(Address)

Notes:

- 1 The mode of the execution of the Joint Bidding Agreement should be in accordance with the procedure, if any, laid down by the Applicable Law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- 2 Each Joint Bidding Agreement should attach a copy of the extract of the charter documents and documents such as resolution / power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member.*
- 3 For a Joint Bidding Agreement executed and issued overseas, the document shall be legalised by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney has been executed*

Appendix-X : CERTIFICATE REGARDING ACCEPTANCE OF NO DEVIATIONS

(On the letter head of the Bidder)

DATED:

To,

Director (Traffic),
Inland Waterway Authority of India
A-13, Sector -1,
Noida (UP)

Sub: Movement 3 MMTPA of imported coal for a period of 10 years through Inland Waterways to NTPC plant at Barh

Dear Sir,

- 1.0 With reference to your RFP document..... Dated, we hereby confirm that we comply with all terms, conditions and specifications of the Bidding Documents read in conjunction with Amendment (s)/Clarification(s) /Addendum (if any) issued by the IWAI prior to opening of Technical Bid and the same has been taken into consideration while making our Technical Bid & Financial Bid and we declare that we have not taken any deviation in this regard.
- 2.0 We further confirm that any deviation, variation or additional condition etc. or any mention, contrary to Bidding Documents and its Amendment (s)/Clarification(s) /Addendum (if any) as mentioned at 1.0 above found anywhere in our Technical Bid and/ or Financial Bid, implicit or explicit shall stand unconditionally withdrawn, without any cost implication whatsoever to IWAI/NTPC, failing which the bid security shall be forfeited.

Date :

Place:

Signature.....
Printed Name.....
Designation.....
Seal.....

Note: The above certificate is to be submitted in a separate sealed envelope, as detailed in the bidding documents. In the absence of this certificate in a separate sealed envelope, as per provisions of the bidding documents, the bid shall be rejected and shall be returned unopened.

VOLUME-II

DRAFT TRIPARTITE AGREEMENT

AGREEMENT FOR COAL MOVEMENT THROUGH INLAND WATERWAY TRANSPORT (IWT)

This Tripartite Agreement is made at [.....] on this [.....] day of [.....],
[2013] **BY AND AMONG**

1. **NTPC Limited (A Government of India Enterprises)**, a company incorporated under the Companies Act, 1956, having its Registered Office at NTPC Bhawan, SCOPE Complex, 7 Institutional Area, Lodhi Road, New Delhi-110003 (hereinafter referred to as “**NTPC**”) which expression shall, unless the context requires otherwise, include its successors and permitted assigns, of the **FIRST PART**.

AND

2. **Inland Waterways Authority of India**, a statutory body constituted by Government of India under Inland Waterway Authority of India Act 1985, with its headquarters at A-13, Sector-1, Noida, Uttar Pradesh, (hereinafter referred to as “**IWAI**”), which expression shall unless the context requires otherwise, include its successors and permitted assigns, of the **SECOND PART**.

AND

3. [..... **LIMITED**], a company incorporated under the provisions of the Companies Act, 1956/Companies Act 2013 (in case of SPV) and existing under the and having its registered office at [.....], acting through its Director/Authorized Signatory [Shri] duly authorized by the resolution passed at the meeting of its Board of Directors held on [.....] (hereinafter referred to as the “**Operator**”), of **THIRD PART**

(The expressions “NTPC”, “IWAI” and “Operator” shall include their respective successors, and are hereinafter collectively referred to as the “Parties” and individually as “Party”)

WHEREAS

- A. NTPC is a premier power generation company, constituted by Government of India under the Companies Act 1956, having expertise and strength in areas such as setting up, operation &

maintenance of power projects and sale of power to various state power utilities and other bulk customers. NTPC , imports coal to meet the fuel requirements of its power plants situated at various places in India. NTPC uses various ports for import of coal in India from where the coal is delivered at the power plants through railway network.

- B. IWAI has been constituted by Government of India for undertaking development and regulation of inland waterways in the country. It has the overall responsibility to develop and maintain National Waterways as well as co-ordination of Inland Waterway Transport (IWT) with other modes.
- C. NTPC [is developing / has developed³] a super thermal power plant at Barh, District Patna, Bihar (“Barh STPP”) with a total capacity of 3300 MW. NTPC requires around three million metric tonnes (“3MMT”) of imported coal per annum for the operation of Barh STPP. In this regard NTPC may procure and import the required quantities of coal for Barh STPP, either directly and or through identified imported coal Supplier(s) or their designated agency(ies), as the case may be . With this objective, NTPC intends to appoint an operator that would be responsible for unloading the coal from the Ocean Going Vessels and thereafter hauling the coal on Vessels using National Waterway - 1 and ensuring delivery of the coal at the coal stack yard of the Barh STPP. (The “Project”).
- D. IWAI is, as part of its statutory obligations, maintaining National Waterway 1 (NW1), which forms part of the waterway required for the proposed coal movement to Barh STPP.
- E. In order to provide uninterrupted transportation of coal to NTPC Barh STPP, IWAI has committed to provide round the clock navigability of waterway, and all such facilitation as being necessary to provide Least Available Depth (LAD) of 3 m (with effect from (wef) December 2017) to help smooth movement of vessels from Transfer Point (*defined later*) to Barh STPP. IWAI shall, also co-ordinate with Kolkata Port Trust (KoPT) for providing requisite facilities for navigation through the waterway falling under the jurisdiction of KoPT.
- F. IWAI for and on behalf of NTPC had issued a Request for Proposal no. _____ dated _____ inviting bids for selection of Operator for the Project
- G. Pursuant to the evaluation of the Bids received, NTPC accepted the proposal submitted by the Successful Bidder and accordingly issued the Letter of Award No _____ dated _____ (“LOA”) to the Successful Bidder inter alia requiring the Successful Bidder to make payment of the Project Success Fee, the Project Development Fee, the Performance Security and execution of the Agreement. The Price Bid for Total Transportation Rate that has been quoted by the Operator and accepted by NTPC as per LOA is Rs _____ per MT (Schedule of Rates attached as Schedule H)
- H. The Successful Bidder has since promoted and incorporated the Operator as its wholly owned company, under the Companies Act 2013 to implement the Project, and as on the Execution Date, the Successful Bidder holds the entire shareholding of the Operator and has requested NTPC to accept the

³ To be retained as per factual understanding

Operator as the entity which shall undertake execution of the Project as per terms hereof and the Coal Transportation Agreement.

- I. By its letter dated....., the Operator has also joined in the said request of the Successful Bidder to NTPC, requesting NTPC to accept the Operator as the entity which shall undertake and perform the obligations and exercise the rights of the Successful Bidder including the obligation to enter into this Tripartite Agreement pursuant to the LoA. The Operator has further represented to the effect that it has been promoted by the Successful Bidder solely for the purpose hereof.

OR

[The Successful Bidder is a company existing under the Companies Act 1956 and has, pursuant to the competitive bidding process been selected as the Successful Bidder to implement the Project. The Successful Bidder has requested NTPC to accept it as the Operator for undertaking the Project as per the terms hereof and the Coal Transportation Agreement and for executing this Tripartite Agreement.]

[Note: either of the above paragraphs needs to be retained as per the correct factual understanding.]

- J. Accordingly, in accordance with the provisions of the RFP and the LoA, the Successful Bidder has paid/furnished;
- (i) Non refundable Project Success Fee of Rs 2,50,00,000/- (Rupees Two Crore Fifty lacs only) along with applicable service tax and other levies, to “IL&FS IIDC Fund” (hereinafter referred to as “IL&FS IIDC Fund”), through Demand draft no ____, dated ____, payable at New Delhi
 - (ii) Non refundable Project Development Fees of Rs 50,00,000/- (Rupees Fifty Lacs only) along with applicable service tax and other levies, to “Integrated Translog Development Company Ltd IWAI-IIDC PDF” through Demand draft no ____, dated ____, payable at New Delhi.
 - (iii) an irrevocable, unconditional, first demand bank guarantee issued by _____, _____, for an amount equal to Rs 25,00,00,000/- (Rs. Twenty Five Crore only), having a validity upto _____, 20____ (equivalent to the thereafter) as a guarantee for the performance by the Operator of its obligations in relation to the Project (“**Performance Security**”) subject to and in accordance with the terms hereof.
- K. Pursuant to the issuance of the RFP and the selection of the Successful Bidder, NTPC is entering into this Tripartite Agreement whereby the Operator is appointed to implement the Project (as defined in this Agreement).

NOW THEREFORE In consideration of forgoing and the respective covenants and agreements set forth in this agreement, the sufficiency and adequacy of which is hereby acknowledged and intended to be legally bound hereby, the parties agree as follows:

ARTICLE -1

DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

In this Agreement, unless repugnant to the context or inconsistent therewith, the following words, phrases and expressions shall bear the meaning hereinafter respectively assigned to them:

“Accounting Year” means the financial year commencing from the first day of April of any calendar year and ending on the thirty-first day of March of the next calendar year;

“Affected Party” shall have the meaning set forth in Article 10.1 of this Agreement;

“Agreement” means this agreement including the recitals, annexures and attachments hereto as may be amended, supplemented or modified, from time to time, in accordance with the provisions hereof;

“Applicable Laws” means all laws, brought into force and effect by GOI or the State of Bihar including any statute, ordinance, notification, rule, regulation, judgment, order, decree, bye-law, approval, directive, guideline, policy, requirement or other governmental restriction or any similar form of decision of, or determination by, or any interpretation or having the force of law in the Republic of India, the State of Bihar, by any Competent Authority or instrumentality thereof, whether in effect as on the date of this Agreement or thereafter;

“Applicable Permits” and or “Clearances” means all clearances, licenses, permits, authorizations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the construction, operation and maintenance of the Project and other facilities which are required to be arranged to fulfill the obligation of Operator during the subsistence of this Agreement;

“Arbitration Act” means the Arbitration and Conciliation Act, 1996 and shall include modifications to or any reenactment or amendment thereof, as in force from time to time;

“Bid” or “Proposal” means the documents in their entirety comprised in the proposal or bid (including the technical and financial proposal or bid) submitted by the Successful Bidder in response to the Request for Proposal dated -----, 2014, and accepted by NTPC and IWAI, with amendments and modifications, if any, pursuant to negotiations between the Parties;

“Bid Security” means the irrevocable and unconditional bank guarantee of Rs 2,35,00,000/- (Rupees Two Crore thirty five lacs only) furnished by the Successful Bidder in favour of IWAI Fund along with the Bid;

“Capesize Vessel” means an Ocean Going Vessel with DWT upto 1,80,000 MT

“Change in Law” means occurrence of any of the following events after the execution of this Agreement:

- (a) enactment of any new Applicable Law;
- (b) the repeal in whole or in part (unless re-enacted with the same effect) or modification of any existing Applicable Law;
- (c) the change in interpretation or application of any Applicable Law;
- (d) a change in the interpretation or application of any Indian law by a judgement of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to execution of this Agreement; or
- (e) the imposition of a requirement for a Clearance(s) (other than for cause) not required on the date of this Agreement;
- (f) a change in the terms and conditions attaching to such Clearance(s) (other than for cause) or the attachment of any new terms and conditions to a Clearance(s) (other than for cause), after the date of grant of any Clearance(s); or
- (g) any Clearance(s) previously granted ceasing to remain in full force and effect, though there is no fault of or breach by a Party (including a failure to renew), or if granted for a limited period, not being renewed on a timely basis on an application therefore having been duly made in good time.

For the avoidance of doubt, a change in the rate of any Tax or the imposition of a new Tax shall not constitute a Change in Law and the Parties shall be liable to bear the impact and incidence thereof at their cost and risk.

“Channel” means navigable channel of NW1 between Haldia and Barh;

“Coal Procurement Tender” means tender document that will be issued by NTPC directly or through other agencies for selection of Imported Coal Supplier(s);

“Coal Transportation Agreement” means a contract, which shall be in accordance with the terms and conditions specified in Schedule I to this Agreement, which shall be executed between Imported Coal Supplier(s) and/or NTPC or their designated agency(ies), as the case may be and the Operator for the unloading, transportation and handling of 3 MMTPA of coal through Waterway from Transfer Point to the Barh and delivery of coal inside the coal stack yard of Power plant.

“COD” or “Commercial Operation Date” means the Date on which Operator receives the Completion Certificate in relation to the Unloading Infrastructure and Material Handling System in accordance with the terms of the Agreement.

“Competent Authority” means GOI, any state government or any governmental department, commission, board, body, bureau, agency, authority, instrumentality, court or other judicial or

administrative body, central, state, or local having jurisdiction over the Project, the Operator, the Project Assets, the Project Site and the Works or the performance of all or any of the services, obligations or covenants of Operator under or pursuant to this Agreement or any portion thereof;

“Compliance Date” shall mean the date on which the Conditions Precedent have been satisfied by both the Parties and as ascribed thereto in Article 3 of this Agreement

“Completion Certificate” shall have the meaning set forth in Article 7.7 (b) of this Agreement;

“Construction Documents” mean collectively the Designs and Drawings, the Master plan and the Development Plan pertaining to the construction and development of Unloading Infrastructure and Material Handling System;

“Construction Works” means the works and things necessary for achieving Construction Completion and commencing Commercial Operations in accordance with the provisions of this Agreement;

“Construction Period” means the period beginning from the Compliance Date and ending on COD;

“Consortium” means the consortium/joint venture consisting of _____, _____ and _____ (to be filled by bidder/(s)) (referred to as the **“Consortium Members”**) formed/acting pursuant to the joint bidding agreement dated _____ entered into by them, and attached hereto as **Schedule C**, for the purpose of bidding for the Project and in the event of being successful to implement the Project;

“Conditions Precedent” shall have the meaning set forth under Article 3 of this Agreement;

“Consultation Notice” has the meaning ascribed to it in Article 11.3 of this Agreement;

“Cure Period” means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default and shall:

- (a) commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;
- (b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and
- (c) not in any way be extended by any period of suspension under this Agreement;

Provided that if the cure of any breach by the Operator requires any reasonable action by the Operator that must be approved by NTPC the applicable Cure Period shall be extended by the period taken by the NTPC to accord their approval;

“Dead Weight Tonnage (‘DWT’)” means an expression of a vessel’s total carrying capacity including the weight of the crew, passengers, cargo, fuel, ballast, drinking water and stores;

“Debt Due” means the aggregate of the following sums representing the amounts advanced by Lenders under the Financing Documents towards financing the Total Project Cost of the Unloading Infrastructure & Material Handling System, expressed in Indian Rupees and outstanding on the Transfer Date:

- (a) The principal amount of the debt including any subordinated debt provided by the Lenders under the Financing Documents for financing the Total Project Cost (**“the Principal”**) but excluding (i) working capital loans; (ii) any part of the Principal that had fallen due for repayment one year prior to the Transfer Date and (iii) any debt that has been rescheduled or refinanced, unless such payment had been rescheduled or refinancing made with the prior consent of NTPC; and

provided, *however*, for the purpose of this Agreement the Debt Due shall not exceed normative value as specified in Article 13.1 (c) of this Agreement

“Development Plan” means the site development plan for the Unloading Infrastructure & Material Handling System conforming to the provisions of the RFP, this Agreement and, inter alia, providing for the following:

- (a) Detailed layout plan including technical drawings for the entire Unloading Infrastructure & Material Handling System;
- (b) Details of development plan of each component of the Project Assets in the Unloading Infrastructure & Material Handling System;
- (c) Project implementation/construction schedule with identified milestones, including the phasing of the Project, if any.

“Dispute Resolution” shall have the meaning set forth in Article 16 of this Agreement;

“Equity” means the paid up equity share capital of the Operator representing the equity component of the Actual Project Cost of the Unloading Infrastructure & Material Handling System subject to the limits specified as per Article 13.1 (c), as capitalized in the books of the Operator and duly certified by the Statutory Auditors.

“Encumbrances” means, in relation to the Project, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries;

“Event of Default” means an Operator Event of Default and/or NTPC and/or IWAI Event of Default, as the context may require or admit as referred in Article 11 of this Agreement;

“Execution Date” means the date of execution of this Agreement

“Expert” means any person, body, organization of repute with recognized technical/professional expertise in respect of any field, matter or subject relevant for the purpose of this agreement

“Force Majeure” or “Force Majeure Event” shall have the meaning ascribed to it in Article 10 of this Agreement;

“GOI” means the Government of India;

“Good Industry Practice” means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced Operator engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Operator in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner;

“Government Instrumentality” means any department, division or sub-division of the Government of India or the State Government and includes any commission board, authority, agency or municipal and other local authority or statutory body including Panchayat under the control of the Government of India or the State Government, as the case may be, and having jurisdiction over all or any part of the Project or the performance of all or any of the services or obligations of the Operator under or pursuant to this Agreement;

“Imported Coal Supplier(s)” means any agency which will be appointed by NTPC directly or through other agencies (in case NTPC intends to procure the desired quantities of coal required for Barh STPP through a third party suppliers and not directly itself), who will be/is responsible for procurement and import of coal, its transportation and delivery through the Operator at Barh STPP during the subsistence of this Agreement and in accordance with the Coal Transportation Agreement;

“Indemnified Party” means the party entitled to the benefit of an indemnity pursuant to Article 15 of this Agreement;

“Indemnifying Party” means the party obligated to indemnify the other Party pursuant to Article 15.2;

“Insurance Cover” means the aggregate of the maximum sums insured under the insurances taken out by the Operator pursuant to Article 9.1, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable in relation to such act or event;

“**KoPT**” means Kolkata Port Trust created under Major Port Trust Act, 1964;

“**LAD**” means the least available depth in navigable channel maintained by IWAI;

“**Lenders**” means the financial institutions, banks, multilateral lending agencies, NBFCs, trusts, funds and agents or trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide finance to the Operator under any of the Financing agreements for meeting all or any part of the Total Project Cost and who hold *pari passu* charge on the assets, of the Operator;

“**Material Adverse Effect**” means any circumstance or act or event which materially affects or restrict or frustrates the ability of either Party to perform any of its obligations under and in accordance with the provisions of this Agreement or the legality, validity, binding nature or enforceability of this Agreement and which circumstance or act or event causes a material financial burden or loss to either Party;

“**Material Breach**” means a breach of the obligations, terms and conditions of this Agreement or covenants by a Party, which materially and substantially affects or is likely to affect the Project/ the performance of the transactions contemplated by this Agreement or has/is likely to have a Material Adverse Effect.

“**NTPC Land**” shall mean and refer to the land belonging to NTPC, located around Barh STPP and as detailed in Schedule F hereof, required for construction of pipe conveyor system by the Operator in terms hereof.

“**Material Handling System**” means construction and operation of Pipe Conveyor system along with other ancillary structure that is required for delivery of 3 MMTPA coal inside the coal stack yard to be developed by the Operator at the Project Site in accordance with the provisions hereof.

“**Month**” means the calendar month as per the Gregorian calendar

“**National Waterway-1**” or “**NW1**” shall mean Ganga-Bhagirathi- Hooghly river system between Haldia (Sagar) and Allahabad (1620 Kms) declared as NW1 in October 1986 by IWAI.

“**Non-Political Event**” shall have the meaning set forth in Article 10.2;

“**Operation Period**” means the period commencing from the COD and ending on the Transfer Date and as specified in Article 2.3;

“**Operator**” shall have the meaning attributed thereto in the array of Parties hereinabove as set forth in the Recitals;

“**Operator Default**” shall have the meaning set forth in Article 11.1 (a);

“Ocean Freight” means the freight that is to be paid by Imported Coal Supplier(s) and/or NTPC and/or their designated agency(ies), as the case may be to vessel owner/agent for transportation of imported coal from port of Origin to Transfer Point;

“Ocean Going Vessel” means a seaworthy gearless Panamax and Capesize vessel(s) , as the case may be which would be used for navigation in sea as a means of transportation of coal from port of origin to Transfer Point.

“Party” means either NTPC, IWAI or the Operator or, where the context admits or requires, the Successful Bidder, and **“Parties”** means collectively NTPC, IWAI and the Operator and, where the context admits or requires, the Successful Bidder

“Panamax Vessel” means an Ocean Going Vessel with a DWT of upto 80,000 MT

“Person” means any natural person, firm, corporation, company, voluntary association, partnership, joint venture, trust, incorporated organization, unincorporated organization, any government or competent authority or instrumentality thereof or other entity.

“Performance Security” shall have the meaning set forth in Article 4;

“Political Event” shall have the meaning set forth in Article 10.3;

“Project” means the provision of the services by the Operator pursuant to Article 2.1 of this Agreement and includes the scope identified in Article 2.2 of this Agreement, which have to be provided in accordance with the provisions of this Agreement;

“Project Agreements” means, collectively this Agreement, Coal Transportation Agreement and any other material agreements (other than the Financing Documents) entered into or may hereinafter be entered into by the Operator in connection with the transportation of coal from Transfer Point upto delivery of coal inside the coal stack yard of power station;

“Project Assets” mean the fixed infrastructure provided by the Operator at the Project Site including Unloading Infrastructure and Material Handling System;

“Project Milestones” means the project milestones as indicated in **Schedule D** of this Agreement;

“Project Requirement” means services and facilities with regard to carrying out the Project including (i) midstream unloading of coal from Ocean Going Vessel, (ii) transportation of coal (a minimum of 3 MMTPA of coal per annum) through Vessels up to Barh (iii) Unloading and delivery of coal at the coal stack yard of Barh STPP and (iv) transfer of Project Site, Unloading Infrastructure and Material Handling System upon expiry or termination of the Agreement, as the case may be.

“Project Site” means a land parcel admeasuring approximately 5 acres and as detailed in Schedule F hereof to be provided by NTPC to the Operator on a license/ right to use basis for development and operation of Project Assets, in accordance with the provisions of this Agreement.

“Request for Proposal” or **“RFP”** “means the Request for Proposal dated ----, 2014 issued by IWAI for and on behalf of NTPC inviting bids/proposals for the Project, and includes any addendum/clarifications issued in respect thereof by IWAI;

“Successful Bidder” means the Consortium/entity, company, M/s [.....] that has been successful in the bidding process for the Project and that has[incorporated or has been selected as] the Operator.

“Tax” means all forms of taxation whether direct or indirect and whether levied by reference to income, profits, gains, net wealth, asset values, turnover, added value, goods, services, works, import, export, production or other reference and statutory, governmental, state, provincial, local governmental or municipal impositions, duties, contributions, rates and levies (including without limitation social security contributions and any other payroll taxes), whenever and wherever imposed (whether imposed by way of a withholding or deduction for or on account of tax or otherwise) and/or levied of any nature whatsoever, whether by NTPC/IWAI or Competent Authorities, and in respect of any Person and all penalties, charges, costs and interest relating to it;

“Term” means the duration for which this Agreement shall be effective and binding on the Parties which shall be the period that commences from the Execution Date and shall continue till the Transfer Date;

“Termination” means prior termination of this Agreement pursuant to Termination Notice but shall not, unless the context otherwise requires, include the expiry of this Agreement due to efflux of time in the normal course;

“Termination Notice” means the communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement;

“Termination Payment” shall have the meaning ascribed thereto under Article 13;

“Transfer Date” means the date of expiry by efflux of 10 (ten) years period from COD or early termination as the case may be, of this Agreement in accordance with terms of this Agreement.

“Transfer Point” means the location identified by the Operator from where the coal would be unloaded and transferred from Ocean Going Vessels (Panamax and Capesize) to Operator’s Vessels.

“Transshipment Infrastructure” means the mechanism infrastructure and facilities including but not limited transshiper and transloader required for unloading and transferring of coal from Ocean Going Vessels and loading onto the Operator’s Vessels.

“Unloading Infrastructure” means civil/ mechanical structures for berthing of vessels, equipments for unloading of the coal from vessels and delivery of coal on Material Handling System.

“Vessels” means river sea vessels or any combination of coastal vessel/river sea vessels/inland vessel (Self propelled/Tug and barge combination) capable of 24 hours and round the year operations and shall abide by applicable rules of Competent Authority, procured by the Operator for transferring the coal from the Transfer Point to Barh.

“Works” or “Scope of Works” means as provided in Article 2.2.

1.2 **Principle of Interpretations**

- (a) The words and expressions beginning with capital letters and defined in this Agreement shall unless the context otherwise requires have the meaning ascribed thereto herein and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules –
- (b) In this Agreement, unless the context otherwise requires,
 - (i) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
 - (ii) references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
 - (iii) words importing singular shall include plural and vice versa, and words importing the masculine shall include the feminine gender; and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organizations or other entities (whether or not having a separate legal entity);
 - (iv) references to a “person” and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) or two or more of the above and shall include successors and assigns;
 - (v) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;

- (vi) the words “include” and “including” are to be construed without limitation and shall be deemed to be followed by “without limitation” or “but not limited to” whether or not they are followed by such phrases;
- (vii) references to “construction” include, unless the context otherwise requires, investigation, design, developing, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and “construct” shall be construed accordingly;
- (viii) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (ix) any reference to day shall mean a reference to a calendar day;
- (x) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;
- (xi) any reference to any period commencing “from” a specified day or date and “till” or “until” a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- (xii) the words importing singular shall include plural and vice versa;
- (xiii) references to any gender shall include the other and the neutral gender;
- (xiv) “indebtedness” shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (xv) references to the “winding-up”, “dissolution”, “insolvency”, or “reorganization” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, arrangement, protection or relief of debtors;
- (xvi) any reference, at any time, to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause shall not operate so as to increase liabilities or obligations of IWAI hereunder or pursuant hereto in any manner whatsoever;

- (xvii) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Independent Engineer shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party or the Independent Engineer, as the case may be, in this behalf and not otherwise;
 - (xviii) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
 - (xix) references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears; and
 - (xx) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (“the Damages”).
- (c) The rule of construction, if any, that a contract should be interpreted against the Parties responsible for drafting and preparation thereof, shall not apply.

1.3 Measurements and Arithmetic Conventions

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

1.4 Ambiguities within the Agreement

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

- (a) Between two Articles of this Agreement, the provisions of specific Articles relevant to the issue under consideration shall prevail over those in other Articles;
- (b) Between the Articles and the the Schedules/ Appendices/ Annexures, the Article shall prevail, save and except as expressly provided in the Articles or the Schedules/ Appendices/ Annexures;
- (c) Between the dimension scaled from the drawing and its specific written dimension, the latter shall prevail; and

- (d) Between any value written in numerals and that in words, the latter shall prevail.
- (e) Between the provisions of this Agreement and any other documents forming part of this agreement , the former shall prevail

1.5 **Priority of Agreements and Errors/Discrepancies**

This Agreement, and all other agreements and documents forming part of this Agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and other documents and agreements forming part hereof shall, in the event of any conflict between them, be in the following order:

- (a) this Agreement; and
- (b) all other agreements and documents forming part hereof;

i.e. the Agreement at (a) above shall prevail over the agreements and documents at (b) above.

ARTICLE -2: APPOINTMENT OF OPERATOR AND SCOPE OF WORK

2.1 Appointment of Operator

NTPC hereby appoints the Operator as the exclusive entity that would provide during the Operations Period: (i) services of unloading of coal from Ocean Going Vessels, transportation of coal on Vessels through National Waterways – I till Barh STPP, (ii) development of the Project Assets including the design, construction finance, operation of the Unloading Infrastructure and Material Handling System and any facility related thereto; (iii) manage, operate and maintain the Project Assets; (iv) handling of coal till coal stack yard of Barh STPP using the Material Handling System; (v) transfer to NTPC, in accordance with the provisions of this Agreement, the Unloading Infrastructure and Material Handling System on the termination/expiry of this Agreement and (vi) perform and fulfil all obligations of the Operator in accordance with this Agreement.

It is hereby clarified that the appointment of the Operator as an exclusive inland waterways transporter in accordance with the provisions of this Agreement is limited only to the transportation of 3MMT per annum of coal to Barh STPP.

2.2 Scope of work

The scope of work of the Operator in implementing the Project and its obligations shall, for the Term of this Agreement, *inter alia*, include:

- (a) Prepare and submit to NTPC, the design and drawings of the Unloading Infrastructure and Material Handling System in accordance with the provisions of this Agreement;
- (b) formulate and implement a detailed plan in accordance with which following scope of works shall be performed by the Operator:
 - (i) coal would be unloaded and transferred from Ocean Going Vessels (both Panamax and Capesize vessels) to the Operator's Vessels at such locations as are identified by the Operator as being suitable for such unloading from the Ocean Going Vessels to the Vessels by the Operator (such location being referred to as the "**Transfer Point**").
 - (ii) The Transfer point shall be identified and finalized by the Operator in accordance with the Applicable Laws and in consultation with the concerned port authorities including but not limited to the Kolkata Port Trust (*if applicable*) and/or Paradip Port Trust and/or any other port authority
 - (iii) design, create and procure suitable and adequate infrastructure and facilities for unloading and transferring of the coal from Ocean Going Vessels (both Panamax and Capesize vessels) to Operator's Vessels at the Transfer Point ("**Transshipment Infrastructure**")

- (iv) procure and operate sufficient number of Vessels to meet movement schedule of imported coal
- (v) Facilitate NTPC in timely acquisition of land required for development of Unloading Infrastructure and Material Handling System at Barh waterfront, at such location as is determined in accordance with Schedule F of the draft Tripartite Agreement (the “**Unloading Point**”) including but not limited to liaisoning with District and State Administration for all land acquisition issues and interaction with Project Affected Persons (PAPs) for disbursement of compensation on account of land acquisition. For avoidance of doubt, NTPC shall acquire the land under the provisions of the Land Acquisition Act 1894 including its amendments if any, as may be enforced and shall also be responsible for payment of compensation in relation to the same.
- (vi) design, construct, finance, operate and maintain, Unloading Infrastructure and Material Handling System including but not limited to the pipe conveyor system and other ancillary equipments at the Unloading Point, that would be used to unload coal from the Vessels for onward delivery of coal to coal stack yard of Barh STPP. The Unloading Infrastructure and Material Handling System including pipe conveyor system will be transferred and handed over to NTPC at Re 1/- (Rupee One only) at the end of the Term.
- (vii) The pipe conveyor alignment for the carriage of coal from the Unloading Point till the Junction House (JH) 2 identified by NTPC within the coal stack yard of Barh STPP (hereinafter the “**JH 2**”) shall be developed in accordance with the Applicable Laws and guidelines, along the corridor finalized by the Operator in consultation with NTPC. Details regarding pipe conveyor is provided in Schedule G.
- (viii) Pipe Conveyor system should have a discharge capacity of 1000 TPH.
- (ix) Operator shall ensure the creation / procurement of Transshipment Infrastructure, Vessel and development of Unloading Infrastructure and Material Handling System, required for the purposes of discharge of its obligations in respect of the Project within a period of thirty six (36) months from the date of execution of the Tripartite Agreement.
- (x) Complete on board stevedoring for discharge of coal from Ocean Going Vessel to Vessels and ensure a minimum unloading rate of 12,000 Metric Tonne PDPRWWDSHINC (Per Day Pro-rata Working Weather Day Sunday Holiday Included). Operator shall be responsible for safe berthing of Ocean Going vessels alongside the transshipment infrastructure at transfer point and all the cost and expenses related to wharfage, anchorage tug charges, pilotage, mooring, fenders if any at Transfer Point.
- (xi) bear and pay all cost, taxes, levies, cess, expenses and charges in connection with or incidental to the performance of the obligations under this Agreement and under the Coal Transportation Agreement;

- (xii) comply with all Applicable Laws and obtain all Applicable Permits or Clearances and approval in all material respects as applicable during construction period and during the subsistence of the Tripartite Agreement.
- (xiii) Performance and fulfillment of all other obligations of the Operator in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Operator under this Agreement;
- (xiv) Not assign, transfer or sublet or create any lien or Encumbrance on this Agreement, the Project Site, and/ or the Project Assets, or lease or part possession thereof, save and except as expressly permitted by this Agreement.

2.3 Operation Period

The Operation Period shall commence from the COD (Date on which Operator receives the Completion Certificate in relation to the Unloading Infrastructure and Material Handling System in accordance with the terms of the Agreement) and shall extend to a period of 10 years or till termination of this Agreement as the case may be in accordance with the provision of this Agreement.

ARTICLE -3: CONDITIONS PRECEDENT

3.1 Conditions Precedent

The respective rights and obligations of the parties shall be subject to the satisfaction in full of the conditions precedents specified in this Article (the “Conditions Precedent”).

(a) Condition Precedent of IWAI

Provide navigational channel and navigational aids from Haldia to Barh

(b) Conditions Precedent of NTPC

(i) Provide the right of way to the Operator in respect of the NTPC Land, from the desiltation plant to coal stack yard of Barh STPP, for construction of pipe conveyer system.

(ii) Provide leave and license rights in respect of the Project Site to the Operator.

(c) Conditions Precedent of Operator

The Conditions Precedent required to be satisfied by the Operator shall be deemed to have been fulfilled when the Operator shall have:

(i) Submit the item-wise detailed logistic solution within 60 days of signing of Tripartite Agreement. The logistics solution submitted as part of the Technical Bid shall ensure compliance with applicable regulatory requirements, operational and safety standards of NTPC and attached as Schedule K of this Agreement.

(ii) Procure all the Applicable Permits/Licenses/Clearances including but not limited to, environmental clearances unconditionally or if subject to conditions then all such conditions shall have been satisfied in full and such Applicable Permits/Licenses/Clearances are kept in full force and effect during the construction of the Project;

Provided that upon request in writing by the Operator, NTPC/IWAI may, in its discretion, waive, after recording the reasons thereof, any of the Conditions Precedent set forth in this Article,

3.2 Each Party shall make all reasonable endeavors to satisfy the Conditions Precedent within 180 (One Hundred and Eighty days) from the date of execution of Tripartite Agreement and shall provide the other Party with such reasonable co-operation as may be required to assist that Party in satisfying the conditions Precedent for which that Party is responsible.

(a) The Parties shall notify each other in writing at least once a month on the progress made in satisfying the Conditions Precedent. Each Party shall promptly inform the other Party when any Condition Precedent for which it is responsible has been satisfied.

- (b) Each party shall make all efforts for complete fulfillment of the Conditions Precedent within 180 (One Hundred and Eighty) days from the Execution Date, and the date when the Operator, IWAI and NTPC each fulfils its Conditions Precedents shall be the Compliance Date (the 'Compliance Date'), as jointly certified in writing by the Parties/their authorized representatives forthwith upon such fulfillment, whereupon the obligations of the Parties under this Agreement shall commence
- (c) In the event: (a) NTPC and/or IWAI does not procure fulfillment of any or all the Conditions Precedent set forth in Articles 3.1 (a) and (b) within the period specified in respect thereof, and the delay has not occurred as a result of breach of this Agreement by the Operator or due to Force Majeure, NTPC and/or IWAI shall compensate the Operator by a commensurate extension (equal to the period of delay in fulfillment of NTPC's / IWAI Condition Precedent) of the COD without any penalty.
- (d) In the event (i) the "Operator" does not procure fulfillment of any or all the Conditions Precedent set forth in Article 3.1(c) within the period specified in respect thereof, and (ii) the delay has not occurred as a result of breach of this Agreement by NTPC/IWAI or due to Force Majeure, and NTPC/IWAI has not waived, fully or partially such Conditions Precedent, unless the time period for fulfilling the said Conditions Precedent has been extended by NTPC at its sole discretion, this Agreement shall be deemed to have been terminated by the mutual agreement of the Parties and no Party shall subsequently have any rights or obligations under this Agreement. NTPC shall in such an event be entitled to invoke the Performance Security and appropriate the proceeds thereof as pre estimated Damages. Provided however, in case of delay of any of the condition precedent, NTPC/IWAI may, in its sole discretion instead of terminating this Agreement, grant extension of time for the fulfillment of Conditions Precedent set forth herein above. In the event of such an extension the COD shall also be commensurately extended.

ARTICLE-4: PERFORMANCE SECURITY

4.1 Performance Security

- (a) The Successful bidder, for and on behalf of the Operator has, prior to the execution of this Agreement, as security for the due and punctual performance of all the Operator's obligations from the Execution Date hereof and during the subsistence of the Term, delivered to NTPC an unconditional and irrevocable bank guarantee #____, dated ____, for a sum of Rs 25,00,00,000 / - (Rupees Twenty Five Crores only) in favour of NTPC from a scheduled/nationalized bank of India, in the approved format as attached in Appendix VII of Instruction to Bidders (Volume I of RFP) (the "**Performance Security**").
- (b) The initial validity of the Performance Security is for three (3) years from the date of its issuance. The Operator undertakes that the Performance Security shall remain valid and effective and be maintained in full force throughout the term of this Agreement and until three months after the expiry/ termination of this Agreement (the "**Validity Period**").

The Operator shall, at least one month prior to the expiry of the existing Performance Security, furnish to the NTPC, a fresh Performance Security of the prescribed value. In the event the Operator fails to maintain the Performance Security/ furnish a fresh Performance Security, at-least 30 days before the expiry of the existing Performance Security, so as to keep the same valid and in subsistence throughout the prescribed Validity Period, the same shall be construed as an Operator Event of Default which shall entitle NTPC to terminate this Agreement in accordance with the provisions hereof and to invoke and appropriate the Performance Security already available with NTPC, fully or partially as deemed fit by the NTPC.

- (c) The Performance Security shall be provided for securing the performance of inter alia the following obligations of the Operator:
- (i) The commencement of the Construction Works relating to the development of Unloading Infrastructure and Material Handling System by the Operator within Ninety (90) days of the Approval Date;
- (ii) The commencement of operation within 36 (Thirty Six) months from the Execution Date or any extension thereof in accordance with the provision hereof.
- (iii) Effective operations of the entire Project Assets for the entire Term of the Project and delivery of coal at the coal stack yard of Barh STPP as per provision of this Agreement

4.2 Appropriation of Performance Security

- (a) In the event of the Operator being in default of the due, faithful and punctual performance of its obligations under this Agreement including but not limited to the obligations under Clause 3.1 (c) and its obligations during the Construction and Operations Period and failing to remedy such default within the relevant cure period or owing any sums to NTPC under this Agreement or in the event of there being any claims or demands whatsoever whether liquidated or which may at any time be made or have been made on behalf of NTPC for or against the Operator under this Agreement or against NTPC in respect of this Agreement, NTPC shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to call in, encash and appropriate the relevant or delinquent amounts from the Performance Security as damages for such default, dues, demands or claims.
- (b) The decision of NTPC as to any breach/delay having been committed, liability accrued or loss or damage caused or suffered shall be conclusive, absolute and binding on the Operator. The Operator specifically confirms and agrees that no proof of any amount of liability accrued or loss or damages caused or suffered by NTPC under this Agreement is required to be provided in connection with any demand made by NTPC to recover such compensation through encashment of the Performance Security under this Agreement and that no document or any action shall be required other than NTPC's written demand in this behalf.
- (c) In the event of encashment of the Performance Security by NTPC, in full or part, the Operator shall within 30 (Thirty) days of receipt of the encashment notice from NTPC provide a fresh Performance Security or replenish the existing Performance Security, as the case may be, to the original Performance Security amount. The provisions of this Article 4 shall apply mutatis mutandis to such fresh Performance Security. The Operator's failure to comply with this provision shall constitute an Operator Event of Default, which shall entitle NTPC to terminate this Agreement in accordance with the provisions of Article 13 hereof.

4.3 Release of Performance Security

Subject to the provisions hereof, NTPC shall return the Performance Security to the Operator **within 30 (Thirty) days**, of the expiry of the Validity Period as per clause 4.1 (b), provided that there are no outstanding claims of NTPC on the Operator.

ARTICLE 5 : REPRESENTATIONS AND WARRANTIES

5.1 Representations and Warranties of Parties

Each Party represents and warrants to the other that:

- (a) It is duly organized, validly existing and in good standing under the laws of India;
- (b) It has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (c) It has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorize the execution, delivery and performance of this Agreement;
- (d) It has the financial standing and capacity to undertake the Project;
- (e) This Agreement constitutes its legal, valid and binding obligation fully enforceable against it in accordance with the terms hereof;
- (f) It is subject to civil and commercial laws of India with respect to this Agreement and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof; and
- (g) It shall have an obligation to disclose to the other Party as and when any of its representations and warranties ceases to be true and valid.

5.2 Additional Representations and Warranties of Operator

In addition to the representations and warranties under Article 5.1 hereinabove, the Operator represents and warrants to IWAI/NTPC that:

- (a) The execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of its Memorandum and Articles of Association or any Applicable Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (b) There are no actions, suits, proceedings, or investigations pending or, to the Operator's knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi judicial or other authority, the outcome of which may result in the breach of or constitute a default of the Operator under this Agreement or which individually or, in the aggregate, may result in any Material Adverse Effect;
- (c) It has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Competent Authority or any other pending or potential matters which may result in any Material Adverse Effect or impairment of the Operator's ability to perform its obligations and duties under this Agreement;

- (d) It has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have any Material Adverse Effect;
- (e) No representation or warranty by the Operator, contained herein or in any other document furnished by it to NTPC/IWAI or to any Competent Authority in relation to Clearances or otherwise, contains or will contain any untrue statement of material fact or, omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (f) Each Consortium Member/the Successful Bidder was and is duly organized and existing under the laws of the jurisdiction of its incorporation and has full power and authority to consent to and has consented to the Operator entering into this Agreement and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;

Provided that whenever any pending or potential matter, including the matters listed under sub-clauses (a) to (f), comes to the knowledge of the Operator, during the Construction Period and during the Operation Period, the outcome of which may result in the breach of or constitute a default of the Operator under this Agreement or which individually or in the aggregate may result in any Material Adverse Effect or impairment of the Operator's ability to perform its obligations and duties under this Agreement, the Operator shall immediately intimate the same to IWAI;

- (g) All rights and interests of the Operator in the Project Site and the Project Assets shall pass to and vest in NTPC or its nominated agency on the Transfer Date free and clear of all liens, claims, and encumbrances, without any further act or deed on the part of the Operator or NTPC and that none of Project Assets including materials, supplies or equipment forming part thereof shall be acquired by it, subject to any agreement under which a security interest or other lien or encumbrance is retained by any person save and except as expressly provided in this Agreement; and
- (h) No sums, in cash or kind, have been paid or will be paid by or on behalf of the Operator, to any person by way of commission or otherwise for securing the Development, execution of this Agreement or for influencing or attempting to influence any officer or employee of NTPC/IWAI.
- (i) The Operator is a Special purpose Vehicle incorporated only for the purpose of the implementation of the Project and as on the date hereof, the equity shareholding pattern of the Operator is as follows:

S.No	Shareholder	Percentage Holding
1.	Successful Bidder	100%

Note: The clause may not be required in case where the selected Bidder is a company, since the formation of SPV is optional.

5.3 Additional Representations and Warranties of Successful Bidder

The aggregate direct shareholding of the Successful Bidder (Single entity or Consortium) in the subscribed and paid up equity share capital in the Operator shall be as follows:

- (a) The aggregate equity shareholding of the Successful Bidder in the issued, subscribed and paid up equity share capital of the Operator, unless otherwise approved in writing by NTPC, shall not be less than 100% (hundred per cent) during the period commencing from and including the Execution Date and up till the expiry of a period of two years from the COD (the “**Lock-in Period**”) and not less than 51% (fifty one percent) during the balance Term of the Agreement.
- (b) In case of Successful Bidder being a Consortium, the aggregate equity share capital of the Lead Member in the issued, subscribed and paid-up equity share capital of the Operator(s) shall not be less than 51% (fifty one per cent) at all times during the subsistence of the Term of this Agreement. Further, the other member of the Consortium whose technical/ financial capacity was considered for qualification of Successful Bidder as per the RFP shall hold equity share capital representing not less than 26% (twenty six per cent) of the subscribed and paid-up equity of the Operator(s) during the Lock-in Period.
- (c) The Successful Bidder shall in the event it has been selected for the Project on the strength of the technical and or financial capabilities of its/ any of the consortium member’s Associates, the said Associate shall remain an Associate of the Successful Bidder/ member of the consortium, throughout the Lock-in Period.

5.4 Disclaimer

- (a) Without prejudice to any express provision contained in this Agreement, The Successful Bidder and/or Operator affirms, acknowledges and agrees that assumptions, assessments, statements, data and information furnished in the bidding document [including this Agreement] by the IWAI/NTPC and/or by any consultant/advisor appointed by IWAI/NTPC, as the case may be, are only indicative and for the sole purpose of facilitating the formulation of the bid. The Successful Bidder and/or Operator further agrees, acknowledges and affirms that, it has, before placing reliance on the same, conducted its own investigations and analysis and checked the accuracy, adequacy, correctness, reliability and completeness thereof; and the Successful Bidder and/or the Operator shall have no claim against the IWAI/NTPC and/or its consultant, to indemnify the Successful Bidder/Operator in respect of any loss/damage/costs whatsoever arising out of or in connection with such reliance placed by the Successful Bidder/Operator on the aforesaid assumptions, assessments, statements, data and information furnished in the bidding documents [including this Agreement and the Coal Transportation Agreement] by the IWAI/NTPC and/or by any consultant appointed by IWAI/NTPC, as the case may be. The Operator/ Successful Bidder acknowledges that prior to the execution of this Agreement, the Operator/ Successful Bidder has after a complete and careful examination made an independent evaluation of the Request

for Proposal, Project, the legal framework [inter-alia including any project report/feasibility report/ furnished therein by any of its consultant, for and on behalf of the IWAI/NTPC] and the technical and financial aspects of the Project, Scope of Work, the Project Site and the suitability of its condition, soil and location for implementation of the Project, the availability of goods, materials and things implementing Project, all the information and documents provided by NTPC/IWAI, its consultants or any Competent Authority, the market and demand conditions, risks, consequences and liabilities involved in implementing the Project, and has determined to its satisfaction the nature and extent of such difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder.

- (b) The Operator/ Successful Bidder further acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in sub-clause (a) above and hereby confirms that NTPC, IWAI, any Competent Authority and their consultants shall not be liable for the same, in any manner whatsoever, to the Operator or Persons claiming through or under the it.
- (c) The Operator/Successful Bidder accepts that it is solely responsible for the verification of any design, data, documents or information provided by NTPC/IWAI/ and/ or its consultants or any Competent Authority as the case may be, to the Operator/ Successful Bidder, and that it shall accept and act thereon at its own cost and risk.
- (d) The Operator/ Successful Bidder shall be solely responsible for the contents, adequacy and correctness of the Construction Documents, data and detailed engineering prepared or procured by the Operator for implementing the Project.
- (e) The Operator further acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth above and hereby confirms that NTPC/IWAI, its consultants shall not be liable for the same in any manner whatsoever to the Operator/ Successful Bidder or any person claiming through or under any of them.

ARTICLE 6: OBLIGATION OF PARTIES

6.1 Obligation

The obligations of IWAI, NTPC and Operator shall be as under:

(a) **Obligation of NTPC**

- (i) provide leave and license in respect of the Project Site to the Operator in accordance with the provisions of clause 6.5 hereof.
- (ii) to provide the right of way to the Operator in respect of the NTPC Land, from the de-siltation plant to coal stack yard of Barh STPP, for construction of pipe conveyer system.
- (iii) Issuance of required notification and the payment for land acquisition under the provisions of the Land Acquisition Act 1894 including its amendments if any, as may be enforced.
- (iv) upon written request from the Operator, and subject to the Operator complying with Applicable Laws, provide all reasonable support and assistance to the Operator in procuring Applicable Permits required from any Competent Authority for implementation and operation of the Project. However, procurement or not procurement of any such Applicable permits/clearances shall not provide recourse to NTPC and NTPC shall not be liable in any manner whatsoever in respect thereof.
- (v) NTPC shall ensure during the Operation Period, transportation of a minimum quantity of 3 MMT (million metric tonne) of coal per annum, through the Operator using Inland Waterways Transport (IWT), either itself and/ or through the Imported Coal Supplier(s) and/or their designated agency(ies), as the case may be (in terms of the Coal Transportation Agreement) selected pursuant to the Coal Procurement Tender as the case may be (the “**Minimum Guaranteed Quantity**”) from Transfer Point to coal stack yard of Barh STPP and shall make good the deficits if any in accordance with the provisions of Article 6.3 hereof.
- (vi) NTPC either itself and/or through its Imported Coal Supplier(s) and/or their designated agency(ies), as the case may be, shall ensure delivery of coal at Transfer Point on Fairly Evenly Spread (FES) basis. NTPC will furnish to Imported Coal Supplier(s) (ICS) and/or their designated agency(ies), as the case may be a quarterly schedule of quantity with a tentative month wise break up proposed to be delivered at Barh STPP.

- (vii) To buy back the Unloading Infrastructure and Material Handling System at Re 1/- (one) lumpsum transfer price after expiry of this Agreement due to efflux of time or as per clause 13.1 (c) due to early termination of this Agreement as the case may be
- (viii) Facilitate and assist in obtaining the electricity and water connections at the Project Site on chargeable (at prevailing rates) basis for the construction of Project Assets
- (ix) To provide electricity at a single point at Project Site free of cost only during the operation of Project Assets.
- (x) Ensure that Imported Coal Supplier(s) and/or their designated agency(ies), as the case may be executes the Coal Transportation Agreement with the Operator and accepts the Operator as the exclusive transport operator appointed by NTPC for transportation of coal from Transfer Point to Barh STPP.
- (xi) Ensure timely payments by the Imported Coal Supplier(s) and/or NTPCs designated agency(ies), as the case may be to the Operator, in terms of the Coal Transportation Agreement, of the amounts due to the Operator for the Services performed as per the Schedule of Rates provided in Schedule H (*on the basis of the applicable Total transportation Rate per metric tonne*).
- (xii) Include the Coal Transportation Agreement as specified in Schedule I to this Agreement, in the Main Tender Document for Coal Import for Barh project
- (xiii) Imported Coal Supplier(s) and/or NTPCs designated agency(ies) shall reimburse to the Operator any increase in the below stipulated existing statutory charges, payable by the Operator during the Operation Period on actual basis. In case of any reduction in below stipulated charges the Total Transportation Rate per metric tonne as applicable at the time of such revision shall be adjusted accordingly.

Charges	Existing Charges
Wharfage charges levied by KoPT/ concerned port authority	@60% of that applicable for 'Foreign Cargo' at KoPT berth other than through mechanized system plus service tax
Royalty charges to be paid to Paradip Port for transloading operation at Kanika Sands*	Rs. 10 per MT
Gross Registered Tonnage (GRT) charges to Farakka Barrage Project	Rs 20 per GRT
Waterway usage charges	Rs 0.02 per GRT per kilometer

*an area comprising the radius of 2 nautical miles around a position earmarked by Lat 21°08'12" N Log 87°14'00" which has been notified for the purpose of transloading.

The Letters of KoPT, Farakka Lock Gate and Office Order of Government of India (MoS) regarding the rates are attached as Schedule A, B and J respectively

- (xiv) Support, cooperate with and facilitate the Operator in the implementation and operation of the Project in accordance with the provisions of this Agreement

(b) Obligation of IWAI

- (i) Ensure Least Available Depth (LAD) of 3 meters (with effect from December 2017) with a minimum width of Channel of 45 meters from Haldia upto Barh for a period of 330 days in a year subject to Article 10 of this Agreement.
- (ii) provide channel markings, navigational aids including night navigation facilities for 24 hrs operation of Vessels, and other navigational aids such as DGPS, etc. Details of DGPS are provided in Schedule-E.
- (iii) Maintain and ensure the availability of the above facilities during the Operations Period
- (iv) Ensure smooth 24x7 operation of lock gate at Farakka over the Operation Period, in close co-ordination with Farakka Barrage Project, to enable the crossing of Vessels within 2 hours of its arrival
- (v) Make available existing IWT facility at Haldia in case of exigency on charge basis
- (vi) to extend all necessary assistance in the form of sharing information and providing necessary inputs and data to Parties
- (vii) monitor the entire process jointly with NTPC wherever required
- (viii) traffic management on the waterways with priority to the traffic destination to Barh STPP
- (ix) issue river notices of the channel on fortnightly basis, which shall be available on website of IWAI
- (x) in case of navigational distress/emergency to the Operator, such as engine failure or collision with another Vessel, IWAI to arrange necessary help for the Operator by diverting its nearest vessel for assistance on charge basis
- (xi) Ensure availability of Least Available Depth of 3m (with effect from December 2017) at the Unloading Infrastructure at Barh, throughout the Operation Period.

(c) Obligation of Operator

The Operator shall at its own cost and expenses, and in addition to and not in derogation of its obligations set forth elsewhere in this Agreement:

- (i) comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement and the Coal Transportation Agreement.
- (ii) Perform its obligations in accordance with Good Industry Practices
- (iii) Fulfill entire Project Requirements and Scope of Work as stipulated in Article 2.2 of this Agreement;
- (iv) Facilitate NTPC in timely acquisition of the Project Site required for development of Unloading Infrastructure and Material Handling System at Barh waterfront including but not limited to liaisoning with District and State Administration for all land acquisition issues and interaction with Project Affected Persons (PAPs) for disbursement of compensation on account of land acquisition.
- (v) ensure and procure that its sub-contractors, if any, comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Operators' obligations under this Agreement;
- (vi) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its contractors in connection with the performance of its obligations under this Agreement;
- (vii) Enter into Coal Transportation Agreement with the Imported Coal Supplier(s) or any other agency nominated by NTPC.
- (viii) ensure coal transportation through IWT for target quantity to Barh STPP in time from Transfer Point to coal stack yard of Barh STPP;
- (ix) Transfer the Unloading Infrastructure and Material Handling System at Re 1/- (Lumpsum Transfer price) to NTPC after expiry of this Agreement due to efflux of time or as per Article 13.1 due to early termination of this Agreement as the case may be;
- (x) Operate and maintain Unloading Infrastructure & Material Handling System for the Term of this Agreement;
- (xi) pay in a timely manner all applicable Taxes, duties, levies, cess and utility charges in respect of the Project and its activities relating thereto, that may be levied,

claimed or demanded from time to time by any Competent Authority including any increase therein effected or fines or penalties related thereto. The Operator shall indemnify and keep indemnified NTPC from any and all liabilities and consequences arising from any and all such non-payment, delayed payment, attachment, disturbance of possession, notice, order, litigation etc.

- (xii) The Operator shall ensure that the personnel engaged by it in the performance of its obligations under this Agreement are at all times properly trained for their respective functions.
- (xiii) Operator shall bear and pay all applicable charges and levies for use of public utilities and facilities, incidental to the performance of its obligations hereunder, including but not limited to the following charges:

- a) anchorage charges levied by KoPT for Transshipment Mechanism at the Transfer Point; KoPT has approved a concessional wharfage charge @60% of that applicable for 'Foreign Cargo' at KoPT berth other than through mechanized system and nil anchorage charge on mother vessel/ transloader/ daughter vessel/river sea vessels for this Project for 3 MMTPA of coal . The above set forth charges are subject to change from time to time, during the Operation Period.
- b) Rs 10 per MT of the cargo transloaded from/to the mother vessel only to Paradip Port as Royalty.

In case the Operator finalize the Transfer Point which is not under the jurisdiction of KoPT and /or Paradip Port Trust, the Operator shall be required to do its own due diligence and finalize the commercial terms with the concerned port authorities. In such case, any incremental change in the charges shall be borne by the Operator

- c) Rs 20 per GRT to Farakka Barrage Project to enable the crossing of Vessels through Lock Gate.
- d) Waterway usage charges prevailing @ Rs 0.02 per Gross registered tonnage (GRT) per kilometer for use of National Waterways.
- e) Any increase or decrease in the above stipulated statutory charges during the Operation Period shall be passed on to Imported coal Supplier or NTPC or/and their designated agency(ies) as the case may be and accordingly the Total Transportation Rate Per Metric Tonne as applicable at the time of such revision shall be adjusted.

- (xiv) Develop Standard Operating Procedures (SOP) for operation and maintenance of Project Assets in discussion with NTPC;
- (xv) Coordinate with Imported Coal Supplier(s) and/or NTPC and/or their designated agency for coal import, Master/Agent of the Vessel and port for safe anchorage and stevedoring operations.
- (xvi) take adequate preventive measures to comply with safety and security standards of NTPC as well as other Competent Authorities, at own cost and expense
- (xvii) Intimate NTPC at least 3 months in advance for carrying out any preventive maintenance of the Transshipment Infrastructure. During the period of preventive maintenance Operator may carry out the operations with alternative arrangements.
- (xviii) Operator shall be responsible for the safe berthing of the Ocean Going Vessel alongside Transshipment Infrastructure and all incidental charges relating thereto, like wharfage on coal, anchorage including Tug charges, pilotage, mooring if any shall be on account of Operator. All other expenses not specified and incidental to transshipment and IWT movement to be paid by operator. All charges related to coal or mother vessel to be paid by ICS.

6.2 Operator's &/ or Successful Bidders Obligations pertaining to Change of Ownership

- (a) The aggregate equity share capital of the Successful Bidder in the issued, subscribed and paid up equity share capital of the Operator, unless otherwise approved in writing by NTPC, shall not be less than 100% (hundred per cent) during the period commencing from and including the Execution Date and up till the expiry of a period of two years from the COD (the “**Lock-in Period**”) and not less than 51% (fifty one percent) during the balance Term of the Agreement.
- (b) In case of Successful Bidder being a Consortium, the aggregate equity share capital of the Lead Member in the issued, subscribed and paid-up equity share capital of the Operator(s) shall not be less than 51% (fifty one per cent) at all times during the subsistence of the Term of this Agreement. Further, the other member of the Consortium whose technical/ financial capacity was considered for qualification of Successful Bidder as per Volume I of the RFP shall hold equity share capital representing not less than 26% (twenty six per cent) of the subscribed and paid-up equity of the Operator(s) during the Lock-in Period
- (c) The Successful Bidder shall further ensure, that in the event it has been selected for the Project on the strength of the technical and or financial capabilities of its/ any of the consortium member's Associates, the said Associate shall remain an Associate of the Successful Bidder/ member of the consortium, throughout the Lock-in Period.
- (d) Further, any transfer of the share capital by the Successful Bidder after the Execution Date and during the Term shall require the prior written approval of NTPC, from national security and

public interest perspective and the decision of NTPC in this behalf being final, conclusive and binding on the Operator. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavor to convey its decision thereon expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Operator from any liability or obligation under this Agreement.

- (e) Any non-compliance with the provision of this Article 6.2 by the Successful Bidder/Lead Member/ Consortium Members/ the Operator and failure to remedy such non compliance within 30 days from the date of NTPC's notice in this regard shall constitute an operator(s) Event of Default, which shall entitle NTPC to terminate this Agreement in accordance with the provisions of Article 12 hereof.

6.3 NTPC's Obligation's relating to Minimum Guaranteed Quantity

NTPC hereby assures and represents to the Operator that it shall during each year of the Operation Period, utilise the Project for transportation of a minimum quantity of 3MMT of coal per annum as measured at the Transfer Point (such quantity being referred to as "Minimum Guaranteed Quantity", MGQ), shortfall if any in the Minimum Guaranteed Quantity of coal in any particular year during the Operations Period shall be made good / compensated by NTPC to the Operator as follows:

- a) NTPC shall pay to the Operator by way of compensation, an amount arrived at by multiplying the Shortfall Quantity(*defined below*) with an amount equivalent to 75% of the Total Transportation Rate applicable in respect of the relevant year ("**MGQ Amount**"), if the actual coal quantity made available by NTPC for the Project in the particular year is less than 90% of Minimum Guaranteed Quantity and if the same cannot be adjusted against the Excess Quantity pertaining to any previous year .

Within three (3) weeks of the end of each period of twelve months of operations of the Project, the Operator shall submit to NTPC a statement ("**Annual Statement**") providing:

- (a) Computation of the total quantity of coal supplied to Barh STPP using the Project in the preceding twelve month period
- (b) "**Shortfall Quantity**" because of NTPC's default, if any (Difference between the quantity of coal actually made available by NTPC for transportation through the Project during the respective 12 month period and 90% of MGQ)
- (c) Computation of "**Excess Quantity**" (Difference between the quantity actually made available by NTPC for Project during the respective 12 month period and MGQ, where the quantity actually made available is greater than the MGQ)
- (d) Computation of the "MGQ Amount" payable to operator, in case of Shortfall Quantity. It shall be calculated by multiplying the Shortfall Quantity with the 75% of Total Transportation Rate applicable on the last day of the period of the Annual Statement in which respective Shortfall quantity is reported.

The Annual Statement would be submitted to NTPC together with the supporting documentation and calculations. The MGQ Amount will be paid to Operator directly by NTPC. The MGQ Amount will be payable on submission of a Bank Guarantee of equivalent value by the Operator in the format to be provided by NTPC. NTPC shall, within a period of thirty (30) days, make payment of the MGQ Amount as specified in the Annual Statement.

Provided however, NTPC is allowed to adjust MGQ Amount already paid / payable in any year under the provisions of the Agreement against the Excess Quantity of coal provided above MGQ (3 MMTPA) in any subsequent / earlier years of operations during the tenure of this Agreement.

The Excess Quantity in any particular year shall be adjustable against the Shortfall Quantity during the tenure of the Project. The Operator shall refund the MGQ amount, if paid earlier, proportionate to the Excess Quantity **OR** adjust Excess Quantity accrued earlier with the Shortfall Quantity, as the case may be. For refund purposes, the rates shall be same at which MGQ amount was paid to the Operator. The refund shall be made by the Operator to NTPC within 30 days of approval of Annual Statement by NTPC and on receipt of such refund NTPC shall allow the Operator to reduce the value of Bank Guarantee by the amount of refund.

The Bank guarantee shall be refunded by NTPC after the settlement of last Annual Statement at the end of the Term of Agreement.

Provided however, in the event that NTPC raises an objection to the determination of the MGQ Amount as specified in the Annual Statement it shall, within a period of three weeks from the submission of the Annual Statement:

- (a) notify the Operator of its dispute pertaining to the MGQ Amount,
- (b) within a period of one week from such dispute notice, submit a written submission of its dispute to Operator providing the specific grounds and calculations and documents relating to the dispute being raised and
- (c) make the payment of the entire MGQ Amount to the Operator, under the condition that if the dispute is resolved in favour of NTPC, then the Operator would refund the said amount together with interest applicable at the then prevailing SBI base rate plus plus 6.75% (six and three quarters percent).

It is clarified that no dispute raised by NTPC would be valid until NTPC has made the payment of the MGQ Amount pursuant to this sub-clause (c).

It is clarified that if NTPC fails to notify a dispute on the MGQ Amount within three weeks of receipt of the Annual Statement, it shall be deemed to have accepted the relevant MGQ Amount, and no disputes thereafter in relation to an Annual Statement would be valid under this Agreement.

6.4 Damages Payable by the Operator for Unexecuted Contract Quantity

In case the Operator fails or refuses to transport and deliver any or all of the MGQ of coal at Barh STPP, liquidated damages will be levied on the unexecuted portion of the MGQ @ 1% (one percent)

of the un-executed contract value [quantity of coal offered to the Operator (within 3 MMT) but refused/failed to be transported to Barh STPP by the Operator, for reasons not attributable to NTPC and or Force Majeure (**‘Unexecuted Contract Quantity’**) multiplied by the applicable Transportation Rate per Metric Tonne] hereinafter referred to as the **“Un-executed Contract Value”**. Provided however, this clause 6.4 shall be applicable only in case where the Operator fails or refuses to transport and deliver more than 10% of the MGQ of coal in any particular year.

6.5 Obligations of the Parties in relation to the License of the Project Site

- (a) In consideration of this Agreement and the covenants and warranties on the part of the Operator herein contained, NTPC shall, on or before the Compliance Date, grant leave and license rights in respect of all the land comprising the Project Site, on “as is where is basis” to the Operator, at a nominal license fee of Rs. 1 (one) per annum. The Project Site so made available to the Operator on a leave and license basis, shall be used for the purposes of the Project, more specifically for the development, creation and operation of the Unloading Infrastructure and Material Handling System.
- (b) It is expressly agreed and hereby clarified that the leave and license so granted to the Operator in terms hereof, in respect of the Project Site, shall always be coterminous with the Term of this Agreement and shall terminate and determine automatically and forthwith, without the need for any action to be taken by NTPC to terminate the licence, upon the termination of this Agreement for any reason whatsoever.
- (c) During the Term, the Operator shall protect the Project Site from any and all trespass, encroachments and/ or Encumbrances, and shall not place or create nor permit any contractor or other person claiming through or under the Operator to place or create any Encumbrance or security interest over all or any part of the Project Site or the Project Assets, or on any rights of the Operator therein or under this Agreement, save and except as otherwise expressly set forth in this Agreement.
- (d) The licence, right of way and right to the Project Site, to be granted to the Operator in terms hereof, shall always be subject to the right of access of the NTPC and/ or Iwai and their employees and agents for inspection, viewing and exercise of their right and performance of their obligation under this Agreement.

ARTICLE 7: IMPLEMENTATION OF THE PROJECT

7.1 Construction Documents

(a) Preparation of Construction Documents

Within 60 (Sixty) days from the compliance date, the Operator shall, at its cost, charges and expenses, prepare the Construction Documents in accordance with the provisions hereof and the Applicable Laws and submit the same, along with the specifications and calculations, to NTPC and IWAI for its approval.

It is hereby clarified that the Operator shall submit: (i) design memorandum for Unloading Infrastructure and Material Handling System and (ii) the layout plan for Unloading Infrastructure and Material Handling System as a part of the Construction Document for approval from NTPC as required in this sub-clause

(b) Review and Approval of Construction Documents

- (i) NTPC shall review the Construction Documents and specifications submitted by the Operator and, subject to the provisions of sub-Article (ii) herein below, communicate its approval within thirty (30) days from the date of submission thereof by the Operator.
- (ii) In the event that NTPC has any objection to the Construction Documents and specifications and calculations or any part thereof, it shall promptly and no later than thirty (30) days of submission of the Construction Documents, notify the Operator of its objections, seek clarifications or suggest changes or modifications or corrections thereto. Thereupon, the Operator shall within seven (7) days of such notification provide the necessary clarification and/ or re-submit the Construction Documents and/or specifications and calculations or part thereof, as the case may be, after incorporating the changes, modifications or corrections suggested by NTPC and the NTPC shall approve the same within fifteen (15) days of such re-submission.
- (iii) The date, when NTPC approves the Construction Documents submitted to them by the Operator shall be deemed to be the “**Approval Date**”.
- (iv) The Operator shall not be entitled to any extension of time for completing construction or any other relief on account of delay caused due to providing any clarification or in resubmitting the Construction Documents.

- (v) The Operator shall not change any Construction Documents, specifications and calculations approved by NTPC under this Agreement, without the prior written consent of NTPC.

Provided that the Operator may, for more efficient functioning of the Project Assets, propose to and seek the consent of NTPC for changes to the approved Construction Documents and specifications of any equipment consistent with all design standards applicable to Unloading Infrastructure & Material Handling System and the Applicable Laws may approach NTPC for reconsideration.

It is provided further that the Operator shall bear all the costs and expenses with respect to such change.

- (vi) Notwithstanding the approval by NTPC, the Operator shall be solely responsible for any defect and/or deficiency in the Construction Documents relating to Project Assets or any part thereof and accordingly the Operator shall at all times remain responsible for its obligations under this Agreement.
- (vii) The Operator shall in no way represent to any Person that, as a result of any review by NTPC, NTPC have accepted responsibility for the engineering or soundness of any work relating to Project Assets or part thereof carried out by the Operator and the Operator shall, subject to the provisions of this Agreement, be solely responsible for the technical feasibility, operational capability and reliability of Project Assets or any part thereof.
- (viii) Within ninety (90) days of Construction Completion, the Operator shall furnish to NTPC three (3) copies of "as built" drawings relating to the Project Assets as actually designed, engineered and constructed, including without limitation an "as built" survey illustrating the layout of the Project Assets and setback lines, if any, of the buildings and structures forming part of the Project Assets.

7.2 Mobilization and Commencement

- (a) The Operator shall mobilize its manpower, plant, equipment, materials and resources and commence the Construction Works of the Project Assets within Ninety (90) days of the Approval Date.
- (b) Prior to commencement of Construction Works, the Operator shall
 - (i) submit to NTPC, with due regard to Project Implementation Schedule and Scheduled Construction Completion Date, its design, engineering and construction time schedule created using precedence network techniques, construction methodology outlining, inter alia, the quality assurance, safety and surveillance plan and programme of works

- (ii) have requisite organization and designate and appoint suitable officers/representatives, as it may deem appropriate, to supervise the construction and operation of Project Assets and to coordinate with NTPC.
- (c) Within Ninety (90) days of the Approval Date, the Operator shall develop and institute a quality assurance system and implement the same until the end of the Operation Period. The quality assurance system shall involve maintenance of appropriate records, documents and data, etc. regarding the construction and operation of the Unloading Infrastructure and Material Handling System. NTPC or their nominees shall have the right to inspect, periodically or at random, such records, documents and data etc. and as applicable to make copies thereof, verify the samples or take measurements. The Operator agrees to provide full co-operation to NTPC/IWAI and NTPC's/IWAI's nominee in this behalf.
- (d) The Operator shall give priority to safety in its construction and planning activities in order to protect life, health, property and environment.

7.3 Interruption during Construction Period

During the Construction Period, the Operator may, at its cost and clearances, interrupt the road traffic near the Project Site if such interruption and diversion is necessary for the efficient progress of Construction Works and conforms to Good Industry Practice; provided that such interruption and diversion shall be undertaken by the Operator only with the prior written approval from the concerned Competent Authority which approval shall be facilitated by NTPC on a best effort basis. For the avoidance of doubt, it is agreed that the Operator shall at all times be responsible for ensuring safe operation of Construction Works and shall restore the interruption or diversion within the period specified by the Competent Authority.

7.4 Construction of Unloading Infrastructure & Material Handling System

- (a) The Operator shall construct, install and establish the Unloading Infrastructure & Material Handling System, in accordance with the Applicable laws, the provisions hereof and Good Industry Practice within 36 (thirty six) months from the Execution Date unless extended as provided herein, including the basic and detailed engineering, design, completion, testing and commissioning in accordance with the provisions of this Agreement and after obtaining, as applicable, the sanction to the building plans, with necessary designs, plans and specifications from the proper municipal or other authority, at its own expenses.
- (b) The Operator shall, at its own cost and expense, arrange the water and other utilities as may be required for execution and implementation of the Construction Works. NTPC may facilitate in obtaining the Power connection to Operator at one point on the site on chargeable basis.

- (c) The Operator shall be responsible for the design and programming of the Construction Works and for the accuracy and completeness of the information used for such design and programming in accordance with the requirements established herein. The Operator shall be responsible for any discrepancies, errors or omissions in the data, specifications, drawings and other technical documents that it has prepared or procured, whether the same have been approved, or not approved by IWAI/NTPC.
- (d) The Operator shall ensure that all contract(s) and arrangement(s) entered into in relation to the Construction Works shall (to the extent such provisions can be reasonably obtained in the market concerned) include provisions whereby the relevant Subcontractor warrants that each part of such Works carried out there under shall be fit for its purpose and free from all defects in design, workmanship and materials.
- (e) The Operator shall ensure that the Works shall comprise only materials, goods and workmanship which are of sound quality and which have been manufactured and prepared in accordance or are in conformity, as the case may be, and that each part of the Works shall be fit for the purpose for which it is required as stated in or as may be reasonably inferred from the such plans.
- (f) In the execution of the Construction Works, the Operator shall procure coordination amongst and avoidance of conflicts in the working of the Subcontractors, including all types of Supplier(s), agents and consultants. The Operator shall monitor and supervise the activities of the Subcontractors, retained by it to fulfill its obligations hereunder, under the terms of their respective agreements.
- (g) The Operator shall carry out or cause to be carried out the Construction Works with the skill, care and diligence to be expected of appropriately qualified and experienced professional designers, engineers and contractors with experience of work similar in scope and nature to that required under this Agreement. The Operator shall design, engineer and execute the construction and implementation of the Works using the best design and engineering principles and practices.
- (h) The Operator shall at its responsibility arrange for materials such as bricks, cement, steel, aggregates, soil, bituminous and asphalt materials, chemicals, consumables and any other materials used in undertaking the Works, as well as equipment, machinery, tools and ancillary materials such as shuttering and scaffolding, bearings, joint fillers, boulders and similar materials. The Operator shall make arrangements for transport, loading and unloading, stacking and proper storage (including making sheds) for all materials and equipment in a manner not affecting normal operation/safety/security of NTPC. NTPC/IWAI shall have the right to inspect and check the quality and quantity of the materials and equipment and their storage in compliance with the terms of this Agreement.
- (i) The Operator shall be solely and exclusively responsible for the recruitment, transportation, accommodation, catering, payment of the salaries, wages and other payments and costs

incidental thereto, health, hygiene, safety etc. and all taxes, charges, levies, duties payable under Applicable Laws arising from the respective terms and conditions of employment of all labor and personnel employed on or connected with the Works or the Project Site under or through whatever legal relationship.

- (j) The Operator shall ensure that at all times during the Construction Period, a Project manager, notified in writing to NTPC, having appropriate experience in like works and take charge of and monitor, oversee and ensure the construction of the Works, as notified in writing to NTPC and IWAI (referred to as the “**Operator’s Representative**”).
- (k) The Operator shall organize the Project Site during the Construction Period with regard to safety precautions, fire protection, security, transportation, delivery of goods, materials, plant and equipment, control of pollution, maintenance of competent personnel and labour and industrial relations and general site services including, without limitation, access to and on the Project Site and shall be liable for the safe storage and handling of and removal from the Project Site of all toxic and hazardous materials and substances.
- (l) The Operator shall make its own arrangements at its cost for quarrying, if necessary, and observe and fulfill the environmental and other requirements under the Applicable Laws and Clearances.
- (m) The Operator shall confine its activities to the Project Site and to any additional areas arranged by the Operator at its cost and not encroach upon, damage or degrade adjacent land unreasonably and be liable for all costs and consequences for its failure to do so.
- (n) The Operator shall promptly remove from the Project Site, in accordance with Good Industry Practice, all surplus construction machinery and materials, waste materials (including, without limitation, hazardous materials, all types of solid and liquid waste), rubbish and other debris, and keep the Project Site in a neat and clean condition and in conformity with the Applicable Laws and Clearances.
- (o) The Operator shall within thirty (30) days of Construction Completion clear the Project Site of all temporary structures, labour camps, site offices, utility lines and surplus or unused materials, plant, equipment or tools, etc.
- (p) For the purposes of determining that the construction of the Project Assets is being undertaken in accordance with the provisions of this Agreement and for quality assurance, the Operator shall carry out such tests, at such time and frequency and in such manner, as may be required by NTPC and IWAI or as may be necessary in accordance with Good Industry Practice. The Operator shall promptly carry out such remedial measures as may be necessary to cure the defects or deficiencies, if any, indicated in such test results. The Operator shall promptly report to NTPC and IWAI the remedial measures taken by it to cure the defects/deficiencies, if any, indicated in the test results.

- (q) If NTPC and IWAI reasonably determine that the rate of progress of the construction of the Unloading Infrastructure & Material Handling System is such that the Construction Completion is not feasible on or before the Scheduled Construction Completion Date, it shall so notify the Operator. Thereupon, the Operator shall within 7 days thereof, notify NTPC and IWAI about the steps it proposes to take to expedite progress and the period within which it shall achieve Construction Completion.
- (r) The Operator shall execute the Construction Works in accordance with the Project Implementation Schedule and achieve Construction Completion by the Scheduled Construction Completion Date, unless such time has been extended in accordance with provisions hereof.

7.5 Monthly Progress Report

During the Construction Period, the Operator shall, no later than 7 (seven) days after the close of each month, furnish to NTPC a monthly report on progress of the Construction Works and shall promptly give such other relevant information as may be required by the NTPC.

7.6 Inspection

During the Construction Period, NTPC/IWAI shall have the right to inspect and supervise either itself or through its nominated agency, the Project Assets and make a report of such inspection (the “Inspection Report”) stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Scope of the Project and Specifications and Standards. It shall send a copy of the Inspection Report to IWAI, NTPC and the Operator within 7 (seven) days of such inspection and upon receipt thereof, the Operator shall rectify and remedy the defects or deficiencies, if any, stated in the Inspection Report. Such inspection or submission of Inspection Report by the NTPC/IWAI shall not relieve or absolve the Operator of its obligations and liabilities hereunder in any manner whatsoever.

7.7 Construction Completion

- (a) The Unloading Infrastructure and Material Handling System shall be deemed to be completed only when NTPC and IWAI issue the Construction Completion Certificate in accordance with the provisions of Article 7.7 (b) (referred to as the “**Construction Completion**”).

Provided further the Operator shall not be in breach of this provision, if any non-fulfillment or delay in fulfillment of its obligations herein are caused by (i) the occurrence of an event of Force Majeure specified under Article 10 hereof; or (ii) a NTPC Event of Default under this Agreement (iii) IWAI Event of Default under this Agreement

- (b) Subject to the provision of sub-Article (a) the Operator shall achieve Construction Completion of the Unloading Infrastructure and Material handling System, in accordance

with the provisions hereof , on a date not later than Thirty Six (36) months of the Execution Date (referred to as the “**Scheduled Construction Completion Date**”). At-least 15 days prior to the likely construction completion, Operator shall operate the facility on trial basis (or as mutually agreed upon by all parties to this Agreement) to the satisfaction of NTPC and IWAI. NTPC shall then issue the “**Completion Certificate**”

7.8 Delay in Construction Completion and Liquidated Damages therein

Subject to any of the provisions of this Agreement providing for extension of time for performance or excuse from performance, as the case may be, of any of the obligations of the Operator under this Agreement, the Operator shall pay to NTPC liquidated damages at the rate of 0.1% (zero point one percent) of the Performance Security for each day of delay of part thereof, in completion of Construction Works, beyond the Scheduled Construction Completion Date and until the achievement of COD. In case the aggregate delay in achievement of COD exceeds 180 (One Hundred and Eighty days) for reasons not attributable to NTPC and or Force Majeure, NTPC shall be entitled to terminate this Agreement in accordance with the provisions hereof and forfeit the Performance Security.

7.9 Operation and Maintenance

- (a) The Operator shall during the Operation Period operate and maintain the Project Assets at its own cost as per the Standard Operating Procedure (SOP) mutually agreed between the Operator and NTPC.
- (b) The Operator shall provide at its cost all equipment, consumables and materials, including, water and other facilities, necessary for undertaking the operation and maintenance of the Unloading Infrastructure and Material Handling System. Maintenance shall include regular, routine, periodic and preventive maintenance and the replacement of equipment/consumables etc. and upkeep of the Unloading Infrastructure and Material handling System in good order and working condition.
- (c) Save and except as otherwise expressly provided in this Agreement, if the Unloading Infrastructure or Material handling System or any part thereof shall suffer any loss or damage during the Operation Period, from any cause whatsoever, the Operator shall, at its cost and expense rectify and remedy such loss or damage in a manner so as to make the Unloading Infrastructure & Material Handling System conform to the quality and performance as prescribed by this Agreement.
- (d) The Operator shall be responsible for using best efforts for ensuring the safety of persons at the Project Site and undertake the operation and maintenance of the Project Assets so as to cause the minimal disruption of the operation
- (e) Monitoring and Inspection

(i) **Bv NTPC**

NTPC shall have the right to monitor the operation of Project by itself and/or through Experts that may be appointed by it from time to time. The Experts, if engaged shall undertake the inspection and verification and report to NTPC about the Operation of the Project Assets by the Operator and the compliance thereof with the provisions of this Agreement. The remuneration, cost and expenses of such Experts shall be borne by NTPC.

(ii) **Inspection**

Notwithstanding any provisions of this Agreement and without prejudice to any of the other rights vested under the provisions hereof, NTPC , the Experts, any Competent Authority and any Person authorized by any of them, shall during the Operation Period at all reasonable times and upon reasonable notice have access to the Project Site, the Project/Project Assets and the Works to inspect and examine the materials, plant, equipment and workmanship and all the documents, reports, data, books, accounts, information for compliance thereof with the provisions of this Agreement and to check the progress of the works or for performing statutory duties and the Operator shall provide the necessary cooperation and assistance to them in this behalf.

ARTICLE 8: PAYMENTS BY OPERATOR

8.1 Payment to IWAI

- (a) Operator shall pay the applicable waterway usage charges (prevailing @ Rs 0.02 (Two Paise) per Gross Registered Tonnage (GRT)) per Km for use of National Waterways and the usage charge for use of the facilities created by IWAI as per the Inland Waterway Authority of India (Levy and collection of fees and charges) Regulation, 2011 and any amendments thereafter

ARTICLE 9: INSURANCE COVER

9.1 Insurance Cover

- (a) The Operator shall, during the Construction and Operation Period, purchase and maintain or cause to be purchased and maintained, at its own expense, insurance policies, as are customarily and ordinarily available in India on commercially reasonable terms and reasonably required to be maintained to insure the Project Asset and all related assets against risks in an adequate amount, consistent with similar facilities of the size and type and as may be required by the Lenders (referred to as the “**Insurance Cover**”).
- (b) The Insurance Cover of the Project Assets shall be made assignable to NTPC unless otherwise required by lenders and the respective insurance policies shall contain a specific stipulation to that effect;
- (c) Without limiting the generality of the foregoing, the Operator shall, at its cost and expense, purchase and maintain or cause to be purchased and maintained during the Operation Period, and in case of sub-Article (i) and (ii) below during the Construction Period, such insurances as are necessary, including but not limited to the following:
 - (i) Construction/builders’/contractors’ all risk insurance (during Construction Period);
 - (ii) Erection all risk policy(during Construction Period);
 - (iii) Comprehensive insurance for the Project Assets for their full market value or replacement cost (including fire, burglary, standard and special peril);
 - (iv) Comprehensive third party liability insurance, including injury or death of Persons who may enter the Project Site;
 - (v) Workmen’s compensation insurance policy;
 - (vi) Comprehensive Vehicle Insurance (including against theft, vandalism, damage etc.); and
 - (vii) Any other insurance that may be necessary to protect the Operator, the Persons claiming through or under it, its employees and its assets (against loss, damage or destruction at replacement value) including all Force Majeure Events that are insurable and not otherwise covered in items (i) to (vii).

9.2 Evidence of Insurance

The Operator shall, from time to time, furnish to NTPC copies of all insurance policies in respect of the Insurance Cover (or appropriate endorsements, certification of other satisfactory evidence of insurance), as soon as reasonably practical, after they are received by the Operator and furnish evidence to NTPC that all premiums have been paid and that the relevant policies remain in

existence. Each insurance policy shall provide that the same shall not be cancelled or terminated unless ten (10) days' clear notice of cancellation is provided to NTPC in writing.

9.3 Application of Insurance Proceeds

Unless otherwise provided herein, the proceeds from all insurance claims, except for life and injury, shall be promptly be applied for the repair, renovation, restoration or re-instatement of the Project Asset or any part thereof, which may have been damaged or destroyed.

9.4 Insurance Companies and Waiver of Subrogation

- (a) The Operator shall insure all insurable assets comprised in the Project Asset through Indian insurance companies and, if so permitted by GoI, through foreign insurance companies, to the extent that insurances can be effected with them.
- (b) The premiums payable on insurance coverage as indicated above, including any costs and expenses incidental to the procurement and enforcement of such insurance coverage shall be borne by the Operator.
- (c) All insurance policies supplied by the Operator shall include a waiver of any right of subrogation of the insurers there under against, inter alia, NTPC and its assigns, subsidiaries, affiliates, employees, insurers and underwriters and of any right of the insurers of any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy.
- (d) The Operator hereby further releases, assigns and waives off any and all rights of recovery against, inter alia, NTPC and its affiliates, subsidiaries, employees, successors, assigns, insurers and underwriters, which the Operator may otherwise have or acquire in or from or in any way connected with any loss covered by policies of insurance maintained or required to be maintained by the Operator pursuant to this Agreement (other than third party liability insurance policies) or because of deductible Articles in or inadequacy of limits of any such policies of insurance.

ARTICLE 10: FORCE MAJEURE

10.1 Force Majeure Events

Force Majeure Event shall mean any event or circumstance or a combination of events and circumstances (occurring in India), set out hereunder, or the consequence(s) thereof which affect or prevent the Operator/NTPC/IWAI claiming force majeure (referred to as the “Affected Party”) from performing its obligations, in whole or in part, under this Agreement and which event or circumstance: (i) is beyond the reasonable control and not arising out of the fault of the Affected Party; (ii) the Affected Party has been unable to overcome such event or circumstance by the exercise of due diligence and reasonable efforts, skill and care; and (iii) has a Material Adverse Effect on the Project. Such events shall include any or all of the following:

10.2 Non Political Events

The Non-political Force Majeure Events shall include:

- (a) Acts of God or natural disasters beyond the reasonable control of the Affected Party which could not reasonably have been expected to occur, including but not limited to, storm, cyclone, typhoon, hurricane, flood, landslide, drought, lightning, earthquakes, volcanic eruption, fire or adverse weather conditions affecting the Operation of the Project;
- (b) Radio active contamination, ionizing radiation;
- (c) Epidemic, famine;
- (d) Strikes or boycotts (other than those involving the Operator, contractors or their employees/representative or attributable to any act or omission of any of them) and not being an Other Event set Forth in 10.4, labour disruptions or any other industrial disturbances not arising on account of acts or omissions of the Operator or the Contractor ;
- (e) An act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action, nuclear blast / explosion, sabotage or civil commotion;
- (f) Any judgment or order of any court of competent jurisdiction or statutory authority in India made against the Operator in any proceedings (which are non collusive and duly prosecuted by the Operator) for reasons other than failure of the Operator or of any Person claiming through or under it to comply with any Applicable Law or terms of Clearances or on account

of breach thereof, or of any contract, or enforcement of this Agreement or exercise of any of its rights under this Agreement by IWAI;

- (g) Any unlawful or unauthorized or without jurisdiction revocation of, or refusal to renew or grant without valid cause any Clearance required by the Operator or to perform its obligations hereunder;

Provided that such modification, denial, refusal or revocation has not resulted from the Operator's (i) inability or failure to comply with any condition relating to grant, maintenance or renewal of such Clearances; or (ii) breach or failure in complying with the provisions hereof, any judgment or order or Directive of any Competent Authority or of any contract to which the Operator is bound.

- (h) Any event or circumstances of a nature analogous to any of the foregoing.

10.3 Political Events

The Political Force Majeure Events shall include:

- (a) A Change in Law to which the provisions of Article 17.16 cannot be applied;
- (b) Expropriation or compulsory acquisition by any Competent Authority of the Project or part thereof or rights of the Operator relating thereto; Provided the same has not resulted from an act or default of the Operator or any Person claiming through or under it.

10.4 Other Event

Other Events shall include:

- (a) Reduction in Least Available Depth (LAD) in the channel below 3 m (wef December 2017). at the same location due to any circumstances for a continuous period of not less than 7 (seven) days from the date of its occurrence making it impossible for the vessel to cross the same location.
- (b) Reduction in Channel Width below 30 meters at shoal locations, at the same location due to any circumstances for a continuous period of not less than 7 (seven) days from the date of its occurrence making it impossible for the vessel to cross the same location.
- (c) Breakdown of Farakka Lock Gate for more than 24 hours.

10.5 Notice of Force Majeure Events

- (a) The Affected Party shall give notice to the other Party in writing of the occurrence of any of the Force Majeure Event (referred to as “the Notice”) as soon as the same arises or as soon as reasonably practicable and in any event within seven (7) days after the Affected Party knew, or ought reasonably to have known, of its occurrence and the adverse effect it has or is likely to have on the performance of its obligations under this Agreement.
- (b) The Notice shall inter-alia include full particulars of:

- (i) the nature, time of occurrence and extent of the Force Majeure Event with evidence in respect thereof;
 - (ii) the duration or estimated duration and the effect or probable effect which such Force Majeure Event has or will have on the Affected Party's ability to perform its obligations or any of them under this Agreement;
 - (iii) the measures which the Affected Party has taken or proposes to take, to alleviate the impact of the Force Majeure Event or to mitigate the damage; and
 - (iv) any other relevant information.
- (c) So long as the Affected Party continues to claim to be affected by a Force Majeure Event, it shall provide the other Party with periodic (fortnightly) written reports containing the information called for in accordance with the terms and conditions of this Agreement and such other information as the other Party may reasonably request.

10.6 Period of Force Majeure

The 'Period' of Force Majeure shall mean the period from the time of occurrence specified in the Notice given by the Affected Party in respect of the Force Majeure Event until the expiry of the period during which the Affected Party is excused from performance of its obligations in accordance with Article 10.7.

10.7 Performance Excused

The Affected Party, to the extent rendered unable to perform its obligations or part thereof under this Agreement as a consequence of the Force Majeure Event, shall be excused from performance of such obligations provided that the excuse from performance shall be of no greater scope and of no longer duration than is reasonably warranted by the Force Majeure Event. Notwithstanding any provision of this Article 10, a Force Majeure Event shall not absolve Either Party from any obligation to make payment in respect of its obligations under this Agreement in the event such payment obligations have arisen or accrued prior to the occurrence of the Force Majeure Event.

10.8 Resumption of Performance

During the Period of Force Majeure, the Affected Party shall in consultation with the other Party, make all reasonable efforts to limit or mitigate the effects of the Force Majeure Event on the performance of its obligations under this Agreement. The Affected Party shall also make efforts to resume performance of its obligations under this Agreement as soon as possible and upon resumption shall notify the other Party of the same in writing. The other Party shall afford all reasonable assistance to the Affected Party in this regard.

10.9 Revised Timetable

To the extent the performance of the obligations of the Affected Party is affected by the Force Majeure Event, the time period for the performance of the obligations of the Affected Party shall be extended by a similar time period.

10.10 Consultation and Duty to Mitigate

The Parties shall consult with each other to determine the reasonable measures to be implemented to minimize the losses of each Party resulting from the Force Majeure Event. Except as specifically stated to the contrary, no Party shall be relieved of its obligations under this Agreement by reason of impossibility of performance or any other circumstance whatsoever beyond its control.

10.11 Termination Due to Force Majeure Event

If the Period of Force Majeure continues or is in the reasonable judgment of the Parties likely to continue beyond a period of 180 (One Hundred and eighty) days, the Parties may mutually decide to terminate this Tripartite Agreement or continue this Tripartite Agreement on mutually agreed revised terms. If the Parties are unable to reach an agreement in this regard, the Affected Party shall after the expiry of the said period of 180 (One Hundred and Eighty) days, be entitled to terminate the Tripartite Agreement.

ARTICLE 11: EVENTS OF DEFAULT

Event of Default means the Operator Event of Default or NTPC Event of Default or IWAI Event of Default or /and, as the context may admit or require.

11.1 Events of Default

(a) Operator Event of Default

The Operator Event of Default means any of the following events, unless such an event has occurred as a consequence of a Force Majeure Event (referred to as the “**Operator Event of Default**”):

- (i) the Operator’s failure to perform or discharge any of its obligation under this Agreement.
- (ii) the Operator’s failure to perform or discharge any of its obligation under any other Transaction Document, which has or is likely to have a Material Adverse Effect on the Project;
- (iii) the Operator is deemed to commit a Material Breach of this Agreement including and not limited to proper handling of cargo and such breach is not cured by the Operator within the specified cure period or if not so specified within ninety (90) days of NTPC’s notice to the Operator specifying such breach and requiring the Operator to remedy the same;
- (iv) the Operator fails to achieve transportation of 90% of Minimum Guaranteed Cargo for reasons not attributable to NTPC/IWAI for a consecutive period of three years
- (v) the Operator abandons or manifests intention to abandon the construction or operation of the Project / Project Assets without the prior written consent of NTPC;
- (vi) A breach of its obligations under the Coal Transportation Agreement, by the Operator, if the same has a material adverse effect on the performance of its obligations under the this Agreement
- (vii) any representation made or warranties given by the Operator/Consortium Members/Successful Bidder under this Agreement is found to be false or misleading;
- (viii) levy of an execution or restraint on the Operator’s assets which has or is likely to have Material Adverse Effect on the Project and such execution or restraint remaining in force for a continuous period exceeding sixty (60) days;
- (ix) the Operator engages or knowingly allows any of its employees, agents, Subcontractor agent or representative to engage in, in the course of any activity undertaken pursuant to this Agreement, any activity prohibited by law or which constitutes a breach of or an offence under any law, for the time being in force in India;

- (x) the Operator repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by this Agreement;
- (xi) the Operator has delayed payment that has fallen due under this Agreement beyond the specified time period or if not so specified beyond ninety (90) days of the due date;
- (xii) the Operator is adjudged bankrupt or insolvent;
- (xiii) the Operator does not attend to or abandons the Project for a continuous period of 7 (seven) days;
- (xiv) A breach of the Operator under the Financing Documents;
- (xv) As a result of any act or omission of the Operator, a Competent Authority expropriates, confiscates, seizes, nationalizes or compulsorily acquires any of the assets of the Operator or the shares of the Operator owned by the Successful Bidder/Consortium Members;
- (xvi) The occurrence of a breach identified as an event of default under this Agreement;

(b) NTPC Event of Default

NTPC Event of Default means any or all of the following events, unless such an event has occurred as a consequence of a Force Majeure Event or an Operator Event of Default (referred to as the “**NTPC Event of Default**”):

- (i) Fails to perform or discharge any of its obligation, including the payment obligations in accordance with provisions of this Agreement, and such failure has a material adverse effect on the performance of the Agreement by the Operator;
- (ii) any representation made or warranties given by NTPC under this Agreement is found to be false or misleading;

11.2 Rights of Parties

- (a) Upon the occurrence of the Operator Event of Default, NTPC shall without prejudice to any other rights and remedies available to it under this Agreement or law, be entitled to terminate this Agreement.
- (b) Upon the occurrence of NTPC Event of Default, the Operator shall without prejudice to any other rights and remedies available to it under this Agreement, be entitled to terminate this Agreement.
- (c) Provided that before proceeding to terminate this Agreement, the Party entitled to do so shall give due consideration and shall have due regard to the nature of the underlying Event of Default, its implication on the performance of the respective obligations of Parties under this Agreement and the circumstances in which the same has occurred.

11.3 Consultation Notice

Either Party exercising its right under Article 11.2, shall issue to the other Party a notice in writing specifying in reasonable detail the underlying Event of Default(s) and proposing consultation amongst the Parties and the Lenders to consider possible measures of curing or otherwise dealing with the underlying Event of Default (referred to as the “**Consultation Notice**”).

11.4 Remedial Process

Following the issue of Consultation Notice by either Party, within a period not exceeding ninety (90) days or such extended period as they may agree (referred to as the “**Remedial Period**”) the Parties shall, in consultation with the Lenders, Endeavour to arrive at an agreement as to the manner of rectifying or remedying the underlying Event of Default.

11.5 Obligations during Remedial Period

During the Remedial Period, the Parties shall continue to perform their respective obligations under this Agreement which can be performed, failing which the Party in breach shall compensate the other Party for any loss or damage occasioned or suffered on account of the underlying failure/breach.

11.6 Revocation of Consultation Notice

If during the Remedial Period the underlying Event of Default is cured or waived or the Parties agree upon any of the measures set out in Article 11.4, the Consultation Notice shall be withdrawn by the Party who has issued the same.

11.7 Termination Due to Events of Default

If before the expiry of the Remedial Period, the underlying Event of Default is neither cured nor waived nor the Parties and the Lenders have agreed upon any of the measures in accordance with Article 11.4, the Party who has issued the Consultation Notice shall have the right to terminate this Agreement.

ARTICLE 12 TERMINATION/EXPIRY OF AGREEMENT

12.1 Termination Procedure

Either Party (NTPC and / or Operator) entitled to terminate this Agreement either on account of a Force Majeure Event or on account of an Event of Default shall do so by issue of a notice in writing (referred to as the “**Termination Notice**”) to the other Party and simultaneously deliver a copy thereof to the Lenders. The Termination Notice shall be for a period of ninety (90) days (referred to as the “**Termination Period**”) and at the expiry of which, this Agreement shall stand terminated.

12.2 Obligations during Termination Period

During Termination Period, the Parties shall where applicable to the provisions of Article 12, continue to perform such of their respective obligations under this Agreement which are capable of being performed.

12.3 Requisition

Upon issue or receipt, as the case may be, of the Termination Notice, either as a consequence of a Force Majeure Event or as a consequence of an Event of Default, NTPC shall by a notice in writing (referred to as the “**Requisition**”) call upon the Operator to furnish the following information to enable NTPC to estimate the outstanding liabilities/assets of the Operator and/or to finalize the assets to be handed over to/taken over by NTPC:

- (a) the progress, stage and manner of implementation of the Unloading Infrastructure and Material Handling System and the details of the Project Assets and liabilities under the Financing Documents of the Operator;
- (b) data or records (to be specified by NTPC) regarding the establishment, operation and maintenance of the Project Assets;
- (c) any other information or records (to be specified by NTPC) regarding Operator and the Persons claiming through or under the Operator, its/their business, assets and liabilities;
- (d) the particulars of Contractual Arrangements and the details of functioning of the Subcontractors; and
- (e) the particulars of the security interest, if any, created in favor of Lenders in relation to the Project Assets, in accordance with the provisions hereof, supported by Lenders’ certificate

- (f) Any other details in relation to the Project that NTPC may deem necessary.

The Operator shall within a period of thirty (30) days of receipt of Requisition furnish the particulars called for by NTPC

12.4 Condition Survey

- (a) The Operator agrees that on the service of a Termination Notice or three (3) months prior to the expiry of the Operation Period by efflux of time, it shall conduct or cause to be conducted, by an Expert under NTPC's supervision, a condition survey of the Project Assets to ascertain the condition thereof, verifying compliance with the Operator's obligations under this Agreement and to prepare an inventory of the assets comprised in the Project Assets. During this period, the designated key personnel of NTPC shall be associated with the operation of Project Assets wherever required (except when the same is impossible due to a Force majeure Event) in order to facilitate smooth takeover of the same by NTPC on the Transfer Date
- (b) If, as a result of the condition survey, NTPC shall observe that the Project Site and/or the Project Assets or any part thereof has/have not been operated and maintained in accordance with the requirements thereof under this Agreement (normal wear and tear excepted) the Operator shall, at its cost and expenses, take all necessary steps to put the same in good working conditions before the Transfer Date.
- (c) In the event the Operator fails to comply with the provisions of this Agreement, NTPC may itself cause the condition survey and inventory of Project Assets. NTPC shall be compensated by the Operator for any costs incurred in conducting such survey and preparation of inventory as also in putting the Project Assets in good working condition.

12.5 Consequences of Termination

Without prejudice to any other consequences or requirements under this Agreement or under any law, the following consequences shall follow upon expiry of the Operation Period by efflux of time or termination of this Agreement due to an Event of Default or a Force Majeure Event:

(a) Transfer of Assets

- (i) On the Transfer Date, the Operator shall subject to the provisions of this Agreement:
- (A) handover and deliver, to NTPC or its nominated agency, the possession of the Project Site without any Encumbrances along with all built up structures, built up areas and buildings constructed on, over, at or under it and its right, title and interest therein and thereto;
- (B) transfer and deliver, to NTPC or its nominated agency, the Project Asset and all its rights, titles and interests therein and execute such deeds and

documents, as may be necessary for the purpose and complete all legal or other formalities required in this regard;

- (C) hand over to NTPC or its nominated agency all documents including as-built drawings, manuals, designs, documents, information and records relating to the built up structures, built up areas and buildings on, over, at or under the Project Site;
 - (D) assign, to the extent possible, to NTPC or its nominated agency at the time of transfer all unexpired guarantees and warranties by Subcontractors and Supplier(s) and all insurance policies, if any, in respect of the Project Asset; and
 - (E) at its cost transfer to NTPC or its nominee all such applicable permits which NTPC shall require for owning and operating the Project Assets which can be legally transferred. Provided if the termination is on account of NTPC's Event of Default the cost of such transfer shall be borne or reimbursed by NTPC
 - (F) at its cost, remove within 90 (ninety) days from the expiry of this Agreement, from the Project Site any and all moveable assets that are not to be taken over by NTPC under this Agreement
- (ii) It is clarified that NTPC or its nominated agency shall not take over the liabilities of the Operator, including without limitation liabilities relating to labour and personnel related obligations of the Operator and the Persons claiming through or under the Operator. All such labour and employees shall be the responsibility of the Operator/such Persons even after the termination/expiry of the Operation Period and they shall have no claim to any type of employment or compensation from NTPC or its nominated agency.
 - (iii) On the Transfer Date, Project Assets shall be in healthy / good operating condition, subject to normal wear and tear, having regard for the nature of the asset, the construction and life of the facilities, structures etc.
 - (iv) If on the Transfer Date, any Person is found to be occupying the Project Site or any part thereof, it shall be lawful for NTPC to secure summary eviction of such Person in accordance with the Applicable Laws.

(b) Clearances

The Operator shall, at its cost, transfer to NTPC or its nominated agency, all such Clearances relating to the Project Assets which NTPC may require and which can be legally transferred.

(c) Transfer Costs

- (i) The Project Assets along with Project Site without any Encumbrances shall be transferred to NTPC or its nominated agency, as the case may be, for a sum of Re 1/- (one).
- (ii) The Operator shall be responsible for the costs and expenses, including stamp duties, taxes, legal fees and expenses incurred in connection with the transfer of the unencumbered Project Assets by the Operator to NTPC or its nominated agency.

(d) Guarantees

NTPC shall be entitled to call in, forfeit, encash and appropriate any subsisting Performance Security provided by the Operator, if the termination is on account of an Operator Event of Default.

(e) Transfer of Risk

Until the Transfer Date, all risks shall lie with the Operator for loss of or damage to the whole or any part of the Project Assets unless the loss or damage is due to an act or omission of NTPC in contravention of its obligations under this Agreement. On and from the Transfer Date all risks in relation to the Project Assets shall be deemed to have been transferred to and lie with NTPC or its nominated agency.

ARTICLE 13: COMPENSATION FOR BREACH OF AGREEMENT

13.1 Compensation

(a) Termination due to Force Majeure Event

- (i) No payment shall be paid by any party in case operation stops due to Force majeure.
- (ii) The Operation Period shall be increased/ extended by the same duration for which event of force Majeure exists.

(b) Termination due to Operator Event of Default

If the termination is due to Operator Event of Default, NTPC shall forfeit the Performance Security submitted by the Operator.

(c) Termination due to NTPC Default

In the event this Agreement is terminated due to NTPC Event of Default then NTPC shall buyback the Unloading Infrastructure and Material Handling System at (1) Debt Due plus (2) 100 % (one hundred percentage) Equity.

Provided, however, for the purpose of this Agreement Debt Due and Equity shall not exceed the value as determined on a normative capital cost of (Rs. 150 cr) that is financed on Debt to Equity ratio of 70:30 and assuming uniform repayment of debt over 10 (ten) years period after COD.

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ARTICLE 14: TRAFFIC REGULATION

14.1 Traffic Regulation by IWAI

The IWAI shall regulate traffic on the Waterways / Navigation in accordance with the Applicable Laws and rules as empowered in this behalf under the Applicable Laws.

ARTICLE 15 LIABILITY AND INDEMNIFICATION

15.1 Liability of Operator

Notwithstanding anything to the contrary contained in this Agreement,

- (a) In addition to the Operator's liability and obligations and NTPC/IWAI's remedies provided elsewhere in this Agreement, the Operator shall be solely responsible for any loss of or damage to the Project Assets, losses and reasonable cost and expenses (including legal costs) in relation to the Project Site, damage to environment, death or injury to person, and any other liabilities, damages, losses and reasonable cost and expenses (including legal costs) suffered by NTPC/IWAI during the Operation Period
 - (i) resulting from any act, omission or negligence of the Operator or any other Person claiming through or under it, including Subcontractors, and their respective employees, agents, subcontractors and representatives; or
 - (ii) in connection with, arising out of, or resulting from any breach of warranty, material misrepresentation by the Operator or any other Person claiming through or under it, or non-performance of any term, condition, covenant or obligation to be performed by the Operator under this Agreement.
- (b) The Operator shall also be liable for any loss or damage which occurs as a result of any act, event, omission, negligence or default (including property circumstances, quality of materials used, workmanship, structural, design or other defects, latent or patent, non-compliance with building bye laws, other Applicable Laws, regulatory requirements of Competent Authorities or any other matter) for which the Operator is liable or which is attributable to the Operator and, in turn, the Persons claiming through or under the Operator.
- (c) The Operator shall be fully and solely liable for all works, contracts, dealings and activities in relation to the development, design, construction, maintenance and implementation of the Project.

15.2 Indemnification

- (a) Without prejudice to and in addition to the indemnification provisions elsewhere in this Agreement, the Operator agrees to indemnify and hold harmless NTPC/ IWAI and its shareholders, managers, officers, directors, employees, advisors and consultants/advisors (each a "NTPC and IWAI Indemnified Party") promptly upon demand at any time and from time to time, from and against any and all losses, claims, damages, liabilities, costs, penalties, litigation, proceedings (including reasonable attorneys' fees and disbursements) and expenses of any nature whatsoever (referred collectively, as the "**Losses**") to which NTPC/ IWAI Indemnified Party may become subject, insofar as such Losses directly arise out of, in any way relate to, or result from (i) any mis-statement or any breach of any

representation or warranty made by the Operator; or (ii) the failure by the Operator to fulfill any agreement, covenant or condition contained in this Agreement, including without limitation the breach of any terms and conditions of this Agreement by any employee or agent of the Operator or Person claiming through or under the Operator; or (iii) any claim or proceeding by any Third Party against NTPC/IWAI **Indemnified Party** arising out of any act, deed or omission by the Operator. For the avoidance of doubt, indemnification of Losses pursuant to this Article 15 shall be made in an amount or amounts sufficient to restore each NTPC/IWAI Indemnified Party to the financial position it would have been in case the losses would have not occurred.

(b) Without limiting the generality of sub-clause (a) of this Article 15.

- (i) the Operator shall fully indemnify and defend NTPC/ IWAI Indemnified Party from and against any and all Losses arising out of or with respect to (1) failure of the Operator and the Persons claiming through or under the Operator to comply with Applicable Laws and Clearances; (2) payments of Taxes relating to the Operator and the Persons claiming through or under the Operator, including contractors, Supplier(s) and representatives, including the income or other taxes required to be paid by the Operator/such Persons without reimbursement hereunder; or (3) non-payment of amounts due as a result of materials or services furnished to the Operator or any and the Person claiming through or under the Operator, which are payable by the Operator or such Person.
- (ii) the Operator shall fully indemnify, and defend NTPC/IWAI Indemnified Party harmless from and against any and all Losses which NTPC/IWAI Indemnified Party may hereafter suffer or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Operator or by the Persons claiming through or under the Operator in performing the Operator's obligations or in any way incorporated in or related to the Project. If in any such suit, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Operator shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the suspension of the injunction or restraint order. If, in any such suit claim or proceedings, the Project, or any part, thereof or comprised therein is held to constitute an infringement and its use is permanently enjoined, the Operator shall promptly make every reasonable effort to secure for NTPC/ IWAI Indemnified Party, a license, at no cost to NTPC/IWAI Indemnified Party, authorizing continued use of the infringing work. If the Operator is unable to secure such license within a reasonable time, the Operator shall, at its own expense and without impairing the provisions of this Agreement either replace the affected work, or part, or process thereof with non-infringing work or parts or process, or modify the same so that it becomes non-infringing.

- (iii) the Operator shall further indemnify, defend and hold harmless NTPC/IWAI

Indemnified Party from any and all Third Party claims for loss of or physical damage to property or for death or injury and against all Losses for personal injury and for damage to or loss of any property arising out of or in any way connected with the Operator's performance of this Agreement or arising out of any act or omission of the Operator, and in turn of the Persons claiming through or under the Operator.

- (c) Any payment made under this Agreement pursuant to an indemnity or claim for breach of any provision of this Agreement shall be net of applicable Taxes.

15.3 Indirect or Consequential Losses

Neither Party shall be responsible/liable to the other party in contract, tort, warranty, strict liability or any other legal theory for indirect, incidental, punitive, or consequential loss or damage resulting from the performance of obligations or the exercise of rights under or pursuant to the Agreement.

15.4 Survival

The provisions of Article 15 shall survive the expiry or prior termination of this Agreement.

ARTICLE 16. DISPUTE RESOLUTION

16.1 Amicable Settlement

If any dispute or difference or claims of any kind arises between the Parties in connection with construction, interpretation or application of any terms and conditions or any matter or thing in any way connected with or in connection with or arising out of this Agreement, or the rights, duties or liabilities of any Party under this Agreement, whether before or after the termination of this Agreement, then the Parties shall meet together promptly, at the request of any Party, in an effort to resolve such dispute, difference or claim by discussion between them.

16.2 Assistance of Expert

The Parties may, in appropriate cases agree to refer the matter to an independent Expert appointed by them with mutual consent. The Parties agree to abide by the decision/opinion of the Expert. The cost of obtaining the service of the Expert shall be shared equally

16.3 Arbitration

(a) Arbitrators

In the event the dispute or difference or claim, as the case may be, is not resolved, as evidenced by the signing of the written terms of settlement by the Parties, within thirty (30) days of reference for amicable settlement and/or settlement with the assistance of Expert, as the case may be, the same shall be finally settled by binding arbitration under the Arbitration and Conciliation Act, 1996. The arbitration shall be by a panel of three (3) arbitrators, one each to be appointed by NTPC and the Operator and the third (3rd) to be appointed by two (2) arbitrators so appointed, who will act as chairperson of the arbitral tribunal.

(b) Place of Arbitration

The place of arbitration shall be New Delhi/Noida but by agreement of the Parties, the arbitration hearings, if required, can be held elsewhere from time to time.

(c) English Language

The request for arbitration, the answer to the request, the terms of reference, any written submissions, any orders and rulings shall be in English and, if oral hearings take place, English shall be the language to be used in the hearings.

(d) Procedure

The procedure to be followed within the arbitration, including appointment of arbitrator / arbitral tribunal, the rules of evidence which are to apply shall be in accordance with the Arbitration and Conciliation Act, 1996.

(e) Enforcement of Award

Any decision or award resulting from arbitration shall be final and binding upon the Parties. The Parties hereto hereby waive, to the extent permitted by law, any rights to appeal or to review of such award by any court or tribunal. The Parties hereto agree that the arbitral award may be enforced against the Parties to the arbitration proceeding or their assets wherever they may be found and that a judgment upon the arbitral award may be entered in any court having jurisdiction thereof.

(f) Fees and Expenses

The fees and expenses of the arbitrators and all other expenses of the arbitration shall be initially borne and paid by respective Parties subject to determination by the arbitrators. The arbitrators may provide in the arbitral award for the reimbursement to the prevailing Party of its costs and expenses in bringing or defending the arbitration claim, including legal fees and expenses incurred by such Party.

(g) Performance during Arbitration

If the submission of and/or decision on a dispute is pending, difference or claim or until the arbitral award is published, the Parties shall continue to perform all of their obligations under this Agreement without prejudice to a final adjustment in accordance with such award.

ARTICLE 17 : MISCELLANEOUS PROVISIONS

17.1 Governing Law and Jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India and the courts at Noida/New Delhi shall have jurisdiction over all matters arising out of or relating to this Agreement.

17.2 Waiver & Remedies

- (a) The waiver by either Party, including conditional or partial waiver, of any default by the other Party in the observance and performance of any provision of or obligations or under this Agreement:
 - (i) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions or obligations under this Agreement;
 - (ii) shall not be effective unless it is in writing and executed by a duly authorized representative of such Party; and
 - (iii) shall not affect the validity or enforceability of this Agreement in any manner.
- (b) No failure on the part of any Party to exercise, and no delay in exercising, any right, power, obligation or privilege hereunder or time or indulgence granted by a Party to the other Party shall operate or be treated or deemed as a waiver thereof or a consent thereto or the acceptance of any variation or relinquishment of any such right hereunder; nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The remedies herein provided are cumulative and not exclusive of any remedies provided by the Applicable Laws.
- (c) Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation there under nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

17.3 Survival

The termination /expiry of this Agreement

- (a) shall not relieve either Party of any obligations hereunder, which expressly or by implication, survive the expiry or prior termination of this Agreement/the Development; and

- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such termination/expiry or arising out of such termination/expiry.

17.4 Entire Agreements and Amendments

- (a) This Agreement constitutes the complete, exclusive and entire statement of the terms of the agreement between the Parties on the subject hereof and supersede all previous agreements or arrangements between the Parties, including any memoranda of understanding entered into in respect of the contents hereof.
- (b) No amendment or modification or waiver of any provision of this Agreement, nor consent to any departure by any of the Parties there from, shall in any event be valid and effective unless the same is in writing and signed by the Parties or their duly authorized representative especially empowered in this behalf and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it is given.

17.5 Notices

Unless otherwise stated, notices to be given under this Agreement including but not limited to a notice of waiver of any term, breach of any term of this Agreement and termination of this Agreement, shall be in writing and shall be given by hand delivery, recognized courier, mail, telex or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below:

If to NTPC:

**Head of Station,
Barh Super Thermal Power Project**

**If to IWAI:
Director (Traffic)
Inland Waterways Authority of India
A-13, Sector I, Noida (Uttar Pradesh)**

If to the Operator:

Fax No. -----

Attn:

Or such address, telex number, or facsimile number as may be duly notified by the respective Parties from time to time, and shall be deemed to have been made or delivered (i) in the case of any communication made by letter, when delivered by hand, by recognized courier or by mail

(registered, return receipt requested) at that address and (ii) in the case of any communication made by telex or facsimile, when transmitted properly addressed to such telex number or facsimile number.

In case any Party changes its address, communication numbers, or directed attention as set forth above, it shall notify the other Party in writing prior to the adoption thereof.

17.6 Severability

- (a) If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not prejudice or affect the remaining provisions of this Agreement which shall continue in full force and effect.
- (b) The Parties will negotiate in good faith with a view to agreeing upon one or more provisions which may be substituted, as nearly as is practicable, to such invalid, illegal and unenforceable provision. Provided failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure under this Agreement.

17.7 No Partnership

Nothing contained in this Agreement shall be construed to create an association, trust, partnership, agency or joint venture among the Parties and Parties shall be liable to perform their respective duties and discharge their respective liabilities or obligations in accordance with the provisions of this Agreement. Neither Party shall have any authority to bind the other in any manner whatsoever.

17.8 Language

The language of this Agreement is English. All Notices, Correspondence, Project Agreements, Documentation, Construction Documents, Design Specifications and Standards, Data, Test Reports, Certificates and Information in respect of this Agreement shall be in the English language. All other written and printed matter, communications, documentation, proceedings and notices etc. pursuant or relevant to this Agreement shall be in the English language.

17.9 Exclusion of Implied Warranties etc

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

17.10 Counterparts

This Agreement may be executed in three counterparts, each in the like form and both when taken together shall constitute one and the same document.

17.11 Further Assurances

At all times after the date hereof the Parties shall execute all such documents and do such acts, deeds and things as may reasonably be required for the purpose of giving full effect to this Agreement.

17.12 Remedies Cumulative

The exercise of right by either Party to terminate this Agreement, as provided herein, shall not preclude, such Party from availing any other rights or remedies that may be available to it under law. All remedies available to the Parties shall be cumulative and the exercise or failure thereof of one or more remedies by any Party shall not limit or preclude the exercise of or constitute a waiver of any other remedies by such Party.

17.13 Joint and Several Liability

All members of the Successful Bidder shall be jointly and severally liable to NTPC/IWAI for compliance with the terms of this Agreement. Without prejudice to the foregoing, in the event the non-lead members cannot be made liable or recourse cannot be had to them for any reason whatsoever, the Lead Member shall be solely liable for compliance with the terms hereof. The Lead Member shall have the authority to bind the Successful Bidder and each of its members/partners/promoters except as expressly provided herein, the composition of the members comprising the Successful Bidder shall not be altered till the COD is achieved without the prior written approval of NTPC.

17.14 No Liability for Review

Except to the extent expressly provided in this Agreement.

- (a) No review, comment or approval by NTPC/IWAI/Competent Authorities/ Experts /advisors, nominees or representatives of NTPC/IWAI of the Construction Documents, the Environment Management Plan, the Specifications and Standards, the Transaction Documents or documents submitted by the Operator or its employees or agents or Persons claiming through or under the Operator nor any observation or inspection of the construction, operation or maintenance of the Project nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Operator from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Clearances; and
- (b) NTPC/IWAI or any Competent Authority or the advisors, nominees or representatives of NTPC/IWAI shall not be liable to the Operator by reason of any review, comment, approval observation or inspection or failure to review etc. in sub-clause (a) above and the Operator shall indemnify them and keep them indemnified in this behalf.

17.15 Time

Any date or period as set out in this Agreement may be extended with the written consent of the Parties, in absence of which time shall be of the essence.

17.16 Change in Law

In the event of a Change in Law results in a Material Adverse Effect, NTPC, IWAI, or the Operator may by notice in writing to the other party request such modifications to the terms of this Agreement as the requesting party reasonably believes is necessary to place it in substantially the same legal, commercial and economic position as it was prior to such Change in Law. The Operator and NTPC/IWAI shall thereafter consult in good faith to agree to such modifications and in the event agreement cannot be reached, either of them may refer the matter for determination in accordance with the Dispute Resolution Procedure.

17.17 Depreciation

For the purposes of claiming tax depreciation, the property representing the capital investment made by the Operator/Persons claiming through or under the Operator shall be deemed to be acquired and owned by the Operator/Persons claiming through or under the Operator.

17.18 Violation of Terms

The Parties agree that in the event of any breach of the provisions of this Agreement, the Parties shall suffer irreparable harm and injury and damages would not be an adequate remedy and each of the Parties (at its sole discretion) shall be entitled to an injunction, restraining order, right for recovery, suit for specific performance or such other equitable relief as a court or arbitral forum of competent jurisdiction may deem necessary or appropriate to restrain the other Party from committing any violation or enforce the performance of the covenants, representations and obligations contained in this Agreement. These injunctive remedies are cumulative and are in addition to any other rights and remedies the Parties may have at law or in equity, including without limitation a right for damages.

17.19 Interest and Right of Set Off

Any sum which is due and payable under any of the provisions of this Agreement by one party to the other shall, if the same is not paid within the time allowed for payment thereof, be deemed to be a debt owed by the Party responsible for such payment to the Party entitled to receive the same. Such sum shall until payment thereof carry interest at the rate specified herein, and if not specified at the prevailing SBI base rate per annum, from the due date and until the date of payment or otherwise

realization thereof by the Party entitled to receive the same. Without prejudice to any other right or remedy available under this Agreement or under law, the Party entitled to receive such amount shall also have the right of set off.

Provided this provision for payment of interest for delayed payment shall not be deemed or construed to (i) authorize any delay in payment of any amount due by a party or (ii) be a waiver of the underlying breach of the payment obligations.

17.20 Execution of Agreement

This Agreement is executed in triplicate and a copy each shall be retained by each of the parties hereto.

17.21 Assignment

- (a) No assignment of this Agreement, or any rights or duties hereunder shall be made in whole or in part by the Operator, at any point of time during the Term.
- (b) The Operator may assign its rights or interest or create a Security Interest in respect of its rights to or in respect of the Project Assets (except Project Site) for securing the financial assistance provided or agreed to be provided by the Lenders under the Financing Documents for financing the Project Asset; provided that any such assignment or Security Interest shall be consistent with the provisions hereof and the Lenders are made aware of the same. For the avoidance of doubt the Operator shall not have the right and authority to mortgage, encumber or create, permit or allow the subsistence of any Security Interest whatsoever on the Project Site or any part thereof, in favor of the Lenders or any person in any form, manner, device or method.

NTPC shall be informed by the Operator as to the creation of any Security Interest in favor of the Lenders, together with the Lenders particulars within a period of 14 (fourteen) days from the date such Security Interest comes into existence.

Provided further that in the event of termination of this Agreement by efflux of time or otherwise, such assignment/Security Interest shall stand extinguished. The Operator shall primarily be responsible to ensure that the Lenders are made aware of this provision and a suitable provision to this effect is incorporated in the Financing Documents.

Provided further that, nothing contained in sub-section (b) of this Clause 17.21 shall (i) absolve the Operator from its responsibilities to perform/discharge any of its obligations under and in accordance with the provisions of this Agreement; (ii) authorize or be deemed to authorize the Lenders to implement and execute the Project themselves; and (iii) under any circumstances amount to any guarantee from or recourse to the Authority.

Provided, *however*, the Operator may sub-contract whole or part of the design, construction and operation and maintenance of the Project/ Project Assets to third party contractors.

Provided, *further*, under no circumstances shall the Operator shall be absolved of its rights, duties, obligations under the terms and conditions of this Tripartite Agreement and or the Coal Transportation Agreement, and the Operator shall be solely and exclusively responsible for the implementation of the Project.

IN WITNESS WHEREOF THE PARTIES HERETO HAVE EXECUTED THESE PRESENTS ON THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN.

For and on behalf of the NTPC.

By:

Name:

Designation:

For and on behalf of the Operator

By:

Name:

Designation:

For and on behalf of the IWAI

By:

Name:

Designation:

Witness

Witness

Witness

Schedule A: Letter issued by KoPT approving concessional rates for this Project



कोलकाता पोर्ट ट्रस्ट
KOLKATA PORT TRUST
हल्दिया गोदी पारेसर
HALDIA DOCK COMPLEX
प्रशासनिक प्रभाग
Administration Division



जवाहर टावर, हल्दिया-721 607
दूरभाष नं. (03224) 263171
फैक्स नं. (03224) 263152
जिला- पश्चिम बंगाल

Jawahar Tower, Haldia- 721 607
Phone No. (03224) 263171
Fax No. (03224) 263152
Dist. Haldia Medinipur

No: Ad/101/A/1951

July 08, 2013

Mrs. Jayashree Mukherjee, IAS,
Vice Chairperson,
Inland Waterways Authority of India,
Ministry of Shipping,
Govt. of India,
A-13, Sector-1,
Noida- 201301,
Fax-(0120) 2543973

Dear Madam,

**Sub : Concessional rate of wharfage fees and anchorage charges for
transportation of imported coal for NTPC Power Plant at Barh, Bihar.**

I have been directed to refer to letter dated June 20, 2013 of Chairman, IWAI and to inform you that the Board of Trustees for the Port of Kolkata has approved that granting of the subject concession as communicated by us vide our earlier letter no. Ad/101/A/1293 dated June 05, 2013 will be valid for all vessels for a period of 10 years after start of the actual movement of import coal to NTPC plant at Barh, Bihar.

The other details including terms and conditions as communicated by us in our earlier letter no. Ad/101/A/1293 dated June 05, 2013 will remain unaltered.

Yours faithfully,

(A.K. Dutta)
Manager (Admn)
Haldia Dock Complex



कोलकाता पोर्टन ट्रस्ट
KOLKATA PORT TRUST
हल्दिया गोदी परिसर
HALDIA DOCK COMPLEX
प्रशासनिक पभाग
Administration Division



जवाहर टावर, हल्दिया-721 607
दूरभाष नं. (03224) 263171
फैक्स नं. (03224) 263162
पिनकोड - 721 607

Jawahar Tower, Haldia- 721 607
Phone No. (03224) 263171
Fax No (03224) 263152
Dist. Purba Medinipur

No : Ad/101/A/1293

June 5, 2013

Mrs. Jayashree Mukherjee, IAS,
Vice Chairperson,
Inland Waterways Authority of India,
Ministry of Shipping,
Govt. of India,
A-13, Sector-1,
Noida- 201301
Fax : (0120) 2543973.

Dear Madam,

Sub : Concessional rate of wharfage fees and anchorages charges for transportation of imported coal for NTPC Power Plant at Barh, Bihar.

This has reference to letter no. IWA/CARGO/217(A)/2011 dated 11.07.2012 on the above subject.

The matter has been considered by the Board of Trustees for the Port of Kolkata in its meeting held on 27.05.2013. The Board of Trustees for the purpose of promoting Transloading facilities within KoPT limit of fully laden Panamax vessels carrying Non-Coking Coal and subsequent loading of the said cargo into barges at the Transloading points for transfer of cargo to the power plant at Barh of NTPC as also to promote cargo movement by Inland Waterways approved the following:-

- Wharfage (on per ton or part thereof)- @ 60% of that applicable for 'Foreign Cargo' at KoPT berth other than through mechanized system plus Service Tax.
- Anchorage charge on mother vessel /- Nil
Transloader/ daughter vessels/ barges
- The above concession will be allowed for handling upto 3 IMT of coal per annum to be moved to 'Barh' by Barges, after unloading from fully laden Panamax vessels at proposed transloading facility and the concession shall remain valid for seven years from the date of communication of this letter.
- The port dues, Pilotage and towage charges wherever applicable will be levied as per prevailing rates.
- The other commercial terms, including payment terms, will be mutually agreed before commencement of the operation of the facility.

Yours faithfully,

(A. K. Dutta)
Manager (Admin)

Schedule B: Farakka Lock Gate Charges



Government of India
Ministry of Water Resources
Farakka Barrage Project
Office of the Executive Engineer
Feeder Canal Division
P.O. - Farakka Barrage
Dist.- Murshidabad (WB), PIN – 742212

This is to certify that presently toll charges for crossing vessels from Navigation Lock at Farakka is Rs. 20/- (Rupees twenty) only per G.R.T. subject to minimum Rs. 1000/- (Rupees one thousand) only per vessel/country boat.

(L.N. Singh)
Executive Engineer,
Feeder Canal Division,
Farakka Barrage Project

No. EE/FCD/AB/ 438

Date: 11/06/2013

✓ Copy forwarded to Assistant Director, IWAI, Office Building No. 1, FBP Office complex, P.O. Farakka, Dist. Murshidabad (WB) – 742212 with reference No. IWAI/FRK/FBP COR/2013-14/86 dated 01.06.2013.

Schedule C: Joint Bidding Agreement

Schedule D: Project Milestone

Operator shall be required to carry out detailed milestone based task as per the indicative scope of work provided in the Tripartite Agreement. The below table indicates the deliverable and timelines for the project to be undertaken by the Operator:

S. No.	Milestones/ Deliverables	Milestone	Months and Days
1.	Execution of Tripartite Agreement	(A)	A
2.	Acquisition of Project Site		A+6 Months
3.	Completion of Condition Precedent by both Parties	(B)	A+6 Months
4.	Submission of Construction Documents to NTPC/IWAI	(C)	B + 2 Months
5.	Approval of Construction Documents by NTPC/IWAI (Approval Date)	(D)	C + 1 Month 22 Days
6.	Mobilization of Manpower, Plant, Equipment		D + 3 Months
7.	Scheduled Construction Completion Date of Unloading Infrastructure & Material Handling System & Trial Run	(E)	A+ 36 Months
8.	Operation Period		E + 120 Months

Schedule E: Details of Navigational Aids

I. Night Navigation facilities

Night Navigation through lighted FRP buoys, shore beacon and LED lights atop manned country boats and markings have been provided on the entire route from Tribeni to Barh to enable 24 hours operation.

Further, IWAI has installed DGPS at Swarupganj, Bhagalpur and Patna covering the entire Kolkata – Barh stretch.

In addition to above, IWAI is planning to provide DGPS at Varanasi to cover entire NW1.

II. River Information System

River Information System (RIS) is under consideration for implementation between Haldia and Farakka on National Waterway No. 1. This facility between Farakka – Barh is proposed later in a phased manner. It may be noted that the same shall not be considered as a condition precedent of IWAI.

III. Navigation Lock System

The navigation lock system at Farakka is mainly for movement of vessels between the river Ganges and the canal connecting river Bhagirathi. Main dimension of the lock is provided hereunder:

- (1) Internal length 179.8 m,
- (2) Clear width between the two banks – 25.14 m with a internal depth varying from 18.09 m at u/s to 10.89 m at d/s.

The navigation lock system at Farakka belongs to Farakka barrage project (Ministry of Water Resources) which is operated and maintained by them. Various vessels of IWAI as well operators such as ODC carriers, tourism vessels regularly pass through this lock all round the year. IWAI has an office at Farakka which can be contacted for co-ordination with Farakka Barrage Project.

Schedule F: Details of Land at Waterfront near Barh STPP for development of unloading infrastructure and Material Handling System

Operator shall facilitate NTPC in the acquisition of approximately 5 acres of land for development of Unloading Infrastructure and Material Handling System. The land is about 150 meter downstream of the water intake well of Barh STPP and about 150 m inside the river from the high bank.

The above land is identified in order to facilitate the construction of pipe conveyor which is proposed to be developed by the Operator on the land already in possession of NTPC (approximately 50 m wide corridor) for laying of pipeline.

Schedule G: STANDARD AND SPECIFICATIONS OF MATERIAL HANDLING SYSTEM

I. Description of unloading and Material Handling System

The scope of work for Coal Conveying Plant are enclosed with RFP as a part of Schedule G for the Bidder for making appropriate proposal for the system. Bidders are requested to conduct their own due diligence in respect thereof .

However, following parameters/details specified shall need to be followed:-

- (a) Conveyor capacity (Rated & Design) shall be minimum
- (b) Belting shall be Fire Resistant Grade
- (c) Conveyor gallery for trough conveyor shall be specified in the Tender drawing
- (d) General layout Plan for Coal Conveying system shall be as per Tender drawings.

While submitting the bid, the bidders shall enclose detailed system description along with equipment offered for Material Handling System. It shall be responsibility of the Bidder to design, finance, construct, operate and maintain the coal conveying plant to meet the specified coal requirement.

The operator shall be responsible to Design, Finance, Build, Operate, Maintain and Transfer requisite Unloading Infrastructure which can work in synchronization with the above specified MHS and shall also have an equivalent operational life.

II. Scope of Supply & Services

- 1.00.00 (a) Bidder shall take all necessary precautions to protect all the existing equipment, structures, facilities and buildings etc. from damage. In case any damage occurs due to the activities of the contractor on account of negligence, ignorance, accidental or any other reason whatsoever, the damage shall be immediately made good by the contractor at his own cost to the satisfaction of the Employer. The contractor shall also take all necessary safety measures with specific reference to excavation in rock, at his own cost, to avoid any harm or injury to his workers and staff from the equipment and facilities of the power plant.
- (b) Bidder should note that the existing rail lines within the plant area are operational with rail traffic of coal and liquid fuel rakes. Bidder shall take all precautions to ensure the safety of existing rail tracks and other associated facilities as well as the safety of his men, material and equipment from the operating rail traffic. The bidder shall plan and make all arrangements to ensure that disruption to the existing rail traffic is minimum and shall follow the instructions of the Employer in this regard. Further, bidder shall plan and co-ordinate all his activities considering restrictions, if any, on free access to his work areas due to the rail traffic.

1.01.00 TENDER DRAWINGS

The drawings listed in the specification, form part of the specification and shall supplement the requirements specified herein. The scope and terminal points for the equipment to be furnished under this package shall be as identified in these drawings and read in conjunction

with the text of these specifications. These drawings are preliminary drawings for bidding purpose only and subject to changes that may be necessary during the detailed engineering.

- 1.01.01 In case of any conflicts / contradiction among various volumes/ sections/ annexures/ chapters/ appendices/ tender drawings of bid documents, the same shall be referred to the Employer for clarifications whose decision shall be final and binding. No extra claims shall be allowed on this account.

1.02.00 SCOPE

- 1.02.01 The scope of Coal conveying plant to be furnished, erected and commissioned under this specification shall be as detailed hereinafter. The Contractor shall be fully responsible for system and detailed design, engineering, manufacture, shop fabrication, assembly, testing and inspection at manufacturer's works, packing, dispatch, transportation, transit insurance, custom clearance etc. as applicable, delivery to site, unloading, handling and storage at site, insurance during storage, construction, erection, including erection supervision, testing, inspection, commissioning and handing over to Employer and Guarantee testing including all associated electrical, civil, structural & architectural works as specified, unless specifically excluded as per Section-Terminal Points & Exclusions.

- 1.02.02 The scope of the contractor shall be deemed to include all such items which although are not specifically mentioned in the bid documents and/or in Contractor's proposal but are needed to make the system complete in all respects for its safe, reliable, efficient and trouble free operation and the same shall be furnished and erected unless otherwise specifically excluded as per Section Terminal Points & Exclusions. The general description of the proposed system and the broad scope of work under the specification shall include but not be limited to as elaborated below.

2.00.00 DESCRIPTION, SCOPE AND TERMINAL POINTS

2.01.00 BRIEF DESCRIPTION OF PROJECT

- 2.01.01 Barh Super Thermal Power Project was originally conceived as a pit head coal based power plant of 3300MW(3X660MW + 2X660MW) capacity to be implemented in two stages. Stage-I comprising of three units of 660MW and Stage-II are comprising of two units of 660MW of the plat.

Present proposal of coal conveying plant is for carrying coal as received from jetty to plant and feeding all the stages through various interconnection in the existing coal handling plant.

- 2.01.02 Brief description of proposed Coal conveying plant:

This shall be read in conjunction with Coal Flow Diagram and the system layout enclosed with the specification.

- (i) Coal as received from Operators Vessel shall be unloaded by either slewing type grab crane or mobile type grab crane to an feed hopper through which coal shall be fed to trough conveyor A by vibro feeders. Further, trough conveyor A shall feed to cross country pipe conveyor B at Junction house JH-1 near jetty. The cross country pipe conveyor of coal conveying plant shall start from JH-1 and shall be routed all along the existing Raw water piping corridor with single stream pipe conveyor of

1000 TPH capacity in single flight between Jetty and new Junction house-2 cum drive house, to be installed over existing conveyor 12B and 28.

The proposed cross country conveyor shall travel over NH-31 and 440kv lines before discharging the coal on to conveyor 12B and 28 in the drive house.

- (ii) All conveyor drives envisaged in the subject package shall be VVVF drives.

2.02.00 DETAILED SCOPE

- 2.02.01 Feed hoppers with gratings, complete with civil, structural, architectural and electrical works including vibro feeder, equipment handling facilities for other equipments/ systems such as DS system, ventilation system, drinking water system, drainage water system as specified elsewhere in the specifications.
- 2.02.02 Trough Belt Conveyors A complete with conveyor galleries, conveyor supporting structures, short supports, stringers, deck plate, seal plate, conveyor foundations, drive motors, drive units, pulleys, idlers, gravity take ups including guides, pits etc., internal and external belt cleaners, pull chord switches, belt sway and zero speed switches, electro-hydraulic thruster brakes, all electricals etc. including all civil, structural and architectural works for conveyor gallery, gallery supporting trestles and their associated foundations.
- 2.02.03 Cross country pipe conveyor B complete with conveyor supporting structures, short supports, walkways, stringers, seal plate, conveyor foundations, drive motors, drive units, pulleys, idlers, gravity take ups including guides, pits etc., internal and external belt cleaners, pull chord/belt sway switches, and zero speed switches, electro-hydraulic thruster brakes, all electricals etc. including all civil, structural and architectural works for conveyor gallery, gallery supporting trestles and their associated foundations.
- 2.02.04 Complete chute work along with chute blockage switch in Junction houses including skirt board on cross country conveyor is in the scope of this package.
- 2.02.05 Junction house JH-1 & JH-2, complete with all civil, structural, architectural and electrical works including chutes, monorails, hoists/chain pulley blocks, hoist maintenance platforms, external staircases, dust & debris chutes up to ground level..
Complete chute work along with chute blockage switch of cross country conveyor in drive house including skirt board on existing conveyor 12B and 28 is in the scope of this package.
- 2.02.06 Two (2) nos. vibro feeders to feed the coal to conveyor A complete with drives, all mechanical, electrical accessories and supporting structures etc.
- 2.02.07 Modification of existing conveyor 12B and conveyor 28 along with its galley in order to retrofit junction house JH-2.
- 2.02.08 All inserts, anchor bolts, foundation bolts for Contractor's equipment, platforms etc. in the entire route.
- 2.02.09 Monorails and electrically operated hoist blocks as well as hand operated chain pulley blocks for servicing/installation/easy replacement of drive machinery, different types of pulleys for all conveyors, GTU and other equipment from ground level to their locations and vice-versa.

- 2.02.10 Pressurised Ventilation system for all Switchgear rooms, MCC rooms complete with all mechanical, electrical, accessories, civil and structural works.
- 2.02.11 Air conditioning in electrical buildings as specified elsewhere of this specifications complete with all electrical, civil & structural works etc.
- 2.02.12 One (1) No. In-line Magnetic Separators on Conveyor A at drive house complete with reject chutes, reject trolleys, supporting arrangement, and all mechanical, electrical, civil, structural works and accessories. Independent motorized arrangement for hoisting and travel of each suspended magnet shall also be provided.
- 2.02.13 1 (One) no. Electronic belt weigher with a minimum accuracy of $\pm 0.25\%$ for a range of 20% to 120% of rated capacity of conveyor complete with all mechanical, supporting arrangement, electrical, and accessories on conveyor A.
- 2.02.14 One (1) No. belt vulcanizing machine of adequate size complete with all mechanical, electrical, accessories and consumables for one year consumption. Further, belt jointing facilities as specified shall be provided.
- 2.02.15 All buildings in contractor's scope shall be complete with all electrical, civil, structural, architectural works, cable trenches, fire safety walls, foundation / fencing / earthing for transformers. All cables / duct banks, trenches, cable trestles shall be complete with associated civil/ structural work and necessary civil foundations.
- 2.02.16 All equipment/fittings, supporting structure, along with insert plates, bolts, accessories, MS sleeves, base plates, grouting as may be required and proper alignment etc.
- 2.02.17 Complete unused set of all special tools and tackles, which are necessary or convenient for erection, commissioning and overhauling of any equipment, covered under the scope.
- 2.02.18 First fill of all consumables e.g; oils and lubricants for one year toppings requirements.
- 2.02.19 Preservative shop coating, final painting of all structures and equipment under the scope.
- 2.02.20 Dust suppression system for control of fugitive dust in Junction houses, The system shall be plain water dust suppression type and shall be provided at all discharge and loading points including all electrical and accessories in junction houses as specified.
- 2.02.21 Electrical System / Equipment**
- Unless specifically excluded in clause no. 2.04.00 contractor's scope of work shall include all electrical works as required for putting into successful operation of the Coal Handling Plant covered under this specification. The sizing of the various equipments shall be as defined in the specification.
- 2.02.21.01 **3.3KV Switchgear :-**
- Extension of existing 3.3 KV make up water switchgear (1000A) section with addition of one no. panel in each section.
- 3.3 KV switchgear for complete system as indicated in SLD.
- 2.02.21.02 **MOTORS**
- Motors along with couplings and coupling guards for all rotating auxiliaries covered under this package. All motors shall be with cable glands & lugs.

- 2.02.21.03 **LT SWITCHGEAR**
415V Switchgear/motor control centers (as shown in electrical single line diagram), distribution boards, AC & DC fuse boards, local motor starters as required for plant and equipment.
- 2.02.21.04 **CABLES**
HT, LT Power, control & Instrumentation cables and any special cables
(i) required for connection between equipment / devices in Contractor's scope.
(ii) required for the connection of the Contractor's equipment with Employer's equipment.
- 2.02.21.05 **CABLING, EARTHING AND LIGHTNING PROTECTION**
Cabling viz., cable laying along with cable accessories, cable trays with supporting structure, terminations & jointing kits, trenches, trestle, duct banks etc required for the cables to be supplied by the contractor.
Earthing / Grounding and lightning protection for the plant and equipment under contractor's scope.
- 2.02.21.06 **ILLUMINATION SYSTEM**
Complete illumination system for internal and external lighting of associated plant, equipment, buildings under Contractor's scope.
- 2.02.21.07 **DC SYSTEM**
Two (2) nos. of 110V DC, 90 AH (min) Ni-Cd or 150 AH (min) Lead-acid Plante types batteries, Two (2) nos. 110V DC 40A (min) float cum boost chargers, one(1) no. DCDB as indicated in Electrical single line diagram.
- 2.02.21.08 **VARIABLE FREQUENCY DRIVES**
Variable frequency drives as required for pipe conveyors and grab unloader machine equipment.
- 2.02.21.08 Emergency stop Local Push Button stations for all motors.
- 2.02.21.09 3.3KV/0.433KV, ONAN, Outdoor Transformers as indicated in SLD.
- 2.02.21.10 **PLC and Control panels :-**
(i) Independent PLC based control system consisting of control Desk, PLC Panels, I/O racks, along with its power supply arrangement etc. for the control of coal conveying system.
(ii) Independent PLC based control system consisting of control Desk, PLC Panels, I/O racks, along with its power supply arrangement etc. for the control of grab unloader machine.
(iii) Local control panels for BELT scale, Coal sampling units, sump pumps, DS/DE, ventilation etc. as required for the system.

2.02.21.10.1 ELECTRICAL BUILDINGS

- i) One (1) No. switchgear cum control building near jetty to accommodate Contractor's 3.3KV & 415V switchgear, MLDBs, Welding DB as required, 110V DC charger panels etc. A separate room shall be provided to accommodate contractor's 110V Battery. Two (2) nos. of bidder's 3.3/0.433KV transformers & 2 nos. VFD transformers are to be located by the side of this building. One no. air conditioned control room shall be provided by the side of building to accommodate PLC & VFD system equipment.
- ii) One (1) No. switchgear building near TP-12 to accommodate Contractor's 415V switchgear, MLDBs, Welding DB as required. One air conditioned room shall be provided by the side of building for contractor VFD system equipment. VFD transformer shall be located by the side of building.
- iii) The grab unloader system electrical equipment shall be located at machine.

2.02.22 CIVIL

- 2.02.22.01 The work to be performed under this specification consists of providing all labor, materials, construction equipment, tools and plant, scaffolding, supplies, transportation, all incidental items not shown or specified, but reasonably implied or necessary for successful completion of the work including Contractor's supervision and in strict accordance with the drawings and specifications. The nature of work shall generally involve earthwork in excavation including controlled blasting & very deep underground excavation, extensive de-watering, shoring and strutting, sheet piling, back filling around completed structures and plinth protection, area paving, disposal of surplus excavated materials, piling, concreting including reinforcement and form work, brick work, fabrication and erection of structural/ miscellaneous steel works, inserts, architectural items & finishes such as plastering, painting, flooring, doors, windows & ventilators, glass and glazing, rolling shutters etc., permanently colour coated profiled steel sheeting, anchor bolts, R. C. C. trenches with covers, laying and testing of water pipes, sanitation, water supply, drainage, damp proofing, water proofing and other ancillary items.
- 2.02.22.02 The work shall have to be carried out both below and above ground level and shall be involving, basements, equipment foundations, grounding, slabs, beams, columns, footings, rafts, walls, steel frames, brick walls, stairs, trenches, pits, access roads, culverts, conveyer galleries, trestles, drive house, transfer towers, finishes, complete architectural aspects, drainage, sanitation, water supply (from terminal points to various buildings, conveyor galleries) and all other civil, structural and architectural works associated with the complete Coal Conveying System.
- 2.02.22.03 Scope of the Contractor shall also include supply and laying earthing mat all around the periphery of buildings, structures, and outdoor equipments, as per the approved drawings.
- 2.02.22.04 The work shall also involve arranging construction water from underground sources, storage in underground/ overground tanks and taking the water to construction site through pipelines by pumping or by road tankers etc., including all necessary accessories, tools & tackles etc.
- 2.02.22.05 Access roads to all buildings/facilities from nearest existing road will be in bidder's scope.

2.03.00 TERMINAL POINTS

Broad terminal points for coal conveying plant have been indicated in the tender drawings. Within these terminal points, all equipment and services, civil, structural and architectural works, electrical distribution, piping network etc. as required for cross country conveyor system shall be furnished and erected by the contractor unless specifically excluded as follows:

2.03.01.01 Wherever Contractor is permitted by Employer to take support from any of the Employer's Structures, the Contractor shall ensure that no damage is done to the Employer's Structures including Painting thereof. In case of any damage to the Employer's Structure and/or Painting, then the Contractor shall rectify the same to the complete satisfaction of the Employer.

2.03.01.02 Mechanical:

(a) Employer's conveyor 12B and Conveyor 28. However the complete chute work, impact idlers at feeding zones etc. including all modifications in the existing conveyor support structures shall be in bidder's scope.

2.03.01 Electrical Terminal Points

- (a) Employer's 3.3KV Switchgear.
- (b) Employer's LT MCCs & DCFB.

2.04.00 EXCLUSIONS

AS PER SLD.

3.00.00 SYSTEM DESIGN BASIS

3.01.00 The design capacity of the trough conveyor and cross country pipe conveyor shall be 1100 TPH. The cross country conveyor system shall be designed for round the clock operation. Rated capacity of vibro feeder shall be 1000TPH.

3.02.00 Following shall be considered while designing the conveyor system:

- a) The Coal delivered to the power station shall be of size (-) 50 mm & below. However occasionally 1-2% coal of above (-)50 mm lump size may also be encountered.
- b) HGI of the Coal shall be between 44 to 65. Normally moisture content in coal shall be 30%.
- c) The coal "as received" shall contain varying percentage of fines. Coal with such fines may tend to form adhesive lumps, particularly during monsoon when surface moisture is at its maximum value.
- d) The sizing and selection of the vital equipment covered under the system shall be based on the above characteristic of coal and operating conditions. Contractor shall ensure that equipment/ system efficiency shall not be affected particularly during monsoon when surface moisture is at its maximum value.

3.03.00 For the purpose of volumetric computation, the bulk density of the coal shall be taken as 800 kg/m³. Therefore for calculation of belt conveyor capacity, for their drives & drive motors kW requirement, and sizing (volume calculations) of chute, hoppers etc. the above bulk density shall be considered. For all other purposes viz. for stresses/ load on structures, calculations of plugged chute/ hopper loads etc. the bulk density of the coal shall be taken as 1100 kg/ m³.

TECHNICAL REQUIREMENTS

A-01: BELT CONVEYOR SYSTEM

1.00.00 GENERAL

All Belt Conveyors shall be furnished and erected along with necessary supporting structures, platforms, on ground or overhead galleries, trestle structure with foundation footings, carrying and return idlers, automatic take-ups, pulleys, drive motors with suitable reduction units and couplings, belting, transfer chutes, flap gates, hydraulic couplings and other necessary accessories as per scope specified elsewhere.

1.01.00 CODES AND STANDARDS

The design, manufacture, inspection and testing of the Belt Conveyor System shall comply with all the currently applicable statues, regulations and safety codes in the locality where the equipment is to be installed. The belt conveyor system shall confirm to the latest edition of the following standards & codes. Other internationally acceptable standards/codes, which ensure equal or higher performance than those specified, shall also be accepted. Nothing in this specification shall be construed to relieve the contractor of the required statutory responsibility. In case of any conflict in the standard and this specification, the decision of the Employer shall be final and binding.

“Belt Conveyors for Bulk Materials” published by Conveyor Equipment Manufacturers’ Association.

IS:7155 : Codes of Practice for Conveyor Safety.

IS:1891 (Part-I) : General Purpose Belting

IS:8598 : Idlers and Idler Sets for Belt Conveyors

IS:4009 (Part-II) : Conical Head Grease Nipples

IS:8531: Pulleys for Belt Conveyors.

IS:226 : Structural Steel (Standard Quality)

IS:4682 : Codes of Practice for Lining of Vessels and Equipment for Chemical Processes.

IS:11592 :Code of practice for selection and design of Belt Conveyors.

CAN / CASA - M422 M87 : Canadian standard association.

1.02.00 DESIGN REQUIREMENT

1.02.01 Slopes of conveyors, wherever applicable, shall not exceed 16 deg. depending on the lump size, and other governing factors.

1.02.02 All conveyors shall be designed for design capacity. Design capacity of the conveyor system shall be considered for the selection of belt width, belt speed and the continuous motor rating at 50 deg C Ambient.

1.02.03 Belt conveyor system shall be designed as per the latest edition of ‘Belt Conveyors for Bulk Materials’ published by Conveyor Equipment Manufacturer’s Association’ or equivalent International Standard. A_i value for idler shall be considered 2.8lb (min.) for the purpose of conveyor design calculation only.

- 1.02.04 For pipe conveyors, the pipe diameter shall be selected based on the maximum percentage fill up of 70% at the selected speed.
- 1.03.00 CONSTRUCTION REQUIREMENT**
- 1.04.00 Belting**
- 1.04.01 The belting shall be of synthetic fabric such as Nylon-Nylon, Polyester / Polyimide, EP/ Steel cord etc. with rubber covers of adequate flexibility to give a troughing angle of 35 deg. For all the conveyors the number of plies, cover thickness, factor of safety etc. shall be as per the recommendation of belt manufacturer, but not inferior to the figures as tabulated in data sheet.
- 1.04.02 The pipe conveyor belt is to have sufficient stiffeners to form and maintain the pipe shape as it passes through the circle forming the idler rolls. At the same time it shall remain flexible for the transition from troughed belt to the pipe shape. The belt edge stiffeners shall be suitable to ensure that a seal is maintained at the overlap.
- 1.05.00 Idlers**
- 1.05.01 Carrying idlers shall be provided with three equal rolls with troughing angle of 35 deg. and 2 deg. forward tilt (except in case of reversible conveyors).
- 1.05.02 In no case, shall the diameter of the idler roll be less than 152 mm for both carrying side and return side. However, for impact idlers the steel roll diameter shall not be less than 139 mm and rubber ring thickness shall be minimum 25 mm.
- 1.05.03 Roller used in idlers shall be made from ERW steel tube. Wall thickness shall be minimum 4.0 mm without any negative tolerance. The rollers shall be mounted on EN-8 or equivalent material spindles by means of ball bearings of either deep groove type or seize resistant type (SKF/Equivalent), of minimum 35 mm size for carrying idlers and minimum 25 mm size for return idlers. The bearings shall be adequately sealed and lubricated for life. The rolls shall be supported from fabricated steel brackets. Fixing arrangement of rollers with brackets shall be drop-in type. For adjusting the alignment of the idlers, slotted holes shall be provided in idler supporting base plates. Direction of belt travel shall be clearly marked on the brackets of carrying idlers by embossing / punching.
- 1.05.04 Idler rollers shall be waterproof, dust proof and weather proof against a high velocity water jet. All idlers shall be provided with minimum double labyrinth dust seal.
- 1.05.05 Impact idlers used at the loading and transfer point shall be so designed as to avoid direct loading impact, belt damage and excessive punishment to the carrier. The material used in construction of this type of idlers shall be of resilient type.
- 1.05.06 The return idlers for all conveyors shall be single roll type. For conveyors longer than 400m, two roll return idlers with 10 deg. troughing angle shall be provided.
- 1.05.07 The self-aligning idlers shall be direct acting type, complete with actuating rollers fitted with the ball bearings and mounted inclined towards the belt. The idler frame shall be suitably cradled about a vertical pivot, supported in bearing over a fixed plate. Adequate sealing arrangement shall be provided to prevent contamination of the lubricant by dirt and moisture.

- 1.05.08 Transition type troughing idlers shall be used adjacent to all pulleys to permit proper support of the loaded belt near the pulleys without excessive stretch of the belt edges. The transition idlers shall be provided with preferably adjustable concentrator (end) rolls and long center rolls to suit the troughed belt contour between the last regular troughing idler and the adjacent pulleys. The transition length and the number of the transition idlers shall be selected depending upon the tensions, type and size of belt, number of plies and other necessary governing factors.
- 1.05.09 All the conveyors shall be provided with one self cleaning type rubber disc return idler located near the head pulley for cleaning the return belt.
- 1.05.10 Proper arrangement shall be provided in the brackets of all types of idlers for preventing the rollers from coming out of the brackets during normal / abnormal conditions.
- 1.05.11 **Details for pipe conveyors (Specific requirement)**
- 1.05.11.1 **Feed Point of Pipe Conveyors**
To effectively minimize spillage of conveyed material at the feed zone where the belt is made to change from the flat to the pipe form, the conveyor is allowed to travel in the trough form for a calculated distance. Thereafter pipe shape is formed by means of adjustable idlers (i.e. with varying troughing angle) and finger rollers.
- 1.05.11.2 **Tail End Transition of pipe conveyors**
Fitted at the tail end of the pipe conveyor will be the belt transition section, this transforms the flat belt after it passes over the pulleys into a fully formed pipe shape without including undue tresses into the belt. It will be complete with necessary troughing transition idlers, fingers rolls and support brackets to ensure that the same edge of the belt is always the inner edge of the pipe. Decking plate between the carrying and return belt strands only at feed & discharge open belt portion, misalignment switches, safety guards.
- 1.05.11.3 **Head End Transition of Pipe conveyor**
This is section, which transforms the return belt from flat to its fully formed pipe shape, without including undue stress into the belt in the similar fashion as described in the Tail End Transition.
- 1.05.11.4 Minimum transition distance should be 25 times pipe diameter for fabric belt and 50 times pipe diameter for steel cord belt, or as per latest International Standards.
- 1.05.11.5 The eccentricity (diametrical run out) of troughing idlers & return idlers for pipe conveyors shall not exceed ± 0.7 mm.
- 1.05.11.6 Idler station shall be provided for conveying & return side of the pipe. At each idler station six (6) rollers shall be provided for supporting the conveying side and six (6) rollers shall be provided for supporting the return side pipe. Idler rolls for pipe conveyor shall be 152 mm dia. with shell thickness of minimum 4 mm.
- 1.05.11.7 Idler bearings for pipe conveyors shall be deep groove ball bearings & suitable for with standing extreme heat. Bearing selection shall be suitable for pipe conveyors traveling at 4-6 m/s.

1.06.00**Pulleys**

- 1.06.01 Pulleys shall be provided as required for various conveyors. In determination of pulley diameter, no account shall be taken of the pulley lagging. The nominal diameter and face width of the pulleys shall be as stated in IS:8531.
- 1.06.02 The snub pulleys on each conveyor shall be located to provide a belt wrap on the drive pulleys of not less than 210 deg. wrap is envisaged for single snub drive only.
- 1.06.03 All drive pulley surfaces shall be hot lagged with vulcanised natural rubber lagging grooved in diamond pattern or lagged with rubber ceramic lagging.
- 1.06.04 All non-drive pulleys shall be vulcanised natural rubber lagged (hot) with plain lagging.
- 1.06.05 The rubber to be used for lagging of pulleys shall confirm to specifications listed in data sheet of this section.
- 1.06.06 The rubber lagging of pulleys and method of lagging and testing the same shall conform to IS:4682.
- 1.06.07 The pulleys shall be made from mild steel conforming to IS:2062 (Tested Quality). Suitable stiffening shall be provided at all weld location in the shell on all pulleys.
- 1.06.08 All the pulleys shall be mounted on the forged steel shafts of EN-8 or equivalent material of adequate proportion by taper lock arrangement, running in heavy duty roller bearings with proper greasing arrangement. The plummer blocks for pulleys shall be of horizontally split type construction with minimum (4) nos. bolts holding the two split halves and with min (4) nos. foundation bolts. The plummer blocks shall be dust tight with double labyrinth seals. Conical head shape nipples conforming to IS:4009, suitable drain plug and eye bolt shall be provided. Side covers of plummer blocks shall be heavy duty metallic sheets. No plastic components shall be used.
- 1.06.09 Pulleys shall be mounted on machined & ground surfaces. Suitable guards shall be provided for all tail pulleys and bend pulleys for safety of operating personnel.
- 1.06.10 Suitable stiffening arrangements shall be provided in all pulleys. For selection of pulley shaft dia of all the pulleys, a margin of atleast 20% shall be considered on the maximum tension at designed Conveyor capacity. Selection of pulley diameter, shell thickness, stiffening and shaft diameter shall be subject to approval of Employer during detailed engineering.

1.07.00**Drive Motors**

- 1.07.01 Rating of all drive motors of conveyors shall not be less than 120% of the power required at drive motor output shaft at specified design capacity. The motor rating shall be at 50 deg Cent. ambient. "Limit for HT motor is 160 KW".

1.08.00**Conveyor Bridges**

- 1.08.01 All overground and overhead troughed belt conveyors shall be located in suitably enclosed bridge structure. Structural steel bridges of adequate width and depth (2700 mm clear head room) shall be provided complete with conveyor bottom deck plates, seal plates, walkways of chequered plates with anti-skid arrangement(s), hand rails (on both sides of each conveyor). However pipe conveyors, shall be routed on open structural steel bridges with at least 800 mm walkway on one side & 1100 mm walkway on the other side. In case of double stream pipe conveyor, side walkways shall be 800 mm and central walkway shall be 1100 mm.

- 1.08.02 The conveyor bridge shall have permanently colour coated steel sheeting covers on roof and both sides, properly screwed or locked to steel structure as required. Adequate provision of windows shall be kept. A continuous slot opening of 500 mm shall be provided on both sides just below the roof sheeting.
- 1.08.03 The floors of outdoor troughed belt conveyor galleries shall be designed and constructed as follows:

The side walkways for single conveyors shall be 800 mm on one side and 1100mm on the other side. However, if the centre to centre of conveyors or the width of the gallery is decided by some other criteria, maximum walkway widths consistent with gallery sizes shall be provided. In the complete length of conveyor gallery minimum walkway clearance as indicated above is to be maintained inclusive of all equipments and clearances.

All conveyors shall be provided with 12 G steel seal plates throughout the length and width of the conveyor gallery in such a way that complete gallery bottom surface area forms a single water proof floor and no water / coal falls down from conveyor gallery incase of cleaning / washing.
- 1.08.04 The conveyors shall be provided with continuous decking plate of minimum 3 mm thickness plain steel sheet. Decking plate shall also be provided for the pipe forming and deforming portion of pipe conveyor.
- 1.08.05 Structures and floors shall be so designed as to provide suitable space for routing of 200 NB fire fighting pipe with water, cables and conduits.
- 1.08.06 Steel trestles to support the conveyor bridge shall rest upon concrete foundations to be provided by the Contractor. Complete trestle structures shall also be supplied by the Contractor. Suitable approach/access platforms with hand railings shall be provided to approach the conveyor gallery (like in case of fire) through monkey ladders on the trestles. Suitable wire mesh doors on steel frame construction lockable from outside only shall be provided in the conveyor galleries at these locations. All monkey ladders shall have cage for safety of personnel using them.
- 1.08.07 Independent supports for walkways, conveyor structures shall be provided. The width of conveyor galleries shall be decided by the Contractors depending on the equipment's size and the walkway width as specified. However, in no case the width of gallery shall be less than the width specified in tender drawings.
- 1.08.08 Provision shall be kept with platforms and ladders for crossing over the conveyors at approximately every 100m intervals of route length and minimum one per conveyor.

1.0.0	DESIGN & CONSTRUCTION	
1.1.0	Belting	
1.1.1	Type	Synthetic Fabric of Nylon / Nylon, Polyester / Polyamide/ Steel cord, etc.
1.1.2	Cover Grade	<p>a) Flame test : Conforming to ISO:340</p> <p>b) Drum Friction and Electrical Surface Resistance Test: Conforming to Canadian standard association CAN / CSA M-422- M87 Grade - C.</p>

1.1.3	Cover Thickness (without -ve tolerances).	Synthetic belting	Steel cord belting
	(a) Face	5.0 mm (min.)	8.0 mm (min.)
	(b) Bottom	2.0 mm (min.)	6.0 mm (min.)
1.1.4	No. of plies	Minimum 4	
1.1.5	Drive Arrangement	Snub drive	
1.1.6	Factor of Safety - for Synthetic belting - for Steel cord belting	10 (Minimum) 7 (Minimum)	
1.1.7	Normal Working tension at design capacity	Less than 80% of max. allowable working tension	
1.2.0	Idlers (for troughed belt conveyors)		
1.2.1	Type		
	(a) Carrying	Three roll, 35 degree troughing, 2 degree forward tilt	
	(b) Return	Single Roll, For conveyors upto 400 m c/c length. Two roll with 10 degree angle for conveyors more than 400 m c/c length	
	(c) Loading point	Impact type	
1.2.2	Spacing		
	(a) Carrying idlers	1.2 m (0.6 m for convex curves).	
	(b) Return idlers	3.0 m (for convex curves not more than 1.5 m.)	
	(c) Loading point	Minimum six (6) with 400 mm spacing.	
	(d) Self-aligning Idlers	At 10 m distance from head & Tail pulleys with intermediate spacing 15m	
	(e) Self - aligning return idlers	At 10 m distance from Head & Tail pulleys with intermediate spacing 20m. (Not required for conveyors more than 400m c/c long where 2 roll return idlers are provided).	
1.2.3	Bearings		
	(a) Carrying	Ball Bearings of deep groove type or seize resistant type of min.35 mm size, lubricated for life.	
	(b) Return	Ball Bearings of deep groove type or seize resistant type of min. 25 mm size, lubricated for life.	
1.2.4	Material		
	(a) Roller	ERW Steel tube min. wall thickness 4.0 mm	
	(b) Spindle	E.N. 8 or equivalent.	

1.3.0	Idlers (for pipe conveyor)	
1.3.1	Type	
	(a) Impact idler	Three roll, 30/45 degree, 127/ 190 mm dia rollers – 6 nos. for feed point
	(b) Carrying transition idler	Three roll, 15-45 degree, 152 mm dia rollers
	(c) Pipe forming/ Pipe conveyor zone idlers	152 mm dia. ERW pipe, 6 roll type, hexagonal arrangement
	(d) Pipe forming zone idler spacing Pipe conveyor zone idler spacing	1.0 m 2.0 m
1.3.2	Bearings	
	(a) Carrying	Ball Bearings of deep groove type or seize resistant type with FRP cage of min.35 mm size, lubricated for life.
	(b) Return	Ball Bearings of deep groove type or seize resistant type with FRP cage of min. 25 mm size, lubricated for life.
1.4.0	Pulley	
1.4.1	Pulley shaft diameter	Margin of minimum 20% shall be considered on maximum tension at design capacity for arriving at the shaft dia.
1.4.2	Lagging for Drive Pulleys	Hot lagged with vulcanised natural rubber
	Lagging thickness	12 mm thick grooved in diamond pattern with grooves 6 mm wide x 6 mm deep
1.4.3	Lagging for Other pulleys	Hot lagged with vulcanised natural rubber
	Lagging thickness	12 mm thick plain
1.4.4	Rubber for lagging	
	(1) Type	Natural rubber blended with styrene Butadiene rubber.
	(2) Hardness	55 to 65 durometer (Shore A)
	(3) Elongation	Over 300%
	(4) Strength	160-245 kg/cm ²
	(5) Abrasion loss	250 mm ³ as per DIN 53516
	(6) Specific Gravity	Max. 1.5
	(7) Adhesion Strength	10 kg/cm (minimum)
1.4.5	Bearings for Pulleys	
	(1) Type	Heavy duty roller type
	(2) Casing	Horizontal Split Type
	(3) Sealing	Dust tight with double labyrinth seals.
	(4) Lubrication	Greasing arrangement with conical head shape nipples.
1.4.6	Pulley Material	Mild steel conforming IS : 2062
1.4.7	Shaft Material	Forged Steel shaft EN-8 or equivalent material.
1.5.0	Drive Motors	
1.5.1	Type	Three Phase Squirrel Cage Induction Motors

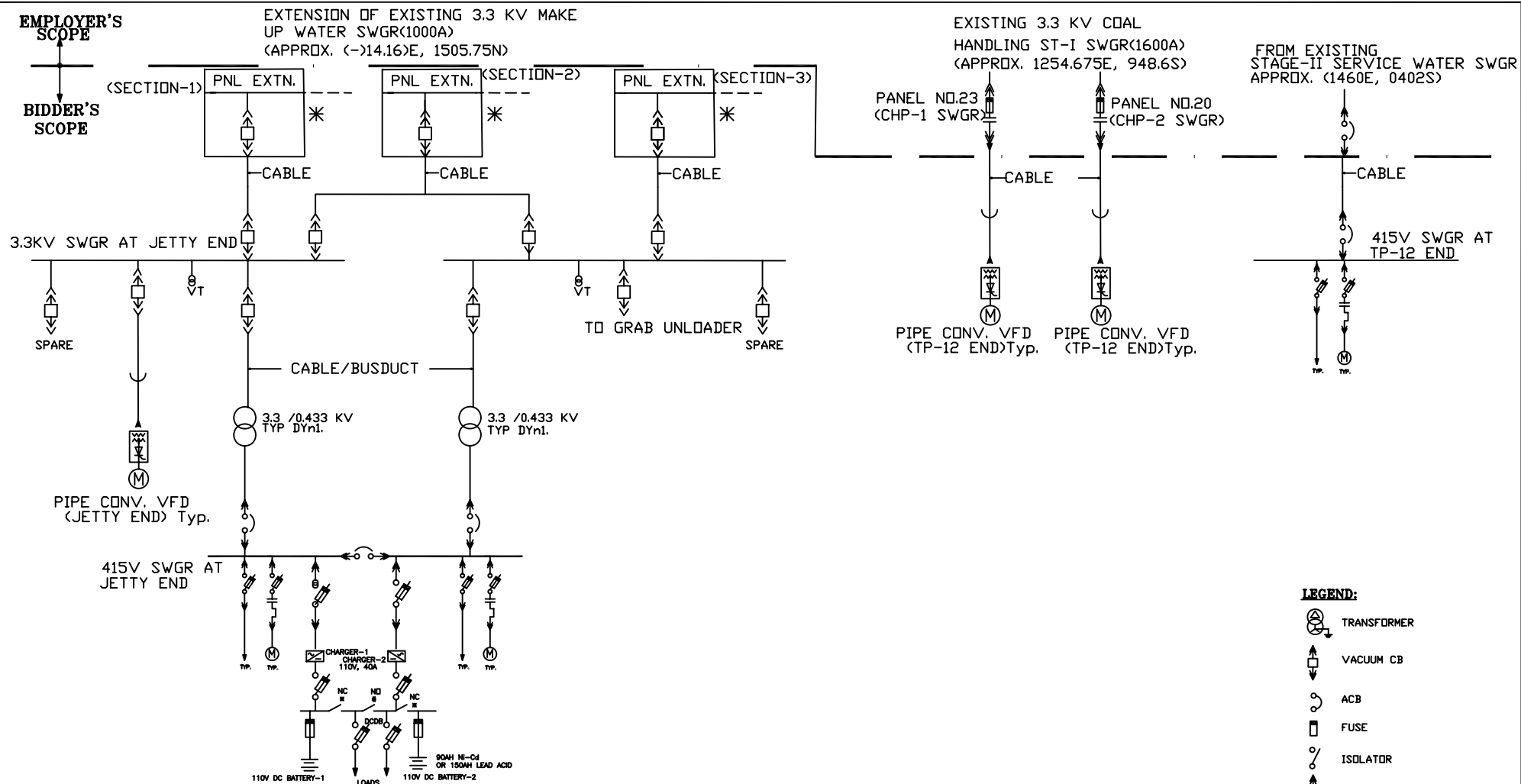
1.5.2	Mounting (for conveyors)	Base mounted
1.5.3	Continuous motor rating (Name plate rating) at 50°C	120% of actual power requirement at motor output shaft at design capacity.
1.6.0	Conveyor Bridges	
1.6.1	Walkways	
	(a) Construction	Chequered plate with antiskid arrangement. Chequered plate steps shall be provided where conveyor slope exceeds 10 degrees. (Totally sealed so that no water falls down while washing.)
	(b) Side walkway width	800 mm (for single conveyors, the width of side walkways shall be 800 mm on one side and 1100 mm on the other)

Drawings - 12 nos

1 ,

EMPLOYER'S SCOPE

BIDDER'S SCOPE



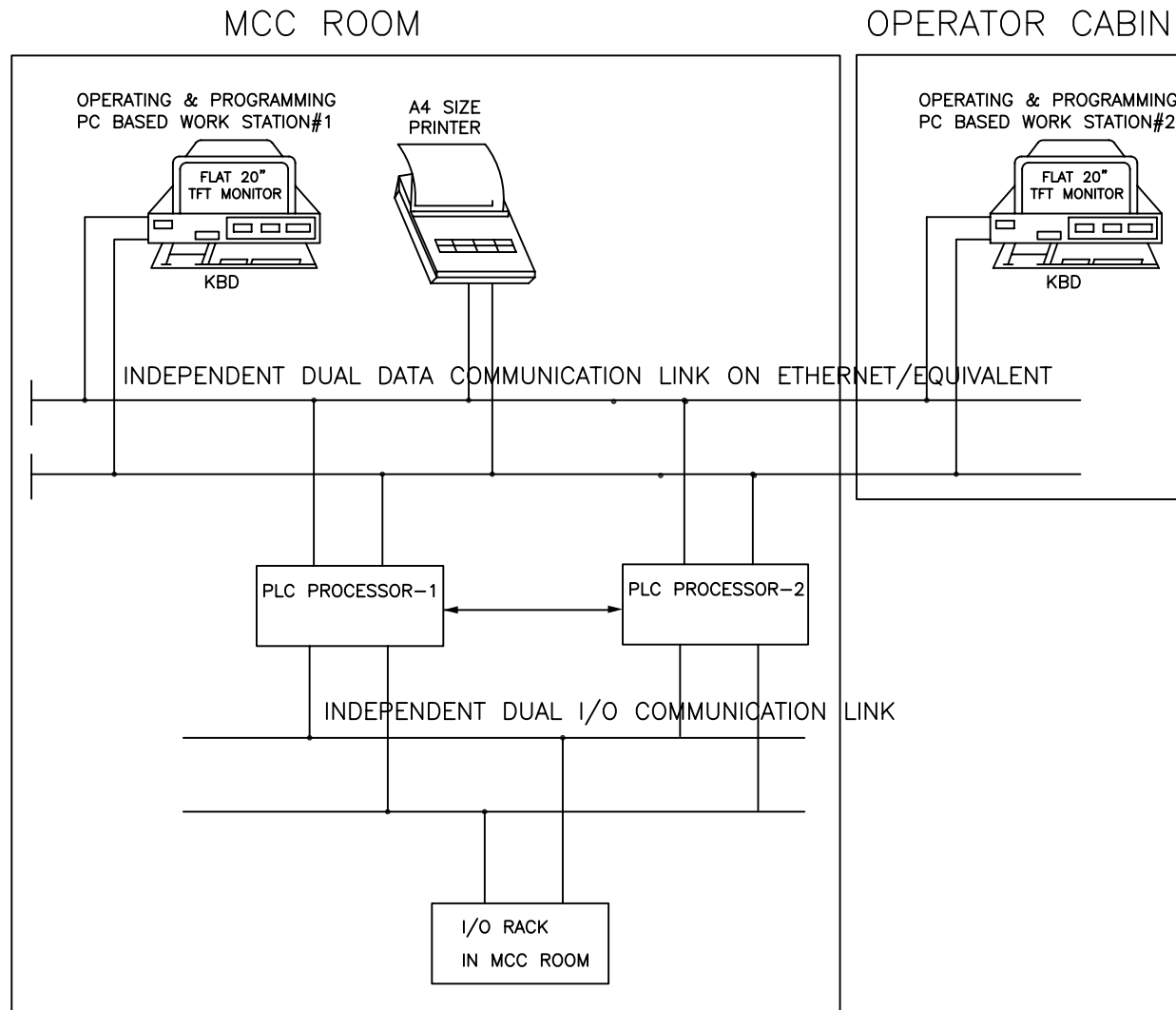
NOTES:

1. NUMBER & TYPE OF FEEDERS SHALL BE AS PER SYSTEM REQUIREMENT.
 2. THIS DRAWING SHALL BE READ IN CONJUNCTION WITH THE SPECIFICATION.
 3. MCC & TRANSFORMER RATINGS INDICATED ARE MINIMUM. HOWEVER, SAME SHALL BE FINALIZED DURING DETAIL ENGINEERING AS PER SYSTEM LOAD REQUIREMENT.
 4. ONE(1) NO. ACFB SHALL BE PROVIDED IN EACH SWITCHGEAR ROOM UNDER BIDDER'S SCOPE.
 5. DC REQUIRED FOR BIDDER'S SWGR NEAR TP-12 SHALL BE TAKEN FROM OWNER'S 220V DCFB LOCATED IN SERVICE BUILDING SWITCHGEAR..
- * ALL 3.3KV SWITCHGEAR EXTENSION PANEL SHALL BE PROVIDED WITH MULTIFUNCTION ENERGY METER FOR MEASUREMENT PURPOSE.

FOR TENDER PURPOSE ONLY

<div> <div>एन टी पी सी</div> <div>NTPC</div> </div>		<div> <div>एन टी पी सी लिमिटेड</div> <div>NTPC Limited</div> <div>(A GOVERNMENT OF INDIA ENTERPRISE)</div> <div>ENGINEERING DIVISION</div> </div>	
PROJECT		BARH STPS	
TITLE		COAL CONVEYING PLANT PACKAGE ELECTRICAL SINGLE LINE DIAGRAM	
REV. NO.	DESCRIPTION	SIZE	SCALE
		A4	
		DRAWING NO.	REV. NO.
		0000-156-POE-A-001	A

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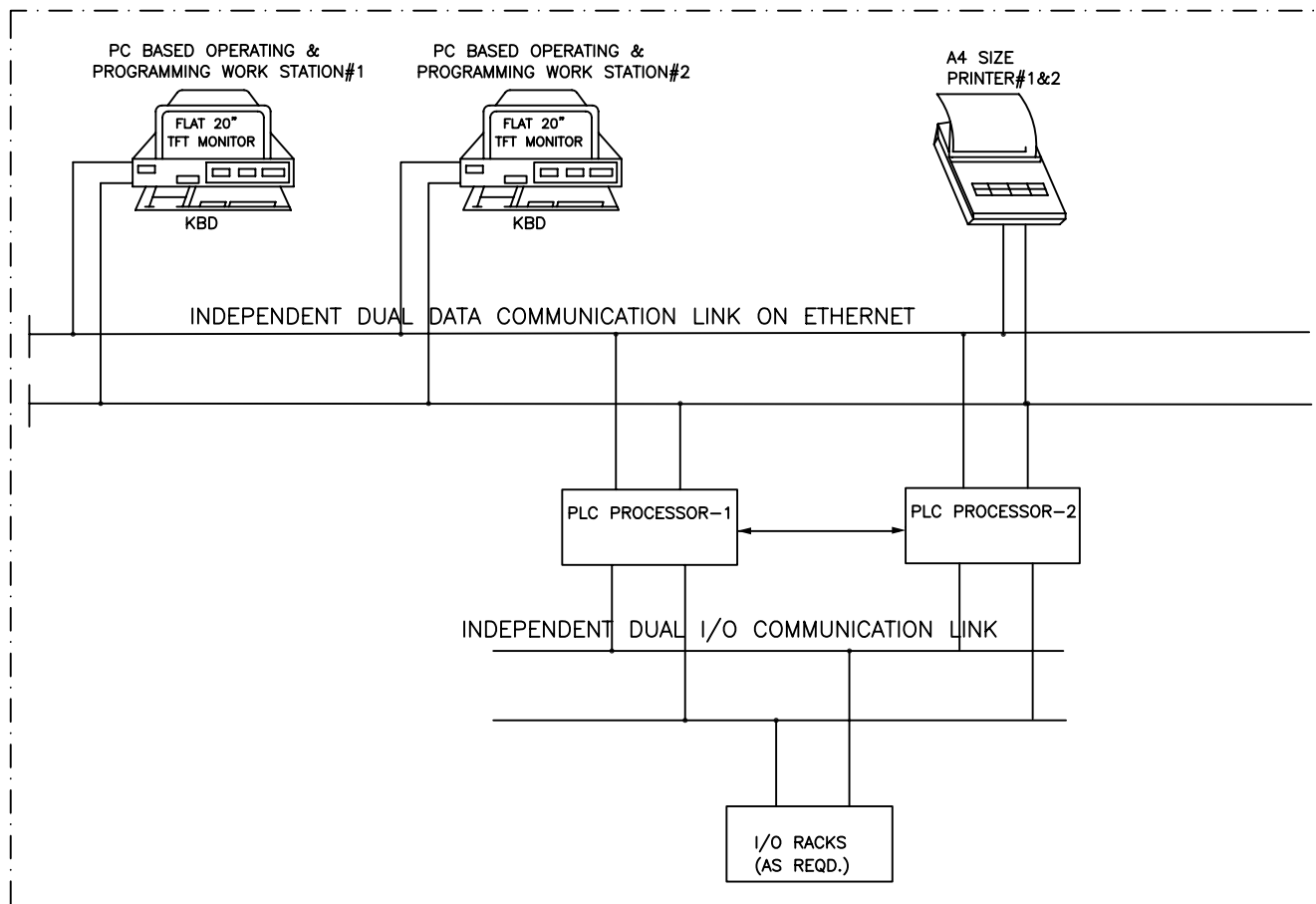
NOTES:

1. PLC PROCESSORS-1&2 SHALL BE IN HARDWARE AS WELL AS SOFTWARE BASED REDUNDANCY CONFIGURATION.

FOR TENDER PURPOSE ONLY									
PROJECT		BARH STPS							
TITLE		COAL CONVEYING PLANT PACKAGE TYPICAL PLC CONFIGURATION FOR GRAB UNLOADER							
REV. NO.	DESCRIPTION	DRAWN	DESIGN	CHKD	APPD	DATE	SIZE	SCALE	DRAWING NO.
						03.04.2013	A4		0000-156-POE-A-003
									REV. NO.
									A

BARH-GRAB UNLOADER-PLC

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NOTES:

1. PLC PROCESSORS-1&2 SHALL BE IN HARDWARE AS WELL AS SOFTWARE BASED REDUNDANCY CONFIGURATION AND TO BE LOCATED IN BIDDER'S CONTROL ROOM.
2. PROGRAMMING & OPERATING WORK STATION #1&2 AND PRINTER#1&2 SHALL BE LOCATED IN CONTROL ROOM.

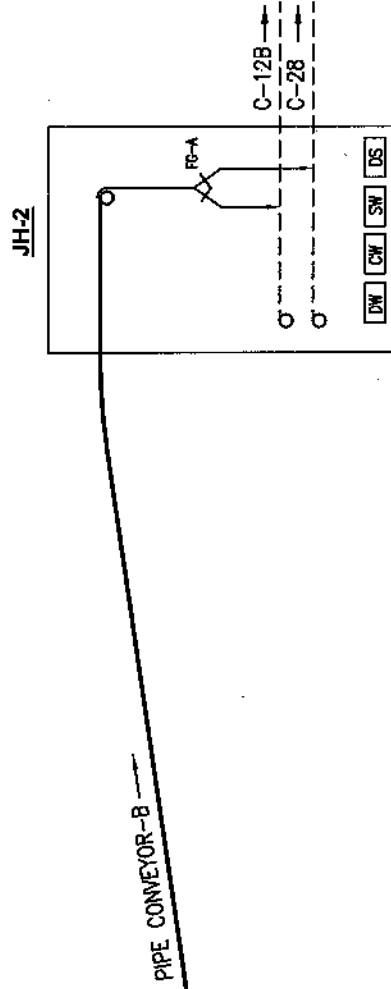
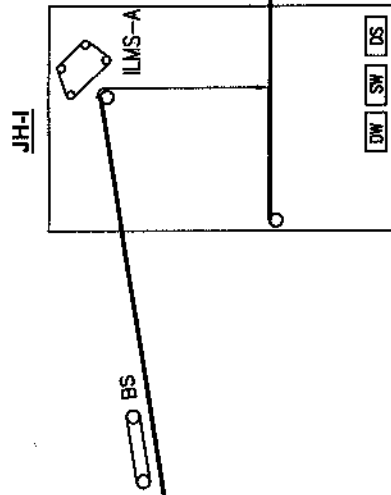
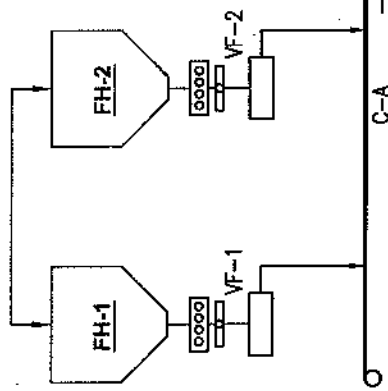
FOR TENDER PURPOSE ONLY

एन टी सी लिमिटेड NTPC Limited (A GOVERNMENT OF INDIA ENTERPRISE) ENGINEERING DIVISION	
PROJECT BARH STPS	
TITLE COAL CONVEYING PLANT PACKAGE TYPICAL PLC CONFIGURATION FOR COAL CONVEYING SYSTEM	
SIZE A4	SCALE 0000-156-POE-A-002
DRAWING NO. 0000-156-POE-A-002	REV. NO. A

REV. NO.	DESCRIPTION	DRAWN	DESIGN	CHKD	APPD	DATE
						03.04.2013

BARH-COAL CONVEYING-PLC

FROM BARGER UNLOADERS



NOTES :

1. THIS DRG. IS MEANT TO SHOW ONLY COAL FLOW PATH AND DOES NOT INDICATE COMPREHENSIVE SCOPE OF WORK.
2. ALL CONVEYORS SHALL BE PROVIDED WITH ACCESSORIES SUCH AS PULL CORD, BELT SWAY AND ZERO SPEED SWITCHES, BELT WIPER UNITS, TENSIONING DEVICES ETC. AS PER TECHNICAL SPECIFICATION. THESE ARE NOT SHOWN IN THE FLOW DIAGRAM FOR CLARITY.
3. ALL ACCESSORIES, ITEMS OF WORK, THOUGH NOT INDICATED BUT REQUIRED TO MAKE THE SYSTEM COMPLETE FOR ITS SAFE, EFFICIENT, RELIABLE AND TROUBLE FREE OPERATION AND MAINTENANCE SHALL ALSO BE INCLUDED IN BIDDER'S SCOPE UNLESS SPECIFICALLY EXCLUDED.
4. DUST SUPPRESSION, SERVICE WATER, POTABLE WATER, COOLING WATER & VENTILATION SHALL BE PROVIDED AS PER TECHNICAL SPECIFICATION REQUIREMENT.
5. MODIFICATION OF CONV. 12B & 28 AND ITS GALLERY SHALL BE CARRIED OUT FOR RETROFITTING OF JH-2. THE ABOVE MODIFICATION WORK SHALL BE CARRIED OUT BY BIDDER IN WORKING PLANT. EXISTING GALLERY AT LOCATION, WHERE COAL IS FALLING, SHALL BE MODIFIED/STRENGTHENED TO TAKE CARE OF THE ADDITIONAL LOAD/IMPACT LOAD.
6. CONV. 12A & C-28 SHALL BE SUITABLY MODIFIED TO INCORPORATE IMPACT IDLERS, CHUTE WORK, SKIRT BOARDS ETC FOR RECEIVING COAL FROM CONV.-B.
7. CONV. 12A & C-28 SHALL BE PROVIDED A SHUTDOWN FOR A VERY SHORT PERIOD (TO BE TIED UP WITH SITE BY BIDDER DURING ERECTION). DURING THIS PERIOD, MODIFICATION AS REQUIRED IN CONV. 12A & C-28 AND ITS GALLERY TO FACILITATE THE CHUTE WORK ETC. FROM CONV.-B.

LEGEND	
	BELT CONVEYOR
	BELT SCALE
	COOLING WATER SYSTEM
	DUST SUPPRESSION SYSTEM
	SERVICE WATER SYSTEM
	DRINKING WATER SYSTEM
	FLAP GATE
	EXISTING/NOT IN SCOPE

EQPT. DESIGN.	EQUIPMENT	QTY.	CAPACITY
FH-1 & 2	FEED HOPPER	2	
ILMS 1	ALONG WITH TRAMP IRON CHUTE IN LINE MAGNETIC SEPARATOR	1	
BS-A	BELT WEIGH SCALE	1	
FG-A	FLAP GATE	1	
VF 1 & 2	VIBRO FEEDER	2	1000 TPH
JH-1 & 2	JUNCTION HOUSE WITH CHUTE WORK	2	
CONV.-A	TROUGH CONVEYOR-A	1	1000 TPH
CONV.-B	PIPE CONVEYOR-A	1	1000 TPH
DS	DUST SUPPRESSION SYSTEM	LOT	
SW	SERVICE WATER	LOT	
CW	COOLING WATER	LOT	
DW	DRINKING WATER	LOT	

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NTPC Limited
(A GOVT. OF INDIA ENTERPRISE)
ENGINEERING DIVISION

PROJECT BARH SUPER THERMAL POWER PROJECT

TITLE
COAL CONVEYING PLANT
COAL FLOW DIAGRAM

REV.	DATE	APPROD.	BY	SCALE	DRG. NO.	REV.
B				---	0000-000-POM-A-001	B



NH-31

S. W. DRAIN

-400 KV LINE

SWITCH YARD

1308.0E
453.02S

1. CONVEYOR ROUTING SHOWN ARE INDICATIVE ONLY. LAYOUT OF CONVEYOR SHALL BE FINALISED BY SUCCESSFUL BIDDER AFTER AWARD OF CONTRACT IN CONSULTATION WITH NTPC.
2. '*'COORDINATE MARKED IS W.R.T. MAIN PLANT COORDINATE.

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NTPC

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NTPC Limited
(A GOVT. OF INDIA ENTERPRISE)
ENGINEERING DIVISION

TITLE

COAL CONVEYING PLANT

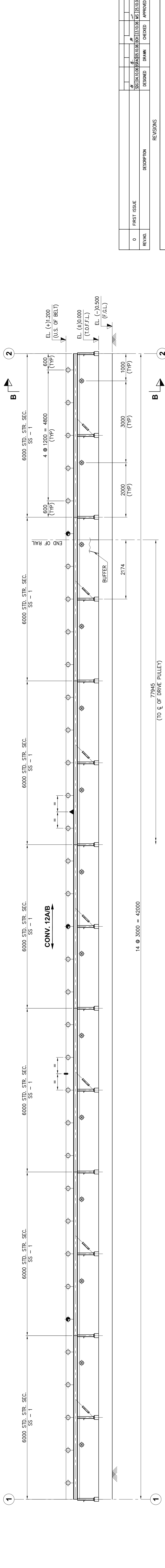
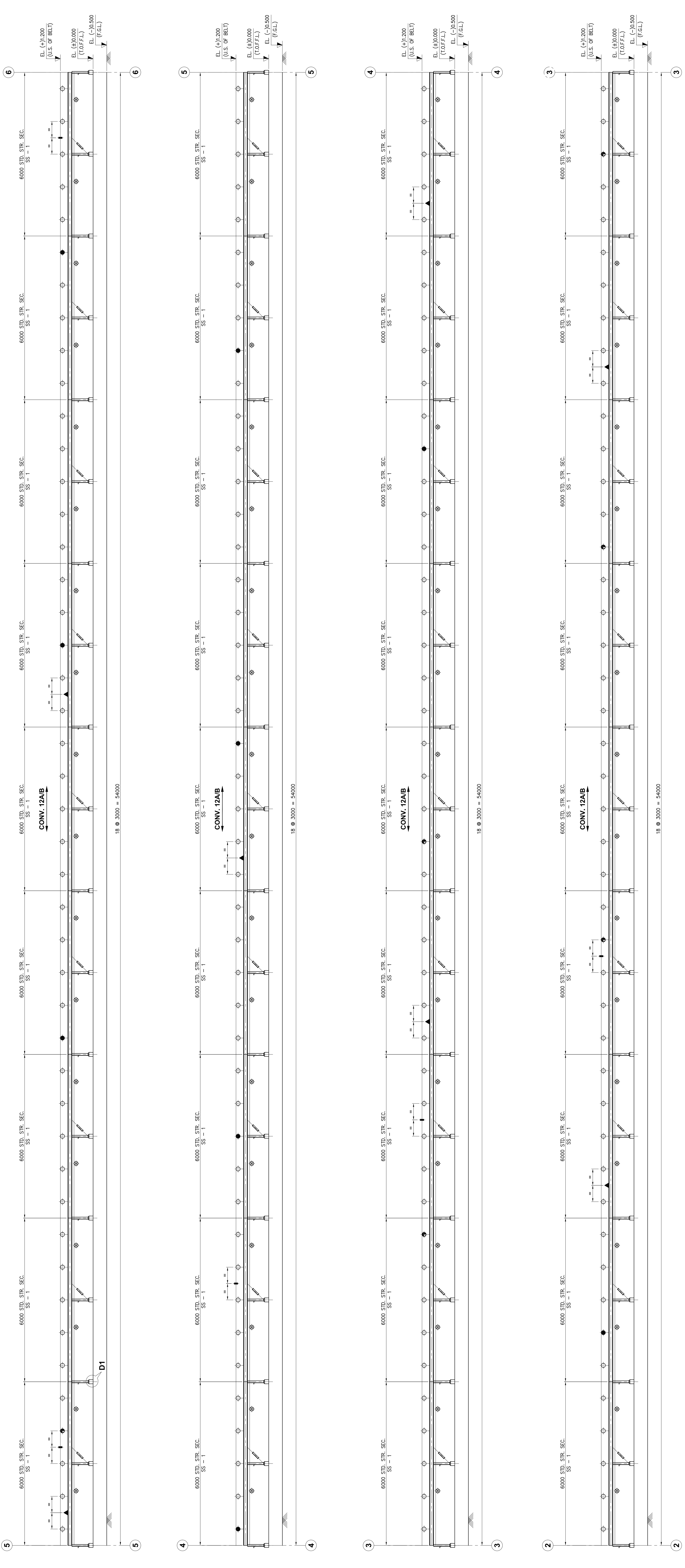
GENERAL LAYOUT OF CONVEYING SYSTEM

[illegible]

SIZE	SCALE	DRG.NO.
A2	--	0000-000-POM-A-002

CAD FILE NAME : 0000--000--POM-A-002.dwg

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REVISIONS

NO.	DESCRIPTION	DATE	BY	CHKD	APPD
0	FIRST ISSUE	04.10.08			
1	REVISION	04.10.08			
2	REVISION	04.10.08			
3	REVISION	04.10.08			
4	REVISION	04.10.08			
5	REVISION	04.10.08			
6	REVISION	04.10.08			
7	REVISION	04.10.08			
8	REVISION	04.10.08			
9	REVISION	04.10.08			
10	REVISION	04.10.08			
11	REVISION	04.10.08			
12	REVISION	04.10.08			
13	REVISION	04.10.08			
14	REVISION	04.10.08			
15	REVISION	04.10.08			
16	REVISION	04.10.08			

NTPC DRAWING NO. - 9558-156-PVM-B-032-SH-2-4-00

एनटीपीसी पावर कॉर्पोरेशन लिमिटेड
NTPC
National Thermal Power Corporation Ltd
< A GOVERNMENT OF INDIA ENTERPRISE >

LARSEN & TOUBRO LIMITED
ECC Division - EDRC

CLIENT :
NATIONAL THERMAL POWER CORPORATION LTD.
BOOTH TANKING PLANT
PACKAGE :
SPEIFICATION NO. : CS-3558-156-2
SUPPLIER CONTRACTOR :
LARSEN & TOUBRO LIMITED
ECC Division

CONSULTANT :
NATIONAL THERMAL POWER CORPORATION LTD.
BOOTH TANKING PLANT
PACKAGE :
SPEIFICATION NO. : CS-3558-156-2
SUPPLIER CONTRACTOR :
LARSEN & TOUBRO LIMITED
ECC Division

JOB NO. : 06088
DATE : 04.10.08
DRAWN : SSG
CHKD : BSH
APPD : MS

TITLE :
G.A. & MKG. OF CONV. 12 A/B

DWG. No. 0 6 0 8 8 - M - B M - C S - C A - 0 0 3 2
REV : A0 0

CHECKED BY :
ARCHITECTURE
CIVIL & STRUCTURAL
PLUMBING & SANITARY
MECHANICAL
ELECTRICAL
INSTRUMENTATION

SCALE :
1:30
PROJECTION

RELEASED FOR :
☐ PRELIMINARY
☐ TENDER
☐ INFORMATION
☒ APPROVAL
☐ CONSTRUCTION

NOTES :

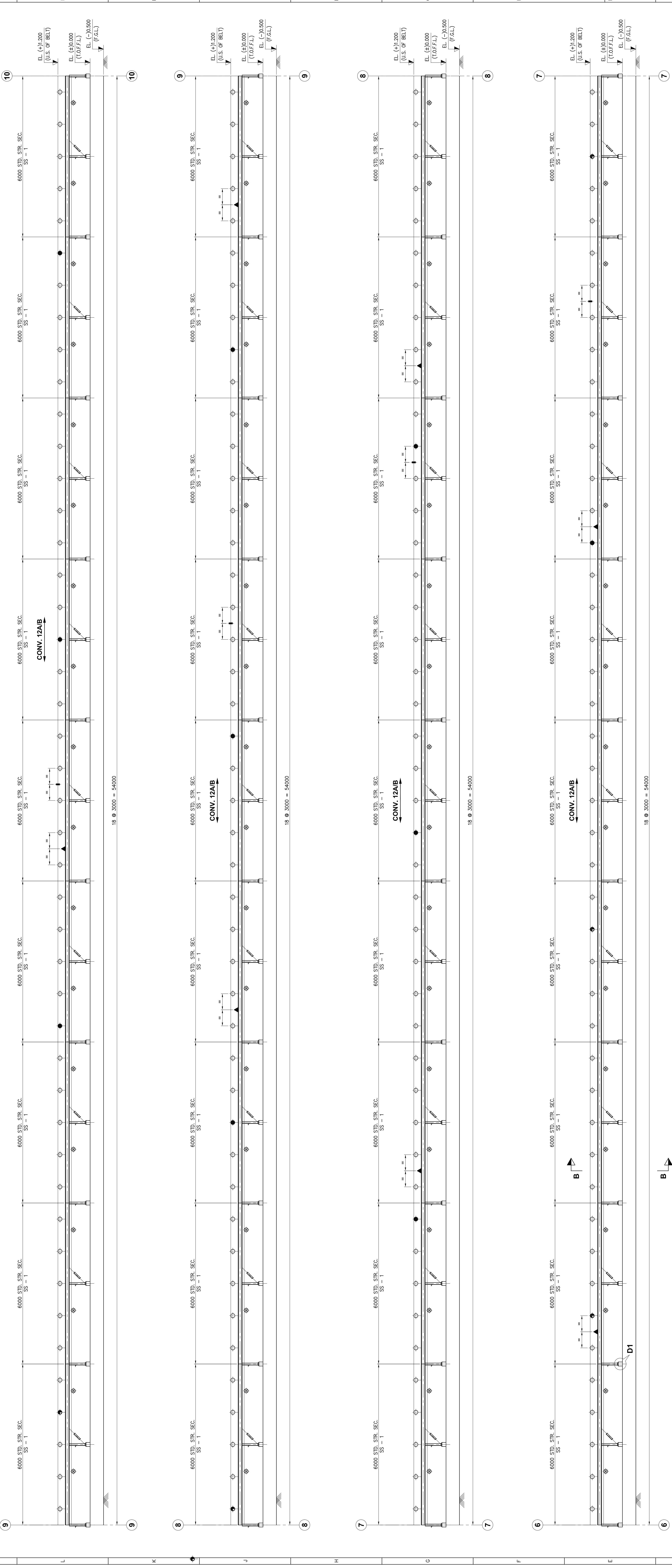
1. ALL DIMENSIONS ARE IN MILLIMETRES & LEVELS ARE IN METRES.
2. READ THIS DRAWING IN CONJUNCTION WITH DWG. NO. 06088-M-BM-CS-CA-0032 SHIT. 1 OF 4, 3 OF 4 & 4 OF 4.
3. FOR OTHER NOTES REFER DWG. NO. 06088-M-BM-CS-CA-0032 (SHT. 1 OF 4).

DETAIL - D2
(TYPICAL SHORT POST DETAIL BETWEEN TP11/TP12 & STACKER/RECLAIMER TRAVEL ZONE AND STACKER/RECLAIMER TRAVEL ZONE & DH1/DH2)

VIEW : C-C
(PEDESTAL DETAIL FOR SHORT POST)
(SCALE 1:3)

DETAIL - D1

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REVNO	DESCRIPTION	REVISIONS			
		DATE	BY	CHKD	APPD
0	FIRST ISSUE	04.10.08	SSG	SSG	SSG

NTPC DRAWING NO.- 9558-156-PVM-B-032-SH-3-4-00
एनटीपीसी पावर कॉर्पोरेशन लिमिटेड
NTPC
National Thermal Power Corporation Ltd
(A GOVERNMENT OF INDIA ENTERPRISE)

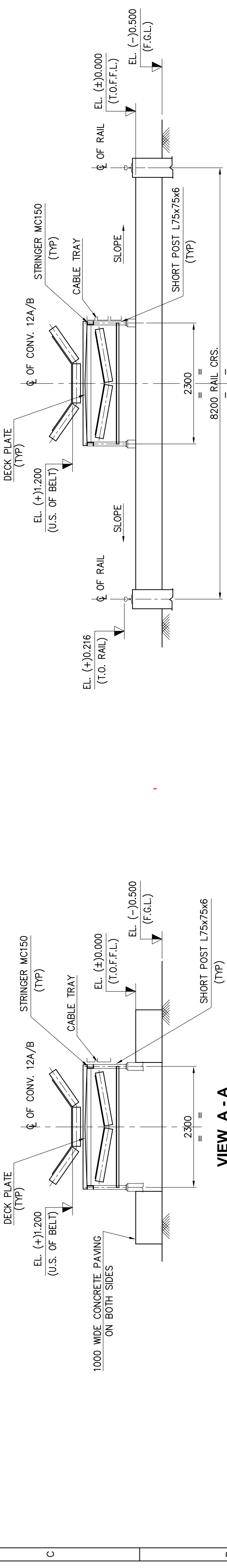
LARSEN & TOUBRO LIMITED
ECC Division - EDRC

CLIENT : NATIONAL THERMAL POWER CORPORATION LTD.
PROJECT : BOMBIKAL POWER PLANT
PACKAGE : BOMBIKAL THERMAL POWER PLANT
SPECIFICATION NO. : CS-3558-156-2
SUPPLIER CONTRACTOR : LARSEN & TOUBRO LIMITED
ECC Division

JOB NO.	TITLE	REVISIONS			
		DATE	BY	CHKD	APPD
06088	G.A. & MKG. OF CONV. 12 A/B	04.10.08	SSG	SSG	SSG

DWG. No.	REV	REVISIONS			
		DATE	BY	CHKD	APPD
06088	0	04.10.08	SSG	SSG	SSG

NOTES :
1. ALL DIMENSIONS ARE IN MILLIMETRES & LEVELS ARE IN METRES.
2. READ THIS DRAWING IN CONJUNCTION WITH DWG. NO. 06088-M-BM-CS-CA-0032
SHT. 1 OF 4, 2 OF 4 & 4 OF 4.
3. FOR OTHER NOTES REFER DWG. NO. 06088-M-BM-CS-CA-0032 (SHT. 1 OF 4).



TYP CROSS SECTIONAL VIEW
BEYOND S/R TRAVEL ZONE

VIEW B - B

POINT	VERTICAL LOAD (N T)	HORIZONTAL LOAD (N T)	
		ALONG THE CONV.	ACROSS THE CONV.
F1	(+ 2.0)	+ 0.4 / - 0.1	(+ 0.2)
F2	(+ 1.4 / - 0.3)	+ 2.9 / - 0.2	(+ 0.2)
F3	(+ 1.4 / - 0.3)	+ 1.5 / - 0.4	(+ 0.2)
F4	(+ 1.4 / - 0.3)	+ 0.8 / - 0.5	(+ 0.2)
F5	(+ 1.4 / - 0.3)	+ 0.5 / - 0.9	(+ 0.2)
F6	(+ 1.4 / - 0.3)	+ 0.3 / - 0.6	(+ 0.2)
F7	(+ 1.4 / - 0.3)	+ 0.2 / - 0.3	(+ 0.2)
F8	(+ 0.1)	+ 0.1 / - 0.2	(+ 0.2)
F9	(+ 0.1)	—	—

SIGN CONVENTION

(V) VERTICAL LOAD : UPWARD (-)
DOWNWARD (+)

(H) HORIZONTAL LOAD : TOWARDS HEAD
TOWARDS TAIL

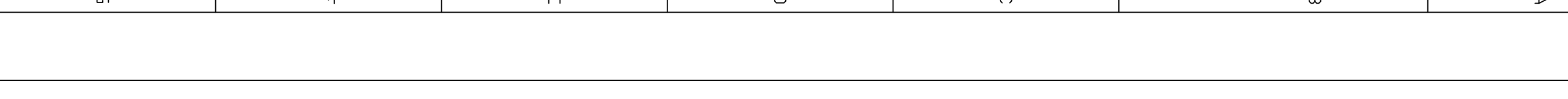
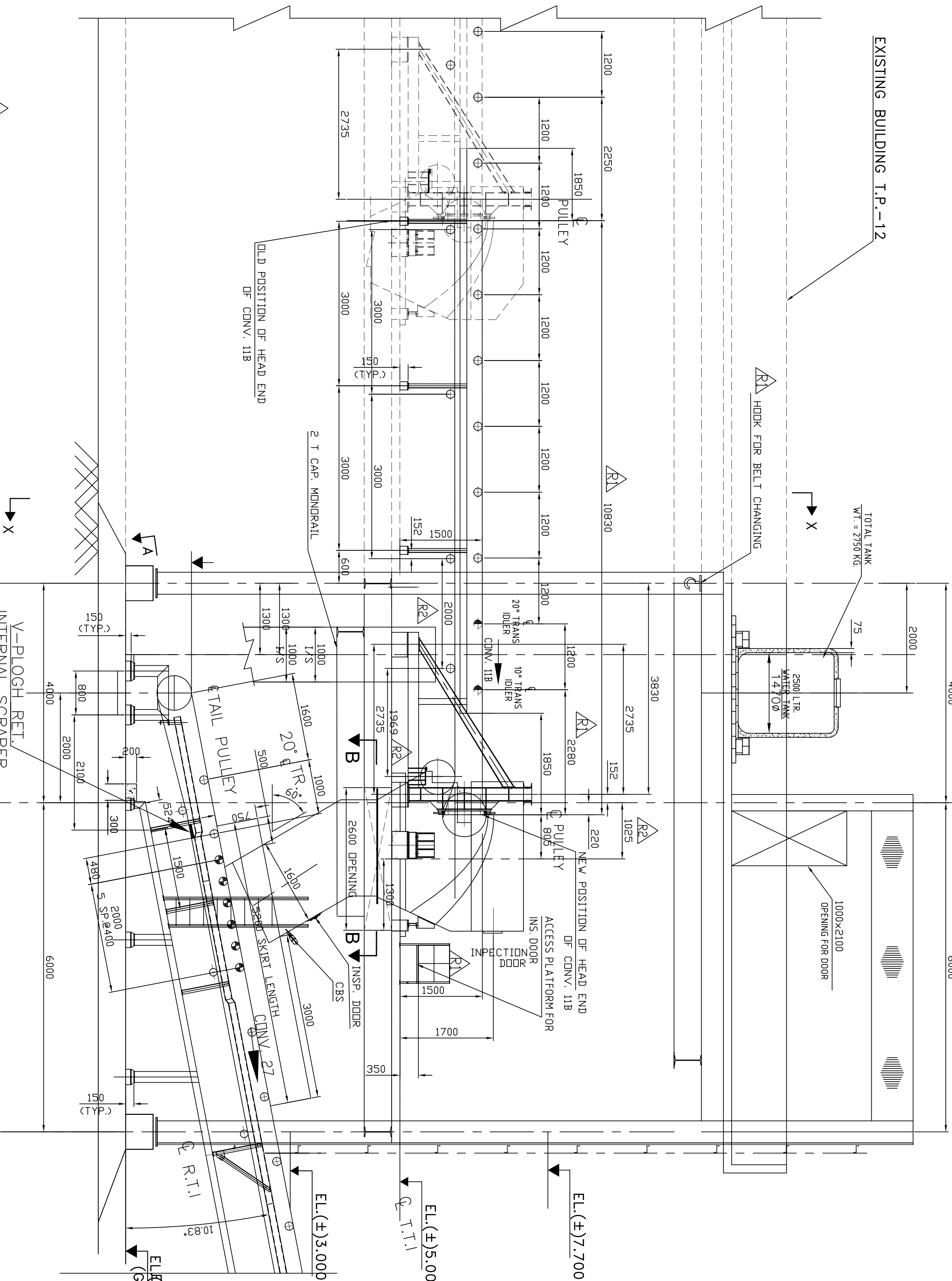
ALL LOADS ARE ACTING AT TOP OF PEDESTAL.

NOTES:

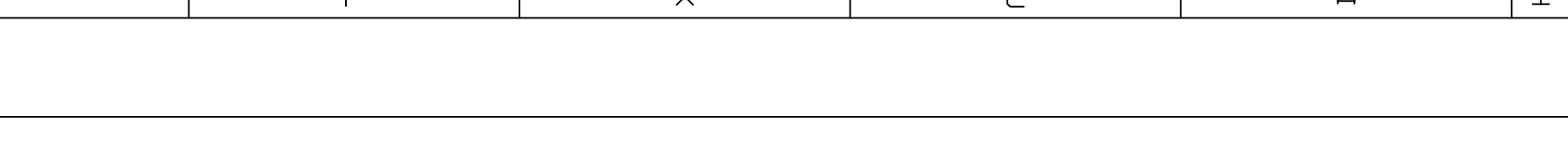
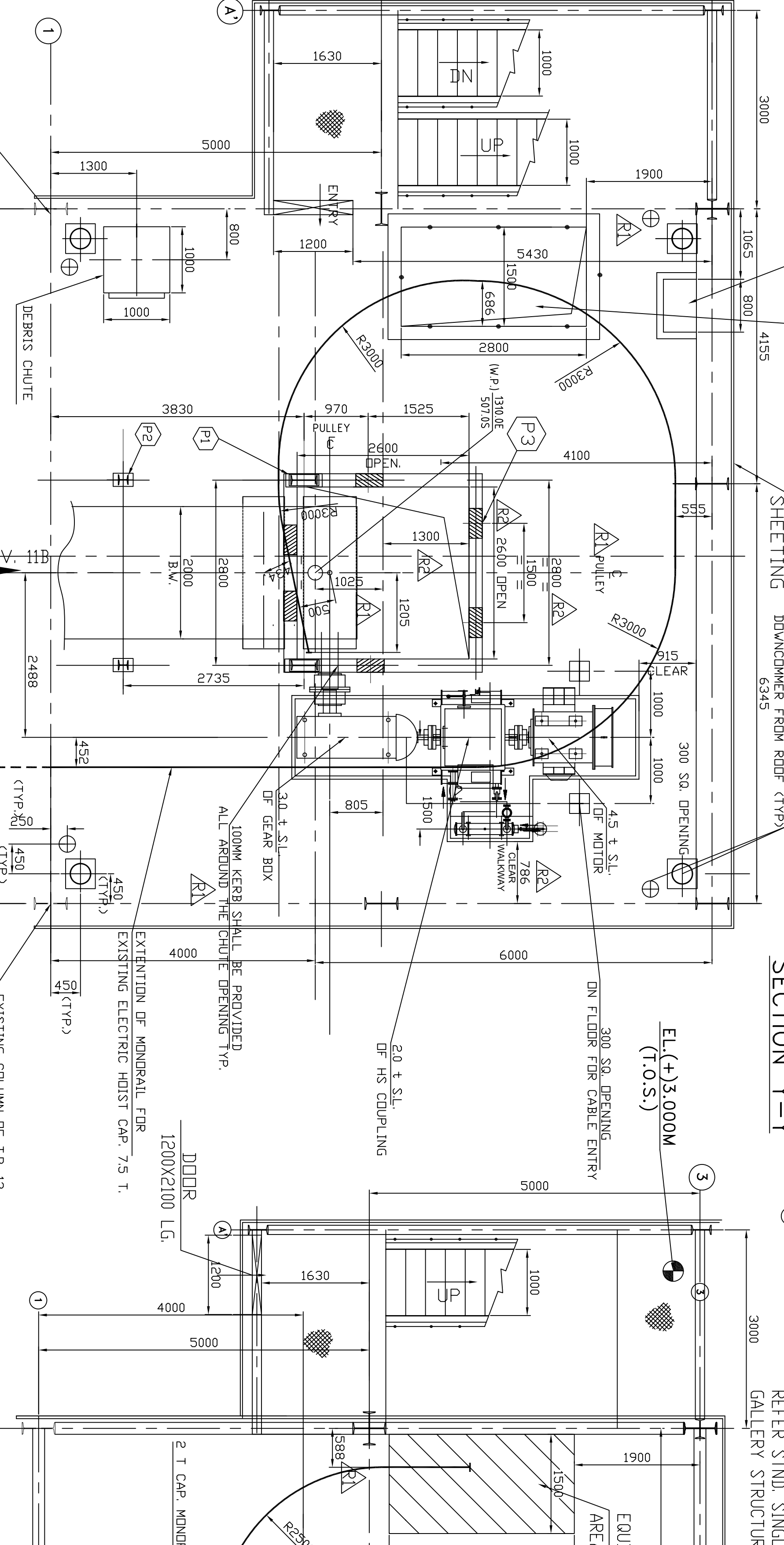
1. ALL DIMENSIONS ARE IN MILLIMETRES & LEVELS ARE IN METRES.
2. READ THIS DRAWING IN CONJUNCTION WITH DWG. NO. 06088-M-BM-CS-GA-0032 SHT. 2 OF 4 TO 4 OF 4.
3. FOR OTHER NOTES REFER DWG. NO. 06088-M-BM-CS-GA-0032 (SHT. 1 OF 4).

TITLE :	GENERAL ARRANGEMENT OF CONVEYOR NO. 2
NAME OF PROJECT	BARI SUPER THERMAL POWER PROJECT (2x660MW)

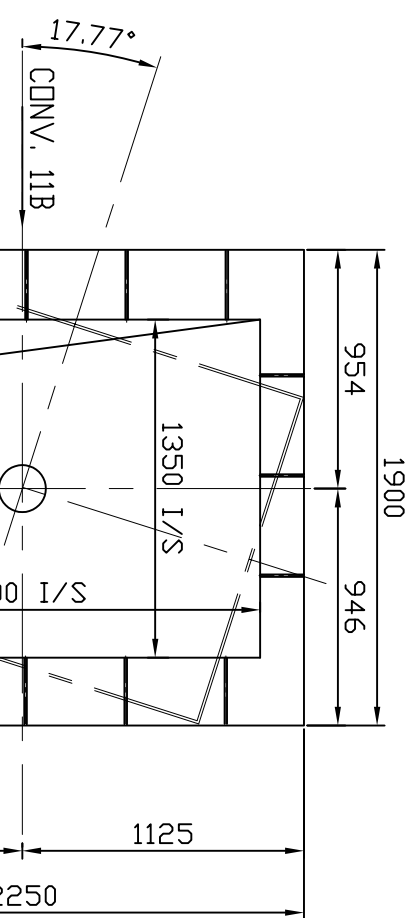
_____b



10000



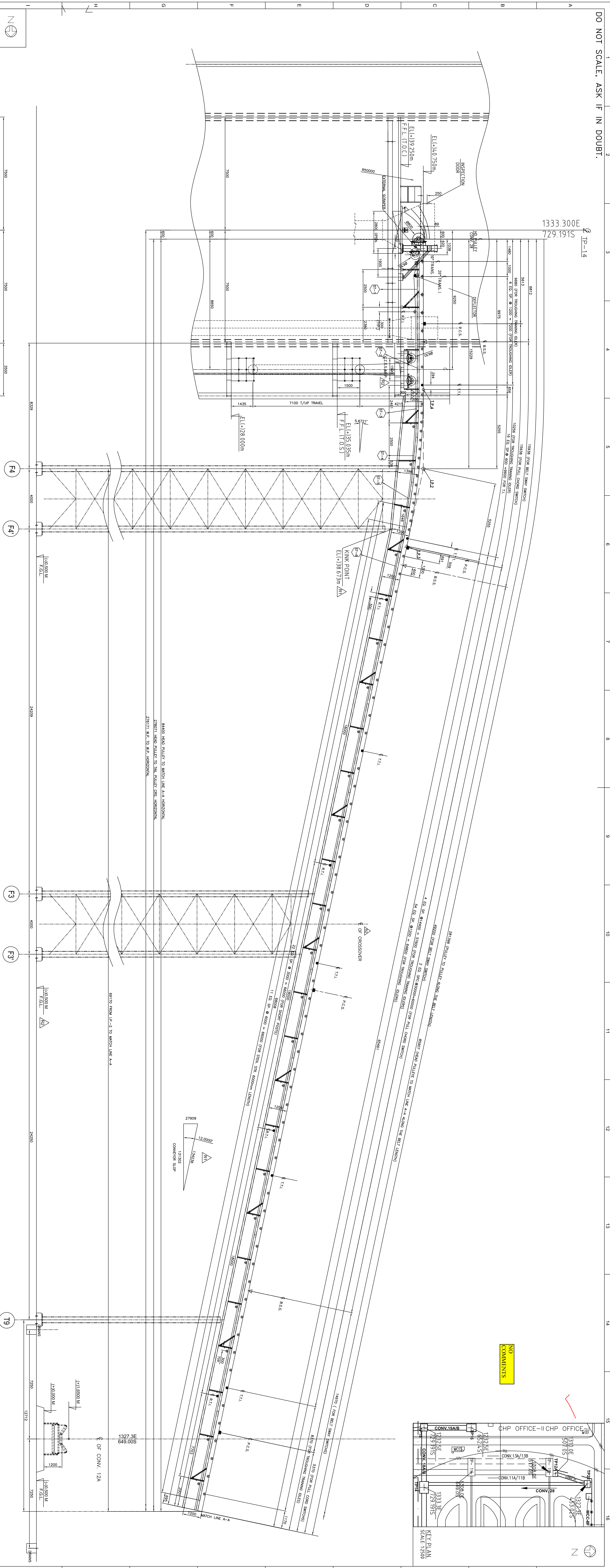
CHUTE BRKT.



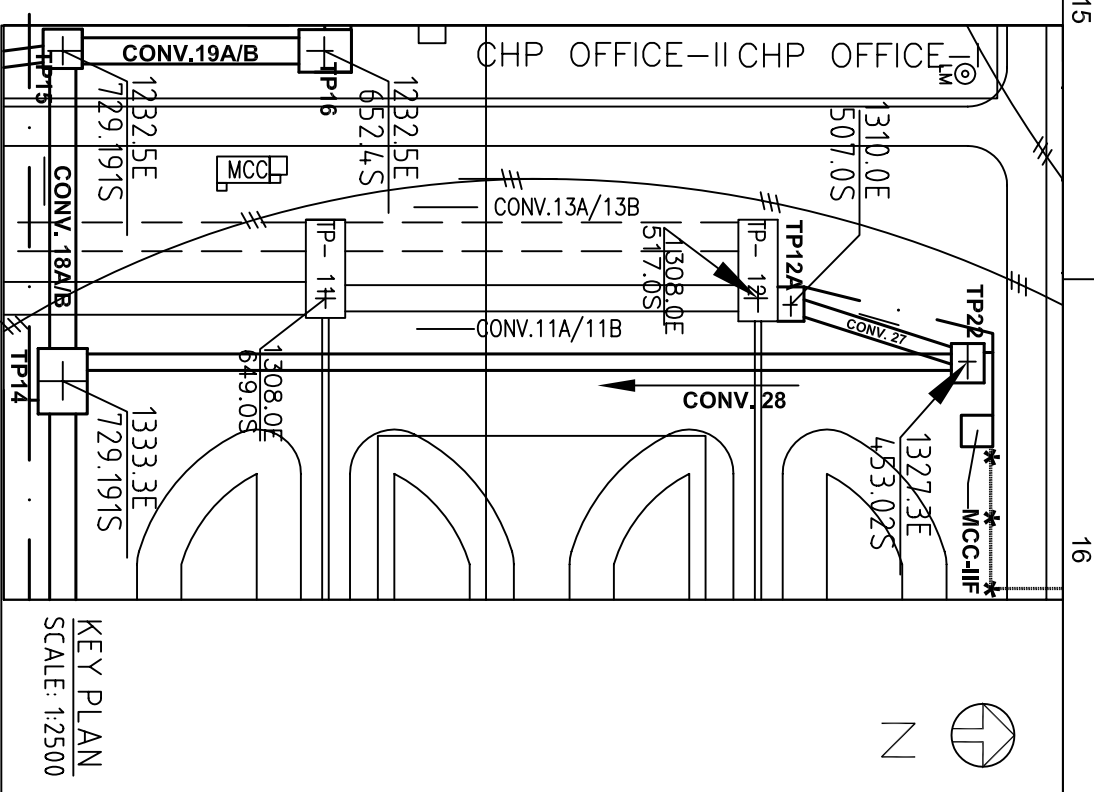
GENERAL ARRANGEMENT, PLANS & LOAD DATA OF TP-12A	CONTRACT NO. 03	(THE LIMITED COMPANY) JANABERSE
DATE 18/03/2010	SCALE 1:50	DRAWING NO. 0-0819-09-MA-01
BY A. GUPTA		REV. R2
DATE 22/05/2010	NAME OF PROJECT BANK SUPER THERMAL POWER PROJECT STAGE-1 & 2 640 MW COAL HANDLING PLANT	SHEET NO. OF 16
PROJECT NO. 15	INDUSTRY 0819	

33	34
----	----

50

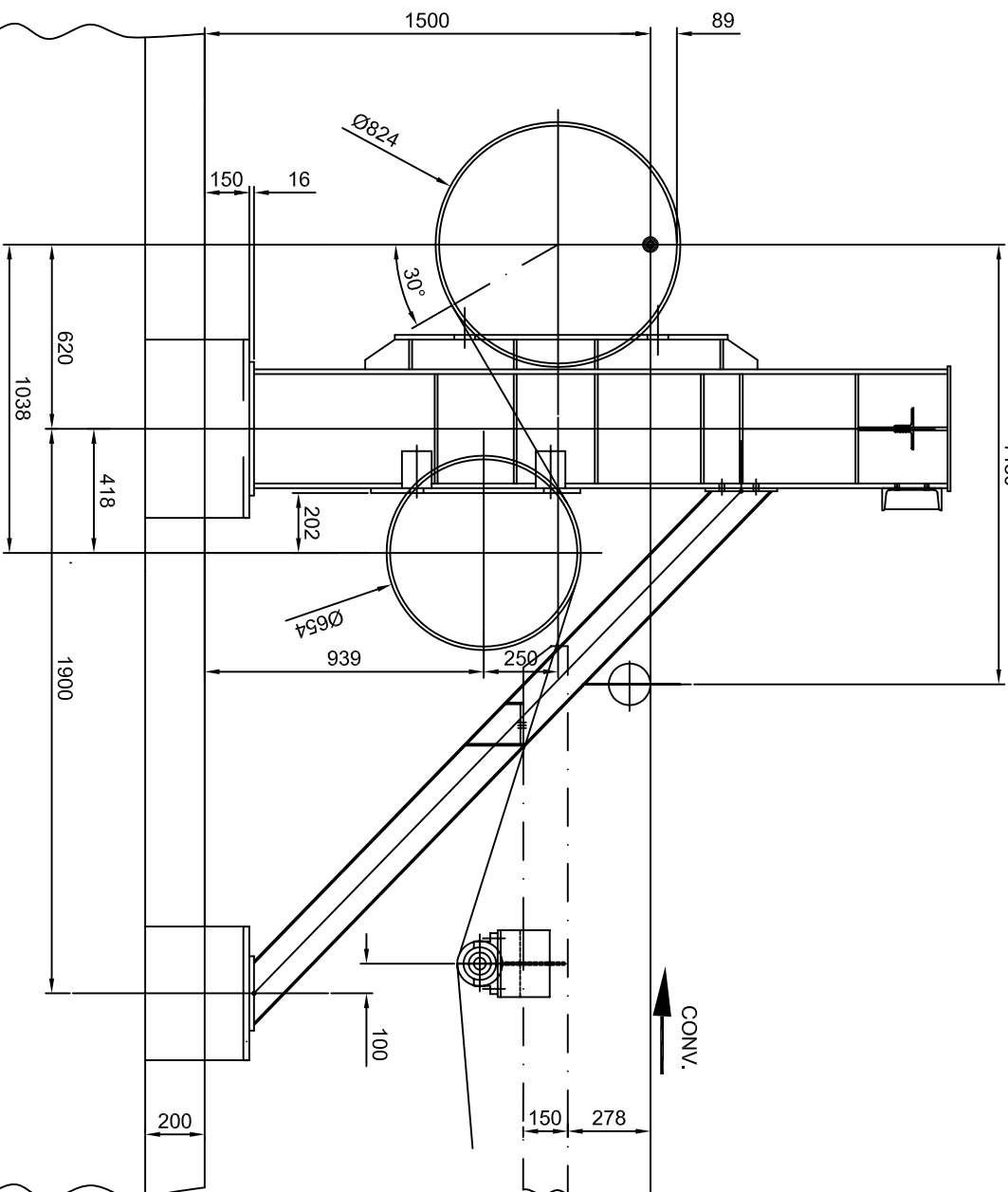


NO COMMENTS



SCALE 1:2500

CONVEYOR DATA														
CONV. 28		CONVEYOR NO.			CONVEYOR		MATERIAL		BELTING		PULLEYS		MISC. EQUIPMENT	
1600		BELT WIDTH IN mm.												
278.071		HORIZONTAL LENGTH												
39.550		PULLEY C/C IN m.												
2200 (RATED)		LIFT IN m.												
2420 (DESIGN)		CAPACITY IN TPH												
3.2		BELT SPEED IN m/s												
354.07		BELT KW												
COAL 0.8		MATERIAL												
(>20)		BULK DENSITY IN t/m												
20 (MAX.)		MAX. LUMP SIZE												
15689		MAX. WORKING TENSION (T1) kgs												
160.0		MAX. ALLOWABLE WORKING TENSION (KN/m)												
4320		SLACK SIDE TENSION AT DRIVE PULLEY (T2) kgs												
16004 FERRIC (N/A)		CARCASS / TYPE												
5		TOP COVER THICKNESS IN mm												
2		BOTTOM COVER THICKNESS IN mm												
FR Flame test		COVER GRADE												
Conforming to ISO:340		VULCANISED												
PHOENIX YULE		MAKE												
800x1800x260x240		HEAD (DRIVE)												
630x1800x180x160		HEAD SNUB												
630x1800x220x200		BEND (2 NOS.)												
630x1800x220x200		TAIL												
630x1800x220x200		TAKE-UP												
-		-												
216		TROUGHING STYLE-7520-35												
-		TROUGHING (NON MAG. IDLER) STYLE-7520-35												
20		TROUGHING TRAINER IDLER STYLE-7522-35												
76		FLAT RETURN STYLE-4921-40												
16		RETURN TRAINER STYLE-4524-40												
6		IMPACT STYLE-7505-35												
1		TRANSITION STYLE-7520-10												
2		TRANSITION STYLE-7520-60												
1		DEFLECTOR												
570 (HT)		RATING IN K.W.												
1485		SPEED IN R.P.M. (SYN)												
SQ. CAGE INDUCTION		TYPE												
3.3KV, 50HZ, 3 PHASE		SUPPLY												
MARATHON		MAKE												
BEVEL HELICAL 3 STAGE		TYPE												
CKC-450 (WITH FAN)		SIZE												
20 : 1		RATIO												
Y		HOLD BACK												
N.A.W.		MAKE												
SCOOP TYPE FLUID COUPLING		HIGH SPEED TYPE												
660 PST		HIGH SPEED SIZE												
GEAR TYPE		LOW SPEED TYPE												
RG -11		LOW SPEED SIZE												
LS. - GBM / EQ. HS. - PREMIUM TRANS. LTD.		MAKE												
170		TORQUE IN kgm												
ET-3150		BRAKE MODEL												
400		BRAKE DRUM DIA IN MM												
ELECTRO HYDRAULIC		TYPE												
ELECTROMAG /EQ.		MAKE												
3.15 MM THK. SHEET ON FULL LENGTH		DECK PLATE												
V. G. T.U.		TAKE-UP												
SPRING BLADED TYPE PRE & MAIN CLEANER		SCRAPER AT DISCHARGE PULLEY												
V-PULVER		INTERNAL SCRAPER												
11 PAIR		PULL CHORD SWITCH												
1		ZERO SPEED SWITCH												
7 PAIR		BELT SWAY SWITCH												



S. NO.	STRINGS	STRINGS	STRINGS
1	1-1	1000	1000
2	2-1	1000	1000
3	3-1	1000	1000
4	4-1	1000	1000
5	5-1	1000	1000
6	6-1	1000	1000
7	7-1	1000	1000
8	8-1	1000	1000
9	9-1	1000	1000
10	10-1	1000	1000
11	11-1	1000	1000
12	12-1	1000	1000
13	13-1	1000	1000
14	14-1	1000	1000
15	15-1	1000	1000
16	16-1	1000	1000
17	17-1	1000	1000
18	18-1	1000	1000
19	19-1	1000	1000
20	20-1	1000	1000
21	21-1	1000	1000
22	22-1	1000	1000
23	23-1	1000	1000
24	24-1	1000	1000
25	25-1	1000	1000
26	26-1	1000	1000
27	27-1	1000	1000

NOTES:

1. ALL DIMENSIONS ARE IN mm AND METERS IN METERS.
2. FOR POINT A TO POINT B, THE DISTANCE IS 1000 M.
3. FOR POINT C TO POINT D, THE DISTANCE IS 1000 M.
4. ELEVATION CORRESPONDENCE TO THE POINTS IS GIVEN IN THE TABLE.
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27. ELEVATION CORRESPONDENCE TO THE POINTS IS GIVEN IN THE TABLE.

DATE	REVISION	BY	CHKD
20/06/10	1	A.S.	
22/06/10	2	A.S.	
22/06/10	3	A.S.	
22/06/10	4	A.S.	
22/06/10	5	A.S.	
22/06/10	6	A.S.	
22/06/10	7	A.S.	
22/06/10	8	A.S.	
22/06/10	9	A.S.	
22/06/10	10	A.S.	
22/06/10	11	A.S.	
22/06/10	12	A.S.	
22/06/10	13	A.S.	
22/06/10	14	A.S.	
22/06/10	15	A.S.	
22/06/10	16	A.S.	
22/06/10	17	A.S.	
22/06/10	18	A.S.	
22/06/10	19	A.S.	
22/06/10	20	A.S.	
22/06/10	21	A.S.	
22/06/10	22	A.S.	
22/06/10	23	A.S.	
22/06/10	24	A.S.	
22/06/10	25	A.S.	
22/06/10	26	A.S.	
22/06/10	27	A.S.	

LEGEND
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2. FOR POINT A TO POINT B, THE DISTANCE IS 1000 M.
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SCRAPER AT DISCHARGE PULLEY
INTERNAL SCRAPER
PULL CHORD SWITCH
ZERO SPEED SWITCH
BELT SWAY SWITCH

GENERAL ARRANGEMENT OF CONVEYOR NO. 28
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DESIGN	ASSUMES NO RESPONSIBILITY FOR
DATE	OPERATION OF ANY STRUCTURES
DRAWING	SHOWN ON THIS DRAWING, BUT NOT
DATE	ANY UNDER CONTRACT TO WHICH
	IT APPLIES.
CHECK	IS LOANED SUBJECT TO RETURN
DATE	AND UPON THE EXPRESS
APPRO	WRITTEN IT IS NOT TO BE USED DIRECTLY
DATE	IN ANY WAY DETRIMENTAL TO
	31.

Schedule H
Schedule of Rates

Schedule I

Draft Coal Transportation Agreement

This Agreement is made at [.....] on this [.....] day of [.....], [20...] BY AND BETWEEN

[..... **LIMITED**], a company incorporated under the provisions of the Companies Act, 1956, having its registered office at [hereinafter referred to as the “**Coal Transportation Agency**” or “**CTA**”] and which expression shall include its successors and permitted assigns, of **FIRST PART**

AND

[..... **LIMITED**], a company incorporated under and existing under the and having its registered office at [.....], [hereinafter referred to as the “**Imported Coal Supplier(s)**” or “**ICS**”] and which expression shall include its successors and permitted assigns of **SECOND PART**.

(The expressions “Coal Transportation Agency” and the “Imported Coal Supplier(s)” shall include their respective successors, and are hereinafter collectively referred to as the “Parties” and individually as “Party”)

WHEREAS

- A. NTPC Limited (hereinafter referred to as NTPC) is a premier power generation company having expertise and strength in areas such as setting up, operation & maintenance of power projects and sale of power to various state power utilities and other bulk customers. NTPC requires coal for operation of its power plants.
- B. For procuring imported coal for its 3300 MW Super thermal power project (STPP) at Barh, District Patna, Bihar (“Barh STPP”) NTPC and Imported Coal Supplier have entered into a Contract Agreement dated _____ for supply of imported coal which stipulates that the Imported Coal Supplier shall enter into a coal transportation agreement with Coal Transportation Agency appointed by the NTPC.
- C. In case NTPC procures the imported coal either by its own or their designated agency, the designated agency of NTPC shall execute the Coal Transportation agreement with Coal Transportation Agency. The terms, conditions and format of the Coal Transportation Agreement were specified in the Coal Supply Agreement, and the ICS or agency nominated by NTPC has agreed to be bound by the same.
- D. In order to ensure adequate and timely supply of coal to the Barh STPP, NTPC has decided to use inland waterways as a viable supplementary mode for transportation of coal till the Barh STPP.

- E. IWAI had undertaken and managed a competitive bid process for and on behalf of NTPC to identify and recommend an operator who would be responsible for unloading the coal from the ocean going vessels and thereafter hauling the coal on vessels using National Waterway -1 and ensuring delivery of the coal, in accordance with identified specifications, at the coal stack yard of the Barh STPP for a period ten (10) years thereafter (“Project”). The Coal Transportation Agency was selected as the successful bidder, and was issued a letter of award (LOA). Subsequently, the Coal Transportation Agency executed a Tripartite Agreement with NTPC and IWAI dated [●], pursuant to which the Coal Transportation Agency is required to enter into a Coal Transportation Agreement with Imported Coal Supplier (ICS) or any other agency(ies) designated by NTPC. The terms, conditions and format for the Coal Transportation Agreement were specified in the Tripartite Agreement, and the CTA has agreed to be bound by the same.
- F. In order to fulfil its obligations under Coal Supply Agreement (in case NTPC intends to procure the desired quantities of coal through an Imported Coal Supplier), the Imported Coal Supplier(s) is entering into this Coal Transportation Agreement. Similarly, to fulfil its obligations under the Tripartite Agreement, the Coal Transportation Agency is entering into this coal transport agreement.
- G. In case NTPC procures the imported coal either by its own or their designated agency(ies), the designated agency(ies) of NTPC shall execute the Coal Transportation agreement with a Coal Transportation agency

NOW, THEREFORE, in consideration of the forgoing and the respective covenants and agreement set forth in this Coal Transportation Agreement, the sufficiency and adequacy of which is hereby acknowledged and intending to be legally bound hereby, the parties to this Coal Transportation Agreement agree as follows.

ARTICLE -1: DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

In this Coal Transportation Agreement, unless repugnant to the context or inconsistent therewith, the following words, phrases and expressions shall bear the meaning hereinafter respectively assigned to them:

“Applicable Laws” means any statute, law, regulation, ordinance, notification, rule, regulation, judgment, order, decree, bye-law, approval, directive, guideline, policy, requirement or other governmental restriction or any similar form of decision of, or determination by, or any interpretation or administration having the force of law in the Republic of India, by any Government Authority or instrumentality thereof, whether in effect as of the date of this Coal Transportation Agreement or thereafter.

“Coal Transportation Agreement” means this agreement including the recitals, annexes and attachments hereto as may be amended, supplemented or modified, from time to time, in accordance with the provisions hereof;

“Contract Period” of this Coal Transportation Agreement shall be ____ year(s) from the date of execution of this Coal Transportation Agreement, unless extended / terminated earlier in accordance with the provisions hereof

“Capesize Vessel” means an Ocean Going Vessel with DWT of upto 1,80,000`MT

“Change in Law” means occurrence of any of the following events after the execution of this Coal Transportation Agreement:

- (a) enactment of any new Applicable Law;
- (b) the repeal in whole or in part (unless re-enacted with the same effect) or modification of any existing Applicable Law;
- (c) the change in interpretation or application of any Applicable Law;
- (d) the imposition of a requirement for a Clearance(s) (other than for cause) not required on the date of this Coal Transportation Agreement;
- (e) a change in the terms and conditions attaching to such Clearance(s) (other than for cause) or the attachment of any new terms and conditions to a Clearance(s) (other than for cause), after the date of grant of any Clearance(s); or

- (f) any Clearance(s) previously granted ceasing to remain in full force and effect, though there is no fault of or breach by a Party (including a failure to renew), or if granted for a limited period, not being renewed on a timely basis on an application therefore having been duly made in good time.

For the avoidance of doubt, a change in the rate of any tax or the imposition of a new tax shall not constitute a Change in Law and the Parties shall be liable to bear the impact and incidence thereof at their cost and risk.

“Clearances” means any and all permissions, clearances, licenses, authorisations, consents, no-objections, approvals of or from any Government Authority required in connection with the Project and for undertaking, performing or discharging the obligations or fulfillment of the purposes contemplated by this Coal Transportation Agreement.

“Dead Weight Tonnage (DWT)” means an expression of a vessel’s carrying capacity including the weight of the crew, passengers, cargo, fuel, ballast, drinking water and stores;

“Dispute” shall have the meaning set forth in Article 14;

“Dispute Resolution Procedure” means the procedure for resolution of Disputes set forth in Article 14;

“Escalation clause” shall have the meaning ascribed to it in Article 8.1;

“Event of Default” means a CTA Event of Default and/or ICS Event of Default, as the context may require or admit.

“Force Majeure” or “Force Majeure Event” shall have the meaning ascribed to it in Article 10;

“GOI” means the Government of India;

“Good Industry Practice” means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Coal Transportation Agreement and which would be expected to result in the performance of its obligations by the Operator in accordance with this Coal Transportation Agreement, Applicable Laws and Clearances in reliable, safe, economical and efficient manner;

“Government Authority” means GOI, Government of Bihar, any state government or any governmental department, commission, board, body, bureau, agency, authority, undertaking, court or other judicial or administrative body or any sub-division or instrumentality thereof, central, state, or local, having jurisdiction over the Parties and the performance of the obligations under this Coal Transportation Agreement;

“Month” means the calendar month as per the Gregorian calendar.

“National Waterway 1 (NW1)” means Ganga-Bhagirathi- Hooghly river system between Haldia (Sagar) and Allahabad (1620 Kms) declared as NW1 in October 1986.

“Notice of Readiness” means the notice issued by the Master of the Ocean Going Vessel pursuant to Article 6.2(b) (i).

“Least Available Depth” means least depth of the NW-1

“Ocean Going Vessel” means a seaworthy gearless Panamax and Capesize vessel(s) and/or their designated agency(ies) , as the case may be which would be used by the ICS for navigation in sea as a means of transportation of coal from port of origin to Transfer Point.

“Party” means either CTA or ICS or, where the context admits or requires, the Successful Bidder, and **“Parties”** means collectively CTA and ICS, where the context admits or requires, the Successful Bidder

“Panamax Vessel” means an Ocean Going Vessel with a DWT of upto 80,000 MT.

“Person” means any natural person, firm, corporation, company, voluntary association, partnership, joint venture, trust, incorporated organization, unincorporated organization, any government or competent authority or instrumentality thereof or other entity.

“Termination” means prior termination of this Coal Transportation Agreement pursuant to Termination Notice but shall not, unless the context otherwise requires, include the expiry of this Coal Transportation Agreement due to efflux of time in the normal course.

“Transfer Point” means the location identified by the CTA from where the coal would be unloaded and transferred from Ocean Going Vessels (Panamax and Capesize) to CTA’s Vessels.

“Termination Notice” means the communication issued in accordance with Article 12.1 of this Coal Transportation Agreement.

“Third Part Damage Report” means the report of the third party surveyor or assayer appointed for this purpose by the Master of Ocean Going Vessel;

“Vessels” means river sea vessels or any combination of coastal vessel/river sea vessels/inland vessel (Self propelled/Tug and barge combination) capable of 24 hours and round the year operations and shall abide by applicable rules of Competent Authority, procured by the Operator for transferring the coal from the Transfer Point to Barh.

Capitalized words and expressions used herein but not defined shall, unless repugnant to the context, have the meaning as respectively ascribed thereto under the Tripartite Agreement.

1.2 Principle of Interpretations

- (a) The words and expressions beginning with capital letters and defined in this Coal Transportation Agreement shall unless the context otherwise requires have the meaning ascribed thereto herein-
- (b) In this Coal Transportation Agreement, unless the context otherwise requires,
 - (i) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
 - (ii) references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
 - (iii) words importing singular shall include plural and vice versa, and words importing the masculine shall include the feminine gender; and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organizations or other entities (whether or not having a separate legal entity);
 - (iv) references to a "person" and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) or two or more of the above and shall include successors and assigns;
 - (v) the table of contents, headings or sub-headings in this Coal Transportation Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Coal Transportation Agreement;
 - (vi) the words "include" and "including" are to be construed without limitation and shall be deemed to be followed by "without limitation" or "but not limited to" whether or not they are followed by such phrases; references to "construction" include, unless the context otherwise requires, investigation, design, developing, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and "construct" shall be construed accordingly;

- (vii) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (viii) any reference to day shall mean a reference to a calendar day;
- (ix) references to any date, period or milestones shall mean and include such date, period or milestones as may be extended pursuant to this Coal Transportation Agreement;
- (x) any reference to any period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Coal Transportation Agreement is not a business day, then the period shall run until the end of the next business day;
- (xi) the words importing singular shall include plural and vice versa;
- (xii) references to any gender shall include the other and the neutral gender;
- (xiii) references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this Coal Transportation Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to this Coal Transportation Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Coal Transportation Agreement or of the Schedule in which such reference appears; and
- (xiv) the damages payable by either Party to the other of them, as set forth in this Coal Transportation Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the Damages)".

1.3 Measurements and Arithmetic Conventions

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

1.4 Ambiguities within the Coal Transportation Agreement

In case of ambiguities or discrepancies within this Coal Transportation Agreement, the following shall apply:

- (a) Between two Articles of this Coal Transportation Agreement, the provisions of specific Articles relevant to the issue under consideration shall prevail over those in other Articles;

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- (b) Between the Articles and the Annexes, the Articles shall prevail, save and except as expressly provided in the Articles or the Annexes;
 - (c) Between the dimension scaled from the drawing and its specific written dimension, the latter shall prevail; and
 - (d) Between any value written in numerals and that in words, the latter shall prevail.
 - (e) Between the provisions of this Coal Transportation Agreement and any other documents forming part of this Coal Transportation Agreement , the former shall prevail

ARTICLE -2: SCOPE OF WORK

2.1 Scope of work

The Coal Transportation Agency shall, at its own risk and cost, perform the following:

- (a) Arrange suitable equipments, infrastructure and facilities at the Transfer Point to operate and maintain the Unloading of Coal from Ocean Going Vessel at the Transfer Point(s) as per the Logistic solution submitted by the CTA (Operator) to IWAI and NTPC under the Tripartite Agreement;
- (b) Arranging suitable Vessels and loading of vessels at the Transfer Point with imported Coal, supplied by the ICS and/or NTPC and/or their designated agency(ies) for onward movement of such Coal to Barh STPP through National Waterway- 1;
- (c) Unloading of Coal at the Barh STPP waterfront and ensure delivery of coal inside the coal stack yard of the Barh STPP using Pipe Conveyor System;
- (d) Coordinate with NTPC or any agency nominated by NTPC for coal import, Master/Agent of the vessel and port for safe anchorage and stevedoring operations.
- (e) Complete on board stevedoring for discharge of coal from vessel, unloading, transportation and storage. All other terms and conditions as stipulated in Coal Transportation Agreement.
- (f) Doing all such acts, and undertaking all such coordination with entities such as IWAI and relevant port authorities or Government Authorities as is necessary for performing the activities listed above.

ARTICLE 3. REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of Parties

Each Party represents and warrants to the other that:

- (a) It is duly organized, validly existing and in good standing under the laws of India or in case of the ICS, country of its incorporation;
- (b) It has full power and authority to execute, deliver and perform its obligations under this Contract and to carry out the transactions contemplated hereby;
- (c) It has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorize the execution, delivery and performance of this Coal Transportation Agreement;
- (d) It has the financial standing and capacity to undertake this Coal Transportation Agreement;
- (e) This Contract constitutes its legal, valid and binding obligation fully enforceable against it in accordance with the terms hereof;
- (f) It is subject to civil and commercial laws of India with respect to this Contract and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof; and
- (g) It shall have an obligation to disclose to the other Party as and when any of its representations and warranties ceases to be true and valid.

3.2 Additional Representations and Warranties of CTA

In addition to the representations and warranties under Article 3.1 hereinabove, the CTA represents and warrants to ICS that:

- (a) it has conducted its own analysis and review of the relevant information and that it has satisfied itself as to the accuracy and completeness of all such relevant information including the terms and conditions and obligations of Tripartite Agreement executed by and between NTPC, IWAI and Coal Transportation Agency (called "Operator" therein) and that the representation/warranties undertaken therein shall remain applicable to this Coal Transportation Agreement also.
- (b) it has examined the Contract and is satisfied that there are no ambiguities, discrepancies, inconsistencies, divergence, impracticalities or omissions from, within and between such documents and that such documents are accurate, complete, technically feasible and sufficient in all respects for the purposes of the performance, execution and implementation of this Contract, and that it shall obtain and maintain during the term of this Contract all

authorizations and approvals required for the performance of its obligations under this Contract , including but not limited to all environmental licenses;

- (c) effect and maintain any and all insurance that is consistent with Good Industry Practice for infrastructure utilized for the operation;
 - (i) perform the obligations under this Contract according to good industry practice;
 - (ii) make available sufficient resources for unloading and transportation of the required Coal volume throughout the term of this Coal Transportation Agreement.

3.3 Without prejudice to Article 3.2 and subject to the remainder of the Article-3 if, notwithstanding the Coal Transporting Agency's analysis and examination of the documents comprising the Contract, any ambiguities, discrepancies, inconsistencies, divergence, impracticalities or omissions from, within the Contract come to the attention of either Party, that Party shall immediately notify the other Party specifying the ambiguity, discrepancy, inconsistency, divergence, impracticality or omission (as the case may be) and the other Party(ies) shall use best and sincere efforts to remedy the difficulty to the extent feasible and practical.

3.4 The Parties agree that any ambiguity, discrepancy, inconsistency, divergence, impracticality or omission as aforesaid shall not vitiate the Coal Transportation Agreement.

ARTICLE 4: OBLIGATION OF PARTIES

4.1 Obligation

The obligations of Coal Transportation Agency shall be as under:

(a) Obligations of Coal Transportation Agency

The Coal Transportation Agency shall, during the Contract Period commencing from the execution of Coal Transportation Agreement, undertake, perform and discharge its role, responsibilities and obligations as detailed out below:

- (i) Specify the Transfer Point to the ICS and/or NTPC or their designated agency;
- (ii) Specify the Transfer Point to the ICS and/or NTPC or their designated agency in writing at least 48 hours (forty eight hours) before the expected arrival of the Ocean Going Vessel in case it is being changed due to Force Majeure;
- (iii) Unload the Coal from the Ocean Going Vessels at an unloading rate of not less than 12,000 Metric Tonne PDPRWWDSHINC basis at the Transfer Point for delivery to the Barh STPP through the vessels ;
- (iv) CTA shall do the operations of stevedoring, vessel unloading, handling, storage, arrangement of vessels and transportation of Coal to Barh STPP;
- (v) The CTA should make all reasonable efforts to deliver the unloaded quantity of imported coal to Barh within 12 days from the date of complete unloading from each Ocean Going Vessel;
- (vi) provide sufficient men, machines and resources for the transportation of Coal from Transfer Point till the coal stack yard at the Barh STPP;
- (vii) Obtain all necessary clearances required for transporting the Coal from Government Authorities and/or statutory authorities/port authorities, IWAI and bear the cost of all dues and levies that may have to be paid including taxes, duties etc. Imported Coal Supplier(s) and/or NTPC or their designated agency(ies) shall provide such authorizations to the Coal Transportation Agency for obtaining the statutory clearances, as may be required;
- (viii) Coal Transportation Agency shall make requisite arrangement for Coal unloading and storage at the Transfer Point in case of breakdown of Transshipment Infrastructure/ routine and preventive repairs of Transshipment Infrastructure or non-availability of NW-1 or any part thereof due to Force Majeure.

- (ix) CTA shall deliver the coal inside the coal stack yard of Power Station with allowable / permissible Handling/Transit loss of ----- (in %) [% Transit Loss *to be indicated by Operator as part of bid submission*].
- (x) CTA shall ensure that the Ocean Going Vessel shall be unloaded within the time period indicated by Operator in their suggested logistic solution. In case the delay happens on the unloading of Ocean Going Vessel, CTA shall be liable to pay demurrages to the ICS; however demurrages in such event shall not exceed USD 15,000 per day for Panamax and Capesize Vessel. The rate of dispatches earned shall be half of the demurrage rate. Demurrage incurred/dispatch earned shall be settled on vessel -to- vessel basis
- (xi) CTA shall be responsible for the safe berthing of the Ocean Going Vessel alongside the Transshipment Infrastructure and all incidental charges relating thereto, like wharfage on coal, anchorage including Tug charges, pilotage, mooring etc if any, shall be on account of CTA.

(b) Other Obligations of CTA

- (i) Inspect the cargo upon arrival of Ocean Going Vessel;
- (ii) Coordination with ICS and/or NTPC or their designated agency(ies), Master/Agent of the Ocean Going Vessel and port for safe berthing at Transfer Point;
- (iii) Take all necessary precautions at all places to avoid any incident or accident which is deemed to cause damage to the environment as per Applicable Law;
- (iv) Complete onboard stevedoring for unloading of Coal into vessels and to ensure a minimum unloading rate of 12,000 Metric Tonne PDPRWWDSHINC basis. CTA shall be responsible for all the cost and expenses related to wharfage, anchorage and tug charges, pilotage, mooring etc if any at Transfer Point.
- (v) Monitoring of loaded Vessels in transit upto Barh STPP
- (vi) Obtain acknowledgement receipt from NTPC with clearly mentioning the weight of the cargo received, moisture content etc on delivery at Barh STPP and submit the same to the ICS and/or NTPC or their designated agency within 15 days of receipt of respective consignment from the ICS and/or NTPC or their designated agency
- (vii) Providing security and measures as mandated by ICS and/or NTPC or their designated agency and also as per Good Industry Practices to minimize handling loss from midstream location/ port to Barh STPP.

(viii) Ensure that there is no theft, pilferage, admixture etc, during transportation of imported Coal;

(i) Apply, maintain, and comply with all necessary approvals, authorizations, and licenses necessary pursuant to Applicable Law for the performance of its obligations under this Coal Transportation Agreement.

(c) **Obligation of Imported Coal Supplier**

Imported Coal Supplier and/ or any other NTPC's designated agency shall during the period of Contract Period commencing from the execution of this **Coal Transportation Agreement** undertake, perform and discharge its role, responsibilities and obligations under this Coal Transportation Agreement in connection with and arising out of and for Coal Transportation in accordance with and in compliance with the terms and conditions of this Coal Transportation Agreement

(i) Ensuring delivery of all the quantities of coal as ordered by NTPC, from time to time, for delivery to Barh STPP under the Coal Supply Agreement, at nominated Transfer Point on Fairly Even Spread Basis (FES) during the Contract Period; NTPC will furnish to Imported Coal Supplier (ICS) a schedule of quantity with a tentative month wise break up proposed to be delivered at the Power station. ICS shall coordinate with CTA and deliver the imported coal as per schedule

(ii) Ensure the delivery of imported coal to CTA through Ocean Going Vessel at Transfer Point;

(iii) Shall appoint and constitute the CTA as its constituted attorney for obtaining all the required and incidental approvals under Applicable Law on its behalf and the CTA shall, acting reasonably, extend all necessary co-operation and support to Imported Coal Supplier in this regard. However, the CTA shall not be responsible for any rejection of approval by any relevant authority.

(iv) Imported Coal Supplier shall arrange for the Ocean Going Vessel to bear and to pay all port dues/charges (except wharfage on coal, anchorage, Tugs charges, Pilotage, Mooring etc at Transfer Point), tonnage dues, light dues, and other taxes, assessments and charges which are customarily payable at the Indian Port(s) of unloading on or with respect to the vessel(s), including customs duty.

(v) Effect payments to CTA directly in accordance with the provisions of this Contract;

(vi) ICS shall reimburse to the CTA any increase in the below stipulated existing statutory charges, payable by the CTA during the Operation Period on actual basis. In case of any reduction in below stipulated charges the Total Transportation Rate

per metric tonne as applicable at the time of such revision shall be adjusted accordingly.

Charges	Existing Charges
Wharfage charges levied by KoPT/ concerned port authority	@60% of that applicable for 'Foreign Cargo' at KoPT berth other than through mechanized system plus service tax
Royalty charges to be paid to Paradip Port for transloading operation at Kanika Sands*	Rs. 10 per MT
Gross Registered Tonnage (GRT) charges to Farakka Barrage Project	Rs 20 per GRT
Waterway usage charges	Rs 0.02 per GRT per kilometer

*an area comprising the radius of 2 nautical miles around a position earmarked by Lat 21°08'12" N Log 87°14'00" which has been notified for the purpose of transloading.

- (vii) To enter into and maintain insurance contracts of a nature, and scope as is consistent with Good Industry Practice for a Contract of this nature.
- (viii) develop and prepare throughout the Contract Period a monthly schedule of activities for off take of the delivered loading quantity at Transfer Point in consultation with CTA;
- (ix) inform the schedule of start of journey from the point of origin and keep the CTA informed of schedule during the Term.
- (x) Arrange custom clearance at its cost at Transfer Point.
- (xi) Appoint surveyor for quality and quantity check at Transfer Point and bear all the related expenses.

ARTICLE 5: ASSURANCE OF USAGE

ICS hereby assures and represents to the CTA that it shall, for the term of this Agreement, shall utilise the services of the CTA for transportation and delivery of coal ordered by NTPC for delivery at Barh STPP and will not employ any other contractor to undertake any of the scope of work as is covered by this Agreement.

ARTICLE 6: TRANSFER POINT AND SHIPPING TERMS

6.1 Transfer Point and Terms

Coal shall be unloaded by the CTA at the Transfer Point. The cargo will be discharged at the rate of 12,000 Metric Tonne PDPRWWDSHINC basis, for a period of at least 330 days in a year.

6.2 Shipping Terms

(a) Transshipment & Unloading of Ocean Going Vehicles Operation

- (i) CTA shall guarantee the minimum unloading rate of 12,000 Metric Tonne PDPRWWDSHINC basis;
- (ii) Lay time to count 12 hours after tendering Notice of Readiness unless used, if used actual time used to count (USC ATUC);
- (iii) CTA to achieve agreed average unloading rate. In the event CTA fails to achieve the same and demurrage incurred, such demurrage will be deducted from the payment of CTA, and applicable Customs duty and taxes etc on such demurrage will also be to the CTA's account. In event lay time is saved and dispatch earned such dispatch will be paid in full to CTA. Any taxes / duties on such settlement or dispatch/demurrage shall be to the account of CTA.
- (iv) HOLD CLEANING: CTA will supply adequate manpower and equipment for shovel cleaning and discharging residual cargo on board the Ocean Going Vessel.
- (v) NOTICES: Arrival Notices of the Ocean Going Vessel at Transfer Point shall be provided by the ICS to CTA at least 15/10/5/3/2/1 days in advance along with description of the nominated Ocean Going Vessel. ICS shall keep gap of minimum 6 (six) days between arrivals of two Ocean Going Vessels carrying Coal at Transfer Point nominated by CTA.
- (vi) Lay time will be calculated on the basis of Statement of Facts (SOF) duly accepted by the Master of the vessel/Master's nominated agents;
- (vii) ICS shall arrange for the vessel to bear and to pay all port dues/charges (except unloading charges wharfage, anchorage, Tugs Charges, pilotage, Mooring at Transfer Point, if any), tonnage dues, light dues, and other taxes, assessments and charges which are customarily payable at the Indian Port(s) of unloading on or with respect to the vessel(s);

- (viii) ICS to ensure that the Master of the Ocean Going Vessel shall provide free use of light on board the Ocean Going Vessel as may be required for working the vessel at the Transfer point of discharge at all times and in each case free of expense to CTA;
- (ix) The initial opening and final closing of the hatches of the Ocean Going Vessel shall always be done by the Ocean Going Vessel's crew and the cost involved therein and the time used for the opening and closing of the hatches, gangway placement, shall be to the account of the Ocean Going Vessel. Any subsequent closing/opening of hatches if any done at the request of CTA time taken for such closing/opening shall be to the account of CTA;
- (x) As regard damages, if any, caused to the Ocean Going Vessel, CTA will be responsible only for the damage caused to the Ocean Going Vessel during unloading for reasons attributable to the CTA. In principle, claims for such damage are to be settled directly between the vessel -owners and the CTA. Such claims shall be lodged by the Master of the Ocean Going Vessel on the CTA promptly (within 48 Hrs of damage) after the damage has been sustained and then confirmed in writing duly supported by Third Party Damage Report. The claim should be settled directly between CTA and owners of the Ocean Going Vessel. In case of no settlement, the damage if raised by the owner of the Ocean Going Vessel on Imported Coal Supplier(s), the same will be recovered by ICS from CTA's bills. In case of no dispute, owner of the Ocean Going Vessel will issue no claim certificate to CTA before sailing from Transfer Point.
- (xi) CTA shall have the option to unload cargo from the Ocean Going Vessel at a second safe berth/anchorage point at the same port where Transfer Point is located. CTA may change the Transfer Point in relation to an Ocean Going Vessel at any time prior to the relevant Ocean Going Vessel mooring at the originally notified Transfer Point. In the event the CTA has to change the Transfer Point after the Ocean Going Vessel has moored for reasons of ensuring safe unloading operations, then the time taken for the Ocean Going Vessel to shift to the new Transfer Point shall be not be considered as part of the lay time of the Ocean Going Vessel. If the port authorities order the shifting of the Ocean Going Vessel to another safe berth/anchorage point at the same port of where Transfer Point is located due to poor unloading or for any other reason, the time involved in shifting and the cost thereof shall be to the account of CTA. If shifting of the Ocean Going Vessel is due to any vessel related reasons not-created by CTA, the expense and time involved in shifting shall be to the account of Ocean Going Vessel.

(b) **SERVICE OF NOTICE OF READINESS FOR UNLOADING OF COAL BY THE MASTER OF THE VESSEL (MASTER'S N/R)**

- (i) Upon arrival of the Ocean Going Vessel within the port limits at the Transfer Point, and in free pratique and after being ready in all respect to unloading of the Coal, the Master of the Ocean Going Vessel shall serve on the concerned port office(s) of "CTA", Notice of Readiness of the vessel to unload the Coal(MASTER'S N/R) through cable/email/fax or in writing during business hours, i.e. Notice Of Readiness can be tendered any day (Monday to Sunday) during 0900 Hrs – 1700 Hrs, and would be deemed to have been accepted by CTA.

(ii) **LAY TIME AND EXCEPTED PERIODS (AT TRANSFER POINT)**

- B. The time taken by the vessel for proceeding from port limits to Transfer Point/ berth shall be treated as transit time and shall be to the account of the vessel, if vessel is not on demurrage.
- C. If, after berthing, the Ocean Going Vessel is found by the port authorities / CTA not ready in all respects to unload, the time between notice of non-readiness to in fact ready of vessel shall be excluded from the laytime
- D. The time taken to carry out the sampling and draught survey shall not be counted as lay time;
- E. The time taken by the Ocean Going Vessel, after completion of unloading, for the purpose of conducting final draft survey will not be counted as lay time;
- F. All cost arising out of any delay due to stoppage of work or strike by the employees of or staff engaged by the CTA, will be to the account of CTA;
- G. Time lost by reason of bad weather if certified by Port Authorities and mentioned in the SOF duly signed by Master/Master's authorized agent preventing unloading of the cargo shall not be computed as lay time unless the Ocean Going Vessel is already on demurrage.

(iii) **STATEMENT OF FACTS (SOF)**

Immediately after completion of unloading, and before the sailing of the Ocean Going Vessel from the port /anchorage point, Statement of Facts shall be made out at the port/anchorage point of unloading duly signed by and distributed amongst

- A. Master of the vessel/agents of the vessel at the port/anchorage point of discharge;

-
- B. Agents/Representative, if any, of the ICS at the port/anchorage point of discharge; and
 - C. Representative of “CTA” at the port of discharge;
 - D. Lay time shall be strictly calculated on the basis of SOF duly signed by the above said parties.

ARTICLE 7: DETERMINATION AND METHODOLOGY FOR HANDLING LOSSES AND TOTAL MOISTURE

7.1 Determination of Quantity and Quality and Handling Losses

(a) Quality Inspection at Transfer Point

Quality determination of imported coal shall be done at Transfer Point as per provisions available in Imported Coal Procurement Contract Agreement prevailing at the time of operation. As per the present specifications, it has been envisaged that quality determination of imported coal at Transfer Point is to be done by International Inspection Agency appointed by Imported Coal Supplier (ICS). It is further envisaged in present specifications that International Inspection Agency (IIA) appointed by ICS shall carry out draft survey, sampling and quality analysis.

Coal samples at Transfer Point shall be drawn from the Ocean Going Vessels, prepared and analyzed by IIA appointed by ICS in accordance with relevant ASTM Standards.

All the costs of inspection including coal-sampling analysis and any such related cost at Transfer Point including the fee for Inspection Agency shall be borne by the ICS.

(b) Quality Inspection at Barh STPP

Quality inspection at Barh STPP shall be carried out by NTPC or any other agency nominated by NTPC. However, CTA shall be responsible for any difference in quality while in transit from Transfer point to Barh STPP through waterways and shall compensate to ICS for the same. The decision of any variation in delivered coal quality shall be determined as per the test results of NTPC and accordingly adjustment on quality variation shall be undertaken as per clause 7.1 (c) (4).

(c) Methodology For Determination of Quantity & Total Moisture

1. QUANTITY DETERMINATION AT TRANSFER POINT

Quantity determination of imported coal shall be done at Transfer Point as per provisions available in Imported Coal Procurement Contract Agreement prevailing at the time of operation.

Present specifications envisage that IIA appointed by ICS will carry out draft survey, sampling and quality analysis at Transfer Point before commencement of first consignment.

2. AT BARH STPP QUANTITY DETERMINATION

- (i) Quantity determination of imported coal shall be done at coal stack yard of Barh STPP by NTPC subject to adjustment due to variations over those measured at Transfer Point if any, and payments thereof to CTA shall be based on such determination at unloading point at Barh STPP.
- (ii) The Coal delivered shall be weighed at unloading point at Barh STPP, through the weightment mechanism attached to the Conveyor system and shall be final for determining the weight at Barh STPP.

3. Transit & Handling losses

Transit and handling losses measured between the Transfer Point and the unloading point at Barh STPP, arising out of the coal handling operations of the CTA involving unloading / loading at Transfer Point & coal handling shall be allowed upto the value _____% (Permissible Transit Loss)..

Losses beyond the Permissible Transit Loss shall have to be absorbed by CTA and calculated at the rate of vessel wise landed price of coal at Barh STPP

4. ADJUSTMENT ON QUALITY VARIATIONS

In the event of variations in the quality parameters of imported coal measured at Transfer point and that measured at Barh STPP, adjustments shall be carried out in line with the correction formulae provided in the Coal Supply Agreement prevailing at the time of operation. However, the formulae in accordance with present bidding documents for imported coal procurement on FOR power station delivery basis are given as under:

a) Total Moisture {As Received Basis (ARB)}

If the actual Total Moisture as per sampling / analysis through joint analysis process at NTPC Power Stations is more than the Total Moisture of coal received, the reduction in weight shall be done as per following formula:

- (i) For Total Moisture {(As Received Basis (ARB)) $25\% < TM \leq 32\%$
Weight of Coal to be reduced (For $25 < B \leq 32$) = $A \times 1.10 \times (B - (C \times (100 - B) / (100 - C))) / 100$
- (ii) For Total Moisture {(As Received Basis (ARB)) $TM > 32\%$
Weight of Coal to be reduced (For $B > 32$) = $2 \times A \times 1.10 \times (B - (C \times (100 - B) / (100 - C))) / 100$

(where A is Coal received weight at power plant, B is percentage value of Total Moisture of coal received at power plant, C is the percentage value of the base parameter of Total Moisture)

No correction shall be applied in case of decrease in Total Moisture below the base

parameter value.

b) Gross Calorific Value {Air Dried Basis (ADB)}

For correction of contracted price, NTPC's test results at power station shall be considered and in case of any dispute, test results of Third Party Inspection Agency nominated by NTPC i.e. CIMFR, shall be considered.

Correction will be done as follows:

- (i) Corrected landed price (for $5700 > \text{GCV} \geq 5300$)

Contracted Landed Price at NTPC station Per Metric Tonne as per Coal Supply Agreement X (GCV (ADB) at NTPC Power Station) / (Contracted base GCV (ADB))

- (ii) Corrected landed price (for $\text{GCV} < 5300$)
$$= A - 2 \times A \left\{ 1 - \frac{\text{GCV (ADB) at NTPC Power Station}}{\text{Contracted base GCV (ADB)}} \right\}$$

where A = Landed Price at NTPC station Per Metric Tonne as per Coal Supply Agreement

No Correction shall be applied in case of increase in measured GCV (ADB) above the value measured at Transfer Point

c) Ash Content (ADB):

For correction of quantity due to Ash, NTPC's test results at Barh STPP shall be considered and in case of any dispute test results of third party lab shall be considered. The cost of third party test shall be borne by ICS

If Ash content is above the base parameter value of Ash, Weight to be reduced shall be done as per following formula:

- (i) For ASH {Air Dried Basis (ADB)} $15 < \text{ASH} \leq 20$

Weight of Coal to be reduced (for $15 < \text{ASH} \leq 20$) = $A \times 1.05 \times (B - (C \times (100 - B) / (100 - C))) / 100$

- (ii) For ASH {Air Dried Basis (ADB)} $\text{ASH} > 20$

Weight of Coal to be reduced ($\text{ASH} > 20$) = $2 \times A \times 1.05 \times (B - (C \times (100 - B) / (100 - C))) / 100$

Where A is Coal received weight, B is percentage value of Ash in coal received, C is the base parameter value of Ash

No correction shall be applied in case of decrease in ash content below the value measured at Transfer Point.

d) Sulphur (ADB):

For Sulphur, NTPC's test results at Barh STPP shall be considered and in case of any dispute, test results of **Third Party Inspection Agency nominated by NTPC i.e. CIMFR** shall be considered. The cost of third party test shall be borne by ICS.

If Sulphur content is above the value measured at Transfer Point, a penalty at the as per the following formula

(i) For Sulphur {Air Dried Basis (ADB)} $0.9 < \text{Sulphur} \leq 1.0$

A penalty at the rate of **Rs.200/- per Metric Ton** for every increase of 0.1% in Sulphur or part thereof shall be levied.

(ii) For Sulphur {Air Dried Basis (ADB)} $\text{Sulphur} > 1.0$

A penalty at the rate of **2 x Rs. 200/- per Metric Tonne (i.e. Rs. 400/- per Metric Tonne)** for every increase of 0.1% in Sulphur or part thereof shall be levied.

Sulphur content below the base parameter value shall be ignored

e) Size

If the size as per sampling/analysis through joint analysis process at NTPC Barh STPP as determined by ASTM-D4749-87 (re approved 2002) or its latest version in air-dried sample for 0-2.36 mm size particles exceeds 25% of the sample coal by weight received at power station, then the weight of coal shall be reduced as per following formula:

$$\text{Weight of Coal to be reduced} = (A * B / 100) * 0.1$$

(Where A is quantity of coal received at power station, B is increase of the fines particles above 25% in percentage value)

(Example- If fines particles is 30%, then $B = (30 - 25) = 5$)

f) After adjusting the received quantity at Barh STPP for quality parameters as above, if it is found that the net adjusted quantity is higher than the quantity measured at Transfer Point, the payment to CTA shall be restricted to Transfer Point quantity. In case the net adjusted quantity at Barh STPP is lower than

quantity measured at Transfer Point, the net adjusted quantity at Barh STPP shall prevail for the purpose of payment.

- g) For the purposes of adjustment of coal quality, the samples shall be taken from each Inland Vessels/River Sea Vessels and analyzed for each Inland Vessels/River Sea Vessels. The weighted average results of such analysis of Inland Vessels/River Sea Vessels received in fifteen days i.e. Inland Vessels/River Sea Vessels received between 1st to 15th and Inland Vessels/River Sea Vessels received between 16th to 30th and 31st of the month at Barh STPP shall be applied for carrying the necessary adjustment.

7.2 Sampling and testing methodology and correction factors / penalties as described in this Article are as per present NTPC coal procurement contract agreements.

However, it is to be noted that Sampling and analysis methodology and correction factors/ penalties to be used at the time of transportation of coal for this Tripartite Agreement shall be as specified in NTPC's coal procurement contract agreement prevailing at that time.

ARTICLE -8: TRANSPORT RATE PAYABLE TO CTA

8.1 Payment to CTA

In consideration of the CTA transporting the Coal from the Transfer Point till the coal stack yard of the Barh STPP, ICS shall make the payment to CTA as per the applicable Transportation Rate Per metric Tonne plus applicable service tax.

CTA will be allowed for price variation on Base Transportation Rate per metric rate (PR_{BP}) (i.e. Total Transportation Rate Per Metric Tonne as per Schedule H exclusive of service tax) as per following terms.

The Base Transportation Rate per metric rate shall be the rate which is discovered through bidding process undertaken for selection of CTA. (Schedule of Rates attached as Schedule H)

(a) **Fuel Price escalation**

Adjustment for variation in fuel price shall be calculated as per the following methodology.

$$\text{Fuel Price Change (F}_{Adj}) = \{PR_{BP} * 25\% * (D_1 - D_{BP}) / D_{BP}\}$$

D_{BP} : Sale price of High Speed Diesel (HSD) at IOC retail station at Haldia on 1st December 2014

D_1 : Sale price of High Speed Diesel (HSD) at IOC retail station at Haldia on 1st day of the respective month.

(b) **Factor Inflation**

Adjustment on account of variation in WPI shall be calculated as per the following methodology

$$WPI_{Adj} = PR_{BP} * 10\% * (WPI_1 - WPI_{BP}) / WPI_{BP}$$

WPI_{BP} shall mean the latest monthly Wholesale Price Index for **All Commodities** as published by the Office of Economic Advisor, Ministry of Commerce and Industry, GoI on its official website before the Bid Due Date as per Clause 1.3 – Schedule of Bidding Process (Volume I of this RFP). Therefore, Wholesale Price Index was (Month) (Year).

WPI_1 means the latest monthly Wholesale Price Index for **All Commodities** as published by the Office of Economic Advisor, Ministry of Commerce and Industry, GoI on its official website as on 1st April each year.

Adjustment on WPI shall be applicable only from 1st April of every year

(c) **Adjustment on account of revision in Statutory Charges (SC_{Adj})**

ICS shall reimburse to the CTA any increase in the below stipulated existing statutory charges, payable by the CTA during the Operation Period on actual basis. In case of any change in stipulated charges mentioned below, the Total Transportation Rate per metric tonne as applicable at the time of such revision shall be adjusted accordingly.

Charges	Existing Charges
Wharfage charges levied by KoPT/ concerned port authority	@60% of that applicable for 'Foreign Cargo' at KoPT berth other than through mechanized system plus service tax
Royalty charges to be paid to Paradip Port for transloading operation at Kanika Sands*	Rs. 10 per MT
Gross Registered Tonnage (GRT) charges to Farakka Barrage Project	Rs 20 per GRT
Waterway usage charges	Rs 0.02 per GRT per kilometer

*an area comprising the radius of 2 nautical miles around a position earmarked by Lat 21°08'12" N Log 87°14'00" which has been notified for the purpose of transloading.

In addition to above, the charges that are to be payable in GRT shall be converted into metric tonne based on the average ratio of the DWT and GRT of the vessels deployed by the CTA.

However, the reimbursement shall not exceed the actual payment made by the Operator

(d) **Modified (PR) shall be calculated as:**

$$PR \text{ (New)} = PR_{BP} + F_{Adj} + WPI_{Adj} + SC_{Adj}$$

F_{Adj} , WPI_{Adj} and SC_{Adj} shall be added or subtracted as the case may be

(e) For the purpose of payment, service tax will be considered at the quoted rate or the actual rate (prevailing 7 days prior to the bid due Date), whichever is lower.

Any subsequent revision in the service tax rate by GoI shall be proportionately increased /decreased for the purpose of payments.

ARTICLE-9: PROCEDURE OF PAYMENT & PERFORMANCE GUARANTEE

9.1 Procedure of Payment

(a) **Payment for Handling and Transportation**

Freight Payment to CTA shall be made within 7 (seven) days from the date of submission of invoice based on the actual quantity received at NTPC power plant, subject to adjustments in respect of the Permissible Transit loss, quality, quantity as per Article 7 of Coal Transportation Agreement. The invoice shall be submitted monthly and the reconciliation of payment between ICS with CTA shall be done on quarterly basis within 7 (seven) days of the end of each quarter. In the event there is any delay in Payment, an interest @ SBI base rate plus 6.75% shall be paid by ICS to CTA on the invoice amount.

It is hereby clarified that the invoices for transportation of coal shall be raised on ICS for the actual quantity of coal received at the NTPC Power Plant. In the event the actual quantity received at power plant as certified by NTPC is less than the quantity transferred to the Operator by ICS at the Transfer Point by more than the Permissible Transit Loss, ICS shall make necessary deductions from the payments due in respect of the Transit Loss over and above the Permissible Transit Loss

Further, NTPC shall make Freight Payment to ICS only after ICS submits documentary evidences of freight payment to CTA

(b) **Delay in Unloading**

In case of any delay in unloading of Coal from the Ocean Going Vessel, the CTA shall be liable to pay demurrage as specified in this Agreement.

(c) **Liquidated Damages**

CTA will ensure the delivery of consignment at Barh Power Plant as per schedule agreed upon by CTA and ICS. In case of any delay, other than those due to Force Majeure Event, if applicable, Liquidated damages (LD) will be charged @ 0.50% (One half of the One percent) of value of delayed consignment for each week's delay or part thereof subject to the ceiling of 5% (five percent) of the total consignment value inclusive of estimated custom duty, CVD with cess and exclusive of sales Tax/VAT and Entry Tax and shall be payable to the ICS.

ARTICLE 10: FORCE MAJEURE

10.1 Force Majeure Events

Force Majeure Event means the occurrence of any of the Non-Political Events, Political Events or the Other Events in India, set out in Article 10.2, 10.3 and 10.4 respectively including the impact/consequence thereof which:

- (a) is beyond the control of the party claiming to be affected thereby (“the Affected Party”);
- (b) Prevents the Affected Party from performing or discharging its obligation under this Coal Transportation Agreement; and
- (c) the Affected Party has been unable to overcome such event or circumstance by the exercise of due diligence and reasonable efforts.

10.2 Non Political Events

The Non-political Force Majeure Events shall include:

- (a) Acts of God or natural disasters beyond the reasonable control of the Affected Party which could not reasonably have been expected to occur, including but not limited to, storm, cyclone, typhoon, hurricane, flood, landslide, drought, lightning, earthquakes, volcanic eruption, fire or adverse weather conditions affecting the Transportation of Coal;
- (b) Epidemic, famine;
- (c) Strikes or boycotts (other than those involving the ICS/CTA, contractors or their employees/representative or attributable to any act or omission of any of them) and not being an Other Event set forth in Article 10.4, labour disruptions or any other industrial disturbances not arising on account of acts or omissions of ICS or CTA;
- (d) An act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action, nuclear blast / explosion, sabotage or civil commotion;
- (e) Any unlawful or unauthorized revocation of, or refusal to renew or grant, without valid cause, any Clearance required by the CTA under applicable law to perform its obligations hereunder;
 - i. Provided that such refusal or revocation has not resulted from the CTA’s breach or failure in complying with the applicable law.

10.3 Political Events

The Political Force Majeure Events shall mean one or more of the following acts or events by or on account of any Government Authority :

- (a) Change in Law;
- (b) compulsory acquisition in national interest or expropriation of the assets of either Party;
- (c) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit, authorisation, no objection certificate, consent, approval or exemption required by the CTA to perform its obligations under this Coal Transportation Agreement; provided that such delay, modification, denial, refusal or revocation did not result from the CTA's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit;
- (d) any event or circumstance of a nature analogous to any of the foregoing.

10.4 Other Event

Other Events shall include:

- (a) Reduction in Least Available Depth (LAD) in the channel below 3 m (wef December 2017). at the same location due to any circumstances for a continuous period of not less than 7 (seven) days from the date of its occurrence making it impossible for the vessel to cross the same location.
- (b) Reduction in Channel Width below 30 meters at shoal locations, at the same location due to any circumstances for a continuous period of not less than 7 (seven) days from the date of its occurrence making it impossible for the vessel to cross the same location.
- (c) Breakdown of Farakka Lock Gate for more than 24 hours.

10.5 Notice of Force Majeure Events

- (a) The Affected Party shall give notice to the other Party in writing of the occurrence of any of the Force Majeure Event (referred to as “the FM Notice”) as soon as the same arises or as soon as reasonably practicable and in any event within seven (7) days after the Affected Party knew, or ought reasonably to have known, of its occurrence and the adverse effect it has or is likely to have on the performance of its obligations under this Coal Transportation Agreement.

- (b) The FM Notice shall inter-alia include full particulars of:
- (i) the nature, time of occurrence and extent of the Force Majeure Event with evidence in respect thereof;
 - (ii) the duration or estimated duration and the effect or probable effect which such Force Majeure Event has or will have on the Affected Party's ability to perform its obligations or any of them under this Coal Transportation Agreement;
 - (iii) the measures which the Affected Party has taken or proposes to take, to alleviate the impact of the Force Majeure Event or to mitigate the damage; and
 - (iv) any other relevant information.
- (c) So long as the Affected Party continues to claim to be affected by a Force Majeure Event, it shall provide the other Party with periodic (which shall be at least fortnightly) written reports containing the information specified by Article 10.5 (b) and such other information as the other Party may reasonably request.

10.6 Period of Force Majeure

The 'Period' of Force Majeure shall mean the period from the time of occurrence specified in the FM Notice given by the Affected Party in respect of the Force Majeure Event until the Force Majeure Event ceases to exist.

10.7 Resumption of Performance

During the Period of Force Majeure, the Affected Party shall in consultation with the other Party, make all reasonable efforts to limit or mitigate the effects of the Force Majeure Event on the performance of its obligations under this Coal Transportation Agreement. The Affected Party shall also make efforts to resume performance of its obligations under this Coal Transportation Agreement as soon as possible and upon resumption shall notify the other Party of the same in writing. The other Party shall afford all reasonable assistance to the Affected Party in this regard.

10.8 Extension of Time

To the extent the performance of the obligations of the Affected Party is affected by the Force Majeure Event, the time period for the performance of the obligations of the Affected Party shall be extended by a similar time period on a day-to-day basis.

10.9 Termination Due to Force Majeure Event

If the Period of Force Majeure continues or is in the reasonable judgement of the Parties likely to continue beyond a period of 180 days , the Parties may mutually decide to terminate this Coal Transportation Agreement or continue this Coal Transportation Agreement on mutually agreed revised terms. If the Parties are unable to reach an agreement in this regard, the Affected Party shall after the expiry of the said period of 180 days , be entitled to terminate the Coal Transportation Agreement.

ARTICLE 11: EVENTS OF DEFAULT

11.1 Events of Default

(a) **CTA Event of Default**

The CTA Event of Default means any of the following events, unless such an event has occurred as a consequence of a Force Majeure Event (referred to as the “**CTA Event of Default**”):

- (i) Contamination of Coal, during transit from Transfer Point to the coal stack yard of Barh STPP rendering the values of the specification parameters reach or exceed rejection limits as determined at Barh STPP;
- (ii) any representation made or warranties given by the CTA under this Coal Transportation Agreement is found to be false or misleading;
- (iii) CTA is adjudged bankrupt or insolvent;
- (iv) the CTA’s failure to perform or discharge any of its obligation in accordance with provisions of this Coal Transportation Agreement;
- (v) fails to perform or discharge any of its obligation under any other contract, which has or is likely to materially affect the performance of its obligations under this Coal Transportation Agreement.
- (vi) A default of the CTA under the Tripartite Agreement

(b) **ICS Event of Default**

ICS Event of Default means any of the following events, unless such an event has occurred as a consequence of a Force Majeure Event (referred to as the “**ICS Event of Default**”):

- (i) Fails to perform or discharge any of its obligation in accordance with provisions of this Coal Transportation Agreement;
- (ii) fails to perform or discharge any of its obligation under any other contract, which has or is likely to materially affect the performance of its obligations under this Coal Transportation Agreement;
- (iii) any representation made or warranties given by ICS under this Coal Transportation Agreement is found to be false or misleading;
- (iv) ICS is adjudged bankrupt or insolvent.

11.2 Rights of Parties

- (a) Upon the occurrence of an Event of Default, either party may, without prejudice to any other rights and remedies available to it under this Coal Transportation Agreement or law, approach NTPC as per clause 11.7.
- (b) Prior to proceeding to NTPC, the Party entitled to do so shall give due consideration and shall have due regard to the nature of the underlying Event of Default, its implication on the performance of the respective obligations of Parties under this Coal Transportation Agreement and the circumstances in which the same has occurred.

11.3 Consultation Notice

Either Party exercising its right under Article 11.2, shall issue to the other Party a notice in writing specifying in reasonable detail the underlying Event of Default(s) and possible measures of curing or otherwise dealing with the underlying Event of Default (referred to as the “**Consultation Notice**”).

11.4 Remedial Process

Following the issue of Consultation Notice by either Party, within a period not exceeding ninety (90) days or such extended period as they may agree (referred to as the “**Remedial Period**”) the Parties shall endeavour to arrive at an agreement as to the manner of rectifying or remedying the underlying Event of Default.

11.5 Obligations during Remedial Period

During the Remedial Period, the Parties shall continue to perform their respective obligations under this Coal Transportation Agreement.

11.6 Revocation of Consultation Notice

If during the Remedial Period the underlying Event of Default is cured or waived or the Parties arrive at an Coal Transportation Agreement in accordance with Article 11.4, the Consultation Notice shall be withdrawn by the Party who has issued the same.

11.7 Right of Parties

If before the expiry of the Remedial Period, the underlying Event of Default is neither cured nor waived and the Parties do not arrive at an agreement in accordance with Article 11.4, the Party who has issued the Consultation Notice shall have the right to approach NTPC for decision. Decision of NTPC under these circumstances will be final and binding on both the parties.

ARTICLE 12 : TERMINATION/EXPIRY OF COAL TRANSPORTATION AGREEMENT

12.1 Termination Procedure

Either ICS or CTA may terminate this Coal Transportation Agreement on account of a Force Majeure Event or an Event of Default by issuing a written notice (referred to as the “**Termination Notice**”) to the other Party, however subject to Article 11.7. The Termination Notice shall be for a period of ninety (90) days (referred to as the “**Termination Period**”), and at the expiry of the Termination Period, this Coal Transportation Agreement shall stand terminated.

12.2 Obligations during Termination Period

During Termination Period, the Parties shall continue to perform such of their respective obligations under this Coal Transportation Agreement which are capable of being performed.

ARTICLE 13: RELATIONSHIP

13.1 Relationship

CTA and ICS shall be two legally independent entities. It is clarified that the actual performance of the work shall be carried out by the CTA under the supervision and direction of Imported Coal Supplier(s) without reducing the CTA's obligations under this Coal Transportation Agreement in any manner. Imported Coal Supplier(s) shall at all times have access to the operations and work performed by the CTA.

ARTICLE-14: DISPUTE RESOLUTION PROCESS

14.1 Dispute Resolution Process (“DRP”)

Parties agree that any disputes that may arise between them in the course of an execution of the terms of this Coal Transportation Agreement (including any disputes over the Transportation Rate per Metric Tonne, adjustments to Transportation Rate per Metric Tonne) (“**Dispute**”) shall be resolved in accordance with the DRP, which is as follows:

- (a) The DRP may be initiated by either party by way of a notice issued to the other party (“**Dispute Notice**”);
- (b) The Dispute Notice must describe the nature of the Dispute between the parties;
- (c) Each party must nominate a representative that has the authority to negotiate and settle the Dispute on its behalf;
- (d) Negotiations shall commence within 45 (forty five) business days of the issue of the Dispute Notice, and must be completed within 90 (ninety) business days of the commencement of such negotiations.

Only if the Dispute cannot be resolved by the DRP, will parties be entitled to refer the Dispute for arbitration as provided in Article 14.2 below.

14.2 Arbitration

In the event any Dispute arising out of this Coal Transportation Agreement is not resolved by the DRP, the parties’ sole recourse shall be to arbitration in accordance with the Arbitration and Conciliation Act, 1996. There shall be three (3) arbitrators, one (1) of whom shall be appointed by CTA, one (1) of whom shall be appointed by ICA, and one (1) of whom shall be appointed by the two arbitrators chosen by CTA and ICS. Proceedings shall be conducted under the rules of International Council for Commercial Arbitration and the place of arbitration shall be at Kolkata, West Bengal and the language of arbitration shall be English. The arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties.

ARTICLE-15: MISCELLANEOUS

15.1 Amendments

All additions, amendments, modifications and variations to this Coal Transportation Agreement shall be valid, effectual and binding on the Parties only if in writing and signed by their respective duly authorised representatives.

15.2 Waiver

Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Coal Transportation Agreement:

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Coal Transportation Agreement;
- (b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
- (c) shall not affect the validity or enforceability of this Coal Transportation Agreement in any manner.

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

15.3 No third party beneficiaries

This Coal Transportation Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

15.4 Survival

Termination of this Coal Transportation Agreement:

- (a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and
- (b) except as otherwise provided in any provision of this Coal Transportation Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

15.5 Severability

If for any reason whatever any provision of this Coal Transportation Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Article 14 of this Coal Transportation Agreement or otherwise.

To

CTA

ICS

15.6 Language

All notices, certificates, correspondence and proceedings under or in connection with this Coal Transportation Agreement shall be in English.

15.7 Authorised representatives

Each of the Parties shall by notice in writing designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

15.8 Notices

Unless otherwise stated, notices to be given under this Agreement including but not limited to a notice of waiver of any term, breach of any term of this Agreement and termination of this Agreement, shall be in writing and shall be given by hand delivery, recognized courier, mail, telex or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below:

To
CTA

To
ICS

Or such address, telex number, or facsimile number as may be duly notified by the respective Parties from time to time, and shall be deemed to have been made or delivered (i) in the case of any communication made by letter, when delivered by hand, by recognized courier or by mail (registered, return receipt requested) at that address and (ii) in the case of any communication made by telex or facsimile, when transmitted properly addressed to such telex number or facsimile number.

In case any Party changes its address, communication numbers, or directed attention as set forth above, it shall notify the other Party in writing prior to the adoption thereof.

IN WITNESS WHEREOF THE PARTIES HERETO HAVE EXECUTED THESE PRESENTS ON THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN.

For and on behalf of the CTA By:

Name:

Designation:

For and on behalf of the Imported Coal Supplier By:

Name:

Designation:

Witness

Witness

Witness

Schedule-J: Charges for Paradip Port for Transshipment infrastructure

265/mos/ID
24 JUL 2014
TRAFFIC DEPARTMENT
PARADIP PORT TRUST

19 JUL 2014

GOVERNMENT OF INDIA
MINISTRY OF SHIPPING
(PORTS WING)

F.No. PD-11020/16/2014-PD.III

New Delhi, the 10th July, 2014

OFFICE ORDER

Sub:- Order dt. 18.09.2012 of the Supreme Court of India in SLP(C) No. 3226/2012 (From the judgment and order dt. 25.11.2011 in WP No. 3323/2011 of the High Court of Orissa at Cuttack) (Board of Trustees for the Port of Kolkata Vs Keonjhar Nava Nirman Parishad & Ors. -

With reference to the above subject, Hon'ble Supreme Court of India in the hearing held on 06.05.2014 has observed that the Minutes of the Meeting on deciding the Port Limits of Kolkata Port Trust held on 30th July, 2013 will be followed by all the stakeholders viz. Ministry of Shipping, State Government of Orissa, West Bengal, and Kolkata Port Trust.

2. One of the decisions in the Minutes dated 30.07.2013 was that an area comprising the radius of 2 nautical miles around a position earmarked by Lat 21'08'12" N Log 087'14.00"E was to be notified for the purpose of transloading. The earmarked area will be notified as part of the port limit of Paradip Port, without any restriction in terms of time and volume of cargo for transloading operations of Kolkata Port and other Ports at a nominal charge. In the Minutes it is also mentioned that the conditionality and other operational issues including customs procedures shall be separately worked out and a Standard Operating Procedure (SOP) will be devised. On the basis of discussions held between Paradeep Port and Kolkata Port and mutual agreement, the SOP has been devised which is given below:-

STANDARD OPERATING PROCEDURE (SOP)

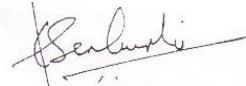
(a) An area notified under the limits of Paradip Port Trust comprising radius of 2 nautical miles around a position earmarked by Lat 20 08 12" N Long 087 14 00" E will be used exclusively for transloading operations without any restriction in terms of time and volume of cargo to be transloaded at the said place. For the purpose of this Standard Operating procedure, the said point is hereafter called as 'Transloading Point'.

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- (b) Due to limitation of space in the area mentioned at (1) above for transloading purpose, the number of trans-loading facilities to be created in the said area shall be initially governed by transloading needs of those ports like KoPT who are facing severe draft constraints in their navigable channel. One Transloading location will also be provided to IWAI for transloading of coal imported by NTPC for dispatch by barges to their power plants through low draft navigable channel. After accommodating the aforesaid requirement of KoPT (to address their critical draft situation) and IWAI, transloading facilities may also be created by PPT and other ports. If the situation so demands, the Ministry of Shipping will initiate action for expansion of the transloading area as per provisions of the minutes of the meeting dated 30/07/2013.
- (c) KoPT/IWAI/other ports will carry out conservancy functions as outsourced to them by Paradeep Port in the earmarked locations as mentioned at (a) above and they will indemnify PPT for all consequences relating to these functions.
- (d) All operations relating to Transloading, conservancy, essential port services etc. will be undertaken by KoPT, IWAI and others within the limits of PPT and as such, there will be no operational, financial and statutory burden on PPT. As such, PPT will not levy any charges on the cargo, vessel etc. However for allowing utilization of their limits for Transloading operations, they will be entitled to receive Royalty @ Rs 10/-per ton of the cargo Transloaded from/to the mother vessel only. The Royalty will be paid by the Service Provider of the Transloading facilities directly to PPT through online PCS system only. No other charge would be levied by Paradeep Port.
- (e) The service Provider concerned will pay the Royalty to PPT prior to calling of the Mother vessels at the Transloading point on the basis of the quantity mentioned in the Transshipment IGM. Upon receipt of clearance from PPT regarding receipt of Royalty, the mother vessel will be called for Transloading operations. The Royalty payable will be finalised subsequently on the basis of the Draft Survey Report.
- (f) Ministry will issue suitable order to TAMP so that the provisions as at item-4 above are appropriately given effect to.
- (g) The ports/IWAI/ other ports may create Transloading facilities by engaging suitable service providers.

- (h) The SOP will be reviewed after 5 years. The rate of Royalty will be increased by Rs 2/- per ton after every 5 years from the date of commencement of Transloading operations.
- (i) The modalities of clearance of cargo by customs will be worked out and will be informed separately.

3. The Standard Operating Procedure (SOP) is being issued in compliance with the Supreme Court order dated 06.05.2014. The Standard Operating Procedure for transloading operations in the area notified under the limits of Paradeep Port Trust is being issued under Section 111 and would be binding on all concerned stakeholders including Paradeep Port, Tariff Authority of Major Ports, and Kolkata Port.



(A.R. Sengupta)
Under Secretary to the Government of India
Tel. No. 23311659

To,
The Chairman,
Kolkata/Paradip Port Trust/IWAI

Copy to:-

TAMP with the instruction that to immediately notify royalty @ Rs. 10 per tonne as mentioned in para 4 of the SOP given above.

Schedule –K: Waterway Based Logistic Solution

NATIONAL WATERWAY No.-1

