

**REQUEST FOR PROPOSAL FOR MOVEMENT OF 3 MMTPA OF IMPORTED COAL FOR A PERIOD OF 7 YEARS THROUGH INLAND WATERWAY TO NTPC PLANT AT FARAKKA**



### **Request for Proposal**

- (1) This document comprises of  
Volume I: Instruction to Bidders  
Volume II: Draft Tripartite Agreement including Draft Transport Agreement as Schedule B and  
Technical specifications of Coal Conveying Plant Package as Schedule E

The above documents are the integral part of RFP document

The Bid document is valid only for the Bidder who has downloaded the document from the website of IWAI and IL&FS Infrastructure Development Corporation Ltd

## **Disclaimer**

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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 Application. All such costs and expenses will remain with the Applicant 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 Application, regardless of the conduct or outcome of the Bidding Process.

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**Volume -I**  
**Instructions to Bidders**

Glossary

Term	Definition
<b>Associate</b>	As defined in clause 2.2.9
<b>Authority</b>	Means collectively IWAI and NTPC
<b>Bids</b>	As defined in the Disclaimer
<b>Bid Due Date</b>	As defined in clause 1.3
<b>Bid Security</b>	As defined in clause 1.2.11
<b>Bidding Documents</b>	As defined in clause 1.2.9
<b>Bidding Process</b>	As defined in clause 1.2.1
<b>Bid Stage</b>	As defined in Disclaimer
<b>Conflict of Interest</b>	As defined in clause 2.2.1(c) & 2.2.1 (d)
<b>Consortium</b>	As defined in clause 2.2.1(a)
<b>Operator</b>	As defined in clause 1.1.6
<b>Eligible Projects</b>	Means projects as provided in clause 2.2.2(b)
<b>Landed Cost of Coal</b>	As defined in clause 1.1.11
<b>Financial Capability</b>	As defined in clause 2.2.2 (c)
<b>Government</b>	Government of India or Government of a State
<b>Jt. Bidding Agreement</b>	As defined in clause 2.2.6 (f)
<b>Lead Member</b>	As defined in clause 2.2.6 (c)
<b>LoA</b>	Letter of Award
<b>Member</b>	Member of a Consortium
<b>PPP</b>	Public Private Partnership
<b>Project</b>	As defined in clause 1.1.6
<b>Rs or Re or INR</b>	Indian Rupee
<b>Tripartite Agreement</b>	means the agreement to be entered into between NTPC, IWAI and the Operator, the draft of which is provided in Volume II of this RFP
<b>Technical Capability</b>	As defined in clause 2.2.2 (a)
<b>The Words and expressions beginning with capital letters and defined in this document shall, unless the context otherwise requires have the meaning ascribed thereto herein</b>	

## 1. Introduction

### 1.1 Background

- 1.1.1 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.
- 1.1.2 NTPC Ltd (NTPC) and IWAI entered into a Memorandum of Understanding (“**NTPC-IWAI MOU**”) to explore the possibilities to use inland waterways as a viable supplementary mode for transportation of coal for NTPC’s power plant located at Farakka, West Bengal
- 1.1.3 NTPC operates a 1600 MW thermal power plant (TPP) at Farakka, District Murshidabad, West Bengal (“**Farakka TPP**”) & plans to increase its capacity by additional 500 MW. NTPC requires around three million metric tonnes (“**3MMT**”) of imported coal per annum for the operation of the Farakka TPP.
- 1.1.4 The Farakka TPP is situated near the banks of National Waterway-1 thereby allowing inland waterway to be a viable option for transportation of imported coal. It is presently being estimated about seventy percent (70%) of the imported coal required by Farakka TPP is imported using the Paradip Port and the balance thirty percent (30%) is imported using the Haldia Port, from where respectively it is transported to the Farakka TPP using the railway network.
- 1.1.5 NTPC imports coal on FOR destination basis either by itself or managed on its behalf by other agencies like STC, MMTC and CIL etc. Coal Procurement Tender process is normally done on an annual basis and for the quantities decided by NTPC based on its requirement for imported coal, in light of the gap in domestic supply of coal for its power plants. One such tendering process is undertaken for the imported coal requirements of various NTPC stations including Farakka TPP (“**Coal Procurement Tender**”).
- 1.1.6 NTPC has mandated IWAI to undertake a competitive bid process, for and on behalf of NTPC, to identify and recommend an operator (“**Operator**”) to NTPC, for final selection by NTPC. IWAI has appointed IL&FS Infrastructure Development Corporation Ltd as Project Development Organization for Project Development, structuring, Bid process management and assistance in final selection of Operator. The Operator, selected would be responsible for unloading the coal from the ocean going vessels and thereafter hauling the coal on barges using National Waterway -1 and ensuring delivery of the imported coal, in accordance with identified specifications, at the coal stack yard of the Farakka TPP, for a period of seven (7) years (hereinafter collectively referred to as “**Project**”), and in this regard the Operator would be expected to:

- (a) formulate and implement a detailed plan in accordance with which: (1) the coal would be unloaded and transferred from ocean going vessels (Panamax/ Capesize) to barges at locations that are identified as being suitable for such unloading from the ocean going vessels to barges by the Operator (such location being referred to as “**Transfer Point**”), (2) to design and implement a suitable mechanism to be used at the Transfer Point for the unloading and transferring the coal from ocean going vessel to barges (“**Transshipment Infrastructure**”), (3) provide adequate number of barge of suitable specifications to meet movement schedule of designated quantities of imported coal as per the requirement of NTPC (4) unloading system of adequate capacity and suitable for the Material Handling System specified under Schedule E of Tripartite Agreement (“**Unloading Infrastructure**”) that would be used at the Farakka TPP waterfront for unloading of coal from barges onto the Conveyor Belt System that would transfer the coal from the Unloading Infrastructure till the coal stack yard of the Farakka TPP (“**Material Handling System**”); and (5) such other details necessary to ensure reliable and sustainable logistics plan for the delivery of 3 MMTPA of imported coal from the ocean going vessel to the coal stack yard of the Farakka TPP (“collectively hereinafter referred as the **Coal Hauling Plan**”);
- (b) construct Material Handling System of Coal Hauling Plan in two phases and in accordance with Schedule E of the Draft Tripartite Agreement:
- (i) Phase I would include the construction and operation of Conveyor Belt system comprising of Conveyor Belt A, Conveyor Belt B and Conveyor Belt C through junction house JH-1 and JH-2. Operator shall provide and implement the Unloading Infrastructure and Material Handling System Phase-I, that would be in operation for approximately nine (9) months (“**Material Handling System-Phase-I Period**”) for unloading transportation and delivery of minimum 2 MMTPA of coal inside the coal stack yard and thereafter utilized in Coal Hauling Plan upon completion of Phase-II of Material handling System for unloading, transportation and delivery of 3 MMTPA coal inside the coal stack yard. Operator would ensure that operation through Phase-I shall commence not later than fifteen (15) months from the date of execution of the Draft Tripartite Agreement.
- (ii) Phase-II would include construction and operation of Conveyor Belt D, Conveyor Belt E Conveyor Belt F and Conveyor Belt G through Junction houses JH-3, JH-4, JH-5 & JH-6. Operator would ensure that operation, through this mode shall commence not later than twenty four (24) months from the date of execution of Draft Tripartite Agreement.
- (c) provide and implement an interim solution that would be in operation for approximately twelve (12) months (“**Interim Period**”) for : (a) enabling the commencement, no later than three (3) months from the execution of the Draft Tripartite Agreement (as defined later in this RFP), of unloading of at least 1 MMT per annum of imported coal from Ocean Going Vessel to barges by utilizing the gears of Ocean Going Vessel and identify suitable Transfer Point in this regard (b) transportation of the coal on barges to the Farakka TPP site, (c) arrangements to be done by the Operator for unloading of the coal from the barges onto

dumper trucks to enable transportation of coal by road to the coal stack yard of the Farakka TPP and (d) procure the services of sufficient number of dumper trucks to enable the unloading of coal from the barges and their transportation and delivery to the coal stack yard of Farakka TPP in accordance with the Schedule E of Draft Tripartite Agreement (“**Interim Coal Handling Plan**”);

- (d) implement the Interim Coal Handling Plan till such time as the Unloading Infrastructure and Material Handling System -Phase-I as provided for in the Coal Hauling Plan becomes operational;
- (e) operate Unloading Infrastructure and Material Handling System-Phase-I for unloading and transportation and delivery of 2 MMTPA of coal till such time Material Handling System-Phase-II become operational;
- (f) undertake the unloading of coal from ocean going vessels onto barges in accordance at the identified Transfer Points in accordance with the Interim Coal Handling Plan, and the Coal Hauling Plan, as the case may be;
- (g) arrange, procure and ensure the provision of suitable equipment and/or facilities required for unloading the coal from the ocean going vessels to the barges in accordance with the Coal Hauling Plan;
- (h) procure and operate sufficient number of barges to ensure the due unloading from ocean going vessel and river based transportation of a minimum of 3MMT per annum ( during the Interim Period for a minimum of 1 MMTPA or prorata and during the Material Handling System-Phase-I period for a minimum of 2 MMTPA or prorata) of coal;
- (i) design, construct, finance, operate and maintain Unloading Infrastructure at the land provided by NTPC on the waterfront in or near Farakka TPP, that would unload coal from the barges and place it on the Material Handling System in accordance with the Interim Coal Handling Plan, and the Coal Hauling Plan, as the case may be. The design and construction of Unloading Infrastructure to be used in Coal Hauling Plan will have to ensure that it shall have an operating life equivalent to the operating life of the Material Handling System (developed as per design given by NTPC). The Unloading Infrastructure designed for and used in Coal Hauling Plan shall be transferred to NTPC at Re 1 (one)/- at the end of the Operation Period in accordance with the terms of the Tripartite Agreement; and
- (j) construct, operate and maintain the Material Handling System (both Phase-I and Phase-II), from the point of unloading at waterfront to coal stack yard of Farakka TPP, in accordance with the design and specifications provided by NTPC (provided that during the Interim Period the Material Handling System would comprise of dumper trucks for transportation and delivery of coal from Barge unloading point at Farakka to coal stack yard in accordance with Schedule E of Draft Tripartite Agreement) that would enable movement of coal from

Barge unloading point directly to coal stack yard . The coal should not be stacked anywhere outside the coal stack yard of Farakka TPP. The Material Handling System developed as per the specification of NTPC (under both Phase-I and Phase-II) and used in Coal Hauling Plan shall be transferred to NTPC, at Re 1 (one)/-, at the end of the Operation Period in accordance with the terms of the Tripartite Agreement.

- 1.1.7 Pursuant to the selection of Operator, the conditions of the future Coal Procurement Tenders for the Farakka TPP will stipulate that: (i) 3 MMT (during the Interim Period for a minimum of 1 MMTPA or prorata and during the Material Handling System-Phase-I period for a minimum of 2 MMTPA or prorata) of coal per annum shall be transported using the Project (ii) the selected coal importer shall enter into an agreement with the Operator for use of the services and facilities of the Project ( this agreement being hereinafter referred to as the “**Coal Transport Agreement**” and annexed as Schedule B of Draft Tripartite Agreement), and (iii) and the Draft terms and conditions and format of the said Coal Transport Agreement shall be provided as a part of the bid documents of the Coal Procurement Tender to which the selected coal importer would have to agree to as part of the criteria for responsive bids therein
- 1.1.8 Pursuant to the mandate issued by NTPC to IWAI for the Project, IWAI for and on behalf of NTPC, is issuing this RFP for selection of the Operator that would implement the Project.
- 1.1.9 The Operator may choose to be duly incorporated under the Companies Act, 1956, as a Special Purpose Vehicle (SPV). However the Selected Bidder, if it is already a company may choose to be the operator itself or create a new company in accordance with the terms of the Draft Tripartite Agreement to be the Operator. If the selected bidder is a Consortium, then either the Lead Member itself may undertake to be Operator or the Consortium would have to incorporate a new company specifically to act as the Operator and implement the Project and such company has to be incorporated by the Selected Bidder prior to execution of the Draft Tripartite Agreement .
- 1.1.10 The Draft Tripartite Agreement, which shall be agreed to as part of the Tripartite Agreement and the draft of which is provided in Volume –II of this 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 shall, for a period of a term equal to the Interim Period, Material Handling Phase-I period and a period of seven (7) years thereafter, *inter alia*, include:
- (a) Preparing and submitting to NTPC for its approval, the drawings of the Unloading infrastructure and Material Handling System in accordance with the provisions of the Draft Tripartite Agreement;
  - (b) Preparing and implementing the Interim Coal Handling Plan;

- (c) Undertake all measures required to implement the Coal Hauling Plan, pursuant to the terms of the Draft Tripartite Agreement read with the Draft Coal Transport Agreement, which shall be annexed in Schedule B of the Draft Tripartite Agreement , which shall include:
- (i) Enabling the commencement of unloading, transportation and delivery inside the coal stack yard of coal through Material Handling System as per the schedule below. All time lines shall be counted from the date of execution of tripartite agreement between the selected operator, NTPC and IWAI.
    - A. Phase I : Within 15 months
    - B. Phase II : Within 24 months
  - (ii) arrange, procure or ensure the provision of suitable equipment and/or facilities required for unloading the coal from the ocean going vessels to the barges at the Transfer Point in accordance with the Coal Hauling Plan;
  - (iii) procure and operate sufficient number of barges to ensure the due unloading from ocean going vessel and transport through IWT mode using NW-1 channel upto Farakka as per the schedule and quantity given in (i) above;
  - (iii) design, finance, build, operate and maintain the Unloading Infrastructure on the land provided by NTPC on the waterfront at Farakka that would unload coal from the barges and place it on the Material Handling System and ensure that its design is compatible with and works in proper synchronization with the Material Handling System;
  - (iv) The design and construction of the Unloading Infrastructure will have to ensure that it shall have an operating life equivalent to the operating life of the Material Handling System (developed as per design given by NTPC);
  - (v) transfer the Unloading Infrastructure to NTPC at the end of Operation Period;
  - (vi) construct, operate and maintain the Material Handling System from the point of unloading at waterfront to coal stack yard of Farakka TPP, in accordance with the design and specifications provided by NTPC and annexed as Schedule E of Draft Tripartite Agreement, that would enable the coal to be unloaded directly onto the coal stack yard of the Farakka TPP;
  - (viii) transfer the Material Handling System to NTPC at the end of Operation Period
- (d) Undertake all measures required to implement the Interim Coal Handling Plan, as agreed with NTPC pursuant to the terms of the Tripartite Agreement, which would include:

- (i) enabling the commencement, no later than three (3) months from execution of the Tripartite Agreement, of unloading atleast 1 MMT per annum of imported coal, at the Transfer Point, from ocean going vessels to barges by utilizing the gears of Ocean Going Vessels,
  - (ii) procure and operate sufficient number of barges to ensure the due unloading from oceangoing vessel and river based transportation of atleast 1MMT per annum of coal from Transfer/Lightering Point to Farakka TPP,
  - (iii) make arrangements in accordance with the Interim Coal Handling Plan for unloading of the coal from the barges onto dumper trucks to enable transportation and delivery of coal by road to the coal stack yard of the Farakka TPP in accordance with Schedule E of Draft Tripartite Agreement and
  - (iv) procure the services of sufficient number of dumper trucks to enable the unloading and transportation by road of atleast 1 MMT per annum of coal from the barges to the coal stack yard of Farakka TPP.
- (e) The Operator would identify appropriate Transfer Points, where the unloading of the coal from the ocean going vessels to the barges would take place for each shipment of imported coal under both Interim Coal Handling Plan and Coal Hauling Plan

1.1.11 The “Landed Cost of Coal” means the cost to NTPC of the imported coal including the cost of transportation of the imported coal from the point of its origin till the coal stack yard of the Farakka TPP using the Paradip Port as well as the Haldia Port as gateway ports from where coal is being moved through railways upto Farakka and would be determined as follows:

$$\text{Landed Cost of Imported Coal per MT} = 0.7xA + 0.3xB$$

Where:

“A” is the Cost of Imported Coal using Paradip Port determined as follows:

$$\text{“A”} = \text{C\&F Price} + \text{CD} + \text{PH (P)} + \text{RF(P)}$$

where:

$$\text{“C\&F Price”} = \text{FOB (Coal)} + \text{OF}$$

“OF(P)” = Ocean Freight in Indian Rupees payable from point of origin of coal to the Paradip Port using the foreign exchange rate of 1US\$ = Rs. 46/-

“FOB (Coal)” = FOB Price of Coal in Indian Rupees using the fixed foreign exchange rate of 1 US\$ = Rs. 46

“PH(P)” = Port handling charges incurred at Paradip Port in berthing, unloading from ocean vessel and loading onto the railway rakes at the nearest railway siding (including entry charges, stevedoring, cost of clearances);

“RF(P)”	= railway freight from railway siding where coal is loaded into the railway rakes at Paradeep Port till Farakka TPP ; and
“CD”	= Custom Duty (Rupee/MT) to be calculated at 5.15% (of actual applicable rate) of 101% of C&F cost plus Rs. 51.5 per MT as clean energy cess .
“B” is the Cost of Imported Coal using Haldia Port determined as follows:	
“B”	= C&F Price + CD + PH (H) + RF(H) where:
“C&F Price”	= FOB (Coal) + OF(H)
“OF(H)”	= Ocean Freight payable from point of origin of coal to the port of Haldia in Indian Rupees using the foreign exchange rate of 1US\$ = Rs. 46/-
“FOB (Coal)”	= FOB Price of Coal in Indian Rupees using the fixed foreign exchange rate of 1 US\$ = Rs. 46/-
“PH(H)”	= Port handling charges incurred at Haldia Port in berthing, unloading from ocean vessel and loading onto the railway rakes at the nearest railway siding (including entry charges, stevedoring, cost of clearances);
“RF(H)”	= railway freight from railway siding where coal is loaded into the railway rakes at Haldia Port till Farakka TPP;
“CD”	= Custom Duty (Rupee/MT) to be calculated at 5.15% (of actual applicable rate) of 101% of C&F cost plus Rs. 51.5 per MT as clean energy cess .

1.1.12 NTPC shall provide through its Imported Coal Supplier, coal of 1MMTPA during the Interim Period, 2 MMTPA during Material Handling System-Phase-I period and minimum guarantee of 3MMTPA for a period of seven (7) years after the Material Handling System-Phase-II Period. The payment for any shortfall in the said minimum cargo guarantee shall be undertaken in accordance with the provisions of the Draft Tripartite Agreement as provided in Volume II of this RFP.

1.1.13 The payments to the Operator shall be made by the Imported Coal Supplier with whom the Operator shall enter into a Coal Transport Agreement in accordance with the terms and conditions of the Tripartite Agreement (the indicative draft of the Coal Transport Agreement is provided in Schedule B to the Tripartite Agreement). Operator and Imported Coal Supplier shall be required to negotiate the specific commercial expenses/demurrages/losses which are not quantified in the Indicative draft. However, payments for default in minimum cargo guarantee shall be paid by NTPC directly to Operator in accordance with the provisions of the Tripartite Agreement.

1.1.14 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.

## **1.2 Brief Description of the Bidding Process**

1.2.1 A single stage bidding process is adopted in this tender (hereinafter referred to as the "Bidding Process") wherein bidders shall be required to submit the following documents at the same time:

- (a) Documents to indicate responsiveness of the Bid that have to be placed in the Outer Envelope in accordance with Clause 2.13.2
- (b) Technical Proposal 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
  - (ii) Complete details of the Logistic solution (including drawings, photographs etc.) suggested by the bidder to undertake the unloading and transportation of coal from Transfer Point to Farakka TPP through Inland Water Transport (IWT) mode for the Interim Period, Material Handling Phase-I Period as well as the period of seven (7) years thereafter, and meeting all the requirements of the Project as described in this RFP.
- (c) Financial Bid providing the Transportation Rate per Metric Tonne of coal at which it would be willing to undertake the implementation of the Project, to be provided in the format as specified in Appendix VI to this RFP.

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 comprising information of the parties on their technical and financial capability and suggested logistic solution for undertaking the Project 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

- 1.2.3 Each Bidder is required to submit, as part of its financial Bid: (a) “Rate per Metric Tonne for Transportation by Barges after unloading from Geared Vessel upto Farakka (b) Rate per Metric Tonne for Road Transportation from bank of waterway to NTPC coal stack yard (c) Rate per Metric Tonne for unloading from ocean going vessel using mechanism suggested by Bidder, loading onto the barges and Transportation by Barges upto Farakka (d) Rate per Metric Tonne for Transportation of coal through conveyor Belt System to NTPC Stack Yard . The evaluation of the Financial Bid of each Bidder and the determination of the Transportation Rate per Metric Tonne of coal offered by a Bidder shall be done in accordance with Clause 2.17.6. Provided, however, NTPC/IWAI reserves the right to determine and select the Bidder which provides the most competitive Transportation Rate per Metric Tonne of coal as the Successful Bidder in accordance with the provisions of this RFP and decision of NTPC in this regard shall be final and binding on the bidder.

It should be noted that quoting the lowest rate for transportation would not automatically qualify a Bidder for being declared as the Successful Bidder. The rate for transportation quoted by the bidder would be examined in the context of the Landed Cost of Coal, as explained in Clause 1.1.11, 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 all the Bids tendered under this RFP without assigning any reason 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 evaluation process.
- 1.2.5 IWAI and/or NTPC reserve the right not to follow up this RFP and terminate the entire selection process without any obligation to any of the Bidders.
- 1.2.6 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 part of this RFP.
- 1.2.7 Following the issue of the Letter of Award the Successful Bidder shall execute the Tripartite Agreement with NTPC and IWAI, and in the event it is creating a special purpose company it will

ensure that such company executes the Tripartite Agreement. The equity holding of the Successful Bidder in the Operator would be as per the requirements of this RFP.

- 1.2.8 The principal contract between NTPC, IWAI and the Operator 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 Transport Agreement (a draft of which is provided as an annexure to the Draft Tripartite Agreement which is a part of this RFP).
- 1.2.9 The Bidders are required to submit their duly completed Bids comprising the Technical Proposal and the Financial Bid ("Bid") in respect of the Project, in accordance with this RFP Document ("Bidding Document"). The Bidders shall download the Bidding Documents (Volume I and Volume II of the RFP) from IWAI, and IL&FS-IDC websites 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/- (Fifteen Thousand Only), through demand draft in favour of "Integrated Translog Development Company Limited IWAI-IIDC PDF".
- 1.2.10 The Bids submitted pursuant to this RFP should be valid for a period of not less than 150 days from the date specified in Clause 1.3 for submission of bids (the "**Bid Due Date**").
- 1.2.11 A Bidder will be required to deposit, along with its Bid, an interest free Bid-Security of Rs. 2,00,00,000/- (Rupees Two Crore only) in favour of "IWAI Fund", Noida. The Bid Security shall be refundable not later than 180 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 sign the Tripartite Agreement. The Bidders need to provide Bid Security in the form of a bank guarantee from a scheduled bank in the format provided in Appendix-III of this RFP document and the validity period of the bank guarantee, shall not be less than 180 (one hundred and eighty) days from the Bid Due Date, exclusive of a claim period of 30 (thirty) days. Bid validity may be extended for a further period upon mutual agreement between IWAI, NTPC and bidders in which case the bidder shall submit duly extended bid security. In case any bidder refuses to extend the validity of bids 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
- 1.2.12 As indicated above, a separate Coal Transport Agreement annexed to the Tripartite Agreement will be executed between the Operator and the importer of coal for enabling the utilization of the Project in the transportation of the imported coal from the identified Transfer Point to the Farakka TPP, using the National Waterway-1. It should be noted that the Transportation Rate per Metric Tonne quoted by the Successful Bidder in its Financial Bid shall be the rates applicable that would be used for determining the amounts payable under the provision of Coal Transportation Agreement to the Operator. For avoidance of doubt the transportation rate per Metric Tonne of coal payable to Successful Bidder for Interim Period, the Material Handling System – Phase I period and the period during which the Coal Hauling Plan is implemented is as follows:

- (a) Transportation Rate per Metric Tonne of Coal for the Interim Period shall be equal to the sum of the rate for Clause 1.2.3(a) and the rate for Clause 1.2.3(b);
- (b) Transportation Rate per Metric Tonne of Coal for the Material Handling System – Phase I period shall be equal to the sum of the rate for Clause 1.2.3(c) and the amount that is fifty per cent (50%) rate for Clause 1.2.3(d); and
- (c) Transportation Rate per Metric Tonne of Coal for the period during Coal Hauling Plan shall be equal to the sum of the rate for Clause 1.2.3(c) and the rate for Clause 1.2.3(d).

1.2.13 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 operation of the Project.

1.2.14 Further, other details of the process to be followed at the Bid Stage and the terms thereof will be spelt out in the later part of the RFP.

1.2.15 Unless the context otherwise requires, the terms not defined in this RFP, but defined in the Draft Tripartite Agreement for the project shall have the meaning assigned thereto in the Draft Tripartite Agreement

1.2.16 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.

1.2.17 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 shall clearly bear the following identification/ title shall reach the designated officer on or before 7<sup>th</sup> February 2011

**"Queries: RFP for the Project".**

**1.3 Schedule of Bidding Process**

IWAI shall endeavour to adhere to the following schedule:

<b>1. Uploading of Bid Documents to enable Bidders to download the same</b>	12 <sup>th</sup> January 2011
<b>2. Pre-Bid Meeting at Farakka</b>	31 <sup>st</sup> January 2011
<b>3. Last date for submission of Queries/Clarification</b>	7 <sup>th</sup> February 2011
<b>4. Bid Due Date(s)</b>	28 <sup>th</sup> February, 2011; 1500 Hrs IST
<b>5. Opening of Technical Proposal</b>	28 <sup>th</sup> February, 2011; 1530 Hrs IST
<b>6. Intimation of Shortlisted Bidders whose Financial Bid would be opened</b>	Within 30 days of Bid Due Date
<b>7. Opening of Financial Bid of Shortlisted Bidders</b>	Within 38 days of Bid Due Date
<b>8. Issuance of Letter of Award</b>	Within 8 days of Opening of Financial Bid
<b>9. Validity of Bids</b>	150 days from Bid Due Date
<b>10. Signing of Tripartite Agreement</b>	Within 15 days from the date of issuance of LoA
<b>11. Submission of Performance Guarantee</b>	On the date of signing of the Tripartite Agreement

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 Application

2.1.1 IWAI wishes to receive Bids for and on behalf of NTPC in order to enable experienced and capable Bidders to be selected for the operation of the Project.

#### 2.2 Eligibility of Applicants

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 (a group of entities submitting a bid are hereinafter referred to as a “**Consortium**”), coming together to implement the Project. However, no Bidder can submit more than one Bid or be part of more than one Consortium or applying individually or as a member of a Consortium. 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 with a formal intent to enter into an agreement or under an existing agreement 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 Associate (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 Associate (or any shareholder thereof having a shareholding of more than five percent 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, as the case may be, is less than one per cent of the paid up and subscribed share capital thereof; provided further that this disqualification shall not apply to a bank, insurance company, pension fund or a public financial institution referred to in section 4A of the Companies Act 1956; or
  - (ii) a constituent of such Bidder is also a constituent of another Bidder; or

- (iii) such Bidder receives or has received any direct or indirect subsidy from any other Bidder, its Member or Associate or has provided any such subsidy to any other Bidder; or
- (iv) such Bidder has the same legal representative for purposes of this Bid as any other Bidder; or
- (v) such Bidder has a relationship with another Bidder, 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 has participated as a consultant to IWAI/NTPC in the preparation of any documents, design or technical specifications of the Project.

It is clarified that this Conflict of Interest provision is applicable till the end of the bid process (i.e till the execution of the Tripartite Agreement with the selected Operator)

- (d) A Bidder shall be liable for disqualification and forfeiture of Bid Security if any legal, financial or technical adviser of the Authority in relation to the Project[s] is engaged by the Bidder in any manner for matters related to the Project during the Bidding Process or subsequent to the (i) issue of the LOA or (ii) execution of the Draft Tripartite Agreement, then notwithstanding anything contrary contained herein or in the LOA or Draft 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, 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 Selected Bidder or Operator for the same  
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 Each Bidder, in the Technical Proposal (the sealed envelope marked as such) , 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)

(a) **Technical Capability Criteria**

For demonstrating technical capability and experience (“**Technical Capacity**”), the Bidder shall:

- (i) Have experience in Operating/Maintaining/managing any of the Eligible projects (as defined below), and the revenue received from such Eligible Projects should be minimum of Rs. 50 Cr per annum, continuously for a minimum period of 2 years in last 7 years immediately preceding the date of submission of bids, in India or abroad,

**OR**

- (ii) have developed and/or implemented at least 3 projects either on its own or as, as a lead member of a consortium in the past 7 years in Eligible Projects, as mentioned below, and the total project cost for such a projects aggregating to a minimum of Rs. 200 Cr.

- (b) **Eligible Projects** for the purposes of this Bid includes barge operations, bulk cargo trans-loading operations, ship owners, stevedores, terminal owners/operators, logistic players, infrastructure developers and other port users who are having experience in the operation or having an investment in barges /ship handling /cargo handling /transportation /coastal vessel / terminal infrastructure development / transshipment services

(c) **Financial Capability Criteria:**

The Bidder shall have:

- (i) Average Annual Turnover of the past 3(three) financial years (i.e. 2007-08, 2008-09, & 2009-10) of at least Rs, 100 Cr.

**OR**

- (ii) Average Net Worth in the past three (3) financial years (i.e. 2007-08, 2008-09, & 2009-10) of at least Rs. 150 Cr.

(d) **Proposed Logistic Solution**

Bidder shall be required to provide the following details for both Interim Coal Handling Plan and Coal Hauling Plan separately 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 Interim solution, Material Handling System Phase-I and Material Handling System-Phase-II separately

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))

In case of a Consortium, the combined technical capability and financial capability of those members of the Consortium, who have and shall continue to have participation interest of atleast 26% (twenty six percent) in the Consortium, 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 participation interest . It is further clarified that technical or financial capability of Consortium members that hold less than 26% in the Consortium shall not be considered for the purposes of evaluation of the Bid. This condition shall be applicable only if the consortium undertakes to and incorporate a SPV to function as Operator. If the consortium chooses not to form SPV then Lead member shall satisfy both Technical and Financial Eligibility criteria.

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. Bidders that do not meet the said evaluation criteria or do not submit the details and supporting documents as stipulated in section 2.2 shall be evaluated as having “Failed” and their Financial Bids shall be returned without opening.

2.2.4 The Bidder shall furnish the details of its Eligible Projects supporting the Technical Capability Criteria of the Bidder, together with the certificate from the respective project owner (in case of PPP projects) or Statutory Auditor (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 concerned client(s) 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), he 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 client; and
- (b) 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 (c) above, and also specifying that the methodology adopted for calculating such net worth conforms to the Financial Capability Criteria;

- (c) 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;
- (d) In case the annual accounts for the latest financial year are not audited and therefore the Bidder can not 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.
- 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 should submit a Power of Attorney in favour of the Lead Member as per format at Appendix-II(b)
- 2.2.6 In case the Bidder is a Consortium, either the Lead Member itself becomes the Operator or the Consortium will be required to form an appropriate SPV for the execution of the Agreement and it should comply with the following additional requirements:
- (a) Number of members in a consortium should be limited to 6 (six);
- (b) Subject to the provisions of sub-clause (a) above, 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 be holding a participatory interest of at least 51% (fifty one percent) in the Consortium. 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 (the “Jt. Bidding Agreement”) for the purpose of making the Bid and submitting Bid

*(Note: A copy of the Jt. Bidding Agreement should be submitted along with the Bid. The Jt Bidding Agreement entered into between the members of the Consortium should be specific to the Project and should fulfill the above requirements, failing which the Bid shall be considered non-responsive).*

(g) Except as provided under this RFP, there shall not be any amendment to the Jt. Bidding Agreement without the prior written consent of the Authority.

2.2.7 Any entity which has been barred by the Central/ State Government, 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, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration Acceptance against the Bidder, nor been expelled from any project or contract nor have had any contract terminated 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 Net Worth of their respective Associates would also be eligible hereunder.

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.

(c) In case the Bidder is a Consortium, Lead Member should satisfy the requirements to the extent specified herein.

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 from national security and public interest perspective. The decision of IWAI 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, the Authority 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 Bangladesh, and Pakistan should have valid and existing RBI/FIPB approval to undertake investments or business operations in India.

### **2.3 Change in composition of the Consortium**

- 2.3.1 Change in the composition of a Consortium will not be permitted by the Authority after the Bid Due Date.

**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**

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, and any other matter considered relevant by them.

**2.6 Acknowledgement by Applicant**

- 2.6.1 It shall be deemed that by submitting the Bid, the Bidder has:
- (a) made a complete and careful examination of the RFP (including the draft Tripartite Agreement) received all relevant information requested from IWAI;
  - (b) 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
  - (c) agreed to be abide by the undertakings provided by it under and in terms hereof.
- 2.6.2 IWAI, their consultants (including IL&FS Infrastructure Development Corporation Ltd) and 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 the Authority.

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

- 2.7.1 Notwithstanding anything contained in this RFP, IWAI and 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 all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.

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

- (a) At any time, a material misrepresentation is made or uncovered, **or**
- (b) the Bidder does not provide, within the time specified by the Authority, the supplemental information sought by the Authority 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 shall 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 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.

2.7.4 NTPC and IWAI reserve the right to verify all statements, information and documents submitted by the Bidder in response to the RFP. 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**

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 1.2.17. 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 deadline for submission of Bid, 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 IL&FS Infrastructure Development Corporation Ltd.

## 2C. PREPARATION AND SUBMISSION OF APPLICATION

### 2.11 Language

The Bid and all related correspondence and documents in relation to the Bidding Process shall be in English language. Supporting documents and printed literature furnished by the Bidder with the Bid may be in any other language provided that they are accompanied by appropriate translations of the pertinent passages in the English language. Supporting materials, which are not translated into English, may not be considered. For the purpose of interpretation and evaluation of the Bid, the English language translation shall prevail.

### 2.12 Format and signing of Application

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 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 Bid, marked “COPY”. The Bidder shall also provide 2 (two) soft copies of the Bid and supporting documents as required under this RFP to support the Bid, on Compact Disc (CD). 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.
- 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 – Minimum Transportation cost quoted) should be covered with a clear/transparent adhesive tape. Any signs of tampering will lead to the rejection of the financial Bid.
- 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 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. The Bidder shall seal the original and each copy of the Bid, together with their respective enclosures, in separate envelopes duly marking the envelopes as “ORIGINAL” and “COPIES”. The envelopes shall then be sealed in an outer envelope.
- 2.13.2 The Bidder shall put two separate envelopes comprising the two parts of the Bid (i.e Technical Proposal and Financial Bid ) in a single outer envelope and seal ALL the envelopes.

The outer single envelope shall be marked **Bid: Coal Movement through Inland Waterway** and shall contain the following documents:

- (a) Cover Letter in the prescribed format (Appendix-I) alongwith following enclosures;

- (i) Demand Draft of Rs15,000/- in favour of M/s Integrated Translog Development Company Ltd IWAI-IIDC PDF as specified in Clause 1.2.9
  - (ii) Bid Security in the form and manner as specified in Appendix -III.
  - (iii) Undertaking of acceptance of NTPC's compensation clause in the form and manner as provided in Appendix VIII.
  - (iv) Power of Attorney for signing the Bid as per the format at Appendix-II(a);
  - (v) If applicable, the Power of Attorney for Lead Member of Consortium as per the format at Appendix-II(b);
  - (vi) Details of Applicant as per Annexure-I in Appendix-I
  - (vii) Statement of Legal Capacity as per Annexure-II in Appendix-I
- (b) Sealed Envelope containing "Technical Proposal"
- (c) Sealed Envelope containing "Financial Bid"

The Envelope marked "Technical Proposal" shall contain the following

- (i) Copy of the Jt. Bidding Agreement, in case of a Consortium;
- (ii) Copy of Memorandum and Articles of Association, if the Bidder/Consortium Member is body corporate, and if a partnership then a copy of its partnership deed;
- (iii) Copies of Bidder's/ each Consortium Member's duly audited balance sheet and profit and loss account for the preceding three years;
- (iv) Appendix- IV(a) providing summary of technical capability of the bidder
- (v) Documentary evidence such as certificate from statutory auditors/ project owner to support the bidders claim for the technical capability
- (vi) Appendix IV (b) providing summary of financial capability of the bidder.
- (vii) 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 Interim Coal Handling Plan and Coal Hauling Plan (in case of Coal Hauling Plan, indicate the timelines for implementation of Material Handling System Phase-I and Material Handling System Phase-II separately)

The envelope marked "Financial Bid" shall contain Appendix VI quoting the transportation rates and its components as detailed therein.

2.13.3 Outer envelope shall be addressed to:

**Chief Engineer**  
**Inland Waterway Authority of India**  
**A- 13, Sector 1, NOIDA, UP, Pin : 201 301**  
**Email: ce.iwai@nic.in**

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.

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 may extend the Bid Due Date by issuing an Addendum in accordance with Clause 2.10.

**2.15 Late Applications**

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

**2.16 Modifications/ substitution/ withdrawal of Applications**

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**

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**2.17 Opening and Evaluation of Applications**

2.17.1 Outer envelope and Technical proposal 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) 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) Names of Consortium Members
  - (d) Name of bidders from whom IWAI has received request to withdraw their proposal (if any)
  - (e) The documents contained as a part of the Technical Proposal in accordance with 2.13.2.
- 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 Proposal shall be subsequently examined in accordance with Clause 2.2.3 of this RFP.
- 2.17.5 The Financial Bid of only such Bidders whose Technical Proposals "Pass" the Technical Evaluation, shall be opened.
- 2.17.6 Envelope of 'FINANCIAL BID' will be opened in the presence of the 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

Each Bidder is required to submit, as part of its financial Bid:

- (a) Rate per Metric Tonne for Transportation by Barges after unloading from Geared Vessel upto Farakka
- (b) Rate per Metric Tonne for Road Transportation from bank of waterway to NTPC coal stack yard
- (c) Rate per Metric Tonne for unloading from Ocean Going Vessel using mechanism suggested by Bidder, loading onto the barges and Transportation by Barges upto Farakka
- (d) Rate per Metric Tonne for Transportation of coal through conveyor Belt System to NTPC Stack Yard.

Evaluation of bids shall be done, based on the weighted average of the Project Rate {(c)+(d)} and the Interim Period Rate {(a) + (b)} as quoted by the Bidder as per the following weightage

Sl. No.	Transportation Rate	Weightage
1.	Project Rate (c) +(d)	95%
2.	Interim Period Rate (a) + (b)	5%

It should be noted that quoting the lowest rate for transportation would not automatically qualify a Bidder for being declared as the Successful Bidder. The rate for transportation quoted by the bidder would be examined in the context of the Landed Cost of Coal, as explained in Clause 1.1.11, before deciding whether the transportation rate quoted is found to be competitive from NTPC's perspective

or not. NTPC and/or IWAI reserves the right to reject all the Bids tendered under this RFP without assigning any reason thereof.

2.17.7 In the event that two or more Bidders have quoted the same evaluated Cost, IWAI may:

(a) Invite fresh Financial Bids only from the Bidders quoting same lowest Transportation Rate, However the fresh Financial Bids should not be higher than the Transportation Rate 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 qualification 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, successors or assigns, but shall be binding on the Bidder if any 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 Bid Acceptance shall not be disclosed.

**2.18 Non-Discriminatory and Transparent Bidding Proceedings**

IWAI shall ensure that the rules for the bidding proceedings 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 responsiveness**

2.20.1 Prior to evaluation of Bids, responsiveness of the bids will be checked. A Bid shall be considered responsive only if:

- (a) it has a Cover Letter as per format at Appendix-I alongwith enclosures as per clause 2.13.2
- (a)
- (b) it is received by the Bid Due Date including any extension thereof pursuant to Clause 2.14.2;
- (c) it has two separately sealed envelopes marked (1) Technical Proposal and (2) Financial Bid as stipulated in Clause 2.13;

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. QUALIFICATION AND BIDDING**

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### **2.22 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.

### **2.23 Correspondence with the Bidder**

IWAI and/or NTPC shall not entertain any correspondence with any Bidder in relation to the acceptance or rejection of any Bid.

## **3. ISSUANCE OF LOA**

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### **3.1 Notification of Successful Bidder**

The Successful Bidder(s) would be notified after completion of the bid evaluation process and a Letter of Award shall be issued to the Successful Bidder.

### **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 reserved 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.

### **3.3 Execution of Tripartite Agreement**

3.3.1 Within fifteen (15) days from the date of issuance of the LoA, the Successful Bidder(s) shall thereafter execute the Tripartite Agreement. In case the consortium decides not to incorporate itself into a SPV, the designated lead member of the consortium satisfying the conditions stipulated in this RFP shall be responsible to act as Operator and sign the Tripartite Agreement and other documents in connection thereto.

3.3.2 In case, the Tripartite Agreement does not get executed within fifteen (15) days of issuance of LoA, , 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 entire Bid Security submitted by the Successful Bidder shall be forfeited.

3.3.3 However, IWAI and/or NTPC on receiving request from the Successful Bidder(s) 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 two weeks from the date of signing of the Tripartite Agreement with the Operator or annulment of bid process as the case may be.

### **3.4 Payments and Performance Security**

3.4.1 At the time of signing of Tripartite Agreement, the Successful Bidder shall make the following payments:

- (a) non-refundable and irrevocable payment of the project development fees of Rs 50,00,000/- (Rupees Fifty Lacs Only) plus applicable service tax to “Integrated Translog Development Company Ltd IWAI-IIDC PDF” through Demand Draft, payable at New Delhi;

- (b) Project Success Fees of Rs. 2,50,00,000/- (Rupees Two Crores Fifty Lacs only) plus applicable service tax to IL&FS Infrastructure Development Corporation Limited, through Demand Draft payable at New Delhi.
- 3.4.2 The Successful Bidder shall for due and faithful performance of its obligations during the Operation Period furnish Performance Security by way of an irrevocable Bank Guarantee issued by a Bank, in favour of NTPC Ltd, equivalent to a sum of Rs 25,00,00,000/- (Twenty Five Crores only). The Operator shall provide the Performance Security on or before the date of execution of the Tripartite Agreement. The format of the Performance Security has been given in the RFP.
- 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 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 the 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. Notwithstanding anything to the contrary contained herein, IWAI and/NTPC shall reject a Bid without being liable in any manner whatsoever to the Bidder if it determines that the Bidder 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.
- 4.2 Without prejudice to the rights of IWAI and/or NTPC under Clause 4.1 hereinabove, 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, 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, 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.

## Appendix I: Cover Letter of Bid

### Cover Letter of Bid

(Refer Clause 2.13.2)

Dated:

To,  
[Chief Engineer,  
Inland Waterway Authority of India  
\*\*\*\*\*]

Sub: **Coal Movement through Inland Waterway**

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[s].
- (3) 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.
- (4) 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.
- (5) I/ We certify that in the last three years, we/ any of the Consortium Members have neither failed to perform on any contract, as evidenced by imposition of a penalty or a judicial pronouncement or arbitration award, nor been expelled from any project or contract nor have had any contract terminated for breach on our part.
- (6) I/ We declare that:
  - (a) I/ We have examined and have no reservations or deviations to the RFP document, including any Addendum issued by the Authority.

- (b) 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
- (c) 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
- (d) 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.
- (7) 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 and clause 2.17.6 of the RFP document.
- (8) I/ We believe that we/ our Consortium/ proposed Consortium satisfy(ies) the Net Worth or Turnover criteria and meet(s) all the requirements as specified in the RFP document and are/ is qualified to submit a Bid.
- (9) I/ We declare that we/ any Member of the Consortium are/ is not a Member of a/ any other Consortium applying for the Bid.
- (10) 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.
- (11) 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.
- (12) 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.
- (13) 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.
- (14) The Statement of Legal Capacity as per format provided at Annex-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 and III respectively of the RFP, are also enclosed.

- (15) Detail of Applicant as per format provided at Annexure-I in Appendix-I of the RFP document, duly filled and signed is enclosed.
- (16) 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 in connection with the selection of Bidders, selection of the Bidder, or in connection with the selection/ Bidding Process itself, in respect of the above mentioned Project[s] and the terms and implementation thereof.
- (17) I/We agree to keep this offer valid for 150 (one hundred and fifty) days from the Bid Due Date specified in the RFP.
- (18) Bid Security of Rs. 2,00,00,000/- (Rupees two crores only) to IWAI in accordance with the RFP Document is enclosed.
- (19) 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
- (20) I/ We agree and undertake to abide by all the terms and conditions of the RFP document.

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 Applicant**

**Details of Applicant**

1. Applicant
- 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			

*\*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	<b>Has the Applicant/ 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)</b>		
2	<b>If the answer to 1 is yes, does the bar subsist as on the date of Application</b>		
3	<b>Has the Applicant/ 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?</b>		

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,

\*\*\*\*\*

\*\*\*\*\*

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/ the Lead Member of our Consortium 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 Appostille 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 Coal Movement through Inland Waterway (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/s. .... having our registered office at ....., M/s. .... having our registered office at ....., and ..... 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

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 OF .....2010.

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 Uttar Pradesh Stamp Act)**

B.G. No.

Dated:

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 180 (one hundred and eighty) days from the Bid Due Date inclusive of a claim period of 30 (thirty) 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 Applicant @**

(Refer to Clauses 2.2.2 (a) & 2.2.2 (b))

Whether the bidder undertake to incorporate as a SPV post selection as Operator: Yes / No

(Applicable only in case of Consortium –Strike off whoever is NOT applicable)

Applicant type #	Name and Member Code*	Technical Capability	
		Revenue received by Bidder for operation, Maintenance and Management 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 Applicant			
Consortium Member 1			
Consortium Member 2			
Consortium Member 3			
Consortium Member 4			
<b>Total</b>			

@ Provide details of only those projects that have been undertaken by the Bidder under its own name 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 Management 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 1\$ is equivalent to Rs. 46

**Schedule to Appendix IV (a): Technical Capability of the Bidder****Details of Eligible Projects**

(Refer to Clauses 2.2.2(a) &amp; 2.2.2 (b))

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 (b) 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 (b) (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 Management 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) Certificate from the client or the Bidder’s statutory auditor must be furnished as per format below.

**Certificate from the Statutory Auditor/Project Owner regarding projects**

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 .....%<sup>€</sup> of the total paid up and subscribed equity capital) of the project company from ..... (date) to ..... (date)<sup>¥</sup>. 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 Clauses 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

\$ In case duly certified audited annual financial statements containing the requisite details are provided, a separate certification by statutory auditors would not be necessary.

\*\* 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).”

- (11) 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.

**Appendix IV (b): Technical Proposal: Financial Capability**

**Financial Capability of the Applicant**

(Refer to Clauses 2.2.2(c) of the RFP)

(In Rs Crore)

Applicant type <sup>§</sup>	Member Code <sup>£</sup>	Average Net Worth€	Average Annual Turnover €
Single entity Applicant			
Consortium Member 1			
Consortium Member 2			
Consortium Member 3			
Consortium Member 4			

**Name & address of Applicant’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 © 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 to 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 (b) of the RFP document.

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

(Refer: Clause 2.2.2 (d))

I. Details of proposed Waterway Based Logistic solution

II. Format for the Estimated Cost of Implementation of Coal Hauling Plan and Interim Period Coal Handling Plan.

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

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 (d))

- (1) Unloading Mechanism (Transshipment Infrastructure) from Ocean Going Vessel in case of Coal Hauling Plan: 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 PDPRSHIC)
  - (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/Capesize
  
- (2) Barges : Bidder shall separately indicate for Interim Period, Material Handling Phase-I period and Coal Hauling Period
  - (a) Type
  - (b) Number
  - (c) Capacity (in MT)
  - (d) Mode of Procurement of barges: Hire/Lease/Own
  - (e) Turnaround time of Barges
  
- (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

In addition to above Bidder is also required to submit the timelines for procurement of Unloading Infrastructure, Material Handling System-Phase-I and Material Handling System-II separately , however, it cannot be higher than as indicated in the RFP document
  
- (4) Dumper Trucks- For interim period
  - (a) Type
  - (b) Capacity (in MT)
  - (c) Number
  - (d) Maximum number of Trips per day
  - (e) Mode of procurement: Hire/Lease/own

**Appendix VI: Format of Financial Bid**

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

**Operation of Coal Movement through Inland Waterway**

**Price Bid format for Transportation Rate**

(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)	Transportation by Barges after unloading from geared vessel upto Farakka waterfront				
(b)	Road Transportation from waterfront to NTPC stack Yard				
(c)	Unloading from Ocean Going Vessel, loading onto the barges and Transportation through Barges upto Farakka waterfront				
(d)	Transportation of coal through conveyor belt system to NTPC stack Yard				

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

**Bidder to note:**

- 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 Transportation Rate amount in the format set out above clearly indicating the amount in both figures and words in Indian Rupees. All payments under this agreement shall be made in Indian Rupees only
3. The Transportation Rate Amount must include two places of decimals.
4. Bidders must note that the all Transportation Rates are subject to price adjustment as per the provision set forth in Draft Coal Transport Agreement vide Article 8.1.2.
5. Rates quoted above shall be inclusive of all applicable taxes & duties prevailing 7 days prior to the Bid Due Date. However any subsequent revision in the Service Tax as applicable shall be paid at actuals.
6. All the definitions shall be as per the provisions of the RFP.

**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 )**

[IWAI 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 Farakka, 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 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 ----- months from the date of the execution of the Tripartite Agreement.

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 the expiry of ----- from the date of execution of the Tripartite Agreement.

Signed and sealed this ..... day of ....., 2010..... 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,  
[Chief Engineer,  
Inland Waterway Authority of India  
\*\*\*\*\*]

Sub: Bid for the Operation of Imported Coal Movement through Inland Waterway Terminal

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.

In accordance with Clause 2.13.2 (a) (iii) and 2.20.1 (a) of the RFP document, I/We hereby undertake to agree and abide with the compensation mechanism provided in Article 14.1 (c) of the Draft Tripartite Agreement in the event there is a default committed by NTPC.

I/We further undertake and agree that the provision in relation to the compensation mechanism provided in Article 14.1 (c) of the Draft Tripartite Agreement in the event there is a default committed by NTPC is being accepted without any reservation or deviation whatsoever.

Yours faithfully,

(Signature of the Authorized Signatory)

Date:

Place:

(Name and designation of the Authorized Signatory)

(Name and Seal of the Bidder/ Lead Member)

**VOLUME-II**

**DRAFT TRIPARTITE AGREEMENT**

## AGREEMENT FOR COAL MOVEMENT THROUGH INLAND WATERWAY TRANSPORT (IWT)

This Tripartite Agreement is made at [.....] on this [.....] day of [.....], [2011] **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 **FIRST PART**.

**AND**

2. **Inland Waterways Authority of India**, a statutory Authority constituted by Government of India under IWAI 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 **SECOND PART**.

**AND**

3. [..... **LIMITED**], a company incorporated under the provisions of the Companies Act, 1956 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”, and “IWAI” and “OPERATOR” shall include their respective successors, and are hereinafter collectively referred to as the “Parties” and individually as “Party”)

**WHEREAS**

- A. NTPC Limited is a premier power generation company, constituted by Government of India under 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 Limited, through State Trading Companies, imports coal to meet the fuel requirements of its power plants situated at various places in the country. 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 IWT with other modes.
- C. NTPC and IWAI have entered into a Memorandum of Understanding (“**NTPC-IWAI MOU**”) to explore the possibilities to use inland waterways as a viable supplementary mode for transportation of coal for NTPC’s power plant located at Farakka, West Bengal
- D. NTPC has mandated IWAI to undertake a competitive bid process, for and on behalf of NTPC, to identify and recommend an operator (“**Operator**”) that would be responsible for unloading the coal from the ocean going vessels and thereafter hauling the coal on barges using National Waterway -1 and ensuring delivery of the coal, in accordance with identified specifications, at the coal stack yard of the Farakka TPP,
- E. IWAI is maintaining National Waterway 1 (NW1), which forms part of waterway for the proposed coal movement to Farakka power plant.
- F. In order to provide uninterrupted transportation of coal to NTPC, IWAI has committed to provide round the clock navigability of waterway, and all such facilitation as being necessary to guarantee Least Available Depth (LAD) of 2.5 m to help smooth movement of barges from Transfer Point to power plant at Farakka. IWAI shall also co-ordinate with KoPT for providing requisite facilities for navigation through the waterway falling under the jurisdiction of KoPT.
- G. NTPC shall make available approximately 11 (Eleven) acres land alongside waterway and provide the same on lease to the Operator for the Unloading Infrastructure and Material Handling System for the entire term equivalent to the term of this Tripartite Agreement.
- H. IWAI for and on behalf of NTPC had issued a Request for Proposal no. \_\_\_\_\_ dated \_\_\_\_\_ inviting bids for selection of Operator. Pursuant to the RFP a detailed evaluation has been made by NTPC & IWAI and a Successful Bidder was selected by NTPC.
- I. 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) and, *inter alia*,:

- (a) NTPC grants the right of development of Unloading Infrastructure on Design, Finance, Build, Operate and Transfer (“DFBOT”) basis and Material Handling System as per NTPC’s design and standards provided in Schedule E of this agreement on the land made available by NTPC at the waterfront of Farakka;
  - (b) NTPC provides a guarantee of 3 MMTPA of coal to be transported to Farakka using NW1 and delivery of the coal inside the coal stack yard by utilizing the Unloading Infrastructure and Material Handling System to be developed by Operator on the land made available by NTPC on the waterfront of Farakka for a period of 7 (seven ) years after COD;
  - (c) The Operator agrees to develop the Unloading Infrastructure on DFBOT basis and Material Handling System as per NTPC’s design and standards provided in Schedule E of this agreement on the land made available by NTPC on the waterfront of Farakka;
  - (d) Till such time the Unloading Infrastructure and Material Handling System- Phase-I is developed, the Operator shall effect the delivery of coal through the Interim Coal Handling Plan using road network in accordance with the provisions of the Tripartite Agreement;
  - (e) Till Material Handling System Phase-II is developed Operator shall effect delivery of coal inside the coal stack yard through the Unloading Infrastructure and Material Handling System built under Phase-I
  - (f) Operator acknowledges and confirms that it has undertaken a due diligence audit of all aspects of the Project, including technical and financial viability, legal due diligence and on the basis of its independent satisfaction and agrees to commence the Project at its own cost & expense and in accordance with the terms and conditions of this Agreement.
- J. In accordance with the provisions of the RFP, the Successful Bidder has paid (i) project success fee of Rs 2,50,00,000/- (Rupees Two Crores and Fifty lacs only), to “IL&FS Infrastructure Development Corporation Limited” (hereinafter referred to as “IIDC”), (ii) Project Development Fees of Rs 50,00,000/- ( Rupees Fifty Lacs only) to “Integrated Translog Development Company Ltd IWAI-IIDC PDF” each individually through Demand Draft drawn in favour of IL&FS Infrastructure Development Corporation Limited and Integrated Translog Development Company Ltd IWAI-IIDC PDF respectively payable at New Delhi, plus service tax as applicable in each case.

**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 11.1;

**“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 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 West Bengal, by any Competent Authority or instrumentality thereof, whether in effect as on the date of this Agreement or thereafter;

**“Applicable Permits”** 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;

**“Approval Date”** shall have the meaning set forth in Article 8.1 (b) (iii);

**“Arbitration Act”** means the Arbitration and Conciliation Act, 1996 and shall include modifications to or any reenactment 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 Preferred Bidder in response to the Request for Proposal dated -----, 2011, 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 2,00,00,000/- (Rupees Two Crores only) from a scheduled bank furnished by the Successful Bidder in favour of IWAI along with the Bid;

“**Capesize Vessel**” means an ocean going cargo vessel with a DWT of 120000 MT or more;

“**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) the imposition of a requirement for a Clearance(s) (other than for cause) not required on the date of this 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.

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

“**Clearances**” means any and all permissions, clearances, licenses, permits, consents, no-objections, exemptions, registrations, filings or other authorizations, of whatever nature, approvals of or from any Competent Authority required in connection with the Project and for undertaking, performing or discharging the obligations or fulfillment of the purposes contemplated by this Agreement;

“**COD**” or “**Commercial Operation Date**” means Date on which Operator receives the Completion Certificate in relation to the Material Handling System Phase-II 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**” means the date of execution of this Agreement;

“**Completion Certificate**” shall have the meaning set forth in Article 8.7 (c);

“**Construction Documents**” mean collectively the Designs and Drawings, the Master Plan and the Development Plan.

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

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

“**Consortium**” means the consortium/joint venture/partnership consisting of \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ ( to be filled by bidder/(s)) (referred to as the “**Consortium Members**”) formed/acting pursuant to the memorandum of 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;

“**Consultation Notice**” has the meaning ascribed to it in Article 12.3;

“**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;

“**Dead Weight Tonnage (DWT)**” means an expression of a ship’s 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 towards Actual Project Cost of the Unloading Infrastructure & Material Handling System subject to the limits specified as per Article 14.1 (c), expressed in Indian Rupees and claimed as outstanding by the Lender under the Financing Documents 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 Project (“**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, if Transfer Date is related to expiry of the Operation Period or any part of the principal that fallen due after the Termination Notice, if Transfer Date is related to termination prior to the COD; 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 14.1 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 Facilities in the Unloading Infrastructure & Material Handling System;
- (c) Project implementation/construction schedule with identified milestones, including the phasing of the Project, if any.

“**DFBOT**” means design, finance, build, operate, maintain and transfer

“**Dispute Resolution**” shall have the meaning set forth in Article 17;

“**Dumper Truck**” means the heavy duty trucks with hydraulic tipping mechanism and of capacity upto 35 MT.

“**Equity**” means the paid up 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 14.1 (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 a Operator Event of Default and/or NTPC and/or IWAI Event of Default, as the context may require or admit as referred in Article 12;

**“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 11;

**“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”** means a company/firm/joint venture which will be selected by NTPC directly or through other agencies, who will then be responsible for procurement of coal, transportation and delivery at Farakka Power Plant during the tenancy of this Agreement;

**“Indemnified Party”** means the party entitled to the benefit of an indemnity pursuant to Article 16;

**“Indemnifying Party”** means the party obligated to indemnify the other Party pursuant to Article 16.2;

**“Infrastructure Facilities”** means: (1) Transshipment Infrastructure for unloading of coal from Ocean Going Vessel; and (2) Barge fleet for movement of coal from transshipment infrastructure to power station through waterway;

**“Insurance Cover”** means the aggregate of the maximum sums insured under the insurances taken out by the Operator pursuant to Article 10.1, 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;

**“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, rights, title and interests of the Operator;

**“Material Adverse Effect”** means a material adverse effect of any act or event on the ability of either Party to perform any of its obligations under and in accordance with the provisions of this Agreement and which 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.

**“Material Handling System”** means Coal Conveying Plant Package as per Schedule E designed for and used in Coal Hauling Plan. Material Handling System of Coal Hauling Plan is to be developed in two phases

- (a) Phase I would include the construction and operation of Conveyor Belt system comprises of Conveyor A, Conveyor Belt B and Conveyor Belt C through junction house JH-1 and JH-2. Operator shall provide and implement the Unloading Infrastructure and Material Handling System Phase-I, that would be in operation for approximately nine (9) months (“Material Handling System-Phase-I Period”) for unloading transportation and delivery of minimum 2 MMTPA of coal inside the coal stack yard and thereafter utilized in Coal hauling plan upon completion of Phase-II of Material handling System for unloading, transportation and delivery of 3 MMTPA coal inside the coal stack yard. Operator would ensure that operation through Phase-I shall commence not later than fifteen (15) months from the date of execution of the Draft Tripartite Agreement.
- (b) Phase-II would include construction and operation of Conveyor Belt D, Conveyor Belt E, Conveyor Belt F and Conveyor Belt G through Junction houses JH-3, JH-4, JH-5 & JH-6. Operator would ensure that operation, through this mode shall commence not later Twenty Four (24) months from the date of execution of Draft Tripartite Agreement.

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

**“Non-Political Event”** shall have the meaning set forth in Article 11.2;

**“Operation Period”** means the period 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 12.1 (a);

“**Ocean Freight**” means the freight that is to be paid by Imported Coal Supplier to vessel owner/agent for transportation of imported coal from port of Origin to Transfer Point;

“**Ocean Going Vessel**” means a seaworthy vessel/ship used for navigation in sea as a means of transportation of coal from port of origin to Transfer Point. During Operation Period Ocean Going Vessel means gearless Panamax/Capesize Vessel and during Interim Period Ocean Going Vessel Means a vessel which are having their own gears and capable to unload midstream.

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

“**Panamax Vessel**” means Ocean Going Vessel with a DWT of 60,000-80000 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.

“**Preferred Bidder**” means the Consortium/entity, M/s [.....] that has been successful in the bidding process for the Project and that has incorporated the Operator.

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

“**Political Event**” shall have the meaning set forth in Article 11.3;

“**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, Transport contract 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 High Seas upto delivery of coal inside the coal stack yard of power station;

“**Project Assets**” mean the facilities and services to be provided by the Operator until the COD and thereafter during the Operation period in accordance with this Agreement;

“**Project Milestones**” means the project milestones by the Successful Bidder as a part of the Interim Coal Handling Plan and the Coal Hauling Plan as provided 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 through barges upto Power Plant and (iii) Unloading and delivery of coal at the coal stack yard of Power Plant (iv) transfer of Unloading Infrastructure and Material Handling System after the expiry or termination of the Agreement, as the case may be. For the purpose of the Project Requirement specified in this Agreement the quantity of the coal shall be 3 MTPA during the operation period;

**“Project Site”** means the area demarcated in **Schedule A** including the waterfront at Farakka TPP land together with the buildings, structures if any and easements rights thereto that may be given to the Operator and all other assets comprised therein on which the Operator is authorized to develop and operate the Project Assets as set forth in this Agreement;

**“Request for Proposal”** or **“RFP”** means the Request for Proposal dated ----, 2011 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;

**“Specifications and Standards”** means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Project, as set forth in Schedule-E, and any modifications thereof, or additions thereto, as included in the design and engineering for the Project, submitted by the Operator to, and expressly approved by the “IWAI and NTPC”;

**“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;

**“Tender Document of Coal Import”** means tender document that will be issued by NTPC directly or through other agencies for selection of Imported Coal Supplier that will then be responsible for entire activities that includes Procurement of coal, transportation from Port of Origin to any Indian Port and delivery of coal at NTPC power plant site;

**“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 date of execution of this Agreement and shall continue till the end of the Operation Period, unless terminated earlier in accordance with the provisions of this Agreement;

**“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**” means the amount payable by IWAI/NTPC/Operator on the event of default as stipulated in this Agreement upon Termination;

“**Transfer Date**” means the date of expiry or termination as the case may be, of the Operation Period in accordance with terms of this Agreement

“**Transfer Point**” means the location where the coal is unloaded and transferred from ocean going vessels (including Panamax/ Capesize) to barges, that are identified as being suitable for such unloading by the Operator.

“**Transshipment Infrastructure**” means the mechanism for unloading of coal from Ocean Going Vessel and loading onto the barges, this will include Transloader, Transhipper etc.

“**Transport Contract**” means a contract, which shall be in accordance with the terms and conditions specified in Schedule B to this Agreement, which shall be executed between Imported Coal Supplier and the Operator for the unloading, transportation and handling of 3 MMTPA after COD (and 1MMTPA during the Interim Period and 2 MMTPA during Material Handling System-Phase-I ) of coal through Waterway from Transfer Point to the Farakka and delivery of coal inside the coal stack yard of Power plant.

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

“**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 "reorganisation" 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 Annexures, the Article shall prevail, save and except as expressly provided in the Articles or the 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 grants to the Operator as the exclusive entity that would provide: (i) services of unloading of coal from ocean going vessels, transportation of coal on barges over National Waterways – I till Farakka TPP, (ii) development of the Project Assets including the Unloading Infrastructure and Material Handling System and any facility related therein; (iii) manage, operate and maintain the Project Assets; (iv) handling of coal till coal stack yard of Farakka TPP 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 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 to only to the transportation of 3MMT per annum of coal to Farakka TPP.

### 2.2 Scope of work

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

- (a) Preparing and submitting to NTPC for its approval, the 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: (1) the coal would be unloaded and transferred from ocean going vessels (Panamax/ Capesize) to barges at the suitable locations that are identified as being suitable for such unloading from the ocean going vessels to barges by the Operator (such location being referred to as “Transfer Point”), (2) the mechanism to be used at the Transfer Point for the unloading and transferring the coal from ocean going vessel to barges (“**Transshipment Infrastructure**”), (3) provide adequate number of barge of suitable specifications to meet movement schedule of designated quantities of imported coal as per the requirement of NTPC, (4) unloading system of adequate capacity and suitable for the Material Handling System specified under Schedule E of Tripartite Agreement (“**Unloading Infrastructure**”) that would be used at the Farakka TPP waterfront for unloading of coal from barges onto the Conveyor Belt System that would transfer and deliver the coal from the Unloading Infrastructure to the coal

stack yard of the Farakka TTP in accordance with the Schedule E of this agreement (“**Material Handling System**”) and (5) such other details necessary to ensure complete logistics plan for the delivery of the coal from the ocean going vessel to the coal stackyard of the Farakka TPP (“collectively hereinafter referred as the **Coal Hauling Plan**”);

- (c) construct Material Handling System of Coal Hauling Plan in two phases and in accordance with Schedule E of the Draft Tripartite Agreement:
- (i) Phase I would include the construction and operation of Conveyor Belt system comprising Conveyor Belt A, Conveyor Belt B and Conveyor Belt C through junction house JH-1 and JH-2. Operator shall provide and implement the Unloading Infrastructure and Material Handling System Phase-I, that would be in operation for approximately nine (9) months (“Material Handling System-Phase-I Period”) for unloading transportation and delivery of minimum 2 MMTPA of coal inside the coal stack yard and thereafter utilized in Coal hauling plan upon completion of Phase-II of Material handling System for unloading, transportation and delivery of 3 MMTPA coal inside the coal stack yard. Operator shall ensure that operation through Phase-I shall commence not later fifteen (15) months from the date of execution of the Draft Tripartite Agreement.
- (ii) Phase-II would include construction and operation of Conveyor Belt D, Conveyor Belt E Conveyor Belt F and Conveyor Belt G through Junction houses JH-3, JH-4, JH-5 & JH-6. Operator shall ensure that operation, through this mode shall commence not later Twenty Four (24) months from the date of execution of Draft Tripartite Agreement.
- (d) provide and implement an interim solution that would be in operation for approximately 12 (Twelve) months (“Interim Period”) for : (1) enabling the commencement, no later than three (3) months from execution of the Draft Tripartite Agreement, of unloading of at least 1 MMT per annum of imported coal from Ocean Going Vessel to barges by utilizing the gears of the ocean going vessel and identify the suitable Transfer Point in this regard (2) transportation of the coal on barges to the Farakka TPP site, (3) arrangements to be done by the Operator for unloading of the coal from the barges onto dumper trucks to enable transportation of coal by road to the coal stack yard of the Farakka TPP and (4) procure the services of sufficient number of dumper trucks to enable the unloading of coal from the barges and their transportation and delivery to the coal stack yard of Farakka TPP in accordance with the Schedule E of Draft Tripartite Agreement (“Interim Coal Handling Plan”);
- (e) Undertake all measures required to implement the Coal Hauling Plan, pursuant to the terms of this Agreement, which shall include:

- (i) Enabling the commencement of unloading, transportation and delivery inside the coal stack yard through Material Handling System as per the schedule below. All time lines shall be counted from the date of execution of Tripartite Agreement between the selected operator, NTPC and IWAI.
  - A. Phase I : Within 15 months
  - B. Phase II : Within 24 months
- (ii) arrange, procure and ensure the provision of suitable equipment and/or facilities required for unloading the coal from the ocean going vessels to the barges at the Transfer Point in accordance with the Coal Hauling Plan;
- (iii) procure and operate sufficient number of barges to ensure the due unloading from ocean going vessel and transport through IWT mode using NW-1 channel upto Farakka as per the schedule and quantity given in (i) above
- (iv) design, construct, finance, operate and maintain the Unloading Infrastructure at the land provided by NTPC on the waterfront in or near the Farakka TPP, that would unload coal from the barges and place it on the Material Handling System in accordance with the Coal Hauling Plan. The design and construction of the Unloading Infrastructure will have to ensure that it shall an operating life equivalent to the operating life of the Material Handling System (developed as per design given by NTPC). The Unloading Infrastructure shall be transferred to NTPC at Re 1 (one)/- at the end of the Operation Period in accordance with the terms of the Tripartite Agreement
- (v) construct, operate and maintain the Material Handling System (both Phase-I and Phase-II) from the point of unloading at waterfront to coal stack yard of Farakka TPP, in accordance with the design specifications provided by NTPC that would enable the movement of coal from Barge unloading point directly to coal stack yard. The coal should not be stacked anywhere outside the coal stack yard of Farakka TPP. The Material Handling System developed in two phases as stipulated in Article 2.2 (c) as per the specification of NTPC and shall be transferred to NTPC, at Re 1 (one)/-, at the end of the Operation Period in accordance with the terms of this agreement
- (f) Undertake all measures required to implement the Interim Coal Handling Plan, as agreed with NTPC pursuant to the terms of this Agreement, which would include:
  - (i) enabling the commencement, no later than three (3) months from execution of this Agreement, of unloading of atleast 1 MMT per annum of coal, at the Transfer Point, from ocean going vessels to barges by utilizing gears of the ocean going vessels,

- (ii) procure and operate sufficient number of barges to ensure the due unloading and river based transportation of a minimum of 1MMT per annum of coal,
- (iii) make arrangements in accordance with the Interim Coal Handling Plan for unloading of the coal from the barges onto dumper trucks to enable transportation of coal by road to the coal stack yard of the Farakka TPP and
- (iv) procure the services of sufficient number of dumper trucks to enable the unloading, transportation & delivery by road of atleast 1 MMT per annum of coal from the barges unloading point to the coal stack yard of Farakka TPP in accordance with Schedule E

The Operator shall, under both the Coal Hauling Plan and the Interim Coal Handling Plan, identify and notify the other parties the appropriate Transfer Points, where the unloading of the coal from the ocean going vessels to the barges would be undertaken.

### **2.3 Operation Period**

The Operation Period of the Coal Hauling Plan shall commence from the COD and shall extend to a period of 7(seven) years, or till termination of this Agreement in accordance with its terms

**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) Conditions Precedent of IWAI**

- (i) provide adequate Least Available Depth (LAD) of 2.5 meters for minimum 330 days in a year and navigational aids for round the clock operation. IWAI is undertaking fortnightly survey for LAD and same is available on IWAI’s website under River Notices.
- (ii) arranging land at Farakka along waterway near to NTPC Plant for development of Unloading Infrastructure and Material Handling System

**(b) Conditions Precedent of NTPC**

- (i) Provide the right of way for construction of Material Handling System from point of unloading to coal stack yard of Farakka TPP
- (ii) To enable Operator to start the transportation of coal using interim solution, NTPC shall
  - A. Provide road network from point of unloading identified by IWAI and NTPC for unloading of coal at Farakka to coal stack yard of Farakka Power plant
  - B. Provide separate gate for entry and exit of Dumpers / Trucks (arranged by the Operator) to be used for transportation of coal from Project Site to coal stack yard
  - C. Provide suitable weighment mechanism to measure the weight of coal transported to coal stack yard through dumpers.
  - D. Facilitate necessary approvals (under applicable Central/State government rules and regulations ) for coal handling using Unloading Infrastructure and Material Handling System as envisaged under the scope of this RFP

**(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) Furnished the Performance Guarantee as stipulated in Article 4;
- (ii) procured all the Applicable Permits/Licenses/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 and operation of the Project;
- (iii) The Operator shall, within 45 (Forty-five) days of the Compliance Date, prepare and submit the Construction Documents to NTPC and IWAI.
- (iv) make all applications at its cost and procure the clearances, and all other necessary Applicable Permits that are required for commencing of the Project ,

Provided that upon request in writing by the Operator, IWAI/NTPC 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 60 (Sixty days) of the Compliance Date, wherever not stipulated and shall provide the other Party with such reasonable cooperation 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) In the event: (a) IWAI/NTPC do not procure fulfillment of any or all the Conditions Precedent set forth in Articles 3.1 (a) and 3.1(b) within the period specified in respect thereof, and (b) the delay has not occurred as a result of breach of this Agreement by the Operator or due to Force Majeure, “IWAI/NTPC”, shall compensate the Operator by suitably extending the COD for the Project and commencement of transportation through interim solution without any penalty, as applicable.
- (c) 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 IWAI/NTPC or due to Force Majeure, IWAI/NTPC shall terminate this agreement and entitle to invoke the Bid/Performance Security and appropriate the proceeds thereof as pre estimated Damages. Upon such termination, the Operator shall hand over the possession of project site to NTPC/IWAI free from any claims and without any compensation and the Operator and Persons claiming through or under it shall forthwith vacate the Project Site

## ARTICLE-4: PERFORMANCE SECURITY

### **4.1 Performance Security**

- (a) The Operator shall, on the Compliance Date, deliver to NTPC an unconditional and irrevocable bank guarantee 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) ( Bank Guarantee shall be valid for the entire period of the Term of this Agreement including the interim period and Material Handling System-Phase-I Period. In case the maximum validity of the bank guarantee which any scheduled bank can offer is less than the period of the term of this contract (including interim period and Material Handling System-Phase-I Period), the Operator shall be responsible to get the bank guarantee validated 60 days before the expiry of the bank guarantee in force. Failure to revalidate the bank guarantee as per the specified time shall be treated as an Operator event of default.
- (b) Besides, as a security for any sums owed by the Operator to NTPC or for any claims and demands as provided in this Agreement, the Performance Security shall be provided for securing the performance of 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 through Unloading Infrastructure and Material Handling System –Phase-I within 15 (Fifteen) months from Compliance Date;
  - (iii) The completion and operation of Material Handling System-Phase-II within 24 (Twenty Four) months from Compliance Date

Upon acceptance of the Performance Security by NTPC, IWAI shall return the Bid Security to the Preferred Bidder/ Operator; provided there are no outstanding claims of IWAI/NTPC on the Preferred Bidder/Operator

#### 4.2 Failure to Provide Performance Security

- (a) The Preferred Bidder's/Operator's failure to provide the Performance Security in accordance with the provisions of the Article 4.1 shall: (i) entitle NTPC to call in and forfeit the Bid Security and retain and appropriate the same; and (ii) constitute a Operator Event of Default that shall entitle NTPC to terminate this Agreement under the provisions of Article13 hereof.
- (b) The Operator shall ensure that the Performance Security is valid and in force at all times during the operation period

#### 4.3 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 Article 4.1 of this Agreement 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 Article4 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 Article13 hereof.

#### 4.4 Release of Performance Security

Subject to the provisions hereof, NTPC shall return the Performance Security to the Operator **within 30 (Thirty) days**, either on the expiry of the relevant period specified in Article 4.1 above or following termination or expiry of this Agreement 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 the 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 Preferred 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 Development 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.

**5.3 Disclaimer**

- (a) Without prejudice to any express provision contained in this Agreement, the Operator acknowledges that prior to the execution of this Agreement, the Operator has after a complete and careful examination made an independent evaluation of the Project, the legal framework 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 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 accepts that it is solely responsible for the verification of any design, data, documents or information provided by NTPC/IWAI to the Operator, its consultants or any Competent Authority and that it shall accept and act thereon at its own cost and risk.
- (d) The Operator 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.

## ARTICLE 6. PROJECT SITE

### **6.1 Handing over of Project Site**

- (a) NTPC shall within 30 (Thirty) days of the compliance date hand over the vacant possession of the Project Site unto the Operator on an “as is where is basis” and together with the full and free right and liberty of way and passage and other rights in relation thereto, for the purpose of implementing the Project in accordance with the provisions of this Agreement
- (b) Upon the Operator observing and performing its obligations, the several covenants, conditions and agreements herein contained and on the part of the Operator to be observed and performed, the Operator shall remain in peaceful possession of the Project Site during the Operation Period. In the event the Operator is obstructed by any Person claiming any right, title or interest in or over the Project Site or any part thereof or in the event of any enforcement action including any attachment, distraint, appointment of receiver or liquidator being initiated by any Person claiming to have any interest in/ charge on the Project Site or any part thereof, NTPC shall, if called upon by the Operator, defend such claims and proceedings at its cost and expense and the Operator shall not be liable for the same in any manner whatsoever.
- (c) The Operator shall bear all expenses related to preparation of the Project Site for the construction of Project Assets.
- (d) The Operator shall keep the Project Site free from any trespass or encroachment and keep NTPC informed thereof

### **6.2 Access to Project Site**

Following the delivery of vacant possession of the Project Site, the Operator shall, at all reasonable times and on reasonable notice, afford access to the Project Site to NTPC and the representatives of or Persons duly authorized by the relevant Competent Authority concerned with safety, security, health or environmental protection etc. to inspect the Project Site and to investigate any other matter within its authority.

### **6.3 Use of Project Site**

The Operator shall use the Project Site exclusively for the purposes of implementing the Project as permitted under this Agreement.

#### 6.4 **Ownership of Land**

The ownership of the Project site shall at no point of time be conferred or transferred to the Operator. The rights of Operator in the Project Site shall only be that of the holder of right of way limited to the purpose of creation and operation of Unloading Infrastructure and Material Handling System within the scope of this agreement. Operator shall neither assign, transfer, sublet, create any charge or encumbrance, nor shall Operator create or permit creation of any third party rights whatsoever, on whole or any part of Project Site. It is expressly agreed that Operator rights in the Project Site shall cease without the need for any action to be taken by NTPC upon the termination of this Agreement for any reason whatsoever.

However, Operator shall be entitled to create a charge on its rights, title and interest in the Unloading Infrastructure and Material Handling System created or provided by Operator at the Project site pursuant to this agreement in favour of Lenders for securing the Financial Assistance for the Project provided or agreed to be provided by them under the Financing Document. Provided, any such charge shall not be effective before financial closure and shall not continue for a period exceeding the Operation Period.

The ownership of Unloading Infrastructure and Material Handling System created or provided by Operator at the Project site pursuant to this agreement shall, until expiry of this agreement or transfer to NTPC on Termination in accordance with this agreement, be with the Operator.

**ARTICLE 7: OBLIGATION OF PARTIES**

**7.1 Obligation**

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

**(a) Obligation of NTPC**

- (i) Provide 1 MMTPA of coal during Interim Period and 2 MMTPA of coal during Material Handling System- Phase-I Period to be transported through Inland Waterways Transport (IWT) from Transfer Point to coal stack yard of Farakka Power Plant
- (ii) Guarantee minimum quantity of 3 MMT per annum during Operation Period to be transported through Inland Waterways Transport (IWT) from Transfer Point to coal stack yard of Farakka Power Plant
- (iii) NTPC through their Imported Coal Supplier shall ensure delivery of coal at Transfer Point on Fairly Evenly Spread (FES) basis.
- (iv) 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 14.1 (c) due to early termination of this agreement as the case may be
- (v) Facilitate in obtaining the electricity connection at single point at Project Site on chargeable basis for the construction of Project Assets.
- (vi) To provide electricity at a single point at Project Site free of cost only during the operation of Project Assets.
- (vii) Ensure that Imported Coal Supplier executes the Transport Contract with Operator.
- (viii) Include the Transport Contract as specified in Schedule B to this Agreement, in the Main tender Document for Coal Import.
- (ix) NTPC to approve the Standard Operating Procedures (SOP) for operation and maintenance of Project Facilities
- (x) In addition to above obligations, NTPC shall also provide the arrangements to enable Operator to start the movement of coal through proposed interim solution as detailed out in Article 3.1(b) (iii) A, B & C.

**(b) Obligation of IWAI**

To provide:

- (i) Navigation infrastructure in the form of dredging and maintenance of the navigation channel and provision of night navigation infrastructure as may be needed for smooth operation of barges.
- (ii) Least Available Depth (LAD) of 2.5 meters from Haldia upto Farakka
- (iii) provide night navigation for 24 hrs operation of barges, markings and other navigational aids DGPS etc
- (iv) Maintain and guarantee the above facilities over a period of 7 years
- (v) Make available existing IWT facility at Haldia in case of exigency on chargeable basis
- (vi) Acquire/Lease and provide the land to NTPC on long term lease for the development of Unloading and Material Handling System (Project Assets)
- (vii) to extend all necessary assistance in the form of sharing information and providing necessary inputs and data to Parties
- (viii) monitor the entire process jointly with NTPC wherever required
- (ix) traffic management with priority to the traffic with destination for NTPC Power Plant
- (x) issue weekly information on the critical parameters of the channel.
- (xi) in case of navigational distress/emergency such as engine failure or collision with another vessel IWAI to arrange necessary help by diverting its nearest vessel for assistance on chargeable basis
- (xii) In addition to above obligations, IWAI shall also provide following facilities to enable Operator to start the movement of coal through proposed Interim Coal Handling Plan.
  - (xii.1) IWAI will provide floating pontoon at Farakka if so needed by Operator
  - (xii.2) IWAI will provide night navigation for round the clock operation of barges, markings and other navigational aids including DGPS etc

(xii.3) IWAI will make available LAD of 2.5 m upto along NW1 from Haldia upto Farakka for minimum period of 330 days in a year

**(c) Obligation of Operator**

- (i) Fulfill entire Project Requirements and Scope of Work as stipulated in Article 2.2;
- (ii) Ensure unloading, transportation and delivery of 2 MMTPA of coal from transfer point to coal stack yard of Farakka Power Plant during Material handling System-Phase-I period.
- (iii) ensure coal transportation through IWT for target quantity to NTPC power site in time from midstream unloading point to coal stack yard of Power Plant;
- (xi) 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 clause 14.1 (c) due to early termination of this agreement as the case may be
- (iv) Operate and maintain Unloading infrastructure & Material Handling System for the Term of this Agreement;
- (v) bear and pay all anchorage charges levied by KoPT for Transshipment Mechanism at the Transfer Point;
- (vi) bear and pay all cost, taxes, expenses and charges in connection with or incidental to the performance of the obligations under this Agreement;
- (vii) comply with all applicable laws and obtain all applicable permits in all material respects;
- (viii) Develop Standard Operating Procedures (SOP) for operation and maintenance of Project Assets in discussion with NTPC;
- (ix) take adequate preventive measures to comply with safety and security standards of NTPC as well as local Statutory Authority at own cost and expense ; and
- (x) In addition to above obligations, the Operator shall also provide following and commence the movement of coal through Interim Coal Handling Plan
  - (x.1) unloading and transportation of 1 MMTPA of coal through IWT by utilizing interim solution
  - (x.2) Arrange requisite number of barges to fulfill the commitment

- (x.3) Arrange requisite number of Dumpers/Trucks at Farakka for smooth evacuation of coal from barge to coal stack yard of Power Plant
- (x.4) Nominate Transfer point and obtain necessary approvals from competent authorities.

## **7.2 Coal Transportation Agreement**

NTPC shall endeavor to ensure that the Imported Coal Supplier (ICS) shall execute a Coal Transportation Agreement with the Operator in accordance with the draft Coal Transportation Agreement provided in **Schedule B** of this Agreement

## **7.3 NTPC's Minimum Guaranteed Coal Obligation**

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 per annum (such quantity being referred to as "Minimum Guaranteed Quantity"), and further that it shall pay the Operator for the transportation of the applicable Minimum Guaranteed Quantity, at the then prevalent Transportation Rate , if the actual quantity for which the Project is utilized in a year is less than 90% of Minimum Guaranteed Quantity in accordance with the provisions of this Article. For avoidance of doubt, the provision of Minimum Guaranteed Quantity shall not be in effect during Interim period and Material handling System-Phase-I period.

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 : (i) the computation of the total quantity of coal supplied to the Operator by Imported Coal Supplier (ICS) at the Transfer point for movement to Farakka TPP using the Project in the preceding twelve month period and stipulate the quantum of shortfall supported by the records of each cargo from Ocean Going Vessels undertaken during the relevant period, (ii) computation of any shortfall shall be calculated on 90% of the Minimum Guaranteed Quantity for the relevant period ("Shortfall Quantity"), (iii) computation of the amount payable ("MGQ Amount") in relation to the Shortfall Quantity which would be determined by multiplying the Shortfall Quantity with the Transportation Rate applicable at the time of the Annual Statement.

The Annual Statement would be submitted to NTPC together with the supporting documentation and calculations. NTPC shall, within a period of thirty (30) days make payment of the MGQ Amount as specified in the Annual Statement.

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 to the MGQ Amount, (b) within a period of one week from such dispute notice, submit a written submission of its dispute 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). Any dispute raised by NTPC in relation to the MGQ Amount under this Article shall be settled in accordance with the provisions of Article 17 (Dispute Resolution) of this Agreement.

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 same and no disputes thereafter in relation to an Annual Statement would be valid under this Agreement.

Provided however, NTPC is allowed to adjust MGQ Amount already paid in any year under this provision of the agreement against the amount payable for the transportation of coal over and above 3 MMT in any subsequent years of operations during the tenure of this agreement.

## ARTICLE 8: IMPLEMENTATION OF THE PROJECT

### 8.1 Construction Documents

#### **(a) Preparation of Construction Documents**

Within 45 (Forty-five) days of the Compliance Date, the Operator shall, at its cost, charges and expenses, prepare the Construction Documents in accordance with the provisions hereof and submit the same, along with the specifications and calculations, to NTPC and IWAI for its approval.

#### **(b) Review and Approval of Construction Documents**

- (i) NTPC and IWAI shall review the Construction Documents and specifications submitted by 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 Operator.
- (ii) In the event that NTPC /IWAI 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 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/ IWAI and the NTPC/IWAI shall approve the same within fifteen (15) days of such re-submission.
- (iii) The date, when NTPC and IWAI approve the Construction Documents submitted to them by Operator shall 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 and IWAI under this Agreement, without the prior written consent of NTPC and IWAI.

Provided that Operator may, for more efficient functioning of the Project Assets, propose to and seek the consent of NTPC /IWAI 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/IWAI for reconsideration.

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

- (vi) Notwithstanding the approval by NTPC and IWAI, 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 and IWAI, NTPC and IWAI 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 and IWAI 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.

## **8.2 Mobilization and Commencement**

- (a) The rights and obligations of the Parties under this Agreement shall commence from the Compliance Date. 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, Operator shall

- (i) submit to NTPC and IWAI, 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 and IWAI.
- (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 and IWAI 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.

### **8.3 Interruption during Construction Period**

During the Construction Period, the Operator may, at its cost and clearances, interrupt the road traffic adjacent to 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 NTPC/Competent authority which approval shall not be unreasonably withheld. 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 NTPC/competent authority.

### **8.4 Construction of Unloading Infrastructure & Material Handling System**

- (a) The Operator shall construct, install and establish the Unloading Infrastructure & Material Handling System – Phase-I within Fifteen (15) months from the Compliance Date and Material Handling System-Phase-II within Twenty Four (24) months from the Compliance 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 power, water and other utilities as may be required for execution and implementation of the Construction Works. NTPC may provide the Power connection 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 suppliers, 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 and IWAI, 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 determines 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.

#### **8.5 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.

#### **8.6 Inspection**

During the Construction Period, NTPC/IWAI shall have the right to inspect and supervise 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.

#### **8.7 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 8.7 (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 11 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-Phase-I, in accordance with the provisions hereof, on a date not later than Fifteen (15) months of the Compliance Date (referred to as the “**Scheduled Construction Completion Date- Phase-I**”). Post completion of construction for Phase-I as committed by the Operator and approved by NTPC and IWAI, Operator shall operate the facility on trial basis for 15 days (or as mutually agreed upon by all parties to this agreement) to the satisfaction of NTPC and IWAI. NTPC shall then issue the “**Provisional Certificate**”
- (c) Subject to the provision of sub-Article (a) the Operator shall achieve Construction Completion of Material handling System-Phase-II, in accordance with the provisions hereof, on a date not later than Twenty Four (24) months of the Compliance Date (referred to as the “**Scheduled Construction Completion Date- Phase-II**”). Post completion of construction for Phase-II as committed by the Operator and approved by NTPC and IWAI, Operator shall operate the facility on trial basis for 15 days (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**”

### **8.8 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 Guarantee for every day delay in fulfilling the specified obligations on or before a milestone date. Provided such liquidated damages shall not exceed 5% (five percent) of the normative cost (Rs. 90 crores). In case the aggregate delay exceeds 180 (one Hundred and eighty days) or the aggregate liquidated damages paid and/or payable under this provision exceeds the specified limit of 5% (Five Percent ) of the Normative cost (Rs. 90 crores) , NTPC shall be entitled to terminate this agreement and consequences of Termination as laid down in Article 13.

### **8.9 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 power, 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) **By NTPC**

NTPC shall have the right to monitor the operation of Project facilities 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 Facilities 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 9: PAYMENTS BY OPERATOR**

**9.1 Payment to NTPC**

- (a) The Operator shall as consideration of the grant of Lease of land at NTPC power plant site for creating Project Assets, pay Rs.....(Rupees ..... ) only per annum by way of Lease Rent to NTPC;
- (b) Any delay in payment of the amount in the preceding Article (a) shall entail payment of interest @ SBI base rate plus 6.75% (six and three quarters percent ) per annum on the amount outstanding;
- (c) Lease rent shall be payable quarterly in advance; and
- (d) Liquidated Damages in accordance with Article 8.8

**9.2 Payment to IWAI**

- (a) Operator shall pay a fee of Rs 0.02 (Two Paise) per metric tonne per Km for movement of coal through inland water transport on National Waterway no. 1
- (b) Payment shall be made by the Operator to IWAI through Demand Draft drawn in favour of "IWAI Fund" payable at Kolkata on quarterly basis within 30 days of the expiry of such quarter based on the quantity received as certified by NTPC. For the purpose of this agreement the year shall be calculated as per the financial year of GoI and the 1<sup>st</sup> quarter shall be calculated from April 1 of every year and subsequent quarters thereof.

**ARTICLE 10: INSURANCE COVER**

**10.1 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).

**10.2 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.

### **10.3 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.

### **10.4 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 11: FORCE MAJEURE**

**11.1 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:

**11.2 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 exceptionally 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 11.4, 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.

### **11.3 Political Events**

The Political Force Majeure Events shall include:

- (a) A Change in Law to which the provisions of Article 18.16 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.

### **11.4 Other Event**

Any of the following events which prevent the Affected party from performing any of its obligations under this Agreement for a continuous period of not less than 7 (seven) days from the date of its occurrence, shall constitute the Other Event:

- (a) Reduction in Least Available Depth (LAD) due to irrigation requirement of States or due to Indo-Bangladesh Water Treaty; and
- (b) Industry wide or State wide strikes or industrial action

### 11.5 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.

### 11.6 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 11.7.

### 11.7 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 11, a Force Majeure Event shall not absolve the Operator 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.

#### **11.8 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.

#### **11.9 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.

#### **11.10 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.

## ARTICLE 12: 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.

### **12.1 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
- (v) any representation made or warranties given by the Operator/Consortium Members/Preferred Bidder under this Agreement is found to be false or misleading;
- (vi) 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;
- (vii) 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;
- (viii) the Operator repudiates this Agreement or otherwise takes any action or evidences

- or conveys an intention not to be bound by this Agreement;
- (ix) 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;
  - (x) the Operator is adjudged bankrupt or insolvent;
  - (xi) the Operator does not attend to or abandons the Project for a continuous period of 7 (seven) days;
  - (xii) As a result of any act or omission of the Operator, any Lender enforces or initiates measures to enforce any Security Interest over any of the assets of the Operator, or the shares of the Operator owned by the Preferred Bidder/Consortium Members;
  - (xiii) 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 Preferred Bidder/Consortium Members;
  - (xiv) The occurrence of a breach identified as an event of default under any Transaction Documents,;

**(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 (referred to as the “**NTPC Event of Default**”):

- (i) Fails to perform or discharge any of its obligation in accordance with provisions of this agreement unless such failure has occurred as a consequence of any Operator Event of Default or Force Majeure Event;
- (ii) fails to perform or discharge any of its obligation under any other contract, which has or is likely to affect the Project/Project Assets, materially;
- (iii) fails to fulfill its obligation under Article 7.3 to make the payment for the minimum guaranteed coal obligation;
- (iv) any representation made or warranties given by NTPC under this Agreement is found to be false or misleading;
- (v) any defect in land title, ownership and possession of the project site

(c) **IWAI Event of Default**

IWAI 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 “**IWAI Event of Default**”):

- (i) Fails to perform or discharge any of its obligation as stipulated in Article 7.1 (b) unless such failure has occurred as a consequence of any Operator Event of Default or Force Majeure Event

**12.2 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) Upon the occurrence of IWAI 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.
- (d) 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.

**12.3 Consultation Notice**

Either Party exercising its right under Article 12.2, 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**”).

**12.4 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.

#### **12.5 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.

#### **12.6 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 12.4, the Consultation Notice shall be withdrawn by the Party who has issued the same.

#### **12.7 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 12.4, the Party who has issued the Consultation Notice shall have the right to terminate this Agreement.

## ARTICLE 13 TERMINATION/EXPIRY OF AGREEMENT

### **13.1 Termination Procedure**

NTPC and 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.

### **13.2 Obligations during Termination Period**

During Termination Period, the Parties shall where applicable to the provisions of Article 13, continue to perform such of their respective obligations under this Agreement which are capable of being performed.

### **13.3 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 the details of the assets and liabilities of the Operator;
- (b) data or records (to be specified by NTPC) regarding the establishment, operation and maintenance of the Project Assets;
- (c) Specifications regarding the Operator’s assets comprised in the Project Assets; and

- (d) 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;
- (e) the particulars of Contractual Arrangements and the details of functioning of the Subcontractors; and
- (f) the particulars of the Security Interests supported by Lenders' certificate.

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

### **13.4 Condition Survey**

- (a) The Operator agrees that on the service of a Termination Notice or six (6) 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.

### **13.5 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) transfer and deliver, to NTPC or its nominated agency, the Possession of the Project Site 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 suppliers and all insurance policies; 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 moveable/immoveable assets that are not to be taken over by NTPC under this Agreement
- (ii) NTPC and the Operator shall, at least six (6) months prior to the expiry of the Operation Period or upon commencement of Termination Period, as the case may be, take all necessary steps to comply the aforesaid process of transfer of assets on the Transfer Date. During this period, the designated key personnel of NTPC shall be associated with the operations of the Project in order to facilitate smooth take-over of the same by NTPC on the Transfer Date.

- (iii) 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.
- (iv) On the Transfer Date, Project Assets shall be in healthy / good operating condition, having regard for the nature of the asset, the construction and life of the facilities, structures etc.
- (v) 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 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 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 14: COMPENSATION FOR BREACH OF AGREEMENT**

**14.1 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 period of operation shall be increased 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 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 percent) Equity.

Provided, however, for the purposes of this Agreement Debt Due and Equity shall not exceed the value as determined on a normative capital cost of [Rs. 90 crores] that is financed on Debt to Equity ratio of 70:30 and assuming that the repayment over 7 (seven) years period after COD.

**(d) Termination due to IWAI Default**

No payment shall be paid to any parties to this contract in case project terminated due to IWAI Event of Default.

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**ARTICLE 15: TRAFFIC REGULATION****15.1 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 16. LIABILITY AND INDEMNIFICATION

### **16.1 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 Facilities, 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.

### **16.2 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 (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 Operator; or (ii) the failure by 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 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 had the Losses not occurred.

- (b) Without limiting the generality of sub-clause (a) of this Article 21.
- (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, suppliers 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.

### **16.3 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.

### **16.4 Survival**

The provisions of Article 16 shall survive the expiry or prior termination of this Agreement.

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**ARTICLE 17. DISPUTE RESOLUTION****17.1 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.

**17.2 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

**17.3 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/IWAI and the Operator and the third (3<sup>rd</sup>) 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 18. MISCELLANEOUS PROVISIONS**

**18.1 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.

**18.2 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.

### 18.3 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.

### 18.4 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.

### 18.5 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:**  
General Manager (Fuel Management)  
NTPC LTD  
Sector 24, Noida (Uttar Pradesh)  
Pin Code- 201301

**If to IWAI:**  
**Chief Engineer**  
**Inland Waterways Authority of India**  
**A-13, Sector I, Noida (Uttar Pradesh)**  
**Fax No: +91-120-2543973**

**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.

#### **18.6 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.

#### **18.7 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.

**18.8 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.

**18.9 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

**18.10 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.

**18.11 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.

**18.12 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.

**18.13 Joint and Several Liability**

All members of the Preferred 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 Preferred Bidder and each of its members/partners/promoters except as expressly provided herein, the composition of the members comprising the Preferred Bidder shall not be altered till the COD is achieved without the prior written approval of NTPC.

#### **18.14 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.

#### **18.15 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.

#### **18.16 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.

**18.17 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.

**18.18 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.

**18.19 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.

**18.20 Execution of Agreement**

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

**18.21 Assignment**

No assignment of this Agreement, or any rights or duties hereunder shall be made in whole or in part by any Party is permitted at any point of time during the Term.

Provided, *however*, the Operator may sub-contract whole or part of the design, construction and operation and maintenance of the Project.

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 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:

Schedule A

Project Site



Schedule B

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**” 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” 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. NTPC imports coal directly or through other agencies. For the financial year \_\_\_\_\_, ----- had issued coal procurement tender No. \_\_\_\_\_ for procurement of ----- MMT (+/-2%) of coal for 1600 MW thermal power plant (TPP) at Farakka, District Murshidabad, West Bengal (“**Farakka TPP**”) (which is hereinafter referred to as the “**Coal Procurement Tender**”). Pursuant to the Coal Procurement Tender, NTPC has selected the Imported Coal Supplier for supplying coal to Farakka TPP. In accordance with the terms of the Coal Procurement Tender, NTPC and Imported Coal Supplier have entered into a Coal Supply Agreement dated \_\_\_\_\_, which stipulates that the Imported Coal Supplier shall enter into a coal transport agreement with a coal transportation agency appointed by the NTPC. The terms, conditions and format of the coal transport agreement were specified in the Coal Procurement Tender, and the ICS has agreed to be bound by the same.
- C. In order to ensure adequate and timely supply of coal to the Farakka TPP, NTPC has decided to use inland waterways as a viable supplementary mode for transportation of coal till the Farakka TPP.

- D. NTPC had mandated IWAI to undertake 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 barges using National Waterway -1 and ensuring delivery of the coal, in accordance with identified specifications, at the coal stack yard of the Farakka TPP during interim period, Material Handling System-Phase-I period and seven (7) 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 transport agreement with an importer identified by NTPC. The terms, conditions and format for the coal transport agreement were specified in the Tripartite Agreement, and the CTA has agreed to be bound by the same.
- E. In order to fulfil its obligations under Coal Supply Agreement and the Coal Procurement Tender, the Imported Coal Supplier is entering into this coal transport agreement. Similarly, to fulfil its obligations under the Tripartite Agreement, the Coal Transportation Agency is entering into this coal transport agreement.

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

## ARTICLE -1: DEFINITIONS AND INTERPRETATIONS

### 1.1 Definitions

In this Transport Contract, 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 Transport Contract or thereafter.

**“Contract”** or **“Transport Contract”** 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;

**“Capesize Vessel”** means an ocean going cargo vessel with a DWT 1,20,000 MT or more.

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

- (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 Transport Contract;
- (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 Transport Contract.

**“Dead Weight Tonnage (DWT)”** means an expression of a ship’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 8.1.2;

**“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 Transport Contract and which would be expected to result in the performance of its obligations by the Operator in accordance with this Transport Contract, Applicable Laws and Clearances in reliable, safe, economical and efficient manner;

**“Government Authority”** means GOI, Government of West Bengal, 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 Transport Contract;

**“Interim Period”** means a period of fifteen (15) months from the execution of the Tripartite Agreement;

“**Material Handling Phase-I Period**” means a period of approximately nine (9) months starting from the date of operation of Material Handling System-Phase-I till the commissioning of Material Handling System-Phase-II

“**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 to enable the barges to undertake transportation of the Coal to the Farakka TPP.

“**Ocean Going Vessel**” means a seaworthy vessel/ship used for navigation in sea as a means of transportation of coal,, used by the ICS for transporting Coal till the Transfer Point. During Operation Period Ocean Going Vessel means gearless Panamax/Capesize Vessel and during Interim Period Ocean Going Vessel means a vessel which are having their own gears and capable to unload midstream.

“**Operation Period**” shall commence from the COD and shall extend to a period of 7(seven) years, or till termination of Tripartite Agreement.

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

“**Panamax Vessel**” means an ocean going cargo vessel with a DWT 60,000-80000 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.

“**Term**” of this Transport Contract shall be \_\_\_\_\_ year(s) from the date of execution of this Transport Contract.

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

“**Termination Notice**” means the communication issued in accordance with Article 12.1 of this Transport Contract.

“**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;

“**Transfer Point**” means such location(s) identified as being suitable by the CTA for unloading of Coal from the Ocean Going Vessels to barges;

“**Transportation Rate**” means (a) Rate per Metric Tonne for Transportation by Barges after unloading from Geared Vessel upto Farakka (b) Rate per Metric Tonne for Road Transportation from bank of waterway to NTPC coal stack yard (c) Rate per Metric Tonne for unloading from ocean going vessel using mechanism suggested by Bidder, loading onto the barges and Transportation by Barges upto Farakka (d) Rate per Metric Tonne for Transportation of coal through conveyor Belt System to NTPC Stack Yard .

For avoidance of doubt the transportation rate per Metric Tonne of coal payable to Successful Bidder for Interim Period, the Material Handling System – Phase I period and the period during which the Coal Hauling Plan is implemented is as follows:

- (a) Transportation Rate per Metric Tonne of Coal for the Interim Period shall be equal to the sum of the rate (a) and (b);
- (b) Transportation Rate per Metric Tonne of Coal for the Material Handling System – Phase I period shall be equal to the sum of the rate (c) and the amount that is fifty per cent (50%) rate of (d); and
- (c) Transportation Rate per Metric Tonne of Coal for the period during which the Coal Hauling Plan shall be equal to the sum of the rate (c) and (d).

## 1.2 Principle of Interpretations

- (a) The words and expressions beginning with capital letters and defined in this Transport Contract shall unless the context otherwise requires have the meaning ascribed thereto herein-
- (b) In this Transport Contract, 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 Transport Contract are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Transport Contract;
- (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 Transport Contract;
- (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 Transport Contract 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 Transport Contract shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to this Transport Contract, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Transport Contract 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 Transport Contract, 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 Transport Contract**

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

- (a) Between two Articles of this Transport Contract, the provisions of specific Articles relevant to the issue under consideration shall prevail over those in other Articles;
- (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 Transport Contract and any other documents forming part of this Transport Contract , 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 and facilities, operate and maintain to carryout Unloading of Coal from Ocean Going Vessel at the Transfer Point(s) as per the technical proposal submitted by the CTA (Operator) to IWAI and NTPC; However, during interim period, unloading of coal from the Ocean Going Vessel into the barges shall be done by utilizing gears of Ocean Going Vessel.
- (b) Arranging for suitable barges, and loading of barges at the Transfer Point with Coal supplied by the ICS for onward movement of such Coal to Farakka TPP through National Waterway-1;
- (c) Unloading of Coal at the Farakka TPP waterfront, and transportation to coal stack yard of the Farakka TPP;
- (d) 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:

- (f) 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;
- (g) It has full power and authority to execute, deliver and perform its obligations under this Contract and to carry out the transactions contemplated hereby;
- (h) 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 Transport Contract;
- (i) It has the financial standing and capacity to undertake this Transport Contract;
- (j) This Contract constitutes its legal, valid and binding obligation fully enforceable against it in accordance with the terms hereof;
- (k) 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
- (l) 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 Transport Contract 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 Transport Contract.

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 Transport Contract.

## ARTICLE 4: OBLIGATION OF PARTIES

### 4.1 Obligation

The obligations of Coal Transportation Agency and Imported Coal Supplier shall be as under:

(a) **Obligations of Coal Transportation Agency**

The Coal Transportation Agency shall, during the period of Term commencing from the execution of this Transport Contract, undertake, perform and discharge its role, responsibilities and obligations as detailed out below:

- (i) Specify the Transfer Point to the ICS;
- (ii) Specify the Transfer Point to the ICS 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 12000 MT PDPRSHINC basis at the Transfer Point for delivery to the Farakka TPP through the barges;
- (iv) CTA shall do the operations of stevedoring, vessel unloading, handling, storage, arrangement of barges and transportation of Coal to Farakka TPP;
- (v) Subject to existence of any Force Majeure Events, transport and deliver the Coal, free from any encumbrance, to the designated coal stack yard at the Farakka TPP within 5 days of unloading from the Ocean Going Vessels;
- (vi) provide sufficient men, machines and resources for the transportation of Coal from Transfer Point till the coal stack yard at the Farakka TPP;
- (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 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.

(b) **Other Obligations of CTA**

- (i) Inspect the cargo upon arrival of Ocean Going Vessel;
- (ii) Coordination with Master/Agent of the Ocean Going Vessel and port for safe berthing at Transfer Point;
- (iii) Take all necessary precautions 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 barges and to ensure a minimum unloading rate of 12000 MT PDPRSHINC basis
- (v) Monitoring loaded barges in transit upto Farakka Power Plant
- (vi) Obtain acknowledgement receipt from NTPC with clearly mentioning the weight of the cargo received, moisture content etc and submit the same to the ICS within 15 days of receipt of respective consignment from the ICS.
- (vii) Providing security and measures as mandated by ICS and also as per Good Industry Practices to minimize handling loss from midstream location/ port to Farakka TPP.
- (viii) Ensure that there is no theft, pilferage, admixture etc, during transportation of Coal;
- (ix) Apply, maintain, and comply with all necessary approvals, authorizations, and licenses necessary pursuant to Applicable Law for the performance of its obligations under this Transport Contract.

(c) **Obligation of Imported Coal Supplier**

Imported Coal Supplier shall during the period of Term commencing from the execution of this Transport Contract undertake, perform and discharge its role, responsibilities and obligations under this Transport Contract in connection with and arising out of and for Coal Transportation in accordance with and in compliance with the terms and conditions of this Transport Contract

- (i) Ensuring delivery of minimum ----- MMTPA Coal at nominated Transfer Point on Fairly Even Spread Basis (FES) during the Term;
- (ii) Ensure the transportation of Coal by way of Ocean Going Vessel from port of origin to the Transfer Point;
- (iii) Shall appoint and constitute the Coal Transportation Agency 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 port unloading charges and wharfage), 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) Imported Coal Supplier shall arrange for Ocean Going Vessel which are having gears during Interim Period and cost of unloading of coal utilizing the gears of Ocean Vessel shall also be borne by Imported Coal Supplier.
  - (vi) Effect Payment to CTA directly in accordance with the provisions of this Contract;.
  - (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) Arrange custom clearance at its cost at Transfer Point.
  - (ix) Appoint surveyor for quality and quantity check at Transfer Point and at the unloading point at Farakka TPP;
  - (x) develop and prepare throughout the Term a monthly schedule of activities for off take of the delivered loading quantity at Transfer Point in consultation with CTA;
  - (xi) inform the schedule of start of journey from the point of origin and keep the CTA informed of schedule during the Term.

**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 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 12000 MT PDPRSHINC, for a period of atleast 11 (Eleven) months in a year.

### 6.2 Shipping Terms

#### (a) **Transshipment & Unloading OF Ocean Going Vehicles Operation**

- (i) CTA shall guarantee the minimum unloading rate of 12000 MT PDPRSHINC;
- (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 accrue in full to CTA. Any taxes / duties on such settlement or dispatch/demurrage shall be to the account of CTA. The rate of dispatch / demurrage as well as the charter party will be finalized at the time of execution of this contract.
- (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 Notice 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. Imported Coal Supplier shall keep gap of 6 (six) days between arrivals of two Ocean Going Vessels carrying Coal at Transfer Point nominated by CTA. ICS shall make efforts to give CTA five (5) days preliminary revocable notice of the Ocean Going Vessel's arrival at the discharge point/ port
- (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 and wharfage), 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 ship-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, 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 t 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**

Quantity of Coal discharged from Ocean Going Vessel shall be determined by the draught survey at Transfer Point. Such quantity shall be delivered at Farakka TPP by CTA and shall be without any shortage. The Coal delivered shall be weighed at Farakka TPP through suitable weighing mechanism as advised by NTPC. Any shortage will be in account of CTA.

The quantity determined shall also be subjected to adjustment due to total moisture variation.

**(a) Quality**

Imported Coal Supplier shall ensure the appointment of an independent Inspection Agency (IIA) of international repute for draught survey, sampling and quality analysis at port of origin/load port, Transfer Point and unloading point at Farakka TPP before commencement of first consignment. The costs of inspection including coal sampling analysis at various points i.e port of origin/load port, Transfer Point and unloading point at Farakka TPP including the fee for inspection agency shall be borne Imported Coal Supplier.

CTA shall only be responsible for excess moisture in the cargo. Other quality parameters shall be in the scope of Imported Coal Supplier. The total moisture shall be determined barge wise at unloading point at Farakka TPP.

If the total actual total moisture as per sampling/analysis by the inspection Agency at unloading point at Farakka TPP varies from the Transfer Point report, the adjustment in weight shall be done on pro-rata basis. For example for x% increase over the Transfer Point report, the total weight of Coal will be reduced by x%

The decrease in total moisture below the Transfer Point value shall be ignored.

**(b) Methodology For Determination of Quantity & Total Moisture**

**(i) At Transfer Port**

Imported Coal Supplier shall ensure the appointment of an independent Inspection Agency (IIA) of international repute for draught survey, sampling and quality analysis at port of origin/load port, Transfer Point and unloading point at Farakka TPP before commencement of first consignment. The costs of inspection including Coal sampling analysis at various points i.e port of origin/load port, Transfer Point and unloading point at Farakka TPP including the fee for inspection agency shall be borne by Imported Coal Supplier. Marine licensed surveyor of internationally accredited Independent Inspection Agency (IIA) shall determine the quantity of

Coal unloaded from Ocean Going Vessel by draught survey. The IIA shall carry out the sampling and analysis of Coal at Transfer Point. The IIA may also monitor Coal unloading from Ocean Going vessel and loading onto the barges. Coal samples at Transfer Point shall be drawn, prepared and analysed by IIA in accordance with American Standards for Testing Materials (ASTM Standards No. D-2234 and D-2013).

**(ii) At Farakka TPP**

Coal samples at Farakka TPP, shall be drawn from each barge/barge train at the point of delivery to the coal stack yard and prepared for analysis by IIA in the presence of NTPC's representative in accordance with the American Standards for Testing Materials (ASTM Standards No. D-2234 and D-2013).

**ARTICLE -8: TRANSPORT RATE PAYABLE TO CTA**

**8.1 Transportation Rate**

CTA shall charge a Transportation Rate on the basis of per MT for Coal unloaded from the Ocean Going Vessel and deliver the Coal to the designated coal stackyard of Farakka TPP through National Waterway-1 . The Transportation Rate shall include all costs, including all levies such as taxes and duties, incurred by the CTA for unloading and delivering the Coal, if any.

**8.1.1 Transportation Rate**

In consideration of the CTA transporting the Coal from the Transfer Point till the coal stack yard of the Farakka TPP, ICS shall pay to the CTA the Transportation Rate in accordance with Schedule F to this Agreement.

**8.1.2 Fuel Price Variation**

The rate specified in Article 8.1.1 (referred to herein as “**Base Freight**” or “**BF**”) is based on the fuel price as of the date of this Agreement. CTA will allow fuel price variation (High Speed Diesel only) for coal carried by Barges against this Transport Contract as per the Article given below:-

- (a) BF shall be modified for change in the price of standard diesel in the State, only if such change is more than 5%. If the price of standard diesel for IOC retail sale price at Haldia on the 1<sup>st</sup> day of Month is D1 and the same on 1<sup>st</sup> day of next Month is D2, then the New BF(D) for the next month will be calculated as:

$$\text{New BF(D)} = \text{BF} + \{ \text{BF} * 25\% * (\text{D2} - \text{D1}) / \text{D1} \}$$

## 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.

(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 Farakka 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, and berthing delay at Transfer Point, Liquidated damages (LD) will be charged @ 0.25% (one fourth Percent) of value of delayed consignment for each week's delay or part thereof subject to the ceiling of 1% of the total consignment value. In case of non-performance of the entire contract or part thereof, the LD will be levied on the unexecuted portion of the contract subject to the ceiling of 1% of unexecuted contract value.

The Contract quantity shall be considered for

- (i) Interim Period : 1 MMTPA
- (ii) Material Handling System-Phase-I period : 2 MMTPA
- (iii) Coal Hauling or Operation Period : 3 MMTPA

## 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 Transport Contract; 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 exceptionally 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 Transport Contract; 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

Any of the following events which prevents the Affected party from performing any of its obligations under this Transport Contract for a continuous period of not less than 7 (Seven) days from the date of its occurrence, shall constitute the Other Event:

- (a) An act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, resurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (b) Reduction in Least Available Depth (LAD) due to irrigation requirement of States or due to Indo-Bangladesh Water Treaty;
- (c) Industry wide or State wide strikes or industrial action.

### 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 Transport Contract.

- (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 Transport Contract;
  - (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 Transport Contract. The Affected Party shall also make efforts to resume performance of its obligations under this Transport Contract 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 -----(-----) days, the Parties may mutually decide to terminate this Transport Contract or continue this Transport Contract 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 -----(-----) days, be entitled to terminate the Transport Contract.

## 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 rendering the values of the specification parameters reach or exceed rejection limits as determined at Farakka TPP;
- (ii) any representation made or warranties given by the CTA under this Transport Contract 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 Transport Contract;
- (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 Transport Contract.

#### (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 Transport Contract;
- (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 Transport Contract;
- (iii) fails to provide Minimum Guaranteed Quantity;
- (iv) any representation made or warranties given by ICS under this Transport Contract is found to be false or misleading;

- (v) ICS is adjudged bankrupt or insolvent.

### **11.3 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 Transport Contract 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 Transport Contract 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 Transport Contract.

### **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 Transport Contract 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.

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**ARTICLE 12. TERMINATION/EXPIRY OF TRANSPORT CONTRACT****12.1 Termination Procedure**

Either ICS or CTA may terminate this Transport Contract 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 Transport Contract 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 Transport Contract which are capable of being performed.

## ARTICLE 13: RELATIONSHIP

### 13.1 Relationship

CTA is an independent transporter and shall not be (nor shall its employees be deemed to be) an agent, employee, partner, or joint venture of Imported Coal Supplier. 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 without reducing the CTA's obligations under this Transport Contract in any manner. Imported Coal Supplier shall at all times have access to the operations and work performed by the CTA.

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**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 Transport Contract (including any disputes over the Transportation Fee, adjustments to Transportation Fee) (“**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 Transport Contract 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 Transport Contract 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 Transport Contract:

- (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 Transport Contract;
- (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 Transport Contract 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 Transport Contract 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 Transport Contract 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 Transport Contract:

- (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 Transport Contract 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 Transport Contract 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 15 of this Transport Contract or otherwise.

**15.6 Notices**

All notices or other communications to be given or made under this Transport Contract shall be in writing, and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile. The address for service of each Party and its facsimile number are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof save that where it is received after 5.30 (five thirty) p.m. on a business day or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed.

To

CTA

ICS

**15.7 Language**

All notices, certificates, correspondence and proceedings under or in connection with this Transport Contract shall be in English.

**15.8 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.

**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:

Schedule C: Memorandum of Agreement

Schedule D : Project Milestone

**Schedule E: Standards and Specification of Material Handling System**

**(1) Description of Unloading and Material Handling at Farakka during Interim Coal Handling Plan-**

During the Interim period (before construction of Material Handling System as per the specifications provided by NTPC and the related Unloading Infrastructure the Operator shall at its own cost and risk:

- (a) Select and make available suitable type of unloading equipment at Farakka and unload the coal from barges to dumper trucks for onward delivery to the coal stack yard of the Farakka TPP
- (b) Procure the services of adequate and suitable capacity road dumpers to move the coal and deliver it at the designated pile nos 4, 5 and 8 of the coal stack yard of the Farakka TPP (For Detailed lay out drawing pls refer “Coal Conveying Plant Package” provided with this document)
- (c) Maintain all equipments and facilities utilized in the above process during the Interim Period( Except the road network at Farakka which will be maintained by NTPC)

On the expiry of Interim Period or commencement of operations under Coal Hauling Plan, the Operator shall be responsible to remove all the equipments used in Interim Plan from the project site.

**(2) Description of Unloading and Material Handling at Farakka during Coal Hauling Plan**

The Material Handling System(MHS) to be developed by the Operator on Finance, Build, Operate, Maintain and Transfer basis shall **be as per the specification provided by NTPC herein under “Coal Conveying Plant Package”**.

The length of conveyor system to be developed by Operator under the scope of this RFP is shown in pink colour (viz Conveyor A, Conveyor B, Conveyor C (all three in Phase I) and Conveyor D, Conveyor E, Conveyor and Conveyor G, (all three in Phase II). For Detailed information please refers Specification of Coal Conveying Plant Package. Technical Drawings and Fire detection & Protection system, which are uploaded with this RFP.

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.

**Schedule F: Payment of Transportation Rate**

*(Note- This schedule shall be filled up in accordance with the Financial Bid (Appendix 6, Volume I).*

For avoidance of doubt the transportation rate per Metric Tonne of coal payable to CTA for Interim Period, the Material Handling System – Phase I period and the period during which the Coal Hauling Plan is implemented is as follows:

- (a) Transportation Rate per Metric Tonne of Coal for the Interim Period shall be equal to the sum of the rate quoted for Clause 1.2.3 (a), of Volume I of the RFP and the rate quoted for Clause 1.2.3 (b) of Volume I of the RFP;
- (b) Transportation Rate per Metric Tonne of Coal for the Material Handling System – Phase I period shall be equal to the sum of the rate quoted for Clause 1.2.3 (c) of Volume I of the RFP and the amount that is fifty per cent (50%) rate quoted for Clause 1.2.3 (d) of Volume I of the RFP; and
- (c) Transportation Rate per Metric Tonne of Coal for the period during which the Coal Hauling Plan shall be equal to the sum of the rate quoted for Clause 1.2.3 (c) of Volume I of the RFP and the rate quoted for Clause 1.2.3 (d) of Volume I of the RFP.]