



**Tender Specification No:  
TN/12/CM/TSPL/2023-24/R0**

**TENDER DOCUMENT (TENDER)**

**For**

**ACTIVE MINE MANAGEMENT**

**from**

**NORTHERN COALFIELDS LIMITED (NCL)**

**For**

**TALWANDI SABO POWER LIMITED (TSPL/OWNER)**

**1980 MW SUPERCRITICAL THERMAL POWER PLANT**

**(3 X 660 MW)**

**AT VILLAGE BANAWALA, DISTT. MANSA,**

**PUNJAB, INDIA**

**19<sup>th</sup> July 2023**

\*This document can be amended at the discretion of TSPL (if needed).

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**VOLUME I: INSTRUCTIONS TO BIDDERS**

## **1. INTRODUCTION**

Talwandi Sabo Power Limited ("hereinafter referred to as TSPL/Owner"), a subsidiary of Vedanta Limited, has developed one of the largest green-field Thermal Power Project in the State of Punjab with an installed capacity of 1980 MW (3 x 660 MW).

TSPL invites bids from reputed Contractors for activities related to Active Mine Management of Domestic Linkage Coal at Northern Coalfields Limited (NCL) for its supply to Talwandi Sabo Power Limited, at Mansa District in State of Punjab on the Terms and Conditions as specified in this Tender.

## **2. GENERAL INFORMATION**

The interested bidders are invited to submit their bid comprising of Technical Bid and Price Bid for the subject package, in line with the provisions of this Tender. The procedure for submission of bids has been explained hereunder in this document. The cost on account of preparation and submission of bid, negotiations, discussions etc. as may be incurred by the bidder(s) in the process are not reimbursable by TSPL and TSPL will in no case be responsible or liable for these costs, regardless of the outcome of the bidding process.

TSPL reserves all rights to reject any or all bids, wholly or partially, extend the date of submission of bids and to annul the bidding process without assigning any reasons whatsoever, at any time prior to award of the Contract, at its sole discretion, and in such case no Bidder /intending Bidder(s) shall raise any loss, claim or liability arising out of or in connection with such action.

While an attempt has been made to define and capture the requirements in as exhaustive manner as possible, bidders are advised and are expected to have a thorough understanding of the applicable requirements for performing services as defined in the Scope of Work.

## **3. BID SUBMISSION AND OPENING PROCEDURE**

- a) Bidders are required to send their Expression of Interest (EOI) to TSPL on [TSPL.Fuel@vedanta.co.in](mailto:TSPL.Fuel@vedanta.co.in). Based on the EOI received from bidders, TSPL will send a link for bidder's registration and for online submission of Bid and reverse bidding. Bidders shall register themselves on ARIBA portal well in advance to understand the process and formalities for online Technical and Price Bid submission and obtain the login credentials / password for the same which will remain valid up to completion of bidding process.
- b) Bidders should understand the online submission procedure thoroughly and then submit their Bids. Any excuse of insufficient knowledge regarding online submission and physical submission shall not be acceptable to TSPL. Bidders shall submit both Technical and Price bid as per mentioned timeline on ARIBA portal (refer Clause 5).
- c) Bidders shall follow the instructions as provided on the screen for submission of Bids and

submit the Bid online in the formats provided on ARIBA portal.

- d) A training session on submission of Bids shall also be carried out on ARIBA portal, at least two days prior to the Bid Due Date.
- e) The figures mentioned in the illustrations given in the Bid Document are only for illustrative purposes.
- f) All communications pertaining to this Bid Document shall be addressed to:

Chief Commercial Officer  
Talwandi Sabo Power Limited  
Talwandi Sabo Road, Vill – Banawala  
Distt- Mansa Punjab-151302  
Ph. No.: -7087026236

Email: [tspl.fuel@vedanta.co.in](mailto:tspl.fuel@vedanta.co.in)

- g) The bidders, in their own interest are advised not to wait till the last moment, to submit their bids. TSPL shall not be responsible for any delay in receipt of the Bids due to any reason whatsoever including failure or non-availability of internet connectivity and/or electrical power, issues related to equipment, hardware, and software etc. Any Bid received after the expiry of the time specified for receiving the same shall not be entertained. However, TSPL at its discretion may extend the timelines for bid submission.
- h) Bids which are not complete in all aspects as stipulated above and/or without EMD are liable for rejection. TSPL may at its sole discretion accept any non-material/ minor deviations.

#### 4. TIME SCHEDULE FOR BIDDING PROCESS

Date	Event
10 <sup>th</sup> Apr-23	Publishing of (Notice inviting Tender) NIT in newspapers by TSPL
19 <sup>th</sup> Jul-23	Date of availability of Bid document at TSPL website
21 <sup>st</sup> Jul-23	Last date for receipt of comments/suggestions (latest by 18:00 Hrs.)
22 <sup>nd</sup> Jul-23	Pre-Bid clarifications
19 <sup>th</sup> Jul-23	Commencement of submission of Bid (online – ARIBA) from 11:00 Hrs. Onwards
24 <sup>th</sup> Jul-23	Closing of submission of online Bid on ARIBA (has to be on or before 17:00 Hrs.)



order/contract to the successful bidder or after the expiry of validity period of the bids, whichever is later. In case, a successful bidder refuses to honor the Contract awarded to him, his EMD shall be forfeited.

**Bank details of TSPL:**

Beneficiary Name	: Talwandi Sabo Power Limited
Account No.	: 35216862121
Centre (Location)	: Mumbai
Bank	: State Bank of India
Branch	: CAG Branch, Mumbai
Account Type	: Cash Credit
IFSC Code	: SBIN0016376

**8. SECURITY DEPOSIT/PERFORMANCE BANK GUARANTEE**

Within seven (7) working days after receipt of Contract/LOI, the successful bidders/ Contractor(s) shall furnish the Security Deposit/ Performance Bank Guarantee (PBG) in the form of a Bank Guarantee (as per TSPL's proforma) for an amount equivalent to 5% of Basic Contract value from any of the Indian Nationalized Bank or scheduled bank (such as State Bank Of India, Bank Of Baroda, Bank Of India, Canara Bank, Indian Bank, Union Bank Of India, Axis Bank Ltd., HDFC Bank Ltd., ICICI Bank Ltd.) revokable at Mansa/Bathinda branch. The PBG shall remain in full force and effect during the period of the Contract that would be taken for satisfactory performance and fulfilment in all respect of the Contract. The PBG submitted should have the validity period of 1 year from the date submission and claim period of 12 months post the date of validity expiry period of the PBG.

- a) The PBG so furnished by the Contractors shall be released upon successful completion of the obligations of the Contractor in terms of the Contract after the Contractor duly submits a certificate to the effect that there are no claims against TSPL from any of its vendors, subcontractors and/or any other third party, including but not limited to the Contractor's employees, engaged in performance of the obligations of the Contractor under the Contract. If requested by TSPL, the Contractor agrees to extend the validity period of the PBG or to issue a further PBG in the event that the duration of this Contract is for any reason extended beyond such validity date.
- b) The Contractor shall renew the PBG within a period of fifteen (15) days prior to the date the PBG expires ("Expiry Date") in case of any extension to the Term. If the Contractor does not submit to TSPL a renewed PBG within a period of fifteen (15) days prior to the Expiry Date, TSPL shall have the right to immediately draw down complete PBG amount and shall reserve the right to retain such amounts till such time the Contractor provides a replacement PBG for the equivalent amount.
- c) The Contractor shall renew the PBG or otherwise submit an additional PBG, as duly required



by TSPL, on account of change in the Contract value pursuant to a variation or amendment to the Contract, within a period of fifteen (15) days of being so notified by TSPL. If the Contractor does not submit to TSPL a renewed PBG or an additional PBG, as the case may be, within the said period of fifteen (15) days, TSPL shall have the right to immediately draw down complete PBG amount and shall reserve the right to retain such amounts till such time the Contractor provides a replacement PBG(s) for the equivalent amount.

- d) In addition to the right contained in the preceding clause, TSPL shall further have an unqualified right under the Contract to revoke the PBGs under the following circumstances:
  - i. Failure by the Contractor to supply the Services in accordance with the Contract resulting in termination; or
  - ii. Failure by the Contractor to duly perform any of its obligations under this Contract; or
  - iii. Any valid claim made by TSPL accruing due to any acts/omission of the Contractor and the Contractor fails to pay TSPL for such a claim immediately upon such demand.
- e) The provision and maintenance of the PBG by the Contractor in accordance with the terms of the Contract shall be a condition precedent to any payment by TSPL to the Contractor.
- f) If the Contractor fails to provide, maintain, or renew the PBG in accordance with the terms of the Contract, then TSPL may, without prejudice to any other rights and remedies to which it may be entitled to, revoke the PBG and/or terminate the Contract forthwith by written notice.
- g) In addition to the other circumstances specified in this Contract, Company has the right to draw down all or part of the value of the PBG and, at Company's discretion, apply the proceeds in remedying any breach by Contractor of this Contract. Such recourse against the PBG shall be without limitation to any other right or remedy of TSPL in relation to the breach by the Contractor.

**9. QUALIFICATION REQUIREMENT (TECHNICAL BID)**

<b>Criteria</b>	<b>Proof to be attached</b>
Quantity of the coal handled by the bidder should be at least 3.5 million MT in any of last 5 years (i.e., FY 18-19, 19-20, 20-21,21-22, 22-23)	Contract Copies and Performance certificates of already executed similar work(s)  Details of work executed similar to that mentioned in this tender document during past 5years and orders currently under execution

Turnover of the bidder shall be more than INR 25 Crores per annum for any of last 5 years (i.e., FY 18-19, 19-20, 20-21, 21-22, 22-23).

Turnover Certificate from Statutory Auditors.

Audited Balance Sheets and Profit and loss statement of last 5 financial years

Bidder's organization chart including the competency details for complete work as per the Scope of Work mentioned in this Tender Document

## **10. EVALUATION OF THE BID**

The Bids shall be evaluated based on the following criteria:

- a. Technical and Financial strength for rendering Services under the Contract
- b. Bidder's price proposal.

TSPL reserves the right to award contract to party other than L-1 in the interest of uninterrupted plant operations and supplying continuous power to PSPCL.

## **11. REVERSE AUCTION**

TSPL shall conduct reverse auction post price bid opening on pre-specified date and time for duration as deemed fit by TSPL. The lowest price in Rs. /MT. discovered during close bidding shall be the opening price (Start Price for Reverse bidding). After Completion of online Reverse Auction, the Closing Price (CP) shall be considered as L1 rate for further processing including negotiations with the L1 bidder, if desired by TSPL.

The bidders are advised not to wait till the last moment to enter their bid so as to avoid complications related to Internet connectivity, network problems, system crash down, power failure etc. No request for extension in time period of reverse auction due to any of the above reasons shall be entertained by TSPL and no claim of any bidder in this respect shall be accepted.

## **12. NEGOTIATIONS AND AWARD OF CONTRACT**

TSPL reserves the right to negotiate the Bid Price to further lower the Cost.

## **13. BID VALIDITY**

The Bids submitted should be valid for a period of 180 days from the last date of opening of Bids.

## **14. CONTRACTORS PERFORMANCE EVALUATION**

Contractors Performance shall be evaluated periodically by TSPL through a Contractor Performance score card as specified hereunder. The Performance of the contractor shall be evaluated based on a scale of 0-100 score range subjected to criteria as laid down by TSPL.

Evaluation of performance of the contractor under this contract shall be at the discretion of TSPL and will be final and binding to the contractor. Any score below 50 shall be treated as non-performance on the part of contractor and TSPL shall have the unqualified right to immediately terminate the Agreement without any entitlement to the Contractor any amounts including but not limited to compensation or damages as a result of such termination. In addition, such Contractor shall be liable for any damages or losses to the Company as a result of such non-performance by the Contractor.

<b>CONTRACTORS PERFORMANCE SCORE CARD</b>										
<b>BP Performance Score Card</b>	<b>Audit month</b>									
<b>BP Name:</b>	<b>Work area</b>	<b>AMM SERIVCES AT NCL</b>								
<b>Parameters</b>	<b>Rating Procedure</b>									
	<b>Rating criteria</b>	<b>UO M</b>	<b>Ratin g</b>	<b>Fre q</b>	<b>Max Fig</b>	<b>Scor e</b>	<b>Out of 100</b>	<b>Weighta ge</b>	<b>Final Score</b>	<b>Percen tage</b>
<b>Output KPIs</b>										
<b>Coordination with Coal Subsidiaries</b>	EIC report on Coordination			1	15		0%	15.00		<b>0%</b>
<b>Quality Delivered at TSPL</b>	Difference between loading and unloading end	Kcal /kg		1	20		0%	25.00		<b>0%</b>
<b>Transit Loss</b>	< 0	%		1	20		0%	25.00		<b>0%</b>
<b>Materialization</b>	> 80%			1	25		0%	15.00		<b>0%</b>
<b>Deviations, Ethics and non-compliances</b>	As per Tender Document			1	10		0%	10.00		<b>0%</b>
<b>Documentation &amp; Communication</b>	As per Tender Document			1	5		0%	5.00		<b>0%</b>
<b>Safety</b>	As per Tender Document			1	5		0%	5.00		<b>0%</b>
<b>GRAND TOTAL</b>								<b>100.00</b>	<b>0.0</b>	<b>0%</b>

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**VOLUME II: CONDITIONS OF CONTRACT**

## 1. DEFINITIONS

1.1. In the Contract, the following words and expressions shall, unless the context otherwise requires, have the following meanings:

**"Affiliate"** shall mean with respect to any person, any other person that, directly or indirectly, controls, is controlled by or is under common control of such specified person. For the purposes of this definition, "control" means the direct or indirect beneficial ownership of more than fifty percent (50%) of the issued share capital, stock or other participating interest or the legal power to direct or cause the direction of the general management of TSPL, partnership or other person in question, and "controlled" shall be construed accordingly;

**"Contract"** shall mean the Contract between TSPL and the Contractor to which this Schedule is attached.

**"Contractor's Personnel" or "Personnel"** shall mean all personnel provided by the Contractor Group in connection with the performance of this Contract, including, without limitation, those referred to in the Scope of Work;

**"Data"** means all reports, studies, designs, data and other information and materials as may be prepared, created or developed by the Contractor Group in the course of provision of Services and/or as a result of the Services or in accordance with this Contract;

**"Fees"** shall mean the prices and/or rates payable by TSPL in respect of the Services and/or as specified in the relevant Purchase Order.

**"Purchase Order"** shall mean the document recording the specific Services to be carried out under this Contract, from time to time.

**"Site"** shall mean the operating site or any other place where the Contractor is performing the Services and/or any supporting activity in respect thereof;

1.2. Unless otherwise stated, any and all references in the Contract to Clauses are references to the Clauses of the Contract.

1.3. The headings in the Contract are used for convenience only and shall not govern or affect the interpretation of the Contract.

1.4. Words denoting the singular shall include the plural and vice versa, where the context requires.

1.5. Except as expressly identified, any reference to statute, statutory provision or statutory instrument shall include any re-enactment or amendment thereof for the time being in force.

- 1.6. Unless expressly stated otherwise, all references to days, weeks, months and years shall mean calendar days, weeks, months and years.

## **2. SCOPE OF CONTRACT**

- 2.1. The terms and conditions of the Contract shall apply from the Effective Date and shall remain valid for the Term unless this Contract is terminated earlier by TSPL in accordance with Clause 19 (Termination) below.
- 2.2. Subject to the provisions of this Contract, the Parties agree that upon request of TSPL in terms hereof, the Contractor shall perform the Services at such locations and for such periods as may be agreed with TSPL.
- 2.3. From time to time, TSPL may issue a Purchase Order to the Contractor. In such case, the terms and conditions of this Contract shall apply to each such Purchase Order as if repeated in total.
- 2.4. The Contractor shall commence the Services on the scheduled commencement date stated under this Contract or in the relevant Purchase Order and shall continue such Services for the Term or the duration of the Purchase Order as applicable unless terminated earlier in accordance with terms and conditions hereunder. Each Purchase Order is subject to Contract on a case by case basis.

## **3. SERVICES**

- 3.1. The Contractor shall perform the Services with all due skill, care and diligence in a safe, competent and timely manner and in accordance with the requirements of the Contract and/or the relevant Purchase Order. If Company notifies the Contractor of any defect in the performance of the Services, the Contractor shall rectify such defect at its own expense.
- 3.2. Except to the extent that it may be legally or physically impossible, the Contractor shall comply with TSPL's instructions and directions in all matters relating to the Services consistent with the provisions hereunder.
- 3.3. The Contractor shall agree with TSPL in the relevant Purchase Order from time to time as regards the personnel who will perform the Services and shall:
  - (a) only provide such Personnel who possess appropriate experience, skills and qualifications necessary for the Services to be performed in accordance with this Contract;
  - (b) not remove or replace such Personnel without the prior written consent of TSPL (not to be unreasonably withheld); and
  - (c) nominate a senior manager or director of the Contractor to have overall responsibility for the provision of the Services in terms stated under this Contract and/or the relevant

Purchase Order, which person shall attend any meetings with TSPL on reasonable prior notice.

- 3.4. Without prejudice to any other rights of TSPL under the Contract or at law, if the Contractor fails to perform the Services in accordance with the provisions of this Contract, TSPL may use alternative means to perform the Services, by giving a prior written notice of 30 (thirty days) to the Contractor and the Contractor shall be liable for any additional cost incurred by TSPL in using such alternate means.

#### **4. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES**

4.1. The Contractor represents and warrants that:

- (i) It is a duly organized company/business entity validly existing under the laws where it is incorporated/established, and has experience, expertise, ability and skills as required to perform the Services as detailed in this Contract and as may be necessary to perform its obligations hereunder in a professional manner.
- (ii) It has all the requisite power, authority and approvals required to enter into this Contract and will have all the requisite power, authority to perform fully each and every obligation under this Contract.
- (iii) This Contract has been duly executed and delivered by its duly authorized representatives and constitutes its legal, valid and binding obligation enforceable against it in accordance with its terms.
- (iv) The execution, delivery and performance of this Contract and all instruments or addenda required hereunder by it does not contravene, violate or constitute a default of or require any consent under the provisions of any other Contract or instrument to which it is bound, including the constitutional documents thereof, or any order, judgment, decree or injunction of any court of law.
- (v) No legal proceedings are pending or threatened against it before any court, tribunal or authority which do or may restrain or enjoin its performance or observance of the terms and conditions of this Contract or which do or may in any other manner question the validity, binding effect or enforceability of this Contract.
- (vi) No order has been made or petition presented for the bankruptcy protection, winding up or dissolution thereof against it.
- (vii) It shall maintain high professional standards to ensure performance of this Contract as per best business practices and in full compliance with statutory obligations.
- (viii) It has all necessary statutory and regulatory permissions, approvals and permits for the running and operation of its establishment for the conduct of its business;

- (ix) It has full right, title and interest in and to all trade names, trademarks, service marks, logos symbols and other proprietary marks (IPR) (including limited right of use of those owned by any of its vendors, affiliates or subcontractors) which it provides to TSPL, for use related to the Services, and that any IPR provided by the Contractor shall not infringe the IPR of any third party;
- (x) The Contractor represents that there is no inquiry/ investigation pending by the police against the Contractor or its employees. The Contractor undertakes that it will confirm at his own cost and expense and shall comply in all respect with the provisions of Government Authority applicable to the Contractor and /or to the Contractor's employees;
- (xi) The Contractor shall be liable for all fines, penalties, and the like of parking, traffic and other criminal offences arising out of or concerning the use of any vehicle for performing the Contract and any toll charges or entry Taxes payable locally and the Contractor accordingly indemnifies Company against all such liability.
- (xii) The Contractor has sufficient resources available to respond to emergencies/ incidents, which may occur along established transportation routes. In case of any accident resulting in loss or damage to property of life, the sole responsibility for any legal or financial implication would vest with the Contractor. Company shall have no liability whatsoever.

4.2 Each Party hereby warrants that it has not entered into this Contract relying on any warranty, representation or undertaking except for any warranty, representation or undertaking expressly set out in this Contract.

## **5. CONTRACTOR'S PERSONNEL**

### **5.1. Contractor's Personnel – General**

- 5.1.1. The Contractor shall, at its expense, provide and keep available for the Services, the Contractor's Personnel.
- 5.1.2. The Contractor shall ensure that the Contractor's Personnel shall be sufficient in number and quality to carry out the Services in accordance with the terms and conditions of the Contract and will be suitably qualified and medically fit and certified, if necessary, to perform the tasks required to complete the Services.
- 5.1.3. Without prejudice to the generality of Clause 5.1.2, the Contractor shall ensure that the Contractor's Personnel are experienced and qualified for the Services they are required to carry out hereunder, to a standard not less than that required by the Contract and that which may from time to time be required by the relevant Government authorities and in accordance with good industry practice.



5.1.4. In relation to any member of the Contractor's Personnel expected to make, in TSPL's sole opinion, significant technical contribution to the Services, the Contractor shall submit full particulars, in the form of a resume, of the qualifications and experience of such member to TSPL prior to that member of the Contractor's Personnel starting any part of the Services. No such member may start any part of the Services unless TSPL's written approval has been given. The Contractor shall submit resumes of any other member of the Contractor's Personnel assigned to the Services on written request by TSPL.

5.1.5. TSPL reserves the right to reject any member of the Contractor's Personnel, prior to that member commencing any part of the Services.

## **5.2. Removal of Personnel**

TSPL may, at any time after the commencement of the Services and at its sole discretion, direct the Contractor in writing to remove any member of the Contractor's Personnel from the Site. The Contractor shall immediately comply with such direction and shall, as soon as reasonably practicable, replace, or procure the replacement of, such person with another person suitably qualified and acceptable to Company. The Contractor shall bear the costs of any such removal and replacement.

## **5.3. Adjustment to the Contractor's Personnel**

The Contractor shall not at any time without TSPL's prior approval increase or decrease the number of the Contractor's Personnel.

## **5.4. Passports and Visas**

5.4.1. The Contractor, if applicable, shall be responsible and bear the cost of obtaining all visas and entry or other permits (including clearance from the Ministry of Home Affairs and immigration authorities, if applicable) required to enable the Contractor's Personnel to proceed to and work at the Site. TSPL may, at TSPL's sole discretion, endeavour to assist the Contractor to obtain such visas and permits.

5.4.2. The Contractor's Personnel shall have such documents on their person when rendering services and shall make the same available for inspection by any Government Authority, if required.

## **5.5. Drugs and Alcohol**

Neither the Contractor nor any of the Contractor's Personnel (including sub-contractors) shall, except for bona fide medical purposes, keep, sell, barter, give, dispense or otherwise dispose of any drugs or alcoholic liquors to any person at the Site or permit the same to be done by any person. Alcohol shall not be permitted at the Site save in a form generally used in medicine and forming a bona fide constituent of a medical kit. TSPL's Representative reserves the right to

search the property and person of any member of the Contractor's Personnel to ensure compliance with the provisions of this Clause 5.5 (Drugs and Alcohol).

TSPL's Representative may at his absolute discretion prohibit any member of the Contractor's Personnel to go on to the Site or other facility in the control of Company, or may require such person to leave the Site where he has reasonable grounds to suspect non-compliance with the provisions of this Clause 5.5 (Drugs and Alcohol).

## **6. FEES**

6.1. TSPL shall pay for the Services performed in accordance with the prices as per Attachment 2 to Schedule I and/or rates specified in the relevant Purchase Order.

6.2. In case of contingency assignments, the agreed fees for such onetime Services shall be payable on completion of the relevant assignment as per the terms agreed under this Contract and/or the relevant Purchase Order.

## **7. CONTRACTOR'S GENERAL OBLIGATIONS**

7.1. The Contractor shall, and the Contractor shall ensure that its employees and representatives shall, in performing its obligations under this Contract, comply in all respects with all relevant laws, statutes, regulations and orders for the time being in force.

7.2. Where any of the Contractor's employees or representatives, including employees or representatives of its subcontractor/(s), if any, is/are present at any of TSPL's premises for the purposes of this Contract, the Contractor shall at all times remain solely responsible for the conduct (including any misconduct) and safety of such employee/(s) or representative/(s).

7.3. The Contractor shall not, in performing its obligations under this Contract, hold itself out or permit any person to hold it out as being authorised to bind TSPL in any way and will not commit any act which might reasonably create the impression that it is so authorised.

7.4. The Contractor shall ensure that it has in place and maintains in place for the duration of this Contract sufficient insurance to comply with all applicable laws and to cover its potential liabilities under this Contract and shall provide evidence of such insurances to TSPL on request. The Contractor undertakes that such insurances shall contain waivers of any rights of recourse including, in particular, subrogation rights against TSPL arising out of or in connection with the performance of this Contract to the extent of liabilities assumed by the Contractor hereunder;

7.5. Notwithstanding the provision of the information by TSPL, the Contractor shall be deemed to have satisfied itself in respect of all relevant matters pertaining to the Services, including, but not limited to, the Scope of Work, the nature of the Services, access to the site, local facilities, climatic, sea, other water and weather conditions, working hygiene and working

environment conditions and/or all other matters which may affect the performance of the Services. Any failure by the Contractor to take into account any of the aforementioned matters shall not relieve or excuse the Contractor from any of its responsibilities, liabilities or obligations hereunder or entitle the Contractor to any extra payment.

7.6. The Contractor shall not subcontract any of its obligations under this Contract without the prior written consent of TSPL. The Contractor shall not be relieved from any of its obligations or liabilities under the Contract by virtue of any subcontract and the Contractor shall be responsible for all Services, acts, defaults or omissions of its subcontractors (and its or their employees and consultants) as though they were the services, acts, defaults or omissions of the Contractor.

7.7. In performing the Services, the Contractor shall:

- (a) give preference to the purchase and use of goods manufactured, produced or supplied in India provided that such goods are available on terms equal or better than imported goods with respect to the timing of delivery, quality, quantity required, price and other terms;
- (b) subject to Clause 7.5, employ Indian subcontractors having the required skills or expertise to the maximum extent possible insofar as their services are available on comparable standards with those obtained elsewhere and at competitive prices and on competitive terms, provided that where no such subcontractors are available, preference shall be given to non-Indian subcontractors who utilise Indian goods to the maximum extent possible, subject to the proviso in Clause 7.7 (a) above; and
- (c) subject to Clause 7.5, co-operate with and assist Indian companies as subcontractors to enable them to develop skills and technology to service the petroleum industry.

7.8 The Contractor shall maintain proper and accurate records in relation to the Services and shall provide copies of the same to TSPL on request. TSPL (or its appointed representative) shall have the right to audit the relevant books and accounts of the Contractor in relation to any reimbursable charges paid for by TSPL under this Contract. Such audit right shall survive for a period of 2 (two) years following the expiry or termination of the Contract. Any incorrect payments identified by such audit shall be adjusted between the Parties as appropriate.

## **8. INTELLECTUAL PROPERTY RIGHTS**

8.1 If the Services performed or provided under the Contract and/or Purchase Order involves a patent, copyright, trademark, or proprietary information (IPR) Intellectual Property Right, the Contractor hereby grants TSPL Group a permanent, irrevocable, worldwide, non-exclusive license to use the same without additional charge.

- 8.2 TSPL is the sole owner of IPR in anything developed and delivered under this Contract / Purchase Order. Contractor shall provide at TSPL's reasonable request any documentation necessary to confirm Company's ownership interest in such intellectual property rights. Contractor shall retain ownership of any intellectual property rights vested in Contractor prior to this Contract or created by Contractor outside of its performance of this Contract during the term of this Contract.
- 8.3 Contractor shall at all times be responsible for, shall release and shall defend, protect, indemnify, hold harmless and defend Company Group, from and against any Claim by a third party for infringement of any IPR which may arise out of the Services performed and/or provided by Contractor.
- 8.4 For the purposes of this clause, Intellectual Property Rights includes but is not limited to all vested, contingent and future intellectual property rights including:
- (i) all inventions, compounds, compositions, substances, methods, processes, techniques, know-how, technology, data, information, discoveries, and materials including ideas, concepts, formulas, assays, practices, software, devices, procedures, designs, constructs, plans, applications, research, regulatory information, manufacturing process, scale-up and other technical data, reports, documentation and samples, including chemical, physical, analytical, safety, manufacturing and quality control data and information, as well as study designs and protocols; and any Patents, trade secrets, confidential information, proprietary processes, or industrial rights directly or indirectly deriving therefrom;
  - (ii) all trademarks, service marks, copyrights, designs, trade styles, logos, trade dress, and corporate names, including all goodwill associated therewith; and
  - (iii) any work of authorship, regardless of copyrightability, all compilations and all copyrights and includes also includes any inventions, made, to be made, discovered, conceived or reduced to practice whether or not patentable.

## **9. OWNERSHIP OF DATA**

- 9.1 All Data shall be the property of TSPL from the date of its creation or development including all Intellectual Property Rights thereto and TSPL shall, accordingly, have unfettered right and authority to dispose of, alienate or transfer all Data. No Data created or developed by the Contractor under this Contract shall become the property of the Contractor; provided that the risk and responsibility for the loss of, or damage to, any Data shall remain with the Contractor until delivery of such Data to TSPL.
- 9.2 All Data shall be fit for the purposes specified in the Contract.

9.3 All items created or developed by the Contractor outside the Contract shall remain the property of the Contractor, provided that TSPL shall have the right to use any such item where it is provided to TSPL as part of the Services.

9.4 Notwithstanding anything to the contrary contained in this Contract, it is hereby agreed between the Parties that any Intellectual Property Rights arising out of, from or in relation to this Contract including those created during the course of performance of the Contract, shall belong to and vest in TSPL and in this regard, the Contractor hereby waives any right, title or interest in the same.

## **10. INDEMNITY**

10.1 The Contractor shall defend, indemnify and hold TSPL, its directors, officials and employees etc., harmless from and against any and all against any and all claims, liabilities, costs, damages and expenses (including court costs and legal fees) in connection with any claim made by any third party (including, but not limited to, any claim made by any governmental or statutory authority) against TSPL arising out of or in connection with the performance by the Supplier of its obligations under this Contract.

10.2 The Contractor shall be liable for and shall defend, indemnify and hold TSPL its directors, officials and employees etc., harmless from and against and all claims in connection with any breach, infringement (whether actual or alleged) of Confidentiality, accident, bodily injury, fraud arising out of or in connection with the performance of this Contract by the Contractor.

10.3 This indemnity shall be without prejudice to any other rights or remedies, including injunctive or other equitable relief, which TSPL may be entitled to.

10.4 Company shall have the right to retain/ withhold out of any payment, to be made to the Contractor, an amount sufficient to indemnify it completely against any such third-party claims and all associated costs.

10.5 It is the express intention of the Parties hereto that the provisions of this Contract / Purchase Order shall exclusively govern the allocation of risks and liabilities of the Parties, it being acknowledged that the Contract reflected herein has been based upon such express understanding. It is acknowledged that the compensation payable to Contractor supplier as specified in this Contract and/or applicable Purchase Order has been based upon the express understanding that risks and liabilities shall be determined in accordance with the provisions of this Contract and/or applicable Purchase Order.

## **11. LIMITATION OF LIABILITY**

11.1 Except as may be otherwise provided in this Contract, in no event shall either party be liable to the other, whether arising under Contract, tort (including negligence), strict liability or

otherwise, for any indirect, consequential, special, punitive, exemplary or incidental loss or damages of any nature arising at any time from any cause whatsoever.

11.2 The limitations of liability and exclusion of warranties as set out in the Contract shall be to the maximum extent permitted by applicable law. Nothing in this Contract purports to exclude or limit liability for fraud, misrepresentation, death or personal injury.

## **12. PAYMENT**

12.1 In addition to any requirements set out in the relevant Purchase Order, if any, each invoice shall:

- (a) be in duplicate;
- (b) bear the Contract Number stated on the cover sheet to the Contract;
- (c) state the name, e-mail address, mobile telephone number of TSPL's Representative; and
- (d) be accompanied by supporting evidence and itemised in accordance with TSPL's requirements.

Invoices to TSPL shall be sent to the address set out in the Contract. Contractor must ensure that all invoices for services performed or goods delivered are submitted to TSPL within 90 days. Specifically, the Contractor shall submit the following information/ documents to TSPL unless specifically exempted by TSPL representative in writing:

- (i) Latest tax residency certificate of the Contractor as issued by the tax / revenue authorities of Contractor's country of residence, stating specifically that the Contractor is tax resident of country as mentioned in such tax residence certificate.
- (ii) Copy of the Permanent Account Number ('PAN') card issued by the Indian Tax authorities,
- (iii) Copy of registration certificates under applicable Indian tax/other laws including but not limited to GST, Excise, import export code etc., as applicable.
- (iv) Copy of the withholding tax certificate issued by Indian tax authorities, enabling TSPL to make payments to the Contractor after deduction of such taxes as per prescribed rate in the withholding tax certificate.

12.2 TSPL shall make payment of a correct invoice within 45 days of receipt to the Contractor's nominated bank account. Any invoice not complying with the provisions of this Contract will be returned by TSPL and the Contractor shall submit a rectifying invoice.

12.3. TSPL may dispute any amount on an invoice and withhold the disputed amount provided that:

- (a) TSPL makes payment of any undisputed portion of the invoice and notifies the Contractor of the disputed amount within 45 days of receipt of the relevant invoice;
- (b) if the dispute is resolved in favour of the Contractor, TSPL shall pay the disputed amount within fifteen (15) days of the date of the resolution of the dispute or forty-five (45) days of receipt of the invoice, whichever is later.

If the dispute is resolved in favour of TSPL, the Contractor shall forthwith issue a credit note for the disputed amount.

12.4 TSPL shall be entitled to set-off / adjust / deduct from any invoice under this Contract, any payment due from the Contractor to TSPL or any of its Affiliates.

### **13. PERFORMANCE BANK GUARANTEE (PBG)**

13.1 The provisions of this clause shall be applicable only in those cases wherein the Contractor is required to furnish a PBG as per the terms and conditions of this Contract.

13.2 The Contractor shall furnish, within 7 days of execution of this Contract, and irrevocable PBG of such value as may be mutually agreed between the parties. The PBG so furnished by the Contractor shall be released upon successful completion of the obligations of the Contractor in terms of the Contract after TSPL duly submits a certificate to the effect that there are no claims against TSPL from any of its vendors, subcontractors and/or any other third party, including but not limited to the Contractor's employees, engaged in performance of the obligations of the Contractor under the Contract. If requested by TSPL, the Contractor agrees to extend the validity period of the PBG or to issue a further PBG in the event that the duration of this Contract is for any reason extended beyond such validity date.

13.3 The Contractor shall renew the PBG fifteen (15) days prior to the date the PBG expires ("Expiry Date") in case of any extension to the Term. If the Contractor does not submit to TSPL a renewed PBG fifteen (15) days prior to the Expiry Date, TSPL shall have the right to immediately draw down complete PBG amount and shall reserve the right to retain such amounts till such time the Contractor provides a replacement PBG for the equivalent amount.

13.4 The Contractor shall renew the PBG or otherwise submit an additional PBG, as duly required by TSPL, on account of change in the Contract value pursuant to a variation or amendment to the Contract, within fifteen (15) days of being so notified by TSPL. If the Contractor does not submit to TSPL a renewed PBG or an additional PBG, as the case may be, within the said period of fifteen (15) days, TSPL shall have the right to immediately draw down complete PBG amount and shall reserve the right to retain such amounts till such time the Contractor provides a replacement PBG(/s) for the equivalent amount.

13.5 In addition to the right contained in the preceding clause, TSPL shall further have an unqualified right under the Contract to draw on the PBGs under the following circumstances:

- (i) Failure by the Contractor to supply the Services in accordance with the Contract resulting in termination; or
- (ii) Failure by the Contractor to duly perform any of its obligations under this Contract; or

(iii) Any valid claim made by TSPL accruing due to any acts/omission of the Contractor and the Contractor fails to pay TSPL for such a claim immediately upon such demand.

- 13.6 The provision and maintenance of the PBG by the Contractor in accordance with the terms of the Contract shall be a condition precedent to any payment by TSPL to the Contractor.
- 13.7 If the Contractor fails to provide, maintain or renew the PBG in accordance with the terms of the Contract, then TSPL may, without prejudice to any other rights and remedies to which it may be entitled to, invoke the PBG and/or terminate the Contract forthwith by written notice.
- 13.8 In addition to the other circumstances specified in this Contract, Company has the right to draw down all or part of the value of the PBG and, at Company's discretion, apply the proceeds in remedying any breach by Contractor of this Contract. Such recourse against the PBG shall be without limitation to any other right or remedy of TSPL in relation to the relevant Contractor breach.

#### **14. SPECIFICATION VARIATION**

- 14.1. No adjustment to the Scope of Work, the Specification, the prices and/or rates set out in Compensation Schedule or the Completion Date (or any other date specified in the Contract for performance by the Contractor) shall be valid unless a variation order has been issued in writing by TSPL (a "Variation Order").
- 14.2. TSPL may at any time issue a Variation Order to the Contractor requiring the Contractor to alter, amend, omit, add to, accelerate, reprogramme or otherwise vary any part of the Scope of Work or Purchase Order and/or the Specification. Upon receipt of a Variation Order the Contractor shall proceed immediately as instructed, and any necessary adjustment to prices and/or rates or dates for performance shall be subsequently made in accordance with Clause 14.3 below.
- 14.3. Where TSPL has issued a Variation Order in accordance with Clause 14.2, the Parties shall use all reasonable endeavours to agree on fair and reasonable adjustments to the prices and/or rates and/or dates for performance, which shall, to the extent possible, be based on the existing prices and/or rates and/or dates for performance specified in the Contract. Such adjustments shall be recorded in a further Variation Order.
- 14.4 Notwithstanding anything contained in this Clause 14, if the parties fail to mutually arrive at the terms of the Variation Order, then the decision of TSPL shall be final and binding and the Contractor shall be required to carry out its obligations under the Contract, including the execution of variation in works, as proposed by TSPL.



## **15. ADVANCE BANK GUARANTEE**

- 15.1 The provisions of this clause shall be applicable only in those cases wherein the Contractor is required to furnish an advance bank guarantee as per the terms and conditions of this Contract.
- 15.2 The Contractor shall furnish an irrevocable, unconditional bank guarantee equivalent to 100% of the Advance Payment, from a scheduled bank acceptable to TSPL (acting reasonably) and in the form attached as Attachment 3 to Schedule I (Advance Bank Guarantee) or otherwise approved by Company and shall be valid till the expiry of the Contract to be paid by TSPL to the Contractor as per the terms and conditions of the Contract as security for the Advance Payment made by TSPL to the Contractor and to secure all other obligations of the Contractor under this Contract (the "Advance Bank Guarantee") as a condition precedent to the release of Advance Payment.
- 15.3 The Contractor shall renew the Advance Bank Guarantee ten (10) days prior to the date the Advance Bank Guarantee expires ("Expiry Date") in case of any extension to the Term. If the Contractor does not submit a renewed Advance Bank Guarantee ten (10) days prior to the Expiry Date, with TSPL, the Contractor shall have the right to immediately draw down complete Advance Bank Guarantee amount and shall reserve the right to retain such amounts till such time the Contractor provides a replacement Advance Bank Guarantee for the equivalent amount.
- 15.4 The Contractor shall renew the Advance Bank Guarantee or otherwise submit an additional Advance Bank Guarantee, as duly required by TSPL, on account of change in the Contract Value or in case of any upward revision to the Advance Payment, pursuant to a variation or amendment to the Contract, within ten (10) days of being so notified by TSPL. If the Contractor does not submit to TSPL a renewed Advance Bank Guarantee or an additional advance bank guarantee, as the case may be, within the said period of ten (10) days, TSPL shall have the right to immediately draw down the complete Advance Bank Guarantee amount and shall reserve the right to retain such amounts till such time the Contractor provides a replacement advance bank guarantee(/s) for the equivalent amount.
- 15.5 In addition to the right contained in the preceding clause, TSPL shall further have an unqualified right under the Contract to draw on the Advance Bank Guarantees under in the following:
- (i) failure by the Contractor to perform the Services in accordance with terms and conditions of Contractor, to the satisfaction of TSPL; or
  - (ii) Any inadequate adjustment of the Advance Payment; or
  - (iii) failure by the Contractor to duly perform any of its obligations under this Contract; or
  - (iv) any valid claim made by TSPL accruing due to any acts/omission of the Contractor and the Contractor fails to pay TSPL for such a claim immediately upon such demand.

15.6 If the Contractor fails to provide, maintain or renew the Advance Bank Guarantee in accordance with the terms of the Contract, then TSPL may, without prejudice to any other rights and remedies to which it may be entitled to, invoke the Advance Bank Guarantee and/or terminate the Contract forthwith by written notice.

## **16. TAXES**

### **16.1 Definitions**

For the purposes of this Clause 16 (Taxation):

- (a) "Tax" or "Taxes" means taxes, levies, duties, fees, charges and contributions as amended from time to time and any interest or penalties thereon;
- (b) "Government Authority" or "Government Authorities" means any local or national government or authority of any country, competent to levy any Tax;
- (c) "Goods and Services Tax" or "GST" shall include Central Goods and Service Tax ("CGST"), State Goods and Service Tax ("SGST"), Integrated Goods and Service Tax ("IGST"), Union Territory Goods and Service Tax ("UTGST") and GST Compensation Cess.

### **16.2 Person Responsible for payment of Taxes**

#### **16.2.1 Taxes General**

Except as may be expressly set out in this Contract, the Contractor shall be responsible for:

- (a) the payment of all Taxes now or hereafter levied or imposed on the Contractor or its subcontractors or on the Contractor's Personnel or its subcontractors by any Government Authority in respect of any wages, salaries and other remuneration paid directly or indirectly to persons engaged or employed by the Contractor or its subcontractors (hereinafter referred to as "Personal Income tax");
- (b) the payment of all Taxes now or hereafter levied or imposed by any Government Authority on the actual/assumed profits and gains made by the Contractor or its subcontractors (hereinafter referred to as "Corporate Income tax");
- (c) the payment of all GST now or hereafter levied or imposed by any Government Authority on the supply of goods or services, if any, provided to TSPL by the Contractor or its subcontractors;
- (d) the payment of all Taxes now or hereafter levied or imposed by any Government Authority on the mentioned goods only, namely, petroleum crude, HSD, Petrol, Natural Gas and ATF, if any, sold to TSPL by the Contractor or its subcontractors (hereinafter referred to as "Sales tax/VAT/CST");

(e) the payment of all Taxes now or hereafter levied or imposed by any Government Authority on the mentioned goods only, namely, petroleum crude, HSD, Petrol, Natural Gas and ATF, if any, manufactured by the Contractor or its subcontractors for sale to TSPL (hereinafter referred to as "Excise Duty"); and

(f) the payment of any other Taxes now or hereafter levied or imposed by any Government Authority on the Contractor or its subcontractors as a result of the performance of this Contract.

#### **16.2.2 Exception to General:**

Prior to commencing the Services, the Contractor shall notify TSPL whether or not it has Fixed Establishment in India. If the Contractor notifies TSPL that it does not have Fixed Establishment in India, then, any Indian GST chargeable on the services provided by the Contractor under this Contract shall be paid by TSPL directly to the relevant Government Authority.

#### **16.2.3 Reimbursement of Taxes to the Contractor**

It is acknowledged that responsibility for payment of Taxes to the Government Authority will be governed as per Clause 16.2.1 and 16.2.2, the Contractor will be reimbursed only for such Taxes which will be agreed to be reimbursed in the Compensation Schedule or any of the Purchase Order(s) issued under the Contract.

#### **16.2.4 Pricing**

The Parties agree that details of Taxes included in, or excluded from, the Contractor's prices and/or rates shall be as stated in the Compensation Schedule to the Contract and nothing in this Clause 16 shall be construed to affect or prejudice such details as stated in the Compensation Schedule.

### **16.3 Withholding taxes and Withholding certificates**

**16.3.1** TSPL shall, at the time of its payments due to the Contractor, withhold the necessary taxes at such rate as is required by any Government Authority, unless and to the extent that the Contractor shall produce to TSPL any certificate issued by a Government Authority (having authority to issue such certificate) entitling the Contractor to receive the payments under the Contract for a prescribed period without deduction of any tax or deduction at a lower rate.

**16.3.2** TSPL shall provide the necessary withholding tax certificates to the Contractor within the time stipulated by the relevant law to enable the Contractor to file the same with the Government Authority as a proof of payment of such taxes.

### **16.4 Person Responsible for filing of returns / information to Government Authorities**

**16.4.1** The Contractor shall be responsible for filing all necessary Tax returns (including, without limitation, returns for Corporate Income tax, Personal Income tax, GST, Sales tax and Excise Duty) with the relevant Government Authorities in accordance with all applicable statutory requirements and shall be responsible for providing all information requested by such Government Authorities.

**16.4.2** The Contractor shall also ensure that its subcontractors file such returns as stipulated by the relevant Government Authorities and furnish such information as requested for by the relevant Government Authorities.

**16.4.3** TSPL, with respect to the tax withheld from the Contractor in accordance with Clause 16.3 (Withholding Tax and Withholding Tax Certificates), shall be responsible for filing the withholding tax returns with the relevant Government Authorities in accordance with applicable statutory requirements.

#### **16.5 Company's rights, if treated as representative assessee by Government Authorities**

In certain situations, a Government Authority may treat TSPL as the representative assessee of the Contractor and/or its subcontractors and recover the Taxes due to the Government Authority by the Contractor or its subcontractors from TSPL. In such situations, TSPL shall have the following rights:

- (a) TSPL shall be entitled to recover from the Contractor, the Taxes paid on behalf of the Contractor or its subcontractors (together with any costs and expenses incurred by TSPL in connection therewith) or to retain the same out of any amounts to be paid to the Contractor or its subcontractors that may be in its possession (whether due under this Contract or otherwise) and shall pay only the balance, if any, to the Contractor; and
- (b) If TSPL is required to furnish any details or documents in such capacity, TSPL shall request the details or documents to be furnished to it by the Contractor and the Contractor shall immediately furnish the same to TSPL. If the Contractor fails to comply with the foregoing, any penalty/interest levied on TSPL for non-filing or late filing of details or documents in this regard shall be recoverable from the Contractor.

**16.6 Indemnity:** The Contractor shall defend, indemnify and hold TSPL Group harmless from and against any and all claims, liabilities, costs, damages and expenses (including court costs and legal fees) in connection with any Taxes which may be levied or imposed on the Contractor or its subcontractors by any Government Authority arising out of or in connection with the performance of this Contract.

#### **16.7 Changes in Law**

If, after the date of execution of this Contract, there is any change in law, excluding any change(s) as result of interpretation by competent authority, tribunal and Court, which results in a change

in the rate of any Tax included in the Contractor's prices or rates or the introduction of a new Tax and such change results in an increase or decrease in the cost to the Contractor of performing this Contract then the Parties shall agree to a revision in pricing to reflect such change provided that:

- (a) the Party requesting such revision shall promptly (and in any case prior to submission of the Contractor's final invoice under this Contract) but not later than 07 (seven) business days notify the other Party that such change in law has arisen; and
- (b) the Party requesting such revision shall provide the other Party with documentary proof of such change in cost to the reasonable satisfaction of the other Party; and
- (c) the provisions of this Clause 16.7 shall not apply to changes in Personal Income tax or Corporate Income tax or to changes in non-Indian Taxes.

### **16.8 GST Compliances by Contractor**

**16.8.1** Notwithstanding anything contained hereinabove, the Contractor shall strictly and in a timely manner, adhere to and undertake all acts, omissions and compliances required under the applicable GST laws to ensure that TSPL is able to avail the Input Tax Credit/set off/rebate/refund of the GST (along with cesses and surcharges, if relevant) as applicable on the Services or any supplies if applicable made by the Contractor under this Contract to the fullest extent possible under law. In this regard, without limiting the generality of the foregoing obligation in any manner whatsoever, Company reserves the right to specify to the Contractor, particulars including but not limited to the following:

- (a) whether Contractor should charge IGST or CGST-plus-SGST;
- (b) GST registration number of TSPL;
- (c) whether the Contractor should be responsible to generate the E-Way Bill;
- (d) the format of invoices/credit and debit notes/advance receipt vouchers;
- (e) the requirement for maintenance of a 'GST compliance rating score' above a specified threshold; etc. and
- (f) the relevant timelines for such compliances based on the applicable GST laws.

**16.8.2** The Contractor acknowledges that any failure in the foregoing obligations (including undertaking the ones specifically instructed by TSPL, if any) can cause significant losses to TSPL in the form of loss of GST credit, statutory interest liability on such credit loss (under applicable GST laws) and adverse impact on the 'GST compliance rating score' and thus, undertakes to carry out this foregoing obligation with sincerity, due diligence and without any delay or demur.

**16.8.3** The Parties agree that TSPL reserves the right to reimburse the GST component on supplies received only when the corresponding credit has become available in the electronic credit ledger of the relevant GST registration of Company.

**16.8.4** Without prejudice to any other indemnification obligation under this Contract, the Contractor agrees to, at all times, to hold harmless and indemnify Company from and against all claims, liabilities, expenses, proceedings, costs and losses that may be suffered or incurred by Company which may arise out of or in connection with any failure by the Contractor to adhere to its obligations including but not limited to its obligations under Clause 16.8.1 above. In this regard, the Contractor also hereby indemnifies Company from any costs, claim or liability arising out of any claim or action or omission by any employee or consultant or agent or outsourced staff or subcontractor of the Contractor.

## **17. MOST FAVOURED CUSTOMER CLAUSE**

If Company obtains a quote from a competitor of the Contractor to provide Services or similar services on longer payment terms or for fees that are less than the Fees in effect under a Contract, taking into account discounts, rebates and any other conditions with economic value to Company, Company may notify the Contractor of the same in writing and request that the payment terms be extended and/or the price is reduced under such Contract to meet such quote. Within 10 (ten) Business Days of receipt of such notice, the Contractor shall advise Company in writing whether it will meet such quote. If the Contractor elects not to meet such quote, or fails to respond in a timely manner, then Company may terminate such Contract by providing a minimum of 7 (seven) days' prior written notice to the Contractor.

## **18. SUSPENSION**

### **18.1 Suspension without Cause**

18.1.1 Notwithstanding anything contained herein to the contrary, TSPL shall have the right, without cause, at any time to require the Contractor to suspend the Services (or part thereof) under this Contract by giving a prior written notice to the Contractor.

18.1.2 TSPL shall not be liable to make any payments of whatsoever nature during the Suspension Period pursuant to Clause 18.1.1.

### **18.2 Suspension Due to Default**

18.2.1 If the Contractor is in breach of any of its obligations under this Contract (including, without limitation, any breach of provisions/policies relating to health safety and environment), TSPL shall, subject to Clause 18.2.2, be entitled to immediately suspend the Services by written notice to the Contractor until such time as such breach has been remedied by the Contractor, in which case no rates or other amounts shall be payable to the Contractor in respect of such period of suspension.

18.2.2 Except in the case of a breach which in the reasonable opinion of TSPL is likely to endanger the safety of any persons or property, TSPL shall, prior to issuing any suspension notice pursuant to Clause 18.2.1, notify the Contractor of the breach. Following receipt of such notice, if the Contractor fails to immediately commence and thereafter continuously

proceed to remedy such breach to TSPL's reasonable satisfaction, TSPL may issue the suspension notice pursuant to Clause 18.2.1.

## **19. TERMINATION**

**19.1** Notwithstanding anything contained herein to the contrary, TSPL may immediately terminate all or part of this Contract/Purchase Order as under:

- (i) by a written notice to the Contractor in case of any breach of the terms of this Contract by Contractor and has failed to remedy such breach within 30 days from receiving notice from TSPL.
- (ii) if Contractor (a) ceases, or threatens to cease, to function as a going concern or conduct its operations in the normal course of business, (b) commences, or becomes the subject of, any bankruptcy, insolvency, reorganization (other than in the course of a corporate re-organization or to an affiliate), administration, liquidation or similar proceedings, (c) makes, or plans to make, a general assignment for the benefit of its creditors, or (d) creditor attaches or takes possession of all or a substantial part of said Party's assets;
- (iii) The foregoing shall not apply to any action or proceeding which is (a) in the reasonable opinion of TSPL, frivolous or vexatious; or (b) discharged, stayed or dismissed within ninety (90) days of commencement;
- (iv) if Contractor is unable to carry out its obligations by reason of Force Majeure events and the force majeure continues for a period more than thirty (30) days, then Company may by giving notice in writing, terminate this Contract with immediate effect. Any such termination shall be without prejudice to any of the right of the Contractor accrued prior to the date of such termination.

**19.2** Notwithstanding anything contained herein to the contrary, TSPL may terminate all or part of this Contract by one (1) months' written notice without assigning any reason whatsoever or if the Contractor fails to obtain any approval required under the terms of this Contract.

**19.3** Upon termination of this Contract, both Parties shall be relieved of their respective rights and obligations under this Contract save such obligations and / or liabilities of the Parties set forth herein which (i) that the Parties have expressly agreed will survive any expiration or termination, or (b) by their nature would be intended to be applicable following any such expiration or termination, or (c) the Parties have accrued before expiration or termination, as the case may be.

**19.4.** Upon termination, the sole liability of TSPL towards the Contractor under the Contract shall be to make payment of all direct and documented costs which have been incurred by the Contractor till the date of termination.

**19.5.** In the event of Contractor's breach of its obligations hereunder, no payment shall be due by TSPL in respect of such services under the Contract/Company order.

## **20. COMPANY'S RIGHT ON TERMINATION FOR DEFAULT**

- 20.1 In case of a termination for default in terms of Clause 19, TSPL shall have the right to have completed either by TSPL Group or any other third party, the services that the Contractor would have been obliged to perform immediately prior to the termination ("Incomplete Works").
- 20.2 TSPL shall be entitled to recover from the Contractor any additional cost incurred by TSPL for procuring the services for the Incomplete Works which are in excess of the amount TSPL would have paid the Contractor for the same work, had the Contract not been terminated, including all reasonable costs incurred by TSPL as a result of such termination ("Additional Costs"). TSPL shall have the right to recover such Additional Costs either directly from the Contractor and/or by invocation of PBG and/or by deducting such Additional Costs from any monies due to or that becomes due to the Contractor under the Contract.
- 20.3 In addition, if such termination occurs prior to mobilization, then no advances, payments or fees of whatsoever nature shall be payable to the Contractor, or, if already paid by TSPL, then any such advances, payments or fees shall be repaid by the Contractor to TSPL.

## **21. CONSEQUENCES OF TERMINATION**

In the event of termination under any provision of this Contract, the Contractor shall:

- (a) promptly cease performance of the Services (or relevant part thereof) and, as directed by TSPL, clear all unnecessary Contractor's Equipment and Contractor's Personnel from the Site;
- (b) allow TSPL all necessary rights of access to the Site to take over the Services (or relevant part thereof); and
- (c) if, and to the extent, requested by TSPL assign any subcontracts or other rights and titles relating to the Services (or relevant part thereof) which the Contractor may have entered into or acquired.

## **22. CONFIDENTIALITY**

- 22.1 TSPL and the Contractor shall keep any information which either Party learns about or receives from the other pursuant to this Contract in strict confidence and will not disclose the same to any third party without the prior written consent of the other Party. The foregoing restriction shall not apply in respect of information which TSPL requires to disclose for the purpose of performing Services or which was in the possession of the disclosing party prior to this Contract or which is required to be disclosed by any law, rule



or regulation of any governmental agency or court order or information which was already within the public domain or which was developed by either Party, independently of and without reference to the Confidential Information and the receiving party has evidence of such independent development. The provisions of this clause shall survive the expiry of termination of the Contract for a period of 3 years.

The Contractor shall not disclose such Information(s) to any potential subcontractors until such time and in manner agreed by Company in writing. The decision of TSPL will be final and binding on the Contractor in this regard. The Contractor shall use best endeavours to prevent the authorised disclosure of the all information hereunder. Where any information is required to be disclosed under Clause 22.1, the Contractor shall give prompt notice to TSPL and shall use its best commercial endeavours to limit the extent of any such disclosure.

### **23. DATA PROTECTION**

- 23.1 Where necessary to enable the Contractor to perform the Services, Company may provide the Contractor with, or the Contractor may have access to, information relating to an identified or identifiable individual ('personal data').
- 23.2 In making personal data available to the Contractor, the Contractor and TSPL confirms that both the Parties have complied with applicable data protection law ('Data Protection Law') and all other Applicable laws (including the European Union's General Data Protection Regulations and the SPDI Rules in relation to the personal data.
- 23.3 The Contractor agrees that when processing personal data on Company's behalf in the performance of the Services the Contractor will:
- (a) only process personal data on Company's documented instructions save where required by law or the order of competent court or tribunal;
  - (b) ensure that personal data is processed in accordance with applicable Data Protection Law and any other Applicable laws, and to notify Company if an instruction infringes any law to which we are subject;
  - (c) take all reasonable steps to ensure that the personal data is protected against misuse and accidental loss or disclosure, and from unauthorised or unlawful processing, destruction or alteration, and in case of any personal data breach (as defined by applicable Data Protection Law) the Contractor will notify TSPL without undue delay upon becoming aware of it;
  - (d) not sub-contract our processing of personal data (save that the Contractor may subcontract and, in doing so, transfer personal data, to the authorised personnel with prior written approval of TSPL in other jurisdictions, or third parties who are bound by

appropriate confidentiality and security obligations consistent with the terms of this clause;

(e) only disclose personal data to its authorised personnel to the extent that they have a need to know for the purpose of providing the Services and are subject to appropriate obligations of confidentiality;

(f) answer Company's reasonable enquiries to enable Company to monitor the Contractor's compliance with this clause and provide Company with reasonable assistance to enable Company to comply with applicable Data Protection Laws.

23.4 Where the Contractor process personal data that originates from a jurisdiction where the applicable Data Protection Law requires additional safeguards to be put in place for the protection of that data, or the Contractor transfer personal data from such a country, or third parties in accordance with clause 23.3 (d)) the Contractor agree to take such steps as Company reasonably require, including entering into contractual clauses to meet the requirements of applicable Data Protection Law.

## **24. NOTICES**

24.1 Any notice or other communication required or given under this Contract shall be delivered in writing either by hand or by courier, registered mail with acknowledgment due, e-mail (e-mail shall be considered as delivered once received by the receiving party) or fax to the address of the relevant Party set out in the Contract (or such other address as may be notified by the relevant Party from time to time).

24.2 If a notice is delivered by hand or courier during normal business hours of the intended recipient, it shall be deemed to have been received at the time of delivery otherwise on the next business day of the recipient. A notice sent by facsimile shall be deemed to have been received at the time when the sender's facsimile machine acknowledges transmission provided however that if the time of acknowledgement of transmission is after 5.00pm on a business day of the recipient it shall be deemed to have been received on the next business day of the recipient.

24.3 All notices or other communications between the Parties shall be in the English language.

## **25. GENERAL LEGAL PROVISIONS**

25.1 TSPL shall be entitled to assign this Contract to an affiliate/subsidiary or on giving written notice to the Contractor. Save as aforesaid, the Contractor shall not be entitled to assign this Contract or any part or any benefit or interest in or under it without the prior written approval of TSPL which TSPL may at its sole discretion accept or refuse.

25.2 This Contract shall not be amended or modified except by mutual Contract in writing between the Parties.

- 25.3** This Contract and all Schedules and Attachments annexed hereto contains the whole Contract between the Parties relating to the subject matter of this Contract, and supersedes any previous understandings, commitments, Contracts, correspondences or representations in respect of the subject matter. No terms or conditions endorsed upon, delivered or contained in Contractor's quotation, acknowledgement or acceptance of the Contract, specification or similar document will form part of the Contract and Contractor waives any right it otherwise might have to rely on such terms and conditions. No variation to any terms or conditions of this Contract shall be valid unless expressly agreed in writing by both parties.
- 25.4** No delay or failure on the part of either Party to enforce from time to time all or any part of the terms and conditions of this Contract shall be interpreted as a waiver of such terms and conditions.
- 25.5** Nothing in this Contract shall, or shall be deemed to, create an agency, a partnership, a joint venture, an association or a relationship of employer and employee, principal and agent or master and servant between the Parties. For the avoidance of doubt, nothing in this Contract shall prevent or restrict TSPL from entering into parallel Contracts with other parties for services similar or related to the Services.
- 25.6** Unless otherwise specifically stated, both TSPL and the Contractor shall retain all rights and remedies, both under the Contract and at law, which either may have against the other.
- 25.7** The Contractor shall comply with all safety instructions of TSPL consistent with the provisions of the Contract including, without limitation, the safety instructions of any of TSPL's other Contractors. Such instructions shall, if the Contractor so requires, be confirmed in writing by TSPL's Representative, so far as practicable.
- 25.8** The Contractor shall not be entitled, without the written consent of Company, to make any news release or public announcement concerning the subject matter of the Contract or to refer to TSPL, use its name or logo, in print or electronic forms for marketing or reference purposes.]
- 25.9** If any provision of this Contract is prohibited, invalid or unenforceable in any jurisdiction, that provision will, as to that jurisdiction, be ineffective to the extent of the prohibition, invalidity or unenforceability without invalidating the remaining provisions of this Contract or affecting the validity or enforceability of that provision in any other jurisdiction, unless it materially alters the nature or material terms of this Contract.
- 25.10** The provisions of this Contract are solely for the benefit of the Parties. No other person are intended to have, nor will have, any rights whatsoever, under this Contract, whether for injury, loss or damage to person(s) or property or for economic loss.

**25.11** This Contract may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Contract and all of which, when taken together, will constitute one and the same instrument.

## **26. FORCE MAJEURE**

26.1 For the purposes of this Contract, "Force Majeure" means the occurrence of any event or circumstance or combination of events or circumstances that is beyond the reasonable control of a Party, has a material and adverse effect on the performance by that Party of its obligations under or pursuant to this Contract, and that demonstrably could not have been foreseen by the Parties; provided, however, that such material and adverse effect could not have been prevented, overcome or remedied by the affected Party through the exercise of diligence and reasonable care; but provided, further, that the exercise of diligence and reasonable care will not include the obtaining or maintaining of insurance beyond the requirements of this Contract.

26.2 Subject to clause 26.1 hereinabove, Force Majeure includes without limitation, the following events and circumstances, but only to the extent that each satisfies the above requirements as provided under Clause 26.1; (a) Act of God, (b) fire, flood, earthquake, epidemic, pandemic, natural disaster or extreme natural event (c) war, riot, insurrection, civil commotion, mobilization or military, call up of a comparable scope, which has been notified in accordance with this Clause 26 any direction, judgement, decree or any other order passed by any judicial/quasijudicial/administrative authority and/or any direction passed by the government authority/(ies) restraining the performance of obligations, whether in part or in full, of the affected party provided that such orders or directions must not emanate out of actions directly attributable to the affected party or (e) any event owing to any restrictions, directives/directions imposed or passed by the government, judicial, quasi-judicial authorities if they impede or delay the performance of the Contract (Force Majeure Events).

### **26.2.1 FORCE MAJEURE EXCLUSIONS:**

Force Majeure will expressly not include the following conditions, except and to the extent that they result from an event or circumstance otherwise constituting Force Majeure:

- (i) unavailability, late delivery or changes in cost of machinery, equipment, materials, spare parts or consumables;
- (ii) prevailing weather conditions at the place of performance of the services/works, including during monsoon periods;
- (iii) failure or delay in performance by any Subcontractor;
- (iv) normal wear and tear or flaws in materials and equipment or breakdowns in equipment.
- (v) any labour unrest/strikes or any other event of the like nature caused by the Contractor (which includes its subcontractors) shall not be considered as a force majeure occurrence

- 26.3 In the event of a Force Majeure occurrence, the party that is or may be delayed in performing the Contract shall notify in writing to the other party without delay but not later than fifteen (15) business days on the initiation of such Force Majeure Event(s) and shall use diligent efforts to end the failure or delay in performance to minimize effects of such Force Majeure Event. Provided, however, that the occurrence of such an event would entitle the parties to renegotiate the time frame for performance of the respective obligations, taking into consideration the nature of such event. . In such a situation, the party, which is not able to perform its obligations under this Contract on account of Force Majeure Event(s), shall not be liable to the other party for the default or breach of this Contract for the period of failure or delay. If the said notice is not received by the other party within fifteen (15) business days, after the party who fails to perform knew or ought to have known of the impediment, it is liable for damages resulting from such non-receipt.
- 26.4 Both Parties agree to use their respective reasonable efforts to cure any event of Force Majeure to the extent that it is reasonably possible to do so. Upon the cessation of the event of Force Majeure, the party declaring Force Majeure shall immediately but not later than three (3) business days give notice thereof to the other party.
- 26.5 Neither Party shall be liable in any manner whatsoever to the other party in respect of any loss, damage, costs, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereof. The costs associated with taking all steps required to mitigate the effects of the Force Majeure Event and restore its ability to perform its obligations under this Contract as soon as reasonably practicable shall be borne by the respective parties.

## **27. BUSINESS ETHICS**

- 27.1 The Contractor shall declare any conflicts of interest with TSPL including relationship or financial interest of any nature whatsoever with employees, managers, other suppliers, vendors or stakeholders of TSPL.
- 27.2 The Contractor shall not use the services of any of the employees of TSPL, directly or indirectly or enter into any sort of monetary transaction with the employees of TSPL. The Contractor undertakes that he has not given, offered or promised to give directly or indirectly any bribes, commission, gift, consideration, reward, or inducement to any of the employees of TSPL or their agent or relatives for showing or agreeing to show favor or disfavor to any person in relation to this Contract or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of the aforesaid undertaking, by the Contractor, or his partners, agent or servant or any one authorized by him or acting on his behalf.
- 27.3 The Contractor agrees to comply with the provisions of TSPL's Supplier Code of Conduct which includes Antibribery and Corruption requirements (a copy of which is also available at <https://www.tsplindia.co/about-us/code-of-conduct/>), TSPL's Human Rights Policy (a

copy of which is available at <https://www.tsplindia.co/wp-content/uploads/2019/04/06-TSPL-Human-Rights-Policy-27-Jan-20.pdf>) including the Modern Slavery Act 2015 as may be amended from time to time and in case of breach thereof, the same shall be treated as a breach of this Contract.

- 27.4 The Contractor shall maintain records and provide to TSPL upon request such records and evidences, as TSPL may reasonably require, confirming the Contractor's compliance with the obligations under this clause.
- 27.5 TSPL shall have a right to initiate "audit proceedings" against the Contractor to verify compliance with the requirements under this clause. Such audit may be carried out by Company or by a reputed agency to be appointed by Company at the sole discretion of Company. The Contractor shall extend full cooperation for smooth completion of the audit mentioned herein.
- 27.6 Notwithstanding anything in this Contract, Company shall have right to terminate the Contract forthwith and recover from the Contractor, the amount of any loss arising from such termination in case, it is found that the Contractor has failed to comply with requirements under this clause including any corrupt practices. A decision of TSPL or his nominee to this effect that a breach of the undertaking had been committed shall be final and binding on the Contractor.
- 27.7 If at any time during execution or performance of this Contract the Contractor becomes aware of any unethical practices or is faced with any undue demand, request for gratification or favor from any employee of TSPL or a person connection with such employee, the Contractor must report the same immediately to the Group Head-Management Assurance at the following address:

Group Head – Management Assurance,  
Vedanta, 75 Nehru Road  
Vile Parle (E), Mumbai 400 099

'Complaints' can also be sent to the designated e-mail id: [tspl.whistleblower@vedanta.co.in](mailto:tspl.whistleblower@vedanta.co.in)

## **28. GOVERNING LAW AND DISPUTE RESOLUTION**

- 28.1 This Contract shall be governed by, construed and enforced in accordance with the laws of Punjab, India. Subject to Clause 28.2 below, the parties submit to the exclusive jurisdiction of the courts of Mansa, Punjab India and any courts that may hear appeals from those courts in respect of any proceedings in connection with this Contract.
- 28.2 Any dispute or difference whatsoever arising between the parties out of or relating to the interpretation, meaning, scope, operation or effect of this Contract or the existence, validity, breach or anticipated breach thereof or determination and enforcement of respective rights, obligations and liabilities of the parties thereto shall be amicably settled by way of mediation by meeting(s) between senior management representatives of each Party. If the

dispute is not conclusively settled within a period of twenty-one (21) days from the date of commencement of mediation or such further period as the parties shall agree in writing, the dispute shall be referred to and finally resolved by arbitration under the Arbitration and Conciliation Act, 1996 (as amended from time to time), which are deemed to be incorporated by reference into this clause. The arbitration shall be conducted as follows:

- (i) A sole arbitrator shall be appointed in case the value of claim under dispute is less than ₹ 50,00,000 (Rupees Five Million Only) and in any other event by a forum of three arbitrators with one arbitrator nominated by each Party and the presiding arbitrator selected by the nominated arbitrators.
- (ii) The language of the mediation and arbitration proceedings shall be English. The seat and venue of arbitration shall be Mansa, India.
- (iii) The award made in pursuance thereof shall be final and binding on the parties. The right to arbitrate Disputes under this Contract shall survive the expiry or termination of the Contract.

28.3 It is clarified that the Services under the Contract shall be continued by the Contractor during the arbitration proceedings unless otherwise directed in writing by TSPL.

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**VOLUME III: TECHNICAL SPECIFICATION AND SCOPE OF WORK**



## **SCOPE OF WORK**

The scope of work under this specification covers the job of arranging coal supplies to Talwandi Sabo Power Limited by Rail from mines of Northern Coalfields Limited (NCL) allocated under the long-term coal linkage. Coal being vital input, ensuring uninterrupted supplies as per the quantity and quality requirements set out in the contract is the essence of services to be rendered by Contractor. The detailed scope of work for Coal Lifting and Transportation management is as follows:

1. Contractor will ensure 100% materialization of contracted quantity within permitted time frame on monthly basis by NCL and/or by Railways. Contracted quantity may increase or decrease in accordance with mutual agreement between the Parties based on Coal allocation.
2. Contractor will ensure the allocation of best possible grade of Coal from desired mines of NCL as per this Contract.

Contractor will ensure timely consent, allotment and loading/dispatch of rakes and in furtherance, the Contractor shall supervise by deploying sufficient resources at the loading point and ensuring that proper quantity and quality coal is loaded, and the coal is free from shale/stone, big size boulders and other foreign ingredients. The Contractor is also responsible to ensure 100% crushed coal is loaded into rakes and delivered at TSPL site. In case of any kind of penalty/demurrage incurred to TSPL due to delay in unloading of rakes due to presence of oversized coal, foreign material & damaged wagon etc., contractor shall be liable to pay up to 50% of the demurrage amount charged by railways for respective rakes.

3. Contractor will ensure that boulders, stones and shales are not loaded into rakes for TSPL.
4. Contractor will ensure that under loading is avoided and the wagons are loaded as per the permissible carrying capacity of the rake as mentioned in the relevant Railways/ NCL circular to ensure minimal dead freight. In case of any underloading then contractor shall ensure adjustment of the same in the respective coal bills as per terms of the FSA.
5. Contractor will ensure that over loading of rakes is avoided to ensure zero punitive charges for overloading by Railways. In case of any overloading the contractor has to take necessary actions as per Fuel Supply Agreement (FSA).
6. Contractor will ensure timely dispatch of rakes by arranging the required power (engine) and crew immediately after loading.
7. Contractor is required to take all statutory approvals required for dispatching coal such as Indent placement for rake, EDRM approval etc.
8. Contractor will coordinate with NCL Mines staff/Railway Authorities for the smooth and continuous flow of rakes from respective sidings.
9. Contractor will ensure rake movement as per TSPL Plant requirement.

10. Contractor will coordinate, follow up and inform TSPL for the linkage rakes status which are in transit from the point of dispatch till TSPL site. Also, daily MIS of rakes in transit shall be submitted to TSPL.
11. Contractor will ensure that no bulged wagons are dispatched to TSPL power plant. In case a bulged wagon is dispatched then any kind of delay or penalty incurred to TSPL due to demurrage charges shall be payable by Contractor up to 50% of the demurrage amount charged by Railways for the respective rakes.
12. Contractor will collect all documents related to rakes loaded like Third Party Sampling Agency (TPSA) quality report, Railway Receipts (along with backup documents), Coal Invoice, Monthly ledger of Coal subsidiaries, Debit and credit notes issued in respective months immediately after issuance and forward the same to our plant. Contractor will also take up with NCL/Railways for obtaining refund amount due to TSPL for various reasons.
13. Contractor will ensure the following promptly in respect to the coal bills and RR collected from NCL and Railways
  - a. The calculation of the coal bill in reference to the RR details and FSA provisions. Necessary correction if required shall be taken up with NCL /Railways.
  - b. Check correctness of calculation of Railway Freight and other charges in RR and necessary correction if required shall be taken up with Railways.
  - c. Documentation (in hard copy and soft copy) of all relevant documents pertaining to each rake/RCR coal shall be maintained by the Contractor and soft copy of these documents shall be submitted to TSPL every week.
  - d. Issuance of Credit Notes from NCL as per the TPSA results within 3 months.
14. Contractor will ensure timely submission of necessary letters to Railways/NCL on behalf of TSPL and arrange acknowledgement of the same.
15. Contractor will give detailed plan of rake supplies in writing or in e-mail for the given month before commencement of rake supplies for each month.
16. Contractor will provide following daily MIS reports to TSPL through e-mail:
  - a) Coal program allocation and offer to TSPL
  - b) Program and Allotment of rakes for loading by Railways/EDRM to TSPL.
  - c) Balance rake remaining to be loaded for TSPL.
  - d) Position of Rakes and arrival time.
  - e) Siding/Mine Quality Intelligence Report
17. Contractor will ensure submission of scanned legible copy of original Railway Receipt (RR) to TSPL within 48 hours from the date of issuance of RR by Railways. Also, Contractor shall ensure the submission of original RR to TSPL within 20 days of issuance of the same by Railways.

18. No Service Charge shall be paid for coal consigned to TSPL but diverted by Railways to plants other than TSPL. No Service Charge shall be payable for the coal received by diversion at TSPL which was originally booked for and belong to any plant other than TSPL.
19. Contractor shall complete reconciliation with NCL for Coal Bills, account balances and other related documents on monthly/need basis.
20. Contractor shall ensure proper documentation for all Incentives/penalties/claims to NCL as per FSA. Also, Contractor shall be responsible for handling of disputes with respect to FSA.
21. Contractor shall participate on behalf of TSPL in sampling and preparation of coal samples at loading point by TPSA and timely issuance of results, for all quantity dispatched by NCL. Contractor shall also ensure the delivery of coal to TSPL as per the quality declared by TPSA.
22. Contractor shall ensure documentation of TPSA Results in excel, soft copy and hard copy. Also, Contractor shall ensure correction of TPSA results (if required) by taking up with TPSA.
23. Contractor shall ensure repair of damaged wagons before they are loaded.
24. Contractor shall ensure timely generation of e-way bills/other statutory requirements for all dispatches to TSPL via road/rail.
25. Contract may depute two resident representatives at TSPL site to ensure end to end execution of the service as given in Scope of Work of this tender document. The boarding, lodging and transportation shall be in scope of the Contractor. The resident representatives shall have minimum 3 years of experience in similar field and shall be approved by TSPL prior to deputation.
26. The Contractor shall ensure dispatch of loading point coal sample to TSPL site within 3 days from the date of sampling. The cost of the same shall be in scope of the Contractor.
27. Contractor shall ensure issuance of credit note for Ungraded coal dispatched from NCL within 3 months.
28. Contractor shall ensure following in relation to diverted rake and missing wagon of TSPL
  - a. Tracking of diverted rake and missing wagons
  - b. Settlement and claim of refund from Railways for diverted rake and missing wagons
29. Contractor to co-ordinate and follow up with respective railway authorities for payment of Land Licensing fees, Staff salary calculation and payments, submission of demurrage waiver letters, getting the demurrage waived off and all railway's related work in the entire process of coal loading from source by Rail, Road to Rail, Rail to Rail, receipt at plant as well as the post unloading formalities and documentation.

30. Railway freight shall be paid by TSPL to Railways. However, Contractor will co-ordinate with Railways for the same and ensure that there is no disruption in allotment and placement of rakes at any time.

The Scope of Work has been detailed as above but in case any items are omitted from the Scope of Work but otherwise required to complete the work then such work shall be deemed as included in the Scope of Work without any additional financial liability to TSPL. The intent of the Contract is to lift raw coal from NCL and deliver to TSPL in terms of quality, quantity and adherence to timelines. Whatever activity and actions are required to achieve the objective, even if not mentioned in the Contract specifically, are the part of Scope of Work for the selected bidder.

**Note:**

1. The performance of the Contractor shall be evaluated through a scorecard as mentioned in Volume I Clause 13.
2. The review of the performance shall be done on weekly basis through Video Conferencing and/or at TSPL site on monthly basis.

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## ANNEXURE-I: PRICE BID FORMAT

Fixed Charge for Service (INR/MT): **to be quoted by the bidder.**

### A. QUANTITY MANAGEMENT

Variable charge (VC): INR 5/MT [Only for the purpose of computation of penalty/ bonus]

(Materialization penalty/bonus to be billed for every month, but to be reconciled/ settled based on quarterly materialization).

Materialization Penalty and Bonus	
95% - 100%	Bonus of 100% VC
85% - 95%	Bonus of 50% of VC
75% - 85%	No Bonus/Penalty
Below 75% up to 70%	Penalty of 100% of VC
Below 70% up to 60%	Penalty of 125% of VC
Below 60%	Penalty of 150% of VC

Materialization on Monthly Allocation:

- i. Materialization will start from 2<sup>nd</sup>/3<sup>rd</sup>/4<sup>th</sup> day of every month till 3<sup>rd</sup> day of next month. Materialization achievement % for the calculation of Bonus/Penalty is to be done based on the Monthly Scheduled Quantity (MSQ) as per FSA, i.e. (No. of rakes loaded from Monthly quota including Supplementary/reallotted rakes) x 100 (Monthly quota of No. of rakes sanctioned by Coal Subsidiary including Supplementary/reallotted rakes) and will not be calculated based on the arrival of rakes at TSPL.
- ii. The bonus and Penalty shall be as per respective slabs in reference to the materialization % calculated above.

### B. QUALITY MANAGEMENT

Variable charge (VC): INR 10/MT [Only for the purpose of computation of penalty/ bonus]

Quality Management Penalty and Bonus	
ARB GCV > 4201 kCal/kg	Bonus @ 100% of VC
ARB GCV 4001-4200 kCal/kg	Bonus @ 50% of VC
ARB GCV > 3801-4000 kCal/kg	No Bonus/ Penalty
ARB GCV 3601-3800 kCal/kg	Penalty @ 50% of VC
ARB GCV 3401 kCal/kg - 3600 kCal/kg	Penalty @ 100% of VC
ARB GCV 3201 kCal/kg - 3400 kCal/kg	Penalty @ 150% of VC
ARB GCV < 3200 Kcal/kg	Penalty @ 200% of VC

\* Bonus/ Penalty calculation for rakes above 3200 Kcal/kg shall be done on monthly weighted average basis.

\* Rakes below 3200Kcal/kg shall be treated individually and penalty would be imposed on these rakes as 200% VC Rs/MT.

TSPL reserves the right to modify above bands of bonus/ penalty due to the reasons not attributable to of the Contractor.

### C. TRANSIT LOSS:

Following Bonus/Penalty shall be applicable and computed on monthly basis.

**Variable Charge (VC): INR 5/MT** [Only for the purpose of computation of penalty/ bonus]

Description	Range	Particulars
Bonus	Nil Shortage & above	Bonus of 100% of VC
No Bonus/Penalty	0% to (-)0.3%	No Bonus/Penalty
Penalty	(-)0.3% to -1%	Penalty of 50% of VC
Penalty	> (-)1%	Penalty of 100% of VC

$$\text{Transit Loss \%} = \frac{[(\text{Weight at TSPL end}) - (\text{Loading weight at MCL end})] \times 100}{(\text{Loading weight at MCL end})}$$

Where:

- Loading weight NCL end is RR weight billed by NCL to TSPL.
- In case of failure of weighment at TSPL end, loading end weighment shall be considered for billing purposes.

### D. UNDER LOADING:

The Bidder shall ensure that there is no underloading of wagons while loading of coal at loading end. In case of any underloading, the bidder must ensure refund of freight amount from NCL on account of such underloading, in accordance with FSA, promptly. The bidder must ensure prompt reconciliation of such refund amount and issuance of credit note by NCL on quarterly basis. In case of failure of the bidder to get the refund beyond a period of 1 year from the date of generation of coal bill, the same shall be recovered from the bidder.









### ANNEXURE-III: PROFORMA OF PBG

Date :

Guarantee No. :

To  
Talwandi Sabo Power Limited  
Village Banwala,  
Mansa-Talwandi Sabo Road,  
Distt. Mansa, Punjab-151302

Dear Sir,

WHEREAS, \_\_\_\_\_, a company incorporated under the laws of \_\_\_\_\_ and having its registered / principal office at \_\_\_\_\_ (hereinafter referred to as the "Party" which expressions shall include its successors and assigns) has in terms of LOI No/ Contract No. \_\_\_\_\_ dated \_\_\_\_\_ (hereinafter referred as the "Contract") entered between you and the said Party, contracted to supply the good or perform the works and services as stated in the Contract.

AND WHEREAS, as per provision of the said Contract, the Party is required to furnish to you a Bank Guarantee for \_\_\_\_\_ (Rupees \_\_\_\_\_ only) towards due and faithful performance of the Party's obligations under the Contract.

Now, we \_\_\_\_ (name of the bank, branch) at \_\_\_\_ (address) (which include our successors and assigns) hereby irrevocably and unconditionally agree and undertake as follows :

1. We hereby irrevocably and unconditionally guarantee to pay to you the sum in aggregate not exceeding \_\_\_\_\_ (Rupees \_\_\_\_\_ only), without demur, merely on the first written demand signed by your representative stating that the amount claimed is due by reasons of breach by the said Party of any of the terms or conditions contained in the said Contract or by reasons of the Party's failure in performance of the Contract and / or any other agreement, if any. Any such demand made on us shall be conclusive as regards the amount due and payable to you by us under this guarantee.
2. Notwithstanding anything to the contrary, your decision as to whether the Party has made any such default or defaults under the aforesaid Contract and / or any other agreement, if any and the amount or amounts to which you are entitled by reason thereof, will be binding on us and we shall not be entitled to ask you to establish your claim or claims under this guarantee and / or be concerned with any dispute, if any between you and the Party and / or refer to the Party and / or rely upon any communication of the Party, but will pay forthwith the sum demanded by you on first written demand without any protest or demur.
3. This guarantee shall come into force from the date of issue of this guarantee and shall remain in full force and effect up to and including \_\_\_\_\_. Should it be necessary to extend the validity of this guarantee beyond the said date, we undertake to extend the period of the

guarantee on your request till such time as may be mutually agreed between you and the Party.

4. We further agree that you shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said Contract and all other written agreement, if any relating to the Contract and/or to extend the time for performance by the Party from time to time.
5. Notwithstanding anything contained hereinabove our liability under this guarantee is restricted to \_\_\_\_ (Rupees \_\_\_\_\_ only). Unless a claim in writing is lodged with us within a period of 6 (six) months from the date of expiry of the guarantee i.e. up to and including \_\_\_\_\_ or up to an extended date as per clause 3 hereinabove, unless otherwise extended, all your rights under this guarantee shall stand forfeited and we shall be released and discharged from all liabilities under this guarantee whether or not this document shall have been returned to us.

THIS GUARANTEE SHALL BE SUBJECT TO THE LAWS OF INDIA AND THE JURISDICTION OF THE COURTS IN MANSA, PUNJAB, INDIA

SIGNED AND DELIVERED this \_\_\_\_\_ day of \_\_\_\_\_, 21\_\_.

For and on behalf of

Bank:

(Authorized Signatory of Bank)

Address:

**ANNEXURE-IV: END USER CERTIFICATE FOR QUANTITIES HANDLED**

(ON THE LETTER HEAD OF END-USER / PSU's)

(To whomsoever it may concern)

**Ref No:**

**Date:**

To,

Chief Commercial Officer  
Talwandi Sabo Power Limited  
Talwandi Sabo – Mansa Road  
Village- Banawala, Distt- Mansa  
Punjab-151302

Dear Sir,

Sub: \_\_\_\_\_

This is to certify that, M/s \_\_\_\_\_ (Name of Bidder) have handled below Quantity for us as per details given below:

<b>S. No</b>	<b>Period of Supply (From-To)</b>	<b>Quantity (MTPA)</b>

This certificate is issued at the request of M/s \_\_\_\_\_(Bidder) for the purpose of participating in the tender.

(Signature of Authorized Person with  
Name, Designation and Complete Address)

PLACE: \_\_\_\_\_

DATE: \_\_\_\_\_

**Note:**

1. \*Strike off whichever is not applicable



**Note:**

1. In case the Bid is submitted by a Joint Venture, information as above shall be furnished by the Lead Member.
2. Documentary evidence like Annual Reports, Audited Financial Statements for preceding three financial years from the last date of Bid submission to be enclosed.
3. This certificate should either be countersigned by Statutory Auditors or may be issued by Statutory Auditors on their Letter head.

**ANNEXURE -VI**  
**STANDARD TERMS AND CONDITIONS**

**1. DEFINITIONS**

1.1. In the Agreement, the following words and expressions shall, unless the context otherwise requires, have the following meanings:

**“Affiliate”** shall mean with respect to any person, any other person that, directly or indirectly, controls, is controlled by or is under common control of such specified person. For the purposes of this definition, “control” means the direct or indirect beneficial ownership of more than fifty percent (50%) of the issued share capital, stock or other participating interest or the legal power to direct or cause the direction of the general management of the company, partnership or other person in question, and “controlled” shall be construed accordingly;

**“Agreement”** shall mean the Agreement between the Company and the Service Provider to which this Schedule is attached.

**“Contractor’s Personnel” or “Personnel”** shall mean all personnel provided by the Contractor Group in connection with the performance of this Contract, including, without limitation, those referred to in the Scope of Work;

**“Data”** means all reports, studies, designs, data and other information and materials as may be prepared, created or developed by the Service Provider Group in the course of provision of Services and/or as a result of the Services or in accordance with this Agreement;

**“Fees”** shall mean the prices and/or rates payable by the Company in respect of the Services and/or as specified in the relevant Purchase Order.

**“Purchase Order”** shall mean the document recording the specific Services to be carried out under this Agreement, from time to time.

**“Site”** shall mean the operating site or any other place where the Contractor/Service Provider is performing the Services and/or any supporting activity in respect thereof;

1.2. Unless otherwise stated, any and all references in the Agreement to Clauses are references to the Clauses of the Agreement.

1.3. The headings in the Agreement are used for convenience only and shall not govern or affect the interpretation of the Agreement.

1.4. Words denoting the singular shall include the plural and vice versa, where the context requires.

1.5. Except as expressly identified, any reference to statute, statutory provision or statutory instrument shall include any reenactment or amendment thereof for the time being in force.

1.6. Unless expressly stated otherwise, all references to days, weeks, months and years shall mean calendar days, weeks, months and years.

**2. SCOPE OF CONTRACT**

2.1. The terms and conditions of the Agreement shall apply from the Effective Date and shall remain valid for the Term unless this Agreement is terminated earlier by the Company in accordance with Clause 19 (Termination) below.

2.2. Subject to the provisions of this Agreement, the Parties agree that upon request of the Company in terms hereof, the Service Provider shall perform the Services at such locations and for such periods as may be agreed with the Company.

2.3. From time to time, the Company may issue a Purchase Order to the Service Provider. In such case, the terms and conditions of this Agreement shall apply to each such Purchase Order as if repeated in total.

2.4. The Service Provider shall commence the Services on the scheduled commencement date stated under this Agreement or in the relevant Purchase Order and shall continue

such Services for the Term or the duration of the Purchase Order as applicable unless terminated earlier in accordance with terms and conditions hereunder. Each Purchase Order is subject to agreement on a case by case basis.

### **3. SERVICES**

3.1. The Service Provider shall perform the Services with all due skill, care and diligence in a safe, competent and timely manner and in accordance with the requirements of the Agreement and/or the relevant Purchase Order. If Company notifies the Service Provider of any defect in the performance of the Services, the Service Provider shall rectify such defect at its own expense.

3.2. Except to the extent that it may be legally or physically impossible, the Service Provider shall comply with the Company's instructions and directions in all matters relating to the Services consistent with the provisions hereunder.

3.3. The Service Provider shall agree with the Company in the relevant Purchase Order from time to time as regards the personnel who will perform the Services and shall:

- (a) only provide such Personnel who possess appropriate experience, skills and qualifications necessary for the Services to be performed in accordance with this Agreement;
- (b) not remove or replace such Personnel without the prior written consent of the Company (not to be unreasonably withheld); and
- (c) nominate a senior manager or director of the Service Provider to have overall responsibility for the provision of the Services in terms stated under this Agreement and/or the relevant Purchase Order, which person shall attend any meetings with the Company on reasonable prior notice.

3.4. Without prejudice to any other rights of the Company under the Agreement or at law, if the Service Provider fails to perform the

Services in accordance with the provisions of this Agreement, the Company may use alternative means to perform the Services, by giving a prior written notice of 30 (thirty days) to the Service Provider and the Service Provider shall be liable for any additional cost incurred by the Company in using such alternate means.

### **4. SERVICE PROVIDER'S REPRESENTATIONS AND WARRANTIES**

4.1. The Service Provider represents and warrants that:

- (i) It is a duly organized company/business entity validly existing under the laws where it is incorporated/established, and has experience, expertise, ability and skills as required to perform the Services as detailed in this Agreement and as may be necessary to perform its obligations hereunder in a professional manner.
- (ii) It has all the requisite power, authority and approvals required to enter into this Agreement and will have all the requisite power, authority to perform fully each and every obligation under this Agreement.
- (iii) This Agreement has been duly executed and delivered by its duly authorized representatives and constitutes its legal, valid and binding obligation enforceable against it in accordance with its terms.
- (iv) The execution, delivery and performance of this Agreement and all instruments or addenda required hereunder by it does not contravene, violate or constitute a default of or require any consent under the provisions of any other agreement or instrument to which it is bound, including the constitutional documents thereof, or any order, judgment, decree or injunction of any court of law.
- (v) No legal proceedings are pending or threatened against it before any court, tribunal or authority which do or may restrain or enjoin its performance or observance of the terms and conditions of this Agreement or which do or may in any other manner



question the validity, binding effect or enforceability of this Agreement.

- (vi) No order has been made or petition presented for the bankruptcy protection, winding up or dissolution thereof against it.
- (vii) It shall maintain high professional standards to ensure performance of this Agreement as per best business practices and in full compliance with statutory obligations.
- (viii) It has all necessary statutory and regulatory permissions, approvals and permits for the running and operation of its establishment for the conduct of its business;
- (ix) It has full right, title and interest in and to all trade names, trademarks, service marks, logos symbols and other proprietary marks (IPR) (including limited right of use of those owned by any of its vendors, affiliates or subcontractors) which it provides to the Company, for use related to the Services, and that any IPR provided by the Service Provider shall not infringe the IPR of any third party;
- (x) The Service Provider represents that there is no inquiry/ investigation pending by the police against the Service Provider or its employees. The Service Provider undertakes that it will confirm at his own cost and expense and shall comply in all respect with the provisions of Government Authority applicable to the Service Provider and /or to the Service Provider's employees;
- (xi) The Service Provider shall be liable for all fines, penalties, and the like of parking, traffic and other criminal offences arising out of or concerning the use of any vehicle for performing the Agreement and any toll charges or entry Taxes payable locally and the Service Provider accordingly indemnifies Company against all such liability.
- (xii) The Service Provider has sufficient resources available to respond to emergencies/ incidents, which may occur along established transportation routes. In case of any accident resulting in loss or damage to

property of life, the sole responsibility for any legal or financial implication would vest with the Service Provider. Company shall have no liability whatsoever.

4.2 Each Party hereby warrants that it has not entered into this Agreement relying on any warranty, representation or undertaking except for any warranty, representation or undertaking expressly set out in this Agreement.

## 5. SERVICE PROVIDER'S PERSONNEL

### 5.1. Service Provider's Personnel – General

5.1.1. The Service Provider shall, at its expense, provide and keep available for the Services, the Service Provider's Personnel.

5.1.2. The Service Provider shall ensure that the Service Provider's Personnel shall be sufficient in number and quality to carry out the Services in accordance with the terms and conditions of the Contract and will be suitably qualified and medically fit and certified, if necessary, to perform the tasks required to complete the Services.

5.1.3. Without prejudice to the generality of Clause 5.1.2, the Service Provider shall ensure that the Service Provider's Personnel are experienced and qualified for the Services they are required to carry out hereunder, to a standard not less than that required by the Contract and that which may from time to time be required by the relevant Government authorities and in accordance with good industry practice.

5.1.4. In relation to any member of the Service Provider's Personnel expected to make, in the Company's sole opinion, significant technical contribution to the Services, the Service Provider shall submit full particulars, in the form of a resume, of the qualifications and experience of such member to the Company prior to that member of the Service Provider's Personnel starting any part of the Services. No such member may start any part of the

Services unless the Company's written approval has been given. The Service Provider shall submit resumes of any other member of the Service Provider's Personnel assigned to the Services on written request by the Company.

- 5.1.5. The Company reserves the right to reject any member of the Service Provider's Personnel, prior to that member commencing any part of the Services.

#### 5.2. **Removal of Personnel**

The Company may, at any time after the commencement of the Services and at its sole discretion, direct the Service Provider in writing to remove any member of the Service Provider's Personnel from the Site. The Service Provider shall immediately comply with such direction and shall, as soon as reasonably practicable, replace, or procure the replacement of, such person with another person suitably qualified and acceptable to Company. The Service Provider shall bear the costs of any such removal and replacement.

#### 5.3. **Adjustment to the Service Provider's Personnel**

The Service Provider shall not at any time without the Company's prior approval increase or decrease the number of the Service Provider's Personnel.

#### 5.4. **Passports and Visas**

- 5.4.1. The Service Provider, if applicable, shall be responsible and bear the cost of obtaining all visas and entry or other permits (including clearance from the Ministry of Home Affairs and immigration authorities, if applicable) required to enable the Service Provider's Personnel to proceed to and work at the Site. The Company may, at the Company's sole discretion, endeavour to assist the Service Provider to obtain such visas and permits.

- 5.4.2. The Service Provider's Personnel shall have such documents on their person when rendering services and shall make the same

available for inspection by any Government Authority, if required.

#### 5.5. **Drugs and Alcohol**

Neither the Service Provider nor any of the Service Provider's Personnel (including sub-contractors) shall, except for bona fide medical purposes, keep, sell, barter, give, dispense or otherwise dispose of any drugs or alcoholic liquors to any person at the Site or permit the same to be done by any person. Alcohol shall not be permitted at the Site save in a form generally used in medicine and forming a bona fide constituent of a medical kit. The Company's Representative reserves the right to search the property and person of any member of the Service Provider's Personnel to ensure compliance with the provisions of this Clause 5.5 (Drugs and Alcohol). The Company's Representative may at his absolute discretion prohibit any member of the Service Provider's Personnel to go on to the Site or other facility in the control of Company, or may require such person to leave the Site where he has reasonable grounds to suspect non-compliance with the provisions of this Clause 5.5 (Drugs and Alcohol).

### 6. **FEES**

- 6.1. The Company shall pay for the Services performed in accordance with the prices as per Attachment 2 to Schedule I and/or rates specified in the relevant Purchase Order.

- 6.2. In case of contingency assignments, the agreed fees for such onetime Services shall be payable on completion of the relevant assignment as per the terms agreed under this Agreement and/or the relevant Purchase Order.

### 7. **SERVICE PROVIDER'S GENERAL OBLIGATIONS**

- 7.1. The Service Provider shall, and the Service Provider shall ensure that its employees and representatives shall, in performing its obligations under this Agreement, comply

in all respects with all relevant laws, statutes, regulations and orders for the time being in force.

7.2. Where any of the Service Provider's employees or representatives, including employees or representatives of its subcontractor/(s), if any, is/are present at any of the Company's premises for the purposes of this Agreement, the Service Provider shall at all times remain solely responsible for the conduct (including any misconduct) and safety of such employee/(s) or representative/(s).

7.3. The Service Provider shall not, in performing its obligations under this Agreement, hold itself out or permit any person to hold it out as being authorised to bind the Company in any way and will not commit any act which might reasonably create the impression that it is so authorised.

7.4. The Service Provider shall ensure that it has in place and maintains in place for the duration of this Agreement sufficient insurance to comply with all applicable laws and to cover its potential liabilities under this Agreement and shall provide evidence of such insurances to the Company on request. The Service Provider undertakes that such insurances shall contain waivers of any rights of recourse including, in particular, subrogation rights against the Company arising out of or in connection with the performance of this Contract to the extent of liabilities assumed by the Service Provider hereunder;

7.5. Notwithstanding the provision of the information by the Company, the Service Provider shall be deemed to have satisfied itself in respect of all relevant matters pertaining to the Services, including, but not limited to, the Scope of Work, the nature of the Services, access to the site, local facilities, climatic, sea, other water and weather conditions, working hygiene and working environment conditions and/or all other matters which may affect the performance of the Services. Any failure by the Service Provider to take into account any of the aforementioned

matters shall not relieve or excuse the Service Provider from any of its responsibilities, liabilities or obligations hereunder or entitle the Service Provider to any extra payment.

7.6. The Service Provider shall not subcontract any of its obligations under this Agreement without the prior written consent of the Company. The Service Provider shall not be relieved from any of its obligations or liabilities under the Agreement by virtue of any subcontract and the Service Provider shall be responsible for all Services, acts, defaults or omissions of its subcontractors (and its or their employees and consultants) as though they were the services, acts, defaults or omissions of the Service Provider.

7.7. In performing the Services, the Service Provider shall:

(a) give preference to the purchase and use of goods manufactured, produced or supplied in India provided that such goods are available on terms equal or better than imported goods with respect to the timing of delivery, quality, quantity required, price and other terms;

(b) subject to Clause 7.5, employ Indian subcontractors having the required skills or expertise to the maximum extent possible insofar as their services are available on comparable standards with those obtained elsewhere and at competitive prices and on competitive terms, provided that where no such subcontractors are available, preference shall be given to non-Indian subcontractors who utilise Indian goods to the maximum extent possible, subject to the proviso in Clause 7.7 (a) above; and

(c) subject to Clause 7.5, co-operate with and assist Indian companies as subcontractors to enable them to develop skills and technology to service the petroleum industry.

7.8 The Service Provider shall maintain proper and accurate records in relation to the Services and shall provide copies of the same to the Company on request. The Company (or its appointed representative) shall have the right to audit the relevant books and accounts of the Service Provider in relation to any reimbursable charges paid for by the Company under this Agreement. Such audit right shall survive for a period of 2 (two) years following the expiry or termination of the Agreement. Any incorrect payments identified by such audit shall be adjusted between the Parties as appropriate.

## **8 INTELLECTUAL PROPERTY RIGHTS**

8.1 If the Services performed or provided under the Agreement and/or Purchase Order involves a patent, copyright, trademark, or proprietary information (IPR) Intellectual Property Right, the Service Provider hereby grants the Company Group a permanent, irrevocable, worldwide, non-exclusive license to use the same without additional charge.

8.2 The Company is the sole owner of IPR in anything developed and delivered under this Agreement / Purchase Order. Service Provider shall provide at the Company's reasonable request any documentation necessary to confirm Company's ownership interest in such intellectual property rights. Service Provider shall retain ownership of any intellectual property rights vested in Service Provider prior to this Agreement or created by Service Provider outside of its performance of this Agreement during the term of this Agreement.

8.3 Service Provider shall at all times be responsible for, shall release and shall defend, protect, indemnify, hold harmless and defend Company Group, from and against any Claim by a third party for infringement of any IPR which may arise out of the Services performed and/or provided by Service Provider.

8.4 For the purposes of this clause, Intellectual Property Rights includes but is not limited

to all vested, contingent and future intellectual property rights including: (i) all inventions, compounds, compositions, substances, methods, processes, techniques, know-how, technology, data, information, discoveries, and materials including ideas, concepts, formulas, assays, practices, software, devices, procedures, designs, constructs, plans, applications, research, regulatory information, manufacturing process, scale-up and other technical data, reports, documentation and samples, including chemical, physical, analytical, safety, manufacturing and quality control data and information, as well as study designs and protocols; and any Patents, trade secrets, confidential information, proprietary processes, or industrial rights directly or indirectly deriving therefrom; (ii) all trademarks, service marks, copyrights, designs, trade styles, logos, trade dress, and corporate names, including all goodwill associated therewith; and (iii) any work of authorship, regardless of copyrightability, all compilations and all copyrights and includes also includes any inventions, made, to be made, discovered, conceived or reduced to practice whether or not patentable.

## **9 OWNERSHIP OF DATA**

9.1 All Data shall be the property of the Company from the date of its creation or development including all Intellectual Property Rights thereto and the Company shall, accordingly, have unfettered right and authority to dispose of, alienate or transfer all Data. No Data created or developed by the Service Provider under this Contract shall become the property of the Service Provider; provided that the risk and responsibility for the loss of, or damage to, any Data shall remain with the Service Provider until delivery of such Data to the Company.

9.2 All Data shall be fit for the purposes specified in the Contract.

9.3 All items created or developed by the

Service Provider outside the Contract shall remain the property of the Service Provider, provided that the Company shall have the right to use any such item where it is provided to the Company as part of the Services.

9.4 Notwithstanding anything to the contrary contained in this Contract, it is hereby agreed between the Parties that any Intellectual Property Rights arising out of, from or in relation to this Contract including those created during the course of performance of the Contract, shall belong to and vest in the Company and in this regard, the Service Provider hereby waives any right, title or interest in the same.

#### **10 INDEMNITY**

10.1 The Service Provider shall defend, indemnify and hold the Company, its directors, officials & employees etc., harmless from and against any and all claims, liabilities, costs, damages and expenses (including court costs and legal fees) in connection with any claim made by any third party (including, but not limited to, any claim made by any governmental or statutory authority) against the Company arising out of or in connection with the performance by the Supplier of its obligations under this Agreement.

10.2 The Service Provider shall be liable for and shall defend, indemnify and hold the Company its directors, officials & employees etc., harmless from and against and all claims in connection with any breach, infringement (whether actual or alleged) of Confidentiality, accident, bodily injury, fraud arising out of or in connection with the performance of this Agreement by the Service Provider.

10.3 This indemnity shall be without prejudice to any other rights or remedies, including injunctive or other equitable relief, which the Company may be entitled to.

10.4 Company shall have the right to retain/ withhold out of any payment, to be made to the Service Provider, an amount

sufficient to indemnify it completely against any such third-party claims and all associated costs.

10.5 It is the express intention of the Parties hereto that the provisions of this Agreement / Purchase Order shall exclusively govern the allocation of risks and liabilities of the Parties, it being acknowledged that the Agreement reflected herein has been based upon such express understanding. It is acknowledged that the compensation payable to Service provider upplier as specified in this Agreement and/or applicable Purchase Order has been based upon the express understanding that risks and liabilities shall be determined in accordance with the provisions of this Agreement and/or applicable Purchase Order.

#### **11 LIMITATION OF LIABILITY**

11.1 **EXCEPT AS MAY BE OTHERWISE PROVIDED IN THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER, WHETHER ARISING UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE, EXEMPLARY OR INCIDENTAL LOSS OR DAMAGES OF ANY NATURE ARISING AT ANY TIME FROM ANY CAUSE WHATSOEVER.**

11.2 The limitations of liability and exclusion of warranties as set out in the Agreement shall be to the maximum extent permitted by applicable law. Nothing in this Agreement purports to exclude or limit liability for fraud, misrepresentation, death or personal injury.

#### **12 PAYMENT**

12.1 In addition to any requirements set out in the relevant Purchase Order, if any, each invoice shall:

(a) be in duplicate; (b) bear the Contract Number stated on the cover sheet to the Agreement;

- (c) state the name, e-mail address, mobile telephone number of the Company's Representative; and
- (d) be accompanied by supporting evidence and itemised in accordance with the Company's requirements.

Invoices to the Company shall be sent to the address set out in the Agreement. Service Provider must ensure that all invoices for services performed or goods delivered are submitted to the Company within 90 days.

Specifically, the Service Provider shall submit the following information/documents to the Company unless specifically exempted by the Company representative in writing:

- (i) Latest tax residency certificate of the Service Provider as issued by the tax / revenue authorities of Service Provider's country of residence, stating specifically that the Service Provider is tax resident of country as mentioned in such tax residence certificate.
  - (ii) Copy of the Permanent Account Number ('PAN') card issued by the Indian Tax authorities,
  - (iii) Copy of registration certificates under applicable Indian tax/other laws including but not limited to GST, Excise, import export code etc., as applicable.
  - (iv) Copy of the withholding tax certificate issued by Indian tax authorities, enabling the Company to make payments to the Service Provider after deduction of such taxes as per prescribed rate in the withholding tax certificate.
- 12.2 The Company shall make payment of a correct invoice within 45 days of receipt to the Service Provider's nominated bank account. Any invoice not complying with the provisions of this Agreement will be returned by the Company and the Service Provider shall submit a rectifying invoice.

12.3. The Company may dispute any amount on an invoice and withhold the disputed amount provided that:

- (a) the Company makes payment of any undisputed portion of the invoice and notifies the Service Provider of the disputed amount within 45 days of receipt of the relevant invoice;
- (b) if the dispute is resolved in favour of the Service Provider, the Company shall pay the disputed amount within fifteen (15) days of the date of the resolution of the dispute or forty-five (45) days of receipt of the invoice, whichever is later.

If the dispute is resolved in favour of the Company, the Service Provider shall forthwith issue a credit note for the disputed amount.

12.4 The Company shall be entitled to set-off / adjust / deduct from any invoice under this Agreement, any payment due from the Service Provider to the Company or any of its Affiliates.

### **13 PERFORMANCE BANK GUARANTEE**

13.1 The provisions of this clause shall be applicable only in those cases wherein the Service Provider is required to furnish a performance bank guarantee as per the terms and conditions of this Agreement.

13.2 The Service Provider shall furnish, within 7 days of execution of this Agreement, and irrevocable Performance Bank Guarantee of such value as may be mutually agreed between the parties. The Performance Bank Guarantee so furnished by the Service Provider shall be released upon successful completion of the obligations of the Service Provider in terms of the Agreement after the Company duly submits a certificate to the effect that there are no claims against the Company from any of its vendors, subcontractors and/or any other third party, including but not limited to the Service Provider's employees, engaged in performance of the obligations of the

Service Provider under the Agreement. If requested by the Company, the Service Provider agrees to extend the validity period of the Performance Bank Guarantee or to issue a further Performance Bank Guarantee in the event that the duration of this Agreement is for any reason extended beyond such validity date.

13.3 The Service Provider shall renew the Performance Bank Guarantee fifteen (15) days prior to the date the Performance Bank Guarantee expires ("Expiry Date") in case of any extension to the Term. If the Service Provider does not submit to the Company a renewed Performance Bank Guarantee fifteen (15) days prior to the Expiry Date, the Company shall have the right to immediately draw down complete Performance Bank Guarantee amount and shall reserve the right to retain such amounts till such time the Service Provider provides a replacement Performance Bank Guarantee for the equivalent amount.

13.4 The Service Provider shall renew the Performance Bank Guarantee or otherwise submit an additional Performance Bank Guarantee, as duly required by the Company, on account of change in the Agreement value pursuant to a variation or amendment to the Agreement, within fifteen (15) days of being so notified by the Company. If the Service Provider does not submit to the Company a renewed Performance Bank Guarantee or an additional performance bank guarantee, as the case may be, within the said period of ten (10) days, the Company shall have the right to immediately draw down complete Performance Bank Guarantee amount and shall reserve the right to retain such amounts till such time the Service Provider provides a replacement performance bank guarantee(/s) for the equivalent amount.

13.5 In addition to the right contained in the preceding clause, the Company shall further have an unqualified right under the Agreement to draw on the Performance Bank Guarantees under the following circumstances:

i) failure by the Service Provider to supply the Services in accordance

with the Agreement resulting in termination; or  
ii) failure by the Service Provider to duly perform any of its obligations under this

Agreement; or iii) Any valid claim made by the Company accruing due to any acts/omission of the Service Provider and the Service Provider fails to pay the Company for such a claim immediately upon such demand.

13.6 The provision and maintenance of the Performance Bank Guarantee by the Service Provider in accordance with the terms of the Agreement shall be a condition precedent to any payment by the Company to the Service Provider.

13.7 If the Service Provider fails to provide, maintain or renew the Performance Bank Guarantee in accordance with the terms of the Agreement, then the Company may, without prejudice to any other rights and remedies to which it may be entitled to, invoke the Performance Bank Guarantee and/or terminate the Agreement forthwith by written notice.

13.8 In addition to the other circumstances specified in this Agreement, Company has the right to draw down all or part of the value of the Performance Bank Guarantee and, at Company's discretion, apply the proceeds in remedying any breach by Service Provider of this Contract. Such recourse against the Performance Bank Guarantee shall be without limitation to any other right or remedy of the Company in relation to the relevant Service Provider breach.

#### 14 SPECIFICATION VARIATION

14.1. No adjustment to the Scope of Work, the Specification, the prices and/or rates set out in Compensation Schedule or the Completion Date (or any other date specified in the Agreement for performance by the Service Provider) shall be valid unless a variation order has been issued in writing by the Company (a "Variation Order").

14.2. The Company may at any time issue a Variation Order to the Service Provider requiring the Service Provider to alter, amend, omit, add to, accelerate, reprogramme or otherwise vary any part of the Scope of Work or Purchase Order and/or the Specification. Upon receipt of a Variation Order the Service Provider shall proceed immediately as instructed, and any necessary adjustment to prices and/or rates or dates for performance shall be subsequently made in accordance with Clause 14.3 below.

14.3. Where the Company has issued a Variation Order in accordance with Clause 14.2, the Parties shall use all reasonable endeavours to agree on fair and reasonable adjustments to the prices and/or rates and/or dates for performance, which shall, to the extent possible, be based on the existing prices and/or rates and/or dates for performance specified in the Agreement. Such adjustments shall be recorded in a further Variation Order.

14.4 Notwithstanding anything contained in this Clause 14, if the parties fail to mutually arrive at the terms of the Variation Order, then the decision of the Company shall be final and binding and the Service Provider shall be required to carry out its obligations under the Contract, including the execution of variation in works, as proposed by the Company.

## **15 ADVANCE BANK GUARANTEE**

15.1 The provisions of this clause shall be applicable only in those cases wherein the Service Provider is required to furnish an advance bank guarantee as per the terms and conditions of this Agreement.

15.2 The Service Provider shall furnish an irrevocable, unconditional bank guarantee equivalent to 100% of the Advance Payment, from a scheduled bank acceptable to the Company (acting

reasonably) and in the form attached as Attachment 3 to Schedule I (Advance Bank Guarantee) or otherwise approved by Company and shall be valid till the expiry of the Contract to be paid by the Company to the Service Provider as per the terms and conditions of the Contract as security for the Advance Payment made by the Company to the Service Provider and to secure all other obligations of the Service Provider under this Contract (the "Advance Bank Guarantee") as a condition precedent to the release of Advance Payment.

15.3 The Service Provider shall renew the Advance Bank Guarantee ten (10) days prior to the date the Advance Bank Guarantee expires ("Expiry Date") in case of any extension to the Term. If the Service Provider does not submit a renewed Advance Bank Guarantee ten (10) days prior to the Expiry Date, with the Company, the Service Provider shall have the right to immediately draw down complete Advance Bank Guarantee amount and shall reserve the right to retain such amounts till such time the Service Provider provides a replacement Advance Bank Guarantee for the equivalent amount.

15.4 The Service Provider shall renew the Advance Bank Guarantee or otherwise submit an additional Advance Bank Guarantee, as duly required by the Company, on account of change in the Contract Value or in case of any upward revision to the Advance Payment, pursuant to a variation or amendment to the Contract, within ten (10) days of being so notified by the Company. If the Service Provider does not submit to the Company a renewed Advance Bank Guarantee or an additional advance bank guarantee, as the case may be, within the said period of ten (10) days, the Company shall have the right to immediately draw down the complete Advance Bank Guarantee amount and shall reserve the right to retain such amounts till such time the Service Provider provides a replacement advance bank guarantee(/s) for the equivalent amount.



15.5 In addition to the right contained in the preceding clause, the Company shall further have an unqualified right under the Agreement to draw on the Advance Bank Guarantees under in the following:

- i) failure by the Service Provider to perform the Services in accordance with terms and conditions of Service Provider, to the satisfaction of the Company; or
- ii) Any inadequate adjustment of the Advance Payment; or
- iii) failure by the Service Provider to duly perform any of its obligations under this Agreement; or iv) any valid claim made by the Company accruing due to any acts/omission of the Service Provider and the Service Provider fails to pay the Company for such a claim immediately upon such demand.

15.6 If the Service Provider fails to provide, maintain or renew the Advance Bank Guarantee in accordance with the terms of the Agreement, then the Company may, without prejudice to any other rights and remedies to which it may be entitled to, invoke the Advance Bank Guarantee and/or terminate the Agreement forthwith by written notice.

## 16 TAXES

### 16.1 Definitions

For the purposes of this Clause 16 (Taxation):

- (a) "Tax" or "Taxes" means taxes, levies, duties, fees, charges and contributions as amended from time to time and any interest or penalties thereon;
- (b) "Government Authority" or "Government Authorities" means any local or national government or authority of any country, competent to levy any Tax;

- (c) "Goods & Services Tax" or "GST" shall include Central Goods & Service Tax ("CGST"), State Goods & Service Tax ("SGST"), Integrated Goods & Service Tax ("IGST"), Union Territory Goods & Service Tax ("UTGST") & GST Compensation Cess.

### 16.2 Person Responsible for payment of Taxes

#### 16.2.1 Taxes General

Except as may be expressly set out in this Contract, the Service Provider shall be responsible for:

- (a) the payment of all Taxes now or hereafter levied or imposed on the Service Provider or its subcontractors or on the Service Provider's Personnel or its subcontractors by any Government Authority in respect of any wages, salaries and other remuneration paid directly or indirectly to persons engaged or employed by the Service Provider or its subcontractors (hereinafter referred to as "Personal Income tax");
- (b) the payment of all Taxes now or hereafter levied or imposed by any Government Authority on the actual/assumed profits and gains made by the Service Provider or its subcontractors (hereinafter referred to as "Corporate Income tax");
- (c) the payment of all GST now or hereafter levied or imposed by any Government Authority on the supply of goods or services, if any, provided to the Company by the Service Provider or its subcontractors;
- (d) the payment of all Taxes now or hereafter levied or imposed by any Government Authority on the mentioned goods only, namely, petroleum crude, HSD, Petrol, Natural Gas & ATF, if any, sold to the Company by the Service Provider or its subcontractors (hereinafter referred to as "Sales tax/VAT/CST");

- (e) the payment of all Taxes now or hereafter levied or imposed by any Government Authority on the mentioned goods only, namely, petroleum crude, HSD, Petrol, Natural Gas & ATF, if any, manufactured by the Service Provider or its subcontractors for sale to the Company (hereinafter referred to as “Excise Duty”); and
- (f) the payment of any other Taxes now or hereafter levied or imposed by any Government Authority on the Service Provider or its subcontractors as a result of the performance of this Agreement.

**16.2.2 Exception to General:** Prior to commencing the Services, the Service Provider shall notify the Company whether or not it has Fixed Establishment in India. If the Service Provider notifies the Company that it does not have Fixed Establishment in India, then, any Indian GST chargeable on the services provided by the Service Provider under this Agreement shall be paid by the Company directly to the relevant Government Authority.

**16.2.3 Reimbursement of Taxes to the Service Provider**

It is acknowledged that responsibility for payment of Taxes to the Government Authority will be governed as per Clause 16.2.1 and 16.2.2, the Service Provider will be reimbursed only for such Taxes which will be agreed to be reimbursed in the Compensation Schedule or any of the Purchase Order(s) issued under the Agreement.

**16.2.4 Pricing**

The Parties agree that details of Taxes included in, or excluded from, the Service Provider's prices and/or rates shall be as stated in the Compensation Schedule to the Agreement and nothing in this Clause 16 shall be construed to affect or prejudice such details as stated in the Compensation Schedule.

**16.3 Withholding taxes and Withholding certificates**

**16.3.1** The Company shall, at the time of its payments due to the Service Provider, withhold the necessary taxes at such rate as is required by any Government Authority, unless and to the extent that the Service Provider shall produce to the Company any certificate issued by a Government Authority (having authority to issue such certificate) entitling the Service Provider to receive the payments under the Agreement for a prescribed period without deduction of any tax or deduction at a lower rate.

**16.3.2** The Company shall provide the necessary withholding tax certificates to the Service Provider within the time stipulated by the relevant law to enable the Service Provider to file the same with the Government Authority as a proof of payment of such taxes.

**16.4 Person Responsible for filing of returns / information to Government Authorities**

**16.4.1** The Service Provider shall be responsible for filing all necessary Tax returns (including, without limitation, returns for Corporate Income tax, Personal Income tax, GST, Sales tax and Excise Duty) with the relevant Government Authorities in accordance with all applicable statutory requirements and shall be responsible for providing all information requested by such Government Authorities.

**16.4.2** The Service Provider shall also ensure that its subcontractors file such returns as stipulated by the relevant Government Authorities and furnish such information as requested for by the relevant Government Authorities.

**16.4.3** The Company, with respect to the tax withheld from the Service Provider in accordance with Clause 16.3 (Withholding Tax and Withholding Tax Certificates), shall be responsible for filing the withholding tax returns with the relevant Government Authorities in accordance with applicable statutory requirements.

**16.5 Company's rights, if treated as representative assessee by Government Authorities**

In certain situations, a Government Authority may treat the Company as the representative assessee of the Service Provider and/or its subcontractors and recover the Taxes due to the Government Authority by the Service Provider or its subcontractors from the Company. In such situations, the Company shall have the following rights:

- (a) The Company shall be entitled to recover from the Service Provider, the Taxes paid on behalf of the Service Provider or its subcontractors (together with any costs and expenses incurred by the Company in connection therewith) or to retain the same out of any amounts to be paid to the Service Provider or its subcontractors that may be in its possession (whether due under this Agreement or otherwise) and shall pay only the balance, if any, to the Service Provider; and
- (b) If the Company is required to furnish any details or documents in such capacity, the Company shall request the details or documents to be furnished to it by the Service Provider and the Service Provider shall immediately furnish the same to the Company. If the Service Provider fails to comply with the foregoing, any penalty/interest levied on the Company for non-filing or late filing of details or documents in this regard shall be recoverable from the Service Provider.

**16.6 Indemnity** The Service Provider shall defend, indemnify and hold the Company Group harmless from and against any and all claims, liabilities, costs, damages and expenses (including court costs and legal fees) in connection with any Taxes which may be levied or imposed on the Service Provider or its subcontractors by any Government Authority arising out of or in

connection with the performance of this Agreement.

**16.7 CHANGES IN LAW**

If, after the date of execution of this Agreement, there is any change in law, excluding any change(s) as result of interpretation by competent authority, tribunal & Court, which results in a change in the rate of any Tax included in the Service Provider's prices or rates or the introduction of a new Tax and such change results in an increase or decrease in the cost to the Service Provider of performing this Agreement then the Parties shall

agree to a revision in pricing to reflect such change provided that:

- (a) the Party requesting such revision shall promptly (and in any case prior to submission of the Service Provider's final invoice under this Agreement) but not later than 07 (seven) business days notify the other Party that such change in law has arisen; and
- (b) the Party requesting such revision shall provide the other Party with documentary proof of such change in cost to the reasonable satisfaction of the other Party; and
- (c) the provisions of this Clause 16.7 shall not apply to changes in Personal Income tax or Corporate Income tax or to changes in non-Indian Taxes.

**16.8 GST Compliances by Service Provider**

**16.8.1** Notwithstanding anything contained hereinabove, the Service Provider shall strictly and in a timely manner, adhere to and undertake all acts, omissions and compliances required under the applicable GST laws to ensure that the Company is able to avail the Input Tax Credit/set off/rebate/refund of the GST (along with cesses and surcharges, if relevant) as applicable on the Services or any supplies if applicable made by the

Service Provider under this Agreement to the fullest extent possible under law. In this regard, without limiting the generality of the foregoing obligation in any manner whatsoever, Company reserves the right to specify to the Service Provider, particulars including but not limited to the following:

- (a) whether Service Provider should charge IGST or CGST-plus-SGST;
- (b) GST registration number of the Company;
- (c) whether the Service Provider should be responsible to generate the E-Way Bill;
- (d) the format of invoices/credit and debit notes/advance receipt vouchers;
- (e) the requirement for maintenance of a 'GST compliance rating score' above a specified threshold; etc. and
- (f) the relevant timelines for such compliances based on the applicable GST laws.

**16.8.2** The Service Provider acknowledges that any failure in the foregoing obligations (including undertaking the ones specifically instructed by the Company, if any) can cause significant losses to the Company in the form of loss of GST credit, statutory interest liability on such credit loss (under applicable GST laws) and adverse impact on the 'GST compliance rating score' and thus, undertakes to carry out this foregoing obligation with sincerity, due diligence and without any delay or demur.

**16.8.3** The Parties agree that the Company reserves the right to reimburse the GST component on supplies received only when the corresponding credit has become available in the electronic credit ledger of the relevant GST registration of Company.

**16.8.4** Without prejudice to any other indemnification obligation under this Agreement, the Service Provider agrees to, at all times, to hold harmless and indemnify Company from and against all claims, liabilities, expenses, proceedings, costs and losses that may be suffered or incurred by Company which may arise out of or in connection with any failure by the Service Provider to adhere to its obligations including but not limited to its obligations under Clause 16.8.1 above. In this

regard, the Service Provider also hereby indemnifies Company from any costs, claim or liability arising out of any claim or action or omission by any employee or consultant or agent or outsourced staff or subcontractor of the Service Provider.

## **17 MOST FAVOURED CUSTOMER CLAUSE**

If Company obtains a quote from a competitor of the Service Provider to provide Services or similar services on longer payment terms or for fees that are less than the Fees in effect under a Contract, taking into account discounts, rebates and any other conditions with economic value to Company, Company may notify the Service Provider of the same in writing and request that the payment terms be extended and/or the price is reduced under such Contract to meet such quote. Within 10 (ten) Business Days of receipt of such notice, the Service Provider shall advise Company in writing whether it will meet such quote. If the Service Provider elects not to meet such quote, or fails to respond in a timely manner, then Company may terminate such Contract by providing a minimum of 7 (seven) days' prior written notice to the service Provider.

## **18 SUSPENSION**

### **18.1 Suspension without Cause**

18.1.1 Notwithstanding anything contained herein to the contrary, the Company shall have the right, without cause, at any time to require the Service Provider to suspend the Services (or part thereof) under this Contract by giving a prior written notice to the Service Provider.

18.1.2 The Company shall not be liable to make any payments of whatsoever nature during the Suspension Period pursuant to Clause 18.1.1.

### **18.2 Suspension Due to Default**

18.2.1 If the Service Provider is in breach of any of its obligations under this Contract (including, without limitation, any breach

of provisions/policies relating to health safety and environment), the Company shall, subject to Clause 18.2.2, be entitled to immediately suspend the Services by written notice to the Service Provider until such time as such breach has been remedied by the Service Provider, in which case no rates or other amounts shall be payable to the Service Provider in respect of such period of suspension.

18.2.2 Except in the case of a breach which in the reasonable opinion of the Company is likely to endanger the safety of any persons or property, the Company shall, prior to issuing any suspension notice pursuant to Clause 18.2.1, notify the Service Provider of the breach. Following receipt of such notice, if the Service Provider fails to immediately commence and thereafter continuously proceed to remedy such breach to the Company's reasonable satisfaction, the Company may issue the suspension notice pursuant to Clause 18.2.1.

## 19 TERMINATION

19.1 Notwithstanding anything contained herein to the contrary, the Company may immediately terminate all or part of this Agreement/Purchase Order as under:

(i) by a written notice to the Service Provider in case of any breach of the terms of this Agreement by Service Provider and has failed to remedy such breach within 30 days from receiving notice from the Company.

(ii) if Service Provider (a) ceases, or threatens to cease, to function as a going concern or conduct its operations in the normal course of business, (b) commences, or becomes the subject of, any bankruptcy, insolvency, reorganization (other than in the course of a corporate re-organization or to an affiliate), administration, liquidation or similar proceedings, (c) makes, or plans to make, a general assignment for the benefit of its creditors, or (d) creditor attaches or takes possession of all or a substantial part of said Party's assets;

(iii) The foregoing shall not apply to any action or proceeding which is (a) in the reasonable opinion of the Company, frivolous or vexatious; or (b) discharged, stayed or dismissed within ninety (90) days of commencement;

(iv) if Service Provider is unable to carry out its obligations by reason of Force Majeure events and the force majeure continues for a period more than thirty (30) days, then Company may by giving notice in writing, terminate this Agreement with immediate effect. Any such termination shall be without prejudice to any of the right of the Service Provider accrued prior to the date of such termination.

19.2 Notwithstanding anything contained herein to the contrary, the Company may terminate all or part of this Agreement by one (1) months' written notice without assigning any reason whatsoever or if the Service Provider fails to obtain any approval required under the terms of this Agreement.

19.3 Upon termination of this Agreement, both Parties shall be relieved of their respective rights and obligations under this Agreement save such obligations and / or liabilities of the Parties set forth herein which (i) that the Parties have expressly agreed will survive any expiration or termination, or (b) by their nature would be intended to be applicable following any such expiration or termination, or (c) the Parties have accrued before expiration or termination, as the case may be.

19.4. Upon termination, the sole liability of the Company towards the Service Provider under the Agreement shall be to make payment of all direct and documented costs which have been incurred by the Service Provider till the date of termination.

19.5. In the event of Service Provider's breach of its obligations hereunder, no payment shall be due by the Company in respect of such services under the Agreement/Company order.

## **20 COMPANY'S RIGHT ON TERMINATION FOR DEFAULT**

**20.1** In case of a termination for default in terms of Clause 19, the Company shall have the right to have completed either by the Company Group or any other third party, the services that the Contractor would have been obliged to perform immediately prior to the termination ("Incomplete Works").

**20.2** The Company shall be entitled to recover from the Contractor any additional cost incurred by the Company for procuring the services for the Incomplete Works which are in excess of the amount the Company would have paid the Contractor for the same work, had the Contract not been terminated, including all reasonable costs incurred by the Company as a result of such termination ("Additional Costs"). The Company shall have the right to recover such Additional Costs either directly from the Contractor and/or by invocation of Performance Bank Guarantee and/or by deducting such Additional Costs from any monies due to or that becomes due to the Contractor under the Contract.

**20.3** In addition, if such termination occurs prior to mobilization, then no advances, payments or fees of whatsoever nature shall be payable to the Contractor, or, if already paid by the Company, then any such advances, payments or fees shall be repaid by the Contractor to the Company.

## **21 CONSEQUENCES OF TERMINATION**

In the event of termination under any provision of this Contract, the Service Provider shall:

- a) promptly cease performance of the Services (or relevant part thereof) and, as directed by the Company, clear all unnecessary Service Provider's Equipment and Service Provider's Personnel from the Site;

- b) allow the Company all necessary rights of access to the Site to take over the Services (or relevant part thereof); and

- c) if, and to the extent, requested by the Company assign any subcontracts or other rights and titles relating to the Services (or relevant part thereof) which the Service Provider may have entered into or acquired.

## **22. CONFIDENTIALITY**

**22.1** The Company and the Service Provider shall keep any information which either Party learns about or receives from the other pursuant to this Agreement in strict confidence and will not disclose the same to any third party without the prior written consent of the other Party. The foregoing restriction shall not apply in respect of information which the Company requires to disclose for the purpose of performing Services or which was in the possession of the disclosing party prior to this Agreement or which is required to be disclosed by any law, rule or regulation of any governmental agency or court order or information which was already within the public domain or which was developed by either Party, independently of and without reference to the Confidential Information and the receiving party has evidence of such independent development. The provisions of this clause shall survive the expiry of termination of the Agreement for a period of 3 years.

The Service Provider shall not disclose such Information(s) to any potential subcontractors until such time and in manner agreed by Company in writing. The decision of the Company will be final and binding on the Service Provider in this regard. The Service Provider shall use best endeavours to prevent the authorised disclosure of the all information hereunder. Where any information is required to be disclosed under Clause 22.1, the Service Provider shall give prompt notice to the Company and shall use its best commercial endeavours to limit the extent of any such disclosure.

## 23. Data Protection

23.1 Where necessary to enable the Service Provider to perform the Services, Company may provide the Service Provider with, or the Service provider may have access to, information relating to an identified or identifiable individual ('personal data').

23.2 In making personal data available to the Service Provider, the Service Provider and the Company confirms that both the Parties have complied with applicable data protection law ('Data Protection Law') and all other Applicable laws (including the European Union's General Data Protection Regulations and the SPDI Rules in relation to the personal data.

23.3 The Service Provider agrees that when processing personal data on Company's behalf in the performance of the Services the Service Provider will:

(a) only process personal data on Company's documented instructions save where required by law or the order of competent court or tribunal;

(b) ensure that personal data is processed in accordance with applicable Data Protection Law and any other Applicable laws, and to notify Company if an instruction infringes any law to which we are subject;

(c) take all reasonable steps to ensure that the personal data is protected against misuse and accidental loss or disclosure, and from unauthorised or unlawful processing, destruction or alteration, and in case of any personal data breach (as defined by applicable Data Protection Law) the Service Provider will notify the Company without undue delay upon becoming aware of it;

(d) not sub-contract our processing of personal data (save that the Service Provider may subcontract and, in doing so, transfer personal data, to the authorised personnel with prior written approval of the Company in other jurisdictions, or third parties who are bound by appropriate confidentiality and security obligations consistent with the terms of this clause;

(e) only disclose personal data to its authorised personnel to the extent that they have a need to know for the purpose of providing the Services and are subject to appropriate obligations of confidentiality;

(f) answer Company's reasonable enquiries to enable Company to monitor the Service Provider's compliance with this clause and provide Company with reasonable assistance to enable Company to comply with applicable Data

Protection Laws.

23.4 Where the Service Provider process personal data that originates from a jurisdiction where the applicable Data Protection Law requires additional safeguards to be put in place for the protection of that data, or the Service Provider transfer personal data from such a country, or third parties in accordance with clause 23.3 (d)) the Service Provider agree to take such steps as Company reasonably require, including entering into contractual clauses to meet the requirements of applicable Data Protection Law.

## 24. NOTICES

24.1 Any notice or other communication required or given under this Agreement shall be delivered in writing either by hand or by courier, registered mail with acknowledgment due, e-mail (e-mail shall be considered as delivered once received by the receiving party) or fax to the address of the relevant Party set out in the Agreement (or such other address as may be notified by the relevant Party from time to time).

24.2 If a notice is delivered by hand or courier during normal business hours of the intended recipient, it shall be deemed to have been received at the time of delivery otherwise on the next business day of the recipient. A notice sent by facsimile shall be deemed to have been received at the time when the sender's facsimile machine acknowledges transmission provided however that if the time of acknowledgement of transmission is after 5.00pm on a business day of the recipient it shall be deemed to have been

received on the next business day of the recipient.

- 24.3 All notices or other communications between the Parties shall be in the English language.

## 25

### GENERAL LEGAL PROVISIONS

- 25.1** The Company shall be entitled to assign this Agreement to an affiliate/subsidiary or on giving written notice to the Service Provider. Save as aforesaid, the Service Provider shall not be entitled to assign this Agreement or any part or any benefit or interest in or under it without the prior written approval of the Company which the Company may at its sole discretion accept or refuse.
- 25.2** This Agreement shall not be amended or modified except by mutual agreement in writing between the Parties.
- 25.3** This Agreement and the all Schedules and Attachments annexed hereto contains the whole agreement between the Parties relating to the subject matter of this Agreement, and supersedes any previous understandings, commitments, agreements, correspondences or representations in respect of the subject matter. No terms or conditions endorsed upon, delivered or contained in Service Provider's quotation, acknowledgement or acceptance of the Agreement, specification or similar document will form part of the Agreement and Service Provider waives any right it otherwise might have to rely on such terms and conditions. No variation to any terms or conditions of this Agreement shall be valid unless expressly agreed in writing by both parties.
- 25.4** No delay or failure on the part of either Party to enforce from time to time all or any part of the terms and conditions of this Agreement shall be interpreted as a waiver of such terms and conditions.
- 25.5** Nothing in this Agreement shall, or shall be deemed to, create an agency, a partnership, a joint venture, an association or a relationship of employer and

employee, principal and agent or master and servant between the Parties. For the avoidance of doubt, nothing in this Agreement shall prevent or restrict the Company from entering into parallel Agreements with other parties for services similar or related to the Services.

- 25.6** Unless otherwise specifically stated, both the Company and the Service Provider shall retain all rights and remedies, both under the Agreement and at law, which either may have against the other.
- 25.7** The Service Provider shall comply with all safety instructions of the Company consistent with the provisions of the Agreement including, without limitation, the safety instructions of any of the Company's other Service Providers. Such instructions shall, if the Service Provider so requires, be confirmed in writing by the Company's Representative, so far as practicable.
- 25.8** The Service Provider shall not be entitled, without the written consent of Company, to make any news release or public announcement concerning the subject matter of the Agreement or to refer to the Company, use its name or logo, in print or electronic forms for marketing or reference purposes.]
- 25.9** If any provision of this Agreement is prohibited, invalid or unenforceable in any jurisdiction, that provision will, as to that jurisdiction, be ineffective to the extent of the prohibition, invalidity or unenforceability without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of that provision in any other jurisdiction, unless it materially alters the nature or material terms of this Agreement.
- 25.10** The provisions of this Agreement are solely for the benefit of the Parties. No other person are intended to have, nor will have, any rights whatsoever, under this Agreement, whether for injury, loss or damage to person(s) or property or for economic loss.



**25.11** This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will constitute one and the same instrument.

## **26.FORCE MAJEURE**

26.1 For the purposes of this Agreement, "Force Majeure" means the occurrence of any event or circumstance or combination of events or circumstances that is beyond the reasonable control of a Party, has a material and adverse effect on the performance by that Party of its obligations under or pursuant to this Agreement, and that demonstrably could not have been foreseen by the Parties; provided, however, that such material and adverse effect could not have been prevented, overcome or remedied by the affected Party through the exercise of diligence and reasonable care; but provided, further, that the exercise of diligence and reasonable care will not include the obtaining or maintaining of insurance beyond the requirements of this Agreement.

26.2 Subject to clause 26.1 hereinabove, Force Majeure includes without limitation, the following events and circumstances, but only to the extent that each satisfies the above requirements as provided under Clause 26.1; (a) Act of God, (b) fire, flood, earthquake, epidemic, pandemic, natural disaster or extreme natural event (c) war, riot, insurrection, civil commotion, mobilization or military, call up of a comparable scope, which has been notified in accordance with this Clause 26 any direction, judgement, decree or any other order passed by any judicial/quasijudicial/administrative authority and/or any direction passed by the government authority/(ies) restraining the performance of obligations, whether in part or in full, of the affected party provided that such orders or directions must not emanate out of actions directly attributable to the affected party or (e) any event owing to any restrictions, directives/directions imposed or passed by

the government, judicial, quasi-judicial authorities if they impede or delay the performance of the Agreement (Force Majeure Events).

### **26.2.1 FORCE MAJEURE EXCLUSIONS:**

Force Majeure will expressly not include the following conditions, except and to the extent that they result from an event or circumstance otherwise constituting Force Majeure:

- (i) unavailability, late delivery or changes in cost of machinery, equipment, materials, spare parts or consumables;
- (ii) prevailing weather conditions at the place of performance of the services/works, including during monsoon periods;
- (iii) failure or delay in performance by any Subcontractor;
- (iv) normal wear and tear or flaws in materials and equipment or breakdowns in equipment.
- (v) any labour unrest/strikes or any other event of the like nature caused by the Service Provider (which includes its subcontractors) shall not be considered as a force majeure occurrence

26.3 In the event of a Force Majeure occurrence, the party that is or may be delayed in performing the Agreement shall notify in writing to the other party without delay but not later than fifteen (15) business days on the initiation of such Force Majeure Event(s) and shall use diligent efforts to end the failure or delay in performance to minimize effects of such Force Majeure Event. Provided, however, that the occurrence of such an event would entitle the parties to renegotiate the time frame for performance of the respective obligations, taking into consideration the nature of such event. . In such a situation, the party, which is not able to

perform its obligations under this Agreement on account of Force Majeure Event(s), shall not be liable to the other party for the default or breach of this Agreement for the period of failure or delay. If the said notice is not received by the other party within fifteen (15) business days, after the party who fails to perform knew or ought to have known of the impediment, it is liable for damages resulting from such non-receipt.

26.4 Both Parties agree to use their respective reasonable efforts to cure any event of Force Majeure to the extent that it is reasonably possible to do so. Upon the cessation of the event of Force Majeure, the party declaring Force Majeure shall immediately but not later than three (3) business days give notice thereof to the other party.

26.5 Neither Party shall be liable in any manner whatsoever to the other party in respect of any loss, damage, costs, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereof. The costs associated with taking all steps required to mitigate the effects of the Force Majeure Event and restore its ability to perform its obligations under this Agreement as soon as reasonably practicable shall be borne by the respective parties.

## **27. BUSINESS ETHICS**

27.1 The Service Provider shall declare any conflicts of interest with the Company including relationship or financial interest of any nature whatsoever with employees, managers, other suppliers, vendors or stakeholders of the Company.

27.2 The Service Provider shall not use the services of any of the employees of the Company, directly or indirectly or enter into any sort of monetary transaction with the employees of the Company. The Service Provider undertakes that he has not given, offered or promised to give directly or indirectly any bribes, commission, gift, consideration, reward, or inducement to any of the employees of the Company or their agent or relatives for showing or agreeing to show favor or disfavor to any person in relation to this Agreement or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of the aforesaid undertaking, by the Service Provider, or his partners, agent or servant or any one authorized by him or acting on his behalf.

27.3 The Service Provider agrees to comply with the provisions of the Company's Supplier Code of Conduct which includes Antibribery and Corruption requirements (a copy of which is also available at <https://www.tsplindia.co/wp-content/uploads/2019/04/TSPL-Suppliers-Code-of-Conduct-12-10-2018-1.pdf>), the Company's Human Rights Policy (a copy of which is available at <https://www.tsplindia.co/wp-content/uploads/2019/04/06-TSPL-Human-Rights-Policy-27-Jan-20.pdf>) including the Modern Slavery Act 2015 as may be amended from time to time and in case of breach thereof, the same shall be treated as a breach of this Agreement.

27.4 The Service Provider shall maintain records and provide to the Company upon request such records and evidences, as the Company may reasonably require, confirming the Service Provider's compliance with the obligations under this clause.

27.5 The Company shall have a right to initiate "audit proceedings" against the Service Provider to verify compliance with the requirements under this clause. Such audit may be carried out by Company or by a reputed agency to be appointed by Company at the sole discretion of Company. The Service Provider shall

extend full cooperation for smooth completion of the audit mentioned herein.

27.6 Notwithstanding anything in this agreement, Company shall have right to terminate the Agreement forthwith and recover from the Service Provider, the amount of any loss arising from such termination in case, it is found that the Service Provider has failed to comply with requirements under this clause including any corrupt practices. A decision of the Company or his nominee to this effect that a breach of the undertaking had been committed shall be final and binding on the Service Provider.

27.7 If at any time during execution or performance of this Agreement the Service Provider becomes aware of any unethical practices or is faced with any undue demand, request for gratification or favor from any employee of the Company or a person connection with such employee, the Service Provider must report the same immediately to the Group Head-Management Assurance at the following address:

Group Head – Management Assurance,  
Vedanta, 75 Nehru Road  
Vile Parle (E), Mumbai 400 099

‘Complaints’ can also be sent to the

designated e-mail id:  
[tspl.whistleblower@vedanta.co.in](mailto:tspl.whistleblower@vedanta.co.in)

## 28. GOVERNING LAW AND DISPUTE RESOLUTION

28.1 This Agreement shall be governed by, construed and enforced in accordance with

the laws of Punjab, India. Subject

to Clause 28.2 below, the parties submit to the exclusive jurisdiction of the courts of Mansa, Punjab, India and any courts that may hear appeals from those courts in respect of any proceedings in connection with this Contract.

28.2 Any dispute or difference whatsoever arising

anticipated breach thereof or determination and enforcement of respective rights, obligations and liabilities of the parties thereto shall be amicably settled by way of mediation by meeting(s) between senior management representatives of each Party. If the dispute is not conclusively settled within a period of twenty-one (21) days from the date of commencement of mediation or such further period as the parties shall agree in writing, the dispute shall be referred to and finally resolved by arbitration under the Arbitration and Conciliation Act, 1996 (as amended from time to time), which are deemed to be incorporated by reference into this clause. The arbitration shall be conducted as follows:

(i) A sole arbitrator shall be appointed in case the value of claim under dispute is less than ₹ 50,00,000 (Rupees Five Million Only) and in any other event by a forum of three arbitrators with one arbitrator nominated by each Party and the presiding arbitrator selected by the nominated arbitrators.

(ii) The language of the mediation and arbitration proceedings shall be English. The seat and venue of arbitration

shall be Mansa, Punjab, India.

(iii) The award made in pursuance thereof shall be final and binding on the parties. The right to arbitrate Disputes under this Agreement shall survive the expiry or termination of the Agreement.

28.3 It is clarified that the Services under the Agreement shall be continued by the Service

between the parties out of or relating to the interpretation, meaning, scope, operation or effect of this Agreement or the existence, validity, breach or

Provider during the arbitration proceedings unless otherwise directed in writing by the Company.