

# **GUJARAT STATE ELECTRICITY CORPORATION LIMITED**



**Tender Document And  
Technical Specifications**

**For**

**Long Term Supply of Non-coking Steam (Thermal) Imported Coal**

**To**

**Gujarat State Electricity Corporation Limited**

**On**

**Highseas Sales / Cost. Insurance, Freight (CIF) Basis and Inland handling and transportation for  
delivery to GSECL's Thermal Power Station at Sikka, Dist.Jamnagar,Gujarat (India)**

**Tender Specification No.: GSECL/Fuel/Imp Coal/LT/Sikka/2013**

**Tender Fee: Rs. 15,000**

**Prepared By:**

**Fuel Department, Gujarat State Electricity Corporation Limited, Corporate Office,  
VidyutBhavan, Race Course, Vadodara: 390 007**

## **DISCLAIMER**

All information contained in this request for proposal (“**RFP**”) and all annexures, appendix, schedules, forms thereof, including the Technical Specifications, (collectively, the “**Tender Document**”), or which information is subsequently provided, by or on behalf of Gujarat State Electricity Corporation Limited (the “**Company**” or “**GSECL**” or “**Purchaser**”) is being provided to the Bidder(s) for the purpose of inviting Bids and does not constitute nor should be interpreted as an offer.

This Tender Document is meant to provide information only and is issued upon an express understanding and agreement that the Bidders will use it only for the purpose of preparing and submitting the Bid and for the purpose necessarily associated herewith and for no other purpose whatsoever.

The purpose of this Tender Document is to provide the Bidders with basic and preliminary information to assist them in the preparation of their Bids and for no other purpose, and is not intended to form the basis of any decision on part of the Bidder(s) to proceed with the Bid.

GSECL makes no representation or warranty, express or implied, as to the accuracy, correctness and completeness of the information contained in the Tender Document. Each Bidder must conduct its own investigation and analysis and should check the accuracy, reliability and completeness of the information and obtain independent advice in relation to the same from appropriate sources.

While this Tender Document has been prepared in good faith, neither GSECL nor its consultants, officers or employees make any representation or warranty or shall have any responsibility or liability whatsoever in respect of any statements or omissions here from. Nothing in this Tender Document shall be construed as legal, financial or tax advice. Any liability is accordingly expressly disclaimed by GSECL, its consultants, partners, affiliates, their respective officers, agents and employees even if any loss or damage is caused by any act or omission on the part of GSECL, its consultants, partners, affiliates, their respective officers, agents or employees, whether negligent or otherwise.

By acceptance of this Tender Document, the Bidders agree that information contained herein supersedes document(s) or earlier information, if any, in relation to the scope of work. This Tender Document and any information herewith will be superseded by any later written information on the same subject made available to the recipient by or on behalf of GSECL.

Each Bidder agrees, understands and accepts that the information contained in this Tender Document is subject to change without notice. Further, in no event, may it be assumed that there shall be no deviation or change in any of the information mentioned herein. GSECL, at its own discretion, without any obligation to do so, may, update, amend or supplement any information contained in this Tender Document, including the evaluation methodology, at any time prior to the submission of the Bids.

Each Bidder unconditionally agrees, understands and accepts that GSECL reserves the right to accept or reject any or all Bids without giving any reason. Neither GSECL nor its employees or

advisers shall entertain any claim of any nature, whatsoever, including without limitation, any claim seeking expenses in relation to the preparation of Bids.

This Tender Document has not been filed, registered or approved in any jurisdiction. Recipients of this Tender Document resident in jurisdictions outside India should inform themselves of, and observe any applicable legal requirements.

Each prospective Bidder must conduct its own analysis of the information contained in this Tender Document, to correct any inaccuracies therein and is advised to carry out its own investigation into the proposed opportunity, the regulatory regime which applies thereto and all matters pertinent to the proposed opportunity and to seek its own professional advice on the legal, financial, regulatory and taxation consequences of entering into any agreement or arrangement relating to the proposed opportunity.

GSECL reserves the right at any time to alter, amend, modify, cancel and recall the Tender Document or any part of it. The Bidders shall be required to submit the Bid in relation to this Tender Document as so amended.

GSECL is not bound to accept any or all the offers. GSECL reserves the right to reject any or all the offers without assigning any reason. GSECL further reserves the right to negotiate with any or all Bidders in relation to their offers. No Bidder shall have any cause of action or claim against GSECL or its officers, employees, consultants, agents, successors or assignees for rejection of its offer.

All Bids, including any and all supporting documents submitted therewith, pursuant to this Tender Document, once submitted, shall become the property of GSECL. Provided however, any intellectual property rights existing in the information contained in such Bid will remain the property of the Bidder (or other persons, as appropriate) submitting that Bid. Provided further that the Bidder shall have deemed to have licensed and authorised GSECL, its officers, employees, advisers, consultants and agents to copy, adapt, disclose or to use, as GSECL may deem fit, all information and material contained in the Bid for the purposes of the Bid process including, without limitation, evaluation of the Bids. For abundant caution it is hereby expressly clarified that GSECL and/or its employees, officers, consultants, advisers or other representative may make such copies of the Bids as they, in their sole discretion, may require.

Each Bidder should satisfy itself that the Tender Documents are complete in all respects.

The laws of the Republic of India are applicable to this Tender Document. Courts in [Gujarat, India] shall have exclusive jurisdiction in relation to any disputes arising from this Tender Document.

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## **DEFINITIONS**

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In addition to the terms defined elsewhere in this Tender Document, the capitalized terms used in this Tender Document shall have the following meaning:

<b>TERM</b>	<b>DEFINITION</b>
<b>Bid</b>	shall mean a bid submitted pursuant to this Tender Document
<b>Bidder</b>	shall mean any Single Bidder or Consortium who submits a Bid pursuant to this Tender Document
<b>Consortium</b>	shall mean the consortium of the Lead Member and other Members, who have jointly submitted a Bid pursuant to this Tender Document.
<b>Lead Member</b>	in relation to a Consortium shall mean and refer to the entity identified by the Members of a Consortium as the lead member of the Consortium
<b>Letter of Intent</b>	shall mean the Letter of Intent or Detailed Order issued by GSECL to the Successful Bidder(s)
<b>Coal or Imported Coal</b>	shall mean non-coking steam (thermal) imported coal meeting the Technical Specifications and other requirements of this Tender Document
<b>Member</b>	in relation to a Consortium shall mean and refer to each entity, other than the Lead Member, which is a part of such Consortium;
<b>Mt</b>	Shall mean Metric Tonne
<b>Sikka Power Station</b>	shall mean the development and implementation of the 2x250 MW Import coal based thermal power station at Sikka, Gujarat, India being undertaken by GSECL
<b>Qualified Bidder</b>	shall mean the Bidders whose Technical Bids are qualified pursuant to this Tender Document
<b>Successful Bidder</b>	shall mean the Bidder selected pursuant to this Tender Document
<b>Technical Specification or Specification</b>	shall mean the Specifications for Coal specified in Section V hereto
<b>Tender Document</b>	shall mean this Tender Document No.GSECL/Fuel/Imp Coal/LT/Sikka/2013(including all Annexures, Sections, General Conditions of Contract and Technical Specifications hereto), as amended from time to time
<b>TPS</b>	shall mean a thermal power station of GSECL

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## **1. SECTION I: INVITATION TO BIDDERS**

Gujarat State Electricity Corporation Ltd. (“GSECL”) is a company incorporated under the laws of India and having its registered office at VidyutBhavan, Race Course, Vadodara – 390 007, India. GSECL is undertaking the development and implementation of 2x250 MW Import coal based (Unit-3 &4) Thermal power station at Sikka, Gujarat (“**Sikka Power Station**”).

Pursuant to this Tender Document, GSECL invites Bids (through e-tendering and physical tendering), from the eligible Bidders for long term supply of 2.5 million Mt per annum of Non-Coking Steam (Thermal) Imported Coal in Bulk for a period of 5 (five) years to GSECL (Purchaser) on CIF (Cost, Insurance & Freight)/ HSS (Highseas Sales) Basis and inland handling and transportation for delivery at the Power Station of GCV (AR) of 5500 Kcal/Kg for its use at the Thermal Power Station of GSECL at Sikka, Jamnagar, Gujarat, India on the terms and conditions specified in this Tender Document.

Outlined hereinafter, is a comprehensive Bid package that the Bidders are requested to go through carefully. The Tender Document is not the final document and GSECL reserves the right to amend or vary the Tender Document at any time prior to the Bid Due Date and to negotiate subsequent modifications to the Tender Document to satisfy GSECL’s requirements.

This Tender Document is meant for the exclusive purpose of inviting Bids for long term supply of 2.5 million Mt per annum of Non-Coking Steam (Thermal) Imported Coal in bulk for a period of 5 (five) years to GSECL on C.I.F. (Cost, Insurance & Freight)/ HSS (Highseas Sales) basis and inland handling and transportation for delivery at the Power Station of GCV (AR) of 5500 Kcal/Kg for its use at GSECL’s Sikka Power Station at Sikka, Jamnagar, Gujarat and must not be relied upon, transferred, reproduced or otherwise used for purposes other than that for which it is specifically issued without the prior permission of GSECL.

Your Bid must be in compliance with the requirements, specifications, and other applicable attachments, including all other terms and conditions mentioned in this Tender Document. Any Bid containing any exceptions/ deviations to the terms and conditions (except in accordance with the Tender Document) shall be liable to be rejected at the sole discretion of GSECL.

GSECL reserves the right to accept or reject, in whole or in part, any Bid, waive formalities in the Bidding process, or to negotiate any terms and conditions terms with any Bidder when such is deemed by GSECL to be in its best interest. GSECL will be under no obligations to provide reasons for accepting or rejecting a Bid.

Non-compliance with any of the Bidding instructions, and/or receipt of a Bid after the Bid Due Date may lead to rejection of Bid. GSECL takes no responsibility for delay, loss or non-receipt of Bids or any letter sent by post.



## **2. SECTION II: INSTRUCTION TO BIDDERS**

### **2.1. Indicative non-binding information**

2.1.1. Gujarat State Electricity Corporation Limited (“GSECL”) is a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at VidyutBhavan, Race Course, Vadodara – 390 007, India. GSECL is engaged in the business of development and implementation of power generation projects. GSECL is undertaking the development of 2x250 MW Import coal based Unit-3 & 4 at Sikka Thermal Power Station in Dist.Jamnagar, State:Gujarat.

2.1.2. Pursuant to this Tender Document, GSECL is seeking Bids from eligible applicants for long term supply of 2.5 million Mt per annum of Non-Coking Steam (Thermal) Imported Coal in Bulk for a period of 5 (five) years to GSECL on CIF (Cost, Insurance & Freight)/ HSS (Highseas Sales) Basis and inland handling and transportation for delivery at the Power Station of GCV (AR) of 5500 Kcal/Kg for GSECL’s use at Power Station of GSECL on the terms and conditions specified in this Tender Document.

### **2.2. BID PROCESS SCHEDULE**

<b>S. No.</b>	<b>ACTIVITY</b>	<b>TIME/ DATE</b>
1.	Notice inviting Tender	07.08.2013
2.	Last date for receipt of queries	27.08.2013
3.	Pre-Bid Meeting	03.09.2013
4.	Last date and time for submission of Physical Bids (“ <b>Physical Bid Due Date</b> ”)	16:00 Hrs. (IST) of 24.09.2013
5.	Last date and time for submission of Online Bids (“ <b>Bid Due Date</b> ”)	17:00 Hrs.(IST) of 24.09.2013.
6.	Opening of Technical Unpriced Bids (“ <b>Technical Bid Opening Date</b> ”)	17:30 Hrs.(IST) of 24.09.2013
7.	Opening of Financial Bids of the Qualified Bidders (“ <b>Financial Bid Opening Date</b> ”)	To be informed later

### **2.3. GENERAL INSTRUCTIONS**

2.3.1. Bidders must review the Tender Document, including the Technical Specifications, Scope of Work, and General Conditions of Contract and ensure that their Bids are as per the terms of the Tender Document. GSECL retains the right to modify the terms of the Tender Document and/or any of the sections/attachments/formats thereto at any time prior to Bid Due Date.

2.3.2. The Bidders are expected to examine the Tender Document, including all instructions, forms, terms, specifications, conditions, and other documents and requirements of the

Tender Document. Failure to furnish all or any information required by the Tender Document or submission of a Bid not responsive to the Tender Document in every respect may result in the rejection of the Bid. Bidders shall be deemed to have understood and taken into account all the terms and conditions prescribed in the Tender Document.

- 2.3.3. Responsibility for the timely submission of the Bids before the Bid Due Date rests solely with the Bidder. Bidders are encouraged to submit the Bids early. GSECL shall open the Bids only after the Bid Due Date, at a time and date to be notified by GSECL. All Bids shall be opened at one time.
- 2.3.4. Once a Bid is submitted no changes will be permitted to be made by the Bidder except in relation to clarifications, if any, sought by GSECL in relation to the Bid.
- 2.3.5. The Bid shall be duly signed and sealed by the authorized representative of the Bidder.
- 2.3.6. In this Tender Document, the Contract shall be awarded with the stipulation that two separate Contracts shall awarded to the same Successful Bidder, viz the Contract for Supply of Coal and Contract for Inland Handling of Coal. The terms and conditions of this Tender Document (including General Conditions of Contract) shall be applicable to both Contracts, unless expressly specified in this Contract. The Bidders shall be deemed to have agreed and acknowledged that they shall be jointly and severally liable for performance of the obligations under both Contracts.

#### 2.4. **PREPARATION AND SUBMISSION OF BIDS**

- 2.4.1. The Tender Documents and Technical Specifications may be downloaded from the website (<https://gsecl.nprocure.com>) or(<https://www.nprocure.com>)(*for viewing, downloading and online submissions of the Online Bids*) and GSECL's website ([www.gsecl.in](http://www.gsecl.in)) (*for viewing and downloading only*).
- 2.4.2. All Online Bids shall be prepared and submitted in two parts, that is, “**Technical Bid**” and “**Financial Bid**”.
- 2.4.3. All Bids shall be prepared in English language only, by typing or printing with indelible black ink.
- 2.4.4. All Bids shall be prepared and submitted in accordance with the specifications in the Tender Document. Failure to furnish any and all information required in the Tender Document or submission of a Bid not responsive to the Tender Document in every respect may result in rejection of the Bid.
- 2.4.5. All Bids are required to be submitted through two modes – (i) “Online Bid” through e-Tendering, and (ii) “Physical Bid”, in the manner prescribed below.
- 2.4.6. The Bidders are required to understand and comply with the e-Tendering procedure for submission of Online Bids and are required to submit the Online Bids in compliance with the e-Tendering procedure. Insufficient or lack of knowledge of e-Tendering process shall not excuse the Bidder from complying with the requirements of this Tender Document

and any Bids not in compliance with the e-Tendering procedure shall be liable for rejection.

2.4.7. The Bidder's Bid and the documents attached thereto shall be considered as forming part of the Contract Documents.

2.4.8. The Financial Bid forming part of the Online Bid must conform to the following requirements:

- a) The payments under the Contract shall be made in Indian Rupees only.
- b) Prices quoted in the Financial Bid should conform to the format provided in the Tender Document. Prices quoted in the Bid shall be firm and binding for the agreed contract period.
- c) The Bidders shall quote the price of Imported Coal for the Sikka Power Stations as per the price schedule specified in the Tender Document.
- d) The price shall be quoted both in words and figures, clearly and legibly. In case of any discrepancy in the amounts mentioned in words and figures, the amount in words shall govern.

2.4.9. Submission of Online Bids:

- a) For the purposes of submission of Online Bids, the Bidders are required to obtain Digital Signature Certificates (meant for e-Tendering) from M/s. (n) Code Solution, A Division of GNFC Ltd., and/or from any other authorized agencies. The Digital Signature Certificates / Registrations are not transferable. The Online Bids can only be filled up and submitted by the entity in whose name the Digital Signature Certificate / Registration has been obtained by the Bidder.
- b) The contact details of M/s. (n) Code Solutions are as under:

M/s. (n) Code Solutions A division of GNFC Ltd. 403, GNFC Infotower, Bodakdev, Ahmedabad: 380 054	Toll free: 1800 233 7944 Tel: +91 79 40007501/512/516/517/525 Fax: +91 79 40007533 Website: <a href="https://gsecl.nprocure.com">https://gsecl.nprocure.com</a> <a href="http://www.nprocure.com">www.nprocure.com</a>
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- c) The Bidders shall fill-up and submit the Online Bids in the format provided in the Tender Document. The Online Bid shall comprise of two parts – the 'Technical Bid' and the 'Financial Bid'. The Bidders are required to furnish all documents / data / information along with their Bids in accordance with the requirements and specifications contained in the Tender Document.
- d) The last date of submission of Online Bids is on or before **17:00 hrs. (IST) of 24.09.2013(Tuesday)**, or such other date as may be extended by GSECL

(**“Bid Due Date”**). No Online Bids shall be accepted after the Bid Due Date. No extension shall be granted under any circumstances whatsoever.

- e) **Bidders may take out prints of the filled tenders for their record purpose and for the required submission of the “Physical Tender” before the bid is submitted “On-Line”, as it will not be possible to do so after closing of “On-line” tender.**
- f) **Any deviation/ modification/ discrepancy between the Data/ Details/ Documents of the bids submitted by the Bidder in the Online Bid and the Physical Bid is not allowed and would be liable for rejection. No further communication in the matter shall be entertained.**

**2.4.10. Submission of “Physical Bids”:**

- a) The Bidder shall submit the “Physical Bid” in a sealed envelope, superscripted as “Physical Bid” on or prior to the Physical Bid Due Date.
- b) The Physical Bid shall comprise of the Technical Bid.
- c) The Technical Bid shall be prepared and submitted in the manner prescribed in this Tender Document and shall contain the following documents:
  - (i) An envelope, superscripted as ‘Tender Fee/EMD’, containing (i) the demand draft or banker’s cheque towards the Tender fee in accordance with Clause 2.5 and (ii) a demand draft or banker’s cheque or unconditional, irrevocable bank guarantee towards Earnest Money Deposit, in accordance with Clause 2.5 and Annexure I.
  - (ii) An envelope, superscripted as “Technical Bid”, containing (a) the Tender Specification downloaded from the website (as per Clause 2.4.1) duly signed and sealed by the Bidder and (ii) Technical Bid Format – Document Checklist (printed from the Online Bid) duly signed and sealed by the Bidder, along with other Bid Documents, duly filled in, signed and sealed by the Bidder.
- d) The above two envelopes (specified in (i) and (ii)) shall be placed in the third envelope, sealed and superscripted as “Technical Bid”, and addressed to Chief Engineer (Fuel), GSECL at the following address:

Chief Engineer (Fuel) Gujarat State Electricity Corporation Ltd. VidyutBhavan, Race Course, Vadodara: 390 007, Gujarat, India.
Tel # 91-265- 6612341 (Direct), 6612342 Mob.# 919925210592 Fax # 91-265-2355195 (Direct)

This envelope must show on the outside, the name of the Bidder and its address. In addition, the lower left-hand corner of the envelope should indicate the following: “Tender No. GSECL/Fuel/Imp Coal/LT/Sikka/2013” for Supply of Non-coking Steam (Thermal) Imported Coal to Gujarat State Electricity Corporation Ltd. on CIF (Cost, Insurance & Freight) / HSS (highseas sales) basis and inland handling and transportation for delivery to GSECL’s Sikka Power Station.

- e) All the envelopes shall be individually sealed and signed, and superscripted and addressed in accordance with the requirements specified in this Tender Document.
- f) The “Physical Bids” should reach the office of Chief Engineer (Fuel), Gujarat State Electricity Corporation Ltd, VidyutBhavan, Race Course, Vadodara - 390 007, Gujarat, India, on or before **16:00 Hrs. (IST) of 24.09.2013 (Tuesday)** or such other extended date as may be notified by GSECL (“Physical Bid Due Date”).
- g) The “Physical Bids” should be sent only by Registered Post Acknowledgement Due (RPAD)/Speed Post/Courier. Bidders should note that the delivery of the “Physical Bids” by hand or through telegraphic/ facsimile/ telex message/email shall not be accepted by GSECL under any circumstances.
- h) Physical Bids received after the Physical Bid Due Date, will not be considered and no further correspondences will be entertained by GSECL in that regard.
- i) Erasures or corrections or overwriting in the Physical Bid, if any shall be initialed by the person signing the Bid failing which the Bid shall be liable for rejection.
- j) Each page of the “Physical Bid” shall be numbered consecutively, signed and sealed.

2.4.11. Bidder shall note that it is mandatory for the Bidders to submit the Bids in both modes *i.e.* “Online Bids” and “Physical Bids”. In case of non-receipt of either “Online Bids” or “Physical Bids” on or prior to the prescribed time (that is, Bid Due Date or Physical Bid Due Date, as applicable) under this Tender Document, the Bids of the Bidder shall be liable for rejection by GSECL.

- 2.4.12. GSECL may at its discretion extend the deadline for the submission of Bids by amending the Bid Due Date or Physical Bid Due Date in the Tender Document, in which case all rights and obligations of GSECL and the Bidders will be subject to the Bid Due Date or Physical Bid Due Date as extended.
- 2.4.13. In case of an unscheduled holiday in [Vadodara], Gujarat, India being declared on the prescribed Bid Due Date or Physical Bid Due Date, as the case may be, the next working day will be treated as the Bid Due Date or the Physical Bid Due Date (as applicable).
- 2.4.14. The Bidder's Bid and the documents attached thereto shall be considered as forming part of the Contract Documents.
- 2.4.15. Bids shall be fully in accordance with the requirement of this Tender Document and the Specifications attached thereto.
- 2.4.16. All information in the Bid shall be in English only.
- 2.4.17. Mode of Submission of the Required Documents:
- a) The Tender Document and Technical Specifications require the submission of several documents to ascertain that the Bidder meets with the Minimum Qualifying Requirements and other technical and commercial qualification requirements prescribed in the Technical Specifications.
  - b) The Bidder shall therefore understand the requirements and submit the documents strictly as prescribed in this Tender Document. Any deviation from this requirement shall lead to disqualification of the Bidders/rejection of Bids at the discretion of GSECL.
  - c) Any failure by the Bidder to adhere to the requirements for preparation and submission of the Bids (Online Bids and/or Physical Bids) shall lead to rejection at the discretion of GSECL.
  - d) Bidders shall bear all costs associated with the preparation and submission of their Bids, and GSECL shall not be responsible or liable for those costs and expenses, irrespective of the conduct or outcome of the Bidding process.
- 2.4.18. Bidders are expected to examine the Tender Document, including all instructions, forms, terms, Specifications, conditions, drawings and other documents and requirements of the Tender Document. Failure to furnish all or any information required by the Tender Document or submission of a Bid not responsive to the Tender Document in every respect may result in the rejection of the Bid. It should be particularly noted that there shall be no change in the proforma for bank guarantee for Earnest Money Deposit. Bidders shall be deemed to have understood and taken into account all the terms and conditions prescribed in the Tender Document.

2.4.19. The Bids submitted shall become the property of GSECL and GSECL shall be under no obligation to return the same to the Bidder.

**2.5. TENDER FEE AND EARNEST MONEY DEPOSIT:**

2.5.1. The Bidder shall pay a non-refundable Tender fee of INR 15,000 (Rupees Fifteen Thousand only) by way of a crossed demand draft or banker's cheque, in the name of Gujarat State Electricity Corporation Ltd., payable at Vadodara. The Tender fee shall be submitted with the Physical Bid in the manner prescribed above.

2.5.2. In addition, all Physical Bids shall be accompanied by an unconditional earnest money deposit in an amount equal to Rs. 6,00,00,000 (Rupees Six Crores) per million Mt of quoted Coal quantity offered by the Bidder in its Bid, in any one of the following forms ("**Earnest Money Deposit**"):

a) by way of crossed Demand Draft or Banker's Cheques in the name of Gujarat State Electricity Corporation Ltd., payable at Vadodara.

**OR**

b) by way of an unconditional and irrevocable bank guarantee in favour of Gujarat State Electricity Corporation Limited, in the form annexed hereto as Annexure-I, from any of the following: (i) Indian Nationalized Banks, including public sector banks (IDBI Bank Ltd.), (ii) private sector banks (AXIS Bank /ICICI Bank/ HDFC Bank), (iii) commercial banks (Kotak Mahindra Bank/Yes Bank/IndusInd Bank/Ratnakar Bank), (iv) Regional Rural Banks of Gujarat (Dena Gujarat Gramin Bank) and (v) Co-operative Banks of Gujarat (Kalapur Commercial Co-op. Bank Ltd./ Rajkot NagarikSahakari Bank Ltd./ Ahmedabad Mercantile Co-op. Bank Ltd./The Mehsana Urban Co-operative Bank Ltd./NutanNagarikSahakari Bank Ltd.).

The validity of the above Bank Guarantee shall be as per Bid Guarantee Form for EMD (Annexure-I) and the same shall be extended as may be required by GSECL in the event of an extension of the Technical Bid Opening Date.

2.5.3. Any Bid not accompanied by the Earnest Money Deposit and/or Tender fee, or with earnest money deposit and/or Tender fee in the form or amount other than specified hereinabove shall be liable for rejection.

2.5.4. The Earnest Money Deposit shall be forfeited by GSECL if:

- a) the Bid is revoked during its validity period;
- b) the prices are changed unilaterally by the Bidder after the submission of the Bids and during validity of the Bid,
- c) GSECL accepts the Successful Bidder's Bid and the Successful Bidder(s) refuses to accept the Letter of Intent or fails to enter into the Contract after the Letter of Intent is issued to such Bidder,

- d) the Successful Bidder(s) fails to submit Performance Bank Guarantee within the period specified.
- 2.5.5. GSECL shall return the Earnest Money Deposit to all unsuccessful Bidders, whose earnest money deposit is not forfeited, on their request in accordance with the Tender Document, after completion of the Tendering process (that is, upon execution of the Contract with the Successful Bidder and submission of Performance Bank Guarantee by the Successful Bidder).
- 2.5.6. The Earnest Money Deposit of the Successful Bidder shall be returned only upon execution of the Contract Agreement with the Successful Bidder and submission of the Performance Bank Guarantee in accordance with the Tender Document.
- 2.5.7. No interest shall be paid on the Earnest Money Deposit.
- 2.6. SIGNATURE ON THE BID**
- 2.6.1. The Online Bids shall be submitted with the Digital Signature Certificate (meant for e-Tendering) of the authorized person of the Bidder.
- 2.6.2. The Physical Bids must contain the name; designation and place of business of the Bidder, with phone and fax nos. of authorized persons of the Bidder making the Bid, and each page of the Bid must be signed and stamped on behalf of the Bidder, with the usual signature of the authorized person of the Bidder. The authorized signatory of the Bidder submitting the Physical Bids must be the same as the person in whose name the Digital Signature Certificate has been obtained for submitting the Online Bids.
- 2.6.3. Bids by a Consortium must be furnished with the full names of all Members and be signed on behalf of each of the Members by the Lead Member, authorized in that behalf by each of the Members, followed by the signature and designation of the person(s) making the Bid on behalf of the Lead Member. Suitable letters of authority issued by each of the Member in favour of the Lead Member shall be furnished with Bid.
- 2.6.4. Bids by corporations/companies must be signed with the legal name of the corporations/companies, by the authorized signatory of the corporation/company, authorized to bind the corporation/company in the matter. Satisfactory evidences (e.g. board resolutions in case of companies) of authority of the person signing on behalf of such Bidder shall be furnished with the Bid.
- 2.6.5. The Bidder's name stated on the Bid shall be the exact legal name of the Bidder.
- 2.6.6. Bids not conforming to the above requirements are liable to be rejected and the Earnest Money Deposit liable to be forfeited.
- 2.6.7. Once a Bid is submitted no changes will be permitted to be made by the Bidder except in relation to the clarifications sought by GSECL on the Bid.



## **2.7. BID OPENING AND EVALUATION**

- 2.7.1. The Technical Bids of the Bidders (both “Physical Bids” and “On-line Bids”) will be opened first in the office of the Chief Engineer (Fuel), GSECL, VidyutBhavan, Race Course, Vadodara - 390 007, Gujarat, India at **17:30 Hrs. (IST) on 24.09.2013(Tuesday)**, or such other date as may be notified by GSECL to all Bidders, by way of fax or email (“**Technical Bid Opening Date**”).
- 2.7.2. If the Bidder desires to be present at the time of Technical Bid opening, it shall depute its authorized representatives (not more than two persons) in time with due authorization for participating in the Technical Bid opening. All Technical Bids shall be opened by GSECL on the same day. Prior to the detailed evaluation of Technical Bids on the Technical Bid Opening Date, GSECL will determine the responsiveness of each Technical Bid (both Online Bids and Physical Bids) to the Tender Document requirements, and examine the Technical Bids to determine whether they are complete, whether required documents have been furnished, whether the documents have been properly signed, and whether the Technical Bid is generally in order.
- 2.7.3. Thereupon, the envelope containing the “**Tender Fee/ EMD**” will be opened first and then the “**Technical Bid**” envelope will be opened. The Bids which do not contain the requisite Tender Fee and/or Earnest Money Deposit will be rejected and the “**Technical Bid**” envelopes of those Bids will not be opened. Thereupon, GSECL will evaluate the Technical Bids and determine the Bidders whose Technical Bids are found to be technically acceptable in accordance with the Tender Document and Specifications, and conforming to other non-commercial requirements (including Qualification Requirements) of the Tender Document, to the satisfaction of GSECL (“**Qualified Bidders**”). Any discrepancy between the Online Bids and Physical Bids, will lead to rejection of the Bids.
- 2.7.4. The Financial Bids of those Qualified Bidders whose Technical Bids are found to be acceptable by GSECL shall be opened at in the office of the Chief Engineer (Fuel), GSECL, VidyutBhavan, Race Course, Vadodara - 390 007, Gujarat, India on a later date to be notified by way of fax or email by GSECL to the Qualified Bidders after the Technical Bid Opening Date, (“**Financial Bid Opening Date**”). If the Qualified Bidder desires to be present at the time of Financial Bid opening, it shall depute its authorized representatives (not more than two persons) in time with due authorization for participating in the Financial Bid opening. All Financial Bids shall be opened by GSECL on the same day.
- 2.7.5. In case, the Technical Bid Opening Date or the Financial Bid Opening Date is a holiday, the relevant Bids shall be opened on the next working day.
- 2.7.6. GSECL reserves the right to accept or reject any Bids without assigning any reasons thereof. GSECL also reserves the right not to order any quantity against this Tender Document. In such cases, the Earnest Money Deposit will be refunded to the Bidders without any interest. GSECL’s decision in this regard shall be final and binding on all the Bidders.

- 2.7.7. It is not mandatory for the Bidder to quote the prices for Imported Coal to be supplied and delivered for all the Discharge Ports. **It shall be noted by the Bidders that for Sikka Power Station, transportation of Imported Coal shall be undertaken by rail mode only, irrespective of the Discharge Port.**

## 2.8. **POLICY FOR BIDS UNDER CONSIDERATION**

- 2.8.1. Bids shall be deemed to be under consideration immediately after the Bid Due Date. While the Bids are under consideration, Bidders and/or their representatives or other interested parties are advised to refrain from contacting by any means, GSECL and/or its employees/ representatives / consultants/advisers on matters related to the Bids under consideration. GSECL, if necessary will obtain clarifications on the Bids by requesting for such information from any or all the Bidders, in writing as may be necessary. The Bidder will not be permitted to change the Bid after the Bid Due Date, except pursuant to any clarifications sought by GSECL from the Bidders in writing.

## 2.9. **BID CLARIFICATIONS/PRE-BID MEETING:**

- 2.9.1. Bidders may seek clarifications in respect of the Tender Documents. Such requests for clarifications must be sent in writing by email to the following addresses: [cefuel.gsecl@gebmail.com](mailto:cefuel.gsecl@gebmail.com); [sefuel.gsecl@gebmail.com](mailto:sefuel.gsecl@gebmail.com); [eefuel.gsecl@gebmail.com](mailto:eefuel.gsecl@gebmail.com). Such requests for clarifications, if any, should reach GSECL on or prior to **27.08.2013**. GSECL shall issue written interpretations and/or clarifications as it may deem fit in writing by publishing the same on the websites mentioned in Clause 2.4 above. The Bidders are required to check the websites mentioned above for any clarifications issued by GSECL in relation to the Tender Document. All such written clarifications by GSECL shall form part of the Tender Document. Any verbal clarifications or information given by GSECL or its consultants or employees shall not in any manner be binding on GSECL.
- 2.9.2. A Pre-Bid meeting will be held on **03.09.2013(Tuesday)**, at GSECL's Corporate office at VidyutBhavan, Race Course, Vadodara - 390 007, Gujarat, India or any other place designated by GSECL. Any written clarifications issued by GSECL pursuant to the Pre-Bid meeting, shall be binding on all Bidders and form a part of the Tender Document. No extension of time for submission of Bids shall be granted on account of Bidders' request for clarification/information.

## 2.10. **QUALIFICATION REQUIREMENTS**

- 2.10.1. The "**Bidder**" can be a (i) single Bidder bidding on its own or (ii) a Consortium formed by a maximum of three Members. A person cannot submit multiple Bids, either as a single Bidder and/or as a part of a Consortium by forming multiple Consortia with different Members. To qualify technically, Bidder shall satisfy all the following minimum threshold criteria prescribed in this Clause.

- 2.10.2. The Bidder shall have a letter of authority and support for participation in this Tender Document from the miners, from whose mines the offered Coal would be procured (“**Offered Mine**”). After issue of Letter of Intent and confirmation, the Bidder shall submit copies of executed agreement with miners from whose Offered Mines the offered Coal will be procured.
- 2.10.3. In the event of a Bidder being a Consortium, the following requirements must be complied with:
- a) A Consortium may consist of a maximum of three Members.
  - b) The Lead Member shall be a coal miner or a coal trader. **In the event the Bid is submitted by single Bidder, the single Bidder must individually comply with this qualification requirement.**
  - c) The Lead Member should have a minimum experience (directly or through any other agency/company) of either import or export to India of an average of at least 1 million Mt per annum in last three financial years (i.e. F.Y. 2010-11, 2011-12, 2012-13) (at least an aggregate 3 million Mt in last three F.Y.) of Non-coking Steam (Thermal) coal. **In the event the Bidis submitted by single Bidder, the single Bidder must individually comply with this qualification requirement.**
  - d) The Consortium Members who are proposed to undertake the inland handling and transportation of Coal must have carried out stevedoring, clearing and forwarding for aggregate of at least 1.5 million Mt of Coal, dry bulk cargo or other minerals in India, over a period of last 3 years (i.e. from 1<sup>st</sup> April 2010 to 31<sup>st</sup> March 2013). Details of orders executed, with quantity and value, together with names and addresses of the purchaser, with Fax No./ Telephone No. are required to be attached. The Consortium Members shall also submit experience certificates from their customers for their satisfactory performance in support of their offers. Experience certificates should be duly notarized. **In the event the Bid is submitted by single Bidder, the single Bidder must individually comply with this qualification requirement.**
  - e) The Lead Member shall have executed a single order of at least INR 50,00,00,000 (Rupees Fifty Crores) in the last three financial years (i.e. F.Y. 2010-11, 2011-12, 2012-13). A copy of the Purchase Order should be submitted with the Bid. **In the event the Bidis submitted by single Bidder, the single Bidder must individually comply with this qualification requirement.**
  - f) The Consortium Member who are proposed to undertake the inland handling and transportation of Imported Coal should possess an Authorization Letter/ Certificate from the Port Authorities for carrying out port operations by the Member or a Commitment Letter of any authorized agent through whom such Consortium Member will handle the port operations. **In the event the Bidis**

**submitted by single Bidder, the single Bidder must individually comply with this qualification requirement.**

- g) All the Members of the Consortium shall accept joint and several liabilities for all the obligations under the Contract.
  - h) The Bid, and in case of a successful Bid, the Contract Agreement (s) shall be signed so as to legally binding on all.
  - i) The Lead Member shall be authorized by other Consortium members to be in charge and this authorization shall be evidenced by submitting a power of attorney signed by legally authorized signatories of all the Consortium members.
  - j) The Lead Member shall be authorized to incur liabilities and receive instructions on behalf of any one or of all partners of the joint venture/Consortium and the entire execution of the contract including payment shall be done by GSECL exclusively with the Lead Member.
  - k) All partners of the joint venture/Consortium shall be liable jointly and severally for the execution of the Contract in accordance with the Contract terms, and a relevant statement to this effect shall be included in the authorization mentioned under Clause 2.10.2above.
  - l) A certified copy of the agreement or MOU entered into by the joint venture/ Consortium partners shall be submitted with the Bid.
  - m) No change in the joint-venture/Consortium partners will be allowed without the prior permission of GSECL.
- 2.10.4. Each Bidder (that is, a single Bidder as well as Consortium) shall be required to sign an Umbrella Contract Agreement (in the format provided in this Tender Document) to undertake the overall responsibility for the scope of work under the Contract.
- 2.10.5. A Bidder (and/or any of the Lead Member or Members in case of the Bidder being a Consortium) blacklisted by any government organization either nationally or internationally will stand disqualified.
- 2.10.6. The Bidders (whether single Bidders or Consortium) must comply with the following requirements:
- a) Bidder shall have to submit the Bill of Lading copies to evidence their experience of at least an aggregate 3 million Mt of Coal in the last three financial years (i.e. financial years 2010-11, 2011-12, 2012-13) of non-coking steam (thermal) coal as above Cl.No.2.10.3(c).
  - b) Details of orders executed, with quantity and value, together with name and address of their customers with Fax No./ Telephone No. are to be attached.

- c) Bidders shall also submit experience certificates from their customers for their satisfactory performance in support of their offers.

**The Bidder should submit all the above (a), (b) and (c) in respect of the same party to whom it has supplied the Coal.**

2.10.7. Bidder (or any one of the Members of the Consortium) should have the experience of wagon loading/unloading and surface transportation of in India

2.10.8. Minimum Tendering Quantity: Bidders must offer a minimum of 50% of the total Tender Quantity for Sikka Power Station (that is a minimum of 50% of 2.5 million Mt per annum) as indicated in Scope of Work below and shall have to accept the delivery schedule as per the requirements of GSECL.

2.10.9. The Bidder must demonstrate sound financial status as defined in this Clause to the satisfaction of GSECL. Documentary proof including copies of audited annual accounts for the last 3 financial years (i.e. F.Y. 2010-11, 2011-12, 2012-13), bank credit limits, bank references, etc. of the Bidder (and in the case of Bidder being a Consortium, of all Members of the Consortium) shall be attached. The Documentary proof shall include without limitation:

- a) Audited Financial Accounts
- b) List of Banks (RBI scheduled banks only) from which references can be obtained with the contact details i.e. Address, Telephone and Fax Nos. Listing of Bankers shall be deemed an authorization by the Bidder/ Consortium for GSECL to request such references and for the bankers to release them to GSECL.
- c) The Bidder (and in case of Bidder being a Consortium, in addition to and not as a limitation to the above-mentioned criteria, on an aggregate basis as a Consortium), shall have to meet the threshold criteria that the annual accounts of the Bidder for each of the last 3 financial years (i.e. F.Y. 2010-11, 2011-12, 2012-13) shall reflect positive Net Worth of at least Rs. 100 crores as reflected in the Balance Sheets of the Bidder as on March 31, 2013. Further without limitation to the foregoing, in case of the Bidder being a Consortium, the Bidder must demonstrate that:
  - The Lead Member (miner/ trader) must have a positive Net Worth of at least Rs. 80 crores for each of the last three financial years (FY 2010-11, 2011-12 & 2012-13);
  - If applicable, the Member responsible for undertaking the shipping (if applicable) must have a positive Net Worth of at least Rs. 20 Crores for each of the last three financial years (FY 2010-11, 2011-12 & 2012-13);

- If applicable, the Member proposed to be responsible for inland handling must have positive Net Worth for each of the last three financial years (FY 2010-11, 2011-12 & 2012-13).

2.10.10. Bidder shall indicate the name of the miner and Offered Mines (with country of origin), from which the offered Coal will be procured, with the letter of authority and support for participation in the Bid along with a document in the form annexed hereto as Annexure - IX, certifying:

- (i) Reserves in million tonnes (furnish relevant proof);
- (ii) Projected tied-up supplies in million tonnes for the next 5 years based on existing orders (furnish relevant proof);
- (iii) Projected production capacity in million tonnes for the next 5 years (furnish relevant proof);
- (iv) Projected production surplus in million tonnes for the next five years (furnish relevant proof); and
- (v) The specifications of the coal offered

The Bidder (and in case of the Bidder being a Consortium, if the Lead Member is a trader; the Lead Member) must submit an agreement with the miner of the Offered Mines and furnish the documents as listed above.

2.10.11. Notwithstanding anything stated above, GSECL reserves the right to assess the credibility, capability and capacity of the Bidders to perform the Contract should circumstances so require, such an assessment being in the overall interest of GSECL.

2.10.12. GSECL also reserves the right to seek such additional information as it may deem fit to satisfy itself of the eligibility of the Bidder.

2.10.13. The Bidder shall furnish all such additional information and other documents to GSECL as may be required from time to time by GSECL. Any failure to do so shall lead to rejection of the Bids by GSECL.

2.10.14. All experience certificates furnished by the Bidders pursuant to their Bids shall be duly notarized.

## **2.11. DETAILS TO BE FURNISHED**

The Bidders must submit the details as specified in SECTION VI – BIDDING FORMATS

## **2.12. BIDDING DOCUMENTS**

The Bidder's Bids and the documents attached thereto shall be considered forming part of the Contract.

## **2.13. LANGUAGE OF BID**

- 2.13.1. The Bid submitted by the Bidder, and all correspondence, information, documentation etc. pertaining to the Bid shall be in the English Language.
- 2.13.2. Any printed literature / material/ documentary evidence etc. accompanying the Bid like copies of purchase orders, experience certificates, etc. furnished by the Bidder in any other language shall be accompanied by an English translation, in which case, for the purposes of interpretation of the Bid, the English translation shall govern. Failure to comply with this may lead to rejection of the Bid, at the sole discretion of GSECL.

#### **2.14. VALIDITY OF BID**

- 2.14.1. The Bids shall be kept valid for acceptance for a period of 120 (One Hundred and twenty) days from the Technical Bid Opening Date. In case of finalization of the tender is likely to be delayed. The tenderers have to extend the same without change in the prices or any terms and conditions of the offer.
- 2.14.2. GSECL reserves the right to extend the Bid validity period as may be required subject to a period of further three (3) months from the Technical Bid Opening Date. In the event of such extension of the validity period of the Bids, all other terms and conditions including the provisions relating to Earnest Money Deposit shall also continue to be valid for the period of such extension and the Bidders shall duly make efforts to ensure that this condition is complied with and shall bear any costs in this regard. Further in the event of negotiations, the quotations shall automatically be extended until the later of 30 days or when the negotiations are completed and the Contract is signed.
- 2.14.3. During the Bid validity period, the Bidders shall not withdraw or amend the Bids. A Bid valid for a shorter period shall be liable for rejection by GSECL.

#### **2.15. REJECTION CRITERIA**

- 2.15.1. Any deviation/ modification/ discrepancy between the data/ details/ documents of the Bids submitted by the Bidder in the Online Bids and the Physical Bids shall not be permitted and would lead to rejection of the Bids. No further communication in the matter shall be entertained by GSECL.
- 2.15.2. It is mandatory for the Bidder to submit the “Technical Bid” in both modes i.e. Online Bid and Physical Bid. In case of non-receipt of either “Online Bids” or “Physical Bids” within the time periods prescribed in this Tender Document, their Bid shall be ignored.
- 2.15.3. Bids, which are not complete in all respects, or are not accompanied with Tender Fee/ Earnest Money Deposit, in full amount, shall be liable for rejection without any requirement of intimation to the Bidders.

- 2.15.4. Any Bid not accompanied by Tender Fee and Earnest Money Deposit of the amount specified in this Tender Document or of less than the amounts specified in the Tender Document shall be disqualified.
- 2.15.5. Bids with Earnest Money Deposit of shorter period than specified shall be rejected.
- 2.15.6. The Bids offering coal inferior to the acceptable range as prescribed in Section V will be liable for rejection.
- 2.15.7. If the Bidder indicates the prices or any other commercial information in the Technical Bid then the Bid will be rejected.
- 2.15.8. Any Bids not complying with the requirements of this Tender Document shall be liable for rejection.
- 2.15.9. If the Bidder submits any incorrect or false or misleading information in its Bid, GSECL will reserve the right to reject such Bid. If at any time (irrespective of whether the Contract has been awarded), it is found that the documents, information, averments and/or data submitted by the Bidder in the Bid, and based on which the Bidder has been considered eligible or successful or has been awarded the Contract is incorrect or false or misleading to the extent that had the correct or true information been made available to GSECL at the time of Bid evaluation, the Bid would have been declared ineligible or unsuccessful, the Bidder shall be forthwith disqualified or, as the case may be, the Contract awarded based on such incorrect or false or misleading information shall be cancelled and the Bid bond/performance bank guarantee deposited shall be appropriated by GSECL towards GSECL's cost, and loss and damage to GSECL.
- 2.15.10. GSECL reserves the right to reject any Bid in part or full without assigning any reasons therefor.
- 2.15.11. If the Bids are rejected by GSECL in accordance with this Tender Document, the Earnest Money Deposit shall be liable to be forfeited.

**2.16. PRICE BASIS, CURRENCIES, PAYMENT, AND OTHER SPECIFICATIONS**

- 2.16.1. The Bidder is to note that the payments shall be made by GSECL under the Contract in Indian Rupees only.
- 2.16.2. The FOB price, Ocean Freight and Insurance quoted in USD by Bidders shall be converted to Indian Rupees using RBI Reference Rate on Base Date for Foreign Exchange.
- 2.16.3. The Bidders shall quote the landed price( i.e., CIF Price and Inland Handling charges) of Imported Coal at the Sikka Power Stations per the price schedule specified in the Tender Document.



- 2.16.4. Bidders shall be responsible for obtaining from the concerned governmental authorities all necessary and applicable statutory clearances/ approvals/ licenses required for supply of Imported Coal on CIF/HSS basis and inland handling and transportation of Imported Coal in bulk from the Discharge Port(s) to the Sikka Power Station.
- 2.16.5. Bidder shall offer Imported Coal having specifications and ranges as specified in Section-V of this Tender Document. It is pertinent to note that any offers for Imported Coal by the Bidder which is inferior to the acceptable range specified in Section-V of this Tender Document will be rejected.
- 2.16.6. Bidder shall offer to supply Imported Coal from a single Offered Mine. Blended coal shall not be offered by the Bidder. However, if the Bidder is unable to offer the supply of Imported Coal from a single Offered Mine for the entire term of the Contract, the Bidder shall take prior written permission from GSECL in accordance with the Contract.
- 2.16.7. Bidder is required to furnish ultimate analysis and ash analysis of the Imported Coal in the Technical Bid. Also, the typical granulometry of the offered coal shall also be provided by the Bidder in the Technical Bid.
- 2.16.8. Bidder should offer the prices for the Imported Coal in its Bid considering the “Guaranteed Parameters”, as specified in Clause 5.2 of Section-V (Technical Specifications, Sampling, Analysis and Adjustments).
- 2.16.9. *Base date for foreign exchange:* Bidder shall quote its FOB (Freight On Board) prices and Ocean Freight Base prices (Fixed basis for 5 Years and Variable basis as per existing CERC methodology) considering the Base Date for Foreign Exchange as “Bid Due Date”, which will also be applicable for the Reserve Bank of India Reference Exchange Rate of the base date for the evaluation purposes.
- 2.16.10. *Base month for indexation:* Bidder shall note that the indexation of coal prices will be done on the basis of the average of weekly indices (as per the existing CERC methodology) for the calendar month preceding the Bid Due Date.

## 2.17. **EVALUATION OF BIDS**

- 2.17.1. For The Sikka Power Station offered Landed Prices (inclusive of all taxes and duties), will be evaluated for the Guaranteed Point Values as specified in this Tender Document Section V. For evaluation of CIF Prices; RBI Reference Rate on Base Date (i.e., Bid Due Date) for Foreign Exchange shall be considered for Sikka TPS(i) Fixed price for the total period of 5 years of the contract (2) Price variable as per existing CERC methodology

*Landed Price of Coal at Sikka TPS (L)*

*Evaluated Price for Sikka TPS = -----*

*GCV (AR) of 5500 Kcal/Kg*

*Where,*

1. *Landed Price of Coal at SikkaTPS (L) (Rs./Mt) = CIF at DP (D1) (Rs./Mt) + Customs Duty (E) (Rs./Mt) + IHC from DP to SikkaTPS (J) (Rs./Mt)*
2. *CIF at DP (D1) (Rs./Mt) = Rate in (USD/Mt) x RBI Reference Rate on Base Date*
3. *CIF at DP (D) (USD/Mt) = FOB (A) (USD./Mt) + Ocean Freight Base Rate (B) (USD/Mt) + Marine Insurance (C) (USD/Mt)*

The prices are evaluated on both fixed rate and variable rates quoted by the bidders. The order will be placed on the lowest from the above price as on base date (i.e., Bid Due Date.)

## **2.18. AWARD OF CONTRACT**

- 2.18.1. It shall not be binding upon GSECL to accept the lowest or any Bid. It shall not be obligatory on the part of GSECL to furnish any information or explanation for the cause of rejection of a Bid or part of the Bid. GSECL also reserves the right to split-up the tender, as it deems fit amongst Successful Bidders.
- 2.18.2. If the Bidder who has quoted the lowest price for partial quantity (subject to such quantity being 50% or more of the required quantity) for a thermal power station, the remaining part order will be awarded to the Bidder quoting the second lowest price for the thermal power station, and the Bidder will have to match the lowest quoted price. If the second lowest Bidder is not agreeable to provide the remaining quantity at the lowest price, the third lowest Bidder would be asked to provide the remaining quantity at the lowest quoted price, and so forth. The part order should be acceptable to the Bidder at the same quoted rate, terms and conditions. Moreover, in the event of placement of part orders, the distribution of shipments shall be solely at the discretion of GSECL and the same shall be binding to Bidders.
- 2.18.3. GSECL shall issue a Letter of Intent(LOI) to the Successful Bidder(s). On acceptance of LOI by the bidder, GSECL issue detailed order to the successful bidder(s). The Contract Agreement unless otherwise agreed to shall be signed by the Successful Bidder within 30 (thirty) days from the date of the Letter of Intent/Order at the offices of GSECL or such other place as may be notified by GSECL, on the date and time mutually agreed upon as per the prescribed format, on submission of Performance Guarantee as per format of GSECL as per Clause 4.21 which shall be submitted within 20 (Twenty) days from the date of Letter of Intent. Failure of the successful bidder to complete the requirement of submission of Security-cum-Performance-Bank-guarantee shall constitute a sufficient ground for annulment of the award of contract and forfeiture of the Earnest Money Deposit. The EMD of the successful bidder will be returned only after furnishing of Security Deposit-cum- Performance Bank Guarantee and signing of the Contract Agreement.

### **3. SECTION III: SCOPE OF WORK**

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#### **3.1. INTRODUCTION**

3.1.1. The Scope of Work of the Successful Bidder under this Tender Document and the Contract shall cover Long Term Supply of 2.5 million Mt per annum Non-Coking Steam (Thermal) Imported Coal in Bulk for a period of five years to GSECL on CIF (Cost, Insurance & Freight)/ HSS (Highseas Sales) Basis and Inland handling and transportation for delivery at the respective thermal power station, of Imported Coal having technical specifications as per Section-V of this Tender Document for GSECL's use at the Sikka Power Station of GSECL.

#### 3.1.2. Tentative Annual Requirement of Imported Coal

*(Qty in million Mt)*

TPS	Annual Qty. Planned to be Procured (Tender Quantity)					Discharge Port(s)
	2014-15	2015-16	2016-17	2017-18	2018-19	
Sikka Power Station	2.5	2.5	2.5	2.5	2.5	BediBunder/ Dahej/ Magdalla/ Mundra/ Navlakhi/ Pipavav/Kandla / Okha
<b>Total</b>	<b>2.5</b>	<b>2.5</b>	<b>2.5</b>	<b>2.5</b>	<b>2.5</b>	

3.1.3. The Successful Bidder agrees and acknowledges that GSECL reserves the right to require the Successful Bidder to supply and deliver the Imported Coal pursuant to the Contract at any thermal power station of GSECL other than the Sikka Power Station in accordance

with the terms of the Contract, and GSECL shall be liable to pay the normative freight rate to the Seller (from the Discharge Port to the concerned thermal power station).

### **3.2. SCOPE OF WORK FOR SUPPLY OF COAL ON HIGH SEAS**

3.2.1. The Successful Bidder (in its capacity as Seller under the Contract) shall arrange delivery of the Imported Coal vessels in suitable sizes to deliver 2.5 million Mt annually of Imported Coal for 5 (five) years on high seas sales / CIF (Cost, Insurance, Freight) basis with the uniform monthly delivery rates for the power stations of GSECL as prescribed in Clause 3.1.2.

3.2.2. GSECL has planned to procure the Imported Coal for a period of five years with the delivery commencing tentatively from April - 2014. The quantities mentioned in Clause 3.1.2 are tentative. However, the quantity to be procured and the shipment schedule for the respective power station will be decided by GSECL based on the requirements of Sikkathermal power station or other TPS in the period of procurement. Each Bidder must offer a minimum 50% of the total Tender Quantity for Sikka Power Station as indicated above and shall have to accept the delivery schedule as per the requirement of the Purchaser.

### **3.3. SCOPE OF WORK FOR INLAND HANDLING OF COAL**

3.3.1. The scope of work of the Successful Bidder (in its capacity as Contractor under the Contract) shall include handling port operations of stevedoring, handling and forwarding of Coal including vessel unloading, handling and storage at the Discharge Port, wagon loading and transportation of Coal to Sikka Power Station or any other thermal power station of GSECL as notified by GSECL in accordance with the Contract, with 0% shortage in quantity and without slippage in quality, and other activities in relation to the foregoing scope of work, including without limitation:

- (i) Co-ordination with Master/Agent of vessel for safe anchorage/ berthing at the Discharge Port.
- (ii) Documentation and liaison with Customs and Port authorities for clearance of cargo.
- (iii) On board stevedoring for discharge of Coal into the barges at anchorage / onto berth.
- (iv) Barging from anchorage to Port/ Landing site.
- (v) Unloading of Coal by suitable equipment at berth/jetty.
- (vi) Transportation from berth/jetty to suitable storage plot.
- (vii) Plot rent for suitable storage for **60 days** from discharge completion on ship-to-ship basis. However, the Coal unloaded from the vessel shall be delivered to thermal power station as per the delivery rate advised by the Purchaser without any financial implication on the Purchaser.
- (viii) Road transportation from storage plot to suitable rail siding.
- (ix) Co-ordination with Railways for rake indent, payment of rail freight.
- (x) Loading of Coal in clean & suitable wagon in free time.

- (xi) Monitoring loaded rakes in transit up to thermal power station and delivery of Rail Receipt at thermal power station. Rail Receipt (RR) should be in the name of the Purchaser.
- (xii) Providing security and other measures to minimize handling loss from Discharge Port to Thermal power station.
- (xiii) Contractor shall regulate the loading of rakes as per the requirement, without any financial implications on the Purchaser.

For, Sikka TPS transportation of Import coal upto TPS should be undertaken by Rail mode only.

#### **4. SECTION IV: GENERAL CONDITIONS OF CONTRACT**

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##### **4.1. DEFINITIONS AND INTERPRETATION:**

###### **4.1.1. Definitions:**

In addition to the terms defined elsewhere in these General Conditions of Contract, the following capitalized terms shall have the following meanings:

**Applicable Law** means any law, rule, regulation, ordinance, order, code, treaty, judgement, decree, injunction, permit or decisions of any central, state or local Government authority, agency, court or other body having jurisdiction over the matter in question as in effect from time to time.

**Purchaser** or **Buyer** means Gujarat State Electricity Corporation Limited, a company incorporated under the laws of India and having its registered office at VidyutBhavan, Race Course, Vadodara: 390 007, its successors, representatives, and assigns.

**Seller** means the company, firm or any other business enterprise, with whom Purchaser has entered into the Contract Agreement for Supply of Imported Coal, and shall be deemed to include the Seller's successors and permitted assigns (approved by the Purchaser).

**Bid** means the bid of the Bidder to the Purchaser for undertaking the supply, inland handling, transportation and delivery of Coal, pursuant to the Tender Document, as accepted by the Letter of Intent.

**Contractor** means the company, firm or any other business enterprise, with whom the Purchaser has entered into the Contract Agreement for Inland Handling of Coal , and shall be deemed to include the Contractor's successors and permitted assigns (approved by the Purchaser).

**Contract** means the respective Contract Agreement signed by the Purchaser and the Seller / Contractor including all attachments and appendices thereto and all Contract Documents incorporated by reference therein.

**Contract Agreement** means the contract agreement pursuant to Letter of Intent, and all subsequent modifications/ amendments to record the Contract as a result of the communications or negotiation proceedings between the Parties.

**Letter of Intent** means the formal acceptance of the Bid of the Contractor and the Seller by the Purchaser pursuant to the Tender Document.

**Metric Tonne or Mt** means one Metric Tonne.

**Imported Coal** or **Coal** shall mean non-coking steam (thermal) imported sized coal meeting the requirements of the Contract and the Specifications set out in Section-V of the Tender Document, required to be sold by the Seller and purchased by the Purchaser in accordance with and subject to the terms of the Contract.

**Offered Mine** means the Coal mine offered by the Seller pursuant to its Bid, from which the Coal is offered to be supplied by Seller.

**Party** means the Purchaser, the Contractor or the Seller as the context may require.

**Services** mean all services required for Supply of Imported Coal to GSECL on CIF/ highseas sales basis and for inland handling and transportation of the Imported Coal in bulk from the Discharge Port(s) to Sikka Power Station of GSECL.

**TPS** or **Delivery Point** for the Contractor for the respective power station is the wagon tippler in case of rail transportation after weighment of Coal at the weighbridge at the respective Thermal Power Station (TPS).

**Term** means the Initial Term, and the Extended Term if any.

**Tonne** means one thousand kilograms.

**Effective Date** means the date on which the Contract comes into effect, as defined in the Contract Agreement.

**Government**” shall include the President of India, the Government of India, the Governor and the Government of any State in India, any Ministry or Department of the same and any local or other authority exercising powers conferred by Law (including without limitation any statutory authority, tribunal, board, or court) and any authority or instrumentality thereof.

**Reference Exchange Rate** for any vessel shall be the Reserve Bank of India Reference Exchange Rate of US\$ v/s INR prevailing on the date of Bill of Lading of the vessel OR the hedged FOREX Rate (US\$ v/s INR) at which the FOREX Cover is obtained as per the mutual agreement. If RBI reference rate of the date of Bill of Lading is not available due to holiday or otherwise then FE rate of the next immediate day will be considered for the purpose of payment.

*The above-referred stipulation for obtaining FOREX Cover may be exercised in the following manner:*

*The Seller shall advise the Purchaser the prevailing rate at which a FOREX Cover through an authorized dealer can be obtained with a suitable mechanism. The Seller shall also advise the prevailing premium for the FOREX Cover. The Purchaser will decide whether to hedge the transaction and to obtain a FOREX Cover or not. If the Purchaser opts to hedge the transaction then the Seller shall take a FOREX Cover and hedge the transaction. The cost of the same (premium) shall be on account of the*

***Purchaser. If the Purchaser has opted to take a FOREX Cover and the Purchaser has left the transaction uncovered and if the exchange rate goes adverse then no exchange rate variation shall be paid to the Seller. Exact modalities, within the prevalent guidelines of RBI and the provisions of FEMA in the matter, shall be finalized at the time of award of the contract.***

#### 4.1.2. Interpretation

In this Contract, unless the context indicates otherwise:-

- (i) Any reference to an ***affiliate*** of any person shall be construed as a reference to any entity, which directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with the Party. For the purposes of this definition, “**Controlling**”, “**Controlled by**” or “**Control**” with respect to any Person, shall mean: (a) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person whether through the ownership of voting securities, by agreement or otherwise, or (b) the power to elect more than one-half of the directors, partners or other individuals exercising similar authority with respect to such Person, or (c) the possession, directly or indirectly, of a voting interest of more than 50%; Provided that a holding or subsidiary company of any entity shall be deemed to be an affiliate of that entity to a subsidiary or holding company, or a subsidiary of a holding company of such a person;
- (ii) Any reference to this ***Contract*** shall be construed as including a reference to its Schedules and Annexes;
- (iii) Where a word or phrase is defined under the terms hereof, its other grammatical forms have a corresponding meaning;
- (iv) Any reference to a ***month*** shall be construed as a reference to a calendar month;
- (v) Any reference to a ***person*** shall be construed as a reference to any natural person, firm, company, corporation, society, trust, Government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above;
- (vi) Any reference to a ***notice, form, consent or approval*** of a Party and agreement between the Parties, means a written notice, consent, approval or agreement;
- (vii) Any reference to a ***Recital, Clause, Section, Schedule, Annexure, Paragraph*** shall be construed to be a reference to a recital, a clause, a section, a schedule, an attachment, an annexure and a paragraph respectively of this Contract;
- (viii) Words importing a ***gender*** include all genders;
- (ix) Save where the contrary is indicated, any reference in this Agreement to:
  - (a) words importing the singular shall include the plural and vice versa;



- (b) a person shall be construed as including a reference to its successors, permitted transferees and permitted assigns in accordance with their respective interests;
  - (c) this Agreement or any other agreement or document shall be construed as a reference to that agreement or document as it may have been or may from time to time be amended, varied, novated, replaced or supplemented;
  - (d) references to any statute or enactment shall be construed as a reference to such statute as it may have been or may from time to time be consolidated, modified, amended or re-enacted re-enacted (with or without modification) and includes all instruments or orders made under such statute or enactment;
  - (e) a time of day shall be construed as a reference to Indian Standard Time.
- (x) The table of contents and any headings in this Agreement are for ease of reference only and shall not affect the interpretation of this Agreement.

#### **4.2. ORIGIN**

4.2.1. The Seller shall supply the Imported Coal to the Purchaser from the Offered Mine. The Seller represents and warrants that the Seller shall have the right to supply the entire quantity of Imported Coal from the Offered Mines to enable the Seller to supply Imported Coal in accordance with the terms of this Contract.

4.2.2. Throughout the Term, the Seller shall ensure that the Offered Mines maintain sufficient reserves Coal Reserves as may be required for Seller for full performance of Seller's obligations hereunder, including its obligation to deliver to the Purchaser required quantities of Imported Coal in accordance with the terms of this Contract. In the event and to the extent that the Imported Coal is insufficient and/or inadequate to enable the Seller to comply with its obligations hereunder at any time during the Term of the Contract for any reason whatsoever (including, without limitation, Force Majeure), the Seller shall be under an obligation to source the Imported Coal with identical Technical Specifications from an alternative source of foreign origin outside India, with prior approval of the purchaser..

#### **4.3. ORDER QUANTITY TOLERANCE**

Quantity tolerance of up to 5% above the Annual Contracted Quantity (ACQ) shall be applicable at the discretion of the Purchaser.

#### **4.4. OBLIGATION TO SELL AND PURCHASE**

Subject to and in accordance with the terms of this Contract, during the Term, Seller agrees to sell and deliver to Purchaser, and Purchaser agrees to purchase, accept from Seller and pay for, the Coal to be delivered at the Discharge Port. The Contractor agrees to undertake the inland handling and transportation of the Coal delivered by the Seller at the Discharge Port for delivery to the respective TPS.

#### 4.5. QUANTITY

##### 4.5.1. Annual Contracted Quantity

The “**Annual Contracted Quantity**” or “**ACQ**” shall be equal to Yearly contracted quantity of Import coal as per the contract agreement for each Contract Year. The date of commencement of First contract year shall be considered from the date of Bill of Lading of the First vessel.

##### 4.5.2. Adjusted Annual Contracted Quantity

The “**Adjusted Annual Contracted Quantity**” or “**AACQ**”, for a given Contract Year, shall be equal to:

- a) the Annual Contracted Quantity; minus
- b) Any quantity of Coal that Purchaser would have purchased but was prevented from purchasing by reason of Force Majeure; minus
- c) Any quantity of Coal that the Seller would have supplied but which Purchaser rejected on account of failure to meet the Specifications; minus
- d) Any Scheduled Maintenance Quantities; minus
- e) Any Forced Outage Quantities.

##### 4.5.3. Purchaser’s Obligation to Take or Pay

- a) In respect of a Contract Year, the Purchaser shall take delivery from Seller of, and pay for, or pay for if not taken, a quantity of Imported Coal equal to 70% (seventy percent) of the Adjusted Annual Contracted Quantity, *less*: (i) any quantities of Imported Coal not made available and/or delivered by Seller during such Contract Year for any reason, including Force Majeure, and (ii) any quantities of Imported Coal not taken by Purchaser during such Contract Year for reasons of Force Majeure (the “**Annual ToP Quantity**”).
- b) Subject to Clause 4.5.3 (a) above, if on the last day of a Contract Year, the total quantity of Imported Coal taken by Purchaser in that year is less than the Annual ToP Quantity for such Contract Year (such shortfall being referred to as “**Annual Deficiency Quantity**”), Purchaser shall pay to Seller an amount calculated as Annual Deficiency Quantity multiplied by the applicable Weighted Average FOB Price for such Contract Year (“**Annual Deficiency Payment**”). Seller shall invoice Purchaser for such Annual Deficiency Payment and Purchaser shall pay such invoiced amounts in accordance with Clause 4.19.

#### 4.5.4. **Make Up Quantities**

- a) If Purchaser has paid Seller Annual Deficiency Payment for any Annual Deficiency Quantity in respect of any Contract Year, then in any subsequent Contract Year and during the Recovery Period, Purchaser shall have the right to request from Seller, the delivery of an equal quantity of Imported Coal (“**Make Up Coal**”).
- b) In the event that Purchaser has accrued the right to Make Up Coal in any Contract Year, then in any subsequent Contract Year, Purchaser shall have the right to receive a credit for all quantities of Imported Coal taken above the Annual ToP Quantity, by a quantity up to the outstanding balance of Make Up Coal at the end of the previous Contract Year calculated in accordance with this Clause 4.5.4 (on a first in first out basis).
- c) For any Make Up Coal that is taken by Purchaser in any Contract Year, Purchaser shall pay to Seller the difference (if such difference is positive) between (i) the weighted average FOB price for the coal taken during the Contract year and (ii) the amount of Annual Deficiency Payment (or part thereof) paid by Purchaser previously on account of Annual Deficiency Quantity which gave rise to such Make Up Coal (on a first in first out basis); provided that in the event such difference is negative, Seller shall pay the difference to Purchaser in accordance with Clause 4.19).
- d) If it is reasonably expected that an outstanding entitlement to Make-Up Coal shall exist at the end of the Term, Purchaser may request (no later than one hundred and eighty (180) days prior to the end of the Term) an extension of the term for taking outstanding entitlement to Make-Up Coal by up to [18 (eighteen)] months (the “**Recovery Period**”), which request shall be effected if at the end of the Term there is an outstanding entitlement to Make-Up Coal.
- e) Any outstanding entitlement to Make-Up Coal existing at the end of the Term shall be (i) made available by Seller during any Recovery Period; or (ii) forfeited if no Recovery Period is requested pursuant to Clause 4.5.4 (d), and in either case the entitlement to Make-Up Coal shall be reduced to zero (0); provided that upon any such forfeiture, the Seller shall reimburse to the Purchaser the amounts paid by the Purchaser towards the relevant Annual Deficiency Quantity, together with interest thereon at SBI PLR+2% per annum.
- f) Seller shall be obliged to accept a request for Make-Up Coal.
- g) Seller shall repay the amounts attributable to any outstanding entitlement to Make-Up Coal, together with interest thereon at SBI PLR+2% per annum, if Seller does not make available the corresponding quantity of Make-Up Coal till the expiry of the Recovery Period.

#### 4.5.5. Maintenance Quantities

- a) The Parties acknowledge that from time to time Purchaser will need to undertake scheduled maintenance of the Purchaser's Facilities in conformity with the recommendations of the contractor of such Purchaser's Facilities. The Purchaser shall, with a prior notice of 1 (one) month, notify the Seller of the tentative dates/days of, and tentative reduction in quantity of Imported Coal, on account of the scheduled maintenance of the Purchaser's Facilities and the percentage reduction in the Annual Contract Quantity. The Purchaser shall be relieved of its obligation to receive Coal and pay for Coal not taken during the scheduled maintenance period for Purchaser's Facilities in relation to Purchaser's Facilities ("**Scheduled Maintenance Quantity**").
- b) Without prejudice to the foregoing, in the event of any unforeseen circumstances or emergencies resulting in shutdown of any unit(s) of Purchaser's Facilities for a period exceeding 30 (thirty) days, Purchaser shall notify the Seller of such forced shutdown, and tentative reduction in quantity of Imported Coal, on account of the forced shutdown of the Purchaser's Facilities and the percentage reduction in the Annual Contract Quantity. The Purchaser shall be relieved of its obligation to receive Coal and pay for Coal not taken during such shutdown period for Purchaser's Facilities ("**Forced Outage Quantities**")

#### 4.5.6. Seller's Failure To Supply

- a) Unless excused by Force Majeure or unless otherwise permitted by the Purchaser in writing, in case the Seller fails to make available or deliver all or part of the quantity notified by Purchaser to Seller for delivery in accordance with this Contract, Seller shall pay to Purchaser, on the date on which the payment would otherwise be due in respect of the month in which the failure of the Seller occurred, an amount for each Mt of Coal of such deficiency equal to: (A) the price at which Purchaser is able, or absent an actual purchase at the time of Seller's breach, would be able to purchase or otherwise receive comparable supplies of Coal of identical quality, plus (B) any differential costs incurred by Purchaser in purchasing such substitute Coal ("**Replacement Price**") minus (C) the Contract Price agreed to for the specific shipment of Coal; except that if such difference is zero or negative, then neither Party shall have any obligation to make any deficiency payment to the other.
- b) Purchaser shall raise an invoice on the Seller in respect of the amounts payable by Seller pursuant to Clause 4.5.6 (a) above, which amounts shall be payable by Seller within 30 (thirty) days from the date of the invoice. Provided that the Purchaser shall be entitled to set off any amounts due from the Seller against any amounts due by Purchaser to Seller, without prejudice to any of the rights or remedies available to Purchaser herein.

#### 4.6. TERM OF THE CONTRACT

4.6.1. The initial term of the Contract shall commence on the Effective Date (i.e, Bill of Lading date of First vessel) as per the contract and shall, unless terminated earlier by either Party in accordance with this Contract, shall end on the expiry of a period of 5 (five) years from the Effective Date (“**Initial Term**”).

#### 4.7. QUALITY OF COAL

##### 4.7.1. Quality of Coal

- a) Seller shall cause all Coal delivered to the Purchaser to comply with the Specifications.
- b) There are serious economic and operational costs associated with the receipt of off-specification coal. The Seller will not load the vessel with the coal having specifications beyond the rejection limits specified in Section-V, otherwise it will be rejected and payment will not be made for such coal
- c) In the event that the Coal made available for offtake by the Seller at the Discharge Point varies from the Specifications, quality adjustments shall be calculated as per Clause 4.8.
- d) In case, if the values of the coal quality parameters exceed rejection levels as per Section-V of the Tender specification, Purchaser shall have the right to reject the entire lot. In case of rejection, **Seller has to remove such rejected quantities at his own cost and shall compensate the cost incurred by the purchaser viz. customs duty, port charges, etc. for the rejected quantity**
- e) The Seller shall take all reasonable steps to ensure that the Coal made available for off-take to Purchaser at the Discharge Port shall be free of stones and metal objects. The Seller shall adopt prudent industrial practices to avoid a mixture of foreign materials like stones and metallic objects during mining of Coal and that stones or foreign material extraneous to Coal are not delivered with the Coal.

##### 4.7.2. Sampling and Analysis

- a) General
  - A. The quality of Coal delivered by Seller shall be determined by drawing Coal samples at the Loading Port, the Discharge Port, and the TPS, in respect of each shipment.

- B. The sampling, analysis and weighment of each shipment shall be undertaken in accordance with then current published ASTM standards.
- b) At Load Port:
- A. The Seller shall, at its own cost and expense, appoint an internationally accredited inspection agency for undertaking sampling, analysis and weighment of a Coal shipment. The Inspection Agency shall be appointed by the Seller from a list of the Inspection Agencies named by Seller for the said purpose and with the prior consent of Purchaser.
  - B. The Inspection Agency shall carry out the sampling and analysis in accordance with the then current ASTM standards at the Load Port.
  - C. The Inspection Agency shall issue a Certificate of Analysis indicating its determination vis-à-vis all the parameters of Specifications in accordance with then current ASTM standards at the Load Port. The Certificate of Analysis shall also state the name of the mine from which the Coal is dispatched along with detailed sub-lot wise analysis results from the analysis carried out at the Load Port and the details of the calculations involved in the analysis.
  - D. Seller shall also arrange for detailed mineralogical analysis of Ash content for Purchaser's records. Seller shall also provide ultimate analysis on Dry Ash free basis for constituents like Carbon, Hydrogen, Nitrogen, Sulphur and Oxygen (By difference).
  - E. The weight of shipments to be delivered by vessel(s) shall be determined at the Seller's cost, by draft survey at the Load Port, upon completion of loading and prior to departure of the vessel from the Load Port. All such draft surveys at the Load Port shall be conducted by the IIA.
  - F. The Purchaser reserves the right, at its own cost and expense, to witness the sampling, weighment and analysis at the load port, through its representatives. The Purchaser also reserves the right to inspect the site of the Offered Mine and any intermediate stack yard at any time during working hours. All the costs for the representatives deputed by the Purchaser for such inspection shall be borne by the Purchaser.
  - G. Quality shall be subject to penalties as stated in clause No.5.4.
- c) At Discharge Port
- (i) The Purchaser shall appoint an Independent Inspection Agency (IIA) to determine the quantity and quality of Coal at the Discharge Port.

- (ii) The IIA shall carry out sampling and analysis at its laboratory, of the Coal received at the Discharge Port in accordance with then current published ASTM standards at the Discharge Port.
  - (iii) Quantity of coal shall be determined by draught survey and quantity of Stones, shales, extraneous materials etc. by stack survey through approved marine licensed surveyor on a ship-to-ship basis and shall be final for payment subject to penalties as stated in Clause No.5.4. The IIA will monitor Coal stocks at Discharge Port, dispatched to railhead and rake loading.
  - (iv) The draft survey, stack survey and analysis carried by the IIA at the Discharge Port, will be binding on the Parties. If required, the Seller and Contractor, at their cost and expense, may depute their authorized representatives to witness the same.
  - (v) The Certificate of Sampling and Analysis and the Draft Survey and Stack Survey Reports issued by the IIA shall be final and binding on the Parties for purposes of determination of Contract Price, and payments to Seller and Contractor.
- d) At TPS:
- (i) The IIA appointed by Purchaser, shall undertake the sampling at TPS and the IIA shall perform a joint analysis in the TPS laboratory, by following the procedure as below:
    - (i) Samples scoops shall be taken from the wagons before unloading.
    - (ii) Relevant ASTM/IS standards shall be followed for sampling and analysis.
    - (iii) The IIA may witness the calibration of the weighbridge at TPS as carried out time to time.
    - (iv) In event of failure of weighbridge at TPS, quantity as per RR shall be deemed to be the quantity of Coal received at the TPS.
  - (ii) The fees of the Independent Inspection Agency (IIA) pursuant to Clause 4.7.2 (c) and (d) shall be borne entirely by the Purchaser.
  - (iii) Adjustment for quantity of Coal shall be done vessel-wise on rake-to-rake analysis results (for rail delivery) in accordance with Clause 5.4.

The above-mentioned analysis shall be final and binding for the purpose of payment and application of adjustment as specified in the Contract.

- (iv) Adjustment for quality is to be done based on the analysis results at the TPS as per Section-V on a rake-to-rake basis.
  - (v) Weighment: Quantity of each Coal rake delivered to TPS will be weighed at in-motion weighbridge of the TPS. For delivery of Coal through road transportation; the quantity of each dumper will be weighed at weighbridge of the TPS. In the event of failure of weighbridge at TPS, quantity as per RR will be deemed to be the quantity of Coal received at the TPS. Payment to the Contractor shall be based on the lowest of (i) the quantities received at Discharge Port, (ii) quantity as per RR and (iii) quantities received at TPS.
  - (vi) The Purchaser shall have the right to undertake the sampling and analysis of Coal quality at the Discharge Port and TPS by a third party agency, in addition to the IIA appointed by the Purchaser for quality and quantity analysis.
- e) The Seller and the Contractor shall extend their fullest co-operation to IIA appointed by the Purchaser to perform its functions and duty effectively.
  - f) The sampling and analysis carried out at the Discharge Port and the TPS shall be binding on the Contractor and Seller. If desired, the Seller and the Contractor may, at their cost and expense, depute their authorized representatives to witness the same.

#### **4.8. ADJUSTMENTS FOR QUANTITY AND QUALITY FOR INLAND HANDLING OF COAL**

- 4.8.1. If Coal delivered under a shipment varies in quality from the Specifications or in quantity, and Purchaser does not reject the same as per clause No. 4.7.1 , quality and quantity adjustments shall be calculated pursuant to the formulas set forth below:
- 4.8.2. Adjustment for quantity shall be done vessel-wise on the analysis results at TPS as per Clause 4.7.2 and Section V.
- 4.8.3. For the purpose of final payment of charges to the Contractor, the total charges will be calculated as follows:

*(Lowest of quantities at Discharge Port, RR and TPS) x (Inland Handling Charges + Normative Railway Freight)*

In the event the Purchaser has a paid a higher amount to the Contractor upon delivery at TPS to the Contractor for the purpose of 70% payment to the Contractor pursuant to Clause 4.17.2 than the amounts that would otherwise have been payable by Purchaser



upon final determination of the charges payable to the Contractor pursuant to this Clause 4.8.3, then any such excess amounts paid by Purchaser shall be adjusted against the amounts remaining to be paid in respect of the remaining 30% payment to the Contractor.

4.8.4. Adjustment for quality shall be done based on sampling and analysis results at the TPS as per Section V on a rake-to-rake basis.

#### 4.9. **SHIPPING TERMS**

4.9.1. Any quantities of Coal required to be delivered under this Contract shall be transported to and delivered at the Discharge Port by Seller by vessels, each of which conform to the following specifications:

- a) Vessel Type: The vessel used for delivery by the Seller shall not be older than 15 (fifteen) years. In the event the age of the vessel is older than 15 (fifteen) years, any expenses, including any overage premium and all additional expenses arising on account of the age of the vessel, and any other incidental costs and damages arising on account of vessel's age, shall be to the account of the Seller.
- b) Seller shall be responsible for the transportation and delivery to the Discharge Port of all quantities of Coal to be sold and delivered to Purchaser under this Contract.
- c) Seller shall charter or arrange for chartering of suitable vessels, in compliance with the terms of this Contract, to carry the required quantities of Coal in full shiploads, in accordance with the delivery schedule provided by the Purchaser.

4.9.2. Seller shall nominate vessel for acceptance of the Purchaser. Such nomination of the vessel shall be at least 21 days in advance of the first day of the delivery date applicable for the particular vessel as mentioned in delivery schedule below. Vessel nomination in less than 21 days in advance from loading may be accepted. However, the acceptance of the vessel at short notice will be at sole discretion of Purchaser. Purchaser will confirm the same within two working days after receipt of the intimation.

4.9.3. The Seller shall not be allowed to replace the nominated vessel once accepted by the Purchaser and sailed from the Load Port. However, such replacement may be permitted by the Purchaser at its sole discretion, without any change to the delivery schedule, in case of unavoidable circumstances upon submission of documentary evidence by the Seller.

4.9.4. In case of replacement of the vessel after the date of Bill of Lading, the CIF Prices as per the Bill of Lading date of the original vessel or as per the replaced vessel, whichever is lower shall be payable. Similarly, the Foreign Exchange Rate corresponding to Bill of Lading date of the original vessel or the replaced vessel, whichever is lower shall be applicable for working out the CIF Price in Rs./Mt.

#### **4.10. PORT OF DISCHARGE**

- 4.10.1. Notice of Receipt (“**NOR**”) can be tendered 24 hours SHINC (Sunday & Holidays Inclusive).
- 4.10.2. Letter of Indemnity: In case of the vessel arrives at the Discharge Port prior to Purchaser receiving the original shipping documents, the Purchaser shall be permitted to discharge Coal against Letter of Indemnity (as per the ship owner’s format) to be furnished on Purchaser’s letterhead.
- 4.10.3. Seller shall ensure delivery of legible non-negotiable copies of documents (as per clause 4.16.3) at least 7 (seven) working days prior to vessel’s scheduled arrival at the Discharge Port to Purchaser. If commencement of discharge is delayed due to delay in delivery of the said documents to the Purchaser, same shall be excluded from time to count.

#### **4.11. INSURANCE**

- 4.11.1. The Seller shall arrange and pay for a marine and inland insurance cover for 110% of the value of Coal up to coal stockyard (from warehouse to warehouse – anywhere in India) for each shipment covering the risks under institute cargo clause ‘C’ including spontaneous combustion and the risks of war, strike, riots and civil commotion from the Load Port up to the coal stockyard anywhere in India or 90 days from the date of loading of cargo at Load Port, whichever occurs first.
- 4.11.2. The insurance policy(ies) shall specify that claims, if any, will be submitted, admitted and paid in US Dollars. The Purchaser shall be shown as the beneficiary while obtaining such insurance. The insurance policy shall allow the Purchaser to make claims in India and all the claims and settlement of dues shall be the responsibility of the Seller.
- 4.11.3. Complete details of the relevant ocean going vessel including but not limited to agreement number, port of loading, name of vessel, quantity of material loaded on board as per the Load Port draft survey weight, number and date of the bill of lading, date of sailing of the vessel, the name of the destination port, expected arrival date at the destination port shall be provided in the insurance policy. Seller shall provide insurance policies to Purchaser evidencing insurances actually arranged. In case such information is provided by the Seller by fax, the Seller shall ensure that the message is faxed in order to ensure clear receipt of the message by the Purchaser.

#### **4.12. DELIVERY SCHEDULE**

##### **4.12.1. Scheduling of the Vessels:**

- a) The Purchaser shall advise Seller of the shipment schedule together with the nominal delivery rate of Coal required in the Letter of Intent/Order. The Delivery Schedule for the first vessel shall commence after 30 (thirty) days from the date of the Letter of Intent, or such later date as advised by Purchaser.

- b) Seller shall plan loading of the second and subsequent vessels as per the nominal delivery rate advised in the order. Since the requirement of imported coal at the power stations is not uniform, the Purchaser will advise the delivery schedule of 10 days duration with cut-off date for every vessel with an advance notice of 30 days.
- c) The Seller shall arrange for loading of the Imported Coal in vessels in suitable sizes for delivery of the Coal at the selected Discharge Port as per the delivery schedule given by the Purchaser for the Power Station.
- d) The date of berthing of the vessel at Discharge Port will be the date of delivery of the vessel quantity at the Discharge Port.
- e) The Seller shall strictly comply with the delivery schedule as advised by the Seller and the delivery of the vessel shall be arranged within the given schedule of the vessel only. However, the early delivery of the vessel may be accepted by the Purchaser at its sole discretion. In such case, the prices payable will be fixed as per Clause 4.16.10 below.
- f) Any delay in arrival of the vessel beyond the cut-off date of delivery of the vessel will be considered as a delay in supply and subject to liquidated damages stipulated under Clause 4.12.5. Further, in such case, the Contract Price payable by Purchaser shall be fixed in accordance with Clause 4.16.11 below.

#### **4.12.2. Transfer of Title and Risk**

- a) Coal to be sold by Seller and purchased by Purchaser pursuant to this Contract shall be delivered by Seller to Purchaser at the Discharge Point. Title to Coal aboard each Vessel carrying such Coal shall pass from Seller to Purchaser 2 (two) nautical miles outside of India's Exclusive Economic Zone upon Purchaser's acceptance of documents and signing of the Highseas Sales Agreement for the said shipment. Provided that notwithstanding the transfer of title in the Coal to the Purchaser as above, risk in and to the Coal shall only pass from the Seller to the Purchaser at the Discharge Port, and immediately thereafter from Purchaser to Contractor. The Seller shall endorse all the necessary documents (including Bills of Lading) in favour of / in the name of Purchaser before the vessel entering into customs barrier and complete all formalities required for Highseas Sales Agreement.
- b) Title to any Coal, in the case the Coal cargo is not delivered by Seller at Discharge Port for any reason whatsoever, will pass from Purchaser to Seller at the first time that the Vessel enters international waters after such discharge.

- c) Nothing in Clause 4.12.2 (a) with respect to the transfer of title and risk shall affect the calculation of the quantity of Coal delivered and the Contract Price to be paid by Purchaser for such Coal pursuant to this Contract.

#### **4.12.3. Seller's Warranty**

Seller warrants that, at the time of delivery of each cargo, it shall have good title to all such Coal to be delivered to Purchaser, the right to sell the same, and that such Coal is free from all liens, claims and encumbrances at the Discharge Port.

- 4.12.4. Contractor shall ensure delivery of the Coal delivered by Seller from the Discharge Port to the Thermal Power Station by rail/road as per the schedule advised by the Purchaser from time to time. The Contractor shall deliver the Coal as per the delivery rate advised by the Purchaser without any extra cost. Purchaser shall not be responsible for any damages/ shortages or loss of material during transportation/ transit of the Coal. While delivering Coal by rail, any and all costs such as idle freight, overloading penalty, demurrage at dispatch shall be borne by the Contractor.

#### **4.12.5. Liquidated Damages for Delayed Supply:**

In case of late delivery of Coal at the Thermal Power Station for any reason whatsoever (including on account of delay in delivery at the Discharge Port by Seller) other than on account of Force Majeure, the Contractor shall be liable to pay liquidated damages to the Seller, calculated at the rate of 0.5% of the total value (Contract Price + inland handling charges) being attributable to the respective delivery scheduled quantity of Coal for each week's delay or part thereof, subject to a maximum of 10% of the total value of the Contract being attributable for respective delivery scheduled quantity. The Parties agree that the liquidated damages payable hereunder are a genuine pre-estimate of loss that will be caused to the Purchaser on account of delay in delivery of the Coal and are not in the nature of penalties.

- 4.12.6. The delivery schedule stipulated by the Purchaser shall be the essence of the contract.

#### **4.13. SERVICE CHARGES FOR INLAND HANDLING CONTRACTOR**

- 4.13.1. The Bidder shall quote their minimum charges for inland handling in Rs./MT for total scope of work of the Contractor, for the designated discharge port(s), in the break-up specified in Financial Bid Format. The quoted charges shall be inclusive of all the costs, taxes, duties and levies except Service Tax, which shall be indicated separately as per Price Schedule Format and shall be paid against the submission of proof of having paid the same (Service Tax). No extra charges are payable over the accepted rates.

- 4.13.2. Bid without cost break-up will not be considered.

- 4.13.3. Statutory Variation: Statutory variation (increase or decrease) on account of the Service Tax shall be allowed as applicable during the contractual period with documentary evidence. Service tax shall be paid on submission of supporting documents having paid the same.

4.13.4. Service charges shall include all Port charges applicable for Cargo handling viz. warfage, plot rent, etc. at unloading port.

4.13.5. The service charge per Mt payable to the Contractor shall be fixed for the Term of the Contract and shall not be subject to any adjustment except for Service Tax (statutory variation as per clause 4.13.3) and Railway Freight charges (as per clause 4.14)..

4.13.6. The service charge (inclusive of Service Tax) per ton paid by Purchaser for Coal delivered under the Contract includes all sums to be borne by Contractor for all taxes of every nature, which are assessed or may be assessed as a result of inland handling and transportation of Coal pursuant to the Contract. Contractor's acceptance of the amounts paid by Purchaser for Coal delivered under the Contract shall constitute full and final settlement of any and all claims by Contractor for costs or expenses (including, without limitation, taxes, fees, governmental impositions, assessments, premiums, and penalties) incurred or paid by Contractor, either while the Contract is in effect or at any time in the future, with respect to the inland handling and transportation of Coal pursuant to the Contract. Contractor agrees to defend, indemnify, and hold Purchaser harmless from and against any claim or liability for any such taxes, fees, governmental impositions, assessments, premiums, or penalties that may be raised against the Purchaser on account of inland handling and transportation of Coal by the Contractor pursuant to this Contract.

#### 4.14. **FREIGHT CHARGES:**

4.14.1. The Contractor will be paid normative Railway freight on the lowest of the quantity received at Discharge Port, RR or TPS (i.e. lowest of the quantity received at Discharge Port, RR or TPS x Normative Railway freight in Rs./MT from Railway siding at Discharge Port to Railway siding at TPS). No extra charges shall be payable by the Purchaser over the applicable Railway freight. Railway siding charges shall be borne by the Contractor. Railway overloading, idle freight or any other penalties and charges shall be borne by the contractor. The normative railway freight effective at the time of supply will be payable, as mentioned above, and in case of any downward or upward variation in the normative Railway Freight, the same would be to the Purchaser's account.

#### 4.15. **PRICE**

4.15.1. The Bidder shall quote its lowest Landed Price, CIF (Cost, Insurance and Freight) Price (FOB Price, Ocean Freight and Marine Insurance) in USD (US Dollar), and Inland Handling Charges (Rs/Mt) of Imported Coal on the Base Date (specified in the Tender Document)), in the Financial Bid Format of the Online Bid. The bidders are required to provide their quotes on both of the following basis:

- a) **Variable on CERC Indexed Basis:** Variable on CERC Indexed Prices for FOB, Ocean Freight and Marine Insurance(Firm)
- b) **Fixed Basis:** Fixed prices for next 5 years

4.15.2. The Landed Price of Imported Coal on the Base Date are to be quoted in the following components:

- (i) CIF Price

(ii) Inland Handling Charges including Railway Freight

Quoted Landed Price on the Base Date (USD/Mt) = CIF Price + Inland Handling Charges including Railway Freight

4.15.3. The CIF prices of Imported Coal on the Base Date are to be quoted in three components of (i) FOB Price (A), (ii) Ocean Freight upto the port (B) and (iii) Marine Insurance (C).

Quoted CIF Price on the Base Date (USD/Mt) = A + B + C

Where,

A = Quoted Base FOB Price (USD/Mt)

B = Quoted Base Ocean Freight (USD/Mt)

C = Quoted Marine Insurance (USD/Mt)

4.15.4. For financial bids placed on “Variable on CERC Indexed basis”, the FOB Price Component and Ocean Freight Component shall be variable and shall be calculated as per the applicable methodology of Central Electricity Regulatory Commission (“CERC”) for payment purpose, as per present practice which is given below. The third component i.e. Marine Insurance shall remain fixed through out the Term.

For financial bids placed on “Variable on CERC Indexed basis”, the methodology of FOB Price and Ocean Freight variation and/or Indexation for the payment purpose for supply of Imported Coal to Purchaser shall be as under.

The CIF Price of Coal payable to the Seller shall be variable as per the formula given below:

a) The CIF Price (Cost, Insurance & Freight) for payment = A + B + C

Where:

A = FOB Price (USD/Mt) to be derived as under

B = Ocean Freight (USD/Mt) to be derived as under

C = Marine Insurance (USD/Mt)

b) **FOB Price:** For financial bids placed on “Variable on CERC Indexed basis”, the above component of FOB Price (A) will be worked out for the payment purpose for the actual date of Bill of Lading of the vessel as per the following formula:

$$\text{FOB Price} = \frac{A \times A2 \times A3}{A1}$$

Where:

A1: **Base Index** value in USD per Mt calculated average monthly, as per the latest CERC methodology, which is currently calculated from the weekly indices of Richard Bay API4, Barlow Jonker, Global Coal New Castle, with weightage 50:25:25 for GCV of 6000:6700:6700 respectively, as published for the

preceding month (Saturday to Friday in respect of the Indices of “Richard Bay API4” and “Global Coal New Castle” and of Friday to Thursday in respect of the Index of “Barlow Jonker”) to the Base Date (i.e. Bid Closing Date). This would be based on the existing CERC methodology.

A2: **Current Index** value in USD per Mt calculated average monthly, as per the latest CERC methodology, which is currently calculated from the weekly indices of Richard Bay API4, Barlow Jonker, Global Coal New Castle, with weightage 50:25:25 for GCV of 6000:6700:6700 respectively, as published for the preceding month (Saturday to Friday in respect of the Indices of “Richard Bay API4” and “Global Coal New Castle” and of Friday to Thursday in respect of the Index of “Barlow Jonker”) to the date of Bill of Lading of the vessel. This would be based on the existing CERC methodology.

A3: **FOB** component quoted in the Tender.

Presently, as per CERC methodology the FOB price are variable as per CERC Index calculated as above, however, in case if CERC revise the methodology for calculation of CERC Index the same will be implemented accordingly.

- c) **Ocean Freight:** For financial bids placed on “Variable on CERC Indexed basis, the above Component of Ocean Freight (B) will be worked out for the payment purpose for the actual date of Bill of Lading of the vessel as per the following formula:

$$\text{Ocean Freight} = \frac{B \times B2 \times B3}{B1}$$

Where:

B1: **Base Index** will be considered monthly average as per Singapore 380 CST Bunker Fuel Price (Also referred to as IFO 380) ex Singapore Warf, as per Clarkson Research Publication corresponding to the Friday of the week preceding the Base Date (Bid Closing Date).

B2: **Current Index** will be considered monthly average as per Singapore 380 CST Bunker Fuel Price (Also referred to as IFO 380) ex Singapore Warf, as per Clarkson Research Publication corresponding to the Friday of the week preceding the date of Bill of Lading of the vessel.

B3: **Ocean Freight** component quoted in the Tender.

- a) **Cap/ Ceiling:** If the delivery period is extended beyond the scheduled Term due to reasons attributable to Seller / Contractor, the CIF Price as applicable on the last day of scheduled delivery period, as calculated above (“**Cap/Ceiling Price**”), shall be applicable for the extended delivery period. However, in case the CIF Price during the extended period is lower than the Cap/Ceiling Price, then the CIF Price as calculated above shall be applicable. Similarly, the Foreign Exchange Rate corresponding to the actual B/L date of the vessel or the FE Rate corresponding to the last day of the scheduled delivery, whichever is lower shall be applicable for working out the CIF Price in Rs./Mt

Accordingly, the CIF Price for the purpose of payment shall be determined as A+B+C i.e. the sum of FOB Price, Ocean Freight and Marine Insurance.

If the order is placed on Fixed price basis, no price variation will be allowed and no indexing will be done for the financial bid prices and the submitted fixed prices will be remain firm through the period of 5(Five) years.

- 4.15.5. The Seller shall issue a certificate, as per Annexure-VIII, for the CIF Price applicable for the particular vessel arrived at, based on the date of Bill of Lading of the vessel and port of discharge; which is verifiable by the Purchaser. The Annexure-VIII as per present methodology of CERC Index, however, in case,if CERC revise the methodology for calculation of CERC Index the same will be implemented and the revised Annexure-VIII will be issued accordingly. However, in case of order placed on Fixed price basis for entire period of 5(Five) years the CIF Price will remain same throughout the period.
- 4.15.6. The prices should be quoted considering Ports facilities to handle the materials and are to include all charges/cost but not limited to, levies, wharfage, shunting, trimming, tallying, royalties, taxes, permits, licenses, customs duties, other charges and cost of production or preservation of the materials, Dock and Harbor dues; port rates, export taxes or other fees or charges, if any, levied because of exportation from the country of origin. Any changes in royalties, taxes, permits, licenses and customs duties and charges in the country of origin or in any country other than India where any such amounts may be payable by the Seller will be borne by the Seller. The price shall be inclusive of all charges/costs of Load Port, freight for carriage of imported Coal from Load Port to any Discharge Port selected by the Purchaser, insurance coverage up to coal stockyard at TPS and any other charges applicable at port of loading and from loading of Coal till passage of title to Purchaser.
- 4.15.7. The price shall also be inclusive of all the port charges related to the vessel at the port of discharge and other incidental expenses such as tonnage dues, light dues, harbor dues, other taxes and charges which are customarily payable for the vessel.
- 4.15.8. The prices stated above are also to include all rights (if any) of patent; registered design or trademark and the Seller shall indemnify the Purchaser against all claims in respect of the same.
- 4.15.9. The “**Reference Exchange Rate**” as defined under clause 4.1.1 shall be considered final for CIF payment.
- 4.15.10. After receipt of the Load Port Documents of a vessel by the Purchaser, Highseas Sales Agreement will be executed as per format given in Annexure-IV for the vessel indicating the quality, quantity of the Coal and highseas sales rate (**HSS Rate**), which will be worked out from the unit CIF rate payable for the vessel as per the Contract, Reference Exchange Rate applicable for the vessel and after adjustment for the quality of Coal. This HSS rate shall be deem to include any highseas sales commission applicable for the vessel. The Seller shall undertake to bear any difference in the amount of customs duty payable over the HSS rate or as assessed by the customs due to any reason.



4.15.11. Marine Insurance: Insurance coverage up to the Coal stockyard (from warehouse to warehouse – anywhere in India) for 110% of CIF value shall be the responsibility of the Seller. The price of imported Coal includes cost of such insurance.

4.15.12. The price per ton paid by Purchaser for Coal delivered under the Contract includes all sums to be borne by the Seller for all taxes of every nature, which are assessed or may be assessed as a result of the sale of Coal pursuant to the Contract. Seller's acceptance of the amounts paid by Purchaser for Coal delivered under the Contract shall constitute full and final settlement of any and all claims by Seller for costs or expenses incurred or paid by Seller, either while the Contract is in effect or at any time in the future, with respect to the production, shipment, or sale of Coal pursuant to the Contract. Seller agrees to defend, indemnify, and hold Purchaser harmless from and against any claim or liability for any such taxes, fees, governmental impositions, assessments, premiums, or penalties.

#### 4.16. **PAYMENT TERMS FOR SUPPLY OF COAL ON HIGH SEAS**

4.16.1. The price payable by the Purchaser to the Seller for each shipment of Coal shall be determined on the basis of the certificate of sampling and analysis at the Load Port issued by the IIA and weighment as per Bill of Lading quantity, after applying the applicable price adjustments if applicable, if any, in accordance with Section V. The Seller shall raise manually signed invoices for the amounts payable by the Purchaser, vessel-wise in accordance with the foregoing.

4.16.2. The Purchaser shall pay 90% (ninety percent) of the amounts invoiced by the Seller pursuant to Clause 4.16.1 above through a letter of credit, on the later to occur of: (i) 45th (forty fifth) day from the date of Bill of Lading, or (ii) 15th (fifteenth) day from the date of arrival of the vessel; or (iii) 15th (fifteenth) day from the first day of the delivery schedule of that vessel, whichever is later.

4.16.3. The letter of credit required pursuant to Clause 4.16.2 shall be opened by the Purchaser with any nationalized/ scheduled/ commercial bank within 7 (seven) working days from the date of receipt of non-negotiable set of Load Port Documents and after executing highseas sales agreement for the vessel. The "**Load Port Documents**" shall comprise of: (i) Certificate of Origin, (ii) Certified Copy of Clean Shipped on Board Bills of Lading, (iii) Certificate of Sampling and Analysis at Load Port. Necessary Load Port Documents for opening of the letter of credit shall be furnished by the Seller within 7 (seven) days from the date of Bill of Lading. The letter of credit opening charges of Purchaser's bank will be to the Purchaser's account, and any other charges (including amendment charges and beneficiary's bank charges) will be to the Seller's account.

4.16.4. Seller shall be required to submit the following documents at least 10 (ten) days prior to the due date of payment under the letter of credit, to the bank with which letter of credit is opened for drawl of 90% payment through letter of credit (as per clause No.4.16.3), with a copy of all such documents to the Purchaser:

- (i) Manually signed invoice of Seller issued pursuant to Clause 4.16.1 for 100% value (with 90% being payable through the letter of credit and balance 10% being

payable later as per clause 4.16.6) in one original, plus one copy showing unit price applicable after Price Adjustment, if any, as per Certificate of Sampling and Analysis at Load Port and Bills of Lading quantity.

- (ii) One certified copy of Certificate of Origin issued by Chamber of Commerce. Name of the mines from which the Coal is supplied should be indicated.
- (iii) Certified copy of Clean Shipped on Board Bills of Lading (B/L) showing actual tonnage shipped (duly endorsed in favour of Purchaser), Port of Loading, Port of Discharge, Carrier Name and also indicating date of Bill of Lading.
- (iv) Original Certificate of Sampling and Analysis at Load Port issued by Internationally Accredited their party Inspection agency (duly endorsed in favour of the Purchaser).
- (v) Policy of the insurance coverage (duly endorsed in favour of Purchaser).
- (vi) Copy of Highseas Sales Agreement.
- (vii) Certificate of arrival of the vessel at Discharge Port issued by Port Authority.

The Seller shall endorse all necessary documents (including Bills of Lading) in favor/ in the name of Purchaser before the vessel entering into Customs Barriers and complete all the formalities required for highseas sales agreement.

- 4.16.5. The final price payable by the Purchaser in respect of each shipment of Coal delivered by Seller shall be determined in accordance with the Certificate of Sampling and Analysis and Draft and Stack Survey Reports issued by the IIA at the Discharge Port, and upon applying price adjustments, if any, on account of quality and quantity, and liquidated damages payable, in accordance with this Contract.
- 4.16.6. Upon determination of the final price by the Purchaser pursuant to Clause 4.16.5, the Purchaser shall pay the balance 10% of the amounts invoiced by Seller pursuant to Clause 4.16.1 after making the necessary deductions for the difference between the amounts invoiced by Seller under Clause 4.16.1 and the final price calculated under Clause 4.16.5, within 15 (fifteen) days from the date of reconciliation of quantity and quality upon unloading of the entire cargo and issue of the Certificate of Sampling and Analysis and draft and stack survey reports at Discharge Port by the IIA. Provided however, that in the event that the deduction required to be made by Purchaser pursuant to Clause 4.16.5 is more than the 10% balance amounts payable by Purchaser pursuant to Clause 4.16.1, then the Seller shall reimburse the difference to the Purchaser within 15 (fifteen) days from the date of reconciliation of quantity and quality upon unloading of the entire cargo and issue of the Certificate of Sampling and Analysis and draft and stack survey reports at Discharge Port by the IIA.
- 4.16.7. The payment of balance amounts pursuant to Clause 4.16.6, if any, shall be made by the Purchaser to the Seller by way of cheques or any other manner as may be mutually agreed between the Seller and Purchaser, and subject to submission of the documents listed in Clause 4.16.8 below.

4.16.8. The Seller shall submit the following documents to the Seller within 5 (five) days reconciliation of quantity and quality upon unloading of the entire cargo and issue of the Certificate of Sampling and Analysis and draft and stack survey reports at Discharge Port by the IIA:

- (i) Manually signed Credit Note of Seller in one original plus one copy showing recovery on account of shortage in weightment as per draft survey compared to Bill of Lading quantity and recovery on account of price adjustment, if any, as per Certificate of Sampling and Analysis at Discharge Port; and
- (ii) Certificate of Sampling and Analysis, the Draft and Stack Survey Reports at Discharge Port issued by IIA appointed by the Purchaser.

4.16.9. Notwithstanding anything to the contrary in this Clause 4.16, in the event the Purchaser disagrees with any invoice or part thereof, due to a manifest error in computation, the Purchaser shall only be obliged to pay the correct amount of such invoice. An invoice may be contested by Purchaser within a period of 60 (sixty) days after date of such receipt. The Parties shall promptly discuss the disputed portion of any invoice in good faith for resolution of such dispute. Promptly after resolution of any dispute as to an invoice, the amount that is the subject of such dispute shall be paid by Purchaser to the Seller.

4.16.10. In the event early delivery of the vessel is accepted by the Purchaser at its sole discretion, the CIF Prices will be fixed for the actual Bill of Lading (B/L) Date of the vessel or the deemed B/L date, whichever is lower basis. The deemed B/L date, in this case, would be the date falling 15 days prior to the first date of the delivery schedule of the vessel considering the haulage of 15 days for the vessel. Similarly, the Foreign Exchange Rate corresponding to the actual B/L date of the vessel or the deemed B/L date, whichever is lower shall be applicable for working out the CIF Price in Rs./Mt. If the highseas sales agreement is signed before the deemed B/L date then the difference, if any, would be adjusted in the balance 10% payment of the vessel.

If late delivery of the vessel is accepted by the Purchaser at its sole discretion, the CIF Prices will be fixed for the actual Bill of Lading (B/L) Date of the vessel or the deemed B/L date, whichever is lower basis. The deemed B/L date, in this case, would be the 15 days prior to the last date of the delivery schedule of the vessel considering the haulage of 15 days for the vessel. Similarly, the Foreign Exchange Rate corresponding to the actual B/L date of the vessel or the deemed B/L date, whichever is lower shall be applicable for working out the CIF Price in Rs./Mt.

#### **4.17. PAYMENT TERMS FOR INLAND HANDLING OF COAL**

4.17.1. The price payable by the Purchaser to the Contractor for each shipment of Coal (vessel-wise) shall be determined on the basis of the actual quantity and quality of Coal received at the TPS. The Contractor shall raise manually signed invoices for 100% of the inland handling charges (including railway freight charges) as per the Contract and on the basis of the actual quantity of the Coal received at the TPS. Contractor shall raise such invoices

within 15 (fifteen) days from the date of completion of the delivery of the entire vessel quantity of Coal at the TPS.

4.17.2. Terms of payment to the Contractor shall be as follows:

- (i) **70% Payment:** Purchaser shall pay 70% of the amounts invoiced by the Contractor pursuant to Clause 4.17.1 within 15 (fifteen) days from the receipt of the invoice pursuant to Clause 4.17.1 subject to the Contractor furnishing the payment voucher prepared and audited by the site office of the Contractor for 70% of the invoiced amount the Purchaser..
- (ii) **Balance 30% Payment:** The balance payment of 30% of the amounts invoiced by the Contractor pursuant to Clause 4.17.1, after deduction of any price adjustments for quantity and quality and any other recoveries and liquidated damages as per provisions of the Contract, will be released by the Purchaser, by cheques within 15 (fifteen) days from the date of signing of joint reconciliation statement for the quality and quantity as per the lowest of the quantity received at discharge port, RR or TPS, after completion of the entire vessel quantity as per clause 4.18. Provided that in the event any amounts are due and payable by the Contractor to the Purchaser pursuant to the joint reconciliation statement which are in excess of the balance 30% of the invoiced amounts due and payable by the Purchaser, then the Contractor shall pay the difference to the Purchaser within 15 (fifteen) days from the date of signing of joint reconciliation statement for the quality and quantity.

4.17.3. Contractor shall support all invoices with any data and/or information reasonably requested by Purchaser.

4.17.4. In the event the Purchaser disagrees with any invoice or part thereof, due to a manifest error in computation, the Purchaser shall only be obliged to pay the correct amount of such invoice. An invoice may be contested by Purchaser within a period of 45 (forty five) days after such receipt. The Parties shall promptly discuss the disputed portion of any invoice in good faith for resolution of such dispute. Promptly after resolution of any dispute as to an invoice, the amount that is the subject of such dispute shall be paid by Purchaser to the Contractor.

#### **4.18. DETERMINATION OF QUANTITY AND QUALITY FOR PAYMENT FOR INLAND HANDLING OF COAL**

4.18.1. **Quantity:** Quantity of Coal discharged from the vessel shall be determined by the draft survey by the IIA at the Discharge Port. Quantity shall be determined at TPS as per the weighbridge readings and shall be final and binding upon the Parties. The Contractor shall deliver the entire quantity of Imported Coal measured at Discharge Port without any shortage to the respective TPS. The Contractor shall be paid 70% of their charges for the quantity delivered at TPS as under:

Qty. Received at TPS x (Inland Handling Charges + Normative Railway Freight)

In the event of any shortage in quantity received at TPS from the quantity received at the

Discharge Port, the Contractor shall be recovered from the Purchaser such amounts calculated as per the following formula:

$$\text{Recovery for shortage (in Rs.)} = 1.1 \times (\text{Discharge Port Qty.} - \text{Qty. Received at TPS}) \times (\text{CIF Price} + \text{Customs Duty})$$

For the purpose of final payment to the IHC, the total charges will be calculated as follows:

(Lowest of quantities at Discharge Port, RR and TPS) x (Inland Handling Charges + Normative Railway Freight)

In case, a higher amount has been paid to Seller upon delivery at TPS for the purpose of 70% payment under Clause 4.17, the excess amounts shall be adjusted accordingly in the remaining 30% payment due to the Contractor.

4.18.2. **Quality:** Quality shall also be determined at TPS. The Contractor shall ensure that there is no alteration from the quality as determined at the Discharge Port. In case the quality determined at TPS shows deterioration in quality as compared to the Discharge Port analysis, adjustments shall be charged as per Section-V.

#### 4.19. **PAYMENTS TO THE PURCHASER**

4.19.1. In the event any amounts are due and payable by the Seller and/or the Contractor to the Purchaser under the terms of this Contract, then, unless specified otherwise in this Contract, Seller and/or the Contractor, as applicable, shall make such payments to the Purchaser within 15 (fifteen) days of receipt on an invoice from the Purchaser in this regard.

4.19.2. In the event of any delay or failure by the Seller and/or the Contractor to make the payments on or before the due date thereof, the Seller / the Contractor (as applicable) shall be liable to pay an interest calculated at the rate of SBI PLR+2% per annum on the unpaid amounts, from the due date thereof till the date on which the due amount are actually paid.

#### 4.20. **SELLER'S / CONTRACTOR'S RESPONSIBILITY**

The Seller and the Contractor shall be jointly and severally liable for the execution of the Contract in all respect in accordance with the conditions of the Contract. The whole contract shall be executed by the Contractor and the Seller to the full satisfaction of the Purchaser.

#### 4.21. **PERFORMANCE GUARANTEE**

4.21.1. The Seller shall furnish to Purchaser an irrevocable and unconditional bank guarantee for an amount equivalent to 10% (ten percent) of one year contract value for the maximum Annual Contracted Quantity during the Term of the Contract, as a security for performance of the obligations of the Seller and the Contractor under the Contract (“**Performance Guarantee**”). The Performance Guarantee shall be furnished by the Seller to Purchaser within 20 (twenty) days from the date of Letter of Intent and in any

event prior to execution of the Contract Agreement and shall remain valid for the entire term of the Contract.

- 4.21.2. The Performance Guarantee shall be furnished in the form and manner acceptable to Purchaser (in format set out in Tender Document) from any Nationalized Banks including Public Sector Bank (IDBI Bank Ltd.), Private Sector Banks (AXIS Bank /ICICI Bank/ HDFC Bank).
  - 4.21.3. The Seller shall ensure that the Performance Guarantee is renewed periodically at least 1 (one) month prior to the expiry date of the Performance Guarantee, and shall furnish the renewed Performance Guarantee to Purchaser.
  - 4.21.4. The Seller shall further ensure that the Performance Guarantee is maintained in the full amount during the Term of the Contract and shall continue to be enforceable for 60 days after the date of last consignment of the Imported Coal contracted to be purchased under this Contract.
  - 4.21.5. If the Seller fails to furnish or renew the Performance Guarantee as stipulated above, the Purchaser reserves the right to terminate the Contract.
  - 4.21.6. The Purchaser shall not be liable to pay any bank charges, commissions or interest on the amount of the Performance Guarantee by virtue of this Contract.
  - 4.21.7. The Performance Guarantee and/or any amendment there to shall be executed on a stamped paper of requisite money value as required under the applicable law
  - 4.21.8. The Purchaser shall be entitled to invoke the Performance Guarantee in the event of failure or breach of the Seller or the Contractor under this Contract or a failure to perform their respective obligations under the Contract, including for recovery of any amounts (including liquidated damages) due and payable to the Purchaser from the Seller or the Contractor arising out of this Contract. Without prejudice to the foregoing or its other rights under contract or at law, the Purchaser shall be entitled to invoke the Performance Guarantee, for any failure or breach or default by the Seller or the Contractor under the Contract, including without limitation:
    - (i) Failure of Seller or the Contractor to start/commence the supply of Coal as per Contract;
    - (ii) Failure of the Seller or Contractor to perform their obligations in accordance with the terms and conditions of the Contract;
    - (iii) Any breach of Contract.
- 4.22. **ADHERENCE TO SAFETY PROCEDURES, RULES, REGULATIONS AND RESTRICTION**

- 4.22.1. The Seller and the Contractor shall comply with all provisions of Applicable Laws (including labour laws, rules, regulations and notifications issued there under from time to time). All safety and labour laws whether enforced by any Governmental Authorities or by the Purchaser shall be applicable in the performance of this Contract and Seller and the Contractor shall abide by them.
- 4.22.2. Each of the Seller and the Contractor represents and warrants that the Seller/ Contractor as well as Seller's/ Contractor's personnel have full knowledge of applicable law that may govern the performance of their obligations under this Contract and they shall comply with the same during the Term of the Contract.
- 4.22.3. Each of the Seller and the Contractor agrees to obtain and maintain, at its own expense, all Applicable Permits that may be required under Applicable Laws for the performance of their obligations under this Contract.
- 4.22.4. Any default or failure by the Seller or the Contractor in complying with the Applicable Laws on account of lack of information or knowledge on the part of the Seller or the Contractor shall not excuse the Seller or the Contractor from performance of its obligations under the Contract.

#### 4.23. **FORCE MAJEURE**

- 4.23.1. If a Party is prevented from performing, in whole or in part, any of its obligations under this Contract due to events or circumstances or consequences thereof that are beyond the reasonable control and without the fault or negligence of such Party affected thereby and which events or circumstances or consequences thereof is in one or more of the following categories: (such events or circumstances or consequences thereof being referred to herein as "**Force Majeure**"):
- b) any act of war, act of the public enemy, civil disturbance;
  - c) sabotage resulting from another event of Force Majeure;
  - d) fire explosions, floods, explosions, lightning, earthquake, drought, cyclone, and other acts of God;
  - e) epidemics or quarantine restrictions;
  - f) industry-wide or nation-wide strikes or lockouts (not involving employees of the Party affected by Force Majeure);

then, provided that the affected Party has given a notice of the happening of such Force Majeure event to the other Party as soon as reasonably practicable and in any event within 5 (five) days from the date of occurrence of the Force Majeure event, during the period for which such Party's performance is prevented by such Force Majeure but no longer period, the obligations of the Parties shall be excused to the extent performance is so prevented by the Force Majeure. The Party affected by the Force Majeure shall remedy

the Force Majeure with all reasonable dispatch and will keep the other Party advised of its efforts to remedy the Force Majeure. For the avoidance of doubt, transportation delays and the loss or failure of Seller's supply shall not be considered Force Majeure events. A change in market conditions (including the ability of Seller to sell Coal at a higher price), whether or not foreseeable shall not be considered Force Majeure events.

Provided that, performance under the Contract and deliveries of Coal shall be resumed as soon as practicable after such Force Majeure has come to end or ceased to exist, and the decision of the Purchaser as to whether the deliveries have been so resumed or not shall be final and conclusive.

#### **4.23.2. Prolonged Force Majeure Event:**

If an event of complete or partial Force Majeure persists for a continuous period of sixty (60) days or more, then the Party not claiming Force Majeure shall have the option, upon three (3) days' prior written notice, to terminate the Contract. Provided that the Purchaser shall be at liberty to take over from the Seller at a price to be fixed by GSECL, which shall be final, all acceptable material in possession of the Seller / Contractor or supplied by the Seller / Contractor at the time of such termination or such portion thereof as the Purchaser may deem fit excepting such materials, as the Seller / Contractor may with concurrence of the Purchaser elect to retain..

#### **4.23.3. Pro Rationing.**

If Seller claims Force Majeure and is unable to meet all of its sales obligations under this Contract and any other of its coal sales agreements involving coal of a similar type and quality as the Coal, then any reductions in Seller's deliveries shall be allocated on a pro rata basis among the Contract and such other coal supply agreements involving coal of the same type and quality as the Coal to the extent contractually permitted by the Contract and such agreements.

#### **4.24. TERMINATION**

##### **4.24.1. Termination for Purchaser's convenience**

The Purchaser shall have a right to terminate the Contract in whole or in part for any reason, at any time, by giving 15 (fifteen) days' prior written notice of termination to the Seller and the Contractor. Upon any such termination of the Contract by the Purchaser, the Contract shall terminate forthwith and the Purchaser shall pay the Contractor and the Seller in accordance with price schedule mentioned in the Contract in respect of any amounts due and payable by Purchaser to Seller or the Contractor prior to the date of termination of the Contract pursuant to this Clause.

##### **4.24.2. Termination For Seller's/Contractor's Default**



The Purchaser, without prejudice to any other rights or remedies it may possess, shall have the right to terminate the Contract forthwith by giving a notice of termination to the Seller and the Contractor, if the Seller and/or the Contractor:

- (a) commences a voluntary proceeding, or an involuntary proceeding is commenced against the Contractor/ Seller seeking liquidation (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), reorganization or other relief with respect to the Contract or its debts under any bankruptcy, insolvency or other similar laws now or hereafter in effect, or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Seller/ Contractor for a substantial part of its property, or if the Seller/ Contractor has consented to any such relief or to the appointment of or taking possession by any such official in any such proceeding commenced by or against the Seller/ Contractor.
- (b) assigns or transfers the Contract or any right or interest therein, without the prior written permission of the Purchaser.
- (c) has, in the judgement of the Purchaser, engaged in corrupt or fraudulent practices in competing for or in executing the Contract.  
For the purpose of this Sub-Clause,  
“corrupt practice” means the offering, giving, receiving or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution.  
"fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Purchaser and includes collusive practice among bidders (prior to or after Bid submission) designed to establish Bid prices at artificial non-competitive levels and to deprive the Purchaser of the benefits of free and open competition.
- (d) has failed to pay any sums due to the Purchaser and such failure has not been cured within 30 (thirty) days of receipt of written notice thereof from the Purchaser;
- (e) has failed to comply with or perform its obligations under this Contract, including failure to maintain / renew the Performance Bank Guarantee, and such failure has not been cured within ten (10) days from the receipt of written notice thereof from the Purchaser;
- (f) has persistently failed to execute the Contract in accordance with the Contract or persistently neglected to carry out its obligations under the Contract;
- (g) is in breach of any Applicable Law and does not remedy the breach within ten (10) days from the receipt of written notice thereof from the Purchaser;
- (h) otherwise breaches the provisions of the Contract or part thereof, and does not remedy the breach within ten (10) days from the receipt of written notice thereof from the Purchaser.

#### **4.24.3. Termination By Seller/Contractor**

The Seller / Contractor shall be entitled to terminate this Contract by giving 30 (thirty) days notice to the Purchaser, upon occurrence of any of the following:

- (a) if the Purchaser has failed to pay the Seller/Contractor any sums due under the Contract within the specified period and such failure is not remedied within 45 (forty five) business days after written notice thereof from Seller / Contractor (provided the payment is not subject to a good faith dispute under this Contract), or
- (b) if the Purchaser has committed a substantial breach of a material obligation under the Contract, and has failed to cure such breach within 45 (forty five) days from the receipt of written notice thereof from the Seller/Contractor;
- (c) if the Purchaser commences a voluntary proceeding, or an involuntary proceeding is commenced against the Purchaser seeking liquidation (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), reorganization or other relief with respect to the Contract or its debts under any bankruptcy, insolvency or other similar laws now or hereafter in effect, or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Purchaser for a substantial part of its property, or if the Purchaser has consented to any such relief or to the appointment of or taking possession by any such official in any such proceeding commenced by or against the Purchaser.

#### **4.24.4 Consequence of Termination**

- a) The Parties agree that in the event this Contract is terminated by the Purchaser pursuant to Clause 4.24.2 of this Contract, then the Seller and the Contractor shall be liable to pay to the Purchaser all direct costs and damages incurred by the Purchaser on account of such termination, including any costs in relation to procurement and delivery of substitute Coal for the Sikka Power Station. Without prejudice to any other rights and remedies available to the Purchaser under this Contract and under law, the Purchaser shall be entitled to invoke the Performance Security upon occurrence of any of the events specified in Clause 4.24.2.
- b) In the event of termination pursuant to Clause 4.24.1 or Clause 4.24.3, the Seller and the Contractor shall be entitled to claim payments of all sums which have become due and payable to the Seller / Contractor prior to the date of termination under the said Clauses.
- c) Upon termination of this Contract, all rights and obligations of the Parties, except such rights and obligations that have accrued prior to such termination, shall forthwith cease to have any force and effect.
- d) Any termination by Purchaser pursuant to this Clause 4.24 shall be without prejudice to any other rights or remedies of the Purchaser that may be exercised in lieu of or in addition to rights conferred by Clause 4.24.

- e) Except as specifically set forth herein, the Seller and the Contractor shall not be entitled to claim any amounts in respect of any termination of this Contract.
- f) The exercise of any of the rights granted to the Purchaser hereunder shall not prejudice or affect any other rights of action or remedy, which have accrued or shall accrue thereafter to the Purchaser.

#### **4.25. DISPUTE RESOLUTION**

- 4.25.1. Except as otherwise provided in the Contract, if any dispute or difference of any kind whatsoever (a “**Dispute**”) shall arise between the Purchaser and the Seller or the Contractor in connection with, or arising out of, or relating to the Contract or the breach, termination or validity thereof, the Purchaser and the Seller/Contractor shall attempt in good faith, for a period of thirty (30) days after the receipt by one party of a notice from the other Party of the existence of the Dispute, to settle such Dispute in the first instance by mutual discussions between the Parties.
- 4.25.2. If the Dispute cannot be settled within thirty (30) days by mutual discussions as contemplated by Clause 4.25.1, either Party may by notice require the Dispute shall finally be settled by arbitration in terms of the provisions of the Arbitration and Conciliation Act, 1996 or any statutory modification or reenactment thereof (“**Arbitration and Conciliation Act**”).
- 4.25.3. The language of the arbitration shall be English, and the place of arbitration including for holding of any and every arbitration proceeding shall be Vadodara, Gujarat, India.
- 4.25.4. The arbitration shall be conducted by a panel of 3 (three) arbitrators. The Purchaser shall appoint one arbitrator, and Seller/Contractor shall collectively be entitled to appoint one arbitrator, within 30 (thirty) days after giving or receiving the demand for arbitration. The two arbitrators so selected by the Parties shall select the third arbitrator. If a Party does not appoint an arbitrator who has consented to participate within 30 days after the selection of the first arbitrator, the relevant appointment shall be made under Arbitration and Conciliation Act.
- 4.25.5. The arbitration award rendered shall be in writing and shall set forth in reasonable detail the facts of the Dispute and the reasons for the arbitrators’ decision.
- 4.25.6. The award rendered in any arbitration commenced hereunder shall be final and binding on the Parties.
- 4.25.7. Notwithstanding the above, during the pendency of any arbitration, the Parties shall continue to perform their respective obligations hereunder.
- 4.25.8. The provisions of this Clause 4.25 shall survive the termination of the Contract.

#### **4.26. GOVERNING LAW AND JURISDICTION**

This Contract shall be governed by, and construed in accordance with, the laws of India, and subject to the provisions of Clause 4.25, the courts in Vadodara, State:Gujarat, India shall have jurisdiction in relation to all matters arising out or in relation to this Contract.

#### 4.27. INDEMNITY

4.27.1. Each Party (the “**Indemnifying Party**”) agrees to indemnify and hold the other Party, its employees, agents, consultants, sub-contractors or affiliates (the “**Indemnified Parties**”) harmless from and against any claims, demands, expenses, costs, liens, liabilities, losses, damages, charges, interest, assessments, penalties and settlements (including any legal costs) (“**Claims**”), (including any Claims by third parties) resulting from:-

- (i) any breach by the Indemnifying Party of its warranties, representations, covenants or obligations under the Contract;
- (ii) any willful or negligent act or omission of the Indemnifying Party (including relating to its performance of its obligations under this Contract);

provided that the indemnification obligation of the Indemnifying Party under this Clause shall not extend to:

- (a) a Claim that was caused by the negligent act or omission or breach of contract on the part of the Indemnified Party; and
- (b) any Claim in respect of and to the extent that, the Indemnified Party is compensated pursuant to the terms of any other agreement or under any policy of insurance.

4.27.2. Without prejudice to the foregoing, the Seller and the Contractor shall at all times, indemnify and keep indemnified the Purchaser, harmless from any and all Claims arising out of or in connection with the Contract or other obligations hereunder directly or indirectly associated herewith and/or arising from any Claims of every kind and nature relating to such loss or damage, including any Claims relating to:

- (i) Personal injury, illness or death of any person (except to the extent directly caused by the acts, omissions or gross negligence or willful misconduct of Purchaser);
- (ii) Loss or damage to property (except to the extent directly caused by the acts, omissions, gross negligence or willful misconduct of Purchaser); and
- (iii) Any damage to the environment, including pollution.

#### 4.27.3. Consequential and Indirect Losses

Except as expressly provided in the Contract, neither Party shall be liable to the other Party, or its directors, officers, shareholders, managers or employees, whether under breach of contract, breach of warranty, guarantee, indemnity, tort liability (including without limitation negligence), or otherwise, for any incidental, special, indirect, exemplary, punitive or consequential damages whatsoever (including without limitation

damages for loss of reputation or business opportunity or revenue) of any nature connected with or resulting from performance of this Contract, but shall only be liable to the other Party for direct and actual damages.

#### **4.28. INDEPENDENT CONTRACTOR**

4.28.1. Each of the Seller and the Contractor shall perform their obligations under the Contract as an independent contractor. Neither the Seller nor the Contractor shall become or represent itself as co-venturer, affiliate, partner, employee or agent of the Purchaser.

4.28.2. The Contract does not form any agency, partnership, joint ventures or joint relationship between the Seller/Contractor and the Purchaser. Subject to the compliance with the Contract, the Seller and the Contractor shall be solely responsible for the manner in which the obligations under the Contract are performed.

4.28.3. All of Seller's / Contractor's personnel, representatives or sub-contractors engaged by the Seller/ Contractor in performing the Contract shall be under the complete control of the Seller/ Contractor and shall not in any event be deemed to be the employees of the Purchaser.

4.28.4. Nothing contained in the Contract, the contracts between the Seller and the Seller's personnel or the Contractor and the Contractor's personnel (as the case may be), or any sub-contract between the Seller/ Contractor and its sub-contractors shall be construed to create any contractual relationship between any such employees or representative or sub-contractor of the Seller/Contractor and the Purchaser. Seller/ Contractor shall be responsible and shall indemnify the Purchaser for all acts, defaults, omissions or negligence of the Seller/ Contractor, Seller's personnel/ Contractor's personnel, its sub-contractors and their respective agents, servants, employees, workmen, and representatives.

#### **4.29. SELLER'S / CONTRACTOR'S ACCEPTANCE**

Acknowledgment of the Letter of Intent and detailed Order under the Agreement shall constitute Contractor's acknowledgment and acceptance of all provisions herein and all provisions of the Detailed Order.

#### **4.30. NOTICE AND ADDRESSES**

4.30.1. Unless otherwise stated in the Contract, all notices to be given under the Contract shall be in writing, and shall be sent by personal delivery, airmail post, special courier, or facsimile transmission to the address of the relevant Party set out below:

*If to the Purchaser*

Chief Engineer (Fuel)  
Gujarat State Electricity Corporation Ltd.

VidyutBhavan, Race Course,  
Vadodara: 390 007, Gujarat, India.  
Tel # 91-265- 6612341 (Direct), 6612342  
Mob.#919925210592  
Fax # 91-265-2355195 (Direct)

If to the Contractor:

*As per the details provided in the Contract Agreement*

If to the Seller

*As per the details provided in the Contract Agreement*

- 4.30.2. Any notice sent by facsimile transmission shall be confirmed within two (2) days after dispatch, by notice sent by airmail post or special courier, except as otherwise specified in the Contract.
- 4.30.3. Any notice sent by airmail post or special courier shall be deemed (in the absence of evidence of earlier receipt) to have been delivered seven (7) days after dispatch. In proving the fact of dispatch, it shall be sufficient to show that the envelope containing such notice was properly addressed, stamped and conveyed to the postal authorities or courier service for transmission by airmail or special courier.
- 4.30.4. Any notice delivered personally or sent by facsimile transmission shall be deemed to have been delivered on date of its dispatch.
- 4.30.5. Notices shall be deemed to include any approvals, consents, invoices, instructions, orders and certificates to be given under the Contract.

#### **4.31. ASSIGNMENT**

- 4.31.1. Neither the Seller nor the Contractor shall assign or transfer this Contract or its rights or obligations hereunder, in whole or in part, to any third party without the prior written consent of the Purchaser.
- 4.31.2. Purchaser shall be entitled to freely assign its rights, obligations and duties under this Contract to its affiliate or other coventurers or any third party by giving written notice to the Seller and the Contractor.

#### **4.32. ENTIRE AGREEMENT**

- 4.32.1. The Contract sets forth the entire agreement between the Purchaser and the Seller/ Contractor, and supersedes all communications, negotiations and agreements (whether written or oral) of Parties with respect thereto made prior to the Effective Date and such communications, negotiations and agreements shall not affect or modify any of the terms

or obligations set forth in this Contract, except as the same may be made part of this Contract in accordance with its terms.

#### **4.33. WAIVER**

4.33.1. None of the provisions of this Contract shall be considered waived by either Party unless such Party gives such waiver in writing. No such waiver shall be of any past or future default, breach or modification of any terms, provisions or conditions of this Contract unless expressly set forth in such waiver.

4.33.2. Without prejudice to the foregoing, none of the following shall release Seller/ Contractor from any of the warranties or obligations under this Contract or be deemed a waiver of any right or remedies as to any prior or subsequent default in accordance with the Contract:

- (i) Failure by Purchaser to insist upon strict performance of any terms or conditions of this Contract; or
- (ii) Failure or delay by Purchaser to exercise any rights or remedies provided herein or by Applicable Law; or
- (iii) Failure to properly notify Seller/ Contractor in the event of breach.

#### **4.34. CONFIDENTIALITY**

4.34.1. All information and other materials disclosed, furnished, communicated or supplied by the disclosing Party to the receiving Party, including the receiving Party's directors, officers, employees, affiliates, or its expressly authorized representatives or agents are strictly confidential and shall not be divulged by receiving party to any third party during the Term of this Contract or thereafter for a period of five (5) years without disclosing Party's prior written consent.

4.34.2. For avoidance of doubt, "Confidential Information" shall be deemed to include all information including but not limited to any technical, commercial and financial information, improvement, inventions, know how, innovations, technology, trade secrets, professional secrets, copyrights and any other intellectual property, discoveries, ideas, concepts, papers, software in various stages of development, techniques, models, data, source code, object code, documentation, manuals, flow charts, research, process, procedures, functions, customer names and other information related to customers, price lists and pricing policies. However, the Parties hereto acknowledge that Confidential Information shall not include any information that:

- a) is now or subsequently becomes publicly known or available without breach of this Contract;

- b) was previously in the possession of the receiving Party without any obligation of confidentiality and which was not acquired from, provided, given, sold or otherwise disclosed (directly or indirectly) by the disclosing Party not through this Contract.

**4.35. SURVIVAL OF TERMINATION**

The termination or expiration of the Contract shall not affect any of the provisions of the Contract which are expressly or by implication to come into effect or to continue in force after such termination or expiration.

**4.36. BINDING EFFECT**

This Contract shall be binding upon and shall inure to the benefit of Purchaser and the Seller/ Contractor, and the respective successors, permitted assigns and personal representatives, if any, of each Party.

**4.37. AMENDMENT**

This Contract shall not be amended, modified, varied or supplemented except by an instrument in writing executed by the Parties.

**4.38. SEVERABILITY**

If any portion of the Contract is determined to be illegal, invalid or unenforceable, for any reason, then, insofar as is practical and feasible, the remaining portions of this Contract shall be deemed to be in full force and effect as if such invalid, illegal or unenforceable portions were not contained herein.

**4.39. AFFIRMATION**

The Seller and the Contractor declare and affirm that neither the Seller nor the Contractor nor any of their directors, employees, any of its agents, has paid nor has it undertaken to pay and that it shall in the future not pay any unlawful commission, bribe, pay-offs, kick-backs and that it has not in any other way or manner paid any sums, whether in Indian currency or foreign currency and whether in India or abroad, or in any other manner given or offered to give any gifts and presents in India or abroad to any person or company to procure the Contract and the Seller and the Contractor undertake not to engage in any of the said or similar acts during the Term of and related to this Contract.

**4.40. NO THIRD PARTY RIGHTS**

This Contract and all rights hereunder are intended for the sole benefit of the Parties and their respective successors and permitted assigns hereto and, do not imply or create any rights on the part of, or obligation, standard of care or liability to any other entity or individual not a party to this Contract.



**4.41. FURTHER ASSURANCES**

The Parties shall execute and deliver such additional documents and shall cause such additional action to be taken as may be reasonably necessary to carry out the purposes and intent of this Contract.

**4.42. LANGUAGE**

The language of the Contract shall be English and all documents, Notices, waivers and all other written communication otherwise between the Parties in connection with this Contract shall be in English.

## 5. SECTION V: TECHNICAL SPECIFICATION, SAMPLING, ANALYSIS AND PRICE ADJUSTMENT

### 5.1. COUNTRY OF ORIGIN

Seller can source the Coal from any foreign origin. Bidder will indicate the name of the miner and the Offered Mines from which Coal offered will be produced, with a letter of authority and support for participation from the Offered Mines.

### 5.2. QUALITY

#### Specifications of Non-coking Steam (Thermal) Imported Coal:

##### 5.2.1. Technical Specifications:

Parameter	Unit	Acceptable Range	Guaranteed Point Value (GPV)	Rejection Limit
Total Moisture (AR)	% by wt.	10 to 22	18	Over 22
Ash Content (AD)	% by wt.	5 to 12	8	Over 12
Fixed Carbon (AD)	% by wt.	30 to 50		
Volatile Matter (AD)	% by wt.	25 to 45		Over 45
Sulphur (AD)	% by wt.	0.6 to 0.8	0.6	Over 0.8
Gross Calorific Value (AR)	Kcal/Kg	5300 to 5800	5500	Below 5300
Hard Grove Index	--	45 to 60		
Ash Fusion Temp. IDT/ HT/ FT	deg. C	1100+ / 1200+ / 1250+		
Size: 0-50 mm	% by wt.	100% 0 to 2 mm: Max. 5%	Min 95%	0-2mm: above 20%

##### 5.2.2. Guaranteed Parameters for Price Basis :-

<b><i>GCV (AR)</i></b>	<b><i>5500 Kcal/kg</i></b>
<b><i>Total Moisture (AR)</i></b>	<b><i>18%</i></b>
<b><i>Ash (ADB)</i></b>	<b><i>8%</i></b>
<b><i>Sulphur (ADB)</i></b>	<b><i>0.6%</i></b>

The price shall be offered considering the above Guaranteed Parameters only. The Bids offering Coal inferior to the acceptable range mentioned above will be liable for rejection. No weightage shall be given for better quality.

##### 5.2.3. Important Notes:

- All parameters above are as per the relevant ASTM/IS test standards.

- b) Seller shall ensure that the analysis at the Load Port closely matches the Technical Specifications offered to avoid rejection of cargo.
- c) In case any of the values of the above parameters exceed rejection levels as indicated above, Purchaser shall have the right to reject the entire lot. In case of rejection, Seller shall remove such rejected quantities at its own cost and shall compensate the cost incurred by the Purchaser, including customs duty, port charges, etc. for the rejected quantity.
- d) No extraneous matter like metals, boulders, stones, shales etc. will be supplied in the Coal.
- e) Bidder shall offer the Coal from a single mine (if Seller is unable to offer from the Coal for the entire Term of the Contract, the Seller shall take prior permission in written from GSECL for any changes) having specifications close to the range of the specifications desired by GSECL.
- f) Blended coal shall not be offered.

### 5.3. SAMPLING & QUALITY ANALYSIS AND WEIGHMENT

Sampling, analysis and weighment shall be undertaken at the Load Port, Discharge Port and TPS in accordance with the Contract.

### 5.4. PRICE ADJUSTMENT

If the Purchaser has not rejected the coal quantity as per clause No.4.7 of the Contract, the price payable to the Seller and the Contractor under the Contract shall be subject to adjustment in case of deviations from the Guaranteed Point Value (GPV) of the Specifications mentioned at Clause 5.2.2 above, as provided in this Clause 5 (“**Price Adjustment**”).

#### 5.4.1. Price Adjustment on the basis of Load Port Analysis:

- a) CIF Price adjustment for lower GCV (AR): If Load Port GCV (AR) (LP GCV) is lower than Guaranteed Point Value of GCV (AR) (GPV GCV) mentioned at Clause 5.2.2, then the price is to be adjusted as follows:

For 5400=<LP GCV(AR)<5500 :

$$\text{Revised CIF (Rs./Mt)} = \text{CIF} - [ 1.1 \times (1 - (\text{LP GCV}/\text{GPV GCV})) \times (\text{CIF} + \text{IHC}) ]$$

For 5300=<LP GCV(AR)<5400:

$$\text{Revised CIF (Rs./Mt)} = \text{CIF} - [ 1.5 \times (1 - \frac{\text{LP GCV}}{\text{GPV GCV}}) \times (\text{CIF} + \text{IHC}) ]$$

Where,

CIF = CIF Price (Rs./Mt) for the vessel as calculated under Clause 4.15 above.

IHC = Inland Handling and Transportation Charges from Discharge Port to TPS including taxes and duties (Rs./Mt)

- b) Price Adjustment for higher Ash Content (AD): If Ash Content (AD) at Load Port analysis (LP AC) gives a value higher than the Guaranteed Point Value of Ash Content (AD) (GPVAC), then Price Adjustment would be as follows:

For 8% < Ash Content (AD) <= 10%:

Price Adjustment (Rs./Mt) =  $1.1 \times (\text{CIF}/100) \times (\text{LP AC} - \text{GPV AC})$

For 10% < Ash Content (AD) <= 12%:

Price Adjustment (Rs./Mt) =  $1.5 \times (\text{CIF}/100) \times (\text{LP AC} - \text{GPV AC})$

- c) Price Adjustment for higher Total Sulphur Content (AD): If Total Sulphur (AD) at Load Port (LP TS) gives a value higher than the Guaranteed Point Value of Total Sulphur (AD) (GPV TS), then Price Adjustment would be as follows:

Price Adjustment (Rs./Mt) =  $1.5 \times (\text{CIF}/10) \times (\text{LP TS} - \text{GPV TS})$

- d) Price Adjustment for higher Total Moisture: If Total Moisture (AR) in Load Port analysis (LP TM) is higher than the Guaranteed Point Value of Total Moisture (AR) (GPV TM) then the Price Adjustment would be as follows:

For 18% < Total Moisture (AR) <= 20%:

Price Adjustment (Rs./Mt) =  $1.1 \times (\text{CIF}/100) \times (\text{LP TM} - \text{GPV TM})$

For 20% < Total Moisture (AR) <= 22%:

Price Adjustment (Rs./Mt) =  $1.5 \times (\text{CIF}/100) \times (\text{LP TM} - \text{GPV TM})$

- e) Seller shall raise vessel wise Highseas Sales Invoices as per the Highseas Sales Invoice Rate (HSS Rate) worked out from the Revised CIF Price (Rs./Mt) after deduction of any Price Adjustment (Rs./Mt) applicable as per clause no. a) to d) above for the Bill of Lading quantity of the vessel.

**5.4.2. Various Price Adjustment for difference/ deviation in Discharge Port Analysis from Guaranteed Point Values/ Load Port Specifications:**

- a) Price Adjustment for lower GCV (AR):

If GCV (AR) at Discharge Port analysis (DP GCV) is lower than both the values of GP GCV and LP GCV then the Price Adjustment would be computed as follows:

If LP GCV of the vessel is equal to or higher than GP GCV then,

Price Adjustment (Rs./Mt) =  $(\text{Revised CIF} + \text{CD} + \text{IHC}) \times 1.5 \times \frac{(\text{GP GCV} - \text{DP GCV})}{\text{GP GCV}}$

If LP GCV of the vessel is lower than GP GCV then,

$$\text{Price Adjustment (Rs./Mt)} = (\text{Revised CIF} + \text{CD} + \text{IHC}) \times 1.5 \times \frac{(\text{LP GCV} - \text{DP GCV})}{\text{LP GCV}}$$

Where, CD = Customs Duty (Rs./Mt)

- b) Price Adjustment for higher Ash Content (AD): If Ash Content (AD) at Discharge Port analysis (DP AC) gives a value higher than both the values of GP AC and LP AC then Price Adjustment would be computed as follows:

If LP AC of the vessel is equal to or lower than GP AC then,

$$\text{Price Adjustment (Rs./Mt)} = 1.5 \times (\text{Revised CIF}/100) \times (\text{DP AC} - \text{GP AC})$$

If LP AC of the vessel is higher than GP AC then,

$$\text{Price Adjustment (Rs./Mt)} = 1.5 \times (\text{Revised CIF}/100) \times (\text{DP AC} - \text{LP AC})$$

- c) Price Adjustment for higher Total Sulphur Content (AD): If Total Sulphur (AD) at Discharge Port analysis (DP TS) gives a value higher than both the values of GP TS and LP TS then Price Adjustment would be calculated as follows:

If LP TS of the vessel is equal to or lower than GP TS then,

$$\text{Price Adjustment (Rs./Mt)} = 1.5 \times (\text{Revised CIF}/10) \times (\text{DP TS} - \text{GP TS})$$

If LP TS of the vessel is higher than GP TS then,

$$\text{Price Adjustment (Rs./Mt)} = 1.5 \times (\text{Revised CIF}/10) \times (\text{DP TS} - \text{LP TS})$$

- d) Price Adjustment for higher Total Moisture: If Total Moisture (AR) in Discharge Port analysis (DP TM) is higher than both the values of GP TM and LP TM then the Price Adjustment would be computed as follows:

If LP TM of the vessel is equal to or lower than GP TM then,

$$\text{Price Adjustment (Rs./Mt)} = 1.5 \times (\text{Revised CIF}/100) \times (\text{DP TM} - \text{GP TM})$$

If LP TM of the vessel is higher than GP TM then,

$$\text{Price Adjustment (Rs./Mt)} = 1.5 \times (\text{Revised CIF}/100) \times (\text{DP TM} - \text{LP TM})$$

- e) Price Adjustment for Size: If the quantity of Coal in the size range of 0-2 mm exceeds 5%, then the Price Adjustment of Rs. 1.5 x (Revised CIF / 100) (Rs/ Mt) for every 5% over the 5% or part thereof shall be applicable.

- f) Price Adjustment for Stones, Shales, Extraneous Materials, etc.: The Price Adjustment for the quantity of stones, shales, extraneous materials, etc. received with the cargo as per the Stack Survey Report of the third party agency shall be applicable as under:

$$\text{Price Adjustment (Rs.)} = 1.5 \times (\text{Revised CIF}) \times \text{Quantity of Stones, Shales, Extraneous Materials as per Stack Survey Report}$$

- g) Final CIF amount payable after Discharge Port analysis: The final CIF amount payable will be worked out from the HSS Rate of the vessel (Rs./Mt) after deduction of any Price Adjustment (Rs./Mt) applicable as per clause no. a) to e) above for the quantity of the Coal measured at the Discharge Port as per the draught survey and then after deduction of the Price Adjustment (Rs.) for stones, shales, extraneous materials, etc. as per clause no. f) and any other Price Adjustment applicable as per terms of the Contract. A Joint Reconciliation Statement for the working of final CIF amount payable for the vessel will be signed by the Seller and Purchaser.

5.4.3. **At TPS:**

a) **Various Price Adjustment for difference/ deviation in TPS Analysis from Discharge Port Analysis Specifications for IHC**

The Price Adjustment, in case of any shortage in the quantity with respect to the quantity at Discharge Port or slippage in the quality as determined at TPS with respect to the quality as determined at Discharge Port, shall be applicable as per the following formulas.

b) Price Adjustment for lower GCV (AR):

If GCV (AR) as per TPS analysis is less than Discharge Port GCV (AR) value then the Price Adjustment would be computed as follows:

Price Adjustment (Rs./Mt) =  $1.5 \times \text{EPSP} \times \frac{(\text{GCV(AR) at DP} - \text{GCV(AR) at TPS})}{\text{GCV (AR) at DP}}$

GCV (AR) at DP

Where, EPSP (Rs./Mt) = Ex-Power Station Price = CIF + Customs Duty + IHC Charges.  
IHC = Inland Handling and Transportation Charges from Discharge Port to TPS including taxes and duties (Rs./Mt)

c) Price Adjustment for higher Ash Content (AD): If Ash Content (AD) as per TPS analysis (TPS AC) gives value higher than Discharge Port Ash analysis (DP AC), then Price Adjustment would be as follows:

Price Adjustment (Rs./Mt) =  $1.5 \times (\text{EPSP}/100) \times (\text{TPS AC} - \text{DP AC})$

d) Price Adjustment for higher Total Sulphur Content (AD): If Total Sulphur (AD) as per TPS analysis (TPS SC) gives value higher than Discharge Port analysis Total Sulphur (AD) value (DP SC), then Price Adjustment would be as follows:

Price Adjustment (Rs./Mt) =  $1.5 \times (\text{EPSP}/10) \times (\text{TPS SC} - \text{DP SC})$

e) Price Adjustment for higher Total Moisture: If Total Moisture (AR) in TPS analysis (TPS TM) is higher than Total Moisture (AR) (DP TM) in Discharge Port then the Price Adjustment would be computed as follows:

Price Adjustment (Rs./Mt) =  $1.5 \times (\text{EPSP}/100) \times (\text{TPS TM} - \text{DP TM})$

- f) Price Adjustment for Size: If the total rake quantity of Coal in the size range of 0-2 mm exceeds the measured quantum (in %age) at Discharge Port, then the Price Adjustment of Rs.1.5 x (EPSP/100)per Mt for every 5% over “the measured quantum (in %age) at Discharge Port” or part thereof shall be applicable.
- g) The Price Adjustment as per clause no. b)tof) above are applicable on a rake-to-rake basis determined at TPS.
- h) Price Adjustment for Stones, Shales, Extraneous Materials, etc.: If the quantity of stones, shales, extraneous materials, etc. received at TPS exceeds the quantity of stones, shales, extraneous materials etc. measured at the Discharge Port as per the Stack Survey Reports of the third party agency at the Discharge Port then the Price Adjustment shall be applicable as under:

Price Adjustment (Rs.) = 1.5 x EPSP x (Quantity of Stones, Shales, Extraneous Materials received at TPS – Quantity of Stones, Shales, Extraneous Materials as per Stack Survey Report at Discharge Port)

- i) Total IHC amount Payable: The payment to the Inland Handling Contractor will be vessel-wise for the quantity lowest of Discharge Port, RR and TPS. The Contractor shall raise vessel wise invoices for 100% value of the Inland Handling Charges (including freight charges) as per the Contract (in Rs./Mt) and for the total quantity received at TPS. After TPS analysis, the final IHC amount payable will be worked out and Joint Reconciliation Statement will be signed for the lowest of the quantities received at Discharge port, RR or TPS (Mt) as per clause 4.18.1 and after deduction of the Price Adjustment applicable as per clause no. b)tof) and then after deduction of the Price Adjustment (Rs.) for stones, shales, extraneous materials, etc. as per clause no. h) and any other Price Adjustments applicable as per terms of the Contract. A Joint Reconciliation Statement for the working of final IHC amount payable for the vessel will be signed by the Contractor and Purchaser.

**6. SECTION VI: BIDDING FORMATS**

**6.1. TECHNICAL BID FORMAT – BIDDER’S DETAILS**

*(This shall form the part of Technical Bid)*

1.	Offer Ref. No. & date:	
2.	Name of the Bidder/ Bidders (in case of JV/Consortium):	
3.	Name and Designation of the person signing this Bid:	
4.	Full Postal Address: Telephone No. / Fax No. E-mail: (Contact in India for foreign Company)	
5.	Details of Tender Fee: DD No. & date, Issuing Bank	
6.	Details of EMD: DD No., date, Issuing Bank <u>OR</u> BG No. no., date, valid upto, Issuing Bank	
7.	Details of Net Worth of the Bidder as reflected in the Balance Sheet of Bidder for the last three years (2010-11, 2011-12 and 2012-13)	
8.	Validity of the Bid:	
9.	Tender Specification downloaded shall be submitted duly signed and sealed on each page by the Bidder in the Physical Tender in confirmation to the acceptance of the terms and conditions of the Tender (subject to deviations, if any)	Attached (in Physical Tender)
10.	List of Enclosures (other than the documents as listed below)	

Signature:  
Name of the Signatory:  
Designation:  
Name of the Firm:  
Address of the Firm:  
Seal of Firm:



**6.2. TECHNICAL BID FORMAT – TECHNICAL SPECIFICATIONS OF COAL**

(This shall form the part of Technical Bid)

S.No.	Particulars	Bidder to indicate/ enclose		
1.	Country of Origin			
2.	Producer/ Miner & Mines (as per clause no. 2.10.2)			
3.	Quality Parameter of offered coal	Type of Coal:		
		Unit	Offered Range	GUARANTEED POINT VALUE
	Total Moisture (AR)	% by wt.		18%
	Inherent Moisture (AD)	% by wt.		
	Ash Content (AD)	% by wt.		8%
	Fix Carbon (AD)	% by wt.		
	Volatile Matter (AD)	% by wt.		
	FC/VM Ratio	--		
	Sulphur (AD)	% by wt.		0.6%
	Gross Calorific Value (AR)	Kcal/Kg		5500
	Hard Grove Index	--		
	Ash Fusion Temp. IDT/ HT/ FT	deg. C		
	Size: 0-50 mm 0-2 mm	% by wt. % by wt.		
	4.	Ash Analysis		To be enclosed
5.	Ultimate Analysis		To be enclosed	
6.	Typical granulometry of the coal		To be enclosed	

7.	Annual Quantity Offered for the Power Station		SikkaPower Station (million Mt)	Total (million Mt)
		Tender Quantity	2.5	2.5
		Offered Quantity		

- Bidder must offer minimum 50% of the total Tender Quantity for Sikka Power Station

Signature:

Name of the Signatory:

Designation:

Name of the Firm:

Address of the Firm:

Seal of Firm:

### 6.3. TECHNICAL BID FORMAT – DOCUMENT CHECKLIST

(This shall form the part of Technical Bid)

#### List of Documents to be submitted in the Technical Bid:

S. No.	Tender Reference	Particulars of Documents	On-Line Submission	Physical Submission
1.	2.5	Demand Draft towards payment of Tender Fee of INR 15,000/-	Scan and Upload	Original DD
2.	2.5	Demand Draft /Bank Guarantee of requisite amounts towards EMD	Scan and Upload	Original DD /BG
3.	2.6	Letter of authority from the Bidder in favor of the person, who is authorized to submit the Bid.	Scan and Upload	Original
4.	2.10.2	<p>Letter of authority and support for participating in this Tender from the miners along with document certifying:</p> <ul style="list-style-type: none"> <li>• Reserves in million tonnes (furnish relevant proof)</li> <li>• Projected tied-up supplies in million tonnes for the next 5 years based on existing orders (furnish relevant proof)</li> <li>• Projected production capacity in million tonnes for the next 5 years (furnish relevant proof)</li> <li>• Projected production surplus in million tonnes for the next five years (furnish relevant proof)</li> <li>• The specifications of the coal offered</li> </ul> <p>As per format provided</p> <p>For lead Bidder being a trader; the trader must submit an agreement with the miner and furnish the documents as listed above.</p>	Scan and Upload	Original
5.	2.10.3	<p>Details of past experience in import or export to India of Non-coking Steam (thermal) Coal in the last three years (i.e. Financial Year 2010-11, 2011-12 and 2012-13) showing order wise details of quantity delivered, value, together with the name, address, Fax/Tel No. and Email of the Purchasers.</p> <p>Bidder shall have to submit the Bill of Lading copies to evident their experience of</p>	Scan and Upload	Original

S. No.	Tender Reference	Particulars of Documents	On-Line Submission	Physical Submission
		average 1 million Mt per annum in last three years (aggregate 3 million Mt in the last three years).		
6.	2.10.3	An Authorization Letter / Certificate from Port Authorities for having carried out port operations by the Bidder or a commitment letter of Authorized Agent through whom Bidder will handle the port operations	Scan and Upload	Original
7.	2.10.3	A Certificate from Port Authorities for permission to carry out port operations at the port the Bidder is Bidding to supply Coal from.	Scan and Upload	Original
8.	2.10.3	Detailsofpastexperiencein Stevedoring, Clearing & Forwarding of Coal, dry bulk cargo or other minerals in India, over a period of last 3 years (i.e. From 1 <sup>st</sup> April 2010 to 31 <sup>st</sup> March 2013) showing order wise details of quantity handled / delivered together with the name, address and Fax/Tel No./Email of the Purchaser.	Scan and Upload	Original
9.	2.10.7	Details of wagon loading/ unloading & surface transportation together with the name, address and Fax/Tel No./Email of the Purchaser	Scan and Upload	Original
10.	2.10.3	Experience Certificates from the customers for the satisfactory performance. All experience certificates shall be duly notarized	Scan and Upload	1 Copy of each Experience Certificate
11.	2.10.3	A copy of the Single Order of minimum Rs. 50 crores executed in the last three years.	Scan and Upload	1 Copy
12.	2.10.9	Copy of audited annual accounts for the last three years, bank credit limits, bank references, of the Bidder/ all members of the joint venture/Consortium.	Scan and Upload (Optional)	1 Copy of each document
13.	2.10.9 (c)	Details of net worth of the Bidder as reflected in the balance sheet for the last three years as on 31.3.2013 of the Bidder duly certified by Chartered Accountant	Scan and Upload	Original
14.	2.10.3 (l)	Copy of the Agreement or MoU entered into by the joint venture/ Consortium partners Annexure-VII CONSORTIUM AGREEMENT FORM	Scan and Upload (Not for Single Bidder)	1 Copy

S. No.	Tender Reference	Particulars of Documents	On-Line Submission	Physical Submission
15.	6.1	Technical Bid Format – Bidder’s Details	Technical Bid Format – Bidder’s Details to be filled up	1 Print Out of TECHNICAL BID FORMAT – BIDDER’S DETAILS duly signed, sealed along with attachment
16.	6.2	Technical Bid Format – Technical Specifications Of Coal (Ash Analysis, Ultimate Analysis and Typical Granulometry of the Coal offered)	Scan and Upload	1 Copy of each document
17.	6.3	Technical Bid Format – Document Checklist	Scan and Upload	1 Copy of each document
18.	6.4	Confirmation of Bidder’s Acceptance to Terms & Conditions of RFP	To be accepted	Original
19.	6.5	Schedule of Deviations	To be filled up	1 Print Out of the SCHEDULE OF DEVIATIONS duly signed, sealed.
20.	6.6	Financial Bid: Financial Bid Format	Bidding Document “Financial Bid: Financial Bid Form” to be filled up	<b><u>NOT TO BE SUBMITTED WITH PHYSICAL BID</u></b>

#### **6.4. ACCEPTANCE OF TERMS & CONDITIONS OF RFP**

<add cover letter>

To,  
The Chief Engineer (Fuel)  
Gujarat State Electricity Corporation Ltd.  
VidyutBhavan, Race Course,  
Vadodara: 390 007, Gujarat, India.

We, the undersigned, declare that:

(a) We have examined and have no reservations to the Tender Document, including Addenda No. (if Any): \_\_\_\_

(b) We offer to complete the scope of work in conformity with the Tender Document and in accordance with the delivery schedule and Specifications.

(c) Our Bid shall be valid for a minimum period of 120 days from the Technical Bid Opening Date, as extended from time to time, in accordance with the Tender Document, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;

(d) If our Bid is accepted, we undertake to complete the Scope of Work in accordance with the Tender Document and we commit to obtain and maintain a Performance Security in the amount of [ ] of the Contract Price for the due performance of the Contract;

(e) We are not participating, as Bidders, in more than one Bid in this Bidding process in accordance with the Bidding Document;

(f) None of the Consortium partners are blacklisted by any government organization nationally or internationally

(g) We understand that this Bid, together with your written acceptance thereof included in your notification of award, shall constitute a binding contract between us, until a formal Contract is prepared and executed.

(h) We understand that you are not bound to accept the best evaluated Bid or any other Bid that you may receive.

Signature:  
Name of the Signatory:  
Designation:

Name of the Firm:  
Address of the Firm:

Seal of Firm:

**6.5. SCHEDULE OF DEVIATIONS**

(This shall form the part of Technical Bid)

Deviation, if any, taken by the Bidder shall be brought out specifically in this schedule. However, Bidder shall not indicate any details of prices in this Schedule of Deviation. Except the deviations brought out in this Schedule, all other terms and conditions of the Tender will be considered acceptable to the Bidder.

Clause No.	Deviation Taken

Signature:  
Name of the Signatory:  
Designation:

Name of the Firm:  
Address of the Firm:

Seal of Firm:

## 6.6. FINANCIAL BID: FINANCIAL BID FORMAT

(This shall also form the part of Online Financial Bid)

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### A. For Supply of Coal on High Seas Sale

(i) Bid Price – Variable on CERC Indexed basis

S. No.	Particulars	Type of Coal	As per specification								
			Discharge Port	Dahej	Navlakhi	Magdalla	Mundra	BediBunder	Pipavav	Kandla	Okha
1.	FOB Price(A)– Variable on CERC Indexed basis	USD/Mt									
2.	Ocean Freight (B)- Variable on CERC Indexed basis	USD/Mt									
3.	Marine Insurance (C)	USD/Mt									
4.	CIF Price at Discharge Port (D= A+B+C)	USD/Mt									

(ii) Bid Price – Fixed basis throughout the period of 5 (Five) years

S. No.	Particulars	Type of Coal	As per specification								
			Discharge Port	Dahej	Navlakhi	Magdalla	Mundra	BediBunder	Pipavav	Kandla	Okha
1.	FOB Price(A) – Fixed basis	USD/Mt									
2.	Ocean Freight (B) – Fixed basis	USD/Mt									
3.	Marine Insurance(C)-Fixed basis	USD/Mt									
4.	CIF Price at Discharge Port (D= A+B+C) – Fixed basis	USD/Mt									

Signature:  
 Name of the Signatory:  
 Designation:  
 Name of the Firm:  
 Address of the Firm:

Seal of Firm:

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**B. Inland Handling Charges**

S. No.	Particulars	Type of Coal	As per specification							
		Discharge Port	Dahej	Navlakhi	Magdalla	Mundra	BediBunde	Pipavav	Kandla	Okha
1.	Inland Handling Charges (Rs./Mt) (G)									
2.	Service Tax on IHC (%)									
3.	Service Tax on IHC (Rs./Mt) (H)									
4.	Railway Freight from Discharge Port to TPS (Normative) (Rs./Mt) (I)	STPS								

NOTE:

It is not mandatory for the Bidder to quote the rates for all ports.

Signature:

Name of the Signatory:

Designation:

Name of the Firm:

Address of the Firm:

Seal of Firm:

**SECTION VII: CONTRACT FORMS**

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**ANNEXURE I - BID GUARANTEE FORM FOR EMD**

**(BANK GUARANTEE ON NON-JUDICIAL STAMP PAPER OF Rs.100/-)**  
**FOR TENDER NO. \_\_\_\_\_**

WHEREAS Messer's \_\_\_\_\_(Name & Address of the Firm) having their registered office at \_\_\_\_\_ (Address of the firm's Registered office) (Hereinafter called the 'Tenderer') wish to participate in the tender No. \_\_\_\_\_for \_\_\_\_\_  
- (Name work) for Gujarat State Electricity Corporation Ltd. (hereinafter called the "Beneficiary") and WHEREAS a Bank Guarantee for \_\_\_\_\_ (Amount of E.M.D) valid till \_\_\_\_\_(mention here date of validity of this guarantee which will be 4 months beyond initial validity of Tenderer's offer), is required to be submitted towards the Earnest Money Deposit by the Tenderer along with the tender.

We, \_\_\_\_\_ (Name of the Bank and address of the Branch giving the Bank Guarantee) having our registered office at \_\_\_\_\_ (Address of Bank's registered office) hereby give this Bank Guarantee No. \_\_\_\_\_ dated \_\_\_\_\_ and hereby agree unequivocally and unconditionally to pay within 48 hours on demand in writing from the Gujarat State Electricity Corporation Ltd or any officer authorized by it in this behalf any amount not exceeding Rs. \_\_\_\_\_(amount of E.M.D.) (Rupees \_\_\_\_\_) to the said Gujarat State Electricity Corporation Ltd. on behalf of the tenderer.

We \_\_\_\_\_(Name of the Bank) also agree that withdrawal of the tender or part thereof by the Tenderer within its validity or Non submission of Security Deposit by the Tenderer within one month from the date tender or a part thereof has been accepted by the Gujarat State Electricity Corporation Ltd. would constitute a default on the part of the Tenderer and that this Bank Guarantee is liable to be invoked and encashed within its validity by the Beneficiary incase of any occurrence of a default on the part of the Tenderer and that the encashed amount is liable to be forfeited by the Beneficiary.

This agreement shall be valid and binding on this Bank up to and inclusive of \_\_\_\_\_(mention here the date of validity of Bank Guarantee) and shall not be terminated by notice or by change in the constitution of the Bank or the firm of Tenderer Or by any reason whatsoever and our liability hereunder shall not be impaired or discharged by any extension of time or variations or alternations made, given, conceded with or without our knowledge or consent by or between the tenderer and the Gujarat State Electricity Corporation Ltd.

NOTWITHSTANDING anything contained hereinbefore our liability under this guarantee is restricted to Rs. \_\_\_\_\_(amount of E.M.D.)(Rupees \_\_\_\_\_)(In words). Our Guarantee shall remain in force till \_\_\_\_\_ (date of validity of the Guarantee).

Place:  
Date:

Signature of the Bank's Authorized  
Signatory with official seal

**ANNEXURE II - SECURITY-CUM-PERFORMANCE BANK GUARANTEE**

(On Stamp Paper of Rs. 100/-)

The Bank of \_\_\_\_\_ hereby agree unequivocally and unconditionally to pay within 48 hours, on demand in writing from the Gujarat State Electricity Corporation Ltd. or any officer authorized by it in this behalf, any amount and not exceeding Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_) to the said Gujarat State Electricity Corporation Ltd. on behalf of M/s. \_\_\_\_\_ who have entered into a contract for the works specified below:

Order No. \_\_\_\_\_ dated \_\_\_\_\_.

This agreement shall be valid and binding on this Bank upto and inclusive of \_\_\_\_\_ (validity date) and shall not be terminable by notice or by change in the constitution of the Bank or the firm of Contractor or by any other reasons whatsoever and our liability hereunder shall not be impaired or discharged by any extension of time or variations or alteration made, given, conceded or agreed, with or without our knowledge or consent, by or between parties to the said within written contract.

“NOTWITHSTANDING” anything contained herein before our liability under this guarantee is restricted to Rs. \_\_\_\_\_ ((in words) \_\_\_\_\_). Our guarantee shall remain in force until \_\_\_\_\_ (validity date).

Place:

Date:

\_\_\_\_\_

Signed and Seal of Bank:

Address of the Bank:

### **ANNEXURE III –CONTRACT AGREEMENT FOR SUPPLY OF COAL**

This agreement is made at Vadodara the \_\_\_\_\_ day of \_\_\_\_\_ in the Christian year Two thousand nine between \_\_\_\_\_ (herein after referred to as “THE CONTRACTOR” which expression shall unless excluded by or repugnant to the contract include its successors or permitted assigns) of the one part and the Gujarat State Electricity Corporation Limited having their Corporate Office, VidyutBhavan, Race Course, Vadodara-390 007 (hereinafter called “The GSECL which expression shall unless excluded by or repugnant to the context include its successors or assigns) of the other part.

WHEREAS the aforesaid GSECL has accepted the tender of the aforesaid contractors for \_\_\_\_\_ as per GSECL Order No. \_\_\_\_\_ hereinafter called “The Works” and more particularly described enumerated or referred to in the specification, terms and conditions prescribed in the Order letter, covering letter and other letters and schedule of price which for the purpose of identification have been signed by Shri \_\_\_\_\_ on behalf of the Contractors and by \_\_\_\_\_ on behalf of the GSECL a list whereof is made out in the Schedule hereunder written and all of which said documents are deemed to form part of this contract and included in the expression “The Works” wherever herein used, upon the terms and subject to the conditions hereinafter mentioned.

AND WHEREAS THE GSECL has accepted the tender of the contractors for the construction of the said works for the sum of Rs. \_\_\_\_\_ ( Rupees \_\_\_\_\_ ) upon the terms and subject to the conditions herein mentioned.

NOW THIS AGREEMENT WITNESSES AND IT IS HEREBY AGREED AND DECLARED THAT :-

1. The contractors shall do and perform all works and things in this contract mentioned and described or which are implied therein or there from respectively or area reasonably necessary for the completion of the works and mentioned and at the times, in the manner and subject to the terms conditions and stipulations contained in this contract and in consideration of the due provision, executions, construction and completion of the works agreed to by the contractors as aforesaid the GSECL doth hereby covenant with the contractor to pay all the sums of money as and when they become due and payable to the contractors under the provisions of the contract. Such payments to be made at such times and in such manner as is provided by the contract.
2. The conditions and covenants stipulated herein before in this contract are subject to and without prejudice to the rights of the GSECL to enforce penalty for delays and / or any other rights whatsoever including the right to reject and cancel on default or breach by the contractors of the conditions and the covenants as stipulated in the general conditions, specifications, forms or tender schedule drawing etc., attached with GSECL’s Order No. \_\_\_\_\_ .

The contract value extent of supply delivery dates specifications and other relevant matters may be altered by mutual agreement and if so altered shall not be deemed or construed to mean or apply to effect or after other terms and conditions of the contract and the general conditions and the contract so altered or revised shall be and shall always be deemed to have been subject to and without prejudice to said stipulation.

## **SCHEDULE**

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.

In witness whereof the parties here to have set their hands and seals this day and month year first above written.

1. Signed, Sealed and delivered by :

(Signature with Name, Designation & Official Seal)  
for and on behalf of M/s. \_\_\_\_\_

In the presence of name, full address & Signature

- i) \_\_\_\_\_
- ii) \_\_\_\_\_

2. Signed, Sealed and delivered by :

(Signature with Name, Designation & Official Seal)  
for and on behalf of GSECL

In the presence of name, full address & Signature

- i) \_\_\_\_\_
- ii) \_\_\_\_\_

**ANNEXURE IV - HIGHSEAS SALES AGREEMENT FORM**

This Highseas Sales Agreement is entered on \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_ and between

(Name and Address of the Seller), HEREINAFTER REFERRED AS 'SELLER

AND

(Name And Address of Purchaser), HEREINAFTER REFERRED AS 'PURCHASER'

It is hereby agreed upon that the Purchaser will Purchase "Imported Non Cooking Steam (Thermal) Coal in Bulk" per (Name of Vessel) from the Seller as per the following terms and conditions:

1. Commodity: Imported Non-cooking steam (Thermal) Coal in Bulk.
2. Origin:
3. Vessel:
  - a. Quantity as per Bill of Lading
  - b. Technical specification:
  - c. Bills of Lading Details:
  - d. Sale Price:
  - e. Payment Terms:
  - f. Force Majeure:

**SCHEDULE**

List of documents forming part of the contract.

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.

For (Seller)

For (Purchaser)

(Authorized Signatory)

(Authorized Signatory)

## **ANNEXURE V - CONTRACT AGREEMENT FOR INLAND HANDLING OF COAL**

This agreement is made at Vadodara the \_\_\_\_\_ day of \_\_\_\_\_ in the Christian year Two thousand nine between \_\_\_\_\_ (herein after referred to as “THE CONTRACTOR” which expression shall unless excluded by or repugnant to the contract include its successors or permitted assigns) of the one part and the Gujarat State Electricity Corporation Limited having their Corporate Office, VidyutBhavan, Race Course, Vadodara-390 007 (hereinafter called “The GSECL which expression shall unless excluded by or repugnant to the context include its successors or assigns) of the other part.

WHEREAS the aforesaid GSECL has accepted the tender of the aforesaid contractors for \_\_\_\_\_ as per GSECL Order No. \_\_\_\_\_ hereinafter called “The Works” and more particularly described enumerated or referred to in the specification, terms and conditions prescribed in the Order letter, covering letter and other letters and schedule of price which for the purpose of identification have been signed by Shri \_\_\_\_\_ on behalf of the Contractors and by \_\_\_\_\_ on behalf of the GSECL a list whereof is made out in the Schedule hereunder written and all of which said documents are deemed to form part of this contract and included in the expression “The Works” wherever herein used, upon the terms and subject to the conditions hereinafter mentioned.

AND WHEREAS THE GSECL has accepted the tender of the contractors for the construction of the said works for the sum of Rs. \_\_\_\_\_ ( Rupees \_\_\_\_\_ ) upon the terms and subject to the conditions herein mentioned.

NOW THIS AGREEMENT WITNESSES AND IT IS HEREBY AGREED AND DECLARED THAT :-

3. The contractors shall do and perform all works and things in this contract mentioned and described or which are implied therein or there from respectively or area reasonably necessary for the completion of the works and mentioned and at the times, in the manner and subject to the terms conditions and stipulations contained in this contract and in consideration of the due provision, executions, construction and completion of the works agreed to by the contractors as aforesaid the GSECL doth hereby covenant with the contractor to pay all the sums of money as and when they become due and payable to the contractors under the provisions of the contract. Such payments to be made at such times and in such manner as is provided by the contract.
4. The conditions and covenants stipulated herein before in this contract are subject to and without prejudice to the rights of the GSECL to enforce penalty for delays and / or any other rights whatsoever including the right to reject and cancel on default or breach by the contractors of the conditions and the covenants as stipulated in the general conditions, specifications, forms or tender schedule drawing etc., attached with GSECL’s Order No. \_\_\_\_\_ .

The contract value extent of supply delivery dates specifications and other relevant matters may be altered by mutual agreement and if so altered shall not be deemed or construed to mean or apply to effect or after other terms and conditions of the contract and the general conditions and the contract so altered or revised shall be and shall always be deemed to have been subject to and without prejudice to said stipulation.

## **SCHEDULE**

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.

In witness whereof the parties here to have set their hands and seals this day and month year first above written.

3. Signed, Sealed and delivered by :

(Signature with Name, Designation & Official Seal)

for and on behalf of M/s. \_\_\_\_\_

In the presence of name, full address & Signature

i) \_\_\_\_\_

iii) \_\_\_\_\_

4. Signed, Sealed and delivered by :

(Signature with Name, Designation & Official Seal)

for and on behalf of GSECL

In the presence of name, full address & Signature

i) \_\_\_\_\_

iii) \_\_\_\_\_



**ANNEXURE VI - UMBRELLA CONTRACT AGREEMENT**

**UMBRELLA AGREEMENT**

**Between**

**GSECL**

**&**

\_\_\_\_\_

**For**

**Long Term Supply of Non-coking Steam (Thermal)  
Imported Coal**

**To**

**Gujarat State Electricity Corporation Ltd.**

**On**

**Highseas Sales/CIF Basis and Inland handling and  
transportation to GSECL's Thermal Power Stations**

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**UMBRELLA AGREEMENT**

This Umbrella Agreement (hereinafter referred to as the “**Agreement**”) is made and entered into on this the \_\_\_\_\_ day of \_\_\_\_\_ 2013 amongst:

1. **Gujarat State Electricity Corporation Limited**, a company incorporated under the laws of India, having its registered office at VidyutBhavan, Race Course, Vadodara – 390 007, Gujarat, India (hereinafter referred to as “**GSECL**” or the “**Purchaser**” which expression shall unless repugnant to the context or meaning thereof be deemed to mean and include its successors and assigns) of the ONE PART;

AND

2. \_\_\_\_\_ a Corporation duly organized and existing under the laws of \_\_\_\_\_ and \_\_\_\_\_ having its registered office at \_\_\_\_\_ (hereinafter referred to as the “**[Lead Member / Bidder]**” which expression shall unless repugnant to the context or meaning thereof be deemed to mean and include its successors and permitted assigns) of the OTHER PART [*Note: Please use Lead Member in case of Consortium bidding and Bidder in case of Single Bidder.*]

WHEREAS, the Purchaser operates power plants for the purpose of generating and selling electrical energy to the Gujarat UrjaVikas Nigam Ltd (“**GUVNL**”).

WHEREAS the Purchaser has entered into a power purchase agreement with the GUVNL under the terms of which, among others, the Purchaser has to procure Imported Coal.

Whereas the Purchaser has signed the Contract for Supply of Imported Coal on or about the date hereof (the “**Supply Contract**”) with \_\_\_\_\_ (hereinafter referred to as the “**Seller**”) for supply of Imported Coal to the Sikka Thermal Power Station (“**TPS**”) of the Purchaser.

Whereas the Purchaser has signed the Contract for Inland Handling of Imported Coal on or about the date hereof (the “**Inland Handling Contract**”) with \_\_\_\_\_ (hereinafter referred to as the “**Contractor**”) for the performance in India for inland handling of Imported Coal from the Discharge Port to designated TPS.

WHEREAS each of the **Supply Contract** and the **Inland Handling Contract** are referred to individually and / or collectively as “**Basic Contract(s)**”.

WHEREAS the Purchaser has engaged the Seller and the Contractor (the “**Basic Contractors**”) for long term supply of 2.5 million Mt per annum of Non-Coking Steam (Thermal) Imported Coal in Bulk for a period of five years to GSECL on CIF (Cost, Insurance & Freight)/ HSS (Highseas Sales) Basis and inland handling of Imported Coal for delivery at the respective TPS (collectively the “**Works**”) and has entered into the Basic Contracts for that purpose;

WHEREAS the **[Lead Member / Bidder]** has agreed and undertaken on behalf of the Basic Contractors to provide a security-cum-performance bank guarantee (“**Guarantee**”) guaranteeing the obligations of the Basic Contractors under the Basic Contracts and under this Agreement.

NOW, THEREFORE, the Parties hereby agree as follows:

## **1.0 DEFINITIONS**

1.1 “**Basic Contracts**” shall mean the following contracts:

- (a) Supply Contract; and
- (b) Inland Handling Contract

1.2 Terms used in this Agreement but not defined shall have the same meaning as given to it in the Basic Contracts.

## **2.0 CONTRACTUAL ARRANGEMENT**

### **2.1 Collective Obligation**

The **[Lead Member / Bidder]** acknowledges, undertakes and guarantees to ensure that

- (i) the Basic Contracts and this Agreement collectively constitute an obligation of the Basic Contractors shall provide Long Term Supply of 2.5 million Mt per annum of Non-Coking Steam (Thermal) Imported Coal in Bulk for a period of five years to GSECL (Purchaser) on CIF (Cost, Insurance & Freight)/ HSS (Highseas Sales) Basis and delivery at the respective TPS; and
- (ii) the aggregate Work required pursuant to the Basic Contracts (the “**Work**”) shall be performed in such a manner that the Basic Contractors collectively are obligated to supply 2.5 million Mt per annum of Non-Coking Steam (Thermal) Imported Coal in Bulk for a period of five years to GSECL on CIF (Cost, Insurance & Freight)/ HSS (Highseas Sales) Basis and deliver the same at the respective TPS on the terms and conditions set forth in the Basic Contracts.

### **2.2 Composite Contractual Arrangement**

The **[Lead Member / Bidder]** acknowledges that the Basic Contracts and this Agreement are intended to record a composite contractual arrangement and undertakes and guarantees to ensure that the Basic Contractors shall perform their obligations under the Basic Contracts.

### **2.3 Co-operation**

The **[Lead Member / Bidder]** agrees and undertakes to and also agrees and undertakes to cause each of the Basic Contractors to

- (i) collectively work for the successful performance of the Work.

- (ii) cooperate among themselves in performing the Work under their respective Basic Contract and in complying with and administering all of the terms of the Basic Contracts, as a collective obligation to ensure delivery of Imported Coal.
- (iii) not raise, and waive, any defenses the **[Lead Member / Bidder]** or the Basic Contractors may have against the Purchaser as to delay or non-performance by the Purchaser under its Basic Contract due to any alleged non-performance, inadequate performance or delay in performance by a Basic Contractor or **[Lead Member / Bidder]** under another Basic Contract, and shall not withhold or alter, or be excused from, performance of its obligations under its Basic Contract or this Agreement, due to any alleged or actual non-performance, inadequate performance or delay in performance by any other Basic Contractor or the **[Lead Member / Bidder]** under another Basic Contract, or this Agreement.

#### **2.4 Cross-Default**

The **[Lead Member / Bidder]** agrees and acknowledges that a default by any Basic Contractor or **[Lead Member / Bidder]**, as the case may be (each a “**Defaulting Entity**”), under any Basic Contract, or this Agreement (each a “**Related Contract**” and, together, the “**Related Contracts**”) to which such Defaulting Entity is a party, after giving effect to any rights of such Defaulting Entity specified in such Related Contract to cure such default, shall constitute with respect to such Defaulting Entity a default under each other Related Contract to which such Defaulting Entity is a party. The **[Lead Member / Bidder]** further acknowledges and agrees that a default by any Basic Contractor or the **[Lead Member / Bidder]** under any Related Contract to which such Basic Contractor or the **[Lead Member / Bidder]** is a party, after giving effect to any rights specified in such Related Contract to cure such default, shall constitute with respect to the other Basic Contractors or **[Lead Member / Bidder]** a default under each Related Contract to which such other Basic Contractors or **[Lead Member / Bidder]** is a party.

#### **2.5 Enforceability**

- (a) The **[Lead Member / Bidder]** represents that as of the date hereof:
  - (i) Corporate Standing. The **[Lead Member / Bidder]** is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or formation, is qualified to do business in India and that the execution, delivery and performance of this Agreement has been duly authorized by all requisite corporate action and will not violate any provision of any government agency, rule or regulation, governmental authorization, statute, or ordinance, or violate any provision of its charter or by-laws or any indenture, agreement, or instrument to which the **[Lead Member / Bidder]** is a party or by which the **[Lead Member / Bidder]** or its property may be bound or affected.
  - (ii) No Violation of Law. The **[Lead Member / Bidder]** is not in violation of any applicable governmental authorization, law, statute, order, rule or

regulation promulgated, or judgement entered by any national, state, local or government agency which for either an individual violation or for a number of violations in the aggregate would adversely affect its ability to perform its obligations under this Agreement.

- (iii) Licenses. The **[Lead Member / Bidder]** is the holder of all national, state, local, or other governmental consents, licenses, permits, or other governmental authorizations required to conduct its business.
  - (iv) Litigation. Except as otherwise disclosed in writing to the Purchaser, the **[Lead Member / Bidder]** is not a party to any legal, administrative, arbitral, investigatorial (to the best of its knowledge), or other proceeding or controversy pending or, to the best of its knowledge, threatened, which would adversely affect its ability to perform under this Agreement.
- (b) The **[Lead Member / Bidder]** acknowledges and agrees on its that it may be required to pay liquidated damages or may otherwise suffer a loss due to non-performance or delay or delay in performance by a Basic Contractor, and confirms that it has entered into contractual loss sharing arrangements with the Basic Contractor that are satisfactory to such Basic Contractor in order to protect itself from any such loss, and that the liability of each Basic Contractor and the **[Lead Member / Bidder]** to the Purchaser shall not be affected by the actual enforcement or otherwise of such loss sharing arrangements.

## **2.6 Co-ordination**

The **[Lead Member / Bidder]** assures and undertakes to co-ordinate and cause the Basic Contractors to co-ordinate among themselves to ensure supply of 3.5 million Mt per annum of Non-Coking Steam (Thermal) Imported Coal in Bulk for a period of five years to GSECL on CIF/ HSS basis and delivery at the respective TPS as set forth in the Basic Contracts.

## **3.0 LIABILITY**

- 3.1 The **[Lead Member / Bidder]** has the single point responsibility and liability to ensure long term supply of 2.5 million Mt per annum of Non-Coking Steam (Thermal) Imported Coal in Bulk for a period of five years to GSECL on CIF / HSS basis and delivery at the respective TPS on the terms and conditions set out in the Basic Contracts.
- 3.2 Notwithstanding anything to the contrary or in the Basic Contracts, the **[Lead Member / Bidder]** agrees and acknowledges that the fact that duplicate or substantially duplicate texts exist in the Basic Contracts shall not be construed as imposing additional or cumulative liabilities on any of the Basic Contractors, subject always to the obligations of the **[Lead Member / Bidder]** under this Agreement, but instead is intended to bind all of them to one composite set of conditions.

#### **4.0 INSURANCE**

The **[Lead Member / Bidder]** has the responsibility to insure, either directly or through a Basic Contractor, any portion of the Works not insured by the Basic Contractors under the Basic Contracts to the satisfaction of the Purchaser.

#### **5.0 TAX TREATMENT**

In the event that the Purchaser receives notification or assessment of any Taxes whether as an agent, or in substitution of **[Lead Member / Bidder]**, Basic Contractors or their servants agents or otherwise, in respect of the performance or arising out of the performance of its obligations by **[Lead Member / Bidder]** under this Agreement or Basic Contracts, the Purchaser shall forthwith notify **[Lead Member / Bidder]** upon which **[Lead Member / Bidder]** shall take prompt and all necessary action for settlement and/or any other lawful disposal of such notification or assessment.

The Purchaser is not liable to pay any direct tax liability coming upon the Basic Contractors or the **[Lead Member / Bidder]**.

The **[Lead Member / Bidder]** shall supply the coal as per the clauses specified in the bidding document. In case there is any deviation, leading to any confiscation / detention or imposition of penalty by the Customs authorities or any government authorities than all such penalties, fines, charges or all additional costs incurred by Purchaser due to deviation in specification / quality / description of coal shall be borne by the **[Lead Member / Bidder]**.

#### **6.0 DEFAULTS**

The **[Lead Member / Bidder]** acknowledges and agrees and would ensure that the Basic Contractors would agree that a default by any of the Basic Contractor under its respective Basic Contract shall be treated as a default under the other Basic Contract] The **[Lead Member / Bidder]** further acknowledges and agrees and would ensure that the Basic Contractors would agree that in the case of a termination or suspension, as the case may be, of a Basic Contract by the Purchaser, the other Basic Contracts shall be deemed to have been terminated or suspended, as the case may be, by the Purchaser as if there was a default by the respective Basic Contractor.

#### **7.0 SECURITY**

[The **[Lead Member / Bidder]** acknowledges that the Basic Contractors shall issue to the Purchaser the Performance Guarantee under the Basic Contracts.

The **[Lead Member / Bidder]** agrees and acknowledges that the Performance Guarantee may be invoked by the Purchaser at its sole discretion, for any breach by a Basic Contractor or the **[Lead Member / Bidder]** under any of the Basic Contracts or this Agreement.

## **8.0 DISPUTES AND ARBITRATION**

Any dispute or difference including those considered as such by only one of the Parties arising out of or in connection with the Agreement shall be to the extent possible settled amicably between the Parties.

- 8.1 All disputes which cannot be settled amicably, by mutual negotiations, shall be referred for arbitration in accordance with the Arbitration and Conciliation Act, 1996, or any statutory modification or enactment thereof for the time being in force.
- 8.2 The **[Lead Member / Bidder]** and the Purchaser will continue to perform their respective obligations under the Agreement during the arbitration proceedings unless such performance itself relates to the dispute referred to arbitration pursuant to this clause 8.
- 8.3 The arbitration panel shall consist of 3 (three) arbitrators, one each to be appointed by Purchaser and the **[Lead Member / Bidder]** respectively and the third arbitrator to be appointed by the two arbitrators so appointed by the Purchaser and the **[Lead Member / Bidder]** in accordance with the provisions of the Indian Arbitration and Conciliation Act, 1996. The arbitration shall be held in Vadodara.
- 8.4 The award rendered in any arbitration commenced hereunder shall be final and conclusive. The Purchaser and the **[Lead Member / Bidder]** hereby undertake to carry out the award without delay.
- 8.5 Notwithstanding any lawful termination of the Basic Contract(s) or this Agreement, this clause 8 shall remain in full force and effect where either arbitration has already commenced or the liabilities between the Purchaser and the **[Lead Member / Bidder]** have not been fully determined.

### **8.6 Cost of Arbitration**

The costs of any arbitration shall be borne equally by the Parties and each shall bear its own expenses in prosecuting or defending a claim; provided that if the arbitration panel determines that the prosecution or defence of a claim by a Party was frivolous, substantially without merit, or not presented in good faith, the Panel shall assess the costs of arbitrating such claim against such Party and may, in its discretion and as it deems equitable, require such Party to reimburse the other Party for all or any portion of such other Party's expenses (including reasonable attorneys' fees and costs) in prosecuting or defending such claim.

### **8.7 Basic Contracts**

Notwithstanding anything contained herein if any dispute relating to or arising in relation to the Basic Contracts between the Purchaser and a Basic Contractor under the provisions of the Basic Contract are referred to arbitration, or an arbitration panel has been or is in the process of being constituted, then the Parties herein agree that such arbitration panel shall be the arbitration panel for the purposes of this Agreement.



## **9.0 EFFECTIVENESS OF AGREEMENT**

This Agreement shall become effective on and from the Effective Date of the Basic Contracts.

## **10.0 GOVERNING LAW, SUBMISSION TO JURISDICTION AND SERVICE OF PROCESS**

10.1 This Agreement shall be interpreted and construed in accordance with Indian law.

10.2 Subject to Clause 8, the parties irrevocably and unconditionally agree that the courts of India at Vadodra, Gujarat shall have jurisdiction to hear and determine any suit, action or proceedings, and to settle disputes, which may arise out of or in connection with this Agreement, and for such purposes, irrevocably submits to the non-exclusive jurisdiction of such courts. The submission to the jurisdiction of Indian courts shall not (and shall not be construed so as to) limit the right of the parties hereto to take proceedings under this Agreement in any other court of competent jurisdiction nor shall the taking of such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction if and to the extent permitted by applicable law.

10.3 The *[Lead Member / Bidder]* and the Purchaser agree that the process by which any proceedings under this Agreement are commenced may be served at the address mentioned in Clause 15. Nothing contained herein shall affect the right to serve process in any other manner permitted by applicable law.

## **11.0 TITLE AND RISK**

The *[Lead Member / Bidder]* agrees that it shall have the single point responsibility to ensure that the Basic Contractors bear the entire risk of loss or damage to the Imported Coal till the delivery of the Coal to the Purchaser at the respective TPS under the Basic Contracts.

## **12.0 ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement among the Parties with respect to the matter dealt with herein, and there are no other oral or written understandings, representations or commitments of any kind, express or implied, which are not expressly set forth herein, except for the Basic Contracts. In case of any conflicts between the provisions of this Agreement and the provisions of any of the Basic Contracts, the provisions of this Agreement shall prevail.

## **13.0 CONFIDENTIALITY AND NON-DISCLOSURE**

A Party shall not disclose this Agreement to any third party without the consent of the other Party except that;

- (a) the Purchaser may disclose the Agreement to its lenders (if any) and shareholders; and
- (b) either Party may disclose the Agreement if required by law or by any public, governmental or statutory authority.

Provided that prior notice shall be given to the other Party by the Party disclosing the Agreement.

#### **14.0 UNDERTAKING**

- 14.1 (a) ***[Lead Member / Bidder]*** hereby undertakes and guarantees unconditionally and absolutely to the Purchaser that the Basic Contractors shall duly and punctually perform all obligations and pay when due all amounts payable by each Basic Contractor under their respective Basic Contracts with the Purchaser (“**Obligations**”).
- (b) The total liability of the ***[Lead Member / Bidder]*** shall be the aggregate of the liabilities under the Basic Contracts.
- 14.2. The obligations of the ***[Lead Member / Bidder]*** under this Agreement (i) shall be absolute, present, irrevocable and unconditional without regard to the lack of power or authority of any party to enter into the Basic Contracts or this Agreement with the Purchaser; (ii) are in no way conditioned upon any attempt to enforce performance or compliance by a Basic Contractor; and (iii) shall remain in full force and effect until the performance by the Basic Contractors of all the obligations under the Basic Contracts. The obligations of the ***[Lead Member / Bidder]*** shall not be affected, reduced, modified or impaired upon the happening from time to time of any of the following events, whether or not with notice to or the consent of ***[Lead Member / Bidder]***:
- (a) the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all of any Basic Contractor’s assets, the marshalling of any Basic Contractor’s assets and liabilities, the receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganisation, arrangement, composition with creditors, or readjustment of, or other similar proceedings affecting any Basic Contractor or any of its assets;
- (b) the assignment of any right, title or interest of Purchaser in the Basic Contracts or this Agreement to any other person;
- (c) any other cause or circumstances under the Basic Contracts or this Agreement, foreseen or unforeseen, whether similar or dissimilar to any of the foregoing (except as otherwise expressly provided under this Agreement); it being the intent of ***[Lead Member / Bidder]*** that its obligations hereunder shall not be discharged except by performance of the Obligations.
- 14.3 ***[Lead Member / Bidder]*** hereby waives notice of (1) any alteration or modification of the Basic Contracts or this Agreement, (2) Purchaser’s acceptance and reliance on this Agreement, and (3) notice of default or demand in the case of default, provided such notice or demand has been given to or made upon the applicable Basic Contractor in accordance with the relevant Basic Contract(s).

- 14.4 It is expressly agreed that upon occurrence of the event of default under any of the Basic Contracts, the Purchaser shall have the option, in addition to monetary and other remedies as defined in Basic Contracts, to call upon the **[Lead Member / Bidder]** to perform the whole or part of such Basic Contract. On receipt of such notice from the Purchaser, the **[Lead Member / Bidder]** shall be obligated to perform such Basic Contract in accordance with its terms and this Agreement. The Purchaser shall be entitled to select any option or combination of options.
- 14.5 It is expressly agreed that no remedy herein conferred upon or reserved to Purchaser hereunder is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default, omission or failure of performance hereunder shall impair any such right or power, and any such right or power may be exercised from time to time and as often as may be deemed expedient, in order for the Purchaser to be entitled to exercise any remedy reserved to it in this Agreement. In the event any provision of this Agreement is breached by any party and thereafter duly waived by the other party so empowered to act, such waiver shall be limited to the particular breach hereunder. No waiver, amendment, release or modification of this Agreement shall be established by conduct, custom or course of dealing, but solely by any instrument in writing duly executed by the parties thereto.

## **15.0 NOTICES**

- 15.1 Any notice, demand, request, consent, approval, confirmation, communication, or statement which is required or permitted under this Agreement shall be in writing and shall be delivered personally or sent by registered or certified mail, telefax or courier service addressed as follows:

If to the Purchaser : Gujarat State Electricity Corporation Ltd,  
VidyutBhavan, Race Course,  
Vadodara - 390 007

Attention : Chief Engineer (Fuel)

If to the **[Lead Member / Bidder]**: [to be inserted]

Attention : [to be inserted]

- 15.2 All notices shall be deemed delivered upon receipt.
- 15.3 Any Party may by notice given in the manner as set out in this Agreement, change the address to which such notices and communications to it are to be delivered or mailed.
- 15.4 Any Party may by notice of at least 15 (fifteen) days to the other party change the address to which such notices and communications to it are to be delivered or mailed.

## **16.0 INDEMNIFICATION**

### **16.1 Requirements**

The *[Lead Member / Bidder]* shall fully indemnify, save harmless and defend the Purchaser, the Purchaser's representative, its subsidiaries and affiliates and parent companies, and the directors, officers, agents and employees of the Purchaser (the "**Purchaser Indemnified Parties**"), from and against any and all losses, costs, damages, injuries, liabilities, claims (excluding a taxation claim or liability to government instrumentalities) and causes of action, penalties and interest, including reasonable attorney's fees (collectively, the "**Damages**"), directly or indirectly arising out of or resulting from or related to this Agreement or the Basic Contracts, including -(i) any damage to or destruction of property of, or death of or bodily injury to, any person to the extent resulting from *[Lead Member / Bidder]*'s /Basic Contractor's/ any subcontractor's fault, negligence, strict liability, alleged fault or intentional act or omission or other act or omission in the performance of the Work, breach of this Agreement, any Basic Contract or any sub-contract otherwise relating to the Work, this Agreement, any Basic Contract, any sub-contract, (ii) including failure to comply with applicable laws or applicable permits, failure or mistake in paying taxes, or non-payment of amounts payable by the *[Lead Member / Bidder]*, Basic Contractor, or any sub-contractor.

### **16.2 Specific Indemnification**

16.2.1 *[Lead Member / Bidder]* shall fully indemnify, save harmless the Purchaser Indemnified Parties from and against any claim, demand, liability, action, proceedings, cost or expense by any third party with respect to:

- i) Failure of the *[Lead Member / Bidder]*, any Basic Contractor or any of their respective sub-contractors to comply with applicable laws, or to obtain applicable permits and required licenses.
- ii) Failure of the *[Lead Member / Bidder]* and/or Basic Contractors to make payments of taxes relating to *[Lead Member / Bidder]*/ Basic Contractor's, any Sub-contractor's income or other taxes required to be paid by *[Lead Member / Bidder]* and/or Basic Contractors pursuant to this Agreement and/or Basic Contracts, and]
- iii) Any hazardous materials that the *[Lead Member / Bidder]*, Basic Contractor or any of their respective sub-contractors has at any time brought on and caused the release thereof on the Sikka TPS or for which any of them is responsible by law or in the Agreement.

### **16.3 Notice and Legal Defence:**

16.3.1 Promptly after receipt by the Purchaser Indemnified Party of any claim or notice of the commencement of any action, administrative or legal proceeding, or investigation as to which the indemnities provided may apply, such Purchaser Indemnified Party shall notify the *[Lead Member / Bidder]* in writing of such fact provided that the failure of the Purchaser Indemnified Party to give any such notice promptly shall not excuse the *[Lead*

**Member / Bidder]**from its indemnification obligations hereunder, except to the extent any such failure actually prejudices the **[Lead Member / Bidder]** in the defence of such matters.

16.3.2 The **[Lead Member / Bidder]**shall assume on behalf of the Purchaser Indemnified Party the defence and conduct the same with due diligence and in good faith and with counsel reasonably satisfactory to the Purchaser Indemnified Party; provided that the Purchaser Indemnified Party shall have the right to be represented therein by a counsel of its own selection and at **[Lead Member / Bidder]**'s expense; and provided further that, if the defendants in any such action include both the **[Lead Member / Bidder]**and the Purchaser Indemnified Party and the Purchaser Indemnified Party has reasonably concluded that there may be legal defences available to it which are different from or additional to, or inconsistent with, those available to the **[Lead Member / Bidder]**, the Purchaser Indemnified Party shall have the right to select separate counsel to participate in the defence of such action on its behalf and at the **[Lead Member / Bidder]**'s expense.

16.3.3 The Purchaser Indemnified Party shall, at the request of the **[Lead Member / Bidder]**, provide all reasonably available assistance in the defence or settlement of any such claim, action, proceeding or investigation. The **[Lead Member / Bidder]** shall not settle or compromise any claim, action or proceeding without the prior written consent of the Purchaser Indemnified Party.

#### **16.4 Failure to Defend Action**

If any claim, action, proceeding or investigation arises as to which the indemnities provided may apply, and the **[Lead Member / Bidder]** fails to assume the defence of such claim, action, proceeding or investigation, then the Purchaser Indemnified Party may at **[Lead Member / Bidder]**'s expense contest (or, with the prior written consent of the Purchaser Indemnified Party, settle) such claim.

#### **16.5 Survival: Expiration of Indemnity**

The provision of this Clause 16 shall survive the termination of this Agreement and the Basic Contracts; provided that the **[Lead Member / Bidder]** shall not have any indemnity obligations pursuant to this Clause 16 for any claim arising out of or resulting from events or circumstances occurring after the termination of this Agreement and the Basic Contracts.

#### **17.0 OTHER PROVISIONS**

##### **17.1 Waiver**

The failure of either Party to insist in any one or more instances upon strict performance of any provisions of this Agreement or the waiver with respect to any default or any other matter hereunder, shall not be construed as a waiver with respect to any subsequent performance, default or matter. No waiver of any of the terms or conditions hereof shall be valid or binding unless made in writing and duly executed by both the Parties.

## **17.2 Survival**

Cancellation, expiration or earlier termination of this Agreement shall not relieve the Parties of their obligations hereunder that by their nature should survive such cancellation, expiration or termination, including warranties, remedies, promises of indemnity and confidentiality.

## **17.3 Language**

All notices, demands, requests, statements, instruments, certificates or other communications given, delivered or made by, or on behalf of, either Party to the other under or in connection with this Agreement (including any arbitration pursuant to Clause 8) shall be in English.

## **17.4 Severability**

Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof and without affecting the validity or enforceability of any provision in any other jurisdiction and in such event, the Parties shall endeavour in good faith to forthwith agree upon a legally enforceable substitute provision as will most closely correspond to the legal and economic contents of the unenforceable provision.

## **17.5 Other Documents**

Each Party agrees to execute and deliver any instruments and to perform any acts which may be necessary or reasonably requested in order to give full effect to the intent and purpose of this Agreement.

## **17.6 Costs**

The costs of stamp duties and similar charges imposed by law on the Agreement or any part thereof for Agreement shall be borne by the **[Lead Member / Bidder]**. However, stamp paper shall be purchased in the name of Purchaser.

## **17.7 Communications**

Wherever provision is made for the giving or issue of any notice, instruction, communication, consent, approval, certificate or determination by any person, unless otherwise specified, such communication shall be in writing.

The expression "written" or "in writing", shall mean for the purposes of this contract any hand-written, typed or printed communication, including the agreed system of electronic transmission and fax.

All certificates, notices, communications or orders to be given to the **[Lead Member / Bidder]** by the Purchaser or the Purchaser's Representative and vice-versa, shall be in writing and may either be delivered by hand against written acknowledgement of receipt, or be sent by mail or one of the agreed systems of electronic transmission. The addresses for the receipt of such communications shall be as stated in the Agreement or modified by notice given in accordance with clause 15.

**17.8 Assignment**

The **[Lead Member / Bidder]** shall not, without the prior consent of the Purchaser, assign to any person any benefit of or obligation under this Agreement in whole or in part. Such assignment, if approved by Purchaser, shall not in any way relieve the **[Lead Member / Bidder]** from any obligations, duty, or responsibility under this Agreement. However, Purchaser may assign to any person any benefit of or obligation under this Agreement in whole or in part.

**17.9 Further Assurances**

The **[Lead Member / Bidder]** shall or shall cause the Basic Contractors to execute and deliver all further documents and instruments, and provide such further assistance, that may be necessary or desirable in the reasonable opinion of Purchaser to complete performance of the Work or to effectuate the purposes or intent of this Agreement and the Basic Contracts.

**17.10 Benefit**

This Agreement shall inure to the benefit of Purchaser, its successors and assigns and shall be binding upon **[Lead Member / Bidder]** and its successors and assigns.

**17.11 No Joint Venture**

Nothing contained in this Agreement or in the Basic Contracts is intended to or shall be construed as creating a joint venture, partnership, agency or association of persons / companies, among the **[Lead Member / Bidder]** and the Purchaser.

**17.12 Termination/ Cancellation**

Purchaser reserves the right to cancel this Agreement and the Basic Contracts in full or part by written notice of one month if the performance of the Basic Contractors, in the opinion of the Purchaser, is not in accordance with this Agreement and Basic Contracts. The Purchaser also reserves the right to terminate/ cancel the order by giving one month written notice without assigning any reason thereof.

IN WITNESS WHEREOF, the Parties have caused this agreement to be executed on their behalf by the undersigned persons thereunto duly authorized.

As <b>[Lead Member / Bidder]</b>	<b>Gujarat State Electricity Corporation Ltd.</b> As Purchaser
By:	By:

**ANNEXURE VII - CONSORTIUM AGREEMENT FORM**

*(To be executed on Stamp paper of appropriate value)*

THIS CONSORTIUM AGREEMENT is entered into on this the ..... day of ..... 20...

**BETWEEN**

1. ...., a [company] incorporated under the [insert] and having its registered office at ..... (hereinafter referred to as the “**First Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns)

**AND**

2. ...., a [company] incorporated under the [insert] and having its registered office at ..... (hereinafter referred to as the “**Second Part**” which expression shall unless it be repugnant to the context or meaning thereof be deemed to mean and include its successors and permitted assigns)

**AND**

3. ...., a [company] incorporated under the [insert]and having its registered office at ..... (hereinafter referred to as the “**Third Part**” which expression shall unless it be repugnant to the context or meaning thereof be deemed to mean and include its successors and permitted assigns)

The above mentioned parties of the First, Second, and Third Part are collectively referred to as the “**Parties**” and each is individually referred to as a “**Party**”

**WHEREAS:**

(A) Gujarat State Electricity Corporation Limited (“**GSECL**”) has invited Bids by its Tender Document No. .... dated..... (the “**Tender Document**”) for selection of bidders for long term supply of 2.5 million Mt per annum of Non-Coking Steam (Thermal) Imported Coal in Bulk for a period of 5 (five) years to GSECL (Purchaser) on CIF (Cost, Insurance & Freight)/ HSS (Highseas Sales) Basis and inland handling and transportation of Imported Coal for delivery at the Power Station of GCV (AR) of 5500 Kcal/Kg for its use at the Thermal Power Station of GSECL at Sikka, Jamnagar, Gujarat, India on the terms and conditions specified in the Tender Document.

(B) The Parties are interested in jointly bidding for the Project as members of a Consortium and in accordance with the terms and conditions of the Tender Document, and

(C) It is a necessary condition under the Tender Document that the members of the Consortium shall enter into a Consortium Agreement and furnish a copy thereof with the Bid.



**NOW IT IS HEREBY AGREED AS FOLLOWS:**

**1. Definitions and Interpretations**

In this Agreement, the capitalised terms shall, unless the context otherwise requires, have the meaning ascribed thereto under the Tender Document.

**2. Consortium**

2.1 The Parties do hereby irrevocably constitute a consortium (the “**Consortium**”) for the purposes of jointly participating and submitting the Bid pursuant to the Tender Document.

2.2 The Parties hereby undertake to participate in the bidding process only through this Consortium and not individually and/ or through any other consortium constituted for participating in the bidding process, either directly or indirectly or through any of their affiliates.

**3. Covenants**

The Parties hereby undertake that in the event the Consortium is declared the Successful Bidder it shall enter into the relevant Contract Agreements with GSECL and performing all its obligations as the Seller and the Contractor in terms of the Contract.

**4. Role of the Parties**

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

(a) Party of the First Part shall be the Lead Member of the Consortium and shall have the power of attorney from all Parties for conducting all business for and on behalf of the Consortium during the bidding process and shall be the Seller under the Contract if the Consortium is declared the Successful Bidder;

(b) Party of the Second Part shall be a Member of the Consortium, and shall be the Contractor under the Contract if the Consortium is declared the Successful Bidder ;

{(c) Party of the Third Part shall be the other Member of the Consortium.

**5. Joint and Several Liability**

The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Contract and in accordance with the terms of the Tender Document and the Contract, under and in accordance with the Contract and the Tender Document.

**6. Representation of the Parties**

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

(a) Such Party is duly organized, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;

(b) The execution, delivery and performance by such Party of this Agreement has been authorized by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/ power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member is annexed to this Agreement, and will not, to the best of its knowledge:

(i) require any consent or approval not already obtained;

(ii) violate any applicable laws presently in effect and having applicability to it;

(iii) violate the memorandum and articles of association, by-laws or other applicable organisational documents thereof;

(iv) violate any clearance, permit, concession, grant, license or other governmental authorisation, approval, judgement, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or

(v) create or impose any liens, mortgages, pledges, claims, security interests, charges or encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;

(c) this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and

(d) there is no litigation pending or, to the best of such Party's knowledge, threatened to which it is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfillment of its obligations under this Agreement.

## **7. Termination**

This Agreement shall be effective from the date hereof and shall continue in full force and effect until the execution of the Contract Agreement, in case the Consortium is declared to the Successful Bidder. However, in case the Consortium is not selected as the Successful Bidder, the Agreement will stand terminated upon return of the Earnest Money Deposit by GSECL to the Bidder.

**8. Miscellaneous**

8.1 This Agreement shall be governed by laws of India.

8.2 The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of GSECL.

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

*[Insert signature blocks]*

**ANNEXURE VIII - CERTIFICATE FOR CIF PRICE WORKING**

- (i) Name of Vessel : \_\_\_\_\_
- (ii) Bill of Lading Quantity : \_\_\_\_\_
- (iii) Date of Bill of Lading : \_\_\_\_\_
- (iv) Preceding month of B/L : \_\_\_\_\_
- (v) Type of Coal : \_\_\_\_\_
- (vi) Port of Discharge : \_\_\_\_\_

<b>Working of FOB Price = A = (A2 x A3) / A1</b>			
A1	CERC Index on the base date (calculated average monthly from the weekly indices for the preceding month from the Bid closing date refer Cl. No.2.11.4 (b) )	USD/Mt	
Calculation for CERC Index calculated average monthly from the weekly indices for the preceding month*:			
	Richards Bay API4	USD/Mt	
	Barlow Jonker	USD/Mt	
	Global Coal New Castle	USD/Mt	
A2	CERC Index with weightage 50:25:25 of above	USD/Mt	
A3	FOB Component of the CIF price accepted	USD/Mt	
FOB Price = A = (A2 x A3) / A1		USD/Mt	
<b>Working of Ocean Freight = B = (B2 x B3) / B1</b>			
B1	Singapore 380 CST Bunker Fuel Price on the base date (calculated average monthly declared weekly of the preceding month from the Bid closing date refer Cl. No.2.11.4 (c) )	USD/Mt	
B2	Singapore 380 CST Bunker Fuel Price (average monthly declared weekly for the preceding month * )	USD/Mt	
B3	Ocean Freight Component of the CIF price accepted	USD/Mt	
Ocean Freight = B = (B2 x B3) / B1		USD/Mt	
<b>Marine Insurance Component = C</b>		<b>USD/Mt</b>	
<b>CIF Price = A+B+C</b>		<b>USD/Mt</b>	

\* = Certified copies of the respective publications are attached herewith

This is also to certify that the Indices Values for the preceding month to derive the applicable CIF Price and raising HSS Invoice are correct to the best of our knowledge and verified as per the certified copies of the respective publications (enclosed). Sign and Seal of the Seller:.....

Encl :a.a.

(Note: The above format is as per present CERC methodology, however, in case if, CERC revise the methodology for calculation of CERC Index, the format will be revised accordingly.)

**ANNEXURE IX - FORMAT FOR LETTER FROM MINE OWNER**

Dear Sir,

Sub : Tender for supply of Imported Steam Coal

Ref : Tender No.:

We, \_\_\_\_\_ (Name of Manufacturer / Mine Owner) established and reputable manufacturers / producers of Steam Coal having factories / mines at \_\_\_\_\_ (Name of the place) hereby authorize \_\_\_\_\_ (Name of the Bidder) to Bid, negotiate and conclude the contract with GSECL for the quantity and quality against your Tender No. for the Steam Coal mined/explored by us. No company, firm, or individual other than M/s. \_\_\_\_\_ (Name of the Bidder) can conclude the contract in regard to this supply of Steam Coal offered for supply against this invitation for Bid by GSECL.

- (i) Reserves in million tonnes (furnish relevant proof):
- (ii) Projected tied-up supplies in million tonnes for the next 5 years based on existing orders (furnish relevant proof):
- (iii) Projected production capacity in million tonnes for the next 5 years (furnish relevant proof):
- (iv) Projected production surplus in million tonnes for the next five years (furnish relevant proof):
- (v) The specifications of the coal offered by us are as follows:

Yours faithfully,

For and on behalf of M/s. \_\_\_\_\_ (Name of manufacturer / mine owner)

(Signature)

(Name)

Annexure: As above