RPCL-NORINCO INTL POWER LIMITED

(A Joint Venture of Rural Power Company Limited (RPCL), Bangladesh and NORINCO International Cooperation Limited, China)

TENDER DOCUMENT
for
Supply of Coal
for
PATUAKHALI 1320 (2×660) MW COAL FIRED THERMAL POWER PLANT

(INTERNATIONAL OPEN TENDER)
(Single Stage Two Envelope Method)

Tender Document No.: PUR-007(CS/PATUAKHALI/OTM)/2024-25
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Section 1. Instructions to Tenderers

A. General

1. Scope of Tender

1.1 The Purchaser named in the Tender Data Sheet (TDS) (hereinafter referred to as the "Purchaser") wishes to issues these Tender Documents for the supply of Goods, and Related Services incidental thereto, as specified in the TDS and as detailed in Section 6: Schedule of Requirements.

1.2 The name of the Tender and the number and identification of its constituent lot(s) are stated in the TDS.

1.3 The successful Tenderer will be required to complete the delivery of the goods and related services (when applicable) as specified in the GCC Clause **18**.

2. Interpretation

2.1 Throughout this Tender Document

(a) the term "in writing" means communication written by hand or machine duly signed and includes properly authenticated messages by facsimile or electronic mail;

(b) if the context so requires, singular means plural and vice versa; and

(c) "day" means calendar days unless otherwise specified as working days;

(d) "Person" means and includes an individual, body of individuals, sole proprietorship, partnership, company, association or cooperative society that wishes to participate in Procurement proceedings;

(e) "Tenderer" means a Person who submits a Tender;

(f) "Tender Document ", means the Document provided by a Purchaser to a Tenderer as a basis for preparation of its Tender;

(g) "Tender ", depending on the context, means a Tender submitted by a Tenderer for delivery of Goods and Related Services to a Purchaser in response to an Invitation for Tender;

3. Source of Funds

3.1 The Purchaser has been allocated public funds from the source as indicated in the TDS and intends to apply a portion of the funds to eligible payments under the contract for which this Tender Document is issued.

3.2 For the purpose of this provision, "public funds" means any funds allocated to a Purchaser under Government budget, or loan, grants and credits placed at the disposal of a Purchaser through the Government by the development partners or foreign states or organizations.

3.3 Payments by the development partner, if so indicated in the TDS, will be made only at the request of the Government and upon approval by the development partner in accordance with the applicable Loan/Credit/Grant Agreement, and will be subject in all respects to the terms and conditions of that Agreement.

4. Corrupt, Fraudulent, Collusive or Coercive Practices

4.1 The Government requires that Procuring Entities, as well as Tenderers shall observe the highest standard of ethics during implementation of procurement proceedings and the execution of Contracts under public funds.

4.2 The Government requires that Procuring Entities, as well as Tenderers and Suppliers shall, during the Procurement proceedings and the execution of Contracts under public funds, ensure-

(a) strict compliance with the provisions of Section 64 of the Public Procurement Act 2006 (Act 24 of 2006);

(b) abiding by the code of ethics as mentioned in the Rule127 of the Public Procurement Rules, 2008;

(c) that neither it's any officer nor any staff or any other agents or intermediaries working on its behalf engages in any practice as detailed in ITT Sub Clause 4.3.

4.3 For the purposes of ITT Sub-clause 4.2 the terms set forth as bellows:

(a) **corrupt practice** means offering, giving or promising to give, receiving, or soliciting, either directly or indirectly, to any officer or employee of a Purchaser or other public or private authority or individual, a gratuity in any form; employment or any other thing or service of value as an inducement with respect to an act or decision or method followed by a Purchaser in connection with a Procurement proceeding or contract execution;

(b) **fraudulent practice** means the misrepresentation or omission of facts in order to influence a decision to be taken in a Procurement proceeding or Contract execution;

(c) **collusive practice** means a scheme or arrangement between two (2) or more Persons, with or without the knowledge of the Purchaser, that is designed to arbitrarily reduce the number of Tenders submitted or fix Tender prices at artificial, non competitive levels, thereby denying a Purchaser the benefits of competitive price arising from genuine and open competition; or

(d) **coercive practice** means harming or threatening to harm, directly or indirectly, Persons or their property to influence a decision to be taken in a Procurement proceeding or the execution of a Contract, and this will include creating obstructions in the normal submission process used for Tenders.

(e) **"obstructive practice"** (applicable in case of Development Partner) means deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede an investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and /or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation.

4.4 Should any corrupt, fraudulent, collusive or coercive practice of any kind come to the knowledge of the Purchaser, it will, in the first place, allow the Tenderer to provide an explanation and shall, take actions only when a satisfactory explanation is not received. Such exclusion and the reasons thereof, shall be recorded in the record of the

procurement proceedings and promptly communicated to the Tenderer concerned. Any communications between the Tenderer and the Purchaser related to matters of alleged fraud or corruption shall be in writing.

4.5 If corrupt, fraudulent, collusive or coercive practices of any kind determined by the Purchaser against any Tenderer alleged to have carried out such practices, the Purchaser shall -

(a) exclude the concerned Tenderer from further participation in the particular Procurement proceeding; or

(b) reject any recommendation for award that had been proposed for that concerned Tenderer or;

(c) declare, at its discretion, the concerned Tenderer to be ineligible to participate in further Procurement proceedings, either indefinitely or for a specific period of time.

4.6 The Tenderer shall be aware of the provisions on corruption, fraudulence, collusion and coercion in Section 64 of the Public Procurement Act, 2006 and Rule 127 of the Public Procurement Rules, 2008 and others as stated in GCC Clause **3**.

5. Eligible Tenderers

5.1 This Invitation for Tenders is open to eligible Tenderers from all countries, except for any specified in the TDS. A Tenderer will be eligible if it is a citizen, or is constituted, registered and operates in conformity with the provisions of the laws of that country.

5.2 A Tenderer may be a physical or juridical individual or body of individuals, or company, association as specified in TDS invited to take part in public procurement or seeking to be so invited or submitting a Tender in response to an Invitation for Tenders.

5.3 Government-owned enterprises in Bangladesh shall be eligible only if they can establish that they (i) are legally and financially autonomous, (ii) operate under commercial law, and (iii) are not a dependent agency of the Purchaser.

5.4 Tenderers shall have the legal capacity to enter into the Contract. A Tenderer that is under a declaration of ineligibility by the Government of Bangladesh in accordance with applicable laws at the date of the deadline for Tender submission or thereafter shall be disqualified.

5.5 Tenderers and all parties constituting the Tenderer shall not have a conflict of interest pursuant to Rule 55 of the Public Procurement Rules, 2008.

5.6 Tenderers in its own name or its other names or also in the case of its Persons in different names, shall not be under a declaration of ineligibility for corrupt, fraudulent, collusive, coercive practices as stated under ITT Sub Clause 4.3 (or obstructive practice, in case of Development Partner) in relation to the Development Partner's Regulation/Guidelines in projects financed by Development Partner.

5.7 Tenderers are not restrained or barred from participating in public Procurement on grounds of execution of defective supply in the past

under any Contract.

5.8 Tenderers are not under a declaration of ineligibility by an international financing agency such as World Bank, Asian Development Bank or any other international agency.

5.9 Tenderers shall not be insolvent, be in receivership, be bankrupt, be in the process of bankruptcy, be not temporarily barred from undertaking business and it shall not be the subject of legal proceedings for any of the foregoing.

5.10 Tenderers shall have fulfilled its obligations to pay taxes and social security contributions under the provisions of laws and regulations of the country of its origin. In the case of foreign Tenderers, a certificate of competent authority in that country of which the Tenderer is citizen shall be provided.

5.11 Tenderers shall provide such evidence of their continued eligibility satisfactory to the Purchaser, as the Purchaser will reasonably request.

5.12 These requirements for eligibility will extend, as applicable, to Sub-contractor proposed by the Tenderer.

6. Eligible Goods and Related Services

6.1 All goods and related services to be supplied under the contract are eligible, unless their origin is from a country specified in the TDS.

6.2 For purposes of this Clause, the term "goods" includes commodities, raw material, machinery, equipment, and industrial plants as specified in TDS; and "related services" includes services such as insurance, transportation, installation, and commissioning, training, and initial maintenance.

6.3 For purposes of this clause, "origin" means the country where the goods have been mined, grown, cultivated, produced, manufactured or processed; or through manufacture, processing, or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its components.

6.4 The origin of goods and services is distinct from the nationality of the Tenderer. The nationality of the firm that produces, assembles, distributes, or sells the goods shall not determine their origin.

7. Site Visit

7.1 For goods contracts requiring installation/ commissioning/ networking or similar services at site, the Tenderer, at the Tenderer's own responsibility and risk, is encouraged to visit and examine the Site and obtain all information that may be necessary for preparing the Tender and entering into a contract for the supply of goods and related services.

7.2 The Tenderer should ensure that the Purchaser is informed of the visit in adequate time to allow it to make appropriate arrangements.

7.3 The costs of visiting the Site shall be at the Tenderer's own expense.

B. Tender Document

8. Tender Document: General

8.1 The Sections comprising the Tender Document are listed below and should be read in conjunction with any addendum issued under ITT Clause 11.

- Section 1 Instructions to Tenderers (ITT)
- Section 2 Tender Data Sheet (TDS)
- Section 3 General Conditions of Contract (GCC)
- Section 4 Particular Conditions of Contract (PCC)
- Section 5 Tender and Contract Forms
- Section 6 Schedule of Requirements
- Section 7 Technical Specifications
- Section 8 Drawings

8.2 The Purchaser shall reject any Tender if the Tender Document was not purchased directly from the Purchaser, or through its agent as stated in the TDS.

8.3 The Tenderer is expected to examine all instructions, forms, terms, and specifications in the Tender Document as well as addendum to Tender Documents.

9. Clarification of Tender Documents

9.1 A prospective Tenderer requiring any clarification of the Tender Document shall contact the Purchaser in writing at the Purchasers address indicated in the TDS before **two-third** of time allowed for preparation and submission of Tender elapses.

9.2 A Purchaser is not obliged to answer any clarification received after that date requested under ITT Sub-Clause 9.1.

9.3 The Purchaser shall respond in writing within five (5) working days of receipt of any such request for clarification received under ITT Sub-Clause 9.1

9.4 The Purchaser shall forward copies of its response to all those who have purchased the Tender Document, including a description of the enquiry but without identifying its source.

9.5 Should the Purchaser deem it necessary to amend the Tender Document as a result of a clarification, it shall do so following the procedure under ITT Clause 11.

10. Pre-Tender Meeting

10.1 To clarify issues and to answer questions on any matter arising in the Tender Document, the Purchaser may, if stated in the TDS, hold a Pre-Tender Meeting at the place, date and time as specified in the TDS. All Potential Tenderers are encouraged to attend the meeting, if it is held.

10.2 Minutes of the pre-Tender meeting, including the text of the questions raised and the responses given, together with any responses prepared after the meeting, will be transmitted within one week (7 days) after holding the meeting to all those who purchased the Tender Document

and even those who did not attend the meeting.

10.3 Any amendment to the Tender Document listed in ITT Sub-Clause 8.1 that may become necessary as a result of the pre-Tender meeting shall be made by the Purchaser exclusively through the issue of an Addendum as stated under ITT Sub-Clause 11 and not through the minutes of the pre-Tender meeting.

10.4 Non-attendance at the pre-Tender meeting will not be a cause for disqualification of a Tenderer.

11. Addendum to Tender Documents

11.1 At any time prior to the deadline for submission of Tenders, the Purchaser on its own initiative or in response to a clarification request in writing from a Tenderer, having purchased the Tender Document or as a result of a Pre-Tender meeting, may revise the Tender Document by issuing an addendum pursuant to Rule 95 of the Public Procurement Rules, 2008.

11.2 The addendum issued under ITT Sub-Clause 11.1 shall become an integral part of the Tender Document and shall have a date and an issue number and shall be circulated by fax, mail or e-mail, to Tenderers who have purchased the Tender Documents within five (5) working days of issuance of such addendum, to enable Tenderers to take appropriate action.

11.3 The Tenderer shall acknowledge receipt of an addendum.

11.4 Tenderers who have purchased the Tender Documents but have not received any addendum issued under ITT Sub-clause 11.1 shall inform the Purchaser of the fact by fax, mail or e-mail before **two-third** of the time allowed for the submission of Tenders has elapsed.

11.5 Procuring Entities shall also ensure posting of relevant addenda with the reference number and date on their website.

11.6 To give a prospective Tenderer reasonable time in which to take an amendment into account in preparing its Tender, the Purchaser may, at its discretion, extend the deadline for the submission of Tenders, pursuant to Rule 95(6) of the Public Procurement Rule, 2008 and under ITT Clause 36.

11.7 If an addendum is issued when time remaining is less than one-third of the time allowed for the preparation of Tenders, a Purchaser shall extend the deadline by an appropriate number of days for the submission of Tenders, depending upon the nature of the Procurement requirement and the addendum. The minimum time for such extension shall not be less than seven (7) days.

C. Qualification Criteria

12. General Criteria

12.1 The Purchaser requires the Tenderer to be qualified by meeting predefined, precise minimum requirements, which entails setting pass/fail criteria, which if not met by the Tenderer, will result in rejection of its Tender.

12.2 In addition to meeting the eligibility criteria, as stated in ITT Clause 5, the Tenderer must satisfy the other criteria stated in ITT Clauses 13 to 15 inclusive.

12.3 To qualify for a multiple number of lots in a package for which tenders are invited in the Invitation for Tenders, The Tenderer shall demonstrate having resources and experience sufficient to meet the aggregate of the qualifying criteria for the individual lot. The requirement of overall experience and specific experience under ITT Sub-Clause 14.1 (a) and 14.1 (b) shall not be separately applicable for individual lot.

13. Litigation History

13.1 The maximum number of arbitration awards against the Tenderer over a period shall be as specified in the TDS.

14. Experience Criteria

14.1 Tenderers shall have the following minimum level of supply experience to qualify for supplying the Goods and Related Services under the contract:

(a) A minimum number of years of overall experience in the supply of goods and related services as specified in the TDS;

(b) Specific experience of satisfactory completion of supply of Goods similar to the proposed goods in at least a number of contract(s) and, each with a minimum value, over the period, as specified in TDS; and

(c) A minimum supply and/or production capacity of Goods as specified in the TDS.

15. Financial Criteria

15.1 Tenderers shall have the following minimum level of financial capacity of qualify for the supply of goods under the contract:

(a) Availability of minimum liquid assets or working capital or credit facilities from a Bank, as specified in the TDS.

16. Appointment of Subcontractor

16.1 Tenderer, pursuant to Rule 53 of the PPR2008, is allowed to sub-contract a portion of the Supply.

16.2 The Tenderer shall specify in its Tender all portion of the Goods that will be Subcontracted, if any, including the entity(ies) to whom each portion will be subcontracted to, subject to the maximum allowable limit for subcontracting of Goods specified in the TDS.

16.3 All subcontracting arrangement must be disclosed at the time of Tendering, and subcontractors must be identified in the Tender submitted by Tenderer.

16.4 A Subcontractor may participate in more than one Tender, but only in that capacity.

16.5 Subcontractors must comply with the provision of ITT Clause 5. For this purpose contractor shall complete the Subcontractor's information in Form PG4-2A for submission with tender.

16.6 If the Purchaser determines that a subcontractor is ineligible, the

subcontracting of such portion of the Goods assigned to the ineligible subcontractor shall be disallowed.

D. Tender Preparation

17. Only One Tender

17.1 If a Tender for Goods is invited on 'lot-by-lot' basis, each lot shall constitute a Tender. A Tenderer shall submit only one (1) Tender for each lot, A Tenderer who submits or participates in more than one (1) Tender for each lot will cause all the Tenders with that Tenderer's participation to be rejected.

18. Cost of Tendering

18.1 Tenderers shall bear all costs associated with the preparation and submission of its Tender, and the Purchaser shall not be responsible or liable for those costs, regardless of the conduct or outcome of the Tendering process.

19. Issuance and Sale of Tender Document

19.1 A Purchaser, pursuant to Rule 94 of the Public Procurement Rules,2008 shall make Tender Documents available immediately to the potential Tenderers, requesting and willing to purchase at the corresponding price if the advertisement has been published in the newspaper pursuant to Rule 90 of the Public Procurement Rules,2008.

19.2 Full contact details with mailing address, telephone and facsimile numbers and electronic mail address, as applicable, of those to whom Tender Documents have been issued shall be recorded with a reference number by the Purchaser or its agent.

19.3 There shall not be any pre-conditions whatsoever, for sale of Tender Document and the sale of such Document shall be permitted up to the day prior to the day of deadline for the submission of Tender.

20. Language of Tender

20.1 Tenders shall be written in English language. Supporting documents and printed literature furnished by the Tenderer may be in another language provided they are accompanied by an accurate translation of the relevant passages into the English language, in which case, for purposes of interpretation of the Tender, such translation shall govern.

20.2 Tenderers shall bear all costs of translation to the governing language and all risks of the accuracy of such translation.

21. Contents of Tender

21.1 The Tender prepared by the Tenderers shall comprise Two Envelope submitted simultaneously, one called the **Technical Offer (Envelope-01)** containing the documents listed in ITT 21.1 (a) to (q) and other called the **Financial Offer** containing the documents listed in 21.4, both envelopes enclosed together in an outer Single envelope.

The **Technical Offer** prepared by the Tenderer shall comprise the following:

(a) Technical Offer Submission Letter (Form PG4-1A) as furnished in Section 5: Tender and Contract Forms;

(b) Tenderer Information Sheet (Form PG4-2) and Subcontractor Information (Form PG4-2A) as furnished in Section 5: Tender and Contract Forms;

(c) Deleted

(d) Tender Security as stated under ITT Clause 29,30 and 31;

(e) The completed Specifications Submission and Compliance Sheet (Form PG4-4) as furnished in Section 5: Tender and Contract Forms as stated under ITT clause 25.2;

(f) Alternatives, if permitted, as stated under with ITT Clause 22;

(g) Written confirmation authorising the signatory of the Tenderer to commit the Tender, as stated under ITT Sub-Clause 34.4;

(h) The completed eligibility declarations, to establish its eligibility as stated under ITT Clause 5, in the Technical Offer Submission Letter (Form PG4-1A), as furnished in section 5: Tender and Contract Forms;

(i) An affidavit confirming the legal capacity stating that there are no existing orders of any judicial court that prevents either the Tenderer or employees of a Tenderer entering into or signing a Contract with the Purchaser as stated under ITT clause 5;

(j) An affidavit confirming that the Tenderer is not insolvent, in receivership or not bankrupt or not in the process of bankruptcy, not temporarily barred from undertaking their business for financial reasons and shall not be the subject of legal proceedings for any of the foregoing as stated under ITT Clause 5;

(k) A certificate issued by the competent authority stating that the Tenderer is a Tax payer having valid Tax identification Number (TIN) and VAT registration number or in lieu any other document acceptable to the Purchaser demonstrating that the Tenderer is a genuine Tax payer and has a VAT registration number as a proof of fulfillment of taxation obligations as stated under ITT Clause 5. In the case of foreign Tenderers, a certificate of competent authority in that country of which the Tenderer is citizen shall be provided;

(l) Documentary evidence demonstrating that they are enrolled in the relevant professional or trade organizations registered in Bangladesh or in case of foreign tenderer in their country of

origin or a certificate concerning their competency issued by a professional institution in accordance with the law of the country of their origin, as stated under ITT Clause 5;

(m) The country of origin declarations, to establish the eligibility of the Goods and Related Services as stated under ITT Clause 6, in the Price Schedule for Goods and Related Services (Form PG4-3B, 3C and PG4-3D) as, applicable, furnished in Section 5: Tender and Contract Forms;

(n) Documentary evidence as stated under ITT Clauses 25, that the Goods and Related Services conform to the Tender Documents;

(o) Documentary evidence as stated under ITT Clause 26 that the Tenderer's qualifications conform to the Tender Documents;

(p) Documents establishing legal and financial autonomy and compliance with commercial law, as stated under ITT Sub-clause 5.3 in case of government owned entity; and

(q) Any other document as specified in the TDS.

21.2 The Tenderer shall submit the Tender Submission Letter (Form PG4-1) as furnished in Section 5: Tender and Contract Forms. This form must be completed without any alterations to its format, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested.

21.3 Deleted

21.4 The **Financial Offer** (**Financial Envelope-02**) prepared by the Tenderers shall comprise the following:

(a) The Financial Offer Submission Letter (Form PG4-1B) as furnished in Section 5:

(b) The Tenderer shall submit the completed Price Schedule for Goods (**Form PG4-3B**), according to their origin as appropriate as furnished in section 5: Tender and Contract Forms.

(c) the written confirmation authorizing the signatory of the Tender to commit the Tenderer, as stated under ITT Sub Clause 37.3;

(d) any other document as specified in the **TDS**.

22. Alternatives

22.1 Unless otherwise stated in the TDS, alternatives shall not be considered.

23. Tender Prices, Discounts

23.1 The prices and discounts quoted by the Tenderer in the Price Schedule (Form PG4-3A, 3B, 3C and PG4-3D) shall conform to the requirements specified below.

23.2 All lots or items as listed in Section 6: Schedule of Requirements must be listed and priced separately on the Price Schedule following the Form PG4-3A, 3B, 3C and PG4-3D as applicable.

23.3 Tenders are being invited either for a single lot or for a number of lots on 'lot-by-lot' basis, as specified in the TDS.

23.4 Each lot shall constitute a Tender, If Tenders for Goods are invited on 'lot-by-lot' basis.

23.5 Tenders being invited for a single lot or for a number of lots on 'lot-by-lot' basis, price quoted shall correspond to 100% of the items specified for each lot and to 100% of the quantities specified for each item of that particular lot and shall correspond to 100% of the total offered lot value, unless otherwise stated in the TDS

23.6 A Lot Tender not offering minimum number of items of those being priced based on percentage of the total number of items, and, the corresponding minimum value based on percentage of the total lot value, as specified in the ITT Sub-Clause 23.5 shall also be considered non-responsive.

23.7 Subject to ITT Sub-Clause 23.5, a Lot tender not offering a particular item which represents more than fifty percent (50%) of the estimated lot value identified by the Purchaser and specified in the TDS, even if it complies with the requirement of minimum number of items based on percentage of the total number of items as stated under ITT Sub Clause 23.5, shall be considered non-responsive.

23.8 The price to be quoted in Price Schedule (Form PG4-3A, 3B, 3C and PG4-3D) shall be the price per unit of goods to be supplied, excluding any discounts offered, only **in case of being awarded more than one lot**, by the Tenderer

23.9 a) Tenderers shall quote any unconditional discount in the Tender Submission Letter as stated under ITT Sub Clause 23.9 (b);

b) Tenderers wishing to offer any unconditional discount shall be equally applicable on all the items of price schedule after arithmetical correction.

23.10 Prices shall be quoted as specified in each Price Schedule (Form PG4-3A, 3B, 3C and PG4-3D) as applicable. The dis-aggregation of price components is required solely for the purpose of facilitating the comparison of tenders by the Purchaser. This shall not in any way limit the Purchaser's right to contract on any of the terms offered. In quoting prices, the Tenderer shall be free to use transportation through carriers registered in any eligible Countries. Similarly, the Tenderer may obtain insurance services from any eligible country. Prices shall be entered in the following manner:

23.11 For Goods, manufactured/produced within Bangladesh, the prices in the Price schedule (Form PG4-3A) shall be entered separately in the following manner:

(a) the price of the Goods quoted EXW (ex works, ex factory, ex

23.12 For Goods, manufactured/produced outside Bangladesh, to be imported, the prices in the Price schedule (Form PG4-3B) shall be entered separately in the following manner:

(a) the price of the Goods, quoted CIP (named place of destination, in the Bangladesh) or CIF (named port of destination, in Bangladesh) as specified in the TDS;

(b) VAT payable on account of supplier, if the contract is awarded; and

(c) the price for inland transportation, insurance, and other local costs for the delivery of the Goods to their final destination (Project Site) specified in the TDS;

(d) in addition to the CIP/CIF prices specified in 23.12(a) above, the price of the Goods to be imported may be quoted in other *INCOTERM* and shall be governed by the rules prescribed in the current edition of *INCOTERM* published by the International Chamber of Commerce, Paris, if so specified in the TDS;

23.13 For Goods, manufactured/produced outside Bangladesh, already imported, the prices in the Price schedule (Form PG4-3C) shall be entered separately in the following manner:

(a) the price of the Goods, including the original import value of the Goods; plus any mark-up ; plus any other related local cost, and custom duties, import VAT and other import taxes already paid on the Goods already imported.

(b) the custom duties, import VAT and other import taxes already paid (need to be supported with documentary evidence) on the Goods already imported;

(c) the price of the Goods, obtained as the difference between (a) and (b) above;

(d) VAT payable on account of supplier, if the contract is awarded; and

(e) the price for inland transportation, insurance, and other local costs for the delivery of the Goods to their final destination (Project Site) specified in the TDS.

23.14 for Related Services, other than inland transportation and other services required to convey the Goods to their final destination, whenever such Related Services are specified in the Schedule of Requirements, the prices in the price schedule (Form PG4-3D) shall be entered in the following manner :

(a) the price of each item comprising the Related Services (inclusive of any applicable taxes).

24. Tender Currency

24.1 For expenditures that will be incurred in Bangladesh, the Tenderer shall quote the prices in Bangladeshi Taka (BDT).

24.2 Suppliers offering Goods manufactured/produced or assembled in Bangladesh, are permitted to submit their Tender in a combination of local and foreign currencies.

24.3 For expenditures that will be incurred outside Bangladesh, the Tenderer may quote the prices in USD or GBP or EUR or JPY as specified in TDS.

25. Documents Establishing the Conformity of the Goods and Related services

25.1 To establish the conformity of the Goods and Related Services to the Tender Documents, the Tenderer shall furnish as part of its Tender the documentary evidence that the Goods and Related services conform to the technical specifications and standards in Section 7, Technical Specifications.

25.2 Documentary evidence of conformity of the Goods and services to the Tender Documents may be in the form of literature, drawings, and data, and shall consist of:

(a) a detailed description of the essential technical and performance characteristics of the Goods;

(b) if so required in TDS, tenderer shall also furnish a list giving full particulars, including available sources and current prices of spare parts, special tools, etc., necessary for the proper and continuing functioning of the Goods during the period specified in the TDS, following commencement of the use of the Goods by the Purchaser ; and

(c) an item-by-item commentary on the Purchaser's Technical Specifications demonstrating substantial responsiveness of the Goods and Related services to those specifications, or a statement of deviations and exceptions to the provisions of Section 7. Technical Specifications.

26. Documents Establishing Qualifications of the Tenderer

26.1 The documentary evidence of the Tenderer's qualifications to perform the contract if its Tender is accepted shall establish to the Purchaser's satisfaction:

(a) that the Tenderer meets each of the qualification criterion specified in Sub-Section C, Qualification Criteria of the ITT;

(b) that, if required in the TDS, a Tenderer that does not manufacture or produce the Goods it offers to supply shall submit the Commitment Letter from Goods Producer (Form PG4-5) furnished in Section 5: Tender and Contract Forms, to demonstrate that it has been duly authorized by the manufacturer or producer of the Goods to supply the Goods to Bangladesh.; and

(c) that, if required in the TDS, in case of a Tenderer not doing business within Bangladesh, the Tenderer is or will be (if awarded the contract) represented by an Agent in the country equipped and able to carry out the Supplier's maintenance.

(d) adequacy of minimum liquid assets i.e. working capital substantiated by Audit Reports or Bank Statement or credit line(s) substantiated in the format as specified (**Form PG4-6A**), without alteration as stated under ITT Sub Clause 15.1(a);

27. Validity Period of Tender

27.1 Tender validities shall be determined on the basis of the complexity of the Tender and the time needed for its examination, evaluation, approval of the Tender and issuance of the Notification of Award pursuant to Rule 19 and 20 of the Public Procurement Rules,2008.

27.2 Tenders shall remain valid for the period specified in the TDS after the date of Tender submission deadline prescribed by the Purchaser, as stated under ITT Clause 36. A Tender valid for a period shorter than that specified will be rejected by the Purchaser as non- responsive.

28. Extension of Tender Validity and Tender Security

28.1 In justified exceptional circumstances, prior to the expiration of the Tender validity period, the Purchaser following Rule 21 of the Public Procurement Rules, 2008 may solicit, **not later than ten (10) days** before the expiry date of the Tender validity, compulsorily all the Tenderers' consent to an extension of the period of validity of their Tenders.

28.2 The request for extension of Tender validity period shall state the new date of the validity of the Tender.

28.3 The request from the Purchaser and the responses from the Tenderers will be made in writing.

28.4 Tenderers consenting in writing to the request made by the Purchaser under ITT Sub-Clause 28.1 shall also correspondingly extend the validity of its Tender Security for twenty-eight (28) days beyond the new date for the expiry of Tender validity.

28.5 Tenderers consenting in writing to the request under ITT Sub-Clause 28.1 shall not be required or permitted to modify its Tender in any circumstances.

28.6 If the Tenderers are not consenting in writing to the request made by the Purchaser under ITT Sub-Clause 28.1, its Tender will not be considered for subsequent evaluation.

29. Tender Security

29.1 The Tender Security and its amount shall be determined sufficient to discourage the submission of frivolous and irresponsible tenders pursuant to Rule 22 of the Public Procurement Rule,2008 and shall be expressed as a rounded fixed amount and, shall not be stated as a precise percentage of the estimated total Contract value.

29.2 The Tenderer shall furnish as part of its Tender, in favour of the Purchaser or as otherwise directed on account of the Tenderer as specified in TDS.

29.3 Amount of the Tender security may be determined on the basis of different percentages for each lot, but the amount in fixed and currency as specified in TDS, if so indicated that the Tenders are invited on lot-by-lot basis under ITT Sub Clause 23.3

30. Form of Tender security

30.1 The Tender Security shall be in the form of an irrevocable bank guarantee issued by an internationally reputable bank and shall require to be endorsed by its any correspondent bank located in Bangladesh, to make it enforceable, in the format (Form PG4-6) furnished in Section 5: Tender and Contract Forms;

30.2 be payable promptly upon written demand by the Purchaser in the case of the conditions listed in ITT Clause 33 being invoked; and

30.3 remain valid for at least twenty eight (28) days beyond the expiry date of the Tender Validity in order to make a claim in due course against a Tenderer in the circumstances detailed under ITT Clause 33 and pursuant to Rule 25 of the Public Procurement Rules,2008.

31. Authenticity of Tender Security

31.1 The authenticity of the Tender security submitted by a Tenderer shall be examined and verified by the Purchaser in writing from the Bank issuing the security, prior to finalization of the Evaluation Report pursuant to Rule 24 of the Public Procurement Rule, 2008.

31.2 If a Tender Security is found to be not authentic, the Tender which it covers shall not be considered for subsequent evaluation and in such case the Purchaser shall proceed to take punitive measures against that Tenderer as stated under ITT Sub-Clause 4.6, pursuant to Rule 127 of the Public Procurement Rules, 2008 and in accordance with Section 64(5) of the Public Procurement Act, 2006.

31.3 Tender not accompanied by a valid Tender Security as stated under Sub-Clause 29, 30 and 31, shall be considered as non-responsive.

32. Return of Tender Security

32.1 No Tender security shall be returned by the Tender Opening Committee (TOC) during and after the opening of the Tenders pursuant to Rule 26 of the Public Procurement Rules 2008.

32.2 No Tender security shall be returned to the Tenderers before contract signing, except to those who are found non-responsive.

32.3 Tender securities of the non-responsive Tenders shall be returned immediately after the Evaluation Report has been approved by the Purchaser.

32.4 Tender securities of the responsive Tenderers shall be returned only after the lowest evaluated responsive Tenderer has submitted the performance security and signed the contract , that being even before the expiration of the validity period specified in Clause 27.

32.5 Tender Securities of the Tenderers not consenting within the specified date in writing to the request made by the Purchaser under ITT Sub-Clause 28.1 in regard to extension of its Tender validity shall be discharged or returned forthwith.

33. Forfeiture of Tender Security

33.1 The Tender security pursuant to Rule 25 of the Public Procurement Rules,2008 may be forfeited if a Tenderer:

(a) withdraws its Tender after opening of Tenders but within the validity of the Tender as stated under ITT Clauses 27,and 28, pursuant to Rule 19 of the Public Procurement Rules 2008; or

(b) refuses to accept a Notification of Award as stated under ITT Sub-Clause 62.3, pursuant to Rule 102 of the Public Procurement Rules 2008; or

(c) fails to furnish performance security as stated under ITT Sub-Clause 63.2, pursuant to Rule 102 of the Public Procurement

Rules 2008; or

(d) refuses to sign the Contract as stated under ITT Sub-Clause 67.2 pursuant to Rule 102 of the Public Procurement Rules 2008; or

(e) does not accept the correction of the Tender price following the correction of arithmetic errors as stated under ITT Clause 49, pursuant to Rule 98(11) of the Public Procurement Rules 2008

34. Format and Signing of Tender

34.1 Tenderers shall prepare one (1) original of the documents comprising the **Technical Offer** as described in ITT Clause 21.1 and clearly mark it **"ORIGINAL OF TECHNICAL OFFER"** In addition, the Tenderers shall prepare the number of copies of the Technical Offer, as specified in the **TDS** and clearly mark each of them **"COPY OF THE TECHNICAL OFFER."** In the event of any discrepancy between the original and the copies, the **ORIGINAL** shall prevail.

34.2 Tenderers shall prepare one (1) original of the documents comprising the **Financial Offer** as described in ITT Clause 21.4 and clearly mark it "**ORIGINAL OF FINANCIAL OFFER**" In addition, the Tenderers shall prepare the number of copies of the Financial Offer, as specified in the **TDS** and clearly mark each of them "**COPY OF THE FINANCIAL OFFER**" In the event of any discrepancy between the original and the copies, the **ORIGINAL** shall prevail

34.3 Alternatives, if permitted under ITT Clause 22, shall be clearly marked "Alternative".

34.4 The original and each copy of the Offer shall be typed or written in indelible ink and shall be signed by the Person duly authorized to sign on behalf of the Tenderer. This Tender specific authorization shall be attached to the Technical Offer Submission Letter (**Form PG4-1A**) and Financial Offer Submission Letter (**Form PG4-1B**). The name and position held by each Person(s) signing the authorization must be typed or printed below the signature. All pages of the original and of each copy of the Tender, except for un-amended printed literature, shall be numbered sequentially and signed by the person signing the Tender.

34.5 Any interlineations, erasures, or overwriting will be valid only if they are signed or initialled by the Person (s) signing the Tender.

34.6 The name and position held by each person signing the authorisation must be typed or printed below the signature.

34.7 All pages of the original and of each copy of the Tender, except for un-amended printed literature, shall be numbered sequentially and signed or initialled by the person signing the Tender.

34.8 Any interlineations, erasures, or overwriting shall be valid only if they are signed or initialled by the person(s) signing the Tender.

34.9 Person(s) signing the Tender shall describe his or her name, address, position.

E. Tender Submission

35. Sealing, Marking and Submission of Tender

35.1 Tenderers shall enclose the original of **Technical Offer** in one (1) envelope, all the copies of the **Technical Offer**, including the alternatives, if permitted under ITT Clause 22, and one USB stick containing the scanned copy of the complete original of **Technical Offer** in another envelope, duly marking the envelopes as **"ORIGINAL OF TECHNICAL OFFER" "ALTERNATIVES" (if permitted)**, **"COPY OF TECHNICAL OFFER","ALTERNATIVES" (if permitted)** These sealed envelopes for the original and copies of the technical Tender shall then be enclosed and sealed in one single envelope and clearly mark it **"Envelope-01: TECHNICAL OFFER".**

35.2 The inner and outer envelopes of **Technical Offer** shall:

(a) be addressed to the Procuring Entity at the address as stated under ITT Sub Clause 36.1;

(b) bear the name of the Tender and the Tender Number as stated under ITT Sub Clause 1.2;

(c) bear the name and address of the Tenderer;

(d) bear a statement "DO NOT OPEN BEFORE ---------- " the time and date for Tender opening as stated under ITT Sub Clause 42.1;

(a) bear any additional identification marks as specified in the **TDS.**

35.3 Tenderers shall enclose the original of **Financial Offer** in one (1) envelope, all the copies of the **Financial Offer**, and one USB stick containing the scanned copy of the complete original of **Financial Offer** in another envelope, duly marking the envelopes as "**ORIGINAL OF FINANCIAL OFFER**" & "**COPY OF FINANCIAL OFFER".** These sealed envelopes for the original and copies of the Financial Tender shall then be enclosed and sealed in one single envelope and clearly mark it "**ENVELOPE-02: FINANCIAL OFFER.**

35.4 The inner and outer envelopes of **Financial Offer** shall:

(a) be addressed to the Procuring Entity at the address as stated under ITT Sub Clause 36.1;

(b) bear the name of the Tender and the Tender Number as stated under ITT Sub Clause 1.2;

(c) bear the name and address of the Tenderer;

(d) bear a statement "DO NOT OPEN BEFORE THE TECHNICAL OFFER EVALUATION AND APPROVAL".

(e) bear any additional identification marks as specified in the **TDS.**

35.5 **The Envelope-01** as stated in ITT Clause 35.1 and **Envelope-02** as in ITT Clause 35.3 shall then be enclosed and sealed in one single outer envelope which shall contain the information as stated under ITT Clause 35.2 (a) to (e) & ITT Clause 35.4 (a) to (e)

35.6 Tenderers are solely and entirely responsible for pre-disclosure of Tender information if the envelope(s) are not properly sealed and marked.

35.7 Tenders shall be delivered by hand or by mail, including courier services at the address(s), as stated under ITT Sub Clause 36.1.

35.8 Tenders shall be submitted on the basis of this Tender Document issued by the Employer.

35.9 The Procuring Entity will, on request, provide the Tenderer with acknowledgement of receipt showing the date and time when it's Tender was received.

36. Deadline for Submission of tenders

36.1 Tenders shall be delivered to the Purchaser at the address specified in the TDS and no later than the date and time specified in the TDS.

36.2 The Purchaser may, at its discretion on justifiably acceptable grounds duly recorded, extend the deadline for submission of Tender as stated under ITT Sub Clause 36.1, in which case all rights and obligations of the Purchaser and Tenderers previously subject to the deadline will thereafter be subject to the new deadline as extended.

36.3 If submission of Tenders for this procurement is allowed in more than one location, the date and time for submission of Tender at the primary and secondary place(s) shall be as specified in the **TDS.**

36.4 The Employer shall ensure that the Tenders received at the secondary place(s) are hand-delivered at the primary place as stated under ITT Sub Clause 36.1 before the time specified in the TDS; but in no case later than **THREE (3) HOURS** after the deadline for submission of Tenders at the secondary place(s) in case of **MULTIPLE DROPPING** as stated under ITT Sub Clause 36.3, as specified in the **TDS**.

37. Late tender

37.1 Any Tender received by the Purchaser after the deadline for submission of Tenders as stated under ITT Sub-Clause 36.1, shall be declared LATE, rejected, returned unopened to the Tenderer.

38. Modification, Substitution or Withdrawal of Tenders

38.1 Tenderers may modify, substitute or withdraw its Tender after it has been submitted by sending a written notice duly signed by the authorized signatory and properly sealed, and shall include a copy of the authorization confirmed by an affidavit authenticated by an authority of the Tenderer's Leading Partner's country of origin; provided that such written notice including the **affidavit** is received by the Employer prior to the deadline for submission of Tenders as stated under ITT Clause 36.

39. Tender Modification

39.1 Tenderers shall not be allowed to retrieve its original Tender, but shall be allowed to submit corresponding modification either to its original **Technical Offer** or **Financial Offer** or both, marked as **"MODIFICATIONFOR TECHNICAL OFFER (MTO)" or "MODIFICATION FOR FINANCIAL OFFER (MFO)"** with two separate envelopes. The envelope/envelopes marked as MTO and/or MFO then be enclosed and sealed in one single outer envelope with a written notice duly as stated under ITT Sub Clause 38.1. The outer envelope shall contain the information as stated under ITT Sub Clause 35.2(a) to (e) and clearly marked as **"MODIFICATION (M)"**

40. Tender Substitution

40.1 Tenderers shall not be allowed to retrieve its original Tender, but shall be allowed to submit another **Technical Offer** or **Financial Offer** or both, marked as **"SUBSTITUTIONFOR TECHNICAL OFFER (STO)" or "SUBSTITUTION FOR FINANCIAL OFFER (SFO)"** with two separate envelopes. The envelope/envelopes marked as STO and/or

SFO then be enclosed and sealed in one single outer envelope with a written notice duly as stated under ITT Sub Clause 38.1. The outer envelope shall contain the information as stated under ITT Sub Clause 35.2(a) to (e) and clearly marked as **"SUBSTITUTION (S)".**

41. Withdrawal of Tender

41.1 The Tenderer shall be allowed to withdraw its Tender by a Letter of Withdrawal marked as "WITHDRAWAL" prior to the deadline for submission of Tenders as stated under ITT Clause 36.

F. Tender Opening and Evaluation

42. Tender Opening

42.1 Only the **Technical Offer (Envelope-1**) shall be opened immediately after the deadline for submission of Tenders at the primary place as specified in the **TDS** but not later than **ONE HOUR,** after expiry of the submission deadline at the same primary place unless otherwise stated under ITT Sub Clause 36.2. Tender opening shall not be delayed on the plea of absences of Tenderers or his or her representatives. **Financial Offer (Envelope-02)** shall not open with **Technical Offer** (**Envelope-1)** and shall be kept unopened at the Custody of the Head of the Procuring Entity or his **Authorised Officer (AO).**

42.2 Persons not associated with the Tender may not be allowed to attend the public opening of Tenders.

42.3 Tenderers' representatives shall be duly authorised by the Tenderer. Tenderers or their authorised representatives will be allowed to attend and witness the opening **Technical Offers**, and will sign a register evidencing their attendance. **Technical Offers** Opening shall not be delayed on the plea of absence of Tenderers or his or her representatives.

42.4 The authenticity of withdrawal or substitution of, or modifications to original Tender, if any made by a Tenderer in specified manner, shall be examined and verified by the Tender Opening Committee (TOC) based on documents submitted as stated under ITT Sub Clause 38.1. Any envelope related to financial modification, substitute shall be recorded but not open with **Technical Offer**.

42.5 Verify (**M), (S), (W), (A), (O) by following step by steps**

(a) **Step 1:** envelopes marked "**Withdrawal (W)"** shall be opened and "Withdrawal" notice read aloud & recorded in the opening sheet. After verify the withdrawal letter is genuine, corresponding tender shall not be opened, but returned unopened to the Tenderer by Procuring Entity (**PE**) at a late time. No Tender withdrawal shall be permitted unless the corresponding withdrawal notice shall be as stated in 38.1 & 41.1 and in such case the Tender shall be opened and recorded.

(b) **Step 2:** the remaining Tenders will be sorted out and those marked **"SUBSTITUTION (S)"** or "**MODIFICATION (M)"** of Tender will be linked with their corresponding Original Tender.

(c) **Step 3:** outer envelopes marked "**SUBSTITUTION (S)**" shall be opened. The inner envelopes containing the "Substitution of Technical Offer (**STO**)" and/or "Substitution of Financial Offer (**SFO**)" shall be exchanged for the corresponding envelopes being

substituted, which are to be returned to the Tenderer unopened by the Procuring Entity at a later time immediately after opening of **Technical Offers**. Only the Substitution of Technical Offer, if any, shall be opened, read out, and recorded. Substitution of Financial Offer will remain unopened in accordance with ITT Sub Clause 42.1. No envelope shall be substituted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out and recorded at Technical Offer opening.

(d) **Step 4:** outer envelopes marked "**MODIFICATION (M)**" shall be opened. No **Technical Offer** and/or **Financial Offer** shall be modified unless the corresponding modification notice contains a valid authorization to request the modification and is read out and recorded at the opening of **Technical Offers**. Only the **Technical Offers**, both Original as well as Modification, are to be opened, read out, and recorded at the opening. **Financial Offers**, both Original as well as Modification, will remain unopened in accordance with ITT Sub Clause 42.1

(e) **Step 5:** if so specified in this Tender Document, the envelopes marked "Alternative of Technical Offer (ATO)" shall be opened and read aloud with the corresponding **Technical Offer** and recorded.

42.6 Ensuring that only the correct Modification for Technical Offer **(MTO),** Substitution for Technical Offer **(STO),** Alternative of Technical Offer **(ATO),** Original Technical Offer **(OTO)** envelopes are opened, details of each **Technical Offer** will be dealt with as follows:

(a) the Chairperson of the TOC will read aloud each **Technical Offer** and record in the Technical Offer Opening Sheet:

(i) the name and address of the Tenderer;

(ii) state if it is a withdrawn, modified, substituted or original Technical Offer;

(iii) any alternatives;

(iv) record the rejection of the Tender which submitted Technical Offer and Financial Offer together in one envelope.

(v) the presence or absence of any requisite Tender Security; and

(vi) such other details as the Procuring Entity, at its discretion, may consider appropriate.

(b) Only **Technical Offer** and alternatives read aloud at the **Technical Offer** Opening will be considered in evaluation.

(c) all pages of the original version of the **Technical Offer**, except for un-amended printed literature, will be initialled by members of the TOC. **Remember, No Financial Offer shall be opened with Technical OFFER.**

42.7 Upon completion of **Technical Offer** opening, all members of the TOC and the Tenderers or Tenderer's duly authorised representatives attending the **Technical Offer** opening shall sign by name, address, designation in the Technical Offer Opening Sheet, copies of which shall

be issued to the Head of the Procuring Entity or an officer authorised by him or her and also to the members of the TOC and any authorised Consultants and, to the Tenderers immediately.

42.8 The omission of a Tenderer's signature on the record shall not invalidate the contents and effect of the record under ITT Sub Clause 42.7.

42.9 No Tender i.e., **Technical** or **Financial Offer** shall be rejected at the Tender opening stage except the **LATE** Tenders as stated in the ITT Clause 37.

43. Evaluation of Tenders

43.1 **Technical Offers** shall be examined and evaluated only on the basis of the criteria specified in the Tender Document.

43.2 **Tender Evaluation Committee** (**TEC**) shall examine, evaluate and compare Tenders that are responsive to the requirements of Tender Documents in order to identify the successful Tenderer.

44. Evaluation process

44.1 TEC may consider a **Technical Offer** as responsive in the Evaluation, only if it is submitted in compliance with the mandatory requirements set out in the Tender Document. The evaluation process should begin immediately after **Technical Offer** opening following two steps:

(a) Preliminary examination

(b) Technical examination and responsiveness

45. Preliminary Examination

45.1 Compliance, adequacy and authenticity of the documentary evidences for meeting the qualification criterion specified in the corresponding section of the Tender document shall have to be preliminarily examined and verified.

45.2 The TEC shall firstly examine the Tenders to confirm that all documentation requested in ITT Clause 21 has been provided. Examination of the compliance, adequacy and authenticity of the documentary evidence may follow the order below:

(a) verification of the completeness of the eligibility declaration in the Technical Offer Submission Letter (Form PG4-1A), to determine the eligibility of the tenderer as stated under ITT Sub-Clause 21.1(h). Any alterations to its format, filling in all blank spaces with the information requested, failing which the tender may lead to rejection of the Tender;

(b) verification of that the Tenderer is enrolled in the relevant professional or trade organisations as stated under ITT Clause 21(l);

(c) verification of the eligibility in terms of legal capacity and fulfilment of taxation obligation by the tenderer in accordance as stated under ITT Sub-Clause 21(i) and 21(k);

(d) verification of eligibility that the tenderer is not insolvent, in receivership, bankrupt, not in the process of bankruptcy, not temporarily barred as stated under ITT Sub-Clause 21(j);

(e) verification of eligibility of Tenderer's country of origin as stated under ITT Sub-Clause 21(b);

(f) verification of the written authorization confirming the signatory of

the Tenderer to commit the Tender has been attached with Technical Offer Submission Letter (Form PG4-1A) as stated under ITT Sub-Clause 21(g); in order to check the authenticity of Tender and Tenderer itself ;

(g) verification of the Tender Security as stated under ITT Sub-Clause 21(d); and

(h) Verification of that the written notice for 'WITHDRAWAL' and 'SUBSTITUTION of or MODIFICATION to, the corresponding Tender is proper and authentic, if the tender is "WITHDRAWN", "SUBSTITUTION" or "MODIFICATION", as stated under ITT Sub-Clause 38.1

45.3 The TEC shall confirm that the above documents and information have been provided in the Tender and the completeness of the documents and compliance of instructions given in corresponding ITT Clauses shall be verified, failing which the tender shall be considered as non-responsive.

46. Technical Examinations & Responsiveness

46.1 Only those Tenders surviving preliminary examination need to be examined in this phase.

46.2 Secondly, the TEC will examine the adequacy and authenticity of the documentary evidence which may follow the order below:

(a) verification of the completeness of the country of origin declaration in the Price Schedule for Goods and Related Services (Form PG4-3B, 3C and PG4-3D) as furnished in Section 5: Tender and Contract Forms to determine the eligibility of the Goods and Related Services as stated under ITT Sub Clause 21(m).

(b) verification and examination of the documentary evidence and completed Specification Submission Sheet (Form PG4-4) as furnished in Section 5: Tender and Contract Forms in the manner specified in TDS to establish the conformity of the Goods and Related Services to the Tender Documents as stated under ITT Sub Clause 21(e) and 21(n).

(c) verification and examination of the documentary evidence that the Tenderer's qualifications conform to the Tender Documents and the Tenderer meets each of the qualification criterion specified in Sub-Section C, Qualification Criteria as stated under ITT Sub Clause 21(o).

(d) verification and examination of the documentary evidence that Tenderer has met all the requirements in regards to scope of Supply as stated under Section 6, Schedule of Requirements, without any material deviation or reservation.

46.3 TEC may consider a Tender as responsive in the evaluation, only if comply with the mandatory requirements as stated under Clause 46.2.

46.4 The TEC's determination of a Tender's responsiveness is to be based on the documentary evidence as requested in Clause 46.2 without recourse to extrinsic evidence.

46.5 Information contained in a Tender, that was not requested in the Tender

Document shall not be considered in evaluation of the Tender.

46.6 If a Tender is not responsive to the mandatory requirements set out in the Tender Document it shall be rejected by the TEC and shall not subsequently be made responsive by the Tenderer by correction of the material deviation, reservation.

46.7 A material deviation or reservation is one-

(a) which affects in any substantial way the scope, quality, or performance of the Goods and Related Services and Tenderer's qualifications mentioned in the Tender Document.

(b) which limits in any substantial way, inconsistent with the Tender Documents, the Purchaser's rights or the Tenderer's obligations under the Contract; or

(c) whose rectification would anyway affect unfairly the competitive position of other Tenderers presenting responsive Tenders.

46.8 During the evaluation of Tender, the following definitions apply:

(a) "Deviation" is a departure from the requirements specified in the Tender Document;

(b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Tender Document;

46.9 A TEC may regard a Tender as responsive, even if it contains-

(a) minor or insignificant deviations, which do not meaningfully alter or depart from the technical specifications, characteristics and commercial terms and conditions or other requirements set out in the Tender Document;

(b) errors or oversights, which if corrected, would not alter the key aspects of the Tender.

47. Clarification on Technical Offer

47.1 TEC may ask Tenderers for clarification of their **Technical Offers**, including breakdowns of unit rates, in order to facilitate the examination and evaluation of **Technical Offers**. The request for clarification by the TEC and the response from the Tenderer shall be in writing, and **Technical Offers** clarifications which may lead to a change in the substance of the **Technical Offers** or in any of the key elements of the **Technical Offers** as stated under ITT Sub Clause 46.2, will neither be sought nor be permitted.

47.2 Any request for clarifications by the TEC shall not be directed towards making an apparently non-responsive Tender responsive and reciprocally the response from the concerned Tenderer shall not be articulated towards any addition, alteration or modification to its Tender.

47.3 If a Tenderer does not provide clarifications of its **Technical Offer** by the date and time set in the TEC's written request for clarification, its Tender shall not be considered in the evaluation.

47.4 Requests for clarification shall be in writing and shall be signed only by the Chairperson of the TEC.

48. Restrictions on the Disclosure of Information Relating to the Procurement Process

48.1 Following the opening of Tenders until issuance of Notification of Award no Tenderer shall, unless requested to provide clarification to its Tender or unless necessary for submission of a complaint, communicate with the concerned Purchaser pursuant to Rule 31 of the Public Procurement Rule,2008.

48.2 Tenderers shall not seek to influence in anyway, the examination and evaluation of the Tenders.

48.3 Any effort by a Tenderer to influence a Purchaser in its decision concerning the evaluation of Tenders, Contract awards may result in the rejection of its Tender as well as further action in accordance with Section 64 (5) of the Public Procurement Act 2006.

48.4 All clarification requests shall remind Tenderers of the need for confidentiality and that any breach of confidentiality on the part of the Tenderer may result in their Tender being non-responsive.

48.5 Information relating to the examination, evaluation, comparison, and post qualification of the tender or contract award, shall not be disclosed to tenderers or any other persons not officially concerned with such process.

49. Approval of Technical Offer

49.1 TEC shall prepare the Technical Offer Evaluation Report and shall directly submit the Evaluation Report to the Head of the Procuring Entity **(HOPE) or Authorized Officer for approval.**

50. Financial Offer Opening

50.1 After receiving approval of the Technical Offer Evaluation Report, **Financial Offer (Envelope-2)** of only the Responsive Tenderers who have been determined as qualified to the requirements of the **Technical Offer**, shall be opened publicly, The Date, time and place of Financial Offer Opening shall be communicated to the Responsive Tenderers in writing by issuing a Financial Offer Opening notice not less than SEVEN DAYS before the opening.

50.2 Ensuring that only the correct MFO, SFO, OFO envelopes of the Responsive Tenderers shall be opened, in the presence of the Responsive Tenderer's representatives who choose to attend, on the date, time and at the place as notified by the Procuring Entity in accordance with ITT Clause 50.1. Details of each **Financial Offer** will be dealt with as follows:

(a) the Chairperson of the Tender Evaluation Committee will read aloud each **Financial Offer** and record in the Financial Offer Opening Sheet:

(a) **the name and address of the Tenderer;**

(b) **state if it is a modified, substituted or original Financial Offer;**

(c) **the Tender Price;**

(d) **the number of initialled corrections;**

(e) **any discounts; and**

(f) **any other details as the Procuring Entity, at its discretion, may consider appropriate**

(b) only the discounts and alternatives read aloud and recorded at the Financial Offer Opening will be considered in Financial Offer Evaluation. No Tenders shall be rejected at the opening of the **Financial Offer**.

(c) all pages of the original version of the **Financial Offer**, except for un-amended printed literature, will be initialled by members of the Tender Evaluation Committee.

(d) The Procuring Entity shall, in writing, notify the Non-responsive Tenderers who have not been determined as qualified to the requirements of the **Technical Offer** and shall return their **Financial Offers (Envelope-02)** unopened after signing of the contract.

51. Clarification on Financial Offer

51.1 TEC may ask Tenderers for clarification of their **Financial Offers**, about the breakdowns of unit rates, in order to facilitate the examination and evaluation of **Financial Offers**. The request for clarification by the TEC and the response from the Tenderer shall be in writing.

51.2 Changes in the Tender price shall not be sought or permitted, except to confirm the correction of arithmetical errors discovered by the TEC in the evaluation of the Tenders, as stated under ITT Sub Clause 52.1.

51.3 If a Tenderer does not provide clarifications of its **Financial Offer** by the date and time, its Tender shall not be considered in the evaluation.

51.4 Requests for clarifications on **Financial Offers** shall be duly signed only by the TEC Chairperson.

52. Correction of Arithmetical Errors

52.1 The TEC shall correct any arithmetic errors that are discovered during the examination of Tenders, and shall promptly notify the concerned Tenderer(s) of any such correction(s) pursuant to Rule 98(11) of the Public Procurement Rule, 2008.

52.2 Provided that the Tender is responsive, TEC shall correct arithmetical errors on the following basis:

(a) If there is a discrepancy between the unit price and the line item total that is obtained by multiplying the unit price by the quantity, the unit price shall prevail and the line item total shall be corrected, unless in the opinion of the TEC there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted will govern and the unit price will be corrected;

(b) If there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected.

52.3 Any Tenderer that does not accept the correction of the Tender amount following correction of arithmetic errors as determined by the application of ITT Sub-Clause 52.2 shall be considered as non-responsive.

53. Conversion to Single Currency

53.1 For evaluation and comparison purpose, TEC shall convert all Tender prices expressed in the amounts in various currencies into an amount in Bangladeshi BDT currency, using the **selling exchange rates**

established by the Bangladesh Bank, on the date of **Tender opening**.

54. Domestic Preference

54.1 **Domestic preference** shall be a factor in tender evaluation, unless otherwise specified in the **TDS**

54.2 If **domestic preference shall be a tender-evaluation factor,** the Purchaser will grant a margin of fifteen percent (15%) domestic preference to Goods manufactured/produced in Bangladesh during the evaluation of its Tender while comparing the same with those of other Tenderers under the classification set out in ITT Sub-Clause 51.3. The evaluation will be carried out in accordance with the provisions set out in ITT Clause 54.

54.3 Tenders will be classified in one of two groups, as follows:

(a) **Group A:** Tender offering goods manufactured/produced in Bangladesh, for which:

(i) labour, raw materials, and components from within the Bangladesh account for more than thirty (30) percent of the EXW price; and

(ii) the production facility in which they will be manufactured/produced or assembled has been engaged in manufacturing or assembling such goods at least since the date of tender submission.

(b) **Group B:** Tenders offering Goods manufactured/produced outside Bangladesh that have been already imported or that will be imported.

54.4 To facilitate this classification by the Tenderer, the Tenderer shall complete whichever Form of the Price Schedule furnished in the Tender Document is appropriate.

54.5 Completion of an inappropriate Form of the Price Schedule by the Tenderer shall not result in rejection of its tender, but merely in the Purchaser's reclassification of the tenderer into its appropriate tender group.

55. Financial Evaluation

55.1 Thirdly the TEC, pursuant to Rule 98 of the Public Procurement Rules, 2008 shall evaluate each Tender that has been determined, up to this stage of the evaluation, to be responsive to the mandatory requirements in the Tender Document.

55.2 To evaluate a Tender in this stage, the Purchaser shall consider the following:

(a) Verification and examination of the Price Schedule for Goods and Related Services (Form PG4-3A, 3B, 3C and PG4-3D) as furnished by the Tenderer and checking the compliance with the instructions provided under ITT Clause 23;

(b) Evaluation will be done for Items or lot by lot as stated under ITT Clause 23 and the Total Tender Price as quoted in accordance with Clause 23;

(c) Adjustment for correction of arithmetical errors as stated under ITT Sub-Clause 52.2;

(d) Adjustment for price modification offered as stated under ITT Clause 38;

(e) Adjustment due to discount as stated under ITT Sub-Clauses 23.8, 23.9 and 55.3;

(f) Adjustment due to the application of economic factors of evaluation as stated under ITT Sub-Clause 55.5 if any;

(g) Adjustment due to the assessment of the price of unpriced items as stated under ITT Clause 56 if any;

(h) Adjustment due to the application of a margin of preference (domestic preference), in accordance with ITT Clause 57 if applicable

55.3 If Tenders are invited for a single lot or for a number of lots as stated under ITT Sub-clauses 23.3, TEC shall evaluate only lots that that have included at least the percentage of items per lot as stated under ITT Sub-Clause 23.5 and 23.6. The TEC shall evaluate and compare the Tenders taking into account:

(a) Lowest evaluated tender for each lot;

(b) The price discount/reduction per lot;

(c) Least cost combination for the Purchaser, considering discounts and the methodology for its application as stated under ITT Sub-clauses 23.8 and 23.9 offered by the Tenderer in its Tender.

55.4 Only those spare parts and tools which are specified as an item in the List of Goods and Related Services in Section 6, Schedule of Requirement or adjustment as stated under ITT Sub-clause 55.5, shall be taken into account in the Tender evaluation. Supplier-recommended spare parts for a specified operating requirement as stated under ITT Sub-clause 25.2(b) shall not be considered in Tender evaluation.

55.5 The Purchaser's evaluation of a tender may require the consideration of other factors, in addition to the Tender Price quoted as stated under ITT Clause 23. The effect of the factors selected, if any, shall be expressed in monetary terms to facilitate comparison of tenders. The factors, methodologies and criteria to be used shall be as specified in TDS. The applicable economic factors, for the purposes of evaluation of Tenders shall be:

(a) Adjustment for Deviations in the Delivery and Completion Schedule
(b) Cost of major replacement components, mandatory spare parts, and service
(c) Cost of goods sourcing
(d) Cost of goods transportation

55.6 Variations, deviations, and alternatives and other factors which are in excess of the requirements of the Tender Document or otherwise result in unsolicited benefits for the Purchaser will not be taken into account in Tender evaluation.

56. Assessing the Price of Unpriced Items

56.1 If it is so permitted under ITT Clause 23, any Tenderer offered only eighty percent (80%) or minimum percent of the items of a lot as stated under ITT Sub-Clause 23.5, the TEC shall calculate the total lot value by adding up the average prices offered by other responsive Tenderers for the missing items to the lot value to establish the winning lot Tender. If the Tenderer offered less than the specified, the Tender shall be evaluated as sated under ITT Clause 23.

56.2 If the winning lot is missing some items as stated under ITT Sub Clause 53.1, comprising less than twenty percent (20%), the Purchaser may procure the missing items from the Tenderer offering the least cost for those remaining items.

57. Evaluation of Domestic Preference

57.1 If the Tender document so specifies, the Tenderer will grant a margin preference to goods manufactured/produced in Bangladesh as stated in ITT Clause 51 for the purpose of Tender comparison, in accordance with the procedure outlined below:

57.2 The Purchaser will first review the tenders to confirm the appropriateness of, and to modify as necessary, the tenderer group classification to which Tenderers assigned their tenders in preparing their Tender Forms and Price Schedules.

57.3 All evaluated tenders in each group will then be compared to determine the lowest evaluated tender of each group. Such lowest evaluated tenders shall be compared with each other and if as a result of this comparison a tenderer from Group A and the Tenders offering Goods manufactured/produced in Bangladesh is the lowest, it shall be selected for the award.

57.4 If, as a result of the preceding comparison, the lowest evaluated tender is from Group B,

(a) all Group B tenders will then be further compared with the lowest evaluated tender from Group A, after adding to the evaluated tender price of goods offered in the tender for Group B, for the purpose of further comparison only an amount equal to fifteen (15) percent of the CIF/CIP (named place of destination or named port of destination) tender price.

(b) The lowest-evaluated tender determined from this last comparison shall be selected for the award.

58. Price Comparison

58.1 The TEC shall compare all responsive Tenders to determine the lowest-evaluated Tender, as stated under ITT Clause 55,56,57.

58.2 In the extremely unlikely event that there is a tie for the lowest evaluated price, the Tenderer who have proposed the goods with best quality factors as specified in TDS and then the Tenderer with the superior past performance with the Purchaser shall be selected, whereby factors such as delivery period, quality of Goods delivered, complaints history and performance indicators could be taken into consideration.

58.3 In the event that there is á tie for the lowest price and none of the Tenderers has the record of past performance with the Purchaser, then the Tenderer shall be selected, who have proposed the goods with best quality factors as stated in TDS and then subject to firm confirmation through the Post-qualification process described in ITT Clause 60, after consideration as to whether the quality of Goods that is considered more advantageous by the end-users.

58.4 The successful Tenderer as stated under ITT Sub Clauses 58.1, 58.2 and 58.3 shall not be selected through lottery under any circumstances.

59. Negotiation

59.1 No negotiations shall be held during the Tender evaluation or award with the lowest or any other Tenderer pursuant to Rule 99 of the Public Procurement Rules, 2008.

60. Post-qualification

60.1 After determining the lowest-evaluated responsive tender as sated under ITT Sub-Clause 58.1, the Purchaser's TEC pursuant to Rule 100 of the Public Procurement Rules, 2008, shall carry out the Post-Qualification of the Tenderer, using only the requirements specified in Sub-Section C, Qualification Criteria.

60.2 The TEC shall contact the references given by Tenderers about their previous Supply experiences to verify, if necessary, statements made by them in their Tender and to obtain the most up-to-date information concerning the Tenderers.

60.3 The TEC may visit the premises of the Tenderer as a part of the post-qualification process, if practical and appropriate, to verify information contained in its Tender.

60.4 The TEC shall determine to its satisfaction whether the Tenderer that is selected as having submitted the lowest evaluated responsive Tender is qualified to perform the Contract satisfactorily.

60.5 The objective of any visit under ITT Sub-Clause 60.3 shall be limited to a general and visual inspection of the Tenderer's facilities and its plant and equipment, and there shall be no discussion concerning the Tender or its evaluation with the Tenderer during such visit(s).

60.6 In the event that the Tenderer with lowest evaluated cost fails the post-qualification, the TEC shall make a similar determination for the Tenderer offering the next lowest evaluated cost and so on from the remaining responsive Tenders, provided that,

(a) such action shall only be taken if the evaluated costs of the Tenders under consideration are acceptable to the Purchaser;

(b) when the point is reached whereby the evaluated costs of the remaining responsive Tenders are significantly higher than that of the official estimate, or the market price, the Purchaser may take action pursuant to Rule 33 and may proceed for re-Tendering, using a revised Tender Document designed to achieve a more successful result.

61. Rejection of All Tenders

61.1 The Purchaser may, in the circumstances as stated under ITT Sub-Clause 61.2 and pursuant to Rule 33 of the Public Procurement Rules 2008, reject all Tenders following recommendations from the Evaluation Committee only after the approval of such recommendations by the Head of the Purchaser.

61.2 All Tenders can be rejected, if -

(a) the price of the lowest evaluated Tender exceeds the official estimate, provided the estimate is realistic; or

(b) there is evidence of lack of effective competition; such as non-participation by a number of potential Tenderers; or

(c) the Tenderers are unable to propose completion of the delivery within the stipulated time in its offer, though the stipulated time is reasonable and realistic; or

(d) all Tenders are non-responsive; or

(e) evidence of professional misconduct, affecting seriously the Procurement process, is established pursuant to Rule 127 of the Public Procurement Rules, 2008.

61.3 Notwithstanding anything contained in ITT Sub-Clause 61.2 Tenders may not be rejected if the lowest evaluated price is in conformity with the market price.

61.4 A Purchaser may pursuant to Rule 35 of the Public Procurement Rules, 2008, on justifiable grounds, annul the Procurement proceedings prior to the deadline for the submission of Tenders.

61.5 All Tenders received by the Purchaser shall be returned unopened to the Tenderers in the event Procurement proceedings are annulled under ITT Sub-Clause 61.4.

62. Informing Reasons for Rejection

62.1 Notice of the rejection, pursuant to Rule 35 of the Public Procurement Rules, 2008, will be given promptly within seven (7) days of decision taken by the Purchaser to all Tenderers and, the Purchaser will, upon receipt of a written request, communicate to any Tenderer the reason(s) for its rejection but is not required to justify those reason(s).

G. Contract Award

63. Award Criteria

63.1 The Purchaser shall award the Contract to the Tenderer whose offer is responsive to the Tender Document and that has been determined to be the lowest evaluated Tender, provided further that the Tenderer is determined to be Post-Qualified as stated under ITT Clause 60.

63.2 A Tenderer shall not be required, as a condition for award of contract, to undertake obligations not stipulated in the Tender Document, to change its price, or otherwise to modify its Tender.

64. Purchaser's Right to Vary Quantities

64.1 The Purchaser reserves the right at the time of Contract Award to increase or decrease the quantity, per item, of Goods and Related Services originally specified in Section 6: Schedule of Requirements, provided this does not exceed the percentages indicated in the TDS, and without any change in the unit prices or other terms and conditions of the

Tender and the Tender Document.

65. Notification of Award

65.1 Prior to the expiry of the Tender validity period and within seven (7) working days of receipt of the approval of the award by the Approving Authority, the Purchaser pursuant to Rule 102 of the Public procurement Rules, 2008, shall issue the Notification of Award (NOA) to the successful Tenderer

65.2 The Notification of Award, attaching the contract as per the sample (Form PG4-7) to be signed, shall state:

(a) the acceptance of the Tender by the Purchaser;

(b) the price at which the contract is awarded;

(c) the amount of the Performance Security and its format;

(d) the date and time within which the Performance Security shall be submitted; and

(e) the date and time within which the contract shall be signed.

65.3 The Notification of Award shall be accepted in writing by the successful Tenderer within seven (7) working days from the date of issuance of NOA.

65.4 Until a formal contract is signed, the Notification of Award shall constitute a Contract, which shall become binding upon the furnishing of a Performance Security and the signing of the Contract by both parties.

65.5 The Notification of Award establishes a Contract between the Purchaser and the successful Tenderer and the existence of a Contract is confirmed through the signature of the Contract Document that includes all agreements between the Purchaser and the successful Tenderer.

66. Performance Security

66.1 The Performance Security shall be determined sufficient to protect the performance of the Contract pursuant to Rule 27 of the Public Procurement Rules, 2008.

66.2 Performance Security shall be furnished by the successful Tenderer in the amount specified in the TDS and **denominated in the currencies** in which the Contract Price is payable pursuant to Rule 102 (8) of the Public Procurement Rules, 2008.

66.3 The proceeds of the Performance Security shall be payable to the Purchaser unconditionally upon first written demand as compensation for any loss resulting from the Supplier's failure to complete its obligations under the Contract.

67. Form and Time Limit for furnishing of Performance security

67.1 The Performance Security shall be in the form of irrevocable Bank Guarantee in the format (Form PG4-9) as stated under ITT Clause 66, **shall be issued by an internationally reputable bank and it shall have correspondent bank located in Bangladesh, to make it enforceable** pursuant to Rule 27(4) of the Public Procurement Rules, 2008.

67.2 Within twenty-eight (28) days from issue of the Notification of Award, the successful Tenderer shall furnish the Performance Security for the due performance of the Contract in the amount specified under ITT Sub Clause 66.2.

68. Validity of Performance Security

68.1 The Performance Security shall be required to be valid until a date twenty-eight (28) days beyond the date of completion of the Supplier's performance obligations under the Contract, including any warranty obligations.

68.2 If under any circumstances date of completion of the Supplier's performance obligations under the Contract, including any warranty obligations is to be extended, the Performance Security shall correspondingly be extended for the extended period.

69. Authenticity of performance Security

69.1 The Purchaser shall verify the authenticity of the Performance Security submitted by the successful Tenderer by sending a written request to the branch of the bank issuing irrevocable Bank Guarantee in specified format.

69.2 If the Performance Security submitted under ITT Sub Clause 66.2 is not found to be authentic, the Purchaser shall proceed to take measures against the Tenderer in accordance with Section 64 of the Act and pursuant to Rule 127 of the Public Procurement Rules, 2008.

70. Contract Signing

70.1 At the same time as the Purchaser issues the Notification of Award, the Purchaser shall send the draft Contract Agreement and all documents forming the Contract pursuant to Rule 102 of the Public Procurement Rule, 2008, to the successful Tenderer.

70.2 Within twenty-eight (28) days of the issuance of Notification of Award, the successful Tenderer and the Purchaser shall sign the contract provided that the Performance Security submitted by the Tenderer is found to be genuine.

70.3 If the successful Tenderer fails to provide the required Performance Security, as stated under ITT Clause 66 or to sign the Contract, as stated under ITT Sub-Clause 70.2, Purchaser shall proceed to award the Contract to the next lowest evaluated Tenderer, and so on, by order of ranking pursuant to Rule 102 of the Public Procurement Rules,2008.

71. Publication of Notification of Award of Contract

71.1 Notification of Awards for Contracts of BDT 10(ten) million and above shall be notified by the Purchaser to the Central Procurement Technical Unit within 7(seven) days of issuance of the NOA for publication in their website. and that notice shall be kept posted for not less than a month pursuant to Rule 37 of the Public Procurement Rules, 2008.

71.2 Notification of Award for Contracts below BDT 10(ten) million, shall be published by the Purchaser on its Notice Board and where applicable on the website of the Purchaser and that notice shall be kept posted for not less than a month pursuant to Rule 37 of the Public Procurement Rules, 2008.

72. Debriefing of Tenderers

72.1 Debriefing of Tenderers by Purchaser shall outline the relative status and weakness only of his or her Tender requesting to be informed of

the grounds for not accepting the Tender submitted by him or her pursuant to Rule 37 of the Public Procurement Rule, 2008, without disclosing information about any other Tenderer.

72.2 In the case of debriefing confidentiality of the evaluation process shall be maintained.

73. Right to Complain

73.1 Any Tenderer has the right to complain if it has suffered or likely to suffer loss or damage due to a failure of a duty imposed on the Purchaser to fulfil its obligations in accordance with Section 29 of the Public Procurement Act 2006 and pursuant to Part 12 of Chapter Three of the Public Procurement Rules, 2008.

73.2 Circumstances in which a formal complaint may be lodged in sequence by a potential Tenderer against a Purchaser pursuant to Rule 56 of the Public Procurement Rules, 2008, and the complaints, if any, be also processed pursuant to Rule 57 of the Public Procurement Rules 2008.

73.3 The potential Tenderer shall submit his or her complaint in writing within seven (7) calendar days of becoming aware of the circumstances giving rise to the complaint.

73.4 In the first instance, the potential Tenderer shall submit his or her complaint to the Purchaser who issued the Tender Document.

73.5 The place and address for the first stage in the submission of complaints to the Administrative Authority is provided in the TDS.

73.6 The Tenderer may appeal to a Review Panel only if the Tenderer has exhausted all his or her options of complaints to the administrative authority as stated under ITT Sub-Clause 73.2.

Section 2. Tender Data Sheet

ITT Clause	Amendments of, and Supplements to, Clauses in the Instruction to Tenderers
	A. General
ITT 1.1	The Purchaser is: RPCL-NORINCO INTL POWER LIMITED **Representative:** Company Secretary RPCL-NORINCO INTL POWER LIMITED Asian Tower, 10th Floor, House # 52, Road # 21, Nikunja 2, Khilkhet, Dhaka 1229, Bangladesh Issuing the Tender Document for Supply of Coal for Patuakhali 1320 (2×660) MW Coal Fired Thermal Power Plant
ITT 1.2	The number, identification and name of lots comprising the Tender are: Supply of Coal for Patuakhali 1320 (2×660) MW Coal Fired Thermal Power Plant Identification Number (Tender Document No.) of the Tender: PUR-007(CS/PATUAKHALI/OTM)/2024-25 Date: 06.11.2024
ITT 3.1	The source of fund is RNPL's own fund
ITT 3.3	The name of the Development Partner is: Not applicable
ITT 5.1	Tenderers from the following countries are not eligible: Israel
ITT 5.2	Any kind of Consortium is not allowed
ITT 6.1	Goods, and Related Services from the following counties are not eligible: Any country other than Indonesia, South Africa, Australia.
ITT 6.2	Goods, and Related Services means **Coal ONLY.** Coal should be supplied from a single Coal mine ONLY. Blended coal is strictly forbidden and shall result in rejection of the Offer.
	B. Tender Document
ITT 8.2	The following are the offices of the Purchaser or authorised agents for the purpose of providing the Tender Document: Company Secretary RPCL-NORINCO INTL POWER LIMITED Asian Tower, 10th Floor, House # 52, Road # 21, Nikunja 2, Khilkhet, Dhaka 1229, Bangladesh The interested Tenderer must collect the hard copy of the signed Tender

	Document issued in their name for submission of Tender from the corporate office of RPCL-NORINCO INTL Power Limited (RNPL); Address: Asian Tower, 10th Floor, House # 52, Road # 21, Nikunja 2, Khilkhet, Dhaka 1229, Bangladesh, with a non-refundable fee of USD 1,200 (US Dollar One Thousand Two Hundred) or BDT 140,000 (One Hundred and Forty Thousand Bangladesh Taka) in the form of an international bank draft encashable at any scheduled bank in Bangladesh or in the form of local bank draft/pay order, made payable to "RPCL-NORINCO INTL POWER LIMITED". In case any Tenderer chose to pay the amount through online bank transfer, the account details of RNPL are as under: Applicable for : Any Tenderer paying Tender Document purchase fee to RNPL in USD Transfer Method : SWIFT Account Title : RPCL- NORINCO INTL POWER LIMITED Account Number : 0200016276015 Bank Name : Agrani Bank Limited Branch Name : Gulshan Corporate Branch, Gulshan-01, Dhaka. SWIFT Code : AGBKBDDH042 Remarks : Please mention the purpose of the remittance during transfer through the bank and inform RNPL's Company Secretary after remitting. The Tender Document purchaser must have an original copy of authorization letter issued by the tenderer with Bank draft or Swift copy attached.
ITT 9.1	For **clarification of Tender purposes** only, the Purchaser's address is: Company Secretary Address: RPCL-NORINCO INTL POWER LIMITED Asian Tower, 10th Floor, House # 52, Road # 21, Nikunja 2, Khilkhet, Dhaka 1229, Bangladesh Telephone: +88 02 55098013, +88 02 55098012, +88 02 55098014 Facsimile number: Electronic mail address: cs@rnpl.com.bd Time: Not later than 04 December, 2024
ITT 9.3	The Purchaser shall respond through writing/email/facsimile or any other method viable to the Purchaser.

ITT 10.1	The Pre-Tender meeting shall be held at Address: RPCL-NORINCO INTL POWER LIMITED Asian Tower, 10th Floor, House # 52, Road # 21, Nikunja 2, Khilkhet, Dhaka 1229, Bangladesh Time & Date: 10:00 AM BST, 20 November, 2024
C. Qualification Criteria	
ITT 13.1	The maximum two (2) number of arbitrations against the Tenderer over a period last five (5) years reckoned from the date of opening of **Technical Offer**.
ITT 14.1(a)	The Tenderer shall have a minimum of five (5) years of overall experience in the supply of Coal. The Tenderer will have to submit a document which certifies their 1st supply experience to be at least five (5) years old reckoned from the date of opening of **Technical Offer**.
ITT 14.1(b)	The minimum specific experience as Supplier in supply of Coal shall be: The Tenderer should be a coal mine owner or holding company of a coal mine owner or a trader and should have exported, a minimum total quantity of 8 (Eight) million MT of coal to power plant, during the past 5 (Five) years, reckoned from the date of opening of **Technical Offer**. As supporting document, Tenderer will have to submit bill of lading accompanied with commercial invoice of each shipment/end user certificate with mentioned delivery quantity issued by Purchaser to match the required supply experience.
ITT 14.1(c)	The minimum supply and/or production capacity of Coal is/ are: The average annual production capacity of the coal mine over the last 5 (Five) years reckoned from the date of opening of **Technical Offer**, should be minimum 10 million MT. As supporting document, Tenderer will have to submit a declaration letter from coal mine in the format provided in Attachment 2, Form PG4-2, Section 5: Tender and Contract Forms. As a complementary to coal mine's production capacity, the recoverable reserve of the coal mine should be a minimum quantity of 25 (Twenty-Five) million MT. As supporting document, Tenderer will have to submit a declaration letter from coal mine in the format provided in Attachment 2, Form PG4-2, Section 5: Tender and Contract Forms with attached recoverable Reserve report of the coal mine needs to be submitted. The Report should reflect the recoverable reserve information of the coal mine and should not be more than five (5) years old reckoned from the date of opening of **Technical Offer**.

ITT 15.1(a)	The minimum amount of liquid asset or working capital or credit facility is i. Liquid Asset or working capital of the tenderer as per the latest audited financial statements should not be less than USD 400.00 Million or credit facilities of USD 400.00 million. ii. The average annual turnover of the Tenderer, in the three (3) financial years as on 1st July 2024, should not be less than USD 100 Million (US Dollars One Hundred Million Only) as evidenced by the audited financial statements of the tenderer. iii. The net asset value per share (NAVPS) of the tenderer as per the latest audited financial statements should not be less than 1 (one).
ITT 16.2	The maximum of percentage of Goods allowed to be subcontracted: Any kind of subcontractor is not allowed
D. Tender Preparation	
ITT 21.1(q)	Along with the required documents mentioned in ITT 21.1 (a) to (p), the Tenderer shall submit with its Tender the following additional documents as mentioned here and in Section 5: Tender and Contract Forms: i Sealed and signed Tender Document by Authorised Signatory of the Tender ii In case of the Tenderer is a trader, a signed commitment letter(s) from the goods producer issued in favor of the supplier as per the format provided in Form PG4-5 of Section 5: Tender and Contract Forms. Documents mentioned in attachment and appendices of each Form of Section 5: Tender and Contract Forms need to be duly submitted by the Tenderer as per the provided format.
ITT 22.1	Alternatives shall not be permitted.
ITT 23.3	Tenders are being invited for single lot
ITT 23.5	The Tenderer shall quote prices of 100% of items and quantity. Otherwise Tender shall be rejected.
ITT 23.7	Not applicable
ITT 23.11(c) **ITT 23.12 (c)** **ITT 23.13 (e)**	"Final destination (Project Site)": Patuakhali 1320 (2×660) MW Coal Fired Thermal Power Plant, Dhankhali, Kalapara, Patuakhali, Barisal, Bangladesh. But the supply shall be FOBT basis in any port/anchorage in Indonesia, South Africa or Australia proposed by the Tenderer.
ITT 23.12 (a)	Place of Destination: FOBT basis in any port/anchorage in Indonesia, South Africa or Australia proposed by the Tenderer. The Tender Price shall be inclusive of, and not subject to any increase as a result of, all costs and expenses arising in the production, transport to the Loading Port, sale, delivery to and loading on board the relevant Vessel, and Trimming of the relevant Vessel, as well as all Taxes that any Government Instrumentality of the Country of Origin may impose on the sale or purchase of any Shipment to or by the Purchaser or on the Supplier in relation to any of the foregoing.

ITT 23.12 (d)	Price shall be quoted on FOBT basis. The Tender Price shall be inclusive of, and not subject to any increase as a result of, all costs and expenses arising in the production, transport to the Loading Port, sale, delivery to and loading on board the relevant Vessel, and Trimming of the relevant Vessel, as well as all Taxes that any Government Instrumentality of the Country of Origin may impose on the sale or purchase of any Shipment to or by the Purchaser or on the Supplier in relation to any of the foregoing.
ITT 24.3	Name of the foreign currency: USD
ITT 25.2(b)	Spare parts are: Not required
ITT 26.1(b)	Commitment letter from goods producer is required as per the format provided in Form PG4-5
ITT 26.1(c)	After sales service is: not required
ITT 27.2	The Tender validity period shall be One hundred and fifty (150) days after the deadline of submission as mentioned in IFT
ITT 29.2	In favour of RPCL-NORINCO INTL POWER LIMITED Asian Tower, 10th Floor, House # 52, Road # 21, Nikunja 2, Khilkhet, Dhaka 1229, Bangladesh
ITT 29.3	The amount of the Tender Security shall be USD 1,500,000 (US Dollar One and a Half Million Only) or equivalent BDT on the date of publication of IFT.
ITT 34.1	In addition to the original of the **Technical Offer**, three (3) copies and one USB stick containing the scanned copy of the complete original of **Technical Offer** shall be submitted.
ITT 34.2	In addition to the original of the **Financial Offer**, three (3) copies and one USB stick containing the scanned copy of the complete original of **Financial Offer** shall be submitted.
E. Tender Submission	
ITT 35.2(e)	The inner and outer envelopes shall bear the following additional identification marks: Not required
ITT 35.7	Tenderer shall not have the option of submitting their tender electronically.
ITT 35.8	If tenderers shall have the option of submitting their bids electronically, the electronic bidding submission procedures shall be: Not allowed

ITT 36.1	For **Tender submission purposes**, the Purchaser's address is: Attention: Company Secretary Address: RPCL-NORINCO INTL POWER LIMITED Asian Tower, 10th Floor, House # 52, Road # 21, Nikunja 2, Khilkhet, Dhaka 1229, Bangladesh The deadline for submission of Tenders is 12:00 PM (BST) on 19 December, 2024
F. Tender Opening and Evaluation	
ITT 42.1	The Tender opening shall take place at (*always the **primary place***): Address: RPCL-NORINCO INTL POWER LIMITED Asian Tower, 10th Floor, House # 52, Road # 21, Nikunja 2, Khilkhet, Dhaka 1229, Bangladesh 12:30 PM (BST) on 19 December, 2024
ITT 46.2(b)	For evaluation purpose, from the proposed coal specification of Form PG4-4 by the Tenderer, only the first eight (8) Base Coal Specification (SL No 1-8) will be evaluated. The evaluation method shall be following: In the event of any disparity between the proposed coal specification in Specification Submission and Compliance Sheet (Form PG4-4) and the results from laboratory analysis as per attachment of Form PG4-4, the value that confers less advantage to the tenderer during the evaluation process will prevail.
ITT 54.1	Domestic preference shall not be a tender evaluation factor
ITT 55.5	The applicable economic factors, for the purposes of evaluation of Tenders shall be: (a) Not Applicable (b) Not applicable (c) **Cost of Coal sourcing** *The Procuring Entity will evaluate the proposed coal specifications by the Tenderer as requested in Form PG4-4 according to ITT 46.2 (b) and relevant TDS and use the evaluated Gross Calorific Value of Coal to find out Actual Coal Sourcing Cost.* ***Cost (c)=Actual Coal Sourcing Cost in USD/MT** = Financial Offer*(Evaluated GCV of Coal/ Base GCV Of Coal)* (d) **Cost of Coal transportation** *The Procuring Entity will consider the coal transportation cost according to the country of origin of coal and loading port proposed by the Tenderer.* ***Cost (d)=Coal Transportation Price**=26.43 USD/MT (for coal transportation from Indonesia)* *The Procuring Entity will find out the monthly coal requirement considering*

	evaluated GCV of Tenderer, guaranteed heat rate of RNPL and gross generation in a month as following: ***Monthly Coal Requirement (MT)**= [(Guaranteed Heat Rate of RNPL/ Evaluated GCV of Coal)*Gross Generation in a Month]/1000* *The total cost {(Cost (c)+Cost (d))×Monthly Coal Requirement} will be used to find out the final Evaluated Financial Offer.* *[An illustration for this Financial Evaluation Procedure has been added at Article 5 of Section 7: Technical Specifications]*
ITT 58.2, ITT 58.3	In the extremely unlikely event that there is a tie for the lowest Evaluated Tender Price, then in order of sequence, the tenderer that proposed the higher Gross calorific value as received basis, lower sulphur as received basis, lower ash as received basis, lower moisture as received basis of coal in their technical proposal will get the priority.
G. Contract Award	
ITT 64.1	Not applicable
ITT 66.2	The amount of Performance Security shall be USD 10,000,000.00 (US Dollar Ten Million Only) or equivalent Taka on the date of claim.
ITT 73.5	The name and address of the office where complaints to the Purchaser are to be submitted is: Attention: Company Secretary, RNPL. Address: RPCL-NORINCO INTL POWER LIMITED Asian Tower, 10th Floor, House # 52, Road # 21, Nikunja 2, Khilkhet, Dhaka 1229, Bangladesh

Section 3. General Conditions of Contract

1. Definitions

1.1 The following words and expressions shall have the meaning hereby assigned to them. Boldface type is used to identify the defined term:

(a) "**Actual GCV**" means the gross calorific value on an ARB of the Coal in any shipment of Coal, as stated in the Certificate of Analysis or in the Umpire Certificate, as the case may be.

(b) "**Actual TA**" means the total ash content on an ARB of the Coal in any shipment of Coal, as stated in the Certificate of Analysis or in the Umpire Certificate, as the case may be.

(c) "**Actual TM**" means the total Moisture content on ARB of any shipment of Coal as stated in the Certificate of Analysis or in the Umpire Certificate, as the case may be.

(d) "**Actual TS**" means the total Sulphur content on an ARB of the Coal in any shipment of Coal, as stated in the Certificate of Analysis or in the Umpire Certificate, as the case may be.

(e) "**ADB**", with respect to any Coal quality parameter, means the analysis of such parameter on the basis that Coal has naturally dried in the open air until it cannot dissipate any more moisture and the moisture content is in approximate equilibrium with the moisture in the surrounding atmosphere.

(f) "**Additional Quantity**" has the meaning given to in Clause 4.4 of Article 4 of Section 6: Schedule of Requirements

(g) "**Adjusted Delivered Quantity**" means, in respect of any Delivery Year, the sum of:

i. the aggregate quantity of Coal delivered to the Purchaser (or an Affiliate of the Purchaser at the direction of the Purchaser) in the Delivery Year, including any Additional Quantity purchased pursuant to Clause 4.4 of Article 4 of Section 6: Schedule of Requirements;

ii. any quantity of Coal that was obtained by the Purchaser in a Mitigating Purchase;

iii. any quantity of Coal that was not supplied to the Purchaser due to an Event of Force Majeure affecting the Supplier or the Purchaser, as the case may be; and

iv. any quantity of Coal that was not supplied to the Purchaser due to a Supplier's Event of Default, or a Reduction Event (excluding any quantities already counted in clause (b) above), as determined following the completion of the relevant Delivery Year.

(h) "**Affiliate**" in relation to a Party or shareholder of a Party, means a public, private, governmental or commercial

company or other entity that directly or indirectly controls, is controlled by, or is under common control with, the Party or entity.

For the purposes of this definition, "control" means the right to cast fifty percent (50%) or more of the votes exercisable at an annual general meeting (or its equivalent) of the entity concerned or, if there are no such rights, ownership of fifty percent (50%) or more of the equity share capital of or other ownership interest in such entity, or the right to direct the policies or operations of such entity.

(i) **"Annual Delivery Quantity"** means the quantity of Coal to be sold and delivered by the Supplier to, and purchased by, the Purchaser in respect of each Delivery Year, as specified in Clause 4.2 of Article 4 of Section 6: Schedule of Requirements.

(j) "**ARB**", with respect to any Coal quality parameter, means the analysis of such parameter on an "as received" basis.

(k) "**Ash Content**" means the total ash content of Coal expressed as a percent (%) of total weight of a Coal sample and measured on an ARB in accordance with ASTM Test Standard D3174-11 (as the same may be amended, revised, modified or supplemented from time to time).

(l) **"ASTM"** means the American Society for Testing and Materials with the technical standards published by ASTM International, as the same may be amended, revised, modified or supplemented from time to time.

(m) **"Bangladesh"** means the People's Republic of Bangladesh.

(n) **"Base GCV"** means GAR 5000 Kcal/Kg.

(o) **"Base Price"** means, the P_n (as determined in accordance with GCC 25.1 and PCC 25.1.3) in respect of any Shipment.

(p) **"Beneficiary Certificate"** means a document showing the Delivered Price of a Shipment of Coal due and payable by the Purchaser as determined in accordance with GCC 25.1 and PCC 25.1.3, in the form included in Clause 3 of Article 6 Format of Relevant Forms for Contract Execution Phase Section 7: Technical Specifications.

(q) **"Bill of Lading"** means a shipping document that serves as (i) a receipt for cargo prepared by the shipper and signed by the carrier, (ii) a "document of title" to the cargo, and (iii) evidence of the terms and conditions of the shipping contract, substantially in the form of Clause 3 of Article 6 Format of Relevant Forms for Contract Execution Phase Section 7: Technical Specifications or such other form as may be reasonably acceptable to the Purchaser.

(r) **"Business Day"** means:

i. for the purpose other than for making any payment

under this Agreement, a day which is not a Friday, Saturday, Sunday or a public or legal holiday in either Bangladesh or China or Indonesia/Australia/South Africa (wherever applicable); and

ii. for the purpose of making any payment under this Agreement, a day which is not a Friday, Saturday, Sunday, a public holiday or a legal holiday or a day on which banking institutions are authorized or obliged by law or regulation to close either in Bangladesh or China or Indonesia/Australia/South Africa (wherever applicable).

(s) **"°C"** means degree(s) centigrade or degree(s) Celsius as defined in the International System of Units.

(t) **"Calorific Value, Gross" ("GCV")** means the calorific value of Coal expressed as a higher heating value, referred on a (GAR) basis, in accordance with ASTM Test Standard D5865-11a (as the same may be amended, revised, modified or supplemented from time to time).

(u) **"Calorific Value, Net" ("NCV")** means the calorific value of Coal expressed as a lower heating value, referred on a (NAR) basis, in accordance with ASTM Test Standard D5865-11a (as the same may be amended, revised, modified or supplemented from time to time). The NCV is the subtraction of the heat of vaporization of water vapor from the GCV.

(v) **"Capesize"** means a Vessel of a size between 150,000 DWT and 210,000 DWT and with a maximum beam of 47 meters.

(w) **"Cent"** shall mean one one-hundredth of a Dollar ($0.01).

(x) **"Certificate of Analysis"** means a certificate issued by the Loading Port Laboratory in accordance with Clause 7.2 of Article 7 of Section 6: Schedule of Requirements or the Umpire Laboratory pursuant to Clause 7.3 of Article 7 of Section 6: Schedule of Requirements, in each case based on the ASTM test standards set out in Article 3 of Section 7: Technical Specifications and in a form substantially similar to Clause 1 of 'Article 6 Format of Relevant Forms for Contract Execution Phase' of Section 7: Technical Specifications.

(y) **"Certificate of Holds Cleanliness"** means a certificate substantially in the form of Clause 6 of Article 6 Format of Relevant Forms for Contract Execution Phase Section 7: Technical Specifications issued by an independent inspector (to be nominated by the Purchaser and approved by the Supplier) engaged by the Purchaser to inspect the cleanliness of each hold of any Vessel nominated by the Purchaser to receive delivery of a Shipment, such inspection to be performed according to the relevant standards.

(z) **"Certificate of Origin"** means, in respect to any shipment,

a document executed by the Supplier that certifies the origin of the Coal contained in the Shipment, substantially in the form of Clause 5 of 'Article 6 Format of Relevant Forms for Contract Execution Phase' Section 7: Technical Specifications or such other form as may be reasonably acceptable to the Purchaser.

(aa) **"Certificate of Weight"** means a certificate substantially in the form of Clause 7 of 'Article 6 Format of Relevant Forms for Contract Execution Phase' Section 7: Technical Specifications issued by the Licensed Marine Surveyor in accordance with Article 8 of Section 6: Schedule of Requirements setting forth the weight of a Shipment on the Vessel.

(bb) **"Change in Legal Requirement"** means the adoption, enactment or application to the Purchaser or the Supplier of any Legal Requirement (i) that was not existing or applicable to the Purchaser or the Supplier on the date of this Agreement, or (ii) constitutes a change in such Legal Requirement or the application or interpretation thereof by a Government Instrumentality after the date of this Agreement.

(cc) **"Changed Formulas"** has the meaning given to in GCC 37.2 and PCC 37.2.

(dd) **"Coal"** means either or both, (a) thermal coal produced from the mining area controlled by the Supplier in the XXX, Indonesia/Australia/South Africa covered by its Mining Rights Authorizations and satisfying fully the Coal Quality Specifications in Article 1 of Section 7: Technical Specifications and/or (b) thermal coal produced or procured by the Supplier from Indonesia/Australia/South Africa and satisfying fully the Coal Quality Specifications in Article 1 of Section 7: Technical Specifications.

(ee) **"Coal Condition Undertaking"** has the meaning given to in Clause 3.2 of Article 3 of Section 6: Schedule of Requirements.

(ff) **"Coal Handling Facilities"** means the facilities at or proximate to the Facility Site for receiving, storing, processing, or conveying Coal for consumption in the Facility, including without limitation, the Discharge Port facilities, coal yard, conveyor, crusher, stacker-reclaimers, whether or not such facilities are owned or operated by the Purchaser or an Affiliate of the Purchaser.

(gg) **"Coal Quality Rejection Limits"** means the specifications set out in Article 2 of Section 7: Technical Specifications.

(hh) **"Coal Quality Specifications"** means the specifications set out in Article 1 of Section 7: Technical Specifications.

(ii) **"Completion Schedule"** means the fulfilment of the Related Services by the Supplier in accordance with the terms and conditions set forth in the Contract;

(jj) **"Commencement Notice"** means a written Commencement Notice for Commercial Delivery, delivered

by the Purchaser to the Supplier in accordance with Clause 2.3 of Article 2 of Section 6: Schedule of Requirements.

(kk) **"Commercial Delivery Period"** means the period commencing on the First Delivery Date and continuing until the end of the Term.

(ll) **"Commercial Operation Date"** means the date on which the construction, testing, inspection and commissioning of the Facility has been completed and commercial operation has commenced under and pursuant to the Power Purchase Agreement, the progress and occurrence of which shall be notified by the Purchaser to the Supplier from time to time in writing.

(mm) **"Commissioning Coal"** delete.

(nn) **"Confidential Information"** has the meaning given to in GCC 10 and PCC 10.3.

(oo) **"Consent"** means any approval, consent, authorization or other requirement that is required from any Government Instrumentality.

(pp) **"Contaminants"** means materials contained or mixed with the coal, such as bone, shale, rock, dirt, clay, wood, rocks, plant matter, garbage, iron or steel, nonferrous materials, blast materials, salt, petroleum coke, pitch, pitch coke, tar sludge and or other extraneous material.

(qq) **"Contractor"** means any contractor or supplier integrally involved in the design, engineering and/or construction of the Facility or other facilities required by a Party for the performance of its obligations hereunder and any of their direct sub-contractor(s) integrally involved in the design, construction and/or operation of the Facility or other facilities required by a Party for the performance of its obligations hereunder, as the case may be.

(rr) **Contract Agreement** means the Agreement entered into between the Purchaser and the Supplier, together with the Contract Documents referred to therein, including all attachments, appendices, and all documents incorporated by reference therein;

(ss) **Contract Documents** means the documents listed in the Contract Agreement, including any amendments thereto;

(tt) **Contract Price** means the price stated in the Notification of Award and thereafter as adjusted in accordance with the provisions of the Contract;

(uu) **Country of Origin"** means the Republic of Indonesia/Commonwealth of Australia/ Republic of South Africa

(vv) **Day** means calendar days unless otherwise specified as working days;

(ww) **"DB"** with respect to any Coal quality parameter, means the analysis of such parameter on dried basis.

(xx) **"Deadweight Tonnes"** or **"DWT"** means the deadweight capacity of a Vessel, measured in Tonnes, which capacity comprises the weight of cargo, crew, bunker fuel, fresh water and stores.

(yy) **Delivery** means the transfer of ownership of the Goods from the Supplier to the Purchaser in accordance with the terms and conditions set forth in the Contract;

(zz) **"Delivered Price"** has the meaning given to in GCC 25 and PCC 25.1.

(aaa) **"Delivery Schedule"** has the meaning given to in Clause 6.4.3 of Article 6 of Section 6: Schedule of Requirements.

(bbb) **"Delivery Month"** means the calendar month in any Delivery Year in which any Shipment is to be delivered by the Supplier to the Purchaser at the Loading Port.

(ccc) **"Delivery Month Quantity"** has the meaning given to in Clause 6.4.5 of Article 6 of Section 6: Schedule of Requirements.

(ddd) **"Delivery Year"** means (i) the First Delivery Year, (ii) each calendar year (or portion thereof in the event of early termination of this Agreement) after the end of the First Delivery Year to the start of the Final Delivery Year, (iii) the Final Delivery Year.

(eee) **"Demurrage"** means the financial compensation that Supplier shall pay the Purchaser (to pay the Vessel owner) for total Time Used exceeds total Laytime allowed.

(fff) **"Despatch"** means the financial reward paid by the Purchaser (received from Vessel owner) to Supplier for total Time Used is less than total Laytime allowed.

(ggg) **"Director General Regulation No. 515"** delete.

(hhh) **"Discharge Port"** means the coal jetty within the Facility in the Patuakhali district of Bangladesh.

(iii) **"Dispute"** has the meaning given in GCC 47 and PCC 47.4.

(jjj) **"Draft Survey"** means a marine draft survey carried out by a Licensed Marine Surveyor in accordance with Article 8 of Section 6: Schedule of Requirements to determine the quantity of Coal in Tonnes loaded on the Vessel.

(kkk) **"Dollar" "Cents"** or the symbol "$" and "¢" shall mean the lawful currency of the United States of America.

(lll) **"Effective Date"** has the meaning given to it on the first page of the Form PG4-8: Contract Agreement.

(mmm) **"Estimated Quantity"** has the meaning given to in Clause 6.4.1 of Article 6 of Section 6: Schedule of Requirements.

(nnn) **"ETA"** means the estimated time of arrival.

(ooo) **"Event of Force Majeure"** has the meaning given to in GCC 38 and PCC 38.1.

(ppp) **"Expected Supply Shortfall"** has the meaning given to in Clause 4.6.1 of Article 4 of Section 6: Schedule of

Requirements.

(qqq) **"Expert"** has the meaning given to in GCC 47 and PCC 47.4.

(rrr) **"Extended Forced Outage"** means an unplanned interruption of the generating capability of the Facility that is necessary to carry out and complete any inspection, testing, overhaul, maintenance, or repair of any part of the Facility, including the Coal Handling Facilities, that continues for more than ten (10) days or, in the case of more than one (1) such interruption, continue in the aggregate for more than ten (10) days in any Delivery Year.

(sss) **"Facility"** means the coal-fired electric generating plant having an output of approximately 1320 megawatts (gross), to be located in Patuakhali, Bangladesh, including all components thereof and related facilities located on the Facility Site, including the Coal Handling Facilities and any and all transmission lines, appliances, parts, instruments, appurtenances, accessories and other property that may be incorporated or installed in or attached to or otherwise become part of such facility.

(ttt) **"Facility Site"** means the parcel(s) of real property located in Kalapara, Patuakhali, Bangladesh upon which the Facility will be situated.

(uuu) **"Final Delivery Year"** means the period beginning at 00:01 HRS on January 1 and continuing through 24:00 HRS on December 31 of the calendar year in which the fifth (5th) anniversary of the First Delivery Date occurs.

(vvv) **"Financing Documents"** means the agreements for making available any loans, credit facilities, notes (including floating rate notes and commercial paper), bonds, subordinated debt or other funds other than equity, including working capital and any letters of credit and related agreements, security agreements, swap agreements, and any other documents relating to the development, construction, acquisition, ownership, operation and maintenance of the Facility.

(www) **"Financing Party"** means any Person which provides loans or other financing to the Purchaser as evidenced by or pursuant to the Financing Documents.

(xxx) **"First Commercial Delivery Window"** has the meaning given to it in Clause 2.3.1 (a) of Article 2 of Section 6: Schedule of Requirements.

(yyy) **"First Delivery Date"** has the meaning given to it in Clause 2.3.1 of Article 2 of Section 6: Schedule of Requirements.

(zzz) **"First Delivery Year"** means the period beginning on the First Delivery Date and continuing through December 31 of the calendar year in which the First Delivery Date occurs.

(aaaa) **"First Split"** has the meaning given to in Clause 7.2.3 (a)

of Article 7 of Section 6: Schedule of Requirements.

(bbbb) **"First Unit"** means the first of the two (2) 660 MW (gross) electric generating units constituting the key parts of the Facility to commence operation on a commercial basis.

(cccc) **"FOB"** or **"Free on Board"** has the meaning given to in INCOTERMS 2010 except as otherwise provided in this Agreement.

(dddd) **"FOBT"** or **"Free on Board Trimmed"** means FOB with the Vessel Trimmed at the Loading Port as defined and construed in accordance with INCOTERMS 2010, except as may be otherwise provided in this Agreement.

(eeee) **"Free Pratique"** means permission to do business at a port by a ship that has complied with all applicable legal requirements, including obtaining a clean bill of health for ship and crew.

(ffff) **"Full Certificate of Analysis"** means a certificate issued by the Loading Port Laboratory in accordance with Clause 7.2.5 of Article 7 of Section 7: Technical Specifications based on the ASTM test standards set out in Article 3 of Section 7: Technical Specifications and in a form substantially similar to Clause 2 of 'Article 6 Format of Relevant Forms for Contract Execution Phase' Section 7: Technical Specifications.

(gggg) **"GAR"** means "Gross, as received", being the higher heating value of the Coal expressed in Kcal/Kg.

(hhhh) **"gcNEWCn"** delete.

(iiii) **"GCC"** mean the General Conditions of Contract;

(jjjj) **"Goods"** means raw materials, products and equipment and objects in solid, liquid or gaseous form, electricity, and related Services if the value of such Services does not exceed that of the Goods themselves;

(kkkk) **"Government"** means the Government of the People's Republic of Bangladesh;

(llll) **"Government Instrumentality"** means, in respect of the People's Republic of the Bangladesh or the Country of Origin or any other country having jurisdiction over the matter in question, as the case may be, any ministry, department, political subdivision, instrumentality, agency, corporation or commission under the direct or indirect control of such country.

(mmmm) **"Hardgrove Index (HGI)"** refers to the grindability of Coal as measured by ASTM Standard D409/D409M-11 (as the same may be amended, revised, modified or supplemented from time to time).

(nnnn) **"INCOTERMS"** means the 2010 edition of the International Rules for the Interpretation of Trade Terms published by the International Chamber of Commerce, as such rules may be replaced, revised or amended from time to time.

(oooo) **"Initial Delivery Date"** delete.

(pppp) **"Initial Supply Period"** delete.

(qqqq) **"ISM"** means the International Safety Management Code 2002, which is the international management code for the safe operation of ships and for pollution prevention, and any amendments thereto or subsequent editions.

(rrrr) **"ISO"** means the International Organization for Standardization.

(ssss) **"JORC Code"** means the 2004 Australasian Code for reporting Exploration Results, Mineral Resources and Ore Reserves, published by The Joint Ore Reserves Committee of The Australasian Institute of Mining and Metallurgy, Australian Institute of Geoscientists and Minerals Council of Australia, the Australian Guidelines for Estimating and Reporting of Inventory Coal, Coal Resources and Coal Reserves (2003 edition), as the same may be amended, revised, modified or supplemented from time to time.

(tttt) **"Kcal"** means Kilocalorie as defined in the International System of Units.

(uuuu) **"Kg"** means Kilogram as defined in the International System of Units.

(vvvv) **"Laycan"** has the meaning given to in Clause 6.4.3 (c) of Article 6 of Section 6: Schedule of Requirements.

(wwww) **"Laytime"** has the meaning given to in Clause 6.9 of Article 6 of Section 6: Schedule of Requirements.

(xxxx) **"Legal Requirement"** means all laws, statutes, orders, decrees, injunctions, licenses, permits, approvals, agreements and regulations of any Government Instrumentality.

(yyyy) **"Term SOFR"** means the term SOFR reference rate administered by CME Group Benchmark Administration Limited (or any other person which takes over the administration of that rate) for the relevant period published (before any correction, recalculation or republication by the administrator) by CME Group Benchmark Administration Limited (or any other person which takes over the publication of that.

(zzzz) **"Licensed Marine Surveyor"** means a Person licensed or approved, as applicable, by a Government Instrumentality of the Country of Origin to undertake Draft Surveys.

(aaaaa) **"Loading Port"** means XXXX, or such other coal loading point to be advised by the Supplier on not less than ninety (90) days prior written notice and accepted by the Purchaser, such acceptance not to be unreasonably withheld.

(bbbbb) **"Loading Port Laboratory"** has the meaning given to in Clause 7.2 of Article 7 of Section 7: Technical Specifications.

(ccccc) **"Major Holidays"** means Holidays as applicable and declared by the relevant Government of Indonesia/Australia/South Africa, which will be finalized by the Supplier and Purchaser.

(ddddd) **"Marketable Coal Reserves"** has the meaning given to that expression in the JORC Code, as in effect on the date hereof.

(eeeee) **"Maximum Delivery Year Quantity"** has the meaning given to in Clause 4.2.1 of Article 4 of Section 6: Schedule of Requirements.

(fffff) **"Maximum Initial Quantity"** delete.

(ggggg) **"Mines"** means XXXX under concession to an Affiliate of the Supplier approved in writing by the Purchaser.

(hhhhh) **"Minimum Delivery Year Quantity"** has the meaning given to it in Clause 4.2.1 of Article 4 of Section 6: Schedule of Requirements.

(iiiii) **"Mining Rights Authorizations"** Applicable permits from competent authority of Indonesia/Australia/South Africa, which including but not limited to Mining permit, Sales and Transport permit, Export permit of coal copies of which are attached as Clause 8 of 'Article 6 Format of Relevant Forms for Contract Execution Phase' Section 7: Technical Specifications.

(jjjjj) **"Minister"** delete.

(kkkkk) **"Minister Regulation 07"** delete.

(lllll) **"Mitigating Purchase"** has the meaning given to in Clause 4.7.3 of Article 4 of Section 6: Schedule of Requirements.

(mmmmm) **"mm"** means millimeter(s) as defined in the International System of Units.

(nnnnn) **"NAR"** means "Net, as received", being the lower heating value of the Coal expressed in Kcal/Kg.

(ooooo) **"New Pricing Index"** has the meaning given to in GCC 37 and PCC 37.2

(ppppp) **"Notice of Dispute"** has the meaning given to it in GCC 47 and PCC 47.4.

(qqqqq) **"Notice of Readiness"** means a notification by the master of the Vessel to the Supplier that the Vessel is Ready In All Respects to berth and load Coal in the ordinary course.

(rrrrr) **"Opening Layday"** means the first (1st) day of the Laycan.

(sssss) **"P_n"**, **"P_{GCV}"**, **"P_{TM}"**, **"P_{TS}"**, **"P_{TA}"** have the respective meanings given to such terms in GCC 25.1 and PCC 25.1.3.

(ttttt) **"Panamax"** means a Vessel of between 60,000 and 88,000 DWT, the maximum sized Vessel that can transit the Panama Canal.

(uuuuu) **"Person"** means any natural person, corporation,

business trust, joint venture, association, company, partnership or government, or any agency or political subdivision thereof.

(vvvvv) **"Port Authorities"** refers to any Government Instrumentality that has control over ports and shipping in the Country of Origin or Bangladesh.

(wwwww) **"Power Purchase Agreement"** means the Power Purchase Agreement dated 20th February 2019 between the Bangladesh Power Development Board (BPDB) and RNPL for the supply of dependable capacity and electric energy to BPDB from the Facility, as such agreement may be amended or modified from time to time by the parties thereto.

(xxxxx) **"Pricing Index"** means, at the relevant time, the index being used for the determination of P_n in GCC 25.1 and PCC 25.1.3.

(yyyyy) **"Probable Coal Reserves"** has the meaning given to that expression in the JORC Code, as in effect on the date hereof.

(zzzzz) **"Proved Coal Reserves"** has the meaning that would be given to that expression in the JORC Code, as in effect on the date hereof.

(aaaaaa) **"Prudent Utility Practices"** means any of the practices, methods, and acts which, in the exercise of the good faith judgment of an independent power generation company, in light of the facts (including, but not limited to, the practices, methods, acts, actions and conduct engaged in or approved by a significant portion of the international electric generating industry for facilities and equipment substantially similar to the Facility) known at the time a decision was made, would reasonably be expected to accomplish the desired result in a manner consistent with Legal Requirements, contractual obligations, cost-effectiveness, plant reliability, safety, health and environmental matters, wholesale and other market conditions, expedition and the construction, operation and maintenance standards recommended by the equipment suppliers and manufacturers for the Facility.

Prudent Utility Practices is not intended to be limited to optimum practice, method, or act to the exclusion of all others, but rather is a spectrum of possible practices, methods, or act which could have been expected to accomplish the desired result at the lowest reasonable cost consistent with cost-effectiveness, plant reliability, safety health and environmental matters, and expedition.

(bbbbbb) **"PCC"** means the Particular Conditions of Contract;

(cccccc) **"Procuring Entity/Purchaser"** means a Entity having administrative and financial powers to undertake Procurement of Goods, Works or Services using public funds, as specified in the PCC;

(dddddd) **"Purchaser Event of Default"** has the meaning given

to it in GCC 42 and PCC 42.5.

(eeeeee) **"Purchaser Initial Cure Period"** has the meaning given to it in GCC 42 and PCC 42.5.

(ffffff) **"Purchaser Termination Amount"** means an amount equal to Two Million US Dollars ($2,000,000) as full compensation to the Supplier for the damages suffered by it as a consequence of the termination of this Agreement due to a Purchaser Event of Default, in accordance with GCC 42 and PCC 42.5.

(gggggg) **"Purchaser Test Analysis"** has the meaning give to it in Clause 7.3 of Article 7 of Section 7: Technical Specifications.

(hhhhhh) **"Ready In All Respects"** means, in relation to any Vessel that has arrived at the Loading Port, all of the following conditions have been satisfied: (a) the Supplier has received a copy of the Certificate of Holds Cleanliness; (b) the Vessel has completed all formalities required by Port Authorities or other Government Instrumentalities of the Country of Origin prior to loading of Coal, including Vessel customs clearance.

(iiiiii) **"Reasonable and Prudent Operator"** means a Person or Party seeking to perform its obligations, duties and responsibilities in compliance with applicable laws and regulations, and in so doing, exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a knowledgeable, skilled and experienced operator engaged in the same or similar type of undertaking under the same or similar circumstances and conditions.

(jjjjjj) **"Reduction Event"** has the meaning given to in Clause 4.8 of Article 4 of Section 6: Schedule of Requirements.

(kkkkkk) **"Rejection Limits"** means the relevant limits of each Specification at which point the Purchaser may reject a shipment tendered for delivery by the Supplier hereunder, as listed under the heading "Rejection Limits" in Article 2 of Section 7: Technical Specifications.

(llllll) **"Related Services"** means Services linked to the supply of Goods contracts.;

(mmmmmm) **"RNPL"** means RPCL-NORINCO Intl Power Limited, the owner of the Facility.

(nnnnnn) **"Rules"** has the meaning given to in GCC 47 and PCC 47.4.

(oooooo) **"Scheduled Outage"** means a planned interruption of the generating capability of the Facility that has been scheduled and allowed by BPDB according to Power Purchase Agreement and is for any inspection, testing, overhauls, preventive and corrective maintenance, repairs, replacement or improvement of the Facility including the Coal Handling Facilities.

(pppppp) **"Second Commercial Delivery Window"** has the

meaning given to it in Clause 2.3.1 of Article 2 of Section 6: Schedule of Requirements.

(qqqqqq) **"Second Split"** has the meaning given to in Clause 7.2.3 (b) of Article 7 of Section 6: Schedule of Requirements.

(rrrrrr) **"SHINC"** means Saturdays, Sundays and holidays included except Major Holidays in the Country of Origin.

(ssssss) **"Shipment"** means a full or partial shipload of Coal on any Vessel in any Delivery Year.

(tttttt) **"Significant Discrepancy"** has the meaning given in Clause 7.3.2 of Article 7 of Section 6: Schedule of Requirements.

(uuuuuu) **"Site"** means the point(s) of delivery named in the PCC

(vvvvvv) **"Size"** refers to the size classification of a sample of Coal tested in accordance with ASTM Test Standard D4749-87 (2007) (as the same may be amended, revised, modified or supplemented from time to time).

(wwwwww) **"Specifications"** in relation to the parameters of the Coal, means the corresponding specifications as set out in Article 1 of Section 7: Technical Specifications and listed under the heading "Specification", and "Specification" means any one of such Specifications.

(xxxxxx) **"Subcontractor"** means any natural person, private or government entity, or a combination of the above, to whom any part of the Goods to be supplied or execution of any part of the Related Services is subcontracted by the Supplier;

(yyyyyy) **"Substitute Coal"** has the meaning given to in Clause 3.4 of Article 3 of Section 6: Schedule of Requirements.

(zzzzzz) **"Substitute Vessel"** has the meaning given to it in Clause 6.5.3 of Article 6 of Section 6: Schedule of Requirements.

(aaaaaaa) **"Sulphur Content"** refers to the sulphur content of a sample of Coal tested in accordance with ASTM Test Standard D3177-02 (2007) (as the same may be amended, revised, modified or supplemented from time to time).

(bbbbbbb) **"Supplier"** means a Person under contract with a Purchaser for the supply of Goods and related Services under the Act;

(ccccccc) **"Supply Failure"** has the meaning given to in Clause 4.7.1 of Article 4 of Section 6: Schedule of Requirements.

(ddddddd) **"Supply Shortfall Remedial Plan"** has the meaning given to in Clause 4.6.1 of Article 4 of Section 6: Schedule of Requirements.

(eeeeeee) **"Supplier Event of Default"** has the meaning given to in GCC 42 and PCC 42.5.

(fffffff) **"Supplier Initial Cure Period"** has the meaning given to in GCC 42 and PCC 42.5.

(gggggg) **"Supplier Termination Amount"** an amount equal to Ten Million US Dollars ($10,000,000) as full compensation to the Purchaser for the damages suffered by it as a consequence of the termination of this Agreement due to a Supplier Event of Default, in accordance with GCC 42 and PCC 42.5.

(hhhhhhh) **"Supramax"** means a vessel of a size between 45,000 DWT and 60,000DWT and with a maximum beam of 32 meters.

(iiiiiii) **"System Operator"** means the Power Grid Company of Bangladesh, and its successors, and any other entity assuming the responsibility for dispatch of electric power generation facilities and management of the electric power delivered to and transmitted on the Bangladesh power grid.

(jjjjjjj) **"Tax"** means any tax, levy, rate, duty, fee or other charge (other than any Port Charges) imposed directly or indirectly on a Party, its assets, income, dividends or profits (without regard to the manner of collection or assessment, whether by withholding or otherwise) by any Government Authority or other body duly authorized to impose such tax, levy, rate, duty, fee or other charge.

(kkkkkkk) Without limiting the generality of the foregoing, Taxes include, Income Taxes, a gross receipts tax, a goods and services tax, a capital gains tax, a property tax, an excise tax, a value-added tax, or any tax related to environmental effects of exploring for, producing, processing, transporting, storing, supplying, selling or consuming Coal sold and purchased pursuant to this Agreement, including a carbon tax; provided, that "Tax" shall not include any penalties and interest that may be imposed for failure to report or late filing of returns or reports for any Taxes or exemptions for the payment thereof;

(lllllll) **"Technical Dispute"** has the meaning given to in GCC 47 and PCC 47.4.

(mmmmmmm) **"Term"** has the meaning given to in Section 6: Schedule of Requirements.

(nnnnnnn) **"Third Commercial Delivery Window"** delete.

(ooooooo) **"Third Party"** means any Person that is not a Party.

(ppppppp) **"Third Split"** has the meaning given in Clause 7.2.3 (c) of Article 7 of Section 6: Schedule of Requirements.

(qqqqqqq) **"Time Used"** means, in relation to any Shipment being delivered onto a Vessel at the Loading Port, the duration of time from (i) the commencement of the counting of time to (ii) the completion of the loading of all Coal onto the Vessel, as determined in accordance with Section 6: Schedule of Requirements.

(rrrrrrr) **"Tonne"** or **"Metric Tonne (MT)"** means a metric tonne of 1000 kilograms as defined in the International System of Units.

(sssssss) **"Total Moisture"** refers to the total moisture content of a sample of Coal tested in accordance with ASTM Test Standards D3173-11 and D3302/D3302M-10 (as the same may be amended, revised, modified or supplemented from time to time).

(ttttttt) **"Trimmed"** means that Trimming of a Vessel on which a Shipment has been loaded has been completed.

(uuuuuuu) **"Trimming"** means stabilizing the Vessel by leveling off cargo within each hold, and stowing cargo throughout the Vessel so that the fore and aft drafts are practically the same by use of manpower, spouts, or any such Trimmers as may be available at the Loading Port, and "Trim" and "Trimmed" shall be construed accordingly.

(vvvvvvv) **"Umpire Certificate"** has the meaning given to it in Clause 7.3.2 of Article 7 of Section 6: Schedule of Requirements.

(wwwwwww) **"Umpire Laboratory"** has the meaning given to it in Clause 7.3.2 of Article 7 of Section 6: Schedule of Requirements.

(xxxxxxx) **"Vessel"** has the meaning given to it in Clause 6.5.1 of Article 6 of Section 6: Schedule of Requirements.

(yyyyyyy) **"Vessel Nomination"** has the meaning given to it in Clause 6.5.2 of Article 6 of Section 6: Schedule of Requirements.

(zzzzzzz) **"Weather Working Day"** or **"WWD"** means a period of twenty-four (24) hours made up of one or more working days during which it is, or if the Vessel is still waiting for its turn, it would be, possible to discharge the Coal without interference due to weather. If such interference occurs (or would have occurred if work had been in progress), there shall be excluded from Laytime the actual period of such interference.

(aaaaaaaa) **"Working Day"** means any day except for a Major Holiday in the Country of Origin.

(bbbbbbbb) **"Writing"** means communication written by hand or machine duly signed and includes properly authenticated messages by facsimile or electronic mail.

(ccccccc) **"Verified Report"** means the report submitted by the Purchaser to the Head of the Purchaser setting forth its findings as to the existence of grounds or causes for termination and explicitly stating its recommendation for the issuance of a Notice to Terminate.

2. Contract Documents

2.1 Subject to the order of precedence set forth in the GCC Sub-Clause 5.1, all documents forming the Contract (and all parts thereof) are intended to be correlative, complementary, and mutually explanatory. The Contract Agreement shall be read as a whole.

3. Corrupt, Fraudulent, Collusive or Coercive Practices

3.1 The Government requires that Purchaser, as well as Suppliers, shall observe the highest standard of ethics during the implementation of procurement proceedings and the execution of contracts under public funds.

3.2 The Government requires that Procuring Entities, as well as Suppliers shall, during the execution of Contracts under public funds, ensure-

(a) strict compliance with the provisions of Section 64 of the Public Procurement Act 2006 (Act 24 of 2006);

(b) abiding by the code of ethics as mentioned in the Rule127 of the Public Procurement Rules, 2008;

(c) that neither it nor any other member of its staff or any other agents or intermediaries working on its behalf engages in any practice as detailed in GCC Sub -Clause 3.3

3.3 For the purpose of GCC Sub-clause 3.2 the terms –

(a) **corrupt practice** means offering, giving or promising to give, receiving, or soliciting, either directly or indirectly, to any officer or employee of a Purchaser or other public or private authority or individual, a gratuity in any form; employment or any other thing or service of value as an inducement with respect to an act or decision or method followed by a Purchaser in connection with a Procurement proceeding or contract execution;

(b) **fraudulent practice** means the misrepresentation or omission of facts in order to influence a decision to be taken in a Procurement proceeding or Contract execution;

(c) **collusive practice** means a scheme or arrangement between two (2) or more Persons, with or without the knowledge of the Purchaser, that is designed to arbitrarily reduce the number of Tenders submitted or fix Tender prices at artificial, noncompetitive levels, thereby denying a Purchaser the benefits of competitive price arising from genuine and open competition; or

(d) **coercive practice** means harming or threatening to harm, directly or indirectly, Persons or their property to influence a decision to be taken in a Procurement proceeding or the execution of a Contract, and this will include creating obstructions in the normal submission process used for Tenders.

3.4 Should any corrupt, fraudulent, collusive or coercive practice of any kind come to the knowledge of the Purchaser, it will, in the first place, allow the Supplier to provide an explanation and shall, take actions only when a satisfactory explanation is not received. Such exclusion and the reasons thereof, shall be recorded in the record of the procurement proceedings and promptly communicated to the Supplier concerned. Any communications between the Supplier and the Purchaser related to matters of alleged fraud or corruption shall be in writing.

3.5 If corrupt, fraudulent, collusive or coercive practices of any kind determined by the Purchaser against the Supplier alleged to have carried out such practices, the Purchaser shall proceed under GCC Clause 42.4

3.6 The Supplier shall permit the Purchaser to inspect the Supplier's accounts and records and other documents relating to the submission of the Tender and Contract performance.

4. Interpretation

4.1 In interpreting the GCC, singular also means plural, male also means female or neuter, and the other way around. Headings in the GCC shall not be deemed part thereof or be taken into consideration in the interpretation or construction thereof or of the Contract. Words have their normal meaning under the English language unless specifically defined.

4.2 **Entire Agreement**

(a) The Contract constitutes the entire agreement between the Purchaser and the Supplier and supersedes all communications, negotiations and agreements (whether written or oral) of parties with respect thereto made prior to the date of Contract Agreement; except those stated under GCC Sub Clause 5.1(i) .

4.3 **Amendment**

(a) No amendment or other variation of the Contract shall be valid unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorised representative of each party thereto.

4.4 **Non-waiver**

(a) Subject to GCC Sub-Clause 4.4(b), no relaxation, forbearance, delay, or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect, or restrict the rights of that party under the Contract, neither shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.

(b) Any waiver of a party's rights, powers, or remedies under the Contract must be in writing, dated, and signed by an authorised representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.

4.5 **Severability**

(a) If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.

4.6 **Other provisions shall be as specified in PCC.**

5. Documents Forming the Contract in order of precedence

5.1 The following documents forming the Contract shall be in the following order of precedence, namely :

(a) the signed Contract Agreement;

(b) the Notification of Award;

(c) The Tender and the appendices to the Tender;

(d) Particular Conditions of Contract;

(e) General Conditions of Contract;

(f) Technical Specifications;

(g) Drawings;

(h) Price Schedule and schedule of requirements and;

(i) Other Documents including correspondences listed in the PCC forming part of the Contract.

6. Eligibility

6.1 The Supplier and its Subcontractors shall have the nationality of an eligible country. A Supplier or Subcontractor shall be deemed to have the nationality of a country if it is a citizen or constituted, incorporated, or registered, and operates in conformity with the provisions of the laws of that country.

6.2 All Goods and Related Services to be supplied under the Contract shall have their origin in Eligible Countries.

6.3 For the purpose of the GCC Clause 6.2, origin means the country where the goods have been grown, mined, cultivated, produced, manufactured/produced, or processed; or through manufacture, processing, or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its components.

7. Governing Language

7.1 The Contract shall be written in English language. Correspondence and documents relating to the Contract exchanged by the Supplier and the Purchaser shall be written in English. Supporting documents and printed literature that are part of the Contract may be in another language provided they are accompanied by an accurate translation of the relevant passages in English language, in which case, for purposes of interpretation of the Contract, this translation shall govern.

7.2 The Supplier shall bear all costs of translation to the governing language and all risks of the accuracy of such translation.

8. Governing Law

8.1 The Contract shall be governed by and interpreted in accordance with the laws of the People's Republic of Bangladesh.

9. No fees/Gratuities

9.1 No fees, gratuities, rebates, gifts, commissions or other payments, other than those shown in the Tender or the contract, shall be given or received in connection with the procurement process or in the contract execution.

10. Use of Contract Documents & Information

10.1 The Supplier shall not, except for purposes of performing the obligations in this Contract, without the Purchaser's prior written consent, disclose this Contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the Purchaser. Any such disclosure shall be made in confidence and shall extend only as far as may be necessary for purposes of such performance.

10.2 Any document, other than this Contract itself, enumerated in GCC Clause 10.1 shall remain the property of the Purchaser and shall be returned (all copies) to the Purchaser on completion of the Supplier's performance under this Contract if so required by the Purchaser.

10.3 **Any other provision as specified in PCC.**

11. Communications & Notices

11.1 Communications between Parties (notice, request or consent required or permitted to be given or made by one party to the other) pursuant to the Contract shall be in writing to the addresses specified in the PCC.

11.2 A notice shall be effective when delivered or on the notice's effective date, whichever is later.

11.3 A Party may change its address for notice hereunder by giving the other Party notice of such change to the address.

12. Trademark, Patent and Intellectual Property Rights

12.1 The Purchaser should not be liable for any infringement of intellectual property rights arising from use of the goods procured. In case there are third-party claims of such infringement of patent, trademark, or industrial design rights, the supplier must indemnify and hold the Purchaser free and harmless against such claims and shall not be in contravention of The **Trademark Act, 2009 and The Patents and Designs Act, 1911.**

13. Copyright

13.1 The copyright in all drawings, documents, and other materials containing data and information furnished to the Purchaser by the Supplier herein shall remain vested in the Supplier, or, if they are furnished to the Purchaser directly or through the Supplier by any third party, including suppliers of materials, the copyright in such materials shall remain vested in such third party.

14. Assignment

14.1 The Supplier shall not assign his rights or obligations under the Contract, in whole or in part, except with the Purchaser's prior written consent.

14.2 **Any other provision as specified in PCC.**

15. Sub contracting

15.1 Any subcontracting arrangements made during contract implementation and not disclosed at the time of the Tendering shall not be allowed.

15.2 Subcontracting of any portion of the Goods shall not relieve the Tenderer from any liability or obligations that may arise from its performance.

15.3 Supplier shall retain full responsibility for the contract and can not pass any contractual obligations to the subcontractor and under no circumstances assignment of the contract to the subcontractor be allowed.

15.4 Subcontractors shall comply with the provisions of GCC Clause 3 and 6.

16. Supplier's Responsibilities

16.1 The Supplier shall supply all the Goods and Related Services specified in the Scope of Supply as stated under GCC Clause 18 and the Delivery and Completion schedule, as stated under GCC Clauses 23 and 24 in conformity with the provisions of the Contract Agreement.

17. Purchaser's Responsibilities

17.1 Whenever the performance of the obligations in this Contract requires that the Supplier obtain permits, approvals and other license from local public authorities, the Purchaser may, if so needed by the Supplier, make its best effort to assist the Supplier in complying with such requirements in a timely and expeditious manner. However, the supplier shall bear the costs of such permits and/or licenses. On the other hand, the Purchaser shall pay all costs involved in the performance of its responsibilities, in accordance with the contract.

17.2 The Purchaser shall pay the Supplier, in consideration of the provision of Goods and Related Services, the Contract Price under the provisions of the Contract at the times and manner prescribed in the Contract Agreement.

18. Scope of Supply

18.1 Subject to the PCC, the Goods and Related Services to be supplied shall be as specified in Section 6: Schedule of Requirements.

18.2 Unless otherwise stipulated in the Contract, the Scope of Supply shall include all such items not specifically mentioned in the Contract but that can be reasonably inferred from the Contract as being required for attaining Delivery and Completion of the Goods and Related Services as if such items were expressly mentioned in the Contract.

19. Amendment to Order

19.1 The Purchaser may make an amendment to Order for necessary adjustment within the general scope of the contract in any one or more of the following aspects in order to fully meet the requirement of the Contract:

(a) Drawing, design or specifications of the goods, provided that:

i. The goods to be furnished are to be specifically manufactured/produced for the government in accordance therewith;

ii. The change is an improvement of the goods and advantageous to the Government;

iii. It is done at no extra cost; and

iv. It is not prejudicial to the losing Tenderers in the sense that such change/s could not have been foreseen during the conduct of the tendering and would have significantly affected the other tenderer's tender;

(b) The place of delivery;

(c) The place of performance of the services;

(d) Additional items needed and necessary for the protection of the goods procured, which were not included in the original contract.

19.2 Such amendment may or may not result to an increase or a decrease of the contract price, and/or an extension or reduction of the delivery period. However, the amendment should not have the result of changing the subject matter of the contract or the specifications of the goods or services, in any material aspect and to such an extent that, if introduced during the Tendering stage, may have had a significant effect on other Tenderer's tender, because this situation would actually require another tendering activity.

20. Instances When Amendment to Order May be Issued

20.1 The Purchaser may issue amendments order at any time during contract implementation, through a notice as stated under GCC Clause 11, provided that such adjustment is required to fully meet the requirements of the contract. Any of the following circumstances may serve as basis for such amendment/s:

(a) Emergency cases, fortuitous events or unforeseen contingencies arising during contract implementation, and such contingencies have an impact on the procurement at hand, such as:

i. Changes in the conditions affecting the contract, e.g., a change in the place of delivery;

ii. Time is of the essence in the implementation of the contract, and any changes require immediate implementation; and

iii. Additional requirements have been identified as necessary for the protection of the goods procured, such as changes in the packaging of the goods, or

additional items have become necessary to ensure that the goods are sufficiently protected from the elements;

(b) When the contract does not reflect the real intention of the parties due to mistake or accident, and the amendment is necessary to reflect the party's intention; and

(c) Other analogous circumstances that could affect the conditions of the procurement at hand

21. Adjustments in Contract Price and/or Delivery Schedule in Amendment to Order

21.1 If an amendment to order increases or decreases the cost of, or the time required for executing any part of the delivery under the original contract, an equitable adjustment in contract price and/or delivery schedule should be mutually agreed upon between parties concerned, and the contract should be modified as stated under GCC Clause 46

21.2 If the amendment to order consists of additional items, the price adjustment shall be based on the unit price in the original contract for items of goods similar to those in the original contract. If the contract does not contain any rate applicable to the additional items,

then suitable prices shall be mutually agreed upon between the parties, based on prevailing market prices.

21.3 It is required, however, that any increase in contract price must not exceed ten percent (10%) of the original contract price.

22. Packing and Documents

22.1 The Supplier shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract and in accordance with existing industry standards. The packing shall be sufficient to withstand, without limitation, rough handling and exposure to extreme temperatures, salt and precipitation, and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.

22.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract as stated under GCC Clause 22.1, including additional requirements, if any, specified in the PCC, and in any subsequent instructions ordered by the Purchaser.

22.3 The outer packaging must contain a "Packing List" which must reflect the actual contents of the package.

23. Delivery and Documents

23.1 Subject to GCC Sub-Clause 19, the Delivery of the Goods and completion of the Related Services shall be in accordance with the Delivery and Completion Schedule specified in the Section 6: Schedule of Requirements.

23.2 The details of shipping and other documents to be furnished by the Supplier shall be specified in the PCC, and shall be received by the Purchaser at least one week before arrival of the Goods and, if not received the Supplier shall be responsible for consequent expenses.

24. Acceptance

24.1 Acceptance by the Purchaser shall be completed not later than fourteen (14) days from receipt of the goods at final destination in the form of an **Acceptance Certificate**, unless any defects in the supply, any damage during transportation or any failure to meet the required performance criteria of the supply are identified and reported to the Supplier as stated under GCC Clause 31 and GCC Clause 32. In such cases the Acceptance Certificate will be issued only for those parts of the contract supplies which are accepted. The Acceptance Certificate for the remaining supplies will only be issued after the Supplier has remedied the defects and/or any non-conformity under GCC Clause 31 and GCC Clause 32.

24.2 Deleted

24.3 **Any other provision as specified in PCC.**

25. Contract Price

25.1 The Contract Price shall be specified in the PCC.

25.2 During evaluation, tender has excluded and not taken into account:

(a) In the case of Goods manufactured/produced in Bangladesh, VAT payable on account of Supplier, which will be payable on the goods if a contract is awarded to the Tenderer;

(b) in the case of Goods manufactured/produced outside the Bangladesh, already imported or to be imported, customs duties, import VAT and other import taxes levied on the imported Good, VAT, which will be payable on the Goods if the contract is awarded to the Tenderer.

25.3 The Contract price will include all the costs paid or payable as stated under GCC Clause 25.2.

25.4 Prices charged by the Supplier for the Goods delivered and the Related Services performed under the Contract shall not vary from the price as stated under GCC Sub-Clause 25.1, with the exception of any change in price resulting from a Change Order issued under GCC Clause 19.

26. Transportation

26.1 The Supplier is required under the Contract to transport the Goods to a specified place of destination as specified in Section 6: Schedule of Requirements, defined as the Site, transport to such place of destination, including insurance, other incidental costs, and temporary storage, if any. These costs shall be included in the Contract Price.

26.2 If not in accordance GCC Clause 26.1, responsibility for transportation of the Goods shall be as specified in the ***INCOTERM*** indicated in the Price Schedule or any other trade terms specify the responsibilities of the Purchaser and Supplier as specified in PCC.

27. Terms of Payment

27.1 The Contract Price, including any Advance Payments, if applicable, shall be paid in the manner as specified in the PCC.

27.2 The Supplier's request for payment shall be made to the Purchaser in writing, accompanied by an invoice describing, as appropriate, the Goods delivered and Related Services performed, and accompanied by the documents as stated under GCC Clause 23 and 24 and upon fulfilment of any other obligations stipulated in the Contract.

27.3 Payments shall be made promptly by the Purchaser, but in no case later than the days indicated in the PCC after submission of an invoice or request for payment by the Supplier, and after the Purchaser has accepted it.

27.4 The currencies in which payments shall be made to the Supplier under this Contract shall be those in which the tender price is expressed.

27.5 In the event that the Purchaser fails to pay the Supplier any payment by its respective due date or within the period set forth in the PCC, the Purchaser shall pay to the Supplier interest on the amount of such delayed payment at the rate shown in the PCC, for

the period of delay until payment has been made in full, whether before or after judgment or arbitrage award.

28. Insurance

28.1 The Goods supplied under this Contract shall be fully insured by the Supplier in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage, and delivery. The Goods remain at the risk and title of the Supplier until their final acceptance by the Purchaser.

28.2 If not in accordance GCC Clause 28.1, the insurance coverage shall be as specified in the ***INCOTERM*** indicated in the Price Schedule or any other insurance provisions as specified in PCC.

29. Taxes and Duties

29.1 For Goods Manufactured/produced within Bangladesh, the Supplier shall be entirely responsible for all taxes, duties, VAT, license fees, and other such levies imposed or incurred until delivery of the contracted goods to the Purchaser.

29.2 For Goods manufactured/produced outside Bangladesh, the Supplier shall be entirely responsible for all taxes, duties and other such levies imposed outside Bangladesh.

29.3 If any tax exemptions, reductions, allowances or privileges may be available to the Supplier in Bangladesh, the Purchaser shall use its best efforts to enable the Supplier to benefit from any such tax savings to the maximum allowable extent.

30. Performance Security

30.1 The proceeds of the Performance Security shall be payable to the Purchaser as compensation for any loss resulting from the Supplier's failure to complete its obligations under the Contract.

30.2 The Performance Security shall be discharged by the Purchaser and returned to the Supplier not later than Thirty (30) days following the date of Completion of the Supplier's performance obligations under the Contract and the issuance of certification to that effect by the Purchaser, including any warranty obligations as stated under GCC Clause 33, provided that there are no claims field against the supplier.

31. Specifications and Standards

31.1 The Goods and Related Services supplied under this Contract shall conform to the technical specifications and standards mentioned in Section 7, Technical Specifications and in Section 8, Drawings, if any.

31.2 If there is no applicable standard, the goods must conform to the authoritative standards appropriate to the good's country of origin. Such standards must be the latest issued by the concerned institution.

31.3 Subject to the GCC Clause 19, the Supplier shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof provided or designed by or on behalf of the Purchaser, by giving a notice of such disclaimer to the Purchaser.

31.4 Wherever references are made in the Contract to codes and standards in accordance with which it shall be executed, the edition or the revised version of such codes and standards shall be those specified in the Technical Specification. During Contract execution,

any changes in any such codes and standards shall be applied only after approval by the Purchaser and shall be treated under GCC Clause 19.

32. Inspections and Tests

32.1 The Purchaser shall have the right to test the Goods to confirm their conformity to the Contract specifications. The PCC and Technical specifications shall specify what tests the Purchaser requires and where they are to be conducted. The supplier shall at its own expense and at no cost to the Purchaser, carry out all such tests of the Goods and related services as are specified in the Contract.

32.2 The Supplier shall provide the Purchaser with a report of the results of any such test.

32.3 The Purchaser may engage external agents for the purpose of conducting inspection or pre-shipment inspection of Goods, provided that the Purchaser shall bear all of its costs and expenses.

32.4 The Purchaser or its designated representative as specified shall be entitled to attend the tests and/or inspections under GCC Clause 32.1, provided that the Purchaser shall bear all of its own costs and expenses incurred in connection with such attendance.

32.5 Whenever the Supplier is ready to carry out any such test and inspection, it shall give a reasonable advance notice, including the place and time, to the Purchaser. The Supplier shall obtain from any relevant third party or manufacturer any necessary permission or consent to enable the Purchaser or its designated representative to attend the test and/or inspection.

32.6 The Purchaser may require the Supplier to carry out any test and/or inspection not required by the Contract, but deemed necessary to verify that the characteristics and performance of the Goods comply with the technical specifications, codes and standards under the Contract, provided that the Supplier's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impede the progress of manufacturing and/or the Supplier's performance of its other obligations under the Contract, due allowance will be made in respect of the Delivery Dates and Completion Dates and the other obligations so affected.

32.7 The Purchaser may reject any Goods or any part thereof that fail to pass any test and/or inspection or do not conform to the specifications. The Supplier shall either rectify or replace such rejected Goods or parts thereof or make alterations necessary to meet the specifications at no cost to the Purchaser, and shall repeat the test and/or inspection, at no cost to the Purchaser, upon giving a notice under GCC Sub-Clause 32.5.

32.8 The Supplier agrees that neither the execution of a test and/or inspection of the Goods or any part thereof, nor the attendance by the Purchaser or its representative, nor the issue of any report as stated under GCC Sub-Clause 32.2, shall relieve the Supplier from any warranties or other obligations under the Contract.

33. Warranty

33.1 The Supplier warrants that all the Goods supplied under the Contract are new, unused, and of the most recent or current models, and that they incorporate all recent improvements in design and materials, except when the design and/or material required by the Purchaser provides otherwise under GCC Clause 19.

33.2 The Supplier further warrants that the all Goods supplied under this Contract shall have no defect, arising from design, materials, or workmanship or from any act or omission of the Supplier that may develop under normal use of the supplied Goods in the conditions prevailing in Bangladesh.

33.3 In order to assure that manufacturing defects shall be corrected by the Supplier, manufacturer, or distributor, as the case may be, a warranty shall be required from the Supplier for a minimum period of three (3) months in the case of supplies, and one (1) year in the case of equipment, or other such period as may be specified in the PCC, after the Goods, or any portion thereof as the case may be, have been delivered to and accepted in the form of an **Acceptance Certificate** as indicated in the GCC Clause 24.1 at the final destination indicated in the PCC

33.4 The warranty periods may vary among the various items and lots. The warranty for Goods delivered ahead will lapse earlier than the succeeding deliveries.

33.5 The Purchaser shall promptly notify the Supplier in writing of any claims arising under this warranty.

33.6 Upon receipt of such notice, the Supplier shall, within the period specified in the PCC, expeditiously repair or replace the defective Goods or parts thereof, at no cost to the Purchaser.

33.7 If the Supplier, having been notified, fails to remedy the defect(s) within the period as stated under GCC Sub Clause 33.6, the Purchaser may proceed to call upon the Performance security without prejudice to any other rights which the Purchaser may have against the Supplier under the Contract and under the applicable law.

33.8 Performance Security under GCC Clause no 30 shall only be released after the lapse of the warranty period, provided that the goods supplied are free from patent and latent defects and all the conditions imposed under the contract have been fully met.

(a) A patent defect, which is one that is apparent to the purchaser on normal observation. It is an apparent or obvious defect.

i. For example, a ball pen that does not write is patently defective.

(b) A latent defect, which is one that is not apparent to the purchaser by reasonable observation. A latent defect is "hidden" or one that is not immediately determinable.

i. For example, a ball pen that writes .75 kilometres instead of the expected 1.5 kilometres, has a latent defect.

33.9 **Any other provision as specified in PCC.**

34. Delays in Delivery and Extensions of Time

34.1 The Supplier must deliver the Goods or perform the services procured within the period prescribed by the Purchaser, as specified in the Contract.

34.2 If at any time during performance of the Contract, the Supplier or its subcontractors should encounter conditions impeding timely delivery of the Goods or completion of Related Services as stated under GCC Clause 23, the Supplier shall promptly notify the Purchaser in writing. It must state therein the cause/s and duration of the expected delay. The Purchaser shall decide whether and by how much to extend the time. In all cases, the request for extension should be submitted before the lapse of the original delivery date.

34.3 Within twenty-one (21) days of receipt of the Supplier's notice, the Purchaser shall evaluate the situation and may grant time extensions, if based on justifiable grounds, without liquidated damages.

34.4 The Procuring may extend up to twenty percent (20%) of the original contract time, above 20% of the original contract time approval of Head of Purchaser (HOPE) shall be required, in which case the extension shall be ratified by the Parties by amendment of the Contract as stated under GCC Clause 46.

34.5 Except in the case of Force Majeure, as provided under GCC Clause 38, a delay by the Supplier in the performance of its Delivery and Completion obligations shall render the Supplier liable to the imposition of liquidated damages as stated under GCC Clause 35, unless an extension of time is agreed upon, under GCC Sub-Clause 34.3.

34.6 Any other provision as specified in PCC.

35. Liquidated Damages

35.1 Subject to GCC Clause 34 and 38, if the , if the Supplier fails to deliver any or all of the Goods by the Date(s) of delivery and/or perform the Related Services within the period specified in the Contract as stated under GCC Clause 23, the Purchaser shall, without prejudice to all its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to the percentage specified in the PCC of the Contract price of the delayed Goods or unperformed / Related Services for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of the percentage specified in those PCC. Once the maximum is reached, the Purchaser may terminate the Contract as stated under GCC Clause 42.

35.2 **Any other provision as specified in PCC.**

36. Limitation of Liability

36.1 Except in cases of criminal negligence or wilful misconduct, and in the case of infringement of patent and intellectual property rights, if applicable, the Supplier shall not be liable to the Purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production,

or loss of profits or interest costs, the aggregate liability of the Supplier to the Purchaser shall not exceed the total Contract Price, provided that this limitation shall not apply, to the cost of repairing or replacing defective equipment or, to any obligation of the Supplier to pay liquidated damages to the Purchaser.

37. Change in Laws and Regulations

37.1 Unless otherwise specified in the Contract, if after the Contract, any law, regulation, ordinance, order or bylaw having the force of law is enacted, promulgated, abrogated, or changed in Bangladesh (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the Delivery Date and/or the Contract Price, then such Delivery Date and/or Contract Price shall be correspondingly increased or decreased, to the extent that the Supplier has thereby been affected in the performance of any of its obligations under the Contract.

37.2 **Any other provision as specified in PCC.**

38. Definition of Force Majeure

38.1 In this Clause, "Force Majeure" means an exceptional event or circumstance:

(a) which is beyond a Party's control;

(b) which such Party could not reasonably have provided against before entering into the Contract;

(c) which, having arisen, such Party could not reasonably have avoided or overcome; and

(d) which is not substantially attributable to the other Party.

Events of force majeure shall also be as specified in PCC.

38.2 Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as conditions (a) to (d) above are satisfied:

(i) war, hostilities (whether war be declared or not), invasion, act of foreign enemies;

(ii) rebellion, terrorism, sabotage by persons other than the Contractor's Personnel, revolution, insurrection, military or usurped power, or civil war;

(iii) riot, commotion, disorder, strike or lockout by persons other than the Contractor's Personnel;

(iv) munitions of war, explosive materials, ionising radiation or contamination by radio-activity, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity, and

(v) natural catastrophes such as cyclone, hurricane, typhoon, tsunami, storm surge, floods, earthquake , landslides, fires, epidemics, quarantine restrictions, or volcanic activity;

(vi) freight embargoes;

(vii) acts of the Government in its sovereign capacity.

Instances of force majeure shall also be as specified in PCC.

39. Notice of Force Majeure

39.1 If a Party is or will be prevented from performing its substantial obligations under the Contract by Force Majeure, then it shall give notice to the other Party of the event or circumstances constituting the Force Majeure and shall specify the obligations, the performance of which is or will be prevented. The notice shall be given within 14 days after the Party became aware, or should have become aware, of the relevant event or circumstance constituting Force Majeure.

39.2 The Party shall, having given notice, be excused performance of its obligations for so long as such Force Majeure prevents it from performing them.

39.3 Notwithstanding any other provision of this Clause, Force Majeure shall not apply to obligations of either Party to make payments to the other Party under the Contract.

39.4 Any other provision as specified in PCC.

40. Duty to Minimise Delay

40.1 Each Party shall at all times use all reasonable endeavours to minimise any delay in the performance of the Contract as a result of Force Majeure.

40.2 A Party shall give notice to the other Party when it ceases to be affected by the Force Majeure.

40.3 Any other provision as specified in PCC.

41. Consequences of Force Majeure

41.1 The Supplier shall not be liable for forfeiture of its Performance Security, liquidated damages, or termination for default if and to the extent that it's delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.

41.2 The Purchaser may suspend the delivery or contract implementation, wholly or partly, by written order for a certain period of time, as it deems necessary due to force majeure as defined in the contract.

41.3 Delivery made either upon the lifting or the expiration of the suspension order. However, if the Purchaser terminates the contract as stated under GCC clause 42, resumption of delivery cannot be done.

41.4 Head of Purchaser determines the existence of a force majeure that will be basis of the issuance of suspension of order.

41.5 Adjustments in the delivery or contract schedule and/or contract price, Including any need to modify contract under GCC Clause 46.

41.6 **The consequences of force majeure shall also be as specified in PCC.**

42. Termination for Default

42.1 The Purchaser shall terminate this Contract for default when any of the following conditions attends its implementation:

(a) Outside of force majeure, the Supplier fails to deliver or perform any or all of the GOODS within the period(s) specified in the contract, or within any extension thereof granted by the Purchaser pursuant to a request made by the Supplier prior to the delay;

(b) As a result of force majeure, the Supplier is unable to deliver or perform any or all of the GOODS, amounting to at least ten percent (10%) of the contract price, for a period of not less than sixty (60) calendar days after receipt of the notice from the Purchaser stating that the circumstance of force majeure is deemed to have ceased; or

(c) The Supplier fails to perform any other obligation under the Contract;

(d) If the Supplier, in the judgment of the Purchaser has engaged in corrupt, fraudulent, collusive or coercive practices, as stated under GCC Clause 3, in competing for or in executing the Contract;

(e) When deductible amount due to liquidated damage reaches its maximum as stated under GCC Clause 35.

42.2 Termination of a contract for default is without prejudice to other remedies available to the Purchaser for breach of contract, such as payment of liquidated and other damages, if there are grounds for the latter.

42.3 In the event the Purchaser terminates the Contract in whole or in part, as stated under GCC Clause 42.1, the Purchaser may procure, upon such terms and in such manner as it deems appropriate, Goods or Related Services similar to those undelivered or not performed, and the Supplier shall be liable to the Purchaser for any additional costs for such similar Goods or Related Services. However, the Supplier shall continue performance of the Contract to the extent not terminated.

42.4 In the event as stated under GCC Clause 42.1(d), the Purchaser shall,

(a) terminate the Supplier's employment under the Contract and cancel the contract, after giving 14 days' notice to the Supplier and the provisions of Clause 42 shall apply as if such expulsion had been made under Sub-Clause 42.1

(b) declare, at its discretion, the concerned Person to be ineligible to participate in further Procurement proceedings, either indefinitely or for a specific period of time.

42.5 **Any other provision as specified in PCC.**

43. Termination for insolvency

43.1 The Purchaser shall terminate this Contract if the Supplier is declared bankrupt or insolvent as determined with finality by a court of competent jurisdiction. In this event, termination will be without compensation to the Supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the Purchaser and/or the Supplier.

43.2 **Any other provision as specified in GCC 42.5.**

44. Termination for Convenience

44.1 The Purchaser, by written notice sent to the supplier, may terminate this Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that the termination is for the Purchaser's convenience, the extent to which performance of the supplier under the contract is terminated, and the date upon which such termination becomes effective.

44.2 Any of the following circumstances may constitute sufficient grounds to terminate a contract for conveniences:

(a) If Physical and economic conditions have significantly changed so as to render the contract no longer economically, financially or technically feasible, as determined by the Head of Purchaser;

(b) The Head of Purchaser has determined the existences of conditions that make contract implementation impractical and/or unnecessary, such as, but not limited to, fortuitous event/s, change in laws and government policies;

(c) Funding for the contract has been withheld or reduced;

(d) Any circumstances analogous to the foregoing.

44.3 The GOODS that have been delivered and/or performed or are ready for delivery or performance within thirty (30) calendar days after the Supplier's receipt of Notice to Terminate shall be accepted by the Purchaser at the contract terms and prices. For GOODS not yet performed and/or ready for delivery, the Purchaser may elect:

(a) to have any portion delivered and/or performed and paid at the contract terms and prices; and/or

(b) to cancel the remainder and pay to the Supplier an agreed amount for partially completed and/or performed goods and for materials and parts previously procured by the Supplier.

44.4 **Any other provision as specified in GCC 42.5.**

45. Procedures for Termination of Contracts

45.1 The following provisions shall govern the procedures for termination of this Contract as stated under GCC Clauses 42,43 and 44:

(a) Upon receipt of a written report of acts or causes which may constitute ground(s) for termination as aforementioned, or upon its own initiative, the Purchaser shall, within a period of seven (7) calendar days, verify the existence of such ground(s) and cause the execution of a Verified Report, with all relevant evidence attached;

(b) Upon recommendation by the Purchaser, the Head of the Purchaser shall terminate this Contract only by a written

notice to the Supplier conveying the termination of this Contract. The notice shall state:

1. that this Contract is being terminated for any of the ground(s) afore-mentioned, and a statement of the acts that constitute the ground(s) constituting the same;
2. the extent of termination, whether in whole or in part;
3. an instruction to the Supplier to show cause as to why this Contract should not be terminated; and
4. special instructions of the Purchaser, if any.

(c) The Notice to Terminate shall be accompanied by a copy of the Verified Report;

(d) Within a period of seven (7) calendar days from receipt of the Notice of Termination, the Supplier shall submit to the Head of the Purchaser a verified position paper stating why this Contract should not be terminated. If the Supplier fails to show cause after the lapse of the seven (7) day period, either by inaction or by default, the Head of the Purchaser shall issue an order terminating this Contract;

(e) The Purchaser may, at any time before receipt of the Supplier's verified position paper, withdraw the Notice to Terminate if it is determined that certain items or works subject of the notice had been completed, delivered, or performed before the Supplier's receipt of the notice;

(f) Within a non-extendible period of ten (10) calendar days from receipt of the verified position paper, the Head of the Purchaser shall decide whether or not to terminate this Contract. It shall serve a written notice to the Supplier of its decision and, unless otherwise provided, this Contract is deemed terminated from receipt of the Supplier of the notice of decision. The termination shall only be based on the ground(s) stated in the Notice to Terminate; and

(g) The Head of the Purchaser may create a Contract Termination Review Committee (CTRC) to assist him in the discharge of this function. All decisions recommended by the CTRC shall be subject to the approval of the Head of

45.2 **Any other provision as specified in GCC 42.5.**

46. Contract Amendment

46.1 Subject to applicable laws, no variation in or modification of the terms of this Contract shall be made except by written amendment signed by the parties.

46.2 The Purchaser, in accordance with their Delegation of Financial Powers, as required, may amend the Contract to reflect the changes introduced to the Original terms and Conditions of the Contract.

47. Settlement of Disputes

47.1 **Amicable Settlement:**

(a) The Purchaser and the Supplier shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or its interpretation.

47.2 **Adjudication**

(a) If the Supplier /Purchaser believe that amicable settlement of dispute is not possible between the two parties, the dispute shall be referred to the Adjudicator within fourteen (14) days of first written correspondence on the matter of disagreement;

(b) The Adjudicator named in the PCC is jointly appointed by the parties. In case of disagreement between the parties, the Appointing Authority designated in the PCC shall appoint the Adjudicator within fourteen (14) days of receipt of a request from either party;

(c) The Adjudicator shall give its decision in writing to both parties within twenty-eight (28) days of a dispute being referred to it;

(d) The supplier shall make all payments (fees and reimbursable expenses) to the Adjudicator, and the Purchaser shall reimburse half of these fees through the regular progress payments;

(e) Should the Adjudicator resign or die, or should the Purchaser and the Supplier agree that the Adjudicator is not functioning in accordance with the provisions of the Contract; a new Adjudicator will be jointly appointed by the Purchaser and the Supplier. In case of disagreement between the Purchaser and the Supplier the Adjudicator shall be designated by the Appointing Authority designated in the PCC at the request of either party, within fourteen (14) days of receipt of a request from either party.

47.3 **Arbitration**

(a) If the Parties are unable to reach a settlement under GCC Clause 47.1(a) within twenty-eight (28) days of the first written correspondence on the matter of disagreement, then either Party may give notice to the other party of its intention to commence arbitration in accordance with GCC Sub-Clause 47.3(b);

(b) The arbitration shall be conducted in accordance with the rules of procedure specified in the PCC.

47.4 **Any other provision as specified in PCC.**

Section 4. Particular Conditions of Contract

GCC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
GCC 1.1(cccccc)	The Purchaser is RPCL-NORINCO Intl Power Limited
GCC 1.1(uuuuuu)	The site(s)/ point(s) of delivery/place of destination is/are: Any **Loading Port**/anchorage as per Section 6: Schedule of Requirements in Indonesia, South Africa or Australia proposed by the Tenderer and accepted by the Purchaser.
GCC 4.6	**4.6.1.** Notwithstanding anything stated in GCC Clause 4, the following PCC 4.6.2 shall be complementary to GCC Clause 4 and shall prevail if there is a conflict with GCC Clause 4. **4.6.2.** In this Agreement, unless the context otherwise requires: (a) the singular shall include the plural and vice versa; (b) Unless stated to the contrary, references to an Article or Section or Appendix are to Articles, Sections and Appendices of this Agreement, and shall include all subparts in those Articles, Sections and Appendices; (c) the Appendices are an integral part of this Agreement; (d) references to this Agreement or any other agreement or document shall be construed as a reference to such agreement or document as amended, modified or supplemented and in effect from time to time; (e) the headings of Articles, Sections and Appendices are for convenience only and shall not be used for or affect the interpretation of this Agreement; (f) a fraction of a Tonne in any calculation shall be rounded up to the nearest Tonne if such fraction is one-half (0.50) of a Tonne or more and shall be rounded down otherwise; a fraction of a Cent in any calculation shall be rounded up to the nearest Cent if such fraction is one-half of a Cent or more and shall be rounded down otherwise; and (g) references to "include" and "including" shall be deemed to be followed by "without limitation".
GCC 5.1	The following documents shall also be part of the Contract: 1. All clarifications and replies regarding technical specifications and arithmetic corrections etc submitted by the Tenderer 2. Performance Security 3. All other correspondences regarding this Tender 4. Sealed and signed Tender Document.
GCC 10.3	**10.3.1.** Notwithstanding anything stated in GCC Clause 10, the following PCC 10.3.2, shall be complementary to GCC Clause 10 and shall prevail if there is a conflict with GCC Clause 10.

	10.3.2. CONFIDENTIALITY **10.3.2.1. Definition of Confidential Information** For the purposes of this PCC 10.3.2, "**Confidential Information**" means: (a) the existence and terms of this Agreement, and (b) all documents or information in any form that are provided by the Supplier to the Purchaser or the Purchaser to the Supplier in the performance of this Agreement, whether or not such documents or information (i) are provided before or after the date this Agreement becomes effective, or (ii) have expressly been designated as confidential. **10.3.2.2. Obligation to Maintain Confidentiality** Subject to PCC 10.3.2.3, no Party shall: (a) disclose any **Confidential Information** received by it under PCC 10.3.2; or (b) use **Confidential Information** for any purpose other than in connection with its rights and interests or the performance of its obligations under this Agreement. **10.3.2.3. Permitted Disclosures** Notwithstanding PCC 10.3.2.2, a Party may disclose **Confidential Information**: (a) to its directors, employees and professional advisors and/or to its Affiliates and/or their respective directors, employees and professional advisors relating to this Agreement and on a need-to-know basis, provided that the Party has procured that any such Person receiving the **Confidential Information** has been made aware of and agrees or is otherwise obligated to comply with the Party's confidentiality obligations under this PCC 10.3.2; (b) to the extent required to be disclosed by any **Legal Requirement**, provided the Party shall use reasonable efforts to notify the other Parties of any such requirement in advance of complying with it; (c) if the **Confidential Information** has been generated by the Party from documents or information that have not been received from the other Party and do not reflect the terms of this Agreement; (d) to prospective and actual **Financing Parties** and their advisors, provided they agree to be bound by the confidentiality provisions of this Agreement; or (e) in any proceedings under GCC 47.4 and relevant PCC 47.4.2 or GCC 47.4 and relevant PCC 47.4.4, provided the participants have been obligated to maintain the confidentiality of the **Confidential Information**.
GCC 11.1	For **notices**, the Purchaser's contact details shall be: Attention: Executive Director Address: RPCL-NORINCO INTL POWER LIMITED Asian Tower, 9th Floor, House # 52, Road # 21, Nikunja 2, Khilkhet, Dhaka 1229, Bangladesh

	Telephone: +88 02 55098013, +88 02 55098012, +88 02 55098014 Facsimile number: Electronic mail address: rnpled@gmail.com
	For **notices**, the Supplier's contact details shall be: Attention: Address: Telephone: Facsimile number: Electronic mail address:
GCC 14.2	**14.2.1.** Notwithstanding anything stated in GCC Clause 14, the following PCC 14.2.2, 14.2.3 shall be complementary to GCC Clause 14 and shall prevail if there is a conflict with GCC Clause 14. **14.2.2. Assignment** **14.2.3.1.** Neither Party shall, without the prior written consent of the other Party, such consent shall not be unreasonably withheld, assign, novate, charge, mortgage, pledge, create a security interest or otherwise encumber any of its rights or obligations under this Agreement to any Person, except that: a) such Party may assign, charge, mortgage, pledge, create a security interest or otherwise encumber its right to receive payments under this Agreement for the benefit of any Person providing finance or financial accommodation to or for the benefit of such Party (or any of its affiliates or subsidiaries) as collateral security (including rights arising from or by reference to this Agreement) for such financing or financial accommodation, provided however, that such Party shall remain responsible at all times for the performance of this Agreement; and b) such consent shall not be necessary in the context of (i) an acquisition of all or part of the Party, by asset sale, share sale, merger, change of control or operation of law, (ii) transactions which are merely to change the legal form or the domicile of a Party, and (iii) transactions with affiliated entities or parent companies that succeed to all or any part of the business, so long as the assignee agrees in writing to be bound by the terms and conditions of this Agreement. **14.2.3.2.** The Purchaser may assign its rights under this Agreement with respect to the purchase and receipt from the Supplier of coal to one of its affiliates, provided that: a) the assignee shall not be entitled to receive under this Agreement any greater amount of coal than that to which the Supplier would have been entitled;

	b) the Parties and the assignee shall execute a deed of assignment in the form set out in 'Clause 9: Form of Deed of Novation' of 'Article 6 Format of Relevant Forms for Contract Execution Phase' of Section 7: Technical Specifications; and c) the Supplier shall at all times remain responsible for the proper performance of its obligations under this Agreement. **14.2.3.3.** In the occurrence of any event as stipulated in the PCC 14.2. 2.1 a) above, the relevant Party shall immediately notify, in writing, the other Party of the enforcement by a third Party, whether in whole or in part, of such assignment, charge, mortgage, pledge or encumbrance and the other Party shall give its acknowledgment to such assignment, charge, mortgage, pledge or encumbrance. **14.2.3. Security for Financing** **14.2.3.1.** The Purchaser shall be entitled to assign its rights and/or obligations under this Agreement to the Financing Parties or their agent to provide security or collateral for loans and/or credit facilities made available to the Purchaser pursuant to the Financing Documents, or to any entity/ies as may be required by the Financing Parties or such agent under the Financing Documents. The Supplier undertakes to execute promptly any such acknowledgments or consents as may be reasonably necessary to give effect to such security or collateral arrangements or assignments. The Supplier further undertakes to enter into a direct agreement with the Financing Parties or their security agent pursuant to which the Supplier shall afford the Financing Parties or their agent, inter alia, a reasonable opportunity to cure or prevent a default by the Purchaser hereunder, or to designate an appropriately qualified Person to assume, temporarily or permanently, the rights and obligations of the Purchaser hereunder. **14.2.3.2.** Each Party shall immediately notify the other Party, in writing, of any enforcement by a **Financing Party** or financial institution, whether in whole or in part, of any assignment, charge, mortgage, pledge or encumbrance made in accordance with PCC 14.2.3.
GCC 18.1	**18.1.1.** Notwithstanding anything stated in GCC Clause 18, the following PCC 18.1.2 shall be complementary to GCC Clause 18 and shall prevail if there is a conflict with GCC Clause 18. **18.1.2.** The scope of Supply shall be as outlined in including but not limited to Section 6: Schedule of requirements.
GCC 22.2	The packing, marking and documentation within and outside the packages shall be: The outer packing may be clearly marked on at least four slides as follows: Name and address of Purchaser Name of the Supplier Contract Description Loading Point: Final Destination/Delivery Point Gross weight

	Package number of total number of packages Brief description of the content Any special lifting instructions
GCC 23.2	Details of shipping and documents to be furnished by the Supplier and invoicing method shall be as following **23.2.1.** Notwithstanding anything stated in GCC Clause 23.2, the following PCC 23.2.2 shall be complementary to GCC Clause 23.2 and shall prevail if there is a conflict with GCC Clause 23.2.
	23.2.2. Invoicing **23.2.2.1.** The Supplier shall prepare and submit each of the following documents for each Shipment to the Purchaser by email with pdf attachment as soon as practicable but not later than five (5) Business Days after loading of the Shipment has been completed at the **Loading Port** or within such other period expressly provided below. (a) one (1) signed original of **Beneficiary Certificate**, together with: i. one (1) signed original and three (3) copies of the Supplier's invoice for the **Base Price** of the Shipment; and ii. one (1) signed original and three (3) copies of **debit or credit note** detail the calculation of the **Delivered Price** in accordance with this Agreement (including the calculation of the **Delivered Price per Tonne** (DP_n) in accordance with the provisions of Clause 1.2 of Article 1 of Section 7; Technical Specification and Article 2 of Section 7: Technical Specification; Each **Beneficiary Certificate**, invoice, and debit or credit note shall be substantially in the form of 'Clause 3: Form of Beneficiary Certificate' of 'Article 6 Format of Relevant Forms for Contract Execution Phase' of Section 7: Technical Specifications with monetary amounts denominated in Dollars state the Tonnes of Coal delivered in the Shipment, the name of the Vessel and the **Bill of Lading** number and date. (b) a set of three (3) negotiable original **clean on board** ocean Vessel shipped **Bills of Lading** signed by the master of the Vessel or his authorized agent; (c) one (1) original of the **Loading Port Laboratory's Certificate of Analysis** endorsed by the Purchaser Laboratory; (d) one (1) original of the **Certificate of Weight** from the **Loading Port**; (e) one (1) original of the **Certificate of Holds Cleanliness**; (f) one (1) original of the **Certificate of Origin** for the Coal delivered in the Shipment; (g) one (1) original of the **Acceptance of Readiness** (including the **Notice of Readiness**); and (h) one (1) original of the **Statement of Facts**.

	23.2.2.2. If the Supplier discovers an error in an invoice or the Purchaser notifies the Supplier of an error in an invoice, the Supplier shall issue a corrected invoice to the Purchaser within five (5) days after the date the error is discovered by the Supplier or notified to the Supplier by the Purchaser. **23.2.2.3.** The Supplier shall reimburse the Purchaser the amount of any penalties, fees, or additional costs and expenses that are imposed on or incurred by the Purchaser due to any failure of the Supplier to provide the invoice and supporting documents required under PCC 23.2.2.1 within the time specified therein.
GCC 24.3	**24.3.1.** Notwithstanding anything stated in GCC Clause 24, the following PCC 24.3.2 shall be complementary to GCC Clause 24 and shall prevail if there is a conflict with GCC Clause 24. **24.3.2.** For non-conforming, non-complying shipments, contaminated shipments the Purchaser has the rights and the Supplier has the responsibilities as stated in Article 5 of Section 6: Schedule of Requirements.
GCC 25.1	**25.1.1.** The Contract price is: as specified in the Notification of Award (PG4-7) and the delivered price may vary from contract price as outline in PCC 25.2, PCC 25.3, PCC 25.4. **25.1.2. Delivered Price** The price payable by the Purchaser to the Supplier for each Shipment delivered **FOBT** at the **Loading Port** (the "**Delivered Price**") shall be determined as set out in PCC 25.1.3. The **Delivered Price** shall be inclusive of, and not subject to any increase as a result of, all costs and expenses arising in the production, transport to the **Loading Port**, sale, delivery to and loading on board the relevant Vessel, and **Trimming** of the relevant Vessel, as well as all Taxes that any **Government Instrumentality** of the Country of Origin may impose on the sale or purchase of any Shipment to or by the Purchaser or on the Supplier in relation to any of the foregoing. **25.1.3. Calculation of Invoice Value** The delivered value ("Invoice Value") of each Shipment of Coal shall be determined in accordance with the following formula: $\mathbf{IV_n = Q_n \times DP_n}$ Where: n=The Shipment of Coal, as identified by its Bill of Lading, IV_n=The Invoice Value for the Shipment, Q_n=The quantity of Coal in the Shipment, in Tonnes as recorded in the Certificate of Weight from the Loading Port, and DP_n=The Delivered Price per Tonne of Coal after adjustment to Base Price for the Shipment, determined as follows: $\mathbf{DP_n = P_n + P_{GCV} - P_{TM} - P_{TS} - P_{TA}}$

	Where: P_{GCV} = Price increase or decrease per Tonne due to Actual GCV, determined in accordance with GCC 27 and PCC 27.1.8.1 P_{TS} = Price decrease per Tonne due to Actual TS, determined in accordance with GCC 27 and PCC 27.1.8.2 P_{TA} = Price decrease per Tonne due to Actual TA, determined in accordance with GCC 27 and PCC 27.1.8.3 P_{TM} = Price decrease per Tonne due to Actual TM, determined in accordance with GCC 27 and PCC 27.1.8.4 **P_n = The Base Price per Tonne for the Shipment n** = **ICI-3+F** Where, ICI-3 : Monthly Average of the Reference Index (i.e., The Reference Index used for quoting Bid price) calculated Based on the weekly indices. For this purpose, the Gregorian calendar month preceding the date of Bill of lading shall be considered as the month. F : Final price factor
GCC 26.2	Responsibility of the Purchaser and Supplier is: as specified in Clause 6.1, Clause 6.2, Clause 6.3 of Article 6 of Section 6: Schedule of Requirements
GCC 27.1	Payment method shall be as following: **27.1.1.** Notwithstanding anything stated in GCC Clause 27, the following PCC 27.1.2, 27.1.3, 27.1.4, 27.1.5. 27.1.6, 27.1.7 shall be complementary to GCC Clause 27 and shall prevail if there is a conflict with GCC Clause 27. **27.1.2.** All payments from RNPL to the Supplier shall be made in the bid currency (ies), and for each shipment, the amount payable shall be calculated as follows, subject to adjustments and variations being made, if any. (a) The price of coal as determined by GCC 25 and PCC 25.1, GCC 27 and PCC 27.1, GCC 37 and PCC 37.2 (b) The quantity of Coal as determined in Article 4 of Section 6: Schedule of Requirements. (c) Any other applicable adjustment/discount according to this Agreement including but not limited to adjustments outlined in PCC 27.1.8 **27.1.3.** The Initial payment and Balance Payment shall be made to the Contractor through Letter of Credit (L/C). If the payment due date of RNPL falls on a bank holiday of any bank involved in the payment by RNPL to the Supplier, then RNPL shall make payment by the next banking day. **27.1.4.** Letter of Credit (L/C) in United States Dollars for each shipment will be opened in any Scheduled Bank of Bangladesh within thirty (30) Business days after receipt the proforma invoice and advised through a bank reasonably acceptable to the Supplier in accordance with the conditions stipulated in this PCC 27.1. The L/C opening charges of RNPL's Bank will be to the account of RNPL and amendment charges and all other charges including Supplier's Bank charges will be to the Supplier's account. In case of any Amendment in the L/C is necessitated by RNPL,

charges shall be borne by RNPL.

27.1.5. Delete

27.1.6. If an amount in an invoice requires correction after an invoice has been paid by the Purchaser to the Supplier, the correction shall be made by way of a debit note or credit note in the next invoice to be issued by the Supplier to the Purchaser (or by way of separate invoice in respect of the final Shipment under this Agreement).

27.1.7. If the Supplier or the Purchaser calls for an Umpire Analysis and an Umpire Certificate is issued (subject to Umpire Certificate results falling outside the reproducibility limits), the Supplier or Purchaser shall prepare a debit note / credit note no later than three (3) Business Days following receipt by the Supplier and the Purchaser of the Umpire Certificate. The final debit note or credit note shall be based on the adjusted price, Certificate of Weight and Umpire Certificate results and shall take into account any prior payment by the Purchaser in accordance with above. The owing Party shall remit any final payment by telegraphic transfer (T/T) into the other Party's nominated bank account within thirty (30) days of receipt of debit note or credit note.

27.1.8. In case that the value for Gross Calorific Value, Total Moisture, Total Sulphur Content and Total Ash fails to comply with the base values as specified in Article 2 of Section 7: Technical Specifications, the price adjustments as following detail shall apply.

27.1.8.1. Gross Calorific Value

If the actual gross calorific value of a Shipment, as stated in the **Loading Port Laboratory's Certificate of Analysis** ("**Actual GCV**"), is higher or lower than Base Gross calorific value (i.e. **GAR 5000 Kcal/Kg)**, the price per Tonne for the Shipment shall, in accordance with PCC 25.1.3, be increased (if P_{GCV} is positive) or decreased (if P_{GCV} is negative) by an amount P_{GCV}, calculated in accordance with the following formula:

$$P_{GCV} = P_n \times [(\text{Actual GCV} - 5000) / 5000]$$

27.1.8.2. Total Moisture

If the actual total moisture of a Shipment as stated in the Loading Port Laboratory's Certificate of Analysis ("**Actual TM**") is greater than Base Value for Total Moisture (by weight ARB), i.e. 28% and the Purchaser accepts the Shipment under Clause 5.2 of Article 5 of Section 6: Schedule of Requirements notwithstanding breach of the relevant **Coal Quality Rejection Limit**, the price per Tonne for the Shipment shall, in accordance with PCC 25.1.3, be **decreased** by an amount calculated in accordance with the following formula:

$$P_{TM} = P_n \times [(\text{Actual TM} - 28\%) / (1 - 28\%)]$$

There shall be no adjustment if the Actual TM (As Received Basis) is less than or equal to 28%.

27.1.8.3. Total Sulphur Content

If the actual total sulphur content of a Shipment as stated in the Loading Port Laboratory's Certificate of Analysis ("**Actual TS**") is greater than the Base Value for Total Sulphur (by weight ARB), i.e. 0.70%, the price per Tonne for the Shipment shall, in accordance with PCC 25.1.3, be **decreased** by an amount calculated in accordance with the following formula:

$$P_{TS} = (\text{U.S.\$ } 3.00/\text{Tonne}) \times (\text{Actual TS} - 0.70\%) \times 100$$

There shall be no adjustment if the Actual TS (As Received Basis) is less

	than or equal to 0.70%. **27.1.8.4. Total Ash** If the actual total ash of a Shipment as stated in the Loading Port Laboratory's Certificate of Analysis ("**Actual TA**") is greater than the Base value for Ash Content (by weight ARB), i.e. 9%, the price per Tonne for the Shipment shall, in accordance with PCC 25.1.3, be **decreased** by an amount calculated in accordance with the following formula: P_{TA} = (U.S.$ 0.30/Tonne) × (Actual TA – 9%) × 100 There shall be no adjustment if the Actual TA (As Received Basis) is less than or equal to 9%.
GCC 27.3	Payment terms shall be as following: **27.3.1.** Notwithstanding anything stated in GCC Clause 27, the following PCC 27.3.2 shall be complementary to GCC Clause 27 and shall prevail if there is a conflict with GCC Clause 27. **27.3.2.** The payment shall be released to the account of Supplier in two (2) stages i.e. Initial Payment and Balance Payment. **27.3.2.1.** Initial Payment : Ninety percent (90%) of the Contract Price of the Shipment shall be released against usance L/C of 15 days allowable time with upon sailing of the vessel containing the Coal Shipment from Supplier, based on the quality parameters of coal as indicated in the Coal Load Port Analysis Certificate and quantity of coal as appearing in the Certificate of Weight at the Coal Load Port, on fulfillment of the all conditions stipulated in this PCC 23.2.2. **27.3.2.2.** Balance Payment: Ten percent (10%) of Contract Price of the shipment shall be released after adjusting any outstanding Dues on receipt of the Shipment by RNPL and adjustment for quality and quantity variations, as may be necessary.
GCC 27.5	For late payments, mutual set-off and disputed amounts following rule shall apply: **27.5.1.** Notwithstanding anything stated in GCC Clause 27, the following PCC 27.5.2, 27.5.3, 27.5.4 shall be complementary to GCC Clause 27 and shall prevail if there is a conflict with GCC Clause 27. **27.5.2.** Late Payments: Any undisputed amount that is not paid when due under this Agreement shall accrue interest at the rate of 3-Month Term SOFR plus one percent (1.00%) per annum from, and including, the date that such payment was due until, and excluding, the date on which such amount together with accrued interest is paid in full. **27.5.3.** Mutual Set-Off: It is hereby expressly agreed between the Parties to the Contract that mutual undisputed dues owed by and between the Parties, arising out of or in relation to this Contract, shall at all times remain subject to mutual equitable set-off. The residual dues remaining, upon effecting such a set-off, shall be paid by the Party by whom the greater sum of dues was owed to the other Party.

	27.5.4. If a Party disputes any amount in any invoice or corrected invoice issued under this Agreement, the Party shall promptly notify the other Party in writing of (i) the amount in dispute and (ii) the basis for the Dispute. The Party shall pay the amount of the invoice (if any) that is not in dispute within the time required under PCC 27.3, and may withhold payment of the amount in dispute until such time as the Dispute is resolved. If it is agreed or determined that a disputed amount (or any portion thereof) was correctly invoiced, the relevant Party shall pay the other Party any portion of the disputed amount that was withheld (together with any interest accrued pursuant to PCC 27.5) within ten (10) Business Days following such agreement or determination. If it is agreed or determined that a disputed amount was incorrectly invoiced and paid by a Party, the receiving Party shall refund to the paying Party any portion the disputed and incorrectly invoiced amount (together with any interest accrued pursuant to PCC 27.5) that was previously paid within ten (10) Business Days following such agreement or determination.
GCC 28.2	The insurance coverage shall be: as stated in Clause 6.1 of Article 6 of Section 6: Schedule of Requirements
GCC 32.1	**32.1.1.** Notwithstanding anything stated in GCC Clause 32, the following PCC 32.1.2 shall be complementary to GCC Clause 32 and shall prevail if there is a conflict with GCC Clause 32. **32.1.2.** The inspections and tests method and procedure and other relevant works shall be carried as detailed in Article 7 and Article 8 of Section 6: Schedule of Requirements
GCC 33.3	The period of validity of the Warranty shall be: upto completion of supplying of coal on FOBT basis.
GCC 33.6	The Supplier shall correct any defects covered by the Warranty within: not applicable
GCC 33.9	**33.9.1.** Notwithstanding anything stated in GCC Clause 33, the following PCC 33.9.2, 33.9.3 shall be complementary to GCC Clause 33 and shall prevail if there is a conflict with GCC Clause 33.The representations and warranties shall be as following: **33.9.2. Representations and Warranties of the Purchaser** The Purchaser represents and warrants that: **33.9.2.1.** it is a limited company duly organized and validly existing under the laws of Bangladesh, and has the legal capacity to execute, deliver and perform this Agreement and the transactions contemplated by it; **33.9.2.2.** the execution, delivery and performance of this Agreement by the Purchaser has been duly authorized by all requisite corporate action, and will not contravene any provision of, or constitute a default under, any other agreement or instrument to which the Purchaser or its property is subject or any Legal Requirement applicable to the Purchaser;

33.9.2.3. this Agreement constitutes a legal, valid and binding obligation of the Purchaser and is enforceable against the Purchaser in accordance with its terms;

33.9.2.4. it has obtained, and shall maintain without default throughout the **Term**, all Consents including any and all legislative, administrative and other governmental actions, as may be required to authorize its execution, delivery or performance of this Agreement and the transactions contemplated by it; and

33.9.2.5. there are no legal actions, suits or proceedings, either pending or to the Purchaser's best knowledge, threatened, against or affecting the Purchaser before any court or administrative body or arbitral tribunal that could reasonably be expected to adversely affect the ability of the Purchaser to meet and carry out its obligations under this Agreement.

33.9.3. Representations and Warranties of the Supplier

The Supplier represents and warrants that:

33.9.3.1. It is a limited liability company duly organized and validly existing under the laws of eligible countries, and has the legal capacity to execute, deliver and perform this Agreement and the transactions contemplated by it.

33.9.3.2. the execution, delivery and performance of this Agreement by it has been duly authorized by all requisite corporate action, and will not contravene any provision of, or constitute a default under, any other agreement or instrument to which it or its property is subject or any Legal Requirement applicable to it.

33.9.3.3. this Agreement constitutes a legal, valid and binding obligation of it and is enforceable against it in accordance with its terms.

33.9.3.4. there are no legal actions, suits or proceedings, either pending or to its best knowledge, threatened, against or affecting it before any court or administrative body or arbitral tribunal that could reasonably be expected to adversely affect its ability to meet and carry out its obligations under this Agreement.

33.9.3.5. this Supplier, through the Mines, has the legal right to mine and sell Coal from the mine that is the subject of the Mining Rights Authorization meeting the **Coal Quality Specifications** in Article 1 of Section 7: Technical Specifications. the **Coal Condition Undertaking**, and other terms and conditions of this Agreement, in quantities at all times sufficient to meet the Supplier's obligations under this Agreement.

33.9.3.6. The Supplier has made all necessary arrangements for production and inland transportation for the Coal from the Supplier's mine to the **Loading Port**.

	33.9.3.7. the Supplier has sufficient **Marketable Coal Reserves** at the Mines to satisfy and guarantee its supply obligations to the Purchaser during the term of this Agreement. The Supplier has not contracted to sell to others Coal from the Marketable Coal Reserves of the Mines in such quantity as to jeopardize the Supplier's ability to deliver the total maximum quantity of Coal that the Supplier is obligated to deliver to the Purchaser hereunder or to interrupt any deliveries to be made hereunder. **33.9.3.8.** In the event of any Supply Failure as per Section 4.7.2 of Article 4 of Section 6: Schedule of Requirements, rejection of any Shipment as not complying with the Coal Quality Rejection Limits as per Section 5.1.2 of Article 5 of Section 6: Schedule of Requirements, shipment that is not compliant with the Coal Condition Undertaking as per Section 5.3.1 of Article 5 of Section 6: Schedule of Requirements, any failure of the Seller to provide the invoice and supporting documents required under GCC 23 and PCC 23.2.2.1, within the time specified therein as per GCC 23 and PCC 23.2.2.3 and any Supplier Event of Default as per GCC 42.5 and PCC 42.5.2, the Purchaser may draw such amount under the bank guarantee. **33.9.3.9.** The Performance Security shall be reinstated to the Supplier Termination Amount within three (3) Business Days from the date of withdrawal made by the Purchaser if any withdrawal is made by the Purchaser. Immediately upon each such reinstatement, the issuing bank shall confirm to the Supplier and Purchaser that such reinstatement has occurred.
GCC 34.6	**34.6.1.** Notwithstanding anything stated in GCC Clause 34, the following PCC 34.6.2, shall be complementary to GCC Clause 34 and shall prevail if there is a conflict with GCC Clause 34. **34.6.2.** Expected Supply Shortfall, Supply Failure by the Supplier etc. are detailed out in Clause 4.6, Clause 4.7 Article 4 of Section 6: Schedule of Requirements. **34.6.3.** Delay or acceleration in Time Used in Loading of Shipment is also detailed in Clause 6.12 of Article 6 of Section 6: Schedule of Requirements.
GCC 35.1	Not applicable
	Not applicable

GCC 35.2	**35.2.1.** Notwithstanding anything stated in GCC Clause 35, the following PCC 35.2.2, 35.2.3, shall be complementary to GCC Clause 35 and shall prevail if there is a conflict with GCC Clause 35. **35.2.2.** In case of supply failure, the purchaser's compensation shall be in the form as specified in Clause 4.6, Clause 4.7, Clause 4.8 of Section 6: Schedule of Requirements including but not limited to reimbursables, mitigating purchases etc. **35.2.3.** In case of delay or acceleration in loading of shipment demurrage and despatch shall be as specified in Clause 6.12 of Section 6: Schedule of Requirements
GCC 37.2	**37.2.1.** Notwithstanding anything stated in GCC Clause 37, the following PCC 37.2.2, shall be complementary to GCC Clause 37 and shall prevail if there is a conflict with GCC Clause 37. **37.2.2. Change in Pricing Index or Calculation of Delivered Price** **37.2.2.1.** If: (a) the **Pricing Index** is discontinued (b) the **Pricing Index** is no longer published with the frequency contemplated in the formula for determining the **Delivered Price**; or (c) there is a change in the specifications of the coal on which the **Pricing Index** is based such that they no longer correspond materially with the specifications of the Coal to be supplied under this Agreement; then either Party may submit a written request to the other Party requiring that the Parties shall negotiate in good faith with the objective of promptly agreeing on a replacement of the **Pricing Index** (a **"New Pricing Index"**) and/or an amendment of the formulas in PCC 25.1.3 or PCC 27.1.8 such that the **New Price Index** and/or **Changed Formulas** will accurately and transparently reflect the **FOBT** price of coals with a **Base GCV**, total moisture, total ash and total sulphur specifications similar to the Coal to be supplied under this Agreement. **37.2.2.2.** If the Parties are unable to agree upon a **New Pricing Index and/or** Changed Formulas within ninety (90) days after a Party has made a written request for negotiation pursuant to PCC 25.1.2, either Party, on written notice to the other Party, may require that the **Dispute** be referred to an **Expert** who shall decide whether there should be a **New Pricing Index** and/or **Changed Formulas** and, if so, decide on the appropriate **New Pricing Index** and/or **Changed Formulas** in view of the objective referred under PCC 25.1.2. The determination of the **Expert** shall be final and binding on the issue of a **New Pricing Index** and/or **Changed Formulas** unless and until there is another change as described in PCC 25.1.3 in relation to the Price Index and formulas then in effect and being used hereunder.

37.2.2.3. The Parties shall continue to use the **Pricing Index** and/or the existing formulas and/or **SOFR** until a **New Pricing Index** and/or **Changed Formulas** have been agreed or determined by an **Expert**. Thereafter, any amounts, which have been invoiced after the date on which a Party made a written request for negotiation pursuant to PCC 25.1.3 shall be recalculated and accounted for in accordance with PCC 27.1.

37.2.3. Change in Legal Requirement

37.2.3.1. If there is a **Change in Legal Requirement** of the Country of Origin that, upon its effectiveness, will result in either of the Parties being materially adversely affected in its performance of this Agreement (excluding the imposition of any Tax on a Party), on the written request of the Party that is materially adversely affected, the Parties shall promptly enter into negotiations in good faith with a view to agreeing on amendments to this Agreement that (i) are necessary to comply with the Change in Legal Requirement, and (ii) will eliminate the adverse effect of the Change in Legal Requirement on the affected Party.

37.2.3.2. Until such time as the Parties may agree on amendments to this Agreement pursuant to PCC 37.2.3, the following terms shall apply:

(a) the Purchaser shall be entitled to continue purchasing Coal from the Supplier up to the quantities provided in Article 4 of Section 6: Schedule of Requirements at a **Delivered Price** determined in accordance with PCC 25.1.3 for so long as such supply of Coal or pricing of Coal is not prohibited by any Legal Requirement of the **Country of Origin**;

(b) thereafter, the Purchaser shall be entitled to purchase Coal from the Supplier up to the quantities provided in Article 4 of Section 6: Schedule of Requirements at a price delivered **FOBT** that is equal to the lesser of (i) the price at which Supplier may sell Coal to the Purchaser in compliance with Legal Requirements of the Country of Origin and (ii) the then prevailing **Delivered Price**;

(c) if the price at which the Supplier is required to sell a Shipment to the Purchaser in compliance with Legal Requirements of the Country of Origin **exceeds** the **Delivered Price** for such Shipment as determined in accordance with PCC 25.1.3, **the Purchaser shall pay to the Supplier** the lowest price for each Shipment of Coal then permitted under the applicable Legal Requirements of the Country of Origin, and **the Supplier**, shall pay to the Purchaser the difference between the then permitted legal price and the Delivered Price. Such difference shall be deemed to be a "**Refundable Surcharge**" and shall be refunded to the Purchaser by the Supplier within ten (10) days of the payment for such Shipment being made by the Purchaser. If the repayment by the Supplier of the surcharge (or any other mechanism to keep the price of Coal sold hereunder at the **Delivered Price**) is not allowed (or is expected by the Purchaser to not be allowed) the Purchaser may, in its sole discretion and without cost or expense as provided in Clause 4.5.2.4 (b) of Article 4 of Section 6: Schedule of Requirements, cancel one or more Shipments that have

	been ordered pursuant to Clause 6.4.5 of Article 4 of Section 6: Schedule of Requirements or are included in a **Delivery Schedule** established pursuant to Clause 6.4.3 of Article 4 of Section 6: Schedule of Requirements; and (d) any Shipment of Coal that the Purchaser cancels or does not schedule for delivery as a consequence of the Change in Legal Requirement shall not, unless otherwise elected by the Purchaser, be included in the **Adjusted Delivered Quantity** for the relevant **Delivery Year**. **37.2.3.3.** If the Parties have not agreed on amendments to this Agreement pursuant to PCC 37.2.3 within ninety (90) days from the date a Party has requested negotiations, the Purchaser may at any time thereafter terminate this Agreement upon thirty (30) days' prior written notice to the Supplier without liability of any kind to the Supplier in respect of such termination; provided that during such ninety (90) day period the Purchaser's right to suspend Shipments under PCC 37.2.3.2 (c) will continue to exist.
GCC 38.1	**38.1.1.** Notwithstanding anything stated in GCC Clause 38.1, the following PCC 38.1.2, shall be complementary to GCC Clause 38.1 and shall prevail if there is a conflict with GCC Clause 38.1. **38.1.2. Events of Force Majeure** An "**Event of Force Majeure**" shall mean all events and/or circumstances that prevent or delay the performance of a Party's obligations hereunder that are beyond the reasonable control of the affected Party acting as a **Reasonable and Prudent Operator** if (and only if) and to the extent that (a) such event and/or circumstance (or the effects thereof on the affected Party) is (are) not within the reasonable control, directly or indirectly, of the affected Party, (b) such event and/or circumstance (or the effects of which), despite the exercise of reasonable diligence and care, cannot be or be caused to be prevented, reduced, overcome, avoided or removed by such Party, (c) the Party affected has taken all reasonable precautions, due care, and reasonable alternative measures to avoid the effects of such event and/or circumstance on the Party's ability to perform its obligations under this Agreement and to mitigate the consequences thereof, (d) such event and/or circumstance is not the direct or indirect result of the affected Party's negligence or the failure of the affected Party to perform any of its obligations under this Agreement, and (e) the affected Party has given the other Party prompt notice of the occurrence of such event and/or circumstance required under GCC 39.4 and relevant PCC 39.4.2 (a). , describing such event and/or circumstance in reasonable detail, the effect thereof on the affected Party and its obligations hereunder, and the actions being taken to ensure resumption of normal performance under this Agreement and the actions being taken by or on behalf of the affected Party to comply with GCC 38, GCC 39, GCC 40, GCC 41 and their relevant PCC.

GCC 38.2	**38.2.1.** Notwithstanding anything stated in GCC Clause 38.2, the following PCC 38.2.2, shall be complementary to GCC Clause 38.2 and shall prevail if there is a conflict with GCC Clause 38.2. **38.2.2. Instances of Force Majeure** Subject to complying with the provisions of GCC 38.1 Events of Force Majeure shall include, but shall not be limited to: (a) acts of God, including fire, volcanic eruption, landslide, earthquakes, floods, lightning, typhoons, tsunami, epidemics, plagues or other unusual natural calamities; (b) war or the public enemy whether declared or not, public disorders, civil disturbance, insurrection, rebellion, sabotage, riots, violent demonstrations, blockade, embargoes, revolution at the Supplier's mining site(s), piracy, expropriation, requisition, confiscation, nationalization, quarantine, export or import restriction or other restrictions, rationing or allocations imposed by any Government Instrumentality; (c) explosion; (d) strikes or lockouts or other collective or industrial action by a Party's employees; (e) accidents to harbors, docks, canals or other assistance to or adjuncts of shipping or navigation whether river or otherwise, epidemic or quarantine; (f) radioactive contamination or ionizing radiation; (g) any action or failure to act without justifiable cause or without sufficient advance notice by any Government Instrumentality of the Country of Origin and/or Bangladesh; or (h) a Change in Legal Requirement (excluding those addressed in PCC 37.2.3);
GCC 39.4	**39.4.1.** Notwithstanding anything stated in GCC Clause 39.4, the following PCC 39.4.2, shall be complementary to GCC Clause 39.4 and shall prevail if there is a conflict with GCC Clause 39.4. **39.4.2. Notice Requirements** A Party affected by an Event of Force Majeure shall: (a) promptly notify the other Party in writing of the details of the Event of Force Majeure, including but not limited to reasonable projections of the time and extent to which the Event of Force Majeure is expected to prevent or limit the Party's performance of its obligations under this Agreement; (b) at the request of the other Party, provide the other Party with reasonable proof of the time and extent to which the Event of Force Majeure will prevent or limit the Party's ability to perform its obligations under this Agreement; and (c) promptly notify the other Party in writing when the Event of Force Majeure no longer prevents or limits the Party's ability to perform its obligations under this Agreement. "Promptly" here shall be construed as within two (2) Business Days after the occurrence of an Event of Force Majeure.

GCC 40.3	**40.3.1.** Notwithstanding anything stated in GCC Clause 40, the following PCC 40.3.2, shall be complementary to GCC Clause 40 and shall prevail if there is a conflict with GCC Clause 40. **40.3.2. Obligation to Mitigate** A Party affected by an **Event of Force Majeure** shall: (a) use all reasonable efforts, acting as a reasonable and **Prudent Operator**, to mitigate the effects of the **Event of Force Majeure** and resume normal performance of its obligations in accordance with the terms of this Agreement; and **(b)** continue to perform its obligations under this Agreement to the extent that the **Event of Force Majeure** does not prevent or limit such performance.
GCC 41.6	**41.6.1.** Notwithstanding anything stated in GCC Clause 41.6 the following PCC 41.6.2, shall be complementary to GCC Clause 41.6 and shall prevail if there is a conflict with GCC Clause 41.6. **41.6.2. Consequences of an Event of Force Majeure** **41.6.2.1.** Subject to its compliance with GCC 39, GCC 40 and their relevant PCC and except as provided in PCC 41.6.3, a Party affected by an **Event of Force Majeure** shall not be liable to the other Party for any failure or delay in performing its obligations under this Agreement to the extent such failure or delay is caused by an **Event of Force Majeure.** **41.6.2.2.** The Purchaser shall have the right to purchase coal from another source during the period of any **Event of Force Majeure** declared by the Supplier, and the Supplier shall have the right to sell to other Persons Coal otherwise allocated for sale to the Purchaser during the period of an **Event of Force Majeure** declared by the Purchaser. **41.6.2.3.** If an **Event of Force Majeure** prevents or limits the ability of the Supplier to supply Coal in accordance with the Purchaser's requirements under this Agreement: (a) the quantity of Coal that the Purchaser is required to purchase under Article 4 of Section 6: Schedule of Requirements or Clause 4.2 of Article 4 of Section 6: Schedule of Requirements, as applicable during the period of the **Event of Force Majeure**, shall be reduced by any quantity of Coal that the Supplier is unable to deliver due to the **Event of Force Majeure**; (b) the Supplier shall allocate deliveries of Coal among the Purchaser and the Supplier's other customers under existing contracts in a fair and reasonable manner, in full Shipments and, to the greatest extent possible, on a proportionate basis; and (c) without prejudice to the generality of GCC 40 and PCC 40.3, the Supplier shall comply with the requirements of Clause 4.6.1 of Article 4 of Section 6: Schedule of Requirements and to the extent the Supplier cannot remedy a supply shortfall by supplying

	Substitute Coal on terms to be agreed under Clause 3.4 of Article 3 of Section 6: Schedule of Requirements or pursuant to a **Supply Shortfall Remedial Plan** approved by the Purchaser pursuant to Clause 4.6.2 of Article 4 of Section 6: Schedule of Requirements, assist the Purchaser in obtaining coal that meets the **Coal Quality Specification** from alternative sources that are acceptable to the Purchaser. **41.6.2.4.** Either Party shall be entitled to terminate this Agreement on not less than thirty (30) days' prior notice to the other Party if an **Event of Force Majeure** has prevented or can reasonably be expected to continue to prevent the other Party from performing its obligations under this Agreement to a material degree for a period which is more than ninety (90) days. Such termination shall not excuse either Party from performing all obligations which have become due under this Agreement (and which were not excused by reason of an **Event of Force Majeure**) before the date of termination. As used in this PCC 41.6.2.4, **"material"** shall be the supply of fifty percent (50%) of, or the procurement of, fifty percent (50%) of the **Annual Delivery Quantity**. **41.6.3. Obligations Not Excused or Suspended** No obligation of a Party to pay any amount when due under this Agreement shall be excused or suspended due to an Event of Force Majeure.
GCC 42.5	**42.5.1.** Notwithstanding anything stated in GCC Clause 42 the following PCC 42.5.2, 42.5.3, 42.5.4, 42.5.5, 42.5.6, 42.5.7, 42.5.8, 42.5.9, shall be complementary to GCC Clause 42 and shall prevail if there is a conflict with GCC Clause 42. **42.5.2. Supplier Events of Default** Each of the following events, acts, occurrences or conditions shall constitute a "**Supplier Event of Default**": **42.5.2.1.** the Supplier fails to pay the Purchaser any undisputed amount when due and such failure continues for twenty (20) Business Days following the Purchaser's written notice to the Supplier of such default; **42.5.2.2.** the Supplier within any twelve (12)-month period during the Term, in each following case: (i) fails to supply three (3) or more Shipments as and when required by the terms of this Agreement, or (ii) supplies three (3) or more Shipments which do not comply with **the Coal Condition Undertaking**, whether or not the Purchaser has accepted any of the Shipments; or (iii) supplies three (3) or more Shipments which do not comply with the **Coal Quality Rejection Limits**, whether or not the Purchaser has accepted any of the Shipments;

42.5.2.3. the Supplier breaches or fails to perform any of its material covenants or obligations under this Agreement (other than any such breach referred to in PCC 42.5.2.1 and PCC 42.5.2.2 or PCC 42.5.2.4 - PCC 42.5.2.6) and such breach or failure is not remedied within sixty (60) days after written notice from the Purchaser to the Supplier stating that such breach or failure has occurred, identifying the breach or failure in question in reasonable detail and demanding the remedy thereof (the "**Supplier Initial Cure Period**"); provided, however, if (i) the **Supplier Initial Cure Period** is not reasonably sufficient to cure such breach or failure to perform, (ii) the Supplier shall have commenced to cure such failure within the **Supplier Initial Cure Period** and (iii) the Supplier shall continuously and diligently pursue the cure of such breach or failure, such breach or failure shall not constitute a **Supplier Event of Default** unless it is not remedied within one hundred twenty (120) days after the commencement of a **Supplier Initial Cure Period;**

42.5.2.4. any representation or warranty made by the Supplier being false or misleading in any material respect and thereby having a material adverse effect on the Supplier's ability to perform its obligations hereunder;

42.5.2.5. the Supplier fails to comply with any decision or award of an arbitral tribunal or by an Expert within thirty (30) days of such decision or award becoming binding and due; or

42.5.2.6. passing of a resolution for the bankruptcy, insolvency, winding up, liquidation of, or other similar proceeding relating to the Supplier, the appointment of a trustee, liquidator, custodian, provisional manager or similar Person in such a proceeding which appointment has not been set aside or stayed within one hundred eighty (180) days of such appointment; or the making by a court having jurisdiction of an order winding up or otherwise confirming the bankruptcy or insolvency of the Supplier, which order has not been set aside or stayed withing one hundred eighty (180) days.

42.5.3. Remedies Following a Supplier Event of Default

42.5.3.1. Upon the occurrence of a **Supplier Event of Default**, the Purchaser may, in addition to exercising any other rights or remedies available to it under applicable laws, terminate this Agreement upon thirty (30) days' prior written notice to the Supplier, which notice shall identify the relevant **Supplier Event of Default**; provided that such termination may be made with immediate effect in the case of a **Supplier Event of Default** under PCC 42.5.2.1, PCC 42.5.2.5 and PCC 42.5.2.6; and, provided further, that during the period following the delivery of the notice from the Purchaser of the termination of this Agreement, the Supplier may continue to undertake efforts to cure the default, and if the **Supplier Event of Default** is cured or remedied within such thirty (30) day period (where such period is available), then the termination notice shall not be effective and the Purchaser shall have no right to terminate this Agreement in respect of such cured default.

42.5.3.2. For so long as a **Supplier Event of Default** is continuing, and pending the effectiveness of any termination of this Agreement pursuant to PCC 42.5.3, the Purchaser may acquire coal from Persons other than the Supplier and may permanently or temporarily reduce the quantities of Coal the Purchaser is obliged to purchase under Article 4 of Section 6: Schedule of Requirements or Clause 4.2 of Article 4 of Section 6: Schedule of Requirements with no liability to the Supplier in respect of any such reductions.

42.5.3.3. Upon such termination of this Agreement by the Purchaser, the Supplier shall pay to the Purchaser the **Supplier Termination Amount** as full compensation to the Purchaser for the damages suffered by it as a consequence of the termination of this Agreement due to a Supplier Event of Default, in accordance with PCC 42.5.9.3.

42.5.4. Purchaser Events of Default

Each of the following events shall constitute a "**Purchaser Event of Default**":

42.5.4.1. the Purchaser fails to pay the Supplier any undisputed amount when due and such failure continues for twenty (20) Business Days following the Supplier's written notice to the Purchaser of such default;

42.5.4.2. the Purchaser fails to nominate three (3) or more Shipments as per Clause 6.4 of Article 6 of Section 6: Schedule of Requirements within a **Delivery Year**, whether or not the Supplier has accepted such failures;

42.5.4.3. Purchaser breaches or fails to perform any of its material covenants or obligations under this Agreement (other than any breach referred to in PCC 42.5.4 or PCC 42.5.4.4 – PCC 42.5.4.6) and such breach or failure is not remedied within sixty (60) days after written notice from the Supplier to the Purchaser stating that such a breach or failure has occurred, identifying the breach or failure in question in reasonable detail and demanding the remedy thereof (the "**Purchaser Initial Cure Period**"); provided, however, if (i) the **Purchaser Initial Cure Period** is not reasonably sufficient to cure such breach or failure to perform, (ii) the Purchaser shall have commenced to cure such failure within the **Purchaser Initial Cure Period** and (iii) the Purchaser shall continuously and diligently pursue the cure of such breach or failure,

such breach or failure shall not constitute a **Purchaser Event of Default** unless it is not remedied within one hundred twenty (120) days after the commencement of the Purchaser Initial Cure Period;

42.5.4.4. any representation or warranty made by the Purchaser being false or misleading in any material respect and thereby having a material adverse effect on the Purchaser's ability to perform its obligations hereunder;

42.5.4.5. the Purchaser fails to comply with any decision or award of an arbitral tribunal or by an **Expert** within thirty (30) days of such decision or award becoming binding and due; or

42.5.4.6. the passing of a resolution for the bankruptcy, insolvency, winding up, liquidation of, or other similar proceeding relating to the Purchaser, the appointment of a trustee, liquidator, custodian, provisional manager or similar Person in such a proceeding which appointment has not been set aside or stayed within one hundred eighty (180) days of such appointment; or the making by a court having jurisdiction or an order winding up or otherwise confirming the bankruptcy or insolvency of the Purchaser, which order has not been set aside or stayed within one hundred eighty (180) days.

42.5.5. Remedies Following a Purchaser Event of Default

42.5.5.1. Upon the occurrence of a **Purchaser Event of Default**, the Supplier may, in addition to exercising any other rights or remedies available to it under applicable laws, terminate this Agreement upon thirty (30) days prior written notice to the Purchaser, which notice shall identify the relevant **Purchaser Event of Default**; provided that such termination may be made with immediate effect in the case of a Purchaser Event of Default under PCC 42.5.4, PCC 42.5.4.4, PCC 42.5.4.5 and PCC 42.5.4.6 and, provided further, that during the period following the delivery of the notice from the Supplier of the termination of this Agreement, the Purchaser may continue to undertake efforts to cure the default, and if the **Purchaser Event of Default** is cured or remedied within such thirty (30) day period (where such period is available), then the termination notice shall not be effective and the Supplier shall have no right to terminate this Agreement in respect of such cured default.

42.5.5.2. Upon such termination of this Agreement by the Supplier, the Purchaser shall pay to the Supplier the **Purchaser Termination Amount** as full compensation to the Supplier for the damages suffered by it as a consequence of the termination of this Agreement due to a Purchaser Event of Default, in accordance with PCC 42.5.9.3.

42.5.6. Exclusion of Consequential Damages

42.5.6.1. Subject to PCC 42.5.6.2, each Party shall be liable to the other Party for all losses, damages, costs and expenses suffered or incurred by the other Party, due to the breach, default or non-performance by such Party of any one or more of its obligations under this Agreement; provided that where recovery of specified US Dollar amounts and/or items of cost and losses and percentage limitations thereon are expressly provided herein as the compensation and remedy for a Party's failure to perform or non-performance or breach of its obligations hereunder or for termination of this Agreement, such specified US Dollar amounts and/or items of cost and losses expressly provided herein are intended to protect each Party's legitimate commercial interests and not to impose a penalty or unreasonable or unjustified burden on the paying Party and are agreed to be the sole and exclusive remedy for the failure on the part of a Party to perform or for the non-performance or breach of its obligations hereunder or for termination of this Agreement as provided herein, including the **Purchaser Termination Amount** and

the **Supplier Termination Amount**, as the case may be.

42.5.6.2. Except as otherwise provided herein, neither the Supplier nor the Purchaser shall be liable for any:

(a) special, incidental or consequential damages;

(b) lost revenues, or profits (whether or not special, incidental or consequential in nature),

in the case of (a) and (b) arising out of or in connection with the performance or non-performance of this Agreement. This provision shall not limit the liabilities of either Party in respect of any indemnity obligation under this Agreement, the payment of any specified US Dollar amounts including under Clause 4.7.3 of Article 4 of Section 6: Schedule of Requirements or the **Supplier or Purchaser Termination Amount**.

42.5.7. Duty to Mitigate Losses

Each Party shall use all reasonable endeavours to mitigate its losses arising out of or in connection with an **Event of Default** by the other Party and/or termination of this Agreement by such Party

42.5.8. Rights Not Waived

The failure of any Party to insist in any one or more instances upon strict performance of any of the provisions of this Agreement, or to take advantage of any of its rights under this Agreement, shall not be construed as a waiver of any such provisions or the relinquishment of any such rights. No waiver of any right or benefit under this Agreement by a Party shall be valid unless made in writing and executed by a duly authorized representative of the Party having such right or benefit.

42.5.9. Termination

42.5.9.1. This Agreement shall expire on upon expiry of the Term, unless terminated earlier.

42.5.9.2. Notwithstanding the provision stipulated on PCC 42.5.7, this Agreement may be terminated by any Party at any time before the expiry date as provided in PCC 42.5.3 or PCC 42.5.5.

42.5.9.3. Upon such termination of this Agreement, (i) if the Party in default is the Supplier, the Supplier shall pay to the Purchaser the **Supplier Termination Amount** or (ii) if the Party in default is the Purchaser, the Purchaser shall pay to the Supplier the **Purchaser Termination Amount**. In either case, such payment shall be made not later than thirty (30) days following the later of (a) the date on which this Agreement terminated or (b) the date on which any **Dispute** regarding the validity of such termination is finally resolved pursuant to GCC 47 and PCC 47.4.

	42.5.9.4. The termination of the Agreement under and pursuant to this GCC 42 and PCC 42.5 from any cause shall not release any Party hereto from any liability which had arisen prior to and existed at the time of termination has already accrued to any Party hereto or from obligations and liabilities that, by their nature, should survive termination, including the obligations in GCC 33 and PCC 33.9 and in Clause 3.5.2 of Article 3 of Section 6: Schedule of Requirements and Clause 6.11.5 of Article 6 of Section 6: Schedule of Requirements. **42.5.9.5.** Upon termination of this Agreement pursuant to this GCC 42 and PCC 42.5, neither Party shall have any obligation to the other Party, except for the obligation to pay **the Supplier Termination Amount** or the **Purchaser Termination Amount**, as the case may be, and any other obligations that survive such termination as provided in PCC 42.5.9.4 above. Except as otherwise specifically provided for herein, the only rights of the Parties to terminate this Agreement are as set out in this GCC 42 and PCC 42.5.
GCC 47.2(b)	The name of the Adjudicator will be decided before signing of the Contract.
GCC 47.3(b)	The rules of procedure for arbitration proceedings shall be as follows: as specified in GCC 47.4 and PCC 47.4
GCC 47.4	**47.4.1.** Notwithstanding anything stated in GCC Clause 47 the following PCC 47.4.2, be complementary to GCC Clause 47 and shall prevail if there is a conflict with GCC Clause 47. **47.4.2. Disputes** **47.4.2.1. Mutual Discussions** Except as otherwise provided in this Agreement, if any dispute or difference of any kind whatsoever, including the existence, validity, termination or breach hereof, (a "**Dispute**") shall arise between the Purchaser, on the one hand, and the Supplier, on the other hand, in connection with, or arising out of, or relating to this Agreement, the **Dispute** shall be notified in writing ("**Notice of Dispute**") by one Party to the other Party and thereafter promptly referred to the chief executive officers of the Purchaser and the Supplier. The chief executive officers of the Purchaser and the Supplier shall attempt in good faith, for a period of thirty (30) days after either the Purchaser or the Supplier receives the **Notice of Dispute** from the other Party, to settle such **Dispute.** **47.4.3. Arbitration** **47.4.3.1.** If the Parties have been unable to resolve any **Dispute** within a period of thirty (30) days pursuant to GCC 47 and PCC 47.4, then the Dispute (other than a Technical Dispute) shall be referred to and finally resolved by arbitration administered by the Singapore International Arbitration Centre ("SIAC") in accordance with the Arbitration Rules of the SIAC (the "Rules"), which Rules are deemed to be incorporated by reference into this GCC 47 and PCC 47.4 and as may be amended by GCC 47 and PCC 47.4.

47.4.3.2. The number of arbitrators shall be three (3) and shall be appointed in accordance with the Rules. No arbitrator shall be a national of the Country of Origin or Purchaser's country of domicile, and no arbitrator shall be a present or former employee, consultant or agent of either Party or an Affiliate of either Party and shall not be a person who may have an interest in the outcome of the Dispute.

47.4.3.3. The language of the arbitration shall be English. The seat of arbitration shall be Singapore. The governing law of the arbitration agreement, if any, in this PCC 47.4.3 shall be Singapore law

47.4.3.4. The Parties agree that the International Bar Association Rules of Evidence in effect on the date of the commencement of the arbitration shall apply.

47.4.3.5. Any monetary award shall be rendered in Dollars. Judgment upon the award of the arbitrators may be entered in any court having jurisdiction over any Party concerned. The Parties waive any right to apply to any court of law and/or other judicial authority to determine any preliminary point of law and/or review any question of law and/or the merits, insofar as such waiver can validly be made. The Parties waive any right to punitive or other exemplary damages that may be allowed by common law or applicable statute. The parties shall not be deemed, however, to have waived any right to challenge any award on the ground that the tribunal lacked substantive jurisdiction and/or on the ground of serious irregularity affecting the tribunal, the proceedings or the award to the extent allowed by the law of the seat of arbitration.

47.4.3.6. The award rendered in any arbitration commenced hereunder shall be final and binding on the Parties and the Parties agree to implement the award without delay.

47.4.4. Resolution of Technical Disputes by Expert

47.4.4.1 If a **Dispute** relates exclusively to:

(a) the sufficiency or accuracy of information provided by the Supplier to the Purchaser under Clause 3.7 of Article 3 of Section 6: Schedule of Requirements;

(b) the procedures or results of sampling, testing or analysis of Coal by the **Loading Port Laboratory** or an Alternative Laboratory under Article 7 of Section 6: Schedule of Requirements;

(c) the results of the **Draft Surveys** at the **Loading Port**;

(d) the calculation of **Demurrage** or **Despatch**; or

(e) the determination of a **New Pricing Index** or **Changed Formulas** under PCC 37.2.2,

(each a **"Technical Dispute"**), and the Supplier and the Purchaser have been unable to resolve the **Technical Dispute** within a period of thirty (30) days pursuant to GCC 47 and PCC 47.4 or such other time period as thirty (30) days pursuant to GCC 47 and PCC 47.4 or such other time period as prescribed for discussions between the Parties, the **Technical Dispute** shall finally be settled by a person with expertise in the relevant area(s) to which the **Dispute** relates, selected in accordance with PCC 47.4.4.2 (the **"Expert"**) pursuant to this PCC 47.4.4 upon the written request of either the Supplier or the Purchaser. The **Expert** shall not be deemed to be acting as an arbitrator, and its decision shall not purport to interpret or determine the legal rights and obligations of the Parties under this Agreement.

47.4.4.2 Within fourteen (14) days following any such written request, the Supplier and the Purchaser shall agree on the selection of the **Expert**. The **Expert** shall be independent, shall have substantial experience in the coal industry, transport of coal by sea, and/or other technical fields relevant to the **Technical Dispute**, and shall not be a present or former employee of any Party or their Affiliates or any person that may have an interest in the outcome of the **Technical Dispute**. If the Parties are unable to agree on the appointment of an **Expert** within that time, then either the Supplier or the Purchaser may request the International Chamber of Commerce's International Centre for Expertise to appoint a suitably qualified individual to act as the **Expert**. The fees of the **Expert** and the costs of proceedings undertaken by the **Expert** to resolve the **Technical Dispute** shall be shared by the Supplier and the Purchaser equally.

47.4.4.3 The **Expert** shall be instructed to decide the **Technical Dispute** within sixty (60) days (or such longer or shorter period as the Supplier and the Purchaser agree is appropriate under the circumstances) based on all information, data, further testing or other considerations the **Expert** considers relevant. Each Party undertakes to provide the **Expert** with prompt cooperation and make available to the **Expert** all information, data, and test results that may be requested by the **Expert** as necessary or useful to the resolution of the **Technical Dispute**. Unless otherwise agreed by the Parties, any meetings or proceedings conducted by the **Expert** shall be conducted in Hong Kong in the English language.

47.4.4.4 The **Expert** shall render its decision in writing, with a written explanation of the basis of the decision. The decision of the **Expert** shall be final and binding upon the Parties, save in the event of fraud or manifest error, and the Parties agree to implement the Expert's decision without delay.

47.4.5. Obligation to Continue Performance

Without prejudice to the other provisions of this Agreement, the Parties shall continue to perform all of their respective obligations under this Agreement notwithstanding the existence of status of any **Dispute** that may have arisen between them, and neither Party shall be entitle to suspend its performance of this Agreement by reason only of the existence of such a **Dispute** or the reference of any matter or Dispute to an arbitral tribunal or to the **Expert**.

47.4.6. Survival

The provisions of this GCC 47 and PCC 47.4 shall survive the termination of this Agreement, howsoever caused.

Section 5. Tender and Contract Forms

Form	Title
	Tender Forms
PG4 – 1A	Technical Offer Submission Letter
PG4 – 1B	Financial Offer Submission Letter
PG4 – 2	Tenderer Information Sheet
PG4-2A	Subcontractor Information
PG4 – 3A,3B & 3C	Price Schedule for Goods
PG4 – 3D	Price Schedule for Related Services
PG4 – 4	Specifications Submission and Compliance Sheet
PG4 – 5	Commitment Letter from Goods Producer
PG4 – 6	Bank Guarantee for Tender Security
PG4 – 6A	Bank's Commitment for Line of Credit *(when this option is chosen)*
	Contract Forms
PG4 – 7	Notification of Award
PG4 – 8	Contract Agreement
PG4 – 9	Bank Guarantee for Performance Security
PG4 – 10	Bank Guarantee for Advance Payment

Forms PG4-1 to PG4-6 comprises part of the Tender and should be completed as stated in ITT Clause 21.

Forms PG4-7 to PG4-10 comprises part of the Contract as stated in GCC Clause 5.

Technical Offer Submission Letter (Form PG4 – 1A)

[This letter shall be completed and signed by the Authorized Signatory on the Letter-Head pad of the Tenderer]

To: *[Contact Person]* *[Name of Purchaser]* *[Address of Purchaser]*	Date:
Invitation for Tender No:	*[indicate IFT No]*
Tender Package No:	*[indicate Package No]*

We, the undersigned, offer to supply in conformity with the Tender Document the following Goods and related Services:

In signing this letter, and in submitting our Tender, we also confirm that:

(a) our Tender shall be valid for the period stated in the Tender Data Sheet (ITT Sub-Clause 27.2) and it shall remain binding upon us and may be accepted at any time before the expiration of that period;

(b) a Tender Security is attached in the form of a *[state pay order, bank draft, bank guarantee]* in the amount stated in the Tender Data Sheet (ITT Clause 29) and valid for a period of 28 days beyond the Tender validity date;

(c) if our Tender is accepted, we commit to furnishing a Performance Security in the amount stated in the Tender Data Sheet (ITT Sub-Clause 66.2) in the form stated in Tender Data Sheet (ITT Sub-Clause 67.1) and valid for a period of 28 days beyond the date of completion of our performance obligations;

(d) we have examined and have no reservations to the Tender Document, issued by you on *[insert date];* including Addendum to Tender Documents No(s) [*state numbers*], issued in accordance with the Instructions to Tenderers (ITT Clause 11). *[insert the number and issuing date of each addendum; or delete this sentence if no Addendum have been issued];*

(e) we, have nationalities from eligible countries, in accordance with ITT Sub-Clause 5.1;

(f) we are submitting this Tender as a sole Tenderer.

(g) we are not a Government owned entity as defined in ITT Sub-Clause 5.3
or
we are a Government owned entity, and we meet the requirements of ITT Sub-Clause 5.3];
(delete one of the above as appropriate)

(h) we, declare that we are not associated, nor have been associated in the past, directly or indirectly, with a consultant or any other entity that has prepared the design, specifications and other documents, in accordance with ITT Sub-Clause 5.5;

(i) we have not been declared ineligible by the Government of Bangladesh or the

Development Partner, under the laws of Bangladesh or official regulations or by an act of compliance with a decision of the United Nations Security Council on charges of engaging in corrupt, fraudulent, collusive, coercive (or obstructive in case of Development Partner) practices, in accordance with ITT Sub-Clause 5.6;

(j) furthermore, we are aware of ITT Clause 4 concerning such practices and pledge not to indulge in such practices in competing for or in executing the Contract;

(k) we, confirm that we do not have a record of poor performance, such as abandoning the Supply, not properly completing contracts, inordinate delays, or financial failure as stated in ITT Sub-Clause 5.8, and that we do not have, or have had, any litigation against us, other than that stated in the Tenderer Information Sheet (Form PG4-2);

(l) we are not participating as Tenderers in more than one Tender in this Tendering process. We understand that your written Notification of Award shall the acceptance of our Tender and become a binding Contract between us, until a formal Contract is prepared and executed;

(m) we confirm that we do not have a record of insolvency, receivership, bankrupt or being wound up, our business activities were not been suspended, and it was not been the subject of legal proceedings in accordance with ITT Sub Clause 5.9;

(n) we confirm that we have fulfilled our obligations to pay taxes and social security contributions applicable under the relevant national laws and regulations of Bangladesh in accordance with ITT Sub Clause 5.10.

(o) We acknowledge that you have the right to choose or reject some or even all suppliers before awarding the contract and agree that you will not make any explanation for the actions you have taken.

(p) If we become a successful supplier, in addition to meeting the delivery period, we should also meet the reasonable changes required by the Purchaser according to the actual situation of the plant, without any additional cost.

(q) we understand that you reserve the right to accept or reject any Tender, to cancel the Tender proceedings, or to reject all Tenders, without incurring any liability to Tenderers, in accordance with ITT Clause 61.

Signature:	*[insert signature of authorized representative of the Tenderer]*
Name:	*[insert full name of signatory with National ID]*
In the capacity of:	*[insert designation of signatory]*

Duly authorized to sign the Tender for and on behalf of the Tenderer

[If there is more than one (1) signatory add other boxes and sign accordingly].

Attachment: Written confirmation authorizing the above signatory(ies) to commit the Tenderer, in accordance with ITT Sub-Clause 34.4 as per Attachment 4, Form PG 4-2;

Financial Offer Submission Letter (Form PG4 – 1B)

[This letter shall be completed and signed by the Authorized Signatory on the Letter-Head pad of the Tenderer]

To: *[Contact Person]* *[Name of Purchaser]* *[Address of Purchaser]*	Date:
Invitation for Tender No:	*[indicate IFT No]*
Tender Package No:	*[indicate Package No]*

We, the undersigned, offer to supply in conformity with the Tender Document the following Goods and related Services:

In signing this letter, and in submitting our Tender, we also confirm that:

(a) our Tender shall be valid for the period stated in the Tender Data Sheet (ITT Sub-Clause 27.2) and it shall remain binding upon us and may be accepted at any time before the expiration of that period;

(b) a Tender Security is attached in the form of a *[state pay order, bank draft, bank guarantee]* in the amount stated in the Tender Data Sheet (ITT Clause 29) and valid for a period of 28 days beyond the Tender validity date;

(c) if our Tender is accepted, we commit to furnishing a Performance Security in the amount stated in the Tender Data Sheet (ITT Sub-Clause 66.2) in the form stated in Tender Data Sheet (ITT Sub-Clause 67.1) and valid for a period of 28 days beyond the date of completion of our performance obligations;

(d) we have examined and have no reservations to the Tender Document, issued by you on [insert date]; including Addendum to Tender Documents No(s) [state numbers], issued in accordance with the Instructions to Tenderers (ITT Clause 11). [insert the number and issuing date of each addendum; or delete this sentence if no Addendum have been issued];

(e) we, have nationalities from eligible countries, in accordance with ITT Sub-Clause 5.1;

(f) we are submitting this Tender as a sole Tenderer.

(g) we are not a Government owned entity as defined in ITT Sub-Clause 5.3
or we are a Government owned entity, and we meet the requirements of ITT Sub-Clause 5.3];
(delete one of the above as appropriate)

(h) we, declare that we are not associated, nor have been associated in the past, directly or indirectly, with a consultant or any other entity that has prepared the design, specifications and other documents, in accordance with ITT Sub-Clause 5.5;

(i) we have not been declared ineligible by the Government of Bangladesh or the Development Partner, under the laws of Bangladesh or official regulations or by an act of compliance with a decision of the United Nations Security Council on charges

of engaging in corrupt, fraudulent, collusive, coercive (or obstructive in case of Development Partner) practices, in accordance with ITT Sub-Clause 5.6;

(j) furthermore, we are aware of ITT Clause 4 concerning such practices and pledge not to indulge in such practices in competing for or in executing the Contract;

(k) we, confirm that we do not have a record of poor performance, such as abandoning the Supply, not properly completing contracts, inordinate delays, or financial failure as stated in ITT Sub-Clause 5.8, and that we do not have, or have had, any litigation against us, other than that stated in the Tenderer Information Sheet (Form PG4-2);

(l) we are not participating as Tenderers in more than one Tender in this Tendering process. We understand that your written Notification of Award shall the acceptance of our Tender and become a binding Contract between us, until a formal Contract is prepared and executed;

(m) we confirm that we do not have a record of insolvency, receivership, bankrupt or being wound up, our business activities were not been suspended, and it was not been the subject of legal proceedings in accordance with ITT Sub Clause 5.9;

(n) we confirm that we have fulfilled our obligations to pay taxes and social security contributions applicable under the relevant national laws and regulations of Bangladesh in accordance with ITT Sub Clause 5.10.

(o) we understand that you reserve the right to accept or reject any Tender, to cancel the Tender proceedings, or to reject all Tenders, without incurring any liability to Tenderers, in accordance with ITT Clause 61.

Signature:	*[insert signature of authorized representative of the Tenderer]*
Name:	*[insert full name of signatory with National ID]*
In the capacity of:	*[insert designation of signatory]*

Duly authorized to sign the Tender for and on behalf of the Tenderer

[If there is more than one (1) signatory add other boxes and sign accordingly].

Attachment: Written confirmation authorizing the above signatory(ies) to commit the Tenderer, in accordance with ITT Sub-Clause 34.4 as per Attachment 4, Form PG 4-2;

Tenderer Information Sheet (Form PG4-2)

[The Tenderer shall fill in this Form in accordance with the instructions indicated below. No alterations to its format shall be permitted and no substitutions shall be accepted]

Invitation for Tender No: *[Indicate IFT No]* Date *[Insert date of Tender Submission]*

Tender Package No: *[Indicate Package No]*

A. Individual Tenderer

1.	***Eligibility Information of the Tenderer [ITT Clauses 5 & 26]***	
1.1	Nationality of individual or country of registration	
1.2	Tenderer's legal Name:	
1.3	Tenderer's legal address in Country of Registration	
1.4	Tenderer's legal status	[complete the relevant box]
	Proprietorship	
	Partnership	
	Limited Liability Concern	
	Government-owned Enterprise	
	Others [please describe, if applicable]	
1.5	Tenderer's Year of Registration	
1.6	Tenderer's Authorised Representative Information	
	Name	
	National ID number	
	Address	
	Telephone / Fax Numbers	
	e-mail address	

1.7

Attached are copies of original documents of in accordance with serial no. 1: *[check box(es) of the attached original documents]*

- ☐ *Articles of Incorporation or Registration of firm named in 1.2, in accordance with ITT sub-Clause 5.1 and 5.2*
- ☐ *In case of government owned entity, documents establishing legal and financial autonomy and compliance with commercial law, in accordance with ITT Sub-Clause 5.3*
- ☐ *An affidavit confirming the legal capacity stating that there are no existing orders of any judicial court that prevents either the tenderer or employees of a tenderer entering into or signing a Contract with the Purchaser in accordance with ITT clause 5*
- ☐ *An affidavit confirming that the tenderer is not insolvent, in receivership or not bankrupt or not in the process of bankruptcy, not temporarily barred from undertaking their business for financial reasons and shall not be the subject of legal proceedings for any of the foregoing in accordance with ITT Clause 5.*
- ☐ *Business Licence/Trade Licence*
- ☐ *Latest Income Tax Clearance Certificate, VAT Registration Certificate, Tax Identification Number (TIN) (if applicable)*
- ☐ *Documentary evidence demonstrating that they are enrolled in the relevant professional or trade organizations registered in Bangladesh in accordance with ITT Clause 5 or in case of foreign tenderer in their country of origin or a certificate concerning their competency issued by a professional institution in accordance with the law of the country of their origin, as stated under ITT Clause 5.*
- ☐ *Declaration Letter in Official Letter pad/Board Resolution for Power of Attorney as per format provided in Attachment 4 of Form PG4-2*

2. Litigation History: *[Number of arbitration awards against the tenderer over the period in accordance the ITT Clause 13.1] if no [state "None"]*

3.	***Qualification Information of the Tenderer:***	
3.1	*Number of years of overall experience of the Tenderer in the supply of goods and related services as stated under ITT Sub-Clause14.1(a) and relevant TDS:*	
3.2	*Specific experience as supplier in supply of similar to the proposed goods, as stated under ITT Sub-Clause 14.1(b) and relevant TDS:*	
3.3	*The supply and/or production capacity of Goods and recoverable reserve of the Goods, if applicable, as stated under ITT Sub-Clause 14.1(c) and relevant TDS*	
3.4	*Available liquid assets or working capital or credit facilities in accordance with ITT Clause 15.1(a) and relevant TDS as per Attachment 3 of Form PG4-2*	

3.5	*Average Annual Turnover in accordance with ITT Clause 15.1(a) and relevant TDS as per Attachment 3 of Form PG4-2*	
3.6	*Net Asset Value per Share in accordance with ITT Clause 15.1(a) and relevant TDS as per Attachment 3 of Form PG4-2*	

3.7 Attached are copies of original documents required in accordance with serial no.3: *[check box(es) of the attached original documents]*

- ☐ *Certification of 1st supply experience in accordance with ITT Sub-Clause 14.1 (a)*
- ☐ *Bill of Lading accompanied with Commercial Invoice of each shipment/end user certificate with mentioned delivery quantity issued by the Purchaser to match the required supply experience, in accordance with ITT Sub-Clause 14.1 (b) as per Attachment 1a & 1b, Form PG4-2*
- ☐ *Declaration Letter of the Coal Mine as per Attachment 2, Form PG 4-2 containing the Annual production Capacity & Recoverable Coal Reserve Information, in accordance with IIT Sub-Clause 14.1(c)*
- ☐ *Documentary evidences in accordance with ITT sub clause 15.1(a) and relevant TDS) as per Attachment 3, Form PG4-2*

4. *Other Information of the Tenderer:*

4.1	Tenderer Type (Trader/Miner): *[Tenderer will fill up their type in the 3rd column based on the definition below:* *Trader: Tenderer is not fully/partially owned by a Coal Mine Owner Company* *Miner: Tenderer is fully/partially owned by a Coal Mine Owner Company]*	
4.2	Force Majeure Declarations: *[Tenderer will fill up the number of force majeure declared in last five (5) years]*	

4.3 Attached are copies of original documents required in accordance with serial no.4 : *[check box(es) of the attached original documents]*

- ☐ *History of Force Majeure Declarations in the last five (5) years reckoned from the date of opening of Technical Offer in accordance with ITT sub clause 21.1(q) as per Attachment 7 of Form PG4-2*

5. *Technical Solution of the Tenderer*:

5.1	Loading Port Restrictions *[Tenderer will fill up the 3rd column writing 'Provided as Attachment 8 of Form PG4-2']*	

5.2	Coal Mine Information booklet *[Tenderer will fill up the 3rd column writing 'Provided as Attachment 5 of Form PG4-2']*	
5.3	Method Statement to ensure long term, stable coal supply *[Tenderer will fill up the 3rd column writing 'Provided as Attachment 6 of Form PG4-2']*	

5.4 Attached are copies of original documents required in accordance with serial no.5 : *[check box(es) of the attached original documents]*

- ☐ *Loading Port Restrictions in accordance with ITT sub clause 21.1(q) as per Attachment 8 of Form PG4-2*
- ☐ *Coal Mine Information booklet in accordance with ITT sub clause 21.1(q) as per Attachment 5 of Form PG4-2*
- ☐ *Method Statement to ensure long term, stable coal supply in accordance with ITT sub clause 21.1.(q) as per Attachment 6 of Form PG4-2*

Format of Attachments for Form PG4-2

Attachment 1a	End User Certificate
Attachment 1b	Bill of Lading & Commercial Invoice
Attachment 2	Format of Declaration Letter of Recoverable Reserve amount and Average Annual Production amount
Attachment 3	Financial Criteria Qualification
Attachment 4	Power of Attorney
Attachment 5	Coal Mine Information
Attachment 6	Method Statement to Ensure Stable and Long-Term Coal Supply
Attachment 7	History of Force Majeure Declaration
Attachment 8	Loading Port Restrictions

Attachment 1a: End User Certificate

[This certificate shall be issued in company letter pad of End User Certificate Issuing Authority]

Ref No.: **Date:**

TO WHOM IT MAY CONCERN

This is to certify that ...*[Name of the Tenderer and Address]*... has been awarded the contract of ...*[Name of the Contract and Contract Ref. No.:]*.... They have successfully supplied and delivered to us total ...*[Mention the quantity]*... MT of coal at our ...*[Name of the Power Plant & Address]*... as per following details:

Sl No.	Vessel Name	LC Ref. No.	BL No. & Date

*Please add rows if necessary

We found that their performance is satisfactory and we wish their success.

Date:

(Signature).....
(Printed Name) .....
(Designation) .....
(Company) .... *[Name And Address of The Coal Mine Owner Company]*.....
(Phone No.) .....
(Email Address.) .....
(Company Seal) .....

Attachment 1b: Bill of Lading & Commercial Invoice

COD E NAME :
Shipper

BILL OF LADING
TO BE USED WITH CHARTER-PARTIES

Page 2

Consignee

THIRD ORIGINAL

TO THE ORDER OF AGRANI BANK PLC, GULSHAN CORPORATE BRANCH, GULSHAN-01, DHAKA-1212, BANGLADESH

Notify party

RPCL-NORINCO INTL POWER LIMITED (RNPL)
ASIAN TOWER (LEVEL-9TH, 10TH & 11TH FLOOR)
HOUSE # 52, ROAD # 21, NIKUNJA-2, KHILKHET, DHAKA-1229, BANGLADESH.

Vessel | Port of Loading

Port of Discharge

Shipper's description of goods | Gross Weight

(of which **NIL** on deck at Shipper's risk; the Carrier not being responsible for loss or damage howsoever arising)

Freight payable as per
CHARTER-PARTY dated .....

FREIGHT ADVANCE
Received on account of freight

Time used for loading ..... days ..... hours

SHIPPED at the Port of Loading in apparent good order and condition on board the Vessel for carriage to the Port of Discharge or so near thereto as she may safely get the goods specified above.

Weight, measure,quality, quantity, condition,contents and value unknown.

IN WITNESS whereof the Master or Agent of the said Vessel has signed the number of Bills of Lading indicated below all of this tenor and date, any one of which being accomplished the others shall be void.

FOR CONDITIONS OF CARRIAGE SEE OVERLEAF

Freight payable at	Place and date of issue
Number of original B(s)/L	Signature

Printed and sold :
By Wyt & Zonen B.V., Rotterdam (phone;31-010-4252627)
by the authority of The Baltic and International Maritime Council (BIMCO), Copenhagen

Attachment 2: Declaration Letter of Recoverable Reserve amount and Average Annual Production amount over the last 5 years reckoned from the date of opening of Technical Offer of ...[Name Of The Coal Mine]... by ...[Name Of The Coal Mine Owner Company]

[This letter shall be issued in company letter pad of coal mine owner company]

Declaration Letter

Reference No.: *[insert reference no. of this letter]* Date: [insert date] d/m/y

To

[Name and Address of the Tenderer]

We *... [Name of the Coal Mine Owner Company] ...*, are aware that, *... [Name and Address of the Tenderer] ...* is participating in the bidding process for Supply of Coal for Patuakhali 1320 (2×660) MW Coal Fired Thermal Power Plant, Tender Document No. PUR-007(CS/PATUAKHALI/OTM)/2024-25 Date: 06.11.2024, issued by RPCL-NORINCO INTL POWER LIMITED (RNPL).

We hereby declare the following information of ... *[Name of The Coal Mine]...*: regarding recoverable reserve amount and average annual production amount over the last 5 years reckoned from the date *[....Date of opening of Technical Offer....]*

The recoverable coal reserve amount of *...[Name of The Coal Mine]...* is ..... MT as per the attached (Appendix 2.1) Report Indicating Recoverable Reserve of The Coal Mine dated *...[d/m/y]...* prepared by *"...[Name of The Report Preparing Entity]..."*.

The average annual production amount over the last five (5) years reckoned from Date of opening of Technical Offer of ... *[Name of The Coal Mine]* ... is ..... MT as per the attached (Appendix 2.2) *Relevant* Supporting Document of Annual Production Information. Summary of the average annual production amount over the last five (5) years reckoned from the date *[.... Date of opening of Technical Offer....]* is as follows:

Sl No.	Year	Actual Production (million MT)	Supporting Document
1			Relevant Supporting Document of Annual Production Information (Appendix 2.2)
2			Relevant Supporting Document of Annual Production Information (Appendix 2.2)
3			Relevant Supporting Document of Annual Production Information (Appendix 2.2)
4			Relevant Supporting Document of Annual Production Information (Appendix 2.2)
5			Relevant Supporting Document of Annual Production Information (Appendix 2.2)
Total Production Amount of 5 Years in million MT			
Average Production Amount of 5 Years in million MT			

For any kind of queries from RNPL, we will be available to receive and respond through below-signed person and contact details.

Appendices:

1. Appendix 2.1: *Report Indicating Recoverable Reserve of The Coal Mine*
2. Appendix 2.2: Relevant *Supporting Documents of Annual Production Information*

Date:

(Signature).....
(Printed Name) .....
(Designation) .....
(Company) .... *[Name And Address of The Coal Mine Owner Company]*.....
(Phone No.) .....
(Email Address.) .....
(Company Seal) .....

Attachment 3: Financial Criteria Qualification

To
Company Secretary
RPCL-NORINCO INTL POWER LIMITED
Asian Tower, 10th Floor, House # 52, Road # 21, Nikunja 2, Khilkhet,
Dhaka 1229, Bangladesh

Dear Sir,

With reference to our Tender Proposal No. .....[Reference No. of Proposal Letter] ..... Dated.....*[Date of Proposal Letter]* ... submitted against Tender Document for Supply of Coal for Patuakhali 1320 (2×660) MW Coal Fired Thermal Power Plant(Tender Document No.: PUR-007(CS/PATUAKHALI/OTM)/2024-25 Date: 06.11.2024).we hereby furnish the information from audited financial statements of three (3) years as on 1st July 2024 as per the requirement of ITT 15 to meet the financial qualification criteria according to the attached Appendix 3.1: Audited Financial Statement of three (3) years as on 1st July 2024)

Sl. No.	Particulars	Data/Details
1.	**Financial Particulars of the Tenderer**	**Financial Data**
(a)	**Liquid Asset or Working Capital or Credit Facilities**	**Amount** **USD.....Million**
(i)	**Annual Turnover of the preceding three Financial years**	**Turnover (in USD Million)**
	Financial Year	
	Financial Year	
	Financial Year	
	Average Annual Turnover for the preceding three (3) Financial Years (as per ITT 15 and relevant TDS)	
(ii)	**Net Asset Value (NAV) to Paid-up Share Capital ratio as on the last day of the preceding Financial Year (as per ITT 15 and relevant TDS)**	**Net Asset Value** **USD.....Million** **Paid up share capital** **USD.....Million** **Ratio of Net Asset Value (NAV) to Paid-up Share Capital**

Appendices:

1. Appendix 3.1: Full Audited Financial Statement of latest three (3) years
2. Appendix 3.2: Credit Facility Document

Date:

(Signature) .....
(Printed Name) .....
(Designation) .....
(Company Seal) .....

Attachment 4: Power of Attorney

Format of POWER OF ATTORNEY

Date: [*insert date of signing the Power of Attorney*] d/m/y

To
Company Secretary
RPCL-NORINCO INTL POWER LIMITED
Asian Tower, 10th Floor, House # 52, Road # 21, Nikunja 2, Khilkhet,
Dhaka 1229, Bangladesh

I, [*insert the legal representative's name*], ID _____ [*insert the ID type and number*], the legal representative of _____[*insert the Tenderer's name*], hereby authorize _____[*insert the authorized representative's name*] (hereinafter referred to as "authorized representative"), ID _____ [*insert the ID type and number*], to participate in the tendering process for Supply of Coal for Patuakhali 1320 (2×660) MW Coal Fired Thermal Power Plant (Tender Document No.: PUR-007(CS/PATUAKHALI/OTM)/2024-25 Dated 06.11.2024) and sign tender proposal on behalf of our company.

The authorized representative(s) is/are authorized to sign all documents and handle all matters related to the pre-award phase of procurement process including but not limited to submit tender guarantee, response, proposal opening, evaluation, contract negotiation.

If awarded, the authorized representative(s) is/are also authorized to sign all documents and handle all matters related to the contract agreement including but not limited to receiving Notification of Award (NoA), submitting performance guarantee, contract signing.

The authorized representative(s) is/are also authorized to sign all documents and handle all matters related to receiving work orders and executing contract in accordance with the contract terms.

Our company is fully responsible for the signatures and acts of the authorized representative(s).

This power of attorney shall remain in force until the written notice of revocation reaches. All documents signed by the authorized representative(s) (within the validity period of the power of attorney) shall not be invalidated by the revocation of the authorization.

The authorized representative(s) has no right of sub-entrustment.

Authorizer (signature):

Authorized representative (signature):

Validity of authorization: DD-MM-YY
Contact Details (Contact Number and E-mail) of Authorized Representative (s): .....
Name, Address and official seal of the Tenderer:

Notes:
(1)This power of attorney must be filled and signed by the legal representative himself/herself, otherwise will be rejected.
(2)If there are two or more authorized representatives, the relevant documents, agreements, contracts etc. signed by any authorized representatives shall be regarded as valid.

Attachment 5: Coal Mine Information

To
Company Secretary
RPCL-NORINCO INTL POWER LIMITED
Asian Tower, 10th Floor, House # 52, Road # 21, Nikunja 2, Khilkhet,
Dhaka 1229, Bangladesh

Dear Sir,

With reference to our Tender Proposal No. .....[Reference No. of Proposal Letter] ..... Dated.....[*Date of Proposal Letter*] ... submitted against Tender Document for Supply of Coal for Patuakhali 1320 (2×660) MW Coal Fired Thermal Power Plant (Tender Document No.: PUR-007(CS/PATUAKHALI/OTM)/2024-25 Date: 06.11.2024), we hereby submit the following information as per the requirement of ITT 21.1.(q) regarding our proposed coal mine *....[Name of the Coal Mine]...* of ...*[Name of the Coal Mine Owner Company]*...:

COAL MINE INFORMATION

Coal Brand	:		**Country of Origin of Coal**	:	
Location	:		**Mine's Contact**	:	
Mine Name	:		**Parent Company**	:	
OPERATION					
Coal Reserve	:	Marketable Reserve (million MT)	:		
		Mine Life (year)	:		
Mining Method	:				
Major Equipment:					
LOADING PORT					
Name:					
Max acceptable size of vessel:					
Draft Limit:					
Transportation Procedure: *[Tenderer to provide detailed transportation method from mine to loading port]*					

Permit Information

Permit Type	Name of the Permit	Issuing Authority	Validity Period	Supporting Document
Mining Permit		**[Name of the competent authority]** **[Country]**	**From [Issuance Date] to [Expiry Date]**	Appendix 5.1: Mining Permit (Original & English Translation)
Sales & Transportation Permit		**[Name of the competent authority]** **[Country]**	**From [Issuance Date] to [Expiry Date]**	Appendix 5.3: Sales & Transportation Permit (Original & English Translation)
Export Permit		**[Name of the competent authority]** **[Country]**	**From [Issuance Date] to [Expiry Date]**	Appendix 5.2: Export Permit (Original & English Translation)

Appendices:

1. Appendix 5.1: Mining Permit (Original & English Translation)
2. Appendix 5.2: Export Permit (Original & English Translation)
3. Appendix 5.3: Sales & Transportation Permit (Original & English Translation)
4. Appendix 5.4: Map from Mine to Loading Port

Date:

(Signature) .....]
(Printed Name) .....
(Designation) .....
(Company Seal) .....

Attachment 6: Method Statement to Ensure Stable and Long-Term Coal Supply

To
Company Secretary
RPCL-NORINCO INTL POWER LIMITED
Asian Tower, 10th Floor, House # 52, Road # 21, Nikunja 2, Khilkhet,
Dhaka 1229, Bangladesh

Dear Sir,

With reference to our Tender Proposal No. .....[Reference No. of Proposal Letter] ..... Dated.....[*Date of Proposal Letter*] ... submitted against Tender Document for Supply of Coal for Patuakhali 1320 (2×660) MW Coal Fired Thermal Power Plant (Tender Document No.: PUR-007(CS/PATUAKHALI/OTM)/2024-25 Dated 06.11.2024) , we hereby furnish the required method statement to ensure stable and long-term coal supply as per requirement of ITT 21.1(q):

[Tenderer will propose method statement for the work covering the following areas including but not limited to: Scope, coal sourcing, coal transportation to loading port, coal storing, coal sampling and testing, quality control, management approach, environmental impact.]

Date:

(Signature) .....
(Printed Name) .....
(Designation) .....
(Company
Seal) .....

Attachment 7: History of Force Majeure Declaration

To
Company Secretary
RPCL-NORINCO INTL POWER LIMITED
Asian Tower, 10th Floor, House # 52, Road # 21, Nikunja 2, Khilkhet,
Dhaka 1229, Bangladesh

Dear Sir,

With reference to our Tender Proposal No. .....[Reference No. of Proposal Letter] ..... Dated.....[*Date of Proposal Letter*] ... submitted against Tender Document for Supply of Coal for Patuakhali 1320 (2×660) MW Coal Fired Thermal Power Plant(Tender Document No.: PUR-007(CS/PATUAKHALI/OTM)/2024-25 Date: 06.11.2024), we hereby furnish the following declaration of force majeure history of last 5 years as per requirement of ITT 21.1 (q):

Force Majeure Declaration

Sl No	Timeline of Force Majeure	Reason	Name of the Purchaser	Supporting Documents
1	From [Beginning Date] to [End Date]			[Appendix 8.1: Declaration Letter of Force Majeure to the Purchaser/End User]
2	From [Beginning Date] to [End Date]			[Appendix 8.1: Declaration Letter of Force Majeure to the Purchaser/End User]
3	From [Beginning Date] to [End Date]			[Appendix 8.1: Declaration Letter of Force Majeure to the Purchaser/End User]]
4	From [Beginning Date] to [End Date]			[Appendix 8.1: Declaration Letter of Force Majeure to the Purchaser/End User]]
5	From [Beginning Date] to [End Date]			[Appendix 8.1: Declaration Letter of Force Majeure to the Purchaser/End User]

Appendix:

1. Appendix 8.1: Declaration Letter of Force Majeure to the Purchaser/End User

Date:

(Signature) .....
(Printed Name)
(Designation) .....
(Company Seal) .....

Attachment 8: Loading Port Restrictions

To
Company Secretary
RPCL-NORINCO INTL POWER LIMITED
Asian Tower, 10th Floor, House # 52, Road # 21, Nikunja 2, Khilkhet,
Dhaka 1229, Bangladesh

Dear Sir,

With reference to our Tender Proposal No. .....[Reference No. of Proposal Letter] ..... Dated.....[Date of Proposal Letter] ... submitted against Tender Document for Supply of Coal for Patuakhali 1320 (2×660) MW Coal Fired Thermal Power Plant(Tender Document No.: PUR-007(CS/PATUAKHALI/OTM)/2024-25 Date: 06.11.2024), we hereby furnish the following loading port information as per requirement of ITT 21.1 (q):

We declare that, if awarded, as Supplier we shall provide to the Purchaser a safe berth/anchorage facility or area at the Loading Port where the Vessel can when fully laden safely reach and safely leave and where the Vessel can always lie safely afloat during loading. As Supplier, we guarantee that it can and will accept Vessels onto the berth/anchorage and into the Loading Port safely, if not specified therein, with the maximum beam, LOA and maximum draft of the Vessel alongside the berth/anchorage, and when sailing to leave the port, which is customary for the port/point of shipment. As Supplier, we shall indemnify the Purchaser in respect of all liabilities, losses, costs, expenses, claims demands or proceedings suffered or incurred by the Purchaser as a result of any breach of such guarantee.

Loading Port			
Location			
Coordinates			
Berth Length			
Berth Depth			
Channel Depth			
Maximum Permissible Vessel Limit			
LOA			
Breadth			
D.W.T.			
Draft			
Air Draft			
Permissible Vessel Type			
Shiploader(s)			
No & Type			
Capacity			
Outreach			

Clean Height			
Travel Distance			
Vessel de-ballasting rate			

Date:

(Signature) .....
(Printed Name)
(Designation) .....
(Company Seal) .....

Subcontractor Information (Form PG4-2A)

[This Form should be completed by each Subcontractor, preferably on its Letter-Head Pad]

Invitation for Tender No: *[IFT No]*

Tender Package No

Not applicable

Price Schedule for Goods (Form PG4-3A)

[Group A Tenders: Goods Manufactured/produced in Bangladesh]

Invitation for Tender No: **Date:**
Tender Package No:

Not applicable

Price Schedule for Goods (Form PG4-3B)

[Group B Tenders: Goods Manufactured/produced outside Bangladesh, to be imported]

Invitation for Tender No: **Date:**
Tender Package No:

To
Company Secretary
RPCL-NORINCO INTL POWER LIMITED
Asian Tower, 10th Floor, House # 52, Road # 21, Nikunja 2, Khilkhet,
Dhaka 1229, Bangladesh

Dear Sir,

With reference to our Tender Proposal No. .....[Reference No. of Proposal Letter] ..... Dated.....[*Date of Proposal Letter*] ... submitted against Tender Document for Supply of Coal for Patuakhali 1320 (2×660) MW Coal Fired Thermal Power Plant (Tender Document No.: PUR-007(CS/PATUAKHALI/OTM)/2024-25 Date: 06.11.2024), we hereby declare according to the ITT 23 that, for our proposed coal,

1. We hereby quote the following as our Tender Price, considering the complete scope of work, specifications and terms and conditions of the Tender Document for the Coal, having base parameters specified at sl. no. 4 below and in other sections of the Tender Document, for supply of coal thereof on FOBT basis, delivered at Coal Loading Port (CLP) for Patuakhali 1320 (2x660) MW Coal Fired Thermal Power Plant. We declare that the Tender price (P) in USD/MT shall include not limited to the FOBT price of Coal, logistics in the source country, port charges, stevedoring, and loading the Vessel at the Coal Loading Port, taxes, duties, levies in the Coal source country.

2. Tenderer is requested to submit the Tender Price (P) linked to Argus Media Indonesian Coal Index (ICI). The Tender Price shall be submitted linked to ICI-3 Index-5000 GAR.

   Tenderer will express the Tender Price in United States Dollar (USD).
   Tender Price (in USD/MT): P = ICI-3+F
   Where,
   ICI-3: Value of ICI-3, 5000 GAR published by Argus Media on last Friday 28 (twenty-eight) days prior to the date of opening of technical offer.
   Price Factor (F): Tenderer to provide plus or minus figure as Price Factor (F) which shall be applicable to derive Tender Price before unconditional discount. For example, if "F" is premium of $1 then please mention it as "plus $1.00" and if it is discount of $1 then please mention it as "minus $1.00".

Sl No.	Description	Tender Price (P) (USD/MT)	ICI3 Price (USD/MT)	Price Factor (F) (USD/MT)	Country of Origin of Coal
1.	Tender Price (P) for Supply of Coal for Patuakhali 1320 (2×660) MW Coal Fired Thermal Power Plant before unconditional discount	[In Figures].....			
		[In Words].....			

3. We hereby offer an unconditional discount on the Tender Price quoted under sl no.2 above:

Sl No.	Description	Price (USD/MT)
1.	unconditional discount on the Tender Price quoted under sl no.2 above:	[In Figures]..... [In words].....

4. We hereby confirm that for quoting the Tender Price (P) in the Financial Proposal, we have considered the following Coal Quality Base Specifications and values thereof as per ITT 23, besides other Coal quality parameters specified in the Tender Document:

No.	Parameter	Units	Base Specifications
1	Gross Calorific Value As Received Basis	Kcal/kg	5000
2	Total Moisture As Received Basis	%	25.2
3	Total Ash As Received Basis	%	9
4	Volatile Constituent Air Dried Basis	%	38.58
5	Total Sulfur As Received Basis	%	0.70
6	HGI		54
7	Ash Fusion Temperature (Reducing Initial Deformation)	°C	1320
8	Ash Fusion Temperature (Reducing Spherical)	°C	1380
9	Coal particles below 2mm	%	25.00

5. We hereby confirm that for quoting the Tender Price (P) in this Financial Proposal, we

have considered the reference index [...name of the reference index...] of date [.....d/m/y....] which is last Friday 28 (Twenty-Eight) days prior to the date of opening of **Technical Offer**. Relevant supporting document of reference index is attached.

6. We hereby confirm that for the purpose of adjustment, reference indices shall be in line with the stipulations of the Tender Document.
7. We hereby confirm that the Tender Price (P) shall be inclusive of, and not subject to any increase as a result of, all costs and expenses arising in the production, transport to the Loading Port, sale, delivery to and loading on board the relevant Vessel, and Trimming of the relevant Vessel, as well as all Taxes that any Government Instrumentality of the Country of Origin may impose on the sale or purchase of any Shipment to or by the Purchaser or on the Supplier in relation to any of the foregoing.
8. We agree to abide by this Financial Proposal for a period 150 days from the date of opening of Technical Proposal as stipulated in the Tender Document, unless otherwise extended, and it shall remain binding on us and may be accepted by you at any time before the expiration of the stipulated period.
9. Until a formal Contract is prepared and executed between us, this proposal, together with your written acceptance thereof in the form of your Notification of Award, shall constitute a binding contract between us.
10. We understand that you are not bound to accept the lowest or any other bid you may receive.

Attachment:

1. Attachment PG4-3B_1: Supporting Document of Reference Index on last Friday 28 (Twenty-Eight) days prior to the date of opening of **Technical Offer**.

Date:

(Signature) .....

(Printed Name) .....

(Designation) .....

(Company Seal) .....

Price Schedule for Goods (Form PG4-3C)

[Group B Tenders: Goods Manufactured/produced outside Bangladesh, already imported]

Invitation for Tender No: **Date:**
Tender Package No:

Not applicable

Price and Completion Schedule - Related Services (Form PG4-3D)

Invitation for Tender No: **Date:**
Tender Package No:

Not applicable

Specifications Submission and Compliance Sheet (Form PG4-4)

Invitation for Tender No: Date:

Tender Package No:

To
Company Secretary
RPCL-NORINCO INTL POWER LIMITED
Asian Tower, 10th Floor, House # 52, Road # 21, Nikunja 2, Khilkhet,
Dhaka 1229, Bangladesh

Dear Sir,
With reference to our Tender No. .....[Reference No. of Proposal Letter] ..... Dated.....*[Date of Proposal Letter]* ... submitted against Tender Document for Supply of Coal for Patuakhali 1320 (2×660) MW Coal Fired Thermal Power Plant(Tender Document No.: PUR-007(CS/PATUAKHALI/OTM)/2024-25 Date: 06.11.2024), we hereby submit the following coal specification as per requirement of Section 6: Schedule of Requirements:

Proposed Coal Specification

SL No	Description			Coal Quality Rejection Limit	Tenderer's Proposed Typical Value
1	**Gross Calorific Value As Received Basis**		Kcal/kg	**Min. 4800**	
2	**Total Moisture As Received Basis**		%	**Max. 32.2**	
3	**Approx. Analysis**	**Total Ash As Received Basis**	%	**Max. 12.6**	
4		**Volatile Constituent As Dried Basis**	%	**Min. 20 & Max. 43**	
5	**Total Sulfur As Received Basis**		%	**Max. 0.9**	
6	**HGI**		Points	**Min. 48**	
7	**Ash Fusion Temperature (Reducing Initial Deformation)**		℃	**Min. 1240**	
8	**Ash Fusion Temperature (Reducing Spherical)**		℃	**Min. 1280**	
9	**Coal Size below 2mm**		%	Max. 35	
10	Coal Size above 50mm		%	Max. 10 Over 300mm is not allowed	
11	Approx. Analysis	Resi. Moisture Air Dried Basis	%	Max. 25	
12		Fixed Carbon Air Dried Basis	%	Min. 45	
13	Ultimate Analysis	Carbon (Dry, Ash free)	%	Min. 45	

SL No	Description			Coal Quality Rejection Limit	Tenderer's Proposed Typical Value
14		Hydrogen (Dry, Ash free)		Max. 3.64	
15		Oxygen (Dry, Ash free)		Max. 13.19	
16		Nitrogen (Dry, Ash free)	%	Max. 0.86	
17		SiO_2 (Dry basis)		Max. 70.97	
18		Al_2O_3 (Dry basis)		Max. 19.92	
19		TiO_2 (Dry basis)		Max. 0.80	
20	Ash Analysis	Fe_2O_3 (Dry basis)		Max. 8	
21		CaO (Dry basis)		Max. 4.49	
22		MgO (Dry basis)	%	Max. 1.63	
23		$Na_2O+0.66*K_2O$ (Dry basis)		Max. 2.45	
24		Others (Dry basis)		Max. 5.06	

We declare that each of the above items shall be determined in accordance with the appropriate American Society for Testing and Materials standards as stated in GCC 32.1.

As the supporting document of the above-proposed coal specifications, the signed lab analysis reports of 3 shipments within last one (1) year reckoned from the date of opening of technical offer are attached here in Attachment PG4-4_1.

We acknowledge that, for evaluation purpose, in the event of any disparity between the above-proposed coal specification and the results from laboratory analysis as per attachment, the value that confers less advantage to the tenderer during the evaluation process will prevail.

We also acknowledge that, if awarded, we are committed to supply the coal maintaining the above proposed coal specification (Sl No 1-24) throughout contact term and if we fail to supply as per the above proposed coal specification, the Purchaser shall have **Right to Reject** the coal.

We also acknowledge that, in case, the sample of the attached lab analysis reports has not been taken from the proposed coal mine or the name of the proposed coal mine is not mentioned as source of sample in the attached lab analysis reports, the lab analysis reports will be considered as invalid and the tender could be rejected.

We also acknowledge that, the lab analysis reports will be considered as invalid and the tender could be rejected, in case, the sample of the attached lab analysis reports has not been issued by the following duly licensed independent and renowned laboratory as below:

i. PT. Anindya Wiraputra Konsult
ii. PT Geoservices Indonesia
iii. PT Leon Testing and Consulting Indonesia
iv. Bureau Veritas
v. Sucofindo
vi. SGS

Attachments:

1. Attachment PG4-4_1 : Signed Lab Analysis Reports of Proposed Coal Specifications.
2. Attachment PG4-4_2: Commitment Letter from Coal Mine regarding Coal Particle Size

Date:

(Signature) .....

(Printed Name) .....

(Designation) .....

(Company Seal) .....

[The Tenderer should complete all the columns as required]

Attachment PG4-4_2: Commitment Letter from Coal Mine Regarding Coal Particle Size

[The Tenderer shall require the Coal Mine Owner Company to fill in this Letter in accordance with the instructions indicated.]

Invitation for Tender No: Date:

Tender Package No:

Reference No.: *[insert reference no. of this letter]* Date: [insert date] d/m/y

To

[Name and Address of the Tenderer]

We *... [Name of the Coal Mine Owner Company] ...*, are aware that, *... [Name and Address of the Tenderer] ...* is participating in the tendering process for Supply of Coal for Patuakhali 1320 (2×660) MW Coal Fired Thermal Power Plant, (Tender Document No.: PUR-007(CS/PATUAKHALI/OTM)/2024-25 Date: 06.11.2024), issued by RPCL-NORINCO INTL POWER LIMITED (RNPL). We *...[Name of the Coal Mine Owner Company]...* are reputable supplier of Coal having the establishment at *...[Address of the Coal Mine Owner Company]...* .

If *...[Name of the Tenderer]...* is awarded as successful tenderer in the tendering process for Supply of Coal for Patuakhali 1320 (2×660) MW Coal Fired Thermal Power Plant, we do hereby confirm that, supplied coal from our coal mine named *...[Name of the Coal Mine]...* for full contract term as per (Tender Document No.: PUR-007(CS/PATUAKHALI/OTM)/2024-25 Date: 06.11.2024) will meet the following Coal Quality Rejection Limit as described in Article 2 of Section 7: Technical Specifications of the Tender Document:

No.	Parameter	Units	Base Specifications	Coal Quality Rejection Limits
9	Coal particles below 2mm	%	25.00	Above 35.00

For any kind of queries from RNPL, we will be available to receive and respond through below-signed person and contact details.

Signed: *[insert signature(s) of authorized representative(s) of the Coal Mine Owner Company]*

Name: *[insert complete name(s) of authorized representative(s) of the Coal Mine Owner Company]*

Address: *[insert full address including Fax, Phone and e-mail]*

Title: *[insert title]*

Date: *[insert date of signing*

Commitment Letter from Goods Producer (Form PG4 - 5)

[The Tenderer shall require the Coal Mine Owner Company to fill in this Form in accordance with the instructions indicated. This letter of authorization should be on the letterhead of the Coal Mine Owner Company and should be signed by a person with the proper authority to sign documents that are binding on the Coal Mine Owner Company. The Tenderer shall include it in its tender, if so indicated in the ***TDS as stated under ITT Sub-Clause26.1(b)****]*

Invitation for Tender No: Date:

Tender Package No:

Reference No.: *[insert reference no. of this letter]* Date: [insert date] d/m/y

To

[Name and Address of the Tenderer]

We *... [Name of the Coal Mine Owner Company] ...*, are aware that, *... [Name and Address of the Tenderer] ...* is participating in the tendering process for Supply of Coal for Patuakhali 1320 (2×660) MW Coal Fired Thermal Power Plant, (Tender Document No.: PUR-007(CS/PATUAKHALI/OTM)/2024-25 Date: 06.11.2024), issued by RPCL-NORINCO INTL POWER LIMITED (RNPL). We *...[Name of the Coal Mine Owner Company]...* are reputable supplier of Coal having the establishment at *...[Address of the Coal Mine Owner Company]...* .

If *...[Name of the Tenderer]...* is awarded as successful tenderer in the tendering process for Supply of Coal for Patuakhali 1320 (2×660) MW Coal Fired Thermal Power Plant, we do hereby confirm to support *...[Name of the Tenderer]...* in providing required coal from our coal mine named *...[Name of the Coal Mine]...* for full contract term as per (Tender Document No.: PUR-007(CS/PATUAKHALI/OTM)/2024-25 Date: 06.11.2024)

For any kind of queries from RNPL, we will be available to receive and respond through below-signed person and contact details.

Signed: *[insert signature(s) of authorized representative(s) of the Coal Mine Owner Company]*

Name: *[insert complete name(s) of authorized representative(s) of the Coal Mine Owner Company]*

Address: *[insert full address including Fax, Phone and e-mail]*

Title: *[insert title]*

Date: *[insert date of signing]*

Bank Guarantee for Tender Security (Form PG4 – 6)

[this is the format for the Tender Security to be issued by a scheduled bank of Bangladesh as stated under ITT Clauses 29 and 30]

Invitation for Tender No: Date:

Tender Package No:

To:
[Name and address of Purchaser]

TENDER GUARANTEE No:

We have been informed that *[insert name of Tenderer]* (hereinafter called "the Tenderer") intends to submit to you its Tender dated *[insert date of Tender]* (hereinafter called "the Tender") for the supply of *[description of goods and related services]* under the above Invitation for Tenders (hereinafter called "the IFT").

Furthermore, we understand that, according to your conditions, Tenders must be supported by a Bank Guarantee for Tender Security .

At the request of the Tenderer, we *[insert name of bank]* hereby irrevocably undertake to pay you, without cavil or argument, any sum or sums not exceeding in total an amount of USD/BDT *[whichever currency applicable to Tenderer should be chosen] [insert amount in figures and in words]* upon receipt by us of your first written demand accompanied by a written statement that the Tenderer is in breach of its obligation(s) under the Tender conditions, because the Tenderer:

a. has withdrawn its Tender after opening of Tenders but within the validity of the Tender Security ; or
b. refused to accept the Notification of Award (NOA) within the period as stated under Instructions to Tenderers (ITT) ; or
c. failed to furnish Performance Security within the period as stipulated in the NOA; or
d. refused to sign the Contract Agreement by the time specified in the NOA; or
e. did not accept the correction of the Tender price following the correction of the arithmetic errors in accordance with the ITT; or

This guarantee will expire:

(a) if the Tenderer is the successful Tenderer, upon our receipt of a copies of the contract signed by the Tenderer and the Performance Security issued to you in accordance with the ITT; or

(b) if the Tenderer is not the successful Tenderer, twenty eight (28) days after the expiration of the Tenderer's Tender validity period, being [*date of expiration of the Tender validity plus twenty eight(28) days]*

Consequently, we must receive at the above-mentioned office any demand for payment under this guarantee on or before that date.

Signature Seal

Letter of Commitment for Bank's Undertaking for Line of Credit (Form PG4-6A)

*[This is the format for the Credit Line to be issued by any internationally reputable bank in accordance with **ITT Clause 26.1(d)**]*

Memo No.: Date:

Invitation for Tender No: Date:

Tender Package No:

To:

[*Name and address of the Procuring Entity*]

CREDIT COMMITTMENT No: [*insert number*]

We have been informed that *[name of Tenderer]* (hereinafter called "the Tenderer") intends to submit to you its Tender (hereinafter called "the Tender") for the supply of Goods of *[description of Goods and related services]* under the above Invitation for Tenders (hereinafter called "the IFT").

Furthermore, we understand that, according to your conditions, the Tenderer's Financial Capacity i.e. Liquid Asset must be substantiated by a Letter of Commitment of Bank's Undertaking for Line of Credit.

At the request of, and arrangement with, the Tenderer, we *[name and address of the Bank]* do hereby agree and undertake that [*name and address of the Tenderer*] will be provided by us with a revolving line of credit, in case awarded the Contract, for the delivery of Goods and related services viz. [*insert name of supply*], for an amount not less than [*name of currency(s)*] [*Amount in figure*] (*in words*) for the sole purpose of the supply of Goods and related services under the above Contract. This Revolving Line of Credit will be maintained by us until issuance of "**Acceptance Certificate**" by the Procuring Entity.

In witness whereof, authorised representatives of the Bank have hereunto signed and sealed this Letter of Commitment.

Name and Signature Name and Signature

Notification of Award (Form PG4 - 7)

Contract No: Date:
To:

[Name of Contractor]

This is to notify you that your Tender dated *[insert date]* for supply of coal for the Contract Price of unit price of ICI3+F per Metric Tonne as corrected and modified in accordance with the Instructions to Tenderers, has been approved by *[name of Purchaser]*.

You are thus requested to take following actions:

i. accept in writing the Notification of Award within seven (7) working days of its issuance pursuant to ITT Sub-Clause 62.3

ii. furnish a Performance Security in the specified format and in the amount of USD/BDT *[whichever currency applicable to Tenderer should be chosen] [state amount in figures and words]* ,within Twenty-eight (28) days from issue of this Notification of Award but not later than *(specify date),* in accordance with ITT Clause 64.2

iii. sign the Contract within twenty eight (28) days of issuance of this Notification of Award but not later than *(specify date),* in accordance with ITT Clause 67.2

You may proceed with the execution of the supply of Goods and related Services only upon completion of the above tasks. You may also please note that this Notification of Award shall constitute the formation of this Contract, which shall become binding upon you.

We attach the draft Contract and all other documents for your perusal and signature.

Signed

Duly authorised to sign for and on behalf of *[name of Purchaser]*

Date:

Contract Agreement (Form PG4 - 8)

THIS AGREEMENT made the *[day]* day of *[month] [year]* between *[name and address of Purchaser]* (hereinafter called "the Purchaser") of the one part and *[name and address of Supplier]* (hereinafter called "the Supplier") of the other part:

WHEREAS the Purchaser invited Tenders for supply of coal and has accepted a Tender by the Supplier for the supply of coal at unit price of ICI3+F per Metric Tonne (hereinafter called "the Contract Price") for a period of five (5) years under certain Terms and Conditions of the contract.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the General Conditions of Contract hereafter referred to.
2. The following documents forming the Contract shall be in the following order of precedence, namely :
    - (a) the signed Form of Contract Agreement;
    - (b) the Notification of Award
    - (c) The Tender and the appendices to the Tender
    - (d) Particular Conditions of Contract;
    - (e) General Conditions of Contract;
    - (f) Technical Specifications;
    - (g) Drawings;
    - (h) Price Schedules and Schedule of Requirements and;
    - (i) other document including correspondences listed in the PCC forming part of the Contract
3. In consideration of the payments to be made by the Purchaser to the Supplier as hereinafter mentioned, the Supplier hereby covenants with the Purchaser to provide the goods and related services and to remedy any defects therein in conformity in all respects with the provisions of the Contract.
4. The Purchaser hereby covenants to pay the Supplier in consideration of the provision of the goods and related services and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of Bangladesh on the day, month and year first written above.

For the Purchaser:	For the Supplier:
Signature	
Print Name	
Title	
In the presence of Name Address	

Bank Guarantee for Performance Security (Form PG4 – 9)

*[This is the format for the Performance Security to be issued by **an internationally reputable bank and it shall have correspondent bank located in Bangladesh, to make it enforceable** in accordance with ITT Sub-Clause 64.1 pursuant to Rule 27(4) of the Public Procurement Rules, 2008.]*

Contract No: Date:

To:

[Name and address of Purchaser]

PERFORMANCE GUARANTEE No: *[insert Performance Guarantee number]*

We have been informed that *[name of supplier]* (hereinafter called "the Supplier") has undertaken, pursuant to Contract No *[reference number of Contract]* dated *[date of Contract]* (hereinafter called "the Contract") for the supply of *[description of goods and related services]* under the Contract.

Furthermore, we understand that, according to your conditions, Contracts must be supported by a performance guarantee.

At the request of the Supplier, we *[name of bank]* hereby irrevocably undertake to pay you, without cavil or argument, any sum or sums not exceeding in total an amount of USD/BDT *[whichever currency applicable to Tenderer should be chosen] [insert amount in figures and in words]* upon receipt by us of your first written demand accompanied by a written statement that the Supplier is in breach of its obligation(s) under the Contract conditions, without you needing to prove or show grounds or reasons for your demand of the sum specified therein.

This guarantee is valid until *[date of validity of guarantee]*, consequently, we must receive at the above-mentioned office any demand for payment under this guarantee on or before that date.

[Signatures of authorized representatives of the bank]

Signature Seal

Bank Guarantee for Advance Payment (Form PG4 – 10)

[this is the format for the Advance Payment Security to be issued by ***an internationally reputable bank and it shall have correspondent bank located in Bangladesh, to make it enforceable*** *in accordance with GCC Clause 27.1]*

Contract No: Date:

To:

[Name and address of Purchaser]

ADVANCE PAYMENT GUARANTEE No:

We have been informed that *[name of supplier]* (hereinafter called "the Supplier") has undertaken, pursuant to Contract No *[reference number of Contract]* dated *[date of Contract]* (hereinafter called "the Contract") for the supply of *[description of goods and related services]* under the Contract.

Furthermore, we understand that, according to your Particular Conditions of Contract Clause 26.1, Advance Payment(s) on Contracts must be supported by a bank guarantee.

At the request of the Supplier, we *[name of bank]* hereby irrevocably undertake to pay you, without cavil or argument, any sum or sums not exceeding in total an amount of Tk *[insert amount in figures and in words]* upon receipt by us of your first written demand accompanied by a written statement that the Supplier is in breach of its obligation(s) under the Contract conditions, without you needing to prove or show grounds or reasons for your demand of the sum specified therein.

We further agree that no change, addition or other modification of the terms of the Contract to be performed, or of any of the Contract documents which may be made between the Purchaser and the Supplier, shall in any way release us from any liability under this guarantee, and we hereby waive notice of any such change, addition or modification.

This guarantee is valid until *[date of validity of guarantee]*, consequently, we must receive at the above-mentioned office any demand for payment under this guarantee on or before that date.

[Signatures of authorized representatives of the bank]

Signature Seal

Section 6. Schedule of Requirements

Invitation for Tender No: Date
Tender Package No:

Article 1. Brief Summary List of Goods and Delivery Schedule

This Contract shall come into effect on the Execution Date (Date of Contract Signing) and continue in full force and effect until 31st December of the calendar year in which the fifth (5th) anniversary of the First Delivery Date occurs, unless terminated earlier in accordance with the terms hereof (the "Term").

The Purchaser shall issue a **Notice of First Delivery Year**, which shall specify the date (the first day of the **Laycan**) to be the **First Delivery Date**.

Completion Schedule

Item No.	Description of Item	Unit of Measurement	Minimum Delivery Year Quantity	Maximum Delivery Year Quantity	Point of Delivery	Laycans
1	2	3	4	5	6	7
1	Coal FOBT	Metric Tonnes	A* × 1,300,000	A* × 4,000,000	Loading Port acceptable to RNPL	As per Order of Coal, starting from the First Delivery Date to the end of the First Delivery Year.
2	Coal FOBT	Metric Tonnes	1,300,000	4,000,000	Loading Port acceptable to RNPL	As per Order of Coal, for the second Delivery Year.
3	Coal FOBT	Metric Tonnes	1,300,000	4,000,000	Loading Port acceptable to RNPL	As per Order of Coal, for the third Delivery Year.
4	Coal FOBT	Metric Tonnes	1,300,000	4,000,000	Loading Port acceptable to RNPL	As per Order of Coal, for the fourth Delivery Year.
5	Coal FOBT	Metric Tonnes	B# × 1,300,000	B# × 4,000,000	Loading Port acceptable to RNPL	As per Order of Coal, for the Final Delivery Year.

For the First Delivery Year and Final Delivery Year, the Quantity set out in this schedule shall be adjusted pro rata to reflect the number of days in each such Delivery Year.

* A = the number of days from the First Delivery Date to 31st December of the First Delivery Year / 365.

B = the number of days from the 1st January of the Final Delivery Year to the date when the Contract terminates or 31st December of the Final Delivery Year, as the case may be / 365.

In case the actual quantity of Coal for each Delivery Year ordered by the Purchaser and delivered by the Supplier is less than the quantity as stated in the Completion Schedule, the balance portion for each Delivery Year will be carried forwarded to the next Delivery Year, and the Annual Delivery Quantity for the next Delivery Year will be amended and notified to the Supplier.

Article 2 TERM OF AGREEMENT

2.1 Delete.

2.2 Delete.

2.3 Notice of First Delivery Date

2.3.1 The Parties agree that the commencement of **Commercial Delivery Period** and the first Delivery Year (the "**First Delivery Date**") shall occur after the Commercial Operation Date, which is presently expected to occur between 28th February and 30th April 2025. The First Delivery Date shall be established in accordance with the following provisions:

(a) Not later than ninety (90) days prior to the occurrence of First Delivery Date, the Purchaser shall by notice to the Supplier nominate the "**First Commercial Delivery Window**", being a period of two hundred and forty-five (45) days during which the First Delivery Date shall occur.

(b) At least forty-five (45) days prior to the commencement of the First Commercial Delivery Window, the Purchaser shall by notice to the Supplier nominate the "**Second Commercial Delivery Window**", being a period of twenty (20) days falling entirely within the First Commercial Delivery Window.

(c) At least twenty (20) days prior to the commencement of the Second Commercial Delivery Window, the Purchaser shall issue the **Commencement Notice of Commercial Delivery**, which shall specify the date (the first day of the **Laycan**) falling within the Second Commercial Delivery Window to be the First Delivery Date.

2.3.2 Determination of subsequent delivery of each Shipment shall be carried out in accordance with Clause 6.4 of Article 6 of Section 6: Schedule of Requirements.

2.3.3 The Purchaser can exercise a one-time right to extend the First Delivery Date up to ninety (90) days, subject to such right being exercised at least twenty (20) days prior to commencement of the First Delivery Date.

2.3.4 If an Event of Force Majeure occurs prior to the **First Delivery Date** which has the effect of impeding the Purchaser's ability to accept delivery of Coal under this Agreement or the Supplier's ability to make delivery of such Coal by the **First Delivery Date** (if already nominated or ascertained), then the **First Delivery Date** shall be extended by the period of the delay caused by the Event of Force Majeure.

2.3.5 Delete.

2.4 Term

2.4.1. This Agreement shall come into effect on the **Execution Date** (Date of Contract Signing) and continue in full force and effect until 31st December of the calendar year in which the fifth (5th) anniversary of **the First Delivery** Date occurs, unless terminated earlier in accordance with the terms hereof (the "**Term**").

2.4.2. Delete.

2.4.3. Delete.

2.5 Delete.

Article 3 COAL QUALITY AND SOURCE

3.1 Coal Quality Specifications

All Coal, when delivered by the Supplier to the Purchaser under this Agreement, shall (a) be of substantially uniform quality throughout and suited for bulk sea transport, (b) comply with the **Coal Condition Undertaking** in Clause 3.2 of Article 3 of Section 6: Schedule of Requirements, and (c) comply with the **Coal Quality Specifications** provided in Article 1 of Section 7: Technical Specifications.

3.2 Non-Contamination

The Supplier shall inspect and remove any **Contaminants** such as bone, shale, rock, dirt, clay, wood, rocks, plant matter, garbage, iron or steel, nonferrous materials, blast materials, salt, petroleum coke, pitch, pitch coke, tar sludge and or other extraneous material prior to loading of the coal at the Loading Port.

The Supplier shall, at its own cost, task the **Independent Surveyor** at the Loading Port to exclude **Contaminants** (if any) from the Coal prior to loading of the coal at the Loading Port.

The Supplier undertakes to the Purchaser that all Coal, on delivery by the Supplier to the Purchaser, shall be substantially free of **Contaminants** (the "**Coal Condition Undertaking**").

3.3 Source of Coal

3.3.1 Without prejudice to Clauses 3.1 and 3.2 of Article 3 of Section 6: Schedule of Requirements, and unless otherwise agreed in writing by the Purchaser pursuant to Clause 3.4 of Article 3 of Section 6: Schedule of Requirements, all Coal supplied by the Supplier to the Purchaser under this Agreement shall have been produced from the Mines covered by the **Mining Rights Authorizations** only. Mixing Coal from different mines is strictly forbidden.

3.3.2 The Supplier shall provide a **Certificate of Origin** to the Purchaser in respect of each Shipment under this Agreement.

3.3.3 The Supplier shall maintain throughout the **Term** all legal rights granted under the **Mining Rights Authorizations** or otherwise necessary to produce, transport, and sell Coal to the Purchaser for export in accordance with the terms of this Agreement and in compliance with all applicable Legal Requirements.

3.4 Substitute Coal

3.4.1 In case the Supplier intends to substitute a coal from a source other than that identified in Clause 3.3.1 of Article 3 of Section 6: Schedule of Requirements ("**Substitute Coal**"), it shall obtain the Purchaser's prior written consent, which consent shall not be unreasonably withheld, provided that the following conditions shall be satisfied:

(a) the **Substitute Coal** is within the minimum and maximum ranges or other tested value stated in the **Coal Quality Specifications**;

(b) the **Delivered Price** of the Substitute Coal shall be determined as provided in GCC 25 and PCC 25.1.3, except to the extent such **Substitute Coal** is being supplied by the Supplier to mitigate an **Event of Force Majeure** affecting the Supplier on other terms agreed by the Parties;

(c) the Supplier shall be responsible for any transportation costs for Substitute Coal that exceed the costs of transporting Coal from the Loading Port to the **Discharge Port**, except to the extent such **Substitute Coal** is being supplied by the Supplier to mitigate an **Event of Force Majeure** on other terms agreed by the Parties; and

(d) the Supplier's written request shall set forth in detail:

(i) the reason(s) for the proposed substitution;

(ii) the duration, Shipments, or quantity covered by the proposed substitution; and

(iii) without prejudice to the requirements of Clause 3.4 of Article 3 of Section 6: Schedule of Requirements, the specifications of the proposed Substitute Coal in respect of all of the quality parameters set out in Article 1 of Section 7: Technical Specifications.

3.4.2 If the Purchaser approves any such request in writing, such **Substitute Coal** shall be treated as "Coal" for all other purposes and subject to all other terms and conditions of this Agreement.

3.5 Title

3.5.1 At the time of delivery at the **Loading Port,** the Supplier shall have good title to all Coal delivered to the Purchaser under this Agreement.

3.5.2 All Coal delivered shall be free and clear of all liens, charges, mortgages, pledges, security interests, claims for Taxes or royalties or other such encumbrances, claims or any other rights of Third Parties competing with those of the Purchaser. The Supplier shall indemnify and hold the Purchaser harmless from and against any such liens, charges, mortgages, pledges, security interests, claims for Taxes or royalties or other such encumbrances, claims or rights of Third Parties against any Coal supplied to the Purchaser under this Agreement.

3.6 Maintenance of Reserves

3.6.1 The Supplier undertakes that throughout the Term:

(a) it shall, consistent with good mining practice maintain that quantity of Coal in **Marketable Coal Reserves** (includes Proved and Probable Coal Reserves) in the area covered by its **Mining Rights Authorizations** as may be required (after taking into consideration all of the Supplier's obligations to other purchasers) for full performance of the Supplier's obligations hereunder; and

(b) it shall not contract to sell Coal from its Marketable Coal Reserves to Third Parties in quantities that could jeopardize the Supplier's ability to deliver the Maximum Delivery Year Quantity of Coal that the Purchaser is entitled to purchase from Supplier under this Agreement or that could cause Supplier to interrupt or delay any deliveries to be made to the Purchaser under this Agreement.

3.6.2 The Supplier, promptly following any written request the Purchaser may make from time to time, shall confirm that it is in compliance with Clause 3.6 of Article 3 of Section 6: Schedule of Requirements.

3.7 Review of Reserves and Production

3.7.1 The Supplier, at its expense, shall provide the Purchaser with such information as the Purchaser may, from time to time, reasonably request concerning the Supplier's **Marketable**

Coal Reserves, **Proved Coal Reserves**, and **Probable Coal Reserves**, its production capacity, and its total contractual commitments to supply and deliver Coal.

3.7.2 The Purchaser, at its expense, may from time to time appoint an independent and reputable firm, reasonably acceptable to the Supplier, to verify the sufficiency, in light of the Supplier's total contractual commitments to supply and deliver Coal, of the Supplier's **Marketable Coal Reserves**, **Proved Coal Reserves**, and **Probable Coal Reserves** and its production capacity. The Supplier hereby agrees to provide access to its data room and all other reasonable assistance to the Purchaser's selected independent firm in connection with such review, subject to the independent firm entering into a non-disclosure agreement with the Supplier. The Supplier shall also provide such independent firm access to visually inspect its mining sites at times reasonably agreed with the Purchaser with a view towards minimizing any interference with site operations by the Supplier.

Article 4 QUANTITY

4.1 Delete

4.2 Delivery Years

4.2.1. In each Delivery Year, the Supplier shall supply and sell to Purchaser the quantity (the "**Annual Delivery Quantity**") of Coal ordered by the Purchaser in accordance with Article 6 of Section 6: Schedule of Requirements up to the **"Maximum Delivery Year Quantity"**, which shall be notified by Purchaser to Supplier at least ninety (90) days before the commencement of the each Delivery Year and shall not be more than **4,000,000.00 Metric Ton**; provided that except as provided herein and subject to Clause 4.2.2 and Clause 4.4 **of Article 4 of Section 6: Schedule of Requirements** and GCC 38 and PCC 38.1, GCC 38 and PCC 38.2, GCC 39 and PCC 39.4, GCC 40 and PCC 40.3, GCC 41 and PCC 41.6,the **Annual Delivery Quantity** shall not be less than 1,300,000 Tonnes in each Delivery Year (the "**Minimum Delivery Year Quantity**").

4.2.2. For the **First Delivery Year** and **Final Delivery Year**, the **Minimum Delivery Year Quantity** and **Maximum Delivery Year Quantity** set out in Clause 4.2 of Section 6: Schedule Requirements shall be adjusted **pro rata** to reflect the number of days in each such Delivery Year. The **Maximum Delivery Year Quantity** and **Minimum Delivery Year Quantity** shall be inclusive of shipping tolerance of plus or minus 10%.

4.3 Notification of Quantity

4.3.1. On or before 1 November in the previous Delivery Year, the Purchaser shall notify the Supplier of the estimated quantity of Coal it requires from the Supplier for the next Delivery Year (the "**Annual Delivery Quantity**"). Such quantity shall be determined in accordance with Clause 6.4 of Article 6 of Section 6: Schedule of Requirements. Unless otherwise specified in the notice provided by the Purchaser and agreed by the Supplier, the portion of the **Annual Delivery Quantity** delivered in each **Delivery Month** shall, except in the case of an **Event of Force Majeure** or a **Scheduled Outage** or an **Extended Forced Outage**, be as follows and adjusted as per Clause 6.4 of Article 6 of Section 6: Schedule of Requirements:

between ..... Tonnes (minimum) and ..... Tonnes (maximum) to be delivered from ..... onwards, *provided* aggregate tonnage for any three (3) month period shall be between ..... and ..... Tonnes.

4.3.2. In any Delivery Year in which (i) a Scheduled Outage is scheduled by the Purchaser to occur or (ii) an **Extended Forced Outage** occurs, then the Purchaser shall provide at least forty-five (45) days' notice in advance of the relevant Delivery Month to readjust the delivery schedule in such Delivery Month.

4.4 Increased Coal Requirements

4.4.1. The Purchaser shall have the option to purchase any additional Coal ("**Additional Quantity**") in a Delivery Year in excess of/addition to the Annual Delivery Quantity for such Delivery Year and shall have the same Delivered Price as determined pursuant to GCC 25 and PCC 25.1, GCC 27 and PCC 27.1, GCC 37 and PCC 37.2 (provided that in the First Delivery Year and the Final Delivery Year such Additional Quantity shall be a **prorated** quantity) by providing notice on or before **1st February** of such Delivery Year. The Purchaser may exercise such option, and the Supplier shall supply and sell to the Purchaser any such **Additional Quantity** in a Delivery Year nominated by the Purchaser.

4.4.2. The Delivered Price for such Additional Quantity shall be determined in accordance with GCC 25 and PCC 25.1.3 and shall not in any event include any surcharge.

4.4.3. In the event Purchaser exercise the option to buy **Additional Quantity** as per Clause 4.4 of Article 4 of Section 6: Schedule of Requirements above, the Maximum and Minimum Delivery Year Quantity for that specific Delivery Year shall remain unchanged as specified in Clause 4.2 of Article 4 of Section 6: Schedule of Requirements.

4.5 Change in a Delivery Month Quantity

4.5.1. Increases in a Delivery Month Quantity

4.5.1.1. If the Purchaser wishes to schedule delivery of a Shipment of Coal for a date in a Delivery Month on less than forty (40) days' prior written notice to the Supplier (an "**Emergency Shipment**"), the Supplier shall supply the Emergency Shipment on the following terms:

(a) The Purchaser shall provide the Supplier with at least thirty (30) days' prior written notice of the delivery date at the Loading Port for the **Emergency Shipment**.

(b) The Delivered Price for such Additional Quantity shall be determined in accordance with GCC 25 and PCC 25.1.3 and shall not in any event include any surcharge.

(c) The Emergency Shipment shall be counted towards the **Minimum Delivery Year Quantity** and **Maximum Delivery Year Quantity** for the relevant Delivery Year, as applicable.

(d) The Delivery Schedule for the remainder of the Delivery Year shall be adjusted as necessary such that the aggregate quantity of Coal delivered or scheduled to be delivered to the Purchaser shall not exceed the **Maximum Delivery Year Quantity** for the relevant Delivery Year, as applicable.

4.5.1.2. For the avoidance of doubt, if Purchaser orders any **Additional Quantity** as provided in Clause 4.4 of Article 4 of Section 6: Schedule of Requirements from the Supplier upon at least thirty (30) days' advance written notice, the Delivered Price for such Additional Quantity shall be determined in accordance with GCC 25 and PCC 25.1.3 and shall not in any event include any surcharge.

4.5.2. Decrease in a Delivery Month Quantity

4.5.2.1. The Purchaser, after transmitting to the Supplier a final written order for the Delivery Month Quantity pursuant to Clause 6.4.5 of Article 6 of Section 6: Schedule of Requirements, may cancel one or more shipments in that Delivery Month that have been ordered pursuant to Clause 6.4.5 of Article 6 of Section 6: Schedule of Requirements or are included in a **Delivery Schedule** established pursuant to Clause 6.4.3 of Article 6 of Section 6: Schedule of Requirements by written notice to the Supplier on the following terms in this Clause 4.5 of Article 4 of Section 6: Schedule of Requirements.

4.5.2.2. If the Purchaser issues a such written notice for a shipment to be cancelled after the Opening Layday or at most ten (10) days before the commencement of loading of the shipment, the Purchaser shall pay the Supplier an amount equal to the expected quantity of the scheduled shipment multiplied by USD 1.00 per Tonne as full compensation to the Supplier for the damages suffered by it as a consequence of the cancellation of this shipment.

4.5.2.3. If the Purchaser issues a such written notice for a shipment to be cancelled before the Opening Layday or at least eleven (11) days before the commencement of loading of the shipment, the Purchaser shall not necessarily pay the Supplier any amount as a result of the cancellation of this shipment.

4.5.2.4. Notwithstanding the foregoing, the Purchaser shall have no liability to make any payment to the Supplier under this Clause 4.5.2 of Article 4 of Section 6: Schedule of Requirements in respect of:

(a) any reduction in anticipated quantities of Coal to be ordered in a Delivery Month that occurs prior to the date the Purchaser issues a written order of a Delivery Month Quantity pursuant to Clause 6.4.5 of Article 6 of Section 6: Schedule of Requirements; and/ or

(b) any cancellation or delay of a delivery, even if included in a written order for a Delivery Month Quantity under Clause 6.4.5 of Article 6 of Section 6: Schedule of Requirements that is due to (i) an **Event of Force Majeure** affecting the Purchaser or (ii) a **Change in Legal Requirement** that is the subject of Clause GCC 37.2 and PCC 37.2.3.

4.6 Expected Supply Shortfalls

4.6.1 The Supplier shall promptly notify the Purchaser of any expected reduction in its ability to meet its obligations to supply Coal in accordance with the quantity and scheduling requirements of this Agreement (an "**Expected Supply Shortfall**"), whether due to a **Supply Failure**, an **Event of Force Majeure**, or any other cause. Within not more than five (5) further Business Days, the Supplier shall provide the Purchaser with a "**Supply Shortfall Remedial Plan**." The **Supply Shortfall Remedial Plan** shall:

(a) explain the cause and extent of the **Expected Supply Shortfalls**;

(b) describe the actions the Supplier will take to mitigate or avoid such Expected Supply Shortfalls;

(c) propose sourcing of a Substitute Coal; and

(d) propose a reduced delivery schedule that the Supplier reasonably believes can be met until such time as the Supplier is able to comply with its full delivery obligations under this Agreement.

4.6.2 The Purchaser shall be entitled to approve or disapprove the **Supply Shortfall Remedial Plan** in its discretion, and shall notify the Supplier of such decision in writing within **ten (10) Business Days** after receipt of the **Supply Shortfall Remedial Plan**.

4.6.3 If a **Supply Shortfall Remedial Plan** is required due to a **Supply Failure** and the Purchaser approves a **Supply Shortfall Remedial Plan** proposed by the Supplier, the Purchaser shall not arrange for **Mitigating Purchases** under Clause 4.7.3 of Article 4 of Section 6: Schedule of Requirements in respect of any quantities of Coal that the Supplier supplies in accordance with the approved **Supply Shortfall Remedial Plan**.

4.6.4 If a **Supply Shortfall Remedial Plan** is required due to a **Supply Failure** and the Purchaser does not approve a **Supply Shortfall Remedial Plan** proposed by the Supplier, the Purchaser shall remain entitled to arrange **Mitigating Purchases** in accordance with Clause 4.7.3 of Article 4 of Section 6: Schedule of Requirements.

4.6.5 If a **Supply Shortfall Remedial Plan** is required due to an **Event of Force Majeure**, the Purchaser's approval or disapproval of the **Supply Shortfall Remedial Plan** shall be without prejudice to the rights and obligations of the Parties under GCC 41 and PCC 41.6.

4.7 Supply Failures

4.7.1 Each of the following events, if not due to an Event of Force Majeure affecting the Supplier, shall constitute a "**Supply Failure**":

(a) the Supplier fails to schedule delivery of one or more Shipments in accordance with Clause 6.4.3 and Clause 6.4.5 of Article 6 of Section 6: Schedule of Requirements;

(b) the Supplier fails to deliver any part of a Shipment scheduled in accordance with Clause 6.4.3 and Clause 6.4.5 of Article 6 of Section 6: Schedule of Requirements within seven (7 days) after the last day of the relevant **Laycan** for reasons other than a delay in the arrival of the nominated Vessel or congestion at the Loading Port; or

(c) the Supplier delivers any Coal that does not comply with the **Coal Quality Rejection Limits**;

(d) the Supplier delivers any Coal that the Purchaser rejects pursuant to Article 5 of Section 6: Schedule of Requirements.

4.7.2 In the event of any **Supply Failure**, the Supplier shall reimburse the Purchaser for all reasonable costs, expenses, and fees incurred by the Purchaser as a consequence of cancelling or rescheduling shipping arrangements from the **Loading Port** due to the Supply Failure.

4.7.3 The Purchaser shall be entitled to remedy any **Supply Failure** by making one or more purchases of Coal from a Third Party (in each case, a "**Mitigating Purchase**") in an aggregate amount equal to the quantity as evidenced by a **Certificate of Weight** included in the **Mitigating Purchase** and shall not be more than the quantity of Coal the Supplier has failed or is expected to fail to deliver; provided that (i) the Purchaser has notified the Supplier in writing that it intends to make such **Mitigating Purchase(s)**, (ii) the terms of the **Mitigating Purchase(s)** are commercially reasonable under the circumstances, and (iii) the Purchaser has used its reasonable efforts to schedule the delivery of the **Mitigating Purchase(s)** within thirty (30) days after the date or respective dates of the Shipments that the Supplier has failed or is expected to fail to deliver. Following the Purchaser's completion of any such **Mitigating Purchase**, the Purchaser shall be entitled to invoice the Supplier and the Supplier shall pay the Purchaser the sum, if positive, of

(a) the difference between:

(i) the price paid by the Purchaser for delivery FOBT of the quantity of Coal purchased in the **Mitigating Purchase**, adjusted for Gross Calorific Value, Sulphur Content, Moisture Content and Ash Content of the Coal delivered in the **Mitigating Purchase**, and including all other costs, expenses or Taxes of the kind that would have been included in the Delivered Price under GCC 25 and PCC 25.1.2, as if such Coal had been delivered to the Purchaser under this Agreement, and

(ii) the Delivered Price that would have been payable by the Purchaser to the Supplier for the same quantity of Coal,

which difference may be positive or negative; **plus**

(b) the difference between:

(i) the transportation costs paid by the Purchaser in procuring transport of the quantity of Coal included in the Mitigating Purchase to the Facility Site, and

(ii) the transport price that would have been payable by the Purchaser to a shipper for transporting such quantity of Coal from the Loading Port to the Facility Site for arrival on the same date the Coal included in the Mitigating Purchase is delivered to the Facility Site,

which difference may be positive or negative; **plus** (c) and (d):

(c) any and all costs, expenses, and duties incurred by the Purchaser in connection with the Supply Failure by the Supplier, including the costs, expenses, and fees incurred by the Purchaser as a consequence of cancelling or rescheduling shipping arrangements from the Loading Port as provided in Clause 4.7.2 of Article 4 of Section 6: Schedule of Requirements and

(d) any reasonable additional costs, expenses, duties and Taxes incurred in the Mitigating Purchase that would not have been incurred in respect of a shipment of such quantity of Coal pursuant to this Agreement.

4.7.4 The Purchaser's invoice in respect of any **Mitigating Purchase** shall include documented evidence of the details of the **Mitigating Purchase**, including the sampling and testing of the Coal included in the **Mitigating Purchase** and the amounts described in Clause 4.7.3 of Article 4 of Section 6: Schedule of Requirements. The Supplier shall pay the Purchaser the amount of the Purchaser's invoice within **fifteen (15) Business Days** after receipt of the invoice by telegraphic transfer (T/T) into the Purchaser's nominated bank account, or the Purchaser may set-off the amount due from any other amounts payable by the Purchaser to the Supplier.

4.8 Reduced Coal Requirements

4.8.1 In addition to reductions in its aggregate purchases of Coal due to **Events of Force Majeure** affecting the Purchaser and/or **Extended Forced Outages**, the Purchaser shall be entitled to reduce its aggregate purchases of Coal from the Supplier in any **Delivery Year** below the Minimum Delivery Year Quantity where such reduction is due to a reduction in dispatch by the **System Operator** or the Purchaser's customers (a "**Reduction Event**"); provided that such reduction of its aggregate purchases of Coal due to a Reduction Event shall not be greater than one hundred and thirty thousand (130,000) Tonnes in any Delivery Year.

4.8.2 The Purchaser shall notify the Supplier of the occurrence of any **Reduction Event** as soon as practicable following its occurrence. Such notice shall specify the decrease in Coal requirements that the Purchaser reasonably expects to result from such Reduction Event in the current Delivery Year and any future Delivery Year(s). The **Minimum Delivery Year Quantity** and **Maximum Delivery Year Quantity** shall be reduced by the quantities specified in such notice or notices, subject in each case to the limitation stated in Clause 4.8.1 of Article 4 of Section 6: Schedule of Requirements.

The Purchaser shall in the same notice, or as soon as practicable in a further written notice to the Supplier, revise the shipping schedules and other arrangements previously made by the Purchaser and the Supplier in accordance with Clause 6.4 of Article 6 of Section 6: Schedule of Requirements for the Delivery Year, and the Supplier shall make deliveries of Coal in accordance with such revised schedules and arrangements.

Article 5 NON-CONFORMING SHIPMENTS

5.1. Right to Reject

5.1.1 If Coal from any Shipment fails to comply with the **Coal Quality Rejection Limits**, the Purchaser shall have the right to reject the Shipment by sending a written notice to the Supplier at any time prior to the unloading of the Shipment at the **Discharge Port**. If the Purchaser rejects a Shipment pursuant to this Clause 5.1.1 of Article 5 of Section 6: Schedule of Requirements, the Purchaser may, at Supplier's cost and expense, and without prejudice to any other legal remedies the Purchaser may have, redirect the relevant Vessel back to the **Loading Port** with the Shipment on board.

5.1.2 If the Purchaser rejects any Shipment as not complying with the **Coal Quality Rejection Limits,** the Supplier shall:

(a) promptly cure any deficiency in supply by supplying additional Coal and/or Substitute Coal, subject to the Purchaser's approval in accordance with Clause 3.4 of Article 3 of Section 6: Schedule of Requirements;

(b) reimburse the Purchaser for all reasonable expenses incurred by the Purchaser in relation to the rejected Shipment, including but not limited to correct the conditions that resulted in the Shipment not meeting the **Coal Quality Rejection Limits**, shipping, disposal, handling, demurrage, Taxes, duties and any other costs or expenses that would not have arisen had the Shipment not been made and rejected; and

(c) take such steps as are necessary to correct the conditions that resulted in the Shipment not meeting the **Coal Quality Rejection Limits**.

5.2. Acceptance of Non-Complying Shipment

5.2.1 If the Purchaser accepts delivery of a Shipment that does not comply with the **Coal Quality Rejection Limits**, or if such non-compliance is determined to exist after the Purchaser has accepted the Shipment but prior to its being unloaded at the **Discharge Port,** the price decrease in respect of each such **Coal Quality Specification** that is shown in the Loading Port Laboratory's Certificate of Analysis (or Umpire Laboratory's Certificate of Analysis pursuant to Clause 7.3.2 of Article 7 of Section 7: Technical Specifications) to be not in compliance with its corresponding **Coal Quality Rejection Limit** shall be the amount as provided in GCC 27 and PCC 27.1.8.2, PCC 27.1.8.3 and/or PCC 27.1.8.4, as applicable.

5.2.2 The Purchaser shall also be entitled to recover the actual additional transportation cost, measured on a per BTU basis, where the Actual GCV is less than the Gross Calorific Value (ARB) specified in the **Coal Quality Reject Limits**.

5.2.3 The Parties shall use reasonable efforts to agree on a further discount in the **Delivered Price** of the Shipment in an amount necessary to compensate the Purchaser for all direct damages actually incurred, or that it is reasonably likely to incur, as a consequence of such Coal not complying with the **Coal Quality Rejection Limits**.

5.2.4 If the Parties are unable to reach such an agreement within **fifteen (15) Business Days** after the non-compliance with the **Coal Quality Rejection Limits** becomes known, the Purchaser shall be entitled to pursue its legal and equitable remedies against the Supplier in respect of the delivery of Coal that does not comply with the **Coal Quality Rejection Limits**.

5.2.5 The Purchaser shall have the right to withhold the payment for that Shipment to the Supplier until agreement as per Clause 5.2.3 of Article 5 of Section 6: Schedule of Requirements

above is reached or the legal and equitable remedies are fulfilled by the Supplier as per Clause 5.2.4 of Article 5 of Section 6: Schedule of Requirements above.

5.2.6 For the avoidance of doubt, the remedies provided under this Clause 5.2 of Article 5 of Section 6: Schedule of Requirements shall be without prejudice to the Purchaser's remedies under GCC and PCC 42.5.

5.3. Contaminated Shipments

5.3.1 If a Shipment does not comply with the **Coal Condition Undertaking**, the Purchaser shall have the right to withhold the payment for that Shipment to the Supplier until the Supplier agrees with the Purchaser regarding the amount to be reimbursed by the Supplier to the Purchaser for all reasonably incurred direct costs and expenses attributable to such noncompliance. Upon agreement of the amount to be reimbursed by the Supplier to the Purchaser, the Purchaser shall deduct such agreed amount from the due payment for that Shipment and pay the balance to the Supplier either through Letter of Credit (L/C) or telegraphic transfer (T/T).

5.3.2 Such direct expenses shall include, without limitation, any costs or liabilities incurred by the Purchaser for the removal of extraneous material and contaminants from the Shipment to render it contaminant-free.

5.3.3 For purposes of this Clause 5.3 of Article 5 of Section 6: Schedule of Requirements, the Parties agree that direct expenses shall be reasonably incurred if the Purchaser has acted in accordance with **Prudent Utility Practices.**

5.4. Right to Adjust the Minimum Delivery Year Quantity

5.4.1 The Purchaser shall have the right to lower the Minimum Delivery Year Quantity for that Delivery Year as a result of any Non-Complying Shipment or any Shipment which does not comply with the Coal Condition Undertaking, as the case may be, whether or not the Purchaser has accepted, by a written notice to the Supplier.

5.4.2 For every one Non-Complying or Contaminated Shipment, a reduction of 2.5% of the Minimum Delivery Year Quantity as per Clause 4.2.1 of Article 4 of Section 6: Schedule of Requirements shall be introduced and a new Minimum Delivery Year Quantity will be established for that Delivery Year accordingly.

Article 6 DELIVERY AND SHIPMENT

6.1. Supplier's Responsibilities

All Coal supplied by the Supplier to the Purchaser under this Agreement shall be delivered **FOBT** at the **Loading Port**. The Supplier shall be responsible for all costs and expenses of mining the Coal, of transporting to and maintaining the Coal at the **Loading Port**, costs related to the Coal loading and **Trimming** operation and Government royalties and taxes. It will be the sole responsibility of the supplier to arrange all necessary measures to load the coal on berthing of the loading port into the vessel nominated by the purchaser not limited to loading equipment, transport from mine to loading port etc. Purchaser will not be responsible to provide any kind of loading facilities at the loading port.

Before the commencement of loading of any shipment at the Loading Port, the Supplier shall ensure the coal to be delivered is properly insured and the insurance policy shall be effective continuously. Supporting documents shall be provided to the Purchaser meanwhile.

6.2. Purchaser's Responsibilities

The Purchaser shall be responsible for all costs and expenses of arranging for, insuring and shipping all Coal supplied by the Supplier hereunder following its departure the Loading Port to the Discharge Port, including port dues, tugs, pilotage, linesman, light dues, garbage removal, sundry expenses, time checker, agency fees using Vessels meeting the requirements of Clause 6.5.1 of Article 6 of Section 6: Schedule of Requirements.

6.3. Title and Risk of Loss

Title to and all risk of loss, damage or destruction to all Coal supplied by the Supplier under this Agreement shall pass to the Purchaser at the time the Coal is loaded onto the Vessel arranged by the Purchaser at the Loading Port.

6.4. Determining Delivery Schedule

6.4.1 At least **sixty (60) days** before the commencement of the **Delivery Year**, the Purchaser shall notify the Supplier of the estimated quantity of Coal it requires from the Supplier for the relevant **Delivery Year** ("**Estimated Quantity**"), which quantity shall not exceed the **Maximum Delivery Year Quantity** for the relevant **Delivery Year**, as applicable, unless agreed by the Supplier.

6.4.2 At least **forty (40) days** prior to the commencement of each **Delivery Year**, the Supplier and the Purchaser shall update the relevant **Estimated Quantity** and develop a tentative delivery schedule for each three (3) month period in the relevant **Delivery Year**.

6.4.3 At least **forty (40) days** prior to the commencement of each successive three (3) month period in **Delivery Year**, the Supplier and the Purchaser shall agree on a delivery schedule for such three (3) month period (the **"Delivery Schedule"**). The **Delivery Schedule** shall:

(a) if applicable, take into account any adjustments in purchase quantities notified by the Purchaser to the Supplier under Article 4 of Section 6: Schedule of Requirements since the preparation of the last **Delivery Schedule**;

(b) be coordinated with other export ship arrivals at the **Loading Port** over such three (3) month period; and

(c) specify for each Shipment a **seven (7) day** period within which the **Vessel** is to arrive at the **Loading Port** and submit a **Notice of Readiness** (the "**Laycan**").

6.4.4 The Supplier shall not be entitled to withhold agreement to any reasonable schedule proposed by the Purchaser to the extent that (i) the aggregate quantity proposed for delivery in any **Delivery Month** is within +/- fifteen percent (15%) of monthly minimum quantity in accordance with Clause 4.3 of Article 4 of Section 6: Schedule of Requirements and (ii) the **Delivery Schedule**, taking into account prior Shipments delivered or ordered pursuant to Clause 6.4.5 of Article 6 of Section 6: Schedule of Requirements, will not require the Supplier to supply Coal to the Purchaser in excess of the **Maximum Delivery Year Quantity** for the relevant **Delivery Year,** as applicable except if Purchaser has exercised the option for **Additional Quantity** as per Clause 4.4 of Article 4 of Section 6: Schedule of Requirements.

6.4.5 At least twenty (20) days prior to the commencement of each **Delivery Month**, the Purchaser shall transmit to the Supplier its written order for Coal to be delivered to Purchaser during such month (the **"Delivery Month Quantity"**), together with any adjustments in the **Laycan(s)** for the Shipment(s) of Coal to be delivered to the **Loading Port** in such **Delivery Month**. Within three (3) Business Days after receipt of the order and **Laycan(s),** the Supplier may request that the Purchaser modify the **Delivery Schedule** and **Laycan(s),** in which case the Supplier and the Purchaser will discuss scheduling alternatives in good faith with a view to agreeing on a revised **Delivery Schedule** and **Laycan(s).** If the Supplier makes no such request, it will be deemed to have agreed to the **Delivery Schedule** and **Laycans** proposed by the Purchaser for the relevant **Delivery Month**. If the Supplier does request modification of the Delivery Schedule and Laycan(s) proposed by the Purchaser, the Delivery Schedule and Laycans originally proposed by the Purchaser shall be adjusted as agreed by the Parties. In the absence of any such agreement within fifteen (15) Business Days, the Delivery Schedule and Laycan(s) previously established for the **Delivery Month** pursuant to Clause 6.4.3 of Article 6 of Section 6: Schedule of Requirements shall become binding on the Parties.

6.4.6 The Parties shall maintain the delivery schedule as per Clause 4.3 of Article 4 of Section 6: Schedule of Requirements throughout each **Delivery Year**, subject, inter alia, to variations for **Scheduled Outages**, **Extended Forced Outages**, **Reduction Events** and **Events of Force Majeure**.

6.5. Vessels

6.5.1 Unless the Parties otherwise agree, the supplier shall arrange for all Coal supplied and delivered to the Purchaser at the **Loading Port** under this Agreement to be supplied in full Shipments (plus or minus 10% shipping tolerance), onto vessels ("**Vessels**") that are:

(a) either Capesize or Panamax or Supramax or Handymax or Handy size, at the Purchaser's option, not exceeding twenty-five (25) years in service and meeting the **Loading Port** restrictions as provided in Attachment 8 of Form PG4-2 of Section 5: Tender and Contract Forms;

(b) capable of berthing and receiving Coal at the Loading Port;

(c) classed as Lloyds 100 A1 or equivalent by a classification society which is a member in good standing of the International Association of Classification Societies;

(d) single deck bulk carriers having a security system and associated security equipment necessary to comply with International Ship and Port Facility Security (ISPS) Code, all in safe and good working order; and

(e) compliant with all publicly available **Legal Requirements** applicable to the **Loading Port**.

(f) equipped with hatches of the mechanical type and shall be of such design and construction that will not unreasonably restrict or impede the operation of the ship loader;

(g) capable of providing the Supplier with free use of winches and related electric power required by Supplier during loading, Trimming and stowage of the Coal on board such Vessel;

(h) equipped with lighting facilities and crew available during the loading operation;

(i) single deck self-trimming bulk carriers;

(j) equipped with gears which must not impede the normal operation of the ship loaders and dischargers or otherwise reduce the loading rate of the terminal/ floating crane;

(k) fully insured with a **P&I Club** that is a member of the International Group of **P&I Clubs** unless agreed in writing with the Supplier:

(l) issued with a valid International Safety Management Code Certificate; and

(m) capable of a deballasting rate of minimum one thousand (1,000) Tonnes per hour.

6.5.2 At least **seven (7) Business Days** prior to the first (1st) day of the **Laycan** at the **Loading Port** for the **Vessel** for any Shipment ("**Opening Layday**"), the Purchaser shall notify the Supplier of the Vessel's name ("**Vessel Nomination**"), its length, its beam, the number of holds and hatches, and the draft expected on arrival at the **Loading Port**.

6.5.3 If the **Vessel** is not a Vessel and does not meet the specifications of Clause 6.5.1 of Article 6 of Section 6: Schedule of Requirements, the Supplier shall have the right to reject the Vessel by written notice to the Purchaser not later than **one (1) Business Day** after receipt of the notice from the Purchaser. At least **five (5) days** prior to **Opening Layday**, the Purchaser may notify the Supplier of a change in or substitution of the definitive performing Vessel, and provide the substitute Vessel's **("Substitute Vessel")** name, its length, its beam, the number of holds and hatches, and the draft expected on arrival at the **Loading Port**.

6.5.4 The **ETA** of the **Substitute Vessel** shall not be earlier than the original ETA nominated in the **Vessel Nomination**. In the event the definite performing Vessel has been cancelled due to its late arrival at the **Loading Port**, the Purchaser may nominate a **Substitute Vessel** at least **five (5) days** prior to the ETA of such Vessel. If the Purchaser does not provide the second notice of a **Substitute Vessel,** the first notice and the nominated **Vessel** shall be effective, without change except where the Supplier has rejected the **Nominated Vessel** in accordance with the provisions of this Agreement.

6.5.5 Purchaser or its agent shall provide the **stowage plan** with the estimated tonnage of cargo to be loaded into the Vessel at least three (3) days prior to **ETA**.

6.6. Loading

6.6.1 The Supplier shall give the Purchaser at least **five (5) Business Days'** notice of the expected date of commencement of loading of each Shipment onto the **Vessel**.

6.6.2 The Supplier shall procure that no part of any Shipment is loaded in deep tanks or other areas which are not standard coal cargo holds.

6.6.3 The Purchaser shall hire, at its own cost, an independent inspector (to be nominated by the Purchaser) to inspect the cleanliness of each hold in the Vessel according to the standards prescribed by the relevant standards. The Purchaser shall provide the Supplier with a copy of a **Certificate of Holds Cleanliness** promptly upon its being issued by such inspector.

6.6.4 As soon as practicable, but not later than **two (2) Business Days** after the completion of loading of each Shipment, the Supplier shall advise the Purchaser by facsimile or email with pdf attachment of the details of the Shipment including:

(a) the total quantity of Coal loaded and as stated on the relevant **Bill of Lading**; and

(b) the approximate quantity of Coal loaded in each hold of the **Vessel**.

6.7. Berthing and Notice of Readiness

6.7.1 The Purchaser shall procure that each Vessel to be used for a Shipment is obliged to provide seven (7) days', five (5) days', forty-eight (48) hours' and twenty-four (24) hours' prior notice of the Vessel's ETA at the **Loading Port** and additional notice(s) of any variation thereto of more than twelve (12) hours.

6.7.2 The Supplier shall provide free of charge to the Purchaser a berth at the **Loading Port** which the Vessel can safely reach and lie always afloat, provided the Vessel arrives at the **Loading Port** within its **Laycan**. The Supplier and the Purchaser shall coordinate with each other to make arrangements for pilots, pilot boats, tugboats, mooring and unmooring teams required to berth any Vessel at the Loading Port.

6.7.3 The Purchaser shall cause the **Notice of Readiness** to be tendered by the master of the **Vessel** to the Supplier any time during day or night **SHINC** except on Major Holidays of the Country of Origin when the Vessel (i) has arrived at the **Loading Port** and (ii) is **Ready in All Respects** to load the Coal at the **Loading Port**, whether the Vessel has arrived at its designated berth at the **Loading Port** or not.

6.7.4 With regards to Major Holidays, the time from 1700 hours **(Standard Time of Country of Origin)** on the day preceding each of the Major Holidays until 0900 hours **(Standard Time of Country of Origin)** on the next Working Day shall not count as **Laytime** or the time within which **Notice of Readiness** may be tendered, unless any Coal is actually loaded during such time in which case time actually used shall count.

6.7.5 Delete.

6.7.6 If at any time the **Vessel** is prevented from entering **Loading Port** because of the **Vessel's** inefficiency, breakdown or other hindrances which constitute usual hazards to the Vessel, **Notice of Readiness** shall be deemed invalid. **Notice of Readiness** shall be retendered only when such inefficiency, breakdown or other hindrances have ceased to exist. Any losses related to such invalid **Notice of Readiness** shall be borne by the Purchaser.

6.7.7 The rates of demurrage shall be declared at the time of **Vessel Nomination** and shall be the rate of demurrage per day specified in the relevant shipping contract.

6.7.8 Upon arrival at the **Loading Port** the master of the Vessel shall give the **Notice of Readiness** at any time (**SHINC**) (except with respect to Clause 6.7.3, Clause 6.7.4 & Clause 6.7.5 of Article 6 of Section 6: Schedule of Requirements) by radio or telephone

subsequently confirmed in writing to the Supplier. If a loading berth is not immediately available, the **Vessel** shall wait at the customary anchorage for the **Loading Port** for a **Vessel** of its size and type, whether within or outside of port limits (whether legal, commercial or otherwise) and when in **Free Pratique** and when customs cleared, and shall there tender the **Notice of Readiness** to the Supplier.

6.8. Acceptance of Notice of Readiness

The **Notice of Readiness** will be deemed to be accepted, when tendered:

(a) if tendered within the **Laycan** for the Vessel established under Clause 6.4.3 of Article 6 of Section 6: Schedule of Requirements;

(b) if tendered earlier than the first day of the Laycan for the Vessel, upon the earlier of

(i) the time the **Loading Port** is able to receive the **Vessel** and commence loading, or

(ii) the first day of the **Laycan**; or

(c) if tendered later than the final day of the **Laycan** for the Vessel, upon the **Loading Port** being able to receive the Vessel and commence loading following its normal procedures for scheduling and coordinating the loading of Vessels.

(as applicable, the "**Acceptance of Notice of Readiness**").

6.9. Laytime

The **Laytime** allowed for each Vessel shall be determined by dividing the weight of the cargo of Coal loaded at the **Loading Port** by twenty thousand (20,000) Tonnes per day (**SHINC**), twenty-four (24) consecutive hours per day except Major Holidays of the Country of Origin unless used.

6.10. Calculation of Time Used

6.10.1 The counting of Time Used shall commence upon the earlier of:

(a) twelve (12) hours after **Acceptance of Notice of Readiness**, provided that the **Vessel** is then **Ready In All Respects**; or

(b) commencement of loading.

6.10.2 If the **Vessel** arrives at the berth for loading Coal and is not **Ready In All Respects**, the Vessel's **Notice of Readiness** shall be void and counting of time shall not commence until such Vessel becomes **Ready In All Respects** and a further **Notice of Readiness** is subsequently accepted in accordance with Clause 6.8 of Article 6 of Section 6: Schedule of Requirements.

6.10.3 The time for the following events shall not be counted in determining **Time Used**, even if the Vessel is already subject to **Demurrage** when the relevant event occurs (except in the case of Clause 6.10.3 (n) of Article 6 of Section 6: Schedule of Requirements):

(a) time waiting for tide;

(b) the time required for the **Draft Survey** before loading commences and the **Draft Survey** after the loading is completed;

(c) time required for hatch opening and closing;

(d) time used for Vessel requirements (including repairs to the Vessel and/or delays in the start or completion of events listed in Clause 6.10.4 of Article 6 of Section 6: Schedule of Requirements due to the Purchaser or the ship owner/operator);

(e) time lost due to a failure on the part of the Purchaser to provide a Vessel meeting the requirements of Clause 6.5.1 of Article 6 of Section 6: Schedule of Requirements;

(f) time lost due to a previous Vessel loading Coal under this Agreement failing to depart the loading berth promptly on completion of loading for reasons attributable to vessel requirements and other than if the failure to depart is due to acts or omissions of or delays caused by the Supplier or its agents, including the **Loading Port**;

(g) the time taken for the Vessel shifting from anchorage or pilot on board, whichever is earlier, until Vessel is all fast alongside the designated berth and/or anchorage and **Ready In All Respects** to load whether the **Vessel** is already subject to **Demurrage** or not;

(h) any time lost due to loading interruption due to adverse weather conditions, such as swell, wind, rain, fog, or other natural causes, that render it unsafe for the loading operations to continue as determined by the Master of the Vessel unless the Vessel is already on Demurrage;

(i) any time lost if loading is interrupted by the Vessel to conduct activities required by the owner, whether the Vessel is then on Demurrage or not (e.g., taking bunkers, vitals, or all draught surveys/draught checks and holds cleanliness inspection);

(j) any time lost as a result of breakdown, inefficiency, repairs or any other inability of the Vessel to load the Coal on a continuous basis, whether the Vessel is already subject to Demurrage or not;

(k) Vessel loading is necessarily suspended or interrupted because of the acts and/or activities of the military or the navy (such as mock war drill, etc.), whether the Vessel is already subject to Demurrage or not;

(l) any time lost due to compliance with statutory and class requirements for the Vessel to load, whether the Vessel is already subject to Demurrage or not; and

(m) time lost awaiting the completion of loading of a previous Vessel receiving a delivery of Coal under this Agreement, but only for so long as such previous Vessel is not subject to Demurrage; and

(n) time lost due to any **Event of Force Majeure** that directly prevents, interrupts or slows the loading of Coal, and occurs when the Vessel is not subject to **Demurrage**.

6.10.4 The counting of **Time Used** shall end when (a) the entire Shipment has been loaded onto the vessel, (b) all stevedores' equipment has been removed from the vessel and (c) the final **Draft Survey** has commenced.

6.10.5 In the event, after twelve (12) hours of completion of loading, due to failure of the Supplier to provide necessary documents for receiving outward clearance of **Vessel** to depart the **Loading Port**, the laytime shall continue to counting until the Supplier delivers necessary documents to the **Loading Port** agent. For avoidance of doubt, period of delay caused by the failure of the Supplier to provide necessary documents for receiving outward clearance of Vessel to depart the **Loading Port** shall not be counted as Laytime if the period of delay is less than the stipulated twelve (12) hours, but the twelve (12) hours exemption shall be

counted as **Laytime** if the delay is beyond the stipulated twelve (12) hours. The **Loading Port** agent shall deliver to the master of the Vessel all documents required to effect outward clearance of the Vessel from the anchorage/ **Loading Port** after completion of loading and the release of the clean original **Bills of Lading** to the Supplier.

6.10.6 Any time used for intermediate draft Surveys shall count as **Laytime**, unless ordered by the Master/Vessel, in which case such time shall not count as **Laytime**. Loading shall be deemed completed and Laytime and time on **Demurrage** shall stop when (a) the quantity of Coal requested by the master of the Vessel in his pre-loading stowage plan has been loaded on board the Vessel or when all the holds are full before the quantity requested in the stowage plan is attained, (b) all **Trimming** equipment has been removed from the **Vessel** and (c) final **Draft Survey** has commenced. The Supplier shall have the right to supply additional Coal in a single drop not exceeding two hundred (200) Tonnes per hold for **Trimming** purposes.

6.10.7 The Coal shall be mechanically levelled and **Trimmed** (or spout Trimmed) at the Supplier's time and expense. Provided that the Trimming carried out by the Supplier satisfies all code and safety standards and insurance requirements when completed, any further **Trimming** required by the master of the Vessel shall be for the Purchaser's account and time so used shall not count as **Laytime**.

6.11. Responsibilities at the Loading Port

6.11.1 The Supplier shall be responsible for obtaining and maintaining all required **Consents** for the export, sale and delivery of Coal pursuant to this Agreement.

6.11.2 The Supplier shall comply with, and shall procure that its stevedores and involved Contractors comply with, all Legal Requirements of the Country of Origin applicable at the **Loading Port** and in respect of the sale, delivery and export of Coal under this Agreement.

6.11.3 The Purchaser shall ensure that the **Vessel** for any **Shipment** is fully available day and night for loading and that the Supplier shall have full use of permanently fixed lighting and services on board the **Vessel** including those of officers and crew.

6.11.4 The **Vessel** shall be loaded and Trimmed by the Supplier, or its agent, at the risk and expense of the Supplier.

6.11.5 The Supplier shall indemnify and hold the Purchaser harmless from and against all costs, liabilities, losses, expenses, claims, demands or proceedings associated with any damage to any vessel or the property of the Purchaser or any other Person, any damage to the environment, or any personal injury where such damage or personal injury is caused by the Supplier or any of its employees, Contractors or agents in the performance by the Supplier of its obligations under this Agreement.

6.12. Demurrage and Despatch

6.12.1 If the **Time Used** for loading any **Shipment**, as determined in accordance with Clause 6.10 of Article 6 of Section 6: Schedule of Requirements, exceeds the **Laytime** permitted for such Shipment, as determined under Clause 6.9 of Article 6 of Section 6: Schedule of Requirements, the Supplier shall pay **Demurrage** to the Purchaser in respect of such difference in time at the rate in USD per hour payable by the Purchaser under the relevant shipping contract.

6.12.2 If the **Time Used** for loading any Shipment, as determined in accordance with Clause 6.10 of Article 6 of Section 6: Schedule of Requirements, is less than the **Laytime** permitted for

such Shipment, as determined under Clause 6.9 of Article 6 of Section 6: Schedule of Requirements, the Purchaser shall pay **Despatch** to the Supplier in respect of such difference in time at a rate equal to fifty percent (50%) of the rate that would have applied for **Demurrage** under the relevant shipping contract.

6.12.3 The procedure for determining and invoicing for **Despatch** or **Demurrage** shall be as follows:

(a) the Purchaser shall cause its shipping agent to provide the Supplier with a **Statement of Facts** reflecting its record of the details of the **Laytime** and **Time Used** at the **Loading Port** for the Shipment, and its proposed calculation of **Demurrage** or **Despatch**;

(b) within **ten (10) Business Days** after receipt thereof, the Supplier shall either (i) notify the Purchaser that it accepts the calculation of **Demurrage** or **Despatch**, or (ii) notify the Purchaser that it does not accept the calculation of **Demurrage** or **Despatch**, in which case it shall provide the Purchaser with its records of **Laytime** and **Time Used**, and its proposed calculation of **Demurrage** or **Despatch**;

(c) if the Supplier notifies the Purchaser that it does not accept the Purchaser's shipping agent's determination of **Demurrage** or **Despatch**, the Purchaser within ten (10) Business Days shall either (i) notify the Supplier that it accepts the Supplier's calculation of **Demurrage** or **Despatch**, or (ii) notify the Supplier that it does not accept such calculation, in which case the Parties and/or their respective agents at the **Loading Port** shall promptly meet and seek to agree on the calculation of **Demurrage** or **Despatch** based on all relevant records. If the Parties are unable to reach an agreement, the calculation of **Demurrage** or **Despatch** shall be determined by an **Expert**; and

(d) following the Parties' agreement on or an **Expert's** determination of the amount of **Demurrage** or **Despatch**, the Supplier shall issue an invoice to the Purchaser for **Despatch** or the Purchaser shall issue an invoice to the Supplier for **Demurrage**, and the Party receiving the invoice shall pay the amount of the invoice within fifteen (15) Business Days after receipt.

Article 7 SAMPLING AND TESTING

7.1. Testing Standards and Methods

7.1.1 The weighing, sampling and analysis of Coal by the **Loading Port Laboratory** under Clause 7.2 of Article 7 of Section 6: Schedule of Requirements, for any **Purchaser Test Analysis** under Clause 7.3 of Article 7 of Section 6: Schedule of Requirements, and by the **Umpire Laboratory** under Clause 7.3.2 of Article 7 of Section 6: Schedule of Requirements shall be performed in accordance with the relevant ASTM procedures and standards set out in Article 3 of Section 7: Technical Specifications and the provisions of this Article 7.

7.1.2 The Purchaser, at its own expense, shall be entitled to have a representative observe the collection, sampling and analysis of each **Shipment** by **Loading Port Laboratory** pursuant to Clause 7.2 of Article 7 of Section 6: Schedule of Requirements, subject to that representative is not from competitor Inspection Company. The Supplier shall provider the Purchaser with at least three (3) Business Days' prior notice of the dates of the collection, sampling and analysis by the **Loading Port Laboratory**.

7.1.3 The Supplier and the Purchaser, at their own expense, shall be entitled to have a representative observe the analysis of the Coal from any Shipment by the **Umpire Laboratory** pursuant to Clause 7.3.2 of Article 7 of Section 6: Schedule of Requirements.

7.2. Collection, Sampling and Analysis at Loading Port

7.2.1 The Supplier shall arrange for an Independent Inspection Authority ("**IIA**") proposed by the Supplier and approved by the Purchaser from duly licensed independent and renowned laboratory as listed in Article 7 of Section 7: Technical Specifications, which approval shall not be unreasonably withheld, to collect and analyse representative samples of Coal from each **Shipment** at the **Loading Port** (the "**Loading Port Laboratory**"). The cost and expense of the sampling and analysis shall be borne by the Supplier.

7.2.2 The samples shall be taken by means of a mechanical, three-stage sampler. From the primary representative samples, the **Loading Port Laboratory** shall prepare three tertiary samples and one composite uncrushed sample in accordance with the relevant ASTM standards in Article 3 of Section 7: Technical Specifications:

(a) a composite sample prepared to 0.25mm top size for determination of gross and net calorific value, total sulphur, ash, volatile matter, fixed carbon, ash fusion temperature, the chemical composition of the ash, ultimate analysis and analysis of trace elements;

(b) a sub lot sample prepared to 3.0mm top size for determination of total moisture;

(c) a composite sample prepared to 4.75mm top size for determination of grindability; and

(d) a composite uncrushed sample for determination of size.

7.2.3 The **Loading Port Laboratory** shall then divide each of the 0.25mm, 3.0mm and 4.75mm tertiary samples, which shall weigh approximately five (5) kilograms into three "splits":

(a) the first split (the "**First Split**") will be analyzed by the **Loading Port Laboratory** for purposes of issuing its **Certificate of Analysis** and its **Full Certificate of Analysis;**

(b) the second split (the "**Second Split**") will be retained by the **Loading Port Laboratory** and stored in a safe place, packed in a frozen condition, sealed and stamped as specified above, for at least sixty (60) days from the date of the **Bill of Lading**, to be used as the controlling sample in case of disputes; and

(c) the third split (the "**Third Split**") will be delivered to an IIA appointed by the Purchaser in accordance with Clause 7.3 of Article 7 of Section 6: Schedule of Requirements (the "Purchaser Laboratory").

7.2.4 Each of the **First Split**, the **Second Split** and the **Third Split** shall be placed in a suitable air tight and sealed container which carries the stamp of the **Loading Port Laboratory**. Each **Split** shall be marked so that its relationship to the **Loading Port Laboratory's Certificate of Analysis** is clear and its label shall provide the name of the **Vessel**, the quantity of Coal delivered, the date of the **Bill of Lading**, the sample quantity and top size, and the name of the coal mine from which the coal is obtained.

7.2.5 No later than four (4) Business Days after completion of loading of the Shipment, the Supplier shall transmit its **Certificate of Analysis** by facsimile or email with pdf attachment and by courier to the Purchaser. The **Loading Port Laboratory's Certificate of Analysis** shall, subject to Clause 7.3.3 of Article 7 of Section 6: Schedule of Requirements, be used to determine whether such Shipment complies with the **Coal Quality Rejection Limits** and for the purpose of calculating the Delivered Price of such Shipment in accordance with GCC 25 and PCC 25.1, GCC 27 and PCC 27.1, GCC 37 and PCC 37.2 and GCC 27 and PCC 27.1.8 of Section 6: Schedule of Requirements.

7.2.6 The Supplier shall cause the **Loading Port Laboratory** to issue and transmit its **Full Certificate of Analysis** by facsimile or email with pdf attachment and by courier to the Purchaser within seven (7) Business Days after the completion of loading of the Shipment. For the avoidance of doubt, the values for parameters reported in the **Loading Port Laboratory's Certificate of Analysis** shall be restated in the **Loading Port Laboratory's Full Certificate of Analysis** without further testing of the **First Split** in respect of such parameters.

7.3. Analysis by Umpire Laboratory

7.3.1 The Purchaser shall be entitled to arrange for a duly licensed laboratory of its choosing to perform an analysis of the **Third Split** taken by the **Loading Port Laboratory** from any Shipment and delivered by the Supplier to such laboratory within the day when the samples are taken (a "**Purchaser Test Analysis**"). The Purchaser shall bear the cost and expense of any **Purchaser Test Analysis** that it may elect to have performed.

7.3.2 If a **Purchaser Test Analysis** reports any of the following:

(a) a Gross Calorific Value that is 91 Kcal/Kg (dry basis) more or less than the Gross Calorific Value reported in the **Loading Port Laboratory's Certificate of Analysis** (after the figures reported in the **Purchaser Test Analysis** and **Loading Port Laboratory's Certificate of Analysis** are converted to a dry basis);

(b) an Ash Content that is 0.50% more or less than the Ash Content (dry basis) reported in the **Loading Port Certificate of Analysis** (after the figures reported in the **Purchaser Test Analysis** and **Loading Port Laboratory's Certificate of Analysis** are converted to a dry basis);

(c) a Sulphur Content that is 0.14% more or less than the Sulfur Content (dry basis) reported in the **Loading Port Certificate of Analysis** (after the figures reported in the **Purchaser Test Analysis** and **Loading Port Laboratory's Certificate of Analysis** are converted to a dry basis); or

(d) a Total Moisture (ARB) that is 1.5% more or less than the Total Moisture (ARB) reported in the **Loading Port Laboratory's Certificate of Analysis**,

(each, a "**Significant Discrepancy**"), the Purchaser shall be entitled, upon notice to the Supplier with a copy of the **Purchaser Test Analysis** not more than fifteen (15) Business Days after the completion of the unloading of the Shipment at the **Discharge Port**, to require that an independent and duly licensed laboratory proposed by the Purchaser and approved by the Supplier, which approval shall not be unreasonably withheld (the "**Umpire Laboratory**"), perform an analysis of the **Second Split** and issue such **Umpire Laboratory's Certificate of Analysis**. The Supplier shall, not more than fifteen (15) Business Days from the receipt of **Certificate of Purchaser Test Analysis**, be entitled, upon notice to the Purchaser, to require the **Umpire Laboratory** to perform an analysis of the **Second Split** and issue such **Umpire Laboratory's Umpire Certificate of Analysis** (**the "Umpire Certificate"**). The costs and expenses of such analysis shall be borne by the Party requesting such analysis.

7.3.3 If there are any **Significant Discrepancies** between the **Umpire Laboratory's Umpire Certificate of Analysis** and the **Loading Port Laboratory's Certificate of Analysis**, the **Umpire Laboratory's Umpire Certificate of Analysis** shall be used to re-determine whether the **Coal Quality Rejection Limits** have been met and to recalculate all of the price adjustments under GCC 27 and PCC 27.1.8 for the Shipment.

7.3.4 The Purchaser shall have the right to withhold the payment for that Shipment to the Supplier in case of any **Significant Discrepancy** and/or cancel or reschedule the Shipments that have been ordered pursuant to Clause 6.4.5 of Article 6 of Section 6: Schedule of Requirements or are included in a **Delivery Schedule** established pursuant to Clause 6.4.3 of Article 6 of Section 6: Schedule of Requirements thereafter until both Parties reach agreement on such **Significant Discrepancy.**

8 WEIGHING

8.1 Draft Survey at Loading Port

8.1.1 The weight of each Shipment of Coal shall be determined by a **Draft Survey** at the **Loading Port** conducted by a **Licensed Marine Surveyor** approved by the Purchaser and the Supplier. Such Draft Survey shall be conducted at the cost of the Supplier and in accordance with internationally accepted methods and standards.

8.1.2 Both Parties, at their own expense, shall be entitled to have a representative observe the Draft Survey at the Loading Port. Upon completion, a **Certificate of Weight** shall be issued by such **Licensed Marine Surveyor** in a form reasonably acceptable to the Purchaser. The **Certificate of Weight** shall be conclusive (absent fraud or manifest error) and shall be the amount of Tonnes used for determining the **Delivered Price** of the Shipment. The Supplier shall supply the Purchaser with a copy of the **Certificate of Weight** by facsimile or by other equivalent prompt means of transmission within one (1) Business Day of its issuance.

Section 7. Technical Specifications

Article 1 Coal Quality Specification

[Coal should be supplied from a single Coal mine ONLY. Blended coal is strictly forbidden and shall result in rejection of the Offer.]

Parameters		Basis		Typical	Minimum	Maximum
Gross Calorific Value		As received basis	Kcal/kg		4800	
Total Moisture		As received basis	%			32.2
Approx. Analysis	**Ash content**	As received basis	%			12.6
	Volatile Matter	Air dried basis	%		20	43
Total Sulphur		As received basis	%			0.9
HGI			Points		48	
Ash Fusion Temperature (Reducing Initial Deformation)			℃		1240	
Ash Fusion Temperature (Reducing Spherical)			℃		1280	
Coal Size below 2mm			%			35.00
Coal Size above 50mm			%			10.00 (over 300 mm is not allowed)
Approx. Analysis	Inherent Moisture	Air dried basis	%			25
	Fixed Carbon	Air dried basis	%		45	
Ultimate Analysis	Carbon	Dry, Ash free	%		45	
	Hydrogen	Dry, ash free	%			3.64
	Oxygen	Dry, ash free	%			13.19
	Nitrogen	Dry, ash free	%			0.86
Ash Analysis	SiO_2	Dry basis	%			70.97
	Al_2O_3	Dry basis	%			19.97
	TiO_2	Dry basis	%			0.80
	Fe_2O_3	Dry basis	%			8
	CaO	Dry basis	%			4.49
	MgO	Dry basis	%			1.63
	$Na_2O+0.66* K_2O$	Dry basis				2.45
	Others	Dry basis				5.06

Parameters		Basis		Typical	Minimum	Maximum
Ultimate Analysis	Chlorine	Dry basis	%			
	Phosphorus	Dry basis	%			
	Oxygen	Dry basis	%		13.19	
	Others	Dry basis	%			
Ash Fusion Temperature	Hemispherical Temperature		Deg C			
	Flow Temperature		Deg C			
Gross Calorific Value		Air dried basis	Kcal/kg			
Net Calorific Value		As received basis	Kcal/kg			
Other Elements in Ash						
Ash Analysis	Na_2O	Dry basis	%			
	K_2O	Dry basis	%			
	SO_3	Dry basis	%			
	P_2O_5	Dry basis	%			
	Mn_3O_4	Dry basis	%			
Trace Elements						
Antimony (Sb)		Air dried basis	ppm			
Arsenic (As)		Air dried basis	ppm			
Boron (B)		Air dried basis	ppm			
Cadmium (Cd)		Air dried basis	ppm			
Chlorine (Cl)		Air dried basis	ppm			
Chromium (Cr)		Air dried basis	ppm			
Cobalt (Co)		Air dried basis	ppm			
Copper (Cu)		Air dried basis	ppm			
Fluorine (F)		Air dried basis	ppm			
Lead (Pb)		Air dried basis	ppm			
Manganese (Mn)		Air dried basis	ppm			
Mercury (Hg)		Air dried basis	ppm			
Nickel (Ni)		Air dried basis	ppm			
Phosphorus (P)		Air dried basis	ppm			
Selenium (Se)		Air dried basis	ppm			
Thallium (Ti)		Air dried basis	ppm			
Vanadium (V)		Air dried basis	ppm			
Zinc (Zn)		Air dried basis	ppm			

Article 2 Coal Quality Rejection Limits

No.	Parameter	Units	Base Specifications	Coal Quality Rejection Limits
1	Gross Calorific Value As Received Basis	kcal/kg	5000	Below 4800
2	Total Moisture As Received Basis	%	25.2	Above 32.2
3	Total Ash As Received Basis	%	9	Above 12.6
4	Volatile Constituent Air Dried Basis	%	38.58	Below 20 or Above 43
5	Total Sulfur As Received Basis	%	0.70	Above 0.90
6	HGI		54	Below 48
7	Ash Fusion Temperature (Reducing Initial Deformation)	℃	1320	Below 1240
8	Ash Fusion Temperature (Reducing Spherical)	℃	1380	Below 1280
9	Coal particles below 2mm	%	25.00	Above 35.00

Article 3 SAMPLING AND TESTING STANDARDS

All Coal quality analyses shall be performed following the procedures and directions established from time to time by ASTM International. The following specific standards as in effect as of January 1, 2011 shall apply to collecting and preparing samples and testing of specific coal quality parameters:

PROCEDURE/TEST METHOD	STANDARD
1. Sampling	
Collecting Gross Samples	ASTM D2234/D2234M-10 & D7430-11 & 9411
Preparing Coal Samples for Analysis	ASTM D2013/D2013M-11
2. Testing of Analysis Samples	
Total Moisture	ASTM D3173-11 & D3302/D3302M-10
Inherent (Residual) Moisture	ASTM D3173-11 & D3302/D3302M-10
Volatile Matter	ASTM D3175-11H
Ash	ASTM D3174-11
Total Sulphur	ASTM D3177-02 (2007)
Carbon & Hydrogen	ASTM D5373-08
Nitrogen	ASTM D3179-02
Total Chlorine	ASTM 2361 ASTM D4208-02 (2007)
Fluorine	ASTM 3761-10
Calorific Value	ASTM D5865-11a
Grindability (HGI)	ASTM D 409/D409M-11
Fusibility (Ash Fusion Temperature)	ASTM D1857/D1857M-04(2010)
Bulk Density	ASTM D291-07e1
Coal Size (Fines and Top-size)	ASTM D4749-87 (2007)
Trace Elements in Coal Ash	ASTM 3682-01(2006)/ASTM D3683-04
Ash Composition Analysis	ASTM D3682-01 (2006), ASTM D2795, ASTM D1759

Article 4 SAMPLE CALCULATIONS FOR PRICE ADJUSTMENTS FOR COAL QUALITY VARIATIONS

If Coal from any Shipment fails to comply with the Coal Quality Rejection Limits, the Purchaser shall have the right to reject the Shipment according to Clause 5.1.1 of Article 5 of Section 6: Schedule of Requirements or accepts delivery of such Shipment subject to price adjustment according to Clause 5.2.1 of Article 5 of Section 6: Schedule of Requirements.

- **Price Adjustment for gross calorific value where Actual GCV is greater than or less than 5000 Kcal/kg (GAR)**

P_{GCV} = $P_n \times [(\text{Actual GCV} - 5000) / 5000]$

If Actual GCV < 5000 (but >4800), e.g., 4900, P_{GCV} = \$70.00 × (4900 – 5000)/ 5000 = – \$1.400 /Tonne

If Actual GCV >5000, e.g. 5150, P_{GCV} = \$70.00 × (5150 – 5000)/ 5000 = \$2.100/Tonne

- **Price Adjustment for total moisture where Actual TM is more than 28% by weight (ARB) and thus in breach of the relevant Coal Quality Rejection Limit, then,**

$P_{TM} = P_n \times [(\text{Actual TM} - 28\%) / (1 - 28\%)]$

If Actual TM ⩾ 28%, e.g. 28.3%, P_{TM} = \$70.00 × [(0.283 – 0.280)/(1 – 0.280)] = \$0.292/Tonne,

If Actual TM < 28%, P_{TM} = \$0.00 / Tonne

- **Price Adjustment for total sulphur content where Actual TS is more than 0.70% by weight (ARB)**

P_{TS} = (U.S.\$3.00/Tonne) × (Actual TS – 0.70%) × 100

If Actual TS is ⩾ 0.70% (but ⩽ 0.90%), e.g. 0.76%, P_{TS} = \$3.00 × (0.76% - 0.70%) × 100= \$ 0.18 / Tonne

If Actual TS < 0.70%, P_{TS} = \$ 0.00 / Tonne

- **Price Adjustment for total ash where Actual TA is more than 9% by weight (ARB)**

P_{TA} = (US\$ 0.30 /Tonne) × (Actual TA – 9%) × 100

If Actual TA ⩾ 9% (but is ⩽ 12.60%), e.g. 10.0%, P_{TA} = \$0.30 × (10.0 %– 9%) × 100= \$0.300 / Tonne

If Actual TA < 9%, P_{TA} = \$0.00 / Tonne

Note: P_n is the Base Price per Tonne for the Shipment n, before adjustment for quality variations and is determined in accordance with GCC 25 and PCC 25.1.3. In sample calculations above, P_n is assumed to be U.S.\$70.00/Tonne.

Article 5 Adjustment Method of Economic Factors for Financial Evaluation

Illustration:01

Tenderer's Name	Proposed Coal Mine	Tender Price (USD/MT)	Evaluated GCV (kCal/Kg)	Base GCV (kCal/Kg)	Guaranteed Heat Rate of RNPL (kCal/kWH)	Gross Generation in a month (kWH)	Monthly Coal requirement (MT)	Actual Coal Sourcing Cost (USD/MT)	Coal Transportation Cost (USD/MT) (For Indonesia*)	Total Cost (USD/MT)	Total Cost in a Month USD
1	2	3	4	5	6	7	8	9	10	11	12
X	A	82.78	5200	5000	2,270	950,400,000	414,886	86.09	26.43	112.52	46,683,488
Y	B	82.78	4800	5000	2,270	950,400,000	449,460	79.47	26.43	105.90	47,597,275

* Column-7= 1320 X 1000X 720 kWh (Gross Generation in a Month)
Column-8= [(Column-6/Column-4)X Column-7]/1000
Column-9= (Column-4/Column-5)×Column -3
Column-10= Contracted Transportation Cost
Column-11= Column-9+ Column-10
Column-12= Column-8X Column-11

Illustration:02

Tenderer's Name	Proposed Coal Mine	Tender Price (USD/MT)	Evaluated GCV (kCal/Kg)	Base GCV (kCal/Kg)	Guaranteed Heat Rate of RNPL (kCal/kWH)	Gross Generation in a month (kWH)	Monthly Coal requirement (MT)	Actual Coal Sourcing Cost (USD/MT)	Coal Transportation Cost (USD/MT) (For Indonesia*)	Total Cost (USD/MT)	Total Cost in a Month USD
1	2	3	4	5	6	7	8	9	10	11	12
X	A	83.28	5200	5000	2,270	950,400,000	414,886	86.61	26.43	113.04	46,899,229
Y	B	81.28	4800	5000	2,270	950,400,000	449,460	78.03	26.43	104.46	46,950,591

* Column-7= 1320 X 1000X 720 kWh (Gross Generation in a Month)
Column-8= [(Column-6/Column-4)X Column-7]/1000
Column-9= (Column-4/Column-5)×Column -3
Column-10= Contracted Transportation Cost
Column-11= Column-9+ Column-10
Column-12= Column-8X Column-11

*Coal transportation cost will vary depending on the country of origin of coal as declared in Price Schedule for Goods (Form PG4-3B) and the loading port proposed by the Tenderer in Attachment 5 of Tender Information Sheet (Form PG4-2).

Article 6 Format of Relevant Forms for Contract Execution Phase

1. Form of Certificate of Analysis

CERTIFICATE OF SAMPLING AND ANALYSIS

[To be Provided Later]

2. FORM OF FULL CERTIFICATE OF ANALYSIS

CERTIFICATE OF SAMPLING AND ANALYSIS

[To be Provided Later]

3. FORM OF BENEFICIARY CERTIFICATE, INVOICE AND DEBIT & CREDIT NOTE

FORM OF BENEFICIARY CERTIFICATE

[To be Provided Later]

4. FORM OF BILL OF LADING

[To be Provided Later]

5. FORM OF CERTIFICATE OF ORIGIN

[To be Provided Later]

6. FORM OF CERTIFICATE OF HOLDS CLEANLINESS

Certificate No.: Page No. 1/1

CERTIFICATE OF HOLDS CLEANLINESS

Our Reference :
Name of Vessel : MV
Quantity : XX,XXX METRIC TONNES
Shipper : XXX COAL SUPPLIER XXXX
Cargo Description :
Port of Loading :
Date of Loading : <Date><Month><Year>

THIS IS TO REPORT that in accordance with instructions received from our principal, XXX Coal Supplier., we have attended (on board the above-mentioned Vessel for the purpose of carrying out intervention on the above Vessel hold and hatches and we report as follows:
FINDINGS:
Cargo Holds: 1, 2, 3, 4, 5, 6 and 7
Previous Cargo:
Method of Cleaning Brushed, washed and ventilated

The above Hold(s) in our opinion, as far as could be ascertained were found to be clean to receive the intended cargo.
This statement covers the cleanliness of the cargo holds of the above Vessel at the time of intervention only. It is the ship's responsibility to prepare the ship adequately for receipt to the nominated cargo.

Signed and Dated,

<Date><Month><Year> Issued by .....

7. FORM OF CERTIFICATE OF WEIGHT

Certificate No.: Page No. 1/1

CERTIFICATE OF WEIGHT

Our Reference	:	
Name of Vessel	:	MV
Quantity	:	XX,XXX METRIC TONNES
Shipper	:	XXX COAL SUPPLIER XXXX
Cargo Description	:	XXX
Port of Loading	:	XXXX
Date of Loading	:	<Date><Month><Year>

THIS IS TO REPORT that in accordance with instructions received from our principal, XXX Coal Supplier, we have attended (sub-contracted XXXXXXX to attend) on board the above-mentioned Vessel for the purpose of conducting a draft survey of the above-mentioned commodity whose reported as follows:
XX,XXX Metric Tonnes

All drafts, densities, as well as fresh water, ballast, bilge and fuel oil soundings were ascertained in conjunction with the Vessel's Officers.
All calculations are based upon the Vessel's hydrostatic tables and the Vessel's calibrated tank sounding tables, as provided to the draft Surveyors.
This survey was conducted by using the internationally accepted method of determining Vessel's displacement by draft survey. This certificate is not a certificate of seaworthiness and only applies to the cargo loaded at this date, time, and place with the master being responsible for the stability and seaworthiness of his Vessel at all times.

Signed and Dated,
<Date><Month><Year>

Issued by .....

8. MINING RIGHTS AUTHORIZATIONS

The following Mining Rights Authorizations are attached.

9. FORM OF DEED OF NOVATION

THIS Deed of Novation (the "Deed") is made on XXXXXXX by and between:

2. RPCL-NORINCO INTL POWER LIMITED, a joint venture company of Rural Power Company Limited (RPCL), Bangladesh and NORINCO International Corporation Ltd., China, incorporated under the laws of Bangladesh and having its principal place of business at 7th Floor, Atlanta Trade Center, House# 01, Road# 1/A, Sector# 04, Uttara Model Town, Dhaka, Bangladesh (hereinafter referred to as the "**Purchaser**" or "**RNPL**"), which expression includes its successors and permitted assigns, and;
3. **[*an Affiliate of RNPL*],** a company duly incorporated under the laws of XXXXX and having its operations office at XXXXXXX, XXXXXXXXX, XXXXXXXX, XXXXXXXX, XXXXXXX, XXXX. ("**XXX**"); and
4. **[*insert Supplier*],** a XXXXXXX, XXXXXXXXX, XXXXXXXX, XXXXXXXX, XXXXXXX (the "**Supplier**" or "**YYY**")

The Purchaser, XXX and YYY individually may be referred as "**Party**" and, collectively, the "**Parties**".

WHEREAS:

A. The Purchaser and YYY are parties to a Contract Agreement for the Sale and Purchase of Coal for Patuakhali 1320 (2×660) MW Coal Fired Thermal Power Plant dated [.....] and as amended from time to time ("**Contract**").

B. Due to certain technical issues, the Purchaser wishes to assign all its rights under the Contract in relation to XXX (xx) shipments of [MT (+/-10%)] coal ("**Assigned Tonnage**") to **XXX** for shipment during [***insert schedule***] (under mutually agreed laycan(s)).

B. **YYY** is willing to accept such assignment as of the date hereof on the terms and conditions set out below.

WHEREBY, the Parties agree as follows:

1. Capitalised terms used but not defined in this **Deed** shall have the meaning given to them in the Contract.
2. The Purchaser hereby assigns to **XXX** all of its rights under the Contract with respect to the Assigned Tonnage, and **XXX** hereby accepts the assignment of such rights from the Purchaser.
3. For the purposes of Section 14.2.3.1 of the Contract, **YYY** hereby acknowledges and consents to the assignment of rights from the Purchaser to **XXX** with respect to the Assigned Tonnage as set out herein, provided that:
   a. **XXX** shall not be entitled to receive under the Contract any greater amount than that to which the Purchaser would have been entitled;
   b. notwithstanding the assignment under this Deed, except in respect of invoicing, and payment of invoices, under GCC 47 and PCC 47.4 of the Contract, **the Purchaser** shall be entitled to continue to deal directly with the Supplier in the performance of the Supplier's obligations under the Contract with respect to the Assigned Tonnage; and
   c. The Supplier shall at all times remain responsible for the proper performance of its obligations under the Contract, including, without limitation, all obligations with respect to the Assigned Tonnage.
4. A person who is not a party to this Deed shall have no rights under the Contracts to enforce any term of, or enjoy any benefit under, this Deed.

5. This Deed may be executed in any number of original copies and each such copy may be executed by each of the Parties in separate counterparts, each of which copies (and counterparts) when executed and delivered by the Parties, shall constitute an original, but all of which shall together constitute one (1) and the same instrument.
6. This Deed and any matters arising among the Parties with respect to or related thereto and any non-contractual obligations and liabilities arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the **laws of England and Wales**. **Disputes** under this Deed shall be resolved in accordance with GCC 47 and PCC 47.4 of the Contract, as if set out, mutatis mutandis, in full in this Deed.

IN WITNESS WHEREOF, this Deed has been executed and delivered on the date first stated above.

RNPL	***[an Affiliate of RNPL]***	***[the Supplier]***
Authorized Signatory	Authorized Signatory	Authorized Signatory
Authorized Signatory		Authorized Signatory

Article 7 List of Independent Inspection Authority

The weighing, sampling and analysis of Coal by the Loading Port Laboratory under Clause 7.2 of Article 7 of Section 6: Schedule of Requirements, for any Purchaser Test Analysis under Clause 7.3 of Article 7 of Section 6: Schedule of Requirements, and by the Umpire Laboratory under Clause 7.3.2 of Article 7 of Section 6: Schedule of Requirements shall be performed in accordance with the relevant ASTM procedures and standards set out in Article 3 of Section 7: Technical Specifications and from the following duly licensed independent and renowned laboratory:

i. PT. Anindya Wiraputra Konsult
ii. PT Geoservices Indonesia
iii. PT Leon Testing and Consulting Indonesia
iv. Bureau Veritas
v. Sucofindo
vi. SGS

Section 8. Drawings

Notes on Drawings

[Insert here a list of Drawings, including site plans, which should be attached to this section or annexed in a separate folder. The Drawings shall be clearly dated, numbered and show any revision number(s), if appropriate.]

FORMAT

LOGO

[Insert Full Contact Details of the Procuring Entity]

CONTRACT AMENDMENT

Contract No.	
Amendment No.	
Approval Reference No.	

Contract No. [insert number/year] by and between the [insert Procuring Entity's name] and [insert Supplier's legal title] for the contract named [insert name of the Goods and related services] is amended as follows:

1. GCC Clause [insert clause no], is hereby revised as _____
_____
_____

2. GCC Clause [insert clause no], is hereby revised as _____
_____
_____

and so on .

The effective date of this Amendment is [insert effective date] or upon execution whichever is later.

ALL OTHER TERMS AND CONDITIONS OF THE ORIGINAL CONTRACT SHALL REMAIN IN FULL FORCE AND EFFECT

THIS AMENDMENT, consisting of [insert number] page(s) and [insert number] attachment(s), is executed by the persons signing below who warrant that they have the authority to execute this Amendment under the original Contract.

IN WITNESS WHEREOF, the Procuring Entity and the Supplier have signed this Amendment.

[Supplier's Authorized Signatory]	[Procuring Entity's Authorized Signatory]
_____	_____
Signature	Signature
_____	_____
Title Date	Title Date