

Tripartite Agreement

Between

[Insert Name of Coal Producer]

AND

[Insert Name of Coal Consumer]

AND

[Insert Name of TPSA]

Date:

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This Tripartite Agreement (the "Agreement") is made and entered into on the [Date] day of [Month], [Year]

AMONGST

(1) [Insert Name of Coal Producer], a company registered under Companies Act, [1956/ 2013] in India (In case the Coal Producer is not a registered company viz. Partnership, Proprietorship etc. suitable amendment may be made here) and having its registered office at [.] (hereinafter called the "**Coal Producer**" which expression shall wherever the context so admits include its successors and permitted assigns of the first part)

AND

(2) [Insert Name of Coal Consumer], a company registered under Companies Act, [1956/ 2013] (In case the Coal Consumer is not a registered company viz. Partnership, Proprietorship etc. suitable amendment may be made here) in India and having its registered office at [.] (hereinafter called the "**Coal Consumer**" which expression shall whatever the context so admits include its successors and permitted assigns of the second part).

AND

(3) [Insert Name of Third Party Sampling Agency], a company registered under Companies Act, [1956/ 2013] (In case the TPSA is a Partnership Firm suitable amendment may be made here) in India and having its registered office at [.] (hereinafter called the "**TPSA**", which expression shall whatever the context so admits include its successors and permitted assigns of the third part).

The Coal Producer, Coal Consumer and the TPSA are individually referred to as "Party" and collectively as "Parties".

WHEREAS:

(A) Ministry of Power (MoP) vide letter dated 30.03.2021 has communicated its decision to engage services of other agencies besides Central Institute of Mining and Fuel Research (CIMFR) for Third party Sampling (TPS) of coal for power sector.

(B) As per decision, the TPS Agencies for Power Sector shall be empanelled by Power Finance Corporation Limited (PFC) and the coal consumers shall be free to take services of any of the empaneled agencies subject to selection of one (1) TPSA per coal subsidiary for all modes. The Terms of Reference (ToR) for empanelment of the agency has been decided collectively by Ministry of Coal, MoP, Coal India Limited (CIL) and NTPC with the following broad guidelines:

- Multiple Agencies should be available.
- Sampling only at loading end with appellate/referee provision.
- Choice of taking services from empanelled agencies shall be of the buyer of coal and
- Review mechanism (6 monthly basis) to review the working of the system.

(C) Accordingly, PFC, acting on behalf of the MoP empanelled third party sampling agencies for collection, preparation and analysis of coal samples at loading end for power sector through a competitive bidding process pursuant to RFP.

(D) [Insert Name of Third Party Sampling Agency] has paid the empanelment fees to PFC and was notified as an empanelled third party sampling agency by PFC. TPSA has been accredited for Coal Scope (IS 436-part-I, Sec-I, 1964 specification or its latest version) by National Accreditation Board of Certification Bodies (NABCB). TPSA has been chosen by

Coal Consumer for carrying out the Activity as per the provisions of this Agreement.

- (E) The TPSA shall be wholly responsible for collection, preparation, storage, transportation and analysis of coal samples in a transparent manner in context of coal supplies through different modes for Coal Consumer, as per applicable procedure, legislation and guidelines (relevant BIS/ISO and FSA) in this regard.

Now, therefore, after understanding the job description in detail and consequent to expression of willingness to take up the coal sampling activity, TPSA assures the other Parties about its ability, willingness, expertise and infrastructure to undertake said job of sampling and analysis of coal at the loading end as per the scope of work in this Agreement on being appointed.

And whereas, the Parties have agreed to enter into this Agreement on the following terms and conditions.

1. DEFINITIONS AND INTERPRETATIONS:

1.1. **Definitions:** In this Agreement (including the recitals), unless the context otherwise requires, the following terms shall have the meanings given to them below:

- (a) **"Activity"** shall mean collection, preparation, storage, transportation and analysis of coal samples at the loading end with appellate/referee provision in a transparent manner in context of coal supplies through different modes for Coal Consumer, as per applicable procedures, regulations and guidelines (relevant BIS/ ISO and FSA) in this regard;
- (b) **"Agreement"** shall mean this Tripartite Agreement entered into between Coal Producer, Coal Consumer and TPSA;
- (c) **"Clause"** shall mean a clause of this Tripartite Agreement;
- (d) **"Coal Consumer"** shall mean [Insert name of coal consumer];
- (e) **"Coal Producer"** shall mean [Insert name of coal producer];
- (f) **"Companies Act"** shall mean the (Indian) Companies Act, 2013, as amended from time to time, and any previous Companies Act in India as the context may require;
- (g) **"Conflict of Interest"** shall have the same meaning as ascribed here to in Clause 4.2 of this Agreement;
- (h) **"NABL"** shall mean National Accreditation Board for Testing and Calibration of Laboratories;
- (i) **"NABL Accredited Laboratory"** shall mean any of the laboratories listed in Schedule 1 of this Agreement including future modifications;
- (j) **"Party(ies)"** shall mean Coal Producer, Coal Consumer or TPSA as the case maybe;
- (k) **"Performance Security"** shall mean the irrevocable and unconditional bank guarantee submitted by the TPSA in the form set forth in Schedule 3 of this Agreement;
- (l) **"RFP"** shall mean the Request for Proposal dated [.] issued by the Power Finance Corporation Limited for "Empanelment of Third Party Sampling Agencies for

collection, preparation and analysis of coal samples at loading end with appellate/referee provision for power sector”;

- (m) **“Rupee”** or **“INR”** means Indian Rupee, the lawful currency of India;
- (n) **“TPSA”** shall mean [Insert name of empanelled Third Party Sampling Agency];
- (o) **“Working Day”** shall mean any day of the week excluding Sunday.

1.2. **Interpretations**

- (a) References in this Agreement to any statutory provision shall include a reference to that statute or provision as amended, extended or re-enacted and to any statutory replacement thereof from time to time and shall also include reference to all statutory instruments and orders made pursuant to any such statutory provision.
- (b) Reference in this Agreement to the singular shall include a reference to the plural and vice versa and reference to the masculine includes a reference to the feminine and neuter and reference to a person shall include reference to any company as well as any legal or natural person.
- (c) The construction of this Agreement and the Schedules hereto is not to be affected by any heading.
- (d) References in this Agreement to recitals, clauses, sub-clauses and schedules are, unless otherwise specified, references to recitals, clauses and sub-clauses of and schedules of this Agreement.
- (e) References to this Agreement include a reference to each of the schedules.
- (f) Words and definitions not defined in this Agreement but defined in the RFP shall have the meanings assigned to them in the RFP.

2. SCOPE OF THE AGREEMENT

- 2.1. This Agreement details the terms and conditions, financial arrangement, responsibilities and obligation of Coal Producer, Coal Consumer and TPSA. Further, any specific terms or conditions, procedure or methodology specified/not specified in this Agreement, but relevant to the scope and deemed necessary to be amended/included, may be mutually discussed and agreed to between the Coal Consumer, TPSA and Coal Producer within two (2) months of signing of this Agreement and shall be included as an amendment as per Clause 12 of this Agreement.
- 2.2. TPSA will undertake Activity at loading end of Coal Producer for the despatches to Coal Consumer in terms of this Agreement and that TPSA, Coal Producer and Coal Consumer shall respectively and faithfully abide by and subject themselves to the terms and conditions and stipulations of the Agreement.

3. FINANCIAL ARRANGEMENTS

- 3.1. In consideration of the Activity to be carried out by TPSA at loading end, Coal Producer and Coal Consumer shall pay TPSA in the following manner:
 - (a) Based on the expression of interest by Coal Consumer in writing, tentative quantity to be handled for Activity will be informed to TPSA by Coal Consumer and shall form

part of this Agreement.

- (b) Rate for the Activity at loading end will be Indian Rupees [.] (INR [.]) per tonne excluding GST but including all other taxes/ levies.
- (c) The cost of the Activity as per aforesaid rate and applicable taxes will be shared equally by Coal Producer and Coal Consumer, i.e. on 50:50 basis.
- (d) TPSA shall submit Performance Security to the Coal Consumer and Coal Producer at the rate of three percent (3%) of the work value or as amended subsequently (as per Ministry of Finance Office Memorandum No. F 9/4/2020-PPD dated 12.11.2020 or its subsequent amendment thereof, if any) while executing this Agreement. On successful completion of the work, the Performance Security shall be released within thirty (30) days of issuance of completion certificate by the competent authority. Provided that TPSA shall submit the Performance Security to Coal Producer and Coal Consumer on 50:50 basis. Further, the Coal Consumer /Coal Producer can invoke the Performance Security independently.
- (e) Penalty may be levied by Coal Consumer /Coal Producer on 50:50 basis
- (f) Coal Producer and Coal Consumer will release fund against each monthly bill towards test results submitted by TPSA for corresponding quantity within thirty (30) days of receipt of bills along with necessary documentation. Coal Consumer and Coal Producer shall ensure timely payment to TPSA.

3.2. **Period of Tripartite Agreement**

Initially the Agreement shall be for a period of two (2) years and on successful completion of two (2) years, it may be extended on yearly basis with mutual consent of all Parties subject to valid empanelment.

4. **GENERAL TERMS & CONDITIONS**

- 4.1. TPSA shall be wholly responsible for collection, preparation, storage, transportation and analysis (moisture, ash, GCV on equilibrated basis, total moisture etc.) or any other format for reporting of results, as may be notified by Coal Producer/ Coal Consumer in future while ensuring smooth functioning of operational and technical issues pertaining to the Activity. Towards this, detailed documentation of coal supplied to Coal Consumer through Rail/ Road/ MGR etc. will be furnished by Coal Producer/ Coal Consumer which will be the basis of raising the bills on monthly basis by TPSA.
- 4.2. TPSA shall avoid any Conflict of Interest while discharging the contractual obligations and shall inform Coal Producer and Coal Consumer in writing, any possible instance of Conflict of Interest while rendering service in respect of subject assignment. In the event of non-disclosure of such information, the Agreement may be terminated by Coal Producer or Coal Consumer without any further notice. For the purpose of this Agreement, Conflict of Interest shall include, but is not limited to, the conditions wherein
 - (a) TPSA is a consumer of coal or in the business of production/trading of coal and operation and management of coal based thermal power plant either in his own name or as a partner in a partnership firm or as a sister concern or as a holding company having any such subsidiary or as a subsidiary of any such holding company.
 - (b) TPSA or its member of board of directors and/ or its promoters/ partners have any position of interest or cross holding/ shareholding directly or indirectly with any

interested parties including Coal Producer or Coal Consumer.

- (c) TPSA is not a third party sampling agency undertaking sampling/ analysis for same Coal Consumer both at loading and unloading end.
- 4.3. It will be the sole responsibility of TPSA to comply with all statutory requirements relating to workmen engaged and towards the Activity during the term of this Agreement.
- 4.4. All the terms & conditions of the RFP and subsequent corrigendum/ amendments thereof, shall be treated as part and parcel of this Agreement.
- 4.5. This Agreement shall be part of the Fuel Supply Agreement (FSA).
- 4.6. TPSA shall have the obligation to conduct and carry out all tasks required to complete the Activity as per the terms and conditions of this Agreement.

5. PROCESS OF SAMPLING

5.1. Collection, preparation and analysis of sample

- (a) TPSA shall be wholly responsible for collection, preparation, storage, transportation and analysis of coal samples in a transparent manner in context of coal supplies through different modes for Coal Consumer, as per applicable procedures, regulations and guidelines (relevant BIS/ ISO and FSA) in this regard.
- (b) Collection of samples shall be done by TPSA. Further, sample preparation facilities/ machineries like pulverisers/ crushers and testing equipment are to be provided by TPSA. TPSA shall adhere to equipment specifications provided in Schedule TPSA shall also ensure all required safety arrangements. TPSA shall arrange a porta cabin with requisite facilities for sample preparation, which shall be placed near the sampling point in the premises of Coal Producer.
- (c) TPSA shall take the samples at their porta cabin or permanent structure within the premises of Coal Producer for storage as well as for preparation. TPSA will arrange its own crusher/ pulverizer. Local transportation of samples to the storage room of TPSA shall be arranged by TPSA. Coal Producer and Coal Consumer representatives shall be allowed to accompany TPSA representatives during transportation of samples. Further, boarding/ lodging of the persons hired for this purpose shall be arranged by TPSA.
- (d) Sample collection, preparation and storage shall be under CCTV camera with live streaming facility. The arrangement of CCTV and back up storage facility for a period of thirty (30) days shall be provided by Coal Producer at sampling point and by TPSA at preparation and storage point.
- (e) The authorized representatives of Coal Consumer and Coal Producer shall jointly witness the process of sample collection and preparation of the laboratory samples. The authorized representatives will put their signature on the sample tags as evidence of the process of sampling. However, their absence from participation/ witnessing for any reasons thereof shall not be considered as ground for disputing the results. The authorized representatives of all three Parties (Coal Producer, Coal Consumer and TPSA) will also sign on the samples register to be maintained by TPSA at the loading end.
- (f) Coal Producer shall provide adequate space and enabling conditions for collection of

coal samples at the loading end i.e. proper lighting, illumination, ramps/ ladders. In case of lack of above said conditions, same shall be provided by TPSA at the cost of Coal Producer.

- (g) There needs to be arrangement of sampling by Auto Mechanical Sampler and sampling by Mechanical Augur as below:
 - (i) The Mechanical Augur sampling, may be adopted in a phased manner within six (6) months of signing of Tripartite Agreement with the cost to be borne by TPSA, wherever feasible. Feasibility to be decided mutually between the Coal Producer and Coal Consumer.
 - (ii) Auto Mechanical sampling will be provided by the Coal Producer, for silo loading wherever available.
- (h) The sample for testing by TPSA/ referee samples shall be packed and sealed in tamper-proof hard bottles with 3-D holograms, QR codes and RFID tags at the coal sampling site itself.
- (i) After collection of samples, laboratory samples are to be prepared within two (2) days as per relevant BIS.
- (j) TPSA shall make arrangements for online tracking of samples at all stages from sample preparation to analysis at agency lab and referee lab.

5.2. **Parting of Sample**

- (a) Sample of 212 Micron size shall be prepared, as per BIS norms. The final laboratory sample shall be divided into 4 (four) parts. Part-I of the sample is for analysis by TPSA at NABL Accredited Laboratory (excluding those of Coal Producer and Coal Consumer). Part-2 and Part-3 of the sample are to be handed over to Coal Producer and Coal Consumer respectively for their own analysis. Part-4 of the sample, to be called referee sample, shall be sealed jointly by TPSA, representatives of Coal Producer and Coal Consumer.
- (b) Further, analysis through Automatic Bomb Calorimeter (BIS) with print out facility will be done without manual intervention and necessary records will be kept by TPSA. For tests/analysis (moisture, ash, GCV on equilibrated moisture basis), prepared samples will be transported to the labs of Third Party (excluding those of Coal Producer and Coal Consumer) in tamper proof manner. TPSA will ensure software system based Double Blinding of coal samples before sending the same for analysis in a NABL Accredited Laboratory (excluding those of Coal Producer and Coal Consumer).

5.3. TPSA shall communicate the result of sampling within fifteen (15) Working Days of sample collection to Coal Producer and Coal Consumer through email/ fax/ other electronic mode followed by hard copy. All analysis results submitted must contain sample wise details about source, date of collection, RR Number, Quantity, analysis details etc. Print outs of bomb calorimeter are also to be given with the hard copies of the analysis results of samples and also for referee samples by TPSA.

5.4. TPSA will also provide excel sheet of all the samples analyzed by them and facilitate auto updation of results and integration of TPSA coal sampling portal with portal of Coal Producer/Coal Consumer. TPSA is to develop online tracking system for all event of sampling and its analysis activities which is accessible to both Coal Producer and Coal Consumer.

5.5. **Double Blinding of samples:** TPSA has to ensure software system based double blinding

of coal samples before sending the same for analysis in NABL Accredited Laboratory (excluding those of Coal Producer and Coal Consumer).

5.6. TPSA shall also provide results of analysis to respective Coal Producer (HQ/ Area)/ Coal Consumer in excel format for online updation of records. TPSA shall also provide means to seamlessly transfer data to any ERP/ software of Coal Producer/ Coal Consumer.

5.7. **Precision/Adherence to Timeline/Non Collection of Samples/Penalty:**

- (a) **Precision:** In every sample involving referee analysis, the Bomb Calorimeter GCV value of referee sample analysis should be within the precision of (+/-) 65 Kcal/Kg compared to the Bomb Calorimeter GCV value of initial analysis of that sample as specified under BIS norms.
- (b) For every such sample, where the difference of Bomb Calorimeter GCV value of referee sample analysis and Bomb Calorimeter GCV value of TPSA sample analysis exceeds the above tolerance limit, no sampling charges shall be payable for that sample for TPSA sampling.
- (c) In case the above variation exceeds beyond five percent (5%) of total number of referee samples that are challenged in a month, it shall be construed unsatisfactory performance on the part of TPSA. In the event, the variation occurs in more than four (4) months in a continuous period of one year (12 months), it shall form ground for termination of the Agreement.
- (d) The timeline for submission of result within fifteen (15) Working Days by TPSA is to be maintained strictly and non-adherence to the timeline shall attract penalty as per the following table:

Sl.	Delay (in Days)	Penalty
1.	1-2	5% of the total amount for that despatch
2.	3-5	10% of the total amount for that despatch
3.	6-10	20% of the total amount for that despatch
4.	10-15	50% of the total amount for that despatch
5.	>15 days	100% of the total amount for that despatch

Non-payment of penalty amount by TPSA to Coal Producer/ Coal consumer within thirty (30) days of its imposition shall lead to termination as per Clause 7.2 (h) of this Agreement.

- (e) **Non collection of samples:** In case any consignment goes unsampled due to the failure of TPSA, double the rate of sampling charge on unsampled quantity shall be imposed as penalty on TPSA towards its failure.
- (f) **Others:** If any consignment goes unsampled due to hurdles/ problems created by any Party brought out in writing by TPSA, concerned Party will take corrective action to avoid re-occurrence.
- (g) At any point of time, if a person engaged by TPSA is reported to be involved in some illegal/ nefarious activity, TPSA would remove such person forthwith, under intimation to both Coal Producer and Coal Consumer.

5.8. Referee Sample:

- (a) Referee sample shall be collected as per Clause 5.2 (a) of this Agreement.
- (b) Referee sample shall be stored in tamper proof metal bottles with 3-D holograms, QR codes and RFID tags/ Geo tagging and biometric lock/ GPS enabled lock and under 24x7 CCTV supervision with online streaming. The standard operating procedure for referee sample analysis has been provided in Schedule 5 of this Agreement.
- (c) The referee sample shall be kept at the loading end. The storage site is to be provided by Coal Producer, which will be under the custody of TPSA with proper lock and key arrangement for the referee sample and shall be kept under CCTV surveillance. TPSA shall ensure safety and security of these samples. TPSA with mutual consent of Coal Producer and Coal Consumer can also arrange for a separate neutral premise under its control having facility of proper lock and key arrangement and CCTV surveillance for storage of referee samples.
- (d) The referee sample shall be preserved for a period of thirty (30) days from the date of communication of results by TPSA. The unchallenged referee samples shall be destroyed after thirty (30) days with proper records maintained by TPSA. Both Coal Producer and Coal Consumer representatives shall sign in the register as witness. If any Party fails to attend/ witness the destruction of referee samples, no claim will be entertained after destroying the unchallenged samples.

5.9. Raising of Dispute

- (a) Coal Producer or Coal Consumer may raise dispute within seven (7) days of the submission of results by TPSA excluding the date of submission. The Party challenging the result will send email (for referee challenge), along with its test reports, in reply to TPSA results with a copy of mail to the other Party. Print out of result of bomb calorimeter shall be enclosed by the disputing/ challenging Party.
- (b) The referee process shall continue even if the information about the referee protest conveyed by the Party challenging the result is not acknowledged by the other Party.
- (c) Referee sample shall be sent to any one of the nine (9) designated government NABL accredited referee laboratories (referee labs) i.e. Central Power Research Institute - Bangalore, NML - Jamshedpur, IIT Kharagpur, MECL Nagpur, JNARDCC Nagpur, IIMT Bhubaneswar, IICT Hyderabad, NEIST Jorhat, IEST Shibpur or any other NABL accredited laboratory that may be designated for this purpose in future. However, the choice of referee lab out of those empanelled, shall be done on rotational basis by the TPSA only.
- (d) Arrangement for full payment of charges in advance in case of challenging TPSA analysis results is to be made by the disputing/ challenging Party along with the request for referee sampling. Without deposition of advance payment, request of challenging Party for referee sampling shall not be considered and results of TPSA shall be treated as final. TPSA shall inform the list of disputed cases received from Coal Producer and/or Coal Consumer on monthly basis along with the estimated advance payment to be paid to the referee laboratories.
 - (i) The disputing/challenging party shall make the advance payment to the TPSA's account within ten (10) days of information of estimated advance payment as shared by TPSA failing which the request of disputing challenging Party for referee sampling shall not be considered and results of TPSA shall be treated as

final.

- (ii) Within five (5) days of receipt of advance payment from challenging party, TPSA will make the referee payment charges in advance to the referee labs on behalf of the disputing/ challenging Party. In the event TPSA does not make such advance payment, as received from the challenging party in its account, to the referee lab the disputing/challenging Party shall have the right to deduct such payments from the monthly invoices raised by the TPSA as per Clause 3.1 (f) of this Agreement.
- (iii) The advance payment to be made by the challenging party to the TPSA for onward payment to the referee lab shall be separate from the monthly invoices and shall not be included in the value of services of test results submitted as per Clause 3.1 (f) for computation of GST as per CGST rules. TPSA will ensure compliance of CGST rules in respect of expenditure claimed as a "Pure agent" as per CGST Rules 2017.
- (e) TPSA shall process the request for analysis of referee sample and despatch the referee samples to referee labs on monthly basis with advance intimation to both Coal Producer & Coal Consumer.
- (f) TPSA shall take necessary steps to obtain results of referee samples from the designated referee labs and communicate the same to Coal Producer and Coal Consumer within fifteen (15) Working Days from the date of receipt of the samples by the designated referee lab. TPSA shall forward the copy of original results as received from referee labs along with print out of bomb calorimeter results as received from referee labs to the Coal Producer and Coal Consumer. Non-adherence of the timeline by TPSA shall attract penalty as per the following table:

Sl.	Delay (in Days)	Penalty
1.	1-2	02% of the total amount for that despatch
2.	3-5	05% of the total amount for that despatch
3.	6-10	10% of the total amount for that despatch
4.	10-15	20% of the total amount for that despatch
5.	>15 days	50% of the total amount for that despatch

Non-payment of penalty amount by TPSA to Coal Producer/ Coal consumer within thirty (30) days of its imposition shall lead to termination as per Clause 7.2 (h) of this Agreement.

- (g) The Referee results along with the bomb calorimeter print out shall be final and binding on both the Coal Producer and Coal Consumer.
- 5.10. **Development of web portal:** TPSA shall develop a web portal within three (3) months of signing of this Agreement for posting the sample results, referee results and integration of portal with portal of Coal Producer/Coal Consumer, along with the provision of raising of referee challenge through portal, and downloading of sample/ referee results. Till the time of development of web portal, the results shall be shared as per the provisions of Clause of 8.3.3 of the Tripartite Agreement.
- 5.11. The performance of the TPSA shall be monitored and reviewed on a half yearly basis as per the performance parameters provided in Clause 5.7 above by a JS level Committee of

Ministry of Power and Ministry of Coal, Apex Committee (with CEA as one of the member) and Executive Committee. Non-performance of the TPSA shall result in invocation, encashment, or appropriation of Performance Security by the Coal Consumer/ Coal Producer.

6. FORCE MAJEURE

- 6.1. Neither Coal Producer, Coal Consumer nor TPSA shall be held responsible for non-fulfilment of their respective obligations under this Agreement due to the existence of one or more of the force majeure events such as but not limited to acts of God, war, flood, earthquakes, strike, lockouts, epidemics, riots, civil commotion etc. provided on the occurrence and cessation of any such events the affected Party thereby shall give a notice in writing to the other Party within one (1) month of such occurrence or cessation. If the force majeure conditions continue beyond six (6) months the Parties shall then mutually decide about the future course of action.

7. EFFECTIVE DATE AND TERMINATION OF THE TRIPARTITE AGREEMENT

- 7.1. This Agreement shall be deemed to have come into effect from the date of signing of the Agreement.

- 7.2. **Termination:** This Agreement may be terminated by Coal Producer /Coal Consumer by giving a two (2) months' notice in writing to TPSA in the following cases:

- (a) If TPSA obtains the empanelment on the basis of false information/ false statement.
- (b) If TPSA does not take up the Activity as per the terms of the Agreement.
- (c) If performance of TPSA is not found satisfactory as per Clause 5.7 (c) of the Agreement.
- (d) If any fraud/ embezzlement is detected subsequently and not reported by TPSA.
- (e) Suppressing information regarding Conflict of Interest.
- (f) If TPSA is declared insolvent by the relevant competent authority.
- (g) If TPSA commits material breach of this Agreement.
- (h) Non-payment/ non-realization of penalties or any dues of Coal Producer/ Coal Consumer by TPSA.

Re-engagement of same TPSA after the Termination shall be done based on mutual agreement between Coal Producer & Coal consumer. Termination by either Coal Consumer /Coal Producer shall be subject to unsatisfactory performance on part of TPSA as per Clause 5.7(c) or as per this Clause 7.2 of Agreement.

- 7.3. In the event of termination of the Agreement vide Clause 7.2, the rights and obligations of the Parties thereto shall be settled through mutual discussion between the Parties. Provided that any pending payments with respect to monthly invoice to TPSA for all completed Activities shall be paid by the Coal Producer and Coal Consumer within thirty (30) days of date of termination of this Agreement. Provided further that in the event of termination of the Agreement vide Clause 7.2, the Performance Security shall be invoked, encashed or

appropriated by the Coal Consumer/Coal Producer.

- 7.4. Change of name of TPSA with or without change of constitution/ partners is allowed provided that any such change of name/constitution/partners shall be intimated along with proof of such change to Coal Producer immediately but in no case later than thirty (30) days from the date of when such change occurred failing which this Agreement shall be cancelled. Provided further that any change in constitution/partners of the TPSA shall be allowed subject to TPSA maintaining compliance requirements as agreed to by it in its bid during empanelment process.

8. DETAILED MODALITIES FOR THIRD PARTY SAMPLING

Modalities for collection, handling, storage, preparation and analysis of coal samples and submission of the analysis results, by TPSA shall be as under:

8.1. Collection of Samples by TPSA:

Samples of coal shall be collected by TPSA from the loading end as given below:

8.1.1 Collection of samples from loaded wagons (Rail and MGR):

- (a) Rake-wise and grade-wise coal supplied from one loading end shall be considered as one lot, in case of supplies by rail.
- (b) In case of coal despatches through MGR the sample collected from each rake (source wise, grade wise and consumer wise) loaded from the respective loading end during the day shall be pooled together and shall be considered as a lot for the purpose of sampling.
- (c) Each lot shall be divided into a number of sub-lots in a manner that the quantity of coal/ number of wagons in such sub-lots is more or less equal. One (1) gross sample shall be collected from each sub-lot. The number of sub-lots shall be determined as under:

No. of wagons in one Lot	Number of sub lots/ gross samples
Up to 30 wagons	4
>30 wagons up to 50 wagons	5
>50 wagons	6

- (d) Each sub-lot consists of one (1) wagon selected as per random table given in IS: 436 (Part I/ Section I) 1964 for collection of gross sample/ increments.
- (e) In each wagon selected for sampling, the sample shall be drawn from one spot in such a manner so that if in the first randomly selected wagon, the sample is collected at one end, in the next random wagon the sampling spot will be in the middle of the wagon and in the third random wagon, the sampling spot will be at the other end and this sampling procedure shall be repeated for all subsequent random wagons.
- (f) Before collecting the samples, the sampling spot will be levelled and at least 25 cm of coal from the surface shall be removed/ scrapped and the place will be levelled for an area of 50 cm by 50 cm.

- (g) About 50 kg of sample shall be collected from each selected wagon in the lot by drawing 10 increments of approx. 5 kg each with the help of shovel/ scoop.
- (h) Any stone/ shale of size more than that specified in Schedule (of FSA) shall be removed/ discarded from the sample;
- (i) Samples thus collected from all the selected wagons in a lot shall be mixed together to form one gross sample per lot.
- (j) In case live overhead traction line exists in the siding, TPSA shall ensure that the power supply in the overhead traction is essentially switched off before commencement of sample-collection process from loaded wagons.

8.1.2 Collection of Samples of Coal Despatches by Road:

- (a) Samples shall be collected source-wise and grade-wise on daily basis round the clock, depending upon the timing of loading at respective despatch point(s).
- (b) The first truck for TPSA sampling on a day shall be selected randomly from the first eight loaded trucks before weighment at the road weighbridge. Every eighth (8th) truck being loaded of the same grade in the order of loading thereafter shall be subjected to TPSA sampling.
- (c) The sampling spot at the top of the loaded truck, selected randomly, will be levelled and at least 25 cm of coal surface shall be removed/ scrapped and the place will be levelled for an area of 50 cm by 50 cm for collection of sample.
- (d) About 30 kg of sample shall be collected from each selected truck by drawing increments of approx. 5 kg each with the help of shovel/ scoop.
- (e) All the samples collected source-wise, grade-wise from every 8th truck in accordance with Clause 8.1.2 (b) as above on daily basis shall be mixed together to form a gross sample.
- (f) Any stone/ shale of size more than that specified in Schedule (of FSA) shall be removed/ discarded from the sample.

8.1.3 Collection of Samples from Conveyor Belt/ Piped Conveyors

- (a) Samples shall be taken lot-wise, grade-wise.
- (b) The quantity that passes over the conveyor in a day (00 hrs to 24 hrs) constitutes 1 lot, which needs to be divided into a number of sub-lots for the purpose of sampling. Number of sub-lots to be divided & quantity of gross sample to be collected from sub lots shall be as below:

Wt. of the Lot (Tons)	No. of sub-lots/ gross samples	Qty to be collected (Kg)
up to 500	2	100
501 to 1000	3	150
1001 to 2000	4	200
2001 to 3000	5	250
Over 3000	6	300

Illustration

- (i) If the quantity to be passed in a day over the conveyor is 600 tons (which is 1 lot), then there will be 3 sub-lots and total sample quantity will be 150 kg
 - (ii) 1 gross sample shall be collected from 1 sub-lot, @ 50 kg per sub-lot. Thus, total 150 kg gross sample shall be collected from 3 sub-lots over the whole day (from 00 hrs to 24 hrs)
 - (iii) If the conveyor is operated for 15 hours in a day, spacing the collection of 150 kg over 15 hours of conveyor operation, 10 kg will be collected every 1 hour (quantity & intervals can be mutually decided by Coal Producer & Coal Consumer depending on the running time of the conveyor and the qty that passes in a day)
- (c) The belt needs to be stopped at the scheduled time to facilitate collection of the samples manually.
 - (d) While collecting the sample, the scoop should traverse the entire cross-section of the conveyor belt, drawing approximately 5 kg per increment
 - (e) Any stone/ shale of size more than that indicated in Schedule (of FSA) shall be removed/ discarded from the sample.
 - (f) There shall be one gross sample for the day mixing all the gross samples collected from all the sub lots during a day.

8.2. Preparation of laboratory samples

- 8.2.1 The gross sample collected at the loading end by TPSA shall be divided into two portions. One portion (one fourth of the gross sample) called Part — 1 shall be used for analysis of total moisture and the other portion (three fourth of the gross sample) called Part — 2 for determination of ash, moisture and GCV on Equilibrated Basis. Determination of total moisture shall be conducted in the nearest NABL Accredited Laboratory at the loading end.
- 8.2.2 The Part-2 sample shall be reduced into laboratory sample. For the general procedure for reduction of gross sample and preparation of moisture sample and laboratory samples, IS: 436 (Part I/ Set 1)-1964 or it's latest version shall be followed.
- 8.2.3 Final Laboratory samples shall be in the size of 12.5 mm for determination of Total Moisture and in the size of 212 micron IS sieve for determination of ash, Equilibrated Moisture (at 40 degree C and 60% RH) and GCV. Due care shall be taken by TPSA to ensure that the final lab sample is essentially in 212 micron size before the same is collected from the loading end so that no further sieving or pulverizing is warranted at the laboratory before analysis. Final Lab sample shall not be handed over by TPSA in size other than that of 212 micron IS sieve.
- 8.2.4 The final pulverized sample shall be divided into four equal parts viz. Set — I, Set— II, Set —III and Set — IV of 500 gms each as detailed below:
 - (a) Set – I shall be taken by TPSA to NABL Accredited Laboratory (excluding those of Coal Producer and Coal Consumer) for analysis of ash, moisture and GCV (on equilibrated conditions' basis at 40 degree C and 60% RH) as per latest BIS Standards (IS: 1350 Part 1-1984) or (IS: 1350 Part-II-2017), as applicable
 - (b) Set – II of the sample shall be handed over by TPSA to Coal Producer.

- (c) Set – III of the sample shall be handed over by TPSA to Coal Consumer.
 - (d) Set – IV of the sample called as Referee Sample shall be sealed jointly by TPSA in presence of authorized representatives of Coal Producer and Coal Consumer and shall be kept in the custody of TPSA at the loading end under proper and secured arrangements. The referee sample shall be retained in double sealed condition (duly signed by TPSA and the authorized representative of Coal Producer and Coal Consumer for minimum of thirty (30) days from the date of sample collection, beyond which it may be destroyed after necessary details are properly recorded by TPSA. For the purpose of Referee Analysis, the referee sample(s) shall be packed and transported by TPSA in a tamper-proof metal bottles with 3-D holograms, QR codes and RFID tags/ Geo tagging and biometric lock/ GPS enabled lock and under 24x7 CCTV supervision with online streaming, to the referee lab from the loading end. Coal Producer and Coal Consumer can exercise the liberty to accompany TPSA to the referee lab at their own expenses. The referee sample shall be analyzed in the situations specified in paragraph 8.2.6 below. (Double-blinding)
- 8.2.5 Samples shall be collected, packed and transported by TPSA to the sample preparation site(s) at the loading end in such a manner so as to make them tamper-proof.
- 8.2.6 In the event that a dispute is raised by the relevant Parties within the time period stipulated at Clause 5.9 (a) above, the referee sample shall be analyzed by a designated government NABL Accredited Laboratory selected on rotational basis from the list as provided in Clause 5.9 (c) (other than the laboratory at which the original sample has been analyzed by a TPSA) for even distribution of referee samples across designated referee laboratories. The analysis cost of the referee sample shall be borne by the challenging/ disputing Parties. The non-disputing Party may witness transportation of referee sample to the above-mentioned government laboratory at their own cost. The findings of such government laboratory, post analysis of the referee sample, shall be binding for Coal Consumer and Coal Producer.
- 8.2.7 Notwithstanding anything to the contrary contained herein the analysis results communicated by TPSA or the government NABL Accredited Laboratory under paragraph 8.2.4 (a) and paragraph 8.2.6 respectively, shall be binding only with respect to the samples of coal collected for a particular consignment/day, as applicable, and shall not impact any past/ future supply of the contracted grade of coal made/ to be made to Coal Consumer in accordance with the terms of this Agreement
- 8.3. **Records of Samples/ Third Party sampling**
- 8.3.1 Proper analysis records like electronic print-out of the analysis results obtained from the Automatic Bomb Calorimeter, source-wise, grade-wise and date-wise details of coal samples received, etc. shall be maintained at the laboratories where the coal samples are analyzed by TPSA. Coal samples shall be analyzed only at an NABL Accredited Laboratory (excluding those of Coal Producer and Coal Consumer). Provided that determination of total moisture shall be conducted in the nearest NABL Accredited Laboratory.
- 8.3.2 Name of the colliery/ Siding/ Coal Consumer, date of collection and other identification details (e.g. Rake no. in case of rail supply etc.) shall be properly recorded by TPSA and a proper code number is assigned for each sample for identification and reconciliation of the analysis results.
- 8.3.3 Monthly statements containing the details of each and every analysis result source wise, mode-wise, grade-wise and consumer-wise, finalized during a month based on analysis by a TPSA or referee analysis, as the case may be shall be prepared by TPSA and submitted

to Coal Producer and Coal Consumer before the 5th of the following month stating inter alia, the quantity of Coal covered against the respective analysis results. Copies of the monthly statement/ report shall be submitted by TPSA to (i) the General Manager (Quality Control) of Coal Producer or his representative; and (ii) the representatives of Coal Consumer.

8.4. Analysis of sample(s)

8.4.1 Tests/ analysis for determination of moisture, ash, GCV on Equilibrated Basis shall be done by TPSA at NABL Accredited Laboratory (excluding those of Coal Producer and Coal Consumer).

8.4.2 Analysis of sample(s) shall be carried out as per latest version of IS 1350 (Part-I)1984 for determination of Total Moisture, Equilibrated Moisture and Ash and as per latest version of IS 1350 (Part-II), 2017 for determination of GCV.

9. RELATIONSHIP WITH AFFILIATE

{Insert in case TPSA has taken recourse to Financially Evaluated Entity to meet the Qualification Requirement as per the provisions of the RFP}

9.1. TPSA shall be required to continue to be an Affiliate with [Name of Financially Evaluated Entity] for at least three (3) years from the date of this Agreement.

10. CONFIDENTIALITY

10.1. The information, documents and data that shall come within the command or knowledge of TPSA in course of the Activity shall be confidential and the same shall not be used by TPSA for any purpose other than the performance of the work. During the tenure of Agreement and thereafter, all Parties undertake on their behalf and on behalf of their subcontractors/ employees/ representatives/ associates to maintain strict confidentiality and prevent disclosure of any/ all information & data exchanged/ generated pertaining to work under this Agreement for any purposes other than in accordance with this Agreement.

11. NOTICES

11.1. All notices and communications required to be served on Coal Producer and Coal Consumer shall be considered to be duly served if the same been posted by registered mail to Coal Producer and Coal Consumer at its last known address of business. Similarly, any notice to be given to TPSA shall be considered as duly served if the same has been posted by registered mail to TPSA.

12. AMENDMENTS TO THE AGREEMENT

12.1. No amendment or modification of this Agreement shall be valid unless the same is made in writing by all the three (3) Parties and their authorized representatives and specifically stating the same to be an amendment of this Agreement. The modifications/ changes shall be effective from the date on which they are made/ executed unless otherwise agreed to.

13. ASSIGNMENT OF THE AGREEMENT

13.1. The rights and/ or liabilities arising to any Party on account of this Agreement shall not be assigned except with the written consent of the other Parties and subject to such terms

and conditions as may be mutually agreed upon between the parties.

14. DISPUTE RESOLUTION

- 14.1. Disputes will be resolved amicably by a committee having members of Coal Producer, Coal Consumer and TPSA. For all such issues which cannot be resolved by such committee, the matter will be referred to a committee having members from Ministry of Power, Ministry of Coal, CEA, CIL, power utilities, APP and TPSA whose decision will be final and binding on all the three (3) Parties.

SEAL OF PARTIES

In witness whereof the Parties here to have signed this Agreement on the day of (Month) and year mentioned hereinbefore.

For and on behalf of Coal Producer Name: Designation: Seal: _____	For and on behalf of Coal Consumer Name: Designation: Seal: _____	For and on behalf of TPSA Name: Designation: Seal: _____
Witnesses: (Name Address) 1. _____ 2. _____ Date: _____	Witnesses: (Name Address) 1. _____ 2. _____ Date: _____	Witnesses: (Name Address) 1. _____ 2. _____ Date: _____

SCHEDULE 1: NABL ACCREDITED LABORATORY

[List to be added by TPSA at the time of signing of Tripartite Agreement]

SCHEDULE 2: INTEGRITY PACT

This Pact (hereinafter called the Integrity Pact) is made and entered into on day of the month of and year of.....,

AMONGST

(1) [Insert Name of Coal Producer], a company registered under Companies Act, [1956/ 2013] in India (In case the Coal Producer is not a registered company viz. Partnership, Proprietorship etc. suitable amendment may be made here) and having its registered office at [.] (hereinafter called the "**Coal Producer**" which expression shall wherever the context so admits include its successors and permitted assigns of the first part)

AND

(2) [Insert Name of Coal Consumer], a company registered under Companies Act, [1956/ 2013] (In case the Coal Consumer is not a registered company viz. Partnership, Proprietorship etc. suitable amendment may be made here) in India and having its registered office at [.] (hereinafter called the "**Coal Consumer**" which expression shall whatever the context so admits include its successors and permitted assigns of the second part).

AND

(3) [Insert Name of Third Party Sampling Agency], a company registered under Companies Act, [1956/ 2013] (In case the TPSA is a Partnership Firm suitable amendment may be made here) in India and having its registered office at [.] (hereinafter called the "**TPSA**", which expression shall whatever the context so admits include its successors and permitted assigns of the third part).

And Whereas,

- (A) TPSA has been notified as an empanelled third-party sampling agency for collection, preparation, and analysis of coal samples at loading end for power sector through a competitive bidding process.
- (B) TPSA has been chosen by Coal Consumer for signing a Tripartite Agreement with the Coal Consumer and Coal Producer in the form and content as shared with the TPSA and agreed to by the TPSA during the bidding process and for carrying out the activity as per the provisions of the Tripartite Agreement.
- (C) TPSA had agreed and confirmed in its bid that in the event of its selection as successful bidder and empanelment, it shall submit the integrity pact duly signed and stamped as per the format provided in Schedule 2 of Tripartite Agreement at the time of signing of Tripartite Agreement.

NOW, THEREFORE,

To avoid all forms of corruption by following a system that is fair, transparent and free from any influence/prejudiced dealings prior to, during and subsequent to the currency of the Tripartite Agreement to be entered into with a view to:-

Enabling the Coal Producer or Coal Consumer to obtain the desired services from TSPA at price discovered competitively during the bid process in conformity with the defined specifications/scope of work in the Tripartite Agreement by avoiding the high cost and the distortionary impact of corruption, and

Enabling TPSAs to abstain from bribing or indulging in any corrupt practice to ensure that the services under the Tripartite Agreement is provided by the TPSA with the highest standards of ethics during the currency of Tripartite Agreement.

The parties hereto hereby agree to enter this Integrity Pact and agree as follows:

1. Commitments of the Coal Producer and Coal Consumer

- 1.1 The Coal Producer and Coal Consumer undertake that no official of the Coal Producer or Coal Consumer, connected directly or indirectly with the any activity of the Tripartite Agreement, will demand, take a promise for or accept, directly or through intermediaries, any bribe, consideration, gift, reward, favor or any material or immaterial benefit or any other advantage from the TPSA, either for themselves or for any person, organization or third party related to the Tripartite Agreement in exchange for an advantage in the implementation of activities related to the Tripartite Agreement.
- 1.2 All the officials of the Coal Producer and Coal Consumer will report to their respective appropriate office for any attempted or completed breaches of the above commitment as well as any suspicion of such a breach.
- 1.3 In case any such preceding misconduct on the part of such official(s) is reported by the TPSA to the Coal Producer or Coal Consumer with full and verifiable facts and the same is prima facie found to be correct by the Coal Producer or Coal Consumer, necessary disciplinary proceedings, or any other action as deemed fit, including criminal proceedings may be initiated by the Coal Producer or Coal Consumer and such a person shall be debarred from further dealings related to the Tripartite Agreement. In such a case while an enquiry is being conducted by the Coal Producer or Coal Consumer the proceedings under the Tripartite Agreement would not be stalled.

2. Commitments of TPSA

The TPSA commits itself to take all measures necessary to prevent corrupt practices, unfair means and illegal activities during any currency of the Tripartite Agreement:

- 2.1 The TPSA will not offer, directly or through intermediaries, any bribe, gift, consideration, reward, favor, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of the Coal Producer or Coal Consumer, connected directly or indirectly with any activity related to the Tripartite Agreement, or to any person, organization or third party related to the Tripartite Agreement in exchange for any advantage in the implementation of the Tripartite Agreement.
- 2.2 The TPSA further undertakes that it has not given, offered or promised to give, directly or indirectly any bribe, gift, consideration, reward, favor, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of the Coal Producer or Coal Consumer or otherwise in procuring the Tripartite Agreement or forbearing to do or having done any act in relation to the obtaining or execution of the Tripartite Agreement or any other contract with the Government of India for showing or forbearing to show favor or disfavor to any person in relation to the contract or any other contract with the Government of India.
- 2.3 TPSA shall disclose the name and address of agents and representatives in India and also shall disclose their foreign principals or associates related to or involved in signing and implementation of the Tripartite Agreement.
- 2.4 TPSA shall disclose the payments to be made by them to agents/brokers or any other intermediary, in connection with the implementation of the Tripartite Agreement.

- 2.5 The TPSA further confirms and declares to the Coal Producer or Coal Consumer that the TPSA has not engaged any individual or firm or company whether Indian or foreign to intercede, facilitate or in any way to recommend to the Coal Producer or Coal Consumer or any of its functionaries, whether officially or unofficially for the award of the Tripartite Agreement to the TPSA, nor has any amount been paid, promised or intended to be paid to any such individual, firm or company in respect of any such intercession, facilitation or recommendation.
- 2.6 The TPSA, before signing the Tripartite Agreement, shall disclose any payments he has made, is committed to or intends to make to officials of the Coal Producer or Coal Consumer or their family members, agents, brokers or any other intermediaries in connection with the Tripartite Agreement and the details of services agreed upon for such payments.
- 2.7 The TPSA will not collude with other parties interested in the Tripartite Agreement to impair the transparency, fairness and progress of the implementation of the Tripartite Agreement.
- 2.8 The TPSA will not accept any advantage in exchange for any corrupt practice, unfair means and illegal activities.
- 2.9 The TPSA shall not use improperly, for purposes of competition or personal gain, or pass on to others, any information provided by the Coal Producer or Coal Consumer as part of the business relationship, regarding plans, technical proposals and business details, including information contained in any electronic data carrier. The TPSA also undertakes to exercise due and adequate care lest any such information is divulged.
- 2.10 The TPSA commits to refrain from giving any complaint directly or through any other manner without supporting it with full and verifiable facts.
- 2.11 The TPSA shall not instigate or cause to instigate any third person to commit any of the actions mentioned above.
- 2.12 If the TPSA or any employee of the TPSA or any person acting on behalf of the TPSA, either directly or indirectly, is a relative of any of the officers of the Coal Producer or Coal Consumer, or alternatively, if any relative of an officer of the Coal Producer or Coal Consumer has financial interest/stake in the TPSA's firm, the same shall be disclosed by the TPSA at the time of signing of the Tripartite Agreement. The term 'relative' for this purpose would be as defined in Section 6 of the Companies Act 2013.
- 2.13 The TPSA shall not lend to or borrow any money from or enter into any monetary dealings or transactions, directly or indirectly with any employee of the Coal Producer or Coal Consumer.

3. Previous Transgression

- 3.1 The TPSA declares that no previous transgression occurred in the last three (3) years immediately before signing of this Integrity Pact, with any other company in any country in respect of any corrupt practices envisaged hereunder or with any public sector enterprise in India or any government department in India that could justify TPSA's exclusion from signing of the Tripartite Agreement.
- 3.2 The TPSA agrees that if it makes incorrect statement on this subject, TPSA can be disqualified from the empanelment list.

4. Sanctions for Violations

- 4.1 Any breach of the aforesaid provisions by the TPSA or any one employed by it or acting on its behalf (whether with or without the knowledge of the TPSA) shall entitle the Coal Producer or Coal Consumer to take all or any one of the following actions, wherever required:-
- I. To immediately call off the signing of the Tripartite Agreement without assigning any reason or giving any compensation to the TPSA.
 - II. The Performance Security, submitted as part of Tripartite Agreement, shall stand forfeited either fully or partially, as decided by the Coal Producer or Coal Consumer and the Coal Producer or Coal Consumer shall not be required to assign any reason therefore.
 - III. To immediately cancel the Tripartite Agreement, if already signed, without giving any compensation to the TPSA.
 - IV. To recover all sums already paid by the Coal Producer or Coal Consumer, and in case of an Indian TPSA with interest thereon at 2% higher than the prevailing Prime Lending Rate of State Bank of India, while in case of a TPSA from a country other than India with interest thereon at 2% higher than the LIBOR.
 - V. To encash the Performance Security, furnished by the TPSA, in order to recover the payments, already made by the Coal Producer or Coal Consumer, along with interest.
 - VI. To cancel all or any other contracts with the TPSA. The TPSA shall be liable to pay compensation for any loss or damage to the Coal Producer or Coal Consumer resulting from such cancellation/rescission and the Coal Producer or Coal Consumer shall be entitled to deduct the amount so payable from the payment (s) due to the TPSA.
 - VII. To debar the TPSA from participating in future bidding processes of the Coal Producer or Coal Consumer for a minimum period of five (5) years, which may be further extended at the discretion of the Coal Producer or Coal Consumer.
 - VIII. To recover all sums paid in violation of this Pact by TPSA(s) to any middleman or agent or broker with a view to securing the Tripartite Agreement.
 - IX. In cases where irrevocable Letters of Credit have been received in respect of any contract signed by the Coal Producer or Coal Consumer with the TPSA, the same shall not be opened.
- 4.2 The Coal Producer or Coal Consumer will be entitled to take all or any of the actions mentioned at para 5.1 (i) to (ix) of this Pact also on the Commission by the TPSA or any one employed by it or acting on its behalf (whether with or without the knowledge of the TPSA), of an offence as defined in Chapter IX of the Indian Penal code, 1860 or Prevention of Corruption Act, 1988 or any other statute enacted for prevention of corruption.
- 4.3 The decision of the Coal Producer or Coal Consumer to the effect that a breach of the provisions of this Integrity Pact has been committed by the TPSA shall be final and conclusive on the TPSA. However, the TPSA can approach the independent monitor(s) appointed for the purposes of this Pact.
- 5. Independent Monitors**
- 5.1 The Coal Producer and Coal Consumer have appointed Independent Monitors (hereinafter referred to as Monitors) for this Pact in consultation with the Central Vigilance Commission (Name & Addresses of Monitors to be given).

- 5.2 The task of the Monitors shall be to review independently and objectively, whether and to what extent the parties comply with the obligations under this Pact.
- 5.3 The monitors shall not be subject to instructions by the representatives of the parties and perform their functions neutrally and independently.
- 5.4 Both the parties accept that the Monitors have the right to access all the documents relating to the Tripartite Agreement, including minutes of meetings.
- 5.5 As soon as the Monitor notices, or has reason to believe, a violation of this Pact, he will so inform the Authority designated by the Coal Producer or Coal Consumer.
- 5.6 The TPSA(s) accepts that the Monitor has the right to access without restriction to all project documentation of the Coal Producer or Coal Consumer including that provided by the TPSA. The TPSA will also grant the Monitor, upon his request and demonstration of a valid interest, unrestricted and unconditional access to his project documentation. The same is applicable to Subcontractors. The Monitor shall be under contractual obligation to treat the information and documents of the TPSA/Subcontractors(s) with confidentiality.
- 5.7 The Coal Producer or Coal Consumer will provide to the Monitor Sufficient information about all meetings among the parties related to the project provided such meetings could have an impact on the contractual relations between the parties. The parties will offer to the Monitor the option to participate in such meetings.
- 5.8 The Monitor will submit a written report to the designated Authority of Coal Producer or Coal Consumer/Secretary In the department/ within 8 to 10 weeks from the date of reference or intimation to him by the Coal Producer or Coal Consumer or TPSA and should the occasion arise, submit proposals for correcting problematic situations.

6. Facilitation of investigation

- 6.1 In case of any allegation of violation of any provisions of this Pact or payment of commission, the Coal Producer or Coal Consumer or its agencies shall be entitled to examine all the documents including the Books of Accounts of the TPSA and the TPSA shall provide necessary information and documents in English and shall extend all possible help for the purpose of such examination.

7. Law and Place of Jurisdiction

- 7.1 This Pact is subject to Indian Law. The place of performance and jurisdiction is the seat of the Coal Producer or Coal Consumer.

8. Other Legal Actions

- 8.1 The actions stipulated in this Integrity Pact are without prejudice to any other legal action that may follow in accordance with the provisions of the extant law in force relating to any civil or criminal proceedings.

9. Validity

- 9.1 The validity of this Integrity Pact shall be from date of its signing and extend up to two (2) years or the complete execution of the Tripartite Agreement to the satisfaction of both the Coal Producer or Coal Consumer and the TPSA, including warranty period, whichever is later.

Tripartite Agreement

9.2 Should one or several provisions of this Pact turn out to be invalid; the remainder of this Pact shall remain valid. In this case, the parties will strive, to come to an agreement to their original intentions.

10. The parties hereby sign this Integrity Pact at on

Coal Producer

..... Name of the Officer
..... Designation
..... Name of Coal Producer

Coal Consumer

..... Name of the Officer
..... Designation
..... Name of Coal Consumer

TPSA

..... Name of the Officer
..... Designation
..... Name of TPSA

SCHEDULE 3: PERFORMANCE SECURITY

(To be on non-judicial stamp paper of appropriate value as per Stamp Act relevant to place of execution. Foreign entities submitting Bids are required to follow the applicable law in their country. To be provided in the name of Coal Consumer and Coal Producer on 50:50 basis)

In consideration of the[Insert name of the TPSA with address] (hereinafter referred to as "TPSA") agreeing to undertake the obligations under the Tripartite Agreement dated and[Insert name of Coal Consumer/Coal Producer, as applicable, with address], (hereinafter referred to as "Coal Consumer"/"Coal Producer") agreeing to execute the Tripartite Agreement with the [Insert name of TPSA], regarding 'Activity' (as defined in the Tripartite Agreement), the [Insert name and address of the bank issuing the guarantee and address of the head office] (hereinafter referred to as "Guarantor Bank") hereby agrees unequivocally, irrevocably and unconditionally to pay to[Insert name of Coal Consumer/ Coal Producer] at[Insert place from address of Coal Consumer/ Coal Producer] forthwith on demand in writing from[Insert name of Coal Consumer/Coal Producer] or any Officer authorized by it in this behalf, any amount up to and not exceeding Rupees crores only [Insert the amount of the bank guarantee in respect of the Coal Consumer/ Coal Producer as per the terms of Tripartite Agreement on behalf of M/s. [Insert name of TPSA]. This guarantee shall be valid and binding on the Guarantor Bank up to and includingand shall not be terminable by notice or any change in the constitution of the Bank or the term of the Tripartite Agreement or by any other reasons whatsoever and our liability hereunder shall not be impaired or discharged by any extension of time or variations or alternations made, given, or agreed with or without our knowledge or consent, by or between parties to the respective agreement. Our liability under this Guarantee is restricted to Rupees Crores (Rs.) only. Our Guarantee shall remain in force until [Insert the date of validity of the Guarantee equivalent to the validity of Tripartite Agreement]. The Coal Consumer/ Coal Producer shall be entitled to invoke this Guarantee up to three hundred sixty-five (365) days of the last date of the validity of this Guarantee. The Guarantor Bank hereby expressly agrees that it shall not require any proof in addition to the written demand from the Coal Consumer/Coal Producer, made in any format, raised at the above mentioned address of the Guarantor Bank, in order to make the said payment to the Coal Consumer/ Coal Producer. The Guarantor Bank shall make payment hereunder on first demand without restriction or conditions and notwithstanding any objection by ,[Insert name of TPSA] and/or any other person. The Guarantor Bank shall not require the[Insert name of TPSA] to justify the invocation of this BANK GUARANTEE, nor shall the Guarantor Bank have any recourse against the [Insert name of TPSA] in respect of any payment made hereunder. THIS BANK GUARANTEE shall be interpreted in accordance with the laws of India. The Guarantor Bank represents that this BANK GUARANTEE has been established in such form and with such content that it is fully enforceable in accordance with its terms as against the Guarantor Bank in the manner provided herein. THIS BANK GUARANTEE shall not be affected in any manner by reason of merger, amalgamation, restructuring, liquidation, winding up, dissolution or any other change in the constitution of the Guarantor Bank. This BANK GUARANTEE shall be a primary obligation of the Guarantor Bank and accordingly the Coal Consumer/Coal Producer shall not be obliged before enforcing this BANK GUARANTEE to take any action in any court or arbitral proceedings against TPSA, to make any claim against or any demand on TPSA or to give any notice to TPSA or to enforce any security held by the TPSA or to exercise, levy or enforce any distress, diligence or other process against TPSA. The Guarantor Bank acknowledges that this BANK GUARANTEE is not personal to the Coal Consumer/ Coal Producer and may be assigned, in whole or in part, (whether absolutely or by way of security) by Coal Consumer/ Coal Producer to any entity to whom the Coal Consumer/ Coal Producer is entitled to assign its rights and obligations under the Tripartite Agreement. The Guarantor Bank hereby agrees and acknowledges that the Coal Consumer/ Coal Producer shall have a right to invoke this Bank Guarantee either in part or in full, as it may deem fit. Notwithstanding anything contained hereinabove, our liability under this Guarantee is restricted to Rupees Crores only (Rs.Crores) and it shall remain in force until[Date to be inserted equivalent to the validity of Tripartite Agreement], with an additional claim period of three hundred sixty five (365) days thereafter. This BANK GUARANTEE

Tripartite Agreement

shall be extended from time to time for such period, as may be desired by
[Insert name of TPSA]. We are liable to pay the guaranteed amount or any part thereof under this
Bank Guarantee only if the Coal Consumer/ Coal Producer serves upon us a written claim or demand.
In witness where of:

[Signature of Coal Consumer/ Coal Producer]

Signature

Name:

Power of attorney No.:

For:

Insert Name of the Bank

Banker's Seal and Full Address, including mailing address of the Head Office

SCHEDULE 4: EQUIPMENT SPECIFICATIONS

S.No.	Equipment	Range
1	Muffle Furnace (15X15X30 CC)	0 – 950 C
2	Muffle Furnace (15X15X30 CC)	0 – 1200 C
3	Air Circulatory Oven (60X60X60 – 5 racks)	0 – 250 C
4	Rough Balance	6 Kgs – 0.1 gms
5	Analytical Balance (1 which has direct connection with GCV analyser)	220 gms – 0.1 mg
6	Bomb Calorimeter with 0.001 deg temperature sensor with Printer connection and balance connection	
7	Humidity Chamber/ arrangement of EGCV for by Sulphuric acid bath through desiccator or similar arrangement	
8	Primary Jaw Crusher	Input 150mm – Output 50 mm
		Input 50mm – Output 12.5 mm
9	Secondary Jaw Crusher	Input 12.5mm – Output 3.35 mm
10	Pulveriser/Hammer Mill	Input 3.35mm – Output 212 micron
11	CRM of Benzoic Acid and Coal	
12	Moisture dish, Ash dish, VM crucible	
13	Oxygen gas, Nichrome wire, Thread,	

SCHEDULE 5: STANDARD OPERATING PROCEDURE FOR REFEREE SAMPLE ANALYSIS

- i. Referee Sample shall be retained in double sealed condition duly signed by the representatives of Coal Producer and the representative of Coal Consumer along with the signature of TPSA representatives and kept in safe custody of TPSA at the loading point for 30 days from the date of sample collection or for 15 days from the date of communication of results by TPSA, whichever is later. Disposal of the unchallenged referee samples will be done by TPSA under intimation to the Coal Producer and Coal Consumer with proper documentation of sample details.
- ii. For safe custody of referee samples, locker of Godrej make or equivalent make shall be provided by Coal Producer at loading end. All the keys will be solely under the custody of TPSA.
- iii. For more transparency in handling of referee samples, a separate room without any windows shall be provided by the Coal Producer for referee sample preservation, which will be under surveillance of CCTV round the clock by TPSA.
- iv. Coal Consumer/ Coal Producer may raise dispute, if any, within seven (7) days of the submission of result by TPSA excluding the date of submission.
- v. In order to remove the randomness in challenging results through referee samples, the referee sample challenge will be submitted along with the challenging party's test reports.
- vi. The challenging party will send email (for referee challenge) in reply to TPSA results. Challenging party shall also inform other party regarding the dispute. However, non-receipt of information by other party shall not affect referee process.
- vii. Referee sample shall be sent to any one of the nine (9) designated government NABL accredited referee laboratories (referee labs) i.e. Central Power Research Institute - Bangalore, NML - Jamshedpur, IIT Kharagpur, MECL Nagpur, JNARDCC Nagpur, IIMT Bhubaneswar, IICT Hyderabad, NEIST Jorhat, IEST Shibpur or any other NABL accredited laboratory that may be designated for this purpose in future. However, the choice of referee lab out of those empanelled, shall be done on rotational basis by the TPSA only.
- viii. TPSA will process the request of referee sample analysis on monthly basis and dispatch the referee samples to referee labs on priority with advance intimation to both Coal Producer & Coal Consumer.
 - a. TPSA will make the list of disputed cases received from Coal Producer and/or Coal Consumer for Referee analysis during the first day to last day of the month along with estimated advance amount to be paid to the Referee lab.
 - b. The list & estimated advance amount will be communicated by TPSA to respective challenging party/ parties up to 10th of following month.
 - c. By 20th of the same month, challenging party/parties will arrange the advance amount to be paid to the Referee labs and shall make such payment to TPSA's account within such timeline failing which the request of disputing challenging Party for referee sampling shall not be considered and results of TPSA shall be treated as final.
 - d. Within five (5) days of receipt of advance payment from challenging party, TPSA will make the referee payment charges in advance to the referee labs on behalf of the disputing/ challenging Party. In the event TPSA does not make such advance payment, as received from the challenging party in its account, to the referee lab the disputing/challenging Party

shall have the right to deduct such payments from the monthly invoices raised by the TPSA as per Clause 3.1 (f) of this Agreement.

- e. The advance payment to be made by the challenging party to the TPSA for onward payment to the referee lab shall be separate from the monthly invoices and shall not be included in the value of services of test results submitted as per Clause 3.1 (f) for computation of GST as per CGST rules. TPSA will ensure compliance of CGST rules in respect of expenditure claimed as a "Pure agent" as per CGST Rules 2017.
- f. TPSA, Coal Consumer and Coal Producer shall complete the coding, and challenging Party shall arrange transportation of the referee samples to designated referee labs. TPSA will send the disputed samples for analysis to the referee laboratories by the end of same month. In case of constraints/ exceptional cases, TPSA shall arrange transportation and amount will be reimbursed by the Coal Producer/Coal Consumer, as the case may be, within a period of one month after raising of bills by TPSA.
- ix. The referee samples will be coded and decoded at a centralized place in respective TPSA lab, in case lab is far off, it may be arranged in nearby lab of Coal Producer/ Coal Consumer on mutually agreed basis and same will be recorded in writing. All the concerned parties shall have the right to be present at the time of coding / decoding. The centralized place must be under CCTV surveillance. The methodology of coding and decoding will be as per Annexure A below. The samples will be carried to the designated lab by TPSA representatives from the place of coding. Other parties may witness transportation of referee samples. The intimation for witnessing, coding/decoding and transportation from coding point to referred lab would be given in advance by TPSA to both Coal Producer & Coal Consumer.
- x. TPSA will make necessary arrangements for analysis of referee samples. Cost of transportation charges for referee samples and referee samples analysis charges will be borne by the challenging party.
- xi. All the samples disputed by the Coal Producer as well as Coal Consumer shall be transported for a particular monthly lot in one go and above charges shall be shared by Coal Producer and Coal Consumer on pro rata basis on number of referee samples
- xii. TPSA shall take necessary steps to obtain results of referee samples from the designated government NABL accredited referee labs and communicate the same to Coal Producer and Coal Consumer within fifteen (15) working days from the date of receipt of the samples by the designated government NABL accredited referee lab. Non-adherence of the timeline by TPSA shall attract penalty as per Tripartite Agreement.
- xiii. TPSA shall forward the copy of original results as received from referee labs along with print out of bomb calorie meter results as received from referee labs to the Coal Producer and Coal Consumer.
- xiv. The findings of the referee sample shall be final and binding on both the Coal Producer and Coal Consumer.

Annexure A

Coding and decoding of Referee Samples

- i. Identification of referee challenged samples, its number and the name of the challenging party with site will be assessed.
- ii. Referee Samples will be opened and a new code in place of original identification will be assigned in presence of authorized representative of Coal Producers and Coal Consumer. Coal Producer/Coal Consumer may witness the process, but no one including TPSA will be allowed to note/ photography/videography as a proof, just to maintain the secrecy of the sample.

During the process of coding, only the seal of the Referee packets will be broken and it will be sealed by a new random code by TPSA. This code will be noted by TPSA only on a piece of paper, which will finally be sealed in an envelope and kept in a safe locker with the signature of all concerned parties (nobody will be allowed to note or to take photographs/videography of the total process). Now the coded sample will go to the designated laboratory for analysis purpose.

- iii. The representative of Coal Producer and Coal Consumer present during coding/decoding must be authorized by their competent authority.
- iv. After getting the results of the sample from referee lab, TPSA will intimate the date and time of opening of sealed envelope and the same may be witnessed by Coal Producer/Coal Consumer. TPSA will e-mail scanned copy of the contents of envelope to all the parties concerned.
- v. Finally, the results will be sent to all concerned by TPSA with the original details provided during collection of samples.

Following points to be considered for Software Based Double Blinding.

- a) Gross samples collected in bags to be bar coded at site and send to sample preparation units.
- b) Prepared samples to be packed in separate bags and again bar coded.
- c) These samples to be sent to NABL Accredited labs identified in TPA and to be registered at sample registration desk.
- d) Lab to generate a unique code against each sample thus received.
- e) Upon completion of the analysis, results to be submitted to the lab registration desk against the unique code. Finally, the registration desk to report back the results based on the respective barcodes generated at the sample preparation sites.

SCHEDULE 6: SAMPLE REPORT TEMPLATE

Relative Humidity of laboratory (%): [.]

Temperature of laboratory(C): [.]

Sl.	Sample ID	Date of Collection	Date of Preparation	Date of sample receiving at laboratory	Railway rake/ MGR			Total Moisture %	Air-dried Basis			Equilibrated moisture basis (60% RH & 40 C)			Analysed Grade	Washery Grade (for coking coal)
					Quantity (Mt)	R.R No. / F. Note No.	R.R. Date		M %	ASH %	GCV (Kcal/kg)	M %	ASH %	GCV (Kcal/kg)		
1	[.]	[.]	[.]	[.]	[.]	[.]	[.]	[.]	[.]	[.]	[.]	[.]	[.]	[.]	[.]	[.]

Note:

- (i) Samples collected as per Tripartite Agreement dated [.]
- (ii) Ash, Moisture & Total Moisture as per applicable BIS norms
- (iii) GCV as per applicable BIS norms
- (iv) Sulphur(s) value has been put in the bomb calorimeter as determined in the laboratory as per applicable BIS norms
- (v) None of the experiment is performed by external service provider
- (vi) This report should not be replicated or reproduced.