

Request for Proposal No.	RFP/SASAN/2018/Jul/02 Date: 14.07.2018
Bidder's offer reference No.	

FORMAT FOR AGREEMENT

This agreement is executed at _____ on this ___ day of _____ 2018 by and, between **Sasan Power Ltd**, a company incorporated under the Companies Act, 1956, having its registered office at **H Block, 1st Floor, Dhirubhai Ambani Knowledge City, Navi Mumbai - 400710** and its station/project namely **3960 MW Sasan Ultra Mega Power Project (SUMPP)** located at Sasan, Gram Siddhikhurd, Dist-Singrauli, Madhya Pradesh, hereinafter referred to as “SPL”, unless repugnant to the context or meaning thereof, be deemed to include its successors and permitted assigns as a Party of the FIRST PART;

And

_____(name of company), a Company/ Limited Liability Partnership (LLP) incorporated under Company Act/ a partnership firm with CIN No _____/ a proprietorship (strike which are not applicable) _____ Govt. of ___having its Registered Office at _____ represented by _____ (duly authorized by _____(name of company)) hereinafter referred to as _____, unless repugnant to the context or meaning thereof, be deemed to include its successors and permitted assigns as a Party of the SECOND PART.

WHEREAS:

- (A) Sasan Power Limited has developed coal based Sasan Ultra Mega Power Project (Sasan UMPP) with total installed capacity of 3960 MW, located near village Sasan, Gram Siddhikhurd, Post Office Tiyara, Dist Singrauli, in the State of Madhya Pradesh. SPL, depending upon the quality of coal being used, is generating approximately 40 Lakh tonne of ash per annum from its 6 nos. of units of 660MW each. Ash so generated is being collected in dry form and is temporarily stored in the 8 nos. of ash silos, each having storage capacity of 1200 MT. SPL to provide ash “as is where is basis” from ash silos of Sasan Ultra Mega Power Project (SUMPP) on free of cost basis and SPL would share the contracted transportation cost.

(B) _____(SECOND PART) with its Integrated Cement Plant/Cement Clinker Grinding Unit/Cement Blending Unit/ Allied Products Manufacturing Unit/Road Projects/ for land filling, located at _____ and having a capacity of _____ per annum for manufacturing of Cement / RMC/ Other ash based products/utilisation of ash, is desirous of lifting ash on transportation cost sharing basis as per below mentioned schedule from SPL as one of the inputs for manufacturing of said ash based products or utilisation of the ash.

Sr. No.:	Financial Year	Lifting of Ash quantity (Contracted Quantity) (>2 Lakh Ton/year) (A)	Shipping address	Distance of shipping address from SUMPP (Kms)
1	FY'19			
2	FY'20			
3	FY'21			
4	FY'22			
5	FY'23			

(C) SPL has agreed to the proposal of _____(SECOND PART) for lifting of ash from SPL and to cater for the requirement of _____(SECOND PART) as per above mentioned schedule, subject to availability of ash. Ash quality to be supplied would be “as is where is basis” from SUMPP’s ash silos/ any other pollution free ash conveyance system.

(D) And whereas SPL, has agreed to permit _____(SECOND PART) to collect the said ash on “as is where is basis” from the Ash Silos of SUMPP and transporting the same to bidders desired location of _____ (SECOND PART) in closed trucks / bulkers / tankers.

(E) And whereas SPL, and _____(SECOND PART) have mutually discussed and agreed upon the terms and conditions relating to collection of ash from ash silos of SUMPP and its transportation to the bidders desired location _____ (SECOND PART) and has decided to reproduce the said terms and conditions into writing as below:

Now therefore, in consideration of the premises and mutual agreements, covenants and conditions set forth herein, it is hereby agreed by and between the Parties as follows:

1. That this agreement shall come into force for all purposes and intent from the date of signing of this agreement.
2. **Validity of Agreement:** That this agreement shall remain valid for a period of XX/XX (Maximum Five financial years including the financial year in which this agreement is signed) (based on the request/ requirement of the party) years from the date of signing of this agreement and ash from plant silos will be issued on agreed transportation cost sharing basis and on “as is where is basis”.
3. **Price :** Rate of ash transportation cost to be shared by SPL shall be as under subject to Fuel Escalation as per Clause 4.

That, _____(SECOND PART) agrees that SPL would not be liable to share transportation cost for the quantity of ash lifted in excess of agreed quantity in respective financial year as per this agreement.

Sr. No	Financial Year	Lifting of Ash quantity (Contracted Quantity) (>2 Lakh Ton/year) (A)	Shipping address	Distance of shipping address from SUMPP (Kms)	Contracted Transportation cost to be shared by SPL (Rs/Ton) (B)	Total Amount (Rs) (C)=(A)x(B)
1	FY'19					
2	FY'20					
3	FY'21					
4	FY'22					
5	FY'23					

4. **Fuel Escalation :** In case there is increase/decrease in the price of High Speed Diesel (HSD) during the tenancy of the contract then Variation of Rate shall be calculated as per following.

Rate of Transportation cost sharing by SPL would be increased / decreased by 0.30% for every corresponding 1% increase / decrease in HSD price. This will be applicable on the base price when HSD will increase / decrease by 5% (single/cumulative) over the base price of HSD at Sasan. The same shall be applicable from subsequent day of official intimation by the concerned authorities of SPL.

Base Rate- Average Base Rate at Sasan as on xx.xx.2018: Rs xx.xx /Ltr

5. That _____(SECOND PART) shall organize all labourer, T&P, transport etc. to lift ash

from Ash Silos of SUMPPas per the terms and conditions mentioned in this Agreement and as directed by authorized representative of SPL.

6. That _____(SECOND PART) shall have scope of loading of ash into the closed trucks / bulkers / tankers from the ash silos of SUMPP, transporting and further unloading it to bidders location as per prevailing rules/regulations to the satisfaction of plant officials/local Govt. Administrative authorities etc.
7. That, this agreement has been executed as per the existing statutory provisions and policies of SPL and in the event of change in statutory provisions, policy, rules of SPL in future, the same shall be applicable and binding on the bidder automatically, failing which this agreement shall be deemed to be terminated automatically.

8. DELIVERY OF ASH

- 8.1 That, _____ (SECOND PART) shall appoint its authorized representative for coordinating the overall activity of off-take of ash from ash silos of SPL. The authorized representative of _____(SECOND PART) shall coordinate with Incharge of Ash Management Group of SPL and execute the lifting of ash from the ash silos.
- 8.2 That, SPL reserves the right, to inspect the bulkers/closed trucks/tankers, to verify the registration, insurance documents, PUC certificate, back horn, back light and driver's license of the said vehicles used for lifting of the ash by the _____(SECOND PART).
- 8.3 That, ash shall be collected by _____ (SECOND PART) on "as is where is basis" from any of the ash silos of SUMPP as instructed by the representative of SPL and SPL shall not be responsible for quality of ash, collection, transportation, any environment or safety related issues during transportation, handling and its utilization.
- 8.4 That, to facilitate SPL to ensure smooth and hindrance free issue of ash to various contracted parties, _____(SECOND PART) agrees to submit the monthly ash lifting schedule for one year. This schedule will further be submitted by the _____(SECOND PART) as a weekly schedule 5 days in advance for the succeeding month for approval of SPL. The monthly/weekly schedule can be revised mutually however, _____(SECOND PART) to ensure that lifting of ash for 3 consecutive months should not be less than 80% of the prorated contracted quantity. That, _____(SECOND PART) agrees that once the ash is loaded in their bulkers/closed trucks/tankers, it will become property of the _____(SECOND PART). Accordingly, _____(SECOND PART) agrees to take product insurance for the ash so lifted to cover the risk of payment of compensation to affected parties arising due to spillage

of ash for any reasons.

- 8.5 That, before lifting the ash from the silos, _____(SECOND PART) agrees to weigh the tare weight of bulkers/closed trucks/tankers to be used for ash lifting on the SPL's weigh bridge and subsequent to filling of ash by the _____(SECOND PART) from ash silos in the said bulkers/closed trucks/tankers, _____(SECOND PART) agrees to weigh the closed truck/bulker/tankers filled with ash at SPL's weigh bridge to determine actual quantum of ash lifted before taking the same outside SPL's plant premises.
- 8.6 That, _____(SECOND PART) agrees to raise invoice for the quantity of the ash lifted along with original weighment slips of the vehicles and certificate of quantum of ash lifted issued by SPL's representative on monthly basis.
- 8.7 That, SPL agrees to settle undisputed amount payable/receivable towards lifting of ash compliant with Rules & Regulations of Madhya Pradesh Pollution Control Board, Central Pollution Control Board, MOEF, GOI, Govt. of Madhya Pradesh, RTO etc. within 30 days of raising of such invoice in the succeeding month, to the month in which ash is lifted by the _____(SECOND PART).
- 8.8 That, _____ (Second Part) shall make their own arrangements for T&Ps, labourers & transportation of ash to their plant in closed trucks/bulkers/tankers in environment friendly manner.
- 8.9 That, _____ (SECOND PART) agrees that SPL shall not be responsible in any manner whatsoever for its inability to provide ash due to SPL's plant related problems or due to any other reason / conditions. Also, _____ (SECOND PART) agrees that SPL shall not be liable for payment of any compensation on account of its inability for providing the committed quantity of ash through this agreement for any reasons whatsoever.
- 8.10 That, _____ (SECOND PART) agrees to lift minimum 80 % of monthly scheduled quantity of ash lifting approved by SPL subject to adjustment in quantity of ash permitted as per this agreement. In case _____ (SECOND PART) fails to lift the minimum quantity of 80% of cumulative scheduled quantity of ash lifting for any consecutive three months, SPL will have right to review the continuance of the agreement. That, _____(SECOND PART) agrees to submit the reasons/ justification for lower off-take. That, _____(SECOND PART) further agrees that if the reasons/justification submitted by _____(SECOND PART) is not acceptable to SPL, SPL shall have right to terminate the agreement. _____(SECOND PART) agrees that in the event of such termination of agreement, amount/ BG submitted in favour of SPL against the performance guarantee shall also be forfeited.

- 8.11 **Adjusted quantity:** That, Parties agree that guaranteed ash offtake quantity would be adjusted downward if ash lifting is affected for following reasons;
- a) The quantity of ash which the SPL could not provide to the _____(SECOND PART) due to any reasons including forced outage of the SPL's plant or ash off-takers' congestion at SPL,
 - b) Transporters' strike for more than one week affecting ash transport, Flood/Earthquake restricting the movement of trucks for more than one week, Complete non operation of _____(SECOND PART)'s plant due to low demand of output product resulting into lower demand of ash vis-à-vis agreement quantity, strike in Vendor's plant for more than one week.
- 8.12 That, _____(SECOND PART) shall keep and maintain all record of measurements, challans for the quantity of ash lifted from SPL. Similarly _____(SECOND PART) shall submit end users certificate in the first week of each month for the quantity of the ash lifted in the previous month.
- 8.13 That, _____(SECOND PART) shall furnish a Contract Performance Bank Guarantee of 10% of the Contract value in the prescribed format in favour of SPL, guaranteeing assured off-take quantity of ash as mentioned in Para B above or the adjusted quantity whichever is applicable, on sustainable basis. The Bank Guarantee shall be kept valid by _____ (SECOND PART) for the contracted period with a claim period of one month and the shall be renewed from time to time as per advice of SPL.
- 8.14 That, _____(SECOND PART) agrees that in the case of non-lifting of agreed quantity of ash by _____(SECOND PART), SPL shall have the right to allocate the ash to some other user(s) without notice to _____(SECOND PART) and without any contest by _____ (SECOND PART).

9. TAXES AND DUTIES

- 9.1 That, all applicable taxes, duties or levies whichever may be imposed on the lifting and transportation of ash by any statutory authorities / Government(s) / Government agencies during the period of this agreement shall be borne by _____ (SECOND PART)
- 9.2 If SPL is called upon to pay such taxes, duties or levies directly to the authorities concerned, the same shall be paid within seven days by _____(SECOND PART) to SPL on demand for onward remittance and in case _____(SECOND PART) fails to do so, SPL shall have the right to adjust the same from the unpaid bills and/or security deposit of

the _____ (SECOND PART). Further, shortfall in the amount (if any) would be adjusted from the Bank Guarantee of _____(SECOND PART) and SPL shall have a right to terminate the contract.

- 9.3 It is clarified that the maximum liability of SPL under this contract would be to pay to the extent of sharing of transportation charges contracted with SPL including the Fuel Escalation provisions and no other charges would be payable by SPL in regard to lifting of the ash by _____(SECOND PART).

10. STATUTORY CLEARANCES:

10.1 That, _____(SECOND PART) shall be fully responsible for obtaining all applicable statutory clearances and compliance at their own cost from State Government, Government of India, Statutory Bodies and local authorities for the purpose of transporting ash to their agreed location prior to actual commencement of lifting of ash. SPL shall not bear any expenditure on this account whatsoever. (For this SECOND PART shall submit undertaking for compliance of all statutory norms/ regulation.)

10.2 That, SPL's commitment to supply ash under this agreement shall be subject to _____(SECOND PART) fully complying with all the requirements under the applicable laws, rules and regulations and amendment thereof including the rules and Regulations which are not specifically mentioned herein but incidental to such work. _____(SECOND PART) also agrees to comply with the rules / regulations related to lifting of ash, safety standards, pollution control and environment related norms finalised by SPL from time to time.

11. OPERATION OF ASH SILOS & TRANSPORTATION OF ASH

11.1 That, normally lifting of ash shall be allowed round the clock on all weekdays including Sundays excluding National Holidays or as decided by Engineer In-charge.

11.2 That, _____(SECOND PART) agrees to use only closed trucks/bulkers/tankers for lifting of the ash as permitted under the prevailing relevant Rules and Regulations.

11.3 That, all the vehicles closed trucks/ bulkers/ tankers engaged by _____ (SECOND PART) for lifting of ash from SPL shall only be parked at the designated parking area allocated by SPL

11.4 That, the persons engaged by _____(SECOND PART) for lifting of ash from SPL should follow all rules & regulations of SPL and follow the instructions of authorized representative of SPL.

- 11.5 That, no materials, other than ash, shall be lifted by _____ (SECOND PART). In the event it is found that some materials of SPL, other than ash is lifted and taken away by the representatives of _____(SECOND PART) or in closed trucks / bulkers / tankers of _____(SECOND PART), SPL, shall have the right to recover the same and/or terminate the agreement forthwith and to initiate the legal action as deemed fit against _____(SECOND PART) and/or its representatives involved.
- 11.6 That, _____(SECOND PART) agrees that no Child labours shall be engaged by _____(SECOND PART) in any circumstances in the process of off-take of ash from SPL.
- 11.7 That, _____(SECOND PART) agrees that any spillage caused while loading of ash / movement of closed trucks/ bulkers/ tankers of _____(SECOND PART) in the SPL premises shall be immediately cleaned / removed by _____(SECOND PART) at their own cost, failing which SPL will do the same at the risk and cost of the _____(SECOND PART) .
- 11.8 That, _____(SECOND PART) agrees that ash collected in closed trucks/ bulkers/ tankers from SPL shall not be dumped at any place other than the location agreed as per this agreement by _____(SECOND PART) in any circumstances. However, in case of breakdown of the closed truck/ bulker/ tanker or the accident of the closed truck/ bulker/tanker, the ash shall be immediately transferred to other closed / covered truck/ bulker/ tanker by _____(SECOND PART) in such a manner that there should not be any pollution due to this activity and suitable road safety arrangements will be made to avoid any road accident(s) . Further, in the event of spillage of ash due to accident, vehicle breakdown or due to any other circumstances, compensation payable if any to the affected person(s) or third party or to the Government department etc. due to such spillage, shall be the borne by the ----- (SECOND PART).
- 11.9 That, it is the responsibility of the _____(SECOND PART) to ensure that the ash quantity loaded in closed trucks/ bulkers/ tankers is within permissible limits of the vehicles approved by concerned Govt. authorities and SPL shall not be responsible for any consequences due to overloading of closed trucks/ bulkers/ tankers, if any, done by the authorized representative (s) of _____ (SECOND PART).
- 11.10 That, _____(SECOND PART) shall submit on yearly basis an Undertaking (in the Prescribed Format) confirming the compliance by _____(SECOND PART) of all the applicable rules & regulations, Notifications, laws etc. laid by RTO and/or any other authorities related to transportation of ash in trucks. And _____(SECOND PART) shall be solely responsible for any violations of above

said rules, regulations, laws etc.

11.11 That, in the event _____(SECOND PART) fails to make good the liability sustained by SPL, if any, due to any act(s) of _____(SECOND PART), same may be recovered by SPL from the Security Deposit provided by _____(SECOND PART) to SPL and _____(SECOND PART) shall have no objection for the same. For this purpose _____(SECOND PART) agrees to submit a security deposit of Rs.10,00,000/- in the form of Demand Draft in favour of Sasan Power Limited payable at _____ before commencement of actual off-take of ash from SPL. _____(SECOND PART) agrees that no interest on the amount of such security deposit shall be payable by SPL to _____(SECOND PART).

11.12 That, _____(SECOND PART) shall identify the competent person/ executive for monitoring and smooth execution of work ensuring the compliance of all the Safety, Regulatory and Statutory norms.

12. DAMAGE TO SPL PLANT OR PROPERTY:

12.1 That, _____(SECOND PART) shall be fully responsible and liable to compensate SPL, for any damage to SPL's plant and property or injury to its employees or third party caused due to any act of misconduct, malafide intention, negligence, omission etc. on the part of _____(SECOND PART).

12.2 That, this agreement shall be reviewed on yearly basis by SPL on following performance criteria:

- a) All Employees/ representatives / agencies / sub-agencies / transporters etc. of _____(SECOND PART) shall behave in responsible manner towards SPL/SPL's Contractors/employees etc. and confirm to the code of conduct of SPL.
- b) Shall not involve themselves in any anti-social activity including creating Industrial Relations (IR) problems in SPL premises and shall not be involved in any law & order violation and shall confirm to the code of conduct of SPL.
- c) Shall co-operate with SPL/ SPL's Contractors etc. for their smooth and continuous functioning in case of addition / extension / alteration of its plant is being carried out and shall confirm to the code of conduct of SPL.

d) Shall not cause any damage to SPL Plant or equipment / any injury to SPL's personnel.

e) Shall not cause any hindrance / create problems to other parties.

13. OBSERVANCE OF LABOUR LAWS:

That, _____(SECOND PART) shall comply with the provisions of all the applicable labour laws and keep insurance of all the persons engaged in the process of off-take of ash from SPL .

14. SAFETY:

14.1 That, _____(SECOND PART) shall follow all safety regulations and security requirements during collection & transportation of ash from SPL, as issued in this regard by SPL / Central Govt. / State Govt. / Any other authority & also abide by the any other instructions issued by SPL in this regard.

14.2 That, _____(SECOND PART) shall ensure safe movement of trucks/ bulkers/ tankers inside the SPL's premises and shall be solely responsible for any accident caused by the movement of these closed trucks/ bulkers/ tankers inside the SPL's premises.

14.3 That, the protective cover/safety appliances / personal protective equipment as may be required under the Law/SPL Rules for the persons engaged for this work shall be arranged by _____(SECOND PART) at their own cost.

14.4 That, SPL shall not be held responsible for any accident and casualty of the persons engaged in off-take of ash by _____(SECOND PART).

14.5 That, _____(SECOND PART) shall indemnify SPL, for any liability under Workmen's Compensation Act or under any other law, that may arise in respect of the persons engaged by _____(SECOND PART).

15. OBSERVATION OF ENVIRONMENTAL NORMS, PREVENTION OF POLLUTION AND INDEMNITY TO SPL:

15.1 That, the process of loading of ash in closed trucks/ bulkers/ tankers and the movement of closed trucks/ bulkers/ tankers in the silo area of SPL and the transportation of ash to unit/ash shipment address of _____(SECOND PART) shall be carried out by _____(SECOND PART) in such a manner that there is neither any dust

nuisance nor any violation of environmental norms.

15.2 That, all the rules & regulations, notifications, laws etc. laid by Pollution Control Boards, CPCB, MoEF etc. shall be complied and followed by _____(SECOND PART).

15.3 That, _____(SECOND PART) shall be solely responsible for violations of provisions of any applicable environmental laws / rules / notifications during the process of off-take of ash from the ash silos of SPL and its transportation to unit/ash shipment address of _____(SECOND PART)

15.4 That, _____(SECOND PART) shall keep SPL indemnified against any liability that may arise on these accounts. In the event of any liability arises to SPL due to non fulfilment of responsibility by _____(SECOND PART), same shall be recovered from the security deposit provided to SPL by _____(SECOND PART).

15.5 That, _____(SECOND PART) shall comply with all laws, rules & regulations etc. laid by statutory authorities as well as the directions / advice of SPL related to ash loading and its transportation in closed trucks/ bulkers/ tankers which are not mentioned above but are necessary for compliance of all applicable laws, safety and environmental norms and to carry out all the works in a safe and eco-friendly manner.

16. FORCE MAJEURE

16.1 Definition of Force Majeure

In this Clause, "**Force Majeure**" means an event beyond the control of the Employer and the Contractor, which makes it impossible or illegal for the party claiming Force Majeure ("**Affected Party**") to perform its obligations under the Contract and which act or event is: (i) beyond the reasonable control and not arising out of the fault of the Affected Party; (ii) the Affected Party has been unable to overcome such act or event by the exercise of due diligence and reasonable efforts, skill and care; and (iii) has a Material Adverse Effect on the Works. For the purpose of this Clause 16.1 a Force Majeure event shall mean:

- a) Act of God or events beyond the reasonable control of the Affected Party and against which an experienced party could not be reasonably expected to take precautions, exceptionally adverse weather conditions, lightning, earthquake, cyclone, flood, volcanic eruption or fire to the extent originating from a source external to the Site or beyond design specification for the construction Works;
- b) Contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component of such an assembly;

- c) Riot, commotion or disorder, strikes or boycotts which interrupt supplies and services to the Works for a period exceeding a continuous period of seven (7) days in a year, unless solely restricted to employees of the Contractor or of his Subcontractors currently or formerly engaged on the Works;
- d) Any discoveries or archaeological finding that prevents a party from discharging its obligations;
- e) Any events/Act due to Political Event such as amendment in Constitutional Law of State or National which has impact or consequence in execution of scope of Work under this Contract.
- f) Expropriation or compulsory acquisition by any governmental agency of any assets or rights of the Employer or the Contractor;
- g) An act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, insurrection, terrorist or military invasion or civil commotion which interrupt supplies and services to the Works for a period exceeding a continuous period of (7) days in a year ; and
- h) Industry wide, city wide, state wide or India wide strikes or industrial action or any public agitation.
- i) If a Party considers that it may be affected by a Force Majeure event, the Party shall promptly notify the other Party and Employer's Representative of such Force Majeure event within seven (7) days of such occurrence. If neither Party issues any notice regarding the event within seven (7) days of its occurrence, the said event shall be deemed not to have occurred and the Contract shall continue to have effect as such.

16.2 Effect of Force Majeure Event

Neither SPL nor the Contractor shall be considered in default or in contractual breach to the extent that performance of their obligations is prevented by a Force Majeure event which arises after the date of Notice to Proceed. Upon the occurrence of such Force Majeure, the Affected Party shall endeavour to continue to perform its obligations as far as reasonably practicable.

16.3 Contractor's Responsibility

If affected by such Force Majeure event, the Contractor shall within a period of seven (7) days, promptly notify the SPL's Representative of any proposals for overcoming the consequences of the Force Majeure event, including any reasonable alternative means for

performance, but shall not carry out these proposals without the consent of the Employer's Representative.

16.4 Employer's Responsibility

If affected by such Force Majeure event, the Employer shall within a period of seven (7) days, promptly notify the Employer's Representative and the Contractor of any proposals for overcoming the consequences of the Force Majeure event.

16.5 Payment to Contractor

The Works that have already been measured shall be paid for by SPL even if the same is subsequently destroyed or damaged as a result of the Force Majeure event. The cost of rebuilding or replacing any part of the Works that has been measured shall be borne by SPL.

16.6 Resumption of Work

The obligations under the Contract shall be resumed as soon as practicable after the Force Majeure event has come to an end or ceased to exist. In case of doubt or dispute, whether a particular occurrence should be considered a Force Majeure event as defined under this clause, the decision of the SPL's Representative shall be final and binding.

16.7 Optional Termination, Payment, Release and mitigate the effects

- a) Irrespective of any extension of time, if a Force Majeure event occurs and its effect continues for a period of one hundred and eighty (180) days or more in a continuous period of three sixty five days (365) days after notice has been given under this Force Majeure Clause, SPL may give to the Contractor a notice of termination of the Contract which shall take effect thirty five (35) days after the notice is given.
- b) The Contractor shall be paid fully for the Works done under the Contract, but not for any defective work or Works done. SPL shall have the option to take over any Plant and Materials lying at site, at rates provided for in the Contract, failing that, as per rates, which are determined to be fair and reasonable by the SPL's Representative.
- c) The affected Party shall use all reasonable efforts to mitigate the effects of a Force Majeure, including but not limited to, the payment of all reasonable sums of money by or on behalf of the affected Party, which sums are reasonable in light of the likely efficacy of the mitigation measures. Save as expressly provided above, SPL shall not be liable to make any payments in respect of a period of or for consequences arising out of a Force Majeure.

17. TERMINATION

- 17.1 That, both parties agree that continuous lifting of agreed quantity of ash is the essence of this agreement.

- 17.2 That, commencement of first off-take of ash by _____(SECOND PART) should not exceed beyond one month from the date of signing of this agreement or agreed date by SPL and _____(SECOND PART).
- 17.3 That, _____ (SECOND PART) agrees to lift minimum 80 % of monthly scheduled quantity of ash lifting approved by SPL subject to adjustment in quantity of ash permitted as per this agreement. In case _____ (SECOND PART) fails to lift the minimum quantity of 80% of cumulative scheduled quantity of ash lifting for any consecutive three months approved by SPL, SPL will have right to review the continuance of the agreement. That, _____(SECOND PART) agrees to submit the reasons/ justification for lower off-take. That, _____(SECOND PART) further agrees that if the reasons/justification submitted by _____(SECOND PART) is not acceptable to SPL, SPL shall have right to terminate the agreement. _____(SECOND PART) agrees that in the event of such termination of agreement, amount/ BG submitted in favour of SPL against the performance guarantee shall also be forfeited.
- 17.4 That, in case _____(SECOND PART) is unable to lift any quantity of ash from SPL for a continuous period of more than 30 days (excluding force majeure conditions/ inability of SPL to issue ash due to plant shut down, maintenance, less generation of ash etc) under this agreement then SPL shall have an absolute right to terminate this agreement and encash the above said BG submitted in favour of SPL against the performance guarantee .
- 17.5 That, SPL shall have an absolute right to terminate this agreement by giving three months notice and _____(SECOND PART) will not have any right to make any claim on account of such termination of the agreement. However, SPL will return the BG and security deposit submitted to SPL by _____(SECOND PART), if agreement is terminated as per this clause subject to other deductions applicable under other clauses of this agreement if any. However, if -----(SECOND PART) wishes to terminate the contract, they will have to serve atleast 6 months notice in writing to SPL.
- 17.6 Other conditions for Termination of Contract shall be as per Clause 13 of the GCC.

18. LIQUIDATED DAMAGES:

- 18.1 That, in case _____(SECOND PART) fails to lift the minimum agreed quantity of fly ash as per the schedule given in Annexure A of the Special Condition of Contract (SCC); then Liquidated Damages (LD) shall be charged @ 25% of per ton cost of transportation to be shared by SPL as per contract for the shortfall quantity.
- 18.2 The Liquidated Damages shall not in any way relieve the _____(SECOND PART) from any of its obligations to complete the Work or from any other obligations and

liabilities of the _____(SECOND PART) under the Contract.

- 18.3 Notwithstanding the above, in the event the _____(SECOND PART) fails to complete work as per the schedule; and Liquidated damages for shortfall in quantity becomes more than 10% of the Contract Value, then SPL at his sole discretion, shall be entitled to treat the failure as an act of default by the _____(SECOND PART) and same shall entitle SPL to terminate the Contract.
- 18.4 SPL shall issue notice to the _____(SECOND PART) in writing before recommending any risk & cost to the _____(SECOND PART). The _____(SECOND PART) shall immediately provide an action plan to make good of any balance Work/deficient Work within seven (07) days of receiving such notice. Any non response by the _____(SECOND PART) to the Risk and Cost proposal of SPL or failure to provide an action plan shall be deemed as an acceptance of the Risk and Cost proposal by the _____(SECOND PART).
- 18.5 The Liquidated Damages for delay will be recovered at the sole discretion of SPL from the Contract Value or from other securities/ BG's available with SPL or jointly.
- 18.6 In case of the _____(SECOND PART) completing all the work under this Contract within the agreed contractual schedule, amount of Liquidated Damages withheld/deducted for delay in completion of the intermediate milestones will be refundable.
- 18.7 The total Liquidated Damages payable by the _____(SECOND PART) on account of any or all of the above shall be subject to a maximum of 10% of the Contract value.

19. WAIVER:

That, any failure by either party to this Agreement, to enforce any of its rights hereunder, whether arising from the failure on the part of the other party, to adhere to and/or fulfill its obligations under the terms hereof or otherwise, shall not be deemed to constitute a waiver of any such default and / or surrender of any such right.

20. SETTLEMENT OF DISPUTES AND ARBITRATION:

- 20.1 **That, dispute and /or difference of any** kind whatsoever arising between the parties relating to this Agreement shall in first instance be settled amicably with intervention of In-charge of Ash Management Cell, SPL within 15 (fifteen) days of referral of such dispute or difference to him, failing which the matter shall be referred to the sole arbitration by CEO, SPL or his representative of not below the rank of General Manager.
- 20.2 If the efforts to resolve all or any of the Dispute, differences or controversy through

negotiation fails, then such Dispute or differences, whatsoever arising between the Parties, arising out of or relating to performance of Works or effect of the Contract or the breach thereof shall be referred to arbitration in accordance Clause no 18.0 of General Condition of Contract (GCC).

- 21. That, the cost of stamp duty and registration of this agreement shall be borne by _____(SECOND PART). Original copy of the agreement shall remain in the custody of SPL.
- 22. This agreement shall be governed by Indian Laws, Madhya Pradesh State Govt. Laws and directives and the Courts of Singrauli District in state of Madhya Pradesh shall have the exclusive jurisdiction to entertain any suit or action arising out of this agreement.

23.NOTICE:

That, any notice that may be required under this agreement, shall be given in writing by any of the party either by personal delivery against acknowledgement or Registered Ads, E-Mail or Facsimile and shall be deemed to have been duly served upon receipt thereof at the following addresses: -

For _____

For _____

Sasan Power Limited

Address of Agency

PO: _____,

Dist: _____ (___)

Pin – _____

IN WITNESS WHEREOF the parties here to have executed this agreement through their authorized representatives on the date and place mentioned herein.

For and on behalf of SPL

For and on behalf of (SECOND PART)

WITNESS

WITNESS

1. _____

1. _____

2. _____

2. _____