

## Tender Document - Supply, Erection & Commissioning of Producer Gas Plant

### Scope of work -

#### Looking for the reputed technology provider for the below producer gas plant with strict environment clauses

- Equivalent current consumption of HFO: Approx. 55 KL/day
- Gross Calorific value of HFO: 10000 Kcal/Kg.
- Density of HFO: 960 KG/M3.
- Location to use producer gas as fuel : 1) Bake oven 2) Cast house 3) Foundry shop

**1. Description:** BALCO Bake Oven consists of 2 furnaces of 34 sections each and 2 furnaces of 36 sections each. Each section is having 8 pits (open cavity) of 5.6m (18 ft) depth & 0.7 m width separated by flue walls of width 0.5m. Flue walls of two sections are adjoined by head-walls. Our Baking Furnace is mainly made of fire clay (alumina-silica) refractory bricks. Green anodes are placed in Pits & then covered by Calcined petroleum coke of specified size. Flue gases are passes through the cavity of flue walls to heat the anodes by conduction. Flue gasses are generated due to the combustion of Heavy furnace oil (HFO), which is injected inside flue walls through injectors.

#### 2. Foundry shop

	MF 1-6	MF -7	MF – P & Q	MF –R & 8
Furnace Name				
Capacity(MT)	20	32	20	25
Melting Rate(Mt/hr)	1.5	2	4	4
HFO Consumption(KL/Day)	3	4	4	4

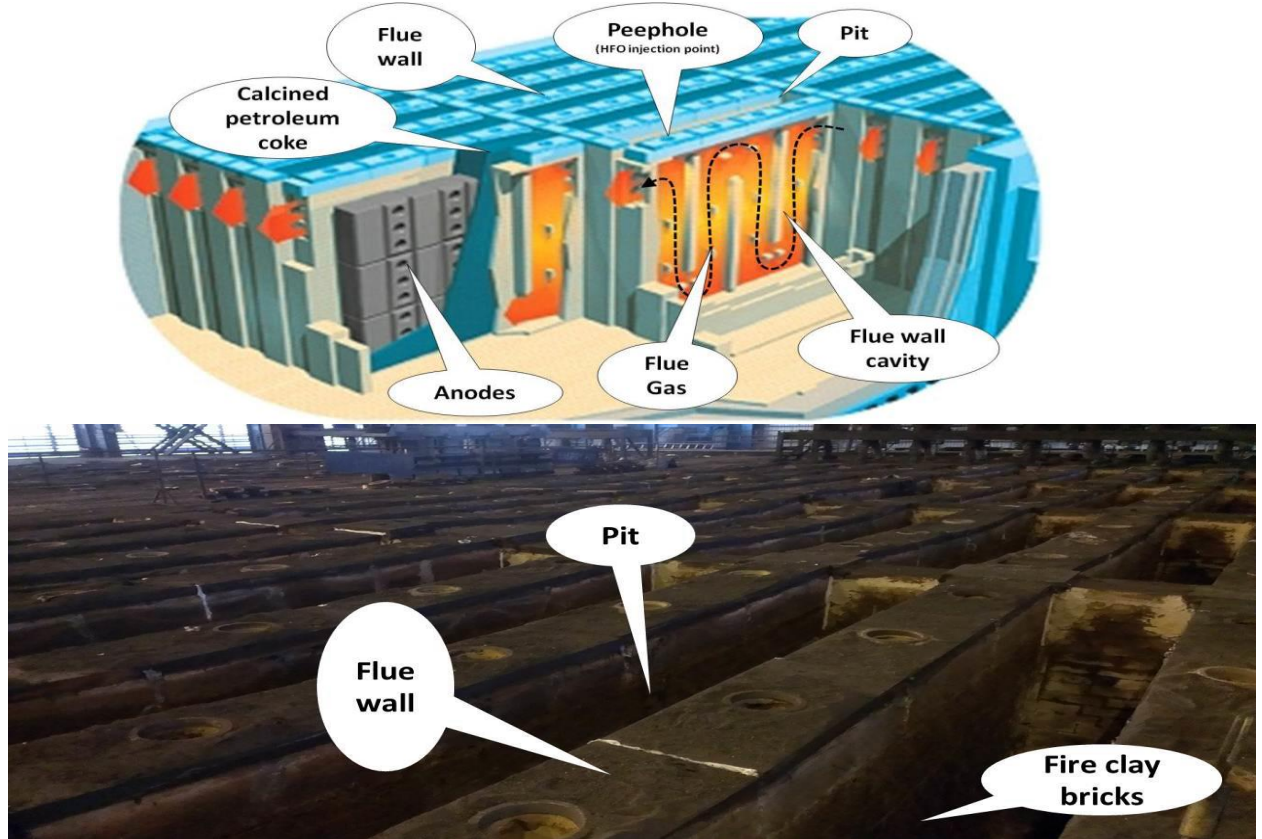
#### 3. Cast House

	Cast House-1						Cast House-2					Cast House-3
Furnace Name	A	B	H	J	F	G	K	L	M	N	O	S
Capacity(MT)	20	20	25	25	50	50	4 5	45	45	45	45	80

Melting Rate(Mt/Hr)	0	0	2	2	2	2	6	3	3	3	3	7.8
HFO Consumption(KL/Day)	0.5	0.5	1.5	1.5	2.5	2.5	4	2.5	2.5	2.5	2.5	2.5

- Current consumption of HFO: Approx. 55 KL/day
- Gross Calorific value of HFO: 10000 Kcal/Kg.
- Density of HFO: 960 KG/M3.
- Location to use producer gas as fuel : 1) Bake oven 2) Cast house 3) Foundry shop

**Schematic view of bake oven furnaces: -**



We are trying to explore producer gas as an alternate fuel. To cater the above requirement, please suggest suitable technology of producer gas plant which will generate same amount of heat to bake the carbon anodes.

**STANDARD TERMS AND CONDITIONS**  
**1. DEFINITIONS**

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

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

“**Agreement**” shall mean the Agreement between the Company and the Service Provider to which this Schedule is attached. “**Fees**” shall mean the prices and/or rates payable by the Company in respect of the Services and/or as specified in the relevant Purchase Order.

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

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

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

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

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

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

## **2. SCOPE OF CONTRACT**

2.1. The terms and conditions of the Agreement shall apply from the Effective Date and shall remain valid for the Term unless this Agreement is terminated earlier by the Company in accordance with Clause 10 below (Standard Terms and Conditions).

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

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

2.4. The Service Provider shall commence the Services on the scheduled commencement date stated under this Agreement or in the relevant Purchase Order and shall continue such Services for the Term or the duration of the Purchase Order as applicable unless terminated earlier in accordance with terms and conditions hereunder. Each Purchase Order is subject to agreement on a case by case basis.

## **3. SERVICES**

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

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

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

(a) only provide such personnel who possess appropriate experience, skills and qualifications necessary for the Services to be performed in accordance with this Agreement;

(b) not remove or replace such personnel without the prior written consent of the Company (not to be unreasonably withheld); and

(c) nominate a senior manager or director of the Service Provider to have overall responsibility for the provision of the Services in terms stated under this Agreement and/or the relevant Purchase Order, which person shall attend any meetings with the Company on reasonable prior notice.

3.4. The Company shall be entitled to request the Service Provider to replace any of its personnel providing the Services, where in the Company's reasonable opinion such person is incapable and or unsuitable for performing the Services required by this Agreement. The Service Provider shall promptly replace such person at no additional cost to the Company.

3.5. Without prejudice to any other rights of the Company under the Agreement or at law, if the Service Provider fails to perform the Services in accordance with the provisions of this Agreement, the Company may use alternative means to perform the Services and the Service Provider shall be liable for any additional cost incurred by the Company in using such alternative means.

3.6. The Service Provider hereby represents and warrants that it has all corporate authorisations and all other approvals, statutory, regulatory or other consents, licenses, waivers or exemptions required to enter into and perform its obligations under the Contract and is not restrained, enjoined or otherwise prohibited or made illegal by any

applicable law, from executing and performing this Contract.

## **4. FEES**

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

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

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

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

5.2. Where any of the Service Provider's employees or representatives is present at any of the Company's premises for the purposes of this Agreement, the Service Provider shall at all times remain responsible for the conduct and safety of such employee or representative.

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

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

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

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

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

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

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

(b) subject to Clause 5.5, employ Indian subcontractors having the required skills or expertise to the maximum extent possible insofar as their services are available on comparable standards with those obtained elsewhere and at competitive prices and on competitive terms, provided that where no such subcontractors are available, preference shall be given to non-Indian subcontractors who utilise Indian goods to the maximum extent possible, subject to the proviso in Clause 5.6 (a) above; and

(c) subject to Clause 5.5, co-operate with and assist Indian companies as subcontractors to enable them to develop skills and technology to service the petroleumindustry.

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

## **6. INTELLECTUAL PROPOERTY RIGHTS**

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

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

and includes also includes any inventions, made, to be made, discovered, conceived or reduced to practice whether or not patentable.

#### **7. THIRD PARTY CLAIMS AND LIMITATION OF LIABILITY**

7.1. The Service Provider shall be liable for and shall defend, indemnify and hold the Company harmless from and against any and all claims, liabilities, costs, damages and expenses (including court costs and legal fees) in connection with:

(a) any claim made by any third party (including, but not limited to, any claim made by any governmental or statutory authority) against the Company arising out of or in connection with the performance by the Service Provider of its obligations under this Agreement.

(b) any infringement (whether actual or alleged) of any patent or other intellectual property right arising out of or in connection with the performance of this Agreement by the Service Provider.

6.2. Notwithstanding anything to the contrary in this Agreement, in no event shall either Party be liable to the other, whether arising under Agreement, tort (including negligence), strict liability or otherwise, for any indirect, consequential, special, punitive, exemplary or incidental loss or damages of any nature arising at any time from any cause whatsoever.

#### **7. VARIATIONS**

7.1. At any time during this Agreement, the Company may request the Service Provider to vary, amend or otherwise alter the Services (a "Variation Request").

7.2. Upon the receipt of a request from the Company pursuant to Clause 7.1, the Service Provider shall, within 7 days, notify the Company of the effect of the Variation Request on the Fees and/or other terms under this Agreement and/or the relevant Order.

7.3. If following receipt of the Service Provider's response pursuant to Clause 7.2, the Parties are in agreement on the Variation Request and the adjustments to be made to the Services under this Agreement and/or the relevant Purchase Order, the Parties shall execute a variation order (a "Variation Order") to reflect such agreement.

7.4. The Services shall not be varied, amended or otherwise altered and/or the Fees shall not be adjusted until such time as a Variation Order is executed by both Parties.

#### **8. PAYMENT**

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

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

Invoices to the Company shall be sent to the address set out in the Agreement. Service Provider

must ensure that all invoices for services performed or goods delivered are submitted to the Company within 90 days.

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

(i) Latest tax residency certificate of the Service Provider as issued by the tax / revenue authorities of Service Provider's country of residence, stating specifically that the Service Provider is tax resident of country as mentioned in such tax residence certificate.

(ii) Copy of the Permanent Account Number ('PAN') card issued by the Indian Tax authorities,

(iii) Copy of registration certificates under applicable Indian tax/other laws including but not limited to GST, Excise, import export code etc., as applicable.

(iv) Copy of the withholding tax certificate issued by Indian tax authorities, enabling the Company to make payments to the Service Provider after deduction of such taxes as per prescribed rate in the withholding tax certificate.

8.2. The Company shall make payment of a correct invoice within 45 days of receipt to the Service Provider's nominated bank account. Any invoice not complying with the provisions of this Agreement will be returned by the Company and the Service Provider shall submit a rectifying invoice.

8.3. The Company may dispute any amount on an invoice and withhold the disputed amount provided that: (a) the Company makes payment of any undisputed portion of the invoice and notifies the Service Provider of the disputed amount within 45 days of receipt of the relevant invoice;

(b) if the dispute is resolved in favour of the Service Provider, the Company shall pay the disputed amount within fifteen (15) days of the date of the resolution of the dispute or forty-five (45) days of receipt of the invoice, whichever is later.

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

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

## **9. TAXES**

### **9.1. Definitions**

For the purposes of this Clause 9 (Taxation):

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

### **9.2. Person Responsible for payment of Taxes**

#### **9.2.1. General**

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

- (a) the payment of all Taxes now or hereafter levied or imposed on the Service Provider or its subcontractors or on the personnel of the Service Provider or its subcontractors by any Government Authority in respect of any wages, salaries and other remuneration paid directly or indirectly to persons engaged or employed by the Service Provider or its subcontractors (hereinafter referred to as "Personal Income tax");
- (b) the payment of all Taxes now or hereafter levied or imposed by any Government Authority on the actual/assumed profits and gains made by the Service Provider or its subcontractors (hereinafter referred to as "Corporate Income tax");
- (c) the payment of all GST now or hereafter levied or imposed by any Government Authority on the supply of goods or services, if any, provided to the

Company by the Service Provider or its subcontractors;

(d) the payment of all Taxes now or hereafter levied or imposed by any Government Authority on the mentioned goods only, namely, petroleum crude, HSD, Petrol, Natural Gas & ATF, if any, sold to the Company by the Service Provider or its subcontractors (hereinafter referred to as "Sales tax/VAT/CST");

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

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

#### **9.2.2. Exception to General:**

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

#### **9.2.3. Reimbursement of Taxes to the Service Provider**

It is acknowledged that responsibility for payment of Taxes to the Government Authority will be governed as per clause 9.2.1 and 9.2.2, the Service Provider will be reimbursed only for such Taxes which will be agreed to be reimbursed in the Compensation Schedule or any of the Purchase Order(s) issued under the Agreement.

#### **9.2.4. Pricing**

The Parties agree that details of Taxes included in, or excluded from, the Service Provider's prices and/or rates shall be as stated in the Compensation Schedule to the Agreement and nothing in this Clause 9 shall be construed to affect or prejudice such details as stated in the Compensation Schedule.

### **9.3. Withholding taxes and Withholding certificates**

**9.3.1.** The Company shall, at the time of its payments due to the Service Provider, withhold the necessary taxes at such rate as is required by any Government Authority, unless and to the extent that the Service Provider shall produce to the Company any certificate issued by a Government Authority (having authority to issue such certificate) entitling the Service Provider to receive the payments under the Agreement for a

prescribed period without deduction of any tax or deduction at a low rate.

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

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

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

documents to be furnished to it by the Service Provider and the Service Provider shall immediately furnish the same to the Company. If the Service Provider fails to comply with the foregoing, any penalty/interest levied on the Company for non-filing or late filing of details or documents in this regard shall be recoverable from the Service Provider.

**9.6. Indemnity**

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

**9.7. Changes in Law**

If, after the date of execution of this Agreement, there is any change in law which results in a change in the rate of any Tax included in the Service Provider's returns, the Service Provider shall, within the time stipulated by the relevant law, file the same with the Government Authority as a proof of payment of such taxes.

**9.4.2.**

**9.4.3.**

Authorities.

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

The Company, with respect to the tax withheld from the Service Provider in accordance with Clause 9.3 (Withholding Tax and Withholding Tax Certificates), shall be responsible for filing the withholding tax returns with the relevant Government Authorities in accordance with applicable statutory requirements.

decrease in the cost to the Service Provider of performing this Agreement then the Parties shall agree to a revision in pricing to reflect such change provided that:

(a) the Party requesting such revision shall promptly (and in any case prior to submission of the Service Provider's final invoice under this Agreement) notify the other Party that such change in law has arisen; and

(b) the Party requesting such revision shall provide the other Party with documentary proof of such change in cost to the reasonable satisfaction of the other Party; and

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

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

(a) The Company shall be entitled to recover from the Service Provider, the Taxes paid on behalf of the Service Provider or its subcontractors (together with any costs and expenses incurred by the Company in connection therewith) or to retain the same out of any amounts to be paid to the Service Provider or its subcontractors that may be in its possession (whether due under this Agreement or otherwise) and shall pay only the balance, if any, to the Service Provider; and

(b) If the Company is required to furnish any details or documents in such capacity, the Company shall request the details or

(c) the provisions of this Clause 9.7 shall not apply to changes in Personal Income tax or Corporate Income tax or to changes in non-Indian Taxes.

**9.8. GST Compliances by Service Provider**

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

(b) GST registration number of the Company;

(c) whether the Service Provider should be responsible to generate the E-Way Bill;

(d) the format of invoices/credit and debit notes/advance receipt vouchers;

(e) the requirement for maintenance of a 'GST compliance rating score' above a specified threshold; etc. and  
(f) the relevant timelines for such compliances based on the applicable GST laws.

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

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

9.8.4. Without prejudice to any other indemnification obligation under this Agreement, the Service Provider agrees to, at all times, to hold harmless and indemnify Company from and against all claims, liabilities, expenses, proceedings, costs and losses that may be suffered or incurred by Company which may arise out of or in connection with any failure by the Service Provider to adhere to its obligations including but not limited to its obligations under clause 9.9.1 above. In this regard, the Service Provider also hereby indemnifies Company from any costs, claim or liability arising out of any claim or action or omission by any employee or consultant or agent or outsourced staff or subcontractor of the Service Provider.

#### **9.9. Payment of royalty on minerals-**

It shall be the sole liability of the contractor to pay all royalties due, as per the applicable Rules, as amended from time to time, in respect of the minerals / materials which are being bought and used for the purposes of execution of this contract. The contractor shall produce royalty clearance certificate from the competent authority as proof of payment of royalty. In no event shall any liability in this regard be put on the company. Any default with respect to payment of royalty or non-production of royalty clearance certificate on the part of the service provider/contractor would count as a breach of the terms and conditions in the contract and the company shall have the right to immediately terminate the contract and to recover the outstanding amount of the royalty along with interest from Service Provider / contractor.

#### **10. TERMINATION**

10.1. Either Party may, at any time and without cause, terminate all or part of this Agreement by giving no less than [30] days' prior written notice to the other Party. Provided that, if any Services under this Agreement, or any Purchase Order issued hereunder, have already been initiated and the work is in progress, then the Company shall have the right to cancel/ terminate all or any part of the Service under the Agreement or the relevant Purchase Order without cause and with immediate effect.

10.2. In addition, the Company may terminate all or part of this Agreement with immediate effect by written notice to the Service Provider if one of the following circumstances occurs:

(a) if the Service Provider breaches any provision of this Agreement, provided that where remediable, the Company has notified the Service Provider of such breach and the Service Provider has upon receipt of such notice, failed to immediately and thereafter continuously proceed to remedy such breach to the Company's reasonable satisfaction; or

(b) if the Service Provider becomes insolvent or bankrupt or makes a composition or arrangements with its creditors; or

(c) if the Service Provider is wound up or a resolution for its winding up is made (other than for the purposes of an amalgamation or reconstruction whilst solvent); or

(d) if the Service Provider has a liquidator, provisional liquidator, receiver, administrator or an administrative receiver or manager of its business or undertaking appointed; or

(e) if the force majeure under Clause 14 continues for more than thirty (30) days.

10.3. In the event of cancellation/ termination of all or part of this Agreement for any reason, the Company's sole liability to the Service Provider in respect of such cancellation/ termination shall be to make payment of the Fees properly due under this Agreement up to the date of termination.

10.4. The expiry or termination of this Agreement shall be without prejudice to the rights and obligations of the Parties up to and including the date of expiry or termination and shall not affect or prejudice any term of this Agreement that is expressly or by implication provided to come into effect on, or continue in force after, such expiry or termination.

#### **11. CONFIDENTIALITY**

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



11.2. The Service Provider shall not disclose such Information(s) to any potential subcontractors until such time and in manner agreed by Company in writing. The decision of the Company will be final and binding on the Service Provider in this regard.

11.3. The Service Provider shall use best endeavours to prevent the authorised disclosure of the all information hereunder. Where any information is required to be disclosed under Clause 11.1, the Service Provider shall give prompt notice to the Company and shall use its best commercial endeavours to limit the extent of any such disclosure.

## **12. NOTICES**

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

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

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

## **13. GENERAL LEGAL PROVISIONS**

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

13.2. This Agreement shall not be amended or modified except by mutual agreement in writing between the Parties.

13.3. This Agreement and the all Schedules and Attachments annexed hereto contains the whole agreement between the Parties relating to the subject matter of this Agreement, and supersedes any previous understandings, commitments, agreements or representations in respect of the subject matter. No terms or conditions endorsed upon, delivered or contained in Service Provider's quotation, acknowledgement or acceptance of the Agreement, specification or similar document will form part of the Agreement and Service Provider waives any right it otherwise might have to rely on such terms and conditions. No variation to any terms or conditions of this Agreement shall be valid unless expressly agreed in writing by both parties.

13.4. No delay or failure on the part of either Party to enforce from time to time all or any part of the terms and conditions of this Agreement shall be interpreted as a waiver of such terms and conditions.

13.5. Nothing in this Agreement shall, or shall be deemed to, create an agency, a partnership or a relationship of employer and employee between the Parties. For the avoidance of doubt, nothing in this Agreement shall prevent or restrict the Company from entering into parallel Agreements with other parties for services similar or related to the Services.

13.6. Unless otherwise specifically stated, both the Company and the Service Provider shall retain all rights and remedies, both under the Agreement and at law, which either may have against the other. Each Party represents and warrants to the other that (i) it has been duly registered and organized and is a validly existing legal entity under the laws of the jurisdiction of its incorporation and that it has full power, authority and capacity to enter into and to carry out its obligations under the Agreement and (ii) by performing the Services it will not be in breach of any other Agreement, agreement, license or permit or in violation of any law and (iii) it shall at all times act in accordance with applicable laws and regulations.

13.7. The Service Provider shall comply with all safety instructions of the Company consistent with the provisions of the Agreement including, without limitation, the safety instructions of any of the Company's other Service Providers. Such instructions shall, if the Service Provider so requires, be confirmed in writing by the Company's Representative, so far as practicable.

13.8. The Service Provider shall not be entitled, without the written consent of Company, to make any news release or public announcement concerning the subject matter of the Agreement or to refer to the Company, use its name or logo, in print or electronic forms for marketing or reference purposes.]

13.9. If any provision of this Agreement is prohibited, invalid or unenforceable in any jurisdiction, that provision will, as to that jurisdiction, be ineffective to the extent of the prohibition, invalidity or unenforceability without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of that provision in any other jurisdiction, unless it materially alters the nature or material terms of this Agreement.

13.10. The provisions of this Agreement are solely for the benefit of the Parties. No other person are intended to have, nor will have, any rights whatsoever, under this Agreement, whether for injury, loss or damage to person(s) or property or for economic loss.

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

#### **14. FORCE MAJEURE**

14.1. Neither the Company nor the Service Provider shall be responsible for any failure to fulfil any term or condition of the Agreement if and to the extent that fulfilment has been delayed or temporarily prevented by a force majeure occurrence such as any (a) Act of God, (b) fire, flood, earthquake, (c) war, riot, insurrection and civil commotion, mobilization or military, call up of a comparable scope, which has been notified in accordance with this Clause 14 and which is beyond the reasonable commercial control and without the fault or negligence of the party affected and which, by the exercise of reasonable diligence, the said party is unable to provide against. For the avoidance of doubt, any strikes caused by the Service Provider (which includes its subcontractors) shall not be considered as a force majeure occurrence.

14.2. In the event of a force majeure occurrence, the party that is or may be delayed in performing the Agreement shall notify the other party without delay giving the full particulars thereof and shall use reasonable endeavours to remedy the situation without delay.

14.3. Save as otherwise expressly provided in the Agreement, no payments of whatever nature shall be made in respect of any period where Services are not carried out as a result of a force majeure occurrence.

14.4. Following notification of a force majeure occurrence in accordance with Clause 14.2, the Parties shall meet without delay with a view to agreeing a mutually acceptable course of action to minimise any effects of such occurrence.

#### **15. BUSINESS ETHICS**

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

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

15.3. The Service Provider agrees to comply with the provisions of the Company's Supplier Code of Conduct which includes Anti-bribery and Corruption requirements (a copy of which is also available at

[http://www.vedantalimited.com/media/104182/supplier\\_code\\_of\\_conduct\\_-](http://www.vedantalimited.com/media/104182/supplier_code_of_conduct_-)

[\\_december\\_2016.pdf](http://www.vedantalimited.com/media/104182/supplier_code_of_conduct_-)) and the Company's Human Rights Policy (a copy of which is available at [http://www.vedantalimited.com/media/80325/vedanta\\_human\\_rights\\_policy.pdf](http://www.vedantalimited.com/media/80325/vedanta_human_rights_policy.pdf)) including the Modern Slavery Act 2015 and in case of breach thereof, the same shall be treated as a breach of this Agreement.

OR

15.3 The Service Provider agrees to comply with the provisions of the Company's Supplier Code of Conduct which includes Anti-Bribery and Corruption requirements (a copy of which is also available at

[http://www.vedantalimited.com/media/104182/supplier\\_code\\_of\\_conduct\\_-](http://www.vedantalimited.com/media/104182/supplier_code_of_conduct_-)

[\\_december\\_2016.pdf](http://www.vedantalimited.com/media/104182/supplier_code_of_conduct_-)) and the Company's Human Rights Policy (a copy of which is available at [http://www.vedantalimited.com/media/80325/vedanta\\_human\\_rights\\_policy.pdf](http://www.vedantalimited.com/media/80325/vedanta_human_rights_policy.pdf)) including the Modern Slavery Act and in case of breach thereof, the same shall be treated as a breach of this Agreement.

The Service Provider acknowledges and agrees that the Company is subject to the Modern Slavery Act 2015. In performing its obligations under the Agreement, the Service Provider represents and warrants that neither the Service Provider nor any of its employees performing the Services:

- (a) have been convicted of any offence involving slavery and human trafficking;
- (b) have been or are the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking;
- (c) shall indulge in performance of any activity of slavery or human trafficking;

During the course of this Agreement, the Service Provider shall promptly notify the Company as soon as it becomes aware of:

- i. an act which may lead to the Company being in any breach, or potential breach, of the Modern Slavery Act 2015; or
- ii. any actual or suspected act of slavery or human trafficking in connection with this Agreement.

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

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

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

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

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

Group Head – Management Assurance, Vedanta,  
75 Nehru Road  
Vile Parle (E), Mumbai 400 099  
'Complaints' can also be sent to the designated e-mail id: Balco.whistleblower@vedanta.co.in

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

16.1. This Agreement shall be governed by, construed and enforced in accordance with the laws of New Delhi, India.

16.2. Any dispute or difference whatsoever arising between the parties out of or relating to the interpretation, meaning, scope, operation or effect of this Agreement or the existence, validity, breach or anticipated breach thereof or determination and enforcement of respective rights, obligations and liabilities of the parties thereto shall be amicably settled by way of mediation. If the dispute is not conclusively settled within a period of twenty-one

(21) days from the date of commencement of mediation or such further period as the parties shall agree in writing, the dispute shall be referred to and finally resolved by arbitration under the Arbitration and Conciliation Act, 1996 (as amended from time to time), which are deemed to be incorporated by reference into this clause. The arbitration shall be conducted as follows:

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

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

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

## **OTHER TERMS AND CONDITIONS<sup>1</sup>**

### **17. STATUTORY COMPLIANCES & CLEARANCES**

a) The Service Provider shall be solely liable for Statutory Compliance in respect of all applicable laws of land existing as on the date of the Agreement as well as those notified by the Central/ State Government from time to time including but not limited to compliance of provisions of Contract Labour (Regulation and Abolition) Act, 1970, Employees State Insurance Act, 1948, Employees Provident Funds and Miscellaneous Provisions Act, 1952, Minimum Wages Act, 1948, Payment of Bonus Act, 1965, Payment of Gratuity Act, 1972, Payment of Wages Act, 1936, Employees Compensation Act, 1923, Interstate Migrant Workmen (regulation of Employment and Conditions of Service) Act, 1979 etc. in respect of all employees employed by the Service Provider, directly or indirectly or through any sub-contractor. The Service Provider shall be solely responsible for maintenance of records and filing of various forms/ returns prescribed under all applicable Central/State Labour laws and Regulations/Rules made thereunder in respect of Workmen employed or engaged by it.

b) The Company shall be entitled to deduct/adjust from amount payable to the Service Provider, any dues, wages, compensation on accident or death, expenses incurred for benefits, provision for amenities and amounts paid or payable by the Company in compliance with the applicable laws, in respect of workmen/employees of the Service Provider.

c) The Service Provider shall ensure compliance under the Safety Provisions of the applicable State/ Central laws and shall ensure that its employees are trained, competent, physically and mentally fit for the assignment and are not suffering from any chronic or contagious disease.

The Service Provider is responsible for the safety and security of all men and materials employed by him. The Service Provider shall provide all safety equipment (such as tools & tackles, aprons, gloves, safety shoes etc.) to all Service Provider team members. The Service Provider shall provide adequate coverage against any accident met by the Service Provider's team during the period of the Agreement. The Service Provider shall indemnify the Company and its officers against any claim, dispute and litigations arising in this regard. Further no separate consideration shall be payable by the Company for the same.

The Service Provider shall take all the required clearances under the applicable laws which includes but is not limited to Environment Protection Act, CG Land Revenue Code, CG Municipal Corporation Act etc. for successful discharge of all its obligations under the scope of work.

### **18. SUSPENSION**

No compensation for alteration of schedule or suspension of work: If at any time after the award of the Agreement, the Company shall for any reason whatsoever not require the whole work done or part thereof as specified in the acceptance of the contract, the Company shall give notice in writing

*1 Other terms and conditions (Clause 17-28) are specific to BALCO and are in addition to the Standard Terms and Conditions released as per the Corporate Policy.*

of the same to the Service Provider and the Service Provider shall not be entitled to any compensation and / or damage of any kind whatsoever, nor the contractor will be entitled to any claim for compensation for re-scheduling of the delivery period.

**RELATIONSHIP BETWEEN THE SERVICE PROVIDER AND THE COMPANY**

Personnel engaged/employed by the Service

Provider shall be deemed employees of the Service Provider and will not for any purpose be considered employees or agents of the Company. Except as may otherwise be provided in this Agreement, each Party shall be solely responsible for the supervision, daily direction, and control of its employees and payment of their salaries/wages, benefits, provision for amenities, compensation, disability benefits and the like.

**20.**

a)

**SERVICE PROVIDER'S OBLIGATIONS/LIABILITIES**

The sole responsibility of the performance of the sub-contractor rests with the Service Provider and the Service Provider shall be liable for any work done by its sub-contractor, agents, employees or

Officials. However, the Company reserves the right to claim damages and enforce rights on the sub-

b)

c)

Contractor solely or jointly with the Service Provider but such enforcement will not absolve the Service Provider from any liability. The Service Provider shall advise the Company regarding, compliances, if any to be made by the Company. The Company shall, without prejudice to its other rights be entitled to deduct/ adjust from any dues payable to the Service Provider or any security, all amount(s) which the Company may be liable to pay, incur or sustain as a result of the performance or

non-performance, observance or non-observance of any of the terms of this Agreement by the Service Provider.

**21.**

**SERVICE PROVIDERS' WARRANTIES & REPRESENTATIONS**

The Service Provider hereby, warrants and represents that:

a)

b)

c)

The Services under this Agreement shall be strictly in accordance with the agreed terms.

**22.**

Rs 500/- First time

Rs 1000/- Second time onwards

If the Service Provider continues failing to provide The safety &/or PPE, the Company reserves its right to terminate the Agreement.

At any point of time, the safety compliance will be checked by the Company's Safety Department or Execution Department. The Service Provider shall immediately upon knowing of any accident, damage or losses, in which it is involved on the site, inform the area-in-charge.

**23.**

**PENALTY FOR VIOLATION OF SAFETY MEASURES**

In case of any violation of safety measures and or on non-compliance of safety PPE by the Service Provider or its employee(s), the Company may penalise the Service Provider as follows:

The Service Provider shall take all safety precautions and provide adequate supervision by competent persons in order to do the job safely and without damage to plant, personnel, equipment, and the environment.

**DISCIPLINE AT WORK AREA**

The Service Provider shall maintain discipline at

**24.**

work area. It shall keep the area neat and clean after the work is over. All the spares, waste material like oil grease etc. shall be kept at the designated area and the work place shall be cleaned after the job is over. In case, maintenance activities are found to be suffering due to non-performance by Service Provider's employees or job negligence, suitable punitive action shall be taken by the Company for the same.

**EMERGENCY**

The Service Provider shall ensure that its workers

follow the following instructions:

1.

2.

Contact fire control room on telephone No. 5333, 5219,5393,2333,242033 and inform name, location and brief of the emergency. If telephone is not available, break the glass of nearest manual call point of fire alarm or use the nearby portable fire extinguisher if you know the operation of the extinguisher. Rush to the location of Emergency and assess the situation. Combat the Emergency with the help of the available people using fire hydrant and fire extinguisher.

3.

4.

The Services to be provided under this Agreement shall not infringe any third party intellectual property rights. The Service Provider hereby represents to the

Company that, as of the date of signing of the Agreement, the Service Provider has received no notification of any rightful patent infringement claim which would prejudice the Company's right to use or maintain the Plant.

5.

Rush to nearby assembly point [displayed in the department] in case of an extreme emergency.

As soon as any Emergency call occurs, the Fire

control room operator will immediately ask the Turn out no.1 available at Fire Station plant-I to rush at the emergency spot.

He will simultaneously inform to Main Security

Gate of respective plants.