

MODEL TRIPARTITE AGREEMENT*

BETWEEN

ODISHA POWER GENERATION CORPORATION LIMITED

AND

CEMENT MANUFACTURER

AND

THIRD PARTY LOGISTICS AGENCY (if applicable)

FOR

**OPERATION OF BTAP/BCFC/SIMILAR CLOSED WAGON RAKES
FOR FLY ASH TRANSPORTATION**

(*This is an indicative “Model Tripartite Agreement & shall be modified as per the conditions of the contract & final negotiation with the selected Cement Manufacturer.)

MODEL TRIPARTITE AGREEMENT FOR OPERATION OF RAKES FOR FLY ASH TRANSPORTATION

This **AGREEMENT** for transportation of dry fly ash from OPGC plant to various cement plants through dedicated rake (BTAP/BCFC/similar closed wagon rakes)

Odisha Power Generation Corporation Limited, an existing company incorporated under the companies act, 1956 having its registered office at Zone-A 7th Floor fortune towers, Chandrasekharapur, Bhubaneswar, Dist- Khurda, Odisha -751023, hereinafter referred to as **“OPGC”**

AND

Cement Manufacturer (Name of the agency), a company duly incorporated under the Companies Act, 1956 having its registered office _____ (hereinafter referred to as **“Agency”**).

AND

Third Party Logistics agency (Name of the agency), a company incorporated under the Companies Act, 1956 having its corporate office _____ (hereinafter referred to as **“TPL”**).

AND

OPGC, Agency & TPL are hereinafter collectively referred to as **“Parties”** and individually, each as a **“Party”**.

WHEREAS:

- (A)** AGENCY is engaged in the business of manufacturing and selling of cement at various locations in India.
- (B)** Fly ash is being used by AGENCY for cement manufacturing and is one of the important raw materials for production of cement.
- (C)** OPGC owns and operates a thermal power plant of 1740 (one thousand seven hundred forty) MW capacity in IB Valley, Odisha near Jharsuguda (**“Power Plant”**), which can generate up to approximately 30,00,000 (3 Million Tonnes Per Annum (MTPA)) of fly ash. The Power Plant also has a dedicated rail connectivity.
- (D)** The Parties are now entering into this Agreement for transportation of fly ash from the OPGC Power Plant to Agency’s cement plant through Rakes (BTAP / BCFC/ similar closed wagon rakes). The Agency will arrange required number of rakes to transport the fly ash as per the scope.

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

- 1.1.1 **"Agreement"** shall mean this Agreement for operating Rakes;
- 1.1.2 **"Applicable Law"** shall mean any relevant statute, law, bye-law, regulation, ordinance, rule, judgment, rule of law, order, decree, decision, notifications, Clearance, approval, directive, policy, guideline, circular, requirement or other restriction imposed by a Government Authority or any similar form of decision, or determination by, or any interpretation or administration of any of the foregoing by, any statutory or regulatory authority or Government Authority whether in effect as of the Effective Date of this Agreement or thereafter, which relate to the subject matter of this Agreement, and the Parties, and in each case as amended from time to time.
- 1.1.3 **"Clearances"** shall mean and includes any and all authorizations, consents, grants, licenses, leases, approvals, registrations, permits, exemptions, concessions, certificates, filings, clearances, variances, orders, publications, notices, declarations, no objection certificates or other authorizations, declarations or regulations, or notifications of any nature which is required to be granted by any Government Authority including but not limited for (a) the incorporation of a person and the fulfilling by such person of all obligations under Agreements to which it is a party, (b) the enforceability of any Agreements to which it is a party, (c) the development, design, construction, operation, and maintenance of the wagons and spares, (d) for matters such as but not limited to safety, environment, labour related issues, as well as all other matters as may be necessary in connection with the performance of any of the Party's obligations under this Agreement including in relation to the design, construction, operation, and maintenance of the Rakes.
- 1.1.4 **"Commercial Operation Date"** shall mean the date on which the relevant Rake(s) under this Agreement has been deployed i.e. the date on which the first RR is issued for the respective Rake.
- 1.1.5 **"Effective Date"** means the date on which the Agreement has been signed by Parties, as first mentioned above.
- 1.1.6 **"Force Majeure Event"** shall have the meaning ascribed to it in Clause 5.

- 1.1.7 **“GST”** shall mean the goods and services tax under the Central Goods and Services Tax Act, 2017, Integrated Goods and Services Tax Act, 2017, relevant State Goods and Services Tax Acts, along with the rules framed thereunder.
- 1.1.8 **“RR”** shall mean the railway receipt issued by the IR on acceptance of Cargo and which entitles the consignee to accept delivery of the Cargo at the terminal station / siding.

2. EFFECTIVENESS AND TERM

- 2.1 This Agreement shall remain in full force and effect, commencing on the Effective Date and shall remain in full force and effect for a period of 14 (fourteen) Years from the Commercial Operation Date (**“Term”**), unless terminated earlier.

3 SCOPE OF THE AGREEMENT

OPGC Scope:

1. Ensure safe storage and loading of the Fly ash onto wagon from Silo within the stipulated time (12 hours).
2. Supply Fly Ash on “as-is-where-is basis”.
3. Provide Railway locomotives for hauling of rake from Chharla siding to the silo for loading of fly ash and back to Chharla siding.
4. Reimbursement of Railway siding charges at OPGC end, at actuals to the AGENCY (CEMENT MANUFACTURER).

AGENCY (CEMENT MANUFACTURER)’s Scope:

1. Arrangement of required number of rakes on dedicated basis Owned or Leased through THIRD PARTY LOGISTIC PROVIDER for transportation of fly ash from OPGC Siding to AGENCY (CEMENT MANUFACTURER) plant.
2. Unloading arrangement at plant within the stipulated time (8 hours).
3. The agency (CEMENT MANUFACTURER) shall raise monthly bill on OPGC towards total charges as per Work order no _____ Dt _____

Scope of Third-Party Logistics provider is being specified for the sake of clarity. However, the overall responsibility for execution of contract/agreement lies with the Agency (Cement Manufacturer)

THIRD PARTY LOGISTICS's Scope :

1. Delivery of rake within 10 months of agreement signing date.
2. Deployment of manpower at respective Railway division's office for smooth movement of rakes, coordination with Railways/OPGC/AGENCY (CEMENT MANUFACTURER) for its entire movement for faster turnaround of rakes.
3. All maintenance costs of the rakes engaged to be paid.
4. Payment of Railway freight and other charges as applicable.
5. Co-ordination with SECR for periodic maintenance and bear all the to and fro costs including other charges, if applicable.
6. Insurance of rake/rakes deployed.
7. All Statutory approvals and compliance required for the rake movement.

Note : Railway siding charges at OPGC end, as per Indian Railway notification will be reimbursed by OPGC at actuals. All the other charges (except railway siding charges at OPGC end) levied in RR shall be borne by the Agency (Cement Manufacturer)

4 INVOICING AND PAYMENT TERMS

- 4.1** TPL shall raise invoice on OPGC with applicable GST, for reimbursement of Railway siding charges at OPGC end, as per Indian Railway notification at actuals as per RR. Same shall be paid within 15 working days from the date of receipt of Original invoice along with supporting documents

5 FORCE MAJEURE

- 5.1** For the purpose of this Agreement, "**Force Majeure Event**" means any event or circumstance or a combination of events or circumstances referred to herein below which (or consequences of which), to the extent that such event or circumstance or combination of events or circumstances, adversely effects the performance of any Party (the "**Affected Party**"), of its obligations under this Agreement and which are beyond the control of the Affected Party and which the Affected Party could not have prevented by the exercise of reasonable skill and care and shall mean the following:

- Act of God, epidemic, lightning, earthquake, pandemic, cyclone, whirlwind, flood, tempest, storm, drought, action of the elements, meteorites, objects falling from aircraft, pressure waves caused by aircraft or aerial devices travelling at supersonic speed, fire or explosion, chemical or radioactive contamination or ionising radiation.
- Act of war (declared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riots, insurrection, civil commotion, act of terrorism, or sabotage.

This is a supplementary agreement governed by the Work Order no _____ Dt _____ issued by OPGC to the Cement Agency .

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed on the date first written above:

**For and on behalf of OPGC For and on behalf of For and on behalf of TPL
AGENCY**

_____ (Authorised signatory) Name:	_____ (Authorised signatory) Name:	_____ (Authorised signatory) Name:
Designation:	Designation:	Designation:

Witnesses:

1. _____	1. _____	1. _____
1. _____	2. _____	2. _____