

**[D R A F T MODEL – B (ACQ – 50,000 - 4,00,000 tpa)]**

**COAL SUPPLY AGREEMENT**

**BETWEEN**

**[Name of the Subsidiary Company]**

**AND**

**[Name of the New Non-Power Consumer\*]**

**[Date of Agreement]**

*\* Including CPP consumers*

This Agreement is made on this \_\_\_\_ day of \_\_\_\_\_ 200\_\_ between \_\_\_\_\_ (Name of the Coal Company), a company registered under the Companies Act, 1956 and having its registered office at \_\_\_\_\_ (Address of the Coal Company) hereinafter called the “Seller” (which expression shall unless excluded by or repugnant to the subject or context, include its legal representatives, successors and permitted assigns) of the one part,

**AND**

[M/s. \_\_\_\_\_, a company registered under the Companies Act, 1956 and having its registered office at \_\_\_\_\_ ]

Or

[M/s \_\_\_\_\_, a Partnership firm having its office at \_\_\_\_\_ possessing Central / State Sales Tax Registration No. \_\_\_\_\_ dated \_\_\_\_\_ issued by \_\_\_\_\_]

Or

[\_\_\_\_\_, a sole proprietor having office at \_\_\_\_\_ possessing Central / State Sales Tax Registration No. \_\_\_\_\_ dated \_\_\_\_\_ issued by \_\_\_\_\_];

hereinafter called the “Purchaser” (which term shall unless excluded or repugnant to the subject or context include its legal representatives, heirs, successors and permitted assigns) of the other part

Whereas the Purchaser was issued a Letter of Assurance (LOA) dated [\_\_\_\_\_] Reference No. [\_\_\_\_\_] and the Purchaser has achieved the milestones as setout in the Annexure 1 of the LOA and fulfilled other conditions as stipulated under the LOA.

Or

Whereas the Purchaser has been granted linkage of Coal by Standing Linkage Committee – Long Term (SLC- LT) [Delete above paragraph in such case]

The Purchaser has requested the Seller for supply of Coal to [\_\_\_\_\_ name and location of the Plant(s)] of the Purchaser (as per details contained in Schedule-I to this Agreement) and the Seller has agreed to make such supplies on the terms and conditions set out hereafter.

Now, therefore, in consideration of the agreement and covenants hereafter set forth and intending to be legally enforceable, the Seller and the Purchaser (each individually a Party hereto and collectively the Parties) hereby covenant and agree as follows:

1. **DEFINITIONS:**

- a) **“Agreement”** means this Coal supply agreement including all its Schedules, Annexure and attachments and subsequent amendments as may be issued in accordance with the terms and conditions hereof.
- b) **“Annual Contracted Quantity”** or **“ACQ”** shall have the meaning as ascribed to it in Clause 4.1
- c) **“Applicable Laws”** means all laws, brought into force and effect by the Government of India (“GoI”) or the State Government including rules, regulations and notifications made thereunder, and judgements, decrees, injunctions, writs and orders of any court of record, applicable to either Seller/CIL or the Purchaser, their obligations or this Agreement from time to time.
- d) **“As Delivered Price of Coal”** shall have the meaning ascribed to it in Clause 10.1
- e) **“Base Price”** shall mean, in relation to a Declared Grade of Coal produced by Seller, the pithead price notified from time to time by CIL or Seller, as the case may be; and in relation to Imported Coal, wherever applicable, shall mean its landed price intimated by CIL or the Seller, as the case may be.
- f) **“Build – Up Period”** shall have the meaning ascribed to it in Clause 2.10.
- g) **“Business Day”** shall mean each Monday, Tuesday, Wednesday, Thursday, Friday and Saturday that is not declared a holiday in the State of (\_\_\_\_\_) to be stated by the Seller).
- h) **“Coal”** means non-coking as well as coking coal, produced by the Seller domestically and categorized into different classes, grades and sizes, as per the notification/order issued for such purpose by Government of India(GoI)/CIL/ Seller; and shall where the context so requires, include Imported Coal.
- i) **“Condition Precedent Period”** shall mean a period of 12 months or a period of [•] days/ months which ever ends later from the Signature Date not exceeding a period of 2 years or pursuant to Clause 2.8.3.6. The [•] day/ month period shall be either the time required by the Purchaser for commissioning of the plant from the Signature Date in case of plant commissioning is to be achieved under Clause 2.8.2.2 or half of the time required by Purchaser from the Signature Date to commissioning in case of 50% of construction is to be achieved as mentioned under Clause 2.8.2.2 as the case may be. Such time period shall be determined in accordance with the implementation schedule under the detailed project report / technical feasibility report submitted during the validity of Letter of Assurance.
- j) **“CIL”** means Coal India Limited, the holding company of the Seller, having its registered office at 10, Netaji Subhash Road, Kolkata 700 001, India.

- k) **“Declared Grade”** means the particular grade(s) of Coal mined from any seam or section of a seam in the Seller’s collieries from which Coal is produced and supplied under this Agreement, as declared by CIL or the Seller.
- l) **“Delivery Point”** means any of the colliery sidings or colliery loading points, as the case may be, in the designated coal mine of the Seller as per Schedule-I, and/or the location(s)/ port(s) identified by the Seller at which the Seller delivers Imported Coal in accordance with the terms of this Agreement.
- m) **“Effective Date”** shall have the meaning ascribed to it in Clause 2.8.3.2
- n) **“First Delivery Date”** shall have the meaning ascribed to it in Clause 2.9
- o) **“Independent Engineer”** mean a Chartered Engineer having necessary expertise to undertake the services or activities as mentioned under Clause 2.8.2.2
- p) **“Imported Coal”** shall mean non-coking as well as coking coal, sourced internationally and categorized for quality, as per international norms for such purpose.
- q) **“Level of Delivery”** shall have the meaning ascribed to it in Clause 4.6.
- r) **“Level of Lifting”** shall have the meaning ascribed to it in Clause 4.7.
- s) **“Month”** shall mean a calendar month.
- t) **“Prime Lending Rate”** or **“PLR”**: shall mean the prime lending rate of State Bank of India as applicable on the due date of payment by the Purchaser.
- u) **“Performance Incentive”** shall have the meaning ascribed to it in Clause 4.10.
- v) **“Seller’s Financial Closure”** shall mean the execution of all the loan agreements, notes, indentures, security agreements, letters of credit and any other documents relating to the financing required or before the commissioning of plant for the project and fulfillment of conditions precedents and waiver, if any, of any of the conditions precedent for the initial draw down of funds there under.
- w) **“Signature Date”** shall have the meaning ascribed to it in Clause 2.1
- x) **“Quarterly Quantity”** or **“QQ”** shall mean one-fourth (1/4<sup>th</sup>) of the Annual Contracted Quantity (ACQ).
- y) **“Year”** means the financial year of the Seller, commencing on April 1<sup>st</sup> and ending on the following March 31<sup>st</sup> and **“Quarter”** means the respective three-monthly periods, namely April to June, July to September, and so on.

2. **COMMENCEMENT & PERIOD OF AGREEMENT:**

- 2.1 This Agreement shall come into force with effect from the day both the Parties sign this Agreement (the “**Signature Date**”).
- 2.2 This Agreement shall, unless terminated in accordance with the terms hereof, remain in force commencing from the Signature Date till the end of **five (5) years** from the First Delivery Date.
- 2.3 After completion of three (3) years from the First Delivery Date, either Party may, by prior written notice to the other Party for period not less than 30 days, seek a review of this Agreement. Notwithstanding, the ACQ shall be revised to the highest of the yearly quantities booked by the Purchaser in such three (3) years for the remaining two (2) years of the Agreement subject to average Level of Lifting(LL) by the Purchaser (as calculated in accordance with Clause 4.7) in the last three (3) years being less than eighty percent (80%). It is expressly clarified that no such revision in ACQ shall take place if the average Level of Lifting (LL), as per the foregoing, is greater than eighty percent (80%).
- 2.4 Notwithstanding the provisions of Clause 2.2 above, in the event of any change in the Grade structure of Coal, such changed Grade structure shall be binding and complied with by both the Parties. The Seller shall within seven (7) days of introduction of such change provide a written notice to the Purchaser calling for a joint review of such provisions of this Agreement on which such change in the Grade structure has a bearing, and upon such joint review, this Agreement shall be duly amended in writing to bring it in full conformity with such change.
- 2.5 If the review in terms of Clause 2.3 does not result in a mutually agreed position with respect to the subject matter of review, this Agreement shall nevertheless continue to be in force. However, if despite further efforts the Parties are unable to arrive at a mutually agreed position with respect to the subject matter of review, within a period of nine (9) months from the date of notice in terms of Clause 2.3, the aggrieved Party shall have the right to terminate the Agreement subject to a further notice of three (3) months given in writing to the other Party.
- 2.6 In the event of any material change in the Coal distribution system of the Seller due to a Government directive/ notification, at any time after the execution of this Agreement, the Seller shall within seven (7) days of introduction of such change provide a written notice to the Purchaser calling for a joint review. If the Parties are unable to arrive at a mutually agreed position with respect to the subject matter of review, within a period of thirty (30) days from the date of notice, CIL shall have the right to terminate the Agreement subject to a further notice of thirty (30) days given in writing to the other Party

2.7 On completion of five (5) years from the First Delivery Date, this Agreement shall expire unless both the Parties mutually agree in writing to extend the Agreement, on the same or such terms as may be agreed upon by the Parties.

**2.8 Condition Precedent (CP)**

The obligations of the Parties under this Agreement (other than those set out in Clause 2.8, Clause 2.9, Clause 2.10, Clause 3.0 and those obligations specifically provided to take place before satisfaction of the Conditions Precedent) are subject to the satisfaction in full of the Conditions Precedent provided under Clause 2.7.1 and Clause 2.7.2 within the Condition Precedent Period and shall come in force after the Effective Date determined under the Clause 2.8.3.2.

**2.8.1 Seller's Condition Precedent**

2.8.1.1 In respect of supply of Imported Coal, the Seller shall have made all necessary arrangements for import of coal including having executed the fuel supply agreement, which shall no longer be subject to termination due to failure to fulfill or waiver of the conditions precedent specified therein. The Seller shall have made the necessary shipping and port arrangements for delivery of Imported Coal in accordance with the terms of this Agreement

2.8.1.2 The Seller shall have obtained from the lawful authority all requisite sanctions, approvals, licenses and consents including those related to land acquisition, environment and forest clearance for development and operation of the coal block identified in Schedule I to this Agreement

2.8.1.3 The Seller shall have achieved Financial Closure (Sellers Financial Closure) with respect to development and operation of the coal block identified in Schedule I to this Agreement

**2.8.2 Purchaser's Condition Precedent (CP)**

2.8.2.1 The Purchaser shall have obtained from the lawful authority all necessary clearances, authorisations, approvals and permissions required for, construction, commissioning, operation and maintenance of the Plant

2.8.2.2 The Purchaser shall have constructed at least fifty percent (50%) of the Plant, as per the implementation schedule specified in detailed project report/ techno-economic feasibility report submitted during the validity of Letter of Assurance (LoA), and the completion of such 50% construction has been certified by an Independent Engineer within the Condition Precedent Period. In an event the Purchaser has already achieved fifty percent (50%) of construction of plant as milestone under the Letter of Assurance (LOA), the Purchaser shall achieve commissioning of plant within the Condition Precedent Period. The Purchaser shall submit a certificate of such commissioning of plant by an Independent Engineer within 5 Days of commissioning. In an event the Purchaser has already achieved the commissioning of plant as a milestone under the Letter of Assurance (LoA), the Condition Precedent shall stand waived at the time of signing this agreement

### 2.8.3 **Satisfaction of Condition Precedent (CP)**

2.8.3.1 The Conditions Precedent shall be completed/ achieved within the Condition Precedent Period

2.8.3.2 Within 15 days of completion of their respective CPs each party shall issue a notice of satisfaction notifying other party about the completion of its CPs. Other party within a period of 15 days from receipt of such notice shall confirm its acceptance of the same. The later of two dates on which acceptance letter is issued by Seller or Purchaser, as the case may be, or the last date of Condition Period period, whichever occurs earlier shall be the **Effective Date**.

2.8.3.3 If a Party is prevented from fulfilling a Condition Precedent because of the occurrence of an event of Force Majeure within the Condition Precedent Period and the affected party provides documents to other party's satisfaction establishing the Force Majeure period, then such Condition Precedent Period shall stand extended by the number of days such Party is delayed from fulfilling its Condition Precedent. Such extension due to Force Majeure however shall not exceed a total of 180 days

2.8.3.4 The CPs set out in Clause 2.8.1 above shall be fulfilled to the satisfaction of Seller or waived by Seller at its sole discretion without affecting the Seller in any way to honour the obligations under this agreement. Within 15 days of achieving or waving the CPs set out in Clause 2.8.1, as the case may be, the Seller shall issue a notice of satisfaction and notify to Purchaser in writing. The Purchaser within 15 days from receipt of such notification shall issue a letter accepting the same.

2.8.3.5 The CPs set out in Clause 2.8.2 above shall be fulfilled to the satisfaction of both the Parties or waived jointly by both the Parties in writing, as the case may be. Within 15 days of completion of achieving the CPs set out in Clause 2.8.2 the Purchaser shall issue a written notice of satisfaction and notify to Seller. The Seller within 15 days from receipt of such notification by Purchaser shall issue a letter accepting the same.

2.8.3.6 In the event that any of the Conditions Precedent stipulated have not been satisfied or waived within the Condition Precedent Period or any extended period as mutually agreed by both the Parties, the non defaulting party shall have the right to extend the Condition Precedent period at its discretion or terminate the agreement by providing a written notice of 30 days provided the non defaulting party has completed/ achieved its CPs as set out in this Agreement and issued a notice of satisfaction.

2.8.3.7 In case of termination of agreement by Seller due to reasons other than Force Majeure, the Seller shall have the right to forfeit the Security Deposit amount submitted by the Purchaser

## 2.9 **First Delivery Date**



2.9.1 Not later than 5 days from Effective Date, both parties shall determine a mutually agreeable 3 month period (target start period) within a time period of 18 month from the Effective Date for commencement of coal supplies. In the event that the Parties are not able to agree on such 3-Month period the later of the 3 month period suggested by either party shall prevail. The actual date of coal delivery at the Delivery Point by the Seller during the mentioned 3 month period shall be the **First Delivery Date**. In case there is no coal supply by the Seller at the Delivery Point during this 3 month period owing to reasons other than Force Majeure the last date of such 3 month period shall be deemed to be the **First Delivery Date** and performance obligations of both the Parties in accordance with the provisions of this Agreement shall be applicable thereafter.

2.9.2 In case of Force Majeure during the target start period and the affected party provides documents to other party’s satisfaction establishing the Force Majeure period, then the target start period shall stand extended by the number of days for which Force Majeure has occurred. Such extension due to Force Majeure however shall not exceed a total of 180 days

**2.10 Build – Up Period**

2.10.1 Build-Up Period shall commence immediately after the First Delivery Date. The Build-Up Period shall be a period of 6 months from the First Delivery Date. Whereas other provisions of this Agreement shall remain valid and enforceable for coal supplies during the Build up period, any compensation arising on account of short supply or short lifting, as per Clause 4.5 of this Agreement, during the Build up period shall not be payable by either Party.

2.10.2 The indicative coal quantities to be supplied by the Seller and to be purchased by the Purchaser during the Build- Up Period is shown below. For avoidance of doubt, it is clarified that the quantities mentioned are indicative and the actual scheduled quantities may exceed or be lower compared to the quantities indicated above. The quantities shall however not exceed the pro-rated contracted quantities under this Agreement

<b>Build Up Period</b>	<b>Indicative Coal Requirement (in Tonnes)</b>
Build-Up Period [A period of 6 month from First Delivery Date]	

**3 Security Deposit (SD)**

3.1 On signing of this agreement the Commitment Guarantee (CG) provided by the Purchaser prior to issue of Letter of Assurance (LOA) shall stand converted into the Security Deposit amount as determined under Clause 3.2. In an event the Commitment Guarantee amount provided by Purchaser is more than the Security Deposit amount as determined under Clause 3.2, Seller shall return such balance

amount within three (3) months from the date of signing of this Agreement. In an event the Security Deposit amount as determined under Clause 3.2 is more than the Commitment Guarantee amount, the Purchaser shall deposit such balance amount within three (3) months from the date of signing this agreement. Failure to submit the balance amount by the Purchaser within three (3) months from the date of signing of this agreement, as aforementioned, shall entitle the Seller to adjust the ACQ such that it is commensurate with the Security Deposit submitted by the Purchaser. Accordingly, the Purchaser has furnished Rs. [●] (Indian Rupees \_\_\_\_\_) towards the Security Deposit amount stipulated in Clause 3.2.

Notes:

Purchaser directly entering into this Agreement who have been granted coal linkage by Standing Linkage Committee – Long Term (SLC- LT) and have not been issued Letter of Assurance (LOA) by Seller shall deposit the Security Deposit amount as determined under Clause 3.2 before the Signature Date.[In such case delete Clause 3.1]

- 3.2 The Purchaser shall deposit with the Seller a sum of [Rs. \_\_\_\_\_ (Indian Rupees \_\_\_\_\_)] equivalent to six percent (6%) of the Base Price of such Grade of Coal, as described in Schedule-II to this Agreement, prevalent on the date of deposit multiplied by ACQ, as Security Deposit (SD), in cash / Bank Guarantee on or before the signing of this Agreement. In case of multiple Grades indicated in Schedule-II, the highest Grade shall be considered for the purpose of calculation of SD without any commitment whatsoever to supply such Grade of Coal. Such Security Deposit shall be non-interest bearing. [In case the SD is in the form of a bank guarantee, the same shall be provided in the format enclosed with this Agreement at Schedule-III (“**SD Bank Guarantee**”)]
- 3.3 The Purchaser shall deposit at least one half of the amount of Security Deposit before the Signature Date and the balance amount shall be deposited within three (3) months of the Signature Date. Failure to submit the balance amount within three (3) months of the Signature Date, as aforementioned, shall entitle the Seller to adjust the ACQ such that it is commensurate with the Security Deposit submitted by the Purchaser. Accordingly, the Purchaser has furnished Rs. \_\_\_\_\_ (Indian Rupees \_\_\_\_\_) towards hundred percent (100%) / fifty percent (50%) [strike out which ever not applicable] of the Security Deposit amount stipulated in Clause 3.1 above.
- 3.3 The SD submitted by the Purchaser, as per Clause 3.2 above, shall remain valid till three (3) months from the expiry of this Agreement.
- 3.4 The value of the Security Deposit shall be suitably increased / decreased to match the changes in the Base Price notified by the Seller from time to time. In the event of failure of the Purchaser to provide such increased value within thirty (30) days from the date of notification of such change in Base Price, the Seller shall have the right to suspend Coal supplies. If additional SD due to such increase in the Base Price of Coal is submitted by way of additional bank guarantee, the period

of validity of such bank guarantee shall be the same as that of the initial SD Bank Guarantee furnished in terms of clauses 3.1 to 3.3 above. Alternatively, the amount of the initial SD Bank Guarantee may be increased by an amendment so as to cover the increased value of SD resulting from the change in the Base Price.

- 3.5 The Security Deposit shall be refundable to the Purchaser at the end of its validity subject to successful completion of and complete settlement of all claims of Seller arising out of this Agreement.
- 3.6 The Purchaser shall ensure that the Security Deposit stands replenished within 7 (seven) days of drawl of funds by the Seller in accordance with the provisions of this Agreement. Failure to replenish the Security Deposit within such stipulated period shall entitle the Seller to suspend its Coal supplies without absolving the Purchaser of its obligations under this Agreement.
- 3.7 In the event of termination of the Agreement by the Seller in accordance with Clause 16.1.4 to 16.1.8, the Seller shall be entitled to forfeit the Security Deposit of the Purchaser in addition to any other rights vested with the Seller upon such termination.

#### **4. QUANTITY:**

##### **4.1 Annual Contracted Quantity (ACQ):**

The Annual Contracted Quantity of Coal agreed to be supplied by the Seller and undertaken to be purchased by the Purchaser, shall be \_\_\_\_\_ lakh tonnes per Year from the Seller's mines in the \_\_\_\_\_ coal field and/ or from international sources. For part of Year, the ACQ shall be prorated accordingly.

##### **4.2 End-use of Coal**

The total quantity of Coal supplied pursuant to this Agreement is meant for use at the [\_\_\_\_\_name & location of the Plant(s)] as listed in Schedule-I. the Purchaser shall not sell/divert and/or transfer the Coal for any purpose whatsoever and the same shall be treated as material breach of Agreement. In the event that the Purchaser engages or plans to engage into any such resale or trade, the Seller shall terminate this Agreement forthwith without any liabilities or damages, whatsoever, payable to the Purchaser. It is expressly clarified that the Seller shall reserve the right to verify including the right to inspect/ call for any document from the Purchaser and physically verify the end-use of Coal and satisfy itself of its authenticity. The Purchaser shall have the obligation to comply with the Seller's directions/ extend full co-operation in carrying out such verification/ inspection.

- 4.3 (a) The Purchaser shall have the right by serving a written notice at least one (1) month prior to the commencement of a quarter, to revise the Quarterly Quantity (QQ) to be supplied by the Seller in that quarter, provided that in such revision the increase/ decrease shall not be in excess of 10% of the QQ. However, in respect

of the 2<sup>nd</sup> quarter of a Year, namely, July to September, the Purchaser shall not have the right to increase the QQ. The sum total of QQ including any revision allowed hereof shall not exceed the ACQ.

- (b) Seller shall have the right to make good the short supplies of a quarter in the succeeding quarter, to the extent of 10% of the QQ.
- (c) Seller shall supply Coal from sources as mentioned in the Schedule I. In case the Seller is not in a position to supply the Scheduled Quantity (SQ) of Coal from such sources as indicated in Schedule I, the Seller shall have the option to supply the balance quantity of Coal from alternate source, including Imported Coal. Further, in case of alternate sources, the Purchaser shall accept Coal directly from such alternate sources through Indian railway system and / or by alternate modes of transport depending upon operational flexibility and at such Delivery Point, as decided by the Seller. Additional cost due to supply through alternate source including the inland logistics cost of Imported Coal shall be borne by the Purchaser.

4.4 **Scheduled Quantity (SQ):**

The monthly Scheduled Quantity (SQ) shall be one third (1/3<sup>rd</sup>) of the QQ, as has been revised by the Purchaser in terms of clause 4.3(a). The Parties agree that if the quantity sought to be lifted by the Purchaser in a month within the SQ is not sufficient to form a rake, formation of rake would be allowed by clubbing the quantity of the next month and so on within the quarter. If at the end of the quarter, any residual quantity is left due to inability to form a rake, being fraction of rake it would be carried over to the next quarter for the purpose of rake formation. If at the end of fourth quarter, the residual quantity is 0.5 fraction or more of the rake quantity it would be rounded off to a rake and if the residual quantity is less than 0.5 fraction of the rake quantity, it shall lapse.

4.5 **Compensation for short delivery/lifting**

- 4.5.1 If for a Year, the Level of Delivery by the Seller, or the Level of Lifting by the Purchaser falls below 100% with respect to that Year, the defaulting Party shall be liable to pay compensation to the other Party for such shortfall in Level of Delivery or Level of Lifting, as the case may be, (“**Failed Quantity**”) in terms of the following:

S.No.	Level of Delivery / Lifting of Coal in a Year	Rate of compensation for the Failed Quantity in terms of Base Price of the highest Grade, as shown in Schedule II	Formula for calculation of compensation
1	Less than 100% but upto 50% of ACQ	NIL	NIL
2	Below 50% of	10%	$0.1 \times P \times [((100-LD \text{ or } LL) - 50)/100] \times ACQ$

	ACQ	
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where P shall be the simple average of base prices grades as shown in the Schedule II.

Notes:

The Level of Delivery/ Level of Lifting that would cause compensation for the Failed Quantity payable by the defaulting Party, as mentioned in the table above, may be reviewed by the Seller in light of its Coal availability and Coal commitments, and amended accordingly on year-to-year basis at the sole discretion of the Seller during the term of the Agreement.

4.5.2 Compensation for short supply/lifting shall be payable by the defaulting Party to the other Party within a period of 90 days from the date of receipt of claim. In the event of non-payment within the due date, the defaulting Party shall be liable to pay interest as mentioned in the Clause 13.

4.6 **Level of Delivery:**

Level of Delivery with respect to a Year shall be calculated in the form of percentage as per the following formula:

$$\text{Level of Delivery (LD)} = \frac{(\text{DQ} + \text{DDQ} + \text{FM} + \text{RF}) \times 100}{\text{ACQ}}$$

Where:

LD = Level of Delivery of Coal by the Seller during the Year.

DQ = Delivered Quantity, namely, aggregate actual quantities of Coal delivered by the Seller during the Year

DDQ = Deemed Delivered Quantity, reckoned in the manner stated in Clause 4.9

FM = Proportionate quantity of Coal which could not be delivered by the Seller in a Year due to occurrence of Force Majeure event affecting the Seller and / or the Purchaser, calculated as under:

$$\text{FM} = \frac{\text{ACQ} \times \text{Number of days lost under applicable Force Majeure event}}{365}$$

Note: For the purpose of calculation of 'Number of days lost under applicable Force Majeure event', affecting both the Parties shall be counted only once.

RF = Quantity of Coal that could not be supplied by the Seller during the Year owing to the Railways not allotting wagons or not placing wagons for loading, in spite of specific valid indent/offer submitted by the Seller to the Railways against valid program(s) submitted by the Purchaser for the purpose.

4.7 **Level of Lifting:**

Level of Lifting with respect to a Year shall be calculated in the form of percentage as per the following formula:

$$\text{Level of Lifting (LL)} = \frac{(\text{ACQ}-\text{DDQ}) \times 100}{\text{ACQ}}$$

Where:

LL = Level of Lifting of Coal by the Purchaser during the Year.

DDQ shall have the same meaning as given in Clause 4.9

4.8 For the purpose of computing DDQ and RF, the weight per rake will be that declared by the Seller for any rake-load for the purpose of financial coverage under clause 11.2. The weight so derived will be used for calculation of compensation from either Purchaser or Seller.

4.9 **Deemed Delivered Quantity:**

For the purpose of this Agreement, the aggregate of the following items provided under clause 4.9.1 to 4.9.2 shall constitute the Deemed Delivered Quantity with respect to a Year.

4.9.1 **For supply of Coal by rail:**

- i/ The quantity of Coal not supplied by the Seller owing to omission or failure on the part of Purchaser to submit in advance the designated rail program (s) to the Seller as per agreed time-table with respect to the Scheduled Quantity.
- ii/ The quantity of Coal not supplied by the Seller owing to cancellation, withdrawal or modification of the rail program(s) by the Purchaser after its submission whether before or after allotment of wagon(s) by Railways.
- iii/ The quantity of Coal not supplied by the Seller owing to Seller exercising the right of suspension of supplies in terms of Clause 11.
- iv/ The quantity of Coal not supplied by the Seller owing to Purchaser failing or omitting to fulfill the requirements under Clause 11.
- v/ The quantity of Coal offered by Seller through alternative source which is not accepted by the Purchaser.

4.9.2 **For Supply of Coal by road:**

- i/ The quantity of Coal not supplied by the Seller owing to omission or failure on the part of Purchaser to book value paid orders for the Scheduled Quantity in terms of Clause 7.2.2.

- ii/ The quantity of Coal not supplied by the Seller owing to Purchaser's failure to place the requisite number / type of road transport at the Delivery Point for delivery of Coal within the validity period of the sale order/delivery order.
  - iii/ The quantity of Coal not supplied by the Seller owing to Coal through alternative source not accepted by the Purchaser.
- 4.9.3 Deemed Delivered Quantity in terms of Clause 4.9.1 and 4.9.2 shall be calculated on cumulated monthly basis during a Year.

4.10 **Performance Incentive:**

- 4.10.1 If the Seller delivers Coal to the Purchaser in excess of ninety percent (90%) of the ACQ in a particular Year, the Purchaser shall pay the Seller an incentive ("Performance Incentive"/ "PI"), to be determined as follows:

$$PI = P \times \text{Additional Deliveries} \times \text{Multiplier}$$

Where:

PI = The Performance Incentive payable by the Purchaser to the Seller

P = The Base Price of Highest Grade, as shown in Schedule II

Additional Deliveries = Quantity [in tonnes] of Coal delivered by the Seller in the relevant Year in excess of 90% of the ACQ.

Multiplier shall be 0.15 for Additional Deliveries between 90%-95% of ACQ and 0.30 for Additional Deliveries in excess of 95% of ACQ.

- 4.10.2 With respect to part of a Year in which the term of this Agreement begins or ends, the relevant quantities in Clause 4.10.1, except the Multiplier, shall apply pro-rata.
- 4.10.3 Within thirty (30) days of expiry of a Year, the Seller shall submit an invoice to the Purchaser with respect to the PI payable in terms of Clause 4.10.1 and the Purchaser shall pay the amount so due within thirty (30) days of the receipt of the invoice. In the event of non-payment of PI by the due date, the Seller shall have the right to suspend Coal supplies without absolving the Purchaser of its obligations under this Agreement.

5. **QUALITY:**

- 5.1 The quality of the Coal to be supplied from the mines of the Seller shall, as far as possible, be within the specifications as per Schedule-II to this Agreement. The

- Seller shall take all reasonable steps to remove stone, shale and extraneous matters before the loading of the Coal.
- 5.2 If the quality of the Coal supplied from the mines of the Seller i.e. the grade, as determined in terms of Clause 8 hereinafter, falls beyond the limits as specified in Schedule II, the Purchaser shall bring the same to the attention of the Seller by a notice in writing for taking appropriate remedial action.
6. **WEIGHMENT OF COAL:**
- 6.1 When Coal is delivered for despatch by rail, each wagon shall be weighed at the weigh bridge at the Delivery Point and the recorded weight shall be entered in the relevant dispatch document. Such recorded weight shall form the basis for raising bills by the Seller. The weighment shall be on wagon to wagon basis in the manner described hereinafter.
- 6.1.1 In case wagons are weighed on electronic weigh bridge the weight recorded in the computerized print out shall be taken as the weight for the respective wagon. In the absence of computerized print out facility, the weight as certified by the Railways shall be reckoned as weight and shall be binding on the Parties.
- 6.1.2 In the absence of electronic weighbridges, the weighment shall be done on the mechanical weighbridges at the Delivery Point.
- 6.1.3 In the cases not covered by Clauses 6.1.1 or 6.1.2, weight recorded on the Railway Receipt (RR) as per existing practice of Railways shall be reckoned as weight and shall be binding on the Parties. However, the wagons will be loaded up to the permissible capacity fixed by Railways for such wagons on the basis of volumetric measurement.
- 6.1.4 The Purchaser shall be entitled to depute an authorised representative to witness the weighment / loading of wagon at the Delivery Point.
- 6.2 When Coal is delivered for dispatch by road, the weight recorded at the weighbridge of the Seller at the concerned delivery point and as mentioned in the dispatch document, shall be binding on the Parties.
- 6.3 The weighbridges at respective Delivery Points at Seller's end shall be calibrated and maintained as per applicable statutory provisions. The Seller shall regularly monitor the accuracy of the weighbridges. If and when any weighbridge is found to be out of order, after remedying the defect as expeditiously as possible, the Seller shall arrange for calibration, wherever necessary, as per Applicable Laws.

7. **METHOD OF ORDER BOOKING AND DELIVERY OF COAL:**

7.1 **Order Booking by Rail:**



7.1.1 In terms of the notice issued by the Seller before the commencement of a month, the Purchaser shall submit a programme in writing to the Seller, as per the applicable Railway rules and Seller's notified procedures, for the supply of the Scheduled Quantity as per Clause 4.4. The Purchaser shall also ensure compliance of the requirements under Clause 11.2. Thereafter, the Seller shall process for issuance of the consent of the programme.

The validity period of the monthly programme for movement by rail for seeking allotment shall be till the last day of the month concerned. The consent of the programme to be issued by the Seller shall not remain valid after the above period. Once the rake is allotted, it shall remain valid for supply as per prevailing Railways rules.

7.1.2 The Seller shall thereupon submit specific indent/offer based on the valid rail programme(s) to the Railways as per the extant Railway rules for the allotment and placement of wagons during the concerned month in conveniently spaced intervals.

7.1.3 The wagons shall be booked on "freight to pay" or "freight pre paid" basis, as applicable.

7.1.4 In case of formation of rakes with wagons loaded from different loading points, the Seller shall make best efforts to complete documentation formalities as per Railway rules so as to enable the Purchaser to avail a trainload freight rate.

## 7.2 **Order Booking by Road:**

7.2.1 In terms of the notice issued by the Seller for monthly Coal allocation / bookings stipulating the time schedule for order booking and advance payment, the Purchaser shall deposit 100% advance payment in the manner provided in Clause 11.1, for the Scheduled Quantity.

7.2.2 Based on the monthly colliery wise allocation done by the Seller in terms of Clause 7.2.1, the Purchaser shall place orders with the Seller for the Scheduled Quantity by making advance payment of the full value of the respective order {"Advance Payment"}, within such period as notified by the Seller. The advance payment may also be made in three (3) installments each of ten (10) days value of Coal in accordance with the terms and conditions including the time periods of depositing the installments, as stipulated in the monthly notice on colliery wise allocation issued by the Seller.

7.2.3 The Seller shall arrange to issue sale order(s)/delivery order(s) separately for each colliery and issue necessary loading programme / schedule from time to time. The Purchaser shall arrange to place the required number / type of trucks to lift the Coal as per such loading programme / schedule. The Seller shall ensure that the sale order / delivery order in favour of the Purchaser is prepared promptly upon

realization of the Advance Payment and the same reaches the concerned colliery/weigh bridge within five (5) working days of the last day of the period notified by the Seller for booking orders in terms of Clause 7.2.1.

- 7.2.4 The Seller shall ensure delivery and the Purchaser shall ensure lifting of Coal against sale order / delivery order of any month within the validity period of 45 days, as mentioned in the sale order.
- 7.2.5 In the event of any quantity remaining undelivered / unlifted, the Purchaser shall be entitled to receive, once the validity period of the sale order/ delivery order expires, the refund of the proportionate value of such quantity. The refund with respect to a particular month shall be made by the Seller within 30 days from the date of receipt of application for refund from the Purchaser.

## **8. DETERMINATION OF COAL QUALITY:**

For determination of the quality of Coal supplied, the grade as declared by the Seller shall be reckoned as correct for all purposes. Complaint if any, on the matter of Coal quality shall be made by the Purchaser giving specific details of the consignment to the CGM (S&M) / GM (S&M) of the Seller and also to colliery/area authorities for remedial action. Any complaint regarding quality of Coal shall be made at the colliery end/ Delivery Point.

## **9. TRANSFER OF TITLE TO GOODS:**

Once delivery of Coal have been effected at the Delivery Point by the Seller, the property / title and risk of Coal so delivered shall stand transferred to the Purchaser in terms of this Agreement. Thereafter the Seller shall in no way be responsible or liable for the security or safeguard of the Coal so transferred. Seller shall have no liability, including towards increased freight or transportation costs, as regards any diversion of wagons / rakes /road transport en-route, for whatever causes, by Railways, or road transporter or any other agency.

## **10 PRICE OF COAL:**

- 10.1 The “As Delivered Price of Coal” for the Coal delivered hereunder shall be the sum of the Base Price, sizing charges, transportation charges up to the Delivery Point, rapid loading charges, statutory charges, levies and other charges. The components of the As Delivered Price of Coal shall be determined on the basis of the rates/criteria duly notified by CIL/Seller/statutory authority from time to time as is applicable to the Purchaser and in force for the time being.
- 10.2 In the event of revision by the CIL/Seller of any component of the As Delivered Price of Coal, other than statutory charges and levies, the Seller shall inform the Purchaser of such revision from time to time. The Purchaser shall be liable to pay the revised As Delivered Price of Coal as and from the date the revised rates/criteria becomes or has become effective.

- 10.3 All royalties, taxes, duties, cesses, and such statutory levies payable to the State Government, Central Government or to any other statutory authority on the supply / dispatch/ delivery of Declared Grade of Coal under this Agreement shall be borne by the Purchaser.
- 10.4 The price of Imported Coal shall be as decided and declared by CIL from time to time.
- 10.5 In all cases the entire freight charges, irrespective of the mode of transportation of the Coal supplied, shall be borne by and to the account of the Purchaser.
- 10.6 The Purchaser shall be liable to make payment to the Seller in terms of this Agreement, on the basis of declared grade with respect to all quantity of Coal supplied irrespective of when and in what condition the loaded wagons/ rakes/road transport vehicles reach or do not reach the destination.

## **11. FINANCIAL COVERAGE, BILLING AND PAYMENT:**

### **11.1 Supply of Coal by Road:**

For road dispatches, advance payment by way of Demand Draft /Bankers' Cheque shall be drawn in favour of Seller by the Purchaser in terms of Clause 7.2 and payable on any Nationalised / Scheduled Bank at \_\_\_\_\_.

### **11.2 Supply of Coal by Rail:**

11.2.1 The Purchaser shall submit financial coverage (“**Financial Coverage**”) in the form of a Banker’s Cheque/Demand Draft or Bank Guarantee, (issued by a scheduled Bank acceptable to the Seller and in the format enclosed at **Schedule - IV** of this Agreement) for an amount equal to the estimated As Delivered Price of Coal for fifteen (15) days of Coal supplies, i.e. ACQ/24, subject to a minimum amount equivalent to As Delivered Price of Coal of one rake-load, as indicated in the notice by the Seller. In case the supply consists of different Grades, the As Delivered Price of Coal shall be calculated on the Base Price of the highest Grade, as shown in Schedule II.

11.2.2 Where the Financial Coverage is made in the form of bank guarantee (“**Financial Coverage Bank Guarantee**” or “**Financial Coverage BG**”) , such Financial Coverage BG shall be kept operative and valid by the Purchaser for 5 years (five years) from the First Delivery Date and for a further period of one hundred eighty (180) days thereafter, encashable at \_\_\_\_\_(to be indicated by the Seller). In case of any increase in the As Delivered Price of Coal, the amount of the Financial Coverage BG shall be increased commensurately within seven (7) days of such increase. The Purchaser shall ensure that at all times the amount of the Financial Coverage BG is not less than the estimated As Delivered Price of

Coal for fifteen (15) days of Coal supplies, i.e. ACQ/24, subject to a minimum amount equivalent to As Delivered Price of Coal of one rake-load of Coal and the As Delivered Price of Coal shall take into account the Base Price of the highest Grade of Coal, as shown in Schedule II.

11.2.3 The Seller by way of a notice, to be put up on the Seller's notice board, shall inform the Purchaser the Coal value to be paid through Demand Draft / Banker's Cheque at least three (3) working days in advance before expected date of offer to the Railways for allotment of rakes. The Purchaser shall accordingly be required to deposit Demand Draft / Banker's Cheque along with debit advice issued by the drawee bank to the tune of value of Coal in rake loads to be offered as per notice within forty eight (48) hours of such notice. The quantity in any single offer within a month shall not exceed the quantity as per the financial coverage in terms of clause 11.2.1.

11.2.4 The BG in terms of Clause 11.2.1 shall be initially valid for a minimum period of one (1) year. The Purchaser shall ensure renewal at least one (1) month prior to expiry of the BG. In the event of delay in renewing the BG, as an interim measure, the Purchaser will be allowed to lift supplies of Coal subject to making payment to the Seller by Banker's cheque/ Demand Draft of an amount equivalent to the value of the BG immediately prior to its expiry. The Purchaser shall be entitled to refund of such payment on providing due replacement through a valid bank guarantee. The Seller shall have the right to suspend supplies of Coal, without any notice, in the event that there is no valid and subsisting Financial Coverage BG for the amount hereinbefore stated as per clause 11.2.1, and the Purchaser has not deposited any payment in lieu of such Bank Guarantee.

11.3 Seller shall raise the Coal supply bills on rake-to-rake basis for delivery of Coal by rail. Bills for delivery of Coal by road shall be prepared by the Seller on periodical basis. Bills shall be prepared by the Seller on the basis of grade of Coal declared by the Seller. Within two Business days after receipt of a bill/invoice from the Seller for supplies effected by rail, the Purchaser shall make full payment to the extent of the residual amount, if any, to the Seller with respect to each bill / invoice. The payment shall be through Demand Draft / Banker's / local cheque payable at (\_\_\_\_\_ to be stated by the Seller). In the event of non-payment within the aforesaid stipulated period, the Purchaser shall be liable to pay interest in accordance with Clause 13.

11.4 **Overloading & Under loading:**

11.4.1 Any penal freight for overloading charged by the Railways for any consignment shall be payable by the Purchaser. However, if overloading is detected from any particular colliery, consistently during three (3) continuous months, on due intimation from the Purchaser to this effect, the Seller undertakes to take remedial measures.

11.4.2 Any idle freight for under-loading below the stenciled carrying capacity, as shown on the wagon, for Grade A, Grade B, Steel Grade I, Steel Grade II, Washery Grade I, Washery Grade II, Semi-coking Grade I, Semi-coking Grade II and washed Coal; and below the stenciled carrying capacity, as shown on the wagon, plus two (2) tonnes for all other Grades of Coal shall be payable by the Seller.

11.4.3 Idle freight resulting from under loading of wagon, as per Clause 11.4.2, shall be adjusted in the bills. Idle freight shall be reckoned as:

(i) the difference between the freight charges applicable for the stenciled carrying capacity, as shown on the wagon, less the freight payable as per actual recorded weight of Coal loaded in the wagon for Grade A, Grade B, Steel Grade I, Steel Grade II, Washery Grade I, Washery Grade II, Semi-coking Grade I, Semi-coking Grade II and washed Coal; Or

(ii) the difference between the freight charges applicable for the stenciled carrying capacity, as shown on the wagon, plus two (2) tonnes less the freight payable as per actual recorded weight of Coal loaded in the wagon for all other Grades of Coal.

#### 11.5 **Modalities for Billing, Claims & Payment**

11.5.1 The Seller shall raise and the Purchaser shall pay the bills for Coal supplies on Declared Grade basis in accordance with Clause 11.3 above.

11.5.2 Further, the Parties shall jointly reconcile all payments made for the monthly Coal supplies during the Year, by end of April of the following Year. The Parties shall, forthwith, give credit/debit for the amount falling due, if any, as assessed during such joint reconciliation. The annual reconciliation statement shall be jointly signed by the authorised representative of the Seller and the Purchaser which shall be final and binding.

11.5.3 In the event of due date of any payment obligation under this Agreement falling on Sunday or a gazetted holiday, the next first working day shall be the effective due date for the purpose.

#### 12. **NOTICE:**

In the event, either Party owing payment of any amount to other Party under the terms of this Agreement, defaults in making such payments as per terms of the Agreement, the Party not in default shall give a notice in writing to the Party in default and the matter shall thereafter be dealt with in terms of Clause 13 & 14.

#### **13. INTEREST ON DELAYED PAYMENT:**

With respect to default in making any payment due in terms of this Agreement by one Party to the other, the defaulting Party shall be liable to pay interest at PLR on the total sum outstanding and for the period the payment has remained over

due. Without prejudice to the foregoing, in the event the Purchaser fails to pay the overdue amount along with the interest within such thirty (30) days, the Seller shall be entitled to encash the Security Deposit and/or the Financial Coverage BG and suspend Coal supplies in accordance with Clause 14. For removal of doubts, it is clarified that it shall be permissible for the Seller to adjust or recover the interest due in terms of this Clause from the Security Deposit and/or the Financial Coverage BG.

#### 14. **SUSPENSION OF COAL SUPPLIES**

14.1 Notwithstanding other provisions of this Agreement, in the event the Purchaser fails to pay any amount including any interest, due to the Seller under this Agreement within a period of thirty (30) days of the same falling due, the Seller shall have the right to resort to any one or more of the following:

(a) Adjust the outstanding amount against the Security Deposit or by invoking the Security Deposit BG maintained in terms of Clause 3 or such portion of it as available; and/or

(b) Invoke the Financial Coverage Bank Guarantee or any cash deposit towards Financial Coverage to the extent available and necessary to meet the outstanding dues; and/or

(c) Suspend supplies of Coal to the Purchaser.

14.2 During the period of suspension of supplies in terms of Clause 14.1 the Seller shall be relieved of his obligations to supply Coal. However, the obligations of the Purchaser under this Agreement shall be deemed to remain in full force.

14.3 In the event of suspension of Coal supplies pursuant to this Clause, the Seller shall have the right to continue the suspension for as long as the interest-free Security Deposit or the Financial Coverage, as the case may be, has not been fully replenished. The Seller shall resume the Coal supplies within three (3) days of payment of the outstanding amount together with interest as also full replenishment of Security Deposit and/or the Financial Coverage.

14.4 In the event rail movement is declared / considered not feasible by Railways, review will be made jointly in the matter of mode of transport.

#### 15 **SETTLEMENT OF DISPUTES:**

15.1 In the event of any dispute, disagreement or difference arising out of or in connection with this Agreement, including any question regarding its performance, existence, validity, termination and the rights and liabilities of the Parties to this Agreement (“Dispute”), the Parties shall in the first instance endeavour to amicably settle the same through negotiations carried out in good faith.

- 15.2 For the purpose of conducting negotiations, each Party shall designate in writing to the other Party a representative who shall be authorised to negotiate on its behalf with a view to resolving any Dispute (the “**Representative**”). Each such Representative shall remain so authorised until his replacement has been designated in writing to the other Party by the Party he represents.
- 15.3 The Representative of the Party which considers that a dispute has arisen shall give to the Representative of the other Party, a written notice setting out the material particulars of the dispute (“**Dispute Notice**”). Within thirty days, or such longer period as may be mutually agreed, of the Dispute Notice having been delivered to the other Party, the Representatives of both Parties shall meet in person, to attempt in good faith and using their best endeavours at all times, to resolve the Dispute. Once the Dispute is resolved, the terms of the settlement shall be reduced in writing and signed by the Representatives of the Parties

16. **TERMINATION OF CONTRACT/AGREEMENT:**

- 16.1 Notwithstanding the provisions of Clause 2, this Agreement may be terminated in the following events and in the manner specified hereunder:
- 16.1.1 In the event that either Party is rendered wholly or partially unable to perform its obligations under this Agreement (“**Affected Party**”) because of a Force Majeure Act, as described in Clause 17 below, and such inability to perform lasts for not less than a total of ninety (90) days in any continuous period of one hundred eighty (180) days, and in the considered assessment of the other Party (“**Non-Affected Party**”) there is no reasonable likelihood of the Force Majeure Act coming to an end in the near future, such Party shall have the right to terminate this Agreement, by giving at least ninety (90) days prior written notice to the Affected Party of the intention to so terminate this Agreement. In such event, the termination shall take effect on expiry of the notice period or ninety (90) days whichever is later, and the Parties shall be absolved of all rights/obligations under this Agreement, save those that had already accrued as on the effective date of termination.
- 16.1.2 In the event that the Purchaser is prevented /disabled under law from using Coal, for reasons beyond their control, owing to changes in applicable environmental and/or statutory norms, howsoever brought into force; the Purchaser shall have the right to terminate this Agreement, subject to a prior written Notice to the Seller of not less than thirty (30) days.
- 16.1.3 In the event of any material change in the Coal distribution system of Seller due to a Government directive/ notification, at any time after the execution of this Agreement, the Seller may terminate this Agreement without any obligation/liability after providing the Purchaser with prior written notice to the Purchaser of not less than thirty (30) days.

- 16.1.4 In the event that the Level of Delivery (LD) falls below thirty percent (30%) or the Level of Lifting (LL) falls below thirty percent (30%), the Purchaser or the Seller as the case may be, shall have the right to terminate this Agreement, after providing the other Party with prior written notice of not less than thirty (30) days. However, such notice is to be issued within sixty (60) days of the end of the relevant Year.
- 16.1.5 In the event that the matter pertaining to the diversion or breach of end use of coal leads to suspension of the deliveries pursuant to Clause 14.1(b) and the matter cannot be resolved to the satisfaction of the Seller, the Seller shall have the right to terminate the agreement forthwith without any liabilities or damages, whatsoever, payable to the Purchaser.
- 16.1.6 In the event of encashment of Security Deposit or the Financial Coverage or suspension of Coal supplies pursuant to Clause 14.1, the Seller shall have the right to terminate this Agreement by providing prior written notice of thirty (30) days provided the Purchaser has not replenished the Security Deposit/ Financial Coverage within the aforesaid said notice period of thirty (30) days.
- 16.1.7 In the event that either Party suffers insolvency, appointment of liquidator (provisional or final), appointment of receiver of any of material assets, levy of any order of attachment of the material assets, or any order or injunction restraining the Party from dealing with or disposing of its assets and such order having been passed is not vacated within sixty (60) days, the other Party shall be entitled to terminate this Agreement
- 16.1.8 In the event that any Party commits a breach of term or condition of this Agreement (“Defaulting Party”) not otherwise specified under this clause 16.1, the other Party (“Non-Defaulting Party”), shall have the right to terminate this Agreement after providing the Defaulting Party thirty (30) days prior notice and the breach has not been cured or rectified to the satisfaction of the Non-Defaulting Party within the said period of thirty (30) days.

**16.2 Accrued rights to survive termination**

Termination of this Agreement shall be without prejudice to the accrued rights and obligations of either Party as at immediately prior to the termination.

**17. FORCE MAJEURE:**

- 17.1 “Force Majeure Act” means any act, circumstance or event or a combination of acts, circumstances and events which wholly or partially prevents or delays the performance of obligations arising under this Agreement by any Party (“**Affected Party**”) and if such act, circumstance or event is not reasonably within the control of and not caused by the fault or negligence of the affected Party, and provided that such act, circumstance or event is in one or more of the following categories:



- a) Flood, inundation of mine, drought, lightening, cyclone, storm, earthquake or geological disturbances, eruption of gases, subsidence and such natural occurrences.
- b) Explosion, Mine fire and other fire, contamination of atmosphere by radio active or hazardous substances.
- c) Civil disturbance such as riot, terrorism.
- d) Industry wise /nation wide strikes.
- e) Any law, ordinance or order of the Central or State Government, or any direction of a statutory regulatory authority that restricts performance of the obligations hereunder;
- f) Epidemic;
- g) The enactment, promulgation, amendment, suspension or repeal of any Applicable Laws after the date hereof;
- h) Any delay or direction or order on the part of the Government of India or relevant State Government or denial or refusal to grant or renew, or any revocation, or modification of any required permit or mining lease or governmental approvals including those related to land acquisition or environment/ forest clearance provided that such delay, modification, denial, refusal or revocation was not due to a cause attributable to the Affected Party;
- j) Global shortage of Imported Coal or logistical constraints in transportation of Imported Coal ;

Provided that a Force Majeure Act shall not include economic hardship, equipment failure or breakdown other than as specifically set forth above.

#### 17.2 **Burden of Proof:**

In the event the Parties are unable to agree in good faith that a Force Majeure Act has occurred; the Parties shall resolve the dispute in accordance with the provisions of this Agreement. The burden of proof as to whether a Force Majeure Act has occurred shall be upon the Party claiming the occurrence or existence of such Force Majeure Act.

#### 17.3 **Effect of Force Majeure:**

If either Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure Act, that Party shall be excused from whatever performance is affected by the Force Majeure Act to the extent so affected, provided that:

- a) Within five (5) Business Days after the occurrence of the inability to perform due to a Force Majeure Act, the Affected Party provides a written notice to the other Party of the particulars of the occurrence, including an estimation of its expected duration and probable impact on the performance of its obligations hereunder, and continues to furnish periodic reports with respect thereto, every seven (7) days, during the period of Force Majeure,
- b) The Affected Party shall use all reasonable efforts to continue to perform its obligations hereunder and to correct or cure as soon as possible the Force Majeure Act,
- c) The suspension of performance shall be of no greater scope and no longer duration than is reasonably necessitated by the Force Majeure Act,
- d) The Affected Party shall provide the other Party with prompt notice of the cessation of the Force Majeure Act giving rise to the excuse from performance and shall thereupon resume normal performance of obligations under this Agreement with utmost promptitude,
- e) The non-performance of any obligation of either Party that was required to be performed prior to the occurrence of a Force Majeure Act shall not be excused as a result of such subsequent Force Majeure Act,
- f) The occurrence of a Force Majeure Act shall not relieve either Party from its obligations to make any payment hereunder for performance rendered prior to the occurrence of Force Majeure Act or for partial performance hereunder during period of subsistence Force Majeure Act; and
- g) The Force Majeure Act, shall not relieve either Party from its obligation to comply with Applicable Laws. The Affected Party shall exercise all reasonable efforts to mitigate or limit damages to the other Party.

18 **SCHEDULES / ANNEXURES:**

The Schedules detailed below shall form part of this Agreement.

Schedule - I - Annual Contracted Quantity (ACQ)

Schedule - II - Quality of Coal

Schedule - III - Bank Guarantee format for Security Deposit

Schedule - IV - Bank Guarantee format for Financial Coverage against Coal Supplies.

19 **MISCELLANEOUS:**

- 19.1 Amendment: This Agreement cannot be amended or modified except by prior written agreement between the Parties.
- 19.2 Severability and Renegotiation: In the event any part or provision of this Agreement becomes, for any reason, unenforceable or is declared invalid by a competent court of law or tribunal, the rest of this Agreement shall remain in full force and effect as if the unenforceable or invalid portions had not been part of this Agreement, and in such eventuality the Parties agree to negotiate with a view to amend or modify this Agreement for achieving the original intent of the Parties.
- 19.3 Governing Law: This Agreement, and the rights and obligations hereunder shall be interpreted, construed and governed by the laws of India. The courts of [\_\_\_\_\_name of place to be mentioned by the Seller] shall have exclusive jurisdiction in all matters under this Agreement.
- 19.4 Entirety: This Agreement together with any documents referred to in it, supersedes any and all oral and written agreements, drafts, undertakings, representations, warranties and understandings heretofore made relating to the subject matter hereof and constitutes the entire Agreement and understanding of the Parties relating to the subject matter hereof. It is expressly agreed that this Agreement shall supersede all previous discussions and meetings held and correspondence exchanged between the Seller & the Purchaser in respect of this Agreement and any decisions arrived at therein in the past and before coming into force of this Agreement shall have no relevance with reference to this Agreement and no reference of such discussions or meetings or past correspondence shall be entertained either by the Seller or the Purchaser for interpreting this Agreement or its implementation.
- 19.5 Counterpart: This Agreement may be executed in any number of counterparts and each counterpart shall have the same force and effect as the original instrument.
- 19.6 Assignment: The Purchaser shall not, without the express prior written consent of the Seller, assign to any third party this Agreement or any part thereof, or any right, benefit, obligation or interest therein or thereunder.
- 19.7 Limitation Of Liability: The Parties agree that except as otherwise expressly agreed in this Agreement, neither Party shall have any right or entitlement to any consequential losses, costs or damages, loss of profit or market, as a result of a breach by the other Party of this Agreement
- 19.8 Notice: Any notice to be given under this Agreement shall be in writing and shall be deemed to have been duly and properly served upon the Parties hereto if delivered against acknowledgement or by registered mail with acknowledgement due, addressed to the signatories or the authorised representatives of the signatories nominated in accordance with the provisions of this Agreement at the following addresses:

1) Seller's address

2) Purchaser's address **Signature**

Designation:

Designation:

Address:

Address:

Telephone:

Telephone:

Fax:

Fax:

Email:

Email:

**20 IMPLEMENTATION OF THE AGREEMENT:**

20.1 The respective [[•] designation of the authorized representative] of the industry/ plant or his nominated representative shall be authorised to act for and on behalf of the Purchaser.

20.2 GM(Sales) or any representative duly authorized by the Seller shall act for and on behalf of the Seller.

20.3 Any other nomination of authorised representative shall be informed in writing, by the Seller and the Purchaser, as the case be, within one month of signing of this Agreement or by giving 30 (thirty) days' notice.

20.4 It shall be the responsibility of the Parties to ensure that any change in the address for service or in the particulars of the designated representative is notified to the other Party and all other concerned, before effecting a change and in any case within two (2) Business Days of such change

**[Note:** For consumers of Western Coalfields Limited (WCL), relevant amendments to Clauses 4.6, 4.9.1, 7.1 and 11.2 would need to be made to bring into effect the different practices followed by WCL with respect to these **clauses**].

Signed in presence of the witness /witnesses under mentioned on \_\_\_\_\_ day of \_\_\_\_\_.

**For (\_\_\_\_\_ name of the Seller) For (\_\_\_\_\_ name of the Purchaser)**

**Signature**

**Signature**

Name  
**(block letters)**

Name:  
**(block letters)**

Designation:

Designation:

Address:

Address:

Telephone:

Telephone:

Fax:

Fax:

Email:

Email:

**1. WITNESS**

- a) Signature
- b) Name  
**(block letters)**

c) Address & Occupation

**2. WITNESS**

- a) Signature
- b) Name  
**(block letters)**

c) Address & Occupation

**1. WITNESS**

- a) Signature
- b) Name  
**(block letters)**

c) Address & Occupation

**2. WITNESS**

- a) Signature
- b) Name  
**(block letters)**

c) Address & Occupation

**Annual Contracted Quantity  
(Refer Clause 4.1)**

**Annual Contracted Quantity**

Sl. No.	Name of the Plant owned by Purchaser	Name of Rake Fit Station	Annual Contracted Quantity (Lakh Tonnes)	Mode of Transport	Source coal field of the Seller*

\* Details of Imported Coal shall be furnished by the Seller to the Purchaser from time to time as and when such Coal is offered.

**QUALITY OF COAL**  
(Refer Clauses 5.1 & 5.2)

Name of the Plant	Size (mm)	Grade(s) of Coal

**BANK GUARANTEE FORMAT  
FOR SECURITY DEPOSIT  
(Refer Clause 3)**

On Rs. 50/- Non judicial Stamp Paper

Date of Issue: -----

Effective Date<sup>1</sup>: -----

Expiry Date: -----

Value of B.G: -----

1. [The Chairman – cum- Managing Director,  
Coal India Limited,  
10, Netaji Subhash Road, Kolkata – 700 001]
2. [The Chairman-cum-Managing Director,  
(name and address of the subsidiary Company)]
3. \_\_\_\_\_

In consideration of Coal India Limited of 10, Netaji Subhash Road, Kolkata – 700 001/ \_\_\_\_\_(name of the subsidiary Company) having its Registered Office at \_\_\_\_\_ (regd. address of the subsidiary Company) and Sales Office at \_\_\_\_\_ (address of the sales office of the subsidiary Company) (hereinafter referred to as ‘**Seller**’, which expression shall unless excluded by or repugnant to the subject or context, include its legal representatives, successors and permitted assigns) having agreed to supply Coal/Imported Coal to \_\_\_\_\_(Name of the Company/ Partnership firm/ Proprietor) having its registered office at \_\_\_\_\_(address of the Company/ Partnership firm/ Proprietor) (hereinafter referred to as the ‘**Purchaser**’, which term shall unless excluded or repugnant to the subject or context include its legal representatives, successors and permitted assigns in case of Company) and, the Purchaser being required to furnish the Security Deposit as per the terms of the Fuel Supply Agreement (FSA)

We, \_\_\_\_\_(Name and address of the Bank), having its Head Office at \_\_\_\_\_ (Address of the Head Office of the Bank) (hereinafter called the Guarantor, which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators, executors and assigns) do hereby irrevocably and unconditionally guarantee and undertake to

<sup>1</sup> *The Bank Guarantee Effective Date for Security Deposit corresponds to the Signature Date of this agreement.*



pay Seller or such other place or places as may be directed by the Seller all amounts payable by the Purchaser to the extent of Rs. \_\_\_\_\_/- (Indian Rupees \_\_\_\_\_) at any time upto \_\_\_\_\_ (date that is sixty-four (64) months from the date of issue of the Bank Guarantee) subject to the following terms and conditions :-

- 1) The Guarantor shall pay to the Seller on demand and without any demur, reservation, contest, recourse or protest and/ or without any reference to the Purchaser. As to whether the occasion or ground has arisen for such demand, the decision of the Seller shall be final.
- 2) The Seller shall have the fullest liberty without reference to the Guarantor and without affecting this guarantee to postpone at any time or from time to time the exercise of all or any of its powers and rights under arrangement made with the Purchaser, and the Guarantor shall not be released from this guarantee by any arrangement between the Seller and the Purchaser or any alteration thereof made with or without the consent of the Guarantor or by exercise or non-exercise by the Seller of all or any of its powers and rights against the Purchaser, or any other forbearance, act of omission on the part of the Seller or indulgence granted by or on behalf of the Seller to the Purchaser, which under the law relating to surety ship would but for this provision have the effect of releasing the Bank as Guarantor from their obligations under this guarantee.
- 3) The guarantee herein contained shall not be determined or affected by the winding up or insolvency of the Purchaser, but shall in all respects and for all purpose be binding and operative until all monies due to the Seller in respect of all liability or liabilities of the Purchaser are fully paid.
- 4) It is also agreed that Seller will be entitled at its option to enforce this guarantee against the Guarantor as principal debtor in the instance notwithstanding any other security or guarantee that the Seller may have in relation to the Purchaser's liability.
- 5) The Guarantee will remain valid for a period of sixty-four (64) months from the date hereof and to such further period, as may be required and agreed by the Parties and agreed by the Guarantor before the expiry of the aforesaid validity.
- 6) The Guarantee shall cover all claims or demand of Seller to the extent of the amount guaranteed.
- 7) Notwithstanding anything contained, the liability of the Guarantor under this Agreement is restricted to Rs. \_\_\_\_\_/- (Indian Rupees \_\_\_\_\_), and the same will remain in force upto and including the day of \_\_\_\_\_ (date that is sixty-four (64) months from the issue of the Bank Guarantee) and to such further period, as may be required and

agreed by the Parties and agreed by the Guarantor before the expiry of the aforesaid validity.

- 8) This guarantee can be enforced by Seller any number of times for their claims or demand to the total extent of Rs. \_\_\_\_\_/- (Indian Rupees \_\_\_\_\_), as long as it remains in force.
- 9) Unless a demand or claim under this guarantee is received by the Guarantor within the period mentioned in clause 5 and 7 hereof, all rights of the Seller shall be forfeited and the Guarantor shall be relived or discharged from all liabilities.
- 10) The guarantee is operative at our ----- (name and address of the branch) Branch, \_\_\_\_\_ (Place).

Signature of the Bankers  
With date & Rubber Stamp

**Schedule-IV**

**BANK GUARANTEE FORMAT  
FOR FINANCIAL COVERAGE AGAINST COAL SUPPLIES  
(Refer Clause 11.2.1)**

On Rs. 50/- Non judicial Stamp Paper

Date of Issue :-----

Effective Date<sup>2</sup> :-----

Expiry Date: -----

Value of B.G. :-----

1. [The Chairman – cum- Managing Director,  
Coal India Limited,  
10, Netaji Subhash Road, Kolkata – 700 001]

2. [The Chairman-cum-Managing Director,

\_\_\_\_\_  
(Name & Address of the Subsidiary Company)]

3. \_\_\_\_\_  
(Name & Address of any other office of the Coal Company)

In consideration of Coal India Limited of 10, Netaji Subhash Road, Kolkata – 700 001/ \_\_\_\_\_(name of the subsidiary Company) having its Registered Office at \_\_\_\_\_ (regd. address of the subsidiary Company) and Sales Office at \_\_\_\_\_ (address of the sales office of the subsidiary Company) (hereinafter referred to as ‘**Seller**’, which expression shall unless excluded by or repugnant to the subject or context, include its legal representatives, successors and permitted assigns) having agreed to supply Coal/ Imported Coal to \_\_\_\_\_(Name of the Company/ Partnership firm/ Proprietor) having its registered office at \_\_\_\_\_(address of the Company/ Partnership firm/ Proprietor) (hereinafter referred to as the ‘**Purchaser**’, which term shall unless excluded or repugnant to the subject or context include its legal representatives, successors and permitted assigns in case of Company), as per the terms of the

<sup>2</sup> *The Bank Guarantee Effective Date for Financial Coverage against Coal Supplies corresponds to the First Delivery Date of this agreement.*

Fuel Supply Agreement vide Agreement No. ( \_\_\_\_\_ ) dated ( \_\_\_\_\_ );

We, \_\_\_\_\_(Name and address of the Bank), having its Head Office at \_\_\_\_\_ (Address of the Head Office of the Bank) (hereinafter called the Guarantor, which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators, executors and assigns) do hereby irrevocably and unconditionally guarantee and undertake to pay Seller or such other place or places as may be directed by the Seller all amounts payable by the Purchaser as price of Coal supplies, excluding Railway Freight but including interest bills, long flame Coal bills, transportation charges bills, other supplementary bills and all incidental charges subject to the following terms and conditions :-

- 1) The Guarantor shall pay to the Seller on demand and without any demur, reservation, contest, recourse or protest and/ or without any reference to the Purchaser. As to whether the occasion or ground has arisen for such demand, the decision of the Seller shall be final.
- 2) The Seller shall have the fullest liberty without reference to the Guarantor and without affecting this guarantee to postpone at any time or from time to time the exercise of all or any of its powers and rights under arrangement made with the Purchaser, and the Guarantor shall not be released from this guarantee by any arrangement between the Seller and the Purchaser or any alteration thereof made with or without the consent of the Guarantor or by exercise or non-exercise by the Seller of all or any of its powers and rights against the Purchaser, or any other forbearance, act of omission on the part of the Seller or indulgence granted by or on behalf of the Seller to the Purchaser, which under the law relating to surety ship would but for this provision have the effect of releasing the Bank as Guarantor from their obligations under this guarantee.
- 3) The guarantee herein contained shall not be determined or affected by the winding up or insolvency of the Purchaser but shall in all respects and for all purpose be binding and operative until all monies due to the Seller in respect of all liability or liabilities of the Purchaser are fully paid.
- 4) It is also agreed that Seller will be entitled at its option to enforce this guarantee against the Guarantor as principal debtor in the instance notwithstanding any other security or guarantee that the Seller may have in relation to the Purchaser's liability.
- 5) The guarantee shall remain valid for a period of 12 months from the date hereof.
- 6) It is expressly agreed between the Parties that this guarantee is in respect of prices of Coal for all orders for purchase of Coal which may be placed by the Purchaser on the Seller during the subsistence of this Agreement.

- 7) This guarantee shall cover all claims or demand of the Seller to the extent of the amount guaranteed in respect of despatches of Coal for which allotment has been made.
- 8) Notwithstanding anything contained the liability of the Guarantor under this Agreement is restricted to Rs. \_\_\_\_\_/- (Indian Rupees \_\_\_\_\_) and the same will remain in force upto and including the day of \_\_\_\_\_(date that is 12 months from the date hereof).
- 9) This guarantee can be enforced by the Seller any number of times for their claims or demand to the total extent of Rs. \_\_\_\_\_/- (Indian Rupees \_\_\_\_\_), as long as it remains in force.
- 10) Unless a demand or claim under this guarantee is received by the Guarantor within the period mentioned in clause 5 and 8 hereof, all rights of the Seller shall be forfeited and the Guarantor shall be relived or discharged from all liabilities.
- 11) The guarantee is operative at our ----- (name and address of the branch) Branch, \_\_\_\_\_.

Signature of the Bankers  
With date & Rubber Stamp.