

COST PLUS  
MODEL OF COAL  
SUPPLY  
AGREEMENT FOR  
SUPPLY FROM CIL  
SOURCES TO  
GOVT./STATE  
POWER UTILITIES  
UNDER NCDP

**M O D E L**

**COAL SUPPLY AGREEMENT**

**UNDER NCDP**

**BETWEEN**

**[Name of the Subsidiary**

**Company]**

**AND**

**[Name of the Govt./State**

**Power Utility] For existing**

**(as on 31/3/2009)**

**Power Plants [Date of**

**Agreement]**

This Agreement is made on this \_\_\_\_\_ day of \_\_\_\_\_ 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, successors and permitted assigns) of the one part,

AND

Ms..... a company registered under the Companies Act, 1956/ State Electricity Board and having its registered office / Head office at ..... hereinafter called the “Purchaser” (which term shall unless excluded or repugnant to the subject or context include its successors and permitted assigns) of the other part.

## Whereas

- A. Ministry of Coal, Government of India (hereinafter referred to as “MOC”) has notified New Coal Distribution Policy (hereinafter referred to as “NCDP”) on 18 October 2007 mandating a switchover from the linkage regime of Coal distribution to firm Fuel Supply Agreements (FSAs) between CIL’s subsidiaries and their respective consumers with demand greater than 4200 tonnes per annum (TPA). Subsequently, MOC have issued guidelines for supply of Coal on Cost Plus Basis vide reference No.23022/14/2008-CPD dated 7.10.2008.
- B. The Purchaser *has installed / has to install* (\*) .....(type of Plant) Plants for generation and sale of electricity and the Seller is engaged in mining and sale of Coal of different grades through its various mines.
- C. The Purchaser and Seller had entered into a Fuel Supply Agreement (hereinafter referred to ..... to ..... as ..... “FSA”) on ..... and *the said FSA contains / has been modified on ..... to contain* (\*) enabling provisions for supply of coal on Cost Plus Basis.

Or

The Purchaser and Seller had entered into a Memorandum of Understanding (MoU) on ..... for supply of Coal from the ..... Mine on Cost Plus Basis. Consequent upon compliance / achievement of all terms and conditions stipulated in the said MoU by the Purchaser, the Purchaser and Seller have entered into a Fuel Supply Agreement (FSA) on ..... and the said FSA contains enabling provisions for supply of Coal on Cost Plus Basis.

Or

(In case mother FSA is not needed and in case of only LOA holders, then the above may be modified as under)

The Purchaser and Seller had entered into a Memorandum of Understanding (MoU) on..... for supply of coal from the ..... Mine on Cost Plus basis, and Purchaser have complied / achieved all terms and conditions stipulated in the said MoU.

- D. The Purchaser and the Seller have therefore agreed to enter into this Agreement to set out the mutually agreed terms and conditions for supply of Coal by the Seller to the Purchaser from the ..... Mine *opened / to be opened* (\*) on Cost plus arrangements.

NOW, THEREFORE, in consideration of the agreement and covenants hereinafter set out, and intending to be legally bound hereby, the Parties hereto covenant and agree with each other as follows: *NOTE* :

*(\*) Portion in italics which is not applicable to be deleted.*

1. DEFINITIONS & RULES OF INTERPRETATION:

When used herein, the defined terms set forth in this Clause-1 shall, unless the context otherwise require, have the following meaning(s).

1.1 DEFINITIONS:

- a) **“Agreement”** means this Cost Plus Agreement entered into on the Date of execution of contract including all its Annexures and Attachments and subsequent amendments as may be made in accordance with the terms and conditions hereof.
- b) **“Annual Contracted Quantity” or “ACQ”** shall have the meaning as ascribed to it in Clause 3.1
- 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 judgments, 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) **“Alternate Sources”** means other Cost Plus mines or indigenous mines of the Seller or supplies from imported coal of the Seller, subject to the availability of having Coal of quality nearly similar to the specifications of the Mine, offered by Seller. at As Delivered Price of coal as per the terms laid down in this agreement, or from Imported Coal at a price declared by CIL from time to time, including service charges and other incidental expenses i.e. the landed cost.
- e) **“Alternate Supplies”** means the coal supplied from Alternate Sources.
- f) **“Actual Commissioning” (AC)** ..... mine is said to have achieved Actual Commissioning when it has achieved a cumulative production of 85% of the Annual rated capacity of ..... tonnes during a 12 continuous months period.

- g) “.....”(Mine) .....(Underground/Opencast) means the coal mine opened/to be opened as per terms and conditions of this Agreement by the Seller
- h) “**As Delivered Price of Coal**” shall have the meaning ascribed to it in Clause 8.
- i) ‘**Base UHV**’ shall mean the UHV of the coal as declared in the PR.
- j) ‘**Analysed UHV**’ shall mean the actual UHV of the coal based on the assesment of quality of coal supplied by the seller from the mine.
- k) ‘**Base Price**’ of coal produced by the seller shall mean the price so arrived at to yield 12% IRR at 85% capacity utilization covering the entire life of the mine or 20 years whichever is less. The Base price so worked out is Rs. ....Per tonne. The ‘Base price’ of coal from the cost plus project at the time of signing of Agreement is to be reviewed once the Cost Plus Project is completed. On review, if it is ascertained that the project yields less than 12% IRR at 85% capacity utilisation, the Base Price will be reset on the basis of Project Completion Report taking into consideration the actual cash flow till project completion and future projected cash flow so as to ensure that the cost plus mine yields 12% IRR at 85% capacity utilisation over the entire life of the mine or 20 years whichever is less.
- Such review and reset of base price shall also be done, if required, by incorporating the activities which were not envisaged and considered in the original project report.
- The project shall be deemed to have been completed once the following conditions are fulfilled and the “**Project Completion Report**” is duly approved.
- 1) Achievement of coal production capacity of 80% of the rated output.
  - 2) Completion of all facilities and initial mine development work.
  - 3) 90% of capital investment is made.
- l) “**BIS**” means The Bureau of Indian Standards or any successor or any other mutually agreed similar organisation which performs substantially the same role as that currently performed by the Bureau of Indian Standards;
- m) “**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) under the Negotiable Instruments Act, 1981.

n) **“Coal”** means non-coking as well as coking coal, produced 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. For the avoidance of any doubt, Coal shall also include the middlings arising out of washing of coking and non-coking coal.

o) **“CMPDI”** means Central Mine Planning and Design Institute Limited, a subsidiary of the Coal India Limited;

p) **“CIL”** means Coal India Limited, the holding company of the Seller, having its registered office at 10, Netaji Subhash Road, Calcutta 700 001, India.

q) **“Colliery Loading Point”** shall mean

- (i) Silo, or
- (ii) Mid point for wharf wall loading at the colliery, or
- (iii) Truck loading point, or
- (iv) Ropeways loading point, or
- (v) Transfer point to the customer’s belt conveyor etc, as the case may be.

r) **“Contract Price”** means the notified price of the grade as declared in the project report of the coal supplied plus the fixed mark-up percentage payable by the Purchaser to the Seller for supply of Coal at the Delivery Point, excluding other charges and statutory charges as mentioned in clause 8.2 and 8.3 respectively.

Such **Mark-Up Percentage** on notified price, which is the difference between the base price and the notified price expressed as a percentage of notified price, shall be determined by comparing the Base price with the notified price of the coal of corresponding grade at the time of signing of agreement. Once the notified price is revised, the contract price under the cost plus agreement shall be revised by adding the same mark-up percentage on the revised notified price and such mark-up percentage shall remain constant during the entire tenure of the contract. In case the “Base Price” is revised during the tenure of the contract, then the mark up percentage shall be worked out afresh and the same mark-up percentage shall continue for remaining tenure of the contract or till such time the Base Price is further revised, whichever is earlier.

s) **“Contracted Quantity”** shall mean the quantity of coal to be supplied under the contract during the tenure of the contract.

- t) **“Day”** means a period of twenty-four (24) consecutive hours beginning and ending at 00.00 hrs. and the reference date for such day shall be the date on which such day starts at 00.00 Hrs
- u) **“Detailed Project Report” (DPR) or “Project Report” (PR)** means the project report of..... mine which contains all the relevant information, including number of mine entries, manpower planning, estimated productivity levels, method of working, suggested capital equipment to be procured, surface installations outlining the handling arrangements at the Pit head, workshops and any other amenities etc.
- v) **“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.
- w) **“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.
- x) **“Effective Date”** shall have the meaning ascribed to it in Clause 2.2.
- y) **“Equilibrated Basis”** means determination/computation of various quality parameters such as but not limited to ash, volatile matter, fixed carbon, Gross Calorific Value etc. expressed at Equilibrated Moisture level determined at 60% relative humidity (RH) and 40 degree Celsius (°C).
- z) **“Equilibrated Moisture”** means moisture content, as determined after equilibrating at 60% relative humidity (RH) and 40 degree Celsius as per the relevant provisions (relating to determination of equilibrated moisture at 60% RH and 40 degree Celsius) of BIS 1350 of 1959 or amendment thereof.
- aa) **“Failed Quantity”** shall have the meaning as ascribed to it in the clause 3.7.
- ab) **“Financial Year” (FY)** means the financial year of the Seller, commencing on April 1st and ending on the following March 31st and **“Quarter”** means the respective three-monthly periods, namely April to June, July to September, and so on.
- ac) **“Force Majeure Event”** shall have the meaning as ascribed to it in Clause 17.
- ad) **“Grade”** means the grade / class in which the coking and non-coking Coal is categorised and/or to be categorised in terms and in accordance with the relevant notification by Govt. of India and published in Gazette of India.



- ae) “Imported Coal”** shall mean non-coking as well as coking coal, sourced internationally.
- af) “IRR”** shall mean the Internal Rate of Return.
- ag) ”Imported price”** shall mean the price of imported coal as declared by the Seller/ CIL from time to time.
- ah)“Movable asset”** in relation to the project report shall mean the plant and machinery, vehicles and furnitures & fixtures only. All assets other than the movable asset shall be treated as **“Immovable Asset”** including Net Revenue expenditure capitalised as shown in the project report.
- ai) “IS”** means the standard specifications issued by the Bureau of Indian Standards (BIS)
- aj) “Kilo Calorie”** shall mean the amount of heat required to raise the temperature of one kilogram (1 Kg.) of pure water at fifteen degrees Celsius (15°C), by one degree Celsius (1°C)
- ak) “Level of Delivery”** shall have the meaning ascribed to it in Clause 3.8.
- al) “Level of Lifting”** shall have the meaning ascribed to it in Clause 3.9.
- am)“(MGR) Merry-go-round”** shall mean the Purchaser’s captive rail transportation system for transportation of Coal
- an) “Mine”** means the ..... mine as mentioned in 1.1(g).
- ao) “Month”** means an English calendar month.
- ap) “Monthly Scheduled Quantity” (SQ)** shall have the meaning as ascribed to in **Clause 4.0.**
- aq) “Notified Price”** of coal, 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.
- ar) “Operating Year”** shall mean a period of 12 continuous calendar months beginning from 1st April and ending 31st March.

**as) “Pithead”** shall mean the following:

In case of an underground Coal mine, Pithead shall mean the mine entry and shall constitute a place or point, as distinct from Delivery Point on the surface of Coal mine at ground level, and

In case of an open-cast Coal mine, Pithead shall mean the exit point of Coal on surface (mouth/entry of the main access trench or an auxiliary access trench). In case of open-cast mines with more than one exit points of Coal, there will be as many ‘Pitheads’ and will apply respectively to the amount of Coal egressing from a particular exit point.

The distance of transportation on surface from the Pithead (mouth of the main access trench or an auxiliary access trench) to the Colliery Loading Point shall be measured along the route of Coal transportation.

**at) “Plant”** means plant installed or to be installed for generation of electricity by the Purchaser.

**au) “Party”** means either the Seller or the Purchaser, and “Parties” mean a joint reference to the Seller and the Purchaser.

**av) “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.

**aw) “Purchaser’s Container”** means the Railway wagons and/or trucks placed for and on behalf of the Purchaser and/or receiving hopper, bunker, transfer point owned by the Purchaser from where Coal is moved by the Purchaser directly to its Power Station by belt conveyor.

**ax) “Quarterly Quantity” or “QQ”** shall have the meaning ascribed to it in Clause 3.5

**ay) “Quality Specification Certificate”** means a document issued indicating the results of sampling and testing in accordance with this Agreement

**az) “Surface Moisture”** means the moisture content present in Coal that is derived as the difference between Total Moisture and Equilibrated Moisture, and expressed in percentage terms.

**aaa) “Statutory Charges”** shall be as detailed in Clause 8.3

**aab) “Total Moisture”** means the total moisture content (including surface moisture) expressed as percentage present in Coal and determined on as delivered basis in pursuance to IS.

**aac) “Useful Heat Value” or “UHV”** means the heat value determined on Equilibrated Basis by the following formula:

$$\text{UHV} = 8900 - 138 \times [A + M]$$

Where, UHV = Useful Heat Value in kilo calories per kilogram (KCal/kg)

A = Ash content; and

M = Moisture content

In the case of Coal having moisture less than two per cent (2%) and volatile content less than nineteen percent (19%), the UHV shall be the value arrived at as above reduced by 150 KCal/kg for each one percent (1%) reduction in volatile content below nineteen per cent (19%) fraction pro rata.

**aad) “Unloading Point”** means the place/point at the Purchaser’s Power Station end at which Coal from/through the Purchaser’s Container is received/ unloaded.

**aae)“UTS”** is Unit Train System.

**aaf) “Weights and Measures Standards”** mean the standards, as prescribed under the Standards of Weights and Measures Act, 1976 and amendments thereof.

**aag)“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.

## 1.2 RULES OF INTERPRETATION:

- a) a reference to this Agreement includes all schedules and annexures to this Agreement;
- b) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinated legislation issued under, that legislation or legislative provision;
- c) headings do not affect the interpretation of this Agreement;
- d) a reference to Rs., INR or Rupees is to the lawful currency of the Republic of India unless specified otherwise;
- e) a reference to an agreement, deed, instrument or other document include the same as amended, novated, supplemented, varied or replaced from time to time; and
- f) the expressions “including”, “includes” and “include” have the meaning as if followed by “without limitation”.
- g) Words imparting the singular only also include plural and vice-versa where the context so requires;
- h) The expression "writing" or "written" shall include communications by facsimile and letter;
- i) If any definition in Clause 1.1 is a substantive provision conferring a right or imposing an obligation on any Party, effect shall be given to it as if it were a substantive provision in the body of this Agreement.

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2. **PERIOD OF AGREEMENT:**

2.1 **Commencement**

This Agreement shall come into force upon signature by both the Parties, hereon, hereinafter referred to as the Date of execution of the contract.

2.2 **Term**

The Term of this Agreement shall be for a period of ..... years (co-terminus with the life of the mine) effective from the date (hereinafter referred to as the **Effective Date**) on which all the Conditions Precedent have either been satisfied or being capable of waiver, waived mutually and a joint notice in this regard confirming the satisfaction of all Conditions Precedent have been signed by both the Seller and the Purchaser.

On completion of the term, 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.

2.3 Notwithstanding the provisions of Clause 2.2 above, in the event of any change in the Grade structure of Coal declared by Govt. of India or by any other authority empowered by the Govt., such changed Grade structure shall be binding and complied with by both the Parties and shall come into effect as per such declaration.

2.4 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, the Parties shall refer the matter to the Govt. of India for a decision.

2.5 **Conditions Precedent**

The obligations of the Parties under this Agreement are subject to the satisfaction of Seller's Conditions Precedent as under:

## **2.6 Seller's Condition Precedent**

The Seller shall have obtained from the lawful authority all requisite sanctions, approvals, licences and consents including those related to land acquisition, environment and forest clearance for development and operation of the Mine within ..... months (\*) from the Date of execution of the contract such other extended period as may be agreed to in writing and in accordance with the terms of this agreement.

*(\*) to be decided mutually between Seller & Purchaser.*

## **2.7 Provisions relating to Conditions Precedent**

Seller shall undertake all such steps, as may be reasonably required and will make diligent efforts to procure the satisfaction, in full of the Conditions Precedent.

## **2.8 Failure to satisfy the Conditions Precedent**

In the event that any of the Conditions Precedent stipulated in Clause 2.6 has not been satisfied or waived within the specified period, either Party may, by not less than thirty days notice in writing terminate this Agreement with no liability on the part of either Party, provided that the Purchaser shall not have the right to terminate this Agreement under this Article so long as the Seller offers to supply the Contracted Quantity from the Mine or from the Alternate Source(s) or a combination of both.

## **2.9 I) Security Deposit**

- a) On or before the date of execution of contract, the Purchaser shall furnish Security Deposit to the Seller in Cash / Bank Guarantee (BG) for a sum of Rs.....(insert amount in figures & words) equivalent to 6% of the Contract Price of ..... Mine as on the date of execution of the contract multiplied by the Annual Contract Quantity (ACQ) in terms of Clause 3.1 of this Agreement. Such Security Deposit shall be non-interest bearing and in case of it being deposited in the form of Bank Guarantee, it should comply with the format specified by the Seller as per Schedule VI and issued by the Scheduled Bank, acceptable to the Seller. The Security Deposit shall be suitably increased , if there is increase in Contract Price as per this Agreement.

(If the purchaser is existing FSA holder for which he has already deposited 6% for the Annual Contracted Quantity (ACQ) in terms of Clause 3.1 of this Agreement based on notified price, then in such case he has to deposit an amount equivalent to the difference between the notified price and the contract price for the cost plus quantity.)

- b) The Bank Guarantee furnished towards Security Deposit shall be maintained throughout the period of this Agreement.
- c) The Security Deposit shall be forfeited in case the Purchaser fails to comply with any provisions of this Agreement.

## **II) Financial Guarantee against Risk**

a) On or before the date of execution of the contract—the purchaser shall furnish Bank Guarantee (BG) for an amount equivalent to the value of immovable asset as per Project Report.

b) When there are more than one purchaser of coal from a cost plus mine, the BG to be furnished by the purchaser shall be equivalent to the investment as at a) attributable to the purchaser, which is to be calculated in accordance with the contracted quantity of the purchaser as per the agreement as a percentage of total contracted quantity for all the purchasers taken together.

c) The amount of BG shall be tapered-off every year from the year subsequent to the year of project completion in the proportion of actual coal off-take during the period on progressive basis as a percentage of total contracted quantity during the entire contract period.

d) In the event any amount is recovered by the seller from the BG in terms of clause 3.1.4, the purchaser shall replenish the amount failing which the seller reserves the right to terminate the contract.

e) For any change in Capital Investment, the financial guarantee against risk shall also be revised accordingly. .

## **3. QUANTITY:**

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

The Annual Contract Quantity of coal agreed to be supplied shall be ..... lakh tonnes per Operating Year of 12 calendar months provided that where the period of operation of the Mine is less than 12 months following the date of Actual Commissioning, the Annual Contract Quantity shall be prorated accordingly.

However, till such time the actual commissioning of the mine takes place (i.e. 85% of the mines capacity is achieved) the quantity of coal produced from the mine and supplied shall be treated as annual contract quantity for the period but no compensation or incentive shall be payable or receivable during the period.

3.1.1 It is expressly clarified that the Annual Contracted Quantity (ACQ) shall be valid for each Power Station separately, as mentioned in Schedule I, and all the provisions of this Agreement related to ACQ shall be applicable mutatis mutandis.

3.1.2 The Seller sell and deliver to the Purchaser, and the Purchaser shall purchase and pay for Coal in the quantities and having the qualities as required hereby, upon the terms and conditions set out in this Agreement.

**3.1.3 Disposal of stock at purchaser's risk.**

Where specific mine being offered under cost plus agreement will be left with stock when a consumer fails to lift the quantity as per the agreement provision, in such event the seller shall be empowered to dispose off the stock at consumer's risk. Any loss suffered by the seller for non-disposal of such stock or for disposal of such stock at a price lower than the contract price shall be recovered by the seller from the BG towards financial gurantee against the risk submitted by the purchaser.

**3.2 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 to any third party for any purpose whatsoever and such act on the part of the purchser shall be treated as material breach of Agreement. However, the purchaser may transfer the coal meant for its one Power Plant to another Power Plant fully owned by the purchaser provided that such supply of coal shall for all commercial purposes under this Agreement remain unchanged and on account of the original Power Plant. 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.

**3.3 Sources of Supply**

3.3.1 The Seller shall endeavor to supply Coal from own sources as mentioned in



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. 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, provided that such alternate delivery point for dispatch by rail/MGR shall be either Railway siding or wharf wall. Additional cost due to supply through alternate source shall be borne by the Purchaser.

- 3.3.2 In the event of shortfall of coal supplies from own sources, the Seller may consider supply of Imported Coal for which Seller shall inform the Purchaser three months in advance of such likely supplies and such supplies shall be made based on mutual consultation. In the event, the Purchaser declines to consider Seller's offer on Imported Coal, it shall not be considered as Purchaser's default under this Agreement.
- 3.3.3 In the event that the Seller is unable to supply the Contracted Quantity from ..... Mine, the Seller may at its discretion offer coal from alternate source(s) at respective As Delivered Prices as defined in Clause 1.1(h) of this Agreement .
- 3.3.4 In case of supply of coal from Alternate Sources either in the event of Force Majeure or otherwise, the Seller shall intimate the Delivery Point to the Purchaser.
- 3.3.5 The Seller, on the request of the Purchaser shall furnish the necessary information within the reasonable time and accuracy, about the quality of Alternate Supplies proposed to be despatched from the Alternate Source(s) to the Delivery Point.
- 3.3.6 The Purchaser and the Seller may jointly review the handling arrangements made/being made/as available at the Alternate Source(s), if required.
- 3.3.7 The Seller shall supply the entire / part production of the..... Mine to the Purchaser which shall however not exceed the Contracted Quantity for any Operating Year. It is clarified that Seller shall be free to enter into separate Cost Plus Agreement(s) with other Purchaser(s) for that part of the production in excess of the Contracted Quantity from the ..... Mine.
- 3.3.8 The Seller shall have the right to sell any coal produced from ..... Mine over and above the Contracted Quantity to any party/parties other than the Purchaser as per the terms and price agreed between the Seller and such party/parties.

#### **3.4 Actual Commissioning Date**

The Mine is said to have achieved Actual Commissioning on a date (the Actual Commissioning date), when it has achieved a cumulative production of 85% of Annual rated capacity of ..... tonnes during the immediate preceding 12 continuous month period.

### **3.5 Quarterly Quantity (QQ)**

The Annual Contracted Quantities for the Year, as per Clause 3.1 shall be divided into Quarterly Quantities (QQ), expressed in tonnes, as follows:

I <sup>st</sup> Quarter (Apr-Jun.)	25% of ACQ
II <sup>nd</sup> Quarter (Jul-Sep)	22% of ACQ
III <sup>rd</sup> Quarter (Oct-Dec)	25% of ACQ
IV <sup>th</sup> Quarter (Jan-Mar)	28% of ACQ

### **3.6 Scheduled Quantity (SQ):**

The monthly Scheduled Quantity (SQ) shall be one third (1/3rd) of the QQ

#### **3.6.1 Delivery Schedule**

The Purchaser and the Seller shall discuss and finalise the supply schedule from the Mine after the *Actual Commissioning Date* of the Mine for the remaining period of that financial year and thereafter atleast 45 days prior to the beginning of subsequent financial year.

3.6.2 The delivery schedule as finalised as per clause 3.6.1 above shall clearly stipulate the quantity to be supplied by the Seller for each Month of the next 12 months period or the remaining months of the Financial Year as the case may be, hereinafter called Scheduled Quantities for the Month (SQ).

3.6.3 The Scheduled Quantity for the month if desired can be increased / decreased by the Seller and Purchaser with mutual consent.

3.6.4 The Seller shall have a right to supply additional quantity of coal from the ..... Mine to the extent necessary to make up the shortfall in supply, if any, in the immediately preceding month.

3.6.5 If the Seller fails to supply Monthly Scheduled Quantity of coal from ..... Mine during any Quarter, the Seller at its discretion shall offer coal from the ..... Mine and / or Alternate Sources within immediately succeeding quarter. In case Purchaser

refuses / fails to off-take such quantities or part thereof, then the refused / failed quantities shall be taken as Deemed Delivered Quantities (DDQ) of the Seller.

3.6.6 The Seller shall construct, own, maintain and operate, suitable loading system with requisite Coal Crushing and sizing facilities of adequate capacity, for loading/feeding sized Coal into Purchaser's container, at the ..... Mine.

**3.7 Compensation for short delivery/lifting**

If for a Year, the Level of Delivery by the Seller, or the Level of Lifting by the Purchaser falls below ACQ with respect to that Year, the defaulting Party shall

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	Formula for calculation of compensation
1	Less than 100% but upto 90% of ACQ	Nil	NIL
2	Below 90% but upto 85% of ACQ	10%	$0.1 \times P \times [((100-LD \text{ or } LL) - 10)/100] \times ACQ$
3	Below 85% but upto 80% of ACQ	20 %	$0.1 \times P \times [((100-85) - 10)/100] \times ACQ$ + $0.2 \times P \times [(85-LD \text{ or } LL) /100] \times ACQ$
4	Below 80% of ACQ	40%	$0.1 \times P \times [((100-85) - 10)/100] \times ACQ$ + $0.2 \times P \times [(85-80) /100] \times ACQ$ + $0.4 \times P \times [(80-LD \text{ or } LL) /100] \times ACQ$

Where, P = Weighted average Contract Prices corresponding to the UHV of Coal supplied from the ..... Mine during the relevant Operating Year.

### **3.8 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 3.11

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.

### **3.9 Level of Lifting:**

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

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

Where:

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

DDQ shall have the same meaning as given in Clause 3.11.

- 3.10                      For the purpose of computing DDQ and RF, the weight per rake will be [\_\_\_\_\_to be specified by the Seller], which shall be used for calculation of compensation from either the Purchaser or Seller.

### **3.11 Deemed Delivered Quantity:**

For the purpose of this Agreement, the aggregate of the following items provided under Clause 3.11.1 to 3.11.2 shall constitute the Deemed Delivered Quantity with respect to a Year.

#### **3.11.1 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 programme (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 programme(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 Purchaser's failure to pay and/or submit / maintain IRLC, as applicable, in accordance with Clause 11.1.2.

(iv) The quantity of Coal not supplied by the Seller owing to Seller exercising the right of suspension of supplies in terms of Clause 15.

(v) The quantity of Coal offered by Seller from alternative source in terms of Clause 3.3.1 which is not accepted by the Purchaser.

#### **3.11.2 For Supply of Coal by road/ ropeways/MGR/belt conveyor:**

(i)The quantity of Coal not supplied by the Seller owing to Purchaser's failure to pay and/or submit IRLC, as applicable, in accordance with Clause 11.1.2.

(ii) The quantity of Coal not supplied by the Seller owing to Seller exercising the right of suspension of supplies in terms of Clause 15.

(iii) The quantity of Coal not supplied by the Seller owing to Purchaser's failure to place the requisite number / type of transport at the Delivery Point for delivery of Coal within the validity period of the sale order/delivery order.

(iv) The quantity of Coal not supplied by the Seller owing to Coal from alternative source in terms of Clause 3.3.1 not accepted by the Purchaser.

3.11.3 Deemed Delivered Quantity in terms of Clause 3.11.1 and 3.11.2 shall be calculated on cumulated monthly basis during a Year.

### **3.12 Performance Incentive:**

3.12.1 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 = Weighted average Contract Prices corresponding to the UHV of Coal supplied from the ..... Mine during the relevant Operating Year.

UHV of Coal supplied from the ..... Mine during the relevant Operating Year.

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 0.10 for Additional Deliveries between 90%-95% of ACQ, 0.20 for Additional Deliveries between 95%-100% of ACQ and 0.40 for Additional Deliveries in excess of ACQ.

- 3.12.2 With respect to part of Year in which term of this Agreement begins or ends, the relevant quantities in Clause 3.12.1, except the Multiplier, shall apply pro-rata.
- 3.12.3 With respect to the Performance Incentive payable under Clause 3.12.1, it is agreed that the Performance Incentive shall be payable on the basis of actual quantity physically delivered.
- 3.12.4 Supply of coal in excess of ACQ shall be with mutual consent.

#### **4.0. QUALITY:**

- 4.1 The quality of Coal delivered / to be delivered shall conform to the specifications given in Schedule II.
- 4.2 The Seller shall deliver sized Coal with size conforming to specifications laid in Schedule II. The Seller shall make reasonable efforts to remove stones from Coal.
- 4.3 The Seller shall use magnetic separators and metal detectors, at its Coal handling/loading system at the Delivery Point, where the same are already installed.

#### **4.5 Declaration of Common Grade/ Re-declaration of Grade by the Seller:**

The Seller shall declare one common Grade for Coal seam or seams from which Coal is being despatched through the same Delivery Point, wherever applicable.

#### **4.6 Oversized Coal / stones**

##### **4.6.1 Oversized Coal:**

The Purchaser shall inform the Seller all incidents of receipt/presence of oversized Coal, in terms of specifications laid down in Schedule II, in any specific consignment(s), immediately on its detection at the Delivery Point and/or Unloading Point and the Seller shall take all reasonable steps to prevent such ingress at his end.

- 4.6.2 All coal delivered hereunder shall be substantially free of stones and all metal objects. The Seller shall install metal detectors wherever possible or adopt other means of segregating foreign / extraneous materials. In addition to the forgoing, the Seller shall



use reasonable efforts to remove all stones, extraneous to the Coal. If in the Purchaser's opinion, the presence of stones causes operating or maintenance problems with the Plant, then upon the Purchaser's request, the Purchaser and the Seller shall meet and use reasonable efforts to agree on a mutually acceptable plan for increasing the effectiveness of the Seller's efforts at removing stones from the Coal. Detailed procedure for segregation of stones, if any received with Coal and compensation for the same shall be mutually finalized by the Purchaser and the Seller. However, such compensation shall be limited to 0.75% of the total quantity of coal supplied progressively in an operating year by the Seller to the concerned plant by Rail based on weightment of coal in terms of Clause No.5 and after accounting for Moisture Compensation in terms of Clause 9.2. of Model Coal Supply Agreement for Govt. / State Power Utilities under NCDP.

#### **4.7 Assessment of Quality of Coal**

##### **4.7.1 Sample collection:**

- i) Samples of Coal shall be collected jointly by manual method during each of the shifts and at each of the Delivery Points for determining the quality of Coal provided that in case of loading through Silo the Seller shall install AMS within a period of 24 months of signing of this Agreement at all such Silo loading points which are not having AMS at present. The AMS existing at the Silo loading point shall be made operational by the Seller within a period of 6 months from the date of signing of this Agreement. In the event of AMS at Silo loading point not being operational beyond the above specified period, the sample shall be collected jointly through the AMS at the Purchaser's unloading point till such time the loading end AMS becomes operational. The Seller shall also ensure that AMS at the Silo loading points shall be operational for 90% of the period in a year. Also if, for any reason the AMS at Seller's Silo loading point remains non operational for a continuous period of more than 10 days, then the samples shall be collected jointly through the AMS at the Purchaser's unloading point till such time the loading end AMS becomes operational.
- ii) For the purpose of sampling each rake (source wise, grade wise and plant wise) of Coal supplied from one Delivery Point shall be considered as a lot.
- iii) Each day's supply from a source shall be considered as one lot for the purpose of sampling in case of Coal supplies by road, ropeways, belt and Merry-Go-Round (MGR) rail system. However, in case of Coal supplies by Railways, each rake from a source shall be considered for the purpose of sampling.

4.7.2 Detailed modalities for collection, handling, storage and preparation of joint samples shall be as per Schedule IV to this Agreement.

#### **4.7.3 Sample preparation & analysis:**

**(i) Total Moisture**

Sample for determination of Total Moisture shall be segregated from the sample collected at the Delivery Point jointly by the Seller and the Purchaser, and prepared and analysed, as per procedure given in Schedule-IV.

**(ii) Daily Gross Sample**

- a) The Gross Sample collected from a rake and/or day's supply for determination of moisture, ash & volatile matter on equilibrated basis shall be jointly reduced into laboratory sample on the date immediately following the date of collection. The final laboratory samples will be divided into two parts viz. Set - I and Set - II, as follows.

Set - I shall be used for joint analysis to determine the ash, moisture and volatile matter.

Set - II shall be kept under joint seal as referee sample in the safe custody for a period of fourteen (14) days or until the analysis results of Set - I are accepted without dispute, whichever is earlier.

- b) The sample in Set -I shall be analysed for ash, moisture and volatile matter content on equilibrated basis {wherever required in accordance with IS: 1350 (Part -I) - 1984 and IS: 1350 (Part - II) - 1970}.
- c) Set-I of the laboratory sample as prepared shall be jointly analysed at the Seller's laboratory at the loading end as per relevant part of IS: 1350 (Part -I) - 1984 and IS: 1350 (Part - II) - 1970 within three-four (3-4) days from the date of preparation and distribution of laboratory sample for proximate analysis.
- d) In the event of any dispute (which shall be raised not later than forty-eight (48) hours after analysis) at the time of joint analysis, the referee sample as in Set- II shall be referred for analysis within seventy two (72) hours of the dispute but not later than eight (8) days of the collection of samples at any mutually agreed Government laboratory.
- e) The procedure for storage of referee sample shall be mutually agreed upon by both the Parties.

- 4.7.4 Each sample shall be assigned with a code number and will be identified by such code only and no other particulars will be indicated or written on the tag attached with the relevant bag containing the sample.
- 4.7.5 All tools, tackles required for collection of joint samples, its preparation and all laboratory facilities for the purpose of joint analysis of samples shall be provided by the Seller as per the provision of this Agreement.
- 4.7.6 In the event that no sample is collected from dispatches by a rake or on any day, as the case may be, from a source for any reason, the weighted average of the most recent results available in any preceding month against respective Source and Grade shall be adopted for such dispatches for which samples were not collected.

## **5.0 WEIGHMENT OF COAL**

- 5.1 For dispatch of Coal by Rail, all the wagons loaded for the Purchaser shall be weighed at the loading end at the electronic weighbridge of Seller and electronic print out of actual weight recorded shall be provided. Such weighment shall be final and binding for determination of the quantity delivered. The Purchaser shall have the right to witness the weighment of the wagons at the weighbridge, if desired. The Seller shall hand-over copies of jointly signed or in the absence of the Purchaser's representative(s), signed by the Seller, print-outs of the weighment to the Purchaser immediately after weighment of each consignment, besides a copy of such signed printouts shall also be annexed along with the bill(s) raised by the Seller.
- 5.2 Only in the absence of weighment of Coal on electronic weighbridge at the loading end, the weight recorded at the Purchaser's electronic weighbridge with an electronic print-out facility at the Unloading Point, if in proper working order, shall be taken as final. In respect of unweighed consignments at the Delivery Point on electronic weighbridge and weighed on electronic weighbridge at the Purchaser's end, the Purchaser shall submit the associated electronic printout to the Seller within thirty (30) days from the date of Railway Receipt, beyond which time the weight of the consignment shall be considered on Railway Receipt basis.
- 5.3 If both the weighbridges installed by the Seller as well as the Purchaser are defective,/ not available for recording weight of the consignments of Coal , weighted average quantity of Coal per wagon ( to be determined separately for respective types of wagons in the circuit), as per the actual weighment over a continuous period of immediately preceding seven (7) days shall form the basis for determining the quantity of Coal from that source at that Delivery Point, till such time any one of the weighbridges is corrected and put back into operation. If

the weighbridges at both the Seller's and the Purchaser's end are not available for recording weight of coal and actual weighment over a continuous period of immediately preceding seven (7) days is also not available then weight of Coal for such unweighed wagons shall be taken as per the weight indicated in the Railway Receipts (RRs).

5.4 The Seller and the Purchaser shall permit access to and make facilities available at its weighbridge, for representatives of either Party to witness and note the weight for the consignment. In case the representative of any Party fails to be present, at the time of such weighment, the weight recorded by the representative of the other Party in accordance with Clause 5.1 and 5.2, shall be final and binding.

5.5 The weighbridges both at the Seller's end and at the Purchaser's end shall be calibrated as per the Weights and Measures Standards and also whenever required. Both the Seller and the Purchaser shall have right to witness the calibration of the weighbridge at each other's end. Coal bills of consignment, which are weighed as per the provisions of clause 5.1, shall bear the rubber stamp indicating electronic printout has been enclosed. If the electronic printout with Coal bill is not received by the Purchaser despite rubber stamp, such bills shall be returned to the Seller for re-submission along with electronic printout within twenty (20) days.

#### **5.6 Operation and Maintenance of Weighment System**

The Parties shall at their respective costs,

- a) operate and maintain their weighbridges in good working order and in accordance with the Weights and Measures Standards and other applicable laws.
- b) cause the weighbridge to be inspected, tested and certified by the statutory agencies in accordance with and at the intervals required by the Weights and Measures Standards and the Parties shall, at their cost, extend / make available all requisite facilities required for the purpose of testing and/or calibrating the weighbridge.

5.7 For dispatch of Coal by road, the weight recorded at the electronic weighbridge of the Seller at the loading end shall be final for the purpose of billing and payment. The Purchaser shall have the right to witness the weighment at the colliery, if desired. The weighbridge shall be calibrated as per the provisions of the Standards of Weights & Measures Act 1976. The Purchaser shall have right to witness such calibration.

- 5.8 For dispatch of Coal by belt conveyor, a weightometer shall be installed at the colliery/ washery end of the Seller and weight recorded by the weightometer shall be the weight of Coal supplied. The weightometer shall be kept under joint seal and will be repaired / recalibrated in the presence of the representatives of the both the Parties, wherever necessary.
- 5.9 For dispatch of Coal by MGR system, weight recorded at the loading end through electronic weighment system shall form the basis for determining the quantities of Coal delivered.
- 5.10 In the absence of weighment through electronic weighment system at the loading end, the weight recorded at the Purchaser's electronic weighment system with an electronic print-out facility at the Unloading Point, if in proper working order, shall be taken as final. In respect of unweighed consignments at the Delivery Point on electronic weighment system and weighment through such system at the Purchaser's end, the Purchaser shall submit the associated electronic printout to the Seller within ten (10) days from the date of dispatch, beyond which time the weight of the consignment shall be considered on the basis of weighment at loading end in the preceding seven (7) days. Similarly, in the event both the weighment system at the loading end and at the unloading end being not operational, the weight of such consignment shall be determined based on average of loading or unloading end weighment during available preceding month.

## **6. METHOD OF ORDER BOOKING AND DELIVERY OF COAL:**

The Purchaser shall submit monthly programme(s) mode-wise for off-take of Coal against the monthly mode-wise Coal allocation made by the Seller. Notwithstanding, Clause 6.1 and Clause 6.2 shall be applicable in case of Coal off-take by rail and road respectively.

### **6.1 Order Booking by Rail:**

- 6.1.1 At least seven (7) working days prior to the commencement of the month concerned, the Purchaser shall submit a programme in writing to the Seller, as per the applicable Railway rules and the Seller's notified procedures. Thereafter, the Seller shall process for issuance of the consent of the programme. The sanction of the consented rail programme shall be obtained accordingly. 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 the prevailing Railways rules.

- 6.1.2 Subject to fulfillment of payment obligations pursuant to Clause 11.1.2 by the Purchaser, 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.
- 6.1.3 The wagons shall be booked on “freight to pay” or “freight pre paid” basis, as applicable based on the arrangements made by the Purchaser with Railways in this regard.
- 6.1.4 In case of formation of rakes with wagons loaded from different Delivery 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.
- 6.1.5 In the event rail movement is declared / considered not feasible by Railways, review will be made jointly in the matter of mode of transport

## **6.2 Order Booking by Road:**

- 6.2.1 The Seller shall intimate the Purchaser about the monthly Coal allocation for order booking seven (7) working days prior to the commencement of the month concerned.
- 6.2.2 Based on the monthly colliery wise allocation done by the Seller in terms of Clause 6.2.1, the Purchaser shall place orders with the Seller for the Scheduled Quantity.
- 6.2.3 Subject to fulfilment of payment obligations pursuant to Clause 11.1.2 by the Purchaser, 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 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 6.2.1.
- 6.2.4 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, as mentioned in the sale order.
- 6.2.5 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.

## **7.0 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 missing/diversion of wagons / rakes or road transport en-route, for whatever causes, by Railways, or road transporter or any other agency.

## **8.0 PRICE OF COAL:**

“**As Delivered Price of Coal**” for the coal supplies pursuant to this Agreement means any of the following as applicable at the time of delivery of coal depending upon the type / source of coal supplies.

(i) Sum of Contract Price, Other Charges and Statutory Charges, as applicable at the time of delivery of Coal in case of supplies from ..... Mine.

(ii) Sum of contract price in terms of respective cost plus agreement (s), other charges and statutory charges; in case of supplies from Alternate Source(s) for which Seller has entered into Cost plus Agreements.

(iii) Sum of Notified Price, other charges and statutory charges; in case of supplies from indigenous Alternate Source(s) from which Seller is supplying coal on notified price to other consumers.

(iv) Sum of landed cost till the Delivery Point, service charges and other incidental expenses declared by CIL or Seller and Statutory charges ; in case of supply of Imported Coal

### **8.1a) Base Price**

Base price shall mean the price as defined in the clause.....of this agreement.

### **8.1b) Contract price:**

Contract price shall mean the price as defined in the clause.....of this agreement.

## **8.2 Other Charges:**

### **8.2.1 Transportation charges:**

Where Coal is transported by the Seller beyond the distance of three (3) kms from

Pithead to the Delivery Point, the Purchaser shall pay transportation charges, as notified by CIL / Seller from time to time.

**8.2.2 Sizing/Crushing charges:**

Where Coal is crushed by mechanical means for limiting the top-size to 250mm, or any other lower size, the Purchaser shall pay sizing/crushing charges, as applicable and notified by CIL / Seller from time to time.

**8.2.3 Rapid Loading Charges:**

Where Coal is loaded through rapid loading system, the Purchaser shall pay rapid loading charges notified by CIL / Seller from time to time.

**8.3 Statutory Charges:**

The statutory charges shall comprise royalties, cesses, duties, taxes, levies etc., if any, payable under relevant statute but not included in the ~~Base Price~~ contract price and/or other charges pursuant to Clause 10.2, shall be payable by the Purchaser. These levies/charges shall become effective from the date as notified by the Government/ statutory authority.

8.4 In all cases, the entire freight charges, irrespective of the mode of transportation of the Coal supplied, shall be borne by the Purchaser.

**9.0 COMPENSATION:**

**9.1 Oversized Stones:**

The compensation shall be as per clause 4.6.2.

**9.2 Excess Surface Moisture**

(i) In the event that monthly weighted average Surface Moisture in Coal exceeds seven percent (7%) during the months from October to May and nine percent (9%) during the months from June to September, the Coal quantities delivered to the Purchaser during such month shall be adjusted for the resultant excess Surface Moisture, which shall be calculated in percentage by which the Surface Moisture exceeds the foregoing limits.

(ii) The Seller shall give regular credit note on account of excess Surface Moisture, as per Clause 9.2(i) above, calculated at the rate of contract price of analysed Grade of Coal and Other Charges pursuant to Clause 8.2 but excluding statutory charges



pursuant to Clause 8.3, if any, and railway freight for the quantity of excess Surface Moisture.

- (iii) Sampling/ analysis and determination of Surface Moisture for compensation shall be done as per the procedure given in Schedule IV.

#### **10.0 OVERLOADING AND UNDER LOADING:**

- 10.1 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.
- 10.2 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; any idle freight for under-loading below the stenciled carrying capacity, as shown on the wagon or carrying capacity based on the actual tare weight, as the case may be, shall be borne by the Seller. For all other Grades of Coal, any idle freight for under-loading below the stenciled carrying capacity, as shown on the wagon or carrying capacity based on the actual tare weight, as the case may be, plus two (2) tonnes shall be borne by the Seller.
- 10.3 Idle freight resulting from under loading of wagon, as per Clause 10.2, shall be adjusted in the bills. Idle freight shall be reckoned as:
  - (i) 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, the difference between the freight charges applicable for the stenciled carrying capacity, as shown on the wagon or carrying capacity based on the actual tare weight, as the case may be, less the freight payable as per actual recorded weight of Coal loaded in the wagon; and/or
  - (ii) For all other Grades of Coal, the difference between the freight charges applicable for the stenciled carrying capacity, as shown on the wagon or carrying capacity based on the actual tare weight, as the case may be, plus two (2) tonnes less the freight payable as per actual recorded weight of Coal loaded in the wagon.
- 10.4 For the purpose of clause 10.2 & 10.3, applicable grade shall be reckoned with reference to the average UHV of the Mine as per Detailed Project Report.

## **11.0 MODALITIES FOR BILLING, CLAIMS & PAYMENT**

### **11.1 Bills on Declared Grade basis**

11.1.1 The Seller shall raise source-wise bills for the Coal supplied to the Purchaser on Declared Grade basis. The Seller shall raise such bills on rake-to-rake basis for delivery of Coal by rail and on daily basis for delivery of Coal by road and other modes of transport. Such bills shall be raised within seven (7) days of delivery.

11.1.2 The Purchaser shall pay in accordance with either of the following payment mechanisms -

(a) The Purchaser shall make advance payment for a month in three (3) installments for availing Coal supplies from the Seller - first (1<sup>st</sup>) installment on the first (1<sup>st</sup>) day of the month, second (2<sup>nd</sup>) installment on the eleventh (11<sup>th</sup>) day of the month and the third (3<sup>rd</sup>) installment on the twenty first (21<sup>st</sup>) day of the month. Each of these payment installments shall cover the As Delivered Price of Coal for the Coal quantities that is one-ninth (1/9<sup>th</sup>) of the QQ concerned, as per Clause 3.5. Further, each of these installments shall take into account the average of Base Prices of Grades mentioned in Schedule II. However, the third (3<sup>rd</sup>) installment shall also include the adjustment amount with regard to the actual quantity of Coal delivered pursuant to Clause 5.0 and the quality of Coal analysed pursuant to Clause 11.2 vis-à-vis the advance payment made for the previous month. For the avoidance of any doubt, such adjustment amount shall also include the quantity adjustment calculated pursuant to Clause 9.1 & 9.2.

(b) The Purchaser shall maintain with the Seller an Irrevocable Revolving Letter of Credit (IRLC) issued by a bank acceptable to the Seller and in the format acceptable to the Seller and fully conforming to the conditions stipulated in Schedule III for an amount equivalent to As Delivered Price of Coal for the Coal quantities that is one-ninth (1/9<sup>th</sup>) of the QQ concerned, as per Clause 3.5. The As Delivered Price of Coal in this context shall take into account the average of Base Prices of Grades mentioned in Schedule II. The IRLC shall be maintained throughout the term of this Agreement. The amount of IRLC shall be suitably changed whenever there is a change in any component of the As Delivered Price of Coal. In addition to the IRLC, the Purchaser shall pay advance amount equivalent to seven (7) days Coal value by way of Demand Draft/ Banker's cheque/ Electronic Fund Transfer (EFT).

11.1.3 All the payments shall be made through Demand Draft / Banker's cheque/Electronic Fund Transfer 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 14.

11.1.4 Advance payment made by the Purchaser shall be non-interest bearing, and it shall change in accordance with change in the As Delivered Price of Coal.

## 11.2 Adjustment for analyzed quality

11.2.1 The bills with regard to adjustment for quality, as determined under Clause 4.7, shall be supported by relevant documents in respect of the analysis carried out of the following parameters:

- a) Total Moisture (%)
- b) Equilibrated Moisture (%)
- c) Ash (%)
- d) Volatile Matter (%)
- e) Useful Heat Value (Kcal/Kg)

Provided that in the event no sample is collected from dispatches by a rake or on any day, as the case may be, from a source for any reason, the weighted average of the most recent results available in any preceding month against respective Source and Grade shall be adopted for such dispatches for which samples were not collected.

11.2.2 After receiving the Quality Specification of Coal supplied by the Seller with respect to an Invoice, the Debit / Credit notes shall be prepared on the basis of weighment as per Clause 5 and analyzed quality as per Clause 4.7. **The Debit / Credit Note in respect of analyzed quality shall be worked out as under:**

$$\frac{\text{Contract Price (x) Analyzed UHV (as defined in clause 1.1)}}{\text{Base UHV (as defined in clause 1.1)}}$$

However, Royalty, Cess and Stowing Excise duty and any other levies or duties payable shall be charged **on declared grade basis and** as per the prevailing rules and regulations as applicable in this regard. A copy of the quality specification in line with the terms as stipulated in *Schedule - I* of this Agreement shall support the Debit / Credit note.

11.2.3 The amount arising out of final settlement of any bill pursuant to Clause 11.2.1 that is disputed by the Purchaser shall be paid for, as part of the third (3<sup>rd</sup>) installment pursuant to Clause 11.1.2(a) that is due for payment in the same month or in the immediately succeeding month to the month in which such settlement takes place.

### **11.3 Bills of Miscellaneous Claims:**

- 11.3.1 The Seller shall, within seven (7) days of the receipt of claim pursuant to Clause 11.1 raised by the Purchaser, issue credit note, which shall be adjusted as part of the third (3<sup>rd</sup>) installment pursuant to Clause 11.1.2. (a).
- 11.3.2 The bills towards interest charges pursuant to Clause 14 shall be raised by the parties on monthly basis by the tenth (10<sup>th</sup>) day of the following month and the payment shall be made by fifteenth (15<sup>th</sup>) day of the same month.
- 11.3.3 Compensation for short supply/lifting, as calculated in accordance with Clause 3.7, shall be payable by the defaulting Party to the other Party within a period of ninety (90) days from the date of receipt of claim failing which it will attract interest in terms of Clause 14.
- 11.3.4 After expiry of the Year, the Seller shall submit an invoice to the Purchaser with respect to the Performance Incentive payable in terms of Clause 3.12.1 and the Purchaser shall pay the amount so due within thirty (30) days of the receipt of the invoice failing which it will attract interest in terms of Clause 12.

### **11.4 Diverted rakes/ missing wagons**

In case of any missing / diversion of wagons / rakes by Indian Railways, the Purchaser shall nevertheless make the payment to the Seller for the coal consigned to the Purchaser in such missing / diverted wagons / rakes based on the loading end sampling and analysis. In case of diversion of rakes en-route or missing wagons, bills shall be paid to the Seller by the original consignee.

### **11.6 Reconciliation / Adjustments:**

- The Parties shall jointly reconcile all payments made for Coal supplies on quartely/ annual basis. The Parties shall, forthwith, give credit/debit for the amount falling due, if any, as assessed during such joint reconciliation. The reconciliation statement shall be jointly signed by the authorised representative of the Seller and the Purchaser which shall be final and binding.
- 11.7 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.

## **12.0 INTEREST ON DELAYED PAYMENT**

In the event of delay in payment/adjustment of any amount payable/recoverable pursuant to the provisions of this Agreement, the Seller/the Purchaser shall be entitled to charge interest on such sum remaining outstanding for the period after the due date till such time the payment is made. The interest charged by the Seller/Purchaser pursuant to this Clause shall be at the rate of PLR.

## **13.0 SUSPENSION OF COAL SUPPLIES**

13.1 In the event any payment due under this Agreement is not made by the Purchaser by the due date, the Seller shall be entitled to regulate and/or suspend further delivery of Coal till such day the payment as due along with the interest amount is received by the Seller. The quantity of Coal not delivered by the Seller pursuant to such regulation and/or suspension of delivery of Coal shall be the Regulated Quantity Not Supplied (RQNS) and Deemed Delivered Quantity (DDQ) of Coal shall accrue to the Seller for the quantity equal to RQNS.

13.2 In the event the Seller suspends the Coal supplies pursuant to Clause 14.1, during such period that the Coal supplies remain suspended, while the Seller shall be relieved of his obligations under this Agreement, the obligations of the Purchaser under this Agreement shall be deemed to remain in full force . The seller shall however reserve the right to dispose of the stock in terms of **clause 3.1.6**

13.3 The Seller shall resume the Coal supplies within three (3) days of payment of the outstanding amount together with interest.

## **14.0 REPRESENTATIONS, WARRANTIES AND COVENANT**

### **GENERAL REPRESENTATIONS, WARRANTIES AND COVENANTS)**

14.1 Each Party hereby represents and warrants to the other Party that this Agreement constitutes a legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms except to the extent that its enforceability may be limited by bankruptcy, insolvency, moratorium or other similar laws affecting the rights of creditors generally and by general principles of equity ; and

### **Compliance with Laws**

- 14.2 The Seller covenants with the Purchaser that it will obtain and during the term of this Agreement it will renew and maintain all permits, licenses and approvals required under Applicable Laws to be held in connection with development and construction of the ..... Mine, the mining, transportation and delivery of coal, all as contemplated by this Agreement, and as otherwise required for the performance by the Seller of its obligations hereunder. The Seller shall promptly notify the Purchaser of any actual loss, revocation, termination, amendment or breach of any such permit, license or approval or any actual breach of any Applicable Laws related to performance of this Agreement.
- 14.3 The Purchaser covenants with the Seller that it will obtain and during the term of this Agreement it will renew and maintain all permits, licenses and approvals required under Applicable Laws to be held in connection with construction and operation of the Plant, all as contemplated by this Agreement and as otherwise required for the performance by the Purchaser of its obligations hereunder. The Purchaser shall promptly notify the Seller of any actual loss, revocation, termination, amendment or breach of any such permit, license or approval or any actual breach of any Applicable Laws related to performance of this Agreement.
- 14.4 The Seller shall take all action required under Applicable Laws in connection with the Sellers operations and activities under this Agreement, including without limitation compliance with any reporting or notice requirements under Applicable Laws relating to environmental matters.
- 14.5 The Purchaser shall take all action required under Applicable Laws in connection with the Purchasers operations and activities under this Agreement, including without limitation compliance with any reporting or notice requirement under Applicable Laws relating to environmental matters.

### **Inspection**

- 14.6 Each Party grants to the other (including its agents) in addition to the rights of the Parties pursuant to this Agreement, the right to visit such Party's facilities from time to time, upon reasonable notice and subject to the applicable rules and regulations of the facilities, to witness operations related to this Agreement and/or to carry out any rights or obligations under this Agreement.

## **Indemnification**

- 14.7 Purchaser agrees to defend, indemnify and hold harmless the seller and its affiliates and all officers, directors, employees and agents thereof, from and against any and all liabilities (including third party liabilities), lawsuits, claims, damages, losses, property damage, fines, penalties and assessments by any public agency, costs and expenses (including costs and expenses of reasonable attorney's fees), which are incurred or brought as a result of any negligent or willful act or omission of the Purchaser, its agents, employees, representatives, contractors or subcontractors associated with, or arising from, the performance by the Purchaser of its obligations under this Agreement.

## **15.0 SETTLEMENT OF DISPUTES:**

- 15.1 All differences or disputes between the Parties shall be settled/resolved amicably in the first instance. If amicable settlement is not possible, then the unresolved disputes or differences shall be settled through Arbitration in terms of Office Memorandum (OM) No. DPE/4(10)/2001-PMA-GLI dated 22<sup>nd</sup> January, 2004 Govt. of India, Ministry of Industry, Department of Public Enterprises, New Delhi as enforced from time to time. The Arbitration shall be conducted as per the afore-said Office Memorandum and the relevant provisions relating to Arbitration read as under:-

"In the event of any dispute or difference relating to the interpretation and application of the provisions of the contracts, such dispute or difference shall be referred by either party to the Arbitration of one of the Arbitrators in the Dept. of Public Enterprises to be nominated by the Secretary to the Govt. of India, in charge of the Bureau of Public Enterprises. The Arbitration Act 1940 shall not be applicable to the Arbitration under this clause. The award of the Arbitrator shall be binding upon the parties to the dispute, provided, however, any party aggrieved by such award may make a further reference for setting aside or revision of the award to the Law Secretary, Dept. of Legal Affairs, Ministry of Law & Justice, Govt. of India. Upon such reference, the dispute shall be decided by the Law Secretary or by the Special Secretary/Additional Secretary when so authorised by the Law Secretary, whose decision shall bind the parties finally and conclusively. The parties to the dispute will share equally the cost of Arbitration as intimated by the Arbitrator".

15.2 In the event the aforesaid OM is cancelled or otherwise becomes not applicable to both the Parties, any difference or dispute arising between the Parties under this Agreement shall then be resolved by arbitration in accordance with the provisions set forth below:

- (i) The arbitration proceedings shall be governed by the rules of the Indian Arbitration and Conciliation Act, 1996.
- (ii) The arbitral tribunal shall consist of three (3) arbitrators.
- (iii) The arbitration shall be conducted in (\_\_\_\_\_ to be indicated by the Seller) and Indian laws shall govern the arbitration.
- (iv) Any decision or award of the arbitrate tribunal shall be final and binding upon the Parties. The Parties hereto agree that the arbitral award shall be enforced against the Parties to the arbitration proceeding or their assets wherever they may be found and that judgement upon the arbitral award may be entered in any court having jurisdiction thereof.
- (v) The arbitral tribunal consisting of three (3) arbitrators shall be formed by the Purchaser and the Seller each nominating one arbitrator and the third arbitrator shall be nominated by the two arbitrators nominated by the Purchaser and the Seller and if the two arbitrators have failed to nominate the third arbitrator within fifteen (15) Business Days of their appointment, then such nomination shall be made by the Ministry of Coal, Government of India.
- (vi) The language of the arbitration and the arbitral judgement shall be English.

## 16. TERMINATION OF CONTRACT/AGREEMENT:

16.1 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 nine (9) months in continuous form or of twelve (12) months in discontinuous form in a period of two (2) Years, 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 thirty (30) days.

16.1.3 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

16.1.4 In the event that any Party commits a material 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 material 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 of this Agreement shall be without prejudice to the accrued rights and obligations of either Party as at immediately prior to the termination.

16.3 In the event of the termination of the agreement due to the reasons not attributable to the seller, the BG for the security deposit as well as financial gurantee against the risk shall be forfeited by the seller.

## **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 logistics 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 duration no longer 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 of 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.

## **18.0 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 - IRLC stipulations
- Schedule- IV - Detailed modalities for joint sampling
- Schedule –V - Bank Guarantee Format for Security Deposit
- Schedule –VI - Format for Financial Guarantee against risk

19.0 MISCELLANEOUS:

19.1 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

Designation:

Designation:

Address:

Address:

Telephone:

Telephone:

Fax:

Fax:

Email:

Email:

19.2 Amendment: This Agreement cannot be amended or modified except by prior written agreement between the Parties.

19.3 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.

19.4 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.

19.5 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.

- 19.6 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.
- 19.7 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.
- 19.8 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
- 20.0 IMPLEMENTATION OF THE AGREEMENT
- 20.1 The respective [\_\_\_\_\_ designation of the authorized representative] of the Power Station 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 3.8, 3.11.1 and 6.1* 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

Name  
(block letters)  
Designation:  
Address:  
Telephone:  
Fax:  
Email:

Signature

Name:  
(block letters)  
Designation:  
Address:  
Telephone:  
Fax:  
Email:

1. 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

2. WITNESS

a) Signature  
b) Name  
(Block letters)

c) Address & Occupation

Schedule-I

Annual Contracted Quantity  
(Refer Clause 3.1)

Annual Contracted Quantity

Sl. No.	Name & location of the Power Plant owned by Purchaser	Unit-wise Installed Capacity of the Power Station (in MW)	Balance life** of plant/unit in Years (w.e.f. ....)	Name of Rake Fit Station	Annual Contracted Quantity (Lakh Tonnes)	Mode of Transport	Source Coal field of the Seller*
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\* Details of Imported Coal shall be furnished by the Seller to the Purchaser from time to time as and when such Coal is offered.

\*\* Balance life of the Plant/Unit shall be as determined by appropriate authority of Govt. of India.



Schedule-II

Quality of Coal  
(Refer Clause 6)

S.No.	Name & Location of the Power Plant owned by the Purchaser	Top-size of Coal (mm)	Grade(s) of Coal
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### Schedule-III

#### IRLC Stipulations (Refer Clause 13.1.2(b))

In the event the Purchaser opts to submit IRLC, as per the payment provisions laid down in Clause 11.1.2 (b), the IRLC shall conform to the following conditions:

1. The underlying amount of IRLC shall be equivalent to As Delivered Price of Coal for the Coal quantities that is one-ninth (1/9<sup>th</sup>) of the QQ concerned, as per Clause 3.5. Further, the As Delivered Price of Coal in this context shall take into account the average of Base Prices of the Grades mentioned in Schedule II.
2. The underlying amount of IRLC shall be suitably changed whenever there is a change in any component of the As Delivered Price of Coal.
3. The term of the IRLC shall be for a minimum period of one year, and the same shall be renewed one month prior to its expiry so as to remain valid throughout the term of the Agreement.
4. 100% payment shall be released in favour of the Seller against the bills/ invoices duly signed and submitted by the Seller.
5. IRLC shall be automatic without any reinstatement clause, accordingly the amount of each drawl shall be automatically reinstated.
6. IRLC shall be issued by a bank acceptable to the Seller
7. All IRLC charges including those related to opening, establishment, negotiation, re-instatement, amendment or any other incidental charges shall be borne by the Purchaser
8. All documents drawn under this IRLC shall be in English language only.
9. All amounts under this IRLC shall be payable at [\_\_\_\_\_ to be mentioned by the Seller].
10. There shall be no restriction for the number of drawls in a month.

## SCHEDULE -IV

### Detailed modalities for joint sampling

- 1.0 Modalities for collection, handling, storage and preparation of joint samples:
  - 1.1 General
    - a) Sample shall be collected source wise, grade wise and Power station wise.
    - b) Samples shall be collected, packed and transported in such a manner so as to make these tamper proof to the satisfaction of Seller and Purchaser for which detailed procedure may be worked out at sampling sites jointly by representatives of Seller and Purchaser
    - c) Name the colliery / siding / Power Station, date of collection and other identification details (eg. Rake no. in case of rail supply) shall be maintained in a register and a proper code number shall be assigned for each sample for identification and reconciliation of results.
    - d) Laboratory samples prepared shall be in the size of 12.5mm for Total Moisture and for Proximate Analysis 212 micron IS Sieve. Precaution shall be taken so that before analysis, in test laboratory , further sieving or pulverizing is not required.
    - e) Proper analysis records shall be maintained at the laboratories where the samples are analysed.
    - f) Samples collected at the loading end shall be analysed as per BIS Standards (IS:1350 Part I - 1984) for determination of ash, moisture content and volatilematter.
    - g) Monthly statements containing the details of each and every analysis result finalized during a month based on joint/ referee analysis, as the case may be, shall be prepared indicating inter-alia the quantity of Coal covered by the respective analysis results. Such monthly statements shall be duly authenticated jointly, as applicable and respective analysis results shall be applied to the corresponding quality of Coal for billing/ commercial purpose
    - h) The final pulverized sample shall be divided into two equal parts. One part shall be kept for analysis at the Seller's laboratory at loading end and the second part will be

retained as referee sample under the joint custody and seal of Seller and Purchaser at the loading end.

- i) Samples drawn at loading ends shall be analysed in designated laboratories at loading end in the presence of Seller and Purchaser.
- j) The samples shall be identified jointly at the time of analysis in the laboratory by the code number already assigned as per clause 1.1(c).

## 1.2 COLLECTION OF SAMPLES FROM WAGONS:

- a) In case of dispatch by Rail each rake (source wise, grade wise and Power Station wise) of Coal supplied from one Delivery Point shall be considered as a Lot for the purpose of sampling.
- b) In case of Coal dispatches through MGR the sample collected from each rake (source wise, grade wise and Power Station wise) loaded from the respective Delivery Point during the day shall be pooled together and shall be considered as a lot for the purpose of sampling.
- c) Each rake shall be divided into sub-lots in a manner that the quantity of Coal/number of wagons in such sub-lots is more or less equal. The number of sub lots shall be determined as under :

No. of wagons in the rake	Number of sub lots
Up to 30 wagons	4
>30 wagons up to 50 wagons	5
>50 wagons and above	6

- d) From each of the sub lots one wagon each shall be selected as per random table in IS: 436 (Part I/Section I) 1964 or its latest version for collection of increments.
- e) In each wagon selected for sampling, the sample will be drawn from the spot in a manner so that if in one wagon the sample is collected at one end, in the next wagon the spot will be in the middle of the wagon and in the third wagon at the other end and this sampling procedure will be repeated for subsequent wagons.
- f) Before collecting the samples, the spot will be leveled and at least 25 cm of Coal surface shall be removed/scrapped from the top and the place will be leveled for an area of 50 cm by 50 cm.
- g) About 50 kg of sample shall be collected from each selected wagon in the rake of a source by drawing 10 increments of approx. 5 kg each with the help of shovel/scoop.
- h) Any stone/shale of size more than that indicated in Schedule-II shall be

removed/discarded, however all stones/ shale of size in terms of Schedule II shall form part of the sample collected.

- i) Source wise, grade wise and Power Station wise Samples collected from all the selected wagons in a rake shall be mixed (grade wise/source wise/Power Station wise) separately to form Gross Sample accordingly.
- j) Item (d) to (g) above shall be applicable for Coal supplied in box wagons as well as BOBR wagons where there is no live overhead traction line.
- k) In case of having live overhead traction line, the parties shall ensure that the power supply in the over head traction is switched off to facilitate collection of joint samples from BOX / BOBR wagons pursuant to points (d) to (g) above.

### 1.3 COLLECTION OF SAMPLES OF COAL DESPATCHES BY ROAD

- a) Sample shall be collected colliery wise / grade wise on daily basis during a day i.e. 6.00 Hr to 18.00 Hr
- b) The first truck for joint sampling on a day shall be selected randomly from the first eight trucks placed for loading by the Purchaser. Every eighth (8<sup>th</sup>) truck there after shall be subjected to joint sampling.
- c) The spot at the top of the truck, will be leveled and at least 25 cm of Coal surface shall be removed/scrapped from the top and the place will be leveled for an area of 50 cm by 50 cm for collection of sample.
- d) About 30 kg of sample shall be collected from each truck by drawing 6 increments of approx. 5 kg each with the help of shovel/scoop.
- e) All the samples collected from every eighth truck shall be mixed together grade wise to form a Gross Sample.
- f) Any stone/shale of size more than that indicated in Schedule-II shall be removed/discarded, however all stone / shale of size as mentioned in Schedule II shall form the part of the sample collected.

### 1.4 COLLECTION OF SAMPLES FROM CONVEYOR BELT

- a) In case of supply by conveyer belt sample shall be collected in increments of full cross section and thickness of the stream in one operation in a regular interval of time as mutually decided by both Seller and Purchaser and lot shall consist of samples so collected during a day i.e. 0.00 Hr to 0.00 Hr. of the following day.

- b) Before collecting the increments, the speed of the conveyer and quantum of material passing a certain point in a given time shall be ascertained so that an appropriate spacing of time between increments may be arranged over the whole of the lot.
  - c) If it is practicable to stop the belt periodically, increment may be collected from the whole cross section of the stream by sweeping the whole of the Coal lying between the sides of a suitable frame placed across the belt. The frame should be inserted in the Coal until it is in contact with the belt across its full width.
- α) Minimum 150 kgs of samples to be collected for daily Gross Sample.

#### 1.5 COLLECTION OF SAMPLES FROM STOCKPILE

- a) For the purpose of sampling, the quantity of Coal in the stock pile shall be divided into a suitable manner of sub-lots as specified in the following table:

Weight of the lot (MT)	No. of Sub-lots
Up to 500	2
501 to 1000	3
1001 to 2000	4
2001 to 3000	5
Over 3000	6

- b) The surface of each sub-lot shall be leveled and one point for approximately every 250 MT of material in the sub-lots shall be chosen at random for taking gross sample as per the following procedure:
  - i. In case height of the stock pile is not more than 1.5 metre, the material shall be collected at every selected point by taking the whole section of Coal from top to bottom over the area of a circle of 30 cm diameter.
  - ii. In case the height of the stock pile is more than 1.5 metre, the sample shall be collected at every selected point by taking the material over an area of a circle of 30 cm diameter and up to a depth of 1.5 metre.

#### 1.6 PREPARATION OF MANUALLY COLLECTED SAMPLES:

- 1.6.1 The Gross Sample collected will be divided into two portions. One portion (one fourth of the Gross Sample) called Part-1 will be used for analysis of Total Moisture and the other portion (three fourth of the Gross Sample) called Part-2 for Proximate Analysis and determination of UHV on Equilibrated basis .

1.6.2 The Part-2 Sample shall be jointly reduced into laboratory sample on the date immediately following the date of collection. The final laboratory samples will be divided into two parts viz. Set - I and Set - II

- Set - I shall be used for joint proximate analysis at loading end as per BIS standard (IS 1350 Part 1-1984)
  - Set - II shall be kept under joint seal as referee sample in the safe custody for a period of fourteen days or until the analysis results of Set - I are accepted without dispute, whichever is earlier.
- a) The Gross Samples for each Delivery Point shall be separately crushed to (-) 5 cm by mechanical means, mixed thoroughly, coned and quartered.
  - b) Two opposite quarters shall be retained and the rest rejected.
  - c) The retained material shall be further mixed, halved and one half retained.
  - d) Material so obtained shall be crushed to 12.5 mm by a Jaw Crusher and then to 3.3 mm by a palmac type of reduction mill/ or jaw crusher.
  - e) The crushed material shall be reduced either by coning and quartering or by ruffling to 2 kgs.
  - f) The sample so reduced shall be finally ground to pass through 212 micron IS sieve using a Raymond mini mill.
  - g) From the final sample passing through 212 micron IS sieve, 1.5 Kg shall be taken, which shall constitute the laboratory sample.
  - h) Such laboratory sample shall be divided into two equal i.e. Set-I and Set-II as mentioned at 1.4.2. The sample shall be kept in glass or polythene container.
  - i) All tools and tackles, plastic bags, sealing compound and other items required for collection, preparation, storage and analysis of the sample shall be provided by the Seller.

## 2.0 PREPARATION OF TOTAL MOISTURE SAMPLE AND DETERMINATION OF TOTAL MOISTURE:

- a) Part - 1 Sample shall be analysed jointly at the Delivery Point for determination of Total Moisture as per IS: 1350(Part -I) - 1984.
- b) For rail supplies, rake wise Surface Moisture shall be determined at loading end. For supplies by modes other than rail, Surface Moisture shall be determined jointly at loading end on daily basis.

- c) The samples shall be divided into two parts and shall be sealed in two previously weighed air tight plastic containers duly labeled and coded as Set-I™ and Set-II™ (the weight shall include any sealing material to be used also) immediately. Weight of each part of such sample shall be minimum 5 kg. The second set Set-II™ of Coal samples shall be set aside as referee sample. All the containers shall be sealed at the time of sample collection in such a manner that there is no loss of moisture. All the containers, after the collection of the sample and sealing, shall be individually weighed. All the weights, before and after the collection of samples shall be jointly recorded.
- d) An empty tray measuring 4 feet x 3 feet shall be weighed. The sample for joint analysis shall be spread in this tray. The weight of Coal of the tray shall be recorded.
- e) This tray containing the sample shall be kept under joint lock in a room/laboratory furnished with either sealing fans or with exhaust fan for drying the sample for 24 hours. If the sample is not reasonably dry the period of drying may be extended to further periods of 24 hours, till the sample is dry.
- f) The tray shall be weighed again and weight noted. Again the sample shall be kept for drying for about 2 hours and again weighed and this process shall be repeated till constant weight is achieved. This would normally take 2-4 hours. The final weight shall be taken and loss in weight that is W1 in the 1st stage of air drying shall be recorded.
- g) This sample shall now be crushed to -12.5 mm size in a crusher. Coning and quartering shall be done to reduce the sample quantity to 5 kg.
- h) This sample of -12.5 mm of approximately 5 kg shall be weighed and kept in an oven at ambient temperature of 38<sup>0</sup>C for about 2 hours. Again weight shall be taken and the process of heating cooling and weighing shall be continued till constant weight is reached.
- i) The loss in weight shall be recorded as W2 that is the loss of weight after 2nd stage drying.
- j) This sample of approximately 5 kg after the 2nd stage of drying shall be crushed to -3.35 mm size and the same shall be reduced to half Kg. by quartering and coning.
- k) Out of the half kg of sample 10 gms of Coal sample shall be taken in a weighed glass dish and kept in the drying oven at 108 +/- 2<sup>0</sup>C for about 90 minutes.



- l) The dish shall be cooled and weighed. Heating, cooling and weighing shall continue till constant weight is reached.
- m) The loss of weight shall be recorded as W3 that is the weight loss in 3rd stage drying.
- n) Based on the above procedure, the Total Moisture shall be computed jointly.
- o) All tools and tackles, plastic bags, sealing compounds and other items required for collection, preparation, storage and analysis of the sample shall be provided by the Seller.

**SCHEDULE-V**

**BANK GUARANTEE FORMAT  
FOR SECURITY DEPOSIT**

**(Refer Clause 2.10(I) )**

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 from the ..... Mine on cost plus basis and / or from the  
Alternate sources 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 Cost Plus 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,

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

include its successors, administrators, executors and assigns) do hereby irrevocably and unconditionally guarantee and undertake to pay Seller or such other person or persons 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) on 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 Indemnity and Guarantee 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 extended period, as may be required in terms of the Agreement before the expiry of the aforesaid validity<sup>2</sup>.
- 6) The Guarantee shall cover all claims or demand of Seller to the extent of the amount guaranteed.

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<sup>2</sup> On expiry of Sixty months period, the Guarantee shall be renewed again for a further period of Sixty – four months .Such renewal on expiry of each sixty months period shall continue till the BG is discharged by the Seller with a specific advice to the issuing bank.

- 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 extended period, as may be required in terms of the Agreement 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 in writing 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).
- 11) This gurantee shall not be discharged due to the change in the constitution of the issuing bank.
- 12) The Bank has under its constitution power to give this Gurantee and Sri..... who has signed it on behalf of the Bank has authority to do so.

Signature of the Bankers  
With date & Rubber Stamp

**SCHEDULE-VI**

**BANK GUARANTEE FORMAT  
FOR FINACIAL GURANTEE AGAINST RISK  
[Refer Clause 2.10(II) ]**

On Rs. 50/- Non judicial Stamp Paper

Date of Issue: -----

Effective Date<sup>3</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 from the ..... Mine on cost plus basis and / or from the  
Alternate sources 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 Financial Guarantee as per the terms of the Cost Plus 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

<sup>3</sup> *The Effective Date for financial guarantee corresponds to the date of execution of the MOU/Agreement/Contract*

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 person or persons 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) on 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 Indemnity and Guarantee 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<sup>4</sup> will remain valid for a period of sixty-four (64) months from the date hereof and to such further extended period<sup>5</sup>, as may be required in terms of the Agreement before the expiry of the aforesaid validity.

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<sup>4</sup> Since the value of financial guarantee shall not change till the year of project completion under this contract, the BG submitted initially shall remain valid at least till such time.

<sup>5</sup> The BG value shall be tapered off every year from the year subsequent to the year of project completion in the proportion of actual coal off take during the period on progressive basis as a percentage of the total contracted quantity during the entire contract period. Therefore, the BG for the revised amount shall replace the existing BG thereafter accordingly.

- 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 extended period, as may be required in terms of the Agreement 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 in writing 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).
- 11) This guarantee shall not be discharged due to the change in the constitution of the issuing bank.
- 12) The Bank has under its constitution power to give this Gurantee and Sri..... who has signed it on behalf of the Bank has authority to do so.

**SIGNATURE OF THE BANKERS  
WITH DATE & RUBBER STAMP**