

**COAL INDIA LIMITED****A Maharatna Company**

(Govt. of India Undertaking)

**COAL BHAWAN**Marketing Division, Ground Floor  
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Corporate ID No. L23109WB1973GOI028844

Ref.No. CIL/S&amp;M/47252/609

Date: 27.07.2015

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To,  
The General Managers(S&M)  
ECL, Santoria/BCCL, Dhanbad/CCL, Ranchi/WCL, Nagpur/  
SECL, Bilaspur /MCL, Sambalpur /NCL, Singrauli.  
General Manager, NEC, Margherita

**Sub: Modification in Model FSA applicable for State Nominated Agencies**

Dear Sir,

The following modifications in Model FSA applicable for State Nominated Agencies has been approved in 317<sup>th</sup> CIL Board meeting held on 13<sup>th</sup> July'15.

- The tenure of FSA shall be 2 years or less corresponding to the period for which the nomination would be received from the nominating State Government.
- The restriction of limiting supply on quarterly basis was removed to allow carry-over of value paid orders till the end of the contract.
- The restriction of carry over in case of inability to lift coal by the purchaser for whatsoever reason to subsequent months had been removed for value paid orders even for quantities which could not be lifted by the purchaser within 45 days.
- The quantity considered as deemed delivery on account of Railway Failure(RF) has been removed and
- The scope for termination of FSA on account of less than 30% lifting has also been removed against forfeiture of SD.

As in most of cases the nomination from State Govt. has been received for one year hence as per existing practice point 'a' is to be implemented from the year 2016-17.

Accordingly the clause wise modification in comparison to existing clauses of Model FSA applicable for State Nominated Agencies which has been legally vetted is enclosed as Annexure -A. (Pgs. 1 to 7)

A format has evolved in line with clause 4.4 of the FSA through which the state agency should submit a quarterly return for evaluation of genuine consumption and monitoring of the same by the State Government and shall be hoisted in the website of the State Nominating Authority/Agency for public viewing is enclosed as Schedule VI of FSA.

This is for your information and necessary action.

Encl: As above

Yours faithfully

  
General Manager (S&M)

Copy to:

- Director (M), CIL Kolkata
  - CVO, CIL
  - TS to Chairman, CIL, Kolkata
  - GM (Telecom), CIL – along with enclosures (Annexure-A & Schedule VI)
- He is requested to make necessary arrangement so that the above letter with enclosures is uploaded on CIL Website under "Our Business"->"Sales & Marketing"->"NCDP-FSA" menu

Copy to:

- Joint Secretary (LA), MoC

**Comparative of existing provision Vis-a-vis suggested modification in the FSA  
Model for State nominated Agency**

Clause No	Existing provision	Modified Provision
1.l)	"Prime Lending Rate" or "PLR": shall mean then prime lending rate of State Bank of India as applicable on the due date of payment by the Purchaser.	"Interest Rate": shall mean the repo rate of Reserve Bank of India (RBI) as applicable on the date of payment by the Purchaser plus 3%.
1.m)	"Quarter" means the respective three-monthly periods, namely April to June, July to September, and so on	Deleted
1.q)	"Truncated Year" shall mean a truncated year by virtue of the Signature Date occurring after April 1 <sup>st</sup> in the case of first year of this Agreement, or otherwise truncated due to Force Majeure Acts etc.	Truncated Year" shall mean a truncated year by virtue of the Signature Date occurring after April 1 <sup>st</sup> in of this Agreement, or otherwise truncated due to Force Majeure Acts etc.
2.1	This Agreement shall come into force on the signature date. This agreement shall, unless terminated in accordance with the terms hereof, remain in force for a period of one year for which the nomination is received ("Terms of Agreement")	This Agreement shall come into force on the signature date. This agreement shall, unless terminated in accordance with the terms hereof, remain in force for a period of 24(twenty four) months or 12 (twelve) months from the signature date ("Terms of Agreement") depending upon the period for which the nomination is made by the State Government
2.2	The Term of Agreement may be extended for another year upon mutual agreement in writing by both the parties provided nomination is also received for the second year.	Deleted
<b>Security deposit</b>		
3.1.1	The Purchaser shall deposit with the Seller as Security Deposit, in the form of cash /or bank guarantee an amount expressed in Indian Rupees equivalent to the Base Price of Grade [            ] Coal prevalent on the Signature Date multiplied by "ACQ/12" (ACQ divided by 12) i.e. Rs [            ],	The Purchaser shall deposit with the Seller as Security Deposit, in the form of cash /or bank guarantee an amount expressed in Indian Rupees equivalent to the Base Price of Grade [            ] Coal prevalent on the Signature Date multiplied by "ACQ/12" (ACQ divided by 12) i.e. Rs [            ],. 'It is clarified that Security Deposit shall be computed with reference to prorate ACQ in case of truncated Year'
3.3	The Security Deposit shall remain valid and operative until 3 (three) months after the expiry of the Term of Agreement. In the event the Term of Agreement is extended in accordance with Clause 2.2, the Purchaser shall extend the validity of the Security Deposit such that it remains valid and operative until 3 (three) months after such extended period.	The Security Deposit shall remain valid and operative until 3 (three) months after the expiry of the Term of Agreement.
3.7	In the event of termination of the Agreement by the Seller in accordance with Clause 17.1(a) to	In the event of termination of the Agreement by the Seller in accordance

	(d), the Seller shall be entitled to forfeit the Security Deposit of the Purchaser in addition to any other rights vested with the Seller upon such termination.	with Clause 17.1(a), (c) and (d), the Seller shall be entitled to forfeit the Security Deposit of the Purchaser in addition to any other rights vested with the Seller upon such termination.
3.8	Not Existing	'Security deposit shall be forfeited in case of lifting is less than 30% of the ACQ. However, in the event of such forfeiture, compensation for short lifting shall not be applicable simultaneously.
4.1	<p><b>Annual Contracted Quantity (ACQ):</b></p> <p>The Seller shall supply and the Purchaser shall purchase the Annual Contracted Quantity (ACQ) of tonnes ( ) of Coal per annum, as decided by CIL and within the recommendation of the State Government. Such Coal shall be supplied by the Seller either from own sources of the Seller and / or Coal imported by CIL / Seller. The mode-wise, coal field-wise break-up of ACQ is indicated in <b>Schedule – III</b> to this Agreement. In the event of a truncated Year, the ACQ shall be prorated accordingly.</p>	<p><b>Annual Contracted Quantity (ACQ):</b></p> <p>The Seller shall supply and the Purchaser shall purchase the Annual Contracted Quantity (ACQ) of _____tonnes ( ) of Coal per annum, as decided by CIL within the recommendation of the State Government. Such Coal shall be supplied by the Seller from own sources of the Seller. The mode-wise, coal field-wise break-up of ACQ is indicated in <b>Schedule – III</b> to this Agreement. In the event of a truncated Year, the ACQ shall be prorated accordingly.</p>
4.2	The ACQ shall be revised and reset by CIL on yearly basis taking into account the Coal quantities lifted by the Purchaser in the immediately preceding Year	The ACQ shall be subject to change within the earmarked quantity based on any directions from the nominating State Government.
4.4	The Purchaser shall submit to the State Government, a Quarterly Return giving month-wise, consumer-wise, unit-wise details of Coal sold. Such details should essentially include name, address and contact no. of consumer, type & location of unit, quantity lifted during the month and the price at which Coal was supplied for evaluation of genuine consumption and monitoring of the same by the State Government	The Purchaser shall submit to the State Government, a Quarterly Return as per <b>Schedule VI</b> giving month-wise, consumer-wise, unit-wise details of Coal sold. Such details should essentially include name, address and contact no. of consumer, type & location of unit, quantity lifted during the month and the price at which Coal was supplied for evaluation of genuine consumption and monitoring of the same by the State Government. Such particulars shall be hosted by the Purchaser and the State Nominating Authority in their respective websites on regular basis.
4.6	<p><b>Quarterly Quantity (QQ)</b></p> <p>ACQ shall be sub-divided in four quarters of a Year and the quantity to be supplied within the</p>	<b>Deleted</b>

	<p>quarter shall be Quarterly Quantity (QQ).</p> <table border="1" data-bbox="279 163 815 349"> <thead> <tr> <th>Quarter</th> <th>Period</th> <th>QQ (in% of</th> </tr> </thead> <tbody> <tr> <td>I</td> <td>April to June</td> <td>25</td> </tr> <tr> <td>II</td> <td>July to September</td> <td>20</td> </tr> <tr> <td>III</td> <td>October to</td> <td>25</td> </tr> <tr> <td>IV</td> <td>January to March</td> <td>30</td> </tr> </tbody> </table> <p>QQ will be pro-rated depending upon the date / month of commencement and termination of this Agreement.</p>	Quarter	Period	QQ (in% of	I	April to June	25	II	July to September	20	III	October to	25	IV	January to March	30	
Quarter	Period	QQ (in% of															
I	April to June	25															
II	July to September	20															
III	October to	25															
IV	January to March	30															
4.7.1	<p>Monthly Scheduled Quantity (MSQ)</p> <p>The Monthly Scheduled Quantity (MSQ) shall be 1/3<sup>rd</sup> the QQ. In case of supply by Rail, the Parties agree that if the quantity to be lifted by the Purchaser in a month falling within the Monthly Scheduled Quantity is insufficient to form a rake, formation of rake would be allowed by clubbing with the quantity of the next month and so on within the quarter. If at the end of the quarter any residual quantity is left, being fraction of rake, it would be carried over to the next quarter and so on till the end of 4<sup>th</sup> quarter. If at the end of 4<sup>th</sup> quarter, residual quantity is insufficient to form a full rake, the same would be treated as lapsed. In no event shall the sum total of all the Quarterly Quantities exceed the Annual Contracted Quantity.</p>	<p>Monthly Scheduled Quantity (MSQ)</p> <p>The Monthly Scheduled Quantity (MSQ) shall be 1/12 th of the ACQ. In case of supply by Rail, the Parties agree that if the quantity to be lifted by the Purchaser in a month falling within the Monthly Scheduled Quantity is insufficient to form a rake, formation of rake would be allowed by clubbing with the quantity of the next month and so on within the contract period.</p>															

4.7.2	<p><b>Make-up Entitlement &amp; Make-up Quantities</b></p> <p>The quantity of Coal booked by the Purchaser but could not be delivered due to any default of the Seller (for the avoidance of any doubt, it shall not include the quantities not delivered by the Seller due to any Force Majeure Act, any default of the Purchaser and /or failure of Indian Railways), shall be entitled to be lifted as "Make-up" quantity by the Purchaser in the immediately following month Provided that at the end of any Quarter the Make- up carried over to the next Quarter (relevant Quarter), shall not exceed 10% of the total quantity booked by the Purchaser in the relevant Quarter concerned.</p>	<p><b>Make-up Entitlement &amp; Make-up Quantities/Carry forward</b></p> <p>i. The quantity of coal remains unlifted within the validity period of 45 days from the date of Sale Order for supply through Road mode against value paid orders will not lapse and will be carried forward with the allocation of next month and so on till the end of the contract.</p> <p>ii. In case of supply through Rail mode, the number of rakes offered but not allotted within the validity period (i.e end of the concerned month) shall not lapse. The pending rakes shall be considered for supply in the subsequent month and so on till the end of the contract</p> <p>iii. However, such quantity will lapse at the end of the contract if the residual quantity is less than a rake load for rail mode or less than a truck load for road mode. The quantity for which the purchaser did not book by making full payment shall stand lapsed at the end of the month</p> <p>iv. In case of bookings by Rail, the allotted rakes will remain valid for supply for the period permissible as per Railway rules. For bookings by Road, in case any quantity remains unlifted after the expiry of 45 days validity period of respective Delivery orders, the purchaser will have the option to take refund against unlifted quantities or to carry it forward till the end of the period of this agreement.</p> <p>v. In no case annual booking of coal by Road/allotments by Rail under above process shall exceed the ACQ.</p>
4.9	<p>The Delivery Compensation for short delivery/lifting shall be payable by the defaulting Party to the other Party within a period of 90 days from the date of receipt of claim. In the event of non-payment within the due date, the defaulting Party shall be liable to pay interest in accordance with Clause 15. However, in the event of nonpayment of Delivery Compensation by the Purchaser beyond 180 days of such claim, the Seller shall be entitled to take any or all remedies including but not limited to encashment of Security Deposit, adjustment against the Coal value lying with Seller and/or termination of Coal supply.</p>	<p>The Delivery Compensation for short delivery/lifting shall be payable by the defaulting Party to the other Party within a period of 30 days from the date of receipt of claim. In the event of non-payment within the due date, the defaulting Party shall be liable to pay interest in accordance with Clause 15. However, in the event of non-payment of Delivery Compensation by the Purchaser beyond 60 days of such claim, the Seller shall be entitled to take any or all remedies including but not limited to encashment of Security Deposit,</p>

		adjustment against the Coal value lying with Seller and/or termination of Coal supply.
5.1	<p><b>Level of Delivery</b></p> <p>Level of Delivery with respect to a Year shall be calculated in the form of <b>percentage</b> as per the following formula:</p> $\text{Level of Delivery (LD)} = \frac{(\text{DQ} + \text{DDQ} + \text{RF} + \text{FM}) \times 100}{\text{ACQ}}$ <p>Where: LD = Level of Delivery of Coal by the Seller during the Year (in %) ACQ shall have the same meaning as given in Clause 4.1</p> <p>DQ = Delivered Quantity, which is the aggregate of actual quantities of Coal delivered by the Seller during the Year (in tonnes) DDQ = Deemed Delivered Quantity, reckoned in the manner stated in Clause 6 (in tonnes)</p> <p>FM = Proportionate quantity of Coal which could not be delivered by the Seller during the Year due to occurrence of Force Majeure event affecting the Seller and / or the Purchaser, calculated as under:</p> <p>FM = <math>\frac{\text{ACQ} \times \text{No of days lost under applicable Force Majeure event}}{365}</math> (in tonnes)/</p> <p>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 valid indent / offer submitted by the Seller to the Railways against valid programme(s) submitted by the Purchaser for the purpose (in tonnes)</p>	<p><b>Level of Delivery</b></p> <p>Level of Delivery with respect to a Year shall be calculated in the form of percentage as per the following formula:</p> $\text{Level of Delivery (LD)} = \frac{(\text{DQ} + \text{DDQ} + \text{FM}) \times 100}{\text{ACQ}}$ <p>Where: LD = Level of Delivery of Coal by the Seller during the Year (in %) ACQ shall have the same meaning as given in Clause 4.1</p> <p>DQ = Delivered Quantity, which is the aggregate of actual quantities of Coal delivered by the Seller during the Year (in tonnes) DDQ = Deemed Delivered Quantity, reckoned in the manner stated in Clause 6 (in tonnes)</p> <p>FM = Proportionate quantity of Coal which could not be delivered by the Seller during the Year due to occurrence of Force Majeure event affecting the Seller and / or the Purchaser, calculated as under:</p> <p>FM = <math>\frac{\text{ACQ} \times \text{No of days lost under applicable Force Majeure event}}{365}</math> (in tonnes)/</p> <p>Deleted</p>
<b>For supply of Coal by road</b>		
6.2.iii)	The quantity of Coal not supplied by the Seller owing to Purchaser's failure to place the requisite number / type of containers for road transport at the Delivery Point for delivery of Coal within the validity period of the delivery order.	Deleted
<b>METHOD OF ORDER BOOKING AND DELIVERY OF COAL</b>		
<b>By Road</b>		
8.2.1	In terms of the notice by the Seller issued for monthly Coal allocation / bookings stipulating the time schedule for order booking and advance payment, the Purchaser shall deposit 100% advance payment in the manner provided in Clause 11, for the Monthly	In terms of the notice by the Seller issued for monthly Coal allocation / bookings stipulating the time schedule for order booking and advance payment, the Purchaser shall deposit 100% advance payment in the manner provided in

	Scheduled Quantity determined in terms of Clause 4.7	Clause 11, for the Monthly Scheduled Quantity determined in terms of Clause 4.7 or the quantity the Purchaser likes to book in a month whichever is less.
8.2.2	The Seller shall ensure delivery and the Purchaser shall ensure lifting of Coal against sale order(s) / delivery order(s) of any month during the validity period of 45 (forty-five) days from date of issue of such sale order(s)/delivery order(s) or the first day of the month concerned, whichever is later. The validity of the sale order/ delivery order shall in no case be extended. Any quantity remaining unlifted after the expiry of the validity period of sale order/ delivery order shall stand lapsed and it shall attract liabilities as provided under this Agreement.	deleted
8.2.4	In the event the Purchaser fails to book or lift any quantity of Coal for any month, such Coal quantity shall lapse and shall be treated as failed quantity. It is clarified that in no case shall the Purchaser be allowed to book/lift such lapsed/ failed quantity in any subsequent period	In the event the Purchaser fails to book any quantity of Coal for any month, such Coal quantity shall lapse and shall be treated as failed quantity. It is clarified that in no case shall the Purchaser be allowed to book such lapsed/ failed quantity in any subsequent period
10.2	The price of imported Coal shall be as decided and declared by CIL from time to time	deleted
15	<p><b>INTEREST:</b></p> <p>With respect to default in making any payment due in terms of this Agreement by one Party to the other, the defaulting Party shall be liable to pay interest @ PLR on the total sum outstanding and for the period the payment has remained over due. For removal of doubts, it is clarified that the Seller shall have the right to adjust or recover the interest due in terms of this Clause from the interest-free Security Deposit and/or the Bank Guarantee referred to in Clause 11.2.</p>	<p><b>INTEREST:</b></p> <p>With respect to default in making any payment due in terms of this Agreement by one Party to the other, the defaulting Party shall be liable to pay interest @ repo rate of Reserve Bank of India (RBI) as applicable on the due date of payment by the Purchaser plus 3%(three) on the total sum outstanding and for the period the payment has remained over due after adjustment of advance. For removal of doubts, it is clarified that the Seller shall have the right to adjust or recover the interest due in terms of this Clause from the interest-free Security Deposit and/or the Bank Guarantee referred to in Clause 11.2.</p>
17.1.b)	<p>LD/LL obligations:</p> <p>(i) By the Seller within 60 days of the end of the relevant Year, in the event that Level of Lifting (LL) by the Purchaser falls below 30% of ACQ for the concerned Year, and on providing at least thirty (30) days' prior written notice to the Purchaser.</p>	deleted

	(ii) By the Purchaser within 60 days of the end of the relevant Year, in the event that Level of Delivery (LD) by the Purchaser falls below 30% of ACQ for the concerned Year, and on providing at least thirty (30) days' prior written notice to the Seller.	
17.1.c)	By the Seller in the event of non-payment of compensation by the Purchaser within 180 days the claim for compensation being made by the Seller in accordance with clause 4.9 herein above.	By the Seller in the event of non payment of compensation by the Purchaser within 60 days the claim for compensation being made by the Seller in accordance with clause 4.9 herein above.

-X-X-X-X-



Schedule VI

Format for Quaterly Return to be given by State Nominated Agency to the State Government  
in reference to clause 4.4 of the FSA Period:

S.No	Name & Address of the Consumer	Name & Address of the Unit	Business Type	Factory Licence No.	Contact No. & E-mail id	Month	Quantity Lifted (tonnes)	Selling Price/tonne
1						April		
						May		
						June		
2						April		
						May		
						June		
3						April		
						May		
						June		
4						April		
						May		
						June		

Note: The above format is only suggestive. Any additional information as deemed fit may be taken by the State Govt.