

**M O D I F I E D - M O D E L**

**COAL SUPPLY AGREEMENT**

**BETWEEN**

**[Name of the Subsidiary Company]**

**AND**

**[Name of the New State Electricity Board/  
State GENCo through LOA Route\*]**

**(\*Also applicable against LOA issued prior to NCDP  
and units to be commissioned after introducing  
NCDP against old linkages)**

**[Date of Agreement]**

This Agreement is made on this \_\_\_\_ day of \_\_\_\_\_ 201\_\_ between \_\_\_\_\_ (Name of the Coal Company), a company registered under the Companies Act, 1956 and having its registered office at \_\_\_\_\_ (Address of the Coal Company) hereinafter called the “Seller” (which expression shall unless excluded by or repugnant to the subject or context, include its legal representatives, successors and permitted assigns) of the one part,

**AND**

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

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

Or

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

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

and

Whereas the Purchaser has entered into or is yet to enter into long term Power Purchase Agreements (PPA) either directly with Distribution Companies (DISCOMs) ) or through Power Trading Company (ies) (PTC) who has / have signed back to back PPA(s) (long-term) with DISCOMs and have commissioned or would get commissioned after 31.3.2009 and on or before 31<sup>st</sup> March 2015,

and

Whereas, the Purchaser has not any direct / indirect interest in any manner as associate or group company with any entity who has been allotted coal block in India for end use as stipulated in clause 3.2 with further reinforcement by Schedule-I in accordance with guidelines/policies of the Government of India relating to Letter of Assurance/ Allocation of coal on tapering basis.

and

Whereas, the Purchaser gives a self-declaration that no coal block(s) has/have been allotted for the Power Plant(s) covered under this Agreement and even if coal block(s) has/have been allotted, such coal block(s) has/have not been allotted as source(s) of coal supplies for the power plant(s) covered under this Agreement. The Purchaser shall further declare that there has been no change in the ownership pattern of the Purchaser since the time of issue of Letter of Assurance(LoA) till the time of signing of this Agreement.

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

## 1. DEFINITIONS & RULES OF INTERPRETATION:

### 1.1 DEFINITIONS:

- a. **“Agreement”** means this Coal supply agreement including all its Schedules, Annexure and attachments and subsequent amendments as may be issued in accordance with the terms and conditions hereof and it shall supersede and exclude any previous arrangement, understanding or commitment that the Seller may have had with the Purchaser.
- 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. **“As Delivered Price of Coal”** shall have the meaning ascribed to it in Clause 8.
- e. **“Base Price”** shall mean, in relation to a Declared Grade [as defined at 1.1(1)] of Coal produced by Seller, the Pithead price notified from time to time by CIL or Seller; and in relation to Imported Coal, wherever applicable, shall mean its landed cost till the Delivery Point and service charges intimated by CIL or the Seller, as the case may be.  
In the event the Sellers supply coal from sources, notified by Seller on cost plus basis, cost plus basis prices shall be applicable
- f. **“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.
- g. **“Coal”** means non-coking as well as coking coal, produced domestically and categorized into different classes, GCV bands, 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.
- h. **“Condition Precedent Period”** shall have meaning ascribed to it under Clause 2.8.3.1
- i. **“CIL”** means Coal India Limited, the holding company of the Seller, having its registered office at 10, Netaji Subhash Road, Kolkata 700 001, India, and having authorities to enter into any agreement/side agreements, supplementary to this agreement for ensuring supply of coal from import of coal or other alternative sources.

- j. **“Coal Distribution System”** of the Seller would include any distribution system in force including directions thereon from the Government issued from time to time.
- k. **“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.
- l. **“Declared Grade”** means the particular grade(s) under different categories [ as defined at 1.1(s)] of Coal mined from any seam or section of a seam in the Seller’s collieries as declared by CIL or the Seller from which Coal is produced and supplied under this Agreement, as declared by CIL or the Seller.
- m. **“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.
- n. **“DISCOM”** means the “Distribution Licensee” who is authorized to operate and maintain a distribution system for selling electricity to the consumers in his area of supply at tariffs regulated by the State / Central Regulatory Authority, whichever is applicable.
- o. **“Effective Date”** shall mean the date of occurrence of the last of the events specified under clause 2.8.3.2 or 2.8.3.3
- p. **“First Delivery Date”** shall have the meaning ascribed to it in Clause 2.9
- q. **“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).
- r. **“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.
- s. **“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 issued by the Seller and/or by Govt. of India and published in the public domain and/or the Gazette of India, as applicable. The basis of grading for different categories of coal are as under:
  - i. Non Coking Coal : based on GCV bands
  - ii. Coking Coal : based on Ash percentage
  - iii. Semi Coking Coal : based on (Ash + Moisture) percentage

- t. **“Imported Coal”** shall mean non-coking as well as coking coal, sourced internationally.
- u. **“Independent Engineer”** shall mean a consulting engineering firm or group, acceptable to the Seller, having necessary expertise to undertake the services or activities as mentioned under Clause 2.8.2.2
- v. **Importing Agency:** It may be the holding company of the Seller i.e CIL or any other agency(ies) appointed for supply of imported coal on behalf of the Seller.
- w. **“IS”** means the standard specifications issued by the Bureau of Indian Standards (BIS)
- x. **“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)
- y. **“Level of Delivery”** shall have the meaning ascribed to it in Clause 3.7.
- z. **“Level of Lifting”** shall have the meaning ascribed to it in Clause 3.8.
- aa. **“Merry Go Round”** or **MGR”** shall mean the Purchaser’s captive rail transportation system for transportation of Coal
- bb. **“Month”** shall mean a calendar month.
- cc. **“Party”** means either the Seller or the Purchaser, and **“Parties”** mean a joint reference to the Seller and the Purchaser
- dd. **“Interest Rate”** shall mean the repo rate of Reserve Bank of India(RBI) as applicable on the due date of payment by the Purchaser plus 3% (three).
- ee. **“Performance Incentive”** shall have the meaning ascribed to it in Clause 3.12.
- ff. **“Pithead”** shall mean any of the following as the context may admit:

In case of an underground Coalmine, Pithead shall mean the point of entry into the mine on the surface of coal mine at the ground level and would be a place or point distinct from Delivery Point

In case of an open-cast Coalmine, 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.

- gg. **“PPA”(Long Term)** means the Power Purchase Agreement between the Power Generating Source and the power procurer(s), i.e DISCOM(s) either directly or through PTC(s) who has/ have signed back to back PPA(s) with DISCOMs for a period of 7 years and above. However, the same shall not be applicable for the portion which is sold under market driven price.
- hh. **“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.
- ii. **“Quarterly Quantity”** or **“QQ”** shall have the meaning ascribed to it in Clause 3.4.
- jj. **“Seller’s Financial Closure”** shall mean the date on which execution of all the loan agreements, notes, indentures, security agreements, letters of credit and any other documents relating to the financing of the coal block have become effective and the Seller has immediate access to such funding with respect to development and operation of the coal block identified in Schedule I to this Agreement.
- kk. **“Signature Date”** shall mean the Date of signing of this Agreement by both Parties.
- ll. **“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.
- mm. **“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.
- nn. **“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.
- oo. **“Gross Calorific Value”** or **“GCV”** means the heat value determined in any calibrated combustion Bomb Calorimeter, in accordance with the procedure laid down in IS: 1350 (Part-II) 1970 dated April 1971 or any subsequent revision thereof and result reported on equilibrated basis at 40 Degree Celsius and 60% Relative Humidity.
- pp. **“Weights and Measures Standards”** mean the standards, as prescribed under the Standards of Weights and Measures Act, 1976 and amendments thereof.

- qq. “**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.
- rr. “**Power Trading Company (PTC)**”: A Power Trading Company is a trading licensee under the Electricity Act 2003 and having Trading License approved by the State Electricity Regulatory Commission under Section 86(1)(b) of the Electricity Act 2003
- ss. ‘**Third Party**’ : The agency appointed for collection, preparation and analysis of coal samples at loading points and relevant documentation

## 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.

2. **PERIOD OF AGREEMENT:**

- 2.1 This Agreement shall come into force on the **Effective Date**
- 2.2 This Agreement shall, unless terminated in accordance with the terms hereof, remain in force till the end of **twenty (20) years** from the Effective Date or the Life of the Power plant whichever is earlier.
- 2.3 After completion of five (5) years from the First Delivery Date, either Party may, by prior written notice to the other Party for a period not less than thirty (30) days, seek a review of this Agreement.
- 2.4 Notwithstanding the provisions of Clause 2.2 above, in the event of any change in the Grade structure of Coal, such changed Grade structure shall be binding and complied with by both the Parties. The Seller shall within fifteen (15) days of introduction of such change provide a written notice to the Purchaser calling for a joint review of such provisions of this Agreement on which such change in the Grade structure has a bearing, and upon such joint review, this Agreement shall be duly amended in writing to bring it in full conformity with such change.
- 2.5 In the event, the Parties are unable to arrive at a mutually agreed position with respect to the subject matter of review in terms of Clause 2.3 within a period of three (3) months from expiry of each five (5) year term, the Parties shall refer the matter to the Govt. of India and until a decision from the Government of India is received, the Agreement shall continue to be in force. The decision of the Govt. of India on the subject matter shall be final and binding on both the Parties.
- 2.6 (i) 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.
- (ii) In terms of the Presidential Directives dated 17-7-2013 the Seller shall have the right to refer the FSA to the Ministry of Coal, Govt. of India for review of the actual supply schedule as and when FSA for 60,000 MW of plant capacity in aggregate becomes eligible for drawing coal as per FSA
- (iii) Notwithstanding the provision contained in any other clauses of this agreement, the FSA shall not be effective if the Plant is not commissioned by March, 2015 (with a cushion of further three months).
- 2.7 On completion of twenty (20) years from the Effective Date, or earlier in case of life of the Plant is less than twenty years this Agreement shall expire unless both the Parties mutually agree in writing to extend the Agreement, on the same or such terms as may be agreed upon by the Parties.



## **2.8 Condition Precedent (CP)**

The rights and obligations of the Parties under this Agreement are subject to the satisfaction in full of the Conditions Precedent provided under Clause 2.8.1 and Clause 2.8.2 within the Condition Precedent Period unless the same have been waived in accordance with this Agreement.

### **2.8.1 Seller's Condition Precedent :**

**2.8.1.1 In respect of supply of Imported Coal:** the Seller shall have (i) acquired a definitive right under a coal import agreement with its supplier of imported coal; and (ii) made all necessary arrangements for import of Coal including the necessary shipping and port arrangements for delivery of Imported Coal in accordance with the terms of this Agreement

**2.8.1.2 In respect of supply of domestic Coal (Applicable only for a Purchaser for whom any coal block has been identified for supply of coal ):** the Seller shall have (i) 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 coal block identified in Schedule I to this Agreement; and (ii) achieved Seller's Financial Closure with respect to development and operation of the block identified in Schedule I to this Agreement.

### **2.8.2 Purchaser's Condition Precedent**

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

**2.8.2.2** The Purchaser shall have completed the construction and the completion of such construction along with readiness of the power plant for lighting up has been certified by an Independent Engineer within the Condition Precedent Period..

**2.8.2.3 Applicable to Purchaser who has signed FSA without entering into long-term PPA :** The Purchaser shall have to furnish the long term Power Purchase Agreements (PPA) either directly with Distribution Companies (DISCOMs) or through Power Trading Company (ies) (PTC) who has / have signed back to back PPA(s) (long-term) with DISCOMs within the Condition Precedent (CP) period as per clause 2.8.3.1.

### **2.8.3 Satisfaction of Condition Precedent**

**2.8.3.1** The Conditions Precedents shall be fulfilled/ achieved within a period of twenty four (24) months from the Signature Date or such further period (upto a maximum of 180 days) as may be extended on account of Force Majeure under Clause 17 of this Agreement (“**Condition Precedent Period**”)

The CPs set out in Clause 2.8.1 above shall be fulfilled to the satisfaction of Seller or waived by the Seller at its sole discretion in accordance with the option to be exercised by the Purchaser in the letter as per Schedule VII with regard to acceptance / surrender of supply of imported coal without affecting in any way the Seller's obligations under this agreement. Within fifteen (15) days of achieving or waiving the CPs set out in Clause 2.8.1 as the case may be, the Seller shall issue a notice of satisfaction and notify to the Purchaser in writing. The Purchaser within fifteen (15) days from receipt of such notification shall issue a letter accepting the same.

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

**2.8.3.3** Notwithstanding the provisions of clause 2.8.3.1 above, at the request of the Purchaser, CIL may at its sole discretion extend the Condition Precedent Period.

**2.8.3.4** If within the Condition Precedent Period, the Purchaser does not fulfill the Condition Precedent set out in clause 2.8.2 due to any reasons other than Force Majeure, or the said Condition Precedents in clause 2.8.2 have not been jointly waived by the parties in writing, the Seller shall have the right to forfeit the Security Deposit amount submitted by the Purchaser without any further notice to Purchaser. In case of FSAs applicable for more than 1 unit of a power plant, Security Deposit shall be forfeited in proportion to the number of units failed to achieve condition precedent.

## **2.9 First Delivery Date**

**2.9.1.1** Not later than 5 days from Effective Date, both parties shall determine a mutually agreeable 3 Month period within a time period of 18 month from the Effective Date for commencement of coal supplies ("Target Start Period"). In the event that the Parties are not able to agree on such 3-Month period then later of the 3 month period suggested by the either party shall be the Target Start Period. The actual date of coal delivery at the Delivery Point by the Seller within the Target Start Period shall be the **First Delivery Date**. In case there is no coal supply by the Seller at the Delivery Point during Target Start Period owing to reasons other than Force Majeure the last date of Target Start Period shall be deemed to be the **First Delivery Date**.

**2.9.2** The Target Start Period may be extended on account of Force Majeure in accordance with Clause 17, subject to a maximum of 180 days

## 2.10 Build – Up Period

- 2.10.1** Build-Up Period shall be the period of 6 months commencing on the First Delivery Date. In case CIL decides at its sole discretion to import, Build-up period shall be extended for a further period of six months for commencing supply of imported coal. During the Build-Up Period any compensation arising on account of short supply or short lifting, as per Clause -3.6 of this Agreement, shall not be payable by either Party. Supply of coal by Seller shall start only after the Purchaser's power plant becoming ready to start lighting up the boilers, to be confirmed by the Purchaser to the Seller in writing with documentary evidence.
- 2.10.2** The indicative Coal quantities to be supplied by the Seller and to be offtaken by the Purchaser during the Build- up Period are shown below. For avoidance of doubt, it is clarified that the quantities mentioned are indicative and the actual scheduled quantities may exceed or be lower compared to the quantities indicated below. The quantities shall however not exceed the pro-rated contracted quantities under this Agreement

<b>Build Up Period</b>	<b>Indicative Coal Requirement (in Tonnes)</b>
Build-Up Period [A period of 6 /12 months from First Delivery Date as the case may be]	

## 2.11 Security Deposit (SD)

- 2.11.1** On signing of this agreement the Commitment Guarantee (CG) provided by the Purchaser prior to issue of Letter of Assurance (LOA) shall stand converted into the Security Deposit amount as determined under Clause 2.11.2. Accordingly, a sum of Rs. [•] (Indian Rupees \_\_\_\_\_) is deemed to have been deposited by the Purchaser towards the Security Deposit amount stipulated in Clause 2.11.2. In the event the Commitment Guarantee amount provided by Purchaser is more than the Security Deposit amount as determined under Clause 2.11.2, Seller shall return such balance amount within three (3) months from the date of signing of this Agreement. In an event the Security Deposit amount as determined under Clause 2.11.2 is more than the Commitment Guarantee amount, the Purchaser shall deposit such balance amount within three (3) months from the date of signing this agreement. Failure to submit the balance amount by the Purchaser within three (3) months from the date of signing of this agreement, as aforementioned, shall entitle the Seller to adjust the ACQ such that it is commensurate with the Security Deposit required to be submitted by the Purchaser under clause 2.11.2

*Notes: Purchaser directly entering into this Agreement who have been granted coal linkage by Standing Linkage Committee – Long Term (SLC- LT) and have not been issued Letter of Assurance (LOA) by Seller or any Purchaser who have been issued LOA without depositing of Commitment Guarantee as stipulated under the LOA shall deposit the Security Deposit amount as determined under Clause 2.11.2 before the Signature Date.[In such case delete Clause 2.11.1*

**2.11.2** The Purchaser shall deposit with the Seller a sum of [Rs. \_\_\_\_\_ (Indian Rupees \_\_\_\_\_)] equivalent to six percent (6%) of the Base Price of such Grade of Coal, as described in Schedule-III to this Agreement, prevalent on the date of deposit multiplied by ACQ, as Security Deposit (SD), in cash / Bank Guarantee on or before the signing of this Agreement. In case of multiple Grades indicated in Schedule-III, the highest Grade shall be considered for the purpose of calculation of SD without any commitment whatsoever to supply such Grade of Coal. Such Security Deposit shall be non-interest bearing. Accordingly, the Purchaser has furnished Rs. [•] (Indian Rupees \_\_\_\_\_) towards the Security Deposit amount.

*[In case the SD is in the form of a bank guarantee the same shall be provided in the enclosed format (“SD Bank Guarantee”) with this Agreement at Schedule- II.]*

**2.11.3** The SD Bank Guarantee submitted by the Purchaser, as per Clause 2.11.2 above, shall remain valid till thirty (30) days from the First Delivery Date under this Agreement. Purchaser shall extend the SD Bank Guarantee and submit such letter of extension/ extended SD Bank Guarantee to the Seller one month in advance of the expiry date thereof, failing which the Seller shall have the right to terminate this Agreement. In case of multiple units of a Power plant, thirty (30) days from FDD of the last unit.

**2.11.4** The value of the Security Deposit shall be suitably increased / decreased to match the changes in the Base Price notified by the Seller from time to time. In the event of failure of the Purchaser to provide such increased value within thirty (30) days from the date of notification of such change in Base Price, the Seller shall have the right to terminate the Agreement. If additional SD due to such increase in the Base Price of Coal is submitted by way of additional bank guarantee, the period of validity of such bank guarantee shall be the same as that of the initial SD Bank Guarantee furnished in terms of Clauses 2.11.1 to 2.11.3 above. Alternatively, the amount of the initial SD Bank Guarantee may be increased by an amendment so as to cover the increased value of SD resulting from the change in the Base Price.

**2.11.5** The Security Deposit shall be refundable to the Purchaser at the end of 30 days from the First Delivery Date. In case of multiple units of a Power plant, thirty (30) days from FDD of the last unit.

### **3. QUANTITY:**

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

**3.1.1** The Annual Contracted Quantity of Coal agreed to be supplied by the Seller and undertaken to be purchased by the Purchaser, shall be \_\_\_\_\_ lakh tonnes per Year from the Seller’s mines and/ or from import., as per Schedule I. For part of Year, the ACQ shall be prorated accordingly. The ACQ shall be in the proportion of the percentage of Generation covered under long term Power Purchase Agreement(s) executed by the Purchaser with the DISCOMs either directly or through PTC(s) who has/have signed back to back long term PPA(s) with DISCOMs . Whenever, there is any change in the percentage of PPA(s),

corresponding change in ACQ shall be effected through a side agreement. Such changes shall be allowed to be made only once in a year and shall be made effective only from the beginning of the next quarter. However, in no case ACQ should exceed the LOA quantity as mentioned in Schedule-I.

- 3.1.2 The Purchaser shall in advance under the Schedule I provide firm annual coal requirement for the initial years required for phasing of the Power Plant after the completion of Build-Up Period, quantities subject to maximum of Annual Contract Quantity mentioned under Clause 3.1.1. Such quantities shall be considered binding and deemed to be Annual Contract Quantities for the respective years and be used for provisions under this Agreement.
- 3.1.3 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.

### **3.2 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 the same shall be treated as material breach of Agreement, for which the Purchaser shall be fully responsible and such act shall warrant suspension of coal supplies by the Seller.

However, interplant transfer of coal may be considered provided:

- a) Transfer of coal shall be allowed only between the power plants wholly owned by the Purchaser or its wholly owned subsidiary. No transfer of coal shall be allowed for a Joint Venture (JV) company of the Purchaser. The supply of coal, shall for all commercial purpose under the FSA remain unchanged and on account of the original Power Plant.
- b) Both the Power Plants should have executed FSA in the modified FSA Model applicable for new power plants and not having any supplies linked to coal blocks. In case of IPPs both the plants must have valid long term PPAs with DISCOMS.
- c) In no case the transferred quantity to a plant together with the quantity supplied under the applicable FSA shall exceed the ACQ of the transferee Plant for a particular year which is proportional to the long term PPA with DISCOMS.
- d) Transfer of coal will not be allowed to those plants who are allotted coal blocks under this arrangement.
- e) In case of change in the ownership and no environmental clearance of the plant this facility shall stand withdrawn, and
- f) Penalty/Incentive under this arrangement would be considered in terms of (a) above.

### 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 through import which shall not, unless otherwise agreed between the parties, exceed 15% of the ACQ in the year 2012-13 ,13-14 and 14-15, 13% of ACQ in the year 2015-16 and 5% of the ACQ for the year 2016-17 and onwards. Seller may at its discretion, make such arrangement for supply of imported coal through, CIL, and /or other enterprises. Accordingly, the Purchaser has to enter into a 'Side Agreement' with CIL and/or the Seller, as the case may be, in addition to this Agreement. The 'Side Agreement' dealing with the terms and conditions for supply of imported coal would be an integral part of this Agreement.
- 3.3.2 For supply of coal through import as stated in clause 3.3.1 above, the Purchaser shall agree to have back to back arrangements , if so required, with the Importing agency(ies) to be notified by the Seller/CIL and deposit 100% of payable amount in advance. The commercial terms and conditions for such supply shall be regulated as per the Side Agreement.
- 3.3.3 The Seller may also offer coal from loading points / coal stocks to be lifted by the Purchaser by his/ their own transport arrangement by road / road-cum-rail or any other mode up to 5 % of the ACQ. The provision shall however be applicable for supplies of coal under the Agreement from collieries of three coal producing subsidiaries of CIL viz. SECL, MCL and CCL. Further the provision shall continue till such time three major railway lines in these coal companies are constructed and made operational.
- 3.3.4 CIL reserves the right to transfer part of the ACQ from the Seller to another coal producing company (Subsidiary of CIL) based on the proposal received from the Seller, which would be binding on the Purchaser.

### 3.4 Quarterly Quantity (QQ)

The Annual Contracted Quantities, from indigenous sources, 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

### 3.5 Scheduled Quantity (SQ):

- 3.5.1 The monthly Scheduled Quantity (SQ) shall be one third (1/3<sup>rd</sup>) of the QQ.
- 3.5.2 Either the Purchaser or the Seller by serving a written Notice at least thirty (30) days prior to the commencement of a month, may revise the SQ to be supplied by

- the Seller in that month, provided that the increase/ decrease resulting from such revision shall not be in excess of 5% of the SQ and the Purchaser shall seek any such increase in SQ for the months of July, August and September of any Year only with the prior written consent of the Seller.
- 3.5.3 Seller shall have the right to make good the short supplies in a particular month in the succeeding month(s) of the same Quarter to the extent of 5% of the SQ. Similarly, Purchaser shall have the right to make good the short lifting in a particular month in the succeeding months of the same Quarter to the extent of 5% of the SQ.
- 3.5.4 Total variation in any Month pursuant to clauses 3.5.2 and 3.5.3 shall in no case exceed 10% of the SQ.
- 3.5.5 Normally variation shall not be permitted in respect of QQ either by Purchaser or Seller pursuant to 3.5.2, 3.5.3 and 3.5.4 except with mutual consent of the Purchaser and the Seller. However, variation in QQ with corresponding variation in the SQs of the quarter concerned over and above permitted under sub clause 3.5.2, 3.5.3 and 3.5.4 can be made with mutual consent of the Purchaser & the Seller expressed in writing.
- 3.5.6 Not used
- 3.5.7 The above schedule of supply is in respect of supply of coal from indigenous sources. Supply of imported coal shall be made as per its availability, which is depending upon many uncontrollable factors and hence no restrictions shall be applicable for quarterly distribution
- 3.6 **Compensation for short delivery/lifting**
- 3.6.1 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 be liable to pay compensation to the other Party for such shortfall in Level of Delivery or Level of Lifting, as the case may be (“**Failed Quantity**”) in terms of the following

Source	Level of Delivery / Lifting of Coal in a Year	Percentage of Penalty for the failed quantity (at the rate of weighted average of Base Prices of Grades of coal supplied)		
		2012-13,2013-14 & 2014-15	2015-16	2016-17 onwards
Imported + Domestic Qty	Below 100% but up to 80% of ACQ	NIL	NIL	NIL
Applicable for Imported Coal Only	Below 80% but up to 75% of ACQ	0 - 1.5	0 - 1.5	0 - 1.5
	Below 75% but up to 67% of ACQ			-
	Below 67% but up to 65% of ACQ		-	-

Source	Level of Delivery / Lifting of Coal in a Year	Percentage of Penalty for the failed quantity (at the rate of weighted average of Base Prices of Grades of coal supplied)		
		2012-13,2013-14 & 2014-15	2015-16	2016-17 onwards
Applicable for Domestic Coal	Below 75% but up to 70% of ACQ	-	-	0 - 5
	Below 70% but up to 67% of ACQ	-	-	5 - 10
	Below 67% but up to 65% of ACQ	-	0-2	
	Below 65% but up to 60% of ACQ	0 - 5	-2-7	10 - 20
	Below 60% but up to 55% of ACQ	5 - 10	7 - 20	20 - 40
	Below 55% but up to 50% of ACQ	10 - 20	20 - 40	
	Below 50% of ACQ	20 - 40		

3.6.2 The penalty payable shall be computed in the same manner as done slab-wise for computation of income-tax. However, unlike income tax, the percentage of compensation shall grow on linear basis within each slab

*\* Note: For the phasing period the annual coal requirements shall be based on the quantities mentioned by the Purchaser for the initial years under Schedule I of this agreement*



Note: The Purchaser has to give unconditional acceptance of imported coal and pricing mechanism thereof as would be decided by CIL, by signing the Schedule VII of this agreement. Unless such acceptance is accorded, the penal provision for supply below 80% and up to 65% of ACQ for the years 2012-13, 2013-14 and 2014-15 and below 80% and up to 67% of ACQ for the year 2015-16 shall not be applicable. The penal provision for supply below 75% shall be applicable from the year 2016-17 and onwards. The terms of import and the pricing mechanism shall be as per the provisions of the side agreement.

3.6.3 Agreements made earlier under the ‘Coal Distribution System’ as defined at clause 1.1(j) shall take precedence over the commitments made under this agreement

3.6.4 The Seller shall be entitled to modify/amend the penalty levels as specified at clause 3.6.1 pursuant to review undertaken by MOC in terms of the clause 2.6(ii)

### 3.7 **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.

### 3.8 **Level of Lifting:**

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

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

Where:

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

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

3.9 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.

3.10 (Deleted – Not Used)

**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 14.
- (v) The quantity of Coal offered by Seller from domestic and/or imported coal in terms of Clause 3.3.1 and 3.3.2 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 14.

- (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 offered by Seller from domestic and/or imported coal in terms of Clause 3.3.1 and 3.3.2 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 (90%) of the ACQ in a particular Year, The Purchaser shall pay the Seller an incentive ("Performance Incentive") for the excess coal supplied :

Percentage of Actual deliveries	Percentage of Incentive at the rate of weighted average Base Price of grades of coal supplied		
	2012-13, 2013-14 & 2014-15	2015-16	2016-17 onwards
Above 90% but up to 95% of ACQ	0 - 10	0 - 10	0 - 10
Above 95% but up to 100% of ACQ	10 - 20	10 - 20	10 - 20
Above 100% of ACQ	40 (Fixed)	40 (Fixed)	40 (Fixed)

Actual Deliveries = Actual Quantity [in tonnes] of Coal delivered by the Seller in the relevant Year including coal offered from imported coal but not accepted by the Purchaser.

3.12.2 The incentive payable shall be calculated in the same manner as done slab-wise for computation of income-tax. However, unlike income tax, the percentage of incentive shall grow on linear basis within each slab

3.12.3 With respect to part of Year in which term of this Agreement begins or ends, the relevant quantities in Clause 3.12.1, shall apply pro-rata.

3.12.4 The quantity offered by the company from imported coal and not accepted by the Purchaser shall be added with the actual delivered quantity as deemed delivered quantity for the purpose of determining the Actual Deliveries.

3.12.5 Supply of coal in excess of ACQ shall be with mutual consent

### 3.13 Incentive/compensation adjustment for supply below 3100 Kcal/kg

- 3.13.1 Coal supplied below 3100 Kcal/Kg (earlier below 'G' grade under UHV system) will be accounted for separately to work out the percentage contribution of below 3100Kcal/kg of the overall supply.
- 3.13.2 The quantity qualifying for incentive/compensation shall be proportionately divided into two parts in the same ratio as indicated in 3.13.1 above.
- 3.13.3 25% of the proportionate quantity worked out as supply below 3100Kcal/Kg, as at 3.13.2 above, would be considered for incentive/compensation.
- 3.13.4 The proportionate quantity worked out as supply above 3100Kcal/Kg, as at 3.13.2 and the adjusted quantity of supply below 3100Kcal/kg, as at 3.13.3 above will be added to ascertain the qualifying quantity for incentive/compensation

### 4. **QUALITY:**

- 4.1 The quality of Coal delivered / to be delivered shall conform to the specifications given in Schedule III.
- 4.2 The Seller shall make adequate arrangements to assess the quality and monitor the same to endeavour that un-graded Coal (GCV of less than 2200 Kcal/Kg for Non-coking coal) is not loaded into the Purchaser's Containers. If the Seller sends any quantity of such Coal, the Purchaser shall limit the payment of cost of Coal to Re.1/- (Rupee one only) per tonne. Royalty, cess, sales tax, etc. shall however be paid as per the Declared Grade. Railway freight shall be borne by the Purchaser.
- 4.3 The Seller shall deliver sized Coal with size conforming to specifications laid in Schedule III. The Seller shall make reasonable efforts to remove stones from Coal.
- 4.4 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:**
- (i) 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.
- (ii) If the Grade analysed pursuant Clause 4.7 shows variation from the Declared Grade, consistently over a period of three (3) months, the Purchaser shall request the Seller for re-declaration of Grade, which shall be duly considered by the Seller.

#### 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 III, 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 **Stones**

The Purchaser shall inform the Seller all incidents of receipt / presence of stones in any specific consignment(s) by rail, immediately on its detection at the Delivery Point and/or Unloading Point. The Seller shall, immediately take all reasonable steps to prevent such ingress at his end. The stones segregated by the Purchaser at the Power Station end shall be assessed jointly by the representative of the Seller and the Purchaser at the Power Station end for adjustments pursuant to Clause 9.1.

##### 4.6.3 **Modalities for assessment of stones:**

- a) The Purchaser shall endeavour to segregate and stack separately all oversized stones of size more than 250 mm received along with Coal from the Seller's supplies by rail/MGR at the Power Station end, during the month, at a mutually agreed place identified for the purpose within the Power Station premises, for the purpose of joint assessment pursuant to Clause 4.6.2 as per the procedure laid down in Schedule VI of this Agreement for compensation pursuant to Clause 9.1.
- b) The Seller shall depute its representative at the Power Station end between fourth (4<sup>th</sup>) day to tenth (10<sup>th</sup>) day of the following month, for joint assessment of the quantity of stones of size more than 250 mm received by rail/MGR in the preceding month and the Parties shall prepare a jointly signed statement of quantity of stones. The Purchaser shall extend full co-operation and facilitate deputation of such representative of the Seller failing which the Seller shall not agree to the claim raised by the Purchaser in this regard.
- c) In case the Seller's representative fails to be present at the Power Station end, within the period stipulated at Clause 4.6.3 (b) for the assessment of the quantity of oversized stones in compliance to 4.6.3 (a), the quantity of oversized stones assessed by the Purchaser shall be intimated to the Seller, by the fifteenth (15<sup>th</sup>) day of such following month and the same shall be taken as final and binding on the Seller for the purpose of adjustments under Clause 9.1. Thereafter, the Purchaser shall dispose off / remove such stones by the end of such month under intimation to the Seller and the Purchaser shall not be under any obligation to preserve such material beyond the day(s) stipulated herein above. However, the Purchaser shall maintain all records/ documents for example work order, running account bills, payment document etc for such disposal and present the same along with audited records for scrutiny of the Seller, if required.

- d) Quantity of stones attributable to the Seller shall be worked out by pro rata apportionment on the basis of proportionate receipt of Coal by rail/MGR from Seller out of the total Coal received by the rail/MGR at the concerned Power Station during a month. For such apportionment, the Purchaser shall provide certified monthly figures of quantity of Coal received by rail as per Coal bill at the concerned Power Station from the Seller as well as from all sources other than the Seller.
- e) Compensation for oversized stones shall be payable by the Seller to the Purchaser month-wise, Power-station wise, in terms of weighted average Base Price of the analysed Grade of indigenous Coal for the equivalent quantity of stones actually verified/ removed, as above for such coal supplied progressively in a Year by the Seller from the CIL sources to the concerned Power Station by rail/ MGR after accounting for the weight reduction towards destination end, weighment in terms of Clause 5.2 and moisture compensation in terms of Clause 9.2. However, such total quantity of oversized stones actually verified/removed shall be restricted up to a ceiling of 0.75% of the total quantity of indigenous coal supplied during the year for the purpose of compensation if supply of indigenous coal during the year has also been made from any other source(s) including captive block besides CIL sources

4.6.4 Without prejudice to provisions at Clause 4.6.3, if, in the Purchaser's reasonable determination, the presence of oversized Coal and/or stones is causing operating or maintenance problems at the Power Station, then, upon the request of the Purchaser, the Purchaser and the Seller shall meet and prepare a mutually acceptable plan for effectiveness of the Seller's efforts at removing oversized stones from the Coal.

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

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

- i) Samples of Coal shall be collected by the Third Party either manually or through any suitable mechanical sampling arrangement including Augur Sampling method if physically operationable, at each of the Delivery Points for determining the quality of Coal in presence of representatives of Seller and Purchaser
- 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 samples by *Third Party* shall be as per Schedule V 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 by the Third Party, and prepared and analyzed, as per procedure given in Schedule-V.

##### (ii) Daily Gross Sample

a) The Gross Sample collected as per clause 4.7.1(i) for determination of moisture, ash & GCV on equilibrated basis shall be 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 third party analysis to determine the ash, moisture and GCV as per BIS standards IS 1350 Part-I, 1984 and IS 1350 Part-II-1970 respectively..
- Set – II shall be kept under joint seal of the Seller, Purchaser and the Third Party as referee sample in the safe custody of Third Party at the loading end 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 GCV 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 analyzed by the Third Party in the 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 analysis of moisture and GCV.

d) In the event of any dispute (which shall be raised not later than forty-eight (48) hours after analysis) at the time of Third Party analysis of Set-I, 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.

The cost incurred for the analysis of the Referee sample including cost of transportation to the Government Laboratory shall be borne total by the Party raising the dispute

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 samples, its preparation and all laboratory facilities for the purpose of analysis of samples be arranged by the Seller as per the provision of this Agreement.
- 4.7.6 (a) In the event of any reason whatsoever third Party sampling & analysis could not be conducted, joint sampling & analysis shall be carried out by the Seller in presence of the Purchaser at the loading end.
- (b) In the event that no sample is collected either by the Third Party or Seller as mentioned at (a) above 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.
- 4.7.7 In the event the Purchaser fails /declines to participate in the process of sampling and analysis by the designated Third Party as mentioned at clause 4.7.1(i), such failure/refusal of the Purchaser shall not be considered as ground for disputing the result submitted by the Third party which will be binding on both the Parties.

## 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/ wagons 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 for such consignments/ wagons 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.

**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 fulfillment 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. 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:**

The “**As Delivered Price of Coal**” for the Coal supplies pursuant to this Agreement shall be the sum of Base Price, Other Charges and Statutory Charges, as applicable at the time of delivery of Coal.

### **8.1 Base Price**

The Purchaser shall pay the Base Price of Coal in accordance with the provisions of this Agreement. It is expressly clarified that the Base Price in relation to the Indigenous coal and Imported coal shall be notified/declared by the Seller/ CIL, as the case may be from time to time.

## **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.

### **8.2.4 Any other applicable charges:**

Any other applicable charges as notified by CIL/ Seller from time to time including additional charges and service charges arising out of supply of imported coal, as may be applicable. The Service Charges shall be 2% of Landed Price of Imported Coal (CIF Prices) plus applicable taxes and levies for supply of Imported Coal, till any further revision in the rate.

## **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 and/or other charges pursuant to Clause 8.2, 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 Seller shall adjust through regular credit notes to the Purchaser amounting to hundred percent (100%) of the weighted average Base Price, as per the analysed Grade of Coal applicable for the month in which such supplies were made by the Seller 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 oversized stones received by the Purchaser along with the Coal supplies during the month as per the jointly assessed signed statement or as intimated by the Purchaser to the Seller pursuant to Clause 4.6.3(b) or 4.6.3(c) respectively.

## 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 Base Price of Analyzed 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 V.

## 10. 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 Non coking coal of GCV exceeding 5800 Kcal/Kg and coking coal of 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 or permissible carrying capacity as notified by the Railways (route-wise) for any particular type of wagon from time to time, in which case the stenciled carrying capacity as shown on the wagon is more than the permissible carrying capacity,, 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. However, in the cases where permissible carrying capacity is less than the stenciled carrying capacity, as mentioned above, the idle freight shall be borne by the Seller only up to the permissible carrying capacity
- 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 Non coking coal of GCV exceeding 5800 Kcal/Kg and coking coal of 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 or permissible carrying capacity

- as notified by the Railways (route-wise) for any particular type of wagon from time to time, in which case the stenciled carrying capacity as shown on the wagon is more than the permissible carrying capacity, as the case may be, and 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. However, in the cases where permissible carrying capacity is less than the stenciled carrying capacity, as mentioned above, the difference shall be reckoned between the freight applicable for permissible carrying capacity and the freight payable as per the actual recorded weight of coal loaded in the wagon

## **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 3.4. Further, each of these installments shall take into account the weighted average of Base Prices of Grades mentioned in Schedule III based on actual supplies of immediately available previous month. 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 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 3.4. The As Delivered Price of Coal in this context shall take into account the highest of Base Prices of Grades mentioned in Schedule III. 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 12.

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/ Grade**

**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) GCV (Kcal/Kg)

(a) In the event for any reason whatsoever third Party sampling & analysis could not be conducted, joint sampling & analysis shall be carried out by the Seller in presence of the Purchaser at the loading end

(b) In the event no sample is collected either by the Third Party or Seller as mentioned at (a) above 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. The Seller shall give regular credit note on account of Grade slippage to the extent of difference in the Base Price of Declared Grade and analysed Grade of Coal. In case of analysed Grade being higher than the Declared Grade, bonus bill/ claim shall be raised by the Seller. The credit note on Grade slippage shall be issued by the Seller within seven (7) days of acceptance of results under joint signature.

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.

### **1.3 Bills of Miscellaneous Claims:**

11.3.1 The Seller shall, within seven (7) days of the receipt of claim pursuant to Clause 9.1 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 12 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 3.6, 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 12.

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 diversion of rakes en-route or missing wagons, bills shall be paid to the Seller by the original consignee.

### **11.5 Annual Reconciliation / Adjustments:**

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

11.6 In the event of due date of any payment obligation under this Agreement falling on Sunday or a gazetted holiday or Nationwide strike affecting banking services, 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 Interest Rate, as per Clause 1.1(dd).

### **13.0 (Deleted – Not Used)**



## **14.0 SUSPENSION OF COAL SUPPLIES**

- 14.1 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.
- 14.2 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.
- 14.3 The Seller shall resume the Coal supplies within three (3) days of payment of the outstanding amount together with interest.
- 14.4 Not used

## **15.0 SETTLEMENT OF DISPUTES:**

- 15.1 All differences or disputes between the Parties shall be settled/ resolved amicably. If amicable settlement is not possible, then the unresolved disputes or differences shall be settled through the process as defined under 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 aforesaid 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 1996 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 Not used.

16.1.4 In the event that the Level of Delivery (LD) falls below thirty percent (30%) or the Level of Lifting (LL) falls below thirty percent (30%), the Purchaser or the Seller as the case may be, shall have the right to terminate this Agreement, within sixty (60) days of the end of the relevant Year after providing the other Party with prior written notice of thirty (30) days.

16.1.5 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

16.1.6 Not Used

16.1.7 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**

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

## **17. FORCE MAJEURE:**

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

- a) Flood, inundation of mine, drought, lightening, cyclone, storm, earthquake adverse geo-mining conditions, 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 etc.

- 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;
- i) Global shortage of Imported Coal or delays caused by supplier or no response to enquiries for supply of coal or logistics constraints in transportation of Imported Coal;
- (j) Any law and order problems affecting coal production and transportation of coal.
- k) Failure of supply of Power from Power Supplier(s)
- l) The events under Force Majeure for supply of coal through import shall be in accordance with the provisions under the side agreement for supply of imported coal as per clause 3.3.1 and 3.3.2.

#### 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 **SCHEDULES / ANNEXURES:**

The Schedules detailed below shall form part of this Agreement.

- Schedule - I - Annual Contracted Quantity (ACQ)
- Schedule - II - Bank Guarantee Format for the Security Deposit Submission
- Schedule - III - Quality of Coal
- Schedule - IV - IRLC stipulations
- Schedule- V - Detailed modalities for joint sampling
- Schedule - VI - Procedure for segregation and separate stacking of stones of +250 mm size at the Power Station and its joint assessment by the Purchaser and the Seller
- Schedule-VII - Option letter for acceptance / surrender of coal supplies to be made through import of coal

## 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**

Designation:  
Address:  
Telephone:  
Fax:  
Email:

**2) Purchaser's address**

Designation:  
Address:  
Telephone:  
Fax:  
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.

## 21.0 SAVINGS

Notwithstanding anything contained herein, this FSA shall not be applicable to purchaser(s) having/seeking tapering linkage(s) and/or Purchaser(s) having PPA(s) of whatever duration permitting sale/supply of electricity at non-regulated rate or market driven price.

[**Note:** For consumers of Western Coalfields Limited (WCL), relevant amendments to Clauses 3.7, 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

**2. WITNESS**

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

c) Address & Occupation

**1. WITNESS**

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

c) Address & Occupation

**2. WITNESS**

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

c) Address & Occupation



**Annual Contracted Quantity  
(Refer Clause 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. 01/04/2009)	Name of Rake Fit Station	Original LOA Quantity (Lakh Tonnes)	Annual Contracted Quantity (Lakh Tonnes)	Mode of Transport	Source of Coal field of the Seller*

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

\*\* Balance life of the Plant/Unit shall be as determined by appropriate authority of Govt. of India / as declared by way of “Self-declaration” by the authorized signatory of the Purchaser as per prescribed format of CIL.

# Buyer to provide annual coal requirements for the initial years also

\*\*LOA Quantity means the quantity mentioned in the Letter of Assurance(LOA) issued by the Seller to the Purchaser.

**BANK GUARANTEE FORMAT  
FOR SECURITY DEPOSIT  
(Refer Clause 2.11)**

On Rs. 50/- Non judicial Stamp Paper

Date of Issue: -----

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

Expiry Date: -----

Value of B.G: -----

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

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

We, \_\_\_\_\_(Name and address of the Bank), having its Head Office at \_\_\_\_\_ (Address of the Head Office of the Bank) (hereinafter called the Guarantor, which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators, executors and assigns) do hereby irrevocably and unconditionally guarantee and undertake to pay Seller or such other place or places as may be directed by the Seller all

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

amounts payable by the Purchaser to the extent of Rs. \_\_\_\_\_/- (Indian Rupees \_\_\_\_\_) at any time upto<sup>2</sup> \_\_\_\_\_ subject to the following terms and conditions :-

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

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<sup>2</sup> The Bank Guarantee should be valid till 30 days after the First Delivery Date

- 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).

Signature of the Bankers  
With date & Rubber Stamp

**Quality of Coal**  
(Refer Clause 4.1)

S.No.	Name & Location of the Power Plant owned by the Purchaser	Top-size of Coal (mm)	Grade(s) as mentioned in LOA on UHV basis	Corresponding grades in terms of equivalent GCV

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

**IRLC Stipulations  
(Refer Clause 11.1.2(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 3.4. Further, the As Delivered Price of Coal in this context shall take into account the highest of the Base Prices of the Grades mentioned in Schedule III.
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.

**Detailed modalities for Third Party sampling**

**1.0 Modalities for collection, handling, storage and preparation of third party 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 , Purchaser and *Third Party*
- 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 ash, moisture and GCV analysis 212 micron IS Seive. 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 and moisture content and as per (IS:1350Part-II-1970) for
- g) Monthly statements containing the details of each and every analysis result finalized during a month based on Third party/ referee analysis, as the case may be, shall be prepared indicating inter-alia the quantity of Coal covered by the respective analysis results .The respective analysis results shall be applied to the corresponding quality of Coal for billing/ commercial purpose. Copy of the monthly statement / report shall be submitted to the GM(QC)/Director In charge of the Seller by the Third Party
- 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 by the Third Party and the second part of the sample (Referee Sample) to be retained by the third party in double sealed condition duly signed by the representative of Seller, Purchaser and the Third Party and kept in safe custody at the loading end by the Third Party.

- i) Sample drawn at loading ends shall be analyzed by the Third Party in colliery laboratory at loading end or nearby laboratory of Coal Company available 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 Third party 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 the Third Party 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/ROPEWAYS/ PIPELINE**

- 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.
- d) 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:
- 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.
  - 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 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 determination of ash, moisture and **GCV** 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 analysis of ash, moisture and GCV at loading end as per BIS standard (IS 1350 Part 1-1984 and IS 1350 Part-II-1970 as applicable
- Set – II shall be kept under joint seal of the Seller, Purchaser and the Third Party as referee sample in the safe custody of Third Party at the loading end for a period of fourteen days or until the analysis results of Set – I are accepted without dispute, whichever is earlier. The referee sample i.e. Set-II shall be destroyed after fourteen (14) days from the date of analysis of Set-I if no complaint is received.

- 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 arranged by the Seller.

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

- a) Part – 1 Sample shall be analyzed by the *Third Party* at the loading 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 by the Third Party 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 <sup>TM</sup> and Set-II<sup>TM</sup> (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<sup>TM</sup> 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 recorded by the Third party..
- d) An empty tray measuring 1000 cm<sup>2</sup> (1 ft x 1 ft-approx) shall be weighed. The sample for 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 by the *Third Party*.
- o) All tools and tackles, plastic bags, sealing compounds and other items required for collection, preparation, storage and analysis of the sample shall be *arranged* by the Seller.

**Procedure for segregation and separate stacking of stones of +250 mm size at the Power Station and its joint assessment by the Purchaser and the Seller**

- 1) The stones segregated from Coal supplies received from Seller during a month at the power plant end shall be collected and stacked separately by Purchaser at a suitable location identified mutually by the Purchaser and Seller.
- 2) Such materials will be stacked in a manner that the same can be measured properly for volume.
- 3) (a) Such material collected and stacked during a month shall be loaded into trucks and weighed at nearest weighbridge to determine weight of such material received during the month.  
  
(b) In the event entire stock of such material cannot be weighed as per 3 (a) of the schedule, at least 5 trucks of such material loaded from the heap on random basis shall be weighed at the nearest weighbridge to determine the volumetric conversion ratio of such material, i.e. weight per unit of volume. The same conversion ratio will be applied for determining total weight of the heap of such material. The heap containing the entire stock in such cases shall be measured for volume prior to loading in the trucks and the same recorded jointly.
- 4) Two trucks of such material weighed as above will be randomly selected and unloaded at an identified place near the heap and material of +250 mm size will be manually segregated. After such segregation, the same will be weighed at the nearest weighbridge to establish the percentage of material +250mm size in the sample. This percentage will be applied to the total weight of heap determined as per 3(b) to find the weight of material +250 mm size in the heap.
- 5) After determination of weight pursuant to Clause 3 of this Schedule, the stones shall be disposed off by the Purchaser at a suitable place.
- 6) All infra-structural arrangements including for tools, tackles, equipments, trucks and manpower shall be arranged and provided by Purchaser at their own cost.
- 7) The Purchaser shall provide access to the Seller for examination of all documents / records pertaining to the above claim, if the Seller so desires.

## SCHEDULE-VII

### **Option letter for confirming acceptance /surrender of coal supply to be made through import in terms of clause 2.8.3.1 of the Modified Model FSA applicable for New SEB/State GenCo Power Utilities.**

To

M/s.....  
.....

Dear Sir,

Sub : Acceptance / Surrender of Coal through import.

This has reference to the Letter of Assurance issued to you vide letter No..... for supply of Coal subject to fulfillment of the conditions as stipulated in the said letter.

Clause 3.3 of the FSA provides that the Seller shall have the option to supply the balance quantity of coal through import not exceeding, unless otherwise agreed between the parties, 15% of the ACQ in the year 2012-13, 13-14 and 14-15, 13% of ACQ in the year 2015-16 and 5% of the ACQ for the year 2016-17 and onwards after meeting the quantity available from domestic production.

The percentage of imported coal proposed to be supplied in a year to meet the minimum contractual obligation shall be determined and declared by the Seller on year to year basis.

Accordingly, the imported coal likely to be supplied during..... (year) is .....% of the ACQ.

In order to enable the Seller to make firm arrangement for sourcing coal through import, the Purchaser is required to opt for either of the following two options.

#### **Option-A: Confirmation for acceptance of coal through import:**

- i) The Purchaser agrees unconditionally to accept supply of coal through import at a price, specification and source as may be decided and offered by the Seller/CIL from time to time.
- ii) The Purchaser would indicate acceptance for either the full quantity or a part of the offered quantity to be supplied through import to be expressed in terms of percentage of ACQ. In case of Purchaser giving consent for supply a part of the offered quantity, the part quantity not accepted shall be considered as Deemed Delivered quantity as per clause 3.11.1(v) and 3.11.2(iv).
- iii) The Build-up-Period as per clause 2.10 of the FSA which is at present for a period of six months from the Effective Date shall stand extended for a further period of six months for supply through import to enable the Seller arranging the same after obtaining firm commitment from the Purchaser.

- iv) The Purchaser giving this option shall have to enter into a Side Agreement separately for covering the commercial terms and payment modalities for the supply through import. The Side Agreement shall form an integral part of this Agreement and legally enforceable.

**Option-B: Confirmation for Surrender of coal through import**

- i) The Purchaser unconditionally surrenders the component of ACQ offered by the Seller through import.
- i) The Quantity of imported coal surrendered by the Purchaser shall stand as Deemed Delivered Quantity as per clause 3.11.1(v) and 3.11.2(iv).
- ii) The penal provision for supply below 80% and up to 65% of ACQ for the years 2012-13, 2013-14 and 2014-15 and below 80% and up to 67% of ACQ for the year 2015-16 shall not be applicable. The penal provision for supply below 75% shall be applicable from the year 2016-17 and onwards.

The Purchaser may request for a change of the option exercised by him earlier, but such request has to be made by him at least three months in advance.

Either of the above two options is required to be exercised before or at the time of signing of the FSA by endorsing the format appended below.

You are therefore requested to confirm acceptance of either of the above options by endorsing the copy of the letter in the following manner.

Yours faithfully  
(CGM/GM-Sales)

We, herby confirm that we have read and understood the above including the terms of FSA dated.....and accordingly exercise our unconditional acceptance for the Option A/B (strike out whichever is not acceptable) and request you to take necessary further action.

(In case of exercising option A)

The supply intended to be taken in terms of the percentage of ACQ through import:  
.....

Signature  
Name of the Authorised Signatory  
(Purchaser)  
SEAL

Date:

Modifications in the FSA Models (Since Dec' 2012)

<b>Sr. No</b>	<b>Ref: CIL Board</b>	<b>Modification Regarding</b>	<b>Letter No.</b>	<b>Date of communication</b>
1	292 (12/12/12)	Period of the Agreement, Security Deposit, Modalities for Assessment of Stone & 5% RCR	CILS&M:NewPol(47252):871	28/12/2012
2	-	Corrigendum regarding , Modalities for Assessment of Stone	CILS&M:NewPol(47252):938	31/12/2012
3	296 (25/3/13)	Minor Modifications in FSA provisions	CIL:CMO:S&M:NewPol(47252):266	02/04/2013
4	297 (20/5/13)	Regarding requirement of Long term PPA (without PPA signing)	CIL:CMO:S&M:NewPol(47252):384	27/05/2013
5	298 (27/5/13)	Regarding interplant transfer of Coal	CIL:CMO:S&M:NewPol(47252):445	19/06/2013
6	299 (28/6/13)	Regarding Incentive/ Compensation for Supply of coal	CIL:CMO:S&M:NewPol(47252):465	29/06/2013
7	300 (3/8/13)	Regarding Presidential Directive	CIL:CMO:S&M:NewPol(47252):626	08/08/2013
8	300 (3/8/13)	Third Party Sampling and Analysis provisions	Uploaded in the Website	

**DISCLAIMER:** The model FSA of November 2012 has been updated incorporating subsequent modifications undertaken/communicated vide above communication, after approval of the competent authority. Although utmost care has been taken to ensure that all modifications are properly incorporated but minor discrepancies due to any clerical errors or other-wise may not be ruled out, in such events the provision of the circulation of the above communication will prevail.