

**[D R A F T M O D E L – C (ACQ>4,00,000 tpa)]**

**COAL SUPPLY AGREEMENT**

**BETWEEN**

**[Name of the Subsidiary Company]**

**AND**

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

**[Date of Agreement]**

*\* Including CPP consumers*

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

**AND**

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

Or

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

Or

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

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

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

Or

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

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

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

## 1. **DEFINITIONS:**

- a) **“Agreement”** means this Coal supply agreement including all its Schedules, Annexure and attachments and subsequent amendments as may be issued in accordance with the terms and conditions hereof.
- b) **“Annual Contracted Quantity”** or **“ACQ”** shall have the meaning as ascribed to it in Clause 4.1
- c) **"Applicable Laws"** means all laws, brought into force and effect by the Government of India (“GoI”) or the State Government including rules, regulations and notifications made thereunder, and judgements, decrees, injunctions, writs and orders of any court of record, applicable to either Seller/CIL or the Purchaser, their obligations or this Agreement from time to time.
- d) **“As Delivered Price of Coal”** shall have the meaning ascribed to it in Clause 10.1
- e) **“Base Price”** shall mean, in relation to a Declared Grade of Coal produced by Seller, the pithead price notified from time to time by CIL or Seller, 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) **“Build – Up Period”** shall have the meaning ascribed to it in Clause 2.10.
- g) **“Business Day”** shall mean each Monday, Tuesday, Wednesday, Thursday, Friday and Saturday that is not declared a holiday in the State of (\_\_\_\_\_ to be stated by the Seller) under the Negotiable Instruments Act, 1981.
- h) **“Coal”** means non-coking as well as coking coal, produced by the Seller domestically and categorized into different classes, grades and sizes, as per the notification/order issued for such purpose by Government of India(GoI)/CIL/ Seller and shall, where the context so requires, include Imported Coal.
- i) **“Condition Precedent Period”** shall have the meaning ascribed to it under clause 2.8.3.1.
- j) **“CIL”** means Coal India Limited, the holding company of the Seller, having its registered office at 10, Netaji Subhash Road, Kolkata 700 001, India.

- k) **“Declared Grade”** means the particular grade(s) of Coal mined from any seam or section of a seam in the Seller’s collieries as declared by CIL or the Seller from which Coal is produced and supplied under this Agreement,.
- l) **“Delivery Point”** means any of the colliery sidings or colliery loading points, as the case may be, in the designated coal mine of the Seller as per Schedule-I, and/ or the location(s)/ port(s) identified by the Seller at which the Seller delivers Imported Coal in accordance with the terms of this Agreement.
- m) **“Effective Date”** shall mean the date of occurrence of the last of the events specified under clause 2.8.3.2 or 2.8.3.3
- n) **“First Delivery Date”** shall have the meaning ascribed to it in Clause 2.9
- o) **“Imported Coal”** shall mean non-coking as well as coking coal, sourced internationally and categorized for quality, as per international norms for such purpose.
- p) **“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
- q) **“Level of Delivery”** shall have the meaning ascribed to it in Clause 4.7.
- r) **“Level of Lifting”** shall have the meaning ascribed to it in Clause 4.8.
- s) **“Month”** shall mean a calendar month.
- t) **“Prime Lending Rate”** or **“PLR”**: shall mean the prime lending rate of State Bank of India as applicable on the due date of payment by the Purchaser.
- u) **“Performance Incentive”** shall have the meaning ascribed to it in Clause 4.11.
- v) **“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. .
- w) **“Signature Date”** shall mean the Date of signing of this Agreement by both Parties.
- x) **“Quarterly Quantity”** or **“QQ”** shall have the meaning ascribed to it in Clause 4.4.

- y) “**Year**” means the financial year of the Seller, commencing on April 1<sup>st</sup> and ending on the following March 31<sup>st</sup> and “**Quarter**” means the respective three-monthly periods, namely April to June, July to September, and so on.

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

- 2.1 This Agreement shall come into force on the Effective Date. .
- 2.2 This Agreement shall, unless terminated in accordance with the terms hereof, remain in force commencing from the Effective Date till the end of **five (5) years** from the First Delivery Date.
- 2.3 After completion of three (3) years from the First Delivery Date, either Party may, by prior written notice to the other Party for period not less than 30 days, seek a review of this Agreement. Notwithstanding, the ACQ shall be revised to the highest of the quantities booked by the Purchaser in such three (3) years for the remaining two (2) years of the Agreement subject to average Level of Lifting(LL) by the Purchaser (as calculated in accordance with Clause 4.8) in the last three (3) years being less than eighty percent (80%). It is expressly clarified that no such revision in ACQ shall take place if the average Level of Lifting (LL), as per the foregoing, is greater than eighty percent (80%).
- 2.4 Notwithstanding the provisions of Clause 2.2 above, in the event of any change in the Grade structure of Coal, such changed Grade structure shall be binding and complied with by both the Parties. The Seller shall within seven (7) days of introduction of such change provide a written notice to the Purchaser calling for a joint review of such provisions of this Agreement on which such change in the Grade structure has a bearing, and upon such joint review, this Agreement shall be duly amended in writing to bring it in full conformity with such change.
- 2.5 If the review in terms of Clause 2.3 does not result in a mutually agreed position with respect to the subject matter of review, this Agreement shall nevertheless continue to be in force. However, if despite further efforts the Parties are unable to arrive at a mutually agreed position with respect to the subject matter of review, within a period of nine (9) months from the date of notice in terms of Clause 2.3, the aggrieved Party shall have the right to terminate the Agreement subject to a further notice of three (3) months given in writing to the other Party.
- 2.6 **.(Not Used)**
- 2.7 On completion of five (5) years from the First Delivery Date, this Agreement shall expire unless both the Parties mutually agree in writing to extend the Agreement, on the same or such terms as may be agreed upon by the Parties.
- 2.8 **Condition Precedent (CP)**

The 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 the fuel supply agreement with its foreign counterparty to carry out import of the 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 the Seller shall (i) have obtained from the lawful authority all requisite sanctions, approvals, licences and consents including those related to land acquisition, environment and forest clearance for development and operation of the coal block identified in Schedule I to this Agreement; and (ii) Seller shall have achieved Seller’s Financial Closure with respect to development and operation of the coal block identified in Schedule I to this Agreement

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

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

2.8.2.2 The Purchaser shall have completed the (a) construction of at least 50% of the Plant (in cases where the last milestone provided in the LOA is the ordering of plant and equipment) or (b) commissioning of the Plant (in cases where the last milestone provided in the LOA is the completion of 50% construction of the Plant, as may be applicable and such commissioning or construction as the case may be has been certified by an Independent Engineer.

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

2.8.3.1 The Conditions Precedents shall be fulfilled/ achieved within a period of period of two (2) years 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**”)

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

2.8.3.3 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 15 days of completion of achieving the CPs set out in Clause 2.8.2 the Purchaser shall issue a written notice of satisfaction and notify to Seller. The Seller within 15 days from receipt of such notification by Purchaser shall issue a letter accepting the same.

2.8.3.4 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. .

2.8.3.5 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 the Purchaser.

## **2.9 First Delivery Date**

2.9.1 Not later than 5 days from Effective Date, both parties, shall mutually agree on a 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 the later of the 3 month period suggested by 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 such 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 period, subject to a maximum of 180 days

## **2.10 Build – Up Period**

2.10.1 The Build-Up Period shall be the period of 6 months commencing on the First Delivery Date. During the Build-Up Period any compensation arising on account of short supply or short lifting, as per Clause 4.6 of this Agreement shall not be payable by either Party.

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

<b>Build Up Period</b>	<b>Indicative Coal Requirement (in Tonnes)</b>
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Build-Up Period [A period of 6 month from First Delivery Date]	
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### 3. **SECURITY DEPOSIT (SD)**

- 3.1 On signing of this agreement the Commitment Guarantee (CG) provided by the Purchaser prior to issue of Letter of Assurance (LOA) shall stand converted into the Security Deposit amount as determined under Clause 3.2. Accordingly, a sum of Rs. [•] (Indian Rupees \_\_\_\_\_) is deemed to have been deposited by the Purchaser towards the Security Deposit amount stipulated in Clause 3.2. In an event the Commitment Guarantee amount provided by Purchaser is more than the Security Deposit amount as determined under Clause 3.2, Seller shall return such balance amount within three (3) months from the date of signing of this Agreement. In an event the Security Deposit amount as determined under Clause 3.2 is more than the Commitment Guarantee amount, the Purchaser shall deposit such balance amount within three (3) months from the date of signing this agreement. Failure to submit the balance amount by the Purchaser within three (3) months from the date of signing of this agreement, as aforementioned, shall entitle the Seller to adjust the ACQ such that it is commensurate with the Security Deposit required to be submitted by the Purchaser under clause 3.2..

*Notes:*

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

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

- 3.3 The SD submitted by the Purchaser, as per Clause 3.2 above, shall remain valid till three (3) months from the expiry of this Agreement or the earlier termination thereof.
- 3.4 The value of the Security Deposit shall be suitably increased / decreased to match the changes in the Base Price notified by the Seller from time to time. In the event of failure of the Purchaser to provide such increased value within thirty (30) days from the date of notification of such change in Base Price, the Seller shall have the right to suspend the Coal supplies. If additional SD due to such increase in the Base Price of Coal is submitted by way of additional bank guarantee, the period of validity of such bank guarantee shall be the same as that of the initial SD Bank Guarantee furnished in terms of clauses 3.1 to 3.3 above. Alternatively, the amount of the initial SD Bank Guarantee may be increased by an amendment so as to cover the increased value of SD resulting from the change in the Base Price.
- 3.5 The Security Deposit shall be refundable to the Purchaser at the end of its validity subject to successful completion of and complete settlement of all claims of Seller arising out of this Agreement.
- 3.6 The Purchaser shall ensure that the Security Deposit stands replenished within seven (7) days of drawl of funds by the Seller in accordance with the provisions of this Agreement. Failure to replenish the Security Deposit within such stipulated period shall entitle the Seller to suspend its Coal supplies without absolving the Purchaser of its obligations under this Agreement.
- 3.7 In the event of termination of the Agreement by the Seller in accordance with Clause 16.1.4 to 16.1.8, the Seller shall be entitled to forfeit the Security Deposit of the Purchaser in addition to any other rights vested with the Seller upon such termination.

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

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

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

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

The total quantity of Coal supplied pursuant to this Agreement is meant for use at the [\_\_\_\_\_name & location of the Plant(s)] as listed in Schedule-I. the Purchaser shall not sell/divert and/or transfer the Coal for any purpose whatsoever and the same shall be treated as material breach of Agreement. In the event that the Purchaser engages or plans to engage into any such resale or trade, the Seller shall terminate this Agreement forthwith without any liabilities or damages, whatsoever, payable to the Purchaser. It is expressly clarified that the Seller shall reserve the right to verify including the right to inspect/ call for any document

from the Purchaser and physically verify the end-use of Coal and satisfy itself of its authenticity. The Purchaser shall have the obligation to comply with the Seller's directions/ extend full co-operation in carrying out such verification/ inspection.

**4.3 Sources of Supply**

Seller shall endeavor to supply Coal from sources as mentioned in the Schedule II. In case the Seller is not in a position to supply the Scheduled Quantity (SQ) of Coal from such sources indicated in Schedule II, the Seller shall have the option to supply the balance quantity of Coal from alternate source, including Imported Coal. Further, in case of alternate sources, the Purchaser shall accept Coal directly from such alternate sources through Indian railway system and / or by alternate modes of transport depending upon operational flexibility and at such Delivery Point, as decided by the Seller. Additional cost due to supply through alternate source including the inland logistics cost of Imported Coal shall be borne by the Purchaser.

**4.4 Quarterly Quantity (QQ)**

The Annual Contracted Quantities for the Year, as per **Schedule - I**, shall be divided into Quarterly Quantities (QQ), expressed in tonnes, as follows:

Ist Quarter (Apr-Jun.)	25% of ACQ
IInd Quarter (Jul-Sep)	22% of ACQ
IIIrd Quarter (Oct-Dec)	25% of ACQ
IVth Quarter (Jan-Mar)	28% of ACQ

**4.5 Scheduled Quantity (SQ):**

- 4.5.1 The monthly Scheduled Quantity (SQ) shall be one third (1/3<sup>rd</sup>) of the QQ.
- 4.5.2 Either the Purchaser or the Seller by serving a written Notice at least 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.
- 4.5.3 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.
- 4.5.4 Total variation in any Month pursuant to clauses 4.5.2 and 4.5.3 shall in no case exceed 10% of the SQ.
- 4.5.5 In no case shall there be any variation permitted in respect of QQ either by the Purchaser or Seller.

4.5.6 The sum total of SQ during any Quarter, including any revision allowed hereof, shall not exceed the QQ of the concerned Quarter.

4.6 **Compensation for short delivery/lifting**

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

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

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

Notes:

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

4.6.2 Compensation for short supply/lifting shall be payable by the defaulting Party to the other Party within a period of 90 days from the date of receipt of claim. In the event of non-payment within the due date, the defaulting Party shall be liable to pay interest as mentioned in the Clause 13 without prejudice to any other right available to the non-defaulting Party.

4.7 **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 4.10

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:

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

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

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

#### 4.8 **Level of Lifting:**

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

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

Where:

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

DDQ shall have the same meaning as given in Clause 4.10.

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

#### 4.10 **Deemed Delivered Quantity:**

For the purpose of this Agreement, the aggregate of the following items provided under clause 4.10.1 to 4.10.2 shall constitute the Deemed Delivered Quantity with respect to a Year.

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

- i/ The quantity of Coal not supplied by the Seller owing to omission or failure on the part of Purchaser to submit in advance the designated rail program (s) to the Seller as per agreed time-table with respect to the Scheduled Quantity.
- ii/ The quantity of Coal not supplied by the Seller owing to cancellation, withdrawal or modification of the rail program(s) by the Purchaser after its submission whether before or after allotment of wagon(s) by Railways.
- iii/ The quantity of Coal not supplied by the Seller owing to Seller exercising the right of suspension of supplies in terms of Clause 14.
- iv/ The quantity of Coal not supplied by the Seller owing to Purchaser failing or omitting to fulfill the requirements under Clause 11.
- v/ The quantity of Coal offered by Seller through alternative source which is not accepted by the Purchaser.

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

- i/ The quantity of Coal not supplied by the Seller owing to omission or failure on the part of Purchaser to book value paid orders for the Scheduled Quantity in terms of Clause 7.2.2.
- ii/ The quantity of Coal not supplied by the Seller owing to Purchaser's failure to place the requisite number / type of road transport at the Delivery Point for delivery of Coal within the validity period of the sale order/delivery order.
- iii/ The quantity of Coal not supplied by the Seller owing to Coal through alternative source not accepted by the Purchaser.

4.10.3 Deemed Delivered Quantity in terms of Clause 4.10.1 and 4.10.2 shall be calculated on cumulated monthly basis during a Year.

4.11 **Performance Incentive:**

4.11.1 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"/ "PI"), to be determined as follows:

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

Where:

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

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

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

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

4.11.2 With respect to part of the Year in which the term of this Agreement begins or ends, the relevant quantities in Clause 4.11.1, except the Multiplier, shall apply pro-rata.

4.11.3 Within thirty (30) days of expiry of a Year, the Seller shall submit an invoice to the Purchaser with respect to the PI payable in terms of Clause 4.11.1 and the Purchaser shall pay the amount so due within thirty (30) days of the receipt of the invoice. In the event of non-payment of PI by the due date, the Seller shall have the right to suspend Coal supplies without absolving the Purchaser of its obligations under this Agreement.

5. **QUALITY:**

5.1 The quality of the Coal to be supplied from the mines of the Seller shall, as far as possible, be within the specifications as per Schedule-II to this Agreement. The Seller shall take all reasonable steps to remove stone, shale and extraneous matters before the loading of the Coal.

5.2 If the quality of the Coal supplied from the mines of the Seller i.e. the grade, as determined in terms of Clause 8 hereinafter, falls beyond the limits as specified in Schedule II, the same shall be dealt with in accordance with Clause 8.

5.3 The Seller shall make adequate arrangements to assess the quality and monitor the same to endeavour that Coal having UHV less than 1300 KCal/kg is not loaded into Purchaser's containers

5.4 The Purchaser shall inform the Seller all incidents of presence of oversized Coal, in terms of specifications laid down in Column - (ii) of Schedule -II, in any specific consignment, immediately on its detection at the Delivery Point and the Seller, shall take all reasonable steps to prevent such occurrence at his end.

5.5 The Purchaser shall inform the Seller all incidents of presence of stones in any specific consignment immediately on its detection at the Delivery Point. The Seller shall, immediately take all reasonable steps to prevent such occurrence at his end.

6. **WEIGHTMENT OF COAL:**

6.1 When Coal is delivered for despatch by rail, each wagon shall be weighed at the weigh bridge at the Delivery Point and the recorded weight shall be entered in the

relevant dispatch document. Such recorded weight shall form the basis for raising bills by the Seller. The weighment shall be on wagon to wagon basis in the manner described hereinafter.

- 6.1.1 In case wagons are weighed on electronic weigh bridge the weight recorded in the computerized print out shall be taken as the weight for the respective wagon. In the absence of computerized print out facility, the weight as certified by the Railways shall be reckoned as weight and shall be binding on the Parties.
- 6.1.2 In the absence of electronic weighbridges, the weighment shall be done on the mechanical weighbridges at the Delivery Point.
- 6.1.3 In the cases not covered by Clauses 6.1.1 or 6.1.2, weight recorded on the Railway Receipt (RR) as per existing practice of Railways shall be reckoned as weight and shall be binding on the Parties. However, the wagons will be loaded up to the permissible capacity fixed by Railways for such wagons on the basis of volumetric measurement.
- 6.1.4 The Purchaser shall be entitled to depute an authorised representative to witness the weighment / loading of wagon at the Delivery Point.
- 6.2 When Coal is delivered for dispatch by road, the weight recorded at the weighbridge of the Seller at the concerned Delivery Point and as mentioned in the dispatch document, shall be binding on the Parties.
- 6.3 The weighbridges at respective Delivery Points at Seller's end shall be calibrated and maintained as per applicable statutory provisions. The Seller shall regularly monitor the accuracy of the weighbridges. If and when any weighbridge is found to be out of order, after remedying the defect as expeditiously as possible, the Seller shall arrange for calibration, wherever necessary, as per Applicable Laws.

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

### **7.1 Order Booking by Rail:**

- 7.1.1 In terms of the notice issued by the Seller before the commencement of a month, the Purchaser shall submit a programme in writing to the Seller, as per the applicable Railway rules and Seller's notified procedures, for the supply of the Scheduled Quantity as per Clause 4.5. The Purchaser shall also ensure compliance of the requirements under Clause 11.2. Thereafter, the Seller shall process for issuance of the consent of the programme.

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

- 7.1.2 The Seller shall thereupon submit specific indent/offer based on the valid rail programme(s) to the Railways as per the extant Railway rules for the allotment and placement of wagons during the concerned month in conveniently spaced intervals.
- 7.1.3 The wagons shall be booked on “freight to pay” or “freight pre paid” basis, as applicable.
- 7.1.4 In case of formation of rakes with wagons loaded from different loading points, the Seller shall make best efforts to complete documentation formalities as per Railway rules so as to enable the Purchaser to avail a trainload freight rate.
- 7.1.5 In the event rail movement is declared / considered to be not feasible by Railways, review will be made jointly in the matter of mode of transport.

7.2 **Order Booking by Road:**

- 7.2.1 In terms of the notice by the Seller issued for monthly Coal allocation / bookings stipulating the time schedule for order booking and advance payment, the Purchaser shall deposit 100% advance payment in the manner provided in Clause 11.1, for the Scheduled Quantity.
- 7.2.2 Based on the monthly colliery wise allocation done by the Seller in terms of Clause 7.2.1, the Purchaser shall place orders with the Seller for the Scheduled Quantity by making advance payment of the full value of the respective order {“Advance Payment”}, within such period as notified by the Seller. The advance payment may also be made in three (3) installments each of ten (10) days value of Coal in accordance with the terms and conditions including the time periods of depositing the installments, as stipulated in the monthly notice on colliery wise allocation issued by the Seller.
- 7.2.3 The Seller shall arrange to issue sale order(s)/delivery order(s) separately for each colliery and issue necessary loading programme / schedule from time to time. The Purchaser shall arrange to place the required number / type of trucks to lift the Coal as per such loading programme / schedule. The Seller shall ensure that the sale order / delivery order in favour of the Purchaser is prepared promptly upon realization of the Advance Payment and the same reaches the concerned colliery/weigh bridge within five working days of the last day of the period notified by the Seller for booking orders in terms of Clause 7.2.1.
- 7.2.4 The Seller shall ensure delivery and the Purchaser shall ensure lifting of Coal against sale order / delivery order of any month within the validity period of forty five (45) days, as mentioned in the sale order.
- 7.2.5 In the event of any quantity remaining undelivered / unlifted, the Purchaser shall be entitled to receive, once the validity period of the sale order/ delivery order

expires, the refund of the proportionate value of such quantity. The refund with respect to a particular month shall be made by the Seller within thirty (30) days from the date of receipt of application for refund from the Purchaser.

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

- 8.1 In the event the Purchaser is desirous of availing joint sampling, such facility shall be allowed at the Delivery Point only and for the Coal produced from Seller's own sources and not for Imported Coal, if any. All such joint sampling and analysis for determination of Coal quality shall be done in accordance with the relevant BIS Standards and as prescribed under this Clause and Schedule V of this agreement.
- 8.2 The samples shall be drawn separately for supplies made, from each colliery, grade wise and the venue for joint collection of samples shall be Delivery Point. The detail of sampling / analysis procedures shall be appended by the Seller.
- 8.3 The quality of the Coal to be supplied from the mines of the Seller shall be as far as possible within specifications as per Schedule-II to this Agreement. Complaint if any, on the matter of Coal quality shall be made by the Purchaser giving specific details of the consignment to the CGM (S&M) / GM (S&M) of the Seller and also to colliery/area authorities for remedial action. Any complaint regarding quality of Coal shall be made at the colliery end/ Delivery Point.

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

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

## **10. PRICE OF COAL:**

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

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

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

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

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

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

- 11.2.1 The Purchaser shall submit financial coverage ("**Financial Coverage**") in the form of a Banker's Cheque/Demand Draft or Bank Guarantee, (issued by a scheduled Bank acceptable to the Seller and in the format enclosed at **Schedule - IV** of this Agreement) for an amount equal to the estimated As Delivered Price of Coal for 15 days (Fifteen days) of Coal supplies, i.e. ACQ/24, subject to a minimum amount equivalent to As Delivered Price of Coal of one rake-load, as indicated in the notice by the Seller. In case the supply consists of different Grades, the As Delivered Price of Coal shall be calculated on the Base Price of the highest Grade, as shown in Schedule II.
- 11.2.2 Where the Financial Coverage is made in the form of bank guarantee ("**Financial Coverage Bank Guarantee**" or "**Financial Coverage BG**") , such Financial Coverage BG shall be kept operative and valid by the Purchaser for 5 years (five years) from the First Delivery Date and for a further period of one hundred eighty (180) days thereafter, encashable at \_\_\_\_\_(to be indicated by the Seller). In case of any increase in the As Delivered Price of Coal, the amount of the Financial Coverage BG shall be increased commensurately within 7 (seven)

days of such increase. The Purchaser shall ensure that at all times the amount of the Financial Coverage BG is not less than the estimated As Delivered Price of Coal for fifteen (15) days of Coal supplies, i.e. ACQ/24, subject to a minimum amount equivalent to As Delivered Price of Coal of one rake of Coal and the As Delivered Price of Coal shall take into account the Base Price of the highest Grade of Coal, as shown in Schedule II.

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

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

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

#### 11.4 **Overloading & Under loading:**

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

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

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

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

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

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

11.5.1 The Seller shall raise and the Purchaser shall pay the bills for Coal supplies on Declared Grade basis in accordance with Clause 11.3 above. These bills, however, shall, where applicable, be finally revised and settled between the two Parties on the basis of analyzed grade of Coal in accordance with Clause 8.

11.5.2 The Seller or the Purchaser, as the case may be, shall raise their respective claims arising out of quality determination of Coal through sampling and analysis forthwith. Such claim shall be settled within thirty (30) days thereafter.

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

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

## 12. **NOTICE:**

In the event, either Party owing payment of any amount to other Party under the terms of this Agreement, defaults in making such payments as per terms of the

Agreement, the Party not in default shall give a notice in writing to the Party in default and the matter shall thereafter be dealt with in terms of Clause 13 & 14.

**13. INTEREST ON DELAYED PAYMENT:**

With respect to default in making any payment due in terms of this Agreement by one Party to the other, the defaulting Party shall be liable to pay interest at PLR on the total sum outstanding and for the period the payment has remained over due Without prejudice to the foregoing, in the event the Purchaser fails to pay the overdue amount along with the interest within such thirty (30) days, the Seller shall be entitled to encash the Security Deposit and/or the Financial Coverage BG and suspend Coal supplies in accordance with Clause 14. For removal of doubts, it is clarified that it shall be permissible for the Seller to adjust or recover the interest due in terms of this Clause from the Security Deposit and/or the Financial Coverage BG.

**14. SUSPENSION OF COAL SUPPLIES**

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

- a) Adjust the outstanding amount against the Security Deposit or by invoking the Security Deposit BG maintained in terms of Clause 3 or such portion of it as available; and/or
- b) Invoke the Financial Coverage Bank Guarantee or any cash deposit towards Financial Coverage to the extent available and necessary to meet the outstanding dues; and/ or
- c) Suspend supplies of Coal to the Purchaser.

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

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

**15 SETTLEMENT OF DISPUTES:**

- 15.1 In the event of any dispute, disagreement or difference arising out of or in connection with this Agreement, including any question regarding its performance, existence, validity, termination and the rights and liabilities of the Parties to this Agreement (“Dispute”), the Parties shall in the first instance endeavour to amicably settle the same through negotiations carried out in good faith.
- 15.2 For the purpose of conducting negotiations, each Party shall designate in writing to the other Party a representative who shall be authorised to negotiate on its behalf with a view to resolving any Dispute (the “**Representative**”). Each such Representative shall remain so authorised until his replacement has been designated in writing to the other Party by the Party he represents.
- 15.3 The Representative of the Party which considers that a dispute has arisen shall give to the Representative of the other Party, a written notice setting out the material particulars of the dispute (“**Dispute Notice**”). Within thirty days, or such longer period as may be mutually agreed, of the Dispute Notice having been delivered to the other Party, the Representatives of both Parties shall meet in person, to attempt in good faith and using their best endeavours at all times, to resolve the Dispute. Once the Dispute is resolved, the terms of the settlement shall be reduced in writing and signed by the Representatives of the Parties

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

- 16.1 Notwithstanding the provisions of Clause 2, this Agreement may be terminated in the following events and in the manner specified hereunder:
- 16.1.1 In the event that either Party is rendered wholly or partially unable to perform its obligations under this Agreement (“**Affected Party**”) because of a Force Majeure Act, as described in Clause 17 below, and such inability to perform lasts for not less than a total of ninety (90) days in any continuous period of one hundred eighty (180) days, and in the considered assessment of the other Party (“**Non-Affected Party**”) there is no reasonable likelihood of the Force Majeure Act coming to an end in the near future, such Party shall have the right to terminate this Agreement, by giving at least ninety (90) days prior written notice to the Affected Party of the intention to so terminate this Agreement. In such event, the termination shall take effect on expiry of the notice period or ninety (90) days whichever is later, and the Parties shall be absolved of all rights/obligations under this Agreement, save those that had already accrued as on the effective date of termination.
- 16.1.2 In the event that the Purchaser is prevented /disabled under law from using Coal, for reasons beyond their control, owing to changes in applicable environmental and/or statutory norms, howsoever brought into force; the Purchaser shall have the right to terminate this Agreement, subject to a prior written notice to the Seller of not less than thirty (30) days.

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

## **16.2 Accrued rights to survive termination**

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

## **17. FORCE MAJEURE:**

- 17.1 “Force Majeure Act” means any act, circumstance or event or a combination of acts, circumstances and events which wholly or partially prevents or delays the performance of obligations arising under this Agreement by any Party (“**Affected Party**”) and if such act, circumstance or event is not reasonably within the control of and not caused by the fault or negligence of the affected Party, and provided that such act, circumstance or event is in one or more of the following categories:
- a) Flood, inundation of mine, drought, lightening, cyclone, storm, earthquake or geological disturbances, eruption of gases, subsidence and such natural occurrences;
  - b) Explosion, Mine fire and other fire, contamination of atmosphere by radio active or hazardous substances;
  - c) Civil disturbance such as riot, terrorism;
  - d) Industry wise /nation wide strikes;
  - e) Any law, ordinance or order of the Central or State Government, or any direction of a statutory regulatory authority that restricts performance of the obligations hereunder;
  - f) Epidemic;
  - g) The enactment, promulgation, amendment, suspension or repeal of any Applicable Laws after the date hereof;
  - h) Any delay or direction or order on the part of the Government of India or relevant State Government or denial or refusal to grant or renew, or any revocation, or modification of any required permit or mining lease or governmental approvals including those related to land acquisition or environment/ forest clearance provided that such delay, modification, denial, refusal or revocation was not due to a cause attributable to the Affected Party;
  - j) Global shortage of Imported Coal or logistical constraints in transportation of Imported Coal ;

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

17.2 **Burden of Proof:**

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

17.3 **Effect of Force Majeure:**

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

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

18 **SCHEDULES / ANNEXURES:**

The Schedules detailed below shall form part of this Agreement.

Schedule - I - Annual Contracted Quantity (ACQ)

Schedule - II - Quality of Coal

Schedule - III - Bank Guarantee format for Security Deposit

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

Schedule - V - Detailed Modalities for Joint Sampling

19 **MISCELLANEOUS:**

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

19.2 Severability and Renegotiation: In the event any part or provision of this Agreement becomes, for any reason, unenforceable or is declared invalid by a competent court of law or tribunal, the rest of this Agreement shall remain in full force and effect as if the unenforceable or invalid portions had not been part of this Agreement, and in such eventuality the Parties agree to negotiate with a view to amend or modify this Agreement for achieving the original intent of the Parties.

19.3 Governing Law: This Agreement, and the rights and obligations hereunder shall be interpreted, construed and governed by the laws of India. The courts of [\_\_\_\_\_name of place to be mentioned by the Seller] shall have exclusive jurisdiction in all matters under this Agreement.

19.4 Entirety: This Agreement together with any documents referred to in it, supersedes any and all oral and written agreements, drafts, undertakings, representations, warranties and understandings heretofore made relating to the subject matter hereof and constitutes the entire Agreement and understanding of the Parties relating to the subject matter hereof. It is expressly agreed that this Agreement shall supersede all previous discussions and meetings held and correspondence exchanged between the Seller & the Purchaser in respect of this Agreement and any decisions arrived at therein in the past and before coming into force of this Agreement shall have no relevance with reference to this Agreement and no reference of such discussions or meetings or past correspondence shall be entertained either by the Seller or the Purchaser for interpreting this Agreement or its implementation.

19.5 Counterpart: This Agreement may be executed in any number of counterparts and each counterpart shall have the same force and effect as the original instrument.

19.6 Assignment: The Purchaser shall not, without the express prior written consent of the Seller, assign to any third party this Agreement or any part thereof, or any right, benefit, obligation or interest therein or thereunder.

19.7 Limitation Of Liability: The Parties agree that except as otherwise expressly agreed in this Agreement, neither Party shall have any right or entitlement to any consequential losses, costs or damages, loss of profit or market, as a result of a breach by the other Party of this Agreement.

20 **AUTHORISED PERSONS:**

- 20.1 The respective [[•] designation of the authorized representative] of the industry/ plant or his nominated representative shall be authorised to act for and on behalf of the Purchaser.
- 20.2 GM(Sales) or any representative duly authorized by the Seller shall act for and on behalf of the Seller.
- 20.3 Any other nomination of authorised representative shall be informed in writing, by the Seller and the Purchaser, as the case be, within one month of signing of this Agreement or by giving 30 (thirty) days' notice.
- 20.4 It shall be the responsibility of the Parties to ensure that any change in the address for service or in the particulars of the designated representative is notified to the other Party and all other concerned, before effecting a change and in any case within two (2) Business Days of such change

[**Note:** For consumers of Western Coalfields Limited (WCL), relevant amendments to Clauses 4.7, 4.10.1, 7.1 and 11.2 would need to be made to bring into effect the different practices followed by WCL with respect to these *clauses*].

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

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

**Signature**

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

**1. WITNESS**

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

c) Address & Occupation

**Signature**

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

**1. WITNESS**

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

c) Address & Occupation

**2. WITNESS**

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

- c) Address & Occupation

**2. WITNESS**

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

- c) Address & Occupation

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

**Annual Contracted Quantity**

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

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

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

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

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

On Rs. 50/- Non judicial Stamp Paper

Date of Issue: -----

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

Expiry Date: -----

Value of B.G: -----

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

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

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

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

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

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

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

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

Signature of the Bankers  
With date & Rubber Stamp

**Schedule-IV**

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

On Rs. 50/- Non judicial Stamp Paper

Date of Issue :-----

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

Expiry Date: -----

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

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

2. [The Chairman-cum-Managing Director,

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

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

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

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

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

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

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

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

Signature of the Bankers  
With date & Rubber Stamp.

## SCHEDULE –V

### DETAILED MODALITIES FOR JOINT SAMPLING

Joint Sampling will be done from the delivery / loading point of the seller for Coal produced from own sources and not from Imported Coal.

1.0 Modalities for Collection, Handling, Storage and Preparation of Joint Samples.

1.1 Collection of Samples from Wagons:

- a) Each rake of Coal supplied from one delivery point/loading point shall be considered as a lot for the purpose of sampling. Separate lots to be made in case Coal is of different grades and from different sources loaded from one delivery / loading point.
- b) 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	3
>30 wagons up to 40 wagons	4
> 40 wagons up to 50 wagons	5
>50 wagons and above	6

- c) From each of the sub lots one wagon each shall be selected as per random table in IS: 436 (Part I/Section I) for collection of increments.
- d) In each wagon selected for sampling the spot from where the sample will be drawn in such 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 it will go on and sample procedure will be repeated for subsequent wagons.
- e) Before collecting the samples, the spot from where sample is to be collected from top of the wagons, 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.
- f) About 30 kg of sample shall be collected from each selected wagon in the rake of a source by drawing 6 increments of approx. 5 kg each with the help of shovel/scoop.
- g) Item (d), (e) and (f) above shall be applicable for the Coal supplied in box wagons, where there is no live overhead traction line.

- h) In case of Box wagons, the parties shall ensure that the power supply in the over head traction is switched off to facilitate collection of joint samples pursuant to points (d), (e) and (f) above.

## 1.2 Preparation of Samples:

- a) Each sub lot will be mixed with equal quantity to make one lot on source-wise and grade-wise.
- b) The gross samples for the day for each delivery/loading point shall be separately crushed to (-) 5 cm by mechanical means, mixed thoroughly and quartered.
- c) Two opposite quarters shall be retained and the rest rejected.
- d) The retained material shall be further mixed, halved and one half retained.
- e) Material so obtained shall be crushed to 12.5 mm by a Jaw Crusher and then to 3.3 mm by a reduction mill / or jaw crusher.
- f) The crushed material shall be reduced either by coning and quartering or by ruffling to 2 kgs.
- g) The sample so reduced shall be finally ground to pass through 212 micron IS sieve.
- h) From the final sample passing through 212 micron IS sieve, 1.5 Kg shall be taken, which shall constitute the laboratory sample.
- i) Each laboratory sample shall be divided into two equal parts one for joint analysis by the Seller and the Purchaser at the loading end and the second to be kept as referee sample under joint custody of the Seller and the Purchaser. The sample shall be kept in glass or polythene container.
- j) In the event of any dispute (which shall be raised not later than 48 hours after analysis) at the time of joint analysis, the referee sample shall be analysed at a mutually agreed laboratory within 72 hours of the dispute, but not later than 8 days of the collection of the sample.