Version Dated: 16 March 2017

[MODEL FUEL SUPPLY AGREEMENT – NON REGULATED SECTOR]

BETWEEN

[Name of the Subsidiary Company of Coal India Limited]

AND

[Name of the Successful Bidder/ Non-Power Consumer]

[Date of Agreement]

[To be executed on stamp paper of adequate value]

This Fuel Supply Agreement is made at _____, India on this _____ day of _____ 20__ between:

1. **[Name of Subsidiary of Coal India Limited]**, a company incorporated in India under the Companies Act, [1956/2013] with corporate identity number [CIN], whose registered office is at [address of registered office], India and principal place of business is at [address of principal place of business, if different from the registered office] (hereinafter referred to as the "**Seller**", which expression shall unless repugnant to the meaning or context thereof, be deemed to include its successors and permitted assigns) of the one part;

AND

2. **[Name of the Successful Bidder]**, a company incorporated in India under the Companies Act, [1956/2013][1] with corporate identity number [CIN], whose registered office is at [address of registered office], India and principal place of business is at [address of principal place of business, if different from registered office] (hereinafter referred to as the "**Purchaser**", which expression shall unless repugnant to the meaning or context thereof, be deemed to include its successors and permitted assigns) of the other part;

OR

[Name of the individual], an individual residing at [address] and carrying on a sole proprietorship business under the name style of [name of the **Successful Bidder**] at [address of sole proprietorship] (hereinafter referred to as the "**Purchaser**", which expression shall unless repugnant to the meaning or context thereof, be deemed to include his/ her heirs, executors, administrators, representatives and permitted assigns) of the other part;

OR

[Name of the Successful Bidder], a limited liability partnership incorporated under the Limited Liability Partnership Act, 2008, with its registered office at [address of registered office] (hereinafter referred to as the "**Purchaser**", which expression shall unless repugnant to the meaning or context thereof, be deemed to include its partners, successors, representatives and permitted assigns) of the other part;

OR

[Name of the Individual], an individual residing at [address], **[Name of the**

[1] **Note**: Delete whichever is inapplicable.

Individual], an individual residing at [address] and **[Name of the Individual]**, an individual residing at [address] all carrying on a partnership business under the name style of [**Name of the Successful Bidder**] registered under [name of Act under which the firm is registered] (hereinafter referred to as the "**Purchaser**", which expression shall unless repugnant to the meaning or context thereof, be deemed to include all the partners of the said firm, their representatives, heirs executors, administrators and permitted assignees) of the other part;

OR

[Name of the Successful Bidder], a [insert legal nature of the Successful Bidder (e.g. trust, society etc.)] incorporated under the [insert statute under which the Successful Bidder is incorporated] with its registered office/ principal place of business/ office at [address of registered office/ principal place of business/office] (hereinafter referred to as the "**Purchaser**", which expression shall unless repugnant to the meaning or context thereof, be deemed to include its successors, representatives and permitted assigns) of the other part.[2]

The Seller and the Purchaser may hereinafter be referred to as such, or may collectively be referred to as the "**Parties**", and individually each may be referred to as a "**Party**".

WHEREAS:

A. The Purchaser has participated in an electronic auction for grant of the Coal Linkages (*as hereinafter defined*), pursuant to which the Purchaser has qualified as a Successful Bidder (*as hereinafter defined*) in accordance with the scheme document dated [*insert date*] issued by Coal India Limited for auction of coal linkages in the [*insert name of the sub-sector for which auction has been conducted*] sub-sector ("**Scheme Document**").

B. The Purchaser has thereafter been issued a letter of intent dated [*insert date*] by the Seller ("**LOI**") in terms of which *inter alia* the Purchaser has become entitled to enter into a fresh fuel supply agreement to receive the Annual Contracted Quantity (*as hereinafter defined*).

C. In terms of the requirements of clause 3.7 of the Scheme Document, the Purchaser has submitted the following documents with the Seller in accordance with the timelines stipulated in the Scheme Document:

(a) [an unconditional and irrevocable bank guarantee dated [*insert date*] from [*insert name of bank*] issued at [*insert place*] in the format provided in ***Annexure I/*** a non-interest bearing security deposit][3] for an amount equal to Rs. [*insert amount in figures*] (Rupees [*insert amount in words*] only) ("**Performance Security**"); and

[2] **Note**: Delete whichever is inapplicable.
[3] **Note**: Deleted whichever is inapplicable.

(b) the documents listed in ***Annexure II***.

D. Accordingly, the Parties are now entering into and executing this Agreement to record their mutual understanding with respect to the terms and conditions for supply of the Annual Contracted Quantity (*as hereinafter defined*) from the Seller to the Purchaser.

NOW THEREFORE, in consideration of the of the mutual covenants, terms and conditions and understandings set forth in this Agreement and other good and valuable consideration, the receipt and adequacy of which are hereby mutually acknowledged, the Parties with the intent to be legally bound hereby covenant and agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, in addition to the terms defined in the introduction of the Parties, the Recitals and the body of this Agreement, except where the context otherwise requires, the following words and expressions shall have the following meanings:

(a) "**Acceptable Bank**" shall mean a Scheduled Bank as listed in the Second Schedule of the Reserve Bank of India Act, 1934 excluding those listed under the headings of Gramin Banks, Urban Co-operative Banks and State Co-operative Banks;

(b) "**Advance Payment**" shall have the meaning ascribed to it in Clause 8.2.2;

(c) "**Affected Party**" shall have the meaning ascribed to it in Clause 18.1;

(d) "**Agreement**" shall mean this fuel supply agreement including all the Annexures, schedules, exhibits and attachments thereto and any subsequent supplements, amendments and/ or modifications thereof as may be issued in writing or notified by the Seller or as may be entered into in writing by the Parties in accordance with the terms and conditions hereof;

(e) "**Annual Contracted Quantity**" or "**ACQ**" shall have the meaning as ascribed to it in Clause 5.1.1, and the same shall include the resultant quantity pursuant to the revision / adjustment as per Clause 5.1.2 and Clause 5.1.3;

(f) "**Applicable Laws**" shall mean all applicable statutes, laws, by-laws, rules, regulations, orders, ordinances, protocols, codes, guidelines, policies, notices, directions, judgments, decrees and/ or other requirements or official directives of any governmental authority or court or other rules or regulations, approvals from the relevant governmental authority, government resolution, directive, or other government restriction or any

similar form of decision of, or determination by, or any interpretation or adjudication having the force of law in India;

(g) "**As Delivered Price of Coal**" shall have the meaning ascribed to it in Clause 11.1;

(h) "**Business Day**" shall mean each Monday, Tuesday, Wednesday, Thursday, Friday and Saturday that is not declared a holiday in the State of [*insert place*], India;

(i) "**CIL**" shall mean Coal India Limited, the holding company of the Seller, having its registered office at Coal Bhawan, Premise No-04 MAR, Plot No-AF-III, Action Area-1A, Newtown, Rajarhat, Kolkata-700156;

(j) "**Claim**" shall mean, in relation to a Person, a demand, claim, action or proceeding made or brought by or against the Person, however arising and whether present, immediate or future;

(k) "**Coal**" shall mean non-coking as well as coking coal, produced by the Seller domestically and categorized into different classes, GCV bands, Grades and sizes, as per the notifications/orders issued for such purpose by Government of India, CIL and/ or the Seller;

(l) "**Coal Linkages**" shall have the meaning ascribed to it in the Scheme Document;

(m) "**Coal Mine**" shall mean the designated coal mine specified in ***Annexure III***;

(n) "**Coal Requirement**" shall have the meaning ascribed to it in the Scheme Document;

(o) "**Contracted Grade**" shall mean the Grade of Coal specified in ***Annexure III*** to be supplied to the Purchaser in accordance with the terms of this Agreement;

(p) "**Control**" shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner;

(q) "**Deemed Delivered Quantity**" shall have the meaning ascribed to it in Clause 5.8;

(r) "**Defaulting Party**" shall have the meaning ascribed to it in Clause 17.2(h);

(s) "**Delivery Point**" shall mean [the colliery siding(s) or colliery loading

point(s), as the case may be, in the Coal Mine as identified in ***Annexure III*** /the railway siding(s) or railways loading point(s), as the case may be, as identified in ***Annexure III***][4] at which the Seller shall deliver the Annual Contracted Quantity in accordance with the terms of this Agreement;

(t) "**Dispute**" shall have the meaning ascribed to it in Clause 16.1;

(u) "**Dispute Notice**" shall have the meaning ascribed to it in Clause 16.3;

(v) "**Eligibility Conditions**" shall have the meaning ascribed to it in the Scheme Document;

(w) "**Extended Term**" shall have the meaning ascribed to it in Clause 2.4;

(x) "**Failed Quantity**" shall have the meaning ascribed to it in Clause 5.5.1;

(y) "**Final Verification Agency**" shall have the meaning ascribed to it in Clause 5.1.2;

(z) "**Financial Coverage**" shall have the meaning ascribed to it in Clause 12.2.1;

(aa) "**Financial Coverage Bank Guarantee"** or "**Financial Coverage BG**" shall have the meaning ascribed to it in Clause 12.2.1;

(bb) "**Force Majeure Act**" shall have the meaning ascribed to it in Clause 18.1;

(cc) "**GCV**" shall mean gross calorific value;

(dd) "**Grade**" shall mean the grade/class in which the coking and non-coking Coal are categorised and/or to be categorised in terms and in accordance with the relevant notifications issued by the Seller and/or the Government 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; and
(iii) semi-coking Coal: based on (ash + moisture) percentage;

(ee) "**Indemnified Party**" shall have the meaning ascribed to it Clause 19.1;

(ff) "**Indexed Notified Price**" shall have the meaning ascribed to it Clause11.2;

(gg) "**Interest Rate**" shall mean the repo-rate of the Reserve Bank of India as

[4] **Note:** Delete whichever is inapplicable.

applicable on the due date of payment by the Purchaser plus 3% (three per cent.);

(hh) "**Level of Delivery**" shall have the meaning ascribed to it in Clause 5.6.1;

(ii) "**Level of Lifting**" shall have the meaning ascribed to it in Clause 5.6.2;

(jj) "**Licenses**" shall have the meaning ascribed to it in Clause 20.2(c);

(kk) "**Lock-in Period**" shall have the meaning ascribed to it in Clause 17.1;

(ll) "**LOI**" shall have the meaning ascribed to it in Recital B;

(mm) "**Losses**" shall have the meaning ascribed to it in Clause 19.2;

(nn) "**Month**" shall mean a calendar month;

(oo) "**Non-Affected Party**" shall have the meaning ascribed to it in Clause 17.2(a);

(pp) "**Non-Defaulting Party**" shall have the meaning ascribed to it in Clause 17.2(h);

(qq) "**Normative Coal Requirement**" shall have the meaning ascribed to it in the Scheme Document;

(rr) "**Notified Price**" shall mean Rs. [●] (Rupees [●] only) per tonne;

(ss) "**Performance Security**" shall have the meaning ascribed to it in Recital C(a) and shall include any revised/ incremental Performance Security submitted by the Purchaser in accordance with the requirements of Clause 4;

(tt) "**Person**" shall mean any individual, general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative, association, any foreign trust or any foreign business organization, or any other entity, whether or not having a separate legal personality;

(uu) "**Representative**" shall have the meaning ascribed to it in Clause 16.2;

(vv) "**Scheduled Quantity**" or "**SQ**" shall have the meaning ascribed to it in Clause 5.4.1;

(ww) "**Scheme Document**" shall have the meaning ascribed to it in Recital A;

(xx) "**Secondary Source**" shall have the meaning ascribed to it in Clause 5.3;

(yy) "**Signature Date**" shall mean the date of singing of this Agreement by the Parties;

(zz) "**Specified End Use Plant**" shall mean one or more [insert relevant sub-sector specific] units (in a single location within the same boundary) located in India and owned by the Purchaser, the particulars of which are detailed in of ***Annexure IV***,;

(aaa) "**Successful Bidder**" shall have the meaning ascribed to it in the Scheme Document;

(bbb) "**Term**" shall have the meaning ascribed to it Clause 2.2;

(ccc) "**Third Party**" shall mean a Person who is not a Party to this Agreement;

(ddd) "**Third Party Agency**" shall mean the independent agency appointed for conduct of third party sampling in accordance with Clause 9;

(eee) "**Transfer Event**" shall have the meaning ascribed to it in Clause 15.1;

(fff) "**Winning Premium**" shall mean [*insert in numbers*]%[5] ([*insert in words*] per cent.) of the Notified Price (or Indexed Notified Price, as the case may be); and

(ggg) "**Year**" shall mean the financial year of the Seller, commencing on April 1st and ending on the following March 31st.

1.2 **Interpretation**

In this Agreement, unless the context specifies otherwise:

(a) headings and bold typeface are used for convenience only and shall not affect the interpretation of this Agreement;

(b) reference to the singular includes a reference to the plural and vice versa, and reference to any gender includes a reference to all other gender;

(c) references to the Recitals, Clauses and Annexure shall be deemed to be a reference to the recitals, clauses and annexures of this Agreement;

(d) the Recitals (containing substantive provisions), Clauses and Annexures form part of this Agreement and shall have the same force, binding nature and effect as if expressly set out in the body of this Agreement, and any reference to this Agreement shall include any Recitals (containing substantive provisions), Clauses and Annexures to it;

[5] **Note**: It is clarified that the winning premium shall be rounded up to the nearest second decimal.

(e) the expression "this Clause" shall, unless followed by reference to a specific provision, be deemed to refer respectively to the whole Clause, not merely the sub-clause, paragraph or other provision in which the expression occurs;

(f) references to any enactment are to be construed as referring also to any amendment or re-enactment (whether before or after the Signature Date), and to any rule, regulation, notification, circular or order issued or made thereunder;

(g) references to "**include**" and "**including**" shall be construed without limitation;

(h) reference in this Agreement to any statute or regulation made using a commonly used abbreviation, shall be construed as a reference to the short title of the statute or full title of the regulation;

(i) references to any agreements, scheme documents, instruments and/ or documents are to be construed as references to such agreements, scheme documents, instruments and/ or documents as amended, modified or supplemented from time to time;

(j) reference to "**writing**" or "**written**" means any method of reproducing words in a legible and non-transitory form (excluding, unless otherwise stated herein, e-mail);

(k) the terms "**hereof**", "**herein**", "**hereby**", "**hereto**" and derivative or similar words refer to this entire Agreement or specified Clauses of this Agreement, as the case may be;

(l) the words "**directly or indirectly**" mean directly or indirectly through one or more intermediary Persons or through contractual or other legal arrangements, and "**direct or indirect**" shall have the correlative meanings;

(m) where a wider construction is possible, the words "**other**" and "**otherwise**" shall not be construed *ejusdem generis* with any foregoing words;

(n) time is of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence. When any number of days is prescribed herein, the same shall be reckoned exclusively of the first and inclusively of the last day unless the last day does not fall on a Business Day, in which case the last day shall be the next succeeding Business Day;

(o) any approval, consent, permission, license etc., to be granted by a Party under this Agreement shall be deemed to mean an approval, consent, permission, license etc., in writing; and

(p) any capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Scheme Document.

2. COMMENCEMENT AND TERM OF THE AGREEMENT

2.1 This Agreement shall come into force with effect from the Signature Date.

2.2 Subject to Clause 17.1 and Clause 17.2, this Agreement shall remain in force and effect commencing from the Signature Date until the expiry of 5 (five) years from the Signature Date ("**Term**").

2.3 Notwithstanding the provisions of Clause 2.2, in the event of any change in the Grade structure of the Contracted Grade of Coal, such changed Grade structure shall be binding and complied with by the Parties. The Seller shall, within 7 (seven) days of introduction of such Grade 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. Upon such joint review, this Agreement shall be duly amended in writing to bring it in full conformity with such change. However, if despite their efforts the Parties are unable to arrive at a mutually agreed position with respect to the subject matter of review, within a period of 3 (three) months from the date of the above mentioned notice, the aggrieved Party shall have the right to terminate the Agreement subject to a further notice of 3 (three) months given in writing to the other Party.

2.4 On completion of the Term, this Agreement shall expire, unless the Parties mutually agree in writing to extend the Agreement for a further duration of 5 (five) years ("**Extended Term**"), on the same or such modified terms as may be agreed upon in writing by the Parties.

3. INFORMATION RIGHTS OF THE SELLER

The Purchaser acknowledges and agrees that the Seller shall have the right, throughout the Term or Extended Term, as the case may be, to call for such information and/ or documentation from the Purchaser (including the documentation detailed in ***Annexure V***) as may be required by the Seller to check:

(a) the veracity of the Purchaser's claim of being a *bona fide* consumer of the Contracted Grade of Coal with respect to the Specified End Use Plant; and

(b) the Purchaser's compliance with the LOI, the Eligibility Conditions, the terms and conditions of the Scheme Document and of this Agreement.

The Purchaser shall at all times extend necessary cooperation to the Seller in this regard and shall provide relevant information and/ or documentation requested by the Seller within such reasonable time as may be requested by the Seller.

4. PERFORMANCE SECURITY

4.1 The Purchaser has submitted the Performance Security to the Seller in accordance with the provisions of the Scheme Document. The amount of Performance Security is and shall continue to be for a value computed as per the following formula:

Performance Security = [Annual Contracted Quantity] multiplied by [6% of the aggregate of the Notified Price (or the latest Indexed Notified Price, as the case may be) and Winning Premium].

4.2 The Performance Security shall remain valid till 3 (three) months from the date of expiry of the Term or Extended Term, as the case may be. The Performance Security shall be returned or refunded to the Purchaser at the end of its validity, subject to successful completion of and complete settlement of all claims of the Seller arising out of this Agreement.

4.3 The amount of Performance Security shall be suitably revised as follows, in case of change in the Notified Price (or the latest Indexed Notified Price, as the case may be) in accordance with Clause 11:

4.3.1 In the event of any increase in the Notified Price (or the latest Indexed Notified Price, as the case may be) pursuant to Clause 11, the Purchaser may:

(a) provide a new bank guarantee issued by any Acceptable Bank for the revised value computed as per Clause 4.1; or

(b) provide an additional/ top up bank guarantee issued by any Acceptable Bank for an amount corresponding to the incremental value of the Performance Security computed as per Clause 4.1.

Alternatively, the bank guarantee constituting the Performance Security may be suitably amended for the revised value computed as per Clause 4.1. The new/ revised/ amended/ top up bank guarantee shall be in the format set out in ***Annexure I***. In the event that the Performance Security has been provided in the form of a non-interest bearing security deposit, then, upon any increase in the Notified Price (or the latest Indexed Notified Price, as the case may be) pursuant to Clause 11, the Purchaser shall deposit an additional amount towards the security deposit to cover for such increase.

Any failure of the Purchaser to replenish the Performance Security in the manner specified herein above within 7 (seven) days of notification of change in the Notified Price (or the latest Indexed Notified Price, as the case may be) under Clause 11, shall entitle the Seller to suspend the supply of the Contracted Grade of Coal in accordance with Clause 14.3 without absolving the Purchaser of its obligations under this Agreement. Further, if the Purchaser fails to replenish the Performance Security within 30 (thirty) days of such suspension of Coal supplies, the Agreement shall unless otherwise agreed in writing by the Parties, stand automatically terminated without any further act on the part of the Seller and the Seller shall also have the right to invoke the existing Performance Security.

4.3.2 In the event of any decrease in the Notified Price (or the latest Indexed Notified Price, as the case may be) pursuant to Clause 11, the Purchaser may provide a new bank guarantee issued by an Acceptable Bank in the format specified in ***Annexure I*** for the revised value computed as per Clause 4.1. The Seller shall, within 7 (seven) days of receipt of such new bank guarantee, return the original Performance Security to the Purchaser. In the event that the Performance Security has been provided in the form of a non-interest bearing security deposit, then, upon any decrease in the Notified Price (or the latest Indexed Notified Price, as the case may be) pursuant to Clause 11, the Seller shall refund the excess value of the security deposit to the Purchaser.

4.3.3 In addition to the above, in the event of revision / adjustment in the Annual Contracted Quantity in accordance with Clause 5.1.3, the Purchaser may provide a new bank guarantee issued by an Acceptable Bank in the format specified in ***Annexure I*** for the revised Annual Contracted Quantity computed as per Clause 5.1.3. The Seller shall, within 7 (seven) days of receipt of such new bank guarantee, return the original Performance Security to the Purchaser. In the event that the Performance Security has been provided in the form of a non-interest bearing security deposit, then, upon any revision / adjustment in the Annual Contracted Quantity pursuant to Clause 5.1.3, the Seller shall refund the excess value of the security deposit to the Purchaser.

4.3.4 The period of validity of any new bank guarantee, amended bank guarantee, top up/ additional bank guarantee furnished by the Purchaser and/ or any additional security deposit provided by the Purchaser pursuant to this Clause 4.3, shall be the same as that of the initial Performance Security.

4.4 **Invocation/ Forfeiture of Performance Security**

4.4.1 The Seller shall be entitled to forfeit / invoke the whole or a part of the Performance Security in the following situations:

(a) in the event that the Purchaser fails to submit the revised incremental Performance Security to the Seller within the timeline stipulated in Clause 4.3 above;

(b) in the event that the Purchaser fails to pay the costs of third party sampling in accordance with Clause 8.1.1 and Clause 8.2.1;

(c) in accordance with Clause 5.5.2, Clause 12.2.4, Clause 13.2, Clause 14, Clause 15.3 or Clause 17.1;

(d) in the event that the Seller becomes entitled to exercise its right to terminate or actually exercises its right to terminate this Agreement for any of the reasons specified in Clause 17.2(d) to Clause 17.2(k)*;* and / or

(e) in the event the Purchaser does not cooperate and comply with the

requirements of the Final Verification Agency / CIL / the Seller, including promptly providing all such documentation, clarifications, information and/ or access, as may be requested for the purpose of verification in accordance with Clause 5.1.2.

4.4.2 In the event of any partial or complete invocation of the Performance Security under this Agreement, the Purchaser would have to replenish the Performance Security within 30 (thirty) days of its invocation hereunder, failing which the Seller shall be entitled to terminate this Agreement in accordance with Clause 17.2(f). The period of validity of the replenished Performance Security furnished by the Purchaser pursuant to this Clause 4.4, shall be the same as that of the initial Performance Security. In the event that the Acceptable Bank issuing the Performance Security does not permit a partial invocation of the Performance Security, the Seller shall be entitled to invoke the whole Performance Security and recover thereunder, the amounts due to it and the balance amount, if any, shall be refunded immediately to the Purchaser within 1 (one) day of replenishment of the Performance Security to the Seller in the manner as stipulated above.

5. ANNUAL CONTRACTED QUANTITY

5.1 Annual Contracted Quantity

5.1.1. The quantity of the Contracted Grade of Coal agreed to be supplied at the Delivery Point by the Seller to the Purchaser and undertaken to be purchased by the Purchaser from the Seller at the Delivery Point shall be [*insert figures*] ([*insert in words*]) lakh tonnes per Year ("**Annual Contracted Quantity**"). For part of a Year, the Annual Contracted Quantity shall be pro-rated accordingly. The Annual Contracted Quantity shall be supplied as per the provisions of this Clause 5 and Clause 8.

5.1.2. The Seller / CIL (acting on behalf of the Seller as its duly authorized representative) reserves the right to get the Coal Requirement of the Purchaser verified by the Central Institute of Mining & Fuel Research or any other agency that may be nominated by CIL ("**Final Verification Agency**"), within 180 (one hundred eighty) days of execution of the Agreement.

In case the Purchaser, along with this Agreement, has also entered into other fuel supply agreement(s) with other subsidiary(ies) of CIL (apart from the Seller) for the supply of Coal pursuant to the Scheme Document, then the period of 180 (one hundred eighty) days mentioned above shall commence from the date of execution of this Agreement or such other fuel supply agreement(s), whichever is earlier.

5.1.3. In case the Coal Requirement verified by the Final Verification Agency in terms of Clause 5.1.2 above is less than the Coal Requirement based on which the Purchaser has been allotted the Annual Contracted Quantity in terms of the Scheme

Document, then the Annual Contracted Quantity shall be revised / adjusted in accordance with clause 3.5.2(k) of the Scheme Document, as applicable.

5.1.4. The aforesaid revision / adjustment in the Annual Contracted Quantity shall be given effect to during the residual period of the initial 2 (two) years from the date of execution of the Agreement, in accordance with the following illustration and the revised Annual Contracted Quantity will be supplied during the balance term of the Agreement.

Illustration: Adjustment of Annual Contracted Quantity post verification by the Final Verification Agency

Description	Formula	Value
Annual Contracted Quantity	A	20,500 TPA
Time taken by the Final Verification Agency to verify the Coal Requirement	B	4 months
Say, total quantity supplied prior to the verification by the Final Verification Agency	C	8,500 Tonnes
Annual Contracted Quantity post verification by the Final Verification Agency	D	17,065 TPA
Annual Contracted Quantity post verification by the Final Verification Agency (post adjustment for the Transport Factor)	E	17,000 TPA
Excess supply before the verification by Final Verification Agency is available	F= C – (E × B/12)	2,833 Tonnes
Residual Period	G = 24 - B	20 months
Required Monthly Adjustment	H = F /G	142 Tonnes
Scheduled Quantity to be supplied during the Residual Period	I = (E/12) - H	1,275 Tonnes
The figures have been rounded off for the purpose of this illustration.		

5.2 End-use of Coal

The total quantity of the Coal/Contracted Grade of Coal supplied pursuant to this Agreement shall only be utilized in the Specified End Use Plant. The Purchaser shall not sell, divert and/or transfer the Coal/ Contracted Grade of Coal for any purpose whatsoever and any such sale, diversion and/ or transfer shall be treated as material breach of Agreement. In the event that the Purchaser engages in any such sale, diversion, transfer and/ or trade of Coal/ Contracted Grade of Coal, the Seller shall, after giving the Purchaser a due opportunity of being heard on the matter, be entitled to terminate this Agreement without any liabilities or damages whatsoever payable to the Purchaser.

It is expressly clarified that the Seller shall reserve the right to call for any document(s) from the Purchaser to verify the end-use of the Coal/ Contracted Grade of Coal and satisfy itself of the accuracy of the contents thereof. The Purchaser shall have the obligation to comply with the Seller's directions and shall extend full co-operation to the Seller in carrying out such verification.

Without prejudice to the above rights of the Seller, in case of specific complaints regarding non utilization of coal in accordance with this Agreement, such complaints may be referred to the relevant department(s) or agencies for suitable action.

5.3 **Sources and Mode of Supply**

The Seller shall endeavor to supply the Contracted Grade of Coal at the Delivery Point. In case the Seller is not in a position to supply the Scheduled Quantity of the Contracted Grade of Coal at the Delivery Point on account of a Force Majeure Act, the Seller shall have the option to supply the balance quantity of the Contracted Grade of Coal at the secondary source indicated in ***Annexure III*** ("**Secondary Source**"). Further, in case of supply of the Contracted Grade at the Secondary Source, the Purchaser shall accept the Contracted Grade of Coal directly from such Secondary Source. Additional costs incurred due to supply of the Contracted Grade of Coal at the Secondary Source shall be borne by the Purchaser.

No flexibility shall be given to the Purchaser to take delivery of the Contracted Grade of Coal through any mode other than the mode specified in ***Annexure III***.

5.4 **Scheduled Quantity**

5.4.1 The Annual Contracted Quantity shall, unless otherwise agreed to in writing between the Parties, be delivered in equal monthly quantities during the Year which shall be calculated as Annual Contracted Quantity/12 ("**Scheduled Quantity**" or "**SQ**"); provided that during the first Year of the Term, the Scheduled Quantity shall be suitably pro-rated (i.e. the Scheduled Quantity to be delivered shall be computed suitably commencing from the Signature Date till 31st March of the next Year).

In case of revision / adjustment of the Annual Contracted Quantity in terms of Clause 5.1.3, then the Scheduled Quantity shall consequently be revised, in accordance with the illustration provided in Clause5.1.4.

5.4.2 In case of supply by rail, the Parties agree that in case the Purchaser is unable to lift the Scheduled Quantity due to shortfall in the quantity necessary for formation of rake for transportation through rail mode, the balance Scheduled Quantity will be carried forward to the subsequent Month(s)/ Year(s). As and when such carried forward quantity is adequate to form a rake for transportation through rail mode, the same shall be supplied to the Purchaser. If at the end of the Term, any residual Scheduled Quantity remains (including any quantity which has been carried forward as aforesaid), the same shall be dealt with in the following manner:

(a) in case the residual Scheduled Quantity is 2000TPA or more, the Purchaser will be supplied with the quantity equivalent to one rake; and

(b) in case the residual Scheduled Quantity is less than 2000TPA, such quantity

will lapse.

5.4.3 Notwithstanding anything to the contrary contained herein, if for a Year, the Level of Lifting by the Purchaser falls below the thresholds specified in Clause 5.5.1 solely on account of the fact that the Purchaser has been unable to lift the Scheduled Quantity due to shortfall in the quantity necessary for formation of rake for transportation through rail mode, the Purchaser shall not be liable to pay any compensation for shortfall in the Level of Lifting caused due to the above mentioned reason.

5.4.4 The total variation in the monthly Scheduled Quantity shall not, unless otherwise agreed to in writing by the Parties, exceed 10% (ten per cent.) of the Scheduled Quantity.

5.5 Compensation for short delivery/lifting

5.5.1 Subject to the provisions of Clause 5.4.3, if for a Year, the Level of Delivery by the Seller, or the Level of Lifting by the Purchaser falls below 75% (seventy five per cent.) with respect to that Year, then 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:

Level of Delivery/ Level of Lifting in a Year	**Percentage of Penalty for the Failed Quantity (at the price payable under Clause 11 for Contracted Grade of Coal supplied)**
Below 75% but up to 70% of ACQ	0 -5
Below 70% but up to 65% of ACQ	5-10
Below 65% but up to 60% of ACQ	10-20
Below 60% but up to 50% of ACQ	20-40
Below 50%	40

The penalty 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 a linear basis within each slab.

Illustration:

(a) If the Level of Delivery/ Level of Lifting is below 75% (seventy five per cent.) but up to 70% (seventy per cent.) of the ACQ, the penalty would be 1% (one per cent.) for each percentage shortfall in Level of Delivery/ Level of Lifting below 75% (seventy five per cent);

(b) If the Level of Delivery/ Level of Lifting is below 70% (seventy per cent.) but up to 65% (sixty five per cent.) of the ACQ, the penalty would be 5%

(five per cent.) plus (1% (one per cent.) for each percentage shortfall in Level of Delivery/ Level of Lifting below 70% (seventy per cent.));

(c) If the Level of Delivery/ Level of Lifting is below 65% (sixty five per cent.) but up to 60% (sixty per cent.), the penalty would be 10% (ten per cent.) plus (2% (two per cent.) for each percentage shortfall in Level of Delivery/ Level of Lifting below 65% (sixty five per cent.));

(d) If the Level of Delivery/ Level of Lifting is below 60% (sixty per cent.) but up to 50%, the penalty would be 20% (twenty per cent.) plus (2% (two per cent.) for each percentage shortfall in Level of Delivery/ Level of Lifting below 60% (sixty per cent.)); and

(e) If the Level of Delivery/ Level of Lifting is below 50%, the penalty would be 40% (forty per cent.).

5.5.2 Compensation for the Failed Quantity shall be payable by the defaulting Party to the other Party within a period of 90 (ninety) days from the date of receipt of a claim in this regard from the non-defaulting Party. In the event of non-payment within the due date, the defaulting Party shall be liable to pay interest as mentioned in Clause 13. In the event that the compensation along with interest payable thereon is not paid within a period of 180 (one hundred and eighty) days of receipt of the claim as aforesaid, the Seller shall have the right to invoke the Performance Security.

5.6 **Level of Delivery and Level of Lifting**

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

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

Where:

LD = Level of Delivery of the Contracted Grade of Coal by the Seller for the Year.

DQ = Delivered Quantity, namely, aggregate of actual quantities of the Contracted Grade of Coal delivered by the Seller for the Year.

DDQ = Deemed Delivered Quantity, reckoned in the manner stated in Clause 5.8.

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

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

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

RF = Quantity of the Contracted Grade of Coal that could not be supplied by the Seller for 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.

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

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

Where:
LL = Level of Lifting of the Contracted Grade of Coal by the Purchaser for the Year.

DDQ = Deemed Delivered Quantity, reckoned in the manner stated in Clause 5.8.

FM = Proportionate quantity of the Contracted Grade of Coal which could not be lifted by the Purchaser for a Year due to occurrence of a Force Majeure Act affecting the Seller and / or the Purchaser, calculated as under:

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

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

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

5.8 **Deemed Delivered Quantity**

For the purpose of this Agreement, the aggregate of the following items provided under Clause 5.8.1 to Clause 5.8.2 shall constitute the Deemed Delivered Quantity with respect to a Year:

5.8.1 *For supply of Coal by rail*

(a) The quantity of the Contracted Grade of Coal not supplied by the Seller owing to omission or failure on the part of the Purchaser to submit in advance the designated rail program(s) to the Seller as per agreed time-table

with respect to the Scheduled Quantity in accordance with Clause 8.2.

(b) The quantity of the Contracted Grade 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.

(c) The quantity of the Contracted Grade of Coal not supplied by the Seller owing to the Seller exercising the right of suspension of supplies in terms of Clause 14.

(d) The quantity of the Contracted Grade of Coal not supplied by the Seller owing to the Purchaser failing or omitting to fulfill the requirements under Clause 12.

(e) The quantity of the Contracted Grade of Coal offered by the Seller which is not accepted by the Purchaser.

(f) The quantity of the Contracted Grade of Coal not supplied by the Seller owing to shortfall in the quantity necessary for formation of rake for transportation through rail mode.

5.8.2 *For Supply of Coal by road*

(a) The quantity of the Contracted Grade of Coal not supplied by the Seller owing to omission or failure on the part of the Purchaser to book orders for the Scheduled Quantity in terms of Clause 8.2.2.

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

(c) The quantity of the Contracted Grade of Coal not supplied by the Seller owing to the Seller exercising the right of suspension of supplies in terms of Clause 14.

(d) The quantity of the Contracted Grade of Coal not supplied by the Seller owing to the Purchaser failing or omitting to fulfill the requirements under Clause 12.

(e) The quantity of the Contracted Grade of Coal offered by the Seller which is not accepted by the Purchaser.

5.8.3 Deemed Delivered Quantity in terms of Clause 5.8.1 and Clause 5.8.2 shall be calculated on a cumulated Monthly basis for a Year.

6. QUALITY

The quality of the Contracted Grade of Coal to be supplied at the Delivery Point shall, as far as possible, be within the specifications as set out in ***Annexure VI***. The Seller shall take all reasonable steps to remove stones above 250mm (in size), shale and extraneous matters before the loading of the Contracted Grade of Coal. A complaint, if any, regarding the quality of the Contracted Grade of Coal shall be made by the Purchaser giving specific details of the consignment to the general manager (sales and marketing) of the Seller.

7. WEIGHMENT OF COAL

7.1 If the Contracted Grade of Coal is delivered for dispatch by rail, each wagon shall be weighed at the weighbridge of the Seller at the Delivery Point and the recorded weight shall be entered in the relevant dispatch document/ railway receipt. 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:

7.1.1 In case wagons are weighed on an electronic weighbridge, the weight recorded in the computerized print out shall be taken as the weight for the respective wagon. In the absence of a computerized print out facility, the weight as certified by the railways shall be reckoned as the weight and shall be binding on the Parties.

7.1.2 In the absence of electronic weighbridges, the weighment shall be done on the mechanical weighbridges at the Delivery Point.

7.1.3 In the cases not covered by Clause 7.1.1 or Clause 7.1.2 above, the weight recorded on the relevant dispatch document/ railway receipt as per existing practice of the railways shall be reckoned as the weight and shall be binding on the Parties. However, the wagons will be loaded up to the permissible capacity fixed by the railways for such wagons on the basis of volumetric measurement.

7.2 If the Contracted Grade of 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.

7.3 The Purchaser shall be entitled to depute an authorised representative to witness the weighment / loading of the wagon(s) at the Delivery Point.

7.4 The weighbridges at the Delivery Point at Seller's end shall be calibrated and maintained as per Applicable Laws. 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 thereof, wherever necessary, as per Applicable Laws.

8. METHOD OF ORDER BOOKING AND DELIVERY OF THE COAL

8.1 Order Booking by Rail

8.1.1 In terms of the notice issued by the Seller before the commencement of a month, the Purchaser shall submit a programme for supply of the Scheduled Quantity in writing to the Seller, as per the applicable railway rules and the Seller's notified procedures. The Purchaser shall also ensure compliance of the requirements under Clause 11. Thereafter, the Seller shall process for issuance of the consent of the programme.

The Purchaser shall, at the time of submitting a programme for supply of the Scheduled Quantity in writing to the Seller in accordance with Clause 8.1.1, also pay 50% (fifty per cent.) of the costs (along with applicable taxes and statutory levies, if any) of the third party sampling for the Scheduled Quantity to the Seller, if applicable, as per the terms specified in **Annexure VII**. The Seller shall transfer the third party sampling costs received from the Purchaser to the Third Party Agency.

8.1.2 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.

8.1.3 The Seller shall thereupon submit a 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.

8.1.4 The wagons shall be booked on "freight to pay" or "freight pre-paid" basis, as applicable based on arrangements made by the Purchaser with the railways in this regard.

8.2 **Order Booking by Road**

8.2.1 The Seller shall notify the Purchaser of the monthly time schedule for order booking (by road) and advance payment and the Purchaser shall deposit 100% (one hundred per cent.) of the Advance Payment in the manner provided in Clause 8.2.2, for the Scheduled Quantity. The Purchaser shall, at the time of placing its order for the Scheduled Quantity in accordance with Clause 8.2.2, also be required to pay costs (along with its share of applicable taxes and statutory levies, if any) for third party sampling for the Scheduled Quantity to the Seller, if applicable, as per the terms specified in **Annexure VII**. The Seller shall transfer the third party sampling costs so received from the Purchaser to the Third Party Agency.

8.2.2 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 the period as notified by the Seller. The Advance Payment may also be made in 3 (three) installments each of 10 (ten) days value of the Contracted Grade of Coal in accordance with the terms and conditions including

the time periods of depositing the installments, as stipulated in the monthly notice issued by the Seller under Clause 8.2.1.

8.2.3 Subject to receipt of the Advance Payment along with the costs for third party sampling, if applicable, the Seller shall arrange to issue sale order(s)/delivery order(s) and shall also issue necessary loading programme / schedule from time to time. The Purchaser shall arrange to place the required number / type of trucks to lift the Contracted Grade of 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 receipt of a notice in this regard from the Purchaser and that the same reaches the Delivery Point/ weighbridge within 5 (five) working days of the last day specified in the notice for booking orders in terms of Clause 8.2.1.

8.2.4 The Seller shall ensure delivery and the Purchaser shall ensure lifting of the Contracted Grade of Coal against sale order / delivery order of any month within the validity period of 45 (forty five) days, as mentioned in the sale order/ delivery order.

8.2.5 In the event of any Scheduled 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 any payments made by the Purchaser to the Seller for such quantity. The refund with respect to a particular month shall be made by the Seller within 30 (thirty) days from the date of receipt of an application for refund from the Purchaser.

9. DETERMINATION OF COAL QUALITY

9.1 Notwithstanding anything to the contrary contained herein, the Purchaser shall be required to inform the Seller in writing, on the Signature Date, whether it proposes to avail third party sampling from a Third Party Agency in accordance with the terms hereof. In the event the Purchaser intimates the Seller that it is:

(a) desirous of availing third party sampling by the Third Party Agency, such facility shall be allowed at the Delivery Point only and such third party sampling shall be undertaken throughout the Term in accordance with the procedure set out in ***Annexure VII***. In the event that the Purchaser is desirous of availing third party sampling by the Third Party Agency and for any reason whatsoever, the third party sampling cannot be conducted in accordance with the procedure set out in ***Annexure VII***, the Purchaser may opt for joint sampling and analysis to be carried out by the Seller in presence of the Purchaser at the Delivery Point in accordance with such procedures as may be agreed upon between the Parties; and

(b) not desirous of availing third party sampling, the Purchaser would not be entitled to avail the said facility at any time during the Term.

9.2 Notwithstanding anything to the contrary contained herein, in the event that the

Purchaser does not opt for third party sampling by a Third Party Agency, it shall be obligated to pay, throughout the Term, the As Delivered Price in respect of the Contracted Grade of Coal delivered to it and shall not, in any way be entitled to benefit from or rely on the results of third party sampling availed by any other purchaser of Coal.

In case of a variation of Grade of Coal (decided on the basis of third party sampling by a the Third Party Agency) as compared to the Contracted Grade of Coal, the Purchaser shall pay the Notified Price (or the latest Indexed Notified Price, as the case may be) of the supplied Grade of Coal plus the Winning Premium of the supplied Grade of Coal, without factoring in royalty payments, taxes etc.

Illustration:

Contracted Grade	G6
Notified Price/ Indexed Notified Price (Rs./ Tonne) (B)	2,280
Winning Premium at the time of auction (Rs./ Tonne) (C)	300
Winning Premium (in % terms at the time of auction) (D=C/B)	13.16
Actually Supplied Grade	G7
Indexed Notified Price of Supplied Grade (Rs./ Tonne) (E)	1,920
Premium of Supplied Grade (Rs./ Tonne) (F=E*D)	252.67
Price Payable for G7 Grade (Rs/Tonne) (I = E+F)	**2,172.67**

A similar procedure to calculate the applicable price will be followed in case of a downward variation in the Contracted Grade of Coal.

10. TRANSFER OF TITLE

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

11. PRICE OF CONTRACTED GRADE OF COAL

11.1 The price to be paid by the Purchaser with respect to the Contracted Grade of Coal delivered shall be computed on the basis of the following formula:

As Delivered Price of Coal = [aggregate of the Notified Price (or latest Indexed Notified Price, as the case may be) and the Winning Premium] multiplied by [the relevant quantity of the Contracted Grade of Coal supplied].

11.2 The Winning Premium shall remain constant during the tenure of the Agreement. The Notified Price or the Indexed Notified Price, as the case may be, shall be reviewed by CIL semi-annually, and it may make such modifications as may be deemed appropriate. The price pursuant to any such modification ("**Indexed Notified Price**") shall be notified by CIL and such modification shall be regarded as an indexation. The Notified Price, or the Indexed Notified Price, as the case may be, shall be payable in the manner contemplated in Clause 11.1 over the tenure of the Agreement.

11.3 The As Delivered Price of Coal computed pursuant to Clause 11.1 shall exclude sizing charges, transportation charges up to the Delivery Point, rapid loading charges, statutory charges, levies and other charges, which shall be additionally payable by the Purchaser.

11.4 All royalties, taxes, duties, cesses, and such statutory levies payable to the State Government, Central Government and/ or to any other statutory authority on the supply, dispatch and delivery of Contracted Grade of Coal under this Agreement shall be borne by the Purchaser.

11.5 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.

11.6 Notwithstanding anything to the contrary contained herein, the Purchaser shall be liable to make payment to the Seller in terms of this Agreement, on the basis of Contracted 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.

12. FINANCIAL COVERAGE, BILLING, PAYMENT, OVERLOADING AND UNDER LOADING

12.1 Supply of Contracted Grade of Coal by Road

For road dispatches, Advance Payment pursuant to Clause 8.2 shall be made by way of wire transfer of the amount by way of National Electronic Funds Transfer or Real Time Gross-settlement, to the below mentioned bank account of the Seller:

[*insert beneficiary name*]
[*insert bank account number*]
[*insert bank name*]
[*insert bank address*]
[*insert details of type of account*]
[*insert IFSC Code*].

12.2 Supply of Contracted Grade of Coal by Rail

12.2.1 The Purchaser shall submit a financial coverage in the form of a banker's cheque/ demand draft or a bank guarantee issued by an Acceptable Bank in the format set out in ***Annexure VIII*** ("**Financial Coverage Bank Guarantee**" or "**Financial Coverage BG**") for an amount equal to the estimated As Delivered Price of Coal for 30 (thirty) days of Coal supplies, i.e. ACQ/12, subject to a minimum amount equivalent to the As delivered Price of Coal of 1 (one) rake-load, as indicated in the notice by the Seller ("**Financial Coverage**").

12.2.2 The Financial Coverage BG shall be kept operative and valid by the Purchaser for the Term or Extended Term, as applicable and for a further period of 180 (one hundred and eighty) days thereafter, and shall be encashable at [*insert place*]. In case of any increase in the As Delivered Price of Coal pursuant to Clause 11, 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 30 (thirty) days of Coal supplies, i.e. ACQ/12, subject to a minimum amount equivalent to the As Delivered Price of Coal of 1 (one) rake-load of the Contracted Grade of Coal.

12.2.3 The Seller shall, by way of a notice to be put up on the notice board at its registered office, inform the Purchaser of the value to be paid through demand draft / banker's cheque at least 3 (three) working days in advance before the 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 a debit advice issued by the drawee bank to the tune of the value of the Contracted Grade of Coal in rake loads to be offered as per the notice, within 48 (forty eight) 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 12.2.1.

12.2.4 The Financial Coverage BG in terms of Clause 12.2.1 shall be initially valid for a minimum period of 1 (one) year. The Purchaser shall ensure renewal at least 1 (one) month prior to the expiry of the Financial Coverage BG. In the event of any delay in renewing the Financial Coverage BG, as an interim measure, the Purchaser will be allowed to lift supplies of the Contracted Grade of Coal subject to making payment to the Seller by banker's cheque/ demand draft of an amount equivalent to the value of the Financial Coverage BG immediately prior to its expiry. The Purchaser shall be entitled to a refund of such payment on providing due replacement through a valid bank guarantee. The Seller shall have the right to suspend supplies of the Contracted Grade of Coal or invoke the Performance Security, without any notice, in the event that there is no valid and subsisting Financial Coverage BG for the amount stated hereinabove as per Clause 12.2.1 and the Purchaser has not deposited any payment (by banker's cheque/ demand draft) in lieu of such Financial Coverage BG.

12.2.5 Notwithstanding anything to the contrary contained herein, in the event that the Acceptable Bank issuing the Financial Coverage BG does not permit a partial invocation of the Financial Coverage BG in accordance with the terms of this Agreement, the Seller shall be entitled to invoke the whole Financial Coverage

BG and recover thereunder, the amounts due to it and the balance amount, if any, shall be refunded immediately to the Purchaser within 1 (one) day of replenishment of the Financial Coverage BG to the Seller, in the manner as stipulated hereinabove.

12.3 **Billing and Payment**

The Seller shall raise the Coal supply bills on a rake-to-rake basis for delivery of the Contracted Grade of Coal by rail. Bills for delivery of the Contracted Grade of Coal by road shall be prepared by the Seller on a periodical basis. Bills shall be prepared by the Seller on the basis of the Contracted Grade of Coal. The Purchaser shall, within 2 (two) Business Days after receipt of a bill/invoice from the Seller for supplies effected by rail, make full payments to the Seller , subject to adjustment of the amounts already paid in advance by the Purchaser pursuant to Clause 12.2.3 with respect to each such bill / invoice. The payment shall be made through wire transfer of the amount by way of National Electronic Funds Transfer or Real Time Gross-settlement, to the below mentioned bank account of the Seller:

[*insert beneficiary name*]
[*insert bank account number*]
[*insert bank name*]
[*insert bank address*]
[*insert details of type of account*]
[*insert IFSC Code*].

In the event of non-payment within the aforesaid stipulated period, the Purchaser shall be liable to pay interest in accordance with Clause 13.

12.4 **Overloading and Under loading**

12.4.1 The Purchaser shall be responsible to take delivery of the Contracted Grade of Coal at the Delivery Point and ensure that there is no overloading. Any penal freight for overloading charged by the railways for any consignment shall be payable by the Purchaser. However, if overloading is detected from the Delivery Point consistently during 3 (three) continuous months, the Purchaser shall duly inform the Seller of the same.

12.4.2 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 on account of loading below the following namely, the:

(i) stenciled carrying capacity as shown on the wagon; or

(ii) carrying capacity based on the actual tare weight, where the empty wagon has been weighed; or

(iii) permissible carrying capacity as notified by the railways (route-wise) for any particular type of wagon from time to time, in case 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 on account of under-loading below

(i) the stenciled carrying capacity, as shown on the wagon; or

(ii) carrying capacity based on the actual tare weight, as the case maybe,

plus 2 (two) 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 permissible carrying capacity.

12.4.3 Idle freight resulting from under loading of wagon, as per Clause 12.4.2, shall be adjusted in the bills. Idle freight shall be reckoned as:

(a) 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 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 maybe, and the freight payable as per actual recorded weight of coal loaded in the wagon; and/or

(b) 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 actual tare weight, as the case may be, plus 2 (two) tonnes less the freight payable as per actual recorded weight of the Contracted Grade 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 the permissible carrying capacity and the freight payable as per the actual recorded weight of the Contracted Grade of Coal loaded in the wagon.

12.5 Modalities for Billing, Claims and Payment

12.5.1 The Seller shall raise and the Purchaser shall pay the bills for Coal supplies on the Contracted Grade of Coal in accordance with Clause 12.1 and Clause 12.2 above. Necessary reconciliations shall be done between the Parties on the basis of the

analyzed Grade of Coal in accordance with Clause 9.

12.5.2 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 by a Third Party Agency forthwith. In the event of any such claim being made, the revised price computed as per the formula set out in Clause 9.2 shall be payable by the Purchaser or refunded by the Seller within 30 (thirty) days of the signing of the annual reconciliation statement under Clause 12.5.3. Notwithstanding the aforesaid, in the event of termination of this Agreement pursuant to Clause 17, the annual reconciliation shall be done at the time of termination and the monies shall be paid by the Purchaser or the Seller, as the case may be, within 30 (thirty) days from the date of termination of the Agreement.

12.5.3 The Parties shall jointly reconcile all payments made for the monthly Coal supplies and for third party sampling during the Year by end of April of the following Year. The Parties shall, forthwith, give credit/debit for the amounts 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.

12.5.4 In the event of the 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 of making the payment.

13. NOTICE OF DELAYED PAYMENT AND INTEREST ON DELAYED PAYMENT

13.1 Notice of Delayed Payment

In the event that any Party owing payment of any amount to the 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 defaulting Party and the matter shall thereafter be dealt with in terms of Clause 13.2 and Clause 14.

13.2 Interest on Delayed Payment

In cases of any default in making any payment due in terms of this Agreement by any Party to the other Party, the defaulting Party shall be liable to pay interest at the Interest Rate on the total sum outstanding and for the entire period for which 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 30 (thirty) days, the Seller shall be entitled to invoke the Performance Security 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 Performance Security and/ or the Financial Coverage BG.

14. SUSPENSION OF COAL SUPPLIES

14.1 Notwithstanding other provisions of this Agreement (including Clause 4.3.1, Clause 12.2.4 and Clause 13.2), in the event the Purchaser fails to pay any amount including any interest, due to the Seller under this Agreement within a period of 30 (thirty) 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 Performance Security by invoking the Performance Security or such portion of it as may be deemed necessary;

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

(c) suspend supplies of the Contracted Grade 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 its obligations to supply the Contracted Grade of Coal to the Purchaser hereunder. 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 Performance Security or the Financial Coverage, as the case may be, has not been fully replenished. The Seller shall resume the Contracted Grade of Coal supplies within 3 (three) days of payment/ adjustment of the outstanding amount together with interest as also the full replenishment of Performance Security or Financial Coverage, as the case may be.

15. CHANGE IN CONTROL AND TRANSFER

15.1 Change in Control and Transfer

Any change in the Control of the Purchaser and/ or any transfer of the Specified End Use Plant along with the rights in relation to the Annual Contracted Quantity (each such event being individually referred to as a "**Transfer Event**") shall be permissible with prior approval of the Seller if:

(a) such change in Control does not result in the Purchaser becoming non-compliant with any of the Eligibility Conditions or the transferee of the Specified End Use Plant along with the rights in relation to the Annual Contracted Quantity continues to satisfy all of the Eligibility Conditions; and

(b) such Transfer Event occurs in accordance with Applicable Law and the conditions for transfer and/ or assignment contained in this Agreement.

15.2 Procedure for Change in Control or Transfer

15.2.1 The Purchaser shall, prior to occurrence of any Transfer Event, make an application in writing to the Seller requesting its approval in connection with the Transfer Event. The application shall be accompanied with details and documentary support (where available) in respect of the Transfer Event including:

(a) details of the changes in Control of the Purchaser i.e. the Person to whom the securities of the Purchaser are being transferred or details of the scheme of merger, demerger, amalgamation, arrangement or other corporate restructuring exercise being undertaken by the Purchaser along with details of the resultant entity and its shareholders;

(b) name, address and other details of the proposed transferee;

(c) a certificate confirming continued compliance with the Eligibility Conditions by the Purchaser (or new entity formed as a result of change in Control of the Purchaser) or relevant transferee, as the case may be, post occurrence of the Transfer Event together with documentary evidence in support thereof; and

(d) such other details as may be requested by the Seller.

15.2.2 The Seller shall, within a period of 90 (ninety) days from the date of receiving an application under Clause 15.2.1, convey its decision to approve or reject such Transfer Event for reasons to be recorded in writing. In the event that the Seller does not convey its decision for such a Transfer Event within the above mentioned period of 90 (ninety) days, for reasons other than non-submission of requisite documents by the Purchaser pursuant to Clause 15.2.1, it shall be construed that the Seller has no objection to such Transfer Event.

15.2.3 Any Transfer Event under this Agreement shall, in addition to the conditions specified in Clause 15.1 and Clause 15.2.1, be subject to the conditions that:

(a) the Purchaser (or new entity formed as a result of change in Control of the Purchaser) or transferee, as the case may be, shall be required to submit a fresh bank guarantee from an Acceptable Bank in the format specified in ***Annexure I*** or a fresh non-interest bearing security deposit for the value of Performance Security computed in accordance with Clause 4, and upon receipt of such Performance Security, the earlier Performance Security provided by the Purchaser shall be returned or refunded to the Purchaser; and

(b) the Purchaser shall have paid to the Seller, all outstanding amounts due from the Purchaser to the Seller under this Agreement; and

(c) the new entity formed as a result of change in Control of the Purchaser or the transferee, as the case may be, has accepted all the conditions and liabilities under Applicable Laws which the Purchaser is subject to in respect of this Agreement and the rights granted hereunder. Upon completion of the Transfer Event, the Purchaser (or new entity formed as a result of change in Control of

the Purchaser) or transferee, as the case may be, shall be liable to the Seller with respect to any and all liabilities under this Agreement;

(d) in case of transfer of the Specified End Use Plant along with the rights in relation to the Annual Contracted Quantity, the Purchaser and the transferee shall be required to execute a transfer deed in the format set out in ***Annexure IX*** and submit the same to the Seller within a period of 30 (thirty) days from the date of (i) receipt of a letter of approval from the Seller; or (ii) expiry of period after which it is construed that the Seller has no objection to such transfer. The transfer shall be deemed completed only when the duly transfer deed is submitted to the Seller in accordance with the terms hereof;

(e) in the event of any change in name of the Purchaser or change in Control of the Purchaser on account of *inter alia* amalgamation, merger, de-merger, takeover, court order, change in ownership/shareholding pattern etc., of the Purchaser, the approval under Clause 15.2.2 shall be subject to compliance of the following conditions:

(i) the Specified End Use Plant shall remain unaltered and its location should not have changed;

(ii) the terms and conditions of this Agreement shall remain un-altered;

(iii) the company secretary of the Purchaser shall issue a certificate to the Seller certifying that all procedural and legal requirements under the Companies Act, 2013 have been complied with;

(iv) post change in Control, the Purchaser (or new entity formed as a result of change in Control of the Purchaser) shall continue to comply with all the Eligibility Conditions and other conditions to be met with for the purposes of being entitled to receive the Annual Contracted Quantity hereunder;

(v) the Purchaser must, post change in Control, expressly agrees to comply with all the terms and conditions hereunder;

(vi) the Purchaser shall pay its past dues, if any, related to supplies of the Contracted Grade of Coal;

(vii) the Purchaser shall execute such documents and/ or agreements as may be required by the Seller in this regard.

15.3 **Consequences of default**

Any Transfer Event which is not in conformity with this Agreement or Applicable Laws shall be deemed to be void *ab-initio.* The Seller may in such situations, in its sole discretion, appropriate the Performance Security and terminate this Agreement by giving prior written notice of 30 (thirty) days to the Purchaser.

15.4 **Security**

15.4.1 Subject to Applicable Laws, the Purchaser shall be entitled to create encumbrances over this Agreement or rights granted to it under this Agreement for the purposes of availing financing from a bank or financial institutions for financing the Specified End Use Plant and such security creation shall not require prior approval by the Seller.

15.4.2 In the event of a default, the banks or financial institutions, as the case may be, shall be entitled to enforce their security interest in the manner provided by Applicable Law and as per the procedure specified in Clause 15.2 above; provided that any transferee of the Specified End Use Plant along with the rights in relation to the Annual Contracted Quantity, as nominated by the banks or financial institutions in this regard, meets all the Eligibility Conditions.

16. SETTLEMENT OF DISPUTES

16.1 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, interpretation, validity, termination and the rights and liabilities of the Parties ("**Dispute**"), the Parties shall in the first instance endeavour to amicably settle the same through negotiations carried out in good faith.

16.2 For the purpose of conducting such 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 notified in writing to the other Party, by the Party he represents.

16.3 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 30 (thirty) days, or such longer period as may be mutually agreed by the Parties, 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 recorded in writing and signed by the Representatives of the Parties. In the event that the Representatives of the Parties fail to resolve or settle the Dispute within 90 (ninety) days of their meeting, the Parties shall be entitled to exercise the remedies available to them under Clause 21.3.

17. LOCK-IN PERIOD AND TERMINATION OF THE AGREEMENT

17.1 **Lock-in Period**

Notwithstanding anything to the contrary contained in this Agreement, the Parties shall not be allowed to terminate this Agreement for a period of 2 (two) years from the Signature Date ("**Lock-in Period**") for any reasons whatsoever. In the event that the Purchaser terminates the Agreement prior to expiry of the Lock-in Period for reasons other than on account of the Seller's default, the Seller shall be entitled to invoke the Performance Security in its entirety and the Purchaser shall be disqualified from participating in the immediately subsequent tranche of any auction for the non-regulated sector conducted by CIL.

17.2 **Termination Events**

Subject to Clause 17.1, this Agreement may be terminated in the following events and in the manner specified hereunder:

(a) in the event that the Affected Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure Act and such inability to perform lasts for not less than a total of 90 (ninety) days in any continuous period of 180 (one hundred eighty) 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, the Non-Affected Party shall have the right to terminate this Agreement by giving at least 90 (ninety) days prior written notice to the Affected Party of its intention to so terminate this Agreement. In such an event, the termination shall take effect on expiry of the notice period or 90 (ninety) 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 of the Agreement;

(b) in the event that the Purchaser is prevented /disabled under Applicable Law from using the Coal delivered to it under this Agreement, for reasons beyond its 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 by giving a prior written notice of not less than 30 (thirty) days to the Seller;

(c) in the event of any material change in the Coal distribution system of the Seller due to Applicable Laws or a Government directive/ notification at any time after the Signature Date, the Seller shall within 7 (seven) days of introduction of such change provide a written notice to the Purchaser calling for a joint review of this Agreement. If the Parties are unable to arrive at a mutually agreed position with respect to the subject matter of review, within a period of 30 (thirty) days from the date of the above mentioned notice, the Seller shall have the right to terminate the Agreement subject to a further written notice of 30 (thirty) days being given in writing to the other Party without any obligation/liability whatsoever;

(d) in the event that the Level of Delivery falls below 30% (thirty per cent.) or the Level of Lifting falls below 30% (thirty per cent.), 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 30 (thirty) days. However, such notice is to be issued within 60 (sixty) days of the end of the relevant Year; provided that the Seller shall not have a right to terminate the Agreement pursuant to this sub-clause in the event that the Level of Lifting by the Purchaser falls below 30% (thirty per cent.) solely on account of the fact that the Purchaser has been unable to lift the Scheduled Quantity due to shortfall in the quantity necessary for formation of rake for transportation through rail mode;

(e) subject to Clause 5.2, 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 after giving the Purchaser a due opportunity of being heard on the matter;

(f) in the event of invocation of the Performance Security or suspension of Coal supplies pursuant to Clause 14, the Seller shall have the right to terminate this Agreement by providing prior written notice of 30 (thirty) days to the Purchaser; provided that the Purchaser has not replenished the Performance Security within the aforesaid said notice period of 30 (thirty) days;

(g) in the event that either Party suffers insolvency, appointment of a liquidator (provisional or final), appointment of a receiver of any of its material assets, levy of any order of attachment of its material assets, or any order or injunction restraining the Party from dealing with or disposing of its assets and such order after having been passed is not vacated within 60 (sixty) days, the other Party shall be entitled to terminate this Agreement by giving prior written notice of 30 (thirty) days to first Party;

(h) in the event that any Party ("**Defaulting Party**") commits a breach of any covenant, term or condition of this Agreement not otherwise specified under this Clause 17.2 or of any term or provision of the Scheme Document and such breach, if curable, is not cured by the Defaulting Party to the satisfaction of the other Party ("**Non-Defaulting Party**") within a period of 90 (ninety) days of receipt of a notice in this regard from the Non-Defaulting Party, then the Non-Defaulting Party shall have the right to terminate this Agreement forthwith on expiry of the said 90 (ninety) day period;

(i) in the event that the information contained in any of the documents and/ or undertakings provided by the Purchaser to the Seller and/ or to CIL under this Agreement and/ or the Scheme Document (including information or documentation provided pursuant to the provisions of clause 3.4 and clause 3.7 of the Scheme Document) ceases to be true and correct or is found to be misleading, untrue or incorrect, then the Seller shall have the right to terminate this Agreement by giving prior written notice of 30 (thirty) days to the Purchaser;

(j) subject to Clause 15, in the event that the Purchaser (or the new entity formed as a result of change in Control of the Purchaser) or the relevant transferee ceases to comply with any of the Eligibility Conditions or any other conditions specified herein, then the Seller shall have the right to terminate this Agreement by giving prior written notice of 30 (thirty) days to the Purchaser;

(k) in the event that the Specified End Use Plant ceases to remain operational for a continuous period of 12 (twelve) months or is shut down for any reason, the Seller shall have the right to terminate this Agreement by giving prior written notice of 30 (thirty) days to the Purchaser;

(l) post expiry of the Lock-in Period, the Purchaser shall be entitled to terminate this Agreement for any reason whatsoever, by giving a prior written notice of 3 (three) months to the Seller;

(m) pursuant to Clause 2.3, Clause 4.3.1, Clause 4.4 and Clause 15.3; and/ or

(n) in the event the Normative Coal Requirement calculated based on the Coal Requirement as verified by the Final Verification Agency, is less than 4,200 tonnes per annum, the Agreement shall stand terminated without requirement of any further actions in this regard by the Parties.

17.3 Accrued rights to survive termination

Termination of this Agreement shall be without prejudice to the accrued rights and obligations of either Party arising immediately prior to the termination. In the event of termination of this Agreement, the Purchaser shall return all the Confidential Information in its possession to the Seller or destroy such information in accordance with the instructions of the Seller.

18. FORCE MAJEURE ACT

18.1 Force Majeure Act

The term "**Force Majeure Act**" as used in this Agreement shall mean any act, circumstance or event or a combination of acts, circumstances and/ or 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 or combination thereof 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 or combination thereof falls within one or more of the following categories including:

(a) flood, inundation of mine, drought, lightening, cyclone, storm, earthquake or geological disturbances, eruption of gases, subsidence and such natural occurrences;

(b) explosions, mine fire and other fire, contamination of the atmosphere by radioactive or hazardous substances;

(c) civil disturbance such as riot, terrorism etc.;

(d) industry wise /nation-wide strikes in the sector in which either Party operates in;

(e) any Applicable 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) any epidemic;

(g) the enactment, promulgation, amendment, suspension or repeal of any Applicable Laws after the Signature Date; and/ or

(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;

provided that a Force Majeure Act shall not include within its purview, any economic hardship, equipment failure and/ or breakdown other than as specifically set forth above.

18.2 **Burden of Proof**

The burden of proof as to whether a Force Majeure Act has occurred shall be upon the Affected Party claiming the occurrence or existence of such Force Majeure Act.

18.3 **Effect of Force Majeure**

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

(a) within 5 (five) 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 Non-Affected 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 to the other Party at an interval of every 7 (seven) days during the period of a Force Majeure Act;

(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 Non-Affected 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 the Force Majeure Act or for partial performance hereunder during period of subsistence the Force Majeure Act;

(g) the Force Majeure Act shall not relieve either Party from its obligations to comply with Applicable Laws; and

(h) the Affected Party shall exercise all reasonable efforts to mitigate or limit damages to the Non-Affected Party on account of its non-performance due to the Force Majeure Act.

19. INDEMNIFICATION

19.1 In this Clause, a reference to the Seller shall include the Seller and its officers, employees, staff, advisors, representatives or agents (collectively the "**Indemnified Party**") and the provisions of this Clause shall be for the benefit of the Indemnified Party, and shall be enforceable by each such Indemnified Party.

19.2 The Purchaser shall indemnify the Indemnified Party against all liabilities, costs, expenses, damages and losses (including but not limited to any interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) (collectively the "**Losses**") suffered or incurred by the Indemnified Party arising out of or in connection with:

(a) any breach of the representations, warranties, covenants and/ or undertakings of the Purchaser contained herein or in the Scheme Document;

(b) any information or documentation submitted by the Purchaser to the Seller pursuant to this Agreement and/ or the Scheme Document, being untrue, incorrect or false;

(c) the Purchaser's breach or negligent performance or non-performance of this Agreement;

(d) any claim made against the Indemnified Party for actual or alleged infringement of a Third Party's rights or damage caused to a Third Party arising out of or in connection the performance or non-performance of any of the Purchaser's obligations under this Agreement to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this Agreement by the Purchaser, its employees, agents or contractors;

(e) any Loss or damages caused on account of breach of any Applicable Law by the Purchaser, including without limitation any costs incurred by the Seller in rectifying any damages caused by the Purchaser on account of breach, negligent performance or failure or delay in performance of this Agreement or non-compliance with Applicable Law.

19.3 Any indemnifiable Claim under this Agreement must, be asserted by the Indemnified Party by prompt delivery of written notice thereof to the Purchaser, delivered within 60 (sixty) calendar days of discovery by the Indemnified Party of the breach of the pertinent covenant or obligation of this Agreement, or of any misrepresentation or breach of any representation or warranty made by the Purchaser or of occurrence of the event specified in Clause 19.2. However, any delay on the part of an Indemnified Party in providing or failure to provide such notice will not relieve the Purchaser of its indemnification obligations hereunder.

19.4 The remedies set forth in this Clause 19 shall be without prejudice to all the rights and remedies that the Parties may have under the Applicable Law and shall not be the sole and exclusive remedies of the Parties for any breach of this Agreement or any matter relating to any representation, warranty, covenant or undertaking contained in this Agreement.

20. REPRESENTATIONS, WARRANTIES, COVENANTS AND UNDERTAKINGS

20.1 The Purchaser hereby warrants and represents to the Seller:

(a) it duly organized and validly existing under the Applicable Laws of India and has all powers and authorities to own its property and to carry on its business as now conducted;

(b) it has the full legal right, capacity and authority to enter into this Agreement and this Agreement constitutes its legal, valid and binding obligation;

(c) the execution, delivery and performance by it of this Agreement and the compliance by it with the terms and provisions hereof do not and will not:

(i) contravene any provision of any Applicable Law, statute or any order, writ, injunction or decree of any court or governmental instrumentality to which it is subject; or

(ii) conflict with or be inconsistent with or result in any breach of any of the terms, covenants, conditions or provisions of, or constitute a default under any other agreement, contract or instrument to which it is a party or by which it is bound or to which it may be subject; or

(iii) violate any provision of its constitutional documents;

(d) there are no claims, investigations or proceedings before any court, tribunal or governmental authority in progress or pending against or relating to it, which could reasonably be expected to prevent it from fulfilling its obligations set out in this Agreement or arising from this Agreement;

(e) this Agreement is enforceable against it in accordance with its terms;

(f) the undertakings of the Purchaser pursuant to the Scheme Document and the LOI are true and correct and all information provided by the Purchaser under the Scheme Document and in connection with the LOI, as requested by CIL and/ or the Seller, is not untrue, incorrect or misleading in any way; and

(g) there has been no change in the Control of the Purchaser since the issuance of the LOI till the Signature Date.

20.2 The Purchaser hereby covenants and undertakes to the Seller as follows:

(a) it does and shall continue to satisfy all of the Eligibility Conditions and shall comply with all its obligations, covenants, undertakings and all other terms and conditions required to be complied by it under the Scheme Document;

(b) the Purchaser has and shall always conducted its business in compliance with all Applicable Laws; and

(c) all licenses, registrations, consents, permissions and other authorisations required by the Purchaser for or in connection with its business ("**License**") have been obtained and are validly held by the Purchaser and each License is in full force and effect and the Purchaser shall take necessary steps to renew the Licenses from time to time in accordance with the provisions of Applicable Laws.

21. MISCELLANEOUS

21.1 **Amendment**: This Agreement shall stand amended or modified pursuant to any modifications thereof as may be issued in writing or notified by the Seller or as may be entered into in writing by the Parties.

21.2 **Severability**: In the event that 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.

21.3 **Governing Law and Jurisdiction**: This Agreement and the rights and obligations of the Parties hereunder shall be interpreted, construed and governed by the laws of India. The courts of [*insert name of the state where the Seller's headquarters/ registered office is located*], India shall have exclusive jurisdiction in respect of all matters arising under or in connection with this Agreement.

21.4 **Entire Agreement**: This Agreement together with the Scheme Document and any documents referred to therein (i) supersedes any and all oral and written agreements, drafts, undertakings, representations, warranties and understandings heretofore made in relation to the subject matter hereof; and (ii) constitutes the entire agreement and understanding of the Parties relating to the subject matter hereof It is expressly agreed that this Agreement together with the Scheme Document and any documents referred to therein, shall supersede all previous discussions and meetings held and correspondence exchanged between the Seller and 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 by either Party for the purposes of interpreting or implementing this Agreement. In the event of any conflict between the provisions of this Agreement and the Scheme Document, this Agreement shall prevail.

21.5 **Counterparts**: This Agreement may be executed in any number of counterparts each of which will be deemed an original, and all of which will constitute one and the same instrument.

21.6 **Assignment**: Subject to the provisions of Clause 15, 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 of its rights, benefits, obligations and/ or interests herein or hereunder.

21.7 **Limitation of Liability**: 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.

21.8 **Best Efforts**: Subject to the terms and conditions of this Agreement, each Party shall use its best efforts to take, or cause to be taken, all actions and to do, or

cause to be done, all things necessary or desirable under Applicable Laws to consummate the transactions contemplated herein. Each Party agrees to execute and deliver such other documents, certificates, agreements and other writings and to take such other lawful actions as may be necessary or desirable in order to consummate or implement expeditiously such transactions.

21.9 **Costs and Expenses**: Except as otherwise expressly provided for in this Agreement, each Party shall pay its own costs and expenses in connection with this Agreement and the transactions contemplated hereby.

21.10 **No Third Party Beneficiary**: The terms and provisions of this Agreement are intended solely for the benefit of the Parties and their respective successors and permitted assigns, and it is not the intention of the Parties to confer third party beneficiary rights upon any other Person.

21.11 **Change in Name**: The Purchaser shall intimate the Seller of any change in its name (on account reasons other than a change in its Control), immediately upon occurrence of name change. The Parties shall thereafter take necessary steps to record such change in the name of the Purchaser in the books and records of the Seller and shall also execute an amendment agreement to the Agreement to record such name change.

21.12 **Binding Effect**: This Agreement is binding upon and will inure to the benefit of the Parties.

21.13 **Notices**: 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 or by facsimile or by e-mail, addressed to the signatories or the authorised representatives of the signatories nominated in accordance with the provisions of this Agreement at the following addresses:

1) Seller's address	2) Purchaser's address
Name and Designation:	Name and Designation:
Address:	Address:
Telephone:	Telephone:
Fax:	Fax:
Email:	Email:

Any notice given by the Purchaser under this Agreement, if delivered otherwise than by e-mail, shall always be backed by an e-mail to the above mentioned email address of the Seller. Any notice delivered to the Party to whom it is addressed as provided in this Clause 21.13 shall be deemed (unless there is evidence that it has been received earlier) to have been given and received, if:

(a) hand delivered or sent by registered mail, at the time of acknowledgment of receipt of the same; and

(b) sent by facsimile or e-mail, when confirmation of its transmission has been recorded by the sender's facsimile machine or delivery receipt of email has been received.

21.14 **Waiver, Rights and Remedies**: No failure or delay by any Party in exercising any right, power or remedy under this Agreement shall operate as a waiver thereof. No single or partial exercise of any right, power or remedy under this Agreement by any Party shall preclude any further exercise thereof or the exercise of any other right, power or remedy by that Party. Without limiting the foregoing, no waiver by any Party of any breach by any other Party of any provision hereof shall be deemed to be a waiver of any subsequent breach of that or any other provision hereof.

21.15 **Legal and Prior Rights**: All rights and remedies of the Parties mentioned herein shall be in addition to all other legal rights and remedies belonging to such Parties and the same shall be deemed to be cumulative and not alternative to such legal rights and remedies aforesaid and it is hereby expressly agreed and declared by and between the Parties, that the determination of this Agreement for any cause whatsoever shall be without prejudice to any and all rights and claims of any Party, which shall or may have accrued prior thereto.

21.16 **No Agency**: The Parties agree that nothing in this Agreement shall be in any manner interpreted to constitute an agency for and on behalf of any other Party.

21.17 **Specific Performance of Obligations**: To the extent permitted by Applicable Law, the rights and obligations of the Parties under this Agreement shall be subject to the right of specific performance and may be specifically enforced against a defaulting Party.

22. IMPLEMENTATION OF THE AGREEMENT

22.1 The chief executive officer of the Specified End Use Plant or his nominated representative or any other representative duly authorized by the Purchaser shall be authorised to act for and on behalf of the Purchaser in respect of matters arising out of or in connection with this Agreement.

22.2 The General Manager (Sales) or any other representative duly authorized by the Seller shall be authorised to act for and on behalf of the Seller in respect of matters arising out of or in connection with this Agreement.

22.3 Any other nomination of an authorised representative shall be informed in writing, by the Seller or the Purchaser, as the case be, within 1 (one) month of the Signature Date or by giving 30 (thirty) days prior written notice in this regard to the other Party.

22.4 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 or in any other

particulars specified Clause 21.13 is notified to the other Party and all others concerned, before effecting a change and in any case within 2 (two) Business Days of such change.

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

For (_____name of the Seller)

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

For (_____name of the Purchaser)

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

Annexure I

Format of Performance Security

[Reference number of the bank] *[date]*

To
[insert name and address of the relevant Subsidiary]

WHEREAS

A. **[Name of the Successful Bidder]**, a company incorporated in India under the Companies Act, [1956/2013] with corporate identity number [CIN of the Successful Bidder], whose registered office is at [address of registered office], India and principal place of business is at [address of principal place of business, if different from registered office] **OR** **[Name of the Individual]**, an individual residing at [address] and carrying on a sole proprietorship business under the name style of **[Name of Successful Bidder]** at [address of sole proprietorship], **OR** [**Name of the Successful Bidder**], a limited liability partnership incorporated under the Limited Liability Partnership Act, 2008, with its registered office at [address of registered office] **OR** [**Name of the Individual**], an individual residing at [address], [**Name of the Individual**], an individual residing at [address] and [**Name of the Individual**], an individual residing at [address] all carrying on a partnership business under the name style of [**Name of the Successful Bidder**] registered under [name of Act under which the firm is registered] and with its principal place of business at [address of principal place of business] **OR** [**Name of the Successful Bidder**], a [insert legal nature of the Successful Bidder (e.g. trust, society etc.)] incorporated under the [insert statute under which the Successful Bidder is incorporated] with its registered office/ principal place of business/ office at [address of registered office/ principal place of business/office] (hereinafter referred to as the "**Purchaser**") is required to provide an unconditional and irrevocable bank guarantee for an amount equal to INR [*figures*] (Indian Rupees [*words*]) as a performance security valid until [*date of expiry of performance bank guarantee*] ("**Expiry Date**").

B. The Performance Security is required to be provided to **[insert name of the relevant Subsidiary]** (the "**Seller**") for discharge of certain obligations of the Purchaser under the Scheme Document dated, [date] with respect to Auction of Coal Linkages in the [insert sub-sector name] sub-sector and the fuel supply agreement to be executed between the Seller and the Purchaser (hereinafter collectively referred to as the "**Agreement**)".

We, [***name of the bank***] (the "**Bank**") at the request of the Purchaser do hereby undertake to pay to the Seller an amount not exceeding INR [*figures*] (Indian Rupees [*words*]) ("**Guarantee Amount**") to secure the obligations of the Purchaser under the Agreement on demand from the Seller on the terms and conditions contained herein.

NOW THEREFORE, the Bank hereby issues in favour of the Seller this irrevocable and unconditional payment bank guarantee (the "**Guarantee**") on behalf of the Purchaser in the Guarantee Amount:

1. The Bank for the purpose hereof unconditionally and irrevocably undertakes to pay to the Seller without any demur, reservation, caveat, protest or recourse, immediately on receipt of first written demand from the Seller, a sum or sums (by way of one or more claims) not exceeding the Guarantee Amount in the aggregate without the Seller needing to prove or to show to the Bank grounds or reasons for such demand for the sum specified therein and notwithstanding any dispute or difference between the Seller and Purchaser on any matter whatsoever. The Bank undertakes to pay to the Seller any money so demanded notwithstanding any dispute or disputes raised by the Purchaser in any suit or proceeding pending before any court or tribunal relating thereto the Bank's liability under this present being absolute and unequivocal.

2. The Bank acknowledges that any such demand by the Seller of the amounts payable by the Bank to the Seller shall be final, binding and conclusive evidence in respect of the amounts payable by Purchaser to the Seller under the Agreement.

3. The Bank hereby waives the necessity for the Seller from demanding the aforesaid amount or any part thereof from the Purchaser and also waives any right that the Bank may have of first requiring the Seller to pursue its legal remedies against the Purchaser, before presenting any written demand to the Bank for payment under this Guarantee.

4. The Bank further unconditionally agrees with the Seller that the Seller shall be at liberty, without the Bank's consent and without affecting in any manner the Bank's obligation under this Guarantee, from time to time to: (i) vary and/ or modify and of the terms and conditions of the Agreement; (ii) extend and/ or postpone the time for performance of the obligations of the Purchaser under the Agreement, or (iii) forbear or enforce any of the rights exercisable by the Seller against the Purchaser under the terms and conditions of the Agreement and the Bank shall not be relieved from its liability by reason of any such act or omission on the part of the Seller or any indulgence by the Seller to the Purchaser or other thing whatsoever which under the law relating to sureties would, but for this provision, have the effect of relieving the Bank of its obligations under this Guarantee.

5. Any payment made hereunder shall be made free and clear of and without deduction for, or on account of, any present or future taxes, levies, imposts, duties, charges, fees, commissions, deductions or withholdings of any nature whatsoever.

6. The Bank agrees that Seller at its option shall be entitled to enforce this Guarantee against the Bank, as a principal debtor in the first instance without proceeding at the first instance against the Purchaser.

7. The Bank further agrees that the Guarantee herein contained shall remain in full force and effect during the period that specified in the Agreement and that it shall continue to be enforceable till all the obligations of the Purchaser under or by virtue of the said Agreement with respect to the Performance Security have been fully paid and its claims satisfied or discharged or till the Seller certifies that the terms and conditions of the Agreement with respect to the Performance Security have been fully and properly carried out by the Purchaser and accordingly discharges this Guarantee. Notwithstanding anything contained herein, unless a demand or claim under this Guarantee is made on the Bank in writing on or before the Expiry Date the Bank shall be discharged from all liability under this Guarantee thereafter.

8. The payment so made by the Bank under this Guarantee shall be a valid discharge of Bank's liability for payment thereunder and the Seller shall have no claim against the Bank for making such payment.

9. This Guarantee is subject to the laws of India. Any suit, action, or other proceedings arising out of this Guarantee or the subject matter hereof shall be subject to the exclusive jurisdiction of courts at [*where the Seller's registered office/ principal place of business is located*], India.

10. The Bank has, under its constitution, the power to issue this Guarantee in favour of the Seller and Shri _____ who has signed this Guarantee on behalf of the Bank has the authority to do so. This Guarantee will not be discharged due to the change in the constitution of the Bank.

11. The Bank undertakes not to revoke this Guarantee during its currency except with the previous consent of the Seller in writing.

12. The Seller may, with prior intimation to the Bank, assign the right under this Guarantee to any other person or entity. Save as provided in this Clause 12, this Guarantee shall not be assignable or transferable.

13. Notwithstanding anything contained herein,

    a) the liability of the Bank under this Guarantee shall not exceed the Guarantee Amount; and

    b) this Guarantee shall be valid up to the Expiry Date.

14. The Bank is liable to pay the Guaranteed Amount or any part thereof under this Guarantee only and only if the Seller serves upon the Bank a written claim or demand on or before the Expiry Date.

15. The Guarantee is operative at our **[insert name and address of Branch]**.

Dated the [day] day of [month] [year] for the Bank.

In witness whereof the Bank, through its authorized officer, has set its hand and stamp.

_____

(Signature)

_____

(Name and Designation)
(Bank Stamp)

Annexure II

Documents provided to the Seller under Clause 3.7 of the Scheme Document

1. Relevant Corporate Authorizations of the Purchaser for execution and performance of his obligations under the agreement such as:

   (a) Notarised Power of Attorney.

   (b) Certified true copy of Board Resolution or Certified true copy of Shareholders Resolution etc.

   (c) In case the Purchaser wants a different person (different from the one who participated in the online auction on behalf of the Purchaser) to enter into the Agreement, a power of attorney authorizing such person to enter into the Agreement on behalf of the Purchaser in the format as provided in the Annexure III of the Scheme Document shall be submitted.

2. Commissioning certificate with respect to the Specified End Use Plant from a certified chartered engineer.

3. Self-attested copy of valid Factory License with respect to the Specified End Use Plant or copy of application filed for renewal of the same, in case the Factory License has recently expired.

4. Self-attested copy of Consent to Operate with respect to the Specified End Use Plant issued under the relevant pollution control laws or copy of application filed for renewal of the same, in case the Consent to Operate has recently expired. Alternatively, a valid no-objection certificate from the relevant State Pollution Control Board may be submitted. Wherever, the relevant State Pollution Control Board does not specify the validity of the certificate issued by them to the Specified End Use Plant, such a certificate will be considered acceptable and an intimation will be sent by the Seller to the authority responsible for the issuance of the certificate.

5. Self-attested copy of TIN and PAN number of the Purchaser.

6. [*insert any other documents requested by CIL/ the Seller under Clause 3.7(b) of the Scheme Document*]

Annexure III

Details of Annual Contracted Quantity, Contracted Grade of Coal, Delivery Point, Secondary Source

Mode	Contracted Grade*	Size	Annual Contracted Quantity (in tonnes)	Notified Price (in Rs./tonne)	Delivery Point (Coal Mine in case of Road & Railway Siding in case of Rail)	Secondary Source (to be used in case of a Force Majeure Act)

Annexure IV

Details of Specified End Use Plant

1. Name of the Specified End Use Plant : [*to be inserted*]

2. Location of the Specified End Use Plant : [*to be inserted*]

3. Configuration and capacity details of each [insert relevant sub—sector] unit in the Specified End Use Plants: [*to be inserted*]

Annexure V

Indicative list of Documents that may be called for by the Seller under Clause 3

1. Self-attested copy of valid Factory License with respect to the Specified End Use Plant or copy of application filed for renewal of the same, in case the Factory License has recently expired.

2. Self-attested copy of Consent to Operate with respect to the Specified End Use Plant issued under the relevant pollution control laws or copy of application filed for renewal of the same, in case the Consent to Operate has recently expired. Alternatively, a valid no-objection certificate from the relevant State Pollution Control Board may be submitted. Wherever, the relevant State Pollution Control Board does not specify the validity of the certificate issued by them to the Specified End Use Plant, such a certificate will be considered acceptable and an intimation will be sent by the Seller to the authority responsible for the issuance of the certificate.

3. Self-attested copy of TIN and PAN number of the Purchaser.

4. Income-tax return of the Purchaser (for latest available financial year);

5. Value added tax registration certificate for the Specified End Use Plant for value added tax paid by the Purchaser during the last two years. This certificate would not be required for newly established Specified End Use Plants. In case of non-submission of the certificate on value added tax/ excise duties by existing old Specified End Use Plants, the Purchaser is required to submit a copy of value added tax returns duly certified by a practicing Chartered Accountant or a self-certified statement of the payments already made in this regard during the last two years which would necessarily contain few sample copies;

6. Valid small scale industries/ industrial registration certificate;

7. Documentation with respect to existing coal linkages, assurance of linkages and/ or allocation of mine;

8. Audited accounts of the Purchaser for the immediately preceding three financial years;

9. Copies of licenses to operate the Specified End Use Plant including production licence, constitution status, SSI Registration, factory license, value added tax, excise registration and other statutory registration and/ or documents necessary in this regard. Any change in the status or validity of any licenses and/ or registration from previous year;

10. Copy of current valid pollution control certificates (including consent to establish and consent to operate);

11. Details of critical machinery/ equipment responsible for capacity calculation of the Specified End Use Plant such as details of boilers/ furnaces/ kiln with capacity of consumption;

12. Coal Consumption certificate of the Specified End Use Plant, containing the following details, shall be furnished by the Purchaser and duly certified by a Chartered Accountant:

    Coal (Qty wise)
    Opening stock
    Add: Purchase
    From CIL sources under FSA
    From any other source:
    Less:
    Consumption
    Year end closing stock

13. Copies of electricity bills for the last six months, wherever applicable;

14. Any other relevant information/ documentation as may be deemed necessary for ascertaining bona fide usage of coal.

Annexure VI

Specifications on quality of the Contracted Grade of Coal

Size (mm)	Contracted Grade of Coal
[*insert size*]	[*insert grade*]

Annexure VII

Procedure for Third party sampling

1. APPOINTMENT OF THE THIRD PARTY AGENCY

1.1 Third Party Agency and costs of third party sampling in case of delivery by Rail

1.1.1 In case of off-take of the Contracted Grade of Coal *via* rail mode, the Purchaser may, on the Signature Date, choose a third party agency to conduct the third party sampling from the following:

(a) list of independent third parties provided by CIL from time to time; or

(b) Central Institute of Mining and Fuel Research ("**CIMFR**") or CIMFR appointed agencies.

1.1.2 The third party agency chosen by the Purchaser shall conduct the third party sampling throughout the Term; provided that the Purchaser may change (on reasonable grounds) the third party agency chosen by it with prior written approval of the Seller. In the event that the Seller does not accept the request of the Purchaser for change in the third party agency, the Purchaser shall have the option to:

(a) terminate the arrangement for third party sampling availed by it hereunder, in which case, the Purchaser shall not be entitled to resume the third party sampling at any time during the remainder of the Term; or

(b) to continue the arrangement for third party sampling for the remainder of the Term with the existing third party agency chosen by it.

1.1.3 Third party sampling, if requested by the Purchaser, shall be done from the Delivery Point and the costs in this regard shall be borne equally by the Purchaser and the Seller. The costs of third party sampling shall be payable on the basis of the following formula:

Third Part Sampling Cost = [(Scheduled Quantity specified in the programme submitted by the Purchase under Clause 8.1.1) *multiplied by* (cost per tonne specified by the third party agency)].

1.2 Third Party Agency and costs of third party sampling in case of delivery by Road

1.2.1 The Purchaser shall, on the Signature Date, be required to inform the Seller whether it is desirous of availing third party sampling hereunder. In case of off-take of the Contracted Grade of Coal *via* road mode, a single independent third

party sampling agency will be appointed by the Seller for sampling Coal supplied to various purchasers (including the Purchaser) who have opted for third party sampling at the Delivery Point. It is clarified, that the Seller shall have the sole discretion and right to replace, substitute or change the third party sampling agency nominated by it.

1.2.2 The third party agency chosen by the Seller shall conduct the third party sampling throughout the Term; provided that the Purchaser may make a written request (on reasonable grounds) to the Seller to change the third party agency chosen by the Seller. In the event that the Seller does not accept the request of the Purchaser for change in the third party agency, the Purchaser shall have the option to:

(a) terminate the arrangement for third party sampling availed by it hereunder, in which case, the Purchaser shall not be entitled to resume the third party sampling at any time during the remainder of the Term; or

(b) to continue the arrangement for third party sampling for the remainder of the Term with the existing third party agency chosen by the Seller.

1.2.3 The costs in relation to third party sampling shall be borne as follows:

(a) 50% (fifty per cent.) of the cost of third party sampling will be borne by the Seller; and

(b) the residual 50% (fifty per cent.) cost shall be paid by the Purchaser.

The costs of third party sampling shall be payable on the basis of the following formula:

Third Part Sampling Cost = [(Scheduled Quantity specified in order placed by the Purchaser under Clause 8.2.2) *multiplied by* (cost per tonne specified by the third party agency)].

2. MODALITIES FOR THIRD PARTY SAMPLING

2.1 Collection of Samples by the Third Party Agency

Samples of Coal shall be collected by the Third Party Agency from the Delivery Point as follows:

2.1.1 *Collection of samples from the Railway Siding*

(a) In case of dispatch by rail each rake of Coal supplied to the Purchaser from the Delivery Point shall be considered as a lot for the purpose of sampling.

(b) Each rake shall be divided into approximately equal sub-lots 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

(c) From each of the sub-lots, one wagon each shall be selected as per a random table in BIS Standards (IS: 436 (Part I/Section I) 1964) or its latest version for collection of increments.

(d) 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.

(e) 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.

(f) About 50 kg of the sample shall be collected from each selected wagon in the rake by drawing 10 increments of approx. 5 kg each with the help of shovel/scoop.

(g) Samples collected from all the selected wagons in a rake shall be mixed to form a gross sample.

(h) Item (d) to (f) above shall be applicable for Coal supplied in all types of wagons.

(i) In case of the rake having live overhead traction line, the power supply in the overhead traction shall be switched off to facilitate collection of samples from the wagons pursuant to points (d) to (f) above.

2.1.2 *Collection of Samples of Coal Dispatches by Road*

(a) Samples of Coal shall be collected at the Delivery Point during the day between 6.00 hr to18.00 hr only from the trucks of the purchasers (including the Purchaser, if applicable) who have opted for third party sampling under the linkage auction scheme ("**Purchasers Opting for Sampling**") in the manner specified below.

(b) The first sample of Coal shall be collected from the first truck at the Delivery Point belonging to a Purchaser Opting for Sampling.

Once a sample is collected from the first truck as stipulated above, samples of Coal shall be collected from every 8th (eighth) truck after the truck from which the first sample has been collected. In the event that such 8th (eighth)

truck does not belong to a Purchaser Opting for Sampling, then the next truck belonging to a Purchaser Opting for Sampling shall be deemed as the 8th (eighth) truck and a sample shall be collected from such truck. The same process shall be repeated for every 8th truck thereafter.

(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 the 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 truck in accordance with paragraph 2.1.2(b) above shall be mixed together to form a gross sample.

2.2 **Preparation of laboratory samples**

2.2.1 The gross sample collected at the Delivery Point by the Third Party Agency shall 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 will be used for determination of ash, moisture and GCV on equilibrated basis. The Third Party Agency shall prepare laboratory samples (at the Delivery Point) in the size of 12.5mm for total moisture and 212 micron IS Sieve for proximate and GCV analysis. Precaution shall be taken so that before analysis in any government accredited laboratory or National Accreditation Board for Testing and Calibration Laboratories ("**Laboratory**"), further sieving or pulverizing is not required.

2.2.2 The Part-2 sample shall be reduced into a laboratory sample on the date immediately following the date of collection as per BIS Standards (IS: 436 (Part I/Section I) - 1964). The final pulverized sample will be divided into four parts viz. Set – I, Set – II, Set-III and Set-IV as follows:

(a) Set – I shall be taken by the Third Party Agency to a Laboratory for analysis of ash, moisture and GCV by the Third Party Agency as per BIS Standards (IS: 1350 Part 1-1984) or BIS Standards (IS: 1350 Part-II-1970), as applicable;

(b) Set-II of the sample shall be handed over by the Third Party Agency to the Seller

(c) Set-III of the sample shall (i) in case of rail mode, be handed over by the Third Party Agency to the Purchaser; and (ii) in case of road mode, be handed over in equal portions to all of the Purchasers Opting for Sampling on that particular day; and

(d) Set-IV of the sample called referee sample shall be sealed jointly by the Third Party Agency and representatives of each of the Parties (in case of rail mode) or representatives of each of the Purchasers Opting for Sampling (in case of road mode), as the case may be, and shall be kept with the Third Party Agency at the Delivery Point under proper and good quality lock and key arrangement. The referee sample shall be retained in double sealed condition (duly signed by the Third Party Agency and the representatives of the Parties or the representatives of the Purchaser Opting for Sampling, as the case may be) for 30 (thirty) days from the date of sample collection. The referee sample shall be analyzed in the situations specified in paragraph 2.2.4 below.

All samples prepared by the Third Party Agency shall be packed and transported by the Third Party Agency to the relevant persons identified in paragraph 2.2.2(a) to paragraph 2.2.2(d) above, in such a manner so as to make these tamper proof to the satisfaction of the Parties or the Purchasers Opting for Sampling, as the case may be.

2.2.3 The Third Party Agency shall communicate the analysis result of the sample to the Parties or Purchasers Opting for Sampling, as the case may be, within 18 (eighteen) working days of the sample collection. Either Party (in case of rail mode) and one or more Purchasers Opting for Sampling (in case of road mode) may raise a dispute, if any, regarding the findings of the Third Party Agency within 7 (seven) days of the submission of the analysis result by the Third Party Agency, failing which such analysis result shall be binding on the said parties.

2.2.4 In the event that a dispute is raised by the relevant parties within the time period stipulated at paragraph 2.2.3 above, the referee sample shall be analyzed by a mutually agreed government laboratory (other than the Laboratory at which the original sample has been analyzed by a Third Party Agency). The cost analysis of the referee sample shall be borne by the challenging/disputing parties. The non-disputing party(ies) may witness transportation and analysis of referee sample to the above mentioned government laboratory. The findings of such government laboratory, post analysis of the referee sample, shall be binding only on the challenging/ disputing parties and the non-disputing parties shall be bound by the findings of the Third Party Agency.

2.2.5 All tools and tackles, plastic bags, sealing compound and other items required for collection, preparation, storage and analysis of the sample shall be provided by the Seller.

2.2.6 Notwithstanding anything to the contrary contained herein the analysis results communicated by the Third Party Agency or the government laboratory under paragraph 2.2.3 and paragraph 2.2.4 respectively, shall be binding only with respect to the samples of Coal collected for a particular day and shall not impact any past / future supply of the Contracted Grade of Coal made/ to be made to the Purchaser in accordance with the terms of this Agreement.

2.3 Records of Samples/ Third Party Sampling

2.3.1 Proper analysis records shall be maintained at the Laboratories where the samples are analyzed by the Third Party Agency.

2.3.2 The name/ details of the Delivery Point, date of collection and other identification details (e.g. rake no. in case of rail supply) shall be maintained by the Third Party Agency in a register and a proper code number shall be assigned for each sample for identification and reconciliation of results.

2.3.3 Monthly statements containing the details of each and every analysis result finalized during a month based on analysis by a Third Party Agency or 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 for adjustment of billing/ commercial purpose. Copies of the monthly statement / report shall be submitted by the Third Party Agency to (i) the general manager (quality control) of the Seller or his representative; and (ii) the representatives of the Purchaser (in case of rail mode) or the representatives of all the purchasers who have requested for third party sampling (in case of road mode), as applicable.

<u>Annexure VIII</u>
Format of Financial Coverage Bank Guarantee

On Non judicial Stamp Paper of adequate value

Date of Issue :----------
Effective Date :----------
Expiry Date: ----------
Value of B.G. :----------

1. [The Chairman-cum-Managing Director,

_____
(Name & Address of the Seller)]

3. _____
(Name & Address of any other office of the Purchaser)

In consideration of _____(*insert name of the Seller*) having its registered office at _____ (*insert regd. address of the Seller*) and sales office at _____ (*insert address of the sales office of the Seller*) (hereinafter referred to as the '**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 the Annual Contracted Quantity (*as defined in the Agreement*) to [*Name of the Purchaser*], a company incorporated in India under the Companies Act, [1956/2013] with corporate identity number [*CIN of the Purchaser*], whose registered office is at [*address of registered office*], India and principal place of business is at [*address of principal place of business, if different from registered office*] **<u>OR</u>** [*Name of the Individual*], an individual residing at [*address*] and carrying on a sole proprietorship business under the name style of [*Name of Purchaser*] at [*address of sole proprietorship*], **<u>OR</u>** [*Name of the Purchaser*], a limited liability partnership incorporated under the Limited Liability Partnership Act, 2008, with its registered office at [*address of registered office*] **<u>OR</u>** [*Name of the Individual*], an individual residing at [*address*], [*Name of the Individual*], an individual residing at [*address*] and [*Name of the Individual*], an individual residing at [*address*] all carrying on a partnership business under the name style of [*Name of the Purchaser*] registered under [*name of Act under which the firm is registered*] and with its principal place of business at [*address of principal place of business*] **<u>OR</u>** [*Name of the Purchaser*], a [*insert legal nature of the Purchaser (e.g. trust, society etc.)*] incorporated under the [*insert statute under which the Purchaser is incorporated*] with its registered office/ principal place of business/ office at [*address of registered office/ principal place of business/office*] (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, as applicable), as per the terms of the Fuel Supply

Agreement vide Agreement No. (_____) dated (_____) ("**Agreement**").

We, _____(*insert 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 the Seller or such other Person or Persons as may be directed by the Seller, Seller an amount not exceeding INR [*figures*] (Indian Rupees [*words*]) ("**Guarantee Amount**") to secure the obligations of the Purchaser to pay the As Delivered Price of Coal with respect to the Annual Contracted Quantity under the Agreement on demand from the Seller on the terms and conditions contained herein-

1. The Guarantor shall pay the Guarantee Amount 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 [*insert number*] months/ years from the date hereof.

6. It is expressly agreed between the Parties that this guarantee is in respect of prices of the Contracted Grade of Coal for all orders for purchase of the Contracted

Grade of Coal which may be placed by the Purchaser on the Seller during the subsistence of this Agreement.

7. Notwithstanding anything contained herein, the liability of the Guarantor under this guarantee is restricted to Rs. _____/- (Indian Rupees _____) and the same will remain in force up to and including the day of _____(date that is [insert number] months/ years from the date hereof).

8. 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.

9. The guarantee is operative at our _____ (*insert name and address of the branch*) Branch, _____.

10. The Guarantor has, under its constitution, the power to issue this guarantee in favour of the Seller and Shri _____ who has signed this Guarantee on behalf of the Guarantor has the authority to do so. This guarantee will not be discharged due to the change in the constitution of the Guarantor.

11. Capitalized terms used but not defined herein shall have the meaning assigned to them in the Agreement.

Signature of the Bankers
With date & Rubber Stamp.

Annexure IX

Format of Transfer Deed

The Transfer Deed ("**Deed**") is made on this [*day*] day of [*month*], [*year*] between:

1. **[Name of the Purchaser]**, a company incorporated in India under the Companies Act, [1956/2013] with corporate identity number [*CIN*], whose registered office is at [*address of registered office*], India and principal place of business is at [*address of principal place of business, if different from registered office*] (hereinafter referred to as the "**Transferor**", which expression shall unless repugnant to the meaning or context thereof, be deemed to include its successors and permitted assigns) of the other part;

   OR

   [Name of the individual], an individual residing at [*address*] and carrying on a sole proprietorship business under the name style of [name of the **Purchaser**] at [*address of sole proprietorship*] (hereinafter referred to as the "**Transferor**", which expression shall unless repugnant to the meaning or context thereof, be deemed to include his/ her heirs, executors, administrators, representatives and permitted assigns) of the other part;

   OR

   [Name of the Purchaser], a limited liability partnership incorporated under the Limited Liability Partnership Act, 2008, with its registered office at [*address of registered office*] (hereinafter referred to as the "**Transferor**", which expression shall unless repugnant to the meaning or context thereof, be deemed to include its partners, successors, representatives and permitted assigns) of the other part;

   OR

   [Name of the Individual], an individual residing at [*address*], **[Name of the Individual]**, an individual residing at [*address*] and **[Name of the Individual]**, an individual residing at [*address*] all carrying on a partnership business under the name style of [**Name of the Purchaser**] registered under [*name of Act under which the firm is registered*] (hereinafter referred to as the "**Transferor**", which expression shall, which expression shall unless repugnant to the meaning or context thereof, be deemed to include all the partners of the said firm, their representatives, heirs executors, administrators and permitted assignees) of the other part;

   OR

   [Name of the Purchaser], a [*insert legal nature of the Purchaser (e.g. trust, society etc.)*] incorporated under the [*insert statute under which the Purchaser is*

incorporated] with its registered office/ principal place of business/ office at [*address of registered office/ principal place of business/office*] (hereinafter referred to as the "**Transferor**", which expression shall unless repugnant to the meaning or context thereof, be deemed to include its successors, representatives and permitted assigns) of the other part;[6] and

2. **[Name of the Transferee]**, a company incorporated in India under the Companies Act, [1956/2013] with corporate identity number [*CIN*], whose registered office is at [*address of registered office*], India and principal place of business is at [*address of principal place of business, if different from registered office*] (hereinafter referred to as the "**Transferee**", which expression shall unless repugnant to the meaning or context thereof, be deemed to include its successors and permitted assigns) of the other part;

OR

[Name of the individual], an individual residing at [*address*] and carrying on a sole proprietorship business under the name style of [name of the **Transferee**] at [*address of sole proprietorship*] (hereinafter referred to as the "**Transferee**", which expression shall unless repugnant to the meaning or context thereof, be deemed to include his/ her heirs, executors, administrators, representatives and permitted assigns) of the other part;

OR

[Name of the Transferee], a limited liability partnership incorporated under the Limited Liability Partnership Act, 2008, with its registered office at [*address of registered office*] (hereinafter referred to as the "**Transferee**", which expression shall unless repugnant to the meaning or context thereof, be deemed to include its partners, successors, representatives and permitted assigns) of the other part;

OR

[Name of the Individual], an individual residing at [*address*], **[Name of the Individual]**, an individual residing at [*address*] and **[Name of the Individual]**, an individual residing at [*address*] all carrying on a partnership business under the name style of [**Name of the Transferee**] registered under [*name of Act under which the firm is registered*] (hereinafter referred to as the "**Transferee**", which expression shall, which expression shall unless repugnant to the meaning or context thereof, be deemed to include all the partners of the said firm, their representatives, heirs executors, administrators and permitted assignees) of the other part;

OR

[6] **Note**: Delete whichever is inapplicable.

[Name of the Transferee], a [*insert legal nature of the Transferee (e.g. trust, society etc.)*] incorporated under the [*insert statute under which the Transferee is incorporated*] with its registered office/ principal place of business/ office at [*address of registered office/ principal place of business/office*] (hereinafter referred to as the "**Transferee**", which expression shall unless repugnant to the meaning or context thereof, be deemed to include its successors, representatives and permitted assigns) of the other part;[7] and

3. [**Name of the Seller**], a company incorporated in India under the Companies Act, [1956/2013] with corporate identity number [*CIN*], whose registered office is at [*address of registered office*], India and principal place of business is at [*address of principal place of business, if different from the registered office*] (hereinafter referred to as the "**Seller**", which expression shall unless repugnant to the meaning or context thereof, be deemed to include its successors and permitted assigns) of the one part.

WHEREAS:

A. The Transferor had participated in an electronic auction for grant of the Coal Linkages, pursuant to which the Transferor had qualified as a Successful Bidder in accordance with the scheme document dated [*insert date*] issued by Coal India Limited for auction of coal linkages in the [*insert name of the sub-sector for which auction has been conducted*] sub-sector ("**Scheme Document**").

B. The Transferor was issued a letter of intent dated [*insert date*] by the Seller and thereafter executed a fuel supply agreement dated [*insert date*] with the Seller ("**Agreement**") in terms of which *inter alia* the Transferor has become entitled to receive the Annual Contracted Quantity.

C. The Transferor has, pursuant to its transfer application letter dated [*date*] made in accordance with the provisions of clause 15.2 of the Agreement, requested the Seller for its approval in connection with transfer of the Agreement to the Transferee.

D. The Seller has, pursuant to its letter dated [*date*] approved the transfer application of the Transferor subject to compliance by the Transferee of the terms and conditions contained in this Deed.

NOW THIS DEED WITNESSETH AS FOLLOWS:

1. Capitalised terms used but not defined in this Deed shall, unless the context otherwise requires, have the respective meanings ascribed thereto in the Agreement.

2. The Transferee hereby covenants with the Seller that from and after the transfer and

[7] **Note**: Delete whichever is inapplicable.

assignment of the Agreement, the Transferee shall be bound by, and be liable to perform, observe and conform with and be subject to all the provisions of all the covenants, stipulations and conditions contained in the Agreement in the same manner in all respects as if the Transferee was the Successful Bidder under the Scheme Document and was the Purchaser under the Agreement, and he/ it had originally executed the Agreement as such.

3. It is further hereby agreed and declared by the Transferor of the one part and the Transferee of the other part that:

   (a) the Transferee and the Transferor declare that the Transferee meets and shall continue to meet all the Eligibility Conditions which were required to be met by the Transferor under the Scheme Document and the Agreement and documentary evidence in support thereof is enclosed as ***Annexure A***;

   (b) the Transferee acknowledges that he/ it has received a copy of, and has read and understands the Agreement and Scheme Document, and covenants, agrees and confirms that it shall be bound by all provisions of the Scheme Document and the Agreement as if it was an original party thereto;

   (c) the Transferor hereby declares that he/ it has not assigned or in any other manner transferred the Agreement and that no other Person or Persons has any right, title or interest where under in the present Agreement; and

   (d) the Transferee hereby declares that he/ it has accepted all the conditions, obligations, responsibilities, duties and liabilities which the Transferor was bound by and required to comply with under the Agreement.

Capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Agreement.

In witness whereof the parties hereto have signed on the, date and year first above written.

For and on behalf of the Seller:

_____

Name:
Designation:

For and on behalf of the Transferor:

_____

Name:

For and on behalf of the Transferee:

_____
Name:

ANNEXURE A
Copy of documents evidencing compliance with Eligibility Conditions by the Transferee