

COAL INDIA LIMITED

MARKETING & SALES

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CIL/M&S/ 47252 (New Pol) 1103

07.03.2019

To

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

Sub: Modifications in various clauses of Fuel Supply Agreement (FSA) for State nominated Agencies.

Dear Sir,

CIL Board in its 379th meeting held on 12.02.2019 has approved certain modifications in Model Fuel Supply Agreement for State Nominated Agencies.

Salient modifications are as under:

- The trigger for compensation from the existing level of 60% has been brought down to 30% of the Annual Contract Quantity (ACQ).
- Removal of existing provision for Security Deposit forfeiture for lifting below 30% of the ACQ.
- Carrying forward of unlifted quantity against DOs and unallotted rakes against offers, referral time period for LL/LD etc. shall be applicable on financial year basis,
- Clauses for third party sampling have been incorporated.

The revised model FSA is attached herewith. It shall replace the existing FSAs signed for the year 2018-19/2018-19 & 2019-20 and shall be applicable for future FSAs. The revised FSAs shall be signed for implementing the modifications.

The above is for kind information and necessary action at your end.

Encl: as above.

Yours faithfully,

General Manager (M&S)

Copy to:

1. Director (Marketing), CIL.
2. TS to Chairman, CIL Kolkata.
3. GM (Systems), CIL With a request to arrange to upload the same along with enclosures on CIL Website under "Our Business" > "Marketing & Sales" > "NCDP- FSA" menu.

**MODEL FUEL SUPPLY AGREEMENT
BETWEEN
SUBSIDIARY COMPANIES
AND
STATE NOMINATED AGENCIES**

PREAMBLE:

This Agreement is made on this ____ day of ____ (month) ____ (year), between ____ [insert Coal India Limited or "CIL" or Name of the Company nominated by CIL], a company registered under the Companies Act, 1956 and having its registered office at ____ [Insert address of CIL/the nominated Company] hereinafter called the "**Seller**" (which expression shall unless excluded by or repugnant to the subject or context, include its legal representatives, successors and permitted assigns) of the one part,

AND

M/s. ____ (Name of the State nominated agency), an Agency having its registered office at ____ (Address of the State nominated agency), nominated by the Government of ____ (name of state), hereinafter called the "**Purchaser**" (which term shall unless excluded or repugnant to the subject or context include its legal representatives, successors and permitted assigns) of the other part.

Whereas, as per the New Coal Distribution Policy ("NCDP") issued by Ministry of Coal vide Office Memorandum no 23011/4/2007-CPD dated 18.10.07 and No.23011/90/2013-CPD dated 27.9.2016, small, medium and other consumers having annual requirement up to 10,000 tonne and having no Fuel Supply Agreement with a Subsidiary Company of CIL or CIL, can source their coal requirement from Agencies nominated by State Governments. The aforesaid shall be applicable in accordance with Paragraph 2.3 and Paragraph 3.1 of NCDP as amended from time to time. The Agency/ Association so nominated by the State Government is required to enter into a Fuel Supply Agreement with the coal company designated by CIL.

Whereas, in response to letter No. ____ dated ____ from the Office of ____ (the competent authority of the State Government concerned) of ____ State (name of the state) (**Schedule-I**) nominating M/s ____ (name of the nominated State Agency), CIL vide letter No. ____ has agreed to allow M/s. ____ (name of the State nominated agency) to purchase coal through a Fuel Supply Agreement from the coal companies, decided by CIL.

Whereas the Purchaser has agreed to purchase Coal from the Seller for distribution to units /consumers in small and medium sector located in the State of ____ (name of the state) and the Seller has agreed to make such supplies on the terms and conditions set out hereafter.

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

1. DEFINITIONS:

- (a) Agreement shall mean this Agreement along with all Schedules and Annexures.
- b) "**Annual Contracted Quantity**" or "**ACQ**" shall have the meaning as ascribed to it in Clause 4.1.
- c) "**Applicable Laws**" means all laws, brought into force and effect by the Government of India ("GoI") or the State Government including rules, regulations and notifications made thereunder, and judgements, decrees, injunctions, writs and orders of any court of record, applicable to either Seller/CIL or the Purchaser, their obligations or this Fuel Supply Agreement from time to time.

- d) **"Base Price"** shall mean in relation to Coal produced by Seller, the price at the pithead notified by the Seller, from time to time.
- e) **"Business Day"** shall mean each Monday, Tuesday, Wednesday, Thursday, Friday and Saturday that is not declared a holiday in the State of (to be stated by the Seller) under the Negotiable Instruments Act, 1981.
- f) **"Coal"** means non-coking as well as washery grade coal not linked to coking coal washeries, falling within the different classes, grades, and sizes into which Coal is categorized, from time to time, in the notification/order issued for such purpose by the Government of India or by CIL or Seller, as the case may be.
- g) **"Declared Grade"** means grade of the Coal to be supplied under this Agreement, as declared by CIL or the Seller.
- h) **"Delivery Point"** shall mean any of the colliery sidings or colliery loading points, as the case may be, from where Coal shall be delivered by the Seller in the Purchaser's container.
- i) **"End User"** shall mean, for the purposes of this Agreement, any person who requires up to 10,000 tonne of Coal for his own use on an annual basis, and who does not have any arrangement for supply of Coal with CIL or its subsidiary Company. (Per annum requirement in accordance with Paragraph 2.3 and Paragraph 3.1 of NCDP as amended from time to time)
- j) **"Level of Delivery"** shall have the meaning as ascribed to it in Clause 5.1
- k) **"Level of Lifting"** shall have the meaning as ascribed to it in Clause 5.2.
- l) **"Interest Rate"** shall mean the repo rate of Reserve Bank of India (RBI) as applicable on the date of payment by the Purchaser plus 3%.
- m) Deleted
- n) **"Run of Mine" or "ROM"** shall mean the coal as extracted from the colliery and which has not undergone any processing or resizing to suit the requirement of the user.
- o) **"Signature Date"** shall mean the date on which this Agreement is signed by both parties hereto.
- p) **"State Government"** shall mean the Government of _____ (name of the state) which includes but not limited to _____ (name of the concerned department / office) which has nominated the Purchaser for entering into this Agreement with the Seller.
- q) **"Truncated Year"** shall mean a truncated year by virtue of the Signature Date occurring after April 1st in of this Agreement, or otherwise truncated due to Force Majeure Acts etc.
- r) **"Year"** shall mean the financial year of the Seller, commencing on April 1st and ending on the following March 31st and shall include a Truncated Year;
- s) **"Third Party Agency"** shall mean the independent agency appointed for conduct of third party sampling in accordance with Clause 21.2

2. PERIOD OF AGREEMENT:

- 2.1 *This Agreement shall come into force on the Signature Date. This Agreement shall, unless terminated in accordance with the terms hereof, remain in force for a period till the end of the current financial year or the end of the subsequent financial year from the Signature Date ("Term of Agreement"), subject to the period for which the Purchaser is nominated by the State Government. It is clarified that the Term of Agreement, shall, in no event, exceed the period for which the Purchaser is nominated by the State Government in respect of this Agreement."*
- 2.2 Deleted

3 SECURITY DEPOSIT

3.1 Amount and submission of Security Deposit

- 3.1.1 *The Purchaser shall deposit with the Seller as Security Deposit, in the form of cash /or bank guarantee amount expressed in Indian Rupees equivalent to the Base Price of G7 [G1 in case of North Eastern Coalfields (NEC)] Grade ROM Coal prevalent on the Signature Date multiplied by "ACQ/24" (ACQ divided by 24) i.e. Rs []. It is clarified that Security Deposit shall be computed with reference to prorated ACQ in case of truncated Year. For eg. if the truncated year is of eight months, quantity for calculating Security Deposit shall be "Prorate ACQ/16"*
- 3.1.2 The Purchaser shall have the following options to furnish the Security Deposit amount of Rs.---- to the Seller: (a) Deposit 100% of the Security Deposit prior to the signing of this Agreement; or (b) Deposit a minimum of 20% of the Security Deposit amount referred to in 3.1.1 above, prior to signing of this Agreement and the balance amount in _____ installments after signing of the Agreement. The Purchaser shall not be entitled to claim any interest on the Security Deposit. It is clarified that the Base Price of **G7 [G1 in case of North Eastern Coalfields (NEC)] Grade ROM Coal** of the Seller has been considered only for the purpose of calculating the amount of Security Deposit and no commitment whatsoever shall be inferred thereby to supply such grade of Coal at the said Base Price or otherwise.
- 3.1.3 In pursuance of option (a) of clause 3.1.2 above the Purchaser has deposited a sum of Rs.____ by way of [cash/bank guarantee]
- Or
- 3.1.3 (i) In pursuance of option (b) of clause 3.1.2 above the Purchaser has deposited an initial Security Deposit of Rs. _____ [equivalent to the Base Price of **G7 (G1 in case of North Eastern Coalfields) Grade ROM Coal** of the Seller] prevalent on the Signature Date multiplied by [proportion of the ACQ quantity considered, which proportion shall not be less than ACQ/120], by way of cash/bank guarantee.
- (ii) The balance of Security Deposit amount of Rs in terms of option (b) of clause 3.1.2, shall be deposited by the Purchaser with the Seller in the form of Bank Draft/Banker's Cheque/e-transfer at the rate of 10% of the Base Price of **G7 [G1 in case of North Eastern Coalfields (NEC)] Grade ROM Coal** of the Monthly Scheduled Quantity every month till the said balance Security Deposit amount is covered. It is agreed that any default on the part of the Purchaser to provide monthly installment of Security Deposit in any month, the booking of Coal for that month shall not be accepted by the Seller and it shall be treated as default of the Purchaser.

- 3.2 In event that the Purchaser opts to provide the Security Deposit in the form of a bank guarantee, such bank guarantee shall be as per the format provided at Schedule II hereto.
- 3.3 *The Security Deposit shall remain valid and operative until 6 (six) months after the expiry of the Term of Agreement.*
- 3.4 The value of the Security Deposit shall be suitably increased / decreased to match the changes in the Base Price of G7 [G1 in case of North Eastern Coalfields (NEC)] Grade ROM Coal, as notified by CIL / the Seller from time to time. In the event of failure of the Purchaser to provide such increased value, the Seller shall have the right to suspend the supplies in accordance with Clause 14. If additional Bank Guarantee is required to be submitted due to such increase in the said Base Price, the validity of such Bank Guarantee shall match the validity of the original Bank Guarantee. Alternatively, the amount of original Bank Guarantee may be increased by an amendment to cover the change in the said Base Price.
- 3.5 The Security Deposit shall be refundable to the Purchaser at the end of its validity subject to successful completion of, and complete settlement of the claims of Seller arising out of this Agreement.
- 3.6 The Purchaser shall ensure that the Security Deposit stands replenished within 7 (seven) days of drawl of funds by the Seller in accordance with the provisions of this Agreement. Failure to replenish the Security Deposit within such stipulated period shall entitle the Seller to suspend its Coal supplies without absolving the Purchaser of its obligations under this Agreement.
- 3.7 In the event of termination of the Agreement by the Seller in accordance with Clause 17.1(a), (c) and (d), the Seller shall be entitled to forfeit the Security Deposit of the Purchaser in addition to any other rights vested with the Seller upon such termination.
- 3.8 *There will be no forfeiture of Security Deposit (SD) for level of lifting falling below 30% of the ACQ. However, compensation shall be payable by the Purchaser for short lifting below 30% of ACQ.*

4 QUANTITY:

4.1 Annual Contracted Quantity (ACQ):

The Seller shall supply and the Purchaser shall purchase the Annual Contracted Quantity (ACQ) of ____ tonnes () of Coal per annum, as decided by CIL within the recommendation of the State Government. Such Coal shall be supplied by the Seller from own sources of the Seller. The mode-wise, coal field-wise break-up of ACQ is indicated in **Schedule – III** to this Agreement. In the event of a truncated Year, the ACQ shall be prorated accordingly.

It is clarified that the Purchaser may opt for an ACQ lesser than the quantity allocated by CIL for the Year, subject to submission of a written communication from the nominating authority to that effect. The ACQ can be subsequently revised upward within the quantity allocated by CIL for the Year. Such upward revision will be subject to consent of the Seller and will be allowed only once in a Year. The revised ACQ shall be applicable on pro-rata basis with effect from the date of amendment in the Agreement. Further, any downward revision of original/revised ACQ will not be permitted.

4.2 Deleted

- 4.3 Coal sold and purchased under this Agreement shall only be sold / distributed by the Purchaser to End Users as defined herein.. Further, the Purchaser shall sell Coal to such End Users at the "As declared price of Coal" plus up to 5% margin over Base Price as service charges. The Purchaser shall be also entitled to charge any taxes, levies and any other statutory dues as may be applicable to the sale to the End User in the State of _____. The Purchaser shall ensure that the Coal is sold only to an End User and shall not be re-sold or traded.
- 4.4 The Purchaser shall submit to the State Government, a Quarterly Return as per Schedule VI giving month-wise, consumer-wise, unit-wise details of Coal sold. Such details should essentially include name, address and contact no. of consumer, type & location of unit, quantity lifted during the month and the price at which Coal was supplied for evaluation of genuine consumption and monitoring of the same by the State Government. Such particulars shall be hosted by the Purchaser and the State Nominating Authority in their respective websites on regular basis.
- 4.5 The Purchaser has submitted an Affidavit as enclosed with this Agreement at **Schedule-IV**. Under the Affidavit, the Purchaser has undertaken that Coal will be sold by the Purchaser only to the end-user as per the stipulations under Clause 4.3 of this Agreement. In the event of any breach or any complaint from any quarter received by the Seller/CIL, the same shall be referred to the State Government for examination and suitable action, if any, against the Purchaser. On receipt of any advice from the State Government for action against the Purchaser, the Seller shall be entitled to take appropriate action against the Purchaser including termination of this Agreement. Such termination, however, shall not absolve the Purchaser from its obligations and liabilities under the Agreement.

4.6 Quarterly Quantity (QQ)

Deleted

4.7 Monthly Quantity

4.7.1 Monthly Scheduled Quantity (MSQ)

The Monthly Scheduled Quantity (MSQ) shall be 1/12 th of the ACQ. It is clarified that the MSQ can be varied by mutual consent and approval of the Seller and the Purchaser at the time of execution of this Agreement.

In case any further variation in the MSQ is required by the Purchaser, the Purchaser may request the Seller for the same by sending a written notice to the Seller at least 30 (thirty) days in advance and such variation shall be subject to the express written acceptance by the Seller, and the Seller shall have the discretion and not the obligation to provide such consent.

In case of supply by Rail, the Parties agree that if the MSQ to be lifted by the Purchaser in a month is insufficient to form adequate load for a rake, such formation of adequate load, as prescribed by seller, for a rake would be allowed by combining the MSQ of the next month(s) of the applicable financial year during the Term of Agreement.

4.7.2 Make-up Entitlement & Make-up Quantities/ Carry Forward

- i. *The quantity of coal which remains unlifted within the validity period of 45 days from the date of Sale Order for supply through Road mode against value paid orders will not lapse and will be carried forward with the allocation of next month and so on till the end of the applicable financial year of the contract. However Purchaser may request not to carry forward the order and ask for refund of applicable coal value. Not carrying forward any quantity will not be a ground to seek waiver/reduction in penalty on account of Level of Lifting.*

In case of Sale Orders issued in the ending months of the applicable financial year of the contract period i.e. February/ March, the same shall be valid till the end of financial year or 45 days from the date of Sale order, whichever is later.

- ii. *In case of supply through Rail mode, the number of rakes offered but not allotted within the validity period shall remain eligible for seeking allotment in subsequent month(s) till the end of applicable financial year of the contract. However purchaser may opt not to resubmit the program for rakes not allotted and ask for refund of applicable coal value.*
- iii. *However such quantity will lapse at the end of applicable financial year of the contract if the residual quantity is less than rake load for rail mode or less than a truck load for road mode. The quantity, which the purchaser did not book by making full payment shall stand lapsed at the end of the month.*
- iv. *In case of bookings by Rail, the allotted rakes will remain valid for supply for the period permissible as per Railway rules. For bookings by Road, in case any quantity remains unlifted after the expiry of 45 days validity period of respective Delivery Orders, the purchaser will have the option to take refund against unlifted quantities or to carry it forward till the end of the applicable financial year of this agreement.*
- v. *In no case annual booking of coal by Road/allotments by Rail under above process shall exceed the ACQ.*

4.8 Compensation for short supply/lifting

If for a year, the Level of Delivery by the Seller, or the Level of Lifting by the Purchaser falls below 100% of ACQ with respect to that Year, the defaulting Party shall be liable to pay compensation ("Delivery Compensation") to the other Party for the shortfall quantity in terms of the following:

	<i>Level of delivery/lifting of coal in a year</i>	<i>Rate of compensation for the Shortfall Quantity (at the rate of Base Price of Grade G7 Grade ROM * Coal of the Seller as prevailing on the last day of the year)</i>
1.	<i>Less than 100% but up to 30% of ACQ</i>	<i>NIL</i>
2.	<i>Below 30% of ACQ</i>	<i>5%</i>

**G1 Grade ROM in case of NEC.*

- 4.9** The Delivery Compensation for short delivery/lifting shall be payable by the defaulting Party to the other Party within a period of 30 days from the date of receipt of claim. In the event of non-payment within the due date, the defaulting Party shall be liable to pay interest in accordance with Clause 15. However, in the event of non-payment of Delivery Compensation by the Purchaser beyond 60 days of such claim, the Seller shall be entitled to take any or all remedies including but not limited to encashment of Security Deposit and adjustment against the Coal value lying with Seller and/or termination of Coal supply.

5. LEVEL OF DELIVERY/LIFTING:

5.1 Level of Delivery

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

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

Where:

LD = Level of Delivery of Coal by the Seller during the Year (in %) ACQ shall have the same meaning as given in Clause 4.1

DQ = Delivered Quantity, which is the aggregate of actual quantities of Coal delivered by the Seller during the Year (in tonnes)

DDQ = Deemed Delivered Quantity, reckoned in the manner stated in Clause 6 (in tonnes)

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

$$\text{FM} = \frac{\text{ACQ} \times \text{No of days lost under applicable Force Majeure event}}{365} \text{ (in tonnes)}$$

5.2 Level of Lifting:

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

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

Where:

LL = Level of Lifting of Coal by the Purchaser for the Year (in %)

ACQ & DDQ shall have the same meaning as given in Clause 4.1 & 6.0 respectively.

- 5.3 For the purpose of calculation of 'No. of days lost under applicable Force Majeure event', as described in Clause 5.1 and Clause 5.2 above, in case of a Force Majeure event affecting both the Parties, such number of days shall be counted only once.
- 5.4 For the purpose of computing Level of Lifting or Level of Delivery, the weight per wagon shall be considered as 65 (sixty five) tonnes.

6. DEEMED DELIVERED QUANTITY (DDQ):

For the purpose of this Agreement, the aggregate of the following items shall constitute the Deemed Delivered Quantity (DDQ) with respect to a Year.

6.1 For supply of Coal by rail:

- i. The quantity of Coal not supplied by the Seller owing to omission or failure on the part of Purchaser to submit the designated rail programme(s) as per Clause 8.1 with respect to the Monthly Scheduled Quantities as per Clause 4.7.

- ii. The quantity of Coal not supplied by the Seller owing to cancellation, withdrawal or modification of the rail programme(s) by the Purchaser after its submission whether before or after allotment of wagon(s) by Indian Railways.
- iii. The quantity of Coal not supplied by the Seller owing to Seller exercising the right of suspension under Clause 3.1.3 and Clause 14.
- iv. The quantity of Coal not supplied by the Seller owing to Purchaser failing or omitting to fulfill the requirements under Clause 11.2.

6.2 For supply of Coal by road:

- i. The quantity of Coal not supplied by the Seller owing to omission or failure on the part of Purchaser to provide the Security Deposit or any part thereof in accordance with this clause 3.1.2 or 3.1.3, as the case may be.
- ii. The quantity of Coal not supplied by the Seller owing to omission or failure on the part of Purchaser to book value paid orders for the Monthly Scheduled Quantities as per Clause 4.7 and within the period mandated under clause 8.2.
- iii. Deleted
- iv. Deemed Delivered Quantity in terms of Clauses 6.1 and 6.2 shall be calculated on cumulated monthly basis during a year.

7. WEIGHMENT OF COAL:

- 7.1 In relation to transport of Coal by rail, the weight as recorded by the Indian Railways in the Railway Receipt(R/R) shall be final and binding for all commercial purposes on both the Parties. In relation to Coal being dispatched by road, the weight recorded at the Seller's weighbridge at the Delivery Point and as mentioned in the dispatch document, shall be final and binding on both the Parties for all commercial purposes under this Agreement.

8. METHOD OF ORDER BOOKING AND DELIVERY OF COAL:

8.1 By Rail:

- 8.1.1 Not less than 10 (ten) Business Days before the commencement of a month, the Purchaser shall submit a programme along with applicable financial coverage in terms of Clause 11.2 in writing to the Seller, as per the applicable Railway rules and Seller's procedures, for the supply of the Monthly Scheduled Quantity in terms of Clause 4.7. The Purchaser shall ensure compliance of the requirements under Clause 11.2.

The validity period of the monthly programme for movement by rail for seeking allotment shall be till the last day of the month concerned and the consent shall be issued by the Seller accordingly. Once the rake is allotted, it shall remain valid for supply as per prevailing Railways rules.

- 8.1.2 The Seller shall thereupon submit 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 month concerned.

- 8.1.3 The wagons shall be booked by the Purchaser on "freight to pay" or "freight pre-paid" basis as per Railway Rules.
- 8.1.4 In case of formation of rakes with wagons loaded from different loading points, the Seller shall make reasonable efforts to complete documentation formalities as per Railway rules so as to enable the Purchaser to avail of trainload freight rate.

8.2 By Road:

- 8.2.1 In terms of the notice by the Seller issued for monthly Coal allocation / bookings stipulating the time schedule for order booking and advance payment, the Purchaser shall deposit 100% advance payment in the manner provided in Clause 11, for the Monthly Scheduled Quantity determined in terms of Clause 4.7 or the quantity the Purchaser likes to book in a month whichever is less.

The Seller shall arrange to issue sale order(s)/delivery order(s) separately for each colliery and issue necessary loading programme / schedule. The Purchaser shall arrange to place the required number / type of trucks to lift the Coal as per such loading programme / schedule. The Seller shall endeavour to issue the sale order(s) / delivery order(s) in favour of the Purchaser within 4 (four) Business Days after encashment of the Purchaser's financial instrument as per Clause 11.1.

- 8.2.2 Deleted

- 8.2.3 In the event of any quantity remaining undelivered / unlifted, the Purchaser shall be entitled to the refund of the value of such quantity.

- 8.2.4 In the event the Purchaser fails to book any quantity of Coal for any month, such Coal quantity shall lapse and shall be treated as failed quantity. It is clarified that in no case shall the Purchaser be allowed to book such lapsed/ failed quantity in any subsequent period.

9. TRANSFER OF TITLE OF GOODS:

Once supplies of Coal have been effected at the Delivery Point / Loading Point in the Purchaser's container by the Seller, the property / title and risk of loss of Coal shall stand transferred to the Purchaser. The Seller shall in no way be responsible or liable for the security or safeguard of the Coal so transferred. The Seller shall have no liability, including towards increased freight or transportation costs, as regards any diversion of wagons / rakes / road transport en-route, for whatever causes, by Indian Railways; or road transporter or any other agency.

10. PRICE OF COAL:

- 10.1 The price of Coal delivered hereunder shall be the sum of Base Price, sizing charges, transportation charges up to the Delivery Point, rapid loading charges, statutory charges, levies and other charges, as applicable ("**As Delivered Price of Coal**"). The components of As Delivered Price of Coal shall be determined on the basis of notifications issued by CIL / Seller / statutory authority from time to time. Accordingly, in case of revision of any component of the As Delivered Price of Coal by the CIL/Seller/statutory authority, the Purchaser shall be liable to pay the revised component of As Delivered Price of Coal as and from the date the revised rates/criteria becomes or has become effective.

- 10.2 Deleted

10.3 Royalties, Taxes, Duties, Cess, and such statutory levies payable to the State Government/ Central Government or to any other statutory authority shall be borne by the Purchaser on the basis of grade of Coal as declared by the Seller, as applicable at the time of delivery.

10.4 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. FINANCIAL COVERAGE:

11.1 By Road:

For road dispatches, advance payment as required under Clause 8.2.1 shall be drawn in favour of Seller by the Purchaser by means of DD / Bankers' Cheque **e-transfer** and payable on any scheduled bank acceptable to the Seller at _____ (to be indicated by the Seller).

11.2 By Rail:

11.2.1 The Purchaser shall submit financial coverage to the Seller in the form of a Banker's Cheque/DD/ **e-transfer** Bank Guarantee (issued by a scheduled Bank acceptable to the Seller and in the format enclosed at **Schedule - V** of this Agreement) for an amount equal to the estimated As Delivered Price of Coal for 15 days (Fifteen days) of Coal supplies, i.e. ACQ/24, subject to a minimum amount equivalent to As Delivered Price of Coal of one rake. The Bank Guarantee shall be kept operative and valid by the Purchaser for the Term of Agreement and also for a further period of 180 (one hundred eighty) days, operable at ____ (to be indicated by the Seller).

11.2.2 The amount of the Bank Guarantee shall be increased commensurately within 7 (seven) days of any increase in the As Delivered Price of Coal. The Purchaser shall ensure that at all times the amount of the Bank Guarantee is not less than the estimated As Delivered Price of Coal for 15 days (fifteen days) of Coal supplies, i.e. ACQ/24, subject to a minimum amount equivalent to As Delivered Price of Coal of one rake.

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

11.4 The Bank Guarantee shall be initially valid for a minimum period of fifteen (15) months. The Purchaser shall ensure renewal at least one month prior to expiry of the Bank Guarantee. In the event of delay in renewing the Bank Guarantee, as an interim measure, the Purchaser may make advance payment on rake-to-rake basis for continuing the Coal supplies. The Seller shall have the right to suspend supplies of Coal, without any notice, so long as, either (i) there does not exist a valid and operable Bank Guarantee for the amount herein before stated, or (ii) the Purchaser has not made advance payment on a rake-to-rake basis.

11.5 The Seller shall raise the Coal supply bills on rake-to-rake basis for delivery of Coal by rail. Bills for delivery of Coal by road shall be prepared by the Seller on monthly basis. Bills shall be prepared by the Seller and payable by the Purchaser on the basis of Declared Grade of Coal.

12. OVERLOADING & UNDER LOADING FOR RAIL DESPATCH:

- 12.1 *For non-coking coal of GCV exceeding 5800 Kcal/Kg and coking coal of Steel Grade I, Steel Grade II, Washery Grade I, Washery Grade II, Semi-coking Grade I, Semi-coking Grade II and washed Coal; any idle freight for under-loading below the stenciled carrying capacity, as shown on the wagon or minimum chargeable weight for the purpose of freight charges as notified by the railways (route-wise) for any particular type of wagon from time to time, whichever is lesser, shall be borne by the Seller. For all other Grades of Coal, any idle freight for under-loading below the stenciled carrying capacity, plus two (2) tonnes, or minimum chargeable weight for the purpose of freight charges as notified by the railways (route-wise) for any particular type of wagon from time to time, whichever is lesser, shall be borne by the Seller.*
- 12.1.1 *Idle freight resulting from under loading of wagon, as per Clause 12.1, shall be adjusted in the bills. Idle freight shall be reckoned as the difference between the freight charged by the railways/freight payable for stenciled carrying capacity/freight payable for stenciled carrying capacity plus two (2) tonnes, as applicable in terms of Clause 12.1 and the freight payable for the actual recorded weight of Coal loaded in the wagons. It is clarified that the compensation shall comprise basic railway freight and other applicable charges such as DPC, DS etc. actually levied by the railway under the respective consignment.*
- 12.2 Any penal freight for overloading charged by the Indian Railways for any consignment shall be payable by the Purchaser. However, if overloading/under-loading is detected from any particular colliery, consistently during 3 (three) continuous months, on due intimation from the Purchaser to this effect, the Seller shall endeavour to take remedial measures.
- 12.3 Within two Business days after receipt of a bill/invoice from the Seller for supplies made by rail, the Purchaser shall make full payment to the Seller with respect to each bill / invoice after adjustment of amount already deposited in terms of Clause 11.2. The payment shall be through DD / Banker's Cheque/ **e-transfer** payable at _____ (to be indicated by the Seller). In the event of non-payment within the aforesaid stipulated period, the Purchaser shall be liable to pay interest in accordance with Clause 15. However, in the event of non payment with interest by the Purchaser within 30 (thirty) days of receipt of bill/invoice, the Seller shall be entitled to suspend the Coal supplies and / or realize the outstanding dues in the manner set out in Clause 14.

13. NOTICE:

In the event, either Party owing payment of any amount to the other Party defaults in making such payment, the Party not in default shall give a written notice to the Party in default and the matter shall thereafter be dealt with in accordance with Clause 14.

14. SUSPENSION OF COAL SUPPLY:

- 14.1 Notwithstanding other provisions of this Agreement, when payment with respect to an invoice raised by the Seller is not made by the Purchaser or the Bank Guarantee or Security Deposit is not submitted or replenished, as the case may be, within the stipulated period including the period allowed for making payment with interest in accordance with this Agreement the Seller shall have the right to:
- a) Adjust the outstanding dues against the interest-free Security Deposit as described in Clause 3

- b) Invoke the Bank Guarantee, as described in Clause 11.2, to the extent available and necessary to meet the outstanding dues.
- c) Suspend supplies of Coal after giving a written notice to the Purchaser providing a cure-period of not less than seven (7) Business Days. The Seller shall be entitled to give such notice as soon as the aggregate of sums due from the Purchaser, including the value of Coal to be supplied during the cure-period, is equal to or more than the subsisting values of security under (a) and (b) above.

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

14.3 In the event of suspension of supplies of Coal pursuant to this Clause, the Seller shall have the right to continue the suspension as long as the interest-free Security Deposit or the Bank Guarantee in terms of Clause 11.2, as the case may be, has not been fully replenished or replaced, as may be required.

14.4 The Seller shall resume the Coal supplies within 3 (three) days of receipt of payment of the outstanding dues together with interest in the manner provided in Clause 15, along with full replenishment of the Security Deposit and/or the Bank Guarantee in terms of Clause 11.2.

15. **INTEREST:**

With respect to default in making any payment due in terms of this Agreement by one Party to the other, the defaulting Party shall be liable to pay interest @ repo rate of Reserve Bank of India (RBI) as applicable on the due date of payment by the Purchaser plus 3%(three) on the total sum outstanding and for the period the payment has remained over due after adjustment of advance. For removal of doubts, it is clarified that the Seller shall have the right to adjust or recover the interest due in terms of this Clause from the interest-free Security Deposit and/or the Bank Guarantee referred to in Clause 11.2.

16. **Resolution of Disputes:**

In the event of any dispute or differences between the Purchaser and the Seller, such dispute or differences shall be resolved amicably by mutual consultation. If such resolution is not possible, then, the unresolved dispute or difference shall be referred to the sole arbitrator for arbitration as per the Arbitration & Conciliation Act, 1996 and rules made thereunder from time to time. The sole Arbitrator shall be nominated by Chairman, Coal India Limited. In the event of such an arbitrator to whom the matter is originally referred, being transferred or vacating his office or being unable to act for any reason whatsoever, the Chairman, CIL shall appoint another person to act as an arbitrator in accordance with terms of the agreement and the person so appointed shall be entitled to proceed from the stage at which it was left out by his predecessors.

The venue of the arbitration proceeding shall be [-----] or such other places as the arbitrator may decide.

17. **TERMINATION OF AGREEMENT:**

17.1 This Agreement may be terminated in the manner and subject to the conditions detailed herein below:

(a) Automatically, in the event the nomination of the Purchaser is withdrawn or canceled by the concerned State Government, which shall be deemed to be the default of the Purchaser under the Agreement. However, liabilities of the Purchaser that had already accrued on the effective date of such termination shall survive.

(b) Deleted

(c) By the Seller in the event of non payment of compensation by the Purchaser within 60 days the claim for compensation being made by the Seller in accordance with clause 4.9 herein above.

(d) By the Seller, on receipt of advise from the State Government, in accordance with clause 4.5 herein above.

(e) By either party by providing prior written notice for a period of 90 days, where any Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure Act, as described in Clause 18 below; and such inability to perform lasts for not less than a total of 90 days in any continuous period of 180 days, In such event, the termination shall take effect on expiry of the notice period of 90 days, 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.

17.2 Termination of this Agreement shall be without prejudice to the accrued rights and obligations of either Party as at immediately prior to the termination. On termination of the Agreement, State Government shall be duly informed by the Party terminating the Agreement, of such termination.

17.3 Notwithstanding the provisions of Clause 17.1 and 17.2 above, in the event of any material change in the coal distribution system of Seller due to a Government directive/ notification, at any time after the execution of this Agreement, the same shall be notified by the Seller to the Purchaser in writing. In the event the Seller decides to terminate this Agreement, arising out of any such change, it shall notify the Purchaser at least 30 days in advance of such termination coming into effect and the Seller shall stand relieved of any obligation under the Agreement. For the avoidance of any doubt, CIL/ Seller shall bear no liability on account of such termination.

18. **FORCE MAJEURE:**

18.1 As used in this Agreement, the expression "**Force Majeure**" or "**Force Majeure Act**" means any act, circumstance or event or a combination of acts, circumstances and events which wholly or partially prevents or delays the performance of obligations of either party arising under this Agreement ("Non-Performing Party") when such act, circumstance or event is not reasonably within the control of and not caused by the fault or negligence of the Non-Performing Party, and provided that such act, circumstance or event is relatable to one or more of the following categories:

- a. Flood, inundation of mine, drought, lightening, cyclone, storm, earthquake or geological disturbances, eruption of gases and such like natural occurrences;
- b. Any law, ordinance or order of the Central or State Government, or any direction of a statutory regulatory authority that restricts performance of the obligations hereunder;
- c. The enactment, promulgation, amendment, suspension or repeal of any Applicable Laws after the date hereof;

- d. Any delay or direction or order on the part of the Government of India or relevant State Government on denial or refusal to grant or renew, or any revocation, or modification of any required permit or mining lease or governmental approvals provided that such delay, modification, denial, refusal or revocation was not due to a cause attributable to the non-performing Party;
- e. Mine fires and inundation where either is caused due to natural causes despite normal precautions in accordance with extant mining practices in India, subsidence, eruption of gases and unforeseen geological disturbances;
- f. War, riot, civil war, blockade, insurrection, acts of public enemies or civil disturbance;

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

18.2 Burden of Proof:

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

18.3 Effect of Force Majeure:

If either Party is wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure Act, then that the Non-Performing Party 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 Non-Performing Party provides a written notice to the other Party of the particulars of the occurrence, including an estimation of its expected duration and probable impact on the performance of its obligations hereunder, and continues to furnish periodic reports with respect thereto, every 7 (seven) days, during the period of Force Majeure.
- b) The Non-Performing Party shall use all reasonable efforts to continue to perform its obligations hereunder and to correct or cure as soon as possible the said Force Majeure Act.
- c) The suspension of performance shall be of no greater scope and no longer duration than is reasonably necessitated by the said Force Majeure Act.
- d) The Non-Performing Party shall provide the other Party with prompt notice of the cessation of the said 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 periods of Force Majeure.
- g) The Force Majeure Act shall not relieve either Party from its obligation to comply with Applicable Laws. The Non-Performing Party shall exercise all reasonable efforts to mitigate or limit damages to the other Party.
- h) Quantity of Coal not delivered by the Seller, or not accepted by the Purchaser due to the Force Majeure Act shall reduce the ACQ by the same amount.

19. SCHEDULES / ANNEXURES:

The Schedules detailed below shall form part of this Agreement.

- Schedule - I - Letter of nomination of State Government (Preamble)
- Schedule - II - Bank Guarantee Pro-forma for Security Deposit (Clause 3.1)
- Schedule - III - Annual Contracted Quantity (Clause 4.1)
- Schedule - IV - Format for Affidavit (Clause 4.5)
- Schedule - V - Bank Guarantee Pro-forma for Financial Coverage against Coal Supplies. (Clause 11.2)
- Schedule - VI - Quarterly Return to be given by State Nominated Agency to State Govt. (clause 4.4)
- Schedule - VII - Procedure for third party sampling for non- power sector inclusive of note on joint sampling. [Clause 21.2.3(i) & (ii)]*

20. MISCELLANEOUS:

- 20.1 Amendment: This Agreement cannot be amended or modified except by prior written consent of the Parties.
- 20.2 Severability and Renegotiation: In the event any part or provision of this Agreement becomes, for any reason, unenforceable or is declared invalid by a competent court of law or tribunal, the rest of this Agreement shall remain in full force and effect as if the unenforceable or invalid portions had not been part of this Agreement, and in such eventuality the Parties agree to negotiate with a view to amend or modify this Agreement for achieving the original intent of the Parties.
- 20.3 Governing Law: This Agreement, and the rights and obligations hereunder shall be interpreted, construed and governed by the laws, regulations and rules in force in India.
- 20.4 Entirety: This Agreement and the Schedules, and such documents attached or referred hereto are intended by the Parties as the final expression of their Agreement and are intended also as a complete and exclusive statement of the terms of their Agreement. All prior written or oral understandings, offers or other communications of every kind pertaining to the matters contained in this Agreement are hereby abrogated and withdrawn.
- 20.5 Counterpart: This Agreement may be executed in any number of counterparts and each counterpart shall have the same force and effect as the original instrument.

- 20.6 The head of the Marketing Division of the Seller or his representative/s nominated for the purpose shall be authorised to act for and on behalf of the Seller.
- 20.7 It shall be the responsibility of the Parties to ensure that any change in the address for service or in the particulars of the designated representative is notified to the other Party and all other concerned, before effecting a change and in any case within two Business Days of such change.
- 20.8 All notices under this Agreement shall be made in writing and shall be either in Hindi or in English.
- 20.9. Unless otherwise specified, the notices to be sent by the Seller to Purchaser or by Purchaser to the Seller shall be at the following addresses:

SELLER

1. Postal Address:
2. Phone No. :
3. Fax:
4. e-Mail:

PURCHASER

1. Postal Address:
2. Phone No. :
3. Fax:
4. e-Mail:

21 QUALITY:

- 21.1 *The quality of the Coal to be supplied from the mines of the Seller as far as possible shall be within the specifications as per Schedule-II to this Agreement. The Seller shall take all reasonable steps to remove stones above 250mm (in size), shale and extraneous matters before the loading of the coal. Complaint, if any, regarding the quality of coal shall be made by the Purchaser giving specific details of the consignment to the GM (M&S) of the Seller.*

21.2 Third Party Sampling

- 21.2.1 *The Third Party Sampling facility shall be extended as an option to the buyers.*
- 21.2.2 *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. Purchaser who is not desirous of availing the option of third party sampling shall give an undertaking to this effect.*
- 21.2.3 *In the event the Purchaser intimates the Seller that it is desirous of availing third party sampling by the Third Party Agency, such facility shall be allowed as per following conditions.*
- (i) *The facility shall be extended at the Delivery Point only and such third party sampling shall be undertaken for the supplies against this FSA in accordance with the procedure for third party sampling for non- power consumers as per Schedule VII.*
- (ii) *If for any reason whatsoever, the third party sampling cannot be conducted in accordance with the procedure for third party sampling for non- power consumers as per Schedule VII, joint sampling and analysis shall be carried out by the Seller in presence of the Purchaser at the Delivery Point in accordance with the modalities for joint sampling as noted in schedule VII . However failure of the purchaser to be present will not invalidate or be a ground for disputing the sampling and analysis carried out by the seller.*
- (iii) *If for any reason whatsoever, the third party sampling/ joint sampling cannot be conducted in accordance with the procedure for third party sampling for non- power consumers as per Schedule VII, the said consignment will be treated in the manner as in case of buyers not desirous of third party sampling.*
- (iv) *For commencement of third party sampling a Tripartite agreement shall be signed by the purchaser, seller and the third party within a time frame as decided mutually by the parties involved as per format available with coal company. Till such time 21.2.3(ii) or 21.2.3 (iii) shall be applicable as the case may be.*

(v) 50% share of the cost of third party sampling shall be borne by the purchaser in terms of the tripartite agreement. Such payment shall be made by the purchaser directly to the third party agency.

21.2.4 In case of a variation of Grade of Coal (decided on the basis of third party sampling by the Third Party Agency) as compared to the declared Grade of Coal, the Purchaser shall pay for the supplied grade of coal as per final analysis report of third party agency/joint sampling/ referee lab as applicable.

21.2.5 Notwithstanding the above, it is clarified that in case of coking coal, if pursuant to the third party sampling by a Third Party Agency, the test results establish that the Grade of Coal supplied falls outside the categorization stipulated in Table I of the Ministry of Coal notification dated June 16, 1994, as modified from time to time, then the supplied coal shall be deemed to be non-coking coal. Such non-coking coal shall be graded on GCV bands and the grade for such non-coking coal shall be established on the GCV band within which it falls.

21.2.6 The Seller shall raise and the Purchaser shall pay the bills for Coal supplies on Declared Grade basis in accordance with Clause 11. Necessary reconciliations shall be done between the Parties on the basis of the analyzed Grade of Coal as per final analysis report of third party agency/joint sampling/ referee lab as applicable.

Credit/debit note, as the case may be, shall be raised by the concerned coal company towards the difference between the notified price of declared grade and notified price of the supplied grade of coal as per the third party/Joint sampling/referee lab result as the case may be, within seven days after reconciliation of final results. Dues arising out of such credit note/debit note shall be payable by the concerned party within thirty days of the issuance of the credit note/debit note. In case of issue of Debit note, the differential price with all applicable taxes and levies shall be payable.

In case of issue of credit note, adjustment/refund of differential price along with Goods & Services Tax (GST) shall be made as applicable. Any credit in respect of other taxes and levies, shall be adjusted/refunded if and when received by the Seller.

21.2.7 Purchaser who does not opt for third party sampling on the signature date may once exercise this option subsequently, any time during the term of the agreement. It is further provided that the purchaser opting for third party on either on signature date or subsequent date may be allowed to discontinue the arrangement subject to written consent of the buyer. However once the buyer opts out of third party sampling after availing it, he shall not be allowed to opt for third party sampling again in the entire term of the agreement.

21.2.8 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, for all supplies against the FSA, the coal value in respect of the declared Grade of Coal 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

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

Name of the seller

Name of the Purchaser

Name

Name

Designation

Designation

Witnesses (with Name and Designation)

1.

1.

2.

2.

Schedule-I

NOMINATION LETTER OF STATE GOVERNMENT

8

8

Schedule II

BANK GUARANTEE PROFORMA FOR SECURITY DEPOSIT (Refer Clause 3.1)

On Rs. 50/- Non judicial Stamp Paper

Date of Issue: -----

Effective Date: -----

Expiry Date: -----

Value of B.G: -----

1. [The Chairman — cum- Managing Director, / Director in charge, NEC.
(name and address of the subsidiary Company)/(name and address)]

2. -----

(Name & Address of any other office of the Coal Company)

In consideration of _____ (name of the subsidiary Company) having its Registered Office at (regd. address of the subsidiary Company) and Sales Office at _____ (address of the sales office of the subsidiary Company) (hereinafter referred to as 'Seller', which expression shall unless excluded by or repugnant to the subject or context, include its legal representatives, successors and permitted assigns) having agreed to supply Coal to _____ (Name of the State nominated agency) having its registered office at _____ (address of the State nominated agency) (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), who has been nominated by (name of concerned department of the State Government) vide letter/ OM No. _____ dated _____ to buy Coal from the Seller;

We, _____ (Name and address of the Bank), having its Head Office at _____ (Address of the Head Office of the Bank) (hereinafter called the Guarantor, which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators, executors and assigns) do hereby irrevocably and unconditionally guarantee and undertake to pay Seller or such other place or places as may be directed by the Seller all amounts payable by the Purchaser to the extent of Rs. _____/- (Indian Rupees _____) at any time upto..... (date that is at the end of..... (insert number) months from the issue of the Bank Guarantee) subject to the following terms and conditions :-

1) The Guarantor shall pay to the Seller on demand and without any demur, reservation, contest, recourse or protest and/ or without any reference to the Purchaser. As to whether the occasion or ground has arisen for such demand, the decision of the Seller shall be final.

2) The Seller shall have the fullest liberty without reference to the Guarantor and without affecting this guarantee to postpone at any time or from time to time the exercise of all or any of its powers and rights under arrangement made with the Purchaser, and the Guarantor shall not be released from this guarantee

by any arrangement between the Seller and the Purchaser or any alteration thereof made with or without the consent of the Guarantor or by exercise or non-exercise by the Seller of all or any of its powers and Final Model FSA for State Nominated Agencies

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, or withdrawal or cancellation of the nomination of the Purchaser by the State Government but shall in all respects and for all purpose be binding and operative until all monies due to the Seller in respect of all liability or liabilities of the Purchaser are fully paid.

4) It is also agreed that Seller will be entitled at its option to enforce this guarantee against the Guarantor as principal debtor in the instance notwithstanding any other security or guarantee that the Seller may have in relation to the Purchaser's liability.

5) *The Guarantee will remain valid for a period of (insert number) months from the date hereof and to such further period, as may be required and agreed by the Parties and agreed by the Guarantor before the expiry of the aforesaid validity.*

6) The guarantee shall cover all claims or demand of Seller to the extent of the amount guaranteed.

7) Notwithstanding anything contained, the liability of the Guarantor under this Agreement is restricted to Rs. /- _____ (Indian Rupees _____), and the same will remain in force upto and including the day of _____ [date that is at the end of..... (insert number) months from the issue of the Bank Guarantee] and to such further period, as may be required and agreed by the Parties and agreed by the Guarantor before the expiry of the aforesaid validity.

8) This guarantee can be enforced by Seller any number of times for their claims or demand to the total extent of Rs. _____/- (Indian Rupees _____), as long as it remains in force.

9) Unless a demand or claim under this guarantee is received by the Guarantor within the period mentioned in clause 5 and 7 hereof, all rights of the Seller shall be forfeited and the Guarantor shall be relived or discharged from all liabilities.

10) The guarantee is operative at our _____ (name and address of the branch) Branch, _____ (Place).

Signature of the Bankers
With date & Rubber Stamp

Schedule-III

Annual Contracted Quantity (Refer Clause 4.1)

Annual Contract Quantity

Sl. No.	Annual Contracted Quantity (Lakh Tonnes)	Mode of Transport		Coalfield of the seller
		By Road	By Rail	
			Name of Rake Fit Station	

Schedule-IV

AFFIDAVIT

[In reference to Clause 4.5 of the Fuel Supply Agreement ("FSA")]

I, _____, S/o _____ resident at _____ the authorised signatory of _____ ("The Purchaser"), registered under the Companies Act, 1956 having its registered office at _____, do hereby solemnly affirm and on oath as as under:

1) That I am the _____ of the Purchaser and duly authorised to affirm and sign this affidavit on behalf of the Purchaser.

2) *That coal will be sold by the Purchaser only to those small, medium and other coal consuming units/consumers for their own use located within the State of ----- whose requirement is upto 10,000 (ten thousand) metric tonne per annum or as amended from time to time and who do not have any arrangement for supply of coal from any subsidiary coal company of Coal India Limited ("CIL")/CIL*

3) That the Purchaser shall ensure that the coal is sold only to an end user and shall not be re-sold or traded.

4) That the Purchaser shall submit to the State Government, a Quarterly Return as specified in Clause 4.4 of the FSA.

DEPONENT

VERIFICATION

I, _____, do hereby verify that the contents of the above affidavit are true and correct and nothing material has been concealed therefrom.

Verified at _____ on the day of _-----

DEPONENT

Schedule-V

BANK GUARANTEE PRO-FORMA FOR FINANCIAL COVERAGE AGAINST COAL SUPPLIES (Refer Clause 11.2)

On Rs. 50/- Non judicial Stamp Paper

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

1. [The Chairman-cum-Managing Director, / Director in charge NEC.

(Name & Address of the Subsidiary Company)/ (name and address)]

2.(Name & Address of any other office of the Coal Company)

*In consideration of ----- (name of the subsidiary Company) having its Registered Office at -----
----- (regd. address of the subsidiary Company) and Sales Office at ----- (address of
the sales office of the subsidiary Company) (hereinafter referred to as 'Seller', which expression shall
unless excluded by or repugnant to the subject or context, include its legal representatives, successors and
permitted assigns) having agreed to supply Coal to ----- (Name of the State nominated
agency) having its registered office at ----- (address of the State nominated agency)
(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 per the terms of the Fuel
Supply Agreement vide Agreement No. (-----) dated (-----)*

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

1) The Guarantor shall pay to the Seller on demand and without any demur, reservation, contest, recourse
or protest and/ or without any reference to the Purchaser. As to whether the occasion or ground has arisen
for such demand, the decision of the Seller shall be final.

2) The Seller shall have the fullest liberty without reference to the Guarantor and without affecting this
guarantee to postpone at any time or from time to time the exercise of all or any of its powers and rights
under arrangement made with the Purchaser, and the Guarantor shall not be released from this guarantee
by any arrangement between the Seller and the Purchaser or any alteration thereof made with or without
the consent of the Guarantor or by exercise or non-exercise by the Seller of all or any of its powers and
rights against the Purchaser, or any other forbearance, act of omission on the part of the Seller or indulgence
granted by or on behalf of the Seller to the Purchaser, which under the law relating to surety ship would but
for this provision have the effect of releasing the Bank as Guarantor from their obligations under this
guarantee.

3) The guarantee herein contained shall not be determined or affected by the winding up or insolvency of the Purchaser, or withdrawal or cancellation of the nomination of the Purchaser by the State Government 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 until three months after the term of Fuel Supply Agreement datedfrom the date hereof.*

6) It is expressly agreed between the Parties that this guarantee is in respect of prices of coal for all orders for purchase of coal which may be placed by the Purchaser on the Seller during the subsistence of this Agreement.

7) This guarantee shall cover all claims or demand of the Seller to the extent of the amount guaranteed in respect of despatches of Coal for which allotment has been made.

8) *Notwithstanding anything contained the liability of the Guarantor under this Agreement is restricted to Rs. -----/- (Indian Rupees-----) and the same will remain in force upto and including the day of----- (date that is at the end of three months after the term of Fuel Supply Agreement dated-----from the date hereof).*

9) This guarantee can be enforced by the Seller any number of times for their claims or demand to the total extent of Rs. -----/- (Indian Rupees -----), as long as it remains in force.

10) Unless a demand or claim under this guarantee is received by the Guarantor within the period mentioned in clause 5 and 8 hereof, all rights of the Seller shall be forfeited and the Guarantor shall be relived or discharged from all liabilities.

11) The guarantee is operative at our ----- (name and address of the branch) Branch, -----

Signature of the Bankers
With date & Rubber Stamp.

Schedule-VI

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

Period:

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

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

Schedule VII- SNA- FSA [Refer Clause 21.2.3 (i) & (ii)]

Procedure for Third party sampling for non- power sector

1. THIRD PARTY AGENCY (TPA) UNDER DIFFERENT MODES OF SUPPLY

1.1 Third Party Agency for dispatches by Rail / Conveyor Belt/Rope Way/Pipeline

- 1.1.1 In case of off-take of the Contracted Grade of Coal *via* Rail / Conveyor Belt / Rope Way / Pipeline, the Purchaser may choose a third party agency to conduct the third party sampling from list of independent third parties provided by CIL from time to time.
- 1.1.2 The third party agency chosen by the Purchaser shall conduct the third party sampling throughout the Term / Period as applicable, 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 shall be done at the Delivery Point and the costs in this regard shall be borne equally by the Purchaser and the Seller.

1.2 Third Party Agency for dispatches by Road

- 1.2.1 In case of off-take of the Contracted Grade of Coal *via* road mode, the Seller shall choose third party agency to conduct the third party sampling from list of independent third parties provided by CIL from time to time. It is clarified, that the Seller shall have the sole discretion and right to replace, substitute or change the third party sampling agency chosen by it.
- 1.2.2 The third party agency chosen by the Seller shall conduct the third party sampling throughout the Term / Period as applicable, 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 Third party sampling shall be done at the Delivery Point and the costs in this regard shall be borne equally by the Purchaser and the Seller.

1. DETAILED MODALITIES FOR THIRD PARTY SAMPLING

Modalities for collection, handling, storage, preparation and analysis of coal samples and submission of the analysis results, by the TPA shall be as under:

2.1 General

- a) In order to commence third party sampling, a tripartite agreement will have to be signed amongst the Seller (First Party), the Purchaser (Second Party) and the TPA (Third Party). The format of tripartite agreement shall be provided by the Seller. Detailed terms and condition of TPA engagement / work including Referee SOP/ sharing of cost of sampling etc. shall be in accordance with Tripartite Agreement.
- b) Collection and preparation of samples may be witnessed only by the authorized representatives of Seller and Purchaser. In case the authorized representative of either party is not present or does not witness the sample collection and preparation activities, the said work shall be continued by TPA irrespective of non-witnessing by either party. Absence and / or failure to witness shall not be considered as a ground for disputing the result by either party. At any point of time, only one authorized representative each from Seller's side and Purchaser's side shall be allowed to be present during the sample collection and preparation activities.
- c) The TPA shall communicate the analysis result(s) of the sample(s) to the Seller and Purchaser within fifteen (15) days from the date of sample collection. The Seller/ Purchaser may raise dispute if any, against the findings of the TPA within seven (7) days after the submission of the analysis result(s), excluding the date of submission of the analysis results by the TPA.

2.2 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:

2.2.1 Collection of samples from loaded wagons (Rail and MGR):

- a) Rake-wise, grade-wise and consumer-wise coal supplied from one Delivery Point shall be considered as one lot, in case of supplies by rail.

- b) In case of Coal dispatches through MGR the sample collected from each rake (source wise, grade wise and Consumer wise) loaded from the respective Delivery Point during the day shall be pooled together to form a gross sample for the day.
- c) Each Rake shall be divided into a no. of sub-lots in a manner that the quantity of Coal / number of wagons in such sub-lots is more or less equal. One sample shall be collected from each sub-lot. The number of sub-lots shall be determined as under:

No. of wagons in one Lot	Number of sub lots/ samples
Up to 30 wagons	4
>30 wagons up to 50 wagons	5
>50 wagons	6

- d) Each sub-lot consists of one (1) wagon selected as per random table given in IS: 436 (Part I/Section I) 1964 for collection of sample / increments.
- e) In each wagon selected for sampling, the sample shall be drawn from one spot in such a manner so that if in the first randomly selected wagon, the sample is collected at one end, in the next random wagon the sampling spot will be in the middle of the wagon and in the third random wagon, the sampling spot will be at the other end and this sampling procedure shall be repeated for all subsequent random wagons.
- f) Before collecting the samples, the sampling spot will be leveled and at least 25 cm of Coal from the surface shall be removed / scrapped and the place will be leveled for an area of 50 cm by 50 cm.
- g) About 50 kg of sample shall be collected from each selected wagon in the lot by drawing 10 increments of approx. 5 kg each with the help of shovel / scoop.
- h) Any stone / shale of size more than that specified in Schedule ---- shall be removed / discarded from the sample;
- i) Samples thus collected from all the selected wagons in a lot shall be mixed together to form one gross sample per lot.
- j) In case live overhead traction line exists in the siding, TPA shall ensure that the power supply in the overhead traction is essentially switched off before commencement of sample-collection process from loaded wagons.

2.2.2 Collection of Samples of Coal Dispatches by Road:

- (a) Samples shall be collected source-wise and grade-wise on daily basis round the clock, depending upon the timing of loading at respective dispatch point(s) only from the trucks of the purchaser (s) who have opted for third party sampling ("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 sampling spot at the top of the loaded truck, selected randomly 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 source wise, grade wise from every 8th truck in accordance with paragraph 2.2.2(b) as above on daily basis shall be mixed together to form a gross sample.
- (f) Any stone/shale of size more than that specified in Schedule ----- shall be removed / discarded from the sample.

2.2.3 Collection of Samples of coal from Conveyor Belt / Ropeway / Pipelines:

- a) Samples shall be taken lot-wise, grade-wise.
- b) The quantity that passes over the conveyor (directly or through rope way / pipe line) in a day (00 hrs to 24 hrs) constitutes one lot, which needs to be divided into a no. of sub-lots for the purpose of sampling. No. of sub-lots to be divided & quantity of gross sample to be collected from sub lots shall be as below:

Wt. of the Lot (Tons)	No. of sub-lots/gross samples	Qty to be collected (Kg)
Up to 500	2	100
501 to 1000	3	150
1001 to 2000	4	200
2001 to 3000	5	250
Over 3000	6	300

For example:

- i) If the qty to be passed in a day over the conveyor is 600 tons (which is 1 Lot), then there will be 3 sub-lots and total sample quantity will be 150 kg
- ii) 1 gross sample shall be collected from 1 sub-lot, @ 50 kg per sub-lot. Thus, total 150 kg gross sample shall be collected from 3 sub-lots over the whole day, i.e. from 00 hrs to 24 hrs

- iii) If the conveyor is operated for 15 hours in a day, spacing the collection of 150 kg over 15 hours of conveyor operation, we need to collect 10 kg every 1 hour (qty & intervals can be mutually decided by seller & purchaser depending on the running time of the conveyor and the qty that passes in a day)
- c) The belt needs to be stopped at the scheduled time to facilitate collection of the samples manually.
 - d) While collecting the sample, the scoop should traverse the entire cross-section of the conveyor belt, drawing app 5kg per increment
 - e) Any stone / shale of size more than that indicated in Schedule ----- shall be removed / discarded from the sample.
 - f) There shall be one gross sample for the day mixing all the gross samples collected from all the sub lots during a day.

2.3 Preparation of laboratory samples

- 2.3.1 The gross sample collected at the loading end by the TPA shall be divided into two portions. One portion (one fourth of the gross sample) called Part – 1 shall be used for analysis of Total Moisture and the other portion (three fourth of the gross sample) called Part – 2 for determination of ash, moisture and GCV on Equilibrated Basis.
- 2.3.2 The Part-2 Sample shall be reduced into laboratory sample. For the general procedure for reduction of gross sample and preparation of moisture sample and laboratory samples, IS : 436 (Part I/Set 1)-1964 (latest version) shall be followed.
- 2.3.3 Final Laboratory samples shall be in the size of 12.5 mm for determination of Total Moisture and in the size of (-) 212 μ (micron) IS sieve for determination of ash, Equilibrated Moisture (at 40°C and 60% RH) and GCV. Due care shall be taken by the TPA to ensure that the final lab sample is essentially in (-) 212 μ (micron) size before the same is collected from the loading point(s) so that no further sieving or pulverizing is warranted at the laboratory before analysis.
- 2.3.4 The final pulverized sample shall be divided into four equal parts viz. Set – I, Set – II, Set – III and Set – IV of 500 gms each as detailed below:
- (a) Set – I shall be taken by the Third Party Agency to a NABL Accredited Laboratory for analysis of ash, moisture and GCV (on equilibrated conditions' basis at 40⁰ and 60% RH) as per latest BIS Standards (IS: 1350 Part 1-1984) or (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 mode other than road, 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 (TPA) in the presence of the authorized representatives of each of the Parties (in case of mode other than road) or representatives of each of the Purchasers Opting for Sampling (in case of road mode), as the case may be, and shall be kept in custody of the TPA at the Delivery Point (loading 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 authorized representative of the Parties or the representatives of the Purchaser Opting for Sampling, as the case may be) for minimum 30 (thirty) days from the date of sample collection, beyond which it may be destroyed after necessary details are properly recorded by TPA. For the purpose of Referee Analysis, the referee sample(s) shall be packed and transported by the TPA in a tamper proof manner, to the satisfaction of Seller and Purchaser(s), to the referee lab from the loading points. The Seller and Purchaser (s) can exercise the liberty to accompany the TPA to the referee laboratory at their own expenses.

2.3.5 Samples shall be collected, packed and transported by the TPA to the sample preparation site(s) at the loading points in such a manner so as to make them tamper proof to the satisfaction of both the Seller and Purchaser (s) for which detailed procedure may be worked out at the Delivery Point (Loading Point) jointly by representatives of the Seller, Purchaser(s) and TPA.

2.3.6 In the event that a dispute is raised by the party(ies) within the time period stipulated at paragraph 2.1(c) above, the referee sample shall be analyzed by a government laboratory (other than the Laboratory at which the original sample has been analyzed by a Third Party Agency). The analysis and transportation cost 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 of their own cost. 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.

2.4 Analysis of sample(s)

2.4.1 Total Moisture determination shall be done by the TPA at the nearest laboratory of the Seller and remaining tests / analysis for determination of moisture, ash, GCV on equilibrated Basis shall be done by the TPA at NABL-accredited laboratory

2.4.2 Analysis of sample(s) shall be carried out as per latest version of IS 1350 (Part-I)-1984 for determination of Total Moisture, Equilibrated Moisture, Ash and Volatile Matter and as per latest version of IS 1350 (Part-II), 1970 for determination of GCV.

3.0 Records of Samples/ Third Party Sampling

- 3.1.1 Proper analysis records like electronic print out of the analysis results obtained from the Automatic Bomb Calorimeter, source wise, grade wise and date wise details of coal samples received etc. shall be maintained at the Laboratories where the coal samples are analyzed by the Third Party Agency for identification and reconciliation of the analysis results.. Coal samples shall be analyzed only at an NABL Accredited coal testing laboratory
- 3.1.2 Monthly statements containing the details of each and every analysis result source wise, mode wise, grade wise and consumer wise finalized during a month based on analysis by a Third Party Agency or referee analysis, as the case may be, shall be prepared by the TPA and submitted to the Seller and Purchaser (s) before the 5th of the following month stating *inter alia*, the quantity of Coal covered against the respective analysis results. 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 mode other than road) or the representatives of all the purchaser(s) who have requested for third party sampling (in case of road mode), as applicable.

Note: In case of joint sampling, similar procedure for collection, preparation and analysis of coal sample as stated above will remain applicable with necessary changes *mutatis-mutandis* as illustrated below;

- i. Sample will be collected and prepared by Seller's facilities.
- ii. The final laboratory sample will be divided into two parts. First part Set-I of sample will be analyzed by seller and second part Set-II will be kept for referee analysis.
- iii. Analysis of the sample will be done in Seller's laboratory .
- iv. Cost of sampling and analysis will be borne by the seller, so there will be no requirement of sharing of cost of sampling between seller and purchaser.
- v. Cost of referee sample analysis in a designated Government Laboratory including cost of transportation of sample will be borne by the disputing party.
- vi. Purchaser shall associate / witness in throughout the collection, preparation and analysis. However, absence and / or failure of Purchaser(s) to associate / witness shall not be considered as a ground for disputing the process / results.