

FUEL SUPPLY AGREEMENT

Between

BHARAT COKING COAL LIMITED

(as the "Seller")

And

[•]

(as the "Purchaser")

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[**Note:** To be executed on stamp paper of adequate value]

This **FUEL SUPPLY AGREEMENT** (hereafter the “**Agreement**” or “**FSA**”) is made and executed at [●], India on this [●] day of [●] 2024 (“**Execution Date**”) at [●].

BY AND BETWEEN

1. **Bharat Coking Coal Limited** a company incorporated under the Companies Act 1956 and now validly existing under the Companies Act 2013 with corporate identity number (CIN) U10101JH1972GOI000918, and having its registered office at Koyla Bhawan, Koyla Nagar, Dhanbad, Jharkhand – 826005, 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 under the Companies Act[1956/2013]¹ with corporate identity number (CIN) [●] and having its registered office 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.

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 the selection of Washery Developer and Operator (“**WDO**”) for the development and operation of Dugda Washery (*defined hereinafter*) situated at Bokaro, Jharkhand and having a capacity of two (2) Metric Tonnes Per Annum (“**MTPA**”) (“**Washery**”) and the Coal Linkages (*as hereinafter defined*), pursuant to which, the Purchaser has qualified as a Successful Bidder (*as hereinafter defined*) in accordance with the request for proposal dated [insert date of the RFP] issued by the Seller (“**RFP**”).
- B. The Purchaser has thereafter been issued a letter of intent dated [●] by the Seller (“**LOI**”) in terms of which *inter alia* the Purchaser has been selected as the WDO for the Washery and has become entitled to enter into a fuel supply agreement to receive the Annual Contracted Quantity (*as hereinafter defined*).
- C. In terms of the requirements of the RFP, the Purchaser has submitted the following documents with the Seller in accordance with the timelines stipulated in the RFP:
 - (a) [an unconditional and irrevocable bank guarantee dated [●] from [insert name of bank] issued at [insert place] in the format provided in ANNEXURE I /a non-interest bearing security deposit]¹ for an amount equal to INR [insert amount in figures] (Indian Rupees [insert amount in words] only) (“**Performance Security**”); and

¹ **Note:** Delete whichever is not applicable.

(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*) by the Seller to the Purchaser.

NOW THEREFORE, in consideration 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:

- 1.1.1 **"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;
- 1.1.2 **"Advance Payment"** shall have the meaning ascribed to the term in Clause 9.2.2;
- 1.1.3 **"Affected Party"** shall have the meaning ascribed to the term in Clause 18.1;
- 1.1.4 **"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;
- 1.1.5 **"Annual Contracted Quantity"** or **"ACQ"** shall have the meaning as ascribed to the term in Clause 6.1;
- 1.1.6 **"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;
- 1.1.7 **"Approved Mine Plan"** shall mean a mine plan which has been approved in accordance with the Applicable Laws in relation to the captive coal mine
- 1.1.8 **"Arbitration Act"** shall have the meaning ascribed to the term in Clause 16.4.2(i);
- 1.1.9 **"As Delivered Price of Coal"** shall have the meaning ascribed to the term in Clause 12.1;
- 1.1.10 **"Bid"** shall have the meaning ascribed to the term in the RFP;
- 1.1.11 **"Build-Up Period"** shall have the meaning ascribed to the term in Clause 3.3;
- 1.1.12 **"Business Day"** shall mean each Monday, Tuesday, Wednesday, Thursday, Friday and Saturday that is not declared a holiday in the state of Jharkhand, India;
- 1.1.13 **CCO Certificate"** shall mean the certificate issued by Coal Controller in the format specified at ANNEXURE XI .
- 1.1.14 **"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;

- 1.1.15 **"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;
- 1.1.16 **"Coal"** shall mean 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;
- 1.1.17 **"Coal Linkages"** shall mean coal linkages from the identified coal mine(s) of the Seller as provided in ANNEXURE III which has been auctioned strictly for washing by the Purchaser in the Washery and captive consumption of the End Products within the Specified End Use Plant;
- 1.1.18 **"Coal Mine"** shall mean the designated coal mine specified in ANNEXURE III
- 1.1.19 **"Coal Washery Rejects"** shall have the meaning ascribed to the term in the Washery Rejects Policy;
- 1.1.20 **"Commercial Operation Date"** or **"COD"** shall mean the date on which the Certificate of Commercial Operation is issued in respect of the Washery of two (2) MTPA Rated Capacity;
- 1.1.21 **"Completion Certificate"** shall have the meaning ascribed to the term in the WDO Agreement;
- 1.1.22 **"Completion Date"** shall mean the date of completion of the Washery as notified by the Purchaser to the Seller through issuance of a Completion Certificate;
- 1.1.23 **"Certificate of Commercial Operation"** shall mean the certificate issued by the Purchaser to the Seller as per the WDO Agreement;
- 1.1.24 **"Confidential Information"** shall mean all documentation, data, drawings, intellectual property rights and other information of a Party except to the extent that such information is in the public domain through no breach of this Agreement;
- 1.1.25 **"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;
- 1.1.26 **"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;
- 1.1.27 **"CPP"** shall mean captive power plants having the meaning as per Rule 3 of the Electricity Rules, 2005;
- 1.1.28 **"Deemed Delivered Quantity"** shall have the meaning ascribed to the term in Clause 6.9;
- 1.1.29 **"Defaulting Party"** shall have the meaning ascribed to the term in Clause 17.2.8;
- 1.1.30 **"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 at which the Seller shall deliver the Annual Contracted Quantity in accordance with the terms of this Agreement;
- 1.1.31 **"Dispute"** shall have the meaning ascribed to the term in Clause 16.1;
- 1.1.32 **"Dispute Notice"** shall have the meaning ascribed to the term in Clause 16.3;
- 1.1.33 **"Effective Date"** shall mean the date of fulfillment/achievement of the last of the Conditions Precedent specified under Clause 3;
- 1.1.34 **"Eligibility Conditions"** shall have the meaning ascribed to the term in the RFP;
- 1.1.35 **"End Products"** shall mean the products generated from the Washery by washing the coal

supplied by the Seller under this Agreement in the Washery including washed coking coal and washed power coal;

- 1.1.36 **"Execution Date"** shall mean the date of execution of this Agreement by the Parties;
- 1.1.37 **"Failed Quantity"** shall have the meaning ascribed to the term in Clause 6.6.1;
- 1.1.38 **"First Delivery Date"** shall mean the date fifteen (15) days from the achievement of Completion Date of the Washery;
- 1.1.39 **"Financial Coverage"** shall have the meaning ascribed to the term in Clause 13.2.1
- 1.1.40 **"Financial Coverage Bank Guarantee"** or **"Financial Coverage BG"** shall have the meaning ascribed to the term in Clause 13.2.1;
- 1.1.41 **"Force Majeure Act"** shall have the meaning ascribed to the term in Clause 18;
- 1.1.42 **"GCV"** shall mean gross calorific value;
- 1.1.43 **"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:
 - (a) non-coking Coal: based on GCV bands;
 - (b) coking Coal: based on ash percentage; and
 - (c) semi-coking Coal: based on (ash + moisture) percentage;
- 1.1.44 **"GST"** shall have the meaning ascribed to the term in Clause 13.5.3;
- 1.1.45 **"Indemnified Party"** shall have the meaning ascribed to the term Clause 19.1;
- 1.1.46 **"Indexed Price"** shall mean the price derived on the basis of applicable price index;
- 1.1.47 **"INR"** shall mean Indian Rupees;
- 1.1.48 **"Interest Rate"** shall mean the repo-rate of the Reserve Bank of India as applicable on the due date of payment by the Purchaser plus three percent (3%);
- 1.1.49 **"Level of Delivery"** shall have the meaning ascribed to the term in Clause 6.7.1;
- 1.1.50 **"Level of Lifting"** shall have the meaning ascribed to the term in Clause 6.7.2;
- 1.1.51 **"Licenses"** shall have the meaning ascribed to the term in Clause 20.2.3;
- 1.1.52 **"LOI"** shall have the meaning ascribed to the term in Recital B;
- 1.1.53 **"Losses"** shall have the meaning ascribed to the term in Clause 19.2;
- 1.1.54 **"Month"** shall mean a calendar month;
- 1.1.55 **"Modulated Price"** shall mean the price applicable for supply of coal and is higher of the Indexed Price and the prevailing Notified Price for NRS consumers;
- 1.1.56 **"MTPA"** shall have the meaning ascribed to the term in Recital A;
- 1.1.57 **"Non-Affected Party"** shall have the meaning ascribed to the term in Clause 17.2.1;
- 1.1.58 **"Non-Defaulting Party"** shall have the meaning ascribed to the term in Clause 17.2.8;
- 1.1.59 **"Normative Coal Requirement"** shall have the meaning ascribed to it in the RFP;
- 1.1.60 **"Notified Price"** shall mean the price of the relevant grade of coal for as notified by the CIL/Seller from time to time;

- 1.1.61 **“Performance Security”** shall have the meaning ascribed to the term in Recital C(a) and shall include any revised/incremental Performance Security submitted by the Purchaser in accordance with the requirements of Clause 5;
- 1.1.62 **“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;
- 1.1.63 **“Representative”** shall have the meaning ascribed to the term in Clause 16.2;
- 1.1.64 **“RFP”** shall have the meaning ascribed to the term in Recital A;
- 1.1.65 **“Scheduled Quantity”** or **“SQ”** shall have the meaning ascribed to the term in Clause 6.5.1;
- 1.1.66 **“Scheduled Production”** shall mean the scheduled quantity of coal production for a financial year, from the captive coal mine as per the Approved Mine Plan, as certified by Coal Controller’s Organisation;
- 1.1.67 **“Secondary Source(s)”** shall have the meaning ascribed to the term in Clause 6.4.2;
- 1.1.68 **“Site”** or **“Project Land”** shall have the meaning ascribed to the term in the Washery Development and Operation Agreement;
- 1.1.69 **“Specified End Use Plant”** or **“EUP”** shall mean one or more blast furnace units (with or without a coke oven plant) which is commissioned and is used to produce steel (in a single location within the same boundary and/or geographically different location) located in India and owned by the Purchaser and may include a CPP or a cogeneration unit or any other unit of the Purchaser for usage in its Specified End Use Plant which is commissioned or to be commissioned;
- The particulars of the Specified End Use Plant(s) are required to be declared by the Purchaser as detailed in ANNEXURE IV
- 1.1.70 **“Successful Bidder”** shall have the meaning ascribed to the term in the RFP;
- 1.1.71 **“Term”** shall have the meaning ascribed to the term in Clause 2.2;
- 1.1.72 **“Third-Party”** shall mean a Person who is not a Party to this Agreement;
- 1.1.73 **“Third-Party Agency”** shall mean the independent agency appointed for conduct of Third-Party sampling in accordance with Clause 10.1;
- 1.1.74 **“Transaction Agreements”** collectively means this Agreement and the WDO Agreement and such other documents as may be designated as such by the Seller;
- 1.1.75 **“Washery”** shall have the meaning ascribed to the term in Recital A;
- 1.1.76 **“Washery Rejects Policy”** shall mean the *Policy for Handling & Disposal of Washery Rejects* dated 27 May 2021 notified by the Ministry of Coal and as amended from time to time;
- 1.1.77 **“WDO”** shall have the meaning ascribed to the term in Recital A;
- 1.1.78 **“WDO Agreement”** or **“WDOA”** means the Washery Development and Operation Agreement dated [●] entered into between the Parties;
- 1.1.79 **“Winning Premium”** shall mean [●] % ([●] percent) of the reserve price (floor price on which auction is conducted) (rounded up to the nearest second decimal); and
- 1.1.80 **“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:

- 1.2.1 headings and bold typeface are used for convenience only and shall not affect the interpretation of this Agreement;
- 1.2.2 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;
- 1.2.3 references to the Recitals, Clauses and Annexure shall be deemed to be a reference to the recitals, clauses and annexures of this Agreement;
- 1.2.4 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;
- 1.2.5 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;
- 1.2.6 references to any enactment are to be construed as referring also to any amendment or re-enactment (whether before or after the Execution Date), and to any rule, regulation, notification, circular or order issued or made thereunder;
- 1.2.7 where any word or expression is given a defined meaning, any other grammatical form of that word or expression shall have the corresponding meaning, where the context requires;
- 1.2.8 references to “**include**” and “**including**” shall be construed without limitation;
- 1.2.9 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;
- 1.2.10 references to any agreements, RFPs, instruments and/ or documents are to be construed as references to such agreements, RFPs, instruments and/ or documents as amended, modified or supplemented from time to time;
- 1.2.11 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);
- 1.2.12 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;
- 1.2.13 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;
- 1.2.14 where a wider construction is possible, the words “**other**” and “**otherwise**” shall not be construed *ejusdem generis* with any foregoing words;
- 1.2.15 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;
- 1.2.16 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;
- 1.2.17 where any notice, consent or approval is to be given by either of the Parties, the notice, consent or approval shall be given on their behalf only by any duly authorised persons;

- 1.2.18 unless otherwise specified, any reference to a period commencing “from” a specified day or date and “till” or “until” a specific day or date shall include both such days or dates;
- 1.2.19 any capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the RFP; and
- 1.2.20 the terms of the RFP shall be deemed to be incorporated in this FSA by reference and shall form a part of this FSA.

2 TERM OF THIS AGREEMENT

- 2.1 This Agreement shall become effective on the Effective Date (except for Clause 3.1 (*Purchaser’s Conditions Precedent*), Clause 3.2 (*Satisfaction of Conditions Precedent*), Clause 16 (*Settlement of Disputes*), Clause 21 (*Miscellaneous*) and Clause 22 (*Implementation of the Agreement*) which shall become effective on the Execution Date.
- 2.2 Subject to Clause 17.1 and Clause 17.2, this Agreement shall remain in force and effect commencing from the Execution Date until the expiry of twenty five (25) years from the Execution Date (“**Term**”). Subject to there being no default by the Purchaser, the Seller and the Purchaser, may, prior to expiry of the Term, mutually agree to extend the term of this Agreement by a period of five (5) years. In case of such extension, the Term shall mean the initial twenty five (25) years and such additional five (5) years.
- 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 seven (7) 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 maximum period of three (3) 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 maximum period of three (3) months given in writing to the other Party without forfeiture of Performance Security subject to final reconciliation.

3 CONDITIONS PRECEDENT

The obligations of the Seller to supply Coal under this Agreement, save and except in accordance with Clause 3.3, are subject to the satisfaction in full of the Conditions Precedent in accordance with this Clause 3.

3.1 Purchaser’s Conditions Precedent

3.1.1 The Purchaser shall obtain and provide to the Seller all necessary clearances, authorizations, approvals and permissions required for construction, commissioning, operation and maintenance of the Washery, including but not limited to the documents/information set out in ANNEXURE II .

3.1.2 The Purchaser shall submit the Certificate of Commercial Operation of the Washery.

3.2 Satisfaction of Conditions Precedent

3.2.1 The Conditions Precedent set out in Clause 3.1 shall be fulfilled within the timelines as specified in the WDO Agreement or such extended timelines determined in accordance with the terms of the WDO Agreement.

3.2.2 Without prejudice to the Effective Date, within fifteen (15) days of fulfillment of all

Conditions Precedent, the Purchaser shall issue a written notice of satisfaction of the same to the Seller. The Seller shall, within fifteen (15) days from receipt of such notice from the Purchaser, subject to the fulfillment of the Conditions Precedent to the satisfaction of the Seller, issue a letter accepting the same to the Purchaser.

- 3.2.3 Notwithstanding anything contained herein, if the Purchaser does not fulfill all or any Conditions Precedent to the satisfaction of the Seller in accordance with this Clause 3 within the timelines prescribed in Clause 3.2.1, the Seller shall have a right, unless the delay is on account of reasons due to a Force Majeure Act or any time extension agreed between the Parties to terminate this Agreement in accordance with Clause 17 and invoke the Performance Security.

3.3 **Build-Up Period**

Build-Up Period shall be the period commencing from the First Delivery Date till the Commercial Operation Date of the Washery ("**Build-Up Period**"). Any compensation arising on account of short supply or short lifting, as per Clause 6.6 of this Agreement during the Build-up Period shall not be payable by either Party.

4 **INFORMATION RIGHTS OF THE SELLER**

- 4.1 The Purchaser acknowledges and agrees that the Seller shall have the right, throughout the Term, to call for such information and/or documentation from the Purchaser (documentation detailed in ANNEXURE II) as may be required by the Seller to verify:
- 4.1.1 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
- 4.1.2 the Purchaser's compliance with the LOI, the Eligibility Conditions, the terms and conditions of the RFP and of the Transaction Agreements.
- 4.2 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.

5 **PERFORMANCE SECURITY**

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

Performance Security = [Maximum of Annual Contracted Quantity as specified in ANNEXURE III] multiplied by six percent (6%) of aggregate of [(Modulated Price (applicable as per Clause 12) and (Winning Premium multiplied by the Modulated Price)].

In the event of any adjustment in the Annual Contracted Quantity in accordance with Clause 6.2, the amount of Performance Security shall not be revised.

- 5.2 The Performance Security shall remain valid till three (3) months from the date of expiry of the Term. The Performance Security shall be returned or refunded to the Purchaser at the end of its validity, subject to successful completion of the obligations of the Purchaser and complete settlement of all claims of the Seller arising out of this Agreement.
- 5.3 The amount of Performance Security shall be suitably revised as follows, in case of any change in the Modulated Price in accordance with Clause 12 and such revised Performance Security shall be deposited within thirty (30) days of such revision:

- 5.3.1 In the event of any increase in the Modulated Price pursuant to Clause 12, the Purchaser may:
- (a) provide a new bank guarantee issued by any Acceptable Bank for the revised value computed as per Clause 5.1; 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 5.1; or
 - (c) Alternatively, the bank guarantee constituting the Performance Security may be suitably amended for the revised value computed as per Clause 5.1.
- 5.3.2 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 Modulated Price pursuant to Clause 12, the Purchaser shall deposit an additional amount towards the security deposit to cover for such increase.
- 5.3.3 Any failure of the Purchaser to replenish the Performance Security in the manner specified herein above within thirty (30) days of notification of change in the Modulated Price under Clause 12, shall entitle the Seller to suspend the supply of the Contracted Grade of Coal in accordance with Clause 15.3 without absolving the Purchaser of its obligations under this Agreement. Further, if the Purchaser fails to replenish the Performance Security within thirty (30) 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.
- 5.3.4 In the event of any decrease in the Modulated Price pursuant to Clause 12, 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 5.1. The Seller shall, within thirty (30) 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 Modulated Price pursuant to Clause 12, the Seller shall refund the excess value of the security deposit to the Purchaser.
- 5.3.5 The period of validity of any new bank guarantee, amended bank guarantee and/or top up/additional bank guarantee furnished by the Purchaser and/or any additional security deposit provided by the Purchaser pursuant to this Clause 5.3, shall be the same as that of the initial Performance Security.

5.4 **Invocation/ Forfeiture of Performance Security**

- 5.4.1 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 5.3 above;
 - (b) in accordance with Clause 3.2.3, Clause 6.2.1, Clause 6.3.2, Clause 6.6.2, Clause 13.2.4, Clause 14.2, Clause 15.1.1, Clause 17.1.1 and Clause 21.11.1(k)

- (c) 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 17.2.4 to Clause 17.2.15; and/or
 - (d) in accordance with the provisions of this Agreement other than as specified above.
- 5.4.2 In the event of any partial or complete invocation of the Performance Security under this Agreement, the Purchaser shall replenish the Performance Security within thirty (30) days of its invocation hereunder, failing which the Seller shall be entitled to terminate this Agreement in accordance with Clause 17.2.6. The period of validity of the replenished Performance Security furnished by the Purchaser pursuant to this Clause 5.4, 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 one (1) day of replenishment of the Performance Security to the Seller in the manner as stipulated above.

6 ANNUAL CONTRACTED QUANTITY

6.1 Annual Contracted Quantity

- 6.1.1 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 per Year shall be as provided in ANNEXURE III ("**Annual Contracted Quantity**").
- 6.1.2 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 6 and Clause 9.

6.2 Annual Contracted Quantity post Grant of Mine Opening Permission by Coal Controllers' Organization (CCO)

- 6.2.1 In the event, mine opening permission for captive coal mine(s) allocated for Specified End Use Plant has been granted post execution of this Agreement, the Purchaser, shall within fifteen (15) days of the grant of mine opening permission by CCO, submit the CCO Certificate to the Seller. In case the Purchaser fails to submit the said CCO Certificate in accordance with this Clause 6.2.1, the Seller shall have the right to terminate this Agreement and invoke the Performance Security.
- 6.2.2 Upon submission of the CCO Certificate, the Annual Contracted Quantity shall be adjusted on the basis of the Scheduled Production (on year-on-year basis) submitted by the Purchaser as part of the CCO Certificate. Such adjustment shall be carried out for the period post grant of mine opening permission by CCO and shall be on the basis of the annual coal requirement of the Specified End Use Plant(s) excluding the CPP met through the Scheduled Production for each Year in accordance with the following formula:

Annual Contracted Quantity for the year = Adjustment Factor * Coal Requirement of the Specified End Use Plant(s) excluding the CPP for the year in TPA

Adjustment Factor = Coal requirement of Specified End Use Plant(s) excluding CPP or a cogeneration unit or any other unit of the Purchaser for usage in its Specified End

Use Plant met from a particular Lot in TPA divided by two (2) Million Tonnes

Coal Requirement for the year =

Normative Coal Requirement of the Specified End Use Plant(s) excluding CPP or a cogeneration unit or any other unit of the Purchaser for usage in its Specified End Use Plant as considered in the RFP in TPA + coal requirement of the Specified End Use Plant(s) excluding CPP or a cogeneration unit or any other unit of the Purchaser for usage in its Specified End Use Plant corresponding to the minimum of the Scheduled Production of coking coal as considered in the RFP in TPA – coking coal requirement of the Specified End Use Plant(s) excluding CPP or a cogeneration unit or any other unit of the Purchaser for usage in its Specified End Use Plant corresponding to the Scheduled Production of coking coal for the year in TPA.

Where a coal mine has been allocated for multiple plants, then the Coal Requirement of the Specified End Use Plant(s) excluding CPP or a cogeneration unit or any other unit of the Purchaser for usage in its Specified End Use Plant shall be calculated after proportionately factoring the Scheduled Production from the said mine.

- 6.2.3 In the event the Coal Requirement of the Specified End Use Plant(s) excluding CPP or a cogeneration unit or any other unit of the Purchaser for usage in its Specified End Use Plant for the Year, as computed above, is more than (two) 2 million tonnes, there shall be no adjustment in the Allocated Quantity.
- 6.2.4 In the event the Coal requirement of the Specified End Use Plant(s) excluding CPP or a cogeneration unit or any other unit of the Purchaser for usage in its Specified End Use Plant for the Year, as computed above, is less than or equal to zero, then Annual Contracted Quantity for that year shall be zero. In the event, the Coal Requirement as computed above, for each year during the Term of the Agreement is less than or equal to zero, then the Agreement shall be terminated.
- 6.2.5 In the event ACQ (Annual contracted Quantity) for any year pursuant to this clause is not an integer multiple of four thousand (4000), such ACQ for the year shall be decreased and rounded off downwards to the nearest integer multiple of four thousand (4000).

6.3 End-use of Coal

- 6.3.1 The total quantity of the Coal/Contracted Grade of Coal supplied pursuant to this Agreement shall be washed in the Washery and the End Products generated from such washing shall be utilized entirely within the Specified End Use Plant(s). The particulars of the Specified End Use Plant(s) are required to be declared by the Purchaser as detailed in ANNEXURE IV . Notwithstanding the above, the consumption of Coal Washery Rejects shall be in accordance with the Washery Rejects Policy or as per the extant policy guidelines issued by Ministry of Coal in this regard.
- 6.3.2 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 or the End Products generated from washing of the Coal supplied under this Agreement, 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 and forfeit the Performance Security.

- 6.3.3 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. For the purpose of the aforesaid verification, the Seller may also rely on certification(s) from erstwhile sponsoring authorities viz. the District Industries Centre, Director of Industries or any other Department as may be nominated by relevant state governments for determining the existence and status of operation of the Specified End Use Plant.
- 6.3.4 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.
- 6.3.5 The Purchaser shall submit an annual return including the details of the utilization of the coal to the Coal Controller Organisation. Coal Controller shall have the right to validate the same and seek additional information, which if required, the Seller shall submit within the stipulated timeframe.

6.4 Sources and Mode of Supply

- 6.4.1 The Seller shall endeavor to supply the Contracted Grade of Coal at the Delivery Point.
- 6.4.2 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 or any other reason, the Seller shall have the option to supply the balance quantity of the Contracted Grade of Coal from the secondary source(s) indicated in ANNEXURE III ("**Secondary Source(s)**"). 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(s). Additional costs incurred due to supply of the Contracted Grade of Coal at the Secondary Source(s) shall be borne by the Purchaser.
- 6.4.3 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 except where change of mode from Rail to Road is approved by the Seller as per ANNEXURE X

6.5 Scheduled Quantity

- 6.5.1 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 Effective Date till 31st March of the next Year).
- 6.5.2 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 two thousand (2000) TPA or more, the Purchaser will be supplied with the quantity equivalent to one (1) rake;

and

- (b) in case the residual Scheduled Quantity is less than two thousand (2000) TPA, such quantity will lapse.

6.5.3 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 6.5.1 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 penalty for shortfall in the Level of Lifting caused due to the above-mentioned reason.

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

6.6 Penalty for short delivery/lifting

6.6.1 Subject to the provisions of Clause 6.5.3, if for a Year, the Level of Delivery by the Seller or the Level of Lifting by the Purchaser falls below seventy five percent (75%) with respect to that Year, then the defaulting Party shall be liable to pay penalty 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 price payable under Clause 12 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 penalty shall grow on a linear basis within each slab.

Illustration:

- (a) If the Level of Delivery/ Level of Lifting is below seventy five percent (75%) but up to seventy percent (70%) of the ACQ, the penalty would be one percent (1%) for each percentage shortfall in Level of Delivery/ Level of Lifting below seventy five percent (75%);
- (b) If the Level of Delivery/ Level of Lifting is below seventy percent (70%) but up to sixty five percent (65%) of the ACQ, the penalty would be five percent (5%) plus one percent (1%) for each percentage shortfall in Level of Delivery/ Level of Lifting below seventy percent (70%);
- (c) If the Level of Delivery/ Level of Lifting is below 65% (sixty five per cent.) but up to sixty percent (60%), the penalty would be ten percent (10%) plus two percent (2%) for each percentage shortfall in Level of Delivery/ Level of Lifting below sixty five percent (65%);

- (d) If the Level of Delivery/ Level of Lifting is below sixty percent (60%) but up to fifty percent (50%), the penalty would be twenty percent (20%) plus two percent (2%) for each percentage shortfall in Level of Delivery/ Level of Lifting below sixty percent (60%); and
- (e) If the Level of Delivery/Level of Lifting is below fifty percent (50%), the penalty would be forty percent (40%).

6.6.2 Penalty for the Failed Quantity shall be payable by the Defaulting Party to the other Party within a period of ninety (90) 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 14.2. In the event that the penalty along with interest payable thereon is not paid within a period of one hundred and eighty (180) days of receipt of the Claim as aforesaid, the Seller shall have the right to invoke the Performance Security.

6.7 Level of Delivery and Level of Lifting

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

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

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 6.9.

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:

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

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 allotted wagons for loading within one hundred and eighty (180) days of allotment, 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.

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

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

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 6.9.

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.
- Non supply of rake by Railways within one hundred and eighty (180) days of allotment shall not be construed as failure on the part of the Purchaser.

6.8 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 penalty from either the Purchaser or the Seller.

6.9 **Deemed Delivered Quantity**

For the purpose of this Agreement, the aggregate of the following items provided under Clause 6.9.1 to Clause 6.9.2 shall constitute the “**Deemed Delivered Quantity**” with respect to a Year:

6.9.1 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 9.1. 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.
- (b) 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 15.
- (c) 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 13.
- (d) The quantity of the Contracted Grade of Coal offered by the Seller which is not accepted by the Purchaser.

6.9.2 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 9.2.
- (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

15.

- (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 13.
- (e) The quantity of the Contracted Grade of Coal offered by the Seller which is not accepted by the Purchaser.

6.9.3 Deemed Delivered Quantity in terms of Clause 6.9.1 and Clause 6.9.2 shall be calculated on a cumulated Monthly basis for a Year.

7 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 III. The Seller shall take all reasonable steps to remove stones above [two hundred and fifty millimetres (250 mm)] (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/HOD (Marketing and Sales) of the Seller.

8 WEIGHMENT OF COAL

8.1 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:

8.1.1 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.

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

8.1.3 In the cases not covered by Clause 8.1.1 or Clause 8.1.2 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.

8.2 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.

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

8.4 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.

9 METHOD OF ORDER BOOKING AND DELIVERY OF THE COAL

9.1 Order Booking by Rail

- 9.1.1 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 12. Thereafter, the Seller shall process for issuance of the consent of the programme.
- 9.1.2 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 till one hundred and eighty (180) days of the date of allotment.
- 9.1.3 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.
- 9.1.4 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.

9.2 Order Booking by Road

- 9.2.1 The Seller shall notify the Purchaser of the monthly time schedule for order booking (by road) and advance payment and the Purchaser shall deposit one hundred percent (100%) of the Advance Payment in the manner provided in Clause 9.2.2 for the Scheduled Quantity.
- 9.2.2 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 ten (10) 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 9.2.1.
- 9.2.3 Subject to receipt of the Advance Payment, 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/ weigh bridge within five (5) working days of the last day specified in the notice for booking orders in terms of Clause 9.2.1.
- 9.2.4 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 forty-five (45) days, as mentioned in the sale order/ delivery order.
- 9.2.5 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 thirty (30) days from the date of receipt of an application for

refund from the Purchaser.

10 DETERMINATION OF COAL QUALITY

10.1 Third-Party Sampling

- 10.1.1 The Third-Party sampling facility shall be extended as an option to the Purchaser.
- 10.1.2 Notwithstanding anything to the contrary contained herein, the Purchaser shall be required to inform the Seller in writing on the Execution 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 is not desirous of availing the option of third-party sampling shall give an undertaking to this effect.
- 10.1.3 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:
- (a) The facility shall be extended at the Delivery Point only and such Third-Party sampling shall be undertaken for the supplies against this Agreement in accordance with the procedure for Third-Party sampling for non-power consumers as per ANNEXURE V .
 - (b) 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 set out in ANNEXURE V, joint sampling and analysis shall be carried out by the Seller in the presence of the Purchaser at the Delivery Point in accordance with the modalities for joint sampling as noted in ANNEXURE V 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.
 - (c) If for any reason whatsoever, the Third-Party sampling/ joint sampling cannot be conducted in accordance with the procedure for Third-Party sampling as set out in ANNEXURE V, the said consignment will be treated in the manner as in case of Purchaser not desirous of availing third-party sampling.
 - (d) For commencement of Third-Party sampling, a tripartite agreement shall be signed by the Purchaser, Seller and the Third-Party within a timeframe as decided mutually by the parties involved as per format available with the Seller. Till such time Clause 10.1.3(a) or Clause 10.1.3(b) shall be applicable as the case may be.
 - (e) Fifty percent (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.
- 10.1.4 In case of a variation of Grade of Coal (decided on the basis of Third-Party sampling by the Third-Party Agency/joint sampling/referee lab as applicable) as compared to the Contracted Grade of Coal, the Winning Premium shall be added on the Modulated Price of the supplied grade of Coal as illustrated below:

Illustration:

Contracted Grade (A)	W-IV
Reserve Price (Modulated Price) (Rs./Tonne) (B)	3187

Winning Premium at the time of auction (Rs./Tonne) (C)	150
Winning Premium (in % terms at the time of auction) (D=C/B)	4.71%
Actually Supplied Grade (Downward Variation)	W-V
Modulated Price of Supplied Grade (Rs./ Tonne) (E)	2586
Premium of Supplied Grade (Rs/Tonne) (F = D*E)	121.71
Price Payable for W-V Grade (Rs/Tonne) (G= E+F)	2707.71
Actually Supplied Grade (Upward Variation)	W-III
Modulated Price of Supplied Grade (Rs./ Tonne) (H)	3354
Premium of Supplied Grade (Rs/Tonne) (I= D*H)	157.86
Price Payable for W-III Grade (Rs/Tonne) (J = H + I)	3511.86

10.1.5 In the event the Purchaser does not opt for Third Party sampling on the Execution Date, it 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 sampling on either on Execution Date or subsequent date may be allowed to discontinue the arrangement subject to written consent of the Purchaser. However, once the Purchaser opts out of Third-Party sampling after availing it, it shall not be allowed to opt for Third-Party sampling again during the entire Term of the Agreement.

10.1.6 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, 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.

11 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 enroute for whatever causes, by the railways, road transporter and/ or any other agency.

12 PRICE OF CONTRACTED GRADE OF COAL

12.1 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”):

As Delivered Price of Coal = {[aggregate of the Modulated Price] and [the Winning Premium multiplied by the Modulated Price]} multiplied by [the relevant quantity of the Contracted Grade of Coal supplied].

12.1.1 Wholesale Price Index (WPI) will be used for indexing of the basic price of NRS Linkage auction by applying on prevailing Modulated Price as on 31st March of the year (for the first year of indexing i.e. on 1st April 2023, WPI will be applicable on Notified Price to arrive Modulated Price). Indexation of basic price may be done to the extent of 25%(1/4th) of the movement of WPI.

12.1.2 The change in price with WPI (**Indexed Price**) over previous year shall have a cap of +5%/-2.5% at the upper end and lower end.

12.1.3 The Modulated Price, applicable for supply, shall be the Indexed Price or and the prevailing

Notified Price for NRS consumers, whichever is higher. In case of revision in Notified Price anytime during the year, the new Modulated Price shall be arrived by taking the Notified price or the prevailing Modulated Price, whichever is higher. The new Modulated Price will be effective from the date of such revision. The Modulated Price, so arrived, will be rounded off to the next higher integer.

- 12.1.4 The Modulated Price will be calculated on the basis of movement of final WPI index of December every year vis a vis December last year and will be made effective from 1st of April of the following year, starting from 1st April 2023.
- 12.1.5 The Winning Premium fetched at the time of auction (over reserve price) will remain constant and shall be applicable as a percentage over the Modulated Price.
- 12.1.6 In case there is change in Modulated Price during the course of the auction either due to change in Notified Price or application of new Modulated Price (in April), the ongoing auction will continue with the earlier Modulated Price. However, during actual supply, the new Modulated Price will be applicable.
- 12.1.7 Seller reserves the right to change/amend/modify the above mentioned indexation methodology/parameters and the same shall be binding on Seller and Purchaser for all commercial and operational provisions under this agreement.
- 12.1.8 The As Delivered Price of Coal computed pursuant to the above shall exclude sizing charges, transportation charges up to the Delivery Point, rapid loading charges, statutory charges, levies and other charges as may be applicable from time to time, which shall be additionally payable by the Purchaser.
- 12.1.9 All royalties, taxes, duties, cess, 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.
- 12.1.10 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.
- 12.1.11 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.

Illustration: Modulated Price

Notified Price prevalent at the time of auction (Rs./tonne)	3147
Modulated Price (at the time of auction) (Rs./tonne)	3187
Premium (Rs./tonne)	150
Bid Price of the Successful Bidder (Rs./tonne)	3337
% Premium over Modulated Price (to remain constant)	4.71%
Change in WPI for Dec'23 vis a vis Dec'22	14%
Applicable percentage of WPI for coal price indexing (say 25%)	3.50%
Indexed Price (Rs./tonne)	3299
Notified Price as on 01.04.2024 (Rs./tonne)	3200
Modulated Price applicable for supply from 01.04.2024 (Rs./tonne)	3299
Premium (4.71% of Modulated Price) (Rs./tonne)	156
Basic coal supply price (Rs./tonne)	3455

13 FINANCIAL COVERAGE, BILLING, PAYMENT, OVERLOADING AND UNDER LOADING

13.1 Supply of Contracted Grade of Coal by Road

For road dispatches, Advance Payment pursuant to Clause 9.2.2 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 or through any other payment mode as notified by the Seller:

Name of the Beneficiary – [●]

Name of the Bank - [●]

Bank account number - [●]

Address of the Bank - [●]

IFSC Code - [●]

13.2 Supply of Contracted Grade of Coal by Rail

13.2.1 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 VI ("**Financial Coverage Bank Guarantee**" or "**Financial Coverage BG**") for an amount equal to the estimated As Delivered Price of Coal for thirty (30) days of Coal supplies, i.e. ACQ/12, subject to a minimum amount equivalent to the As delivered Price of Coal of one (1) rake-load, as indicated in the notice by the Seller ("**Financial Coverage**").

13.2.2 The Financial Coverage BG shall be kept operative and valid by the Purchaser for the Term, and for a further period of one hundred and eighty (180) days thereafter and shall be encashable at [*insert place*]. In case of any increase in the As Delivered Price of Coal pursuant to Clause 12, the amount of the Financial Coverage BG shall be increased commensurately within seven (7) 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 thirty (30) 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.

13.2.3 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 three (3) 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 forty-eight (48) hours of such notice. The quantity in any single offer within a month shall not exceed the quantity as per the Financial Coverage in terms of Clause 13.2.1.

13.2.4 The Financial Coverage BG in terms of Clause 13.2.1 shall be initially valid for a minimum period of one (1) year. The Purchaser shall ensure renewal at least one (1) month prior to 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 or through any other payment mode as notified by the Seller 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

13.2.1 and the Purchaser has not deposited any payment (by banker's cheque/ demand draft) in lieu of such Financial Coverage BG.

13.2.5 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 one (1) day of replenishment of the Financial Coverage BG to the Seller, in the manner as stipulated hereinabove.

13.3 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 two (2) 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 13.2.3, 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 or through any other payment mode as notified by the Seller, to the below mentioned bank account of the Seller:

Name of the Beneficiary - [●]

Name of the Bank - [●]

Bank account number - [●]

Address of the Bank - [●]

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 14.

13.4 Overloading and Under loading

13.4.1 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 three (3) continuous months, the Purchaser shall duly inform the Seller of the same.

13.4.2 For non-coking coal of GCV exceeding five thousand and eight hundred (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:

- (a) stenciled carrying capacity as shown on the wagon; or
- (b) carrying capacity based on the actual tare weight, where the empty wagon has been weighed; or
- (c) 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 two (2) tonnes shall be borne by the Seller. However, in the cases where permissible carrying capacity is less than the stenciled carrying capacity, as mentioned above, the idle freight shall be borne by the Seller only upto permissible carrying capacity.

13.4.3 Idle freight resulting from under loading of wagon, as per Clause 13.4.2, shall be adjusted in the bills. Idle freight shall be reckoned as:

- (a) for non-coking coal of GCV exceeding five thousand and eight hundred (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 two (2) 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.

13.5 Modalities for Billing, Claims and Payment

13.5.1 The Seller shall raise and the Purchaser shall pay the bills for Coal supplies on the Contracted Grade of Coal in accordance with Clause 13.1 and Clause 13.2 above. Necessary reconciliations shall be done between the Parties on the basis of the analyzed Grade of Coal in accordance with Clause 10.

13.5.2 Credit/debit note, as the case may be, shall be raised by the Seller towards the difference between the original price and the revised price computed as illustrated in Clause 10.1.4 as per the third-party/Joint Sampling/referee lab result, as the case may be, within seven (7) days after reconciliation of final results. In case of issue of debit note, the differential price with all applicable taxes and levies shall be payable.

13.5.3 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.

13.5.4 The amount payable by the Purchaser or refundable by the Seller shall be settled within thirty (30) days of the signing of the annual reconciliation statement. 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 thirty (30) days from the date of termination of the Agreement.

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

13.5.6 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.

14 NOTICE OF DELAYED PAYMENT AND INTEREST ON DELAYED PAYMENT

14.1 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 14.2 and Clause 15.

14.2 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 overdue. Without prejudice to the foregoing, in the event the Purchaser fails to pay the overdue amount along with the interest within thirty (30) 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 15. 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.

15 SUSPENSION OF COAL SUPPLIES

15.1 Notwithstanding other provisions of this Agreement (including Clause 5.3.3, 13.2.4 and Clause 14.2, in the event the Purchaser fails to pay any amount including any interest, due to the Seller under this Agreement within a period of thirty (30) days of the same falling due, the Seller shall have the right to resort to any one or more of the following:

15.1.1 adjust the outstanding amount against the Performance Security by invoking the Performance Security or such portion of it as may be deemed necessary;

15.1.2 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

15.1.3 suspend supplies of the Contracted Grade of Coal to the Purchaser.

15.2 During the period of suspension of supplies in terms of Clause 15.1, 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.

15.3 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 three (3) 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.

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 thirty (30) 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 ninety (90) days of their meeting, the Parties shall be entitled to exercise the remedies available to them under Clause 16.4.
- 16.4 If amicable settlement as above is not possible, then the unresolved disputes or differences shall be settled through the process as given below:

16.4.1 In the event the Purchaser is a Public Sector Enterprise:

"In the event of any dispute or difference relating to the interpretation and application of the provisions of commercial contract (s) between Central Public Sector Enterprises (CPSEs) / Port Trusts inter se and also between CPSEs and Government Departments / Organizations (excluding disputes concerning Railways, Income Tax, Customs & Excise Departments), such dispute or difference shall be taken up by either party for resolution through AMRCD as mentioned in DPE OM No. 05/0003/2019-FTS-10937 dated 14.12.2022"-

16.4.2 In the event the Purchaser is not a Public Sector Enterprise:

- (i) either Party may refer such Dispute for settlement through arbitration in accordance with the Arbitration and Conciliation Act 1996, as may be amended from time to time ("**Arbitration Act**");
- (ii) the seat and venue of arbitration shall be Dhanbad, Jharkhand;
- (iii) the entire arbitration proceedings shall be conducted, and the award shall be rendered in the English language;
- (iv) the arbitral tribunal shall comprise of three (3) arbitrators, one (1) each appointed by the Seller and the Purchaser, and the two (2) arbitrators shall mutually appoint the third arbitrator, who shall be the presiding arbitrator, in

accordance with the Arbitration Act;

- (v) the cost and expenses of arbitration shall be borne by the Parties, as decided in the arbitral award;
- (vi) the arbitral award shall be final and binding on both the Parties; and
- (vii) the Agreement, rights and obligations of the Parties, shall remain in full force and effect pending the arbitral award.

17 TERMINATION OF THE AGREEMENT

17.1 This Agreement executed hereof, shall be valid for the entire Term of the Agreement. Any premature exit by the Purchaser except for the reasons of exigencies/force majeure/operational issues faced by Seller including change in Contracted Grade/government regulation shall attract following penal provisions for the Purchaser:

17.1.1 Forfeiture/invoking of security deposit/Performance Security in its entirety;

17.1.2 Debarment of the Purchaser from participation in immediately next/subsequent tranche of linkage auction after exit from the Agreement

17.2 Termination Events

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

17.2.1 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 ninety (90) days in any continuous period of one hundred and eighty (180) days, and in the considered assessment of the other Party (“**Non-Affected Party**”) there is no reasonable likelihood of the Force Majeure Act coming to an end in the near future, the Non-Affected Party shall have the right to terminate this Agreement by giving at least ninety (90) 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 ninety (90) days whichever is later and the Parties shall be absolved of all rights/obligations under this Agreement, save those that had already accrued as on the effective date of termination of the Agreement;

17.2.2 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 thirty (30) days to the Seller;

17.2.3 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 Execution Date, the Seller shall within seven (7) days of introduction of such change provide a written notice to the Purchaser calling for a joint review of 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 thirty (30) 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 thirty (30) days being given in writing to the other Party without any obligation/liability whatsoever;

17.2.4 in the event that the Level of Delivery falls below thirty percent (30%) or the Level of Lifting falls below thirty percent (30%), the Purchaser or the Seller, as the case may

be, shall have the right to terminate this Agreement after providing the other Party with prior written notice of not less than thirty (30) days. However, such notice is to be issued within sixty (60) days of the end of the relevant Year; 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 thirty percent (30%) 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; and

in the event the Level of Lifting falls below thirty percent (30%) and this Agreement is liable for termination, the Purchaser can keep the Agreement alive by paying applicable Penalty as calculated in terms of Clause 6.6 or Performance Security/security deposit amount whichever is higher. The Purchaser shall have to request the Seller within thirty (30) days of completion of the relevant financial year for availing such optional facility providing an undertaking that they shall pay applicable penal amount. The Agreement shall be revived after receipt of the requisite penal amount. No backlog quantity shall be admissible. There shall not be any financial liability for either Party during the dormant period of the Agreement.

- 17.2.5 subject to Clause 6.3 , 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;
- 17.2.6 in the event of invocation of the Performance Security or suspension of Coal supplies pursuant to Clause 15, the Seller shall have the right to terminate this Agreement by providing prior written notice of thirty (30) days to the Purchaser; provided that the Purchaser has not replenished the Performance Security within the aforesaid notice period of thirty (30) days;
- 17.2.7 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 sixty (60) days, the other Party shall be entitled to terminate this Agreement by giving prior written notice of thirty (30) days to first Party;
- 17.2.8 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 RFP 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 ninety (90) 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 ninety (90) day period;
- 17.2.9 In case the Purchaser fails to submit the CCO Certificate in accordance with the Clause 6.2.1 then the Seller shall have the right to terminate the Agreement by giving prior written notice of 15 (fifteen) days to the Purchaser.
- 17.2.10 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 RFP (including information or documentation provided pursuant to the provisions to the RFP) 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 thirty (30) days to the Purchaser;

17.2.11 Subject to Clause 21.11, 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 thirty (30) days to the Purchaser;

17.2.12 pursuant to Clause 21.11;

17.2.13 in case of termination of the WDO Agreement;

17.2.14 pursuant to Clause 2.3, Clause 3.2.3 Clause 5.3.3, Clause 5.4.2, Clause 6.2.1, Clause 6.2.4 and/or Clause 6.3.2;

17.2.15 termination of this Agreement by the Seller pursuant to breach of any provisions of this Agreement by the Purchaser or termination of this Agreement by the Seller in accordance with any other provision of this Agreement;

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

17.3 Supply of Coal shall stand suspended forthwith upon termination of the Agreement.

17.4 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:

18.1.1 flood, inundation of mine, drought, lightning, cyclone, storm, earthquake or geological disturbances, eruption of gases, subsidence and such natural occurrences;

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

18.1.3 civil disturbance such as riot, terrorism etc.;

18.1.4 industry wise /nation-wide strikes in the sector in which either Party operates in;

18.1.5 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;

18.1.6 any epidemic;

18.1.7 the enactment, promulgation, amendment, suspension or repeal of any Applicable Laws after the Execution Date; and/ or

18.1.8 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:

18.3.1 within five (5) Business Days after the occurrence of the inability to perform due to a Force Majeure Act, the Affected Party provides a written notice to the 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 seven (7) days during the period of a Force Majeure Act;

18.3.2 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;

18.3.3 the suspension of performance shall be of no greater scope and no longer duration than is reasonably necessitated by the Force Majeure Act;

18.3.4 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;

18.3.5 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;

18.3.6 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;

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

18.3.8 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:
- 19.2.1 any breach of the representations, warranties, covenants and/ or undertakings of the Purchaser contained herein or in the RFP;
 - 19.2.2 any information or documentation submitted by the Purchaser to the Seller pursuant to this Agreement and/ or the RFP, being untrue, incorrect or false;
 - 19.2.3 the Purchaser’s breach or negligent performance or non-performance of this Agreement;
 - 19.2.4 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;
 - 19.2.5 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 sixty (60) 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 that:
- 20.1.1 it is 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;
 - 20.1.2 it has the full legal right, capacity and authority to enter into this Agreement and this Agreement constitutes its legal, valid and binding obligation;

- 20.1.3 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:
- (a) 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
 - (b) 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
 - (c) violate any provision of its constitutional documents;
- 20.1.4 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;
- 20.1.5 this Agreement is enforceable against it in accordance with its terms; and
- 20.1.6 the undertakings of the Purchaser pursuant to the RFP and the LOI are true and correct and all information provided by the Purchaser under the RFP and in connection with the LOI, as requested by CIL and/or the Seller, is not untrue, incorrect or misleading in any way.
- 20.2 The Purchaser hereby covenants and undertakes to the Seller as follows:
- 20.2.1 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 RFP;
 - 20.2.2 the Purchaser has and shall always conducted its business in compliance with all Applicable Laws; and
 - 20.2.3 all licenses, registrations, consents, permissions and other authorisations required by the Purchaser for or in connection with its business ("**Licenses**") 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 Jharkhand, 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 RFP 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 RFP 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 RFP, 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:** 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:**

Any change of name of the Purchaser, with or without change in control shall be taken on record provided that the nature of Specified End Use Plant(s) and their location remains unaltered/unchanged. It is further clarified that in case of change in control of the Specified End Use Plant(s), the Washery shall also have to be transferred to such transferee.

21.11.1 Procedure and timeline

- (a) In case the Purchaser is a company registered under the Companies Act, 2013, the Purchaser (new name) shall intimate the Seller about change of name within three (3) months succeeding the month in which Certificate of Incorporation pursuant to change of name is issued by the Registrar of Companies.
- (b) In case the Purchaser is Company registered under the Companies Act, 2013, and the change of name of Purchaser is consequent to sale of Specified End Use Plant to a Company registered under Companies Act, 2013, then the Purchaser (new entity) shall intimate the Seller about the change of name within three months succeeding the month in which the instrument evidencing the sale of Specified End Use Plant(s)/Sale Deed is executed and submit the Board Resolutions of both the

Companies (vendor and vendee of the Specified End Use Plant). It is clarified that a single company shall have control of the Washery and the Specified End Use Plant(s).

- (c) In case the Purchaser is a Company registered under the Companies Act, 2013 and the change of name is on account of inter alia amalgamation, merger, demerger, takeover of the Purchaser, the Purchaser (new entity) shall intimate within three months succeeding the month in which the date of approval of the amalgamation, merger, demerger, takeover by the court/tribunal of competent jurisdiction. It is clarified that a single company shall have the control of the Washery and the Specified End Use Plant(s).
- (d) In case the change of name of the Purchaser is consequent to any event not covered under sub-clauses (a),(b) and (c) of Clause 21.11.1, the Purchaser (new entity) shall intimate the Seller about the change of name within three (3) months succeeding the month of issuance/execution of the relevant document.
- (e) The Purchaser (new entity) while intimating the Seller shall submit the following documents:
 - (i) Certificate of Incorporation pursuant to change of name wherever applicable;
 - (ii) Instrument evidencing sale of Specified End Use Plant(s)/Board Resolutions wherever applicable
 - (iii) PAN;
 - (iv) GSTIN;
 - (v) TAN as applicable;
 - (vi) Details of bank account;
 - (vii) Amended Bank Guarantee or any relevant financial instrument;
 - (viii) An indemnity bond (format as per ANNEXURE VIII from Authorized Signatory);
 - (ix) An undertaking/ declaration in the form of affidavit (Format as per ANNEXURE IX from Authorized Signatory
- (f) The Purchaser (new entity) shall provide any further documents/details as may be sought by the Seller.
- (g) After intimation of change of name by the Purchaser, if the Purchaser (new entity) fails to submit all requisite documents then coal supply may be continued for a period of three (3) months succeeding the month of issuance/execution of the applicable document provided that the Purchaser has submitted the indemnity bond and the affidavit as provided in Clauses 21.11.1 (e)(viii) and 21.11.1(e)(ix).
- (h) After submission of requisite documents within the stipulated period, coal supply to the Purchaser may be continued beyond the period of three (3) months as provided in Clause 21.11.1(g) till the issuance of acceptance letter by the Seller.
- (i) During the intermittent period as mentioned in Clauses 21.11.1(g) and 21.11.1(h), coal supply shall be made in the changed name (formerly).
- (j) Seller on acceptance of such change of name shall issue an acceptance letter. A copy of acceptance letter duly acknowledged by Purchaser's authorized signatory, shall be an annexure to this Agreement and treated as its integral part. The acceptance letter issued by Seller and acknowledged by Purchaser, shall be treated as deemed modification in change of name in the Agreement for the purpose of all transactions.
- (k) Non acceptance of the change of name of the Purchaser by the Seller or any violation of the aforementioned provisions shall entitle the Seller to terminate the Agreement with forfeiture of Performance Security/security deposit. The reason for non-

acceptance of change of name shall be communicated to the Purchaser by the Seller.

Note:

- i. For pending cases of change of name control with valid fuel supply agreements, Seller shall issue a notice for compliance. After issuance of such notice the compliance is to be done within three (3) months from the succeeding month in which notice is issued. Procedure and timeline in such cases shall remain same as dealt in the modified clause relating to change of name.
- ii. Prospective bidders / Purchaser are required to inform pendency/ outcome of proceedings under Insolvency and Bankruptcy Code, 2016 (“**IBC**”), if any, through relevant Board resolution/ intimation by company secretary/self-declaration by proprietor/ partners (in case of proprietorship/ partnership firm). In case of non-intimation about referral/ commencement of proceedings pursuant to/before IBC/Debt Recovery Tribunal (“**DRT**”), as it may be, by the bidder to the Seller prior to participation in the bid process or signing of this Agreement, as the case may be, the Bid Security submitted by the Purchaser would be forfeited in case such a lapse comes to the knowledge of the Seller. FSA shall be signed only if the matter is resolved favorably by National Company Law Tribunal/DRT.
- iii. Consequent to taking change of name on record, Seller shall inform service provider for effecting change in name of such registered bidder.
- iv. Notice to the above effect is to be issued by coal companies after making suitable modifications as per their requirement.

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:
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.
- 21.18 **Rationalization/Swapping of Coal:** Swapping/rationalization of the coal linkage under this Agreement/FSA shall not be allowed.

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/HOD (Marketing and 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 one (1) month of the Execution Date or by giving thirty (30) 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 under Clause 21.14 above is notified to the other Party and all others concerned, before effecting a change and in any case within two (2) Business Days of such change.

IN WITNESS WHEREOF the Parties hereto by representatives duly authorized have executed this Agreement on the day, month and the year first above written.

For [●] (name of the Seller)

Signature

Name

Designation:

Address:

Fax:

Email:

For [●] (name of the Purchaser)

Signature

Name:

Designation:

Address:

Fax:

Email:

ANNEXURE I FORMAT OF PERFORMANCE SECURITY

[Reference number of the bank]

[date]

To

[insert name and address of the Seller]

WHEREAS

- A. [Name of the Purchaser], a company incorporated in India under the Companies Act, [1956/2013] with corporate identity number (CIN) [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] (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 Bharat Coking Coal Limited (the “Seller”) for discharge of certain obligations of the Purchaser under the fuel supply agreement dated [•] 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 TO BE SUBMITTED

For execution of FSA:

1. Relevant Corporate Authorizations of the Successful Bidder for execution and performance of his obligations under the agreement such as:
 - Notarised Power of Attorney (PoA).
 - Certified true copy of Board Resolution or Certified true copy of Shareholders Resolution etc. [Note: In case the Bidder wants a different person (different from the one who participated in the online auction on behalf of the Bidder) to enter into the Agreement, a PoA authorizing such person to enter into the Agreement on behalf of the Bidder has to be submitted in the format as provided in the **RFP**.]
2. Documents with respect to the Specified End Use Plant(s)*:
 - a. Commercial Operation Commencement certificate from a certified Chartered Engineer or IEM Part B acknowledgement.
 - b. 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. In case Factories Act not applicable due to number of workers employed then an affidavit cum undertaking to the effect that the said unit does not qualify as a factory under the provisions of Factories Act as per stipulations under section 2(m) of Factories Act regarding number of workers/ is to be submitted.
 - c. 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 relevant Subsidiary to the authority responsible for the issuance of the certificate.
3. Self-attested copy of GSTIN and PAN number of the Successful Bidder.
4. Self-attested copy of the documents uploaded at the RFP stage
5. Valid SSI/industrial registration certificate.

6. Documentation with respect to existing coal linkages, assurance of linkages and/ or allocation of mine, as available.
7. Performance Security (to have already been submitted before execution of the FSA)
8. Details of the coke oven plant, if any, in the format provided below:

Details of the coke oven plant				
Name	Address	Capacity	Quantity of coking/ non-coking coal converted (in Tonnes)	Output in terms of coke (in Tonnes)

*only with respect to the blast furnace units

For lifting of coal:

1. Notarised power of attorney.
2. Documents with respect to the Washery
 - a. Commercial Operation Commencement certificate from a certified Chartered Engineer or IEM Part B acknowledgement.
 - b. Self-attested copy of Consent to Operate with respect to the Washery issued under the relevant pollution control laws. 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, 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. Payment of coal value as per FSA.
4. Authorization document from Purchaser for lifting/supervise loading

NOTE: Validity of the documents wherever applicable to be maintained for lifting. FSA can be executed and/or coal supply continued for a maximum of three (3) months after the date of expiry of the CTO/Factory License if the Purchaser has submitted proof of its application for renewal of the same.

After lifting:

Yearly coal consumption certificate (as per prescribed format) to be submitted to the Seller. duly certified by chartered accountant of the Purchaser within three (3) months of completion of FY.

Coal (Qty wise) Opening stock:

Add:

Purchase From CIL sources under FSA:

From any other source:

Less:

Consumption:

Year end closing stock:

ANNEXURE III DETAILS OF ANNUAL CONTRACTED QUANTITY, CONTRACTED GRADE OF COAL, DELIVERY POINT, SECONDARY SOURCE(S)

Delivery Point-----

Winning Premium %-----

S.No.	Primary Source	Grade*	Modulated Price at the time of auction	Mode	Allocated Quantity**							Ash % Range	Size	Moisture	Secondary Source
					FY24	FY25	FY26	FY27	FY28	FY29	FY30				
1	AKWMC + Choutudih Patch B	W-IV		Rail	-	0.1	0.55	0.04	0.12	0.15	0.04	28-35	(-) 100mm	3-4	-
2	Mudidih Colliery Tetulmuri Patch-A	W-IV		Rail	0.41	0.1	0.1	0.1	0.1	0.1	0	28-35	(-) 100mm	3-4	-
3	GKKC(Patch S)	W-IV		Rail	0	0	0.93	1.4	1.31	1.28	1.49	28-35	(-) 100mm	3-4	-
4	Rajapur/ South Jharia +Dobari Kuya DK-1 Patch	W-IV		Rail	0.98	0.89	0	0	0	0	0	28-35	(-) 100mm	3-4	-
5	Rajapur/ South Jharia	W-V		Rail	0.22	0	0	0	0	0	0	35-42	(-) 100mm	3-4	-
6	Am NT-ST J'gora+NTST MDO	W-V		Rail	0.28	0.63	0.16	0.2	0.2	0.2	0.2	35-42	(-) 100mm	3-4	-
7	ASPX2+Mega Patch, EJ	W-IV		Rail	0.42	0.17	0.17	0.17	0.17	0.17	0.17	28-35	(-) 100mm	3-4	-
8	New Patch, EJ	W-IV		Rail	0	0.42	0.4	0.4	0.4	0.4	0.4	28-35	(-) 100mm	3-4	-

* The actual supply pursuant may vary between and/or beyond the quality parameters indicated above. Beyond FY 2030, BCCL shall ensure supply of

raw coal with similar characteristics as mentioned above.

** includes buffer quantity, actual quantity supplied shall be limited to 2 million tonnes per annum

ANNEXURE IV DETAILS OF SPECIFIED END USE PLANT(s)

Name	Sub-Sector	Location	Configuration and Capacity details of each unit in the Specified End Use Plant

ANNEXURE V PROCEDURE FOR THIRD PARTY SAMPLING

1. THIRD PARTY AGENCY 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 the 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.

2. 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 Third-Party Agency 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 Third-Party Agency (Third Party). The format of the tripartite agreement shall be provided by the Seller. Detailed terms and conditions of the Third-Party Agency 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 the 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 the Third-Party Agency 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, only one authorized representative each from the Seller's side and Purchaser's side shall be allowed to be present during the sample collection and preparation activities.
- (c) The Third Party Agency shall communicate the analysis results of the sample(s) to the Seller and the Purchaser as per the stipulated time period mentioned in the contract. The Seller/Purchaser may raise dispute if any, against the findings of the Third-Party Agency within seven (7) days after the submission of the analysis results excluding the date of submission of the analysis results by the Third-Party Agency.

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 and above	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 Annexure III shall be remove/ 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, Third Party Agency 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 8111 truck in accordance with paragraph 2.2.2(b) as above on daily basis shall be mixed together to fom1 a gross sample.

- (f) Any stone/shale of size more than that specified in Annexure III 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)
Upto 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 0 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 Annexure III 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 Third Party Agency 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 I)-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 Third Party Agency 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 40° and 60% RH) as per latest BIS Standards (IS: 1350 Part 1-1984, reaffirmed 2019) or (IS 1350 Part-2 :2022), 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 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 Third Party Agency. For the purpose of Referee Analysis, the referee sample(s) shall be packed and transported by the Third Party Agency 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 Third Party Agency to the referee laboratory at their own expenses.
- 2.3.5 Samples shall be collected, packed and transported by the Third Party Agency 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 Third Party Agency.
- 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 Third Party Agency 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 Third Party Agency 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 (Reaffirmed 2019) for determination of Total Moisture, Equilibrated Moisture, Ash and Volatile Matter and as per latest version of IS 1350 (Part-II), 1970 2), 2022 for determination of GCV.

3. Records of Samples/ Third Party Sampling

- 3.1 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
- 3.2 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 Third Party Agency 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 I 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.

ANNEXURE VI FORMAT OF FINANCIAL COVERAGE BANK GUARANTEE

[To be issued on Non judicial Stamp Paper of adequate value]

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

To,
Chairman cum Managing Director
Bharat Coking Coal Limited
Koyla Bhawan, Koyla Nagar, Dhanbad, Jharkhand – 826005

(Insert Name & Address of any other office of the Purchaser)

In consideration of Bharat Coking Coal Limited having its registered office at Koyla Bhawan, Koyla Nagar, Dhanbad, Jharkhand – 826005 (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 [●], a company incorporated in India under the Companies Act 1965/2013 with corporate identity number [●], whose registered office is at [●], India and principal place of business is at [●] (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 [●] (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, an amount not exceeding INR [●] (Indian Rupees [●]) (“**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 [●] 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 INR [●]/- (Indian Rupees [●]) and the same will remain in force upto and including the day of [●] (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 INR [●]/- (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

Date

(Rubber Stamp)

ANNEXURE VII 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;

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;

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 the auction process for grant of the Coal Linkages, pursuant to which the Transferor had qualified as a Successful Bidder in accordance with the RFP dated [insert date] issued by Bharat Coking Coal Limited (“**RFP**”).

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 applicable/extant provisions, 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 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 RFP 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 RFP 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 RFP, and covenants, agrees and confirms that it shall be bound by all provisions of the RFP 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

ANNEXURE VIII FORMAT OF INDEMNITY BOND

*(To be furnished in Stamp paper as per Stamp Act)
(Stamp Paper should be purchased in the name of the New Entity)
(At present not less than Rs 50/- stamp paper)*

This deed of Indemnity is executed on this day [●] by [●] having its registered corporate office at [●] represented through Mr/Ms [●] s/o [●], its duly authorized representative (hereinafter referred to as “**Indemnifier**”) in favour of Bharat Coking Coal Limited (hereinafter referred to as the “**Indemnified**”) having its registered office at Koyla Bhawan, Koyla Nagar, Dhanbad, Jharkhand – 826005.

Whereas the Indemnified herein has entered into a Fuel Supply Agreement dated [●] with [●] (*Name of the previous entity*).

And whereas, (*Name of Previous Entity*) has changed its name from XYZ to ABC on account of (*Explanation of the Change of Name Event*)

And whereas the (*Name of New Entity*) has complied with all applicable laws, rules and regulations in relation to (*Explanation of Change of Name event*).

The Indemnifier irrevocably agrees to indemnify for any liability to the Indemnified accruing on account of the (*Name of earlier Entity*) & (*Name of Present Entity*) and for any false statement in the Affidavit/Undertaking dated [●].

The Indemnifier irrevocably agrees to indemnify for any liability to the Indemnified by virtue on non-compliance of any law, rules and regulations and any consequential liability arising out of such non-compliance in relation to the (*explanation of Change of Name event*).

The indemnifier hereby irrevocably agrees from time to time and all times to save and keep harmless and to indemnify Bharat Coking Coal Limited/(“Indemnified”) from any loss or damage caused to the Indemnified due to any act/omission/misrepresentation of the Indemnifier in relation to the (*Change of Name Event*).

Station:

(Signature with Name and Designation)

Date:

Company Seal (*New Entity*)

Witness:

1. Signature with Name, Designation & Address
2. Signature with Name, Designation & Address

ANNEXURE IX AFFIDAVIT CUM UNDERTAKING

I, [●], son/daughter of [●], aged [●] years, resident of [●] working as [insert designation of the deponent], an Authorized Signatory on behalf of [*insert name of the new entity*] hereby solemnly affirm and declare as under:

1. I am authorized to swear and submit this affidavit on behalf of (*Name of the new entity*).
2. That a fuel supply agreement dated [●] was entered into between (*Name of the previous entity*) and Bharat Coking Coal Limited (“**Seller**”).
3. Pursuant to (*Details of the Change of Name Event*), the (*Name of previous entity*) has changed to (*Name of the new entity*).
4. That the (*Name of the new entity*) hereby undertakes to pay any outstanding amount due to the Seller from the (*Name of previous entity*).
5. That the (*Name of the new entity*) hereby undertakes to satisfy all the eligibility conditions for entering into the fuel supply agreement with the Seller.
6. That the (*Name of the new entity*) hereby undertakes that the supplies in (*Name of the new entity*) shall not be construed to be acceptance of the Seller for change of name till the same is taken on record.
7. That the (*Name of the new entity*) hereby undertakes that it shall be solely responsible for all statutory compliances and terms and conditions of the fuel supply agreement in respect of supplies of coal under new name and agrees to fully indemnify the Seller for any consequences thereof.

Deponent

Verification:

Verified on [●] day of [●], 202[●] at [●] that the contents of the above affidavit are true and correct to the best of my knowledge, being derived from the records maintained by the company in the ordinary course of its business and nothing material has been concealed therefrom.

DEPONENT

ANNEXURE X ENABLING CONDITIONS FOR CHANGE OF MODE FROM RAIL TO ROAD

The option for change of Mode from Rail to Road, subject to approval of the Seller, shall be available to eligible Purchaser under following terms:

- a) Purchaser (Purchaser) under NRS Linkage Auction sourcing coal through Rail mode (Primary Source or Secondary Source(s)) may be given an additional option by the concerned coal company (Seller) to take coal through Temporary Road Source(s) in cases where supply through Rail mode is not possible.
- b) The Temporary Road Source(s) of coal would be decided by the coal company in the following preference order:
 - (i) Road despatch point of mine(s) linked to the Primary Source
 - (ii) Road despatch point of mine(s) linked to the Secondary Source(s)
 - (iii) Any other Road Source(s) within the coal company from where linkage has been booked in the latest two concluded tranches of linkage auction NRS.
- c) The Grade of coal of the Temporary Road Source should be same as that of the Primary Rail Source.
- d) In case linkage has been booked from the Temporary Road Source in the latest two concluded tranches of NRS linkage auction, the price payable by the willing FSA holder for supply of coal through the Temporary Road Source would be higher of the following:
 - (i) the As Delivered Price (considering the Modulated Price and Winning premium) for the Primary Rail Source, or
 - (ii) the highest As Delivered Price (considering the Modulated Price and Winning premium) of the bids for the Temporary Road Source under any subsector during latest two (2) concluded tranches of NRS Linkage Auction.
- e) In case no linkage has been booked from the Temporary Road Source [applicable only for (b)(i) & (ii) above] in the latest two concluded tranches of NRS linkage auction, the price payable by the willing FSA holder for supply of coal through temporary Source would be the As Delivered Price for the Primary Rail Source.
- f) This dispensation is to be offered against those Primary Rail Source(s) where more than one month's rakes are pending to be supplied under Linkage auction NRS.
- g) Any revision in the Modulated Price of the declared grade of the Primary Rail Source post auction shall be applicable while exercising this option.
- h) In case of conversion of mode from Rail to Road, the validity for lifting of the Road Order (DO) shall be as per the extant rule but not exceeding the original validity of one hundred and eighty (180) days from the date of allotment of concerned rake.
- i) Coal Company would endeavor to re-instate the supplies from the Primary Rail Source as soon as possible.
- j) Such a decision, whenever taken by the subsidiary coal company, should be executed in a transparent manner duly notifying the same on company website/ notice boards etc.

ANNEXURE XI CERTIFICATE FROM COAL CONTROLLER'S ORGANIZATION

(To be submitted separately for each captive coal mine)

To,

[date]

[Name and Address of BCCL]

1. This is to certify that the [insert name] coal mine has been allocated to [insert name of the Bidder].
2. Mine Opening Permission been issued to [insert name of the Bidder] for the [insert name] coal mine on [DD-MM-YY] and the Scheduled Production for the 30 years commencing from the current financial year is as below:

30 Year Scheduled Production for [insert name] coal mine

Financial Year	Scheduled Production (TPA)
[insert year 1]	
[insert year 2]	
[insert year 3]	
[insert year 4]	
[insert year 5]	
[insert year 6]	
[insert year 7]	
[insert year 8]	
[insert year 9]	
[insert year 10]	
[insert year 11]	
[insert year 12]	
[insert year 13]	
[insert year 14]	
[insert year 15]	
[insert year 16]	
[insert year 17]	
[insert year 18]	
[insert year 19]	
[insert year 20]	
[insert year 21]	
[insert year 22]	
[insert year 23]	
[insert year 24]	
[insert year 25]	
[insert year 26]	
[insert year 27]	
[insert year 28]	
[insert year 29]	
[insert year 30]	

(Signature)

(Name and Designation of CCO official)
(Stamp)