

# **WASHERY DEVELOPMENT AND OPERATIONS AGREEMENT**

**Between**

**BHARAT COKING COAL LIMITED**

**(as the “Authority”)**

**And**

**[•]**

**(as the “Washery Developer and Operator”)**

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## WASHERY DEVELOPMENT AND OPERATIONS AGREEMENT

This WASHERY DEVELOPMENT AND OPERATIONS AGREEMENT (hereafter the “**Agreement**”) is made and executed on this [●] day of [●] 2024 at [●], India.

### BY AND BETWEEN

**Bharat Coking Coal Limited**, a company incorporated under the Companies Act 1956 and now validly existing under the Companies Act 2013, having CIN U10101JH1972GOI000918, and having its registered office at Koyla Bhawan, Koyla Nagar, Dhanbad, Jharkhand – 826005 India, hereinafter referred to as the “**Authority**” or “**BCCL**” (which expression shall, unless repugnant to the context or the meaning thereof, be deemed to include its successors in title and permitted assignees);

### AND

[●], a company incorporated under the Companies Act 2013<sup>1</sup> having CIN [●] and having its registered office at [●], hereinafter referred to as the “**Washery Developer and Operator**” or “**WDO**” (which expression shall, unless repugnant to the context or the meaning thereof, be deemed to include its successors in title and permitted assignees).

The Authority and the WDO shall hereinafter be collectively referred to as the “**Parties**”, and individually as a “**Party**”.

### WHEREAS

- A. The Authority is a ‘*Miniratna*’ public sector undertaking and a wholly owned subsidiary of Coal India Limited (“**CIL**”) and is a major producer of coking coal in India.
- B. The Authority owns and operates Dugda coal washery with an existing installed capacity of 2 (two) MTPA at Bokaro District, Jharkhand (“**Washery**” or “**Dugda Washery**”).
- C. The Authority had invited bids from prospective bidders to Design, Build/Renovate, Operate, Maintain and Transfer the Washery on Build/Renovation, Operation, Maintenance and Transfer model through Request for Proposal No. [●] dated [●] (“**RFP**”). After evaluation of the bids received, the Authority accepted the bid of [●] (“**Successful Bidder**”) and issued a Letter of Intent No. [●] dated [●] (“**LOI**”) to the Successful Bidder, for engagement of the Successful Bidder as the Washery Developer and Operator of the Washery.
- D. Pursuant to the LOI, the WDO and the Authority are entering into this Agreement to govern the terms on which the WDO shall Design, Build/ Renovate, Operate,

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<sup>1</sup> **Note:** If WDO has been incorporated under Companies Act, 1956, this paragraph to be replaced with the following: “[●], a company incorporated under the Companies Act 1956 and now validly existing under the Companies Act 2013, having CIN [●] and having its registered office at [●], hereinafter referred to as the “**Washery Developer and Operator**” or “**WDO**” (which expression shall, unless repugnant to the context or the meaning thereof, be deemed to include its successors in title and permitted assignees).”

Maintain and Transfer the Washery on Build/Renovation, Operation, Maintenance and Transfer model.

**NOW THEREFORE**, in consideration of the promises and covenants herein set forth and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Parties mutually agree as follows:

## 1. DEFINITIONS

Unless the context herein otherwise provides, the following terms shall have the meanings assigned thereto:

- 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;
- 1.2 **"Affected Party"** shall have the meaning ascribed to the term under Clause 22.1;
- 1.3 **"Affiliate"** means with respect to a Party, a Person who, directly or indirectly: (i) Controls such Party; (ii) is Controlled by such Party; (iii) is Controlled by the same Person, who directly or indirectly, controls such Party; or (iv) is an Associate Company of such Party;
- 1.4 **"Agreement"** means this agreement together with the Schedules and the annexures/ exhibits attached thereto and any amendments thereto made in accordance with the Agreement;
- 1.5 **"Anti-Corruption Laws"** means the (Indian) Prevention of Corruption Act 1988 and any other applicable laws dealing with improper or illegal payment, gifts or gratuities or commercial or governmental bribery;
- 1.6 **"Appropriate Authority"** means and include any government and or semi-government authorities/ agencies/ departments including any and all authorities/ agencies/ departments of or constituted by local, state and central government and or under any legislation, ordinance etc. and/ or any judicial or quasi-judicial authority as may be applicable;
- 1.7 **"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;

- 1.8 **“Applicable Permits”** shall mean all clearances, licences, permits, authorisations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the construction, operation and maintenance of the Washery during the subsistence of this Agreement;
- 1.9 **“Associate Company”** has the meaning ascribed to the term ‘associate company’ in section 2(6) of the Companies Act, 2013;
- 1.10 **“Bid Security”** shall have the meaning as ascribed to the term in the RFP;
- 1.11 **“Build/Renovation”** shall mean construction of a new washery or renovation and strengthening of existing Dugda Washery (including augmentation, if required) which inter-alia includes planning, design & engineering, selection of necessary equipment and machineries, procurement, delivery, erection/ installation, testing, successful commissioning of coal washery plant and all allied activities;
- 1.12 **“Build/Renovation Period”** shall mean the period of 42 (forty-two) months commencing from the Effective Date;
- 1.13 **“Coal Washery Rejects”** shall have the meaning ascribed to the term in the Policy for Handling & Disposal of Washery Rejects dated 27 May 2021 notified by the Ministry of Coal, Government of India, and as amended from time to time or any other extant policy guidelines issued by Ministry of Coal in this regard;
- 1.14 **“Commercial Operation Date”** or **“COD”** shall mean the date on which the Certificate of Commercial Operation is issued in respect of the Washery of 2 MTPA Rated Capacity;
- 1.15 **“Completion Certificate”** shall mean the certificate issued in accordance with Clause 16.2;
- 1.16 **“Completion Date”** shall mean the date of completion of the Washery as notified by the Purchaser to the Seller;
- 1.17 **“Certificate of Commercial Operation”** shall have the meaning assigned to such term in Clause 16.4;
- 1.18 **“Captive Power Plant”** or **“CPP”** shall mean the captive power plants having the meaning as per Rule 3 of the Electricity Rules 2005;

- 1.19 **“Confidential Information”** means information of a proprietary nature, written or oral or electronic, and shall include without limitation trade secrets, financial data, sales figures, costs and pricing figures, marketing and other business plans, product development, marketing concepts, specifications, instructions, methods, processes, techniques, or data of any sort developed that is identified as, or should be reasonably understood to be, confidential to the disclosing party, including, but not limited to, the terms of this Agreement. Confidential Information of a Party shall not include: (a) information that is generally known or available in the public domain or has become generally known in the public domain other than through breach by the other Party; (b) information which has been independently developed by the receiving Party without reference to the disclosing Party’s Confidential Information; and (c) information which has been lawfully acquired by or disclosed to the other Party, by any Third Party;
- 1.20 **“Contract Period”** shall mean a period of 25 (twenty five) years from the Effective Date, which may be mutually extended by the Parties in accordance with Clause 4.3. For avoidance of doubt, it is clarified that the Contract Period shall be inclusive of the Build/Renovation Period;
- 1.21 **“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. ;
- 1.22 **“Damages”** shall mean the damages payable by the WDO to the Authority, as set forth in this Agreement, which are hereby mutually agreed to represent the genuine pre-estimated loss and damages likely to be suffered and incurred by the Authority and are not by way of penalty;
- 1.23 **“Day”** shall mean a period of 24 (twenty four) hours from midnight to midnight according to the Gregorian calendar;
- 1.24 **“Defects Liability Period”** shall have the meaning ascribed to it in Clause 23.9;
- 1.25 **“Delivery Point”** shall have the meaning as ascribed to the term in the FSA;
- 1.26 **“Dispute”** shall have the meaning ascribed to it in Clause 27.2.1;
- 1.27 **“Dispute Notice”** shall have the meaning ascribed to it in Clause 27.2.3;

- 1.28 **“Due Date”** shall mean the date on which the Lease Rent becomes payable by the WDO;
- 1.29 **“Dugda Washery”** or **“Washery”** means the Dugda coal washery falling over the Project Land in district Bokaro of Jharkhand as set forth in Recital B;
- 1.30 **“Eligibility Conditions”** shall mean the eligibility criteria specified in the RFP;
- 1.31 **“Effective Date”** means the date of execution of this Agreement;
- 1.32 **“Encumbrance”** means: (i) a security interest of whatsoever kind or nature including any mortgage, charge (whether fixed or floating), pledge, lien (including negative lien), hypothecation, assignment, deed of trust, title retention, or other encumbrance of any kind securing, or conferring any priority of payment in respect of, any obligation of any person including without limitation, any right granted by a transaction which, in legal terms, is not the granting of security but which has an economic or financial effect similar to the granting of security under Applicable Laws; (ii) any voting agreement, interest, option, right of first offer, or refusal or transfer restriction in favour of any person; and (iii) any adverse claim as to title, possession, access or use;
- 1.33 **“End Products”** shall mean the products generated from the Washery by washing the coal supplied by the Authority under the FSA in the Washery including washed coking coal and washed power coal;
- 1.34 **“Engineer in Charge”** shall mean an officer of the Authority adequately empowered to coordinate between the WDO and Authority and issue the Performance Certificate as per Clause 16.3;
- 1.35 **“FDI Policy”** shall have the meaning ascribed to it in the RFP;
- 1.36 **“Financial Year”** means any year commencing on 1<sup>st</sup> April of a particular calendar year and ending on 31<sup>st</sup> March of the subsequent calendar year;
- 1.37 **“Force Majeure Event”** shall have the meaning ascribed to the term under Clause 22;
- 1.38 **“FSA”** shall mean the fuel supply agreement executed/ to be executed on or about the date of this Agreement between the Parties pursuant to the terms of the RFP;

- 1.39 **“Good Industry Practice”** shall mean the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the WDO in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner, and includes prudent coal washing practices generally accepted by coal washery owners and operators for ensuring safe, economic, reliable and efficient development, operation and maintenance of coal washeries;
- 1.40 **“GST”** means the Goods and Services Tax applicable in India under the State Goods and Services Act, 2017 (SGST), Central Goods and Services Tax Act, 2017 (CGST) or Integrated Goods and Services Act 2017 (IGST) or Union Territory Goods and Services Tax Act 2017 (UTGST) and regulations, rules made pursuant thereto, in each case as amended from time to time;
- 1.41 **“INR”** means Indian Rupees;
- 1.42 **“Intellectual Property Rights”** shall mean patents, utility models and other statutory intellectual property rights, as well as the respective applications with regard to patents, utility models and other statutory intellectual property rights whether or not registered, registrable or unregistered;
- 1.43 **“Interest Rate”** shall mean 18% (eighteen percent) per annum
- 1.44 **“Lease Rent”** shall have the meaning assigned to such term in Clause 8.2;
- 1.45 **“Lenders”** means the financing institutions, banks, multilateral lending agencies, trusts, funds and similar bodies undertaking lending business or their trustees/ agents including their successors and assignees, who have agreed to guarantee or provide finance to the WDO for meeting costs of all or any part of the development/renovation of the Project as per this Agreement;
- 1.46 **“Losses”** means any and all losses, liabilities, fines, demands, penalties, settlements, claims, actions, demand, judgment, diminution in value, Taxes, interests, costs and expenses (including reasonable fees, disbursements and other legal costs and expenses), damages (whether or not resulting from third party claims), costs (including costs of investigation, remediation or other response actions) incurred or suffered by any Party;
- 1.47 **“LOI”** shall have the meaning assigned to such term in Recital C;

- 1.48 “**MTPA**” means million tonnes per annum;
- 1.49 “**Non-Affecting Party**” shall have the meaning assigned to such term in Clause 23.5;
- 1.50 “**Performance Security**” shall have the meaning assigned to such term in Clause 11.1;
- 1.51 “**Performance Certificate**” shall mean the certificate issued by the Engineer in Charge post successful completion of the Performance Test in accordance with Clause 16.3;
- 1.52 “**Person**” means any natural person, firm, company, governmental authority, joint venture, partnership, limited liability corporation, association, fund, trust or other entity (whether or not having a separate legal personality);
- 1.53 “**Project**” means Design, Build/Renovation, Operation, Maintenance and Transfer of the Dugda Washery with capacity of at least 2 (two) MTPA at Bokaro, Jharkhand;
- 1.54 “**Property Tax**” means the taxes and other dues described in Clause 8.2.2;
- 1.55 “**Purpose**” shall have the meaning assigned to such term in Clause 4.1;
- 1.56 “**Representative**” shall have the meaning assigned to such term in Clause 27.2.2;
- 1.57 “**RFP**” shall have the meaning assigned to such term in Recital C;
- 1.58 “**Rated Capacity**” shall mean with respect to the Washery, a minimum Throughput of 2 (two) million tonnes per annum;
- 1.59 “**Scope of Works**” shall have the meaning assigned to such term in Clause 6.1;
- 1.60 “**Selectee**” shall have the meaning assigned to such term in Clause 25.1.3;
- 1.61 “**Site**” or “**Project Land**” shall mean 309.37 (three hundred and nine point three seven) acres of land earmarked under the monetization process of Dugda Washery and shall include any building and erections thereon and any other land allotted by the Authority for WDO’s use in the execution/ performance of the Scope of Work as set forth in Schedule I (Description of the Site and Washery);
- 1.62 “**Specifications and Standards**” shall mean the relevant Indian Standards (“**IS**”) specifications related to either Civil Engineering, Mechanical Engineering, Electrical

Engineering, Hydraulics, Electronics and Control Systems, coal sampling or testing or any other discipline of engineering as relevant to design of the washery sub-system and/or guidelines issued by the Research Designs & Standards Organization (“RDSO”) and/or Indian Railways Manual for design related with Railway sidings as applicable, and in absence of a suitable IS standard or Indian Railways standard, any International Standard applicable in India and followed as Good Industry Practice;

- 1.63 “**Specified End-Use Plant**” means 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 or in a geographically different location) located in India and owned by the Successful Bidder/WDO and may include a CPP or a cogeneration unit or any other unit of the Successful Bidder/WDO for usage in its Specified End Use Plant which is commissioned or to be commissioned;
- 1.64 “**Substitution Notice**” shall have the meaning assigned to such term in Clause 25.1.3(a);
- 1.65 “**Successful Bidder**” shall mean the bidder selected to execute the Project pursuant to the RFP;
- 1.66 “**Suspension**” shall have the meaning assigned to such term in Clause 23.2.1;
- 1.67 “**TDS**” shall have the meaning assigned to such term in 8.2;
- 1.68 “**Taxes**” means: (i) any present or future taxes including advance tax, self-assessment tax, tax deducted or deductible at source, GST, stamp duties or any income-tax payable in the capacity of a representative assessee, together with interest, penalties and shall include any cess, surcharge and / or other charges levied by any governmental authority thereto in respect of the aforementioned taxes computed as per the provisions of Applicable Laws; and (ii) all charges, interest, penalties and/or fines incidental or relating to any tax falling within (i) above or which arise as a result of the failure to pay any tax on the due date or to comply with any obligation relating to tax;
- 1.69 “**Throughput**” means the quantity of raw coal that can be washed in the Washery on an annual basis;
- 1.70 “**Transaction Agreements**” shall mean this Agreement and the FSA and such other documents as may be designated as such by the Authority;
- 1.71 “**Washery Assets**” shall have the meaning ascribed to it in Clause 23.7.2(a); and
- 1.72 “**WDO Event of Default**” shall have the meaning ascribed to it in Clause 23.1.1.

## 2. INTERPRETATION

In this Agreement, unless the context requires otherwise, the following rules of interpretation shall apply:

- 2.1 Words indicating the singular also include the plural and vice versa, and words indicating any gender includes a reference to all other gender.
- 2.2 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.
- 2.3 Any word or expression used in this Agreement shall, unless defined or construed in this Agreement, bear its ordinary English meaning.
- 2.4 "Recital", "Clause" and "Schedule" shall refer respectively to Recitals of, Clauses of and Schedules of this Agreement, all of which form an integral part of this Agreement.
- 2.5 The headings and sub-headings under this Agreement (and references to them) are included for convenience only and shall not be taken into account in interpreting the Agreement.
- 2.6 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.
- 2.7 The references to the word "include" or "including" or to the phrase "in particular", shall be construed without limitation.
- 2.8 The references to any contract, agreement, indenture, deed or other instrument shall be construed as a reference to such contract, agreement, indenture deed, or other instrument as the same may, from time to time, be amended, varied, supplemented, suspended or novated.
- 2.9 Any reference to a statutory provision shall include such provision as is from time to time modified, re-enacted, or consolidated, so far as such modification, re-enactment or consolidation applies or is capable of being applied to any transaction entered into hereunder.
- 2.10 All notices shall be in writing and the words "notify", "endorse", "approve", "permit", "certify" or "determine" shall be construed accordingly. Where any notice, consent, permission, license or approval is to be given by either of the Parties under this

Agreement, it shall be deemed to be valid and effectively given on their behalf only by any duly authorized persons.

- 2.11 Any approval, consent, waiver etc., to be granted by a Party under this Agreement shall be deemed to be valid and effective only if it is in writing and given on their behalf by duly authorized persons.
- 2.12 References to Days, months and years are to calendar days, calendar months and calendar years according to the Gregorian calendar, respectively.
- 2.13 The interpretation of a provision of this Agreement shall not be construed adversely against a Party solely because that Party drafted the provision.
- 2.14 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.
- 2.15 Any word or expression used in this Agreement shall unless defined herein, bear the meaning ascribed to such term in the RFP. It is hereby clarified that the terms of the RFP shall be deemed to be incorporated in this Agreement by reference and the Authority shall be entitled to exercise all its rights and remedies as stipulated in the RFP.

### **3. ORDER OF PRIORITY**

- 3.1** This Agreement, all other agreements and documents forming part of, or referred to in this Agreement and the RFP, are to be taken as mutually explanatory and unless otherwise expressly provided elsewhere in this Agreement, the priority shall, in the event of any conflict between them, be in the following order:
  - (a) Transaction Agreements;
  - (b) all other agreements, and documents forming part hereof or referred to herein; and
  - (c) the RFP.
- 3.2** Subject to Clause 3.1, in case of any ambiguities or discrepancies within the Agreement, the following shall apply:
  - a) between any two Clauses of this Agreement, the provisions of specific Clause relevant to the issue under consideration shall prevail over those in the other Clauses;
  - b) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;

- c) between any two Schedules, the Schedule relevant to the issue shall prevail;
- d) between any two Annexures, the Annexure relevant to the issue shall prevail; and
- e) between any value written in numerals and that in words, the latter shall prevail.

#### 4. APPOINTMENT OF WDO AND CONTRACT PERIOD

- 4.1 **Appointment of WDO:** Subject to and in accordance with the provisions of this Agreement, Applicable Laws and Applicable Permits, the Authority hereby appoints the WDO to design, Build/Renovate, operate and maintain the Washery for the Contract Period, wash the raw coal supplied by the Authority at the Washery during the Contract Period for utilization of the End Products for its Specified End-Use Plant (“Purpose”). For avoidance of doubt, the requirement for the WDO to utilize the raw coal only for the Purpose shall be applicable only to the coal supplied by the Authority under the FSA which has been washed at the Washery. With respect to any other coal which may be procured by the WDO from Persons other than the Authority under the FSA, the WDO shall be permitted to utilize such coal once washed at the Washery in accordance with Applicable Law. The WDO hereby accepts the concession and agrees to undertake the Scope of Works subject to and in accordance with the terms and conditions set forth herein.
- 4.2 Further, the WDO acknowledges and affirms that prior to the execution of this Agreement, it has carefully examined and made a complete independent evaluation of the RFP, Scope of Works as specified in the RFP and in this Agreement, inspected the Site, the Washery, existing structures, local conditions and all information provided by the Authority or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy, nature and extent of difficulties, risks and hazards that are likely to arise in the course of performance of its obligations hereunder.
- 4.3 **Contract Period:** This Agreement shall commence from the Effective Date and shall continue to be in full force and effect for the Contract Period. Subject to there being no default by the WDO, the Authority and the WDO may, prior to expiry of the Contract Period, mutually agree to extend the term of this Agreement by a period of 5 (five) years. In case of such extension, references to the “Contract Period” shall mean the initial 25 (twenty-five) years from the Effective Date and such additional 5 (five) year-period. It is further clarified that this Agreement shall be co-terminus with and shall automatically expire upon termination of the FSA.

#### 5. HANDOVER OF WASHERY

- 5.1 Subject to the terms and conditions contemplated under this Agreement and in order to enable the WDO to undertake the designing, building/renovation, development, operation and maintenance of the Washery, the Authority hereby grants, assigns and leases to the WDO, the Site together with all rights and easements, on an “as is where

is” (together with all Encumbrances) basis and without any liability, obligation or assurance of whatsoever nature, on and with effect from the Effective Date for the specified Purpose. The WDO shall be liable to make periodic payments subject to revisions/escalation against the leasehold rights for the Site in accordance with the terms of this Agreement and provisions of Applicable Law.

- 5.2 The WDO hereby acknowledges and accepts that the Site shall remain the exclusive and absolute property of the Authority and neither the WDO nor any Persons claiming thereunder shall at any time claim any property, right, title or interest over such Site.

## 6. SCOPE OF WORKS

- 6.1 During the Contract Period, the WDO shall engage in the scope of works as more fully described in **Schedule II (“Scope of Works”)**. The WDO shall have the right to set up a CPP or a cogeneration unit or any other unit at the Site associated with the WDO’s Specified End Use Plant within the Contract Period.

## 7. AUGMENTATION OF THE WASHERY

- 7.1 The WDO shall be free to augment the Washery’s Throughput capacity at its own cost and risk beyond 2 (two) MTPA. Provided however, the Authority shall not be responsible for supplying coal under the FSA for any capacity beyond 2 (two) MTPA in accordance with the terms of the FSA.

## 8. CONSIDERATION

- 8.1 **Upfront payment:** In consideration of this Agreement and as the upfront value for monetization of the Washery, the WDO has paid to the Authority prior to the Effective Date, INR 72,68,00,000 (Indian Rupees Seventy-Two Crores and Sixty- Eight Lakhs) corresponding to:

8.1.1 INR 14,13,00,000 (Indian Rupees Fourteen Crores and Thirteen Lakhs) towards fair value of existing plant and machinery, building and stores; and

8.1.2 INR 58,55,00,000 (Indian Rupees Fifty-Eight Crores and Fifty Five Lakhs) towards lease rentals corresponding to first 2 (two) years of the Contract Period.

- 8.2 **Lease Rent for the Site:** In consideration of this Agreement and in accordance with Clause 8.2.1 below, the WDO agrees to pay to the Authority, annual lease rent in accordance with Schedule IV (Lease Rent Schedule), for the lease of the Site (“**Lease Rent**”) payable within 30 (thirty) Days of the beginning of each year of the Contract Period. The Lease Rent payable by the WDO to the Authority shall be subject to statutory tax deductions at source (“**TDS**”) at applicable rates under the Income Tax Act 1961 or other deductions in accordance with Applicable Laws. The WDO shall issue a TDS certificate to the Authority for all TDS deducted as per statutory provisions within 2 (two) months from closure of each Financial Year.

8.2.1 **Mode of Payment for Lease Rent:** The Lease Rent shall be paid by the WDO in advance by way of demand draft or online remittance by RTGS in favor of the Authority's specified bank account, within 30 (thirty) Days of the beginning of each year of the Contract Period starting from the 3<sup>rd</sup> Contract Year ("**Due Date**"), failing which the WDO shall be liable to pay interest at the Interest Rate in addition to the Lease Rent for the period of delay from the Due Date until the date of actual payment.

8.2.2 **Payment of Taxes:** The Taxes payable on the Lease Rent amount and any other such levies or Taxes levied by the Appropriate Authorities as may be applicable in future, arising out of the occupancy of the Site, shall be borne by the WDO upon receipt of prescribed service tax/GST invoice or any other applicable tax invoice raised by the Appropriate Authority. The Authority shall at the request of WDO submit such documents as are required by the WDO to claim refund of service tax paid by it.

All Taxes and cesses imposed on the Site ("**Property Tax**") will be borne by the WDO and shall be paid regularly on or before the applicable due date and in the name of the Authority to the relevant Appropriate Authorities. GST and any other Taxes, as may be applicable on the payment of Lease Rent and other utility charges, other than income tax shall be paid by the WDO along with the Lease Rent as set out in Clause 8.2.

8.3 **Payment for Coal Supply:** The WDO shall be required to make periodic payments for the coal supplied in accordance with the provisions of the FSA.

## 9. **GENERAL OBLIGATIONS OF PARTIES**

9.1 **General Obligations of the Authority:** Subject to, and on the terms and conditions of this Agreement, the Authority shall at the cost and expense of the WDO, undertake, comply, and perform the following obligations:

9.1.1 Provide necessary access, right of way and leasehold rights over the Site and Washery to the WDO; and

9.1.2 Extend reasonable support and assistance to the WDO, for procuring the Applicable Permits and necessary infrastructure facilities and utilities required for the operation, development and management of the Washery.

9.2 **General Obligations of the WDO:** Subject to, and on the terms and conditions of this Agreement, the WDO shall, at its own cost and expense, undertake, comply with, and perform all the obligations set out in this Agreement or arising hereunder, in addition to the operation and maintenance obligations set out in this Clause 9.2:

9.2.1 Provide Performance Security to the Authority in accordance with Clause 11 and **Schedule III (Format of Performance Security)** of this Agreement;

- 9.2.2 Make timely payments of the Lease Rent for the Site on its Due Date along with the utility charges and Taxes to the Authority or to the Appropriate Authority, as the case may be, within the prescribed timeframe under this Agreement;
- 9.2.3 Undertake financing, designing, renovation, procurement, development, operation and maintenance of the Washery throughout the Contract Period and complete the Build/Renovation within the Build/Renovation Period;
- 9.2.4 Make necessary applications to the Appropriate Authority with such particulars and details as may be required for obtaining the Applicable Permits for any obligation under this Agreement including those required for the renovated Washery and keeping it in full force and effect throughout the Contract Period;
- 9.2.5 Undertake to procure all the Applicable Permits, as and when due, unconditionally such that all such Applicable Permits are in full force and effect throughout the Contract Period.
- 9.2.6 Procure and maintain the required proprietary rights, licenses, agreements and permissions for materials, methods, processes, know-how and systems used or incorporated into the Renovation and operation of the Washery;
- 9.2.7 Subject to Clause 4.1, undertake responsibility for the transportation of the End Products to its respective Specified End-Use Plant at its own cost and expense;
- 9.2.8 Subject to Clause 4.1, utilize the End-Products for its Specified End-Use Plant and in accordance with Applicable Laws;
- 9.2.9 Provide all necessary information to any Appropriate Authorities as part of its operating and reporting obligations under Applicable Laws along with a copy to the Authority;
- 9.2.10 Comply with all Applicable Laws and maintenance requirements including continuation of validity of any registration/license/permit (if any) of the Washery;
- 9.2.11 Make timely payments of all royalties, rates, Taxes, duties, cesses, charges, levies or other outgoings payable by the WDO under this Agreement or under Applicable Law including but not limited to payments in connection with supply, dispatch or delivery of the specified grade of coal; and sizing charges, transportation charges up to the relevant delivery point, loading charges and such other charges as may be specified in the FSA;
- 9.2.12 Permit the Authority and its representatives at any time during normal working hours to enter the Site and the Washery for the purpose of inspecting the Site and the Washery;
- 9.2.13 Ensure the safety and security of all its materials, equipment, goods and the Washery and shall not use or store any hazardous substance on the Site and/or in the Washery, except in compliance with Applicable Laws;

- 9.2.14 Observe, perform and comply with all the terms and conditions of this Agreement and the FSA along with all Applicable Laws and Applicable Permits (including renewals as required) for the time being in force including but not limited to norms laid down by the Central/State Pollution Control Board and in accordance with Good Industry Practice at all times during the Contract Period;
- 9.2.15 Ensure that its respective officers, employees, agents and advisers observe the highest standard of ethics during the Contract Period;
- 9.2.16 Subject to Clause 4.1, ensure that the Site is used only for the specified Purpose and shall not carry on or permit to be carried on in the Site or in any part thereof, any activities which are unlawful or not in accordance with the provisions of this Agreement;
- 9.2.17 Obtain necessary permissions/ Approvals from the Appropriate Authorities as required under Applicable Law in relation to the Purpose or for the Site;
- 9.2.18 Be responsible for repairs and day to day routine maintenance of the Washery constructed within the Site at its own cost;
- 9.2.19 Make such structural additions, renovations, improvements, and alterations to the Washery as permitted under this Agreement and in conformance with Applicable Laws. Any permissions/ Approvals required to be obtained from Appropriate Authorities for such improvements or alterations shall be at the WDO's sole responsibility and cost;
- 9.2.20 Procure contracts, goods and services for the operations, management and development of the Washery in a fair, transparent and efficient manner and without any undue favour or discrimination in this behalf;
- 9.2.21 Be responsible for its employees, independent contractors, sub-contractors, contract labour or other persons providing services to or on behalf of the WDO and ensure compliance in all respects with all Applicable Laws including all laws relating to wages, hours of work, employment standards, collective bargaining, discrimination, civil rights, safety and health, compensation. The Authority shall not be liable for any claims/liability arising out of the WDO's employees;
- 9.2.22 Employ suitably qualified and skilled persons for the performance of its obligations under this Agreement are at all times properly trained for their respective functions in accordance with the requirements of Applicable Laws and standard industry practice;
- 9.2.23 Design and operate the Washery in a manner that optimizes generation of washed coking coal;
- 9.2.24 The WDO 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 WDO shall submit within the stipulated timeframe; and

9.2.25 Transfer the Washery Assets to the Authority, free from all Encumbrances, upon termination or expiry of this Agreement, in accordance with the provisions hereof.

## 10. REPRESENTATIONS AND WARRANTIES

10.1 **Authority's Representations and Warranties:** The Authority hereby represents and warrants to the WDO that as on the Effective Date:

10.1.1 it is validly existing under the laws of India, has full power and authority to execute this Agreement and the person signing this Agreement is duly authorized and competent to execute this Agreement;

10.1.2 its obligations under this Agreement will be legally valid and binding and enforceable against it;

10.1.3 it is subject to the laws of India;

10.1.4 the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, or constitute a default under, or accelerate performance required under the terms of any covenant, agreement, understanding, decree or Order to which, it is a party or by which, it or any of its properties or assets is bound or affected, and does not result in a violation of the Applicable Law;

10.1.5 it has complied with and is in compliance with all the Applicable Law, in all material respects and has not been subject to any fine, penalty, injunctive relief or any other civil or criminal liabilities which, in the aggregate, has or may have a material adverse effect on its ability to perform its obligations under this Agreement; and

10.1.6 it is a company limited by shares incorporated under the laws of India and has been properly constituted and is in continuous existence since incorporation.

10.2 **WDO's Representations and Warranties:** The WDO hereby represents and warrants to the Authority that as on and with effect from the Effective Date:

10.2.1 it is validly existing under the laws of India, has full power and authority to execute this Agreement and the person signing this Agreement is duly authorized and competent to execute the Agreement;

10.2.2 its obligations under this Agreement will be legally valid and binding and enforceable against it;

10.2.3 it is subject to the laws of India;

10.2.4 the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, or constitute a default under, or accelerate

performance required under the terms of any covenant, agreement, understanding, decree or Order to which, it is a party or by which, it or any of its properties or assets is bound or affected, and does not result in a violation of the Applicable Law;

- 10.2.5 it has complied with and is in compliance with all the Applicable Law, in all respects and has not been subject to any fine, penalty, injunctive relief or any other civil or criminal liabilities which, in the aggregate, has or may have a material adverse effect on its ability to perform its obligations under this Agreement;
- 10.2.6 it has complied with and is in compliance with the Eligibility Criteria as specified in the RFP;
- 10.2.7 it acknowledges that any right, title and interest of the WDO under this Agreement shall not confer ownership rights or title over the Site;
- 10.2.8 no sums, in cash or kind, have been paid to, or accepted by, any person or will be paid to, or accepted by, any person or on its behalf by way of fees, commission or otherwise to induce the Authority to enter into this Agreement;
- 10.2.9 it is able to pay its debts as and when they fall due or otherwise is solvent as per the Applicable Law, it has not compounded with or negotiated any composition with, or called any meeting of its creditors, a receiver, trustee or manager has not been appointed over the whole or any part of its assets or rights, it has not committed any act of bankruptcy or insolvency or passed any resolution for or otherwise entered into any liquidation, winding up or administrative order or taken or suffered any action analogous to any of the foregoing under the laws of India or any other applicable jurisdiction;
- 10.2.10 it is not in breach of any agreement with any Person, who has provided loans, deposits, advances, guarantees or other financial facilities to the WDO; and
- 10.2.11 there are no actions, suits, proceedings, order, injunction, writ, decree or investigations pending or threatened against it before any court or other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or adversely affect the performance of its obligations under this Agreement.

## 11. PERFORMANCE SECURITY

- 11.1 The WDO shall have submitted to the Authority, before the Effective Date, a Performance Security in the form of an irrevocable and unconditional guarantee from an Acceptable Bank, or in the form of a non-interest-bearing security deposit, for the performance of its obligations under this Agreement, of an amount INR 19,16,00,000 (Indian Rupees Nineteen Crores and Sixteen Lakhs) ("**Performance Security**").
- 11.2 The WDO shall keep the Performance Security valid, effective and in full force for such value as is required to be maintained in accordance with Clause 11.1 till 3 (three) months following completion of the Defects Liability Period. The Performance

Security shall be returned or refunded to the WDO at the end of the period mentioned herein, subject to successful completion of and complete settlement of all claims of the Authority arising out of this Agreement.

- 11.3 In case the Performance Security is provided in the form of a Bank Guarantee, the same shall be in the form set out in Schedule III and at least 30 (thirty) Days prior to expiry of a Performance Security, the WDO shall furnish an extended, renewed or replacement Performance Security to the Authority, failing which the Authority shall be entitled to, after giving 5 (five) Days' notice to the WDO, forfeit the Performance Security. In this regard, the Authority reserves the right to call for any documentary evidence from the WDO in relation to such extension or renewal of the Performance Security and the WDO shall be under an obligation to furnish all documents as may be required by the Authority.
- 11.4 The Authority shall, without prejudice to its other rights and remedies hereunder, in law or equity, have the unqualified right to encash and appropriate the Performance Security in part or in full, in the event of a failure or default of the WDO to comply with its obligations hereunder or as per the provisions of this Agreement. The WDO shall, within 15 (fifteen) Days from such encashment and appropriation of the Performance Security by the Authority restore the value of the Performance Security to the value as is required to be maintained pursuant to Clause 11.1; failing which, without prejudice to its rights under Applicable Law, the Authority shall be entitled to terminate this Agreement in accordance with Clause 23.
- 11.5 Notwithstanding anything to the contrary contained in this Agreement, the Performance Security shall stand forfeited and the Authority shall be entitled to appropriate the proceeds thereof as Damages, in the event:
- 11.5.1 A misrepresentation on part of the WDO is made or uncovered at any time;
- 11.5.2 Any act or omission of the WDO results in violation of or non-compliance with the LOI, this Agreement, the FSA, the RFP and/ or any other document referred therein or issued pursuant thereto or any Applicable Law.

## **12. SUBCONTRACTING OF WORKS BY THE WDO**

- 12.1 The WDO shall not subcontract the whole of the Scope of Work. The WDO may subcontract part of the Scope of Work, in accordance with the provisions of this Clause 12, with prior written notice to the Authority. Nothing in this Clause 12 shall relieve the WDO of its obligations under the Agreement and the WDO shall remain solely responsible for the proper provision of the works under this Agreement by all subcontractors.
- 12.2 The WDO shall ensure that in case of any subcontracting to an entity or Person which is incorporated, established or registered in any country which shares a land border with India or whose beneficial owner is situated in such a country, it complies with all Applicable Law, including but not limited to the rules, regulations and guidelines

prescribed by the Government of India in this regard. Further, if such subcontractor is from a country sharing land border with India, per the parameters provided below, it must obtain a valid registration with the Appropriate Authority.

12.3 For the purpose of this Clause, 'subcontractor from a country which shares a land border with India' shall mean:

12.3.1 an entity incorporated, established or registered in such a country; or

12.3.2 a subsidiary of an entity incorporated, established, or registered in such country; or;

12.3.3 an entity substantially controlled through entities incorporated, established, or registered in such a country; or

12.3.4 an entity whose beneficial owner is situated in such a country; or

12.3.5 an Indian (or other) agent of such an entity; or

12.3.6 a natural person who is a citizen of such a country; or

12.3.7 a consortium of joint venture where any member of the consortium or joint venture falls under any of the above

Further, "beneficial owner" for the aforementioned purpose, shall in relation to an entity, mean natural person(s), who, whether acting alone or together, or through one or more juridical person, has a controlling ownership interest or who exercises control through other means.

For the purpose of this sub-clause-

- (a) where the entity is a company, "controlling ownership interest" means ownership of or entitlement to more than 10% (ten percent) of shares or capital or profits of the company and "control" shall include the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements;
- (b) where the entity is a partnership firm, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of/entitlement to more than 15% (fifteen percent) of capital or profits of the partnership;
- (c) where the entity is an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than 15% (fifteen percent) of the property or capital or profits of such association or body of individuals;
- (d) where no natural person is identified under (a) or (b) or (c) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;

- (e) where the entity is a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with 10% (ten percent) or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.
- 12.4 It shall ensure that any engagement of a sub-contractor under this Agreement is in compliance with the latest applicable FDI Policy and if such sub-contractor is from a country sharing land border with India, it shall be adequately registered with the Appropriate Authority as per Clause 12 of this Agreement.
- 12.5 Nothing in this Clause 12 shall relieve the WDO of its obligations under this Agreement and/or the FSA and the WDO shall remain solely responsible for the proper provision of the works and services by all subcontractors.

### **13. SITE**

- 13.1 It is expressly agreed that all rights and permissions granted to the WDO hereunder in respect of the Site shall terminate automatically and forthwith, upon the termination of this Agreement for any reason whatsoever.
- 13.2 During the Contract Period, the WDO shall protect the Site and the Washery from any and all occupations, encroachments or Encumbrances, and shall not place or create nor permit any sub-contractor or other person claiming through or under the WDO to place or create any Encumbrance or security interest over all or any part of the Site, Washery, or any rights of the WDO under this Agreement, save and except as otherwise expressly permitted in Clause 25 of this Agreement. In the event of any encroachment or occupation on any part thereof, the WDO shall report the same forthwith to the Authority and undertake its removal at its own cost and expense.
- 13.3 The WDO shall utilize the Site towards development of Washery and related infrastructure only and shall not utilize any part of the Project Land for any purpose other than as expressly contemplated in this Agreement and shall without prejudice to the generality of the foregoing, not use any part of the Site for commercial real estate development or any other commercial activities not incidental to Washery operations as expressly contemplated herein.

### **14. UTILITIES**

- 14.1 **Power Supply:** The WDO will receive electrical power supply from the Authority's sub-station located near the Washery. The power will be made available to the WDO through an existing power transmission line (11 (eleven) kV) originating at this sub-station at a terminal point (reference point and 1.6 (one point six) km distance) at the boundary of the Site.

As on the date of this Agreement, the Authority has provision for supplying 6 (six) MVA load at 11 (eleven) kV at the terminal point. The WDO acknowledges that the 6 (six) MVA load referred to herein is intended for use by the Washery as well as other facilities such as the Authority's township and such 6 (six) MVA load referred to herein is not dedicated to or for the exclusive use of the Washery. If at any time the WDO desires higher electrical power supply arrangement, then it would have to make such

arrangements with the relevant power distribution utility or governmental instrumentality directly at its own cost.

The WDO will have to make its own arrangement for receiving electrical power at the terminal point and its distribution within the Project Land including but not limited to Washery, CPP or a cogeneration unit or any other unit at Site (if applicable), conveyor system, private railway siding and other facilities at or in connection with the Project established pursuant to the Transaction Agreements. All costs relating to maintenance of power supply system and power consumption for common facilities shall be borne by the WDO.

The Authority will raise monthly invoices based on applicable tariff for electrical power delivered on actuals to the WDO based on a metering device located at the Authority's sub-station.

- 14.2 **Water Supply:** The Washery has a water supply arrangement agreement with Damodar Valley Corporation (DVC) for annual drawal of 1,44,000 (one lakh and forty-four thousand) cubic meters, through water intake well from Damodar River. There is a dedicated corridor for water pipelines in the Site. The Authority has applied for renewal of the water supply agreement with DVC and pursuant to such renewal the WDO may access water supplied through such water supply agreement and shall pay the requisite water charges to the Authority calculated on the basis of applicable tariff rates under such water supply agreement and as per the WDO's actual consumption. However, the WDO shall be free to approach the relevant utility companies to meet any additional water requirement for the Project at the sole cost of WDO. The pipeline from water intake well to the Washery forms part of the Washery's assets; however, the land over which it has been laid is not a part of the Site. The WDO has to make necessary infrastructure arrangements for supply of water from the water intake well.
- 14.3 **Sewage or Drainage Facility:** The WDO shall ensure that suitable sewer linkage at designated points in the Site is available for appropriate disposal of the treated effluents and sewage waste from the Washery. Adequate facilities for treatment of wastewater generated from the Washery through sewage treatment plants and its reuse wherever possible shall be facilitated by the WDO at the Site. The WDO shall ensure that there is no contamination/pollution of ground water or surface water on the Site. While finalizing the land use planning, adequate provisions for ensuring drinking water security by way of rainwater harvesting/groundwater recharge by utilizing existing natural detention basins in the area by executing adequate drainage works shall be ensured by the WDO.
- 14.4 **Telecommunication facilities:** The WDO shall ensure that sufficient internal telecommunication infrastructure catering to basic telephony and other value-added telecom services are available at the Site.
- 14.5 **Existing utilities and roads:** Notwithstanding anything to the contrary contained herein, the WDO shall ensure that the respective entities owning the existing roads, right of way or utilities on, under or above the Site (if any) are enabled by it to keep such utilities in continuous satisfactory use, if necessary, by providing suitable temporary or permanent diversions with the approval of the controlling body of that road or right of way. Any right of way permissions for non-coal uses including but not

limited to laying pipelines/conveyors and other miscellaneous public utility uses such as gas pipelines, drinking water pipelines, railway lines, telephone lines, transmission lines, roads and highways etc. provided by the Authority to the WDO on rent basis shall not be a transferable or inheritable right and shall not constitute any right or title in favour of the WDO.

- 14.6 **New Utilities:** The WDO shall be allowed, subject to approval from the Authority, access to, and use of the Site for laying telephone lines, water pipes, electric cables or other utilities, but only if such additional utilities do not affect the operations of the Washery and do not cause any loss to the Authority or any other facilities located on the Site.

## 15. RENOVATION OF THE WASHERY

- 15.1 The WDO shall design, Build/ Renovate the Washery from the Effective Date in accordance with obligations as per Clause 9.2 The WDO shall ensure that the design and engineering, including construction criteria related thereto, are in conformity with the Scope of Works, Applicable Laws and the Good Industry Practice.
- 15.2 For the purpose of washing of coal, the WDO shall select efficient, cost effective and state-of-the-art technology for the operation of the Washery or capacity augmentation to fetch higher yield of desired quality.
- 15.3 The Project Land has 2 (two) railway sidings namely, Dugda Coal Washery Siding (station code DDCW) and Dugda Coal Washery (station code DUDG). The sidings have multiple branch lines and shunting lines. The WDO shall be responsible for the upkeep/maintenance/repair/operations of these two railway sidings for the Contract Period, without any recourse to the Authority.

## 16. INSPECTION, TESTS AND COMPLETION

- 16.1 The Authority shall, at any time have the right to inspect the Washery. The WDO shall facilitate such inspection and ensure that the WDO team is present at the Site during such inspection by the Authority.
- 16.2 **Completion Certificate:** During the Build/Renovation Period, upon completion of building/renovation of the Washery for the Rated Capacity as per **Schedule II** (*Scope of Works*) the WDO shall submit a self-certificate notifying the Authority of the same ("**Completion Certificate**"). The WDO shall also submit two sets of physical copies and two CDs containing the following in digital format (PDF and AutoCAD) to the Authority, the authenticated Detailed Project Report of the Washery (with latest amendments) for their records and the DPR should be accompanied with necessary documents including, but not limited to the following:
- (i) construction drawings,
  - (ii) detailed engineering drawings,
  - (iii) detailed equipment specifications for Washery,
  - (iv) coal receipt, storage and dispatch arrangements,

- (v) electrical power receipt and distribution arrangement,
- (vi) water intake, storage and distribution arrangement, and
- (vii) pollution control measures including but not limited to effluent treatment plants.

16.3 **Performance Test:** Upon submission of the Completion Certificate, the WDO shall be required to carry out tests on the Washery as specified below, at the cost and expense of the WDO.

16.3.1 The WDO shall notify the Authority of the readiness of the Washery for conducting performance tests and indicate a trial window of 7 (seven) Days during which the trial runs shall be conducted.

16.3.2 The trial runs shall be conducted in the presence of the designated Engineer in Charge of Authority or their authorized representative.

16.3.3 In a continuous period of 72 (seventy-two) hours, the Washery should demonstrate achievement of the performance criteria - minimum Throughput of 16,500 (sixteen thousand and five hundred) tonnes b) the Washery operations during the test period should conform to the DPR submitted by the WDO along with the Completion Certificate; and c) the Engineer in Charge may conduct a physical verification of the assets /P&M present at the Washery and tally them with the provisions made in the DPR submitted with the Completion Certificate.

16.3.4 The Authority shall ensure to supply required quantity of coal corresponding to 7 (seven) Days of ACQ to the WDO for the trial runs.

16.3.5 In case the WDO fails to meet the performance criteria then the Engineer in Charge or his authorized representative may establish any defects or deficiencies in the Washery and WDO shall take such remedial measures as would be necessary to address the defects or deficiencies and notify the Authority of its readiness for conduct of performance tests. The Engineer in Charge of the Authority will issue a Performance Certificate only upon satisfactory completion of the processes set out in Clause 16.3.

16.4 **Certificate of Commercial Operation:** Subject to the results of the tests under Clause 16.3 being obtained to the satisfaction of the Authority and within 7 (seven) Days of obtaining the Performance Certificate, the WDO shall issue to the Authority a self-certificate of commercial operation ("**Certificate of Commercial Operation**") stating that the Washery can hereafter commence operation and undertake the process of washing of raw coal to generate the End Products and the date of issuance of such Certificate of Commercial Operations shall be considered as the Commercial Operation Date ("**COD**").

16.5 **Delay in Commercial Operation:** If the Certificate of Commercial Operations has not been submitted in accordance with this Agreement within the Build/Renovation Period, unless the delay is on account of reasons due to Force Majeure or any time extension agreed between the Parties, an amount equivalent to 0.55% (zero point five five percent) of the Performance Security for each Day of delay, subject to a maximum

of 180 (one hundred and eighty) Days from the completion of the Build/Renovation Period, shall be appropriated from the Performance Security until the Certificate of Commercial Operation is issued and the Washery commences operations.

Provided however, in case of delay beyond 180 (one hundred and eighty) Days from the completion of the Build/Renovation Period, the Authority shall have the right to terminate this Agreement.

## **17. OPERATION AND MAINTENANCE**

17.1 During the Contract Period and with effect from the COD, the WDO shall operate and maintain the Washery in accordance with this Agreement, Applicable Laws and Applicable Permits. The obligations of the WDO hereunder shall be in addition to the obligations of the WDO set out elsewhere in this Agreement:

17.1.1 Ensuring safe, smooth and uninterrupted offtake of raw coal from the Authority's identified coal mines;

17.1.2 Preventing, with the assistance of the concerned law enforcement agencies, any encroachments on, or unauthorised entry to the Site;

17.1.3 Issuing a self-declaration certificate every quarter stating therein that each and every equipment/ system of the Washery under this Agreement is presently in good condition and is operating satisfactorily and giving desired result;

17.1.4 Selecting efficient, cost effective & state-of-the-art technology for the operation of the Washery to fetch higher yield of desired quality;

17.1.5 Ensuring that in case of augmentation of the capacity of the Washery, the WDO would have to undertake suitable arrangements for procurement of the incremental coal requirement and the Authority shall only be responsible to supply Allocated Quantity of 2 (two) MTPA as specified in the FSA;

17.1.6 Ensuring that the End Products are solely utilized for its Specified End-Use Plant for captive consumption or in accordance with Applicable Laws;

17.1.7 Arranging for efficient storage facilities, handling, dispatch and delivery systems for both the raw coal and End Products;

17.1.8 Undertaking responsibility for the smooth and efficient transportation/delivery of the respective End Products to its Specified End-Use Plant at its own cost and expense;

17.1.9 Ensuring treatment of slurry/ effluent/ discharge and excess water from the Washery so that there shall be no leakage of effluent or water outside the Site. It is hereby clarified that any slurry (if produced) at the Washery shall be disposed off as per Applicable Law or utilized for suitable purposes as permitted under Applicable Law with specific regard to environmental laws;

- 17.1.10 Ensuring that the by-products including Coal Washery Rejects generated through the process of washing at the Washery are disposed off in compliance with Applicable Laws with specific regard to environmental laws;
- 17.1.11 Promptly removing from the Washery, all surplus construction machinery and materials, waste materials (including hazardous materials and wastewater), rubbish and other debris (including, without limitation, accident debris) and keep the Washery in a clean, tidy and orderly condition, and in conformity with Applicable Laws and Applicable Permits;
- 17.1.12 Ensuring safe working conditions at the Washery and in the event of unsafe conditions, damage, breakdowns and accidents, undertake removal of obstruction and debris without delay in conformity with this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice;
- 17.1.13 Undertaking operation and maintenance of the Washery in an efficient, coordinated and economical manner, and ensuring that it is always in good running condition in compliance with Applicable Laws and Good Industry Practice;
- 17.1.14 Preparing and following a system of preventive maintenance, scheduled maintenance and other routine maintenance including prompt repairs of all components of the Washery;
- 17.1.15 Maintaining the access road connecting the Washery to the nearest highway and the approach road from the Washery to the water intake well at Damodar river;
- 17.1.16 Making timely payments of all royalties, rates, taxes, duties, cesses, charges, levies or other outgoings payable by the WDO under this Agreement or under Applicable Law; and
- 17.1.17 Maintaining the two railway sidings at the WDO's cost and risk on the Project Land in accordance with Good Industry Practice at all times during the Contract Period;
- 17.2 In the event the WDO does not operate and maintain the Washery or any part thereof in conformity with Clause 17.1, Applicable Laws, Applicable Permits, Transaction Agreements and Good Industry Practice and if within 15 (fifteen) Days of receipt of notice from the Authority, the WDO fails to commence remedial work, the Authority shall, without prejudice to its rights under this Agreement including termination thereof, be entitled but not obligated to undertake such remedial measures at the risk and cost of the WDO, and to recover its cost from the WDO. If following commencement of remedial work, the WDO fails to complete the remedial work to the satisfaction of the Authority within such timeframe as has been agreed by the WDO with the Authority, the Authority shall, without prejudice to its rights under this Agreement including termination thereof, be entitled but not obligated to undertake such remedial measures at the risk and cost of the WDO, and to recover its cost from the WDO.

## **18. INSPECTION AND MONITORING**

The Authority shall at any time during the operation period inspect the operations of the Washery in regular intervals to ensure that the operations of the Washery are in accordance with the provisions of this Agreement. The WDO shall facilitate such visit and ensure the presence of the team of WDO during such visit.

## **19. SAFETY AND SECURITY REQUIREMENTS**

- 19.1 The WDO shall comply with the provisions of this Agreement, Applicable Laws, Applicable Permits and conform to Good Industry Practice for securing the safety and security of the Washery, equipment and individuals on or about the Site at its cost and expense. The WDO shall have the sole responsibility to verify and take necessary actions and measures to ensure that all safety and security measures at the Washery are fully implemented, maintained and kept in proper working order. All costs and expenses arising out of or relating to such requirements shall be borne by the WDO.
- 19.2 The WDO shall, during the Contract Period, undertake appropriate risk and safety assessment of the Washery for potential safety and health hazards.
- 19.3 The WDO shall make arrangements for the engagement of all personnel, and their payment, accommodation, feeding and transport. No person below the age of 18 (eighteen) years shall be employed by the WDO for the execution of the Scope of Works.
- 19.4 The WDO shall employ such number and quality of persons for the execution of the Scope of Works (either directly or through sub-contractors) as may be necessary to complete the Scope of Works as per the timelines provided in the Agreement.
- 19.5 The WDO shall install security and surveillance equipment in conformity with Applicable Laws and Good Industry Practice to ensure and procure the safety and security of its personnel, Washery and Site.
- 19.6 The WDO shall arrange for a canteen, clean and safe drinking water, safe and hygienic toilets for workers, rest shelters, first aid stations, ambulances, fire hydrants and other facilities/ amenities as required under Applicable Laws for ensuring safety, health and welfare of the employees or other persons, as may be deployed directly or indirectly by the WDO.
- 19.7 The WDO shall provide suitable, reliable, and adequate fire-fighting system having fire-fighting hydrant points at strategic locations on all the floors of the Washery as per BIS regulations and prevalent norms. In addition to this, fire extinguishers of different types suitable for industrial use shall be provided at all the required vulnerable locations.
- 19.8 The WDO shall be solely responsible for all its employees, staff and personnel and follow the requirements of all labour laws in force and shall comply with all statutory requirements including payment rates of wages, and observing conditions of labour, which comply with all Applicable Laws. If no established rates or conditions are prescribed under Applicable Law, the WDO shall pay rates of wages and observe

conditions which are not lower than the general level of wages and conditions observed locally by employers whose trade or industry is similar to that of the WDO.

- 19.9 The WDO agrees and affirms that the Authority shall have the right to conduct a safety audit to inspect the safety and security conditions of the Site and Washery, at any time deemed appropriate by the Authority. The Authority may also assess the working conditions of staff and labour employed by the WDO. The WDO shall implement such recommendations as prescribed by the Authority post such inspection and audit and provide the Authority with a detailed list and analysis of all accidents of the preceding calendar year and the measures taken by the WDO for averting or minimizing such accidents in future.

## **20. STORAGE AND DELIVERY**

### **20.1 Dispatch and delivery:**

20.1.1 The Parties shall ensure dispatch and delivery of coal in accordance with the provisions of the FSA.

20.1.2 The WDO shall be solely responsible for the transportation, delivery and safety of the raw coal from the Delivery Point to the Washery and subsequently for the transportation and delivery of the washed coal from the Washery to their respective Specified End-Use Plant.

### **20.2 Storage facility:**

20.2.1 The WDO shall for discharging its obligations under and in accordance with this Agreement, build/renovate and operate separate coal depots within the Site for the storage of raw coal and End Products in accordance with the provisions of this Clause 20.2

20.2.2 Upon delivery of raw coal to the Delivery Point by the Authority or delivery of additional coal from open source, as the case may be, the WDO shall make separate arrangement for the storage of the raw coal sourced from the Authority and the raw coal sourced from any open source(s). The raw coal supplied by the Authority or raw coal sourced an open source shall be washed in the Washery and the End Products generated from both sources, being raw coal from the Authority and from any other open sources shall be stored separately in the areas designated for this purpose within the Site.

20.2.3 The WDO shall also make separate arrangement for the storage of the End-Products generated from the raw coal supplied by the Authority.

## **21. INSURANCE**

- 21.1 The WDO shall, at its own cost and expense, put in place and maintain during the Contract Period the various insurances along with their respective insurance coverage as required under Applicable Laws or Good Industry Practices. The WDO shall ensure that project including its plant and machinery, equipments, other infrastructure etc.

are insured at all times during the Contract Period and submit a copy of the insurance documents to the Authority.

- 21.2 If the WDO fails to effect and keep in force any of the insurance policies required to be maintained under this Agreement, the Authority may (at its option and without prejudice to any other right or remedy) effect insurance for the relevant coverage and pay the premiums due and the WDO shall be obligated to reimburse the Authority for such amounts paid by the Authority, within 14 (fourteen) Days of such payment being made by the Authority.
- 21.3 Nothing in this Clause 21 limits the obligations, liabilities or responsibilities of the WDO, under this Agreement or otherwise.

## 22. FORCE MAJEURE

22.1 The term “**Force Majeure Event**” 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:

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

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

22.1.3 civil disturbance such as riot, terrorism etc.;

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

22.1.5 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;

22.1.6 any epidemic;

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

22.1.8 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 governmental approvals provided that such delay, modification, denial, refusal or revocation was not due to a cause attributable to the Affected Party;

22.2 The Force Majeure Event shall not include within its purview, any economic hardship, equipment failure and/ or breakdown or any event other than as specifically set forth above.

### 22.3 **Burden of Proof**

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

### 22.4 **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 Event, shall be excused from whatever performance is affected by the Force Majeure Event to the extent so affected, provided that:

22.4.1 within 5 (five) Days after the occurrence of the inability to perform due to a Force Majeure Event, the Affected Party provides a written notice to the non-affected party of the particulars of the occurrence, including an estimation of its expected duration and probable impact on the performance of its obligations hereunder, and continues to furnish periodic reports with respect thereto to the other Party at an interval of every 7 (seven) Days during the period of a Force Majeure Event;

22.4.2 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 Event;

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

22.4.4 the Affected Party shall provide the non-affected party with prompt notice of the cessation of the Force Majeure Event giving rise to the excuse from performance and shall thereupon resume normal performance of obligations under this Agreement with utmost promptitude;

22.4.5 the non-performance of any obligation of either Party that was required to be performed prior to the occurrence of a Force Majeure Event shall not be excused as a result of such subsequent Force Majeure Event;

22.4.6 the occurrence of a Force Majeure Event shall not relieve either Party from its obligations to make any payment hereunder for performance rendered prior to the occurrence of the Force Majeure Event or for partial performance hereunder during period of subsistence the Force Majeure Event;

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

22.4.8 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 Event.

## 23. **SUSPENSION AND TERMINATION**

23.1 **WDO Event of Default:**

23.1.1 Subject to Applicable Laws and save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the WDO fails to cure the default within the cure period set forth below, or where no cure period is specified, then within a cure period of 90 (ninety) Days (if the default is curable), the WDO shall be deemed to be in default of this Agreement (“**WDO Event of Default**”), unless the default has occurred due to a Force Majeure Event for which the process set out in Clause 22, 23.5 and 23.7.2 shall have been followed. The defaults referred to herein shall include:

- (a) the Performance Security has been encashed and appropriated in accordance with the Agreement and the WDO fails to replenish or provide fresh Performance Security within 15 (fifteen) Days of such encashment/appropriation;
- (b) the WDO abandons or manifests intention to abandon the Renovation or operation of the Washery without the prior written consent of the Authority;
- (c) the WDO fails to achieve commercial operation of the Washery within the Build/Renovation Period and continues to be in default for 180 (one hundred and eighty) Days which has not been remedied in accordance with Clause 16.5;
- (d) the WDO has failed to make any payment to the Authority within the period specified in this Agreement and/or has failed to make any payment to the Authority within the period specified in the FSA;
- (e) a breach of any other Transaction Agreements, by the WDO;
- (f) the WDO uses the respective End Products for any other purpose other than use of the same in the Specified End-Use Plant or in case of Coal Washery Rejects, in accordance with the extant policy governing the disposal of rejects. It is hereby clarified that the Authority’s right to terminate this Agreement on this ground is in addition to the consequences as laid down under Annexure V of the RFP;
- (g) subject to Clause 4.1, the WDO utilizes the Site for any purpose other than the specified Purpose or carries on or permits to be carried on in the Site or in any part thereof any activities which are unlawful;
- (h) the WDO creates any Encumbrance except as expressly permitted under this Agreement;
- (i) the WDO is not in compliance with the bid eligibility conditions or any other requirements under the RFP or has made a material misrepresentation in respect of or provided any materially incorrect or false information under the RFP or during the Contract Period;

- (j) the WDO has directly or indirectly or through an agent, engaged or indulged in any corrupt, fraudulent, coercive, undesirable or restrictive practice in the bidding process as per the RFP;
- (k) the WDO repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- (l) the WDO breaches any of its obligations, representations and warranties under this Agreement or the FSA;
- (m) the WDO does not provide the supplemental information sought by the Authority within the timeline specified;
- (n) any act or omission of the WDO results in violation of or non-compliance with the LOI, this Agreement, the FSA, the RFP and/ or any other document referred therein or issued pursuant thereto or any Applicable Laws;
- (o) any change in Control or transfer of the Specified End-Use Plant is undertaken by the WDO that is not in compliance with this Agreement or Applicable Laws;
- (p) corporate insolvency or liquidation/ winding up of the WDO; and/or
- (q) any other event or occurrence, as may be identified by the Authority as WDO Event of Default, under this Agreement has occurred.

## 23.2 **Suspension:**

23.2.1 The Parties agree that, in the event of any emergency warranting the de-commissioning or shut-down of the whole or part of the Washery, the Authority shall be entitled, subject to Applicable Laws and without prejudice to its other rights and remedies under this Agreement, to (a) suspend all rights of the WDO under this Agreement, and (b) exercise such rights itself and perform the obligations hereunder or authorise any other person to exercise or perform the same on its behalf during such suspension (the "**Suspension**"). Suspension hereunder shall be effective forthwith upon issue of notice by the Authority to the WDO and may extend up to a period not exceeding 15 (fifteen) Days from the date of issue of such notice; provided that upon written request from the WDO, the Authority may extend the aforesaid period of 15 (fifteen) Days by a further period not exceeding 30 (thirty) Days.

23.2.2 During the period of Suspension hereunder, all rights and liabilities vested in the WDO in accordance with the provisions of this Agreement shall continue to vest therein and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the WDO under and in accordance with this Agreement and the FSA shall be deemed to have been done or taken for and on behalf of the WDO and the WDO undertakes to indemnify the Authority for all costs incurred during such period.

- 23.2.3 In the event that the Authority shall have rectified or removed the cause of Suspension within a period not exceeding 90 (ninety) Days from the date of Suspension, Authority shall revoke the Suspension forthwith and restore all rights of the WDO under this Agreement. For the avoidance of doubt, the Parties expressly agree that the Authority may revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.
- 23.2.4 At any time during the period of Suspension under this Clause 23, the WDO may by notice require the Authority to revoke the Suspension and issue a termination notice., the Authority shall, within 15 (fifteen) Days of receipt of such notice, terminate this Agreement under and in accordance with Clause 23.3. It is clarified that all the provisions of this Agreement shall apply, *mutatis mutandis*, to a termination pursuant to this Clause 23.2 as if a termination notice had been issued by the Authority upon occurrence of a WDO Event of Default.
- 23.2.5 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 180 (one hundred and eighty) Days from the date of Suspension hereunder or within the extended period, if any, set forth in Clause 23.2, then unless otherwise agreed by the Parties, this Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, *mutatis mutandis*, to such termination as if a termination notice had been issued by the Authority upon occurrence of a WDO Event of Default.
- 23.3 **Termination for WDO Event of Default:** Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a WDO Event of Default, the Authority shall be entitled to terminate this Agreement by issuing a termination notice of 15 (fifteen) Days to the WDO. The Authority shall, if there be Lenders, send a copy of its notice of intention to issue a termination notice referred to in Clause 23.1 to inform the Lenders' Representative in accordance with the financing agreement.
- 23.4 **Termination due to termination of Fuel Supply Agreement:** It is expressly agreed between the Parties that in the event, the FSA is terminated, then, this Agreement shall also stand terminated with immediate effect. Further, in case of termination of the FSA due to WDO's default thereunder, the Authority shall have the right to forfeit the Performance Security submitted under this Agreement.
- 23.5 **Termination due to Force Majeure Event:** 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 Event and such inability to perform lasts for not less than a total of 90 (ninety) Days in any continuous period of 180 (one hundred eighty) Days, and in the considered assessment of the other Party ("**Non-Affected Party**") there is no reasonable likelihood of the Force Majeure Event coming to an end in the near future, the Non-Affected Party shall have the right to terminate this Agreement by giving at least 90 (ninety) Days' prior written notice to the Affected Party of its intention to so terminate this Agreement. In such an event, the termination shall take effect on expiry of the notice period or 90 (ninety) Days whichever is later and the Parties shall be absolved of all rights/obligations under this Agreement, save those that had already accrued as on the effective date of termination of the Agreement and the Performance Security submitted

by the WDO shall be returned by the Authority post adjustment for recovery of any payments due under this Agreement.

23.6 **Termination for Expiry:** Unless terminated earlier in accordance with Clause 23.3, and/or Clause 23.5, this Agreement shall be terminated by efflux of time after the expiry of the Contract Period.

23.7 **Consequence of Termination:**

23.7.1 **Payment on Termination for WDO Event of Default:** Upon Termination on account of a WDO Event of Default, the Performance Security submitted by WDO shall stand forfeited. In case the forfeiture of Performance Security is not sufficient to cover any dues including but not limited to any costs associated with Losses or expenses incurred by the Authority due to such premature termination, the WDO shall be liable to pay such dues to the Authority within 30 (thirty) Days of issuance of the termination notice.

23.7.2 **Transfer of Washery Assets:**

(a) Upon Termination of the Agreement prior to expiry of the Contract Period on account of suspension in accordance with Clause 23.2 and/or on account of an WDO Event of Default in accordance with Clause 23.3 and/or on account of prolonged Force Majeure Event in accordance with Clause 23.5, the WDO shall transfer to the Authority, the Washery together with specific assets and any other tangible assets (including but not limited to the CPP or a cogeneration unit or any other unit at the Site (if applicable), civil works and equipment including utility networks, coal depots, foundations, embankments, pavements, electrical systems, communication systems and any such assets on the Site ("**Washery Assets**") free from all Encumbrances (except Encumbrances that are existing on the Execution Date which have not been removed). For the purposes hereof, Parties expressly agree that "Encumbrances existing on the Execution Date" and words of similar import shall mean those Encumbrances, as identified in Schedule VI hereof) to the Authority and the Authority shall purchase from the WDO the Washery Assets at fair market value calculated by an independent asset valuer appointed by the Authority.

(b) Upon Termination of the Agreement initiated by the WDO prior to expiry of the Contract Period, which the WDO acknowledges and agrees shall only be possible in case of termination of the FSA other than due to default by the WDO thereunder, the WDO shall transfer to the Authority the Washery Assets free from all Encumbrances (except Encumbrances that are existing on the Execution Date which have not been removed). For the purposes hereof, Parties expressly agree that "Encumbrances existing on the Execution Date" and words of similar import shall mean those Encumbrances, as identified in Schedule VI hereof) to the Authority and the Authority shall purchase from the WDO the Washery Assets at a nominal value calculated by an independent asset valuer appointed by the Authority.

- (c) Upon expiry of the Agreement at the end of the Contract Period, the WDO shall transfer the Washery Assets free from all Encumbrances to the Authority and the Authority shall purchase from the WDO the Washery Assets for INR 1 (Indian Rupee One). Notwithstanding anything contained in this Agreement, no liability (accrued or contingent) of the WDO or relating to the Washery Assets prior to the date of transfer of the Washery Assets to the Authority, shall be assumed or transferred to the Authority. In the event of any such liability being assumed or transferred to the Authority or any Encumbrance existing on any of the Washery Assets (except Encumbrances that are existing on the Execution Date which have not been removed). For the purposes hereof, Parties expressly agree that “Encumbrances existing on the Execution Date” and words of similar import shall mean those Encumbrances, as identified in Schedule VI hereof). The WDO shall, at the instruction and sole discretion of the Authority, either: (a) pay to the Authority simultaneous to the transfer of the Washery Assets to the Authority, an amount equivalent to the quantum of such liability and/or Encumbrance and procure release of Encumbrance to facilitate the transfer of the Washery Assets to the Authority as contemplated herein; or (b) procure full and final discharge and release of all such liabilities/Encumbrances so as to transfer the Washery Assets free from all Encumbrances to the Authority.
- (d) The WDO shall upon termination or expiry of the Agreement, forthwith hand over peaceful possession of the Site and Washery Assets to the Authority, in any event within 30 (thirty) Days from the notice of termination in accordance with the terms of this Agreement or expiry of the Contract Period, as applicable.

23.8 **Other obligations of WDO:** The WDO shall deliver and transfer all Applicable Permits, relevant records, reports, Intellectual Property Rights, Insurance, Confidential Information, and other licences pertaining to the Site, Washery Assets and its design, engineering, construction, operation and maintenance, including Design Plan and Drawings to the Authority. It shall comply with all other requirements as may be prescribed or required under Applicable Laws for completing the assignment of all rights, title and interest of the WDO in the Site and Washery Assets, free from all Encumbrances, absolutely unto the Authority or to its nominee.

23.9 **Defects Liability after Termination:** The WDO shall be responsible for all defects and deficiencies in the Washery and CPP or a cogeneration unit or any other unit at Site (if applicable) for a period of 365 (three hundred and sixty) Days after termination (“**Defects Liability Period**”), and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Authority during the aforesaid period. In case the WDO fails to repair or rectify such defect or deficiency within a period of 45 (forty-five) Days from the date of notice issued by the Authority in this behalf, the Authority shall be entitled to get the same repaired or rectified and the WDO shall reimburse the Authority to the full extent of costs incurred by the Authority on such repair and rectification within 30 (thirty) Days of receipt of demand thereof. Without prejudice to the foregoing, the Authority shall also be entitled to invoke the Performance Security as provided under Clause 11 in connection with such costs.

## 24. INDEMNITY AND LIMITATION OF LIABILITY

24.1 The WDO hereby indemnifies the Authority, its representatives, directors, officers, employees and agents, without any demur against any and all Losses arising in connection with:

24.1.1 any loss or damage to any property which arises out of or in consequence of the performance of the WDO's obligations under this Agreement or any part thereof and remedying of any defects therein;

24.1.2 performance/non-performance of obligations by the WDO's subcontractors, agents and personnel;

24.1.3 the WDO's gross negligence or willful misconduct and/or fraud;

24.1.4 the operation of the routine business on account of non-compliance of the Applicable Laws by the WDO;

24.1.5 the WDO and/or its employees, agents, contractors, subcontractors, personnel and/or representatives committing any breach or contravention of the Applicable Laws;

24.1.6 death or illness of or injury to any person arising out of or in connection with any act or default of the WDO and/or its employees, agents, contractors, subcontractors, personnel and/or representatives;

24.1.7 any act of commission or omission or default on the part of the WDO and/or its employees, agents, contractors, sub-contractors, personnel and/or representatives; and

24.1.8 the WDO's breach of representations, warranties or duties or covenants hereunder.

24.2 **Consequential Claims and Losses excluded:** Notwithstanding anything to the contrary contained in this Clause 24, no Party shall be liable to the other Party for any claim or recovery in respect of any consequential, special, incidental, indirect losses, loss of profit, loss of opportunity, or punitive damages. Notwithstanding anything to the contrary, it is hereby clarified that Damages for delay and termination payments arising out of this Agreement shall not be interpreted or construed as, consequential damages for the purposes of this Agreement.

24.3 **Survival on Termination:** The provisions of this Clause 24 shall survive termination.

## 25. SECURITY FOR FINANCING

25.1 Subject to Applicable Laws and other applicable provisions of this Agreement, the WDO shall be entitled to create Encumbrance over the Washery or the leasehold interest of the WDO in the Site in favor of the Lenders for the purposes of securing financing provided by the Lenders to the WDO for the Build/ Renovation of the

Washery (including augmentation, if any) and creation of such Encumbrance shall not require prior approval of the Authority. This Encumbrance shall be subject to compliance with the conditions specified in this Clause 25.1, which conditions shall be reflected in the financing documents executed by the WDO with the Lenders:

25.1.1 the ownership of the land/Site shall always remain vested with the Authority and any creation of any Encumbrance over the assets of the WDO and on the leasehold rights of the WDO shall not affect the ownership of the Authority over such land/Site;

25.1.2 such Encumbrance shall not continue beyond the Contract Period;

25.1.3 in case of an event of default by the WDO under the financing documents executed with the Lenders, the Lenders shall be entitled to enforce the Encumbrance created in their favour in accordance with this Clause 25.1.3, Applicable Law and any other applicable provisions of the Transaction Agreements:

- (a) the Lender with the highest exposure (in case of multiple banking), shall be entitled to seek a substitution of the WDO by providing a written notice to the Authority (the "**Substitution Notice**");
- (b) the Substitution Notice shall contain complete particulars of the proposed transferee (the "**Selectee**"), particulars of compliance of the Selectee with all the Eligibility Conditions specified in the RFP, particulars of the debt due and such data and information as would be necessary and relevant for the Authority to decide as to acceptability of the Selectee;
- (c) the Authority may require such other information as it may deem fit regarding suitability of the Selectee and the Lenders/Selectee shall promptly provide such information to the Authority;
- (d) the Substitution Notice must be accompanied by an unconditional undertaking of the Selectee to the effect that it shall upon acceptance by the Authority observe, comply with, perform and fulfil the residual terms, conditions and covenants of the Transaction Agreement as if the Selectee had been the WDO under the Transaction Agreement and to assume, discharge and pay the debt due on terms and conditions agreed to by the Selectee with the secured creditors. The Selectee shall also undertake to enter into such documents and agreements with the Authority as may be necessary or required to give effect to the substitution of the WDO by the Selectee;
- (e) the Authority shall convey its acceptance or otherwise of the Selectee within 60 (sixty) Days of (a) the date of receipt of the Substitution Notice; or (b) the date of receipt of additional information and clarifications requested in respect of any data, particulars or information comprised in the Substitution Notice, whichever is later;

- (f) In the event that the Authority fails to communicate its acceptance or otherwise or the objections if any it has to the acceptance of the Substitution Notice, within the time specified in sub-clause (e) above, the Authority shall be deemed to have accepted the Substitution Notice and the Selectee.
- (g) upon acceptance of the Selectee by the Authority or the Authority having been deemed to have accepted the Substitution Notice, this Agreement shall be assigned in favour of the Selectee when:
  - (i) such Selectee and the WDO shall execute a deed of adherence in the format as specified in **Schedule V** (*Form of Deed of Adherence*) confirming the Selectee's adherence to the terms and conditions of the Transaction Agreements; and
  - (ii) such Selectee shall execute such other documents and agreements with the Authority as may be necessary or required to give effect to the substitution of the WDO by the Selectee.

25.1.4 the WDO shall keep the Authority promptly informed about: (i) any default in its obligation under any arrangement with any of its Lenders; (ii) any Encumbrance created over the Washery or the Site under this Agreement; and (iii) any action initiated by the Lenders regarding enforcement of such Encumbrance.

25.2 Save and except the creation of Encumbrance for the benefit of the Lenders in accordance with Clause 25.1 above, the WDO shall not assign, sub-lease or sub-license this Agreement or in any manner create an Encumbrance on the Site or the Washery, or transfer or dispose part or whole of its leasehold rights or interest under this Agreement save and except with the prior consent in writing of the Authority, which consent the Authority may deny without assigning any reason if such sub-lease, sub-license, assignment or Encumbrance has or may affect the rights and obligations of the Authority under this Agreement or Applicable Laws.

25.3 Notwithstanding anything contained in the FSA, any substitution of the WDO pursuant to this Clause 25 shall also result in substitution of the "*Purchaser*" (as defined in the FSA), under the FSA.

## 26. CHANGE IN CONTROL AND TRANSFER

26.1 Notwithstanding anything to the contrary contained in this Agreement or in the FSA, any change in Control, ownership or management of the WDO and/or the transfer of its Specified End-Use Plant, along with the rights in relation to the coal linkage granted under the FSA or the operations of the Washery shall only be undertaken or permitted with the prior written approval of the Authority, provided that:

26.1.1 such change in Control does not result in the WDO becoming non-compliant with any of the Eligibility Conditions enlisted in the RFP or the transferee of the Specified End-Use Plant continues to satisfy all of the Eligibility Conditions under the RFP;

- 26.1.2 such change in Control and/ or transfer occurs in accordance with Applicable Laws and the conditions for transfer and/or assignment contained in Clause 25.2 of this Agreement; and
- 26.1.3 deed of adherence in format specified in **Schedule V** (*Form of Deed of Adherence*) of this Agreement is executed and delivered to the Authority.
- 26.2 The decision of the Authority in this behalf shall be final, conclusive and binding on the WDO, and the WDO hereby undertakes that it shall not give effect to any such acquisition of equity or control of the board of directors of the WDO or transfer of the Specified End-Use Plant without such prior approval of the Authority. Any change in Control or transfer of the Specified End-Use Plant not in conformity with this Clause 26 or Applicable Laws shall be deemed to be void *ab-initio* and the Authority may in such cases, at its sole discretion, appropriate the Bid Security or Performance Security as the case may be, and terminate this Agreement as per Clause 23.
- 26.3 Notwithstanding anything to the contrary contained herein or the FSA, it is hereby expressly agreed by the WDO that no change shall be effected in its shareholding pattern or beneficial ownership or otherwise so as to make it ineligible in terms of any Applicable Laws, to undertake and perform its obligations hereunder.

## 27. GOVERNING LAW AND DISPUTE RESOLUTION

- 27.1 **Governing Law:** This Agreement shall be governed by and construed in accordance with the laws in India and the courts at Ranchi, Jharkhand, India shall have exclusive jurisdiction over all matters relating to, arising under, pursuant to and/or in connection with this Agreement.
- 27.2 **Dispute resolution:**
- 27.2.1 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.
- 27.2.2 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.
- 27.2.3 The Representative of the Party which considers that a Dispute has arisen shall give to the Representative of the other Party, a written notice setting out the material particulars of the dispute ("**Dispute Notice**"). Within 30 (thirty) Days, or such longer period as may be mutually agreed by the Parties, of the Dispute Notice having been delivered to the other Party, the Representatives of both Parties shall meet in person to attempt in good faith and using their best endeavours at all times, to resolve the Dispute. Once the Dispute is resolved,

the terms of the settlement shall be recorded in writing and signed by the Representatives of the Parties. In the event that the Representatives of the Parties fail to resolve or settle the Dispute within 90 (ninety) Days of their meeting, the Parties shall be entitled to exercise the remedies available to them under Clause 27.2.4.

27.2.4 If amicable settlement as above is not possible, then the unresolved Disputes or differences shall be settled through the process as given below:

A. In the event the WDO 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 (other than those related to taxation matters), 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 and the decision of AMRCD on the said dispute shall be binding on both parties”*

B. In the event the WDO 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;
- (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 3 (three) arbitrators, 1 (one) each appointed by the Authority and the WDO, and the 2 (two) arbitrators shall mutually appoint the third arbitrator, who shall be the presiding arbitrator, in accordance with the Arbitration and Conciliation Act 1996;
- (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.

## 28. MISCELLANEOUS

28.1 **Notices:** Each notice, demand or other communication given or made under this Agreement shall be in writing and delivered or sent to the relevant Party at its address set out below (or such other address as the addressee provides in writing) or by e-mail addressed to the intended recipient. Any notice, demand or other communication so addressed to the relevant Party shall be deemed to have been delivered 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 address:

Notices to Authority	to	Bharat Coking Coal Limited
Name		[●] ( <i>designated as Engineer in Charge by the Authority for this Project</i> )
Address		[●]
E-mail		[●]
To the attention of		[●]

Notices to WDO		[●]
Name		[●]
Address		[●]
E-mail		[●]
To the attention of		[●]

- 28.2 **Stamp Duty and Registration:** The cost of stamp duty, registration charges and any deficit of stamps and other incidental expenses in connection with the execution and registration of this Agreement shall be borne by the WDO. The Authority shall cooperate and assist in registration of this Agreement.
- 28.3 **Amendment / Modification:** No change, variation, deviation amendment or modification of any of the terms and conditions set forth herein shall be valid unless prior written approval of the Authority has been obtained in this regard and incorporated as an amendment to this Agreement and signed by the duly authorised representatives of both Parties.
- 28.4 **Waiver / Forbearance:** The Parties hereto agree that in the event of there being any delay in or indulgence shown by either of the Parties with regard to the enforcement of any of the terms of this Agreement, the same shall not be construed as a waiver by the Party showing such indulgence or tolerance and any such indulgence or forbearance shall not be deemed to be a waiver of the rights and the Parties shall be entitled to enforce such right without prejudice to such indulgence or tolerance.
- 28.5 **Remedies:** The Parties acknowledge that the remedies available to the Authority and/or WDO under this Agreement are all mutually exclusive and without prejudice to any other right / remedy available to the Parties under Applicable Laws.
- 28.6 **Anti-Corruption:** Each Party's performance shall be in compliance with all applicable Anti-Corruption Laws and prohibited business practices as per Applicable Laws and Good Industry Practices, which prohibit the offering, giving or promising to offer or give, directly or indirectly, money or anything of value to any official of a government, political party or instrumentality in obtaining or retaining business in connection with this Agreement. Accordingly, neither Party or other person acting on its behalf will offer, promise, give anything of value, any bribe, rebate, payoff, influence payment, kickback or other unlawful payment to the other party or to any representative, officer, agent or employee in obtaining or retaining business in connection with this Agreement.

- 28.7 **Protection of Intellectual Property Rights:** Neither this Agreement, nor any of the terms of this Agreement, shall be construed or sought to be interpreted to authorize the WDO to use any of the intellectual property rights of the Authority, including, without limitation, the Authority's logo, trade names and trademarks, in any manner whatsoever. The WDO hereby licences and sub-licences respectively, the Authority or any other person authorised by it to use all intellectual property belonging to or licensed to the WDO with respect to the Washery and its development, renovation, operation and maintenance and which is used or created by the WDO in performing its obligations under this Agreement.
- 28.8 **Confidential Information:** The Parties hereby undertake to maintain secrecy of the Confidential Information of the other Party as well as of any other information exchanged before or during or after the Contract Period, including but not limited to the information contained in the documents listed in the Schedules, and any information or knowledge gained of fundamentals, functions, production, design, development, improvement and any other details regarding the Washery or Site and matters incidental thereto.
- 28.9 **Survival:** Termination under Clause 23 of this Agreement shall not relieve the WDO or the Authority, as the case may be, from any obligations hereunder which expressly or by implication survive termination hereof; and any obligations or liabilities for Loss or Damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.
- 28.10 **Relationship Between Parties:** Nothing contained in this Agreement shall be deemed or construed by the Parties or by any third party or court to create the relationship of principal and agent or employer and employee or of partnership or of joint venture or of any association between the Authority and the WDO, and neither method of computation nor any other provisions contained in this Agreement nor any acts of the Parties shall be deemed to create any relationship between the Parties, other than the relationship of Authority and WDO.
- 28.11 **Entire Agreement and Severability:** This Agreement together with the RFP and the FSA, including the recitals and attached Schedules thereto, constitutes the entire Agreement between the Authority and the WDO with respect to the subject matter thereof and supersedes any other prior oral or written communications, representations or statements with respect to the transaction contemplated in this Agreement. If a court finds any provision of this Agreement to be invalid, the remainder of this Agreement will be valid, enforceable and effective.
- 28.12 **Counterparts:** This Agreement shall be executed and registered in duplicate. The original of the duly registered Agreement shall be retained in the custody of the Authority and the WDO shall retain the certified copy thereof.

*[Signature Pages Follows]*

**IN WITNESS WHEREOF**, this Agreement has been executed and delivered by the duly authorised signatory of the Authority as of the date first written above.

**BHARAT COKING COAL LIMITED**

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Name:

Designation:

**IN WITNESS WHEREOF**, this Agreement has been executed and delivered by the duly authorised signatory of the WDO as of the date first written above.

[•]

---

Name:

Designation:

## SCHEDULE I: DESCRIPTION OF THE SITE

*(Site location and description)*

### 1. Leasehold Area

Address	Mouza	Thana	Acq under LA/ Transfer	Area in Acre	Area in Dismil
BCCL M/S Bharat Coking Coal Limited - Dugda Washery, Bokaro, Jharkhand	Buresera	109	45/1958-59	106.55	10,655
			Transfer Govt Land	12.31	1,231
	Dugda	114	45/1958-59	91.34	9,134
			05/82-83	4.23	423
			04/83-84	79.30	7,930
			Transfer Govt Land	15.64	1,564

The above land is owned by and under the possession of BCCL as on the date of execution of the Agreement.

### 2. Buildings

S. No.	Name	Area (m <sup>2</sup> )	Structure	Storey
1	PO Office	743	RCC	1
2	Laboratory	839	RCC	1
3	Store Office	67.7	RCC	1
4	Washed Coal Bunker	625.5	RCC	1
5	Washed Power Coal Bunker	1,142.6	RCC	1
6	Main Plant D-II	406	RCC	5
7	Canteen	170.5	RCC	1
8	Traffic Office	253.6	RCC	2
9	60 MT weigh Bridge	35.4	RCC	1
10	FF Plant D-II	467.5	RCC	4
11	Heavy Vehicle	79.5	RCC	1
12	Old Weigh Bridge	30.8	Tin Shed	1
13	Raw Coal Bunker	3,866.5	RCC	1
14	Non- Coking Plant (Mini Plant)	500	RCC	4
15	F.F. Plant (D-1)	150	RCC	6
16	Dugda-1 (Main Building)	900	RCC	-

### 3. Surface Plan of the Washery (attached separately)

## SCHEDULE II: SCOPE OF WORKS

1. The WDO shall design, Build/Renovate and expand if required, operate and maintain the Washery, as per Rated Capacity. The WDO would be responsible for demolition and removal of existing structures and facilities on the Project Land as is required to enable the designing, Building/Renovation, operation and maintenance of the Washery under this Agreement in accordance with Applicable Laws.
2. Lifting of Coal: The WDO shall be responsible for lifting/ off-take of coal from the Authority at the Delivery Point(s) as per the terms of the FSA and its transportation from Delivery Point(s) to the Site at its own cost.
3. Dispatch of Coal: The End-Products are to be transported to the Specified End-Use Plant by the WDO at its own cost.
4. The WDO shall design the Washery in a manner that optimizes generation of washed coking coal.
5. At the end of the Contract Period/term, or upon termination of the Agreement (as applicable), the Washery along with all other facilities and infrastructure on the Project Land shall be transferred to Authority in accordance with the terms of this Agreement
6. WDO shall be responsible for maintaining:
  - a) the access road connecting the Washery to the nearest Highway.
  - b) The approach road from the Washery to the water intake well at Damodar river.
7. Any other activity as envisaged for effective implementation of this Agreement.

### SCHEDULE III: FORMAT OF PERFORMANCE SECURITY

[Reference number of the bank]

[date]

To

[insert name and address of the Authority]

#### WHEREAS

- A. [Name of the WDO], a company incorporated in India under the Companies Act, [1956/2013] with corporate identity number (CIN) [CIN of the WDO], 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 “WDO”) 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 “Authority”) for discharge of certain obligations of the WDO under the washery development and operations agreement dated [•] executed between the Authority and the WDO (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 Authority an amount not exceeding INR [figures] (Indian Rupees [words]) (“Guarantee Amount”) to secure the obligations of the WDO under the Agreement on demand from the Authority on the terms and conditions contained herein.

**NOW THEREFORE**, the Bank hereby issues in favour of the Authority this irrevocable and unconditional payment bank guarantee (the “Guarantee”) on behalf of the WDO in the Guarantee Amount:

1. The Bank for the purpose hereof unconditionally and irrevocably undertakes to pay to the Authority without any demur, reservation, caveat, protest or recourse, immediately on receipt of first written demand from the Authority, a sum or sums (by way of one or more claims) not exceeding the Guarantee Amount in the aggregate without the Authority 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 Authority and the WDO on any matter whatsoever. The Bank undertakes to pay to the Authority any money so demanded notwithstanding any dispute or disputes raised by the WDO 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 Authority of the amounts payable by the Bank to the Authority shall be final, binding and conclusive evidence in respect of the amounts payable by WDO to the Authority under the Agreement.
3. The Bank hereby waives the necessity for the Authority from demanding the aforesaid amount or any part thereof from the WDO and also waives any right that the Bank may have of first requiring the Authority to pursue its legal remedies against the WDO, before presenting any written demand to the Bank for payment under this

Guarantee.

4. The Bank further unconditionally agrees with the Authority that the Authority 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 WDO under the Agreement, or (iii) forbear or enforce any of the rights exercisable by the Authority against the WDO 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 Authority or any indulgence by the Authority to the WDO 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 Authority 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 WDO.
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 WDO 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 Authority certifies that the terms and conditions of the Agreement with respect to the Performance Security have been fully and properly carried out by the WDO 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 Authority 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 Authority'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 Authority 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 Authority in writing.
12. The Authority 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 Authority 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)

**SCHEDULE IV: LEASE RENT SCHEDULE (INDICATIVE)\***

*Rs. crore*

<b>Year</b>	<b>Upfront Payment #</b>	<b>Annual Payout @</b>
Year 1	<b>58.55</b>	
Year 2		
Year 3		33.13
Year 4		35.11
Year 5		37.22
Year 6		39.45
Year 7		41.82
Year 8		44.33
Year 9		46.99
Year 10		49.81
Year 11		52.80
Year 12		55.97
Year 13		59.32
Year 14		62.88
Year 15		66.66
Year 16		70.66
Year 17		74.90
Year 18		79.39
Year 19		84.15
Year 20		89.20
Year 21		94.55
Year 22		100.23
Year 23		106.24
Year 24		112.61
Year 25		119.37
<b>In case of further extension by a period of 5 years, lease rentals would be payable as follows:</b>		
Year 26		126.53
Year 27		134.13
Year 28		142.17
Year 29		150.70
Year 30		159.75

# payable as part of upfront payment prior to signing of the Transaction Agreements

@ payable from 3<sup>rd</sup> year onwards.

## SCHEDULE V: FORM OF DEED OF ADHERENCE

This Deed of Adherence (“**Deed**”) is executed at [insert place] on the [insert day] day of [insert month] of [insert year] by and between:

1. [insert name], a company incorporated under the [insert details] and having its registered office at [insert address] (hereinafter referred to as the “**Assignor**”), which expression shall unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successors and permitted assigns);
2. Bharat Coking Coal Limited, a company incorporated under the Companies Act 1956 and having its registered office at Koyla Bhawan, Koyla Nagar, Dhanbad – 826005, Jharkhand, India (hereinafter referred to as “**BCCL**”, which expression shall unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successors and permitted assigns); and
3. [insert name], a company incorporated under the [insert details] and having its registered office at [insert address] (hereinafter referred to as the “**Assignee**” [or the “**Selectee**”], as the context may require), which expression shall unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successors and permitted assigns).  
*\*\*Note: The expression “Selectee” applicable only in cases of substitution in accordance with Clause 25.1 of the Agreement.*

The Assignor, BCCL and the Assignee[/Selectee] are hereinafter referred to individually as a “**Party**” and collectively as the “**Parties**”.

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

WHEREAS:

- (a) The Assignor and BCCL are parties to a fuel supply agreement dated [insert date], and a washery development and operation agreement dated [insert date] in relation to the design, building/ renovation, operation and maintenance of the Dugda Coal Washery with capacity of 2 MTPA at Bokaro, Jharkhand (“**Transaction Agreements**”).

*\*\*[The Assignor has entered into financing agreements with [●] in relation to procurement of finance for the performance of the Assignor’s Scope of Work detailed in the Transaction Agreements (“**Financing Agreements**”). Pursuant to an event of default of the Assignor under the Financing Agreements, BCCL has approved the substitution of the Assignor in favour of the Selectee in accordance with Clause 25.1 of the Washery Development and Operations Agreement dated [●] executed between the Assignor and BCCL.]*

*\*\*Note: Applicable only in cases of substitution in accordance with Clause 25.1 of the Agreement.*

- (b) In this Deed, except as the context may otherwise require, all words and expressions defined in the Transaction Agreements shall have the same meanings when used herein.
- (c) The Assignee[/Selectee] hereby covenants with BCCL that from and after the transfer and assignment of the Transaction Agreements, the Assignee[/Selectee] 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 Transaction Agreements

in the same manner in all respects as if the Assignee[/Selectee] was the Successful Bidder under the RFP and was the WDO/Purchaser under the Transaction Agreements, and it had originally executed the Transaction Agreements as such.

- (d) It is further hereby agreed and declared by the Assignor of the one part and the Assignee[/Selectee] of the other part that:
- i. the Assignor and the Assignee[/Selectee] declare that the Assignee/Selectee meets and shall continue to meet all the Eligibility Conditions which were required to be met by the Assignor under the RFP and the Transaction Agreements and documentary evidence in support thereof is enclosed as *Annexure A*;
  - ii. the Assignee[/Selectee] acknowledges that he/ it has received a copy of, and has read and understands the Transaction Agreements and RFP, and covenants, agrees and confirms that it shall be bound by all provisions of the RFP and the Transaction Agreements as if it was an original party thereto;
  - iii. the Assignor hereby declares that it has not assigned or in any other manner transferred the Transaction Agreements and that no other Person or Persons has any right, title or interest where under in the Transaction Agreements; and
  - iv. the Assignee[/Selectee] hereby declares that it has accepted all the conditions, obligations, responsibilities, duties and liabilities which the Assignor was bound by and required to comply with under the Transaction Agreements.
- (e) This Deed of Adherence shall be governed by and construed in accordance with the laws of Republic of India and the courts of Ranchi, India shall be the forum for the administration hereof.

IN WITNESS WHEREOF, this Deed of Adherence has been executed as a deed on the date first above written.

Signed and delivered by the within named Assignee[/Selectee] by the hand of [●] (Authorised Signatory / Director)

In the presence of

(name, address of witness)

Signed and delivered by the within named Assignor by the hand of [●] (Authorised Signatory / Director)

In the presence of

(name, address of witness)

Signed and delivered by the within named BCCL of [●] (Authorised Signatory / Director)

In the presence of

(name, address of witness)

**ANNEXURE A**

**Copy of documents evidencing compliance with Eligibility Conditions by the Assignee[/Selectee]**

**SCHEDULE VI - SCHEDULE OF ENCUMBRANCES**  
**(Note: List of Encumbrances on the Site is to be inserted)**