

*[Pre-signing items:*

1. *The Purchaser shall obtain and provide to the Seller all necessary clearances, authorizations, approvals and permissions required for, construction, commissioning, operation and maintenance of the Specified End Use Plant, including but not limited to the documents/information set out in Schedule V.*
- 1.1 *75 (seventy five) days of issuance of the LOA, in case the capacity of the Specified End Use Plant in respect of which the Purchaser is the Successful Bidder is commissioned; or*
- 1.2 *75 (seventy five) days of commissioning of the capacity of the Specified End Use Plant, in respect of which the Purchaser is the Successful Bidder, in case the same is yet to commission.*
2. *Any other items as may be set out in the LOA.*

**[MODEL FUEL SUPPLY AGREEMENT –  
PARAGRAPH B(iii) OF THE SHAKTI POLICY –  
POWER PRODUCERS/IPP<sub>s</sub> WITHOUT PPAS]**

**BETWEEN**

**[Name of the Subsidiary Company]**

**AND**

**[Name of the Power Producer/IPP]**

**DD/MM/YYYY**

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## FUEL SUPPLY AGREEMENT

This Fuel Supply Agreement (“**Agreement**”) is made on this [insert] day of [insert], [insert] (“**Execution Date**”) by and between:

[insert] (*Name of the Coal Company*), a company registered under the Companies Act, 1956/2013 and having its registered office at [insert] (*Address of the Coal Company*) hereinafter called the “**Seller**” (which expression shall unless excluded by or repugnant to the subject or context, include its legal representatives, successors and permitted assigns) of the FIRST PART,

**AND**

[M/s. [insert], a company registered under the Companies Act, 1956/2013 having its registered office at [insert]] hereinafter called the “**Purchaser**” (which expression shall unless excluded by or repugnant to the subject or context, include its legal representatives, successors and permitted assigns) of the SECOND PART.

Each of the Seller and the Purchaser are individually referred to as a “**Party**” and collectively referred to as the “**Parties**”.

### WHEREAS:

- A. The MOC (as defined hereinafter) has *vide* its letter dated May 22, 2017 dealt with matters concerning “*Signing of Fuel Supply Agreement (FSA) with Letter of Assurance (LoA) holders of Thermal Power Plants - Fading Away of the existing LoA-FSA Regime and Introduction of a New More Transparent Coal Allocation Policy for Power Sector, 2017 SHAKTI (Scheme for Harnessing and Allocating Koyala (Coal) Transparently in India)*” (“**Policy**”) and issued the amendment to the Policy dated March 25, 2019 (“**Amendment**”). The relevant provisions of the Policy and the Amendment shall be applicable to this Agreement.
- B. CIL (as defined hereinafter) conducted the Auction (as defined hereinafter) under the aegis of the Scheme Document dated DD/MM/YYYY (“**Scheme Document**”).
- C. Pursuant to the Auction, [Auction service provider, on behalf of CIL/the Seller] has issued a letter of assurance dated [insert] (“**LOA**”) to the Purchaser in its capacity as the Successful Bidder (as defined hereinafter) in respect of *inter alia* the Allocated Quantity (as defined hereinafter).
- D. The Purchaser has represented and confirmed that it has fulfilled and is in compliance with the conditions set out in the Scheme Document, the LOA and this Agreement, as the case may be, as a result of which, the Seller has agreed to supply Coal (as defined hereinafter) under this Agreement.

NOW THEREFORE, relying on the representations and confirmations provided by the Purchaser and in consideration of the mutual covenants, terms and conditions and understandings set forth in this Agreement and other good and valuable consideration (the receipt and adequacy of which are hereby mutually acknowledged), the Parties with the intent to be legally bound, hereby agree as follows:

## **1. DEFINITIONS AND RULES OF INTERPRETATION**

### **1.1 Definitions**

- 1.1.1 **“Affected Party”** shall have the meaning ascribed to it in Clause 19.1.
- 1.1.2 **“Agreement”** shall mean this Fuel Supply Agreement including all its schedules, annexures and attachments and subsequent amendments as may be issued in accordance with the terms and conditions hereof.
- 1.1.3 **“Allocated Quantity”** shall mean the quantity allocated to the Purchaser pursuant to the Auction and as set out in the LOA.
- 1.1.4 **“Amendment”** shall have the meaning ascribed to such term in Recital A.
- 1.1.5 **“Annual Contracted Quantity”** or **“ACQ”** shall have the meaning as ascribed to it in Clause 4.1.
- 1.1.6 **“Applicable Law(s)”** shall mean all applicable statutes, laws, by-laws, rules, regulations, orders, ordinances, protocols, codes, guidelines, policies, notices, directions, judgments, decrees 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, or determination, or any interpretation or adjudication having the force of law in India.
- 1.1.7 **“As Delivered Price of Coal”** shall have the meaning ascribed to it in Clause 9.1.
- 1.1.8 **“Auction”** shall mean the auction for allocation of Coal linkages to power producers/independent power producers without PPA(s), conducted in accordance with the Scheme Document.
- 1.1.9 **“Bid Security”** shall mean the bid security in the form of an earnest money deposit, at the rate of Rs. 100 (Indian Rupees One Hundred only) per tonne furnished by the Purchaser as per Clause 5.2 of the Scheme Document.
- 1.1.10 **“Build-Up Period”** shall have the meaning ascribed to it in Clause 2.6.
- 1.1.11 **“Business Day”** shall mean each Monday, Tuesday, Wednesday, Thursday, Friday and Saturday that is not declared a holiday in the State of *([•] to be stated by the Seller)*.
- 1.1.12 **“CEA”** shall mean the Central Electricity Authority.
- 1.1.13 **“Certificate of DISCOM”** shall mean the certificate of DISCOM required to be submitted by the Purchaser in accordance with Clause 3.6.6.1 of the Scheme Document.
- 1.1.14 **“CIL”** shall mean Coal India Limited, the holding company of the Seller, having its registered office at Coal Bhawan, Premise No - 04 MAR, Plot-no-AF-III, Action

Area-1A, Newtown, Rajarhat, Kolkata - 700156, and having authorities to enter into any agreement/side agreements, supplementary to this Agreement.

- 1.1.15 **“Coal”** shall mean non-coking as well as coking coal, produced by the Seller and categorized into different classes, GCV bands, Grade(s) and sizes, as per the notification/order issued for such purpose by Government of India/CIL/Seller and it is clarified that Coal shall also include the middlings arising out of washing of coking coal and non-coking coal, as the case may be.
- 1.1.16 **“Coal Distribution System”** shall mean the coal distribution system of the Seller including any distribution system in force and shall include directions issued thereon by the Government from time to time.
- 1.1.17 **“Colliery Loading Point”** shall mean:
- (a) Silo, or
  - (b) Mid-point for wharf wall loading at the colliery, or
  - (c) Truck loading point, or
  - (d) Ropeways loading point, or
  - (e) Transfer point to the customer’s belt conveyor etc., as the case may be, or
  - (f) Any other point at which the Coal is transferred to the Purchaser’s Container.
- 1.1.18 **“Conditions Precedent”** shall mean such conditions as are set out in Clause 2.5.
- 1.1.19 **“Completion of the Auction Process”** shall have the meaning ascribed to it in the Scheme Document.
- 1.1.20 **“Declared Grade”** shall mean the particular Grade(s) under different categories of Coal mined from any seam or section of a seam in the Seller’s collieries from which Coal is produced and supplied under this Agreement, as declared by CIL or the Seller.
- 1.1.21 **“Deemed Delivered Quantity”** or **“DDQ”** shall have the meaning ascribed to it in Clause 4.12.
- 1.1.22 **“DEEP”** shall have the meaning ascribed to it in Clause 4.3.
- 1.1.23 **“Defaulting Party”** shall have the meaning ascribed to it in Clause 18.2.7.
- 1.1.24 **“Delivery Point”** shall mean any of the colliery sidings or Colliery Loading Points, as the case may be, of the Seller, and/or the location(s) identified by the Seller.
- 1.1.25 **“DISCOM”** shall mean the distribution licensee authorised to operate and maintain a distribution system for supplying electricity to the consumers in its area of supply.
- 1.1.26 **“Dispute”** shall have the meaning ascribed to it in Clause 16.1.
- 1.1.27 **“Dispute Notice”** shall have the meaning ascribed to it in Clause 16.3.
- 1.1.28 **“Effective Date”** shall mean the date of fulfillment/achievement of the last of the Conditions Precedent specified under Clause 2.5.

- 1.1.29 “**Eligibility Conditions**” shall have the meaning ascribed to it in the Scheme Document.
- 1.1.30 “**Equilibrated Basis**” shall mean determination/computation of various quality parameters such as but not limited to ash, volatile matter, fixed carbon, Gross Calorific Value etc. determined at equilibrated level i.e. 60% relative humidity (RH) and 40 degree Celsius (°C).
- 1.1.31 “**Equilibrated Moisture**” shall mean moisture content, as determined at equilibrating level i.e. sixty percent (60%) relative humidity (RH) and 40 degree Celsius (°C) as per the relevant provisions of BIS 1350 of 1959 or amendment thereof.
- 1.1.32 “**Failed Quantity**” shall have the meaning ascribed to it in Clause 4.8.1.
- 1.1.33 “**First Delivery Date**” shall mean the first day of the Month commencing immediately after completion of forty five (45) days of the fulfilment/achievement of the last Condition Precedent in accordance with Clause 2.5.
- 1.1.34 “**Force Majeure Act**” shall have the meaning ascribed to it in Clause 19.1.
- 1.1.35 “**Grade**” shall mean the grade/class in which the coking coal and non-coking coal is categorised and/or to be categorised in terms of and in accordance with the relevant notification issued by the Seller and/or by the Government of India and published in the public domain and/or the Gazette of India, as applicable. The basis of grading for different categories of Coal are as under:
- (a) Non-coking coal : based on GCV bands
  - (b) Coking coal : based on ash percentage
  - (c) Semi-coking coal : based on (ash + moisture) percentage
- 1.1.36 “**Gross Calorific Value**” or “**GCV**” shall mean the heat value determined in any calibrated combustion Bomb Calorimeter, in accordance with the procedure laid down in IS: 1350 (Part-II) 1970 dated April 1971 or any subsequent revision thereof, and such results shall be reported on Equilibrated Basis (sample equilibrated at 40 degree Celsius and sixty percent (60%) relative humidity (RH)).
- 1.1.37 “**Indemnified Party**” shall have the meaning ascribed to it in Clause 17.1.
- 1.1.38 Deleted
- 1.1.39 “**Interest Rate**” shall mean the repo rate of the Reserve Bank of India as applicable on the due date of payment/adjustment plus three percent (3%) or any other interest rate mentioned in the relevant guideline/notification, as applicable.
- 1.1.40 “**IPP**” shall mean an independent power producer, which is a generating company not owned/controlled by the Central/State Government.
- 1.1.41 “**IRLC**” shall have the meaning ascribed to it in Clause 12.1.2(b).
- 1.1.42 “**IS**” shall mean the standard specifications issued by the Bureau of Indian Standards.

- 1.1.43 “**Kilo Calorie**” or “**Kcal**” shall mean the amount of heat required to raise the temperature of one kilogram (1 Kg.) of pure water at fifteen degrees Celsius (15°C), by one degree Celsius (1°C).
- 1.1.44 “**Level of Delivery**” shall have the meaning ascribed to it in Clause 4.9.
- 1.1.45 “**Level of Lifting**” shall have the meaning ascribed to it in Clause 4.10.
- 1.1.46 “**LOA**” shall have the meaning ascribed to it in Recital C.
- 1.1.47 “**Losses**” shall have the meaning ascribed to it in Clause 17.2.
- 1.1.48 “**Merry Go Round**” or “**MGR**” shall mean the Purchaser’s captive rail transportation system for transportation of Coal.
- 1.1.49 “**MOC**” shall mean the Ministry of Coal.
- 1.1.50 “**Month**” shall mean a calendar month and “**Monthly**” shall mean accordingly.
- 1.1.51 “**Monthly Scheduled Quantity**” or “**SQ**” shall have the meaning ascribed to it in Clause 4.6.
- 1.1.52 “**Non-Affected Party**” shall have the meaning ascribed to it in Clause 18.1.1.
- 1.1.53 “**Non-Defaulting Party**” shall have the meaning ascribed to it in Clause 18.2.7.
- 1.1.54 “**Notified Price**” shall mean the price of the relevant grade(s) of Coal notified by CIL and/or its Subsidiaries, as the case may be, from time to time.
- 1.1.55 “**Other Charges**” shall have the meaning ascribed to it in Clause 9.7.
- 1.1.56 “**Parties**” shall mean the Seller and the Purchaser referred to collectively and “**Party**” shall mean either the Seller or the Purchaser.
- 1.1.57 “**Performance Incentive**” shall have the meaning ascribed to it in Clause 4.13.
- 1.1.58 “**Pithead**” shall mean any of the following as the context may admit:
- In case of an underground coal mine, Pithead shall mean the point of entry into the mine on the surface of coal mine at the ground level and would be a place or point distinct from Delivery Point.
- In case of an open-cast coal mine, Pithead shall mean the exit point of Coal on surface (mouth/entry of the main access trench or an auxiliary access trench). In case of open-cast mines with more than one exit points of Coal, there will be as many ‘Pitheads’ and will apply respectively to the amount of Coal egressing from a particular exit point.
- 1.1.59 “**Policy**” shall have the meaning ascribed to it in Recital A.



- 1.1.60 “**PTC**” shall mean a power trading company, which is an electricity trader who has been granted a license to undertake trading in electricity under Section 12 of the Electricity Act, 2003.
- 1.1.61 “**Power Producer**” shall mean a power producer which is a generating company owned/controlled by the Central/State Government.
- 1.1.62 “**PPA**” shall mean the medium term (exceeding 1 year but up to 7 years) and/or long term (7 years and above) power purchase agreement between the power generating source and the power procurer(s), i.e. DISCOM(s)/SDA either directly or through PTC(s) who has/have signed back to back PPA(s) with DISCOMs/SDA. However, the same shall not be applicable for the portion which is sold under market driven price.
- 1.1.63 “**Purchaser**” shall mean [*insert name*].
- 1.1.64 “**Purchaser’s Container**” shall mean the railway wagon, truck, receiving hopper, belt conveyor, bunker etc. owned by and/or placed on behalf of the Purchaser for movement of Coal by the Purchaser to its Specified End Use Plant.
- 1.1.65 “**Quarter**” shall mean the respective three-Monthly periods in a Year, namely April to June, July to September, and so on.
- 1.1.66 “**Quarterly Quantity**” or “**QQ**” shall have the meaning ascribed to it in Clause 4.5.
- 1.1.67 “**Representative**” shall have the meaning ascribed to it in Clause 16.2.
- 1.1.68 “**Source**” shall mean the source of supply of Coal specified in Schedule I.
- 1.1.69 “**Scheme Document**” shall mean the Scheme Document dated DD/MM/YYYY, issued by CIL, including its annexures, appendices, schedules, amendment(s), addenda or corrigendum to the Scheme Document and/or any other document issued pursuant thereto.
- 1.1.70 “**SDA**” shall mean any agency appointed / designated by a State for the purpose of power procurement.
- 1.1.71 “**Seller**” shall mean [*insert name*].
- 1.1.72 “**Short Term PPA**” shall mean short-term (i.e. for a period of more than one day to one year) power purchase agreement between the power generating source and the power procurer(s).
- 1.1.73 “**Specified End Use Plant**” shall have the meaning ascribed to it in the Scheme Document, in respect of which the Purchaser has been issued the LOA.
- 1.1.74 “**Statutory Charges**” shall mean and include royalties, cesses, duties, taxes, levies etc., if any, payable as per and in accordance with Applicable Laws.
- 1.1.75 “**Subsidiary**” shall mean a subsidiary of CIL as also set out in Annexure VII of the Scheme Document.

- 1.1.76 “**Successful Bidder**” shall have the meaning ascribed to it in the Scheme Document.
- 1.1.77 “**Surface Moisture**” shall mean the moisture content present in Coal that is derived as the difference between Total Moisture and Equilibrated Moisture, and expressed in percentage terms.
- 1.1.78 “**Term**” shall have the meaning ascribed to it in Clause 2.2.
- 1.1.79 “**Terminated PPA**” shall have the meaning ascribed to it in Clause 4.3.
- 1.1.80 “**Third Party**” shall mean an agency selected by the Purchaser in accordance with this Agreement, from the agencies empaneled by the Seller from time to time, for collection, preparation of Coal samples at loading points, analysis and relevant documentation and with whom relevant agreement(s) are executed in this regard.
- 1.1.81 “**Total Moisture**” shall mean the total moisture content (including Surface Moisture) expressed as percentage present in Coal and determined on “as delivered basis” in pursuance to IS: 1350 (Part – I) - 1984.
- 1.1.82 “**Unloading Point**” shall mean the place/point at the Purchaser’s Specified End Use Plant end at which the Coal is received/unloaded.
- 1.1.83 “**Weights and Measures Standards**” shall mean the standards, as prescribed under Applicable Laws.
- 1.1.84 “**Winning Premium**” shall mean [*insert in numbers*]% ([*insert in words*] per cent.) of the Notified Price.
- 1.1.85 “**Year**” shall mean the financial year of the Seller, commencing on April 1<sup>st</sup> and ending on the following March 31<sup>st</sup>.
- 1.1.86 “**Alternative Source**” shall mean the source as may be notified alongside the Primary Cost-Plus source, offered under auction, to bridge the possible time gap between the operationalization of the EUPs and cost plus mine reaching to the capacity to cater full linkage quantity.
- (a) “**Financial Coverage Bank Guarantee**” or “Financial Coverage BG” shall have the meaning ascribed to it in Clause 3.5
- For cost plus source:**
- “Notified Price” shall mean the price of the cost plus mine coal as notified by WCL from time to time.
  - “Indexed Price” shall mean the price derived on the basis of applicable cost plus mine specific price indexation of WCL.
- 1.1.87 “**Performance Security**” shall have the meaning ascribed to it and shall include any revised/ incremental Performance Security submitted by the Purchaser in accordance with the requirements of Clause 3.**Error! Reference source not found.**<sup>4</sup>
- 1.1.88 **Additional Definition for Cost Plus:**

(a) **“Actual Commissioning”** (AC): The cost plus mine is said to have achieved Actual Commissioning when it has achieved a cumulative production of 85% of the Annual Rated Capacity during a 12 continuous months period.

(b) **“Base GCV”** shall mean the GCV of the coal as declared in the PR.

(c). **“Base Price”** of cost plus mine is that price, in Rs/ton, which is fixed for 15-year term with a condition that mine can be continued as Mine specific for rest of life of mine. Note: The initial Base price is fixed on the basis of latest PR report. The economics of the PR shall be updated time to time. As such, the revised Base Price, as and when issued as per the updated PR shall be considered.

(d) **“Detailed Project Report”** (DPR) or **“Project Report”** (PR) means the Project Report for the Cost Plus mine which contains all the relevant information, including number of mine entries, manpower planning, estimated productivity levels, method of working, suggested capital equipment to be procured, surface installations outlining the handling arrangements at the Pit head, workshops and any other amenities etc.

(e) **“IRR”** shall mean the Internal Rate of Return.

(f) **“Movable Asset”** in relation to the Project Report, shall mean the plant & machinery, vehicles and furniture & fixtures only. All assets other than the movable asset shall be treated as “Immovable Asset” including Net Revenue expenditure capitalized as shown in the Project Report.

## 1.2 Rules of Interpretation

- (a) A reference to this Agreement includes all recitals and the Schedules to this Agreement. The recitals and the Schedules to this Agreement shall form an integral part of this Agreement and shall be read along with this Agreement;
- (b) A reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinated legislation issued under, that legislation or legislative provision;
- (c) Headings do not affect the interpretation of this Agreement;
- (d) A reference to Rs., INR or Rupees is to the lawful currency of the Republic of India unless specified otherwise;
- (e) A reference to an agreement, deed, instrument or other document include the same as amended, novated, supplemented, varied or replaced from time to time;
- (f) The expressions “including”, “includes” and “include” have the meaning as if followed by “without limitation”;
- (g) Words imparting the singular only also include plural and vice-versa where the context so requires;

- (h) The expression “writing” or “written” shall include communications by facsimile and letter;
- (i) If any definition in Clause 1.1 is a substantive provision conferring a right or imposing an obligation on any Party, effect shall be given to it as if it were a substantive provision in the body of this Agreement; and
- (j) The words and expressions beginning with or in capital letters used in this Agreement and not defined herein, but defined in the Scheme Document shall, unless repugnant to the context, have the meaning respectively assigned to them in the Scheme Document. However, in case of any conflict between the terms of this Agreement and the Scheme Document, this Agreement shall prevail.

## **2. TERM OF THIS AGREEMENT**

- 2.1 This Agreement shall become effective on the Effective Date (except for Clause 16, Clause 22 and Clause 23 which shall become effective on the Execution Date).
- 2.2 This Agreement shall, unless terminated in accordance with the terms hereof, remain in force until the earlier of the following (“**Term**”):
  - (a) the balance maximum life of the Specified End Use Plant; or
  - (b) the date of expiry (as per the original term) or the date of termination of the valid PPA, as the case may be.

Provided that, for the purposes of sub-clause (a) above, in case of more than one (1) unit of the Specified End Use Plant, the unit of the Specified End Use Plant having the maximum balance life as on the Execution Date shall be considered. For the purposes of sub-clause (b) above, in case of more than one (1) valid PPA, the date of expiry or the date of termination of the valid PPA(s), as the case may be, that occurs last, shall be considered. In each of these cases, the Annual Contracted Quantity shall be proportionately adjusted corresponding to each expired unit of the Specified End Use Plant and each expired/terminated valid PPA in accordance with Clause 4.1.2.

Provided further that, for the purposes of determination of the Term of this Agreement, any renewal or extension of any valid PPA beyond its original term, shall not be considered.

In respect of Cost-Plus Source, additional provisions or points/operative and commercial clauses, if any, as mentioned/notified/made applicable by concerned coal company shall also be applicable and binding to Seller and Buyer along with the terms and conditions of this FSA document and Scheme document of Round-8, SHAKTI B (iii).

In case supply from cost plus source will not be sufficient to meet the linkage requirement [as per planned production/supply schedule or deviation (for maximum 2 years) from the same due to any operational reason], the willing Purchaser shall be supplied coal from Alternative Source (may be of different Coal Company) through a Side Agreement of this FSA (as per Annexure-II), signed between the

concerned coal company of Alternative Source (if different) and the Purchaser. Such Side Agreement is integral part of the FSA and will be binding in nature to both Buyer and Seller (i.e. coal company of Primary Cost plus source & coal company of Alternative Source, as the case may be). The general terms of supply from Cost Plus source/Alternative source will be guided by the terms of this FSA & Side Agreement, as the case may be.

2.3 Notwithstanding the provisions of Clause 2.2, in the event of any change in the Grade categorisation of Coal, such change in Grade categorisation shall be binding and complied with by both the Parties and this Agreement shall stand amended to that effect.

2.4 In the event of any material change in the Coal Distribution System due to a government directive/notification, at any time after the Execution Date, the Seller shall within fifteen (15) days of introduction of such change provide a written notice to the Purchaser. If the Parties are unable to arrive at a mutually agreed position in this regard within a period of thirty (30) days from the date of notice, the Parties shall refer the matter to the Government of India for a decision.

## **2.5 Conditions Precedent**

The rights and obligations of the Parties under this Agreement are subject to the satisfaction in full of the Conditions Precedent in accordance with this Clause 2.5.

### **2.5.1 Purchaser's Conditions Precedent**

Pursuant to the provisions of the Scheme Document, the Purchaser is required to submit the following documents, within two (2) years of Completion of the Auction Process:

- (a) Valid PPA(s); and
- (b) Certificate(s) of DISCOM(s) in the format provided in Annexure XI of the Scheme Document.
- (c) NOC/certificate issued by CEA ascertaining the validation of PPA/ERC Approval along with the effective period of PPA

### **2.5.2 Satisfaction of Conditions Precedent**

2.5.2.1 Notwithstanding anything contained herein, in the event the Purchaser does not (i) submit the documents set out in Clause 2.5.1 within two (2) years of the Completion of the Auction Process; and/or (ii) start drawing Coal within two (2) years of submission of all the documents set out in Clause 2.5.1, this Agreement shall stand terminated and the corresponding proportionate Bid Security shall be forfeited, without an exception for Force Majeure or any other ground whatsoever.

Provided that in the event the Purchaser has satisfied the abovementioned Conditions Precedent in respect of part of the Annual Contracted Quantity, the Purchaser shall only be entitled to such part of the Annual Contracted Quantity in accordance with the terms of this Agreement and all references to Annual Contracted Quantity in this Agreement shall be read as references to such part of the Annual Contracted Quantity only.

2.5.2.2 Without prejudice to the Effective Date, within fifteen (15) days of fulfillment/achievement of all Conditions Precedent, the Purchaser shall issue a written notice of satisfaction of the same to the Seller. The Seller shall, within fifteen (15) days from receipt of such notice from the Purchaser, subject to the fulfillment of the Conditions Precedent to the satisfaction of the Seller, issue a letter accepting the same to the Purchaser.

2.5.2.3 Notwithstanding anything contained herein, if the Purchaser does not fulfill/achieve all or any Condition Precedent to the satisfaction of the Seller in accordance with this Clause 2.5 within the timelines prescribed in Clause 2.5.2.1, the Seller shall have a right, at its sole and absolute discretion, to terminate this Agreement and to forfeit the Bid Security submitted by the Purchaser without any further notice to the Purchaser.

## **2.6 Build-Up Period**

2.6.1 Build-Up Period shall be the period of six (6) Months commencing on the First Delivery Date (“**Build-Up Period**”). During the Build-Up Period, any compensation arising on account of short supply or short lifting, as per Clause 4.8 of this Agreement, shall not be payable by either Party.

## **3. BID SECURITY**

3.1 The Parties acknowledge and agree that the Purchaser has submitted the Bid Security to the Seller in accordance with the provisions of the Scheme Document.

3.2 As and when the documents set out in Clause 2.5 are submitted by the Purchaser to the Seller, then the proportionate amount of Bid Security corresponding to the Allocated Quantity of the Purchaser against which the documents required under Clause 2.5 are submitted, shall be returned by the Seller to the Purchaser, without any interest, upon the expiry of thirty (30) days from the First Delivery Date of such Allocated Quantity.

3.3 The Bid Security shall be liable to be forfeited and appropriated *inter alia* in any of the events specified in the Scheme Document.

3.4 **PERFORMANCE SECURITY:** Applicable for Cost Plus Source (for successful bidders having/submitting PPA other than Long terms)

3.4.1 The Successful Bidder of cost plus source, shall provide to the relevant Subsidiary, 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 the Agreement within

such time as specified in Clause 3.4.3 The amount of Performance Security shall be computed as follows:

Performance Security = {[Allocated Quantity of the Successful Bidder] multiplied by [6% of the aggregate of the Notified/floor Price and Winning Premium multiplied by (Notified/floor Price)]}.

3.4.2 The Performance Security shall be provided to the relevant Subsidiary to the extent of the Allocated Quantity from such Subsidiary. The Performance Security, if provided in the form of a bank guarantee, shall remain valid till 3 (three) months from the date of expiry of the Agreement. The Performance Security, if provided in the form of a non-interest-bearing security deposit, shall be refunded to the Successful Bidder 3 (three) months after the date of expiry of the Agreement.

Successful Bidders will have option to submit the BG (as performance security) with initial validity of at-least 5 years 3 months. The said BG should be extended/replaced to cover the remaining period of the tenure of the FSA tenure. The extended/replaced BG has to be submitted by the consumer at-least 3 months prior to expiry of initial BG. In case of non-extension/non-replacement of initial BG, as required above, the instance will be considered as 'exit' from FSA and necessary penal provision including forfeiture Performance Security will be applicable.

3.4.3 The amount of Performance Security stipulated in Clause 3.4.1 is to be kept in full throughout the tenure of the agreement and shall be suitably revised in case of change in Price. In case the Performance Security was provided in the form of a bank guarantee, upon such revision, the Successful Bidder may:

- (a) Provide a new bank guarantee issued by any Acceptable Bank for the revised value; or
- (b) Provide an additional/ top up bank guarantee issued by any Acceptable Bank for an amount corresponding to the incremental value of the Performance Security.

Alternatively, the bank guarantee constituting the Performance Security may be suitably amended for the revised value. The revised/ amended/ top up bank guarantee shall be provided within a period of 30 (Thirty) days of such revision.

In case the Performance Security was provided in the form of a security deposit, upon such revision;

- (a) the Successful Bidder shall deposit additional amount towards the security deposit; or
- (b) the relevant Subsidiary shall refund the excess value of the security deposit.

3.4.4 Any failure of the Purchaser to replenish the Performance Security in the manner specified herein above within 30 (thirty) days of notification of change in notified Price, shall entitle the Seller to suspend the supply of the Contracted Grade of Coal without absolving the Purchaser of its obligations under this Agreement. Further, if the Purchaser fails to replenish the Performance Security within 30 (thirty) days of such suspension of Coal supplies, the Agreement shall unless otherwise agreed in

writing by the Parties, stand automatically terminated without any further act on the part of the Seller and the Seller shall also have the right to invoke the existing Performance Security.

The period of validity of any new bank guarantee, amended bank guarantee, top up/ additional bank guarantee furnished by the Purchaser and/ or any additional security deposit provided by the Purchaser pursuant to this Clause 3.4.3 shall be the same as that of the initial Performance Security.

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

- (a) in the event that the Purchaser fails to submit the revised incremental Performance Security to the Seller within the timeline stipulated in Clause 3.4.4 above;
- (b) in the event that the Seller becomes entitled to exercise its right to terminate or actually exercises its right to terminate this Agreement for any of the reasons specified in Clause 18.

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

3.5 **Risk Coverage Financial Guarantee:** Applicable for Cost Plus Source-for successful bidders having/submitting PPA other than Long terms.

3.5.1 For the purpose of execution of FSA, Purchaser/bidder shall furnish Risk Coverage Financial Guarantee (RCFG). The RCFG amount will be lower of:

(a) The estimated initial capital invested in the immovable assets of the proposed cost-plus mine,

(or)

(b) The difference between estimated initial capital investment of the proposed cost-plus mine at cost-plus price and estimated capital investment required/desired to achieve a 12% pre-tax IRR at 85% capacity utilization at notified sale price of coal (reverse calculation).

The risk coverage may necessarily cover such eventuality that in case of premature exit/termination of cost-plus FSA, the guarantee can be forfeited and mine can run as notified price mine for rest of the mine-life.



In other words, RCFG amount should cover the eventuality that in case a Bidder/Linkage holder will exit from Cost Plus arrangement/agreement in between or expiry of (FSA Term) 15 Years FSA, upon forfeiture of the same the mine could run at notified price for rest of the life of the mine and would provide 12% IRR @ 85% capacity utilization as derived and depicted in the Project Report by CMPDIL, Ranchi.

3.5.2 The bidder shall have the following option for paying of Risk Coverage Financial Guarantee:

3.5.2.1 Entirely in Bank-Guarantee (BG) mode.

3.5.2.2 Minimum 50% in BG. Plus, rest of the amount (maximum up to 50% of RCFG) through alternate financial instrument like any AAA (highest rated) Bonds/securities purchased in the name of Bidder and Pledged with and hold by concerned coal company. However, Insurance Surety bonds will not be accepted for this purpose.

3.5.2.3 In case of down-gradation of rating of such bonds/securities post submission, within one month of such down-gradation, it will be responsibility of the bidder to replace the earlier bond/security with any other AAA (highest rated) bond/security.

3.5.2.4 The coal company shall undertake periodic review in case RCFG is given through Bonds/Securities for maintaining required amount of risk coverage financial guarantee. In case the bidder fails to replace/replenish the same within time limit, the coal company may consider it as default in compliance by the bidder and may liquidate the financial instrument at market rate with due notification to the bidder.

3.5.2.5 The concerned Coal Company will monitor such RCFG, so that in case rating is degraded, the Bidder will be notified for replacement of the RCFG with any other AAA rated (highest rated) Bond/security within a month, else the said Bond/Security will be liquidated with due notification to the Bidder.

3.5.2.6 Financial Guarantee/Risk coverage of BG may be obtained from the Bidders in a phased manner (year-wise advance) in tandem with projected/planned investments to be made by the Coal Company and shall be applicable for release of the same also in a year-wise tapered manner, subsequent to reaching Rated Capacity (RC), in line with the proportion of return of investment of fixed cost. It is clarified that for the purpose of phase-wise year-wise return of RCFG amount by Coal Company the proportion of recovery of capital investment for immovable asset shall be considered as- 'proportion of return of investment of fixed cost'.

3.5.2.7 The methodology for operationalization of the above to be worked out by WCL/concerned Coal Company, in coordination with CMPDIL, followed by issuance of due notification.

3.5.3 Invocation/ Forfeiture of RCFG: The Risk Coverage Financial Guarantee of the bidder can be forfeited by the Seller in case of termination/closure of FSA due to the reasons attributable to the Purchaser and/or as per terms and conditions mentioned in the bid documents and notification by concerned coal company/CIL.

3.5.4 Performance security: Applicable for Cost Plus Source (for successful bidders having/submitting PPA other than Long terms)

3.5.4.1 Higher of the RCFG and value of 6% of ACQ (performance security), as per calculation mentioned in clause 3.4 above, may only be obtained from the successful bidder. However, in case of RCFG is obtained from the bidder in phased manner, the coal company must have coverage of 6% of ACQ value (performance security amount) for signing of FSA.

3.5.4.2 In case risk coverage guarantee amount is more than 6% of ACQ, the rest of the required coverage amount to be taken from the bidder in phases.

3.5.4.3 In no case, the security coverage/performance security amount available with Coal Company must not go below 6% of ACQ at any point of time all throughout the tenure of FSA.

3.5.4.4 Other terms related to Performance Security, as mentioned in point 3.4.1 to 3.4.5 above and relevant, will be applicable.

3.5.4.5 The parameters of linkage from .....(cost plus mine name) covering relevant clauses

a) Base Price: As per Schedule 2/2A

Note: if any as per Schedule 2/2A

b) Bid price & % premium: As per bidding

c) Risk Coverage Financial Guarantee (in Crs) & Phase wise distribution: Calculated as per Schedule 2/2A

d) Indexation Formula: As per Schedule 2/2A

e) Other parameter, if any

## **4. QUANTITY**

### **4.1 Annual Contracted Quantity**

4.1.1 The Annual Contracted Quantity of Coal agreed to be supplied by the Seller and undertaken to be purchased by the Purchaser shall be [*insert number*] tonnes per Year as set out in Schedule I, subject to Clause 4.1.2 and Clause 4.1.3 (“ACQ”). For part of Year, the ACQ shall be pro-rated accordingly.

4.1.2 The ACQ shall be proportionately adjusted upon the occurrence of any scenario set out in the first proviso to Clause 2.2.

4.1.3 The ACQ shall also be proportionately adjusted in accordance with the provisions set out under the Eligibility Conditions, particularly, Clause 4.1.1.2 of the Scheme Document. It is further clarified that, in accordance with Clause 4.1.1.2 of the

Scheme Document, if the Purchaser gets a DISCOM certificate of having a valid PPA (prior to May 17, 2017), the ACQ shall be correspondingly reduced for the capacity of the Specified End Use Plant against which the Purchaser gets a DISCOM certificate of having a valid PPA (prior to May 17, 2017).

#### 4.1.4 In case of Cost plus mine:

The schedule of production plan may be finalized on the basis of lifting commencement plan/declaration given by the bidder after becoming successful in auction and other operational factors. As such, the actual production of the cost plus mine may vary from the planned production schedule (maximum by 2 years, pursuant to signing of FSA and in such case(s), supply will be made from Alternative Source to fulfil the requirement of the FSA holder till such time the production from Cost Plus mine will become sufficient to cater linkage requirement or rated capacity of production from the cost plus mine is achieved, as the case may be. In such case, deviation (maximum by 2 years) from supply commitment from cost plus mine with respect to planned supply/production schedule & schedule of lifting provided by the bidder, shall not attract any penal consequence on the Seller (coal company).

Till such time the actual commissioning of the mine takes place (i.e. 85% of the mine capacity is achieved) the quantity of coal produced from the mine and supplied in respect of the bid quantity shall be treated as Annual Contracted Quantity from the cost plus source for the period but no compensation or incentive shall be payable or receivable during the period.

- 4.1.5 For Cost Plus mine/source only: Disposal of stock at Purchaser's risk: Where specific mine being offered under Cost Plus Agreement, will be left with stock when a consumer fails to lift the quantity as per the agreement provision, in such event the Seller shall be empowered to dispose-off the stock at consumer's risk. Any loss suffered by the Seller for non-disposal of such stock or for disposal of such stock at a price lower than the Contract Price shall be recovered by the Seller from the BG towards Financial Guarantee against the risk submitted by the Purchaser.

## 4.2 End-use of Coal

- 4.2.1 The total quantity of Coal supplied pursuant to this Agreement is strictly meant for use and consumption by the *[[•] name and location of the Specified End Use Plant(s)]* as listed in Schedule I, for the purpose of generation of power in furtherance to and in accordance with the valid PPA(s).
- 4.2.2 The Purchaser shall not transfer and/or sell the Coal for any other purpose whatsoever. Swapping and/or rationalization of coal shall be as per the extant applicable policy/guidelines, if any. Any violation in this Clause 4.2 shall be treated as a material breach of this Agreement, for which the Purchaser shall be fully responsible and such act shall warrant suspension of Coal supplies by the Seller in terms of Clause 15.1.2.

## 4.3 Terminated PPA

- 4.3.1 In the event of termination of a valid PPA by the Purchaser in case of default in payment by the DISCOM in accordance with the terms of such valid PPA (“**Terminated PPA**”), the Purchaser shall be allowed to use the Annual Contracted Quantity corresponding to and in respect of such Terminated PPA for sale of power through Short Term PPAs using the Discovery of Efficient Energy Price (“**DEEP**”) portal or power exchange, for a maximum period of 2 (two) years or until the Purchaser finds another buyer of power under long/medium term PPA, whichever is earlier. In this regard, adequate safeguards issued by the Ministry of Power *vide* the Office Memorandum dated August 30, 2019 set out as Schedule VI, as amended from time to time, shall be duly complied with. Further, the net surplus after meeting operating expenses generated in this manner shall be entirely used for servicing debt in the first place, in accordance with the mechanism prescribed by the Ministry of Power *vide* the Office Memorandum dated August 5, 2019 set out as Schedule VII and the Office Memorandum dated August 20, 2019 set out as Schedule VIII, as amended from time to time.
- 4.3.2 The methodology under this Clause 4.3 shall be issued by the Seller and/or any Government authority/ department in writing, subsequently.

#### 4.4 **Source of Supply**

Coal shall be supplied from the Source mentioned in Schedule I. Supply of Coal may vary between/beyond the range of Grades mentioned in Schedule II.

#### 4.5 **Quarterly Quantity (QQ)**

The Annual Contracted Quantity for the Year, as per Clause 4.1 shall be divided into Quarterly Quantities (“**QQ**”), expressed in tonnes, as follows:

I <sup>st</sup> Quarter (April – June)	25% of ACQ
II <sup>nd</sup> Quarter (July – September)	22% of ACQ
III <sup>rd</sup> Quarter (October – December)	25% of ACQ
IV <sup>th</sup> Quarter (January – March)	28% of ACQ

#### 4.6 **Monthly Scheduled Quantity (SQ)**

- 4.6.1 The Monthly Scheduled Quantity (“**SQ**”) shall be one third (1/3<sup>rd</sup>) of the QQ.
- 4.6.2 In the event the SQ is not sufficient for formation of a rake in a Year, such SQ shall be permitted to be carried forward towards formation of a rake in that Year, or in subsequent Year(s), if required, until such cumulative SQ is sufficient to form a rake of Coal. In such a case, the penalty specified under Clause 4.8 shall be applicable after the aforesaid Year in which the rake of Coal is formed.

#### 4.7 **Variation in QQ and SQ**

- 4.7.1 Variation in QQ of a Quarter, not exceeding 5% (five percent), may be made with the written mutual consent of the Purchaser and the Seller, expressed prior to commencement of that Quarter.

- 4.7.2 Subject to the provisions of Clause 4.7.1, variation in SQ for a Month, not exceeding 10% (ten percent), may be made with the written mutual consent of the Purchaser and the Seller, expressed prior to commencement of that Month.
- 4.7.3 Normally variation shall not be permitted in respect of QQ either by Purchaser or Seller pursuant to 4.7.1 and 4.7.2 except with mutual consent of the Purchaser and the Seller. However, variation in QQ with corresponding variation in the SQs of the quarter concerned over and above permitted under sub clause 4.6.1, 4.6.2, 4.7.1 & 4.7.2 can be made with mutual consent of the Purchaser & the Seller expressed in writing.
- 4.7.4 Supply of coal in excess of ACQ shall be with mutual consent. In this respect, for any supply beyond ACQ as per terms and conditions of FSA, the Purchaser will be required to submit an affidavit as enclosed in Schedule IX beside other requirements as per FSA.

The above supply of coal beyond ACQ will be guided/governed by the procedure/notification /guideline issued by CEA/CIL/GOI time to time.

#### 4.8 Compensation for short delivery/lifting

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

Level of Delivery / Lifting of Coal in a Year	Percentage of Penalty for the failed quantity (at the rate of weighted average of Notified Prices of Grades of Coal supplied)
Below 75% but up to 65% of ACQ	0 – 10
Below 65% but up to 50% of ACQ	10 – 40
Below 50% of ACQ	40

- 4.8.2 The penalty payable shall be computed in the same manner as done slab-wise for computation of income-tax. However, unlike income tax, the percentage of compensation shall grow on linear basis within each slab.
- 4.8.3 The Seller shall be entitled to modify/amend the penalty levels as specified at Clause 4.8.1 pursuant to review undertaken by the MOC.

#### 4.9 Level of Delivery

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

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

Where:

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

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

DDQ = Deemed Delivered Quantity, reckoned in the manner stated in Clause 4.12.

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

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

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

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

#### 4.10 **Level of Lifting**

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

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

Where:

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

DDQ shall have the same meaning as given in Clause 4.12.

- 4.11 For the purpose of computing DDQ and RF, the weight per rake will be *[/•/ to be specified by the Seller]*, which shall be used for calculation of compensation from either the Purchaser or the Seller.

#### 4.12 **Deemed Delivered Quantity**

- 4.12.1 For the purpose of this Agreement, the aggregate of the following items provided under Clause 4.12.2 and Clause 4.12.3 shall constitute the Deemed Delivered Quantity with respect to a Year.

##### 4.12.2 **For supply of Coal by rail**

- (a) The quantity of Coal not supplied by the Seller owing to omission or failure on the part of Purchaser to submit the requisite rail programme(s) as per extant procedure with respect to the Scheduled Quantity.
- (b) The quantity of Coal not supplied by the Seller owing to cancellation, withdrawal or modification of the rail programme(s) by the Purchaser after its submission whether before or after allotment of wagon(s) by railways.
- (c) The quantity of Coal not supplied by the Seller owing to Purchaser's failure to pay and/or submit/maintain IRLC, as applicable, in accordance with Clause 12.1.2(b).
- (d) The quantity of Coal not supplied by the Seller owing to Seller exercising the right of suspension of supplies in terms of Clause 15.
- (e) The quantity of Coal offered by Seller in terms of Clause 4.4 not accepted by the Purchaser.

#### 4.12.3 For Supply of Coal by road/ ropeways/MGR/belt conveyer

- (a) The quantity of Coal not supplied by the Seller owing to the Purchaser's failure to pay and/or submit IRLC, as applicable, in accordance with Clause 12.1.2(b).
- (b) The quantity of Coal not supplied by the Seller owing to the Seller exercising the right of suspension of supplies in terms of Clause 15.
- (c) The quantity of Coal not supplied by the Seller owing to the Purchaser's failure to place the requisite number/type of transport at the Delivery Point for delivery of Coal within the validity period of the sale order/delivery order.
- (d) The quantity of Coal offered by Seller in terms of Clause 4.4 not accepted by the Purchaser.

#### 4.13 Performance Incentive

- 4.13.1 If the Seller delivers Coal to the Purchaser in excess of ninety (90%) of the ACQ for a Year, the Purchaser shall pay the Seller an incentive ("**Performance Incentive**") for the excess Coal supplied:

Percentage of actual deliveries	Percentage of Incentive at the rate of weighted average Notified Price of Grades of Coal supplied
Above 90% but up to 95% of ACQ	0 – 10
Above 95% but up to 100% of ACQ	10 – 20
Beyond 100% of ACQ	40

Actual Deliveries = Actual Quantity [in tonnes] of Coal delivered by the Seller for the relevant Year.

- 4.13.2 The incentive payable shall be calculated in the same manner as done slab-wise for computation of income-tax. However, unlike income tax, the percentage of incentive shall grow on linear basis within each slab.
- 4.13.3 With respect to part of Year in which Term of this Agreement begins or ends, the relevant quantities in Clause 4.13.1, shall apply pro-rata.

## **5. QUALITY**

- 5.1 The quality of Coal delivered/to be delivered shall be as per the specifications given in Schedule II. However, any relevant notification by CIL/coal company, as updated time to time, shall have applicability on the same.
- 5.2 The Seller shall make adequate arrangements to assess the quality and monitor the same to endeavour that un-graded Coal (GCV of less than 1500 Kcal/Kg for non-coking coal) is not loaded into the Purchaser's Containers. If the Seller sends any quantity of such Coal, the Purchaser shall limit the payment of cost of Coal to Re. 1/- (Rupee one only) per tonne. Statutory Charges shall, however, be paid as per the Declared Grade. In this regard, any credit in respect of the Statutory Charges, if and when received by the Seller, shall be adjusted through issuance of credit note(s). Railway freight shall be borne by the Purchaser.
- 5.3 The Seller shall endeavour to deliver Coal with size conforming to specifications set out in Schedule II and shall make reasonable efforts to remove stones/extraneous material from the Coal.

### **5.4 Re-declaration of Grade by the Seller**

If the Grade analysed pursuant to Clause 5.6 shows variation from the Declared Grade, consistently over a period of three (3) Months, the Purchaser shall request the Seller for re-declaration of Grade, which shall be duly considered by the Seller.

### **5.5 Oversized Coal/stones**

In the unlikely event of supply of any oversized Coal/stones beyond the specifications set out in Schedule II, the Purchaser shall inform the Seller of such incident(s) in any specific consignment(s), immediately on its detection at the Delivery Point and/or Unloading Point and the Seller shall take all reasonable steps to prevent such ingress at its end. If, in the Purchaser's reasonable assessment, the incidents of oversized Coal and/or stones are causing operating or maintenance problems at the Specified End Use Plant, then, upon the request of the Purchaser, the Purchaser and the Seller shall meet and prepare a mutually acceptable plan for effectiveness of the Seller's endeavours to avoid such instances.

### **5.6 Assessment of Quality of Coal at the loading end**

#### **5.6.1 Sample collection**

- (a) Samples of Coal shall be collected by the Third Party either manually or through any suitable mechanical sampling arrangement, including Augur Sampling method, if physically operable at each of the Delivery Points for



determining the quality of Coal in the presence of representatives of the Seller and the Purchaser.

- (b) For the purpose of sampling, each rake of Coal supplied from one Delivery Point shall be considered as a lot. However, if a rake comprises Coal from more than one (1) coal mine and/or Grade, then the number of lots for sampling will be coal mine/Grade wise, as the case may be.
- (c) Each day's supply to the Purchaser from a Delivery Point shall be considered as one lot for the purpose of sampling in case of Coal supplies by road, ropeways, belt and MGR system etc. However, if such Coal supplies comprise Coal from more than one (1) coal mine and/or Grade, then the number of lots for sampling will be coal mine/Grade wise, as the case may be.

5.6.2 Detailed modalities for collection, handling, storage, preparation and analysis of samples by Third Party shall be as per Schedule IV.

5.6.3 Each sample shall be assigned with a code number and will be identified by such code only and no other particulars will be indicated or written on the tag attached with the relevant bag containing the sample. Detailed modalities of coding/decoding for the purpose of sampling and analysis may be worked out separately by the Parties to facilitate confidentiality and reliability of the process.

5.6.4 (i) In the event, for any reason whatsoever, Third Party sampling and analysis could not be conducted, joint sampling and analysis shall be carried out by the Seller in presence of the Purchaser at the loading end; and

(ii) In the event that, no sample is collected either by the Third Party or Seller and Purchaser jointly as mentioned at sub-clause (i) above, from dispatches by a rake or on any day, as the case may be, from a Delivery Point for any reason, the weighted average of the most recent results available in any preceding Month against respective Delivery Point/Grade shall be adopted for such dispatches for which samples were not collected.

## **6 WEIGHMENT OF COAL**

6.1 For dispatch of Coal by rail, all the wagons loaded for the Purchaser shall be weighed at the loading end at the electronic weighbridge of the Seller and electronic print-out of actual weight recorded shall be provided. Such weighment shall be final and binding for determination of the quantity delivered. The Purchaser shall have the right to witness the weighment of the wagons at the weighbridge, if desired. The Seller shall annex copy of such electronic print-outs along with the bill(s) raised by the Seller.

6.2 Only in the absence of weighment of Coal on electronic weighbridge at the loading end, the weight recorded at the Purchaser's electronic weighbridge with an electronic print-out facility at the Unloading Point, if in proper working order, shall be taken as final. In respect of unweighed consignments/wagons at the Delivery Point on electronic weighbridge and weighed on electronic weighbridge at the Purchaser's end, the Purchaser shall submit the associated electronic print-out to

the Seller for such consignments/wagons within thirty (30) days from the date of railway receipt, beyond which time the weight of the consignment shall be considered on railway receipt basis.

- 6.3 If both the weighbridges installed by the Seller as well as the Purchaser are defective/not available for recording weight of the consignments of Coal, weighted average quantity of Coal per wagon (to be determined separately for respective types of wagons in the circuit), as per the actual weighment over a continuous period of immediately preceding seven (7) days shall form the basis for determining the quantity of Coal at that Delivery Point, till such time any one of the weighbridges is corrected and put back into operation. If the weighbridges at both the Seller's and the Purchaser's end are not available for recording weight of Coal and actual weighment over a continuous period of immediately preceding seven (7) days is also not available then weight of Coal for such unweighed wagons shall be taken as per the weight indicated in the railway receipts.
- 6.4 The Seller and the Purchaser shall permit access to and make facilities available at its weighbridge, for representatives of either Party to witness and note the weight for the consignment. In case the representative of any Party fails to be present, at the time of such weighment, the weight recorded by the representative of the other Party in accordance with Clause 6.1 and Clause 6.2, shall be final and binding.
- 6.5 The weighbridges both at the Seller's end and at the Purchaser's end shall be kept duly calibrated as per the Weights and Measures Standards. Both the Seller and the Purchaser shall have the right to witness the calibration of the weighbridge at each other's end.
- 6.6 **Operation and Maintenance of Weighment System**

The Parties shall at their respective costs,

- (a) Operate and maintain their weighbridges in good working order and in accordance with the Weights and Measures Standards and other Applicable Laws;
  - (b) Cause the weighbridge to be inspected, tested and certified by the statutory agencies in accordance with and at the intervals required by the Weights and Measures Standards and the Parties shall, at their cost, extend/make available all requisite facilities required for the purpose of testing and/or calibrating the weighbridge.
- 6.7 For dispatch of Coal by road, the weight recorded at the electronic weighbridge of the Seller at the loading end shall be final for the purpose of billing and payment. The Purchaser shall have the right to witness the weighment at the colliery, if desired. The weighbridge shall be calibrated as per the provisions of Applicable Laws. The Purchaser shall have the right to witness such calibration.
- 6.8 For dispatch of Coal by belt conveyor, a weightometer shall be installed at the end of the Seller and weight recorded by the weightometer shall be the weight of Coal supplied. The weightometer shall be kept under joint seal and will be

repaired/recalibrated in the presence of the representatives of the both the Parties, wherever necessary.

- 6.9 For dispatch of Coal by MGR system, weight recorded at the loading end through the electronic weighment system shall form the basis for determining the quantities of Coal delivered.

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

The Purchaser shall submit Monthly programme(s) mode-wise for off-take of Coal as under:

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

- 7.1.1 The Purchaser shall submit the programme(s) and shall comply with all requisite formalities, rules and procedures as prescribed by the railways by time to time.
- 7.1.2 Subject to Clause 7.1.1 and other obligations of the Purchaser under this Agreement, the Seller shall provide consent, take allotment and place indents etc. in accordance with extant railway rules and procedures.
- 7.1.3 In case of formation of rakes with wagons loaded from different Delivery Points, the Seller shall make best efforts to complete documentation formalities as per railway rules and procedures so as to enable the Purchaser to avail a trainload freight rate.
- 7.1.4 In the event rail movement is declared/considered not feasible by railways, a joint review will be undertaken in this regard.

### **7.2 Order Booking by Road**

- 7.2.1 The Purchaser shall submit Monthly programme(s) for order booking/allocation in respect of the coal mine wise quantities offered, as per the procedure prescribed by the Seller from time to time.
- 7.2.2 Subject to fulfillment of payment obligations pursuant to Clause 12.1.2 by the Purchaser, the Seller shall arrange to issue sale order(s)/delivery order(s) separately for each colliery and issue necessary loading programme/schedule from time to time. The Purchaser shall arrange to place the required number/type of trucks to lift the Coal as per such loading programme/schedule. The Seller shall ensure that the sale order/delivery order in favour of the Purchaser reaches the concerned colliery/weigh bridge within five (5) working days of the last day of the period notified by the Seller for booking orders.
- 7.2.3 The Seller shall ensure delivery and the Purchaser shall ensure lifting of Coal against sale order/delivery order of any Month within the validity period, as mentioned in the sale order.
- 7.2.4 In the event of any quantity remaining undelivered/unlifted, the Purchaser shall be entitled to receive, once the validity period of the sale order/delivery order expires, the refund of the proportionate value of such quantity.

## **8. TRANSFER OF TITLE TO GOODS**

Once delivery of Coal has been effected at the Delivery Point by the Seller, the property/title and risk of Coal so delivered shall stand transferred to the Purchaser in terms of this Agreement. Thereafter, the Seller shall not be responsible or liable in any manner whatsoever, including in respect of security or safeguard of the Coal so transferred. The Seller shall have no liability, including any liability towards increased freight or transportation costs, as regards missing/diversion of wagons/rakes or road transport en route, for whatever causes, by railways, or road transporter or any other agency.

## **9. PRICE OF COAL**

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

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

- 9.2 The Winning Premium shall remain constant during the tenure of the Agreement. The Notified Price may be reviewed by CIL semi-annually/periodically, and it may make such modifications as may be deemed appropriate. The price pursuant to any such modification shall be notified by CIL and such modification shall be regarded as an indexation. The Notified Price shall be payable in the manner contemplated in Clause 9.1 over the tenure of the Agreement.
- 9.3 The As Delivered Price of Coal computed pursuant to Clause 9.1 shall exclude sizing charges, transportation charges up to the Delivery Point, rapid loading charges, statutory charges, levies and other charges, which shall be additionally payable by the Purchaser.
- 9.4 All royalties, taxes, duties, cesses, and such statutory levies payable to the State Government, Central Government and/or to any other statutory authority on the supply, dispatch and delivery of Contracted Grade of Coal under this Agreement shall be borne by the Purchaser.
- 9.5 In all cases the entire freight charges, irrespective of the mode of transportation of the Coal supplied, shall be borne by and to the account of the Purchaser.
- 9.6 Notwithstanding anything to the contrary contained herein, the Purchaser shall be liable to make payment to the Seller in terms of this Agreement, on the basis of grade with respect to the quantity of Coal supplied, irrespective of when and in what condition the loaded wagons/rakes/road transport vehicles reach or do not reach the destination.
- 9.7 **Other Charges**
- 9.7.1 Transportation charges

Where Coal is transported by the Seller from the Pithead to the Delivery Point, the Purchaser shall pay for such transportation charges which are notified by CIL/the

Seller from time to time. It is clarified that the distance of transportation on surface from the Pithead to the Colliery Loading Point shall be measured along the route of Coal transportation.

**9.7.2 Sizing/Crushing charges**

Where Coal is crushed/sized for limiting the top-size, the Purchaser shall pay sizing/crushing charges, as applicable and notified by CIL/the Seller from time to time.

**9.7.3 Evacuation facility charges.**

**9.7.4 Any other applicable charges**

Any other applicable charges as notified by CIL/the Seller and applicable from time to time.

**9.8 Statutory Charges**

The Statutory Charges shall become effective and payable by the Purchaser from the date as notified by the relevant government/statutory authority.

- 9.9 Notwithstanding anything contained herein, in all cases, the freight charges in their entirety, irrespective of the mode of transportation of the Coal supplied, shall be solely borne by the Purchaser.

**10. COMPENSATION**

**10.1 Excess Surface Moisture**

- 10.1.1 In the event that Monthly weighted average Surface Moisture in Coal exceeds seven percent (7%) during the Months from October to May and nine percent (9%) during the Months from June to September, the Seller shall give credit note on account of quantity equivalent to excess Surface Moisture, calculated at the rate of the weighted average Notified Price of analyzed Grade(s) of Coal and Other Charges. The said compensation shall not include railway freight and Statutory Charges. In this regard, any credit in respect of the Statutory Charges, if and when received by the Seller, shall be adjusted through issuance of credit note(s).

- 10.1.2 Sampling/analysis and determination of Surface Moisture for compensation shall be done as per the procedure set out in Schedule IV.

**11. OVERLOADING AND UNDER-LOADING**

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

- 11.2 For non-coking coal of GCV exceeding 5800 Kcal/Kg and coking coal of Steel Grade I, Steel Grade II, Washery Grade I, Washery Grade II, Semi-coking Grade I, Semi-coking Grade II and washed Coal; any idle freight for under-loading below the stenciled carrying capacity, as shown on the wagon or minimum chargeable weight for the purpose of freight charges as notified by the railways (route-wise) for any particular type of wagon from time to time, whichever is lesser, shall be borne by the Seller. For all other Grades of Coal, any idle freight for under-loading below the stenciled carrying capacity, plus two (2) tonnes, or minimum chargeable weight for the purpose of freight charges as notified by the railways (route-wise) for any particular type of wagon from time to time, whichever is lesser, shall be borne by the Seller.
- 11.3 Idle freight resulting from under-loading of wagon, as per Clause 11.2, shall be adjusted in the bills. Idle freight shall be reckoned as the difference between the freight charged by the railways/freight payable for stenciled carrying capacity/freight payable for stenciled carrying capacity plus two (2) tonnes, as applicable in terms of Clause 11.2 and the freight payable for the actual recorded weight of Coal loaded in the wagons. It is clarified that the compensation shall comprise basic railway freight and other applicable charges such as DPC, DS etc. actually levied by the railway under the respective consignment.

## **12. MODALITIES FOR BILLING, CLAIMS AND PAYMENT**

### **12.1 Bills on Declared Grade basis**

- 12.1.1 The Seller shall raise bills for the Coal supplied to the Purchaser on Declared Grade basis. The Seller shall raise such bills on rake-to-rake basis for delivery of Coal by rail and on daily basis for delivery of Coal by road and other modes of transport. Such bills shall be raised within seven (7) days of delivery.
- 12.1.2 The Purchaser shall make payment in accordance with either of the following payment mechanisms:
- (a) The Purchaser shall make advance payment against Monthly Scheduled Quantity, as per the payment schedule notified by the Seller which shall provide flexibility to the Purchaser to make payment of coal value in at least 3 (three) installments in a month against the said Monthly Scheduled Quantity. The consent in respect of rail programme(s) and/or order booking/allocation in case of road/other modes by the Seller shall be commensurate with the installments of payments made by Purchaser.
  - (b) The Purchaser shall maintain with the Seller an Irrevocable Revolving Letter of Credit (“**IRLC**”) issued by a bank in a format acceptable to the Seller and fully conforming to the conditions to be stipulated as Schedule III for an amount equivalent to As Delivered Price of Coal for the Coal quantities that is one-ninth (1/9th) of the QQ concerned, as per Clause 4.5. The As Delivered Price of Coal in this context shall take into account the highest of Notified Prices of Grades mentioned in Schedule II plus the Winning Premium. The amount of IRLC shall be suitably changed whenever there is a change in any component of the As Delivered Price of

Coal. In addition to the IRLC, the Purchaser shall pay advance amount equivalent to seven (7) days Coal value by way of electronic fund transfer.

- (c) The additional payment mechanism, if any, as notified time to time by CIL/Seller, will also be applicable.

12.1.3 All the payments shall be made through electronic fund transfer payable at *(/•/ to be stated by the Seller)*. In the event of non-payment/delayed payment of any amount(s) as prescribed in this Agreement, the Purchaser shall be liable to pay interest in accordance with Clause 13.

12.1.4 Advance payment made by the Purchaser shall be non-interest bearing, and it shall change in accordance with change in the As Delivered Price of Coal.

## **12.2 Adjustment for analyzed quality/Grade**

12.2.1 The debit note/credit note with regard to adjustment for quality, as determined under Clause 5.6, shall be supported by the relevant analysis report(s) of the Third Party/referee results/joint sampling/weighted average analysis, as the case may be, in accordance with Clause 5.6.

12.2.2 The Seller shall issue credit note/debit note on account of Grade variation to the extent of difference in the Notified Price of Declared Grade and analysed Grade of Coal as follows:

- (a) In case of Third Party result which is not sent for referee analysis, within seven (7) days of receipt of Third Party result by the Seller;
- (b) In case of referee analysis, within seven (7) days of receipt of referee analysis results by the Seller;
- (c) In case of joint sampling, within seven (7) days of the date of jointly signed result; or
- (d) In case of weighted average analysis, within seven (7) days of the joint determination of weighted average result to be applied.

## **12.3 Bills of Miscellaneous Claims**

12.3.1 The bills towards interest charges pursuant to Clause 13 raised by the Parties shall be paid within fifteen (15) days of receipt of such bills.

12.3.2 Compensation for short supply/lifting, as calculated in accordance with Clause 4.8, shall be payable by the defaulting Party to the other Party within a period of ninety (90) days from the date of receipt of claim, failing which, it will attract interest in terms of Clause 13.

12.3.3 After expiry of the Year, the Seller shall submit an invoice to the Purchaser with respect to the Performance Incentive payable in terms of Clause 4.13 and the Purchaser shall pay the amount so due within thirty (30) days of the receipt of the invoice failing which it will attract interest in terms of Clause 13.

#### **12.4 Diverted rakes/missing wagons**

In case of diversion of rakes enroute or missing wagons, bills shall be paid to the Seller by the Purchaser.

#### **12.5 Annual Reconciliation/Adjustments**

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

12.6 In the event of due date of any payment obligation under this Agreement falling on day other than a Business Day or on a day of nationwide strike affecting banking services, the next Business Day shall be the effective due date for the purpose.

12.7 In case of any modifications in the modalities for billing, claims and payment, the Purchaser shall comply with the same.

#### **13. INTEREST ON DELAYED PAYMENT**

In the event of delay in payment/adjustment of any amount payable/recoverable pursuant to the provisions of this Agreement, the Seller/the Purchaser shall be entitled to charge interest on such sum remaining outstanding for the period after the due date till such time the payment is made. The interest charged by the Seller/the Purchaser pursuant to this Clause 13 shall be at the Interest Rate.

Guideline issue by CIL vide CIL/M&S/GM(F)/463 dated 29.11.2024 regarding interest on delayed Refunds/Delay in Return of Bank Guarantees and/or any other guideline/notification in such respect, as may be issued by CIL/Seller time to time, shall be referred, wherever applicable.

#### **14. REPRESENTATIONS, WARRANTIES, COVENANTS AND UNDERTAKINGS**

14.1 Each Party represents and warrants to the other Party that:

14.1.1 it has the capacity to enter into this Agreement and perform its obligations, and all transactions and undertakings contemplated herein;

14.1.2 all corporate or other required action necessary for the authorisation and execution of this Agreement have been duly obtained; and

14.1.3 this Agreement has been duly executed by it and is valid and binding on it in accordance with its terms.

14.2 The Purchaser hereby further warrants and represents to the Seller:



- 14.2.1 it is duly organized and validly existing under the Applicable Laws and has all powers and authorities to own its property and to carry on its business as now conducted;
- 14.2.2 it has the full legal right, capacity and authority to enter into this Agreement and this Agreement constitutes its legal, valid and binding obligation;
- 14.2.3 the execution, delivery and performance by it of this Agreement and the compliance by it with the terms and provisions hereof do not and will not:
- 14.2.4 contravene any provision of any Applicable Law, statute or any order, writ, injunction or decree of any court or governmental instrumentality to which it is subject; or
- 14.2.5 conflict with or be inconsistent with or result in any breach of any of the terms, covenants, conditions or provisions of, or constitute a default under any other agreement, contract or instrument to which it is a party or by which it is bound or to which it may be subject; or
- 14.2.6 violate any provision of its constitutional documents;
- 14.2.7 there are no claims, investigations or proceedings before any court, tribunal or governmental authority in progress or pending against or relating to it, which could reasonably be expected to prevent it from fulfilling its obligations set out in this Agreement or arising from this Agreement;
- 14.2.8 this Agreement is enforceable against it in accordance with its terms; and/or
- 14.2.9 the undertakings of the Purchaser pursuant to the Scheme Document and the LOA are true and correct and all information provided by the Purchaser under the Scheme Document and in connection with the LOA, as requested by CIL and/or the Seller, is not untrue, incorrect or misleading in any way.
- 14.3 The Purchaser hereby also covenants and undertakes to the Seller as follows:
  - 14.3.1 it does and shall continue to satisfy all of the Eligibility Conditions and shall comply with all its obligations, covenants, undertakings and all other terms and conditions required to be complied by it under the Scheme Document and the LOA; and/or
  - 14.3.2 all licenses, registrations, consents, permissions and other authorisations required by the Purchaser for or in connection with its business have been obtained and are validly held by the Purchaser and each of the licenses, registrations, consents, permissions and other authorisations as aforesaid are in full force and effect and the Purchaser shall take necessary steps to renew the Licenses from time to time in accordance with the provisions of Applicable Laws.

## **15. SUSPENSION OF COAL SUPPLIES**

- 15.1 Notwithstanding other provisions of this Agreement, in the event the Purchaser:
  - 15.1.1 Fails to pay any amount, including any interest, due to the Seller under this Agreement within a period of five (5) days of the same falling due;

- 15.1.2 In the event of any *prima facie* breach, default or violation by the Purchaser in respect of Clause 4.2 and/or Clause 4.3; and/or
- 15.1.3 In the event of any intimation from any governmental/statutory authority and/or DISCOM in relation to any breach, default or violation arising out of or in relation to any valid PPA.
- 15.2 The Seller shall have the right to resort to any one or more of the following:
- 15.2.1 Adjust the outstanding amount from any amount of the Purchaser lying with Seller including payments made for Coal supplies; and/or
- 15.2.2 Suspend supplies of Coal to the Purchaser.
- 15.3 During the period of suspension of supplies in terms of Clause 15.1, the Seller shall be relieved of his obligations to supply Coal. However, the obligations of the Purchaser under this Agreement shall be deemed to remain in full force and effect.
- 15.4 In the event of suspension of Coal supplies pursuant to Clause 15.1.1, the Seller shall have the right to continue the suspension for as long as the outstanding payment(s) have not been adjusted/paid. The Seller shall resume the Coal supplies within three (3) days of payment of the outstanding amount(s) together with the interest accrued in accordance with this Agreement until the date of actual payment.
- 15.5 In the event of suspension of Coal supplies pursuant to Clause 15.1.2, the Seller shall have the right to continue the suspension of Coal for as long as the non-occurrence of the said breach, default or violation is not duly explained by the Purchaser to the satisfaction of the Seller.

## **16. SETTLEMENT OF DISPUTES**

- 16.1 In the event of any dispute, disagreement or difference arising out of or in connection with this Agreement, including any question regarding its performance, existence, validity, termination and the rights and liabilities of the Parties to this Agreement (“**Dispute**”), the Parties shall endeavour to amicably settle the same through negotiations carried out in good faith.
- 16.2 For the purpose of conducting negotiations, each Party shall designate in writing to the other Party a representative who shall be authorised to negotiate on its behalf with a view to resolving any Dispute (“**Representative**”). Each such Representative shall remain so authorised until his replacement has been designated in writing to the other Party by the Party he represents.
- 16.3 The Representative of the Party which considers that a dispute has arisen shall give to the Representative of the other Party, a written notice setting out the material particulars of the dispute (“**Dispute Notice**”). Within thirty (30) days, or such longer period as may be mutually agreed, of the Dispute Notice having been delivered to the other Party, the Representatives of both Parties shall meet in person, to attempt in good faith and using their best endeavours at all times, to resolve the Dispute. Once the Dispute is resolved, the terms of the settlement shall be reduced in writing and signed by the Representatives of the Parties.

## 17. INDEMNIFICATION

- 17.1 In this Clause 17, a reference to the Seller shall include the Seller and its officers, employees, staff, advisors, representatives or agents (collectively the “**Indemnified Party**”) and the provisions of this Clause 17 shall be for the benefit of the Indemnified Party, and shall be enforceable by each such Indemnified Party.
- 17.2 The Purchaser hereby indemnifies the Indemnified Party against all liabilities, costs, expenses, damages and losses (including but not limited to any interest, penalties and legal costs calculated on a full indemnity basis and all other professional costs and expenses) (collectively the “**Losses**”) suffered or incurred by the Indemnified Party arising out of or in connection with:
- (a) any breach of the representations, warranties, covenants and/or undertakings of the Purchaser contained herein or in the Scheme Document;
  - (b) any information or documentation submitted by the Purchaser to the Seller pursuant to this Agreement and/or the Scheme Document, being untrue, incorrect or false;
  - (c) the Purchaser’s breach or negligent performance or non-performance of this Agreement;
  - (d) the Purchaser’s breach or negligent performance or non-performance of any valid PPA;
  - (e) any claim made against the Indemnified Party for actual or alleged infringement of a third party’s rights or damage caused to a third party arising out of or in connection the performance or non-performance of any of the Purchaser’s obligations under this Agreement and/or any valid PPA to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this Agreement and/or any valid PPA, as the case may be, including but not limited to any claim on account of quality or quantity of Coal, by the Purchaser, its employees, agents or contractors; and/or
  - (f) any Loss or damages caused on account of breach of any Applicable Law by the Purchaser, including without limitation any costs incurred by the Seller in rectifying any damages caused by the Purchaser on account of breach, negligent performance or failure or delay in performance of this Agreement and/or any valid PPA, as the case may be, or non-compliance with Applicable Law.
- 17.3 Any indemnifiable claim under this Agreement must, be asserted by the Indemnified Party by delivery of written notice thereof to the Purchaser, on discovery by the Indemnified Party of the breach of the pertinent covenant or obligation of this Agreement, or of any misrepresentation or breach of any representation or warranty made by the Purchaser or of occurrence of any event specified in Clause 17.2. However, any delay on the part of an Indemnified Party in providing or failure to provide such notice will not relieve the Purchaser of its indemnification obligations hereunder.

- 17.4 The remedies set forth in this Clause 17 shall be without prejudice to all the rights and remedies that the Indemnified Party may have under the Applicable Law and shall not be the sole and exclusive remedies of the Indemnified Party for any breach of this Agreement or any matter relating to any representation, warranty, covenant or undertaking contained in this Agreement.

## **18. TERMINATION OF THIS AGREEMENT**

### **18.1 Force Majeure Act/Change in Law**

This Agreement may be terminated upon the occurrence of any of the following events and in the manner specified hereunder:

- 18.1.1 In the event that either Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure Act (“**Affected Party**” as described in Clause 19), and such inability to perform lasts for not less than a total of nine (9) Months in continuous form or of twelve (12) Months in discontinuous form in a period of two (2) Years, and in the considered assessment of the other Party (“**Non-Affected Party**”) there is no reasonable likelihood of the Force Majeure Act coming to an end in the near future, such Party shall have the right to terminate this Agreement, by giving at least ninety (90) days prior written notice to the Affected Party of the intention to so terminate this Agreement. In such an event, unless the said notice of termination is withdrawn by the Affected Party, the termination shall take effect on expiry of the notice period or ninety (90) days whichever is later, and the Parties shall be absolved of all rights/obligations under this Agreement, save those that had already accrued as on the effective date of termination.
- 18.1.2 In the event that the Purchaser is prevented/disabled under Applicable Law from using Coal, for reasons beyond their control, owing to changes in applicable environmental and/or statutory norms, howsoever brought into force, the Purchaser shall have the right to terminate this Agreement, subject to a prior written notice to the Seller of not less than thirty (30) days.
- 18.1.3 However, Force Majeure shall not be applicable in the event the Purchaser does not (i) submit the documents set out in Clause 2.5 within two (2) years of the Completion of the Auction Process; and/or (ii) start drawing Coal within two (2) years of submission of all the documents set out in Clause 2.5.

### **18.2 Termination in Event of Default**

This Agreement may be terminated upon the occurrence of any of the following events of default and in the manner specified hereunder:

- 18.2.1 In the event the Purchaser does not submit the documents set out in Clause 2.5 within two (2) years of the Completion of the Auction Process.
- 18.2.2 In the event the Purchaser does not start drawing Coal within two (2) years of submission of all the documents set out in Clause 2.5.

- 18.2.3 In the event that the Level of Delivery falls below thirty percent (30%) or the Level of Lifting falls below thirty percent (30%), the Purchaser or the Seller, as the case may be, shall have the right to terminate this Agreement, after providing the other Party with prior written notice of not less than thirty (30) days.
- 18.2.4 Notwithstanding the provisions of Clause 15.5, in the event that the matter pertains to Clause 15.1.2, the Seller shall have the right to terminate this Agreement forthwith without any liabilities or damages, whatsoever, payable to the Purchaser.
- 18.2.5 In the event of continuation of suspension for a continuous period of six (6) Months pursuant to Clause 15.1.1 and Clause 15.1.3, the Seller shall have the right to terminate this Agreement by providing a prior written notice of thirty (30) days to the Purchaser.
- 18.2.6 In the event that either Party suffers insolvency, appointment of liquidator (provisional or final), appointment of receiver of any of material assets, levy of any order of attachment of the material assets, or any order or injunction restraining the Party from dealing with or disposing of its assets and such order having been passed is not vacated within sixty (60) days, the other Party shall be entitled to terminate this Agreement by giving prior written notice of thirty (30) days to the first Party.
- 18.2.7 In the event that any Party commits a breach of term or condition of this Agreement (“**Defaulting Party**”) not otherwise specified under this Agreement, the other Party (“**Non-Defaulting Party**”), shall have the right to terminate this Agreement after providing the Defaulting Party thirty (30) days prior written notice and the breach has not been cured or rectified to the satisfaction of the Non-Defaulting Party within the said period of thirty (30) days.
- 18.2.8 In the event of the Terminated PPA, the capacity of the Specified End Use Plant for which the Purchaser fails to find another buyer of power under long/medium term PPA within the timeline prescribed in Clause 4.3.1.

### 18.3 **Accrued rights to survive termination**

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

## 19. **FORCE MAJEURE**

- 19.1 “**Force Majeure Act**” shall mean any act, circumstance or event or a combination of acts, circumstances and events which wholly or partially prevents or delays the performance of obligations arising under this Agreement by any Party (such Party being the “**Affected Party**”), and if such act, circumstance or event is not reasonably within the control of and not caused by the fault or negligence of the Affected Party, and provided that such act, circumstance or event is in one or more of the following categories:
- 19.1.1 Flood, inundation of mine, drought, lightening, cyclone, storm, earthquake, adverse geo-mining conditions, eruption of gases, subsidence and such natural occurrences;
- 19.1.2 Explosion, mine fire and other fire, contamination of atmosphere by radioactive or hazardous substances;

- 19.1.3 Civil disturbance such as riot, terrorism etc.;
- 19.1.4 Industry wise/nationwide strikes in the sector in which either Party operates;
- 19.1.5 Any law, ordinance or order of the Central or State Government, or any direction of a statutory regulatory authority that restricts performance of the obligations hereunder;
- 19.1.6 Epidemic;
- 19.1.7 The enactment, promulgation, amendment, suspension or repeal of any Applicable Laws after the Execution Date;
- 19.1.8 Any delay or direction or order on the part of the Government of India or relevant State Government or denial or refusal to grant or renew, or any revocation, or modification of any required permit or mining lease or governmental approvals including those related to land acquisition or environment/forest clearance provided that such delay, modification, denial, refusal or revocation was not due to a cause attributable to the Affected Party;
- 19.1.9 Any law and order problems affecting Coal production and transportation of Coal; and/or
- 19.1.10 Failure of supply of power from power supplier(s).

## **19.2 Burden of Proof**

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

## **19.3 Effect of Force Majeure**

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

- (a) Upon the inability of the Affected Party to perform due to the occurrence of a Force Majeure Act, the Affected Party provides a written notice to the other Party of the particulars of the occurrence, including an estimation of its expected duration and probable impact on the performance of its obligations hereunder, and continues to furnish periodic reports with respect thereto, every fifteen (15) days from the date of such notice, during the period of Force Majeure;
- (b) The Affected Party shall use all reasonable efforts to continue to perform its obligations hereunder and to correct or cure as soon as possible the Force Majeure Act;
- (c) The suspension of performance shall be of no greater scope and duration no longer than is reasonably necessitated by the Force Majeure Act;

- (d) The Affected Party shall provide the other Party with prompt written notice of the cessation of the Force Majeure Act giving rise to the excuse from performance and shall thereupon resume normal performance of obligations under this Agreement with utmost promptitude;
- (e) The non-performance of any obligation of either Party that was required to be performed prior to the occurrence of a Force Majeure Act shall not be excused as a result of such subsequent Force Majeure Act;
- (f) The occurrence of a Force Majeure Act shall not relieve either Party from its obligations to make any payment hereunder for performance rendered prior to the occurrence of Force Majeure Act or for partial performance hereunder during period of subsistence Force Majeure Act; and
- (g) The Force Majeure Act shall not relieve either Party from its obligation to comply with Applicable Laws. The Affected Party shall exercise all reasonable efforts to mitigate or limit damages to the other Party.

## **20. SCHEDULES/ANNEXURES**

The Schedules detailed below shall form part of this Agreement:

Schedule I – Annual Contracted Quantity

Schedule II – Quality of Coal

Schedule III – IRLC Stipulations

Schedule IV – Procedure for Third Party Sampling and Analysis

Schedule V – List of Documents

Schedule VI – The Office Memorandum dated August 30, 2019

Schedule VII – The Office Memorandum dated August 5, 2019

Schedule VIII – The Office Memorandum dated August 20, 2019

Schedule IX- Affidavit for taking supply beyond ACQ

Cost Plus Specific: Annexures & Schedules (Applicable for Cost-Plus Source only)

## **21. INFORMATION RIGHTS OF THE SELLER**

- 21.1 The Seller shall have the right, throughout the Term: (i) to call for such information and/or documentation from the Purchaser (including the documentation detailed in Schedule V); and (ii) to obtain and seek information and/or documentation from any governmental/statutory authority, as may be required by the Seller from time to time, *inter alia* for confirming:
  - 21.1.1 the veracity of the Purchaser's claim of being a *bona fide* consumer of the Coal allocated to it in respect of the Specified End Use Plant;
  - 21.1.2 the Purchaser's compliance with the terms and conditions of the LOA, the Eligibility Conditions, the Scheme Document and this Agreement; and/or
  - 21.1.3 any breach, default or violation arising out of or in relation to any valid PPA by the Purchaser.

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

## 22. MISCELLANEOUS

- 22.1 Notice: Any notice to be given under this Agreement shall be in writing and shall be deemed to have been duly and properly served upon the Parties hereto if delivered against acknowledgement, by registered mail with acknowledgement due, by facsimile, by e-mail or by Speed Post, addressed to the signatories or the authorised representatives of the signatories nominated in accordance with the provisions of this Agreement at the following addresses:

1) Seller's address

2) Purchaser's address

Designation:

Designation:

Address:

Address:

Telephone:

Telephone:

Fax:

Fax:

E-mail:

E-mail:

Any notice given by the Purchaser under this Agreement, if delivered otherwise than by e-mail, shall always be backed by an e-mail to the above mentioned e-mail address of the Seller.

Any notice delivered to the Party to whom it is addressed as provided in this Clause 22.1 shall be deemed (unless there is evidence that it has been received earlier) to have been given and received, if:

- (a) hand delivered or sent by registered mail, at the time of acknowledgment of receipt of the same;
  - (b) sent by Speed Post, the date of delivery as recorded in the system of postal service provider; and
  - (c) sent by facsimile or e-mail, when confirmation of its transmission has been recorded by the sender's facsimile machine or the sender's e-mail system, as the case may be.
- 22.2 **Amendment:** This Agreement shall stand amended or modified pursuant to any modifications thereof as may be issued in writing or notified by the Seller as per the provisions of this Agreement, or as may be entered into in writing by the Parties.
- 22.3 **Severability:** In the event any part or provision of this Agreement becomes, for any reason, unenforceable or is declared invalid by a competent court of law or tribunal, the rest of this Agreement shall remain in full force and effect as if the unenforceable or invalid portions had not been part of this Agreement.
- 22.4 **Governing Law and Jurisdiction:** This Agreement and the rights and obligations hereunder shall be interpreted, construed and governed by the laws of India. The courts of *[[•] name of the state where the Seller's headquarters/registered office is*



*located*], India shall have exclusive jurisdiction in respect of all matters arising under or in connection with this Agreement.

- 22.5 **Entirety:** This Agreement, together with the Scheme Document and any documents referred to therein, (i) supersedes any and all oral and written agreements, drafts, undertakings, representations, warranties and understandings heretofore made in relation to the subject matter hereof; and (ii) constitutes the entire agreement and understanding of the Parties relating to the subject matter hereof. It is expressly agreed that this Agreement, together with the Scheme Document and any documents referred to therein, shall supersede all previous discussions and meetings held and correspondence exchanged between the Seller and the Purchaser in respect of this Agreement and any decisions arrived at therein in the past and before coming into force of this Agreement, shall have no relevance with reference to this Agreement and no reference of such discussions or meetings or past correspondence shall be entertained by either Party for the purposes of interpreting or implementing this Agreement. In the event of any conflict between the provisions of this Agreement and the Scheme Document, this Agreement shall prevail.
- 22.6 **Counterpart(s):** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument.
- 22.7 **Change in Constitution:** In the event there is any change in constitution of the Purchaser company due to amalgamation, merger, de-merger, takeover, court order or change in ownership/shareholding pattern etc., in this regard, the Purchaser shall give a written notice to the Seller within thirty (30) days of such change taking effect, along with the supporting documents/information seeking continuation of this Agreement with respect to the said change. Within sixty (60) days thereafter, the Seller shall verify the said documents/information submitted by the Purchaser/resultant company in respect of compliance with in the Office Memorandum of the MOC dated April 7, 2015 and/or any other directive/guideline as may be issued by the MOC in this regard and arrive at a decision. Subject to the Seller's satisfaction in this regard, an amendment agreement/novation agreement shall be entered into between the Seller, the Purchaser and the resultant company, as applicable, failing which the Seller shall have a right to suspend supply of Coal as per Clause 15 of this Agreement and other provisions set out in Clause 15.5 and Clause 18.2 shall accordingly also apply.
- 22.8 **Change in Name:** The Purchaser shall intimate the Seller of any change in its name (on account of reasons other than as set out in Clause 22.7), immediately upon occurrence of name change. The Parties shall thereafter take necessary steps to record such change in the name of the Purchaser in the books and records of the Seller and shall also execute an amendment agreement to this Agreement to record such name change.
- 22.9 **Assignment:** Except as provided in Clause 22.7, the Purchaser shall not, without the express prior written consent of the Seller, assign to any third party this Agreement or any part thereof, or any right, benefit, obligation or interest therein or there under.

- 22.10 **Limitation of Liability:** Except as otherwise expressly agreed in this Agreement, neither Party shall have any right or entitlement to any consequential losses, costs or damages, loss of profit or market, as a result of a breach by the other Party of this Agreement.
- 22.11 **Costs and Expenses:** Except as otherwise expressly provided for in this Agreement, each Party shall pay its own costs and expenses in connection with this Agreement and the transactions contemplated hereby.
- 22.12 **Waiver, Rights and Remedies:** No failure or delay by any Party in exercising any right, power or remedy under this Agreement shall operate as a waiver thereof. No single or partial exercise of any right, power or remedy under this Agreement by any Party shall preclude any further exercise thereof or the exercise of any other right, power or remedy by that Party. Without limiting the foregoing, no waiver by any Party of any breach by any other Party of any provision hereof shall be deemed to be a waiver of any subsequent breach of that or any other provision hereof.
- 22.13 **No Agency:** The Parties agree that nothing in this Agreement shall be in any manner interpreted to constitute an agency for and on behalf of any other Party.
- 22.14 **Electronic Bank Guarantee(e-BG):** In case of requirement of submission of Bank Guarantee for different purposes mentioned in the Scheme/FSA document, the bidder may use the additional facility of e-Bank Guarantee(e-BG) in terms of the SOP and other guidelines notified/updated time to time by CIL/Coal companies

## **23. IMPLEMENTATION OF THE AGREEMENT**

- 23.1 The respective *[[•] designation of the authorized representative]* of the Specified End Use Plant or its nominated representative shall be authorised to act for and on behalf of the Purchaser.
- 23.2 General Manager (Marketing and Sales) or any representative duly authorized by the Seller shall act for and on behalf of the Seller.
- 23.3 Any other nomination of authorised representative shall be informed in writing, by the Seller and the Purchaser, as the case be, within one (1) Month of execution of this Agreement or by giving thirty (30) days' notice.
- 23.4 It shall be the responsibility of the Parties to ensure that any change in the address for service or in the particulars of the designated representative is notified to the other Party and all other concerned, before effecting a change and in any case within two (2) Business Days' of such change.
- 23.5 It shall be responsibility of the buyer not to operationalize linkage quantity beyond its normative eligibility. In case of occurrence of such situation, the bidder shall inform coal company to make part/full FSA quantity effective after expiry of earlier linkage, so that the situation of effective linkage exceeding normative eligibility/requirement can be avoided.

IN WITNESS WHEREOF this Agreement has been executed by the duly authorized representatives of the Parties hereto on the day and year first above written.

**For and on behalf of**  
**([•] name of the Seller)**

**Signature**

Name:  
**(block letters)**  
Designation:  
Address:  
Telephone:  
Fax:  
E-mail:

**1. WITNESS**

- a) Signature
- b) Name  
**(block letters)**
- c) Address and Occupation

**2. WITNESS**

- a) Signature
- b) Name  
**(block letters)**
- c) Address and Occupation

**For and on behalf of**  
**([•] name of the Purchaser)**

**Signature**

Name:  
**(block letters)**  
Designation:  
Address:  
Telephone:  
Fax:  
E-mail:

**1. WITNESS**

- a) Signature
- b) Name  
**(block letters)**
- c) Address and Occupation

**2. WITNESS**

- a) Signature
- b) Name  
**(block letters)**
- c) Address and Occupation

**Schedule I**  
**Annual Contracted Quantity**

S. No.	Name and location of the Specified End Use Plant owned by the Purchaser	Unit-wise Installed Capacity of the Specified End Use Plant (in MW)	Unit-wise balance life* of Specified End Use Plant in Years (with effect from the Execution Date)	Name of Rake Fit Station nearest to the Specified End Use Plant	Annual Contracted Quantity (Tonnes)	Mode(s) of Transport	Source

\*Balance life of each Unit of the Specified End Use Plant as certified by CEA.

## Schedule II Quality of Coal

S. No.	Name and location of the Specified End Use Plant owned by the Purchaser	Top-size of Coal (mm)	Indicative range of Grade(s)**	Notified Price (In Rs. per tonne)	Winning Premium (in Rs. per tonne)

\*\*The actual supply pursuant to this Agreement may vary between and/or beyond the indicative range of Grades and the same shall not entail any quantity adjustment in any manner.

### For cost plus sources:

S. L. No.	FSA Code/number	Term (Yr.)	Mode	Contracted Grade /Base GCV (for Cost Plus)	Size	Annual Contracted Quantity (in tonnes)	Notified Price/Floor Price/Indexed Price, as applicable (in Rs./tonne)	Winning Premium (%)	Delivery Point /Primary source (Coal Mine in case of Road & Railway Siding in case of Rail)	Secondary Source(s) and details	Alternative Source & Details (if any)	Other relevant details, if any.

Per GCV Price of Primary cost plus sources (name of source):.... Rs/kCal(at midpoint of the primary source grade).

For supply of coal from Secondary source, Per GCV price of secondary source (at midpoint of the secondary source grade) should be atleast equal to per GCV price of Primary cost plus source (at midpoint of the primary source grade).

### Yearwise Supply Schedule by Cost Plus source and Alternative Source

Auction Date:.....

FSA execution Date:.....

Lifting commencement from(as per declaration of bidder in Annexure XIV of Scheme):.....

Bidder willing to lift coal from Alternative source, following the operational & commercial terms of this FSA document(yes/no):.....

Cost Plus production/supply plan declared by concerned coal company:

Year	1*	2	3	4	5	6	7	8	...
Able to fulfill ACQ requirement from cost plus Production for(tes)									
Alternative Source	Name of mine	Coal company,	Grade,	Size					
Quantity (adjusted as per Grade considering mid GCV) from Alternative source to be allotted, as per declaration in Annexure XIV									

\*Considering FSA signing year as Year 1

Note: The above schedule is prepared on the basis of lifting commencement plan/declaration given by the successful bidder and other operational factors. As such, the actual production of the cost plus mine may vary from the planned production schedule (maximum by 2 years), pursuant to signing of FSA and in such case(s), supply will be made from Alternative Source to fulfil the requirement of the FSA holder till such time the production from Cost Plus mine will become sufficient to cater linkage requirement or rated capacity of production from the cost plus mine is achieved, as the case may be. In such case, deviation(maximum by 2 years) from supply commitment from cost plus mine with respect to planned supply/production schedule & schedule of lifting provided by the bidder, shall not attract any penal consequence on the Seller(coal company).

### **Schedule III**

#### **IRLC Stipulations**

*(IRLC Stipulations shall be separately intimated by the Seller to the Purchaser in case the Purchaser opts to submit IRLC as per the payment provisions of this Agreement)*

**Schedule IV**  
**Procedure for Third Party Sampling and Analysis**

**1. APPOINTMENT OF THE THIRD PARTY AGENCY**

The Purchaser may select a Third Party Agency (“TPA”) to conduct the sampling and analysis of coal from the list of third parties empaneled by CIL from time to time.

The cost of sampling and analysis by TPA shall be shared on 50:50 basis by the Seller and the Purchaser.

All tools and tackles, plastic bags, sealing compounds and other items required for collection, preparation, storage and analysis of the sample shall be arranged by the TPA.

**2. DETAILED MODALITIES FOR THIRD PARTY SAMPLING**

Modalities for collection, handling, storage, preparation and analysis of TPA samples:

**2.1 General**

- a) In order to commence third party sampling, a tripartite agreement will be signed between the Seller, the Purchaser and the TPA. The format of tripartite agreement will be provided by the Seller.
- b) Samples shall be collected by TPA lot-wise as per Clause 5.6.1.
- c) Samples shall be collected, packed and transported by the TPA in such a manner so as to make these tamper proof to the satisfaction of Seller and Purchaser for which detailed procedure may be worked out at Delivery Point jointly by representatives of the Seller, the Purchaser and the TPA.
- d) Name of the colliery/Siding/Purchaser, date of collection and other identification details (eg. Rake no. in case of rail supply etc.) shall be properly recorded and a code number shall be assigned for each sample for identification and reconciliation of results.
- e) Collection and preparation of samples will be witnessed by the representative of Seller and Purchaser. In case the representative of either party is not present or do not participate, the work will be done by TPA and absence or failure of participation shall not be considered as a ground for disputing the result.
- f) Proper analysis records like print out of the results from automatic Bomb Calorimeter etc. shall be maintained at the Laboratories where the samples are analyzed by the TPA. TPA shall ensure that samples are analysed in NABL accredited labs.



- g) Laboratory samples prepared shall be in the size of 12.5 mm for the Total Moisture and for ash, Equilibrated Moisture and GCV analysis, 212  $\mu$  (micron) IS sieve. Due care shall be taken to ensure that before analysis, in test laboratory, further sieving or pulverizing is not required.
- h) Samples collected at the loading end shall be analyzed as per latest BIS Standards (IS:1350 Part I – 1984 for determination of ash and moisture content and IS:1350 Part-II-1970 for determination of GCV).
- i) The TPA shall communicate the analysis result of the sample as per the stipulated period. The Seller/the Purchaser may raise a dispute, if any, regarding the findings of the TPA within seven (7) days of the submission of the analysis result by the TPA.
- j) Monthly statements containing the details of each and every analysis result finalized during a month based on TPA/referee analysis, as the case may be, shall be prepared indicating *inter alia* the quantity of Coal covered by the respective analysis results. The finalized results shall be applied for billing/commercial purpose. Copy of the monthly statement/report shall be submitted to Seller and Purchaser by the TPA.
- k) The final pulverized sample will be divided into four parts viz. Set – I, Set – II, Set – III and Set – IV as follows:
  - (i) Set – I shall be taken by the TPA to its NABL or equivalent accredited Coal testing Laboratories under ISO/IEC 17025 Accredited Laboratory for analysis of ash, moisture and GCV as per latest BIS Standards (IS: 1350 Part 1-1984) or BIS Standards (IS: 1350 Part-II-1970), as applicable;
  - (ii) Set – II and Set – III of the sample shall be handed over by the TPA to the Seller and the Purchaser respectively for their own analysis; and
  - (iii) Set – IV of the sample called Referee Sample shall be sealed jointly by the TPA and representatives of Seller and Purchaser and shall be kept in the custody of TPA at the Delivery Point under lock and key arrangements. The referee sample shall be retained in sealed condition (duly signed by the representatives of Seller and Purchaser and the TPA) for minimum of thirty (30) days from the date of sample collection, after which it may be destroyed with proper records by TPA. The referee sample shall be packed and transported by the TPA to designated referee lab, in tamper proof manner to the satisfaction of Seller and Purchaser.
- l) Total Moisture determination will be done as per applicable laboratory and remaining tests/analysis (moisture, ash, GCV on Equilibrated Basis) will be done by the TPA as per BIS Standards (IS: 1350 Part 1-1984) or BIS Standards (IS: 1350 Part-II-1970), as applicable.

- m) In the event of any dispute (which shall be raised not later than seven (7) days from the date of receipt of result from the TPA). Referee sample results shall be declared within stipulated/applicable time period from the date on which sample is disputed by Seller or Purchaser. TPA shall follow a foolproof coding and decoding system for referee analysis and also ensure distribution of referee samples amongst designated referee labs in a judicious manner considering the workload, equitable distribution, infrastructure etc. at various labs. The cost incurred for analysis of referee sample including the cost of transportation to the referee laboratory, shall be borne totally by the Party raising the dispute. The findings of such designated referee laboratory(ies) shall be binding on the Purchaser and the Seller for commercial purposes.
- n) If the timelines specified herein for declaration of TPA result or raising dispute are not adhered to, then, such result or dispute, as the case may be, will not be applicable for any purpose, unless the delay is jointly waived in writing by both the Seller and the Purchaser

## 2.2 COLLECTION OF SAMPLES FROM WAGONS (Rail and MGR)

- a) For the purpose of sampling each lot as per Clause 5.6.1(b) of Coal supplied from one Delivery Point shall be considered as a lot.
- b) Each day's supply as per Clause 5.6.1(c) shall be considered as one lot for the purpose of sampling in case of coal supplies by MGR.
- c) Each lot shall be divided into sub-lots in a manner that the quantity of Coal/number of wagons in such sub-lots is more or less equal. The number of sub-lots shall be determined as under:

No. of wagons in the rake	Number of sub lots
Up to 30 wagons	4
>30 wagons up to 50 wagons	5
>50 wagons and above	6

- d) From each of the sub-lots, one (1) wagon each shall be selected as per random table of IS: 436 (Part I/Section I) 1964 for collection of increments.
- e) In each wagon selected for sampling, the sample will be drawn from the spot in a manner so that if in one (1) wagon the sample is collected at one end, in the next wagon the spot will be in the middle of the wagon and in the third wagon at the other end and this sampling procedure will be repeated for subsequent wagons.
- f) Before collecting the samples, the spot will be leveled and at least 25 cm of Coal surface shall be removed/scrapped from the top and the place will be leveled for an area of 50 cm by 50 cm.

- g) About 50 kg of sample shall be collected from each selected wagon in the lot by drawing 10 increments of approx. 5 kg each with the help of shovel/scoop.
- h) Any stone/shale of size more than that indicated in Schedule II shall be removed/discarded, however all stones/shale of size in terms of Schedule II shall form part of the sample collected.
- i) Samples collected from all the selected wagons in a lot shall be mixed separately to form gross sample accordingly.
- j) Item (d) to (g) above shall be applicable for Coal supplied in box wagons as well as BOBR wagons where there is no live overhead traction line.
- k) In case of having live overhead traction line, TPA shall ensure that the power supply in the overhead traction is switched off to facilitate collection of joint samples from BOX/BOBR wagons pursuant to point 2.2d) to point 2.2g) above.

### **2.3 COLLECTION OF SAMPLES OF COAL DESPATCHES BY ROAD**

- a) Sample shall be collected lot-wise as per Clause 5.6.1(c) on daily basis round the clock, depending upon the timings of trucks/vehicles allowed for exist by the Seller at respective dispatch point(s).
- b) The first truck for TPA sampling on a day shall be selected randomly from the first eight trucks placed for loading by the Purchaser. Every eighth (8<sup>th</sup>) truck there after shall be subjected to TPA sampling.
- c) The spot at the top of the truck, will be leveled and at least 25 cm of Coal surface shall be removed/scrapped from the top and the place will be leveled for an area of 50 cm by 50 cm for collection of sample.
- d) About 30 kg of sample shall be collected from each truck by drawing 6 increments of approx. 5 kg each with the help of shovel/scoop.
- e) All the samples collected from every eighth truck shall be mixed together to form a gross sample.
- f) Any stone/shale of size more than that indicated in Schedule II shall be removed/discarded, however all stone/shale of size as mentioned in Schedule II shall form the part of the sample collected.

### **2.4 COLLECTION OF SAMPLES FROM CONVEYOR BELT/ROPEWAYS/PIPELINES**

- a) Samples will be taken lot-wise as per Clause 5.6.1(c).
- b) The sample shall be collected in increments of full cross section and thickness of the stream in one operation in a regular interval of time as

mutually decided by both Seller and Purchaser and lot shall consist of samples so collected during a day i.e. 0.00 Hr to 0.00 Hr. of the following day.

- c) Before collecting the increments, the speed of the conveyer belt/ropeways/pipelines and quantum of material passing a certain point in a given time shall be ascertained so that an appropriate spacing of time between increments may be arranged over the whole of the lot.
- d) In case of supply through conveyor belt, if it is practicable to stop the belt periodically, increment may be collected from the whole cross section of the stream by sweeping the whole of the Coal lying between the sides of a suitable frame placed across the belt. The frame should be inserted in the Coal until it is in contact with the belt across its full width. If it is not possible, then sample is to be collected from falling stream of the belt at a suitable transfer point where coal is being released from one point to other.
- e) Minimum 150 kgs of samples to be collected for daily gross sample.
- f) Any stone/shale of size more than that indicated in Schedule II shall be removed/discarded, however all stone/shale of size as mentioned in Schedule II shall form the part of the sample collected.

## 2.5 COLLECTION OF SAMPLES FROM STOCKPILE

- a) For the purpose of sampling, a lot shall comprise of sub-lots as set out in point 2.5b) below.
- b) The quantity of Coal in the stock pile shall be divided into a suitable manner of sub-lots as specified in the following table:

Approximate quantity of the stock pile (MT)	No. of Sub-lots
Up to 500	2
501 to 1000	3
1001 to 2000	4
2001 to 3000	5
Over 3000	6

- c) The surface of each sub-lot shall be leveled and one point for approximately every 250 MT of material in the sub-lots shall be chosen at random for taking gross sample as per the following procedure:
  - (i) In case height of the stockpile is not more than 1.5 metre, the material shall be collected at every selected point by taking the whole section of Coal from top to bottom over the area of a circle of 30 cm diameter.

- (ii) In case the height of the stock pile is more than 1.5 metre, the sample shall be collected at every selected point by taking the material over an area of a circle of 30 cm diameter and up to a depth of 1.5 metre.
- d) Any stone/shale of size more than that indicated in Schedule II shall be removed/discarded, however all stone/shale of size as mentioned in Schedule II shall form the part of the sample collected.

## **2.6 PREPARATION OF COLLECTED SAMPLES:**

- a) The gross sample collected at the loading end by the TPA will be divided into two portions. One portion (one fourth of the gross sample) called Part – 1 will be used for analysis of Total Moisture and the other portion (three fourth of the gross sample) called Part – 2 for determination of ash, moisture and GCV on Equilibrated Basis.
- b) The Part-2 Sample shall be reduced into laboratory sample either manually or mechanically or a combination of these two methods. The final laboratory samples will be divided into four parts viz. Set – I, Set – II, Set – III and Set – IV as per point 2.1k). Further preparation of sample is to be done as per latest version of IS 436 (Part I-Sec. II)-1976.

## **3. Analysis of sample(s)**

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

## **Schedule V**

### **List of Documents**

#### **For Execution of FSA**

1. Relevant Corporate Authorizations of the Purchaser for execution and performance of his obligations under the FSA such as:
  - (a) Notarised Power of Attorney (PoA); and
  - (b) Certified true copy of Board Resolution or Certified true copy of Shareholders Resolution etc.

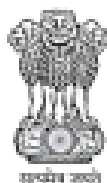
In case the Bidder wants a different person (different from the one who participated in the online auction on behalf of the Bidder) to enter into the FSA, a PoA authorizing such person to enter into the FSA on behalf of the Bidder has to be submitted in the format as provided in **Annexure IV** of the Scheme Document.
2. Self-attested copy of Consent to Operate with respect to the Specified End Use Plant issued under the relevant pollution control laws or copy of application filed for renewal of the same, in case the Consent to Operate has recently expired. Alternatively, a valid no-objection certificate from the relevant State Pollution Control Board may be submitted. Wherever, the relevant State Pollution Control Board does not specify the validity of the certificate issued by them to the Specified End Use Plant, such a certificate will be considered acceptable and an intimation will be sent by relevant Subsidiary to the authority responsible for the issuance of the certificate.
3. Self-attested copy of GSTIN and PAN number of the Purchaser.
4. Certificate of Date of Commercial Operation (COD) issued by CEA.
5. Documentation with respect to existing coal linkages, assurance of linkages and/or allocation of mine.
6. Balance life of each Unit of the Specified End Use Plant as certified by CEA. Copy of Valid PPA document and NOC/certificate issued by CEA ascertaining the validation of PPA/ERC Approval along with the effective period of PPA [ In case PPA is not available at the time of signing of FSA, the NOC of CEA shall be required to be submitted along with PPA document]
7. Certificate of DISCOM (verification certificate) [ In case PPA is not available at the time of signing of FSA, the certificate shall be required to be submitted along with PPA document].
8. Affidavit cum Indemnity covering all formalities/provisions/documentations, as per Annexure-III of Scheme
9. Declaration of the bidder regarding option for availing supply from Alternative source in case of cost-plus source, as per Annexure-XII of Scheme Document.
10. Performance Security/Risk Coverage Financial Guarantee (Applicable: in case of cost-plus source for successful bidders having/submitting PPA other than Long term).

**For lifting of coal**

1. Copy of valid PPA & NOC/certificate issued by CEA ascertaining the validation of PPA/ERC Approval along with the effective period of PPA

*Note: In case the validity of any of the documents submitted at the time of execution of the FSA expires, a valid document is required to be re-submitted at the commencement of lifting of coal*

**Schedule VI**  
**The Office Memorandum dated August 30, 2019**



**No. L-2/2018-IPC(Part-4)**

**Government of India**

**Ministry of Power**

Shram Shakti Bhawan, Rafi Marg,

New Delhi, dated 30.08.2019

**OFFICE MEMORANDUM**

**Sub: Approval of the Government on the recommendations of Group of Ministers (GoM) constituted to examine the specific recommendations of High Level Empowered Committee (HLEC) constituted to address the issues of Stressed Thermal Power Projects.**

The undersigned is directed to refer to para no. 2.1(b) of OM no. L-2/2018-IPC(Part-4) dated 08.03.2019 of this Ministry (copy enclosed) on the 'Approval of the Government on the recommendations of Group of Ministers (GoM) constituted to examine the specific recommendations of High Level Empowered Committee (HLEC) constituted to address the issues of Stressed Thermal Power Projects' which is as follows:

*“2.1(b): A generator which terminates PPA in case of default in payment by the DISCOM, may be allowed to use existing linkage coal for sale of power through short-term PPAs using DEEP portal or power exchange for a period of maximum 2 years or until they find another buyer of power under long/medium term PPA whichever is earlier. Adequate safeguards to be put in place.”*

2. Based on the deliberations held in the meeting chaired by Secretary (Power) on 28.08.2019 with Ministry of Coal, Railway Board, Central Electricity Authority, Coal India Limited and NTPC, it has been decided that the following “Adequate Safeguards” shall be taken by all the concerned:

- i. **The reason for cancellation of the Power Purchase Agreement (PPA) shall be “default in payment” by the DISCOM as per the provisions of the PPA.**
- ii. **A generator which terminates PPA in case of default in payment by the DISCOM, shall not be allowed to sale power bilaterally but only through DEEP portal or power exchange at market determined price for a period of maximum two years.**
- iii. **The existing Letter of Assurance (LOA)/ Fuel supply Agreement (FSA) conditions shall continue for further period of maximum 2 years. If required, necessary modifications shall be made in the existing LOA/FSA.**
- iv. **Linkage after the period of maximum 2 years shall be cancelled in case generator is not able to secure a long/medium term PPA during that period.**



- v. In case of Long term PPA such provision shall not be applicable during the terminal 2 years of PPA.

3. This issues with the approval of the Competent Authority.

Encl: as stated



(S. Majumdar)

Under Secretary to the Govt. of India

Tel: 2335 6938

To,

1. Secretary, Ministry of Coal
2. Chairperson, Central Electricity Authority
3. Chairman, Railway Board
4. CMD, NTPC
5. Chairman, DVC
6. CMD, PFC
7. CMD, REC
8. CMD, PGCIL
9. CMD, CIL
10. Director General, APP

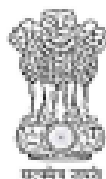
Copy to: Additional Chief Secretaries/Principal Secretary/Secretary (Energy) of State Govt.  
(As per list)

Copy to: Technical Director NIC for posting on website of MoP

**List of Additional Chief Secretary (Energy)/ Principal Secretary (Energy)/ Secretary (Energy) of all States/ UTs**

1. Shri Ajay Jain, Principal Secretary (Power), Room No. 147, Ground floor, 2nd -Block, A.P. Secretariat, Velagapudi, Guntur, Andhra Pradesh-522503
2. Shri P. Ravi Kumar, Addl. Chief Secretary(Energy) Government of Karnataka, Vikasa Soudha, Bangalore-560001
3. Md Nasimuddin, Pr. Secretary(Energy), Government of Tamil Nadu, Fort St. George, Sectt., Chennai-600009
4. Shri. Ajay Mishra, Special Chief Secretary (Energy), R. No. 433, D-Block, 3rdFloor, Telangana Secretariat, Hyderabad-500022
5. Shri NeerajVerma, Principal Secretary (Power) Government of Assam, Assam Sachivalaya, Block-C, 3rd Floor, Dispur-781006
6. Sh. Pratyaya Amrit, Pr. Secretary(Energy), Government of Bihar, 8, Darogaroy Path,Patna-800001
7. Shri Sunil Kumar Gupta, Principal Secretary, D/o Power & NCES, Government of West Bengal, Bidyut Unnayan Bhawan, 5th Floor, 3/C LA Block-III, Saltlake City, Kolkata-700098.
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18. Sh. T.C. Gupta, Additional Chief Secretary(Power), Government of Haryana, Power Department, 37, 7th Floor, Sector-1, Chandigarh-160001
19. Sh. Tarun Sridhar, Add. Chief Secretary(Power), Government of Himachal Pradesh, Shimla-171002
20. Sh. Paul Antony, Addl. Chief Secretary (Power), Government of Kerala, Secretariat, Thiruvananthapuram-695001
21. Sh. R. R. Rashmi, Ch. Secretary (Power), Deptt. of Power, Government of Manipur, Manipur Secretariat, Imphal-795001
22. Sh. M. S. Rao, Pr. Secretary (Energy), Govt. of Meghalaya, Shillong (Mehalaya)
23. Shri H. Lal Engmawia, Secretary, Power & Electricity Deptt., Government of Mizoram, Mizoram Sectt., Axxexe-II, Treasury Square, Aizwal-796001
24. Sh. K. D. Bizo, Secretary(Power), Power Deptt., Government of Nagaland, Nagaland Sectt. Complex, Kohima-797001
25. Sh. A. Venu Prasad, Pr. Chief Secretary (Power), Government of Punjab, Punjab Mini Sectt., R.No.523, Sector-9, Chandigarh
26. Sh. N.T.Bhutia, Secretary (Power), Government of Sikkim, Power Department, Kazi Road, Gangtok-737101
27. Shri Lalit Kumar Gupta, Principal Secretary(Power), Government of Tripura, New Sectt. Complex, Power Department, Agartala-799006
28. Smt. Radhika Jha, Secretary(Power), Government of Uttarakhand, Sectt. Dehradun-248001
29. Sh. Dheeraj Gupta, Principal Secretary (Power), Government of Jammu & Kashmir, Civil Secretariat, Jammu/Srinagar.
30. Shri Sanjeev Khirwar, Secretary (Power), Andaman & Nicobar Admn, Port Blair-744101
31. Shri Anurag Aggarwal, Secretary (Home cum Fin), UT of Chandigarh, 4th floor, UT Secretariat, Sector-9, Chandigarh-160009
32. Sh. S. S. Yadav, Secretary(Power) & Development Commissioner, UTs of Dadra, Nagar Haveli, Daman & Diu, Sectt., Silvassa-396230.
33. Smt. Varsha Joshi, Secretary (Power), Government of NCT of Delhi, L P. Estate, Room no 803 , B wing , Power Deptt., New Delhi-110002
34. Shri Vivek Pandey, Secretary(Energy) & Adviser to the Administrator, Union Territory of Lakshadweep, Lakshadweep
35. Dr. S. Sundaravadivelu, IAS, Secretary (Power), Chief Secretariat, Government of Puducherry, Goubert Avenue, Puducherry-605001



No. L-2/2018-IPC(Part-4)  
Government of India  
Ministry of Power

Shram Shakti Bhawan, Rafi Marg,  
 New Delhi, dated 08.03.2019

OFFICE MEMORANDUM

**Sub:** Approval of the Government on the recommendations of Group of Ministers (GoM) constituted to examine the specific recommendations of High Level Empowered Committee (HLEC) constituted to address the issues of Stressed Thermal Power Projects.

In reference to communication received from Cabinet Secretariat vide D.O. No. CCEA/07/2019(ix) dated 07.03.2019, the undersigned is directed to inform that Government has approved the following:

2. Amendments to be made in the SHAKTI Policy issued vide MoC letter no. 23011/15/2016-CPD/CLD dated 22.05.2017:

- 2.1 The following clause is to be added after clause B(vii) of SHAKTI policy:

*"B(viii): Notwithstanding anything in the foregoing paras, it is further provided as follows:*

- a) *All such power plants including private generators which do not have PPAs, shall be allowed Coal linkage under B(iii) and B(iv) of Shakti Policy for a period of minimum 3 months upto a maximum of 1 year, provided further that the power generated through that linkage is sold in Day Ahead Market (DAM) through power exchanges or in short term through a transparent bidding process through Discovery of Efficient Energy Price (DEEP) portal. A methodology in this regard shall be formulated by Ministry of Power in consultation with Ministry of Coal.*
- b) *A generator which terminates PPA in case of default in payment by the DISCOM, may be allowed to use existing linkage coal for sale of power through short-term PPAs using DEEP portal or power exchange for a period of maximum 2 years or until they find another buyer of power under long/medium term PPA whichever is earlier. Adequate safeguards to be put in place.*
- c) *The provision of para B(v) of Shakti Policy above shall also be applicable in cases where the nodal agency designated by Ministry of Power aggregates/ procures the power requirement for a group of states even without requisition from such states.*
- d) *Central and State generating companies can act as an aggregator of power of such stressed power assets and procure it through transparent bidding process and offer that power to the DISCOM against their existing PPAs to such DISCOMS, till such time their own plants get commissioned. It is proposed that Central and State generating companies may be allowed to use the existing unutilized Bridge Linkages for such*

*stressed power assets provided they meet other parameters of tolling guidelines including competitive bidding.*

- e) In all cases where provisions of B(viii)(a)(b)(c) and (d) above are utilized, net surplus after meeting operating expenses generated in this manner shall be entirely used for servicing debt in the first place. MoP will work out in consultation with DFS – a mechanism to ensure this.”*

2.2 Following is to be added at the end of first para of B(ii) of Shakti Policy, after the words “with PPAs”:

- (i) The power plants which were having valid already concluded Long Term PPA, based on domestic coal on or before 17.05.2017 and who could not participate in the linkage auctions under SHAKTI B(ii) due to any reason, may be allowed to participate in the B(ii) auctions of SHAKTI scheme.*
- (ii) Bidders who have already participated in SHAKTI B(ii) auctions and could not secure linkage for the full ACQ, may obtain the linkage for the balance quantity also by participating in future auctions at a later stage under B(ii) after benchmarking discount.*

2.3 Following is to be added at the end of para B(iii) of Shakti Policy, after the words “auction process”: “Such auctions/ bids shall be held at regular intervals”.

### 3. Other Approvals:

- 3.1 Approval with regard to increase in quantity of coal for e-Auction for power sector: Ministry of Coal may earmark more coal for power sector under special forward e-auction by reducing the equivalent quantity from the spot e auction. The Coal India Ltd. may earmark at least 50 percent of the total coal meant for e-auction (including spot auction and special forward e-auction) for power. The increase in supply of coal for forward e-auction will be in addition to regular requirement of linkage coal for the power sector and the requirements of other sectors.
- 3.2 Approval with regard to non-lapsing of short supplies of coal: If the power plant fulfills its obligations limited to making advance payments as due to coal companies, payments to Indian Railways as due and making arrangements for unloading of the rakes at its plants, then, any short supply for that month of coal, either on account of short supply of coal in the coal company or on account of unavailability of rakes, may not lapse and be carried over (without current limitations of 5% or same quarter) to the subsequent months upto a maximum period of 3 months. In this regard, a suitable methodology shall be evolved for implementation.
- 3.3 Approval with regard to ACQ based on efficiency: ACQ per MW entitlements for all thermal power plants, irrespective of their age or technical parameters, shall be calculated based on Normative Station Heat Rate with upper ceiling of 2600 kcal/kwh.
- 3.4 Approval with regard to mandatory payment of Late Payment Surcharge (LPS): Ministry of Power may engage with the Regulators to ensure that LPS is paid in case of delay in payment by DISCOMs as per the provisions of PPA. Appropriate Regulatory Commissions may ensure compliance.

- 3.5 Approval with regard to cancellation of PPA/FSA/Transmission connectivity/EC/FC/Water etc.: DISCOMS, CIL, PGCIL, Ministry of Environment and Forests, and appropriate Governments may be advised not to cancel PPA, FSA, transmission connectivity, EC/FC, and all other approvals including water, even if the project is referred to NCLT or is acquired by another entity subject to the provisions of the contracted PPA and/ or applicable rules. All clearances may be linked to the plant and not to the promoter.
- 3.6 Approval with regard to cancellation of PPA for non-compliance of COD: If there is any delay in the commissioning of a project for reasons not attributable to the generator, the DISCOMS may be advised not to cancel those PPAs. The PPA may be kept on hold for a certain period, so as to enable removal of impediments in the execution of the project. In the meantime, power can be procured through the mechanism suggested in previous proposals.
4. It is requested to take necessary action to implement the above decisions of the Government. Action taken may be intimated to this Ministry.

Yours faithfully,



(S. Majumdar)

Under Secretary to the Govt. of India  
Tel: 2335 6938

To,

1. Secretary, Ministry of Coal
2. Secretary, Dept. of Financial services, Ministry of Finance
3. Secretary, Ministry of Environment, Forestry and Climate Change
4. Secretary, Ministry of Corporate Affairs
5. Chairperson, Central Electricity Authority
6. Chairman, Railway Board
7. Secretary, Central Electricity Regulatory Commission
8. CE, R&R (Ministry of Power)
9. CMD, NTPC
10. Chairman, DVC
11. CMD, PFC
12. CMD, REC
13. CMD, PGCIL
14. CMD, CIL

Copy to: Additional Chief Secretaries/Principal Secretary/Secretary (Energy) of State Govt. (As per list)

Copy to: Technical Director NIC for posting on website of MoP

Additional Chief Secretaries/Principal Secretary/Secretary(Energy) of State Govt.

1. Shri Ajay Jain, Principal Secretary (Power), Room No. 147, Ground floor, 2nd - Block, A.P. Secretariat, Velagapudi, Guntur, Andhra Pradesh-522503
2. Shri P. Ravi Kumar, Addl. Chief Secretary(Energy) Government of Karnataka, Vikasa Soudha, Bangalore-560001
3. Md Nasimuddin, Pr. Secretary(Energy), Government of Tamil Nadu, Fort St. George, Sectt., Chennai-600009
4. Shri. Ajay Mishra, Special Chief Secretary (Energy), R. No. 433, D-Block, 3<sup>rd</sup>Floor, Telangana Secretariat, Hyderabad-500022
5. Shri Neera/Verma, Principal Secretary (Power) Government of Assam, Assam Sachivalaya, Block-C, 3<sup>rd</sup> Floor, Dispur-781006
6. Sh. Pratyaya Amrit, Pr. Secretary(Energy), Government of Bihar, 8, Darogaroy Path, Patna-800001
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14. Sh. Hemant Sharma, Commissioner -cum- Secretary (Energy), Department of Energy Government of Odisha, Bhubaneswar-751001
15. Shri Naresh Pal Gangwar, Pr. Secretay (Energy), Government of Rajasthan, R.No.104, VidyutBhawan, Janpath, Jaipur-302005

**Schedule VII**  
**The Office Memorandum dated August 5, 2019**



No. L-2/2018-IPC(Part-4)  
Government of India  
Ministry of Power

Shram Shakti Bhawan, Rafi Marg,  
New Delhi, dated 05.08.2019

**OFFICE MEMORANDUM**

**Sub: Approval of the Government on the recommendations of Group of Ministers (GoM) constituted to examine the specific recommendations of High Level Empowered Committee (HLEC) constituted to address the issues of Stressed Thermal Power Projects.**

The undersigned is directed to refer to para no. 2.1(e) of OM no. L-2/2018-IPC(Part-4) dated 08.03.2019 of this Ministry (copy enclosed) on the 'Approval of the Government on the recommendations of Group of Ministers (GoM) constituted to examine the specific recommendations of High Level Empowered Committee (HLEC) constituted to address the issues of Stressed Thermal Power Projects' which is as follows:

*"2.1(e): In all cases where provisions of B(viii)(a)(b)(c) and (d) above are utilized, net surplus after meeting operating expenses generated in this manner shall be entirely used for servicing debt in the first place. MoP will work out in consultation with DFS – a mechanism to ensure this."*

2. The issue has been examined in consultation with Department of Financial Services. In this regard, the following mechanism has to be followed to ensure that net surplus generated after meeting operating expenses are entirely used for servicing debt in the first place:

- (i) In case the Developer uses linkage coal under B(viii) (a), (b), (c) and (d) of the amended SHAKTI Policy, Trust and Retention Account (TRA) mechanism must be put in place, if it is not there already. All revenues generated shall be deposited into the TRA. The TRA shall be governed by extant rules and regulations in place.
- (ii) Generally, the lead Banker shall act as TRA agent. However, in case Non-Banking Finance Company like PFC or REC is the lead financier, any bank, which is one of the lenders, can be assigned the role of TRA agent.
- (iii) All financial costs, whether for existing or the top up loan (for term loan, working capital and non-funded financial facilities etc.) to be allowed on actual basis subject to Para (v) below.
- (iv) Lenders shall appoint Cash Flow Monitoring Agency (CFMA) to verify cash flow and actual costs incurred. Lenders' Financial Adviser (LFA) and Lenders' Engineer / Project Manager may be appointed as CFMA.
- (v) The priority (in the decreasing order) for allowing the expenditure from the revenue deposited in the TRA shall be as under:
  - a) **Statutory Payments:** All payments towards statutory dues (includes taxes, duties paid to Government and other Statutory Authorities).



- b) **Fuel Cost:** All payments towards fuel (coal and secondary oil) cost.
- c) **Transmission Expenses:** All payments for transmission expenses upto the delivery point.
- d) **Operation & Maintenance Expenses:** All payments for operation & maintenance expenses of the power plant. Actual O&M expenses duly certified by CFMA shall be considered subject to the ceiling of prescribed CERC Norms for O&M expenses per MW.
- e) **Interest Payments to Lenders:** All interest payments to the Banks/Financial Institutions for lending to the Power Plant.
- f) **Principal Payments to Lenders:** All principal repayments to the Banks/Financial Institutions.

In the event, any amount is left in the Trust and Retention Account after making all the above mentioned payments, the same shall be retained by the Developer.

3. This issues with the approval of the Competent Authority.

Encl: as stated



(S. Majumdar)

Under Secretary to the Govt. of India

Tel: 2335 6938

To,

1. Secretary, Ministry of Coal
2. Secretary, Dept. of Financial services, Ministry of Finance
3. Chairperson, Central Electricity Authority
4. Secretary, Central Electricity Regulatory Commission
5. CE, R&R (Ministry of Power)
6. CMD, NTPC
7. Chairman, DVC
8. CMD, PFC
9. CMD, REC
10. CMD, PGCIL
11. CMD, CIL
12. Director General, APP

**Copy to:** Additional Chief Secretaries/Principal Secretary/Secretary (Energy) of State Govt.  
(As per list)

**Copy to:** Technical Director NIC for posting on website of MoP

**List of Additional Chief Secretary (Energy)/ Principal Secretary (Energy)/ Secretary (Energy) of all States/ UTs**

1. Sh. Srikant Nagulapalli, Secretary (Power), Room No. 147, Ground floor, 2nd -Block, A.P. Secretariat, Velagapudi, Guntur, Andhra Pradesh-522503
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सत्यमेव जयते

No. L-2/2018-IPC(Part-4)

Government of India

Ministry of Power

Shram Shakti Bhawan, Rafi Marg,  
New Delhi, dated 08.03.2019

**OFFICE MEMORANDUM**

**Sub:** Approval of the Government on the recommendations of Group of Ministers (GoM) constituted to examine the specific recommendations of High Level Empowered Committee (HLEC) constituted to address the issues of Stressed Thermal Power Projects.

In reference to communication received from Cabinet Secretariat vide D.O. No. CCEA/07/2019(ix) dated 07.03.2019, the undersigned is directed to inform that Government has approved the following:

2. Amendments to be made in the SHAKTI Policy issued vide MoC letter no. 23011/15/2016-CPD/CLD dated 22.05.2017:

- 2.1 The following clause is to be added after clause B(vii) of SHAKTI policy:

*"B(viii): Notwithstanding anything in the foregoing paras, it is further provided as follows:*

- a) *All such power plants including private generators which do not have PPAs, shall be allowed Coal linkage under B(iii) and B(iv) of Shakti Policy for a period of minimum 3 months upto a maximum of 1 year, provided further that the power generated through that linkage is sold in Day Ahead Market (DAM) through power exchanges or in short term through a transparent bidding process through Discovery of Efficient Energy Price (DEEP) portal. A methodology in this regard shall be formulated by Ministry of Power in consultation with Ministry of Coal.*
- b) *A generator which terminates PPA in case of default in payment by the DISCOM, may be allowed to use existing linkage coal for sale of power through short-term PPAs using DEEP portal or power exchange for a period of maximum 2 years or until they find another buyer of power under long/medium term PPA whichever is earlier. Adequate safeguards to be put in place.*
- c) *The provision of para B(v) of Shakti Policy above shall also be applicable in cases where the nodal agency designated by Ministry of Power aggregates/ procures the power requirement for a group of states even without requisition from such states.*
- d) *Central and State generating companies can act as an aggregator of power of such stressed power assets and procure it through transparent bidding process and offer that power to the DISCOM against their existing PPAs to such DISCOMS, till such time their own plants get commissioned. It is proposed that Central and State generating companies may be allowed to use the existing unutilized Bridge Linkages for such*

*stressed power assets provided they meet other parameters of tolling guidelines including competitive bidding.*

- e) *In all cases where provisions of B(vii)(a)(b)(c) and (d) above are utilized, net surplus after meeting operating expenses generated in this manner shall be entirely used for servicing debt in the first place. MoP will work out in consultation with DFS – a mechanism to ensure this."*

2.2 Following is to be added at the end of first para of B(ii) of Shakti Policy, after the words "with PPAs":

- (i) *The power plants which were having valid already concluded Long Term PPA, based on domestic coal on or before 17.05.2017 and who could not participate in the linkage auctions under SHAKTI B(ii) due to any reason, may be allowed to participate in the B(ii) auctions of SHAKTI scheme.*
- (ii) *Bidders who have already participated in SHAKTI B(ii) auctions and could not secure linkage for the full ACQ, may obtain the linkage for the balance quantity also by participating in future auctions at a later stage under B(ii) after benchmarking discount.*

2.3 Following is to be added at the end of para B(iii) of Shakti Policy, after the words "auction process": *"Such auctions/ bids shall be held at regular intervals".*

### 3. Other Approvals:

3.1 **Approval with regard to increase in quantity of coal for e-Auction for power sector:** Ministry of Coal may earmark more coal for power sector under special forward e-auction by reducing the equivalent quantity from the spot e auction. The Coal India Ltd. may earmark at least 50 percent of the total coal meant for e-auction (including spot auction and special forward e-auction) for power. The increase in supply of coal for forward e-auction will be in addition to regular requirement of linkage coal for the power sector and the requirements of other sectors.

3.2 **Approval with regard to non-lapsing of short supplies of coal:** If the power plant fulfills its obligations limited to making advance payments as due to coal companies, payments to Indian Railways as due and making arrangements for unloading of the rakes at its plants, then, any short supply for that month of coal, either on account of short supply of coal in the coal company or on account of unavailability of rakes, may not lapse and be carried over (without current limitations of 5% or same quarter) to the subsequent months upto a maximum period of 3 months. In this regard, a suitable methodology shall be evolved for implementation.

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3.4 **Approval with regard to mandatory payment of Late Payment Surcharge (LPS):** Ministry of Power may engage with the Regulators to ensure that LPS is paid in case of delay in payment by DISCOMs as per the provisions of PPA. Appropriate Regulatory Commissions may ensure compliance.

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4. It is requested to take necessary action to implement the above decisions of the Government. Action taken may be intimated to this Ministry.

Yours faithfully,



(S. Majumdar)

Under Secretary to the Govt. of India

Tel: 2335 6938

To,

1. Secretary, Ministry of Coal
2. Secretary, Dept. of Financial services, Ministry of Finance
3. Secretary, Ministry of Environment, Forestry and Climate Change
4. Secretary, Ministry of Corporate Affairs
5. Chairperson, Central Electricity Authority
6. Chairman, Railway Board
7. Secretary, Central Electricity Regulatory Commission
8. CE, R&R (Ministry of Power)
9. CMD, NTPC
10. Chairman, DVC
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12. CMD, REC
13. CMD, PGCIL
14. CMD, CIL

Copy to: Additional Chief Secretaries/Principal Secretary/Secretary (Energy) of State Govt. (As per list)

**Additional Chief Secretaries/Principal Secretary/Secretary(Energy) of State Govt.**

1. Shri Ajay Jain, Principal Secretary (Power), Room No. 147, Ground floor, 2nd - Block, A.P. Secretariat, Velagapudi, Guntur, Andhra Pradesh-522503
2. Shri P. Ravi Kumar, Addl. Chief Secretary(Energy) Government of Karnataka, Vikasa Soudha, Bangalore-560001
3. Md Nasimuddin, Pr. Secretary(Energy), Government of Tamil Nadu, Fort St. George, Sectt., Chennai-600009
4. Shri. Ajay Mishra, Special Chief Secretary (Energy), R. No. 433, D-Block, 3<sup>rd</sup>Floor, Telangana Secretariat, Hyderabad-500022
5. Shri NeerajVerma, Principal Secretary (Power) Government of Assam, Assam Sachivalaya, Block-C, 3<sup>rd</sup> Floor, Dispur-781006
6. Sh. Pratyaya Amrit, Pr. Secretary(Energy), Government of Bihar, 8, Darogaroy Path, Patna-800001
7. Shri Sunil Kumar Gupta, Principal Secretary, D/o Power & NCES, Government of West Bengal, Bidyut Unnayan Bhawan, 5<sup>th</sup> Floor, 3/C LA Block-III, Saltlake City, Kolkata- 700098.
8. Sh. Alok Kumar, Principal Secretary (Power), Government of Uttar Pradesh, Babu Bhawan, R. No. 104, Lucknow-226001
9. Sh. Arvind Singh, Principal Secretary (Energy), Government of Maharashtra, Mantralaya, Madam Cama Road, Hutatma Rajguru Square, Mumbai-400032
10. Shri Gaurav Dwivedi, Secretary (Energy), Govt. of Chhattisgarh, Energy Department, R.No.S-2/10, Mahanadi Bhawan, Mantralaya, Naya Raipur, Chhattisgarh
11. Sh. Pankaj Joshi, Principal Secretary (Energy), Energy Deptt, Block-5, 5<sup>th</sup>Floor, Government of Gujarat, Sachivalaya, Gandhinagar-382010
12. Smt Vandana Dadel, Secretary(Energy) Government of Jharkhand, MDI Campus, Project Bhawan, Dhruwa, Ranchi-834004
13. Sh. I.C.P. Keshari, Additional Chief Secretary (Energy), Government of Madhya Pradesh, Mantralaya, Room No. 312, Bhopal-462004
14. Sh. Hemant Sharma, Commissioner –cum- Secretary (Energy), Department of Energy Government of Odisha, Bhubaneswar-751001
15. Shri Naresh Pal Gangwar, Pr. Secretay (Energy), Government of Rajasthan, R.No.104, VidyutBhawan, Janpath, Jaipur-302005

**Schedule VIII**  
**The Office Memorandum dated August 20, 2019**



No. L-2/2018-IPC(Part-6)  
Government of India  
Ministry of Power

Shram Shakti Bhawan, Rafi Marg,  
New Delhi, dated 20.08.2019

**CORRIGENDUM**

**Sub: Approval of the Government on the recommendations of Group of Ministers (GoM) constituted to examine the specific recommendations of High Level Empowered Committee (HLEC) constituted to address the issues of Stressed Thermal Power Projects.**

The undersigned is directed to refer to this Ministry's OM of even No. dated 05.08.2019 (copy enclosed) with respect to the mechanism to be followed to ensure that net surplus generated after meeting operating expenses are entirely used for servicing debt in the first place.

2. In this regard, Para 2(v)(a) of OM dated 05.08.2019 is modified as under:

**"Statutory Payments:** All payments towards statutory dues (includes taxes, duties paid to Government and other Statutory Authorities)", may be read as:

**"Statutory Payments:** All payments towards statutory dues (includes taxes, duties paid to Government and other Statutory Authorities) arising from the incremental generation from this scheme."

3. This issues with the approval of the Competent Authority.

**Encl: as stated**

(S. Majumdar)

Under Secretary to the Govt. of India  
Tel: 2335 6938

To,

1. Secretary, Ministry of Coal
2. Secretary, Dept. of Financial services, Ministry of Finance
3. Chairperson, Central Electricity Authority
4. Secretary, Central Electricity Regulatory Commission
5. CE, R&R (Ministry of Power)
6. CMD, NTPC
7. Chairman, DVC
8. CMD, PFC
9. CMD, REC
10. CMD, PGCIL
11. CMD, CIL
12. Director General, APP

**Copy to:** Additional Chief Secretaries/Principal Secretary/Secretary (Energy) of State Govt.  
(As per list)

**Copy to:** Technical Director NIC for posting on website of MoP



**List of Additional Chief Secretary (Energy)/ Principal Secretary (Energy)/ Secretary (Energy) of all States/ UTs**

1. Sh. Srikant Nagulapalli, Secretary (Power), Room No. 147, Ground floor, 2nd -Block, A.P. Secretariat, Velagapudi, Guntur, Andhra Pradesh-522503
2. Sh. Mahendra Jain, Addl. Chief Secretary (Energy), Government of Karnataka, Vikasasoudha, Bangalore-560001
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11. Sh. Pankaj Joshi, Principal Secretary (Energy), Energy Deptt, Block-5, 5thFloor, Government of Gujarat, Sachivalaya, Gandhinagar-382010
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16. Shri KalingTayeng, Commissioner cum Secretary (Power), Government of Arunachal Pradesh, Civil Secretariat, Block-2, 3rd Floor, Room No. 316, Itanagar-791111.
17. Sh. Sanjay Goel, Secretary(Power), Government of Goa, Secretariat, Porvorim –Goa, Porvorim.
18. Sh. T.C. Gupta, Additional Chief Secretary(Power), Government of Haryana, Power Department, 37, 7th Floor, Sector-1, Chandigarh-160001
19. Sh. Tarun Sridhar, Add. Chief Secretary(Power), Government of Himachal Pradesh, Shimla-171002
20. Sh. Paul Antony, Addl. Chief Secretary (Power), Government of Kerala, Secretariat, Thiruvananthapuram-695001
21. Sh. R. R. Rashmi, Ch. Secretary (Power), Deptt. of Power, Government of Manipur, Manipur Secretariat,Imphal-795001
22. Sh. M. S. Rao, Pr. Secretary (Energy), Govt. of Meghalaya, Shillong (Mehalaya)
23. Shri H. Lal Engmawia, Secretary, Power & Electricity Deptt., Government of Mizoram, Mizoram Sectt., Axxexe-II, Treasury Square, Aizwal-796001
24. Sh. K. D. Bizo, Secretary(Power), Power Deptt., Government of Nagaland, Nagaland Sectt. Complex, Kohima-797001
25. Sh. A. Venu Prasad, Pr. Chief Secretary (Power), Government of Punjab, Punjab Mini Sectt., R.No.523, Sector-9,Chandigarh

26. Sh. N.T.Bhutia, Secretary (Power), Government of Sikkim, Power Department, Kazi Road, Gangtok-737101
27. Shri Lalit Kumar Gupta, Principal Secretary(Power), Government of Tripura, New Sectt. Complex, Power Department, Agartala-799006
28. Smt. Radhika Jha, Secretary(Power), Government of Uttarakhand, Sectt. Dehradun-248001
29. Sh. Dheeraj Gupta, Principal Secretary (Power), Government of Jammu & Kashmir, Civil Secretariat, Jammu/Srinagar.
30. Shri Sanjeev Khirwar, Secretary (Power), Andaman & Nicobar Admn, Port Blair-744101
31. Shri Anurag Aggarwal, Secretary (Home cum Fin), UT of Chandigarh, 4th floor, UT Secretariat, Sector-9, Chandigarh-160009
32. Sh. S. S. Yadav, Secretary(Power) & Development Commissioner, UTs of Dadra, Nagar Haveli, Daman & Diu, Sectt., Silvassa-396230.
33. Smt. Varsha Joshi, Secretary (Power), Government of NCT of Delhi, I. P. Estate, Room no 803 , B wing , Power Dept., New Delhi-110002
34. Shri Vivek Pandey, Secretary(Energy) & Adviser to the Administrator, Union Territory of Lakshadweep, Lakshadweep
35. Dr. S. Sundaravadivelu, IAS, Secretary (Power), Chief Secretariat, Government of Puducherry, Goubert Avenue, Puducherry-605001



सत्यमेव जयते

No. L-2/2018-IPC(Part-4)

Government of India

Ministry of Power

Shram Shakti Bhawan, Rafi Marg,  
New Delhi, dated 05.08.2019

**OFFICE MEMORANDUM**

Sub: Approval of the Government on the recommendations of Group of Ministers (GoM) constituted to examine the specific recommendations of High Level Empowered Committee (HLEC) constituted to address the issues of Stressed Thermal Power Projects.

The undersigned is directed to refer to para no. 2.1(e) of OM no. L-2/2018-IPC(Part-4) dated 08.03.2019 of this Ministry (copy enclosed) on the 'Approval of the Government on the recommendations of Group of Ministers (GoM) constituted to examine the specific recommendations of High Level Empowered Committee (HLEC) constituted to address the issues of Stressed Thermal Power Projects' which is as follows:

*"2.1(e): In all cases where provisions of B(viii)(a)(b)(c) and (d) above are utilized, net surplus after meeting operating expenses generated in this manner shall be entirely used for servicing debt in the first place. MoP will work out in consultation with DFS – a mechanism to ensure this."*

2. The issue has been examined in consultation with Department of Financial Services. In this regard, the following mechanism has to be followed to ensure that net surplus generated after meeting operating expenses are entirely used for servicing debt in the first place:

- (i) In case the Developer uses linkage coal under B(viii) (a), (b), (c) and (d) of the amended SHAKTI Policy, Trust and Retention Account (TRA) mechanism must be put in place, if it is not there already. All revenues generated shall be deposited into the TRA. The TRA shall be governed by extant rules and regulations in place.
- (ii) Generally, the lead Banker shall act as TRA agent. However, in case Non-Banking Finance Company like PFC or REC is the lead financier, any bank, which is one of the lenders, can be assigned the role of TRA agent.
- (iii) All financial costs, whether for existing or the top up loan (for term loan, working capital and non-funded financial facilities etc.) to be allowed on actual basis subject to Para (v) below.
- (iv) Lenders shall appoint Cash Flow Monitoring Agency (CFMA) to verify cash flow and actual costs incurred. Lenders' Financial Adviser (LFA) and Lenders' Engineer / Project Manager may be appointed as CFMA.
- (v) The priority (in the decreasing order) for allowing the expenditure from the revenue deposited in the TRA shall be as under:
  - a) **Statutory Payments:** All payments towards statutory dues (includes taxes, duties paid to Government and other Statutory Authorities).

- b) **Fuel Cost:** All payments towards fuel (coal and secondary oil) cost.
- c) **Transmission Expenses:** All payments for transmission expenses upto the delivery point.
- d) **Operation & Maintenance Expenses:** All payments for operation & maintenance expenses of the power plant. Actual O&M expenses duly certified by CFMA shall be considered subject to the ceiling of prescribed CERC Norms for O&M expenses per MW.
- e) **Interest Payments to Lenders:** All interest payments to the Banks/Financial Institutions for lending to the Power Plant.
- f) **Principal Payments to Lenders:** All principal repayments to the Banks/Financial Institutions.

In the event, any amount is left in the Trust and Retention Account after making all the above mentioned payments, the same shall be retained by the Developer.

3. This issues with the approval of the Competent Authority.

Encl: as stated



(S. Majumdar)

Under Secretary to the Govt. of India

Tel: 2335 6938

To,

1. Secretary, Ministry of Coal
2. Secretary, Dept. of Financial services, Ministry of Finance
3. Chairperson, Central Electricity Authority
4. Secretary, Central Electricity Regulatory Commission
5. CE, R&R (Ministry of Power)
6. CMD, NTPC
7. Chairman, DVC
8. CMD, PFC
9. CMD, REC
10. CMD, PGCIL
11. CMD, CIL
12. Director General, APP

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23. Shri H. Lal Engmawia, Secretary, Power & Electricity Deptt., Government of Mizoram, Mizoram Sectt., Axxex-II, Treasury Square, Aizwal-796001
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29. Sh. Dheeraj Gupta, Principal Secretary (Power), Government of Jammu & Kashmir, Civil Secretariat, Jammu/Srinagar.
30. Shri Sanjeev Khirwar, Secretary (Power), Andaman & Nicobar Admn, Port Blair-744101
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33. Smt. Varsha Joshi, Secretary (Power), Government of NCT of Delhi, I. P. Estate, Room no 803 , B wing , Power Deptt., New Delhi-110002
34. Shri Vivek Pandey, Secretary(Energy) & Adviser to the Administrator, Union Territory of Lakshadweep, Lakshadweep
35. Dr. S. Sundaravadivelu, IAS, Secretary (Power), Chief Secretariat, Government of Puducherry, Goubert Avenue, Puducherry-605001

**Schedule IX**  
**Affidavit for taking supply beyond ACQ**

**AFFIDAVIT**

**(On Non-Judicial Stamp Paper of requisite value)**

I, ....., Proprietor/Director/Partner/Constituted Attorney/Accredited Representative of The Purchaser M/S ....., solemnly declare that:

1. We affirm that our Power Plant..... executed a Fuel Supply Agreement with M/s ..... (coal company) on.....
2. We affirm that as on date we have furnished long/medium term PPA entered with DISCOMS/ PTCs etc..... (names) totaling to the extent of ..... % of the generating capacity of ..... MW.
3. We affirm that the present ACQ under the FSA which is..... Million tonnes is not adequate to generate electricity as per requirement under the long/medium term PPA.
4. We affirm that we are willing to take coal beyond ACQ of ..... Million tonnes.
5. We affirm that the Power Generated through the additional coal supplied under the FSA beyond the level of present ACQ as mentioned at clause 4 above shall only be used to be supplied through the existing long/medium term PPA.
6. We affirm that in case at any stage it has been found that the coal supplied under this FSA has not been used for generating power for supply to the DISCOMs under the long/medium term PPA we shall be liable for actions as per relevant provision of the FSA/Scheme and any other action as may be taken by any other authority including the State/Central power regulator.

Signature of the Purchaser/Representative of the Purchaser  
(Deponent)

Dated.....

**VERIFICATION**

I, ....., the above named deponent do hereby verify that the contents of the paragraph 1 to 6 are true to my knowledge, nothing has been concealed and no part of it is false. Signed at .....(Place) on .....20...

Deponent

**Seal & Sign of Magistrate**

.....

## Annexure I– Format of Performance Security

(Applicable for Cost Plus Source-for successful bidders having/submitting PPA other than Long term)

[Reference number of the bank]

[date]

To

[insert name and address of the relevant Subsidiary]

### WHEREAS

- A. **[Name of the Successful Bidder]**, a company incorporated in India under the Companies Act, [1956/2013] with corporate identity number [CIN of the Successful Bidder], whose registered office is at [address of registered office], India and principal place of business is at [address of principal place of business, if different from registered office] **OR** **[Name of the Individual]**, an individual residing at [address] and carrying on a sole proprietorship business under the name style of, **[Name of Successful Bidder]** at [address of sole proprietorship], **OR** **[Name of the Successful Bidder]**, a limited liability partnership incorporated under the Limited Liability Partnership Act, 2008, with its registered office at [address of registered office] **OR** **[Name of the Individual]**, an individual residing at [address], **[Name of the Individual]**, an individual residing at [address] and **[Name of the Individual]**, an individual residing at [address] all carrying on a partnership business under the name style of **[Name of the Successful Bidder]** registered under [name of Act under which the firm is registered] and with its principal place of business at [address of principal place of business] **OR** **[Name of the Successful Bidder]**, a [insert legal nature of the Successful Bidder (e.g. trust, society etc.)] incorporated under the [insert statute under which the Successful Bidder is incorporated] with its registered office/ principal place of business/ office at [address of registered office/ principal place of business/office] (hereinafter referred to as the “**Purchaser**”) is required to provide an unconditional and irrevocable bank guarantee for an amount equal to INR [figures] (Indian Rupees [words]) as a performance security valid until [date of expiry of performance bank guarantee] (“**Expiry Date**”).
- B. The Performance Security is required to be provided to **[insert name of the relevant Subsidiary]** (the “**Seller**”) for discharge of certain obligations of the Purchaser under the Scheme Document dated, [date] with respect to Auction of Coal Linkages in the [insert SHAKTI B(iii) Round-8] and the fuel supply agreement to be executed between the Seller and the Purchaser (hereinafter collectively referred to as the “**Agreement**”).



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

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

1. The Bank for the purpose hereof unconditionally and irrevocably undertakes to pay to the Seller without any demur, reservation, caveat, protest or recourse, immediately on receipt of first written demand from the Seller, a sum or sums (by way of one or more claims) not exceeding the Guarantee Amount in the aggregate without the Seller needing to prove or to show to the Bank grounds or reasons for such demand for the sum specified therein and notwithstanding any dispute or difference between the Seller and Purchaser on any matter whatsoever. The Bank undertakes to pay to the Seller any money so demanded notwithstanding any dispute or disputes raised by the Purchaser in any suit or proceeding pending before any court or tribunal relating thereto the Bank’s liability under this present being absolute and unequivocal.
2. The Bank acknowledges that any such demand by the Seller of the amounts payable by the Bank to the Seller shall be final, binding and conclusive evidence in respect of the amounts payable by Purchaser to the Seller under the Agreement.
3. The Bank hereby waives the necessity for the Seller from demanding the aforesaid amount or any part thereof from the Purchaser and also waives any right that the Bank may have of first requiring the Seller to pursue its legal remedies against the Purchaser, before presenting any written demand to the Bank for payment under this Guarantee.
4. The Bank further unconditionally agrees with the Seller that the Seller shall be at liberty, without the Bank’s consent and without affecting in any manner the Bank’s obligation under this Guarantee, from time to time to:  
(i) vary and/ or modify and of the terms and conditions of the Agreement;  
(ii) extend and/ or postpone the time for performance of the obligations of the Purchaser under the Agreement, or (iii) forbear or enforce any of the rights exercisable by the Seller against the Purchaser under the terms and conditions of the Agreement and the Bank shall not be relieved from its liability by reason of any such act or omission on the part of the Seller or any indulgence by the Seller to the Purchaser or other thing whatsoever which under the law relating to sureties would, but for this provision, have the effect of relieving the Bank of its obligations under this Guarantee.
5. Any payment made hereunder shall be made free and clear of and without deduction for, or on account of, any present or future taxes, levies, imposts, duties, charges, fees, commissions, deductions or withholdings of any nature whatsoever.

6. The Bank agrees that Seller at its option shall be entitled to enforce this Guarantee against the Bank, as a principal debtor in the first instance without proceeding at the first instance against the Purchaser.
  7. The Bank further agrees that the Guarantee herein contained shall remain in full force and effect during the period that specified in the Agreement and that it shall continue to be enforceable till all the obligations of the Purchaser under or by virtue of the said Agreement with respect to the Performance Security have been fully paid and its claims satisfied or discharged or till the Seller certifies that the terms and conditions of the Agreement with respect to the Performance Security have been fully and properly carried out by the Purchaser and accordingly discharges this Guarantee. Notwithstanding anything contained herein, unless a demand or claim under this Guarantee is made on the Bank in writing on or before the Expiry Date the Bank shall be discharged from all liability under this Guarantee thereafter.
  8. The payment so made by the Bank under this Guarantee shall be a valid discharge of Bank's liability for payment thereunder and the Seller shall have no claim against the Bank for making such payment.
  9. This Guarantee is subject to the laws of India. Any suit, action, or other proceedings arising out of this Guarantee or the subject matter hereof shall be subject to the exclusive jurisdiction of courts at [where the Seller's registered office/ principal place of business is located], India.
  10. The Bank has, under its constitution, the power to issue this Guarantee in favour of the Seller and Shri [insert name of the signatory] who has signed this Guarantee on behalf of the Bank has the authority to do so. This Guarantee will not be discharged due to the change in the constitution of the Bank
  11. The Bank undertakes not to revoke this Guarantee during its currency except with the previous consent of the Seller in writing.
  12. The Seller may, with prior intimation to the Bank, assign the right under this Guarantee to any other person or entity. Save as provided in this Clause 12, this Guarantee shall not be assignable or transferable.
  13. Notwithstanding anything contained herein,
    - a) the liability of the Bank under this Guarantee shall not exceed the Guarantee Amount; and
    - b) this Guarantee shall be valid up to the Expiry Date.
  14. The Bank is liable to pay the Guaranteed Amount or any part thereof under this Guarantee only and only if the Seller serves upon the Bank a written claim or demand on or before the Expiry Date.
  15. The Guarantee is operative at our [insert name and address of Branch].
- Dated the [day] day of [month] [year] for the Bank.

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

---

(Signature)

---

(Name and  
Designation)  
(Bank Stamp)

## **Annexure II- SIDE AGREEMENT**

(Applicable for Cost Plus Source)

(Disclaimer: This side agreement is required to be signed separately in case the coal company of Alternative source is different from the coal company of Primary Cost Plus source offered under SHAKTI B(iii) Linkage Auction. However, in case both the coal companies are same, the side agreement will not be required to be signed separately, but the terms of this side agreement will remain in force and applicable and will be considered as integral part of FSA document for the purpose of supply/lifting from Alternative Source).

This Agreement is the side Agreement of the Fuel Supply Agreement signed between .....(Seller) & .....(Purchaser) on .....(date) for .....(name of cost plus source) for .....(Round-8) under .....(SHAKTI-B (iii))

This Side Agreement is made on this \_\_\_\_ day of \_\_\_\_\_ 202... between \_\_\_\_\_, a company registered under the Companies Act, 1956 and having its registered office at \_\_\_\_\_, through its representative Shri \_\_\_\_\_, General Manager (M&S)/Designation, hereinafter called the “Seller” (which expression shall unless excluded by or repugnant to the subject or context, include its legal representatives, successors and permitted assigns) of the one part for the purpose of supply from Alternative Source to the cost plus source(auctioned source)

AND

M/s ....., a company registered under the Companies Act 1956 and having its registered office at \_\_\_\_\_, through its representative Shri \_\_\_\_\_, (Designation), hereinafter called the “Purchaser” (which term shall unless excluded or repugnant to the subject or context include its successors and permitted as signs) of the other part for the purpose of procuring coal from Alternative Source of the cost plus source.

Whereas

- a) The Purchaser has entered into a Fuel Supply Agreement (“FSA”) dated \_\_\_\_\_ with ..... (‘Name of Coal company ’) for a quantity of ..... MTPA coal on Cost Plus basis from ..... Cost Plus mine in pursuance to Scheme document dated .....(month/year) of Round-8, SHAKTI B(iii). The terms and conditions/provisions of this FSA& Scheme document will be applicable for operational/commercial purpose for supply from Alternative Source to the Purchaser.
- b) The production of cost plus mine (after opening) reaches to its peak of production in gradual manner, till such time it reaches to its PRC or is sufficient to cater the linkage requirement, there will be flexibility to supply the residual requirement of coal of the concerned EUP against the linkage quantity from Alternative Source of same or other coal company, as per available grade.

On the above ground, as mentioned in the concerned Scheme document, the Purchaser, vide Annexure XII of Scheme document .....(Round 8, SHAKTI B(iii) & date of Scheme document), has expressed its willingness to take coal supply from Alternative Source of the auctioned cost plus source for such cases where supply from cost plus source will not be sufficient to meet the linkage requirement.

- c) Non-lifting of coal from Alternative Source shall attract short lifting penalty/compensation as per FSA document.
- d) The year-wise supply schedule from the Alternative Source, as agreed by Purchaser and Seller is as under:  
 Bid details: Name of Primary source/coal company/Quantity/Grade  
 Name of Alternative Source: .....  
 Grade:.....  
 Mode:.....

Year	FSA signing year (FY-1)	FY-2	FY-3	...	...	...				
Tentative quantity schedule from Cost plus source (tes), as declared by coal company										
Supply/lifting plan (effective ACQ) from Alternative source(tes)										

Note: The above schedule is prepared on the basis of lifting commencement plan/declaration given by the successful bidder and other operational factors. As such, the actual production of the cost plus mine may vary from the planned production schedule (maximum by 2 years), pursuant to signing of FSA and in such case(s), supply will be made from Alternative Source to fulfil the requirement of the FSA holder till such time the production from Cost Plus mine will become sufficient to cater linkage requirement or rated capacity of production from the cost plus mine is achieved, as the case may be. In such case, deviation(maximum by 2 years) from supply commitment from cost plus mine with respect to planned supply/production schedule & schedule of lifting provided by the bidder, shall not attract any penal consequence on the Seller(coal company).

- e) Alternative Source is interim arrangement for supply of coal to ..... (Bidder) for a particular year(s) in respect of ACQ of ..... MTPA from .....(name of

Cost Plus Source) from .....(name of coal company) and it is hereby agreed the actual coal to be delivered under the FSA during the financial year shall be adjusted based on the actual supplies to be made to the bidder from .....(name of cost plus source & coal company)

- f) The ACQ (effective) under the Side agreement dated ..... From Alternative Source shall become zero when the entire ACQ will be effective from .....(name of cost plus source & coal company) under the FSA dated \_\_\_\_\_ executed between .....(name of coal company of Primary source) and the purchaser .....(name and bidder ID of the bidder or Purchaser)
- g) This Side Agreement is Supplementary Agreement to FSA dated \_\_\_\_\_ executed between .....(coal company of Primary cost plus source) and the purchaser and shall be read along with the provisions/clauses of the FSA document which will be binding in all aspect to Seller and Purchaser. As such for the portion of ACQ/effective ACQ in respect of Alternative Source, all provisions of FSA document/Side Agreement will be applicable for both Seller (concerned coal company of Alternative Source) & Purchaser (Bidder).

Signed under mentioned on \_\_\_\_\_ day of \_\_\_\_\_.

<b>For ( _____ name of the Seller i.e. coal company of Alternative source, if different from FSA signing coal company)</b>	<b>For ( _____ name of the Purchaser)</b>
<b>Signature</b>	<b>Signature</b>
<b>Name(block letters)</b>	<b>Name(block letters)</b>
<b>Designation:</b>	<b>Designation:</b>
<b>Address:</b>	<b>Address:</b>
<b>Telephone:</b>	<b>Telephone:</b>
<b>Fax:</b>	<b>Fax:</b>
<b>Email:</b>	<b>Email:</b>