

Model FSA for SHAKTI B(v)Medium Term

[NOTE-

1. FSA to be signed directly with Purchaser (successful bidder under the bidding process conducted by nodal agency) having already commissioned generating capacity,
2. LOA to be issued to Purchaser whose generating capacity is yet to be commissioned, as per details shared by the nodal agency through Ministry of Power and FSA to be signed after fulfilment of terms and conditions mentioned under the LoA]

**[MODEL DRAFT FUEL SUPPLY AGREEMENT –
PARAGRAPH B(v) OF THE SHAKTI POLICY**

BETWEEN

[Name of the Coal Company]

AND

[Name of the Purchaser]

(Supplier selected under the B Issued by the Nodal Agency)

[Date of Agreement]

Model FSA for SHAKTI B(v) Medium Term

TABLE OF CONTENTS

1.	DEFINITIONS AND RULES OF INTERPRETATION	5
2.	TERM OF THIS AGREEMENT	10
3.	CONTRACT PERFORMANCE GUARANTEE	12
4.	QUANTITY	14
5.	QUALITY	18
6.	WEIGHTMENT OF COAL	19
7.	METHOD OF ORDER BOOKING AND DELIVERY OF COAL	20
8.	TRANSFER OF TITLE TO GOODS	21
9.	PRICE OF COAL	21
10.	COMPENSATION	22
11.	OVERLOADING AND UNDER-LOADING	23
12.	MODALITIES FOR BILLING, CLAIMS AND PAYMENT	23
13.	INTEREST ON DELAYED PAYMENT	25
14.	REPRESENTATIONS, WARRANTIES, COVENANTS AND UNDERTAKINGS	25
15.	SUSPENSION OF COAL SUPPLIES	27
16.	SETTLEMENT OF DISPUTES	28
17.	INDEMNIFICATION	29
18.	TERMINATION OF THIS AGREEMENT	30
19.	FORCE MAJEURE	31
20.	SCHEDULES/ANNEXURES	33
21.	INFORMATION RIGHTS OF THE SELLER	33
22.	MISCELLANEOUS	34
23.	IMPLEMENTATION OF THE AGREEMENT	36
	SCHEDULE I ANNUAL CONTRACTED QUANTITY	38
	SCHEDULE II FORMAT OF CONTRACT PERFORMANCE GUARANTEE	39
	SCHEDULE III QUALITY OF COAL	42
	SCHEDULE IV IRLC STIPULATIONS	43
	SCHEDULE IV-A USANCE LC STIPULATIONS	44
	SCHEDULE V PROCEDURE FOR THIRD PARTY SAMPLING AND ANALYSIS	45
	SCHEDULE VI CONTRACTED CAPACITY OF THE POWER STATION	50
	SCHEDULE VII FORMAT OF POWER OF ATTORNEY	51
	SCHEDULE VIII DISCOM CERTIFICATE	53
	Annexure 1	54
	SCHEDULE IX LIST OF DOCUMENTS	55
	SCHEDULE X AFFIDAVIT – UTILIZATION OF COAL SUPPLIED UNDER FSA	56

Model FSA for SHAKTI B(v)Medium Term

SCHEDULE XI FORMAT OF AFFIDAVIT – CHANGE IN CONSTITUTION.....57
SCHEDULE XII FORMAT OF THE INDEMNITY BOND.....59

DRAFT

FUEL SUPPLY AGREEMENT

This Fuel Supply Agreement (“**Agreement**”) is made on this [•] day of [•], 202[•] (“**Execution Date**”) by and between:

[•] (*Name of the Coal Company*), a company registered under the Companies Act, 1956/2013 and having its registered office at [•] (*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 name of Purchaser (Supplier under the PPA)], a company registered under the Companies Act, 1956/2013 having its registered office at [•]] 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 Ministry of Coal (“**MoC**”) has vide its letter dated May 22, 2017 issued a Scheme for Harnessing and Allocating Koyala (Coal) Transparently in India (SHAKTI), which as amended from time to time shall hereinafter be referred to as the “**Policy**”.
- B. Paragraph B(v) of the Policy inter alia provides that “*power requirement of group of States can also be aggregated and procurement of such aggregated power can be made by an agency designated by Ministry of Power or authorized by such States on the basis of tariff-based bidding. Coal linkages will be earmarked for such agencies by predeclaring the availability of coal linkage with description, based on which such agency will undertake tariff based competitive bidding for long-term and medium-term procurement of power and recommend grant of these linkages to successful bidders. The methodology in this regard shall be formulated by Ministry of Power*”.
- C. Subsequently, Ministry of Power (“**MoP**”) vide O.M. No. L-2/2018-IPC (Part-4) dated 08.03.2019 issued an office memorandum on the subject “Approval of the Government on the recommendations of Group of Ministers (GoM) constituted to examine the specific recommendations of the High Level Empowered Committee (HLEC) constituted to address the issues of Stressed Thermal Power Projects” and Para 2.1(c) of the said OM, states that “*the provisions 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.*”

The methodology of allocation of coal as per provisions of para B(v) of SHAKTI was issued by MoP on May 11, 2022 (“**MoP Methodology**”). Subsequently, the MoP vide resolution dated October 20, 2022, issued “Guidelines under Section 63 of the Electricity Act, 2003 for procurement of power on Finance, Own and Operate (FOO) basis under para B(v) of the SHAKTI Policy” (“**Guidelines**”). In accordance with the Guidelines, [PFC Consulting

Limited/name of the nodal agency appointed by group of states]¹ has been designated as the Nodal Agency for conducting the bid process for the purpose of procurement of power under Para B(v) of the SHAKTI Policy (“**Nodal Agency**”). Subsequently, the Nodal Agency issued the Request for Selection (“**RfS**”) dated [*] and draft power purchase agreement dated [*], collectively referred to as Bidding Document (“**BD**”) for procurement of aggregated power for group of states and bidding was conducted by the Nodal Agency.

- D. The Purchaser who emerged as the selected bidder in the bidding process conducted in accordance with the BD would deliver a Contracted Capacity of [•] MW at the Delivery Point corresponding to [•] MW of gross generation on finance, own and operate (the “**FOO**”) basis from a Power Station with an Installed Capacity of [•] MW developed by the Purchaser, for supply of power under the PPA executed on [insert date] between the DISCOM and the Purchaser (as defined hereinafter).
- E. In accordance with MoP Methodology referred at Para Cabove, [the Seller had issued Letter of Assurance(s) dated [•] (hereinafter referred to as the “**LOA**”) to the Purchaser in respect of inter alia the Annual Contracted Quantity (as defined hereinafter)]²/[the Seller has agreed to execute this Agreement for supply the Annual Contracted Quantity (as defined hereinafter)]³.
- F. The Purchaser has represented and confirmed that it has fulfilled and is in compliance with the conditions set out in the BD, [the LOA]⁴ and this Agreement, 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 “**Acceptable Bank**” shall mean a Scheduled Bank as listed in the Second Schedule of the Reserve Bank of India Act, 1934 excluding those listed under the headings of Gramin Banks, Urban Co-operative Banks and State Co-operative Banks.
- 1.1.2 “**Affected Party**” shall have the meaning ascribed to it in Clause 19.1
- 1.1.3 “**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.
- 1.1.4 “**Annual Contracted Quantity**” or “**ACQ**” shall have the meaning ascribed to it in Clause 4.1.
- 1.1.5 “**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

¹ To retain as applicable

² To retain in case of LOA route

³ To retain in case of direct FSA route

⁴ To retain in case of LOA route

Model FSA for SHAKTI B(v)Medium Term

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.

- 1.1.6 “**Appointed Date**” shall have the meaning ascribed to it in the PPA.
- 1.1.7 “**As Delivered Price of Coal**” shall have the meaning ascribed to it in Clause 9.
- 1.1.8 “**Bidding Document** or “**BD**” shall mean the RfS and draft PPA dated [*] for medium term procurement of power, issued by the Nodal Agency, including its annexures, appendices, schedules, amendment(s), addenda or corrigendum to the BD and/or any other document issued pursuant thereto.
- 1.1.9 “**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)*.
- 1.1.10 “**CEA**” shall mean the Central Electricity Authority.
- 1.1.11 “**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 authority to enter into any agreement/side agreements, supplementary to this Agreement.
- 1.1.12 “**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.
- 1.1.13 “**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.
- 1.1.14 “**Colliery Loading Point**” shall mean:
- (i) Silo, or
 - (ii) Mid-point for wharf wall loading at the colliery, or
 - (iii) Truck loading point, or
 - (iv) Ropeway loading point, or
 - (v) Transfer point to the customer’s belt conveyor etc., as the case may be, or
 - (vi) Any other point at which the Coal is transferred to the Purchaser’s Container.
- 1.1.15 “**Conditions Precedent**” shall mean such conditions as are set out in Clause 2.6;
- 1.1.16 “**Contracted Capacity**” shall have the meaning ascribed to it in the PPA.
- 1.1.17 “**Contract Performance Guarantee**” shall have the meaning ascribed to it in Clause 3.
- 1.1.18 “**Day**” shall mean a reference to a calendar day;
- 1.1.19 “**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.

Model FSA for SHAKTI B(v) Medium Term

- 1.1.20 “**Deemed Delivered Quantity**” or “**DDQ**” shall have the meaning ascribed to it in Clause 4.10.
- 1.1.21 “**Defaulting Party**” shall have the meaning ascribed to it in Clause 18.2.5
- 1.1.22 “**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.
- 1.1.23 “**DISCOM**” or “**Utility**” shall mean the distribution licensee authorised to operate and maintain a distribution system for supplying electricity to the consumers in its area of supply in accordance with the Electricity Act, 2003, as amended from time to time.
- 1.1.24 “**Dispute**” shall have the meaning ascribed to it in Clause 16.1
- 1.1.25 “**Dispute Notice**” shall have the meaning ascribed to it in Clause 16.3.
- 1.1.26 “**Effective Date**” shall mean the date of fulfillment/achievement of the last of the Conditions Precedent specified under Clause 2.6.1
- 1.1.27 “**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).
- 1.1.28 “**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 (Part I) 1984 or any subsequent amendments thereof.
- 1.1.29 “**Failed Quantity**” shall have the meaning ascribed to it in Clause 4.7.1
- 1.1.30 “**First Delivery Date**” shall mean the first day of the Month commencing immediately after completion of forty five (45) days from the fulfillment/achievement of the last Condition Precedent in accordance with Clause 2.6.2
- 1.1.31 “**Force Majeure Act**” shall have the meaning ascribed to it in Clause 19.1.
- 1.1.32 “**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:
- (i) Non-coking coal: based on GCV bands
 - (ii) Coking coal: based on ash percentage
 - (iii) Semi-coking coal: based on (ash+moisture) percentage
- 1.1.33 “**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-2) 2022 or any amendment thereof, and such result shall be reported on Equilibrated Basis (sample equilibrated at 40 degree Celsius and sixty percent (60%) relative humidity (RH)).
- 1.1.34 “**Indemnified Party**” shall have the meaning ascribed to it in Clause 17.1.
- 1.1.35 “**Interest Rate**” shall mean interest @ SBI MCLR (3 months) as applicable on the due date of

- payment/adjustment plus three percent (3%).
- 1.1.36 “**IRLC**” shall have the meaning ascribed to it in Clause 12.1.2(ii)
- 1.1.37 “**IS**” shall mean the standards specifications issued by the Bureau of Indian Standards.
- 1.1.38 “**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).
- 1.1.39 “**Level of Delivery**” shall have the meaning ascribed to it in Clause 4.8
- 1.1.40 “**Level of Lifting**” shall have the meaning ascribed to it in Clause 4.9
- 1.1.41 [“**LOA**” shall have the meaning ascribed to it in the Recital E]⁵
- 1.1.42 “**Losses**” shall have the meaning ascribed to it in 17.2.
- 1.1.43 “**Merry Go Round**” or “**MGR**” shall mean the Purchaser’s captive rail transportation system for transportation of Coal.
- 1.1.44 “**MoC**” shall mean the Ministry of Coal.
- 1.1.45 “**MoP**” shall mean the Ministry of Power.
- 1.1.46 “**Month**” shall mean a calendar month and “**Monthly**” shall mean accordingly.
- 1.1.47 “**Monthly Scheduled Quantity**” or “**SQ**” shall have the meaning ascribed to it in Clause 4.5.1.
- 1.1.48 “**Nodal Agency**” shall mean the agency appointed in accordance with the Guidelines.
- 1.1.49 “**Non-Affected Party**” shall have the meaning ascribed to it in Clause 18.1.1.
- 1.1.50 “**Non-Defaulting Party**” shall have the meaning ascribed to it in Clause 18.2.5.
- 1.1.51 “**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.
- 1.1.52 “**Other Charges**” shall have the meaning ascribed to it in Clause 9.2.
- 1.1.53 “**Parties**” shall mean the Seller and the Purchaser referred to collectively and “**Party**” shall mean either the Seller or the Purchaser.
- 1.1.54 “**Performance Incentive**” shall have the meaning ascribed to it in Clause 4.11
- 1.1.55 “**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.

⁵ To retain as applicable

Model FSA for SHAKTI B(v) Medium Term

- 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.
- 1.1.56 **"Policy"** shall have the meaning ascribed to it in Recital A.
- 1.1.57 **"Power Station"** shall have the meaning ascribed to it in the PPA.
- 1.1.58 **"PPA"** shall mean the medium term power purchase agreement(s) dated [insert date of execution of the PPA] between the Purchaser and the DISCOM [insert name of Utility/DISCOM] based on coal supply under para B(v) of the SHAKTI Policy.
- 1.1.59 **"Project"** shall have the meaning ascribed to it under the PPA;
- 1.1.60 **"Purchaser"** shall mean [insert name].
- 1.1.61 **"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 Power Station.
- 1.1.62 **"Quarter"** shall mean the respective three-Monthly periods in a Year, namely April to June, July to September, and so on.
- 1.1.63 **"Quarterly Quantity"** or **"QQ"** shall have the meaning ascribed to it in Clause 4.4
- 1.1.64 **"Representative"** shall have the meaning ascribed to it in Clause 16.2
- 1.1.65 **"Request for Selection"** or **"RfS"** shall mean the request for selection of Power Station for procurement of power on Finance, Own and Operate (FOO) basis under para B(v) of the SHAKTI Policy dated [*] issued by the Nodal Agency including its annexures, appendices, schedules, amendment(s), addenda or corrigendum and/or any other document issued pursuant thereto.
- 1.1.66 **"Seller"** shall mean [insert name].
- 1.1.67 **"Source"** shall mean the source of supply of Coals specified in SCHEDULE I.
- 1.1.68 **"Statutory Charges"** shall mean and include royalties, cesses, duties, taxes, levies etc., if any, payable as per and in accordance with Applicable Laws.
- 1.1.69 **"Subsidiary"** shall mean a subsidiary of CIL
- 1.1.70 **"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.
- 1.1.71 **"Term"** shall have the meaning ascribed to it in Clause 2.2.
- 1.1.72 **"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.
- 1.1.73 **"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 or any subsequent amendments thereof.

1.1.74 “**Usance LC**” shall have the meaning ascribed to it in Clause 12.1.2(iii)

1.1.75 “**Unloading Point**” shall mean the place/point at the Purchaser’s Power Station end at which the Coal is received/unloaded.

1.1.76 “**Weights and Measures Standards**” shall mean the standards, as prescribed under Applicable Laws.

1.1.77 “**Year**” shall mean the financial year of the Seller, commencing on April 1st and ending on the following March 31st.

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 BD shall, unless repugnant to the context, have the meaning respectively assigned to them in the BD. However, in case of a conflict between the terms of this Agreement and the BD, 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 expiry of the term of the PPA in accordance with the provisions thereof, including any extension of the term under the PPA, if any (“**Term**”).
- 2.3 **Notice under the PPA:** Notwithstanding anything contained in the Agreement, the Purchaser shall notify the Seller of any notices under the PPA issued in respect of termination of the PPA, default under the PPA, change in term of the PPA or any change in the Contracted Capacity under the PPA by the Utility within 15 (fifteen) days of the receipt of any such notice. Further, the Purchaser shall also notify the Seller of any of the foregoing notices served by the Purchaser to the Utility under PPA within 15 (fifteen) days of the issuance of such notice. Failure to adhere to the terms of this clause shall be considered a breach of this Agreement which shall be dealt with as per Clause 18.2.7 of this Agreement.
- 2.4 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.
- 2.5 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. The decision of the Government of India shall be final and binding on both the parties.
- 2.6 **Conditions Precedent**
- The rights and obligations of the Purchaser and the Seller under this Agreement are subject to the satisfaction in full of the Conditions Precedent in accordance with this Clause 2.6.
- 2.6.1 **Purchaser’s Conditions Precedent**
- The Purchaser shall:
- 2.6.1.1 Achieve the Appointed Date (as defined in the PPA) in accordance with the timelines as provided in the BDs.
- 2.6.1.2 Submit the DISCOM Certificate in accordance with the format provided in SCHEDULE VIII within 15 days from attainment of Appointed Date.
- 2.6.2 **Satisfaction of Conditions Precedent**
- 2.6.2.1 Without prejudice to the Effective Date, within 15 (fifteen) days of fulfillment/achievement of all Conditions Precedent, the Purchaser shall issue a written notice of the same to the Seller. The Seller shall, within 15 (fifteen) days from receipt of such notice from the Purchaser, subject to the fulfillment of the Conditions Precedent, issue a letter accepting the same to the Purchaser.
- 2.6.2.2 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 Clause 2.6 within the timelines prescribed in Clause 2.6.1, the Seller shall have a right, at its sole and absolute discretion, to terminate this Agreement and to forfeit the Contract Performance Guarantee

submitted by the Purchaser without any further notice to the Purchaser.

3. CONTRACT PERFORMANCE GUARANTEE

- 3.1 [The Purchaser has submitted to the Seller on or prior to signing of this Agreement, Contract Performance Guarantee (CPG) for an amount computed as per the following formula]⁶/[On signing of this agreement, the Commitment Guarantee (CG) provided by the Purchaser prior to issue of Letter of Assurance (LOA) shall stand converted into the Contract Performance Guarantee (CPG) for an amount computed as per the following formula]⁷:

Contract Performance Guarantee (CPG) = [Annual Contracted Quantity] multiplied by [6% of the Notified Price of Source Grade of Coal prevalent on the date of deposit].

The Notified Price of Coal in this context shall take into account the highest of Notified Prices of Grades mentioned in SCHEDULE III

- 3.2 Accordingly, a sum of Rs. [•] (Indian Rupees _____) is deemed to have been deposited by the Purchaser towards the Contract Performance Guarantee amount. [In the event the Commitment Guarantee amount provided by Purchaser is more than the Contract Performance Guarantee amount as determined under this clause, Seller shall return such balance amount within 3 (three) months from the date of signing of this Agreement. In the event, the Contract Performance Guarantee amount as determined under this clause is more than the Commitment Guarantee amount, the Purchaser shall deposit such balance amount within 3 (three) months from the date of signing this agreement. Failure to submit the balance amount by the Purchaser within 3 (three) months from the date of signing of this agreement shall entitle the Seller to adjust the ACQ such that it is commensurate with the Contract Performance Guarantee required to be submitted by the Purchaser under Clause 3.]⁸
- 3.3 CPG may be provided in the form of non-interest bearing security deposit or in the form of bank guarantee. In case the CPG is provided in the form of a bank guarantee, the same shall be provided in the format placed at SCHEDULE II.
- 3.4 The CPG shall remain valid till 4 (four) months from the date of expiry of the Term of this Agreement. In case of extension of the Term of this Agreement, the CPG shall be extended accordingly. The CPG shall be returned or refunded to the Purchaser at the end of its validity, subject to successful completion of the Term of this Agreement and complete settlement of all claims of the Seller arising out of this Agreement.
- 3.5 The value of the CPG shall be suitably increased / decreased to match the changes in the Notified Price notified by the Seller from time to time.
- 3.5.1 In the event of any increase in the Notified Price, the Purchaser may:
- 3.5.1.1 provide a new bank guarantee issued by any Acceptable Bank for the revised value computed as per Clause 3.1; or
- 3.5.1.2 provide an additional/ top up bank guarantee issued by any Acceptable Bank for an amount

⁶ To retain in case of direct FSA route

⁷ To retain in case of LOA route

⁸ To retain in case of LOA route

corresponding to the incremental value of the CPG computed as per Clause 3.5.

Alternatively, the bank guarantee constituting the CPG may be suitably amended for the revised value computed as per Clause 3.1. The new/ revised/ amended/ top up bank guarantee shall be in the format set out in SCHEDULE II. In the event that the CPG has been provided in the form of a non-interestbearing security deposit, then, upon any increase in the Notified Price, the Purchaser shall deposit an additional amount towards the security deposit to cover for such increase.

Any failure of the Purchaser to replenish the CPG in the manner specified herein above within 7 (seven) days of notification of change in the Notified Price, shall entitle the Seller to suspend the supply of Coal in accordance with Clause 15.1.4 without absolving the Purchaser of its obligations under this Agreement. Further, if the Purchaser fails to replenish the CPG within 30 (thirty) days of such suspension of Coal supplies, the Seller shall have the right to forfeit the deposited CPG.

- 3.5.2 In the event of any decrease in the Notified Price, the Purchaser may provide a new bank guarantee issued by an Acceptable Bank in the format specified in SCHEDULE II for the revised value computed as per Clause 3.1. The Seller shall, within 7 (seven) days of receipt of such new bank guarantee, return the original CPG to the Purchaser. In the event that the CPG has been provided in the form of a non-interestbearing security deposit, then, upon any decrease in the Notified Price, the Seller shall refund the excess value of the security deposit to the Purchaser.
- 3.5.3 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, shall be the same as that of the initial CPG.
- 3.6 Invocation/ Forfeiture of Contract Performance Guarantee
- 3.6.1 The Seller shall be entitled to forfeit / invoke the whole or a part of the Contract Performance Guarantee in the following situations:
- (a) in the event that the Purchaser fails to submit the revised Contract Performance Guarantee to the Seller within the timeline stipulated in Clause 3.5.1 above;
 - (b) in accordance with Clauses 4.2, 4.7.4, 13, 15
 - (c) in the event that the Seller becomes entitled to exercise its right to terminate or actually exercises its right to terminate this Agreement for any of the reasons specified in Clause 18.2;
 - (d) in the event the Purchaser fails to submit the coal utilization affidavit as per terms of Clause 4.2.3 and/or
 - (e) in accordance with the provisions of this Agreement other than as specified above.

In the event of any partial or complete invocation of the Contract Performance Guarantee under this Agreement, the Purchaser shall replenish the Contract Performance Guarantee 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 Contract Performance Guarantee furnished by the

Purchaser pursuant to this Clause 3.6, shall be the same as that of the initial Contract Performance Guarantee. In the event that the Acceptable Bank issuing the Contract Performance Guarantee does not permit a partial invocation of the Contract Performance Guarantee, the Seller shall be entitled to invoke the whole Contract Performance Guarantee 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 Contract Performance Guarantee to the Seller in the manner as stipulated above.

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 ("ACQ"). For part of Year, the ACQ shall be pro-rated accordingly.

4.1.2 The Purchaser shall surrender the quantity corresponding to the ACQ under this Agreement of any existing letter of assurance / fuel supply agreement for the corresponding tenure.

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 Power Station* as listed in SCHEDULE I, for the purpose of generation and supply of power only to the Utility with which it has executed the PPA. It is expressly clarified that the Coal supplied pursuant to this Agreement shall not be utilized for sale of power to any third parties. The Annual Contracted Quantity shall be used in the Power Station only for the Contracted Capacity with the DISCOM under the PPA for which the Power Station has been allowed Coal Linkage.

4.2.2 The Purchaser shall not sell, divert and/or transfer the Coal for any purpose whatsoever. Any violation of this Clause 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 and forfeiture of Contract Performance Guarantee.

4.2.3 The Purchaser shall submit to the Seller, on an annual basis, an affidavit in relation to coal utilization as per the format placed at SCHEDULE X, duly endorsed by the DISCOM, within one month of the close of the previous financial year. In the event, the Purchaser fails to submit the coal utilization affidavit within the specified timelines, or any extended timelines, if any, the Seller shall have the right to forfeit the Contract Performance Guarantee and terminate this Agreement.

4.3 Source of Supply

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

4.4 Quarterly Quantity (QQ)

4.4.1 The Annual Contracted Quantity for the Year, as per Clause 4.1 shall be divided into Quarterly

Model FSA for SHAKTI B(v) Medium Term

Quantities (“**QQ**”), expressed in tonnes, as follows:

Quarter	% of ACQ
1 st Quarter (April–June)	25% of ACQ
2 nd Quarter (July–September)	22% of ACQ
3 rd Quarter (October–December)	25% of ACQ
4 th Quarter (January–March)	28% of ACQ

4.5 Monthly Scheduled Quantity (SQ)

4.5.1 The Monthly Scheduled Quantity (“**SQ**”) shall be one third (1/3rd) of the **QQ**.

4.5.2 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 4.7 shall be applicable after the aforesaid Year in which the rake of Coal is formed.

4.6 Variation in **QQ and **SQ****

4.6.1 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.

4.6.2 Subject to the provisions of Clause 4.6.1, 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.

4.6.3 Notwithstanding the provisions of Clause 4.6.1 and Clause 4.6.2, the total Coal supply, in a Year, shall not exceed the **ACQ** or the pro-rated **ACQ** for that Year, as the case may be.

4.7 Compensation for short delivery/lifting

4.7.1 If for a Year, the Level of Delivery by the Seller, or the Level of Lifting by the Purchaser falls below 75% of **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 Coals supplied)
Below 75% but upto 65% of ACQ	0 -10
Below 65% but upto 50% of ACQ	10 -40
Below 50% of ACQ	40

4.7.2 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.

4.7.3 The Seller shall be entitled to modify/amend the penalty levels as specified at Clause 4.7.1.

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

4.8 **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 4.10.

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:

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

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.

4.9 **Level of Lifting**

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

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

Where:

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

shall have the same meaning as given in Clause 4.10.

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.

4.10 Deemed Delivered Quantity

4.10.1 For the purpose of this Agreement, the aggregate of the following items provided under Clause 4.10.2 and Clause 4.10.3 shall constitute the Deemed Delivered Quantity with respect to a Year.

4.10.2 For supply of Coal by rail

4.10.2.1 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 Monthly Scheduled Quantity.

4.10.2.2 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.

4.10.2.3 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

4.10.2.4 The quantity of Coal not supplied by the Seller owing to Seller exercising the right of suspension of supplies in terms of Clause 15.

4.10.2.5 The quantity of Coal offered by Seller in terms of Clause 4.3 not accepted by the Purchaser.

4.10.3 For Supply of Coal by road/ ropeways/MGR/belt conveyor

(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) 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 4.3 not accepted by the Purchaser.

4.11 Performance Incentive

4.11.1 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 upto 95% of ACQ	0 -10
Above 95% but upto 100% of ACQ	10 -20
Above 100% of ACQ	40

Model FSA for SHAKTI B(v)Medium Term

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

**Supply shall be as per extant policy guidelines.*

- 4.11.2 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.
- 4.11.3 With respect to part of Year in which Term of this Agreement begins or ends, the relevant quantities in Clause 4.11.1, shall apply pro-rata.
- 4.11.4 In case of supply of coal beyond the ACQ, the Purchaser would be required to furnish a certificate from CEA regarding use of such coal within its Power Station.

5. QUALITY

- 5.1 The quality of Coal delivered/to be delivered shall be of the grade(s)/size(s) given in SCHEDULE III.
- 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 III. 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 for applying to Coal Controller for approval of re-gradation.

5.5 Oversized Coal/stones

In the unlikely event of supply of any oversized Coal/stones beyond the specifications set out in SCHEDULE III, 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 an incident. If, in the Purchaser's reasonable assessment, the incidents of oversized Coal and/or stones are causing operating or maintenance problems at the Power Station, 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

- 5.6.1.1 Samples of Coal shall be collected by the Third Party either manually or through any suitable

Model FSA for SHAKTI B(v) Medium Term

- 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.
- 5.6.1.2 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 1 (one) coal mine and/or Grade, then the number of lots for sampling will be coal mine/Grade wise, as the case may be.
- 5.6.1.3 Each day's supply (24 Hrs during a day i.e. 0:00 hrs to 24:00 hrs of the day) to the Purchaser from a Delivery Point shall be considered as 1 (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 1 (one) 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 V
- 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/de-coding 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 weighments 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 weightometers 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 from 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 tenders 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.
- 7.1.5 In case of arrear rakes remaining pending for movement at the end of the validity period of the FSA, the Purchaser shall extend the validity period of the LC for a further period as may be decided by the Seller or the extant system of advance payment shall be made applicable for such pending rakes. Otherwise, the pending arrear rakes shall be liable to be cancelled at the cost and responsibility of the Purchaser.

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 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

The Purchaser shall pay the “**As Delivered Price of Coal**” for the Coal supplied pursuant to this Agreement which shall be the sum of the Notified Price, Other Charges and Statutory Charges, as applicable at the time of delivery of Coal. Notwithstanding anything, it is expressly clarified that CIL/Seller may, at any time, notify/amend the Notified Price and/ or Other Charges, which shall come into effect from the date of its notification.

Note: In case of Cost Plus mines of WCL, the pricing and Model FSA shall be as decided by WCL.

9.1 Notified Price

The Purchaser shall pay the Notified Price in accordance with the provisions of this Agreement.

9.2 Other Charges

9.2.1 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.

9.2.2 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.

9.2.3 Evacuation Facility charges

The Purchaser shall pay evacuation facility as charges notified by CIL/the Seller from time to time.

9.2.4 Any other applicable charges

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

9.3 Statutory Charges

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

9.4 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 and to the account of the Purchaser.

9.5 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.

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 to the Purchaser 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 V.

11. OVERLOADING AND UNDER-LOADING

- 11.1 Any penal freight for overloading charged by the railways for any consignments 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 may 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 Bill on Declared Grade basis

- 12.1.1 The Seller shall raise bills for the Coals 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:
- (i) 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.

- (ii) 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 at SCHEDULE IV 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 4.4. The As Delivered Price of Coal in this context shall mean the highest of Notified Prices of Grades mentioned in SCHEDULE III. 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.
- (iii) Purchaser shall open an Irrevocable Letter of Credit (Usance LC) favoring the Coal Company (Seller) for an amount equivalent to 33% of Coal value i.e., As Delivered Price of Coal for Monthly Scheduled Quantity (MSQ under the FSA). Purchaser shall maintain the Usance LC issued by a bank acceptable to the Seller and in the format acceptable to the Seller, fully conforming the conditions stipulated in SCHEDULE IV-A. The As Delivered Price of Coal in this context shall take into account the highest of Notified Prices of Grades mentioned in SCHEDULE III. The Usance LC shall be maintained throughout the term of this Agreement. The amount of Usance LC shall be suitably changed whenever there is a change in any component of the As Delivered Price of Coal. In case of supply by Rail Mode, the Purchaser shall pay advance amount equivalent to seven (7) days’ Coal value by way of RTGS/ NEFT.

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 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.

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.

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 4.7, 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 4.11 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 drakes/missing wagons

In case of diversion of frakes en route or missing wagons, bills shall be paid to the Seller by the Purchaser.

12.5 Reconciliation/Adjustments

The Parties shall jointly reconcile all payments made for the Coal supplies through Online Bill Reconciliation Portal. The Purchaser shall verify/send its observations (if any) on the bills which will be settled by the Seller as per procedures laid down in the Online Bill Reconciliation Portal. The Parties shall forthwith, give credit/debit for the amount reconciled, if any, as assessed during such joint reconciliation. The periodic reconciliation statement shall be jointly signed by the Seller and the Purchaser.

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 as per Clause 1.1.35. Interest on Delayed Payment in case of IRLC and Usance LC shall be applicable after 5 days from date of raising of invoice to date of receipt of funds in CIL / Seller's bank account. Without prejudice to the foregoing, in the event the Purchaser fails to pay the overdue amount along with the interest within 30 (thirty) days, the Seller shall be entitled to invoke the Contract Performance Guarantee and suspend Coal supplies in accordance with Clause 15.

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 that:
- 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:
- (i) contravene any provision of any Applicable Law, statute or any order, writ, injunction or decree of any court or governmental instrumentality to which it is subject; or
 - (ii) conflict with or be inconsistent with or result in any breach of any of the terms, covenants, conditions or provisions of, or constitute a default under any other agreement, contract or instrument to which it is a party or by which it is bound or to which it may be subject; or
 - (iii) violate any provision of its constitutional documents;
- 14.2.4 there are no claims, investigations or proceedings before any court, tribunal or governmental authority in progress or pending against or relating to it, which could reasonably be expected to prevent it from fulfilling its obligations set out in this Agreement or arising from this Agreement;
- 14.2.5 this Agreement is enforceable against it in accordance with its terms; and/or
- 14.2.6 the undertakings of the Purchaser pursuant to the BD [and the LOA]⁹ are true and correct and all information provided by the Purchaser under the BD [and in connection with the LOA, as requested by CIL and/or the Seller,]¹⁰ 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 criteria as per the BD and shall comply with all its obligations, covenants, undertakings and all other terms and conditions required to be complied by it under the BD [and the LOA]¹¹;
- 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

⁹ To retain as applicable

¹⁰ To retain as applicable

¹¹ To retain as applicable

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;

- 14.3.3 it shall not divert, use, transfer, swap and/or other undertake any other form of rationalisation in any manner whatsoever, the Coal supplied pursuant to this Agreement.

15. SUSPENSION OF COAL SUPPLIES

- 15.1 Notwithstanding other provisions of this Agreement, in any of the following events, the Seller shall have the rights as provided in Clause 15.2 below:

15.1.1 in the event the Purchaser 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;

15.1.3 In the event of any intimation from any governmental/statutory authority and/or the Utility in relation to any breach, default or violation arising out of or in relation to the PPA or the BD;

15.1.4 In the event of breach of any condition in respect of Clause 22.7 and/or Clause 3.5.1

- 15.2 In case of any of the events in Clause 15.1, the Seller shall have the right to resort to any one or more of the following:

- (a) Adjust the outstanding amount against the CPG by invoking the CPG or such portion of it as may be deemed necessary; and/or
- (b) Adjust the outstanding amount from any amount of the Purchaser lying with Seller including payments made for Coal supplies; and/or
- (c) 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 the events mentioned in Clauses 15.1.2 to 15.1.4 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. The Purchaser shall not have any recourse to the Seller in case suspension of coal supplies under this Agreement is recognized and treated as an Event of Default under the PPA.

16. SETTLEMENT OF DISPUTES

- 16.1 In the event of any dispute, disagreement or difference arising out of or in connection with this Agreement between the Purchaser and the Seller, 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 (being the Seller or the Purchaser) 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.
- 16.4 If amicable settlement as above is not possible, then the unresolved disputes or differences shall be settled through the process as given below:
- 16.4.1 In the event the Purchaser is a Public Sector Enterprise:
- In case of any Dispute or difference relating to the interpretation and application of the provisions of commercial contract(s) between Central Public Sector Enterprises (CPSEs)/ Port Trusts inter se and also between CPSEs and Government Departments / Organizations (excluding disputes concerning taxation), such Dispute or difference shall be taken up by either the Seller or the Purchaser for resolution through the Administrative Mechanism for Resolution of CPSEs Disputes (AMRCD) as outlined in the Office Memorandum No.05/0003/2019-FTS-10937 dated 14-12-2022 issued by the Department of Public Enterprises and the decision of AMRCD on the said dispute shall be binding on both Parties.
- 16.4.2 In the event the Purchaser is not a Public Sector Enterprise:
- (i) either Party may refer such Dispute for settlement through arbitration in accordance with the Arbitration and Conciliation Act 1996, as may be amended from time to time (“**Arbitration Act**”);
 - (ii) the seat and venue of arbitration shall be [[•] name of the state where the Coal Company/Seller’s headquarters/registered office is located];
 - (iii) the entire arbitration proceedings shall be conducted, and the award shall be rendered in the English language;
 - (iv) the arbitral tribunal shall be a sole arbitrator who shall act in accordance with the Arbitration Act;
 - (v) the cost and expenses of arbitration shall be borne by the Parties, as decided in the

arbitral award;

- (vi) the arbitral award shall be final and binding on both the Parties; and
- (vii) the Agreement, rights and obligations of the Parties, shall remain in full force and effect pending the arbitral award.

17. 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:
- 17.2.1 any breach of the representations, warranties, covenants and/or undertakings of the Purchaser contained herein or in the BD;
 - 17.2.2 any information or documentations submitted by the Purchaser to the Seller pursuant to this Agreement and/or the BD, being untrue, incorrect or false;
 - 17.2.3 the Purchaser’s breach or negligent performance or non-performance of this Agreement;
 - 17.2.4 the Purchaser’s breach or negligent performance or non-performance of the PPA;
 - 17.2.5 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 with the performance or non-performance of any of the Purchaser’s obligations under this Agreement and/or 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 the 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
 - 17.2.6 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 the 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.

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

In the event the Level of Lifting falls below 30% (thirty per cent.) and the FSA is liable for termination, the Purchaser can keep their FSA alive by paying applicable Penalty as calculated in terms of Clause 4.7 or amount equivalent to the Contract Performance Guarantee, whichever is higher. The willing Purchaser shall have to request the Seller within 30 days of completion of relevant financial year for availing such optional facility providing an undertaking that they shall pay applicable penal amount. The FSA shall be revived after receipt of the required penal amount. No backlog quantity shall be admissible. There shall not be any financial liability for either Party during the dormant period of the FSA.

- 18.2.2 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.
- 18.2.3 In the event of continuation of suspension for a continuous period of six (6) Months pursuant to Clause 15.1.1, Clause 15.1.3 and Clause 15.1.4, the Seller shall have the right to terminate this Agreement by providing a prior written notice of thirty (30) days to the Purchaser.
- 18.2.4 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.
- 18.2.5 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.
- 18.2.6 In case of termination of the PPA, this FSA shall stand terminated.
- 18.2.7 In the event the Purchaser does not inform the Seller of notices issued under the PPA as per timelines in Clause 2.3
- 18.2.8 In the event the Purchaser does not submit the coal utilization affidavit in accordance with Clause 4.2.3.
- 18.2.9 In the event the Purchaser does not attain the Conditions Precedent within the timelines as per Clause 2.6.2

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, lightning, cyclone, storm, earthquake, adverse geomining 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 disturbances such as riot, terrorism etc.;
- 19.1.4 Industry wise/nation wide 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 Law 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, such 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 – Format of Bank Guarantee
- SCHEDULE III – Quality of Coal
- SCHEDULE IV – IRLC Stipulations
- SCHEDULE IV A - Usance LC Stipulations
- SCHEDULE V – Procedure for Third Party Sampling and Analysis
- SCHEDULE VI – Contracted Capacity of the Power Station
- SCHEDULE VII – Format of Power of Attorney
- SCHEDULE VIII - DISCOM Certificate
- SCHEDULE IX - List of Documents
- SCHEDULE X-Affidavit – Utilization of Coal Supplied under the FSA
- SCHEDULE XI – Format of Affidavit – Change in Constitution
- SCHEDULE XII – Format of Indemnity Bond

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 but not limited to the documents listed in SCHEDULE IX 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 Power Station;
 - 21.1.2 the Purchaser's compliance with the terms and conditions of [the LOA]¹², the BD and this Agreement; and/or
 - 21.1.3 any breach, default or violation arising out of or in relation to the 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.

¹² To retain as applicable

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 other 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 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, (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

Model FSA for SHAKTI B(v) Medium Term

- Agreements 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 correspondences 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 BD, 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, along with a copy of recommendation/approval of the Utility, within seven (7) days of such change taking effect along with an affidavit (in the format prescribed in SCHEDULE XI) confirming that such change in constitution is in 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 an indemnity bond (in the format prescribed in SCHEDULE XII) underlying such affidavit. The person submitting the affidavit (in the format prescribed in SCHEDULE XI) must be duly authorised by the board of directors of the Purchaser. Subject to the Seller's satisfaction in this regard, a novation agreement or deed of assignment shall be entered into between the Seller, the Purchaser and the resultant company, as applicable. In the event the affidavit cum indemnity bond is not submitted to the satisfaction of the Seller within the timeline prescribed herein above, or if the amendment agreement is not executed, 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 along with a copy of recommendation/approval of the Utility, 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. Any request for assignment made by the Purchaser shall include a copy of recommendation/approval of the Utility in this regard.
- 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.

23. IMPLEMENTATION OF THE AGREEMENT

23.1 The respective *[•] designation of the authorized representative* of the Purchaser/ Power Station 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.

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* 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

Signature

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

1. WITNESS

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

2. WITNESS

Model FSA for SHAKTI B(v)Medium Term

- a) Signature
- b) Name
(block letters)

c) AddressandOccupation

- a)Signature
- b)Name
(blockletters)

c)AddressandOccupation

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SCHEDULE I ANNUAL CONTRACTED QUANTITY

Name and location of the Power Station owned by the Purchaser	Unit-wise Contracted Capacity of Power Station(in MW)	Name of Rake Fit Station nearest to the Power Station	PPA- Expiry Date	Annual Contracted Quantity (Tonnes)	Mode(s) of Transport	Source

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SCHEDULE II FORMAT OF CONTRACT PERFORMANCE GUARANTEE

[Reference number of the bank]

[date]

To

[insert name and address of the relevant Subsidiary]

WHEREAS

- A. [Name of the Purchaser], a company incorporated in India under the Companies Act, [1956/2013] with corporate identity number [CIN of the Purchaser], whose registered office is at [address of registered office], India and principal place of business is at [address of principal place of business, if different from registered office], (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 contract performance security valid until [date of expiry of contract performance bank guarantee] (“**Expiry Date**”).
- B. The Contract Performance Guarantee is required to be provided to [insert name of the relevant Subsidiary] (the “**Seller**”) for discharge of certain obligations of the Purchaser under 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 “**Contract Performance 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

Model FSA for SHAKTI B(v)Medium Term

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 Contract Performance 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 Contract Performance 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 Contract Performance 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 Contract Performance Guarantee 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 Contract Performance Guarantee have been fully and properly carried out by the Purchaser and accordingly discharges this Contract Performance Guarantee. Notwithstanding anything contained herein, unless a demand or claim under this Contract Performance Guarantee is made on the Bank in writing on or before the Expiry Date the Bank shall be discharged from all liability under this Contract Performance Guarantee thereafter.
8. The payment so made by the Bank under this Contract Performance 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 Contract Performance Guarantee is subject to the laws of India. Any suit, action, or other proceedings arising out of this Contract Performance 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 Contract Performance Guarantee in favour of the Seller and Shri _____ who has signed this Contract Performance Guarantee on behalf of the Bank has the authority to do so. This Contract Performance Guarantee will not be discharged due to the change in the constitution of the Bank.
11. The Bank undertakes not to revoke this Contract Performance 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 Contract Performance Guarantee to any other person or entity. Save as provided in this Clause 12, this Contract Performance Guarantee shall not be assignable or transferable.
13. Notwithstanding anything contained herein,
 - a) the liability of the Bank under this Contract Performance Guarantee shall not exceed the

Model FSA for SHAKTI B(v)Medium Term

Guarantee Amount; and

- b) this Contract Performance 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 Contract Performance Guarantee only and only if the Seller serves upon the Bank a written claim or demand on or before the Expiry Date.
15. The Contract Performance 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)

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SCHEDULE III QUALITY OF COAL

Seller (Coal Company)	Nameandlocationof the Power Station	Top-size of Coal (mm)	Indicativerangeof Grade(s)**
Coal Company			

**TheactualsupplypursuanttothisAgreementmayvarybetweenand/orbeyondtheindicativerange of Grades and the same shall not entail any quantity adjustment in any manner.

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SCHEDULE IV 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)

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SCHEDULE IV-A USANCE LC STIPULATIONS

(Refer Clause 12.1.2(iii))

In addition to Advance Payment and Irrevocable Revolving Letter of Credit (IRLC), Usance LC facility has been extended as an option for power consumers (Purchaser) drawing coal supplies through FSAs.

2. Purchaser shall open an Usance LC favouring the Coal Company (Seller). The Purchaser shall open the Usance LC for an amount equivalent to 33% of "As Delivered Price of Coal" of Monthly Scheduled Quantity (MSQ) under the FSA. "As Delivered Price of Coal" will be of highest Notified Price of the Grades mentioned in SCHEDULE III under FSA.

3. The Usance LC shall have the following conditions, inter-alia:

- a) All Bank Charges including opening charge of Usance LC and discounting charges to be borne by the applicant (Purchaser)
- b) Payment would be made within 5 working days to the Seller upon submission of the Pro-forma invoice or Tax Invoice, whichever is earlier, by the seller through RTGS / NEFT. Advising / Negotiating Bank will make the payment.
- c) Discrepancies would be acceptable except quantity and value.
- d) There should not be recourse to the Purchaser under the Usance LC.
- e) Usance LC shall be irrevocable.
- f) The Usance LC shall have the provision for the payment of interest bills also to the Seller.

4. Seller shall submit the Pro-forma invoice/ tax invoice, whichever is earlier, towards the "As Delivered Price of Coal" of the despatch quantity along with the Railway Receipt (RR) / Forwarding note / Electronic Print Out (EPO), whichever is available first, in case of dispatch by Rail mode.

5. The Pro-forma invoice shall be raised on rake to rake basis in case of rail dispatches and on daily basis in case of dispatch by other modes. The Seller shall make arrangements for submission of soft copies of the documents i.e., pro-forma invoice and RR/ Forwarding Note/ EPO etc., to the Advising / Negotiating Bank (*) within 24 hrs of generation of EPO.

6. In case the payment is not made to the Seller within the stipulated time of 5 working days, the Seller shall charge interest in line with FSA at the rate of SBI MCLR (3 months) + 3%, as applicable on the due date of payment under the Usance LC for the entire period for which the payment has remained overdue. Further booking will be stopped for the Purchaser during the period of default. Repeated failure of the Advising Bank (***) to release the Payments shall give right to the Seller to refuse the Usance LC facility to the Purchaser.

7. In addition to Usance LC, the Purchaser shall pay standing advance amount equivalent to seven (7) days "As Delivered Price of Coal" by way of NEFT / RTGS in case of Rail Mode.

8. In case of arrear rakes remaining pending for movement at the end of the validity period of the FSA, the Purchaser shall extend the validity period of the Usance LC for such pending rakes for a further period as may be decided by the Seller or the extant system of advance payment shall be made applicable for such pending rakes. Otherwise, the pending arrear rakes shall be liable to be cancelled at the cost and responsibility of the Purchaser.

SCHEDULE V 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 empanelled 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 (e.g. 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 μ (micron) IS sieve. Due care shall be taken to ensure that before analysis, in test laboratory, further sieving or pulverizing is not required.

Model FSA for SHAKTI B(v)Medium Term

- h) Samples collected at the loading end shall be analyzed as per latest BIS Standards (IS: 1350 Part I – 1984 or subsequent amendments if any for determination of ash and moisture content and IS: 1350 (part-2):2022 for determination of GCV).
- i) The TPA shall communicate the analysis result of the sample as per the stipulated period indicated in the tripartite agreement. 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 Accredited Laboratory for analysis of ash, moisture and GCV as per latest BIS Standards (IS: 1350 Part 1-1984) or subsequent amendments if any or BIS Standards IS: 1350 (part-2):2022, 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 Govt. NABL referee lab, in tamper proof manner to the satisfaction of Seller and Purchaser.
- l) Total Moisture determination will be done at nearest laboratory of the Seller 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) and subsequent amendments if any or BIS Standards IS: 1350 (part-2):2022, 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), Set – IV shall be sent for referee analysis by the TPA to designated Govt. NABL referee labs.. TPA shall follow a fool proof 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.

2.2 COLLECTION OF SAMPLES FROM WAGONS (Rail and MGR)

- a) For the purpose of sampling each lot as per Clause 5.6.1.2 of Coal supplied from one Delivery Point shall be considered as a lot.
- b) Each day's supply (24 Hrs during a day i.e. 0:00 hrs to 24:00 hrs of the day) as per Clause 5.6.1.3 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 III shall be removed/discarded, however all stones/shale of size in terms of SCHEDULE III 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

Model FSA for SHAKTI B(v)Medium Term

- a) Sample shall be collected lot-wise as per Clause 5.6.1.3 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 (8th) 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 III shall be removed/discarded, however all stone/shale of size as mentioned in SCHEDULE III 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 5.6.1.3
- 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 Hrs to 24:00 Hrs of the 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 III shall be removed/discarded, however all stone/shale of size as mentioned in SCHEDULE III shall form the part of the sample collected.

2.5 COLLECTION OF SAMPLES FROM STOCKPILE

Model FSA for SHAKTI B(v)Medium Term

- 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 III shall be removed/discarded, however all stone/shale of size as mentioned in SCHEDULE III 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 BIS norms IS:436 (Part-I)- 1964.

3. Analysis of sample(s)

Analysis of sample(s) is to be done as per latest version of IS 1350 (Part-I)-1984 and subsequent amendments if any for determination of Total Moisture, Equilibrated Moisture, Ash and Volatile Matter and GCV as per latest version of IS: 1350 (part-2):2022.

SCHEDULE VI CONTRACTED CAPACITY OF THE POWER STATION

Unit	Gross Capacity of Unit (in MW)	Contracted Capacity of Unit (in MW)	Utility

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SCHEDULE VII FORMAT OF POWER OF ATTORNEY

[To be stamped in accordance with the relevant Stamp Act and notarized]

Know all men by these presents, that we, [name and registered office address of Purchaser] do hereby irrevocably constitute, nominate, appoint and authorise Mr./ Ms [name of Attorney], son/daughter/wife of [name of father/spouse of Attorney] and presently residing at [address of Attorney], who is presently employed with us and holding the position of [designation or relation with the Purchaser], as our true and lawful attorney (hereinafter referred to as the “Attorney”) to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to execution of the Fuel Supply Agreement including but not limited to signing (including through affixation of digital signatures) and submission of all applications, affidavits and other documents and writings to Coal India Limited (“CIL”) / the relevant Subsidiary, representing us in all matters before CIL / the relevant Subsidiary, and generally dealing with CIL / the relevant Subsidiary in all matters in connection with or relating to execution of the Fuel Supply Agreement with the relevant Subsidiary.

AND we hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this power of attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Documents.

IN WITNESS WHEREOF WE, [name of the Bidder], THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS [date] DAY OF [month], [year].

For [name of the Bidder] (Signature, name, designation and address) Witnesses:

- 1.
- 2.

Accepted Notarised

(Signature, name, designation and address of the Attorney)

Notes:

- The power of attorney to be submitted by the Purchaser shall substantially be in the format set out above.
- The mode of execution of the power of attorney should be in accordance with the procedure, if any, laid down under the applicable law and the charter documents of the executant(s), and when it is so required, the same should be under common seal affixed in accordance with the required procedure.
- Wherever required, the Purchaser should submit for verification the extract of the charter documents and documents such as a board or shareholders’ resolution authorizing the execution of this power of attorney.
- For a power of attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and appropriately notarised in the relevant jurisdiction. However, the power of attorney provided by Purchaser from countries that have signed the Hague Legislation Convention, 1961 are not required to be

Model FSA for SHAKTI B(v)Medium Term

legalised by the Indian Embassy if it carries a conforming apostille certificate.

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SCHEDULE VIII DISCOM CERTIFICATE

[to be submitted by the DISCOM with which the Purchaser has a PPA based on coal supply under SHAKTI B(v)]

I, on behalf of [insert name of the DISCOM] certify that we have executed a [medium term] power purchase agreement (PPA) to procure electricity from the [name of the Power Station] of the Purchaser [name of the developer] pursuant to bidding process conducted under the guidelines of Ministry of Power [insert reference to Ministry of Power guidelines] and understand that the Power Station shall be sourcing coal from the coal linkage awarded pursuant to Paragraph B(v) of the Scheme for Harnessing and Allocating Koyala (Coal) Transparently in India dated May 22, 2017 issued by the Ministry of Coal as amended from time to time (“Policy”). Details of the PPA are placed at Annexure 1 to this Schedule.

We hereby certify that the PPA has been adopted or approved by the appropriate regulatory commission.

We undertake to keep the Coal Company (Seller under the FSA) informed of any notices of occurrence of any event of default or termination or any other notice having a material adverse effect on the PPA in accordance with terms thereof and shall provide details of such notices to Coal Company (Seller under the FSA) within 7 (seven) days of us having given or receiving such notice.

(Signatory of the DISCOM)

(Stamp)

Annexure 1

Name of DISCOM	
Name of Power Station	
Details of the Power Station - Capacity (MW) and unit configuration	
Name of Developer as per Co. registration / Registration No.	
COD (Actual / Anticipated)	
Capacity (MW) for which PPA has been signed with DISCOM (specify Gross capacity, in case of Net capacity approved Aux. consumption and Transmission loss if any shall be taken in to account)	
Tenure of PPA (Years)	
Date of signing of PPA with DISCOM	
Effective date of supply of Power as per PPA	
Actual date of supply of Power	
PPA valid up to (date) :	
Remaining period of the PPA in Years	
Source of coal as per PPA and adopted by Regulator	

**Signature of Authorised Person
of Power Station/Coal Purchaser**
Date
Name
Designation
Seal

**Signature of Authorised Person
of DISCOM**
Date
Name
Designation
Seal

SCHEDULE IX 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) in the prescribed format; and
 - (b) Certified true copy of Board Resolution or Certified true copy of Shareholders Resolution etc.
2. Self-attested copy of valid Factory License with respect to the Power Station or copy of application filed for renewal of the same, in case the Factory License has recently expired*.
3. Self-attested copy of Consent to Operate with respect to the Power Station 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 Power Station, 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
4. Self-attested copy of GSTIN and PAN number of the Purchaser.
5. Certificate of Incorporation/ Commencement of Business Certificate.
6. In-principle water allocation from state water supply authority
7. Certificate of Date of Commercial Operation (COD) issued by CEA.
8. Certificate of commissioning in respect of the Power Station.
9. Documentation with respect to existing coal linkages, assurance of linkages and /or allocation of mine.
10. Balance life of each Unit of the Specified End Use Plant (Power Station) as certified by CEA
11. Copy of PPA
12. Contract Performance Guarantee
13. Any other relevant information/documentation as may be requested for by CIL/the relevant Subsidiary.

For lifting of coal

1. Certificate of DISCOM in relation to 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 X AFFIDAVIT – UTILIZATION OF COAL SUPPLIED UNDER FSA

(on non-judicial stamp paper of requisite value)

(To be executed before a 1st Class/Executive Magistrate)

I, Authorised Signatory of the Purchaser M/s ----- solemnly declare that:

Whereas ---- (Name of the Power Station and Unit) the Purchaser executed a Fuel Supply Agreement (FSA) and signed all further amendments thereto with M/s ---- (name of the coal company), the Seller on ---- for supply of coal for power generation in terms of the said agreement.

Now in terms of the aforementioned FSA we hereby state and solemnly affirm as under:

1. That against the above FSA, we furnished medium term PPA entered with -----(name of the DISCOM) for ---- MW which is to the extent of ---% of the generating capacity of the Power Station
2. That the power generated out of the coal received under the FSA from the coal supplying subsidiary of CIL (name) during [---- FY] has been supplied to -----(name of the DISCOM) under the medium term PPA and has not been supplied under merchant sale/third party sale.
3. That in case at any stage it is found that the power generated out of the coal supplied under the subject FSA has not been supplied to the (name of the DISCOM) under the medium term PPA, we shall be liable for actions as may be available to the Seller under the FSA considering such failure as breach in terms of the Fuel Supply Agreement and for any other actions taken by any other authority including the state/central power regulators.

Signature of the Authorized Signatory of the Purchaser
(Deponent)

Dated-----

VERIFICATION

I, [insert], the [insert designation of the deponent] do hereby verify that the contents of the paragraph 1 and 2 are true to my knowledge whereas that of paragraph 3, my undertaking and nothing has been concealed and no part of it is false.

Signed at

Date

Place

Seal of the Magistrate

Note: The certificate should be endorsed by the DISCOM/Utility prior to submission to the Seller

SCHEDULE XI FORMAT OF AFFIDAVIT – CHANGE IN CONSTITUTION

(to be stamped in accordance with Indian / State Stamp Act, as may be applicable, and duly sworn before Notary public)

Affidavit

I, [insert], s/o [insert], aged [insert] years, resident of [insert] working as [insert] an Authorised Signatory on behalf of [insert name of Purchaser] (“**Purchaser**”) hereby state as under:

1. I am the [insert designation of the deponent] of the Purchaser. I am conversant with the facts and circumstances surrounding the subject of this Affidavit and have been authorized to depose to the same pursuant to the board resolution dated [insert].
2. I am filing this Affidavit to place on record facts and documents in connection with the Fuel Supply Agreement executed between the Purchaser and [insert name of the Seller].
3. I certify and confirm that the constitution of the Purchaser was changed pursuant to [amalgamation, merger, de-merger, takeover, court order or change in ownership/shareholding pattern etc.] on [insert effective date of the change in constitution].
4. I hereby undertake and confirm that [insert name of Purchaser] has complied with all applicable laws, rules and regulations in relation to change in the constitution of the [insert name of the Purchaser] and in accordance with the Office Memorandum dated April 7, 2015, issued by the Ministry of Coal and/or any other directive or guidelines which may be issued by the Ministry of Coal, all documents have been validly executed in this regard, and a true, correct and valid copy of such document are available with [insert name of Purchaser].
5. That an indemnity bond has been executed by [insert name of Purchaser] in favour of [insert name of the Seller] and the same is enclosed along with this affidavit.
6. I hereby undertake and confirm that [insert name of the Purchaser] will execute a novation agreement or deed of assignment with [insert name of the Seller] to extend the term of the Fuel Supply Agreement in accordance with Clause 22.7 of the Fuel Supply Agreement.
7. That nothing has been concealed in the information submitted as mentioned above.

Capitalized terms used but not defined herein shall have the meaning assigned to them in the Fuel Supply Agreement for Coal Linkages under Paragraph B(iv) of Policy dated [insert].

Solemnly affirmed and verified on this [insert] day of, [insert], [insert] at [insert place].

Signature of the Authorised Signatory

Name and designation of the Authorised Signatory:

Name of the Purchaser:

Stamp of the Purchaser:

Date:

Place:

VERIFICATION

I, [insert], the [insert designation of the deponent] of the Purchaser above named, having my office at [insert], do hereby solemnly declare that what is stated above in paragraphs [insert] to [insert] are on the basis of the books and records of the Purchaser, and verify that the contents of the above affidavit are true and correct, no part of it is false and nothing material has been concealed therefrom.

Verified on [insert] day of [insert], [insert] at [insert place].

Deponent
(Signature)
Name, Designation and Seal

DRAFT

SCHEDULE XII FORMAT OF THE INDEMNITY BOND

(To be furnished in stamp paper of appropriate value in accordance with the Indian / State Stamp Act, as may be applicable)

(Stamp Paper to be purchased in the name of the New Entity)

(At present not less than Rs. 50/- stamp paper)

This indemnity bond is executed on this day *[insert]* *[insert name of the Purchaser]* having its registered corporate office at *[insert address of the Purchaser]* represented through *[insert name of authorised signatory]* s/o *[insert name]* its duly authorized representative (hereinafter referred to as ‘**Indemnifier**’) in favour of M/s Coal India Limited/*[insert name of Seller]* (hereinafter referred to as the ‘**Indemnified**’) having its registered office at *[insert address of the Seller]*.

Whereas the Indemnified herein has entered into a Fuel Supply Agreement dated *[insert date]* with *[insert previous name of the Purchaser]*;

And Whereas, *[insert previous name of the Purchaser]* has changed its name from *[insert previous name of the Purchaser]* to *[insert new name of the Purchaser]* on account of *[insert reason for change in name]*;

And Whereas the *[insert new name of the Purchaser]* has complied with all applicable laws, rules and regulations in relation to *[insert reason for change in name]*.

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

The Indemnifier irrevocably agrees to indemnify for any liability to the Indemnified by virtue of non-compliance of any law, rules and regulations and any consequential liability arising out of such non-compliance in relation to the *[insert explanation for change of name event]*.

The Indemnifier hereby irrevocably agrees from time to time and all times to save and keep harmless and to indemnify Coal India Limited/*[insert name of the Seller]* from any loss or damage caused to the Indemnified due to any act/omission/misrepresentation of the Indemnifier in relation to the *[insert explanation for change of name event]*.

Station:

(Signature with Name and Designation)

Date:

Company Seal (New Entity)

Witness:

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