

**E-FUEL SUPPLY AGREEMENT  
(TRANCHE-III-3)**

**(OTHERS SUB-SECTOR WITHIN NON REGULATED SECTOR)**

**BETWEEN**

**THE SINGARENI COLLIERIES COMPANY LIMITED  
(A Government Company)**

**AND**

**M/s. -----**

**Bidder ID: -----**

**SCCL Customer Code: -----**

**w.e.f: 01-04-2018**

## E-FUEL SUPPLY AGREEMENT

This Fuel Supply Agreement is made at Office of the Marketing department of The Singareni Collieries Company Limited, Singareni Bhavan, Hyderabad, Telangana, India on this 01<sup>st</sup> day of April 2018 between:

1. **The Singareni Collieries Company Limited**, a company incorporated in India under the Companies Act, [1956/2013] with Corporate Identity Number U10102TG1920SGC000571, whose registered office is at Kothagudem-507101 Post, Badhradri Kothagudem District, Telangana State, India and principal place of business is at Singareni Bhavan, PB No.18, Red Hills, Khairathabad Post, Hyderabad, Telangana-500004 (hereinafter referred to as the “**Seller**”, which expression shall unless repugnant to the meaning or context thereof, be deemed to include its successors and permitted assigns) of the one part;

AND

2. *M/s.----- (Bidder ID No.-----), a company incorporated in India under the Companies Act, [1956/2013] with Corporate Identity Number -----, whose registered office is at -----India and principal place of business is at -----India (hereinafter referred to as the “**Purchaser**”, which expression shall unless repugnant to the meaning or context thereof, be deemed to include its successors and permitted assigns) of the other part;*

The Seller and the Purchaser may hereinafter be referred to as such, or may collectively be referred to as the “**Parties**”, and individually each may be referred to as a “**Party**”.

**WHEREAS:**

- A. The Purchaser has participated in an electronic auction for grant of the Coal Linkages (*as hereinafter defined*), pursuant to which the Purchaser has qualified as a Successful Bidder (*as hereinafter defined*) in accordance with the scheme document dated ----- issued by The Singareni Collieries Company Limited for Auction Of coal Linkages in the Others sub-sector (“**Scheme Document**”).
- B. The Purchaser has thereafter been issued a letter of intent dated----- by the Seller (“**LOI**”) in terms of which *inter alia* the Purchaser has become entitled to enter into a fresh fuel supply agreement, which henceforth shall be called E- Fuel Supply Agreement (“**E-FSA**”) to receive the Annual Contracted Quantity (*as hereinafter defined*).
- C. In terms of the requirements of clause 3.7 of the Scheme Document, the Purchaser has submitted the following documents with the Seller in accordance with the timelines stipulated in the Scheme Document:
  - (a) *a non-interest bearing security deposit ( Cash guarantee) for an amount equal to Rs.----- (Rupees ----- only) vide UTR reference with date - ----- for the “Performance Security”;* and
  - (b) the documents listed in **Annexure II**.
- D. Accordingly, the Parties are now entering into and executing this Agreement to record their mutual understanding with respect to the terms and conditions for supply of the Annual Contracted Quantity (*as hereinafter defined*) from the Seller to the Purchaser.

**NOW THEREFORE**, in consideration of the of the mutual covenants, terms and conditions and understandings set forth in this Agreement and other good and valuable consideration, the receipt and adequacy of which are hereby mutually acknowledged, the Parties with the intent to be legally bound hereby covenant and agree as follows:

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Agreement, in addition to the terms defined in the introduction of the Parties, the Recitals and the body of this Agreement, except where the context otherwise requires, the following words and expressions shall have the following meanings:

- (a) “**Acceptable Bank**” shall mean a Nationalised Bank;
- (b) “**Advance Payment**” shall have the meaning ascribed to it in Clause 8.2.1 and Clause 12.2.1;

- (c) “**Adjustment**” shall have the meaning ascribed to it in the Scheme Document;
- (d) “**Affected Party**” shall have the meaning ascribed to it in Clause 18.1;
- (e) “**Agreement**” shall mean this fuel supply agreement including all the Annexures, schedules, exhibits and attachments thereto and any subsequent supplements, amendments and/ or modifications thereof as may be issued in writing or notified by the Seller or as may be entered into in writing by the Parties in accordance with the terms and conditions hereof;
- (f) “**Annual Contracted Quantity**” or “**ACQ**” shall have the meaning as ascribed to it in Clause 5.1;
- (g) “**Applicable Laws**” shall mean all applicable statutes, laws, by-laws, rules, regulations, orders, ordinances, protocols, codes, guidelines, policies, notices, directions, judgments, decrees and/ or other requirements or official directives of any governmental authority or court or other rules or regulations, approvals from the relevant governmental authority, government resolution, directive, or other government restriction or any similar form of decision of, or determination by, or any interpretation or adjudication having the force of law in India;
- (h) “**As Delivered Price of Coal**” shall have the meaning ascribed to it in Clause 11.1;
- (i) “**Business Day**” shall mean each Monday, Tuesday, Wednesday, Thursday, Friday and Saturday that is not declared a holiday in the State of [*insert place*], India;
- (j) “**Claim**” shall mean, in relation to a Person, a demand, claim, action or proceeding made or brought by or against the Person, however arising and whether present, immediate or future;
- (k) “**Coal**” shall mean non-coking as well as coking coal, produced by the Seller domestically and categorized into different classes, GCV bands, Grades and sizes, as per the notifications/orders issued for such purpose by Government of India, SCCL and/ or the Seller;
- (l) “**Coal Linkages**” shall have the meaning ascribed to it in the Scheme Document;
- (m) “**Coal Mine**” shall mean the designated coal mine specified in *Annexure III*;
- (n) “**Contracted Grade**” shall mean the Grade of Coal specified in *Annexure III* to be supplied to the Purchaser in accordance with the terms of this Agreement;
- (o) “**Control**” shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner;
- (p) “**Deemed Delivered Quantity**” shall have the meaning ascribed to it in Clause 5.7;

- (q) “**Defaulting Party**” shall have the meaning ascribed to it in Clause 17.2(g);
- (r) “**Delivery Point**” shall mean [the colliery siding(s) or colliery loading point(s), as the case may be, in the Coal Mine as identified in *Annexure III* /the railway siding(s) or railways loading point(s), as the case may be, as identified in *Annexure III*] at which the Seller shall deliver the Annual Contracted Quantity in accordance with the terms of this Agreement;
- (s) “**Dispute**” shall have the meaning ascribed to it in Clause 16.1;
- (t) “**Dispute Notice**” shall have the meaning ascribed to it in Clause 16.3;
- (u) “**E-FSA**” shall have the meaning ascribed to it in Recital B;
- (v) “**Eligibility Conditions**” shall have the meaning ascribed to it in the Scheme Document;
- (w) “**Extended Term**” shall have the meaning ascribed to it in Clause 2.4;
- (x) “**Failed Quantity**” shall have the meaning ascribed to it in Clause 5.5.1;
- (y) “**Force Majeure Event**” shall have the meaning ascribed to it in Clause 18.1;
- (z) “**GCV**” shall mean gross calorific value;
- (aa) “**Grade**” shall mean the grade/class in which the coking and non-coking Coal are categorised and/or to be categorised in terms and in accordance with the relevant notifications issued by the Seller and/or the Government of India and published in the public domain and/or the Gazette of India, as applicable. The basis of grading for different categories of Coal are as under:
  - (i) non-coking Coal: based on GCV bands;
  - (ii) coking Coal: based on ash percentage; and
  - (iii) semi-coking Coal: based on (ash + moisture) percentage;
- (bb) “**Indemnified Party**” shall have the meaning ascribed to it Clause 19.1;
- (cc) “**Indexed Notified Price**” shall have the meaning ascribed to it Clause 11.2;
- (dd) “**Interest Rate**” shall mean the rate of interest that State Bank of Hyderabad, Industrial Finance Branch, Hyderabad, charges to SCCL on avilment of CC limits.
- (ee) “**Level of Delivery**” shall have the meaning ascribed to it in Clause 5.6.1;
- (ff) “**Level of Lifting**” shall have the meaning ascribed to it in Clause 5.6.2;
- (gg) “**Licenses**” shall have the meaning ascribed to it in Clause 20.2(c);
- (hh) “**Link Quantity**” shall have the meaning ascribed to it in the Scheme Document;

- (ii) “**Lock-in Period**” shall have the meaning ascribed to it in Clause 17.1;
- (jj) “**LOI**” shall have the meaning ascribed to it in Recital B;
- (kk) “**Losses**” shall have the meaning ascribed to it in Clause 19.2;
- (ll) “**Lot**” shall have the meaning ascribed to it in the Scheme Document
- (mm) “**Month**” shall mean a calendar month;
- (nn) “**Non-Affected Party**” shall have the meaning ascribed to it in Clause 17.2(a);
- (oo) “**Non-Defaulting Party**” shall have the meaning ascribed to it in Clause 17.2(g);
- (pp) “**Notified Price**” shall mean Rs. [●] (Rupees [●] only) per tonne;
- (qq) “**Performance Security**” shall have the meaning ascribed to it in Recital C(a) and shall include any revised/ incremental Performance Security submitted by the Purchaser in accordance with the requirements of Clause 4;
- (rr) “**Person**” shall mean any individual, general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative, association, any foreign trust or any foreign business organization, or any other entity, whether or not having a separate legal personality;
- (ss) “**Representative**” shall have the meaning ascribed to it in Clause 16.2;
- (tt) “**SCCL**” shall mean The Singareni Collieries Company Limited, the Seller, having its registered office at Kothagudem Collieries, Bhadradi Kothagudem District, Telangana State, Pin - 507101;
- (uu) “**Scheduled Quantity**” or “**SQ**” shall have the meaning ascribed to it in Clause 5.4.1;
- (vv) “**Scheme Document**” shall have the meaning ascribed to it in Recital A;
- (ww) “**Secondary Source**” shall have the meaning ascribed to it in Clause 5.3;
- (xx) “**Signature Date**” shall mean the date of signing of this Agreement by the Parties;
- (yy) “**Specified End Use Plant**” shall mean one or more units of Others Sector in a single location within the same boundary located in India and owned by the Purchaser, the particulars of which are detailed in of *Annexure IV*;
- (zz) “**Successful Bidder**” shall have the meaning ascribed to it in the Scheme Document;
- (aaa) “**Term**” shall have the meaning ascribed to it Clause 2.2;

- (bbb) “**Third Party**” shall mean a Person who is not a Party to this Agreement;
- (ccc) “**Third Party Agency**” shall mean the independent agency appointed for conduct of third party sampling in accordance with Clause 9;
- (ddd) “**Transfer Event**” shall have the meaning ascribed to it in Clause 15.1;
- (eee) “**Winning Premium**” shall mean 0% (Zero per cent.) of the Notified Price (or Indexed Notified Price, as the case may be); and
- (fff) “**Year**” shall mean the financial year of the Seller, commencing on April 1<sup>st</sup> and ending on the following March 31<sup>st</sup>.

## 1.2 Interpretation

In this Agreement, unless the context specifies otherwise:

- (a) headings and bold typeface are used for convenience only and shall not affect the interpretation of this Agreement;
- (b) reference to the singular includes a reference to the plural and vice versa, and reference to any gender includes a reference to all other gender;
- (c) references to the Recitals, Clauses and Annexure shall be deemed to be a reference to the recitals, clauses and annexures of this Agreement;
- (d) the Recitals (containing substantive provisions), Clauses and Annexures form part of this Agreement and shall have the same force, binding nature and effect as if expressly set out in the body of this Agreement, and any reference to this Agreement shall include any Recitals (containing substantive provisions), Clauses and Annexures to it;
- (e) the expression “this Clause” shall, unless followed by reference to a specific provision, be deemed to refer respectively to the whole Clause, not merely the sub-clause, paragraph or other provision in which the expression occurs;
- (f) references to any enactment are to be construed as referring also to any amendment or re-enactment (whether before or after the Signature Date), and to any rule, regulation, notification, circular or order issued or made thereunder;
- (g) references to “**include**” and “**including**” shall be construed without limitation;
- (h) reference in this Agreement to any statute or regulation made using a commonly used abbreviation, shall be construed as a reference to the short title of the statute or full title of the regulation;
- (i) references to any agreements, scheme documents, instruments and/ or documents are to be construed as references to such agreements, scheme documents,

instruments and/ or documents as amended, modified or supplemented from time to time;

- (j) reference to “**writing**” or “**written**” means any method of reproducing words in a legible and non-transitory form (excluding, unless otherwise stated herein, e-mail);
- (k) the terms “**hereof**”, “**herein**”, “**hereby**”, “**hereto**” and derivative or similar words refer to this entire Agreement or specified Clauses of this Agreement, as the case may be;
- (l) the words “**directly or indirectly**” mean directly or indirectly through one or more intermediary Persons or through contractual or other legal arrangements, and “**direct or indirect**” shall have the correlative meanings;
- (m) where a wider construction is possible, the words “**other**” and “**otherwise**” shall not be construed *ejusdem generis* with any foregoing words;
- (n) time is of the essence in the performance of the Parties’ respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence. When any number of days is prescribed herein, the same shall be reckoned exclusively of the first and inclusively of the last day unless the last day does not fall on a Business Day, in which case the last day shall be the next succeeding Business Day;
- (o) any approval, consent, permission, license etc., to be granted by a Party under this Agreement shall be deemed to mean an approval, consent, permission, license etc., in writing; and
- (p) any capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Scheme Document.

## **2. COMMENCEMENT AND TERM OF THE AGREEMENT**

- 2.1 This Agreement shall come into force with effect from the Signature Date.
- 2.2 Subject to Clause 17.1 and Clause 17.2, this Agreement shall remain in force and effect commencing from the Signature Date until the expiry of 31.03.2022 from the Signature Date (“**Term**”).
- 2.3 Notwithstanding the provisions of Clause 2.2, in the event of any change in the Grade structure / name (including change in the Contracted Grade of coal made necessary due to change in the physical characteristics of the mined coal, or, shifting from UHV to GCV etc.) of the Contracted Grade of Coal, such changed Grade structure shall be binding and complied with by the Parties. The Seller shall, within 7 (seven) days of introduction of such Grade change, provide a written notice to the Purchaser calling for a joint review of such provisions of this Agreement on which such change in the Grade structure has a bearing. Upon such joint review, this Agreement shall be duly amended in writing to bring it in full conformity with such change. However, if despite their efforts the Parties



are unable to arrive at a mutually agreed position with respect to the subject matter of review, within a period of 3 (three) months from the date of the above mentioned notice, the aggrieved Party shall have the right to terminate the Agreement subject to a further notice of 3 (three) months given in writing to the other Party.

- 2.4 On completion of the Term, this Agreement shall expire, unless the Parties mutually agree in writing to extend the Agreement for a further duration of 5 (five) years (“**Extended Term**”), on the same or such modified terms as may be agreed upon in writing by the Parties.

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

The Purchaser acknowledges and agrees that the Seller shall have the right, throughout the Term or Extended Term, as the case may be, to call for such information and/ or documentation from the Purchaser (including the documentation detailed in *Annexure V*) as may be required by the Seller to check:

- (a) the veracity of the Purchaser’s claim of being a *bona fide* consumer of the Contracted Grade of Coal with respect to the Specified End Use Plant; and
- (b) the Purchaser’s compliance with the LOI, the Eligibility Conditions, the terms and conditions of the Scheme Document and of this Agreement.

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.

### **4. PERFORMANCE SECURITY**

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

*Performance Security = {[Annual Contracted Quantity] multiplied by [5% of the sum of the Notified Price (or the latest Indexed Notified Price, as the case may be) and Winning Premium multiplied by (Notified Price (or the latest Indexed Notified Price, as the case may be))]}.*

If the Annual Contracted Quantity comprises coal from multiple Lots, the Performance Security shall be computed on the basis of respective quantities, corresponding Notified Prices and Winning Premiums for each Lot.

- 4.2 The Performance Security shall remain valid till 3 (three) months from the date of expiry of the Term or Extended Term, as the case may be. The Performance Security shall be returned or refunded to the Purchaser at the end of its validity, subject to successful

completion of and complete settlement of all claims of the Seller arising out of this Agreement.

4.3 In case of change in the Notified Price (or the latest Indexed Notified Price, as the case may be) in accordance with Clause 11 and/ or in the in case of revision / adjustment in the Annual Contracted Quantity in accordance with Clause 5.1, the amount of Performance Security shall be suitably revised as follows:-

- 4.3.1 In the event of any increase in the Notified Price (or the latest Indexed Notified Price, as the case may be) pursuant to Clause 11, the Purchaser may:
- (a) provide a new bank guarantee issued by any Acceptable Bank for the revised value computed as per Clause 4.1; or
  - (b) provide an additional/ top up bank guarantee issued by any Acceptable Bank for an amount corresponding to the incremental value of the Performance Security computed as per Clause 4.1.

Alternatively, the bank guarantee constituting the Performance Security may be suitably amended for the revised value computed as per Clause 4.1. The new/ revised/ amended/ top up bank guarantee shall be in the format set out in ***Annexure I***.

In the event that the Performance Security has been provided in the form of a non-interest bearing security deposit (cash guarantee), then, upon any increase in the Notified Price (or the latest Indexed Notified Price, as the case may be) pursuant to Clause 11, the Purchaser shall deposit an additional amount towards the security deposit to cover for such increase.

Any failure of the Purchaser to replenish the Performance Security in the manner specified herein above within 30 (thirty) days of notification of change in the Notified Price (or the latest Indexed Notified Price, as the case may be) under Clause 11, shall entitle the Seller to suspend the supply of the Contracted Grade of Coal in accordance with Clause 14.3 without absolving the Purchaser of its obligations under this Agreement. Further, if the Purchaser fails to replenish the Performance Security within 30 (thirty) days of such suspension of Coal supplies, the Agreement shall unless otherwise agreed in writing by the Parties, stand automatically terminated without any further act on the part of the Seller and the Seller shall also have the right to invoke the existing Performance Security.

- 4.3.2 In the event of any decrease in the Notified Price (or the latest Indexed Notified Price, as the case may be) pursuant to Clause 11, the Purchaser may provide a new bank guarantee issued by an Acceptable Bank in the format specified in Annexure I for the revised value computed as per Clause 4.1. The Seller shall, within 30 (thirty) days of receipt of such new bank guarantee, return the original Performance Security to the Purchaser. In the event that the Performance Security has been provided in the form of a non-interest bearing security deposit, then, upon any decrease in the Notified Price (or the latest Indexed Notified Price, as the case may be) pursuant to Clause 11, the Seller shall refund the excess value of the security deposit to the Purchaser.

4.3.3 In the event of revision / adjustment in the Annual Contracted Quantity in accordance with Clause 5.1, the Purchaser may provide a new bank guarantee issued by an Acceptable Bank in the format specified in *Annexure I* for the revised Annual Contracted Quantity computed as per Clause 5.1. The Seller shall, within 30 (thirty) days of receipt of such new bank guarantee, return the original Performance Security to the Purchaser. In the event that the Performance Security has been provided in the form of a non-interest bearing security deposit, then, upon any revision / adjustment in the Annual Contracted Quantity pursuant to Clause 5.1, the Seller shall refund the excess value of the security deposit to the Purchaser.

4.3.4 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 4.3, shall be the same as that of the initial Performance Security.

#### 4.4 **Invocation/ Forfeiture of Performance Security**

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

- (a) in the event that the Purchaser fails to submit the revised incremental Performance Security to the Seller within the timeline stipulated in Clause 4.3 above;
- (b) in the event that the Purchaser fails to pay the costs of third party sampling;
- (c) in accordance with Clause 5.5.2, Clause 13.2, Clause 14, Clause 15.3 or Clause 17.1; and/ or
- (d) in the event that the Seller becomes entitled to exercise its right to terminate or actually exercises its right to terminate this Agreement for any of the reasons specified in Clause 17.2(d) to Clause 17.2(j).

4.4.2 In the event of any partial or complete invocation of the Performance Security under this Agreement, the Purchaser would have to replenish the Performance Security within 30 (thirty) days of its invocation hereunder, failing which the Seller shall be entitled to terminate this Agreement in accordance with Clause 17.2(e). The period of validity of the replenished Performance Security furnished by the Purchaser pursuant to this Clause 4.4, shall be the same as that of the initial Performance Security. In the event that the Acceptable Bank issuing the Performance Security does not permit a partial invocation of the Performance Security, the Seller shall be entitled to invoke the whole Performance Security and recover thereunder, the amounts due to it and the balance amount, if any, shall be refunded immediately to the Purchaser within 1 (one) day of replenishment of the Performance Security to the Seller in the manner as stipulated above.

## 5. ANNUAL CONTRACTED QUANTITY

### 5.1 Annual Contracted Quantity

*The aggregate quantity of the Contracted Grade(s) of Coal agreed to be supplied at the Delivery Point(s) by the Seller to the Purchaser and undertaken to be purchased by the Purchaser from the Seller at the Delivery Point(s) shall be:*

*(In tonnes)*

<i>MINE/CHP</i>	<i>GRADE</i>	<i>QUANTITY/YR</i>

*For part of a Year, the Annual Contracted Quantity shall be pro-rated accordingly. The Annual Contracted Quantity shall be supplied as per the provisions of this Clause 5 and Clause 8.*

The Annual Contracted Quantity shall mean

- (a) till such time as the Verification Certificate is submitted by the Bidder and Adjustment(s) (as detailed in the Scheme Document) is carried out, the Provisional Allocated Quantity of coal awarded to the Bidder from multiple Lots under the Others sub-sector of Tranche-III Coal Linkage Auction; and thereafter,
- (b) Allocated Quantity (i.e. post Adjustment(s)) of coal awarded to the Bidder from multiple Lots under the Others sub-sector of Tranche-III Coal Linkage Auction.

The revised ACQ calculated as per (b) above, shall become applicable from the date of signing of this E-FSA.

### 5.2 End-use of Coal

The total quantity of the Coal/Contracted Grade of Coal supplied pursuant to this Agreement shall only be utilized in the Specified End Use Plant. The Purchaser shall not sell, divert and/or transfer the Coal/ Contracted Grade of Coal for any purpose whatsoever and any such sale, diversion and/ or transfer shall be treated as material breach of Agreement. In the event that the Purchaser engages in any such sale, diversion, transfer and/ or trade of Coal/ Contracted Grade of Coal, the Seller shall, after giving the Purchaser a due opportunity of being heard on the matter, be entitled to terminate this Agreement without any liabilities or damages whatsoever payable to the Purchaser.

It is expressly clarified that the Seller shall reserve the right to call for any document(s)

from the Purchaser to verify the end-use of the Coal/ Contracted Grade of Coal and satisfy itself of the accuracy of the contents thereof. The Purchaser shall have the obligation to comply with the Seller's directions and shall extend full co-operation to the Seller in carrying out such verification.

Without prejudice to the above rights of the Seller, in case of specific complaints regarding non utilization of coal in accordance with this Agreement, such complaints may be referred to the relevant department(s) or agencies for suitable action.

### 5.3 Sources and Mode of Supply

The Seller shall endeavor to supply the Contracted Grade of Coal at the Delivery Point. In case the Seller is not in a position to supply the Scheduled Quantity of the Contracted Grade of Coal at the Delivery Point on account of a Force Majeure Event, the Seller shall have the option to supply the balance quantity of the Contracted Grade or an alternative grade of Coal at the secondary source indicated in *Annexure III* ("**Secondary Source**"). The balance quantity shall be reckoned in terms of the shortfall in quantity of coal supplied and no adjustment shall be made in such quantity for supply of an alternative grade of coal. Further, in case of supply of coal at the Secondary Source, the Purchaser shall have the option whether or not to accept the supply of Coal from such Secondary Source, and shall intimate the Seller of its choice upon being informed by the Seller of proposed supply from the Secondary Source. Additional costs incurred due to supply of Coal at the Secondary Source shall be borne by the Purchaser.

No flexibility shall be given to the Purchaser to take delivery of the Contracted Grade or alternative grade of Coal through any mode other than the mode specified in *Annexure III*.

### 5.4 Scheduled Quantity

- 5.4.1 The Annual Contracted Quantity shall, unless otherwise agreed to in writing between the Parties, be delivered in equal quarterly quantities during the Year which shall be calculated as Annual Contracted Quantity/4 ("**Scheduled Quantity**" or "**SQ**"); provided that during the first Year of the Term, the Scheduled Quantity shall be suitably pro-rated (i.e. the Scheduled Quantity to be delivered shall be computed suitably commencing from the Signature Date till 31<sup>st</sup> March of the next Year).

In case of revision / adjustment of the Annual Contracted Quantity in terms of Clause 5.1, then the Scheduled Quantity shall be revised accordingly.

- 5.4.2 In respect of a particular Lot, in case of supply by rail, the Parties agree that in case the Purchaser is unable to lift the Scheduled Quantity due to shortfall in the quantity necessary for formation of rake for transportation through rail mode, the balance Scheduled Quantity will be carried forward to the subsequent quarter(s)/ Year(s). As and when such carried forward quantity is adequate to form a rake for transportation through rail mode, the same shall be supplied to the Purchaser. If at the end of the Term, any residual Scheduled Quantity remains (including any quantity which has been carried forward as aforesaid), the same shall be dealt with in the following manner:
- (a) in case the residual Scheduled Quantity is 2000 tonnes or more, the Purchaser will

be supplied with the quantity equivalent to one rake; and

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

5.4.3 The total variation in the quarterly Scheduled Quantity shall not, unless otherwise agreed to in writing by the Parties, exceed 10% (ten per cent.) of the Scheduled Quantity.

#### 5.5 Compensation for short delivery/lifting

5.5.1 If for a Year, the Seller fails to meet the Level of Delivery, or the Purchaser fails to meet the Level of Lifting with respect to that Year, then 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/ Level of Lifting in a Year	Rate of Compensation applicable for the Failed Quantity (at the price payable under Clause 11 for Contracted Grade of Coal supplied)
Below 100% but up to 75% of ACQ	Nil
Below 75% of ACQ	10%

The compensation shall be computed in the same manner as done slab-wise for computation of income-tax. The Level of Delivery and Level of Lifting shall be with reference to the ACQ under this E-FSA.

5.5.2 Compensation 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 compensation 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 Performance Security.

#### 5.6 Level of Delivery and Level of Lifting

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

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

Where:

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

DQ = Delivered Quantity, namely, aggregate of actual quantities of the Contracted Grade(s) of Coal delivered by the Seller for the Year or sale order quantity obtained by the Purchaser by paying advance amount, whichever is higher.

DDQ = Deemed Delivered Quantity, reckoned in the manner stated in Clause 5.7.

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

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

**Note:** For the purpose of calculation of ‘Number of days lost under applicable Force Majeure Event’, the period affecting both the Parties shall be counted only once. Further, it is clarified that in case the Purchaser does not accept the supply of coal from the Secondary Source, then such quantity of coal shall be considered in the quantity of the Contracted Grade of Coal which could not be delivered by the Seller for a Year due to occurrence of a Force Majeure Event affecting the Seller and / or the Purchaser.

5.6.2 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 the Contracted Grade of Coal by the Purchaser for the Year.

DDQ = Deemed Delivered Quantity, reckoned in the manner stated in Clause 5.7.

## 5.7 Deemed Delivered Quantity

For the purpose of this Agreement, the aggregate of the following items provided under Clause 5.7.1 to Clause 5.7.2 shall constitute the Deemed Delivered Quantity with respect to a Year:

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

- (a) The quantity of the Contracted Grade of Coal not supplied by the Seller owing to the Seller exercising the right of suspension of supplies in terms of Clause 14.
- (b) The quantity of the Contracted Grade of Coal not supplied by the Seller owing to the Purchaser failing or omitting to fulfill the requirements under Clause 12.
- (c) The quantity of the Contracted Grade of Coal offered by the Seller which is not accepted by the Purchaser.

### 5.7.2 *For Supply of Coal by road*

- (a) The quantity of the Contracted Grade of Coal not supplied by the Seller owing to omission or failure on the part of the Purchaser to book orders for the Scheduled Quantity in terms of Clause 8.2.
- (b) The quantity of the Contracted Grade of Coal not supplied by the Seller owing to the Purchaser's failure to place the requisite number / type of road transport at the Delivery Point for delivery of the Contracted Grade of Coal within the validity period of the sale order.
- (c) The quantity of the Contracted Grade of Coal not supplied by the Seller owing to the Seller exercising the right of suspension of supplies in terms of Clause 14.
- (d) The quantity of the Contracted Grade of Coal not supplied by the Seller owing to the Purchaser failing or omitting to fulfill the requirements under Clause 12.
- (e) The quantity of the Contracted Grade of Coal offered by the Seller which is not accepted by the Purchaser.

5.7.3 Deemed Delivered Quantity in terms of Clause 5.7.1 and Clause 5.7.2 shall be calculated on annual basis.

## **6. QUALITY**

The quality of the Contracted Grade of Coal to be supplied at the Delivery Point shall, as far as possible, be within the specifications as set out in *Annexure VI*. A complaint, if any, regarding the quality of the Contracted Grade of Coal shall be made by the Purchaser giving specific details of the consignment to the General Manager (Marketing) of the Seller.

## **7. WEIGHMENT OF COAL**

- 7.1 If the Contracted Grade of Coal is delivered for dispatch by rail, weighment shall be done at the Delivery Point by way of pre-weigh bin / weighbridge of the Seller and the recorded weight shall be entered in the relevant dispatch document/ railway receipt. Such recorded weight shall form the basis for raising bills by the Seller. The weighment shall be on wagon to wagon basis in the manner described hereinafter:
  - 7.1.1 In case wagons are weighed on a pre-weigh bin / electronic weighbridge, the weight recorded in the computerized print out shall be taken as the weight for the respective wagon. In the absence of a computerized print out facility, the weight as certified by the railways shall be reckoned as the weight and shall be binding on the Parties.
  - 7.1.2 In the absence of electronic weighbridges, the weighment shall be done on the mechanical weighbridges at the Delivery Point.
  - 7.1.3 In the cases not covered by Clause 7.1.1 or Clause 7.1.2 above, the weight recorded on the relevant dispatch document/ railway receipt as per existing practice of the railways



shall be reckoned as the weight and shall be binding on the Parties. However, the wagons will be loaded up to the permissible capacity fixed by the railways for such wagons on the basis of volumetric measurement.

- 7.2 If the Contracted Grade of Coal is delivered for dispatch by road, the weight recorded at the pre-weigh bin / weighbridge of the Seller at the concerned Delivery Point and as mentioned in the dispatch document shall be binding on the Parties.
- 7.3 The Purchaser shall be entitled to depute an authorised representative to witness the weighment / loading of the wagon(s) at the Delivery Point.
- 7.4 The pre-weigh bins / weighbridges at the Delivery Point at Seller's end shall be calibrated and maintained as per Applicable Laws. The Seller shall regularly monitor the accuracy of the pre-weigh bins / weighbridges. If and when any pre-weigh bin / weighbridge is found to be out of order, after remedying the defect as expeditiously as possible, the Seller shall arrange for calibration thereof, wherever necessary, as per Applicable Laws.

## **8. METHOD OF ORDER BOOKING AND DELIVERY OF THE COAL**

### **8.1 Order Booking by Rail**

- 8.1.1 The Seller shall make supply of coal at the Delivery Point on ex-colliery siding basis in the Purchaser's transport system. Seller warrants that coal delivered to the Purchaser herein shall be good and marketable and its transport is lawful and that such coal shall be free and clear of any lien, claim demand, security, interest or any title risk to the coal purchased and sold hereunder shall pass from the Seller to the Purchaser at the Delivery Point. However, the Seller has the first lien and charge on the property of the coal supplied to the extent of dues from the Purchaser to the Seller.
- 8.1.2 The Purchaser shall submit a monthly programme of required quantities for Rail to the Seller as per Seller's procedures in vogue not less than three clear working days before the commencement of the relevant month for the quantity of coal for the given month. The Purchaser while submitting the monthly program in the prescribed proforma of required quantities should invariably enclose a copy of Production Report, or any other documents maintained under State and Central Govt. Rules. Electricity bill, Sales Tax paid receipt, coal consumption, coal stock details as a proof to ensure proper utilization of coal for the corresponding period. Issue of Deliver Order is subject to submission of the above details and any short supply due to non-issue of sale orders by the Seller, due to the reasons as stated above, is at the risk of Purchaser.
- 8.1.3 For rail despatches, the Seller shall despatch coal in full rake load to the Purchaser on "freight to pay" basis and the Seller shall endeavor to comply with all documentation/formalities laid down by the Indian Railways for charging freight on Train Load Rates basis only.
- 8.1.4 The Purchaser shall deposit freight value with Railways as per the Seller's rake programme at the respective sidings. In case of failure of the purchaser to pay the freight

value with Railways resulting in non-movement of rakes to the Purchaser as per the rake programme, the Seller will have right to cancel such sale orders at the risk of the Purchaser.

## 8.2 Order Booking by Road

8.2.1 For road despatches, the Seller shall arrange to issue sale orders to the e-mail address of the Purchaser clearly indicating the Delivery Point, quantity, grade, price and destination with a validity period of three months against the payment of advance amount as per the price components applicable as on the date of issue of sale order. Such advance payment paid will be adjusted against the delivery of coal as per the price. The price components will be notified by Seller from time to time.

8.2.2 The Purchaser shall submit the sale order in Area Quality Departments of SCCL within 10 days from the date of issue of sale order. The Purchaser shall arrange to place the required number/ type of trucks to lift the Contracted grade of coal as per the loading programme/ coal allotment of SCCL.

## 9. DETERMINATION OF COAL QUALITY

9.1 To determine the quality of coal at the Delivery Point, third party sampling shall be undertaken in accordance with the procedure set out in Annexure VII. The facility charges towards Third Party Sampling will be as per SCCL price notification.

9.2 In case of a variation of Grade of Coal (decided on the basis of third party sampling by a the Third Party Agency) as compared to the Contracted Grade of Coal, the Purchaser shall pay the Notified Price (or the latest Indexed Notified Price, as the case may be) of the supplied Grade of Coal plus the Winning Premium of the supplied Grade of Coal, without factoring in royalty payments, taxes etc.

### *Illustration:*

Contracted Grade	G5-ROM
Notified Price/ Indexed Notified Price (Rs./ Tonne) (B)	3,320
Winning Premium at the time of auction (Rs./ Tonne) (C)	300
Winning Premium (in % terms at the time of auction) (D=C/B)	9.04
Actually Supplied Grade	G7-CRR
Indexed Notified Price of Supplied Grade (Rs./ Tonne) (E)	2,660
Premium of Supplied Grade (Rs./ Tonne) (F=E*D)	240.36
<b>Price Payable for G7 Grade (Rs/Tonne) (I = E+F)</b>	<b>2,900.36</b>

similar procedure to calculate the applicable price will be followed in case of a downward variation in the Contracted Grade of Coal.

## 10. TRANSFER OF TITLE

Once delivery of the Contracted Grade of Coal has been effected at the Delivery Point by

the Seller, the property, title and risk in/ of the Contracted Grade of Coal so delivered shall stand transferred to the Purchaser in terms of this Agreement. Thereafter, the Seller shall in no way be responsible and/ or liable for the security or safeguard of the Contracted Grade of Coal so transferred. The Seller shall have no liability whatsoever, including towards increased freight or transportation costs, as regards any diversion of wagons/ rakes/ road transport en-route for whatever causes, by the railways, road transporter and/ or any other agency.

## **11. PRICE OF CONTRACTED GRADE OF COAL**

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

*As Delivered Price of Coal = {[Annual Contracted Quantity] multiplied by [the sum of the Notified Price (or the latest Indexed Notified Price, as the case may be) and Winning Premium multiplied by (Notified Price (or the latest Indexed Notified Price, as the case may be))]}.*

- 11.2 The Winning Premium shall remain constant during the tenure of the Agreement. The Notified Price or the Indexed Notified Price, as the case may be, shall be reviewed by SCCL semi-annually, and it may make such modifications as may be deemed appropriate. The price pursuant to any such modification (“**Indexed Notified Price**”) shall be notified by SCCL and such modification shall be regarded as an indexation. The Notified Price, or the Indexed Notified Price, as the case may be, shall be payable in the manner contemplated in Clause 11.1 over the tenure of the Agreement.
- 11.3 In addition to the As Delivered Price of Coal computed pursuant to Clause 11.1, the Purchaser shall have to pay sizing charges, transportation charges up to the Delivery Point, rapid loading charges, facility charges for third party sampling, statutory charges, levies and other charges as may be applicable at the time of delivery.
- 11.4 All royalties, taxes, duties, cesses, and such statutory levies payable to the State Government, Central Government and/ or to any other statutory authority on the supply, dispatch and delivery of Contracted Grade of Coal under this Agreement shall be borne by the Purchaser.
- 11.5 In all cases the entire freight charges, irrespective of the mode of transportation of the Coal supplied, shall be borne by and to the account of the Purchaser.
- 11.6 Notwithstanding anything to the contrary contained herein, the Purchaser shall be liable to make payment to the Seller in terms of this Agreement, on the basis of Contracted Grade with respect to all quantity of Coal supplied, irrespective of when and in what condition the loaded wagons/ rakes/ road transport vehicles reach or do not reach the destination.

## **12. BILLING, PAYMENT, OVERLOADING AND UNDER LOADING**

## 12.1 Supply of Contracted Grade of Coal by Road

For road dispatches, Advance Payment pursuant to Clause 8.2 shall be made by way of wire transfer of the amount by way of National Electronic Funds Transfer or Real Time Gross-settlement, to the below mentioned bank account of the Seller:

THE SINGARENI COLLIERIES COMPANY LIMITED  
A/c No. 52095896543  
STATE BANK OF HYDERABAD  
INDUSTRIAL FINANCE BRANCH, PANJAGUTTA, HYDERABAD  
Current Account  
IFSC CODE:SBIN0004168

## 12.2 Rail Dispatches - Billing and Payment

12.2.1 All despatches through rail shall be against advance payment only. In case any customer intends to avail credit facility, such customer shall deposit one rake (4000 tonnes) coal value together with taxes and duties and other charges as applicable. In such case, payment shall be made within three working days from the date of moving of rakes from SCCL's Delivery Point. Mode of payment shall be through RTGS / Demand Draft / Online transfer. In the event of delay, the seller shall be entitled to charge interest as per the Interest Rate.

12.2.2 The Seller shall regularly raise bills on rake to rake basis for coal supplied at the applicable price on the date of delivery which includes Notified price ((or the latest Indexed Notified Price, as the case may be), Winning Premium, Sizing charges, Forest land adjustment cost, forest permit fee, Engine shunting charges, Royalty, Fuel Surcharge, Surface Transport Charges, facility charges for third party sampling, statutory duties, levies and other charges notified by the Seller/State Govt./Central Govt. from time to time.

## 12.3 Idle and Penal Freight

12.3.1 **Idle Freight:** Any loss to the purchaser due to under loading of wagons with 'G7' and above grades (G7, G6, G5, G4, G3, G2 and G1) up to the carrying capacity as per the rules of Indian Railways shall be borne by the Seller and any idle freight beyond such carrying capacity shall be borne by the Purchaser. However, any idle freight due to under loading of wagons with 'G8' and below grades (G8, G9, G10, G11, G12, G13, G14, G15, G16 & G17) shall be borne by the Seller.

12.3.2 **Penal Freight:** The Purchaser shall be responsible to take delivery of the Contracted Grade of the coal at the Delivery Point and ensure that there is no overloading. Any loss to the Purchaser due to payment of penal freight i.e., any penal freight for overloading charged by the Railways for any consignment shall be payable by the Purchaser. However, if overloading is detected from any particular colliery, consistently during three (3) continuous months, on due intimation from the purchaser to this effect, the Seller undertakes to take remedial measures.

## **12.4 Modalities for Billing, Claims and Payment**

- 12.4.1 The Seller shall raise and the Purchaser shall pay the bills for Coal supplies on the Contracted Grade of Coal in accordance with Clause 12.1 and Clause 12.2 above. Necessary reconciliations shall be done between the Parties on the basis of the analyzed Grade of Coal in accordance with Clause 9.
- 12.4.2 The Seller or the Purchaser, as the case may be, shall raise their respective claims arising out of quality determination of Coal through sampling and analysis by a Third Party Agency forthwith. In the event of any such claim being made, the revised price computed as per the formula set out in Clause 9.2 shall be payable by the Purchaser or refunded by the Seller. The credit or debit bill due to grade variation, as the case may be, shall be raised within 5 (five) working days to the Purchaser / Seller after the finalization of grades as per the joint sampling protocol / third party sampling carried out at Delivery Point. The Purchaser has to make the payment within 5 working days from the date of receipt of above bill, otherwise the Interest Rate will be charged for the delayed payment. In case of Seller, the credit notes will be raised and the amount will be adjusted in the subsequent bills / sale orders.
- 12.4.3 The Parties shall jointly reconcile all payments made for the monthly Coal supplies and for third party sampling during the Year by end of April of the following Year. The Parties shall, forthwith, give credit/debit for the amounts falling due, if any, as assessed during such joint reconciliation. The annual reconciliation statement shall be jointly signed by the authorised representative of the Seller and the Purchaser, which shall be final and binding.
- 12.4.4 In the event of the due date of any payment obligation under this Agreement falling on Sunday or a gazetted holiday, the next first working day shall be the effective due date for the purpose of making the payment.

## **13. NOTICE OF DELAYED PAYMENT AND INTEREST ON DELAYED PAYMENT**

### **13.1 (Not Used)**

### **13.2 Interest on Delayed Payment**

In cases of any default in making any payment due in terms of this Agreement by any Party to the other Party, the defaulting Party shall be liable to pay interest at the Interest Rate on the total sum outstanding and for the entire period for which the payment has remained over-due. Without prejudice to the foregoing, in the event the Purchaser fails to pay the overdue amount along with the interest within 60 (sixty) days, the Seller shall be entitled to invoke the Performance Security and/ or adjust the same against the Advance Payment and suspend Coal supplies in accordance with Clause 14. For removal of doubts, it is clarified that it shall be permissible for the Seller to adjust or recover the interest due in terms of this Clause from the Performance Security and/ or the Advance Payment.

## **14. SUSPENSION OF COAL SUPPLIES**

- 14.1 Notwithstanding other provisions of this Agreement (including Clause 4.3.1 and Clause 13.2), in the event the Purchaser fails to pay any amount including any interest, due to the Seller under this Agreement within a period of 30 (thirty) days of the same falling due, the Seller shall have the right to resort to any one or more of the following:
- (a) adjust the outstanding amount against the Performance Security by invoking the Performance Security or such portion of it as may be deemed necessary;
  - (b) adjust the outstanding amount against the Advance Payment or any cash deposit to the extent available and necessary to meet the outstanding dues; and/or;
  - (c) suspend supplies of the Contracted Grade of Coal to the Purchaser.
- 14.2 During the period of suspension of supplies in terms of Clause 14.1, the Seller shall be relieved of its obligations to supply the Contracted Grade of Coal to the Purchaser hereunder. However, the obligations of the Purchaser under this Agreement shall be deemed to remain in full force.
- 14.3 In the event of suspension of Coal supplies pursuant to this Clause, the Seller shall have the right to continue the suspension for as long as the Performance Security or the Advance Payment / cash deposit, as the case may be, has not been fully replenished. The Seller shall resume the Contracted Grade of Coal supplies within 3 (three) days of payment/ adjustment of the outstanding amount together with interest as also the full replenishment of Performance Security or Advance Payment / cash deposit, as the case may be.

## **15. CHANGE IN CONTROL AND TRANSFER**

### **15.1 Change in Control and Transfer**

Any change in the Control of the Purchaser and/ or any transfer of the Specified End Use Plant along with the rights in relation to the Annual Contracted Quantity (each such event being individually referred to as a “**Transfer Event**”) shall be permissible with prior approval of the Seller if:

- (a) such change in Control does not result in the Purchaser becoming non-compliant with any of the Eligibility Conditions or the transferee of the Specified End Use Plant along with the rights in relation to the Annual Contracted Quantity continues to satisfy all of the Eligibility Conditions; and
- (b) such Transfer Event occurs in accordance with Applicable Law and the conditions for transfer and/ or assignment contained in this Agreement.

### **15.2 Procedure for Change in Control or Transfer, and/or Change of Name**

15.2.1 The Purchaser shall, prior to occurrence of any Transfer Event, make an application in writing to the Seller requesting its approval in connection with the Transfer Event. The application shall be accompanied with details and documentary support (where available) in respect of the Transfer Event including:

- (a) details of the changes in Control of the Purchaser i.e. the Person to whom the securities of the Purchaser are being transferred or details of the scheme of merger, demerger, amalgamation, arrangement or other corporate restructuring exercise being undertaken by the Purchaser along with details of the resultant entity and its shareholders;
- (b) name, address and other details of the proposed transferee;
- (c) a certificate confirming continued compliance with the Eligibility Conditions by the Purchaser (or new entity formed as a result of change in Control of the Purchaser) or relevant transferee, as the case may be, post occurrence of the Transfer Event together with documentary evidence in support thereof; and
- (d) such other details as may be requested by the Seller.

15.2.2 The Seller shall, within a period of 90 (ninety) days from the date of receiving an application under Clause 15.2.1, convey its decision to approve or reject such Transfer Event for reasons to be recorded in writing. In the event that the Seller does not convey its decision for such a Transfer Event within the above mentioned period of 90 (ninety) days, for reasons other than non-submission of requisite documents by the Purchaser pursuant to Clause 15.2.1, it shall be construed that the Seller has no objection to such Transfer Event.

15.2.3 Any Transfer Event under this Agreement shall, in addition to the conditions specified in Clause 15.1 and Clause 15.2.1, be subject to the conditions that:

- (a) the Purchaser (or new entity formed as a result of change in Control of the Purchaser) or transferee, as the case may be, shall be required to submit a fresh bank guarantee from an Acceptable Bank in the format specified in *Annexure I* or a fresh non-interest bearing security deposit for the value of Performance Security computed in accordance with Clause 4, and upon receipt of such Performance Security, the earlier Performance Security provided by the Purchaser shall be returned or refunded to the Purchaser; and
- (b) the Purchaser shall have paid to the Seller, all outstanding amounts due from the Purchaser to the Seller under this Agreement; and
- (c) the new entity formed as a result of change in Control of the Purchaser or the transferee, as the case may be, has accepted all the conditions and liabilities under Applicable Laws which the Purchaser is subject to in respect of this Agreement and the rights granted hereunder. Upon completion of the Transfer Event, the Purchaser (or new entity formed as a result of change in Control of the Purchaser) or transferee, as the case may be, shall be liable to the Seller with respect to any and all liabilities under this Agreement;

- (d) in case of transfer of the Specified End Use Plant along with the rights in relation to the Annual Contracted Quantity, the Purchaser and the transferee shall be required to execute a transfer deed in the format set out in *Annexure VIII* and submit the same to the Seller within a period of 30 (thirty) days from the date of (i) receipt of a letter of approval from the Seller; or (ii) expiry of period after which it is construed that the Seller has no objection to such transfer. The transfer shall be deemed completed only when the duly transfer deed is submitted to the Seller in accordance with the terms hereof;
- (e) in the event of any change in name of the Purchaser or change in Control of the Purchaser on account of *inter alia* amalgamation, merger, de-merger, takeover, court order, change in ownership/shareholding pattern etc., of the Purchaser, the approval under Clause 15.2.2 shall be subject to compliance of the following conditions:
  - (i) the Specified End Use Plant shall remain unaltered and its location should not have changed;
  - (ii) the terms and conditions of this Agreement shall remain un-altered;
  - (iii) the company secretary of the Purchaser shall issue a certificate to the Seller certifying that all procedural and legal requirements under the Companies Act, 2013 have been complied with;
  - (iv) post change in Control, the Purchaser (or new entity formed as a result of change in Control of the Purchaser) shall continue to comply with all the Eligibility Conditions and other conditions to be met with for the purposes of being entitled to receive the Annual Contracted Quantity hereunder;
  - (v) the Purchaser must, post change in Control, expressly agrees to comply with all the terms and conditions hereunder;
  - (vi) the Purchaser shall pay its past dues, if any, related to supplies of the Contracted Grade of Coal;
  - (vii) the Purchaser shall execute such documents and/ or agreements as may be required by the Seller in this regard.

15.2.4 In case of change of Name, the Purchaser shall submit the following documents as applicable :

- i) IEMs with new name for the EUP.
- ii) Fresh Certificate of Incorporation consequent upon conversion issued by ROC.
- iii) Board Resolution with regard to conversion of the Company into Private Limited Company.
- iv) Change incorporated in VAT & CST Certificate.
- v) Copy of Central Excise Registration certificate.

### 15.3 Consequences of default



Any Transfer Event which is not in conformity with this Agreement or Applicable Laws shall be deemed to be void *ab-initio*. The Seller may in such situations, in its sole discretion, appropriate the Performance Security and terminate this Agreement by giving prior written notice of 30 (thirty) days to the Purchaser.

#### 15.4 **Security**

15.4.1 Subject to Applicable Laws, the Purchaser shall be entitled to create encumbrances over this Agreement or rights granted to it under this Agreement for the purposes of availing financing from a bank or financial institutions for financing the Specified End Use Plant and such security creation shall not require prior approval by the Seller.

15.4.2 In the event of a default, the banks or financial institutions, as the case may be, shall be entitled to enforce their security interest in the manner provided by Applicable Law and as per the procedure specified in Clause 15.2 above; provided that any transferee of the Specified End Use Plant along with the rights in relation to the Annual Contracted Quantity, as nominated by the banks or financial institutions in this regard, meets all the Eligibility Conditions.

### 16. **SETTLEMENT OF DISPUTES**

16.1 In the event of any dispute, disagreement or difference arising out of or in connection with this Agreement, including any question regarding its performance, existence, interpretation, validity, termination and the rights and liabilities of the Parties ("**Dispute**"), the Parties shall in the first instance endeavour to amicably settle the same through negotiations carried out in good faith.

16.2 For the purpose of conducting such negotiations, each Party shall designate in writing to the other Party, a representative who shall be authorised to negotiate on its behalf with a view to resolving any Dispute (the "**Representative**"). Each such Representative shall remain so authorised until his replacement has been notified in writing to the other Party, by the Party he represents.

16.3 The Representative of the Party which considers that a Dispute has arisen shall give to the Representative of the other Party, a written notice setting out the material particulars of the dispute ("**Dispute Notice**"). Within 30 (thirty) days, or such longer period as may be mutually agreed by the Parties, of the Dispute Notice having been delivered to the other Party, the Representatives of both Parties shall meet in person to attempt in good faith and using their best endeavours at all times, to resolve the Dispute. Once the Dispute is resolved, the terms of the settlement shall be recorded in writing and signed by the Representatives of the Parties. In the event that the Representatives of the Parties fail to resolve or settle the Dispute within 90 (ninety) days of their meeting, such dispute or difference shall be referred to Chairman & Managing Director of The Singareni Collieries Company Limited, who in turn shall appoint a Sole Arbitrator at his discretion and such Arbitrator shall act in accordance with the provisions of Arbitration & Conciliation Act, 1996 as amended from time to time, and pass a reasoned award. The cost of the arbitration shall be borne equally by both the parties.

16.4 In the event that any Dispute is not resolved through the measures provided at Clauses 16.1, 16.2 and 16.3 above, the Parties shall be entitled to exercise the remedies available to them under Clause 21.3.

## 17. LOCK-IN PERIOD AND TERMINATION OF THE AGREEMENT

### 17.1 Lock-in Period

Subject to Clause 17.2, the Parties shall not be allowed to terminate this Agreement for a period of 2 (two) years from the Signature Date (“**Lock-in Period**”) for any reasons whatsoever. In the event that the Purchaser terminates the Agreement prior to expiry of the Lock-in Period for reasons other than on account of the Seller’s default, the Seller shall be entitled to invoke the Performance Security in its entirety and the Purchaser shall be disqualified from participating in the immediately subsequent Tranche-III of any auction for the non-regulated sector conducted by SCCL.

### 17.2 Termination Events

This Agreement may be terminated in the following events and in the manner specified hereunder:

- (a) in the event that the Affected Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure Event and such inability to perform lasts for not less than a total of 90 (ninety) days in any continuous period of 180 (one hundred eighty) days, and in the considered assessment of the other Party (“**Non-Affected Party**”) there is no reasonable likelihood of the Force Majeure Event coming to an end in the near future, the Non-Affected Party shall have the right to terminate this Agreement by giving at least 90 (ninety) days prior written notice to the Affected Party of its intention to so terminate this Agreement. In such an event, the termination shall take effect on expiry of the notice period or 90 (ninety) days whichever is later and the Parties shall be absolved of all rights/obligations under this Agreement, save those that had already accrued as on the effective date of termination of the Agreement;
- (b) in the event that the Purchaser is prevented /disabled under Applicable Law from using the Coal delivered to it under this Agreement, for reasons beyond its control, owing to changes in applicable environmental and/or statutory norms, howsoever brought into force, the Purchaser shall have the right to terminate this Agreement by giving a prior written notice of not less than 30 (thirty) days to the Seller;
- (c) in the event of any material change in the Coal distribution system of the Seller due to Applicable Laws or a Government directive/ notification at any time after the Signature Date, the Seller shall within 7 (seven) days of introduction of such change provide a written notice to the Purchaser calling for a joint review of this Agreement. If the Parties are unable to arrive at a mutually agreed position with respect to the subject matter of review, within a period of 30 (thirty) days from the date of the above mentioned notice, the Seller shall have the right to terminate the Agreement subject to a further written notice of 30 (thirty) days being given in writing to the other Party without any obligation/liability whatsoever;

- (d) subject to Clause 5.2, in the event that the Purchaser resells or diverts the Coal purchased under this Agreement to any Third Party, the Seller shall have the right to terminate this Agreement after giving the Purchaser a due opportunity of being heard on the matter;
- (e) in the event of invocation of the Performance Security or suspension of Coal supplies pursuant to Clause 14, the Seller shall have the right to terminate this Agreement by providing prior written notice of 30 (thirty) days to the Purchaser; provided that the Purchaser has not replenished the Performance Security within the aforesaid said notice period of 30 (thirty) days;
- (f) in the event that either Party suffers insolvency, appointment of a liquidator (provisional or final), appointment of a receiver of any of its material assets, levy of any order of attachment of its material assets, or any order or injunction restraining the Party from dealing with or disposing of its assets and such order after having been passed is not vacated within 60 (sixty) days, the other Party shall be entitled to terminate this Agreement by giving prior written notice of 30 (thirty) days to first Party;
- (g) in the event that any Party (“**Defaulting Party**”) commits a breach of any covenant, term or condition of this Agreement not otherwise specified under this Clause 17.2 or of any term or provision of the Scheme Document and such breach, if curable, is not cured by the Defaulting Party to the satisfaction of the other Party (“**Non-Defaulting Party**”) within a period of 90 (ninety) days of receipt of a notice in this regard from the Non-Defaulting Party, then the Non-Defaulting Party shall have the right to terminate this Agreement forthwith on expiry of the said 90 (ninety) day period;
- (h) in the event that the information contained in any of the documents and/ or undertakings provided by the Purchaser to the Seller and/ or to SCCL under this Agreement and/ or the Scheme Document (including information or documentation provided pursuant to the provisions of clauses 3.4 and 3.7 of the Scheme Document) ceases to be true and correct or is found to be misleading, untrue or incorrect, then the Seller shall have the right to terminate this Agreement by giving prior written notice of 30 (thirty) days to the Purchaser;
- (i) subject to Clause 15, in the event that the Purchaser (or the new entity formed as a result of change in Control of the Purchaser) or the relevant transferee ceases to comply with any of the Eligibility Conditions or any other conditions specified herein, then the Seller shall have the right to terminate this Agreement by giving prior written notice of 30 (thirty) days to the Purchaser;
- (j) in the event that the Specified End Use Plant ceases to remain operational for a continuous period of 12 (twelve) months or is shut down for any reason, the Seller shall have the right to terminate this Agreement by giving prior written notice of 30 (thirty) days to the Purchaser;

- (k) post expiry of the Lock-in Period, the Purchaser shall be entitled to terminate this Agreement for any reason whatsoever, by giving a prior written notice of 3 (three) months to the Seller;
- (l) pursuant to Clause 2.3, Clause 4.3.1, Clause 4.4 and Clause 15.3; and/ or
- (m) in the event the Normative Coal Requirement calculated based on the Coal Requirement as verified by the Verification Agency, is less than 4,200 tonnes per annum, this Agreement shall stand terminated without requirement of any further actions in this regard by the Parties.

### 17.3 **Accrued rights to survive termination**

Termination of this Agreement shall be without prejudice to the accrued rights and obligations of either Party arising immediately prior to the termination. In the event of termination of this Agreement, the Purchaser shall return all the Confidential Information in its possession to the Seller or destroy such information in accordance with the instructions of the Seller.

## 18. **FORCE MAJEURE EVENT**

### 18.1 **Force Majeure Event**

The term “**Force Majeure Event**” as used in this Agreement shall mean any act, circumstance or event or a combination of acts, circumstances and/ or events which wholly or partially prevents or delays the performance of obligations arising under this Agreement by any Party (“**Affected Party**”) and if such act, circumstance or event or combination thereof is not reasonably within the control of and not caused by the fault or negligence of the Affected Party, and provided that such act, circumstance or event or combination thereof falls within one or more of the following categories including:

- (a) flood, inundation of mine, drought, lightening, cyclone, storm, earthquake or geological disturbances, eruption of gases, subsidence and such natural occurrences;
- (b) explosions, mine fire and other fire, contamination of the atmosphere by radioactive or hazardous substances;
- (c) civil disturbance such as riot, terrorism etc.;
- (d) industry wise /nation-wide strikes in the sector in which either Party operates in;
- (e) any Applicable Law, ordinance or order of the Central or State Government, or any direction of a statutory regulatory authority that restricts performance of the obligations hereunder;
- (f) any epidemic;
- (g) the enactment, promulgation, amendment, suspension or repeal of any Applicable Laws after the Signature Date; and/ or

- (h) any delay or direction or order on the part of the Government of India or relevant State Government or denial or refusal to grant or renew, or any revocation, or modification of any required permit or mining lease or governmental approvals including those related to land acquisition or environment/ forest clearance provided that such delay, modification, denial, refusal or revocation was not due to a cause attributable to the Affected Party;

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

## 18.2 **Burden of Proof**

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

## 18.3 **Effect of Force Majeure**

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

- (a) within 5 (five) Business Days after the occurrence of the inability to perform due to a Force Majeure Event, the Affected Party provides a written notice to the Non-Affected Party of the particulars of the occurrence, including an estimation of its expected duration and probable impact on the performance of its obligations hereunder, and continues to furnish periodic reports with respect thereto to the other Party at an interval of every 7 (seven) days during the period of a Force Majeure Event;
- (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 Event;
- (c) the suspension of performance shall be of no greater scope and no longer duration than is reasonably necessitated by the Force Majeure Event;
- (d) the Affected Party shall provide the Non-Affected Party with prompt notice of the cessation of the Force Majeure Event giving rise to the excuse from performance and shall thereupon resume normal performance of obligations under this Agreement with utmost promptitude;
- (e) the non-performance of any obligation of either Party that was required to be performed prior to the occurrence of a Force Majeure Event shall not be excused as a result of such subsequent Force Majeure Event;

- (f) the occurrence of a Force Majeure Event shall not relieve either Party from its obligations to make any payment hereunder for performance rendered prior to the occurrence of the Force Majeure Event or for partial performance hereunder during period of subsistence the Force Majeure Event;
- (g) the Force Majeure Event shall not relieve either Party from its obligations to comply with Applicable Laws; and
- (h) the Affected Party shall exercise all reasonable efforts to mitigate or limit damages to the Non-Affected Party on account of its non-performance due to the Force Majeure Event.

## 19. INDEMNIFICATION

- 19.1 In this Clause, a reference to the Seller shall include the Seller and its officers, employees, staff, advisors, representatives or agents (collectively the “**Indemnified Party**”) and the provisions of this Clause shall be for the benefit of the Indemnified Party, and shall be enforceable by each such Indemnified Party.
- 19.2 The Purchaser shall indemnify the Indemnified Party against all liabilities, costs, expenses, damages and losses (including but not limited to any interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) (collectively the “**Losses**”) suffered or incurred by the Indemnified Party arising out of or in connection with:
- (a) any breach of the representations, warranties, covenants and/ or undertakings of the Purchaser contained herein or in the Scheme Document;
  - (b) any information or documentation submitted by the Purchaser to the Seller pursuant to this Agreement and/ or the Scheme Document, being untrue, incorrect or false;
  - (c) the Purchaser’s breach or negligent performance or non-performance of this Agreement;
  - (d) any claim made against the Indemnified Party for actual or alleged infringement of a Third Party’s rights or damage caused to a Third Party arising out of or in connection the performance or non-performance of any of the Purchaser’s obligations under this Agreement to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this Agreement by the Purchaser, its employees, agents or contractors;
  - (e) any Loss or damages caused on account of breach of any Applicable Law by the Purchaser, including without limitation any costs incurred by the Seller in rectifying any damages caused by the Purchaser on account of breach, negligent performance or failure or delay in performance of this Agreement or non-compliance with Applicable Law.

19.3 Any indemnifiable Claim under this Agreement must, be asserted by the Indemnified Party by prompt delivery of written notice thereof to the Purchaser, delivered within 60 (sixty) calendar days of discovery by the Indemnified Party of the breach of the pertinent covenant or obligation of this Agreement, or of any misrepresentation or breach of any representation or warranty made by the Purchaser or of occurrence of the event specified in Clause 19.2. However, any delay on the part of an Indemnified Party in providing or failure to provide such notice will not relieve the Purchaser of its indemnification obligations hereunder.

19.4 The remedies set forth in this Clause 19 shall be without prejudice to all the rights and remedies that the Parties may have under the Applicable Law and shall not be the sole and exclusive remedies of the Parties for any breach of this Agreement or any matter relating to any representation, warranty, covenant or undertaking contained in this Agreement.

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

20.1 The Purchaser hereby warrants and represents to the Seller:

- (a) it duly organized and validly existing under the Applicable Laws of India and has all powers and authorities to own its property and to carry on its business as now conducted;
- (b) it has the full legal right, capacity and authority to enter into this Agreement and this Agreement constitutes its legal, valid and binding obligation;
- (c) 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;
- (d) 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;
- (e) this Agreement is enforceable against it in accordance with its terms;

- (f) the undertakings of the Purchaser pursuant to the Scheme Document and the LOI are true and correct and all information provided by the Purchaser under the Scheme Document and in connection with the LOI, as requested by SCCL and/ or the Seller, is not untrue, incorrect or misleading in any way; and
- (g) there has been no change in the Control of the Purchaser since the issuance of the LOI till the Signature Date.

20.2 The Purchaser hereby covenants and undertakes to the Seller as follows:

- (a) it does and shall continue to satisfy all of the Eligibility Conditions and shall comply with all its obligations, covenants, undertakings and all other terms and conditions required to be complied by it under the Scheme Document;
- (b) the Purchaser has and shall always conducted its business in compliance with all Applicable Laws; and
- (c) all licenses, registrations, consents, permissions and other authorisations required by the Purchaser for or in connection with its business (“**License**”) have been obtained and are validly held by the Purchaser and each License is in full force and effect and the Purchaser shall take necessary steps to renew the Licenses from time to time in accordance with the provisions of Applicable Laws.

## 21. MISCELLANEOUS

- 21.1 **Amendment:** This Agreement shall stand amended or modified pursuant to any modifications thereof as may be issued in writing or notified by the Seller or as may be entered into in writing by the Parties.
- 21.2 **Severability:** In the event that any part or provision of this Agreement becomes, for any reason, unenforceable or is declared invalid by a competent court of law or tribunal, the rest of this Agreement shall remain in full force and effect as if the unenforceable or invalid portions had not been part of this Agreement.
- 21.3 **Governing Law and Jurisdiction:** This Agreement and the rights and obligations of the Parties hereunder shall be interpreted, construed and governed by the laws of India. The courts of Telangana, India shall have exclusive jurisdiction in respect of all matters arising under or in connection with this Agreement.
- 21.4 **Entire Agreement:** This Agreement together with the Scheme Document and any documents referred to therein (i) supersedes any and all oral and written agreements, drafts, undertakings, representations, warranties and understandings heretofore made in relation to the subject matter hereof; and (ii) constitutes the entire agreement and understanding of the Parties relating to the subject matter hereof It is expressly agreed that this Agreement together with the Scheme Document and any documents referred to therein, shall supersede all previous discussions and meetings held and correspondence exchanged between the Seller and the Purchaser in respect of this Agreement and any



decisions arrived at therein in the past and before coming into force of this Agreement, shall have no relevance with reference to this Agreement and no reference of such discussions or meetings or past correspondence shall be entertained by either Party for the purposes of interpreting or implementing this Agreement. In the event of any conflict between the provisions of this Agreement and the Scheme Document, this Agreement shall prevail.

- 21.5 **Counterparts:** This Agreement may be executed in any number of counterparts each of which will be deemed an original, and all of which will constitute one and the same instrument.
- 21.6 **Assignment:** Subject to the provisions of Clause 15, the Purchaser shall not without the express prior written consent of the Seller, assign to any Third Party, this Agreement or any part thereof or any of its rights, benefits, obligations and/ or interests herein or hereunder.
- 21.7 **Limitation of Liability:** Except as otherwise expressly agreed in this Agreement, neither Party shall have any right or entitlement to any consequential losses, costs or damages, loss of profit or market, as a result of a breach by the other Party of this Agreement.
- 21.8 **Best Efforts:** Subject to the terms and conditions of this Agreement, each Party shall use its best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary or desirable under Applicable Laws to consummate the transactions contemplated herein. Each Party agrees to execute and deliver such other documents, certificates, agreements and other writings and to take such other lawful actions as may be necessary or desirable in order to consummate or implement expeditiously such transactions.
- 21.9 **Costs and Expenses:** Except as otherwise expressly provided for in this Agreement, each Party shall pay its own costs and expenses in connection with this Agreement and the transactions contemplated hereby.
- 21.10 **No Third Party Beneficiary:** The terms and provisions of this Agreement are intended solely for the benefit of the Parties and their respective successors and permitted assigns, and it is not the intention of the Parties to confer third party beneficiary rights upon any other Person.
- 21.11 **Change in Name:** The Purchaser shall intimate the Seller of any change in its name (on account reasons other than a change in its Control), 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 the Agreement to record such name change.
- 21.12 **Binding Effect:** This Agreement is binding upon and will inure to the benefit of the Parties.

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

1) Seller's address

*Sri B.Kishan Rao,  
General Manager(Marketing)*

*Address:*

*Singareni Bhavan,PBNo.18,*

*Red hills,Khairathabad-post,  
Hyderabad-500004*

*Telephone: +91 40 23316171*

*Fax: +91 40 23307653*

*Email: cgm\_mkt@scclmines.com*

2) Purchaser's address

*Sri -*

*-,*

*Address:*

*M/s. -*

*-*

*-*

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Any notice given by the Purchaser under this Agreement, if delivered otherwise than by e-mail, shall always be backed by an e-mail to the above mentioned email address of the Seller. Any notice delivered to the Party to whom it is addressed as provided in this Clause 0 shall be deemed (unless there is evidence that it has been received earlier) to have been given and received, if:

- (a) hand delivered or sent by registered mail, at the time of acknowledgment of receipt of the same; and
- (b) sent by facsimile or e-mail, when confirmation of its transmission has been recorded by the sender's facsimile machine or delivery receipt of email has been received.

21.14 **Waiver, Rights and Remedies:** No failure or delay by any Party in exercising any right, power or remedy under this Agreement shall operate as a waiver thereof. No single or partial exercise of any right, power or remedy under this Agreement by any Party shall preclude any further exercise thereof or the exercise of any other right, power or remedy by that Party. Without limiting the foregoing, no waiver by any Party of any breach by any other Party of any provision hereof shall be deemed to be a waiver of any subsequent breach of that or any other provision hereof.

- 21.15 **Legal and Prior Rights:** All rights and remedies of the Parties mentioned herein shall be in addition to all other legal rights and remedies belonging to such Parties and the same shall be deemed to be cumulative and not alternative to such legal rights and remedies aforesaid and it is hereby expressly agreed and declared by and between the Parties, that the determination of this Agreement for any cause whatsoever shall be without prejudice to any and all rights and claims of any Party, which shall or may have accrued prior thereto.
- 21.16 **No Agency:** The Parties agree that nothing in this Agreement shall be in any manner interpreted to constitute an agency for and on behalf of any other Party.
- 21.17 **Specific Performance of Obligations:** To the extent permitted by Applicable Law, the rights and obligations of the Parties under this Agreement shall be subject to the right of specific performance and may be specifically enforced against a defaulting Party.

## **22. IMPLEMENTATION OF THE AGREEMENT**

- 22.1 The chief executive officer of the Specified End Use Plant or his nominated representative or any other representative duly authorized by the Purchaser shall be authorised to act for and on behalf of the Purchaser in respect of matters arising out of or in connection with this Agreement.
- 22.2 The General Manager (Marketing) or any other representative duly authorized by the Seller shall be authorised to act for and on behalf of the Seller in respect of matters arising out of or in connection with this Agreement.
- 22.3 Any other nomination of an authorised representative shall be informed in writing, by the Seller or the Purchaser, as the case be, within 1 (one) month of the Signature Date or by giving 30 (thirty) days prior written notice in this regard to the other Party.
- 22.4 It shall be the responsibility of the Parties to ensure that any change in the address for service or in the particulars of the designated representative or in any other particulars specified Clause 0 is notified to the other Party and all others concerned, before effecting a change and in any case within 2 (two) Business Days of such change.

Signed in presence of the witness /witnesses under mentioned on 01<sup>th</sup> day of April 2018.

For (The Singareni Collieries Company Limited) For (-----)

**Signature**

1) Seller's address

*Sri B.Kishan Rao,  
General Manager(Marketing)*

*Address:  
Singareni Bhavan, PBNo.18,*

*Red hills, Khairathabad-post,  
Hyderabad-500004*

*Telephone: +91 40 23316171*

*Fax: +91 40 23307653*

*Email: cgm\_mkt@scclmines.com*

**Signature**

2) Purchaser's address

*Sri ----  
-,*

*Address:*

-

-

-

-

-

-

-

**1. WITNESS**

a) Signature

b) Name

c) Address & Occupation

**1. WITNESS**

a) Signature

b) Name

c) Address & Occupation

**2. WITNESS**

a) Signature

b) Name

c) Address & Occupation

**2. WITNESS**

a) Signature

b) Name

c) Address & Occupation

## Annexure I

### Format of Performance Security

[Reference number of the bank]

[date]

To

[insert name and address of SCCL]

#### WHEREAS

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

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

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

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

7. The Bank further agrees that the Guarantee herein contained shall remain in full force and effect during the period that specified in the Agreement and that it shall continue to be enforceable till all the obligations of the Purchaser under or by virtue of the said Agreement with respect to the Performance Security have been fully paid and its claims satisfied or discharged or till the Seller certifies that the terms and conditions of the Agreement with respect to the Performance Security have been fully and properly carried out by the Purchaser and accordingly discharges this Guarantee. Notwithstanding anything contained herein, unless a demand or claim under this Guarantee is made on the Bank in writing on or before the Expiry Date the Bank shall be discharged from all liability under this Guarantee thereafter.
8. The payment so made by the Bank under this Guarantee shall be a valid discharge of Bank's liability for payment thereunder and the Seller shall have no claim against the Bank for making such payment.
9. This Guarantee is subject to the laws of India. Any suit, action, or other proceedings arising out of this Guarantee or the subject matter hereof shall be subject to the exclusive jurisdiction of courts at [*where the Seller's registered office/ principal place of business is located*], India.
10. The Bank has, under its constitution, the power to issue this Guarantee in favour of the Seller and Shri \_\_\_\_\_ who has signed this Guarantee on behalf of the Bank has the authority to do so. This Guarantee will not be discharged due to the change in the constitution of the Bank.
11. The Bank undertakes not to revoke this Guarantee during its currency except with the previous consent of the Seller in writing.
12. The Seller may, with prior intimation to the Bank, assign the right under this Guarantee to any other person or entity. Save as provided in this Clause 12, this Guarantee shall not be assignable or transferable.
13. Notwithstanding anything contained herein,
  - a) the liability of the Bank under this Guarantee shall not exceed the Guarantee Amount; and
  - b) this Guarantee shall be valid up to the Expiry Date.
14. The Bank is liable to pay the Guaranteed Amount or any part thereof under this Guarantee only and only if the Seller serves upon the Bank a written claim or demand on or before the Expiry Date.

15. The Guarantee is operative at our **[insert name and address of Branch]**.

Dated the [day] day of [month] [year] for the Bank.

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

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name and Designation)  
(Bank Stamp)



## Annexure II

### **Documents provided to the Seller by Purchaser under Clause 3.7 of the Scheme Document**

1. Relevant Corporate Authorizations of the Purchaser for execution and performance of his obligations under the agreement such as:
  - (a) Notarised Power of Attorney/ Notarised Control Ledger Proforma.
  - (b) Certified true copy of Board Resolution or Certified true copy of Shareholders Resolution etc. if applicable.
2. Self Attested copies of valid small scale industries/ industrial Registration certificates ( IEM/ MSME certificates etc.) with respect to the Specified End Use Plant.
3. Self-attested copy of valid Factory License with respect to the Specified End Use Plant or copy of application filed for renewal of the same, in case the Factory License has recently expired.
4. Self-attested copy of Consent For Operation (CFO) and Boiler Certificate (if applicable) with respect to the Specified End Use Plant issued under the relevant pollution control laws or copy of application filed for renewal of the same along with the proof of payment for obtaining CFO/ Boiler certificate.
5. Self-attested copy of GST / TIN and PAN number of the Purchaser.
6. Income- Tax Returns of the Purchaser (latest financial year).
7. Documentation with respect to existing coal linkages, assurance of linkages and/ or allocation of mine.
8. Details of critical machinery/ equipment responsible for capacity calculation of the Specified End Use Plant such as details of boilers/ furnaces/ kiln with capacity of consumption
9. Any other documents requested by SCCL

**Annexure III**

**Details of Annual Contracted Quantity, Contracted Grade of Coal, Delivery Point,  
Secondary Source**

<b>S.No.</b>	<b>Mode</b>	<b>Contract ed Grade</b>	<b>Size</b>	<b>Lot wise Allocated Quantity as per Scheme Document (in tonnes)</b>	<b>Notified Price (in Rs./tonne)</b>	<b>Premium (in RS./Tonne )</b>	<b>Delivery Point (Coal Mine in case of Road &amp; Railway Siding in case of Rail)</b>	<b>Secondary Source (to be used in case of a Force Majeure Event)</b>
				<b>Annual Contracted Quantity = tonnes</b>				

**Annexure IV**

**Details of Specified End Use Plant**

1. *Name of the Specified End Use Plant :M/s -----*
2. *Location of the Specified End Use Plant : -----*
3. *Configuration and capacity details of each pharmaceutical unit in the Specified End Use Plants: -----TPA*

## Annexure V

### Indicative list of Documents that may be called for by the Seller under Clause 3

1. Self-attested copy of valid Factory License with respect to the Specified End Use Plant or copy of application filed for renewal of the same, in case the Factory License has recently expired.
2. Self-attested copy of Consent to Operate with respect to the Specified End Use Plant issued under the relevant pollution control laws or copy of application filed for renewal of the same, in case the Consent to Operate has recently expired. Alternatively, a valid no-objection certificate from the relevant State Pollution Control Board may be submitted. Wherever, the relevant State Pollution Control Board does not specify the validity of the certificate issued by them to the Specified End Use Plant, such a certificate will be considered acceptable and an intimation will be sent by the Seller to the authority responsible for the issuance of the certificate.
3. Self-attested copy of GST / TIN and PAN number of the Purchaser.
4. Income-tax return of the Purchaser (for latest available financial year);
5. Value added tax registration certificate for the Specified End Use Plant for value added tax paid by the Purchaser during the last two years. This certificate would not be required for newly established Specified End Use Plants. In case of non-submission of the certificate on value added tax/ excise duties by existing old Specified End Use Plants, the Purchaser is required to submit a copy of value added tax returns duly certified by a practicing Chartered Accountant or a self-certified statement of the payments already made in this regard during the last two years which would necessarily contain few sample copies;
6. Valid small scale industries/ industrial registration certificate;
7. Documentation with respect to existing coal linkages, assurance of linkages and/ or allocation of mine;
8. Audited accounts of the Purchaser for the immediately preceding three financial years;
9. Copies of licenses to operate the Specified End Use Plant including production licence, constitution status, SSI Registration, factory license, value added tax, excise registration and other statutory registration and/ or documents necessary in this regard. Any change in the status or validity of any licenses and/ or registration from previous year;
10. Copy of current valid pollution control certificates (including consent to establish and consent to operate);
11. Details of critical machinery/ equipment responsible for capacity calculation of the Specified End Use Plant such as details of boilers/ furnaces/ kiln with capacity of consumption;

12. Coal Consumption certificate of the Specified End Use Plant, containing the following details, shall be furnished by the Purchaser and duly certified by a Chartered Accountant:

Coal (Qty wise)

Opening stock

Add: Purchase

From SCCL sources under FSA / E-FSA

From any other source:

Less:

Consumption

Year end closing stock

13. Copies of electricity bills for the last six months, wherever applicable;
14. Any other relevant information/ documentation as may be deemed necessary for ascertaining bona fide usage of coal.

**Annexure VI**

**Specifications on quality of the Contracted Grade of Coal**

<b>Contracted Grade of Coal</b>	<b>GCV (kCal / kg)</b>

## Annexure VII

### **Procedure for Third party sampling**

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

**1.1 All coal supplies shall be against third party sampling only.**

#### **1.2 Third Party Agency and costs of third party sampling in case of delivery by Rail**

1.2.1 In case of off-take of the Contracted Grade of Coal *via* rail mode, third party sampling will be done rake wise by a Government agency / Indian Institute of Chemical Technology (IICT, a Government institution). The facility charges toward Third Party Sampling will be charged as per SCCL price notification.

#### **1.3 Third Party Agency and costs of third party sampling in case of delivery by Road**

1.3.1 In case of offtake of the Contracted Grade of coal via road mode, a single independent third party agency, i.e. IICT or any other Government institution shall be appointed. The facility charges toward Third Party Sampling will be charged as per SCCL price notification.

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

##### **2.1 Collection of Samples by the Third Party Agency**

Samples of Coal shall be collected by the Third Party Agency from the Delivery Point as follows:

##### **2.1.1 Collection of samples from the Railway Siding / Coal Handling Plants**

- (a) In case of dispatch by rail each rake of Coal supplied to the Purchaser from the Delivery Point shall be considered as a lot for the purpose of sampling.
- (b) Samples shall be collected from the belt conveyor at the time of loading into rakes. In case where automatic samplers are installed, samples shall be collected from automatic samplers. In case of where there is no belt conveyor, the samples shall be collected from the coal yard at the siding while loading from loading area. Sampling procedure shall be as per BIS norms.

### 2.1.2 Collection of Samples of Coal Dispatches by Road

- (a) The sampling and analysis of coal will be done Delivery Point wise / Grade-wise in case of Road / RCR mode for the day. The result of the samples will be applied to all the customers supplied coal on that day for the grade supplied.
- (b) The first truck for sampling on a day shall be selected randomly from the first eight trucks. Every 8th (eighth) such truck thereafter shall be subjected to sampling. In the event that there are less than 8 (eight) trucks loaded on any particular day, then only 1 (one) sample shall be selected randomly from amongst loaded truck/ trucks.
- (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 the sample shall be collected from each truck by drawing 6 increments of approx. 5 kg each with the help of shovel/scoop.
- (e) All the samples collected from every truck in accordance with paragraph 2.1.2(b) above shall be mixed together to form a gross sample.

## 2.2 **Preparation of laboratory samples**

2.2.1 The gross sample collected at the Delivery Point by the Third Party Agency shall 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 will be used for determination of ash, moisture and GCV on equilibrated basis. The Third Party Agency shall prepare laboratory samples (at the Delivery Point) in the size of 12.5mm for total moisture and 212 micron IS Sieve for proximate and GCV analysis. Precaution shall be taken so that before analysis in any government accredited laboratory or National Accreditation Board for Testing and Calibration Laboratories (—Laboratory), further sieving or pulverizing is not required.

2.2.2 The Part-2 sample shall be reduced into a laboratory sample on the date immediately following the date of collection as per BIS Standards (IS: 436 (Part I/Section I) - 1964). The final pulverized sample will be divided into three parts viz. Set – I, Set – II and Set-III as follows:

- (a) Set – I shall be taken by the Third Party Agency to a Laboratory for analysis of ash, moisture and GCV by the Third Party Agency as per BIS Standards (IS: 1350 Part 1-1984) or BIS Standards (IS: 1350 Part-II-1970), as applicable;
- (b) Set-II of the sample shall be handed over by the Third Party Agency to the Seller for their own analysis; and
- (c) Set-III of the sample called referee sample shall be sealed jointly by the Third Party Agency and representatives of the Parties and shall be kept with the Third Party Agency at the Delivery Point under proper and good quality lock and key arrangement. The referee sample shall be retained in double sealed condition (duly



signed by the representatives of the Parties and the Third Party Agency) for 30 (thirty) days from the date of sample collection. The referee sample shall be analyzed in the situations specified in paragraph 2.2.4 below.

2.2.3 The Third Party Agency shall communicate the analysis result of the sample to the Parties within 18 (eighteen) working days of the sample collection. Either Party may raise a dispute, if any, regarding the findings of the Third Party Agency within 7 (seven) days of the submission of the analysis result by the Third Party Agency.

2.2.4 In the event that a dispute is raised by either Party within the time period stipulated at paragraph 2.2.3 above, the referee sample shall be analyzed by a mutually agreed government laboratory (other than the Laboratory at which the original sample has been analyzed by a Third Party Agency). The cost analysis of the referee sample shall be borne by the challenging/disputing Party. Both, Seller and Purchaser may witness transportation and analysis of referee sample to the above mentioned government laboratory. The findings of such government laboratory, post analysis of the referee sample, shall be binding on all the Parties for commercial purposes.

2.2.5 In the event of dispute, raised by any Purchaser, the findings of the Referee sample (upgrade or down grade) shall be applied to all the Purchasers who have taken delivery of coal from the delivery point on that day, in case of Other Industries, i.e. sector (IV) other than Cement, CPP, and Sponge Iron sectors.

2.2.6 All tools and tackles, plastic bags, sealing compound and other items required for collection, preparation, storage and analysis of the sample shall be provided by the Seller.

### 2.3 **Records of Samples/ Third Party Sampling**

2.3.1 Proper analysis records shall be maintained at the Laboratories where the samples are analyzed by the Third Party Agency.

2.3.2 The name/ details of the Delivery Point, date of collection and other identification details (e.g. rake no. in case of rail supply) shall be maintained by the Third Party Agency in a register and a proper code number shall be assigned for each sample for identification and reconciliation of results.

2.3.3 Monthly statements containing the details of each and every analysis result finalized during a month based on analysis by a Third Party Agency or referee analysis, as the case may be, shall be prepared indicating *inter-alia* the quantity of Coal covered by the respective analysis results. The respective analysis results shall be applied for adjustment of billing/ commercial purpose. Copies of the monthly statement / report shall be submitted by the Third Party Agency to (i) the general manager (quality control) of the Seller or his representative; and (ii) the representatives of the Purchaser (in case of rail mode) or the representatives of all the purchasers who have requested for third party sampling (in case of road mode), as applicable.

## Annexure VIII

### Format of Transfer Deed

The Transfer Deed (“**Deed**”) is made on this [day] day of [month], [year] between:

1. **[Name of the Purchaser]**, a company incorporated in India under the Companies Act, [1956/2013] with corporate identity number [CIN], whose registered office is at [address of registered office], India and principal place of business is at [address of principal place of business, if different from registered office] (hereinafter referred to as the “**Transferor**”, which expression shall unless repugnant to the meaning or context thereof, be deemed to include its successors and permitted assigns) of the other part;

**OR**

**[Name of the individual]**, an individual residing at [address] and carrying on a sole proprietorship business under the name style of [name of the **Purchaser**] at [address of sole proprietorship] (hereinafter referred to as the “**Transferor**”, which expression shall unless repugnant to the meaning or context thereof, be deemed to include his/ her heirs, executors, administrators, representatives and permitted assigns) of the other part;

**OR**

**[Name of the Purchaser]**, a limited liability partnership incorporated under the Limited Liability Partnership Act, 2008, with its registered office at [address of registered office] (hereinafter referred to as the “**Transferor**”, which expression shall unless repugnant to the meaning or context thereof, be deemed to include its partners, successors, representatives and permitted assigns) of the other part;

**OR**

**[Name of the Individual]**, an individual residing at [address], **[Name of the Individual]**, an individual residing at [address] and **[Name of the Individual]**, an individual residing at [address] all carrying on a partnership business under the name style of **[Name of the Purchaser]** registered under [name of Act under which the firm is registered] (hereinafter referred to as the “**Transferor**”, which expression shall, which expression shall unless repugnant to the meaning or context thereof, be deemed to include all the partners of the said firm, their representatives, heirs executors, administrators and permitted assignees) of the other part;

**OR**

**[Name of the Purchaser]**, a [insert legal nature of the Purchaser (e.g. trust, society etc.)] incorporated under the [insert statute under which the Purchaser is incorporated] with its registered office/ principal place of business/ office at [address of registered office/ principal place of business/office] (hereinafter referred to as the “**Transferor**”, which expression shall unless repugnant to the meaning or context thereof, be deemed to include its successors, representatives and permitted assigns) of the other part; and

2. **[Name of the Transferee]**, a company incorporated in India under the Companies Act, [1956/2013] with corporate identity number [*CIN*], whose registered office is at [*address of registered office*], India and principal place of business is at [*address of principal place of business, if different from registered office*] (hereinafter referred to as the “**Transferee**”, which expression shall unless repugnant to the meaning or context thereof, be deemed to include its successors and permitted assigns) of the other part;

**OR**

**[Name of the individual]**, an individual residing at [*address*] and carrying on a sole proprietorship business under the name style of [*name of the Transferee*] at [*address of sole proprietorship*] (hereinafter referred to as the “**Transferee**”, which expression shall unless repugnant to the meaning or context thereof, be deemed to include his/ her heirs, executors, administrators, representatives and permitted assigns) of the other part;

**OR**

**[Name of the Transferee]**, a limited liability partnership incorporated under the Limited Liability Partnership Act, 2008, with its registered office at [*address of registered office*] (hereinafter referred to as the “**Transferee**”, which expression shall unless repugnant to the meaning or context thereof, be deemed to include its partners, successors, representatives and permitted assigns) of the other part;

**OR**

**[Name of the Individual]**, an individual residing at [*address*], **[Name of the Individual]**, an individual residing at [*address*] and **[Name of the Individual]**, an individual residing at [*address*] all carrying on a partnership business under the name style of **[Name of the Transferee]** registered under [*name of Act under which the firm is registered*] (hereinafter referred to as the “**Transferee**”, which expression shall, which expression shall unless repugnant to the meaning or context thereof, be deemed to include all the partners of the said firm, their representatives, heirs executors, administrators and permitted assignees) of the other part;

**OR**

**[Name of the Transferee]**, a [*insert legal nature of the Transferee (e.g. trust, society etc.)*] incorporated under the [*insert statute under which the Transferee is incorporated*] with its registered office/ principal place of business/ office at [*address of registered office/ principal place of business/office*] (hereinafter referred to as the “**Transferee**”, which expression shall unless repugnant to the meaning or context thereof, be deemed to include its successors, representatives and permitted assigns) of the other part; and

3. **[Name of the Seller]**, a company incorporated in India under the Companies Act, [1956/2013] with corporate identity number [*CIN*], whose registered office is at [*address of registered office*], India and principal place of business is at [*address of principal place of business, if different from the registered office*] (hereinafter referred to as the “**Seller**”, which expression shall unless repugnant to the meaning or context thereof, be deemed to include its successors and permitted assigns) of the one part.

## WHEREAS:

- A. The Transferor had participated in an electronic auction for grant of the Coal Linkages, pursuant to which the Transferor had qualified as a Successful Bidder in accordance with the scheme document dated [*insert date*] issued by Coal India Limited for auction of coal linkages in the [*insert name of the sub-sector for which auction has been conducted*] sub-sector (“**Scheme Document**”).
- B. The Transferor was issued a letter of intent dated [*insert date*] by the Seller and thereafter executed a fuel supply agreement dated [*insert date*] with the Seller (“**Agreement**”) in terms of which *inter alia* the Transferor has become entitled to receive the Annual Contracted Quantity.
- C. The Transferor has, pursuant to its transfer application letter dated [*date*] made in accordance with the provisions of Clause 15.2 of the Agreement, requested the Seller for its approval in connection with transfer of the Agreement to the Transferee.
- D. The Seller has, pursuant to its letter dated [*date*] approved the transfer application of the Transferor subject to compliance by the Transferee of the terms and conditions contained in this Deed.

## NOW THIS DEED WITNESSETH AS FOLLOWS:

1. Capitalised terms used but not defined in this Deed shall, unless the context otherwise requires, have the respective meanings ascribed thereto in the Agreement.
2. The Transferee hereby covenants with the Seller that from and after the transfer and assignment of the Agreement, the Transferee shall be bound by, and be liable to perform, observe and conform with and be subject to all the provisions of all the covenants, stipulations and conditions contained in the Agreement in the same manner in all respects as if the Transferee was the Successful Bidder under the Scheme Document and was the Purchaser under the Agreement, and he/ it had originally executed the Agreement as such.
3. It is further hereby agreed and declared by the Transferor of the one part and the Transferee of the other part that:
  - (a) the Transferee and the Transferor declare that the Transferee meets and shall continue to meet all the Eligibility Conditions which were required to be met by the Transferor under the Scheme Document and the Agreement and documentary evidence in support thereof is enclosed as *Annexure A*;
  - (b) the Transferee acknowledges that he/ it has received a copy of, and has read and understands the Agreement and Scheme Document, and covenants, agrees and confirms that it shall be bound by all provisions of the Scheme Document and the Agreement as if it was an original party thereto;
  - (c) the Transferor hereby declares that he/ it has not assigned or in any other manner transferred the Agreement and that no other Person or Persons has any right, title or interest where under in the present Agreement; and

- (d) the Transferee hereby declares that he/ it has accepted all the conditions, obligations, responsibilities, duties and liabilities which the Transferor was bound by and required to comply with under the Agreement.

Capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Agreement.

In witness whereof the parties hereto have signed on the, date and year first above written.

For and on behalf of the Seller:

\_\_\_\_\_  
Name:

Designation:

For and on behalf of the Transferor:

\_\_\_\_\_  
Name:

For and on behalf of the Transferee:

\_\_\_\_\_  
Name:

**ANNEXURE A**  
**Copy of documents evidencing compliance with Eligibility Conditions by the Transferee**