

Final

**TRIPARTITE SIDE AGREEMENT FOR SUPPLY OF
IMPORTED COAL**

BETWEEN

COAL INDIA LIMITED

AND

[Name of the Subsidiary Company]

AND

[Name of the New Power Utility through LOA Route]

[Date of Agreement]

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This Tripartite Side Agreement (“**Side Agreement**”) is supplementary agreement to Fuel Supply Agreement (“**Agreement**”) for Supply of Imported Coal to fulfil coal supply obligations of Seller. This Side Agreement shall be read along with the Agreement entered between Seller and Purchaser for supply of Coal to Purchaser.

This Agreement is made on this [•] day of [•] 201[•] between

Coal India Limited, a company registered under the Companies Act, 1956 and having its registered office at 10, Netaji Subhas Road, Kolkata, West Bengal – 700001, India hereinafter called the “**Supplier or CIL**” (which expression shall unless excluded by or repugnant to the subject or context, include its legal representatives, successors and permitted assigns) of the first part,

AND

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

AND

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

As the context required, Supplier, Seller and Purchaser shall individually be referred as “**Party**” and collectively referred as “**Parties**”

Whereas

- the Purchaser has requested the Seller for supply of Coal to [_____ name and location of *the Power Plant(s)* of the Purchaser (as per details contained in Schedule-I to the Agreement) and the Seller has agreed to make such supplies on the terms and conditions set out under the Fuel Supply Agreement (“**Agreement**”) Reference No. [_____] dated [_____], and
- the Seller has option to supply Imported Coal to Purchaser under the provisions of the Agreement.
- under the provisions of Agreement, Seller has decided to supply Imported Coal for meeting its supply obligations under the terms of Agreement.
- Supplier is the holding company of the Seller and Seller has decided to supply the Imported Coal through Supplier.

Now, therefore, in consideration of the Agreement, Side Agreement and covenants hereafter set forth and intending to be legally enforceable, the Supplier, Seller and the Purchaser (each individually a Party hereto and collectively the Parties) hereby covenant and agree as follows:

1. DEFINITIONS & RULES OF INTERPRETATION:

1.1. DEFINITIONS:

- (a) **“Agreement”** means the Coal supply agreement [Ref No.dated.....] entered into between Seller and Purchaser including all its Schedules, Annexure and attachments and subsequent amendments as may be issued in accordance with the terms and conditions of the Coal supply agreement and it shall supersede and exclude any previous arrangement, understanding or commitment that the Seller may have had with the Purchaser.
- (b) **"Applicable Laws"** means all laws, brought into force and effect by the Government of India (“GoI”) or the State Government or the Government of the country or any province/state of the Country having jurisdiction over source of Imported Coal from where Supplier shall purchase the Imported Coal and supply to Purchaser including rules, regulations and notifications made thereunder, and judgements, decrees, injunctions, writs and orders of any court of record, applicable to either Seller/CIL or the Purchaser, their obligations or this Agreement from time to time.
- (c) **“CIL”** means Coal India Limited, the holding company of the Seller, having its registered office at 10, Netaji Subhash Road, Kolkata 700 001, India, and having authorities to enter into any agreement/side agreements, supplementary to this agreement for ensuring supply of coal from import of coal or other alternative sources
- (d) **“Delivery Point”** in relation to Imported Coal shall mean the point where Imported Coal shall be delivered by CIL to Purchaser. Unless agreed otherwise, it shall be Power Plant end of the Purchaser for which the coal is consigned.
- (e) **“Party”** means either the Supplier or Seller or the Purchaser, and **“Parties”** mean a joint reference to the Supplier and the Seller and the Purchaser or any two parties as context requires.
- (f) **“Signature Date for Side Agreement”** shall mean the Date on which this Side Agreement is signed by all the Parties and shall come into effect.

1.2. RULES OF INTERPRETATION:

- (a) this Side Agreement is supplementary to Agreement and shall be read along with the Agreement only.
- (b) unless otherwise defined in this Side Agreement, all the capitalised words shall bear the meaning as defined in the Agreement.
- (c) a reference to this Side Agreement includes all schedules and annexures to this Side Agreement;
- (d) headings do not affect the interpretation of this Side Agreement;
- (e) a reference to an agreement, deed, instrument or other document include the same as amended, novated, supplemented, varied or replaced from time to time; and
- (f) the expressions “including”, “includes” and “include” have the meaning as if followed by “without limitation”;

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- (g) words imparting the singular only also include plural and vice-versa where the context so requires;
- (h) the expression "writing" or "written" shall include communications by facsimile and letter;

2. PERIOD OF SIDE AGREEMENT:

- 2.1. This Side Agreement shall come into force from Date of Signature of Side Agreement.
- 2.2. This Side Agreement shall remain in force till the termination of Agreement unless otherwise terminated earlier for any reason upon mutual consent.

3. Supplier and Seller's responsibility to supply Imported Coal

- 3.1. Seller shall intimate and Purchaser shall agree to accept Imported Coal for any year as per Schedule VII of the Agreement and Supplier shall supply to Purchaser the Imported Coal to meet Seller's supply obligations as per Clause [XX]¹ of the Agreement.
- 3.2. Purchaser shall submit signed copy of Schedule VII to Seller atleast three (03) month in advance of the commencement of the next Financial Year. In case signed Schedule VII is not received within prescribed time, it shall be deemed that Purchaser does not wish to receive Imported Coal and the quantity offered to be supplied through Import shall be considered as Deemed Delivered Quantity.
- 3.3. The Imported Coal shall be supplied to Purchaser at Delivery Point by Supplier on behalf of Seller.
- 3.4. Within three (03) months of the receipt of signed Schedule VII by Seller from Purchaser every year, the Supplier shall intimate the indicative Quantity, Quality and estimate price of Imported Coal to be delivered to Purchaser. Within 15 days from receipt of such notice, the Purchaser shall submit a firm order to the Seller/ Supplier along with the required Security Deposit (SD) in terms of Clause 9 of this Side Agreement.

4. Purchaser's obligation to accept imported Coal

- 4.1. Purchaser shall have full and absolute obligation to accept the quantity of coal supplied by Supplier. Under no circumstance Imported Coal supplied by the Supplier shall be rejected or not accepted by Purchaser unless it is due to the Force Majeure.
- 4.2. In case Purchaser refuses to take delivery of Imported Coal after consenting to procure Imported Coal as per Clause 3.1, Supplier shall not have any obligation to compensate Purchaser for whatsoever reason. Further, Seller/Supplier shall have right to recover all the price including Base Price and all costs incurred on bringing Imported Coal upto the Delivery Point from any amount payable by Purchaser or any guarantees or security provided by Purchaser to Seller or Supplier. Further, Supplier/Seller shall recover any consequential cost incurred by the Supplier for such refusal.
- 4.3. In case the total amount recoverable by supplier under clause 4.2 exceeds the total amount payable by Purchaser to the seller/supplier even after en-cashing any guarantees and/or securities, then Supplier shall raise supplementary invoice over

¹ FSA (Agreement) clause reference for Annual Contracted Quantity (ACQ)

and above the regular invoice to recover such excess amount. The amount mentioned in the supplementary invoice shall be payable within Seven (07) working days from the date of invoicing. Any delay in payment of such invoice shall attract Interest as per provisions of Agreement.

- 4.4. Further, any liability arising on the CIL to the supplier of Imported Coal under Clause [XX]² of the Agreement will be passed on to the Purchaser on a back to back basis and the Purchaser agrees to indemnify CIL against such liability. If directed by CIL, Purchaser shall sign a back to back agreement to the agreement signed between CIL and its supplier for Imported Coal.

5. Fulfilment of Seller/Supplier's obligation under this Side Agreement

- 5.1. In case Seller/Supplier, supplies the Imported Coal or offer to supply Imported Coal to meet quantity obligations in accordance with Clause [XX]³ of the Agreement which is not accepted by Purchaser, Seller shall be deemed to have complied with its supply obligations under the terms of Agreement subject to Clause [XX]⁴ of the Agreement and no compensation for Short Delivery shall be applicable under provision of Clause [XX]⁵ of the Agreement to the extent Imported Coal quantity was offered/supplied by Seller/Supplier.

6. Quantity and Quality of Imported Coal

- 6.1. Seller/Supplier shall intimate the indicative quality and quantity of the Imported Coal on periodic basis as per Clause 3.4.
- 6.2. The quantity of Imported Coal supplied by the Supplier shall be considered equivalent to 1.5 times for domestic coal i.e. 1 tonne of Imported Coal shall be equivalent to 1.5 tonnes of domestic coal for the purpose of meeting quantity obligations under provisions of Agreement.
- 6.3. Any adjustment to price of Imported Coal for deviation in the quality shall be as per the agreement between Supplier and agency importing Coal for Supplier.
- 6.4. For the purpose of Clause 6.3, the Purchaser shall submit the sampling and analysis result and any other relevant documents to Supplier as may be requested by Supplier.

7. Weighment of Imported Coal

- 7.1. The weighment of coal recorded at the time of unloading of Imported Coal at Delivery Point shall be considered as delivered quantity.
- 7.2. The payment for Imported Coal shall be made by Purchaser on the weight of Coal recorded at Delivery Point.

8. Price of Imported Coal

- 8.1. Purchaser acknowledges that the Supplier shall import the coal on the firm purchase commitment of the Purchaser and in no circumstances Purchaser shall refuse to accept the Imported Coal offered to it by Seller or Supplier.
- 8.2. Further, Purchaser acknowledges that the cost incurred by Supplier on Imported

² FSA (Agreement) clause reference for 'Sources of Supply'

³ FSA (Agreement) clause reference for 'Annual Contracted Quantity (ACQ)'

⁴ FSA (Agreement) clause reference for 'Sources of Supply'

⁵ FSA (Agreement) clause reference for 'Compensation for short deliver/lifting'

Coal shall vary depending upon the Quality, Source, type of coal, port of loading, type of contract for supply of coal to Supplier, loading and unloading port tariff, mode of transportation, type and size of vessel, prevailing international coal prices etc.

8.3. Thus, Purchaser warrants that it shall purchase the Imported Coal at all time at a price notified by Supplier/Seller at the time of delivery of consignment of Imported Coal.

8.4. Base Price

Supplier/Seller shall notify the Base Price of the Imported Coal. The Base Price notified by Supplier shall be at unload port which shall include CIF Price of Coal , and all costs upto loading into railway wagons at port but not including taxes and duties which are payable as per Clause 8.6.

8.5. Other Charges

All the costs incurred by Supplier on bringing Imported Coal to Delivery Point after loading of coal into the railway wagons including in-land transportation cost upto Delivery point and any other associated costs incurred on imports of coal etc. shall be paid by Purchaser on actual.

8.6. Statutory Charges

Any taxes, duties, levies, cess and any other statutory chares etc. payable by Supplier/Seller to government authorities of India and/or any other country incidental to such imports shall be paid by Purchaser on actual.

8.7. Service Charge

Further, CIL shall levy a Service Charge of 2% of the CIF Price plus applicable taxes and duties notified for such consignment on the Purchaser. Further, CIL reserves right to change and notify the applicable Service Charge from time to time and same shall be acceptable to Purchaser.

8.8. Supplier/Seller shall notify the Base Price applicable for each consignment of Imported Coal at the time of delivery of Imported Coal.

8.9. The Supplier/Seller reserves the right to change the pricing mechanism at any time during the term of this Side Agreement.

9. Security Deposit

9.1. The Purchaser is required to deposit with the Supplier an amount equivalent to 06% (Six Percent) of the estimated sum of Based Price and Statutory Charges (as per clause 8.4 and 8.6) (which shall be arrived at based on the estimated price of Imported coal) of Imported Coal for the applicable Financial Year multiplied by the Quantity accepted by the Purchaser as mentioned in the firm order in terms of Clause 3.4 as Security Deposit (SD), in the form of Bank Guarantee within fifteen (15) days of Supplier notifying Imported Coal Quantity and estimate price to Purchaser in accordance with Clause 3.4. Such Security Deposit shall be non-interest bearing. [In case the SD is in the form of a bank guarantee the same shall be provided in the BG format to be provided by the Seller/Supplier and issued from a Bank acceptable to the Seller/Supplier.]

9.2. The SD submitted by the Purchaser, as per Clause 9.1 shall remain valid till the SD

for the next Financial Year has been submitted by Purchaser. In case of termination of this Side Agreement, such SD shall remain valid till three (3) months from the expiry of Side Agreement.

- 9.3. The value of the Security Deposit shall be suitably increased / decreased to match the changes in the Base Price and Statutory Charges notified by the Supplier from time to time. In the event of failure of the Purchaser to provide such increased value within ten (10) days from the date of notification of such change in Base Price and Statutory Charges, the Supplier shall have the right to suspend the Imported Coal supplies.
- 9.4. The Security Deposit shall be refundable/returned to the Purchaser at the end of its validity subject to successful completion of and complete settlement of all claims of Supplier/Seller arising out of this Side Agreement.
- 9.5. The Purchaser shall ensure that the Security Deposit stands replenished within seven (07) days in the event of drawl of funds by the Supplier/Seller in accordance with the provisions of Side Agreement. Failure to replenish the Security Deposit within such stipulated period shall entitle the Supplier to suspend its Coal supplies without absolving the Purchaser of its obligations under the Agreement and Side Agreement.

10. Payment for Imported Coal

- 10.1. All the payment for supply of Imported Coal shall be made by Purchaser to Supplier in advance.
- 10.2. The Supplier shall notify to Purchaser the estimated total price (including Base Price, Other Costs and Statutory Charges) of Imported Coal with one (01) month notice before expected delivery date of Imported Coal. The Purchaser shall within Seven (07) days of receipt of notice shall make advance payment to CIL for the expected consignment of Imported Coal. In the event of failure to make advance payment within prescribed period, Supplier shall not be obliged to supply Imported Coal to Purchaser and Supplier/Seller's obligations under Clause 5.1 shall be deemed to be fulfilled.
- 10.3. Purchaser acknowledges that the price notified by Supplier under clause 10.2 are only pre-estimate for purpose of payment of advance amount and actual price for Imported Coal may differ.
- 10.4. On delivery of Imported Coal at Delivery Point, Supplier shall intimate Purchaser the applicable price for the Imported Coal and any differential amount payable by Purchaser shall be paid to Supplier within three (03) days of supplementary invoicing by Supplier.
- 10.5. In case of failure to make payment by Purchaser as per Clause 10.4, Supplier and/or Supplier/Seller shall have right to recover such amount from any guarantees provided by Purchaser to Seller/Supplier without any intimation. Further if required, Supplier/Seller shall raise supplementary invoices as described in Clause 4.3.

11. Compensation for short delivery/lifting and Performance Incentive

- 11.1. The compensation for short delivery/lifting and Performance Incentive applicable as

per Clause [XX]⁶ and Clause [XX]⁷ of the Agreement shall always be calculated based on the price of domestic coal irrespective of whether the delivery obligations are met through domestic coal or Imported Coal in any proportion.

12. Indemnification and liens

Purchaser (the "Indemnifying Party") shall indemnify and hold harmless the Seller and Supplier, its respective successors and assigns (the "Indemnified Party") harmless against all damages, losses and expense suffered or paid as a result of any and all claims, demands, suits, penalties, causes of action, proceedings, judgments and liabilities of third parties (including reasonable counsel fees) assessed, incurred or sustained by or against the Indemnified Party with respect to or arising out of:

- (a) any breach by the Indemnifying Party of its warranties, representations, covenants or agreements or
- (b) the willful or negligent act or omission of the Indemnifying Party or its employees, the Purchaser's agents or representatives, relating to its performance under this Side Agreement and Agreement.
- (c) against any shipment not accepted by Purchaser including any cost incurred by Supplier and Seller whatsoever it may be.
- (d) Further, Purchaser shall indemnify Seller, Supplier or any of its employee, representative, consultant, agent or any party involved in delivery of Imported Coal against any cost, claims, liens etc.

13. Force Majeure event for Imported Coal

Force Majeure for Imported Coal shall mean any event or circumstances or combination of events or circumstances (including effects thereof) beyond the reasonable control of the Supplier and Seller which materially and adversely affects, prevents, delays any Supplier/Seller in the performance of its obligations under this Side Agreement and Agreement and which were not reasonably foreseeable and the effect of which the affected party would not have prevented or dismissed or overcome by the exercise of reasonable skill and care. Any events or circumstances meeting the description of Force Majeure Event which adversely affects prevents or delays the performance of Supplier's obligations under this Side Agreement. The Force Majeure events for Imported Coal shall include all the Force Majeure events as per Agreement and the following events without limitation:

- (a) Strikes, work stoppages, work slowdowns or other labor action (including act by Supplier employee)
- (b) Acts of war (whether declared or undeclared). Invasion or civil unrest;
- (c) Any unusually severe weather conditions, other than those conditions which are reasonably foreseeable including adverse weather conditions during sea transportation
- (d) Any direction to Supplier/seller, by any court of law or judicial authority or government authority in India and/or source country, for any action or omission for compliance of Law;

⁶ 4.6.1 - 'Compensation for short deliver/lifting'

⁷ 4.12 - 'Performance Incentive'

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- (e) Confiscation, nationalization, mobilization, commandeering or requisition by or under the order of an government or de facto authority or ruler or any other act of any local, state or national government authority of India or source country; or
- (f) Any Government Agency's unreasonable delay, denial or refusal to grant or renew or unreasonable revocation or any required permit, license, approval or authorization, including Government Authorizations which prevent Supplier to supply the Imported Coal to Purchaser
- (g) Any Change in Law after the date hereof materially adversely affecting the performance by Supplier of its obligations hereunder.
- (h) Global shortage of Imported Coal or delays caused by supplier or no response to enquiries for supply of coal or logistics constraints in transportation of Imported Coal
- (i) Unavailability, obstruction or blockage of the loading port or discharge port or transportation system upto Delivery Point
- (j) Damage to, or breakdown of, any of the Wharf and/or loading gear at the loading port or discharge port

14. Dispute Resolution

14.1. Any dispute arising out of this Side Agreement shall be addressed as per the provisions of the Agreement.

Signed in presence of the witness /witnesses under mentioned on [•] day of [•].

For Coal India Limited	For ([•] name of the Seller)	For ([•] name of the Purchaser)
Signature Name:	Signature Name:	Signature Name:

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(block letters) Designation: Address: Telephone: Fax: Email:	(block letters) Designation: Address: Telephone: Fax: Email:	(block letters) Designation: Address: Telephone: Fax: Email:
Witness 1	Witness 1	Witness 1
a) Signature b) Name (block letters) c) Address & Occupation	a) Signature b) Name (block letters) c) Address & Occupation	a) Signature b) Name (block letters) c) Address & Occupation
Witness 2	Witness 2	Witness 2
a) Signature b) Name (block letters) c) Address & Occupation	a) Signature b) Name (block letters) c) Address & Occupation	a) Signature b) Name (block letters) c) Address & Occupation