

Request for Proposal

for

Procurement of coal from Indonesia and/or Australia

for

Patuakhali 1320 (2×660) MW Coal Fired Thermal Power Plant

Date :22 November, 2022

RFP No. RNPL/1320/2022/0653



RPCL-NORINCO INTL POWER LIMITED

Table of Contents

Chapter I - Instructions to Bidders (ITB)

- 1 - Assignment
- 2- General
- 3 - Bidding Procedure
- 4 - Contents of Bid Proposal
- 5 - Opening and Evaluation of Bid Proposal
- 6 - Award of Contract
- 7 - Warranty Against Corruption

Chapter II - Forms

- Form 1 - Proposal Letter
- Form 2 - Bid Price Schedule Forms
- Form 3 - Power of Attorney
- Form 4 - Company Qualification Certificate
- Form 5 - Coal Specification Form
- Form 6 - Forms related to Evaluation
- Form 7 - Bid Security Form
- Form 8 - Laboratory List

Chapter III – Contract Agreement for the Sale and Purchase of Coal for Patuakhali 1320 (2×660) MW Coal Fired Thermal Power Plant

Chapter I

Instructions to Bidders (ITB)

DISCLAIMER

1. The Request for Proposal (RFP) does not purport to contain all the information each Bidder may require to submit the **Bid Proposal (the "Proposal" or the "Bid Proposal")**. Each Bidder should conduct its own diligence, investigation and analysis and should check the accuracy, reliability and completeness of the information in the **RFP** and obtain independent advice from appropriate sources.
2. Nothing stated herein shall be construed as a representation or warranty on the part of RNPL. In particular, no representation is made that any letter of award shall be issued or that the Contract Agreement will be executed pursuant to the **RFP**. RNPL, at its sole discretion may stop, re-invite, terminate, suspend or amend the process of selection of the selected Bidder at any stage without assigning any reasons thereof. Further, neither RNPL nor its employees, agents, advisors or consultants make any representation or warranty as to the accuracy, reliability or completeness of the information contained or deemed to be contained in the **RFP**.
3. Neither RNPL nor its employees, agents, advisors or consultants shall be liable to any Bidder or any other person, under any law including the law of contract, tort, the principles of restitution or unjust enrichment or otherwise for any loss, expense or damage which may arise from or be incurred or suffered, in connection with or as arising as a result of the **RFP**, or any matter that may be deemed to form part of the **RFP**, or the award of the contract thereunder, or any other information supplied by or on behalf of RNPL or its employees, agents, advisors or consultants or otherwise arising in any way from the selection process for the award of the contract.
4. The Bidder should ensure that the **RFP** is complete in all respects. In the event that the **RFP** or any part thereof is mutilated or missing, the Bidder must notify the contact person(s) of RNPL immediately.
5. RNPL reserves the right, in its sole and unfettered discretion, without any obligation or liability whatsoever, to accept or reject any or all of the Bids at any stage of the bidding process undertaken/ to be undertaken under the **RFP**, without assigning any reasons thereof.
6. The **RFP** (and all information contained herein) is confidential and is for the exclusive use of the Bidders who desire to participate in this **bidding process**. The **RFP** shall not be copied or distributed to third parties, other than only to the extent necessary on a need-to-know basis for the purpose of preparation of submissions for the Bid by the Bidder and such sharing/ distribution being subject to the same degree of confidentiality as applicable to the Bidder under this **RFP**.
7. RNPL reserves the right to change, modify, add to or alter the bidding process, including

inclusion of additional evaluation criteria for evaluation of the Bidders during the bidding process, based on detailed evaluation of capabilities or on account of any change in government policy, law or regulations. Any change in the bidding process shall be intimated to all the Bidders by hosting such changes on the relevant website(s). For the avoidance of doubt, it is clarified that if at any time after the date of issuance of the **RFP** and prior to the execution of the Contract Agreement, there is any change in policy of the Government of Bangladesh, law or regulations affecting the selection process, or any part of the **RFP** or RNPL's rights or obligations, RNPL shall, in its sole discretion be entitled to change, modify, review, supplement, add to, alter or otherwise deal with the bidding process in such manner and to such extent as RNPL may decide, in its sole discretion, so as to protect its interest. The Bidders shall be required to submit the Bid in relation to the **RFP**/ bidding process as so amended, altered, modified or supplemented

For Information Only

Table of Contents

1.	Assignment.....	1
1.1.	Title of the Project.....	1
1.2.	Title of Work.....	1
2.	General	1
2.1.	Introduction.....	1
2.2.	Quantity.....	1
2.3.	Key Coal Specifications	2
2.4.	Terms	2
2.5.	Contents of the Request for Proposal	2
2.6.	Compliance with Invitation.....	3
2.7.	Language.....	3
2.8.	Source of Fund.....	4
2.9.	Eligible Bidders	4
2.10.	Corrupt Practices.....	4
2.11.	Unacceptable Proposals.....	5
2.12.	Confidentiality of Proposal.....	5
2.13.	Validity Period of the RFP	5
2.14.	Late Proposal	6
2.15.	Amendment of Request for Proposal	6
2.16.	Bid Security.....	6
3.	Bidding Procedure.....	7
3.1.	Bidders' Clarifications	7
3.2.	Enveloping of Documents.....	7
3.3.	Currency of Proposal and Payment.....	8
3.4.	Deadline for Submission.....	8
4.	Contents of Bid Proposal.....	9
4.1.	Commercial Proposal.....	9
4.2.	Technical Proposal.....	9
4.3.	Determination of Responsiveness.....	9
5.	Opening and Evaluation of Bid Proposal.....	10
5.1.	Technical Proposal Opening	10
5.2.	Commercial Proposal Opening	10
5.3.	Evaluation Principles & Method.....	11
5.4.	Selection of the Successful Bidders.....	11
5.5.	Technical Score (35.00 points).....	12
5.6.	Commercial Score (65.00 points).....	14
5.7.	Employer's Right to Accept Any Proposal and to Reject Any or All Proposal.....	14
6.	Award of Contract.....	15
6.1.	Award Criteria	15

6.2.	Notification of Award (NOA)	15
6.3.	Performance Security	15
6.4.	Contract Signing.....	15
7.	Warranty Against Corruption	16

For Information Only

1. Assignment

1.1. Title of the Project

Patuakhali 1320 (2×660) MW Coal Fired Thermal Power Plant

1.2. Title of Work

Procurement of coal from Indonesia and/or Australia for Patuakhali 1320 (2×660) MW Coal Fired Power Plant, Patuakhali, Bangladesh

2. General

2.1. Introduction

2.1.1. RNPL invites sealed proposals from eligible Bidders to submit Proposal for Request for Proposal for Procurement of coal from Indonesia and/or Australia for Patuakhali 1320 (2×660) MW Coal Fired Thermal Power Plant (RFP No. RNPL/1320/2022/0653), following Single-Stage Two-Envelope bidding Procedure (Envelope-1: Technical Proposal; Envelope-2: Commercial Proposal).

2.1.2. Capitalized terms used in this RFP shall have the same meaning ascribed thereto in Chapter III - Contract Agreement for the Sale and Purchase of Coal for Patuakhali 1320 (2×660) MW Coal Fired Thermal Power Plant.

2.1.3. Throughout this RFP,

- (1) the term “Buyer” or “Employer” is used to refer to RPCL-NORINCO INTL POWER LIMITED (RNPL);
- (2) the term “**Bidder**” is used to refer to individual company meeting the requirements specified in 2.9 Eligible Bidders and who intends to participate in the bidding process by obtaining the Request for Proposal and its addenda directly from the source stated by the Employer in the Invitation for Proposal. If the Request for Proposal is not collected from the source mentioned in the Invitation for Proposal, it may result in the rejection of the bid.

2.1.4. The Bidder should note that:

- (1) The Bidder shall bear all costs associated with the preparation and submission of its Proposal, and RNPL will, in no case, be responsible or liable for these costs, regardless of the conduct or outcome of the bidding process; and
- (2) RNPL is not bound to accept any or all the Proposals submitted.

2.2. Quantity

2.2.1. The required maximum quantity of coal to be purchased during Commercial Delivery Period is 1× ±10% 2,400,000 MT per annum from Indonesia and/or 1×±10% 1,600,000 MT per annum from Australia on a Free on Board Trimmed (FOBT) basis after Commercial Operations of the plant. The final quantity will be determined as per Article 4.

QUANTITY of the Contract Agreement.

2.2.2. The required quantity for carpet coal and Commissioning Coal shall be determined through contract negotiation.

2.3. Key Coal Specifications

The coal to be purchased on each and every shipment shall be stable, uniform and comply with the specifications as set out below (the Key Coal Specifications), as determined in accordance with relevant ASTM standards:

No.	Parameter	Units	Required Specifications	
			Coal from Indonesia	Coal from Australia
1	Net Calorific Value As Received Basis	kcal/kg	≥3900	≥5100
2	Total Moisture As Received Basis	%	≤36	≤36
3	Total Ash As Received Basis	%	≤5.8	≤25
4	Volatile Constituent Air Dried Basis	%	Lower Limit: ≥20 Upper Limit: ≤44	Lower Limit: ≥18 Upper Limit: ≤35
5	Total Sulfur As Received Basis	%	≤0.26	≤0.68
6	HGI		≥46	≥48
7	Ash Fusion Temperature (Reducing Initial Deformation)	°C	≥1180	≥1240
8	Ash Fusion Temperature (Reducing Spherical)	°C	≥1240	≥1280

2.4. Terms

Minimum Five Years from First Delivery Date subject to a review of the Agreement every year starting from the beginning of the fourth Year.

2.5. Contents of the Request for Proposal

2.5.1. The Request for Proposal consist of Chapter I, II and III, which include all the clauses and forms indicated below and should be read in conjunction with any addenda thereto.

Chapter 1 Instructions to Bidders (ITB)

- Disclaimer
- Assignment
- General

- Bidding procedure
- Contents of Bid Proposal
- Opening and Evaluation of Bid Proposal
- Award of Contract
- Warranty Against Corruption

Chapter 2 Forms

- Form 1 Proposal Letter
- Form 2 Bid Price Schedule Form
- Form 3 Power of Attorney
- Form 4 Company Qualification Certification
- Form 5 Coal Specification Form
- Form 6 Forms Related to Evaluation
- Form 7 Bid Security Form
- Form 8 Laboratory List

Chapter 3 Contract Agreement for the Sale and Purchase of Coal for Patuakhali 1320 (2×660) MW Coal Fired Thermal Power Plant

- 2.5.2. The Invitation for Proposal issued by the Employer is not part of the Request for Proposal.
- 2.5.3. The Bidder shall obtain the Request for Proposal and its addenda directly from the source stated by the Employer in the Invitation for Proposal. If the Request for Proposal is not collected from the source mentioned in the Invitation for Proposal, it may result in the rejection of the bid. The Employer is not responsible for the completeness of the Request for Proposal and its addenda if they were obtained otherwise.
- 2.5.4. The Bidder is expected to examine all instructions, forms, terms and specifications in the Request for Proposal. Failure to furnish all information or documentation required by the Request for Proposal may result in the rejection of the bid.

2.6. Compliance with Invitation

Bidders shall prepare and submit the Proposal in compliance with the procedures and requirements as provided in this RFP. Any failure to do so may give RNPL a reason to reject or to unfavorably evaluate the Proposal. Bidders shall be regarded as having been thoroughly acquainted with and having accepted all the contents of the RFP.

2.7. Language

The bid proposal documents shall be prepared in English. In case any document is prepared in a language other than English, a certified English translation should be provided together.

2.8. Source of Fund

Employer will be arranging for funds required for this Contract from its own funds.

2.9. Eligible Bidders

2.9.1. This RFP pursuant thereto is open to potential Bidders from all countries, except Israel. A Bidder will be eligible if it is a citizen, or is constituted, registered and operates as a legal entity in conformity with the provisions of the laws of its country.

2.9.2. Bidders shall be required to have the legal capacity to enter into the Contract. A Bidder that is under a declaration of ineligibility by the Government of Bangladesh, in accordance with applicable laws, as on the date of opening of Technical Proposal or thereafter, shall be disqualified.

2.9.3. Any Consortium is not allowed in this bidding process.

2.9.4. Technical Criteria

(1) The values of the specified parameters of the coal supplied by the Bidders (“Indonesian coal” or “Australian Coal”) should be close to the corresponding figures as set out in ITB 2.3 Key Coal Specifications, as evidenced by a test report from any one duly licensed independent and renowned laboratory as listed in Form 8 Laboratory List.

(2) A Bidder should be a coal mine owner or holding company of a coal mine owner or a trader and should have exported, a minimum quantity of 2 million tonnes of coal, in any continuous twelve (12) months period, during the past three (3) years, reckoned from the date of opening of Technical Proposal.

(3) The recoverable reserves of the coal of the coal mine should be of a minimum quantity of 5 million tonnes as evidenced by report following JORC Code or compliant code.

(4) In case of a trader, a coal supply agreement with a minimum term of 5 (five) years between the trader and its coal mine should be submitted together with a report for that contracted coal mine evidencing its recoverable reserves of the coal having a minimum quantity of 5 million tonnes, which should follow JORC Code or compliant code.

2.9.5. Financial Criteria

(1) The average annual turnover of the Bidder, in any of the three (3) financial years within the preceding four financial years, as on 1st July 2022, should not be less than USD 100 Million (US Dollars One Hundred Million Only).

(2) Net Worth of the Bidder, as on the last date of the financial year immediately preceding 1st July 2022, should not be less than 100% of its paid-up share capital.

2.10. Corrupt Practices

The Employer requires that bidders, observe the highest standard of ethics during the procurement and execution of contracts. In pursuance of this policy,

2.10.1. the Employer defines, for the purposes of this provision, the terms set forth below as follows:

- (1) "corrupt practice" is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
- (2) "fraudulent practice" is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
- (3) "collusive practice" is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
- (4) "coercive practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;

2.10.2. the Employer will reject a proposal for award if it determines that the bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for the contract in question;

2.11. Unacceptable Proposals

Any of the following Proposals will not be accepted by RNPL:

- 2.11.1. Proposal submitted after the deadline, or Proposal with incomplete required documents.
- 2.11.2. Two or more Proposals submitted by or with the same coal mine. However, in case of a coal trader, two Proposals may be allowed by such trader provided that one Proposal is for coal from Indonesia and the other one is for coal from Australia only.
- 2.11.3. Proposal which, as deemed by RNPL, deviates from the essential requirements of the RFP.
- 2.11.4. Proposal submitted without a Bid Security.
- 2.11.5. Any other clause stipulated in this RFP document related to unacceptance or rejection of bid proposal.

2.12. Confidentiality of Proposal

The Bidder's proposal must be issued independently, without consultation, communication, or agreement with any other Bidders or potential Bidders.

No attempt has been made directly or indirectly to induce any other persons or firms to submit or not to submit a proposal for the purpose of restricting competition.

The Bidders shall not disclose the RFP to any third party who is not directly related with the preparation of the proposal.

2.13. Validity Period of the RFP

The Proposal shall be bound as a firm offer and valid for a period of One Hundred and Eighty (180)

calendar days after the Deadline for submission. RNPL may request the Bidders to extend the validity period of the Proposal, if necessary.

2.14. Late Proposal

The Employer shall not consider any Proposal that arrives after the deadline for submission of Proposal. Any Proposal received by the Employer after the deadline for submission of Proposal shall be declared late, rejected and returned unopened to the Bidder.

2.15. Amendment of Request for Proposal

At any time but at least 7 (seven) days before the deadline for submission of Proposal, the Employer may amend the Request for Proposal by issuing addenda.

Any addendum issued shall be part of the Request for Proposal and shall be communicated through e-mail from cs@rnpl.com.bd to all who have obtained the Request for Proposal from the source stated by the Employer in the Invitation For Proposal. No other communications of any kind whatsoever will modify the Request for Proposal. The prospective Bidder shall acknowledge receipt of the amendment by sending each and every page of the amendment issued, duly signed via a return e-mail. RNPL shall not be held responsible for non-delivery of any amendment so issued to any Bidder, including in the event any email carrying such amendment bounces back or any attachment is filtered by the Bidder's e-mail server or on account of any such technical reason.

The amendment(s) shall also be posted on the website of RNPL, and it shall be the responsibility of the prospective Bidder to visit the RNPL website from time to time after downloading of the RFP to see if any amendment to the RFP has been uploaded. The Bidder shall furnish its acceptance to such amendment(s) by submitting the amendment(s), with each and every page thereof duly signed by the authorized signatory.

2.16. Bid Security

2.16.1. The Bidders shall furnish as part of its Proposal, in favor of RNPL, on account of the Bidder, a Bid Security in original, in the form as stipulated in the proposal document, of an amount equal to USD \$1,500,000.00 (US Dollar One million and Five Hundred Thousand only).

2.16.2. The Bid Security shall be in the form of an unconditional and irrevocable bank guarantee issued by Scheduled Bank in Bangladesh or a foreign bank of international repute, having correspondent bank located in Bangladesh, and shall be required to be endorsed by the correspondent bank, to make it enforceable, in the format (Form 7) prescribed in Chapter II.

2.16.3. The Bid Security may be forfeited by RNPL, if a Bidder:

- (1) The Bidder withdraws his bid proposal before its expiration of validity; or
- (2) The successful Bidder refuses to enter into a Contract with the Buyer.

2.16.4. The Bid Security shall remain valid for at least 28 (twenty-eight) days beyond the original validity period of the Proposal, or beyond any period of extension if required. Prior to the expiration of the proposal validity period, RNPL may request the proposer for an extension

of security's validity.

2.16.5. The Bid Security shall be returned without interest thereon, (i) to the unsuccessful Bidder within one month after award of the Contract or promptly after rejection of the Bid proposal, and (ii) to the successful Bidder as soon as he establishes the Performance Security.

3. Bidding Procedure

3.1. Bidders' Clarifications

The prospective bidders who have obtained the Request For Proposal from the source stated by the employer in the invitation for proposal are required to submit in writing to cs@rnpl.com.bd and copy to pd1320rnpl@gmail.com and fzq@norinco-intl.com all their questions/inquiries or other points of clarification Twenty-Eight (28) days before the Deadline for Submission of proposal. Any questions to be raised after the prescribed period shall not be entertained by RNPL.

3.2. Enveloping of Documents

3.2.1. The Bidder must specify the origin of country of the coal ("Indonesian Coal" or "Australian Coal") in Form 1 Proposal Letter and attached it with Technical Proposal.

3.2.2. The Bidder should prepare one (1) original proposal comprising the Technical Proposal as described in ITB 4 Contents of Bid Proposal and clearly mark it as "ORIGINAL TECHNICAL PROPOSAL". In addition, the Bidder should prepare three (3) copies of the Original Technical Proposal and clearly mark each of them as "COPY NO. [...] OF THE TECHNICAL PROPOSAL" and one USB stick containing the scanned copy of the complete Original Technical Proposal only. In case there is any discrepancy, the original shall prevail.

3.2.3. The Bidder should prepare one (1) original proposal comprising the Commercial Proposal as described in ITB 4 Contents of Bid Proposal and clearly mark it as "ORIGINAL COMMERCIAL PROPOSAL". In addition, the Bidder should prepare three (3) copies of the Original Commercial Proposal and clearly mark each of them as "COPY NO. [...] OF THE COMMERCIAL PROPOSAL" and one USB stick containing the scanned copy of the complete Original Commercial Proposal only. In case there is any discrepancy, the original shall prevail.

3.2.4. The original and each copy of the Proposal(s) should be typed or written in indelible ink and should be signed/initialed by the Person duly authorised to sign on behalf of the Bidder.

3.2.5. The Bidders should enclose the Original Technical Proposal in one (1) envelope and all the copies of the Technical Proposal in another envelope, duly making the envelopes as "ORIGINAL TECHNICAL PROPOSAL" and "COPY OF TECHNICAL PROPOSAL" respectively. These sealed envelopes for the original and copies of the Technical Proposal shall be enclosed and sealed in one single envelope and clearly marked as "Envelope-1: TECHNICAL PROPOSAL".

3.2.6. The Bidders should enclose the Original Commercial Proposal in one (1) envelope and all

the copies of the Commercial Proposal in another envelope, duly making the envelopes as “ORIGINAL COMMERCIAL PROPOSAL” and “COPY OF COMMERCIAL PROPOSAL” respectively. These sealed envelopes for the original and copies of the Commercial Proposal shall be enclosed and sealed in one single envelope and clearly marked as “Envelope-2: COMMERCIAL PROPOSAL”.

3.2.7. The inner and outer envelope of the Envelope-1 should follow the form below:

To: Company Secretary

RPCL-NORINCO INTL POWER LIMITED (RNPL)

7th Floor, Atlanta Trade Center, House# 01, Road# 1/A, Sector# 04, Uttara Model Town, Dhaka, Bangladesh

Envelope-1: Technical Proposal for Procurement of coal from Indonesia and/or Australia for Patuakhali 1320 (2×660) MW Coal Fired Thermal Power Plant (RFP No RNPL/1320/2022/0653)

XXX (Name and Address of the Bidder to be filled by the Bidder)

3.2.8. The inner and outer envelope of the Envelope-2 should follow the form below:

To: Company Secretary

RPCL-NORINCO INTL POWER LIMITED (RNPL)

7th Floor, Atlanta Trade Center, House# 01, Road# 1/A, Sector# 04, Uttara Model Town, Dhaka, Bangladesh

Envelope-2: Commercial Proposal for Procurement of coal from Indonesia and/or Australia for Patuakhali 1320 (2×660) MW Coal Fired Thermal Power Plant (RFP No. RNPL/1320/2022/0653)

XXX (Name and Address of the Bidder to be filled by the Bidder)

3.3. Currency of Proposal and Payment

Bidders will express the price of their proposal in United States Dollar (USD).

3.4. Deadline for Submission

3.4.1. The Bid Proposal shall be received by RNPL not later than 10 January, 2023 (48 days after issuance of the Invitation for Proposal).

3.4.2. The Employer may, at its discretion, extend the deadline for the submission of Proposal by amending the Request for Proposal, in which case all rights and obligations of the Employer and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended.

4. Contents of Bid Proposal

The Bid Proposal shall include the Commercial proposal and the Technical proposal. Each proposal shall include the following contents.

4.1. Commercial Proposal

Commercial proposal shall contain the following:

- 4.1.1. A Bid Price proposal according to Form 2 Bid Price Form of Chapter II.
- 4.1.2. Filled and signed forms as per Form 6 Forms related to Evaluation.

4.2. Technical Proposal

Technical Proposal shall contain the following:

- 4.2.1. Filled and signed Proposal Letter as per Form 1 Proposal Letter
- 4.2.2. Power of Attorney as per Form 3 Power of Attorney
- 4.2.3. Certificate as per Form 4 Company Qualification Certificate
- 4.2.4. Coal Specification as per Form 5 Coal Specification Form as evidenced by a test report from any one duly licensed independent and renowned laboratory as listed in Form 8 Laboratory List.
- 4.2.5. Bid Security as per form 7 Bid Security Form
- 4.2.6. Company Profile which includes general information, shareholders and top management's information, coal supply experiences in Asia.
- 4.2.7. Mining Permit of the Coal Source
- 4.2.8. Sales and Transportation Permit
- 4.2.9. Certificate of Business Registration
- 4.2.10. Three (3) years summary of Company's Audited Financial Statement
- 4.2.11. Coal Export Permit from competent authority
- 4.2.12. History of Force Majeure Declarations
- 4.2.13. A report (which should comply with JORC Code or compliant code) specifying the recoverable reserves of the coal mine.
- 4.2.14. In case of a trader, a long-term coal supply agreement (at least 5 years reckoned from the deadline for submission or any date after extension) between the trader and its coal mine together with a report (which should comply with JORC Code or compliant code) specifying the recoverable reserves of the coal mine.

4.3. Determination of Responsiveness

- 4.3.1. The Employer's determination of a Bid Proposal's responsiveness is to be based on the contents of the Proposal itself.

- 4.3.2. If a Proposal is not substantially responsive to the requirements of the Request for Proposal, it shall be rejected by the Employer and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.
- 4.3.3. If a Proposal is not substantially responsive, the Employer will notify the Bidder that its Proposal has been rejected.

5. Opening and Evaluation of Bid Proposal

5.1. Technical Proposal Opening

- 5.1.1. The Employer shall open the Technical Proposals in public, in the presence of Bidders' designated representatives and anyone who chooses to attend, at the following address and at the date and time.

Address: RPCL-NORINCO INTL POWER LIMITED (RNPL)

7th Floor, Atlanta Trade Center, House# 01, Road# 1/A, Sector# 04, Uttara Model Town, Dhaka, Bangladesh

Time and Date: 12:30 PM; 10 January, 2023

- 5.1.2. All envelopes shall be opened one at a time, reading out: the name of the Bidder; the presence of a Bid Security, and any other details as the Employer may consider appropriate. No proposal shall be rejected at the proposal opening except for late Proposal.
- 5.1.3. The Employer shall prepare a record of the proposal opening that shall include, as a minimum: the name of the Bidders and the presence or absence of a Bid Security. The Bidders' representatives who are present shall be requested to sign the attendance sheet. A copy of the record shall be distributed to all Bidders.

5.2. Commercial Proposal Opening

- 5.2.1. Commercial Proposals shall not be opened by the Employer until the evaluation of the Technical Proposals has been completed.
- 5.2.2. The Employer shall open the Commercial Proposals in public, in the presence of Bidders' designated representatives and anyone who chooses to attend and at the following address, date and time:

Address: RPCL-NORINCO INTL POWER LIMITED (RNPL)

7th Floor, Atlanta Trade Center, House# 01, Road# 1/A, Sector# 04, Uttara Model Town, Dhaka, Bangladesh

Time and Date: [Will be notified later]

- 5.2.3. Commercial Proposals will be opened only from those bidders who:

- (1) have submitted an acceptable Bid Security;
- (2) have submitted a responsive proposal; and

(3) have met the minimum technical scores specified in ITB 5.4.6.

5.2.4. All envelopes shall be opened one at a time, reading out: the name of the Bidder and the Bid Price in the Commercial Proposal.

5.2.5. The Employer shall prepare a record of the Proposal opening that shall include, as a minimum: the name of the Bidder, the Bid Price. The Bidders' representatives who are present shall be requested to sign the attendance sheet. A copy of the record shall be distributed to all Bidders.

5.3. Evaluation Principles & Method

RNPL would like the coal to be supplied is secured and always meet the Key Coal Specifications as specified in ITB 2.3 above. Besides, RNPL would like to have more than one coal supplier that is experienced, flexible and friendly when working with RNPL, while the delivered price is fairly reasonable and the offered further discount is welcome as well.

Bidder with the highest comprehensive score shall be the successful Bidder, and the others will be the candidate. RNPL intends to select one or more than one bidder for supplying "Indonesian Coal" and one or more than one bidder for supplying "Australian Coal". Detailed evaluation criteria are specified as below.

5.4. Selection of the Successful Bidders

5.4.1. The total score for evaluation is 100.00 (One Hundred Only). While evaluating, the calculations accurate to two decimals place only.

5.4.2. The evaluation method of this procurement is comprehensive evaluation, and the proportion of technical and commercial is 35%: 65% respectively.

5.4.3. Comprehensive score of the Bidders shall be calculated as follows:

5.4.4. Comprehensive score = Technical Score + Commercial Score

5.4.5. The Employer shall only evaluate those Proposal that are found to be substantially responsive.

5.4.6. The minimum Technical score will be 28.00 (Twenty-eight Only). A Proposal shall be rejected at this stage if it fails to achieve the minimum technical score and the Commercial Proposal of such Bidder shall not be opened.

5.4.7. Only Proposal that, have been found substantially responsive and have met the minimum technical scores, shall have their Commercial Proposals opened and evaluated.

5.5. Technical Score (35.00 points)

No.	Evaluation Contents and Scores	Project Contents and Score Distribution	Scoring Rules
1	Recoverable coal reserves (4 points)	Report of coal recoverable reserves (preferably JORC compliant); or other documents or certificates issued by relevant departments of local government or qualified third party organizations that can prove the recoverable reserves of the coal to be supplied. (3 points)	<ol style="list-style-type: none"> 1. Recoverable reserves $\leq 10,000,000$ MT, score 1.0 to 2.0 point. 2. $10,000,000$ MT < Recoverable reserves $\leq 20,000,000$ MT, score 2.1 to 3.0 points. 3. Recoverable reserves > $20,000,000$ MT, score 3.1 to 4.0 points. 4. No relevant report or certificate, score 0 points.
2	Coal quality for Indonesian Coal (10 points)	Net Calorific Value (NAR) (2 points)	<ol style="list-style-type: none"> 1. Net Calorific Value < 3900 kcal/kg, score 0 point. 2. 3900 kcal/kg \leq Calorific Value ≤ 4100 kcal/kg, score 0.1 to 1.0 point. 3. 4100 kcal/kg < Calorific Value, score 1.1 to 2.0 points.
		Total moisture (ARB) (3 points)	<ol style="list-style-type: none"> 1. Total moisture $\leq 32.0\%$, score 2.1 to 3.0 points. 2. 32.0% < Total moisture $\leq 36.0\%$, score 0.1 to 2.0 points. 3. 36.0% < Total moisture, score 0 points.
		Ash content (ARB) (2 points)	<ol style="list-style-type: none"> 1. Ash content $\leq 4.00\%$, score 1.1 to 2.0 points. 2. 4.00% < Ash content $\leq 5.80\%$, score 0.1 to 1.0 point. 3. 5.80% < Ash content, score 0 point.
		Total Sulphur (ARB) (3 points)	<ol style="list-style-type: none"> 1. Total Sulphur $\leq 0.20\%$, score 2.1-3.0 points. 2. 0.20% < Total Sulphur < 0.26%, score 0.1 to 2.0 point. 3. 0.26% < Total Sulphur, score 0 point.
3	Coal quality for Australian Coal (10 points)	Net Calorific Value (NAR) (2 points)	<ol style="list-style-type: none"> 1. Net Calorific Value < 5100 kcal/kg, score 0 point. 2. 5100 kcal/kg \leq Net Calorific Value ≤ 5350 kcal/kg, score 0.1 to 1.0 point. 3. 5350 kcal/kg < Net Calorific Value, score 1.1 to 2.0 points.

No.	Evaluation Contents and Scores	Project Contents and Score Distribution	Scoring Rules
		Total moisture (ARB) (3 points)	1. Total moisture \leq 20.0%, score 2.1 to 3.0 points. 2. 20.0% < Total moisture \leq 36.0%, score 0.1 to 2.0 points. 3. 36.0% < Total moisture, score 0 points.
		Ash content (ARB) (2 points)	1. Ash content \leq 20.00%, score 1.1 to 2.0 points. 2. 20.00% < Ash content \leq 25.00%, score 0.1 to 1.0 point. 3. 25.00% < Ash content, score 0 point.
		Total Sulphur (ARB) (3 points)	1. Total Sulphur \leq 0.48%, score 2.1-3.0 points. 2. 0.48% < Total Sulphur < 0.68 %, score 0.1 to 2.0 point. 3. 0.68% < Total Sulphur, score 0 point.
4	Annual Export Quantity in the last five (5) years (8 points)	Bidders should provide documents evidencing the actually completed annual export quantity.	The Bidder with maximum average annual export quantity which can be verified gets 8.0 points. The others will get points proportionally. Form 6.1 shall be filled by Bidders.
5	At least five (5) Coal Supply Contracts together with the relevant certificates of analysis (COA) from a reputed independent laboratory in the last three (3) years (6 points)	Points will be made based on the delivered contracted quantity, number of contracts and number of the COAs. Each contract should accompany at least 1 COA. The coal supply contracts should be exported only.	The Bidder with the most delivered contracted quantity together with full sets of COAs will get 6.0 points; The Bidder with the most contracts but less contracted quantity will get 0.1 to 5.9 points. The contracted quantity will not be counted if the Bidder does not include at least 1 COA under the Contract and will get 0 point. Form 6.2 shall be filled by Bidders.
6	Letter of Satisfaction from previous Buyers in the last 3 years (7 points)	Bidders should submit documents demonstrating satisfaction of their delivery of coal from the Buyers. Such documents should bear the name and contact details of the Buyer for the purpose of verification.	Scores will be given by Buyer's appreciation and assessment of the documents submitted by Bidders.

5.6. Commercial Score (65.00 points)

Commercial scores shall be calculated according to Bidder's response to the below items:

No.	Evaluation Contents and Scores	Project Contents and Score Distribution	Scoring Rules
1	Financial situation (10 points)	Audit Report which should include but not limited to financial position, cash flow statement, profit level and Notes & Disclosure for the last 5 years.	<ol style="list-style-type: none"> 1. Audit report: 0-1.0 point 2. Financial position: 0-2.0 points 3. Cash flow statement: 0-3.0 points 4. Profit level: 0-3.0 points 5. Notes & disclosure: 0-1.0 point
2	Bid Price (40 points)	As per Bidder's offered price in the Bid Price	<p>The Bidder with the lowest price will get 40.0 Points. The others will get points proportionally. Form 2 shall be filled by Bidders.</p>
3	Production capacity (5 points)	Minimum 10 Years Supply Period	<ol style="list-style-type: none"> 1. Supply Period > 14 Years, score 4.1 to 5.0 points. 2. Supply Period > 12 Years, score 3.1 to 4.0 points. 3. Supply Period > 10 Years, score 3.0 points.
4	Supply Ensure Ability (5 points)	<p>Other similar types of coal be provided in a timely manner in the event of force majeure affecting the supply of the coal mines; and</p> <p>Measures to minimise the occurrence of Supply Failure, Supply Shortfalls or Seller's Default as well as to ensure timely delivery.</p>	<ol style="list-style-type: none"> 1. Proposal contain the solutions of Supply Ensure Ability, Score 1.0 to 5.0 points. 2. For other cases, score 0 points.
5	Flexibility of Supply and Friendly Co-operation with the Buyer (5 points)	Proposal containing any changes to any Sections in Chapter III - Draft Contract (Terms and Conditions), such as in case of Changes in a Delivery Month Quantity, Purchasing Shortfalls, Determining and/or Rescheduling Delivery Schedules, Sampling and Testing, Billing etc. reflects the flexibility and friendly cooperation of the Bidder as an experienced coal Seller.	<p>Scores will be given by Buyer's appreciation and assessment of the proposed changes. Form 6.3 shall be filled by Bidders.</p>

5.7. Employer's Right to Accept Any Proposal and to Reject Any or All Proposal

The Employer reserves the right to accept or reject any Proposal and to annul the bidding process and reject all Proposals at any time prior to contract award, without thereby incurring any liability

to Bidders. In case of annulment, all Proposals submitted and specifically, Proposal Securities, shall be promptly returned to the Bidders.

6. Award of Contract

6.1. Award Criteria

The Employer shall award the Contract to the Successful Bidder or bidders as determined under ITB 5.3 and ITB 5.4, provided further that the Bidder or bidders are determined to be qualified to perform the Contract satisfactorily.

6.2. Notification of Award (NOA)

6.2.1. Prior to the expiration of the period of Proposal validity, the Employer shall notify the successful Bidder or bidders, in writing, that its Proposal has been accepted (the Notification of Award). At the same time, the Employer shall also notify all other Bidders of the results of the bidding.

6.2.2. Until a formal contract is executed, the Notification of Award shall constitute a binding Contract.

6.3. Performance Security

6.3.1. The Performance Security shall be determined sufficient to protect the performance of the Contract by the successful Bidder. Performance Security in the form of Bank Guarantee(s) of an amount as per Chapter III Contract Agreement.

6.3.2. The successful Bidder or Bidders shall furnish the performance security after receipt of notification of award from the Employer, within 28 (twenty-eight) days upon the Bidder's receipt of the Notification of Award and in accordance with Chapter III Contract Agreement. The Bidder shall use for that purpose the Performance Security Form included in Chapter III Contract Agreement. A foreign bank providing a bank guarantee shall have a correspondent bank located in the Employer's Country.

6.3.3. The Performance Security shall initially be required to be valid for a period of Five years from the date of issuance thereof. The validity of the performance Security shall be extended at least 90 days prior to the expiry of the validity thereof, for the period until the date which shall be ninety (90) days beyond the date of completion of the work under the Contract.

6.3.4. Failure of the successful Bidder to submit the abovementioned Performance Security or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the Bid Security. In that event the Employer may award the Contract to the next highest scoring Bidder whose offer is substantially responsive and is determined by the Employer to be qualified to perform the Contract satisfactorily.

6.4. Contract Signing

6.4.1. The successful Bidder or Bidders shall sign the Contract Agreement as per Chapter III with the Employer within 42 (forty-two) days upon the Bidder's receipt of the Notification of

Award, provided that the Performance Security has been submitted by the successful Bidder or Bidders and is found to be genuine.

- 6.4.2. The successful Bidder or Bidders should be responsible for arranging a visit by delegation of RNPL to their mine(s) before Contract Signing and bear all the relevant cost outside Bangladesh including but not limit to international roundabout air-tickets, lodging, transportation etc.

7. Warranty Against Corruption

The Bidder hereby warrants that neither it nor any of its representatives has offered any officer of RNPL or its employee any consideration or commission for this RFP, nor has the Bidder or any of its representatives exerted or utilized any corrupt or unlawful influence to secure or solicit the Contract award for any consideration or commission.

The Bidder also warrants that it shall disclose the name(s) of the person(s) and the amount being paid. The Bidder hereby further acknowledges that any violation of this warranty shall constitute a sufficient ground for the rescission or cancellation of the Contract award without prejudice to the filing of civil or criminal action under any applicable laws against the Bidder or its representative and RNPL officials and employees concerned.

For Information Only

For Information Only

Chapter II

Forms

Table of Contents

1.1.	Form 1 Proposal Letter	1
1.2.	Form 2 Bid Price Schedule Form.....	2
1.3.	Form 3 Power of Attorney	6
1.4.	Form 4 Company Qualification Certificate.....	7
1.5.	Form 5 Coal Specification Form.....	8
1.6.	Form 6 Forms related to Evaluation.....	10
1.7.	Form 7 Bid Security Form.....	11
1.8.	Form 8 Laboratory List	13

For Information Only

1.1. Form 1 Proposal Letter

Proposal Letter

Date: [insert date of signing the Proposal Letter]

To: Company Secretary

RPCL-NORINCO INTL POWER LIMITED (RNPL)

1. We have received and studied the Procurement of coal for Patuakhali 1320 (2×660) MW Coal Fired Thermal Power Plant. In addition to the differences clearly proposed in our proposal, we confirm and accept all the contents of the RFP, including the Draft Contract (Terms and Conditions), and we are willing to undertake the coal supply in accordance with the provisions of the RFP, and strictly implement the responsibilities and obligations we promised. We are submitting this proposal for procurement of[“Indonesian Coal” or “Australian Coal” or “Indonesian and Australian Coal”]
2. We acknowledge that the proposal letter, price bid and all other documents provided according to the RFP are part of our proposal, and we are willing to modify any defects (if any) in them according to the RFP.
3. If we become a successful supplier, we promise to sign the contract with the Buyer according to the requirements of the RFP and assign qualified persons to implement the contract.
4. We agree to abide by this proposal for a period of at least One Hundred and Eighty (180) calendar days after the Deadline for submission, and this proposal shall remain binding on us at any time before the expiration of this period.
5. Before signing and executing the formal contract, this proposal, RFP and your written transaction notice shall constitute a binding contract between us.
6. We believe that you have the right to choose or reject some or even all suppliers before awarding the contract and agree that you will not make any explanation for the actions you have taken.
7. If we become a successful supplier, in addition to meeting the delivery period, we should also meet the reasonable changes required by the Buyer according to the actual situation of the plant, without any additional cost.

Legal Representative of Bidder

[Full name, position, signature and seal]

1.2. Form 2 Bid Price Schedule Form

Bid Price Schedule

Date: [insert date of signing the Bid Price Schedule]

To: Company Secretary

RPCL-NORINCO INTL POWER LIMITED (RNPL)

Bidder: _____

Mine: _____

Loading Port: _____

Validity: One Hundred and Eighty (180) calendar days after the Deadline for submission

Tel No: _____

Email: _____

Dear Sir,

We hereby submit our Bid Price as following details:

1. The Price Adjustment Factor (PAF) and Discount Factor (D) according to **Section 9.2** shall be as following table:

gcNEWC _n	IPV _n	D	PAF
gcNEWC _n ≤ 55	gcNEWC _n	XXX	XXX
55.01 ≤ gcNEWC _n ≤ 70	gcNEWC _n - 55	XXX	XXX
70.01 ≤ gcNEWC _n ≤ 85	gcNEWC _n - 70	XXX	XXX
85.01 ≤ gcNEWC _n ≤ 100	gcNEWC _n - 85	XXX	XXX
100.01 ≤ gcNEWC _n ≤ 115	gcNEWC _n - 100	XXX	XXX
gcNEWC _n ≥ 115	gcNEWC _n - 115	XXX	XXX

Furthermore, the Discount, PAF and Base Price according to **Section 9.2** are in the following table.

GCNewC Base (NAR)		6000		BaseCV (NAR)	3800 (Indonesian) 5500 (Australian)		Base Price Pn
Discount D	XX	XX	XX	XX	XX	XX	
GCNewC	PAF						
	< 55	> 55 < 70	> 70 < 85	> 85 < 100	> 100 < 115	> 115	
40	PAF						XX
45	PAF						XX
50	PAF						XX
55	PAF						XX
57		PAF					XX
60		PAF					XX
61		PAF					XX
62		PAF					XX
63		PAF					XX
64		PAF					XX
65		PAF					XX
66		PAF					XX
67		PAF					XX
68		PAF					XX
69		PAF					XX
70		PAF					XX
71			PAF				XX
72			PAF				XX
73			PAF				XX
74			PAF				XX
75			PAF				XX
76			PAF				XX
77			PAF				XX
78			PAF				XX
79			PAF				XX
80			PAF				XX
81			PAF				XX
82			PAF				XX
83			PAF				XX
84			PAF				XX
85			PAF				XX

Signed by: _____ (Authorized Signature)

_____ (Printed Name)

_____ (Title in Printed Words)

Note: the offer may be negative figures in the situations where Bidders deem appropriate.

For Information Only

1.3. Form 3 Power of Attorney

POWER OF ATTORNEY

Date: [insert date of signing the Power of Attorney]

To: Company Secretary (Title)

RPCL-NORINCO INTL POWER LIMITED (RNPL)

I, [insert the legal representative's name], ID _____ [insert the ID type and number], the legal representative of _____ [insert the Bidder's name], hereby authorize _____ [insert the authorized representative's name] (hereinafter referred to as "authorized representative"), ID _____ [insert the ID type and number], to participate in the coal supply response and contract signing in the name of our company. The authorized representative(s) is/are authorized to sign all documents and handle all matters related to the procurement in the process of response, quotation opening, evaluation and contract negotiation.

Our company is fully responsible for the signatures and acts of the authorized representative(s).

This power of attorney shall remain in force until the written notice of revocation reaches. All documents signed by the authorized representative(s) (within the validity period of the power of attorney) shall not be invalidated by the revocation of the authorization.

The authorized representative(s) has no right of sub-entrustment.

Authorizer (signature):

Authorized representative (signature):

Validity of authorization: DD-MM-YY

Name and official seal of the Bidder:

Notes:

- (1) This power of attorney must be filled and signed by the legal representative himself/herself, otherwise will be rejected.
- (2) If there are two or more authorized representatives, the relevant documents, agreements, contracts etc. signed by any authorized representatives shall be regarded as valid.

1.4. Form 4 Company Qualification Certificate

Company Qualification Certificate

Date: _____ [insert date of signing the Company Qualification Certificate]

To: Company Secretary

RPCL-NORINCO INTL POWER LIMITED (RNPL)

This is to certify that [insert the Bidder's name] satisfies the following circumstances. [insert the Bidder's name]:

- (1) is an independent legal entity;
- (2) has not been blacklisted by any member of World Class Organization within the last five years;
- (3) has not had any property taken over or frozen;
- (4) has not in the last three years won bids through cheating, committed material breaches of contracts, or had major project quality problems, or had any contract terminated due to the Bidder's breach of contract or has been expelled; and
- (5) does not have ongoing major litigation cases.

Legal Representative of Bidder

[Full name, position, signature and seal]

Notes:

The above company qualification certificate can be offered by the Bidder or the qualified third party, and the documents of third party shall prevail.

1.5. Form 5 Coal Specification Form

Coal Specification for Indonesian Coal

Description		Coal Quality Rejection Limit	Seller's proposed coal quality
N.C.V.	Kcal/kg (As Received)	Min. 3900	
Total Moisture	% (As Received)	Max. 36	
Approx. Analysis	Resi. Moisture	% (Air Dried Basis)	Max. 25
	Volatile Matter	% (Air Dried Basis)	Min. 20 & Max. 44
	Fixed Carbon	% (Air Dried Basis)	Max. 45
	Ash	% (As Received)	Max. 5.8
Total Sulfur	% (As Received)	Max. 0.26	
HGI	Points	Min. 46	
Initial Deformation Temperature	°C (Reducing Atmosphere)	Min. 1180	
Coal Size (over 2-100mm)	%	Min. 100	
Coal Size (Fines 0-2mm)	%	Max. 10	
Ultimate Analysis	Carbon	Min. 43.35	
	Hydrogen	Max. 3.18	
	Oxygen	Max. 15.28	
	Nitrogen	Max. 1.21	
	Sulphur	Max. 0.32	
Ash Analysis	SiO ₂	20 ~ 80	
	Al ₂ O ₃	12 ~ 20	
	TiO ₂	Max. 3	
	Fe ₂ O ₃	Max. 20	
	CaO	Max. 13	
	MgO	Max. 7	
	Na ₂ O	Na ₂ O < 1.98	
	K ₂ O	Max. 0.8	
	Others	-	

2. Each of the above items shall be determined in accordance with the appropriate American Society for Testing and Materials standards.

Coal Specification for Australian Coal

Description		Coal Quality Rejection Limit	Seller's proposed coal quality
N.C.V.	Kcal/kg (As Received)	Min. 5100	
Total Moisture	% (As Received)	Max. 36	
Approx. Analysis	Resi. Moisture	% (Air Dried Basis)	Max. 25
	Volatile Matter	% (Air Dried Basis)	Min. 18 & Max. 35
	Fixed Carbon	% (Air Dried Basis)	Max. 45
	Ash	% (As Received)	Max. 25
Total Sulfur	% (As Received)	Max. 0.68	
HGI	Points	Min. 48	
Initial Deformation Temperature	°C (Reducing Atmosphere)	Min. 1240	
Coal Size (over 2-100mm)	%	Min. 90	
Coal Size (Fines 0-2mm)	%	Max. 10	
Ultimate Analysis	Carbon	% (Dry, Ash free)	Min. 43.35
	Hydrogen		Max. 3.18
	Oxygen		Max. 15.28
	Nitrogen		Max. 1.21
	Sulphur		Max. 0.32
Ash Analysis	SiO ₂	% (Dry basis)	20 ~ 80
	Al ₂ O ₃		12 ~ 20
	TiO ₂		Max. 3
	Fe ₂ O ₃		Max. 20
	CaO		Max. 13
	MgO		Max. 7
	Na ₂ O		Na ₂ O<1.98
	K ₂ O		Max. 0.8
	Others		-

2. Each of the above items shall be determined in accordance with the appropriate American Society for Testing and Materials standards.

1.6. Form 6 Forms related to Evaluation

Form 6.1 Annual Export Quantity in the last 5 years

No.	Year	Export Destination	Delivered Quantity (Tonnes)	Average Export Quantity (Tonnes)	Supporting Documents
	2022	Bangladesh			
		Vietnam			

Form 6.2 Coal Supply Contracts with COAs in the last 3 years

No.	Contract Name	Signing Date	Buyer	Contract Quantity (Tonnes)	Contract Period	Delivered Quantity (Tonnes)	Number of COAs	Supporting Documents
1						2022		
						2021		
						2020		

Form 6.3 Proposed Changes to Chapter III - Draft Contract (Terms and Conditions)

No.	Sections in the Draft Contract (Terms and Conditions)	Proposed Changes by the Bidder
1		
2		
3		
4		
5		

1.7. Form 7 Bid Security Form

BANK GUARANTEE FOR BID SECURITY

[Bid security to be issued on non-judicial stamp paper of appropriate value by a **scheduled bank in Bangladesh or a foreign bank of International repute having correspondent bank located in Bangladesh, to make it enforceable**, as stated under the relevant IFB Clause]

[Bank's Name and Address of Issuing Branch or Office]

Date: _____

Beneficiary: RPCL-NORINCO INTL. POWER LIMITED [*Name and Address of Buyer*]

Atlanta Trade Center (7th Floor)

House # 01, Road # 1/A, Sector # 04

Uttara Model Town, Dhaka-1230, Bangladesh.

Bid Security No.: _____

We have been informed that _____ [*name of the Bidder & Address*] (hereinafter called "the Bidder") intends to submitted to you its Proposal dated _____ (hereinafter called "the Proposal") for the execution of _____ [*name of contract*] under Request for Proposals No. _____ ("the RFP").

Furthermore, we understand that, according to your conditions, Proposals must be supported by a Bank Guarantee for Bid Security.

At the request of the Bidder, we _____ [*name of Bank, Branch and Address*] hereby irrevocably and unconditionally undertake to pay you, without cavil or argument, any sum or sums not exceeding in total an amount of US Dollar _____ [*amount in figures*] (_____ [*amount in words*]), upon receipt by us of your first demand accompanied by a written statement stating that the Bidder is in breach of its obligation(s) under the proposal conditions, because the Bidder:

- a) has withdrawn its Proposal during the period of proposal validity specified by the Bidder in the Proposal Letter; or
- b) having been notified of the acceptance of its Proposal by the Buyer during the period of proposal validity, (i) fails or refuses to execute the Contract Agreement or (ii) fails or refuses to furnish the Performance Security/Bond.

This guarantee will expire:

- (a) if the Bidder is the successful Bidder, upon our receipt of copies of the contract signed by the Bidder and the Performance Security issued to you upon the instruction of the Bidder; and
- (b) if the Bidder is not the successful Bidder, upon the earlier of (i) our receipt of a copy your notification to the Bidder of the name of the successful Bidder; or (ii) twenty-eight days after

the expiration of the Bidder's bid; or (iii) expire date.

Consequently, any demand for payment under this guarantee must be received by us at the office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 758.

[signature(s)]

Note: All italicized text is for use in preparing this form and shall be deleted from the final product.

For Information Only

1.8. Form 8 Laboratory List

Australia:

1. ALS Coal (ACTest)
2. SGS
3. Bureau Veritas

Indonesia:

1. PT. Anindya Wiraputra Konsult
2. PT Geoservices Indonesia
3. PT Leon Testing and Consulting Indonesia

For Information Only

Chapter III

Contract Agreement for the Sale and Purchase of Coal for

Patuakhali 1320 (2 × 660) MW Coal Fired Thermal Power Plant

BETWEEN:

("SELLER")

And

("BUYER")

Reference No. ***

Dated ****

Table of Contents

Article 1	DEFINITIONS AND INTERPRETATION	2
1.1	Definitions.....	2
1.2	Interpretation	13
Article 2	TERM OF AGREEMENT	14
2.1	Obligation	14
2.2	Initial Delivery Date	14
2.3	Notice of First Delivery Date	14
2.4	Term	15
2.5	Extension of Term.....	15
Article 3	COAL QUALITY AND SOURCE	17
3.1	Coal Quality Specifications.....	17
3.2	Non-Contamination.....	17
3.3	Source of Coal	17
3.4	Substitute Coal	17
3.5	Title.....	18
3.6	Maintenance of Reserves	18
3.7	Review of Reserves and Production.....	18
Article 4	QUANTITY.....	20
4.1	Initial Supply Period	20
4.2	Delivery Years	20
4.3	Notification of Quantity.....	20
4.4	Increased Coal Requirements	21
4.5	Change in a Delivery Month Quantity.....	21
4.5.1	Increases in a Delivery Month Quantity.....	21
4.5.2	Decrease in a Delivery Month Quantity	21
4.6	Expected Supply Shortfalls.....	22
4.7	Supply Failures.....	23
4.8	Reduced Coal Requirements	24
Article 5	NON-CONFORMING SHIPMENTS	26
5.1	Right to Reject	26
5.2	Acceptance of Non-Complying Shipment.....	26
5.3	Contaminated Shipments.....	27
5.4	Right to Adjust the Minimum Delivery Year Quantity	27
Article 6	DELIVERY AND SHIPMENT.....	28

6.1	Seller's Responsibilities.....	28
6.2	Buyer's Responsibilities.....	28
6.3	Title and Risk of Loss.....	28
6.4	Determining Delivery Schedule	28
6.5	Vessels	29
6.6	Loading.....	30
6.7	Berthing and Notice of Readiness	31
6.8	Acceptance of Notice of Readiness.....	32
6.9	Laytime.....	32
6.10	Calculation of Time Used	32
6.11	Responsibilities at the Loading Port	34
6.12	Demurrage and Despatch	34
Article 7	SAMPLING AND TESTING.....	36
7.1	Testing Standards and Methods	36
7.2	Collection, Sampling and Analysis at Loading Port.....	36
7.3	Analysis by Umpire Laboratory	37
Article 8	WEIGHING.....	39
8.1	Draft Survey at Loading Port.....	39
Article 9	PRICE.....	40
9.1	Delivered Price.....	40
9.2	Calculation of Invoice Value.....	40
9.3	Change in Pricing Index or Calculation of Delivered Price	41
9.4	Change in Legal Requirement.....	42
9.5	HPB Pricing.....	43
Article 10	COAL QUALITY PRICE ADJUSTMENTS.....	45
10.1	Net Calorific Value	45
10.2	Total Moisture	45
10.3	Total Sulphur Content.....	45
10.4	Total Ash.....	45
Article 11	BILLING AND PAYMENT	47
11.1	Invoicing	47
11.2	Payments.....	47
11.3	Payment Terms.....	48
11.4	Disputed Amounts	49
Article 12	Performance Security.....	50
12.1	Amount.....	50

12.2	Issuing Bank.....	50
12.3	Validity	50
12.4	Claims not settled within the validity.....	50
12.5	Withdrawal.....	50
12.6	Reinstatement	50
12.7	Release of the Performance Security.....	50
12.8	Failure to provide the Performance Security	51
Article 13	EVENTS OF FORCE MAJEURE	52
13.1	Events of Force Majeure.....	52
13.2	Instances of Force Majeure	52
13.3	Notice Requirements.....	53
13.4	Obligation to Mitigate.....	53
13.5	Consequences of an Event of Force Majeure	53
13.6	Obligations Not Excused or Suspended	54
Article 14	DEFAULT AND TERMINATION.....	55
14.1	Seller Events of Default.....	55
14.2	Remedies Following a Seller Event of Default	55
14.3	Buyer Events of Default.....	56
14.4	Remedies Following a Buyer Event of Default.....	57
14.5	Exclusion of Consequential Damages	57
14.6	Duty to Mitigate Losses	58
14.7	Rights Not Waived.....	58
14.8	Termination.....	58
Article 15	DISPUTES.....	59
15.1	Mutual Discussions.....	59
15.2	Arbitration.....	59
15.3	Resolution of Technical Disputes by Expert	59
15.4	Obligation to Continue Performance	60
15.5	Survival.....	61
Article 16	REPRESENTATIONS AND WARRANTIES.....	62
16.1	Representations and Warranties of the Buyer	62
16.2	Representations and Warranties of the Seller	62
Article 17	CONFIDENTIALITY.....	64
17.1	Definition of Confidential Information.....	64
17.2	Obligation to Maintain Confidentiality.....	64
17.3	Permitted Disclosures.....	64

Article 18 MISCELLANEOUS	65
18.1 Governing Law	65
18.2 Notice	65
18.3 Assignment	65
18.4 Security for Financing	66
18.5 Survival of Rights	66
18.6 Severability	67
18.7 Entire Agreement	67
18.8 Amendments	67
18.9 Contracts (Rights of Third Parties)	67
18.10 Counterparts	67
18.11 Language	67
APPENDIX A COAL QUALITY SPECIFICATIONS	69
APPENDIX B COAL QUALITY REJECTION LIMITS	71
APPENDIX C SAMPLING AND TESTING STANDARDS	72
APPENDIX D SAMPLE CALCULATIONS FOR PRICE ADJUSTMENTS FOR COAL QUALITY VARIATIONS UNDER ARTICLE 10	73
APPENDIX E FORM OF CERTIFICATE OF ANALYSIS	74
APPENDIX F FORM OF FULL CERTIFICATE OF ANALYSIS	75
APPENDIX G FORM OF BENEFICIARY CERTIFICATE, INVOICE AND DEBIT & CREDIT NOTE	77
APPENDIX H FORM OF BILL OF LADING	83
APPENDIX I FORM OF CERTIFICATE OF ORIGIN	84
APPENDIX J FORM OF CERTIFICATE OF HOLDS CLEANLINESS	85
APPENDIX K FORM OF CERTIFICATE OF WEIGHT	86
APPENDIX L LOADING PORT RESTRICTIONS	87
APPENDIX M MINING RIGHTS AUTHORIZATIONS	88
APPENDIX N FORM OF DEED OF NOVATION	89
APPENDIX O FORM OF CONFIRMATION LETTER	91
APPENDIX P BANK GUARANTEE	93

Contract Agreement for the Sale and Purchase of Coal

This **Contract Agreement for the Sale and Purchase of Coal** (Reference No.:)
(this "**Agreement**") is made as of (the "**Effective Date**") by and between:

RPCL-NORINCO INTL POWER LIMITED, a joint venture company of Rural Power Company Limited (RPCL), Bangladesh and NORINCO International Corporation Ltd., China, incorporated under the laws of Bangladesh and having its principal place of business at 7th Floor, Atlanta Trade Center, House# 01, Road# 1/A, Sector# 04, Uttara Model Town, Dhaka, Bangladesh (hereinafter referred to as the "**Buyer**" or "**RNPL**"), which expression includes its successors and permitted assigns, and

XXXXXXXXXXXXXXXXXXXX, a
..... (hereafter referred to as the "**Seller**").

The Seller and the Buyer may individually be referred to as a "**Party**" and, collectively, as the "**Parties**".

WHEREAS the **Buyer** is implementing the 1320 (2×660, gross) MW Coal Fired Thermal Power Plant at Nishanbaria, Londa and Dhankhali Mouza, Dhankhali Union, Kalapara Upazila, Patuakhali district, Bangladesh (the "**Facility**", as hereinafter defined) that will use coal as the fuel to generate electric power;

WHEREAS the Seller and Buyer are desirous to enter into a Contract Agreement for the Sale and Purchase of Coal to provide adequate and suitable Coal to the Facility;

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the Parties, intending to be legally bound hereby, agree as follows:

Article 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

As used in this Agreement, the following capitalized terms shall have the respective meanings indicated below:

- 1.1.1 “**Actual GCV**” means the gross calorific value on an ARB of the Coal in any shipment of Coal, as stated in the Certificate of Analysis or in the Umpire Certificate, as the case may be.
- 1.1.2 “**Actual TA**” means the total ash content on an ARB of the Coal in any shipment of Coal, as stated in the Certificate of Analysis or in the Umpire Certificate, as the case may be.
- 1.1.3 “**Actual TM**” means the total Moisture content on ARB of any shipment of Coal as stated in the Certificate of Analysis or in the Umpire Certificate, as the case may be.
- 1.1.4 “**Actual TS**” means the total Sulphur content on an ARB of the Coal in any shipment of Coal, as stated in the Certificate of Analysis or in the Umpire Certificate, as the case may be.
- 1.1.5 “**ADB**”, with respect to any Coal quality parameter, means the analysis of such parameter on the basis that Coal has naturally dried in the open air until it cannot dissipate any more moisture and the moisture content is in approximate equilibrium with the moisture in the surrounding atmosphere.
- 1.1.6 “**Additional Quantity**” has the meaning given to in Section 4.4.
- 1.1.7 “**Adjusted Delivered Quantity**” means, in respect of any Delivery Year, **the sum of:**
- (a) the aggregate quantity of Coal delivered to the Buyer (or an Affiliate of the Buyer at the direction of the Buyer) in the Delivery Year, including any Additional Quantity purchased pursuant to Section 4.4;
 - (b) any quantity of Coal that was obtained by the Buyer in a **Mitigating Purchase**;
 - (c) any quantity of Coal that was not supplied to the Buyer due to **an Event of Force Majeure** affecting the Seller or the Buyer, as the case may be; and
 - (d) any quantity of Coal that was not supplied to the Buyer due to a **Seller’s Event of Default**, or a Reduction Event (excluding any quantities already counted in clause (b) above), as determined following the completion of the relevant Delivery Year.
- 1.1.8 “**Affiliate**” in relation to a Party or shareholder of a Party, means a public, private, governmental or commercial company or other entity that directly or indirectly controls, is controlled by, or is under common control with, the Party or entity.
- For the purposes of this definition, “control” means the right to cast fifty percent (50%) or more of the votes exercisable at an annual general meeting (or its equivalent) of the entity concerned or, if there are no such rights, ownership of fifty percent (50%) or more of the equity share capital of or other ownership interest in such entity, or the right to direct the policies or operations of such entity.
- 1.1.9 “**Annual Delivery Quantity**” means the quantity of Coal to be sold and delivered by the Seller to, and purchased by, the Buyer in respect of each Delivery Year, as specified in Section 4.2.

- 1.1.10 “**ARB**”, with respect to any Coal quality parameter, means the analysis of such parameter on an “as received” basis.
- 1.1.11 “**Ash Content**” means the total ash content of Coal expressed as a percent (%) of total weight of a Coal sample and measured on an ARB in accordance with ASTM Test Standard D3174-11 (as the same may be amended, revised, modified or supplemented from time to time).
- 1.1.12 “**ASTM**” means the American Society for Testing and Materials with the technical standards published by ASTM International, as the same may be amended, revised, modified or supplemented from time to time.
- 1.1.13 “**Bangladesh**” means the People’s Republic of Bangladesh.
- 1.1.14 “**Base Price**” means, the P_n (as determined in accordance with Section 9.2) in respect of any Shipment.
- 1.1.15 “**Beneficiary Certificate**” means a document showing the **Delivered Price** of a Shipment of Coal due and payable by the Buyer as determined in accordance with Section 9.2 or 9.5, in the form included in Appendix G.
- 1.1.16 “**Bill of Lading**” means a shipping document that serves as (i) a receipt for cargo prepared by the shipper and signed by the carrier, (ii) a “document of title” to the cargo, and (iii) evidence of the terms and conditions of the shipping contract, substantially in the form of Appendix H or such other form as may be reasonably acceptable to the Buyer.
- 1.1.17 “**Business Day**” means:
- (a) for the purpose other than for making any payment under this Agreement, a day which is not a Friday, Saturday, Sunday or a public or legal holiday in either Bangladesh or China or Indonesia or Australia (wherever applicable); and
 - (b) for the purpose of making any payment under this Agreement, a day which is not a Friday, Saturday, Sunday, a public holiday or a legal holiday or a day on which banking institutions are authorized or obliged by law or regulation to close either in Bangladesh or China or Indonesia or Australia (wherever applicable).
- 1.1.18 “**Buyer Event of Default**” has the meaning given to it in Section 14.3.
- 1.1.19 “**Buyer Initial Cure Period**” has the meaning given to it in Section 14.3.3.
- 1.1.20 “**Buyer Termination Amount**” means an amount equal to Two Million US Dollars (\$2,000,000) as full compensation to the Seller for the damages suffered by it as a consequence of the termination of this Agreement due to a Buyer Event of Default, in accordance with Section 14.8.3.
- 1.1.21 “**Buyer Test Analysis**” has the meaning given to it in Section 7.3.
- 1.1.22 “°C” means degree(s) centigrade or degree(s) Celsius as defined in the International System of Units.
- 1.1.23 “**Calorific Value, Gross**” (“**GCV**”) means the calorific value of Coal expressed as a higher heating value, referred on a (GAR) basis, in accordance with ASTM Test Standard D5865-11a (as the same may be amended, revised, modified or supplemented from time to time).

- 1.1.24 “**Calorific Value, Net**” (“**NCV**”) means the calorific value of Coal expressed as a lower heating value, referred on a (NVR) basis, in accordance with ASTM Test Standard D5865-11a (as the same may be amended, revised, modified or supplemented from time to time). The NCV is the subtraction of the heat of vaporization of water vapor from the GCV.
- 1.1.25 “**Capesize**” means a Vessel of a size between 150,000 DWT and 210,000 DWT and with a maximum beam of 47 meters.
- 1.1.26 “**Cent**” shall mean one one-hundredth of a Dollar (\$0.01).
- 1.1.27 “**Certificate of Analysis**” means a certificate issued by the **Loading Port Laboratory** in accordance with Section 7.2 or the **Umpire Laboratory** pursuant to Section 7.3, in each case based on the ASTM test standards set out in Appendix C and in a form substantially similar to Appendix E.
- 1.1.28 “**Certificate of Holds Cleanliness**” means a certificate substantially in the form of Appendix J issued by an independent inspector (to be nominated by the Buyer and approved by the Seller) engaged by the Buyer to inspect the cleanliness of each hold of any Vessel nominated by the Buyer to receive delivery of a Shipment, such inspection to be performed according to the relevant standards.
- 1.1.29 “**Certificate of Origin**” means, in respect to any shipment, a document executed by the Seller that certifies the origin of the Coal contained in the Shipment, substantially in the form of Appendix I or such other form as may be reasonably acceptable to the Buyer.
- 1.1.30 “**Certificate of Weight**” means a certificate substantially in the form of Appendix K issued by the **Licensed Marine Surveyor** in accordance with Article 8 setting forth the weight of a Shipment on the Vessel.
- 1.1.31 “**Change in Legal Requirement**” means the adoption, enactment or application to the Buyer or the Seller of any Legal Requirement (i) that was not existing or applicable to the Buyer or the Seller on the date of this Agreement, or (ii) constitutes a change in such Legal Requirement or the application or interpretation thereof by a Government Instrumentality after the date of this Agreement.
- 1.1.32 “**Changed Formulas**” has the meaning given to in Section 9.1.
- 1.1.33 “**Coal**” means either or both (a) thermal coal produced from the mining area controlled by the Seller in the XXX, Indonesia or XXX, Australia covered by its Mining Rights Authorizations and satisfying fully the Coal Quality Specifications in Appendix A and/or (b) thermal coal produced or procured by the Seller and satisfying fully the Coal Quality Specifications in Appendix A.
- 1.1.34 “**Coal Condition Undertaking**” has the meaning given to in Section 3.2.
- 1.1.35 “**Coal Handling Facilities**” means the facilities at or proximate to the Facility Site for receiving, storing, processing, or conveying Coal for consumption in the Facility, including without limitation, the **Discharge Port** facilities, coal yard, conveyor, crusher, stacker-reclaimers, whether or not such facilities are owned or operated by the Buyer or an Affiliate of the Buyer.
- 1.1.36 “**Coal Quality Rejection Limits**” means the specifications set out in Appendix B.

- 1.1.37 **“Coal Quality Specifications”** means the specifications set out in Appendix A.
- 1.1.38 **“Commencement Notice”** means a written Commencement Notice for Initial Delivery or Commencement Notice for Commercial Delivery, delivered by the Buyer to the Seller in accordance with Section 2.2 and/or 2.3, as the case may be.
- 1.1.39 **“Commercial Delivery Period”** means the period commencing on the First Delivery Date and continuing until the end of the Term.
- 1.1.40 **“Commercial Operation Date”** means the date on which the construction, testing, inspection and commissioning of the Facility has been completed and commercial operation has commenced under and pursuant to the Power Purchase Agreement, the progress and occurrence of which shall be notified by the Buyer to the Seller from time to time in writing.
- 1.1.41 **“Commissioning Coal”** has the meaning given to in Section 4.
- 1.1.42 **“Confidential Information”** has the meaning given to in Section 17.
- 1.1.43 **“Consent”** means any approval, consent, authorization or other requirement that is required from any Government Instrumentality.
- 1.1.44 **“Contaminants”** means materials contained or mixed with the coal, such as bone, shale, rock, dirt, clay, wood, rocks, plant matter, garbage, iron or steel, nonferrous materials, blast materials, salt, petroleum coke, pitch, pitch coke, tar sludge and or other extraneous material.
- 1.1.45 **“Contractor”** means any contractor or supplier integrally involved in the design, engineering and/or construction of the Facility or other facilities required by a Party for the performance of its obligations hereunder and any of their direct sub-contractor(s) integrally involved in the design, construction and/or operation of the Facility or other facilities required by a Party for the performance of its obligations hereunder, as the case may be.
- 1.1.46 **“Country of Origin”** means the Republic of Indonesia or the Commonwealth of Australia, as the case may be.
- 1.1.47 **“DB”** with respect to any Coal quality parameter, means the analysis of such parameter on dried basis.
- 1.1.48 **“Deadweight Tonnes” or “DWT”** means the deadweight capacity of a Vessel, measured in Tonnes, which capacity comprises the weight of cargo, crew, bunker fuel, fresh water and stores.
- 1.1.49 **“Delivered Price”** has the meaning given to in Section 9.
- 1.1.50 **“Delivery Schedule”** has the meaning given to in Section 6.4.3.
- 1.1.51 **“Delivery Month”** means the calendar month in the Initial Supply Period or any Delivery Year in which any Shipment is to be delivered by the Seller to the Buyer at the **Loading Port**.
- 1.1.52 **“Delivery Month Quantity”** has the meaning given to in Section 6.4.5.
- 1.1.53 **“Delivery Year”** means (i) the First Delivery Year, (ii) each calendar year (or portion thereof in the event of early termination of this Agreement) after the end of the First Delivery Year to the start of the Final Delivery Year, (iii) the Final Delivery Year and, (iv) if applicable, Delivery Years in any extension of the Term pursuant to Section 2.5.1.

- 1.1.54 “**Demurrage**” means the financial compensation that Seller shall pay the Buyer (to pay the Vessel owner) for total Time Used exceeds total Laytime allowed.
- 1.1.55 “**Despatch**” means the financial reward paid by the Buyer (received from Vessel owner) to Seller for total Time Used is less than total Laytime allowed.
- 1.1.56 “**Director General Regulation No. 515**” means regulation No. 515 K/32/DJB/2011 issued by the Director General of Mineral and Coal, Ministry of Energy and Mineral Resources Indonesia.
- 1.1.57 “**Discharge Port**” means the coal jetty within the Facility in the Patuakhali district of Bangladesh.
- 1.1.58 “**Dispute**” has the meaning given in Section 15.
- 1.1.59 “**Draft Survey**” means a marine draft survey carried out by a Licensed Marine Surveyor in accordance with Section 8 to determine the quantity of Coal in Tonnes loaded on the Vessel.
- 1.1.60 “**Dollar**” “**Cents**” or the symbol “\$” and “¢” shall mean the lawful currency of the United States of America.
- 1.1.61 “**Effective Date**” has the meaning given to it on the first page of this Agreement.
- 1.1.62 “**Estimated Quantity**” has the meaning given to in Section 6.4.1.
- 1.1.63 “**ETA**” means the estimated time of arrival.
- 1.1.64 “**Event of Force Majeure**” has the meaning given to in Section 13.
- 1.1.65 “**Expected Supply Shortfall**” has the meaning given to in Section 4.6.1.
- 1.1.66 “**Expert**” has the meaning given to in Section 15.3.
- 1.1.67 “**Extended Forced Outage**” means an unplanned interruption of the generating capability of the Facility that is necessary to carry out and complete any inspection, testing, overhaul, maintenance, or repair of any part of the Facility, including the Coal Handling Facilities, that continues for more than ten (10) days or, in the case of more than one (1) such interruption, continue in the aggregate for more than ten (10) days in any Delivery Year.
- 1.1.68 “**Facility**” means the coal-fired electric generating plant having an output of approximately 1320 megawatts (gross), to be located in Patuakhali, Bangladesh, including all components thereof and related facilities located on the Facility Site, including the Coal Handling Facilities and any and all transmission lines, appliances, parts, instruments, appurtenances, accessories and other property that may be incorporated or installed in or attached to or otherwise become part of such facility.
- 1.1.69 “**Facility Site**” means the parcel(s) of real property located in Kalapara, Patuakhali, Bangladesh upon which the Facility will be situated.
- 1.1.70 “**Final Delivery Year**” means the later of the period beginning at 00:01 HRS on January 1 and continuing through 24:00 HRS on December 31 of the calendar year in which the fifth (5th) anniversary of the First Delivery Date occurs or (ii) the final Delivery Year in any extension of the Term pursuant to Section 2.5.1, as applicable.
- 1.1.71 “**Financing Documents**” means the agreements for making available any loans, credit facilities, notes (including floating rate notes and commercial paper), bonds, subordinated

debt or other funds other than equity, including working capital and any letters of credit and related agreements, security agreements, swap agreements, and any other documents relating to the development, construction, acquisition, ownership, operation and maintenance of the Facility.

- 1.1.72 “**Financing Party**” means any Person which provides loans or other financing to the Buyer as evidenced by or pursuant to the Financing Documents.
- 1.1.73 “**First Commercial Delivery Window**” has the meaning given to it in Section 2.3.1 (a).
- 1.1.74 “**First Delivery Date**” has the meaning given to it in Section 2.3.1.
- 1.1.75 “**First Delivery Year**” means the period beginning on the First Delivery Date and continuing through December 31 of the calendar year in which the First Delivery Date occurs or (ii) the first Delivery Year in any extension of the Term pursuant to Section 2.5.1 as applicable.
- 1.1.76 “**First Split**” has the meaning given to in Section 7.2.3 (a).
- 1.1.77 “**First Unit**” means the first of the two (2) 660 MW (gross) electric generating units constituting the key parts of the Facility to commence operation on a commercial basis.
- 1.1.78 “**FOB**” or “**Free on Board**” has the meaning given to in INCOTERMS 2010 except as otherwise provided in this Agreement.
- 1.1.79 “**FOBT**” or “**Free on Board Trimmed**” means FOB with the Vessel Trimmed at the Loading Port as defined and construed in accordance with INCOTERMS 2010, except as may be otherwise provided in this Agreement.
- 1.1.80 “**Free Pratique**” means permission to do business at a port by a ship that has complied with all applicable legal requirements, including obtaining a clean bill of health for ship and crew.
- 1.1.81 “**Full Certificate of Analysis**” means a certificate issued by the **Loading Port Laboratory** in accordance with Section 7.2.5 based on the ASTM test standards set out in Appendix C and in a form substantially similar to Appendix F.
- 1.1.82 “**gcNEWC_n**” has the meaning given to in Section 9.2.
- 1.1.83 “**GAR**” means “**Gross, as received**”, being the higher heating value of the Coal expressed in Kcal/Kg when received at the **Loading Port**.
- 1.1.84 “**Government Instrumentality**” means, in respect of the People’s Republic of the Bangladesh or the Country of Origin or any other country having jurisdiction over the matter in question, as the case may be, any ministry, department, political subdivision, instrumentality, agency, corporation or commission under the direct or indirect control of such country.
- 1.1.85 “**Hardgrove Index (HGI)**” refers to the grindability of Coal as measured by ASTM Standard D409/D409M-11 (as the same may be amended, revised, modified or supplemented from time to time).
- 1.1.86 “**INCOTERMS**” means the 2010 edition of the International Rules for the Interpretation of Trade Terms published by the International Chamber of Commerce, as such rules may be replaced, revised or amended from time to time.

- 1.1.87 “**Initial Delivery Date**” means the date specified by the Buyer in the **Commencement Notice** for the initial delivery of Coal under this Agreement or deemed as such in accordance with Section 2.2.1.
- 1.1.88 “**Initial Supply Period**” means a period beginning on the Initial Delivery Date and ending at the beginning of the First Delivery Date.
- 1.1.89 “**ISM**” means the **International Safety Management Code 2002**, which is the international management code for the safe operation of ships and for pollution prevention, and any amendments thereto or subsequent editions.
- 1.1.90 “**ISO**” means the International Organization for Standardization.
- 1.1.91 “**JORC Code**” means the 2004 Australasian Code for reporting Exploration Results, Mineral Resources and Ore Reserves, published by The Joint Ore Reserves Committee of The Australasian Institute of Mining and Metallurgy, Australian Institute of Geoscientists and Minerals Council of Australia, the Australian Guidelines for Estimating and Reporting of Inventory Coal, Coal Resources and Coal Reserves (2003 edition), as the same may be amended, revised, modified or supplemented from time to time.
- 1.1.92 “**Kcal**” means Kilo-calorie as defined in the International System of Units.
- 1.1.93 “**Kg**” means Kilogram as defined in the International System of Units.
- 1.1.94 “**Laycan**” has the meaning given to in Section 6.4.3 (c).
- 1.1.95 “**Laytime**” has the meaning given to in Section 6.9.
- 1.1.96 “**Legal Requirement**” means all laws, statutes, orders, decrees, injunctions, licenses, permits, approvals, agreements and regulations of any Government Instrumentality.
- 1.1.97 “**LIBOR**” means the rate per annum equal to the three (3) month London Interbank Offered Rate administered by ICE Benchmark Administration Limited (or any other Person which takes over the administration of that rate) as shown on Reuters screen, reference "LIBOR01", for deposits in US Dollars at 11:00 hours London time on the date on which the applicable payment was due and not paid and if any such day is not a London Banking Day, the rate shall be the rate appearing at approximately 11:00 hours London time for the immediately preceding London Banking Day. If ICE Benchmark Administration Limited ceases to administer or Reuters ceases to publish the London Interbank Offered Rate, then the Parties shall agree on (or an **Expert** shall determine) another reasonably comparable interest rate or publication, in accordance with Section 9.1.
- 1.1.98 “**Licensed Marine Surveyor**” means a Person licensed or approved, as applicable, by a Government Instrumentality of the Country of Origin to undertake **Draft Surveys**.
- 1.1.99 “**Loading Port**” means XXXX, or such other coal loading point to be advised by the Seller on not less than ninety (90) days prior written notice and accepted by the Buyer, such acceptance not to be unreasonably withheld.
- 1.1.100 “**Loading Port Laboratory**” has the meaning given to in Section 7.2.
- 1.1.101 “**Major Indonesian Holidays**” means New Year’s Day (1st day of each calendar year), Independence Day (17th August), Idul Fitri (2 Days only), Idul Adha (1 Day), Christmas Day (25th December) and Election Day (as declared by Government of Indonesia).

- 1.1.102 “**Marketable Coal Reserves**” has the meaning given to that expression in the JORC Code, as in effect on the date hereof.
- 1.1.103 “**Maximum Delivery Year Quantity**” has the meaning given to in Section 4.2 .
- 1.1.104 “**Maximum Initial Quantity**” has the meaning given to in Section 4.
- 1.1.105 “**Mines**” means XXXX under concession to an Affiliate of the Seller approved in writing by the Buyer.
- 1.1.106 “**Minimum Delivery Year Quantity**” has the meaning given to it in Section 4.2.
- 1.1.107 “**Mining Rights Authorizations**” means the IUP OP licenses in respect of each of the Mines and the IUP OP (K) license of the Seller if the Country of Origin is the Republic of Indonesia, copies of which are attached as Appendix M.
- 1.1.108 “**Minister**” means the Minister of Energy and Mineral Resources of the Republic of Indonesia.
- 1.1.109 “**Minister Regulation 07**” means the Regulation of the Minister of Energy and Mineral Resources of Republic of Indonesia Number 07 of 2017 concerning Procedures for Determination of Benchmark Sale Price of Mineral and Coal. as amended by Regulation of the Minister of Energy and Mineral Resources of Republic of Indonesia Number No. 44 of 2017, and as further amended by Regulation of the Minister of Energy and Mineral Resources of Republic of Indonesia Number No. 19 of 2018.
- 1.1.110 “**Mitigating Purchase**” has the meaning given to in Section 4.7.3.
- 1.1.111 “**mm**” means millimeter(s) as defined in the International System of Units.
- 1.1.112 “**NAR**” means “Net, as received”, being the lower heating value of the Coal expressed in Kcal/Kg when received at the **Loading Port**.
- 1.1.113 “**New Pricing Index**” has the meaning given to in Section 9.1.
- 1.1.114 “**Notice of Dispute**” has the meaning given to it in Section 15.
- 1.1.115 “**Notice of Readiness**” means a notification by the master of the Vessel to the Seller that the Vessel is **Ready In All Respects** to berth and load Coal in the ordinary course.
- 1.1.116 “**Opening Layday**” means the first (1st) day of the **Laycan**.
- 1.1.117 “**P_n**”, “**P_{NCV}**”, “**P_{TM}**”, “**P_{TS}**”, “**P_{TA}**” have the respective meanings given to such terms in Section 9.2.
- 1.1.118 “**Panamax**” means a Vessel of between 60,000 and 88,000 DWT, the maximum sized Vessel that can transit the Panama Canal.
- 1.1.119 “**Person**” means any natural person, corporation, business trust, joint venture, association, company, partnership or government, or any agency or political subdivision thereof.
- 1.1.120 “**Port Authorities**” refers to any Government Instrumentality that has control over ports and shipping in the Country of Origin or Bangladesh.
- 1.1.121 “**Power Purchase Agreement**” means the Power Purchase Agreement dated 20th February 2019 between the Bangladesh Power Development Board (BPDB) and RNPL for the supply of dependable capacity and electric energy to BPDB from the Facility, as such agreement may be amended or modified from time to time by the parties thereto.

- 1.1.122 "**Pricing Index**" means, at the relevant time, the index being used for the determination of P_n in Section 9.2.
- 1.1.123 "**Probable Coal Reserves**" has the meaning given to that expression in the JORC Code, as in effect on the date hereof.
- 1.1.124 "**Proved Coal Reserves**" has the meaning that would be given to that expression in the JORC Code, as in effect on the date hereof.
- 1.1.125 "**Prudent Utility Practices**" means any of the practices, methods, and acts which, in the exercise of the good faith judgment of an independent power generation company, in light of the facts (including, but not limited to, the practices, methods, acts, actions and conduct engaged in or approved by a significant portion of the international electric generating industry for facilities and equipment substantially similar to the Facility) known at the time a decision was made, would reasonably be expected to accomplish the desired result in a manner consistent with Legal Requirements, contractual obligations, cost-effectiveness, plant reliability, safety, health and environmental matters, wholesale and other market conditions, expedition and the construction, operation and maintenance standards recommended by the equipment suppliers and manufacturers for the Facility.
- Prudent Utility Practices** is not intended to be limited to optimum practice, method, or act to the exclusion of all others, but rather is a spectrum of possible practices, methods, or act which could have been expected to accomplish the desired result at the lowest reasonable cost consistent with cost-effectiveness, plant reliability, safety health and environmental matters, and expedition.
- 1.1.126 "**Ready In All Respects**" means, in relation to any Vessel that has arrived at the **Loading Port**, all of the following conditions have been satisfied: (a) the Seller has received a copy of the **Certificate of Holds Cleanliness**; (b) the Vessel has completed all formalities required by Port Authorities or other Government Instrumentalities of the Country of Origin prior to loading of Coal, including Vessel customs clearance.
- 1.1.127 "**Reasonable and Prudent Operator**" means a Person or Party seeking to perform its obligations, duties and responsibilities in compliance with applicable laws and regulations, and in so doing, exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a knowledgeable, skilled and experienced operator engaged in the same or similar type of undertaking under the same or similar circumstances and conditions.
- 1.1.128 "**Reduction Event**" has the meaning given to in Section 4.8.
- 1.1.129 "**Rejection Limits**" means the relevant limits of each Specification at which point the Buyer may reject a shipment tendered for delivery by the Supplier hereunder, as listed under the heading "Rejection Limits" in Appendix B.
- 1.1.130 "**RNPL**" means RPCL-NORINCO Intl Power Limited, the owner of the Facility.
- 1.1.131 "**Rules**" has the meaning given to in Section 15.1.
- 1.1.132 "**Scheduled Outage**" means a planned interruption of the generating capability of the Facility that has been scheduled and allowed by BPDB according to Power Purchase Agreement and

is for any inspection, testing, overhauls, preventive and corrective maintenance, repairs, replacement or improvement of the Facility including the Coal Handling Facilities.

- 1.1.133 **"Second Commercial Delivery Window"** has the meaning given to it in Section 2.3.1 (b)
- 1.1.134 **"Second Split"** has the meaning given to in Section 7.2.3 (b).
- 1.1.135 **"Seller Event of Default"** has the meaning given to in Section 14.
- 1.1.136 **"Seller Initial Cure Period"** has the meaning given to in Section 14.
- 1.1.137 **"Seller Termination Amount"** an amount equal to Two Million US Dollars (\$2,000,000) as full compensation to the Buyer for the damages suffered by it as a consequence of the termination of this Agreement due to a Seller Event of Default, in accordance with Section 14.8.3.
- 1.1.138 **"SHINC"** means Saturdays, Sundays and holidays included except Major Holidays in the Country of Origin.
- 1.1.139 **"Shipment"** means a full or partial shipload of Coal on any Vessel, whether in the Initial Supply Period or in any Delivery Year.
- 1.1.140 **"Significant Discrepancy"** has the meaning given in Section 7.3.2.
- 1.1.141 **"Size"** refers to the size classification of a sample of Coal tested in accordance with ASTM Test Standard D4749-87 (2007) (as the same may be amended, revised, modified or supplemented from time to time).
- 1.1.142 **"Specifications"** in relation to the parameters of the Coal, means the corresponding specifications as set out in Appendix A and listed under the heading "Specification", and "Specification" means any one of such Specifications.
- 1.1.143 **"Substitute Coal"** has the meaning given to in Section 3.4.
- 1.1.144 **"Substitute Vessel"** has the meaning given to it in Section 6.5.3.
- 1.1.145 **"Sulphur Content"** refers to the sulphur content of a sample of Coal tested in accordance with ASTM Test Standard D3177-02 (2007) (as the same may be amended, revised, modified or supplemented from time to time).
- 1.1.146 **"Supply Failure"** has the meaning given to in Section 4.7.1.
- 1.1.147 **"Supply Shortfall Remedial Plan"** has the meaning given to in Section 4.6.1.
- 1.1.148 **"Supramax"** means a vessel of a size between 45,000 DWT and 60,000DWT and with a maximum beam of XX meters.
- 1.1.149 **"System Operator"** means the Power Grid Company of Bangladesh, and its successors, and any other entity assuming the responsibility for dispatch of electric power generation facilities and management of the electric power delivered to and transmitted on the Bangladesh power grid.
- 1.1.150 **"Tax"** means any tax, levy, rate, duty, fee or other charge (other than any Port Charges) imposed directly or indirectly on a Party, its assets, income, dividends or profits (without regard to the manner of collection or assessment, whether by withholding or otherwise) by

any Government Authority or other body duly authorized to impose such tax, levy, rate, duty, fee or other charge.

Without limiting the generality of the foregoing, Taxes include, Income Taxes, a gross receipts tax, a goods and services tax, a capital gains tax, a property tax, an excise tax, a value-added tax, or any tax related to environmental effects of exploring for, producing, processing, transporting, storing, supplying, selling or consuming Coal sold and purchased pursuant to this Agreement, including a carbon tax; *provided*, that "Tax" shall not include any penalties and interest that may be imposed for failure to report or late filing of returns or reports for any Taxes or exemptions for the payment thereof;

- 1.1.151 "**Technical Dispute**" has the meaning given to in Section 15.3.
- 1.1.152 "**Term**" has the meaning given to in Section 2.4.
- 1.1.153 "**Third Commercial Delivery Window**" has the meaning given to it in Section 2.3.1 (c).
- 1.1.154 "**Third Party**" means any Person that is not a Party.
- 1.1.155 "**Third Split**" has the meaning given in Section 7.2.3 (c).
- 1.1.156 "**Time Used**" means, in relation to any Shipment being delivered onto a Vessel at the **Loading Port**, the duration of time from (i) the commencement of the counting of time to (ii) the completion of the loading of all Coal onto the Vessel, as determined in accordance with Section 6.10.
- 1.1.157 "**Tonne**" means a metric tonne of 1000 kilograms as defined in the International System of Units.
- 1.1.158 "**Total Moisture**" refers to the total moisture content of a sample of Coal tested in accordance with ASTM Test Standards D3173-11 and D3302/D3302M-10 (as the same may be amended, revised, modified or supplemented from time to time).
- 1.1.159 "**Trimmed**" means that Trimming of a Vessel on which a Shipment has been loaded has been completed.
- 1.1.160 "**Trimming**" means stabilizing the Vessel by leveling off cargo within each hold, and stowing cargo throughout the Vessel so that the fore and aft drafts are practically the same by use of manpower, spouts, or any such Trimmers as may be available at the Loading Port, and "**Trim**" and "**Trimmed**" shall be construed accordingly.
- 1.1.161 "**Typical NCV**" means Base CV as given to it in Section 9.2.
- 1.1.162 "**Umpire Certificate**" has the meaning given to it in Section 7.3.2.
- 1.1.163 "**Umpire Laboratory**" has the meaning given to it in Section 7.3.2.
- 1.1.164 "**Vessel**" has the meaning given to it in Section 6.5.1.
- 1.1.165 "**Vessel Nomination**" has the meaning given to it in Section 6.5.2.
- 1.1.166 "**Weather Working Day**" or "**WWD**" means a period of twenty-four (24) hours made up of one or more working days during which it is, or if the Vessel is still waiting for its turn, it would be, possible to discharge the Coal without interference due to weather. If such interference occurs (or would have occurred if work had been in progress), there shall be excluded from Laytime the actual period of such interference.

1.1.167 “**Working Day**” means any day except for a Major Holiday in the Country of Origin.

1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) the singular shall include the plural and vice versa;
- (b) Unless stated to the contrary, references to an Article or Section or Appendix are to Articles, Sections and Appendices of this Agreement, and shall include all subparts in those Articles, Sections and Appendices;
- (c) the Appendices are an integral part of this Agreement;
- (d) references to this Agreement or any other agreement or document shall be construed as a reference to such agreement or document as amended, modified or supplemented and in effect from time to time;
- (e) the headings of Articles, Sections and Appendices are for convenience only and shall not be used for or affect the interpretation of this Agreement;
- (f) a fraction of a Tonne in any calculation shall be rounded up to the nearest Tonne if such fraction is one-half (0.50) of a Tonne or more and shall be rounded down otherwise; a fraction of a Cent in any calculation shall be rounded up to the nearest Cent if such fraction is one-half of a Cent or more and shall be rounded down otherwise; and
- (g) references to “include” and “including” shall be deemed to be followed by “without limitation”.

Article 2 TERM OF AGREEMENT

2.1 Obligation

Deleted.

2.2 Initial Delivery Date

- 2.2.1 Prior to the **First Delivery Date**, the Seller shall supply, at maximum rates of 210,000 Tonnes per month, the **Commissioning Coal** as per the provisions of Section 4.
- 2.2.2 The first delivery of Commissioning Coal ("**Initial Delivery Date**") shall occur between 1st September and 31st December 2023 on a date set out in a **Commencement Notice for Initial Delivery** that shall be determined in accordance with the following provisions:
- (a) Not later than one hundred and eighty (180) days prior to the occurrence of Initial Delivery Date, the Buyer shall by notice to the Seller nominate the "**First Initial Delivery Window**", being a period of one hundred and twenty (120) days during which the **Initial Delivery Date** shall occur.
 - (b) At least ninety (90) days prior to the beginning of the **First Initial Delivery Window**, the Buyer shall by notice to the Seller nominate the "**Second Initial Delivery Window**", being a period of sixty (60) days during which the **Initial Delivery Date** shall occur.
 - (c) At least thirty (30) days prior to the commencement of the **Second Initial Delivery Window**, the Buyer shall issue the **Commencement Notice of Initial Delivery**, which shall specify the date (the first day of the Laycan) falling within the **Second Initial Delivery Window** to be the **Initial Delivery Date**.
- 2.2.3 Determination of subsequent deliveries of Shipments shall be carried out in accordance with Section 6.4.

2.3 Notice of First Delivery Date

- 2.3.1 The Parties agree that the commencement of **Commercial Delivery Period** and the first Delivery Year (the "**First Delivery Date**") shall occur as close as is reasonably practicable to the Commercial Operation Date, which is presently expected to occur between 30th June and 31st October 2024. The First Delivery Date shall be established in accordance with the following provisions:
- (a) Not later than two hundred and seventy (270) days prior to the occurrence of First Delivery Date, the Buyer shall by notice to the Seller nominate the "**First Commercial Delivery Window**", being a period of two hundred and seventy (270) days during which the First Delivery Date shall occur.
 - (b) At least one hundred and eighty (180) days prior to the beginning of the First Commercial Delivery Window, the Buyer shall by notice to the Seller nominate the "**Second Commercial Delivery Window**", being a period of ninety (90) days during which the First Delivery Date shall occur.
 - (c) At least forty-five (45) days prior to the commencement of the Second Commercial Delivery Window, the Buyer shall by notice to the Seller nominate the "**Third**

Commercial Delivery Window”, being a period of thirty (30) days falling entirely within the Second Commercial Delivery Window.

(d) At least thirty (30) days prior to the commencement of the Third Commercial Delivery Window, the Buyer shall issue the **Commencement Notice of Commercial Delivery**, which shall specify the date (the first day of the **Laycan**) falling within the Third Commercial Delivery Window to be the First Delivery Date.

2.3.2 Determination of subsequent delivery of each Shipment shall be carried out in accordance with Section 6.4.

2.3.3 The Buyer can exercise a one-time right to extend the First Delivery Date up to ninety (90) days following the end of the Third Commercial Delivery Window, subject to such right being exercised at least sixty (60) days prior to commencement of the Third Commercial Delivery Window.

2.3.4 If an Event of Force Majeure occurs prior to the **First Delivery Date** which has the effect of impeding the Buyer’s ability to accept delivery of Coal under this Agreement or the Seller’s ability to make delivery of such Coal by the **First Delivery Date** (if already nominated or ascertained), then the **First Delivery Date** shall be extended by the period of the delay caused by the Event of Force Majeure.

2.3.5 From the Initial Delivery Date, the Buyer shall provide the Seller with monthly updates in writing of the dates on which the Buyer then expect the Commercial Operation Date to be achieved and the First Delivery Date to occur.

2.4 Term

2.4.1 This Agreement shall come into effect on the **Execution Date** and continue in full force and effect until 31st December of the calendar year in which the fifth (5th) anniversary of **the First Delivery Date** occurs, unless terminated earlier in accordance with the terms hereof (the “**Term**”).

2.4.2 After completion of three (3) years from the First Delivery Date, either Party may, by prior written notice to the other Party, seek a review of this Agreement for a period not less than thirty (30) days.

2.4.3 If the review does not result in a mutually agreed position with respect to the subject matter of review, this Agreement shall nevertheless continue to be in force. However, if despite further efforts the Parties are unable to arrive at a mutually agreed position with respect to the subject matter of review, within a period of three (3) months from the date of notice as per Section 2.4.2 above, the aggrieved Party shall have the right to terminate the Agreement subject to a further notice of one (1) month given in writing to the other Party.

2.5 Extension of Term

2.5.1 The Parties shall extend the Term for an additional period of up to five (5) Delivery Years, subject to:

(a) the Seller and the Mines having maintained, or obtained any extension of its necessary Mining Rights Authorizations required to mine, sell and deliver Coal from the Mines (or any alternative coal sources agreed by the Parties which satisfies the Coal Quality

Rejection Limits) as may be necessary for the duration of the proposed extension of the Term;

- (b) the Seller has enough economical mineable reserves to cover the extended delivery period that satisfies the Coal Quality Rejection Limits; and
- (c) the Parties having agreed on any equitable adjustment (if required) in the determination of the Base Price P_n (as determined in accordance with Section 9.2).

2.5.2 In any such extension of the **Term**, the first Delivery Year shall be from the first (1st) day following the end of the original **Term** to the end of the calendar year in which the original **Term** ends and subsequent Delivery Years shall be the calendar years up to the end of the **Term** extension period, but not in any event longer than nine (9) additional (excluding the first Delivery Year of such extension) Delivery Years.

2.5.3 The Parties shall meet in good faith at least six (6) months prior to the end of the **Term** to discuss the matters referred to in Sections 2.5.1 (a) to 2.5.1 (c) with a view to negotiating and agreeing on any amendments to this Agreement as may be necessary or appropriate in the opinion of either Party, provided that there has not occurred any **Buyer Event of Default** or **Seller Event of Default** or material **Dispute** prior to such date, the Parties shall use their reasonable efforts to agree on any such amendments in writing before the end of the **Term**. If the Parties do not agree in writing on all of the amendments to this Agreement necessary to effect the extension of the **Term** for the period requested by the Buyer, this Agreement will end at the end of the **Term**.

Article 3 COAL QUALITY AND SOURCE

3.1 Coal Quality Specifications

All Coal, when delivered by the Seller to the Buyer under this Agreement, shall (a) be of substantially uniform quality throughout and suited for bulk sea transport, (b) comply with the **Coal Condition Undertaking** in Section 3.2, and (c) comply with the **Coal Quality Specifications** provided in Appendix A.

3.2 Non-Contamination

The Seller shall inspect and remove any **Contaminants** such as bone, shale, rock, dirt, clay, wood, rocks, plant matter, garbage, iron or steel, nonferrous materials, blast materials, salt, petroleum coke, pitch, pitch coke, tar sludge and or other extraneous material prior to loading of the coal at the Loading Port.

The Seller shall, at its own cost, task the **Independent Surveyor** at the Loading Port to exclude **Contaminants** (if any) from the Coal prior to loading of the coal at the Loading Port.

The Seller undertakes to the Buyer that all Coal, on delivery by the Seller to the Buyer, shall be substantially free of **Contaminants** (the "**Coal Condition Undertaking**").

3.3 Source of Coal

3.3.1 Without prejudice to Sections 3.1 and 3.2, and unless otherwise agreed in writing by the Buyer pursuant to Section 3.4, all Coal supplied by the Seller to the Buyer under this Agreement shall have been produced from the Mines covered by the **Mining Rights Authorizations** only. Mixing Coal from different mines is strictly forbidden.

3.3.2 The Seller shall provide a **Certificate of Origin** to the Buyer in respect of each Shipment under this Agreement.

3.3.3 The Seller shall maintain throughout the **Term** all legal rights granted under the **Mining Rights Authorizations** or otherwise necessary to produce, transport, and sell Coal to the Buyer for export in accordance with the terms of this Agreement and in compliance with all applicable Legal Requirements.

3.4 Substitute Coal

3.4.1 In case the Seller intends to substitute a coal from a source other than that identified in Section 3.3.1 ("**Substitute Coal**"), it shall obtain the Buyer's prior written consent, which consent shall not be unreasonably withheld, provided that the following conditions shall be satisfied:

- (a) the **Substitute Coal** is within the minimum and maximum ranges or other tested value stated in the **Coal Quality Specifications**;
- (b) the **Delivered Price** of the Substitute Coal shall be determined as provided in Section 9.2, except to the extent such **Substitute Coal** is being supplied by the Seller to mitigate an **Event of Force Majeure** affecting the Seller on other terms agreed by the Parties;
- (c) the Seller shall be responsible for any transportation costs for Substitute Coal that exceed the costs of transporting Coal from the Loading Port to the **Discharge Port**, except to the extent such **Substitute Coal** is being supplied by the Seller to mitigate an **Event of Force Majeure** on other terms agreed by the Parties; and

- (d) the Seller's written request shall set forth in detail:
 - (i) the reason(s) for the proposed substitution;
 - (ii) the duration, Shipments, or quantity covered by the proposed substitution; and
 - (iii) without prejudice to the requirements of Section 3.4, the specifications of the proposed Substitute Coal in respect of all of the quality parameters set out in Appendix A.

3.4.2 If the Buyer approves any such request in writing, such **Substitute Coal** shall be treated as "Coal" for all other purposes and subject to all other terms and conditions of this Agreement.

3.5 Title

3.5.1 At the time of delivery at the **Loading Port**, the Seller shall have good title to all Coal delivered to the Buyer under this Agreement.

3.5.2 All Coal delivered shall be free and clear of all liens, charges, mortgages, pledges, security interests, claims for Taxes or royalties or other such encumbrances, claims or any other rights of Third Parties competing with those of the Buyer. The Seller shall indemnify and hold the Buyer harmless from and against any such liens, charges, mortgages, pledges, security interests, claims for Taxes or royalties or other such encumbrances, claims or rights of Third Parties against any Coal supplied to the Buyer under this Agreement.

3.6 Maintenance of Reserves

3.6.1 The Seller undertakes that throughout the Term:

- (a) it shall, consistent with good mining practice maintain that quantity of Coal in **Marketable Coal Reserves** (includes Proved and Probable Coal Reserves) in the area covered by its **Mining Rights Authorizations** as may be required (after taking into consideration all of the Seller's obligations to other buyers) for full performance of the Seller's obligations hereunder; and
- (b) it shall not contract to sell Coal from its Marketable Coal Reserves to Third Parties in quantities that could jeopardize the Seller's ability to deliver the Maximum Delivery Year Quantity of Coal that the Buyer is entitled to purchase from Seller under this Agreement or that could cause Seller to interrupt or delay any deliveries to be made to the Buyer under this Agreement.

3.6.2 The Seller, promptly following any written request the Buyer may make from time to time, shall confirm that it is in compliance with Section 3.6.

3.7 Review of Reserves and Production

3.7.1 The Seller, at its expense, shall provide the Buyer with such information as the Buyer may, from time to time, reasonably request concerning the Seller's **Marketable Coal Reserves**, **Proved Coal Reserves**, and **Probable Coal Reserves**, its production capacity, and its total contractual commitments to supply and deliver Coal.

3.7.2 The Buyer, at its expense, may from time to time appoint an independent and reputable firm, reasonably acceptable to the Seller, to verify the sufficiency, in light of the Seller's total contractual commitments to supply and deliver Coal, of the Seller's **Marketable Coal**

Reserves, Proved Coal Reserves, and Probable Coal Reserves and its production capacity. The Seller hereby agrees to provide access to its data room and all other reasonable assistance to the Buyer's selected independent firm in connection with such review, subject to the independent firm entering into a non-disclosure agreement with the Seller. The Seller shall also provide such independent firm access to visually inspect its mining sites at times reasonably agreed with the Buyer with a view towards minimizing any interference with site operations by the Seller.

For Information Only

Article 4 QUANTITY

4.1 Initial Supply Period

- 4.1.1. In the Initial Supply Period, the Seller shall supply Coal as requested by the Buyer to satisfy the requirements of the Facility, including start-up, testing of the Facility, and for a steady build-up of a Coal stockpile for the Facility and for operating the First Unit until the occurrence of the First Delivery Date (the “**Commissioning Coal**”) and shall have the same Delivered Price as determined pursuant to Article 9 and shall otherwise be supplied on the same terms and conditions applicable to Coal delivered during the **Commercial Delivery Period** under this Agreement. The quantity of Coal delivered during **Initial Supply Period** shall be at a maximum rate of Tonnes per Month up to a maximum aggregate amount which is between Tonnes and Tonnes (the “**Maximum Initial Quantity**”).
- 4.1.2. The Buyer and the Seller agree that the Buyer shall be able to nominate its Affiliate and to novate the supply and purchase obligations in respect of the entire quantity of Coal or any part thereof to such nominated Affiliate, subject to the Parties and the Affiliate signing a deed of novation in respect of the quantity of Coal being so novated in a form similar to Appendix N.

4.2 Delivery Years

- 4.2.1. In each Delivery Year, the Seller shall supply and sell to Buyer the quantity (the “**Annual Delivery Quantity**”) of Coal ordered by the Buyer in accordance with Article 6 up to a maximum aggregate amount of Tonnes (the “**Maximum Delivery Year Quantity**”); provided that except as provided herein and subject to Section 4.2.2 and Section 4.4 and Article 13, the **Annual Delivery Quantity** shall not be less than 800,000.00 Tonnes in each Delivery Year for coal from Indonesia and 500,000.00 Tonnes for coal from Australia (the “**Minimum Delivery Year Quantity**”).
- 4.2.2. For the **First Delivery Year** and **Final Delivery Year**, the **Minimum Delivery Year Quantity** and **Maximum Delivery Year Quantity** set out in Section 4.2 shall be adjusted **pro rata** to reflect the number of days in each such Delivery Year. The **Maximum Delivery Year Quantity** and **Minimum Delivery Year Quantity** shall be inclusive of shipping tolerance of plus or minus 10%.

4.3 Notification of Quantity

- 4.3.1. On or before 1 October in the previous Delivery Year, the Buyer shall notify the Seller of the estimated quantity of Coal it requires from the Seller for the next Delivery Year (the “**Annual Delivery Quantity**”). Such quantity shall be determined in accordance with Section 6.4. Unless otherwise specified in the notice provided by the Buyer and agreed by the Seller, the portion of the **Annual Delivery Quantity** delivered in each **Delivery Month** shall, except in the case of an **Event of Force Majeure** or a **Scheduled Outage** or an **Extended Forced Outage**, be as follows and adjusted as per Section 6.4:

between Tonnes (minimum) and Tonnes (maximum) to be delivered from onwards, *provided* aggregate tonnage for any three (3) month period shall be between and Tonnes.

- 4.3.2. In any Delivery Year in which (i) a Scheduled Outage is scheduled by the Buyer to occur or (ii) an **Extended Forced Outage** occurs, then the Buyer shall provide at least forty-five (45) days' notice in advance of the relevant Delivery Month to readjust the delivery schedule in such Delivery Month.

4.4 Increased Coal Requirements

- 4.4.1. The Buyer shall have the option to purchase any additional Coal ("**Additional Quantity**") in a Delivery Year in excess of/addition to the Maximum Delivery Year Quantity for such Delivery Year and shall have the same Delivered Price as determined pursuant to Article 9 (provided that in the First Delivery Year and the Final Delivery Year such Additional Quantity shall be a **prorated** quantity) by providing notice on or before **1st February** of such Delivery Year. The Buyer may exercise such option, and the Seller shall supply and sell to the Buyer any such **Additional Quantity** in a Delivery Year nominated by the Buyer.
- 4.4.2. The Delivered Price for such Additional Quantity shall be determined in accordance with Section 9.2 and shall not in any event include any surcharge.
- 4.4.3. In the event Buyer exercise the option to buy **Additional Quantity** as per Section 4.4 above, the Maximum and Minimum Delivery Year Quantity for that specific Delivery Year shall remain unchanged as specified in Section 4.2.

4.5 Change in a Delivery Month Quantity

4.5.1 Increases in a Delivery Month Quantity

- 4.5.1.1 If the Buyer wishes to schedule delivery of a Shipment of Coal for a date in a Delivery Month on less than sixty (60) days' prior written notice to the Seller (an "**Emergency Shipment**"), the Seller shall supply the Emergency Shipment on the following terms:
- (a) The Buyer shall provide the Seller with at least forty-five (45) days' prior written notice of the delivery date at the Loading Port for the **Emergency Shipment**.
 - (b) The Delivered Price for such Additional Quantity shall be determined in accordance with Section 9.2 and shall not in any event include any surcharge.
 - (c) The Emergency Shipment shall be counted towards (i) the **Maximum Initial Quantity** or (ii) the **Minimum Delivery Year Quantity** and **Maximum Delivery Year Quantity** for the relevant Delivery Year, as applicable.
 - (d) The Delivery Schedule for the remainder of the Initial Supply Period or Delivery Year shall be adjusted as necessary such that the aggregate quantity of Coal delivered or scheduled to be delivered to the Buyer shall not exceed the **Maximum Initial Quantity** or the **Maximum Delivery Year Quantity** for the relevant Delivery Year, as applicable.
- 4.5.1.2 For the avoidance of doubt, if Buyer orders any **Additional Quantity** as provided in Section 4.4 from the Seller upon at least sixty (60) days' advance written notice, the Delivered Price for such Additional Quantity shall be determined in accordance with Section 9.2 and shall not in any event include any surcharge.

4.5.2 Decrease in a Delivery Month Quantity

- 4.5.2.1 The Buyer, after transmitting to the Seller a final written order for the Delivery Month Quantity

pursuant to Section 6.4.5, may cancel one or more shipments in that Delivery Month that have been ordered pursuant to Section 6.4.5 or are included in a **Delivery Schedule** established pursuant to Section 6.4.3 by written notice to the Seller on the following terms in this Section 4.5.

- 4.5.2.2 If the Buyer issues a such written notice for a shipment to be cancelled after the Opening Layday or at most ten (10) days before the commencement of loading of the shipment, the Seller shall pay the Seller an amount equal to the expected quantity of the scheduled shipment multiplied by USD 1.00 per Tonne as full compensation to the Seller for the damages suffered by it as a consequence of the cancellation of this shipment.
- 4.5.2.3 If the Buyer issues a such written notice for a shipment to be cancelled before the Opening Layday or at least eleven (11) days before the commencement of loading of the shipment, the Seller shall not necessarily pay the Seller any amount as a result of the cancellation of this shipment.
- 4.5.2.4 Notwithstanding the foregoing, the Buyer shall have no liability to make any payment to the Seller under this Section 4.5.2 in respect of:
- (a) any reduction in anticipated quantities of Coal to be ordered in a **Delivery Month** that occurs prior to the date the Buyer issues a written order of a Delivery Month Quantity pursuant to Section 6.4.5; and/ or
 - (b) any cancellation or delay of a delivery, even if included in a written order for a Delivery Month Quantity under Section 6.4.5 that is due to (i) an **Event of Force Majeure** affecting the Buyer or (ii) a **Change in Legal Requirement** that is the subject of Section 9.3.

4.6 Expected Supply Shortfalls

- 4.6.1 The Seller shall promptly notify the Buyer of any expected reduction in its ability to meet its obligations to supply Coal in accordance with the quantity and scheduling requirements of this Agreement (an "**Expected Supply Shortfall**"), whether due to a **Supply Failure**, an **Event of Force Majeure**, or any other cause. Within not more than five (5) further Business Days, the Seller shall provide the Buyer with a "**Supply Shortfall Remedial Plan.**" The **Supply Shortfall Remedial Plan** shall:
- (a) explain the cause and extent of the **Expected Supply Shortfalls**;
 - (b) describe the actions the Seller will take to mitigate or avoid such Expected Supply Shortfalls;
 - (c) propose sourcing of a Substitute Coal; and
 - (d) propose a reduced delivery schedule that the Seller reasonably believes can be met until such time as the Seller is able to comply with its full delivery obligations under this Agreement.
- 4.6.2 The Buyer shall be entitled to approve or disapprove the **Supply Shortfall Remedial Plan** in its discretion, and shall notify the Seller of such decision in writing within **ten (10) Business Days** after receipt of the **Supply Shortfall Remedial Plan.**

- 4.6.3 If a **Supply Shortfall Remedial Plan** is required due to a **Supply Failure** and the Buyer approves a **Supply Shortfall Remedial Plan** proposed by the Seller, the Buyer shall not arrange for **Mitigating Purchases** under Section 4.7.3 in respect of any quantities of Coal that the Seller supplies in accordance with the approved **Supply Shortfall Remedial Plan**.
- 4.6.4 If a **Supply Shortfall Remedial Plan** is required due to a **Supply Failure** and the Buyer does not approve a **Supply Shortfall Remedial Plan** proposed by the Seller, the Buyer shall remain entitled to arrange **Mitigating Purchases** in accordance with Section 4.7.3.
- 4.6.5 If a **Supply Shortfall Remedial Plan** is required due to an **Event of Force Majeure**, the Buyer's approval or disapproval of the **Supply Shortfall Remedial Plan** shall be without prejudice to the rights and obligations of the Parties under Section 13.5.

4.7 Supply Failures

- 4.7.1 Each of the following events, if not due to an Event of Force Majeure affecting the Seller, shall constitute a "**Supply Failure**":
- (a) the Seller fails to schedule delivery of one or more Shipments in accordance with Section 6.4.3 or 6.4.5;
 - (b) the Seller fails to deliver any part of a Shipment scheduled in accordance with Section 6.4.3 or 6.4.5 within seven (7) days) after the last day of the relevant **Laycan** for reasons other than a delay in the arrival of the nominated Vessel or congestion at the Loading Port; or
 - (c) the Seller delivers any Coal that does not comply with the **Coal Quality Rejection Limits**;
 - (d) the Seller delivers any Coal that the Buyer rejects pursuant to Section 5.
- 4.7.2 In the event of any **Supply Failure**, the Seller shall reimburse the Buyer for all reasonable costs, expenses, and fees incurred by the Buyer as a consequence of cancelling or rescheduling shipping arrangements from the **Loading Port** due to the Supply Failure.
- 4.7.3 The Buyer shall be entitled to remedy any **Supply Failure** by making one or more purchases of Coal from a Third Party (in each case, a "**Mitigating Purchase**") in an aggregate amount equal to the quantity as evidenced by a **Certificate of Weight** included in the **Mitigating Purchase** and shall not be more than the quantity of Coal the Supplier has failed or is expected to fail to deliver; provided that (i) the Buyer has notified the Seller in writing that it intends to make such **Mitigating Purchase(s)**, (ii) the terms of the **Mitigating Purchase(s)** are commercially reasonable under the circumstances, and (iii) the Buyer has used its reasonable efforts to schedule the delivery of the **Mitigating Purchase(s)** within thirty (30) days after the date or respective dates of the Shipments that the Seller has failed or is expected to fail to deliver. Following the Buyer's completion of any such **Mitigating Purchase**, the Buyer shall be entitled to invoice the Seller and the Seller shall pay the Buyer the sum, if positive, of
- (a) the difference between:
 - (i) the price paid by the Buyer for delivery FOBT of the quantity of Coal purchased in the **Mitigating Purchase**, adjusted for Net Calorific Value, Sulphur Content and Ash Content of the Coal delivered in the **Mitigating Purchase**, and including all

other costs, expenses or Taxes of the kind that would have been included in the Delivered Price under Section Article 9.1, as if such Coal had been delivered to the Buyer under this Agreement, and

- (ii) the Delivered Price that would have been payable by the Buyer to the Seller for the same quantity of Coal,

which difference may be positive or negative; **plus**

- (b) the difference between:

- (i) the transportation costs paid by the Buyer in procuring transport of the quantity of Coal included in the **Mitigating Purchase** to the Facility Site, and
- (ii) the transport price that would have been payable by the Buyer to a shipper for transporting such quantity of Coal from the Loading Port to the Facility Site for arrival on the same date the Coal included in the Mitigating Purchase is delivered to the Facility Site,

which difference may be positive or negative; **plus** (c) and (d):

- (c) any and all costs, expenses, and duties incurred by the Buyer in connection with the Supply Failure by the Seller, including the costs, expenses, and fees incurred by the Buyer as a consequence of cancelling or rescheduling shipping arrangements from the Loading Port as provided in Section 4.7.2 and
- (d) any reasonable additional costs, expenses, duties and Taxes incurred in the **Mitigating Purchase** that would not have been incurred in respect of a shipment of such quantity of Coal pursuant to this Agreement.

- 4.7.4 The Buyer's invoice in respect of any **Mitigating Purchase** shall include documented evidence of the details of the **Mitigating Purchase**, including the sampling and testing of the Coal included in the **Mitigating Purchase** and the amounts described in Sections 4.7.3. The Seller shall pay the Buyer the amount of the Buyer's invoice within **fifteen (15) Business Days** after receipt of the invoice by telegraphic transfer (T/T) into the Buyer's nominated bank account, or the Buyer may set-off the amount due from any other amounts payable by the Buyer to the Seller.

4.8 Reduced Coal Requirements

- 4.8.1 In addition to reductions in its aggregate purchases of Coal due to **Events of Force Majeure** affecting the Buyer and/or **Extended Forced Outages**, the Buyer shall be entitled to reduce its aggregate purchases of Coal from the Seller in any **Delivery Year** below the Minimum Delivery Year Quantity where such reduction is due to a reduction in dispatch by the **System Operator** or the Buyer's customers (a "**Reduction Event**"); provided that such reduction of its aggregate purchases of Coal due to a Reduction Event shall not be greater than one hundred and thirty thousand (130,000) Tonnes in any Delivery Year.

- 4.8.2 The Buyer shall notify the Seller of the occurrence of any **Reduction Event** as soon as practicable following its occurrence. Such notice shall specify the decrease in Coal requirements that the Buyer reasonably expects to result from such Reduction Event in the current Delivery Year and any future Delivery Year(s). The **Minimum Delivery Year Quantity**

and **Maximum Delivery Year Quantity** shall be reduced by the quantities specified in such notice or notices, subject in each case to the limitation stated in Section 4.8.1.

The Buyer shall in the same notice, or as soon as practicable in a further written notice to the Seller, revise the shipping schedules and other arrangements previously made by the Buyer and the Seller in accordance with Section 6.4 for the Delivery Year, and the Seller shall make deliveries of Coal in accordance with such revised schedules and arrangements.

For Information Only

Article 5 NON-CONFORMING SHIPMENTS

5.1 Right to Reject

- 5.1.1 If Coal from any Shipment fails to comply with the **Coal Quality Rejection Limits**, the Buyer shall have the right to reject the Shipment by sending a written notice to the Seller at any time prior to the unloading of the Shipment at the **Discharge Port**. If the Buyer rejects a Shipment pursuant to this Section 5.1.1, the Buyer may, at Seller's cost and expense, and without prejudice to any other legal remedies the Buyer may have, redirect the relevant Vessel back to the **Loading Port** with the Shipment on board.
- 5.1.2 If the Buyer rejects any Shipment as not complying with the **Coal Quality Rejection Limits**, the Seller shall:
- (a) promptly cure any deficiency in supply by supplying additional Coal and/or Substitute Coal, subject to the Buyer's approval in accordance with Section 3.4;
 - (b) reimburse the Buyer for all reasonable expenses incurred by the Buyer in relation to the rejected Shipment, including but not limited to correct the conditions that resulted in the Shipment not meeting the **Coal Quality Rejection Limits**, shipping, disposal, handling, demurrage, Taxes, duties and any other costs or expenses that would not have arisen had the Shipment not been made and rejected; and
 - (c) take such steps as are necessary to correct the conditions that resulted in the Shipment not meeting the **Coal Quality Rejection Limits**.

5.2 Acceptance of Non-Complying Shipment

- 5.2.1 If the Buyer accepts delivery of a Shipment that does not comply with the **Coal Quality Rejection Limits**, or if such non-compliance is determined to exist after the Buyer has accepted the Shipment but prior to its being unloaded at the **Discharge Port**, the price decrease in respect of each such **Coal Quality Specification** that is shown in the Loading Port Laboratory's Certificate of Analysis (or Umpire Laboratory's Certificate of Analysis pursuant to Section 7.3.2) to be not in compliance with its corresponding **Coal Quality Rejection Limit** shall be the amount as provided in Sections 10.2, 10.3, and/or 10.4, as applicable.
- 5.2.2 The Buyer shall also be entitled to recover the actual additional transportation cost, measured on a per BTU basis, where the Actual NCV is less than the Net Calorific Value (ARB) specified in the **Coal Quality Rejection Limits**.
- 5.2.3 The Parties shall use reasonable efforts to agree on a further discount in the **Delivered Price** of the Shipment in an amount necessary to compensate the Buyer for all direct damages actually incurred, or that it is reasonably likely to incur, as a consequence of such Coal not complying with the **Coal Quality Rejection Limits**.
- 5.2.4 If the Parties are unable to reach such an agreement within **fifteen (15) Business Days** after the non-compliance with the **Coal Quality Rejection Limits** becomes known, the Buyer shall be entitled to pursue its legal and equitable remedies against the Seller in respect of the delivery of Coal that does not comply with the **Coal Quality Rejection Limits**.

5.2.5 The Buyer shall have the right to withhold the payment for that Shipment to the Seller until agreement as per Section 5.2.3 above is reached or the legal and equitable remedies are fulfilled by the Seller as per Section 5.2.4 above.

5.2.6 For the avoidance of doubt, the remedies provided under this Section 5.2 shall be without prejudice to the Buyer's remedies under Article 14.

5.3 Contaminated Shipments

5.3.1 If a Shipment does not comply with the **Coal Condition Undertaking**, the Buyer shall have the right to withhold the payment for that Shipment to the Seller until the Seller agrees with the Buyer regarding the amount to be reimbursed by the Seller to the Buyer for all reasonably incurred direct costs and expenses attributable to such noncompliance. Upon agreement of the amount to be reimbursed by the Seller to the Buyer, the Buyer shall deduct such agreed amount from the due payment for that Shipment and pay the balance to the Seller either through Letter of Credit (L/C) or telegraphic transfer (T/T).

5.3.2 Such direct expenses shall include, without limitation, any costs or liabilities incurred by the Buyer for the removal of extraneous material and contaminants from the Shipment to render it contaminant-free.

5.3.3 For purposes of this Section 5.3, the Parties agree that direct expenses shall be reasonably incurred if the Buyer has acted in accordance with **Prudent Utility Practices**.

5.4 Right to Adjust the Minimum Delivery Year Quantity

5.4.1 The Buyer shall have the right to lower the Minimum Delivery Year Quantity for that Delivery Year as a result of any Non-Complying Shipment or any Shipment which does not comply with the Coal Condition Undertaking, as the case may be, whether or not the Buyer has accepted, by a written notice to the Seller.

5.4.2 For every one Non-Complying or Contaminated Shipment, a reduction of X% of the Minimum Delivery Year Quantity as per Section 4.2.1 shall be introduced and a new Minimum Delivery Year Quantity will be established for that Delivery Year accordingly.

Article 6 DELIVERY AND SHIPMENT

6.1 Seller's Responsibilities

All Coal supplied by the Seller to the Buyer under this Agreement shall be delivered **FOBT** at the **Loading Port**. The Seller shall be responsible for all costs and expenses of mining the Coal, of transporting to and maintaining the Coal at the **Loading Port**, costs related to the Coal loading and **Trimming** operation and Government royalties and taxes.

Before the commencement of loading of any shipment at the Loading Port, the Seller shall ensure the coal to be delivered is properly insured and the insurance policy shall be effective continuously. Supporting documents shall be provided to the Buyer meanwhile.

6.2 Buyer's Responsibilities

The Buyer shall be responsible for all costs and expenses of arranging for, insuring and shipping all Coal supplied by the Seller hereunder following its departure the Loading Port to the Discharge Port, including port dues, tugs, pilotage, linesman, light dues, garbage removal, sundry expenses, time checker, agency fees using Vessels meeting the requirements of Section 6.5.1.

6.3 Title and Risk of Loss

Title to and all risk of loss, damage or destruction to all Coal supplied by the Seller under this Agreement shall pass to the Buyer at the time the Coal is loaded onto the Vessel arranged by the Buyer at the Loading Port.

6.4 Determining Delivery Schedule

6.4.1 At least **ninety (90) days** before the commencement of the **Delivery Year**, the Buyer shall notify the Seller of the estimated quantity of Coal it requires from the Seller for the relevant **Delivery Year** ("**Estimated Quantity**"), which quantity shall not exceed the **Maximum Delivery Year Quantity** for the relevant **Delivery Year**, as applicable, unless agreed by the Seller.

6.4.2 At least **sixty (60) days** prior to the commencement of the **Initial Supply Period** and each **Delivery Year**, the Seller and the Buyer shall update the relevant **Estimated Quantity** and develop a tentative delivery schedule for each three (3) month period in the **Initial Supply Period** or relevant **Delivery Year**.

6.4.3 At least **sixty (60) days** prior to the commencement of each successive three (3) month period in the **Initial Supply Period** and each **Delivery Year**, the Seller and the Buyer shall agree on a delivery schedule for such three (3) month period (the "**Delivery Schedule**"). The **Delivery Schedule** shall:

- (a) if applicable, take into account any adjustments in purchase quantities notified by the Buyer to the Seller under Article 4 since the preparation of the last **Delivery Schedule**;
- (b) be coordinated with other export ship arrivals at the **Loading Port** over such three (3) month period; and
- (c) specify for each Shipment a **ten (10) day** period within which the **Vessel** is to arrive at the **Loading Port** and submit a **Notice of Readiness** (the "**Laycan**").

- 6.4.4 The Seller shall not be entitled to withhold agreement to any reasonable schedule proposed by the Buyer to the extent that (i) the aggregate quantity proposed for delivery in any **Delivery Month** is within +/- fifteen percent (15%) of monthly minimum quantity in accordance with Section 4.3 and (ii) the **Delivery Schedule**, taking into account prior Shipments delivered or ordered pursuant to Section 6.4.5, will not require the Seller to supply Coal to the Buyer in excess of the **Maximum Initial Quantity** or **Maximum Delivery Year Quantity** for the relevant **Delivery Year**, as applicable except if Buyer has exercised the option for **Additional Quantity** as per Section 4.4.
- 6.4.5 At least twenty (20) days prior to the commencement of each **Delivery Month**, the Buyer shall transmit to the Seller its written order for Coal to be delivered to Buyer during such month (the "**Delivery Month Quantity**"), together with any adjustments in the **Laycan(s)** for the Shipment(s) of Coal to be delivered to the **Loading Port** in such **Delivery Month**. Within three (3) Business Days after receipt of the order and **Laycan(s)**, the Seller may request that the Buyer modify the **Delivery Schedule** and **Laycan(s)**, in which case the Seller and the Buyer will discuss scheduling alternatives in good faith with a view to agreeing on a revised **Delivery Schedule** and **Laycan(s)**. If the Seller makes no such request, it will be deemed to have agreed to the **Delivery Schedule** and **Laycans** proposed by the Buyer for the relevant **Delivery Month**. If the Seller does request modification of the Delivery Schedule and Laycan(s) proposed by the Buyer, the Delivery Schedule and Laycans originally proposed by the Buyer shall be adjusted as agreed by the Parties. In the absence of any such agreement within fifteen (15) Business Days, the Delivery Schedule and Laycan(s) previously established for the **Delivery Month** pursuant to Section 6.4.3 shall become binding on the Parties.
- 6.4.6 The Parties shall maintain the delivery schedule as per Section 4.3 throughout each **Delivery Year**, subject, inter alia, to variations for **Scheduled Outages, Extended Forced Outages, Reduction Events** and **Events of Force Majeure**.

6.5 Vessels

- 6.5.1 Unless the Parties otherwise agree, the Buyer shall arrange for all Coal supplied and delivered to the Buyer at the **Loading Port** under this Agreement to be supplied in full Shipments (plus or minus 10% shipping tolerance), onto vessels ("**Vessels**") that are:
- (a) either Capesize or Panamax or Supramax or Handymax or Handy size, at the Buyer's option, not exceeding twenty-five (25) years in service and meeting the **Loading Port** restrictions as provided in Appendix L;
 - (b) capable of berthing and receiving Coal at the Loading Port;
 - (c) classed as Lloyds 100 A1 or equivalent by a classification society which is a member in good standing of the International Association of Classification Societies;
 - (d) single deck bulk carriers having a security system and associated security equipment necessary to comply with ISPS Code, all in safe and good working order; and
 - (e) compliant with all publicly available **Legal Requirements** applicable to the **Loading Port**.

- (f) equipped with hatches of the mechanical type and shall be of such design and construction that will not unreasonably restrict or impede the operation of the ship loader;
 - (g) capable of providing the Seller with free use of winches and related electric power required by Seller during loading, Trimming and stowage of the Coal on board such Vessel;
 - (h) equipped with lighting facilities and crew available during the loading operation;
 - (i) single deck self-trimming bulk carriers;
 - (j) equipped with gears which must not impede the normal operation of the ship loaders and dischargers or otherwise reduce the loading rate of the terminal/ floating crane;
 - (k) fully insured with a **P&I Club** that is a member of the International Group of **P&I Clubs** unless agreed in writing with the Seller;
 - (l) issued with a valid International Safety Management Code Certificate; and
 - (m) capable of a deballasting rate of minimum one thousand (1,000) Tonnes per hour.
- 6.5.2 At least **seven (7) Business Days** prior to the first (1st) day of the **Laycan** at the **Loading Port** for the **Vessel** for any Shipment ("**Opening Layday**"), the Buyer shall notify the Seller of the Vessel's name ("**Vessel Nomination**"), its length, its beam, the number of holds and hatches, and the draft expected on arrival at the **Loading Port**.
- 6.5.3 If the **Vessel** is not a Vessel and does not meet the specifications of Section 6.5.1, the Seller shall have the right to reject the Vessel by written notice to the Buyer not later than **one (1) Business Day** after receipt of the notice from the Buyer. At least **five (5) days** prior to **Opening Layday**, the Buyer may notify the Seller of a change in or substitution of the definitive performing Vessel, and provide the substitute Vessel's ("**Substitute Vessel**") name, its length, its beam, the number of holds and hatches, and the draft expected on arrival at the **Loading Port**.
- 6.5.4 The **ETA** of the **Substitute Vessel** shall be not be earlier than the original **ETA** nominated in the **Vessel Nomination**. In the event the definite performing Vessel has been cancelled due to its late arrival at the **Loading Port**, the Buyer may nominate a **Substitute Vessel** at least **five (5) days** prior to the **ETA** of such Vessel. If the Buyer does not provide the second notice of a **Substitute Vessel**, the first notice and the nominated **Vessel** shall be effective, without change except where the Seller has rejected the **Nominated Vessel** in accordance with the provisions of this Agreement.
- 6.5.5 Buyer or its agent shall provide the **stowage plan** with the estimated tonnage of cargo to be loaded into the Vessel at least three (3) days prior to **ETA**.

6.6 Loading

- 6.6.1 The Seller shall give the Buyer at least **five (5) Business Days'** notice of the expected date of commencement of loading of each Shipment onto the **Vessel**.
- 6.6.2 The Seller shall procure that no part of any Shipment is loaded in deep tanks or other areas which are not standard coal cargo holds.

- 6.6.3 The Buyer shall hire, at its own cost, an independent inspector (to be nominated by the Buyer) to inspect the cleanliness of each hold in the Vessel according to the standards prescribed by the relevant standards. The Buyer shall provide the Seller with a copy of a **Certificate of Holds Cleanliness** promptly upon its being issued by such inspector.
- 6.6.4 As soon as practicable, but not later than **two (2) Business Days** after the completion of loading of each Shipment, the Seller shall advise the Buyer by facsimile or email with pdf attachment of the details of the Shipment including:
- (a) the total quantity of Coal loaded and as stated on the relevant **Bill of Lading**; and
 - (b) the approximate quantity of Coal loaded in each hold of the **Vessel**.

6.7 Berthing and Notice of Readiness

- 6.7.1 The Buyer shall procure that each Vessel to be used for a Shipment is obliged to provide seven (7) days', five (5) days', forty-eight (48) hours' and twenty-four (24) hours' prior notice of the Vessel's ETA at the **Loading Port** and additional notice(s) of any variation thereto of more than twelve (12) hours.
- 6.7.2 The Seller shall provide free of charge to the Buyer a berth at the **Loading Port** which the Vessel can safely reach and lie always afloat, provided the Vessel arrives at the **Loading Port** within its **Laycan**. The Seller and the Buyer shall coordinate with each other to make arrangements for pilots, pilot boats, tugboats, mooring and unmooring teams required to berth any Vessel at the Loading Port.
- 6.7.3 The Buyer shall cause the **Notice of Readiness** to be tendered by the master of the **Vessel** to the Seller any time during day or night **SHINC** except on Major Holidays of the Country of Origin when the Vessel (i) has arrived at the **Loading Port** and (ii) is **Ready in All Respects** to load the Coal at the **Loading Port**, whether the Vessel has arrived at its designated berth at the **Loading Port** or not.
- 6.7.4 With regards to Major Indonesian Holidays, the time from 1700 hours **WITA** on the day preceding each of the Major Indonesian Holidays until 0900 hours **WITA** on the next Working Day shall not count as **Laytime** or the time within which **Notice of Readiness** may be tendered, unless any Coal is actually loaded during such time in which case time actually used shall count.
- 6.7.5 With regards to Major Australian Holidays, the time from 1700 hours **AWST** on the day preceding each of the Major Australian Holidays until 0900 hours **AWST** on the next Working Day shall not count as **Laytime** or the time within which **Notice of Readiness** may be tendered, unless any Coal is actually loaded during such time in which case time actually used shall count.
- 6.7.6 If at any time the **Vessel** is prevented from entering **Loading Port** because of the **Vessel's** inefficiency, breakdown or other hindrances which constitute usual hazards to the Vessel, **Notice of Readiness** shall be deemed invalid. **Notice of Readiness** shall be retendered only when such inefficiency, breakdown or other hindrances have ceased to exist. Any losses related to such invalid **Notice of Readiness** shall be borne by the Buyer.
- 6.7.7 The rates of demurrage shall be declared at the time of **Vessel Nomination** and shall be the rate of demurrage per day specified in the relevant shipping contract.

6.7.8 Upon arrival at the **Loading Port** the master of the Vessel shall give the **Notice of Readiness** at any time (**SHINC**) (except with respect to Section 6.7.3, 6.7.4 & 6.7.5) by radio or telephone subsequently confirmed in writing to the Seller. If a loading berth is not immediately available, the **Vessel** shall wait at the customary anchorage for the **Loading Port** for a **Vessel** of its size and type, whether within or outside of port limits (whether legal, commercial or otherwise) and when in **Free Pratique** and when customs cleared, and shall there tender the **Notice of Readiness** to the Seller.

6.8 Acceptance of Notice of Readiness

The **Notice of Readiness** will be deemed to be accepted, when tendered:

- (a) if tendered within the **Laycan** for the Vessel established under Section 6.4.3;
- (b) if tendered earlier than the first day of the **Laycan** for the Vessel, upon the earlier of
 - (i) the time the **Loading Port** is able to receive the **Vessel** and commence loading, or
 - (ii) the first day of the **Laycan**; or
- (c) if tendered later than the final day of the **Laycan** for the Vessel, upon the **Loading Port** being able to receive the Vessel and commence loading following its normal procedures for scheduling and coordinating the loading of Vessels.

(as applicable, the "**Acceptance of Notice of Readiness**").

6.9 Laytime

The **Laytime** allowed for each Vessel shall be determined by dividing the weight of the cargo of Coal loaded at the **Loading Port** by twenty thousand (20,000) Tonnes per day (**SHINC**), twenty-four (24) consecutive hours per day except Major Holidays of the Country of Origin unless used.

6.10 Calculation of Time Used

6.10.1 The counting of Time Used shall commence upon the earlier of:

- (a) twelve (12) hours after **Acceptance of Notice of Readiness**, provided that the **Vessel** is then **Ready In All Respects**; or
- (b) commencement of loading.

6.10.2 If the **Vessel** arrives at the berth for loading Coal and is not **Ready In All Respects**, the Vessel's **Notice of Readiness** shall be void and counting of time shall not commence until such Vessel becomes **Ready In All Respects** and a further **Notice of Readiness** is subsequently accepted in accordance with Section 6.8.

6.10.3 The time for the following events shall not be counted in determining **Time Used**, even if the Vessel is already subject to **Demurrage** when the relevant event occurs (except in the case of Section 6.10.3 (n)):

- (a) time waiting for tide;
- (b) the time required for the **Draft Survey** before loading commences and the **Draft Survey** after the loading is completed;
- (c) time required for hatch opening and closing;

- (d) time used for Vessel requirements (including repairs to the Vessel and/or delays in the start or completion of events listed in Section 6.10.4 due to the Buyer or the ship owner/operator);
- (e) time lost due to a failure on the part of the Buyer to provide a Vessel meeting the requirements of Section 6.5.1;
- (f) time lost due to a previous Vessel loading Coal under this Agreement failing to depart the loading berth promptly on completion of loading for reasons attributable to vessel requirements and other than if the failure to depart is due to acts or omissions of or delays caused by the Seller or its agents, including the **Loading Port**;
- (g) the time taken for the Vessel shifting from anchorage or pilot on board, whichever is earlier, until Vessel is all fast alongside the designated berth and/or anchorage and **Ready In All Respects** to load whether the **Vessel** is already subject to **Demurrage** or not;
- (h) any time lost due to loading interruption due to adverse weather conditions, such as swell, wind, rain, fog, or other natural causes, that render it unsafe for the loading operations to continue as determined by the Master of the Vessel unless the Vessel is already on Demurrage;
- (i) any time lost if loading is interrupted by the Vessel to conduct activities required by the owner, whether the Vessel is then on Demurrage or not (e.g., taking bunkers, vitals, or all draught surveys/draught checks and holds cleanliness inspection);
- (j) any time lost as a result of breakdown, inefficiency, repairs or any other inability of the Vessel to load the Coal on a continuous basis, whether the Vessel is already subject to Demurrage or not;
- (k) Vessel loading is necessarily suspended or interrupted because of the acts and/or activities of the military or the navy (such as mock war drill, etc.), whether the Vessel is already subject to Demurrage or not;
- (l) any time lost due to compliance with statutory and class requirements for the Vessel to load, whether the Vessel is already subject to Demurrage or not; and
- (m) time lost awaiting the completion of loading of a previous Vessel receiving a delivery of Coal under this Agreement, but only for so long as such previous Vessel is not subject to Demurrage; and
- (n) time lost due to any **Event of Force Majeure** that directly prevents, interrupts or slows the loading of Coal, and occurs when the Vessel is not subject to **Demurrage**.

6.10.4 The counting of **Time Used** shall end when (a) the entire Shipment has been loaded onto the vessel, (b) all stevedores' equipment has been removed from the vessel and (c) the final **Draft Survey** has commenced.

6.10.5 In the event, after twelve (12) hours of completion of loading, due to failure of the Seller to provide necessary documents for receiving outward clearance of **Vessel** to depart the **Loading Port**, the laytime shall continue to counting until the Seller delivers necessary documents to the **Loading Port** agent. For avoidance of doubt, period of delay caused by the failure of the Seller to provide necessary documents for receiving outward clearance of Vessel to depart the

Loading Port shall not be counted as Laytime if the period of delay is less than the stipulated twelve (12) hours, but the twelve (12) hours exemption shall be counted as **Laytime** if the delay is beyond the stipulated twelve (12) hours. The **Loading Port** agent shall deliver to the master of the Vessel all documents required to effect outward clearance of the Vessel from the anchorage/ **Loading Port** after completion of loading and the release of the clean original **Bills of Lading** to the Seller.

- 6.10.6 Any time used for intermediate draft Surveys shall count as **Laytime**, unless ordered by the Master/Vessel, in which case such time shall not count as **Laytime**. Loading shall be deemed completed and Laytime and time on **Demurrage** shall stop when (a) the quantity of Coal requested by the master of the Vessel in his pre-loading stowage plan has been loaded on board the Vessel or when all the holds are full before the quantity requested in the stowage plan is attained, (b) all **Trimming** equipment has been removed from the **Vessel** and (c) final **Draft Survey** has commenced. The Seller shall have the right to supply additional Coal in a single drop not exceeding two hundred (200) Tonnes per hold for **Trimming** purposes.
- 6.10.7 The Coal shall be mechanically levelled and **Trimmed** (or spout **Trimmed**) at the Seller's time and expense. Provided that the Trimming carried out by the Seller satisfies all code and safety standards and insurance requirements when completed, any further **Trimming** required by the master of the Vessel shall be for the Buyer's account and time so used shall not count as **Laytime**.

6.11 Responsibilities at the Loading Port

- 6.11.1 The Seller shall be responsible for obtaining and maintaining all required **Consents** for the export, sale and delivery of Coal pursuant to this Agreement.
- 6.11.2 The Seller shall comply with, and shall procure that its stevedores and involved Contractors comply with, all Legal Requirements of the Country of Origin applicable at the **Loading Port** and in respect of the sale, delivery and export of Coal under this Agreement.
- 6.11.3 The Buyer shall ensure that the **Vessel** for any **Shipment** is fully available day and night for loading and that the Seller shall have full use of permanently fixed lighting and services on board the **Vessel** including those of officers and crew.
- 6.11.4 The **Vessel** shall be loaded and Trimmed by the Seller, or its agent, at the risk and expense of the Seller.
- 6.11.5 The Seller shall indemnify and hold the Buyer harmless from and against all costs, liabilities, losses, expenses, claims, demands or proceedings associated with any damage to any vessel or the property of the Buyer or any other Person, any damage to the environment, or any personal injury where such damage or personal injury is caused by the Seller or any of its employees, Contractors or agents in the performance by the Seller of its obligations under this Agreement.

6.12 Demurrage and Despatch

- 6.12.1 If the **Time Used** for loading any **Shipment**, as determined in accordance with Section 6.10, exceeds the **Laytime** permitted for such Shipment, as determined under Section 6.9, the Seller shall pay **Demurrage** to the Buyer in respect of such difference in time at the rate in USD per hour payable by the Buyer under the relevant shipping contract.

6.12.2 If the **Time Used** for loading any Shipment, as determined in accordance with Section 6.10, is less than the **Laytime** permitted for such Shipment, as determined under Section 6.9, the Buyer shall pay **Despatch** to the Seller in respect of such difference in time at a rate equal to fifty percent (50%) of the rate that would have applied for **Demurrage** under the relevant shipping contract.

6.12.3 The procedure for determining and invoicing for **Despatch** or **Demurrage** shall be as follows:

- (a) the Buyer shall cause its shipping agent to provide the Seller with a **Statement of Facts** reflecting its record of the details of the **Laytime** and **Time Used** at the **Loading Port** for the Shipment, and its proposed calculation of **Demurrage** or **Despatch**;
- (b) within **ten (10) Business Days** after receipt thereof, the Seller shall either (i) notify the Buyer that it accepts the calculation of **Demurrage** or **Despatch**, or (ii) notify the Buyer that it does not accept the calculation of **Demurrage** or **Despatch**, in which case it shall provide the Buyer with its records of **Laytime** and **Time Used**, and its proposed calculation of **Demurrage** or **Despatch**;
- (c) if the Seller notifies the Buyer that it does not accept the Buyer's shipping agent's determination of **Demurrage** or **Despatch**, the Buyer within ten (10) Business Days shall either (i) notify the Seller that it accepts the Seller's calculation of **Demurrage** or **Despatch**, or (ii) notify the Seller that it does not accept such calculation, in which case the Parties and/or their respective agents at the **Loading Port** shall promptly meet and seek to agree on the calculation of **Demurrage** or **Despatch** based on all relevant records. If the Parties are unable to reach an agreement, the calculation of **Demurrage** or **Despatch** shall be determined by an **Expert**; and
- (d) following the Parties' agreement on or an **Expert's** determination of the amount of **Demurrage** or **Despatch**, the Seller shall issue an invoice to the Buyer for **Despatch** or the Buyer shall issue an invoice to the Seller for **Demurrage**, and the Party receiving the invoice shall pay the amount of the invoice within fifteen (15) Business Days after receipt.

Article 7 SAMPLING AND TESTING

7.1 Testing Standards and Methods

- 7.1.1. The weighing, sampling and analysis of Coal by the **Loading Port Laboratory** under Section 7.2, for any **Buyer Test Analysis** under Section 7.3, and by the **Umpire Laboratory** under Section 7.3.2 shall be performed in accordance with the relevant ASTM procedures and standards set out in Appendix C and the provisions of this Article 7.
- 7.1.2. The Buyer, at its own expense, shall be entitled to have a representative observe the collection, sampling and analysis of each **Shipment** by **Loading Port Laboratory** pursuant to Section 7.2, subject to that representative is not from competitor Inspection Company. The Seller shall provide the Buyer with at least three (3) Business Days' prior notice of the dates of the collection, sampling and analysis by the **Loading Port Laboratory**.
- 7.1.3. The Seller and the Buyer, at their own expense, shall be entitled to have a representative observe the analysis of the Coal from any Shipment by the **Umpire Laboratory** pursuant to Section 7.3.2.

7.2 Collection, Sampling and Analysis at Loading Port

- 7.2.1. The Seller shall arrange for an Independent Inspection Authority ("**IIA**") proposed by the Seller and approved by the Buyer, which approval shall not be unreasonably withheld, to collect and analyse representative samples of Coal from each **Shipment** at the **Loading Port** (the "**Loading Port Laboratory**"). The cost and expense of the sampling and analysis shall be borne by the Seller.
- 7.2.2. The samples shall be taken by means of a mechanical, three-stage sampler. From the primary representative samples, the **Loading Port Laboratory** shall prepare three tertiary samples and one composite uncrushed sample in accordance with the relevant ASTM standards in Appendix C:
- (a) a composite sample prepared to 0.25mm top size for determination of gross and net calorific value, total sulphur, ash, volatile matter, fixed carbon, ash fusion temperature, the chemical composition of the ash, ultimate analysis and analysis of trace elements;
 - (b) a sub lot sample prepared to 3.0mm top size for determination of total moisture;
 - (c) a composite sample prepared to 4.75mm top size for determination of grindability; and
 - (d) a composite uncrushed sample for determination of size.
- 7.2.3. The **Loading Port Laboratory** shall then divide each of the 0.25mm, 3.0mm and 4.75mm tertiary samples, which shall weigh approximately five (5) kilograms into three "splits":
- (a) the first split (the "**First Split**") will be analyzed by the **Loading Port Laboratory** for purposes of issuing its **Certificate of Analysis** and its **Full Certificate of Analysis**;
 - (b) the second split (the "**Second Split**") will be retained by the **Loading Port Laboratory** and stored in a safe place, packed in a frozen condition, sealed and stamped as specified above, for at least sixty (60) days from the date of the **Bill of Lading**, to be used as the controlling sample in case of disputes; and

- (c) the third split (the “**Third Split**”) will be delivered to an IIA appointed by the Buyer in accordance with Section 7.3 (the “Buyer Laboratory”).
- 7.2.4. Each of the **First Split**, the **Second Split** and the **Third Split** shall be placed in a suitable air tight and sealed container which carries the stamp of the **Loading Port Laboratory**. Each **Split** shall be marked so that its relationship to the **Loading Port Laboratory’s Certificate of Analysis** is clear and its label shall provide the name of the **Vessel**, the quantity of Coal delivered, the date of the **Bill of Lading**, the sample quantity and top size.
- 7.2.5. No later than four (4) Business Days after completion of loading of the Shipment, the Seller shall transmit its **Certificate of Analysis** by facsimile or email with pdf attachment and by courier to the Buyer. The **Loading Port Laboratory’s Certificate of Analysis** shall, subject to Section 7.3.3, be used to determine whether such Shipment complies with the **Coal Quality Rejection Limits** and for the purpose of calculating the Delivered Price of such Shipment in accordance with Article 9 and Article 10.
- 7.2.6. The Seller shall cause the **Loading Port Laboratory** to issue and transmit its **Full Certificate of Analysis** by facsimile or email with pdf attachment and by courier to the Buyer within seven (7) Business Days after the completion of loading of the Shipment. For the avoidance of doubt, the values for parameters reported in the **Loading Port Laboratory’s Certificate of Analysis** shall be restated in the **Loading Port Laboratory’s Full Certificate of Analysis** without further testing of the **First Split** in respect of such parameters.

7.3 Analysis by Umpire Laboratory

- 7.3.1. The Buyer shall be entitled to arrange for a duly licensed laboratory of its choosing to perform an analysis of the **Third Split** taken by the **Loading Port Laboratory** from any Shipment and delivered by the Seller to such laboratory within the day when the samples are taken (a “**Buyer Test Analysis**”). The Buyer shall bear the cost and expense of any **Buyer Test Analysis** that it may elect to have performed.
- 7.3.2. If a **Buyer Test Analysis** reports any of the following:
- (a) a Net Calorific Value that is 91 Kcal/Kg (dry basis) more or less than the Net Calorific Value reported in the **Loading Port Laboratory’s Certificate of Analysis** (after the figures reported in the **Buyer Test Analysis** and **Loading Port Laboratory’s Certificate of Analysis** are converted to a dry basis);
 - (b) an Ash Content that is 0.50% more or less than the Ash Content (dry basis) reported in the **Loading Port Certificate of Analysis** (after the figures reported in the **Buyer Test Analysis** and **Loading Port Laboratory’s Certificate of Analysis** are converted to a dry basis);
 - (c) a Sulphur Content that is 0.14% more or less than the Sulfur Content (dry basis) reported in the **Loading Port Certificate of Analysis** (after the figures reported in the **Buyer Test Analysis** and **Loading Port Laboratory’s Certificate of Analysis** are converted to a dry basis); or
 - (d) a Total Moisture (ARB) that is 1.5% more or less than the Total Moisture (ARB) reported in the **Loading Port Laboratory’s Certificate of Analysis**,
- (each, a “**Significant Discrepancy**”), the Buyer shall be entitled, upon notice to the Seller with

a copy of the **Buyer Test Analysis** not more than fifteen (15) Business Days after the completion of the unloading of the Shipment at the **Discharge Port**, to require that an independent and duly licensed laboratory proposed by the Buyer and approved by the Seller, which approval shall not be unreasonably withheld (the "**Umpire Laboratory**"), perform an analysis of the **Second Split** and issue such **Umpire Laboratory's Certificate of Analysis**. The Seller shall, not more than fifteen (15) Business Days from the receipt of **Certificate of Buyer Test Analysis**, be entitled, upon notice to the Buyer, to require the **Umpire Laboratory** to perform an analysis of the **Second Split** and issue such **Umpire Laboratory's Umpire Certificate of Analysis (the "Umpire Certificate")**. The costs and expenses of such analysis shall be borne by the Party requesting such analysis.

- 7.3.3. If there are any **Significant Discrepancies** between the **Umpire Laboratory's Umpire Certificate of Analysis** and the **Loading Port Laboratory's Certificate of Analysis**, the **Umpire Laboratory's Umpire Certificate of Analysis** shall be used to re-determine whether the **Coal Quality Rejection Limits** have been met and to recalculate all of the price adjustments under Article 10 for the Shipment.
- 7.3.4. The Buyer shall have the right to withhold the payment for that Shipment to the Seller in case of any **Significant Discrepancy** and/or cancel or reschedule the Shipments that have been ordered pursuant to Section 6.4.5 or are included in a **Delivery Schedule** established pursuant to Section 6.4.3 thereafter until both Parties reach agreement on such **Significant Discrepancy**.

Article 8 WEIGHING

8.1 Draft Survey at Loading Port

- 8.1.1. The weight of each Shipment of Coal shall be determined by a **Draft Survey** at the **Loading Port** conducted by a **Licensed Marine Surveyor** approved by the Buyer and the Seller. Such Draft Survey shall be conducted at the cost of the Seller and in accordance with internationally accepted methods and standards.
- 8.1.2. Both Parties, at their own expense, shall be entitled to have a representative observe the Draft Survey at the Loading Port. Upon completion, a **Certificate of Weight** shall be issued by such **Licensed Marine Surveyor** in a form reasonably acceptable to the Buyer. The **Certificate of Weight** shall be conclusive (absent fraud or manifest error) and shall be the amount of Tonnes used for determining the **Delivered Price** of the Shipment. The Seller shall supply the Buyer with a copy of the **Certificate of Weight** by facsimile or by other equivalent prompt means of transmission within one (1) Business Day of its issuance.

For Information Only

Article 9 PRICE

9.1 Delivered Price

The price payable by the Buyer to the Seller for each Shipment delivered **FOBT** at the **Loading Port** (the “**Delivered Price**”) shall be determined as set out in Section 9.2. The **Delivered Price** shall be inclusive of, and not subject to any increase as a result of, all costs and expenses arising in the production, transport to the **Loading Port**, sale, delivery to and loading on board the relevant Vessel, and **Trimming** of the relevant Vessel, as well as all Taxes that any **Government Instrumentality** of the Country of Origin may impose on the sale or purchase of any Shipment to or by the Buyer or on the Seller in relation to any of the foregoing.

9.2 Calculation of Invoice Value

The delivered value (“**Invoice Value**”) of each Shipment of Coal shall be determined in accordance with the following formula:

$$IV_n = Q_n \times DP_n$$

Where:

- n = the Shipment of Coal, as identified by its **Bill of Lading**,
- IV_n = the Invoice Value for the Shipment,
- Q_n = the quantity of Coal in the Shipment, in Tonnes as recorded in the **Certificate of Weight** from the Loading Port, and
- DP_n = the **Delivered Price** per Tonne of Coal after adjustment to **Base Price** for the Shipment, determined as follows:

$$DP_n = P_n + P_{NCV} - P_{TM} - P_{TS} - P_{TA}$$

Where:

- P_{NCV} = Price increase or decrease per Tonne due to Actual NCV, determined in accordance with Section 10,
- P_{NCV} = Price increase or decrease per Tonne due to Actual NCV, determined in accordance with Section 10,
- P_{TS} = Price decrease per Tonne due to Actual TS, determined in accordance with Section 10.3,
- P_{TA} = Price decrease per Tonne due to Actual TA, determined in accordance with Section 10.4,
- P_{TM} = Subject to the Shipment being accepted by the Buyer, the price decrease per Tonne due to Actual TM exceeding the **typical value as specified in Appendix B**, determined in accordance with Section 10.2, and

P_n = the **Base Price** per Tonne for the Shipment n (calculated on the assumption that the Coal in the Shipment has the **Typical NCV 3800 kcal/kg for Indonesian Coal and 5500 kcal/kg For Australian Coal**), which shall be:

$$(IPV_n \times BaseCV/6000) \times D + PAF$$

Where:

IPV_n = **Index Price Value** for the Shipment,
 $BaseCV$ = **3800 kcal/kg NAR for Indonesian Coal and 5500 kcal/kg NAR for Australian Coal**
 PAF = Price Adjustment Factor,
 D = **Discount Factor**,
 $gcNEWC_n$ = the monthly price for FOB Newcastle coal (basis 6,000 kcal/kg NAR) reported on the GlobalCOAL website (www.globalcoal.com) for the month preceding the **Opening Layday** in which the loading of the Shipment is scheduled at the Loading Port as the **Pricing Index**, and

The Price Adjustment Factor (**PAF**) and Discount Factor (**D**) shall be derived from the following formula:

- If $gcNEWC_n$ is \$55 or below then the $IPV_n = gcNEWC_n$, $D = \dots$, $PAF = \$0.00$
- If $gcNEWC_n$ is between \$55.01 and \$70.00 then the $IPV_n = (gcNEWC_n - \$55)$, $D = \dots$, $PAF = \dots$
- If $gcNEWC_n$ is between \$70.01 and \$85.00 then the $IPV_n = (gcNEWC_n - \$70)$, $D = \dots$, $PAF = \dots$
- If $gcNEWC_n$ is between \$85.01 and \$100.00 then the $IPV_n = (gcNEWC_n - \$85)$, $D = \dots$, $PAF = \dots$
- If $gcNEWC_n$ is between \$100.01 and \$115.00 then the $IPV_n = (gcNEWC_n - \$100)$, $D = \dots$, $PAF = \dots$
- If $gcNEWC_n$ is above \$115.00 then the $IPV_n = (gcNEWC_n - \$115)$, $D = \dots$, $PAF = \dots$

The Seller shall issue a Confirmation Letter substantially as per the format provided in Appendix O as information to Buyer on the **Base Price** and quantity of specific Shipment enable the Buyer to confirm the calculation of Base Price (or provisional price if applicable $gcNEWC_n$ is not available) for establishment of L/C. Seller shall provide such confirmation letter upon receipt of Vessel Nomination.

9.3 Change in Pricing Index or Calculation of Delivered Price

9.3.1 If:

- (a) the **Pricing Index** is discontinued
- (b) the **Pricing Index** is no longer published with the frequency contemplated in the formula for determining the **Delivered Price**; or

- (c) there is a change in the specifications of the coal on which the **Pricing Index** is based such that they no longer correspond materially with the specifications of the Coal to be supplied under this Agreement;

then either Party may submit a written request to the other Party requiring that the Parties shall negotiate in good faith with the objective of promptly agreeing on a replacement of the **Pricing Index** (a "**New Pricing Index**") and/or an amendment of the formulas in Section 9.2 or Article 10 such that the **New Price Index** and/or **Changed Formulas** will accurately and transparently reflect the **FOBT** price of coals with a **Typical NCV**, total moisture, total ash and total sulphur specifications similar to the Coal to be supplied under this Agreement.

- 9.3.2. If the Parties are unable to agree upon a **New Pricing Index** and/or Changed Formulas within ninety (90) days after a Party has made a written request for negotiation pursuant to Section 9.1, either Party, on written notice to the other Party, may require that the **Dispute** be referred to an **Expert** who shall decide whether there should be a **New Pricing Index** and/or **Changed Formulas** and, if so, decide on the appropriate **New Pricing Index** and/or **Changed Formulas** in view of the objective referred under Section 9.1. The determination of the **Expert** shall be final and binding on the issue of a **New Pricing Index** and/or **Changed Formulas** unless and until there is another change as described in Section 9.1 in relation to the **Price Index** and formulas then in effect and being used hereunder.
- 9.3.3. The Parties shall continue to use the **Pricing Index** and/or the existing formulas and/or **LIBOR** until a **New Pricing Index** and/or **Changed Formulas** have been agreed or determined by an **Expert**. Thereafter, any amounts, which have been invoiced after the date on which a Party made a written request for negotiation pursuant to Section 9.1 shall be recalculated and accounted for in accordance with Section 11.2.

9.4 Change in Legal Requirement

- 9.4.1. If there is a **Change in Legal Requirement** of the Country of Origin that, upon its effectiveness, will result in either of the Parties being materially adversely affected in its performance of this Agreement (excluding the imposition of any Tax on a Party), on the written request of the Party that is materially adversely affected, the Parties shall promptly enter into negotiations in good faith with a view to agreeing on amendments to this Agreement that (i) are necessary to comply with the Change in Legal Requirement, and (ii) will eliminate the adverse effect of the Change in Legal Requirement on the affected Party.
- 9.4.2. Until such time as the Parties may agree on amendments to this Agreement pursuant to Section 9.4, the following terms shall apply:
 - (a) the Buyer shall be entitled to continue purchasing Coal from the Seller up to the quantities provided Article 4 in at a **Delivered Price** determined in accordance with Section 9.2 for so long as such supply of Coal or pricing of Coal is not prohibited by any Legal Requirement of the **Country of Origin**;
 - (b) thereafter, the Buyer shall be entitled to purchase Coal from the Seller up to the quantities provided in Article 4 at a price delivered **FOBT** that is equal to the lesser of (i) the price at which Seller may sell Coal to the Buyer in compliance with Legal Requirements of the Country of Origin and (ii) the then prevailing **Delivered Price**;

- (c) if the price at which the Seller is required to sell a Shipment to the Buyer in compliance with Legal Requirements of the Country of Origin **exceeds the Delivered Price** for such Shipment as determined in accordance with Section 9.2, **the Buyer shall pay to the Seller** the lowest price for each Shipment of Coal then permitted under the applicable Legal Requirements of the Country of Origin, and **the Seller**, to the greatest extent permitted by the then applicable Legal Requirements of the Country of Origin, shall pay to the Buyer the difference between the then permitted legal price and the Delivered Price. Such difference shall be deemed to be a **“Refundable Surcharge”** and shall be refunded to the Buyer by the Seller within ten (10) days of the payment for such Shipment being made by the Buyer. If the repayment by the Seller of the surcharge (or any other mechanism to keep the price of Coal sold hereunder at the **Delivered Price**) is not allowed (or is expected by the Buyer to not be allowed) the Buyer may, in its sole discretion and without cost or expense as provided in Section 4.5.2.4 (b), cancel one or more Shipments that have been ordered pursuant to Section 6.4.5 or are included in a **Delivery Schedule** established pursuant to Section 6.4.3; and
- (d) any Shipment of Coal that the Buyer cancels or does not schedule for delivery as a consequence of the Change in Legal Requirement shall not, unless otherwise elected by the Buyer, be included in the **Adjusted Delivered Quantity** for the relevant **Delivery Year**.
- 9.4.3. If the Parties have not agreed on amendments to this Agreement pursuant to Section 9.4 within ninety (90) days from the date a Party has requested negotiations, the Buyer may at any time thereafter terminate this Agreement upon thirty (30) days' prior written notice to the Seller without liability of any kind to the Seller in respect of such termination; provided that during such ninety (90) day period the Buyer's right to suspend Shipments under Section 9.4.2(c) will continue to exist.

9.5 HPB Pricing

- 9.5.1. **“HPB” or “Indonesian Benchmark Price”** means the minimum per Tonne selling price for Coal under Legal Requirements of the Republic of Indonesia, as determined and made applicable by Minister Regulation 07 and Director General Regulation No. 515 and reported by the Seller to the Buyer in English promptly after each monthly publication, and **“HPB_n”** means the HPB for the month in which the Opening Layday for the loading of the Shipment is scheduled at the Loading Port, as published.
- 9.5.2. The Parties acknowledge that if a Legal Requirement of the Republic of Indonesia requires that the **Delivered Price** for a Shipment be calculated using **HPB** as a **Base Price** rather than P_n as a Base Price. In this regard, the Parties agree as follows:
- (a) For the avoidance of doubt, the **Delivered Price** for each Shipment shall be determined in accordance with Section 9.2 using P_n as the **Base Price** unless a Legal Requirement of the Country of Origin requires that the Delivered Price for the Shipment be determined using the then prevailing **HPB** (**HPB_n**) as the **Base Price**. Where use of **HPB** as the **Base Price** is so required, the DP_n for the Shipment shall be determined by substituting **HPB_n** for P_n and making the relevant adjustments to **HPB_n** for P_{NCV} , P_{TM} , P_{TS} , P_{TA} in accordance with Section 9.2.

- (b) The Seller and Buyer shall agree on the form for determination and calculation of the Refundable Surcharge according to Section 9.4.2 (c) before any shipment is made by the Seller in case HPB Pricing is applicable.
- (c) For avoidance of doubt, Section 9.5 is applicable for Coal from the Republic of Indonesia only, and not applicable for Coal supplied from the Commonwealth of Australia.

For Information Only

Article 10 COAL QUALITY PRICE ADJUSTMENTS

In case that the value for Net Calorific Value, Total Moisture, Total Sulphur Content and Total Ash fails to comply with the typical values as specified in Appendix B, the price adjustments as following detail shall apply.

10.1 Net Calorific Value

If the actual net calorific value of a Shipment, as stated in the **Loading Port Laboratory's Certificate of Analysis ("Actual NCV")**, is higher or lower than **BaseCV**, the price per Tonne for the Shipment shall, in accordance with Section 9.2, be increased (if P_{NCV} is positive) or decreased (if P_{NCV} is negative) by an amount P_{NCV} , calculated in accordance with the following formula:

$$P_{NCV} = P_n \times [(Actual\ NCV - BaseCV) / BaseCV]$$

10.2 Total Moisture

If the actual total moisture of a Shipment as stated in the Loading Port Laboratory's Certificate of Analysis ("**Actual TM**") is greater than typical Value for Total Moisture (by weight ARB), i.e. 32% by (for Indonesian Coal) and 20% (for Australian Coal), and the Buyer accepts the Shipment under Section 5.2 notwithstanding breach of the relevant **Coal Quality Rejection Limit**, the price per Tonne for the Shipment shall, in accordance with Section 9.2, be **decreased** by an amount calculated in accordance with the following formula:

$$P_{TM} = P_n \times [(Actual\ TM - 32.0\%) / (1 - 32.0\%)] \text{ (for Indonesian Coal)}$$

$$P_{TM} = P_n \times [(Actual\ TM - 20.0\%) / (1 - 20.0\%)] \text{ (for Australian Coal)}$$

There shall be no adjustment if the Actual TM is less than or equal to 32% by weight ARB.

10.3 Total Sulphur Content

If the actual total sulphur content of a Shipment as stated in the Loading Port Laboratory's Certificate of Analysis ("**Actual TS**") is greater than the typical Value for Total Sulphur (by weight ARB), i.e. 0.20% (for Indonesian Coal) and 0.48% (for Australian Coal), the price per Tonne for the Shipment shall, in accordance with Section 9.2, be **decreased** by an amount calculated in accordance with the following formula:

$$P_{TS} = (U.S.\$...../Tonne) \times (Actual\ TS - 0.20\%) \times 100 \text{ (for Indonesian Coal)}$$

$$P_{TS} = (U.S.\$...../Tonne) \times (Actual\ TS - 0.48\%) \times 100 \text{ (for Australian Coal)}$$

There shall be no adjustment if the Actual TS is less than or equal to the typical Value for Total Sulphur (by weight ARB).

10.4 Total Ash

If the actual total ash of a Shipment as stated in the Loading Port Laboratory's Certificate of Analysis ("**Actual TA**") is greater than the typical value for Ash Content (by weight ARB), i.e. 4.0% (for

Indonesian Coal) and 20.0% (for Australian Coal), the price per Tonne for the Shipment shall, in accordance with Section 9.2, be **decreased** by an amount calculated in accordance with the following formula:

$$P_{TA} = (\text{U.S. \$...../Tonne}) \times (\text{Actual TA} - 4.0\%) \times 100 \text{ (for Indonesian Coal)}$$

$$P_{TA} = (\text{U.S. \$...../Tonne}) \times (\text{Actual TA} - 20.0\%) \times 100 \text{ (for Australian Coal)}$$

There shall be no adjustment if the Actual TA is less than or equal to the typical value for Ash Content (by weight ARB).

Sample calculations for such price adjustments are provided in Appendix D.

For Information Only

Article 11 BILLING AND PAYMENT

11.1 Invoicing

11.1.1. The Seller shall prepare and submit each of the following documents for each Shipment to the Buyer by email with pdf attachment as soon as practicable but not later than five (5) Business Days after loading of the Shipment has been completed at the **Loading Port** or within such other period expressly provided below.

- (a) one (1) signed original of **Beneficiary Certificate**, together with:
 - (i) one (1) signed original and three (3) copies of the Seller's invoice for the **Base Price** of the Shipment; and
 - (ii) one (1) signed original and three (3) copies of **debit or credit note** detail the calculation of the **Delivered Price** in accordance with this Agreement (including the calculation of the **Delivered Price per Tonne** (DP_n) in accordance with the provisions of Section 9.2 and Article 10;

Each **Beneficiary Certificate**, invoice, and debit or credit note shall be substantially in the form of Appendix G with monetary amounts denominated in Dollars state the Tonnes of Coal delivered in the Shipment, the name of the Vessel and the **Bill of Lading** number and date.

- (b) a set of three (3) negotiable original **clean on board** ocean Vessel shipped **Bills of Lading** signed by the master of the Vessel or his authorized agent;
- (c) one (1) original of the **Loading Port Laboratory's Certificate of Analysis** endorsed by the Buyer Laboratory;
- (d) one (1) original of the **Certificate of Weight** from the **Loading Port**;
- (e) one (1) original of the **Certificate of Holds Cleanliness**;
- (f) one (1) original of the **Certificate of Origin** for the Coal delivered in the Shipment;
- (g) one (1) original of the **Acceptance of Readiness** (including the **Notice of Readiness**); and
- (h) one (1) original of the **Statement of Facts**.

11.1.2. If the Seller discovers an error in an invoice or the Buyer notifies the Seller of an error in an invoice, the Seller shall issue a corrected invoice to the Buyer within five (5) days after the date the error is discovered by the Seller or notified to the Seller by the Buyer.

11.1.3. The Seller shall reimburse the Buyer the amount of any penalties, fees, or additional costs and expenses that are imposed on or incurred by the Buyer due to any failure of the Seller to provide the invoice and supporting documents required under Section 11.1.1 within the time specified therein.

11.2 Payments

11.2.1. All payments from RNPL to the Seller shall be made in the bid currency (ies), and for each shipment, the amount payable shall be calculated as follows, subject to adjustments and variations being made, if any.

- (a) The price of coal as determined by Article 9 Price
 - (b) The quantity of Coal as determined in Clause 4 Quantity.
 - (c) Any other applicable adjustment/diskout according to this Agreement.
- 11.2.2. The Initial payment and Balance Payment shall be made to the Contractor through Letter of Credit (L/C). If the payment due date of RNPL falls on a bank holiday of any bank involved in the payment by RNPL to the Seller, then RNPL shall make payment by the next banking day.
- 11.2.3. Letter of Credit (L/C) in United States Dollars for each shipment will be opened in any Scheduled Bank of Bangladesh within thirty (30) Business days after receipt the proforma invoice and advised through a bank reasonably acceptable to the Seller in accordance with the conditions stipulated in this Section 11.2. The L/C opening charges of RNPL's Bank will be to the account of RNPL and amendment charges and all other charges including Seller's Bank charges will be to the Seller's account. In case of any Amendment in the L/C is necessitated by RNPL, charges shall be borne by RNPL.
- 11.2.4. In the event that RNPL fails to make undisputed payments under the invoices to the Seller by the due date, RNPL shall be liable to pay interest for delayed payments at the rate of 1% + 6 months LIBOR Rate per annum for the days of delay. In case publication of LIBOR cease to exist any time during contract period, it will be replaced by equivalent **Secured Overnight Financing Rate (SOFR)**.
- 11.2.5. If an amount in an invoice requires correction after an invoice has been paid by the Buyer to the Seller, the correction shall be made by way of a debit note or credit note in the next invoice to be issued by the Seller to the Buyer (or by way of separate invoice in respect of the final Shipment under this Agreement).
- 11.2.6. If the Seller or the Buyer calls for an **Umpire Analysis** and an **Umpire Certificate** is issued (subject to **Umpire Certificate** results falling outside the reproducibility limits), the Seller or Buyer shall prepare a debit note / credit note no later than three (3) Business Days following receipt by the Seller and the Buyer of the **Umpire Certificate**. The final debit note or credit note shall be based on the adjusted price, **Certificate of Weight** and **Umpire Certificate** results and shall take into account any prior payment by the Buyer in accordance with above. The owing Party shall remit any final payment by telegraphic transfer (T/T) into the other Party's nominated bank account within thirty (30) days of receipt of debit note or credit note.

11.3 Payment Terms

The payment shall be released to the account of Seller in two (2) stages i.e. Initial Payment and Balance Payment.

- 11.3.1. **Initial Payment** : Eighty percent (80%) of the Contract Price of the Shipment shall be released against usance L/C of 15 days allowable time with upon sailing of the vessel containing the Coal Shipment from Seller, based on the quality parameters of coal as indicated in the Coal Load Port Analysis Certificate and quantity of coal as appearing in the Certificate of Weight at the Coal Load Port, on fulfillment of the all conditions stipulated in this Section 11.21.
- 11.3.2. **Balance Payment**: Twenty percent (20%) of Contract Price of the shipment shall be released after adjusting any outstanding Dues on receipt of the Shipment by RNPL and adjustment for quality and quantity variations, as may be necessary.

11.3.3. **Mutual Set-Off:** It is hereby expressly agreed between the Parties to the Contract that mutual undisputed dues owed by and between the Parties, arising out of or in relation to this Contract, shall at all times remain subject to mutual equitable set-off. The residual dues remaining, upon effecting such a set-off, shall be paid by the Party by whom the greater sum of dues was owed to the other Party.

11.4 Disputed Amounts

11.4.1. If a Party disputes any amount in any invoice or corrected invoice issued under this Agreement, the Party shall promptly notify the other Party in writing of (i) the amount in dispute and (ii) the basis for the **Dispute**. The Party shall pay the amount of the invoice (if any) that is not in dispute within the time required under Section 11.2, and may withhold payment of the amount in dispute until such time as the **Dispute** is resolved.

If it is agreed or determined that a disputed amount (or any portion thereof) was correctly invoiced, the relevant Party shall pay the other Party any portion of the disputed amount that was withheld (together with any interest accrued pursuant to Section 11.3) within ten (10) Business Days following such agreement or determination. If it is agreed or determined that a disputed amount was incorrectly invoiced and paid by a Party, the receiving Party shall refund to the paying Party any portion the disputed and incorrectly invoiced amount (together with any interest accrued pursuant to Section 11.3) that was previously paid within ten (10) Business Days following such agreement or determination.

Article 12 Performance Security

The Seller shall establish in favor of the Buyer a Performance Security denominated in US Dollars in the amount equivalent to Seller Termination Amount in accordance with the following terms:

12.1 Amount

The Performance Security shall be in the amount of USD 2,000,000.

12.2 Issuing Bank

The Performance security, in the form of bank guarantee as per the format as provided in Appendix P, to be issued on non-judicial stamp paper of appropriate value by a scheduled bank in Bangladesh or a foreign bank of international repute having correspondent bank located in Bangladesh, to make it enforceable, as stated under the relevant ITB Clauses.

12.3 Validity

The Performance Security shall initially be required to be valid for a period of five (5) years from the date of issuance thereof. The validity of the performance Security shall be extended at least 90 days prior to the expiry of the validity thereof, for the period until the date which shall be ninety (90) days beyond the date of completion of the work under the Contract. Besides, the Performance Security should be valid until the last date of the Term or termination of the Agreement (which comes earlier).

12.4 Claims not settled within the validity

If the Buyer has any claim against the Seller which is not settled within the validity of the Performance Security, the Seller shall cause the issuing bank of the bank guarantee to confirm to the Buyer, not later than five (5) days before expiry date of the bank guarantee of the extension of the validity of the Performance Security for such period of time as required by the Buyer. If the Seller's bank guarantee is not so extended, the Buyer may draw the full amount of such bank guarantee. In addition, thereto, the Buyer shall have the right to terminate this Agreement upon written notice to the Seller of the termination due to non-extension of the bank guarantee as required by the Buyer.

12.5 Withdrawal

In the event of any Supply Failure as per Section 4.7.2, rejection of any Shipment as not complying with the Coal Quality Rejection Limits as per Section 5.1.2, shipment that is not compliant with the Coal Condition Undertaking as per Section 5.3.1, any failure of the Seller to provide the invoice and supporting documents required under Section 11.1.1 within the time specified therein as per Section 11.1.3 and any Seller Event of Default as per Section 14, the Buyer may draw such amount under the bank guarantee.

12.6 Reinstatement

The Performance Security shall be reinstated to the Seller Termination Amount within three (3) Business Days from the date of withdrawal made by the Buyer if any withdrawal is made by the Buyer. Immediately upon each such reinstatement, the issuing bank shall confirm to the Seller and Buyer that such reinstatement has occurred.

12.7 Release of the Performance Security

The Buyer will release the Performance Security, without interest, after the expiration of the validity of the Performance Security or termination of the Contact (which comes earlier).

12.8 Failure to provide the Performance Security

If the Seller fail to provide the Performance Security required hereunder to be delivered to the Buyer within the required period specified above, the Buyer shall have the right to cancel the Agreement.

For Information Only

Article 13 EVENTS OF FORCE MAJEURE

13.1 Events of Force Majeure

An “**Event of Force Majeure**” shall mean all events and/or circumstances that prevent or delay the performance of a Party’s obligations hereunder that are beyond the reasonable control of the affected Party acting as a **Reasonable and Prudent Operator** if (and only if) and to the extent that

- (a) such event and/or circumstance (or the effects thereof on the affected Party) is (are) not within the reasonable control, directly or indirectly, of the affected Party,
- (b) such event and/or circumstance (or the effects of which), despite the exercise of reasonable diligence and care, cannot be or be caused to be prevented, reduced, overcome, avoided or removed by such Party,
- (c) the Party affected has taken all reasonable precautions, due care, and reasonable alternative measures to avoid the effects of such event and/or circumstance on the Party’s ability to perform its obligations under this Agreement and to mitigate the consequences thereof,
- (d) such event and/or circumstance is not the direct or indirect result of the affected Party’s negligence or the failure of the affected Party to perform any of its obligations under this Agreement, and
- (e) the affected Party has given the other Party prompt notice of the occurrence of such event and/or circumstance required under Section 13.3 (a), describing such event and/or circumstance in reasonable detail, the effect thereof on the affected Party and its obligations hereunder, and the actions being taken to ensure resumption of normal performance under this Agreement and the actions being taken by or on behalf of the affected Party to comply with this Article 13.

13.2 Instances of Force Majeure

Subject to complying with the provisions of Section 13 **Events of Force Majeure** shall include, but shall not be limited to:

- (a) acts of God, including fire, volcanic eruption, landslide, earthquakes, floods, lightning, typhoons, tsunami, epidemics, plagues or other unusual natural calamities;
- (b) war or the public enemy whether declared or not, public disorders, civil disturbance, insurrection, rebellion, sabotage, riots, violent demonstrations, blockade, embargoes, revolution at the Seller’s mining site(s), piracy, expropriation, requisition, confiscation, nationalization, quarantine, export or import restriction or other restrictions, rationing or allocations imposed by any Government Instrumentality;
- (c) explosion;
- (d) strikes or lockouts or other collective or industrial action by a Party’s employees;
- (e) accidents to harbors, docks, canals or other assistance to or adjuncts of shipping or navigation whether river or otherwise, epidemic or quarantine;
- (f) radioactive contamination or ionizing radiation;
- (g) any action or failure to act without justifiable cause or without sufficient advance notice by any Government Instrumentality of the Country of Origin and/or Bangladesh; or

- (h) a **Change in Legal Requirement** (excluding those addressed in Section 9.4);

13.3 Notice Requirements

A Party affected by an **Event of Force Majeure** shall:

- (a) promptly notify the other Party in writing of the details of the **Event of Force Majeure**, including but not limited to reasonable projections of the time and extent to which the **Event of Force Majeure** is expected to prevent or limit the Party's performance of its obligations under this Agreement;
- (b) at the request of the other Party, provide the other Party with reasonable proof of the time and extent to which the **Event of Force Majeure** will prevent or limit the Party's ability to perform its obligations under this Agreement; and
- (c) promptly notify the other Party in writing when the **Event of Force Majeure** no longer prevents or limits the Party's ability to perform its obligations under this Agreement.

"Promptly" here shall be construed as within two (2) Business Days after the occurrence of an Event of Force Majeure.

13.4 Obligation to Mitigate

A Party affected by an **Event of Force Majeure** shall:

- (a) use all reasonable efforts, acting as a reasonable and **Prudent Operator**, to mitigate the effects of the **Event of Force Majeure** and resume normal performance of its obligations in accordance with the terms of this Agreement; and
- (b) continue to perform its obligations under this Agreement to the extent that the **Event of Force Majeure** does not prevent or limit such performance.

13.5 Consequences of an Event of Force Majeure

13.5.1. Subject to its compliance with Sections 13.3 and 13.4, and except as provided in Section 13.6, a Party affected by an **Event of Force Majeure** shall not be liable to the other Party for any failure or delay in performing its obligations under this Agreement to the extent such failure or delay is caused by an **Event of Force Majeure**.

13.5.2. The Buyer shall have the right to purchase coal from another source during the period of any **Event of Force Majeure** declared by the Seller, and the Seller shall have the right to sell to other Persons Coal otherwise allocated for sale to the Buyer during the period of an **Event of Force Majeure** declared by the Buyer.

13.5.3. If an **Event of Force Majeure** prevents or limits the ability of the Seller to supply Coal in accordance with the Buyer's requirements under this Agreement:

- (a) the quantity of Coal that the Buyer is required to purchase under Section 4 or 4.2, as applicable during the period of the **Event of Force Majeure**, shall be reduced by any quantity of Coal that the Seller is unable to deliver due to the **Event of Force Majeure**;
- (b) the Seller shall allocate deliveries of Coal among the Buyer and the Seller's other customers under existing contracts in a fair and reasonable manner, in full Shipments and, to the greatest extent possible, on a proportionate basis; and

(c) without prejudice to the generality of Section 13.4, the Seller shall comply with the requirements of Section 4.6.1 and to the extent the Seller cannot remedy a supply shortfall by supplying **Substitute Coal** on terms to be agreed under Section 3.4 or pursuant to a **Supply Shortfall Remedial Plan** approved by the Buyer pursuant to Section 4.6.2, assist the Buyer in obtaining coal that meets the **Coal Quality Specification** from alternative sources that are acceptable to the Buyer.

13.5.4. Either Party shall be entitled to terminate this Agreement on not less than thirty (30) days' prior notice to the other Party if an **Event of Force Majeure** has prevented or can reasonably be expected to continue to prevent the other Party from performing its obligations under this Agreement to a material degree for a period which is more than ninety (90) days. Such termination shall not excuse either Party from performing all obligations which have become due under this Agreement (and which were not excused by reason of an **Event of Force Majeure**) before the date of termination. As used in this Section 13.5.4, "**material**" shall be the supply of fifty percent (50%) of, or the procurement of, fifty percent (50%) of the **Annual Delivery Quantity**.

13.6 Obligations Not Excused or Suspended

No obligation of a Party to pay any amount when due under this Agreement shall be excused or suspended due to an **Event of Force Majeure**.

Article 14 DEFAULT AND TERMINATION

14.1 Seller Events of Default

Each of the following events, acts, occurrences or conditions shall constitute a “**Seller Event of Default**”:

- 14.1.1. the Seller fails to pay the Buyer any undisputed amount when due and such failure continues for twenty (20) Business Days following the Buyer’s written notice to the Seller of such default;
- 14.1.2. the Seller within any twelve (12)-month period during the Term, in each following case:
 - (i) fails to supply three (3) or more Shipments as and when required by the terms of this Agreement, or
 - (ii) supplies three (3) or more Shipments which do not comply with **the Coal Condition Undertaking**, whether or not the Buyer has accepted any of the Shipments; or
 - (iii) supplies three (3) or more Shipments which do not comply with the **Coal Quality Rejection Limits**, whether or not the Buyer has accepted any of the Shipments;
- 14.1.3. the Seller breaches or fails to perform any of its material covenants or obligations under this Agreement (other than any such breach referred to in Sections 14.1.1 and 14.1.2 or Sections 14.1.4 - 14.1.6) and such breach or failure is not remedied within sixty (60) days after written notice from the Buyer to the Seller stating that such breach or failure has occurred, identifying the breach or failure in question in reasonable detail and demanding the remedy thereof (the “**Seller Initial Cure Period**”); provided, however, if (i) the **Seller Initial Cure Period** is not reasonably sufficient to cure such breach or failure to perform, (ii) the Seller shall have commenced to cure such failure within the **Seller Initial Cure Period** and (iii) the Seller shall continuously and diligently pursue the cure of such breach or failure, such breach or failure shall not constitute a **Seller Event of Default** unless it is not remedied within one hundred twenty (120) days after the commencement of a **Seller Initial Cure Period**;
- 14.1.4. any representation or warranty made by the Seller being false or misleading in any material respect and thereby having a material adverse effect on the Seller’s ability to perform its obligations hereunder;
- 14.1.5. the Seller fails to comply with any decision or award of an arbitral tribunal or by an **Expert** within thirty (30) days of such decision or award becoming binding and due; or
- 14.1.6. the passing of a resolution for the bankruptcy, insolvency, winding up, liquidation of, or other similar proceeding relating to the Seller, the appointment of a trustee, liquidator, custodian, provisional manager or similar Person in such a proceeding which appointment has not been set aside or stayed within one hundred eighty (180) days of such appointment; or the making by a court having jurisdiction of an order winding up or otherwise confirming the bankruptcy or insolvency of the Seller, which order has not been set aside or stayed within one hundred eighty (180) days.

14.2 Remedies Following a Seller Event of Default

- 14.2.1. Upon the occurrence of a **Seller Event of Default**, the Buyer may, in addition to exercising any other rights or remedies available to it under applicable laws, terminate this Agreement upon

thirty (30) days' prior written notice to the Seller, which notice shall identify the relevant **Seller Event of Default**; provided that such termination may be made with immediate effect in the case of a **Seller Event of Default** under Sections 14.1.1, 14.1.5 and 14.1.6; and, provided further, that during the period following the delivery of the notice from the Buyer of the termination of this Agreement, the Seller may continue to undertake efforts to cure the default, and if the **Seller Event of Default** is cured or remedied within such thirty (30) day period (where such period is available), then the termination notice shall not be effective and the Buyer shall have no right to terminate this Agreement in respect of such cured default.

- 14.2.2. For so long as a **Seller Event of Default** is continuing, and pending the effectiveness of any termination of this Agreement pursuant to Section 14.2, the Buyer may acquire coal from Persons other than the Seller and may permanently or temporarily reduce the quantities of Coal the Buyer is obliged to purchase under Sections 4 and 4.2 with no liability to the Seller in respect of any such reductions.
- 14.2.3. Upon such termination of this Agreement by the Buyer, the Seller shall pay to the Buyer the **Seller Termination Amount** as full compensation to the Buyer for the damages suffered by it as a consequence of the termination of this Agreement due to a Seller Event of Default, in accordance with Section 14.8.3.

14.3 Buyer Events of Default

Each of the following events shall constitute a "**Buyer Event of Default**":

- 14.3.1. the Buyer fails to pay the Seller any undisputed amount when due and such failure continues for twenty (20) Business Days following the Seller's written notice to the Buyer of such default;
- 14.3.2. the Buyer fails to nominate three (3) or more Shipments as per Sections 6.4 within a **Delivery Year**, whether or not the Seller has accepted such failures;
- 14.3.3. the Buyer breaches or fails to perform any of its material covenants or obligations under this Agreement (other than any breach referred to in Section 14.3 or Sections 14.3.4 - 14.3.6) and such breach or failure is not remedied within sixty (60) days after written notice from the Seller to the Buyer stating that such a breach or failure has occurred, identifying the breach or failure in question in reasonable detail and demanding the remedy thereof (the "**Buyer Initial Cure Period**"); provided, however, if (i) the **Buyer Initial Cure Period** is not reasonably sufficient to cure such breach or failure to perform, (ii) the Buyer shall have commenced to cure such failure within the **Buyer Initial Cure Period** and (iii) the Buyer shall continuously and diligently pursue the cure of such breach or failure, such breach or failure shall not constitute a **Buyer Event of Default** unless it is not remedied within one hundred twenty (120) days after the commencement of the Buyer Initial Cure Period;
- 14.3.4. any representation or warranty made by the Buyer being false or misleading in any material respect and thereby having a material adverse effect on the Buyer's ability to perform its obligations hereunder;
- 14.3.5. the Buyer fails to comply with any decision or award of an arbitral tribunal or by an **Expert** within thirty (30) days of such decision or award becoming binding and due; or
- 14.3.6. the passing of a resolution for the bankruptcy, insolvency, winding up, liquidation of, or other similar proceeding relating to the Buyer, the appointment of a trustee, liquidator, custodian,

provisional manager or similar Person in such a proceeding which appointment has not been set aside or stayed within one hundred eighty (180) days of such appointment; or the making by a court having jurisdiction or an order winding up or otherwise confirming the bankruptcy or insolvency of the Buyer, which order has not been set aside or stayed within one hundred eighty (180) days.

14.4 Remedies Following a Buyer Event of Default

- 14.4.1. Upon the occurrence of a **Buyer Event of Default**, the Seller may, in addition to exercising any other rights or remedies available to it under applicable laws, terminate this Agreement upon thirty (30) days prior written notice to the Buyer, which notice shall identify the relevant **Buyer Event of Default**; provided that such termination may be made with immediate effect in the case of a Buyer Event of Default under Sections 14.3, 14.3.4, 14.3.5 and 14.3.6 and, provided further, that during the period following the delivery of the notice from the Seller of the termination of this Agreement, the Buyer may continue to undertake efforts to cure the default, and if the **Buyer Event of Default** is cured or remedied within such thirty (30) day period (where such period is available), then the termination notice shall not be effective and the Seller shall have no right to terminate this Agreement in respect of such cured default.
- 14.4.2. Upon such termination of this Agreement by the Seller, the Buyer shall pay to the Seller the **Buyer Termination Amount** as full compensation to the Seller for the damages suffered by it as a consequence of the termination of this Agreement due to a Buyer Event of Default, in accordance with Section 14.8.3.

14.5 Exclusion of Consequential Damages

- 14.5.1. Subject to Section 14.5.2, each Party shall be liable to the other Party for all losses, damages, costs and expenses suffered or incurred by the other Party, due to the breach, default or non-performance by such Party of any one or more of its obligations under this Agreement; provided that where recovery of specified US Dollar amounts and/or items of cost and losses and percentage limitations thereon are expressly provided herein as the compensation and remedy for a Party's failure to perform or non-performance or breach of its obligations hereunder or for termination of this Agreement, such specified US Dollar amounts and/or items of cost and losses expressly provided herein are intended to protect each Party's legitimate commercial interests and not to impose a penalty or unreasonable or unjustified burden on the paying Party and are agreed to be the sole and exclusive remedy for the failure on the part of a Party to perform or for the non-performance or breach of its obligations hereunder or for termination of this Agreement as provided herein, including the **Buyer Termination Amount** and the **Seller Termination Amount**, as the case may be.
- 14.5.2. Except as otherwise provided herein, neither the Seller nor the Buyer shall be liable for any:
- (a) special, incidental or consequential damages;
 - (b) lost revenues, or profits (whether or not special, incidental or consequential in nature),
- in the case of (a) and (b) arising out of or in connection with the performance or non-performance of this Agreement. This provision shall not limit the liabilities of either Party in respect of any indemnity obligation under this Agreement, the payment of any specified US Dollar amounts including under clause 4.7.3 or the **Seller or Buyer Termination Amount**.

14.6 Duty to Mitigate Losses

Each Party shall use all reasonable endeavours to mitigate its losses arising out of or in connection with an **Event of Default** by the other Party and/or termination of this Agreement by such Party.

14.7 Rights Not Waived

The failure of any Party to insist in any one or more instances upon strict performance of any of the provisions of this Agreement, or to take advantage of any of its rights under this Agreement, shall not be construed as a waiver of any such provisions or the relinquishment of any such rights. No waiver of any right or benefit under this Agreement by a Party shall be valid unless made in writing and executed by a duly authorized representative of the Party having such right or benefit.

14.8 Termination

14.8.1. This Agreement shall expire on upon expiry of the Term, unless terminated earlier or extended by Parties prior to the expiry date as provided in Section 2.5.

14.8.2. Notwithstanding the provision stipulated on Section 14.6, this Agreement may be terminated by any Party at any time before the expiry date as provided in Section 14.2 or 14.4.

14.8.3. Upon such termination of this Agreement, (i) if the Party in default is the Seller, the Seller shall pay to the Buyer the **Seller Termination Amount** or (ii) if the Party in default is the Buyer, the Buyer shall pay to the Seller the **Buyer Termination Amount**. In either case, such payment shall be made not later than thirty (30) days following the later of (a) the date on which this Agreement terminated or (b) the date on which any **Dispute** regarding the validity of such termination is finally resolved pursuant to Article 15.

14.8.4. The termination of the Agreement under and pursuant to this Article 13 from any cause shall not release any Party hereto from any liability which had arisen prior to and existed at the time of termination has already accrued to any Party hereto or from obligations and liabilities that, by their nature, should survive termination, including the obligations in Article 16 and in Section 3.5.2 and Section 6.11.5.

14.8.5. Upon termination of this Agreement pursuant to this Article 13, neither Party shall have any obligation to the other Party, except for the obligation to pay **the Seller Termination Amount** or the **Buyer Termination Amount**, as the case may be, and any other obligations that survive such termination as provided in Section 14.8.4 above. Except as otherwise specifically provided for herein, the only rights of the Parties to terminate this Agreement are as set out in this Article 14.

Article 15 DISPUTES

15.1 Mutual Discussions

Except as otherwise provided in this Agreement, if any dispute or difference of any kind whatsoever, including the existence, validity, termination or breach hereof, (a "**Dispute**") shall arise between the Buyer, on the one hand, and the Seller, on the other hand, in connection with, or arising out of, or relating to this Agreement, the **Dispute** shall be notified in writing ("**Notice of Dispute**") by one Party to the other Party and thereafter promptly referred to the chief executive officers of the Buyer and the Seller. The chief executive officers of the Buyer and the Seller shall attempt in good faith, for a period of thirty (30) days after either the Buyer or the Seller receives the **Notice of Dispute** from the other Party, to settle such **Dispute**.

15.2 Arbitration

- 15.2.1. If the Parties have been unable to resolve any **Dispute** within a period of thirty (30) days pursuant to Section 15, then the **Dispute** (other than a **Technical Dispute**) shall be referred to and finally resolved by arbitration administered by the Singapore International Arbitration Centre ("**SIAC**") in accordance with the Arbitration Rules of the SIAC (the "**Rules**"), which Rules are deemed to be incorporated by reference into this Article 14 and as may be amended by this Article.
- 15.2.2. The number of arbitrators shall be three (3) and shall be appointed in accordance with the **Rules**. No arbitrator shall be a national of the **Country of Origin** or Buyer's country of domicile, and no arbitrator shall be a present or former employee, consultant or agent of either Party or an Affiliate of either Party and shall not be a person who may have an interest in the outcome of the **Dispute**.
- 15.2.3. The language of the arbitration shall be English. The seat of arbitration shall be Singapore. The governing law of the arbitration agreement in this Section 15.2 shall be Singapore law.
- 15.2.4. The Parties agree that the International Bar Association Rules of Evidence in effect on the date of the commencement of the arbitration shall apply.
- 15.2.5. Any monetary award shall be rendered in Dollars. Judgment upon the award of the arbitrators may be entered in any court having jurisdiction over any Party concerned. The Parties waive any right to apply to any court of law and/or other judicial authority to determine any preliminary point of law and/or review any question of law and/or the merits, insofar as such waiver can validly be made. The Parties waive any right to punitive or other exemplary damages that may be allowed by common law or applicable statute. The parties shall not be deemed, however, to have waived any right to challenge any award on the ground that the tribunal lacked substantive jurisdiction and/or on the ground of serious irregularity affecting the tribunal, the proceedings or the award to the extent allowed by the law of the seat of arbitration.
- 15.2.6. The award rendered in any arbitration commenced hereunder shall be final and binding on the Parties and the Parties agree to implement the award without delay.

15.3 Resolution of Technical Disputes by Expert

- 15.3.1. If a **Dispute** relates exclusively to:

- (a) the sufficiency or accuracy of information provided by the Seller to the Buyer under Section 3.7;
- (b) the procedures or results of sampling, testing or analysis of Coal by the **Loading Port Laboratory** or an Alternative Laboratory under Article 7;
- (c) the results of the **Draft Surveys** at the **Loading Port**;
- (d) the calculation of **Demurrage** or **Despatch**; or
- (e) the determination of a **New Pricing Index** or **Changed Formulas** under Section 9.3,

(each a "**Technical Dispute**"), and the Seller and the Buyer have been unable to resolve the **Technical Dispute** within a period of thirty (30) days pursuant to Section 15 or such other time period as prescribed for discussions between the Parties, the **Technical Dispute** shall finally be settled by a person with expertise in the relevant area(s) to which the **Dispute** relates, selected in accordance with Section 15.3.2 (the "**Expert**") pursuant to this Section 15.3 upon the written request of either the Seller or the Buyer. The **Expert** shall not be deemed to be acting as an arbitrator, and its decision shall not purport to interpret or determine the legal rights and obligations of the Parties under this Agreement.

15.3.2. Within fourteen (14) days following any such written request, the Seller and the Buyer shall agree on the selection of the **Expert**. The **Expert** shall be independent, shall have substantial experience in the coal industry, transport of coal by sea, and/or other technical fields relevant to the **Technical Dispute**, and shall not be a present or former employee of any Party or their Affiliates or any person that may have an interest in the outcome of the **Technical Dispute**. If the Parties are unable to agree on the appointment of an **Expert** within that time, then either the Seller or the Buyer may request the International Chamber of Commerce's International Centre for Expertise to appoint a suitably qualified individual to act as the **Expert**. The fees of the **Expert** and the costs of proceedings undertaken by the **Expert** to resolve the **Technical Dispute** shall be shared by the Seller and the Buyer equally.

15.3.3. The **Expert** shall be instructed to decide the **Technical Dispute** within sixty (60) days (or such longer or shorter period as the Seller and the Buyer agree is appropriate under the circumstances) based on all information, data, further testing or other considerations the **Expert** considers relevant. Each Party undertakes to provide the **Expert** with prompt cooperation and make available to the **Expert** all information, data, and test results that may be requested by the **Expert** as necessary or useful to the resolution of the **Technical Dispute**. Unless otherwise agreed by the Parties, any meetings or proceedings conducted by the **Expert** shall be conducted in Hong Kong in the English language.

15.3.4. The **Expert** shall render its decision in writing, with a written explanation of the basis of the decision. The decision of the **Expert** shall be final and binding upon the Parties, save in the event of fraud or manifest error, and the Parties agree to implement the **Expert's** decision without delay.

15.4 Obligation to Continue Performance

Without prejudice to the other provisions of this Agreement, the Parties shall continue to perform all of their respective obligations under this Agreement notwithstanding the existence or status of any **Dispute** that may have arisen between them, and neither Party shall be entitled to suspend its

performance of this Agreement by reason only of the existence of such a **Dispute** or the reference of any matter or Dispute to an arbitral tribunal or to the **Expert**.

15.5 Survival

The provisions of this Article 14 shall survive the termination of this Agreement, howsoever caused.

For Information Only

Article 16 REPRESENTATIONS AND WARRANTIES

16.1 Representations and Warranties of the Buyer

The Buyer represents and warrants that:

- 16.1.1. it is a limited company duly organized and validly existing under the laws of Bangladesh, and has the legal capacity to execute, deliver and perform this Agreement and the transactions contemplated by it;
- 16.1.2. the execution, delivery and performance of this Agreement by the Buyer has been duly authorized by all requisite corporate action, and will not contravene any provision of, or constitute a default under, any other agreement or instrument to which the Buyer or its property is subject or any Legal Requirement applicable to the Buyer;
- 16.1.3. this Agreement constitutes a legal, valid and binding obligation of the Buyer and is enforceable against the Buyer in accordance with its terms;
- 16.1.4. it has obtained, and shall maintain without default throughout the **Term**, all Consents including any and all legislative, administrative and other governmental actions, as may be required to authorize its execution, delivery or performance of this Agreement and the transactions contemplated by it; and
- 16.1.5. there are no legal actions, suits or proceedings, either pending or to the Buyer's best knowledge, threatened, against or affecting the Buyer before any court or administrative body or arbitral tribunal that could reasonably be expected to adversely affect the ability of the Buyer to meet and carry out its obligations under this Agreement.

16.2 Representations and Warranties of the Seller

The Seller represents and warrants that:

- 16.2.1. it is a limited liability company duly organized and validly existing under the laws of Indonesia or Australia, and has the legal capacity to execute, deliver and perform this Agreement and the transactions contemplated by it.
- 16.2.2. the execution, delivery and performance of this Agreement by it has been duly authorized by all requisite corporate action, and will not contravene any provision of, or constitute a default under, any other agreement or instrument to which it or its property is subject or any Legal Requirement applicable to it.
- 16.2.3. this Agreement constitutes a legal, valid and binding obligation of it and is enforceable against it in accordance with its terms.
- 16.2.4. there are no legal actions, suits or proceedings, either pending or to its best knowledge, threatened, against or affecting it before any court or administrative body or arbitral tribunal that could reasonably be expected to adversely affect its ability to meet and carry out its obligations under this Agreement.
- 16.2.5. the Seller, through the Mines, has the legal right to mine and sell Coal from the mine that is the subject of the IUP meeting the **Coal Quality Specifications** in Appendix A, the **Coal Condition Undertaking**, and other terms and conditions of this Agreement, in quantities at all times sufficient to meet the Seller's obligations under this Agreement.

- 16.2.6. the Seller has made all necessary arrangements for production and inland transportation for the Coal from the Seller's mine to the **Loading Port**.
- 16.2.7. the Seller has sufficient **Marketable Coal Reserves** at the Mines to satisfy and guarantee its supply obligations to the Buyer during the term of this Agreement. The Seller has not contracted to sell to others Coal from the Marketable Coal Reserves of the Mines in such quantity as to jeopardize the Seller's ability to deliver the total maximum quantity of Coal that the Seller is obligated to deliver to the Buyer hereunder or to interrupt any deliveries to be made hereunder.

For Information Only

Article 17 CONFIDENTIALITY

17.1 Definition of Confidential Information

For the purposes of this Article 16, “**Confidential Information**” means:

- (a) the existence and terms of this Agreement, and
- (b) all documents or information in any form that are provided by the Seller to the Buyer or the Buyer to the Seller in the performance of this Agreement, whether or not such documents or information (i) are provided before or after the date this Agreement becomes effective, or (ii) have expressly been designated as confidential.

17.2 Obligation to Maintain Confidentiality

Subject to Section 17.3, no Party shall:

- (a) disclose any **Confidential Information** received by it under Section 17; or
- (b) use **Confidential Information** for any purpose other than in connection with its rights and interests or the performance of its obligations under this Agreement.

17.3 Permitted Disclosures

Notwithstanding Section 17.2, a Party may disclose **Confidential Information**:

- (a) to its directors, employees and professional advisors and/or to its Affiliates and/or their respective directors, employees and professional advisors relating to this Agreement and on a need-to-know basis, provided that the Party has procured that any such Person receiving the **Confidential Information** has been made aware of and agrees or is otherwise obligated to comply with the Party’s confidentiality obligations under this Article 16;
- (b) to the extent required to be disclosed by any **Legal Requirement**, provided the Party shall use reasonable efforts to notify the other Parties of any such requirement in advance of complying with it;
- (c) if the **Confidential Information** has been generated by the Party from documents or information that have not been received from the other Party and do not reflect the terms of this Agreement;
- (d) to prospective and actual **Financing Parties** and their advisors, provided they agree to be bound by the confidentiality provisions of this Agreement; or
- (e) in any proceedings under Section 15.2 or 15.3, provided the participants have been obligated to maintain the confidentiality of the **Confidential Information**.

Article 18 MISCELLANEOUS

18.1 Governing Law

This Agreement and any matters arising among the Parties with respect to or related thereto and any non-contractual obligations and liabilities arising out of or in connection with it or its subject matter shall be governed by, and be construed and interpreted in accordance with, the **laws of England and Wales**.

18.2 Notice

18.2.1. Any notice by a Party to the other Party in connection with this Agreement shall be in writing, in English, and delivered personally, sent by courier service, sent by fax, or sent as an attachment to an email to the following address, fax number or email address of the other Party (or to such other address, fax number, or email address as may have been previously notified by the Party in writing). Unless there is proof of earlier receipt, a notice shall be deemed to have been duly given and received three (3) Business Days after deposit with a courier service, postage prepaid, addressed to the Party to which notice is being given.

18.2.2. In the case of the Buyer, to:

.....
.....
Attention:
Facsimile No.:
Email:

18.2.3. In the case of the Seller, to:

XXX Coal Supplier
XXXX, Indonesia/Australia
Attention: The legal Counsel
Facsimile No.: XXXXX
Email: XXX@XXX

18.3 Assignment

18.3.1. Neither Party shall, without the prior written consent of the other Party, such consent shall not be unreasonably withheld, assign, novate, charge, mortgage, pledge, create a security interest or otherwise encumber any of its rights or obligations under this Agreement to any Person, except that:

- (a) such Party may assign, charge, mortgage, pledge, create a security interest or otherwise encumber its right to receive payments under this Agreement for the benefit of any Person providing finance or financial accommodation to or for the benefit of such Party (or any of its affiliates or subsidiaries) as collateral security (including rights arising from or by reference to this Agreement) for such financing or financial accommodation,

provided however, that such Party shall remain responsible at all times for the performance of this Agreement; and

- (b) such consent shall not be necessary in the context of (i) an acquisition of all or part of the Party, by asset sale, share sale, merger, change of control or operation of law, (ii) transactions which are merely to change the legal form or the domicile of a Party, and (iii) transactions with affiliated entities or parent companies that succeed to all or any part of the business, so long as the assignee agrees in writing to be bound by the terms and conditions of this Agreement.

18.3.2. The Seller may assign its rights under this Agreement with respect to the sale and Delivery to the Buyer of particular Cargo(es) to its wholly owned Subsidiary that holds the **Mining Right Authorizations** in form of IUP-OP for the relevant Mine from which the Cargo(es) is to be sold and delivered, provided that:

- (a) the assignee shall not be entitled to receive under this Agreement any greater amount than that to which the Seller would have been entitled;
- (b) the Parties and the assignee shall execute a deed of assignment in the form set out in Appendix N; and
- (c) the Seller shall at all times remain responsible for the proper performance of its obligations under this Agreement.

18.3.3. In the occurrence of any event as stipulated in the Section 18.3.1 (a) above, the relevant Party shall immediately notify, in writing, the other Party of the enforcement by a third Party, whether in whole or in part, of such assignment, charge, mortgage, pledge or encumbrance and the other Party shall give its acknowledgment to such assignment, charge, mortgage, pledge or encumbrance.

18.4 Security for Financing

18.4.1. The Buyer shall be entitled to assign its rights and/or obligations under this Agreement to the **Financing Parties** or their agent to provide security or collateral for loans and/or credit facilities made available to the Buyer pursuant to the **Financing Documents**, or to any entity/ies as may be required by the **Financing Parties** or such agent under the **Financing Documents**. The Seller undertakes to execute promptly any such acknowledgments or consents as may be reasonably necessary to give effect to such security or collateral arrangements or assignments. The Seller further undertakes to enter into a direct agreement with the **Financing Parties** or their security agent pursuant to which the Seller shall afford the **Financing Parties** or their agent, inter alia, a reasonable opportunity to cure or prevent a default by the Buyer hereunder, or to designate an appropriately qualified Person to assume, temporarily or permanently, the rights and obligations of the Buyer hereunder.

18.4.2. Each Party shall immediately notify the other Party, in writing, of any enforcement by a **Financing Party** or financial institution, whether in whole or in part, of any assignment, charge, mortgage, pledge or encumbrance made in accordance with Section 18.4.

18.5 Survival of Rights

The expiration or termination of this Agreement shall not affect any rights or obligations, which may

have accrued prior to or in connection with such expiration or termination, and shall not affect continuing obligations of each of the Parties under this Agreement or any other agreement between the Parties, which are expressed to continue after such expiration or termination.

18.6 Severability

In the event that any of the provisions, or portions or applications thereof, of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the Buyer and the Seller shall negotiate an equitable adjustment in the provisions of this Agreement with a view toward effecting the purpose of this Agreement, and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby.

18.7 Entire Agreement

This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof, and supersedes any and all prior and contemporaneous written and oral agreements, proposals, negotiations, understandings and representations pertaining to the subject matter hereof.

18.8 Amendments

No amendments or modifications of this Agreement shall be valid unless evidenced in writing and signed by a duly authorized representative of each of the Buyer and the Seller.

18.9 Contracts (Rights of Third Parties)

Unless expressly provided to the contrary, a Person who is not a Party may not enforce any of its terms under the Contracts.

18.10 Counterparts

This Agreement may be executed in any number of original copies and each such copy may be executed by each of the Parties in separate counterparts, each of which copies when executed and delivered by the Parties, shall constitute an original, but all of which shall together constitute one (1) and the same instrument.

18.11 Language

This Agreement and all notices or communication under or in connection with this Agreement shall be in English language, or if in any other language, shall be accompanied by a certified translation English. In the event of any conflict between the English documents and documents in any other language, the Parties agree for the English document to prevail.

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have caused this Agreement to be signed by their duly authorized officers as of the date indicated below and to be effective as of the day and year first above written.

XXXXXXXXXXXXXXXXXXXX

By: _____

Name:

Title:

By: _____

Name:

Title:

XXX Coal Supplier

By: _____

Name:

Title:

By: _____

Name:

Title: Director

For Information Only

APPENDIX A
COAL QUALITY SPECIFICATIONS

Parameters	Basis	Typical	Minimum	Maximum
Total Moisture	As received basis	%		
HGI		Points		
Proximate Analysis				
Inherent Moisture	Air dried basis	%		
Ash content	As received basis	%		
Total Sulphur	As received basis	%		
Volatile Matter	Air dried basis	%		
Fixed Carbon	Air dried basis	%		
Specific Energy				
Gross Calorific Value	Air dried basis	Kcal/kg		
Gross Calorific Value	As received basis	Kcal/kg		
Net Calorific Value	As received basis	Kcal/kg		
Ultimate Analysis				
Carbon	Dry basis	%		
Hydrogen	Dry basis	%		
Nitrogen	Dry basis	%		
Total Sulphur	As received basis	%		
Chlorine	Dry basis	%		
Phosphorus	Dry basis	%		
Oxygen	Dry basis	%		
Others	Dry basis	%		
Ash Fusion Temperature				
Initial Deformation Temperature				Deg C
Spherical Temperature	Reducing			Deg C
Hemispherical Temperature	Atmosphere			Deg C
Flow Temperature				Deg C
Coal Size				
Above 50mm				%
Below 2mm				%

Parameters	Basis	Typical	Minimum	Maximum
Elements in Ash				
SiO ₂	Dry basis	%		
Al ₂ O ₃	Dry basis	%		
Fe ₂ O ₃	Dry basis	%		
CaO	Dry basis	%		
MgO	Dry basis	%		
TiO ₂	Dry basis	%		
Na ₂ O	Dry basis	%		
K ₂ O	Dry basis	%		
SO ₃	Dry basis	%		
P ₂ O ₅	Dry basis	%		
Mn ₃ O ₄	Dry basis	%		
Others	Dry basis	%	-	
Trace Elements				
Antimony (Sb)	Air dried basis	ppm		
Arsenic (As)	Air dried basis	ppm		
Boron (B)	Air dried basis	ppm		
Cadmium (Cd)	Air dried basis	ppm		
Chlorine (Cl)	Air dried basis	ppm		
Chromium (Cr)	Air dried basis	ppm		
Cobalt (Co)	Air dried basis	ppm		
Copper (Cu)	Air dried basis	ppm		
Fluorine (F)	Air dried basis	ppm		
Lead (Pb)	Air dried basis	ppm		
Manganese (Mn)	Air dried basis	ppm		
Mercury (Hg)	Air dried basis	ppm		
Nickel (Ni)	Air dried basis	ppm		
Phosphorus (P)	Air dried basis	ppm		
Selenium (Se)	Air dried basis	ppm		
Thallium (Tl)	Air dried basis	ppm		
Vanadium (V)	Air dried basis	ppm		
Zinc (Zn)	Air dried basis	ppm		

APPENDIX B
COAL QUALITY REJECTION LIMITS

For Indonesian Coal

Parameters	Basis		Typical	Rejection
Total Moisture	As received basis	%	32.00	Above 36.00
HGI		Points	50.00	Below 46.00
Ash content	As received basis	%	04.00	Above 05.80
Total Sulphur	As received basis	%	00.20	Above 00.26
Net Calorific Value	As received basis	%	4100	Below 3900
Initial Temperature	Reducing Atmosphere	Deg C	1240	Below 1180
Coal particles below 2mm		%	25.00	Above 35.00

COAL QUALITY REJECTION LIMITS

For Australian Coal

Parameters	Basis		Typical	Rejection
Total Moisture	As received basis	%	20.00	Above 36.00
HGI		Points	52.00	Below 48.00
Ash content	As received basis	%	20.00	Above 25.00
Total Sulphur	As received basis	%	00.48	Above 00.68
Net Calorific Value	As received basis	%	5350	Below 5100
Initial Temperature	Reducing Atmosphere	Deg C	1300	Below 1240
Coal particles below 2mm		%	25.00	Above 35.00

APPENDIX C
SAMPLING AND TESTING STANDARDS

All Coal quality analyses shall be performed following the procedures and directions established from time to time by ASTM International. The following specific standards as in effect as of January 1, 2011 shall apply to collecting and preparing samples and testing of specific coal quality parameters:

PROCEDURE/TEST METHOD	STANDARD
1. Sampling	
Collecting Gross Samples	ASTM D2234/D2234M-10 & D7430-11 & 9411
Preparing Coal Samples for Analysis	ASTM D2013/D2013M-11
2. Testing of Analysis Samples	
Total Moisture	ASTM D3173-11 & D3302/D3302M-10
Inherent (Residual) Moisture	ASTM D3173-11 & D3302/D3302M-10
Volatile Matter	ASTM D3175-11H
Ash	ASTM D3174-11
Total Sulphur	ASTM D3177-02 (2007)
Carbon & Hydrogen	ASTM D5373-08
Nitrogen	ASTM D3179-02
Total Chlorine	ASTM 2361 ASTM D4208-02 (2007)
Fluorine	ASTM 3761-10
Calorific Value	ASTM D5865-11a
Grindability (HGI)	ASTM D 409/D409M-11
Fusibility (Ash Fusion Temperature)	ASTM D1857/D1857M-04(2010)
Bulk Density	ASTM D291-07e1
Coal Size (Fines and Top-size)	ASTM D4749-87 (2007)
Trace Elements in Coal Ash	ASTM 3682-01(2006)/ASTM D3683-04
Ash Composition Analysis	ASTM D3682-01 (2006), ASTM D2795, ASTM D1759

APPENDIX D
SAMPLE CALCULATIONS FOR PRICE ADJUSTMENTS FOR COAL QUALITY
VARIATIONS UNDER ARTICLE 10

If Coal from any Shipment fails to comply with the Coal Quality Rejection Limits, the Buyer shall have the right to reject the Shipment according to Section 5.1.1 or accepts delivery of such Shipment subject to price adjustment according to Section 5.2.1.

- **Price Adjustment for net calorific value where Actual NCV is greater than or less than 4100 Kcal/kg (NAR)**

$$P_{NCV} = P_n \times [(Actual\ NCV - 4100) / 4100]$$

If Actual NCV < 4100 (but >3900), e.g. 4000, $P_{NCV} = \$50.00 \times (4000 - 4100) / 4100 = -\$1.2195 / Tonne$

If Actual NCV >4100, e.g. 4150, $P_{NCV} = \$50.00 \times (4150 - 4100) / 4100 = \$0.6098 / Tonne$

- **Price Adjustment for total moisture where Actual TM is more than 32% by weight (ARB) and thus in breach of the relevant Coal Quality Rejection Limit, then,**

$$P_{TM} = P_n \times [(Actual\ TM - 32.0\%) / (1 - 32.0\%)]$$

If Actual TM > 32%, e.g. 35%, $P_{TM} = \$50.00 \times [(0.35 - 0.32) / (1 - 0.32)] = \$2.206 / Tonne,$

If Actual TM < 32%, $P_{TM} = \$0.00 / Tonne$

- **Price Adjustment for total sulphur content where Actual TS is more than 0.20% by weight (ARB)**

$$P_{TS} = (U.S.\$3.00 / Tonne) \times (Actual\ TS - 0.20\%) \times 100$$

If Actual TS is > 0.20% (but <0.26%), e.g. 0.24%, $P_{TS} = \$3.00 \times (0.24\% - 0.20\%) \times 100 = \$0.12 / Tonne$

If Actual TS < 0.20%, $P_{TS} = \$0.00 / Tonne$

- **Price Adjustment for total ash where Actual TA is more than 4.00% by weight (ARB)**

$$P_{TA} = (US\$ 0.30 / Tonne) \times (Actual\ TA - 4.00\%) \times 100$$

If Actual TA > 4.00% (but is < 5.80%), e.g. 4.5%, $P_{TA} = \$0.30 \times (4.50\% - 4.00\%) \times 100 = \$0.15 / Tonne$

If Actual TA < 4.00%, $P_{TA} = \$0.00 / Tonne$

Note: The sample calculations take a shipment from Indonesia for instance.

P_n is the FOBT Price per Tonne for a Shipment, before adjustment for quality variations and is determined in accordance with Section 9.2. In sample calculations above, P_n is assumed to be U.S.\$50.00/Tonne. U.S.\$3.00/Tonne, and US\$ 0.30 /Tonne here are for demonstration only.

APPENDIX E FORM OF CERTIFICATE OF ANALYSIS

CERTIFICATE OF SAMPLING AND ANALYSIS

Certificate No.: XXX/XXX

Page No. 1/1

To : RNPL
Our Reference :
Name of Vessel : MV
Quantity : XX,XXX METRIC TONNES
Shipper : XXX COAL SUPPLIER XXXXX
Cargo Description : INDONESIAN STEAM COAL IN BULK
Port of Loading : XXX COAL TERMINAL, INDONESIA
Date of Loading : <Date><Month><Year>

THIS IS TO REPORT that in accordance with instructions received from our principal, XXX Coal Supplier, we have performed the inspection, sampling and analysis of the coal consignment nominated above. We hereby report the following.

SAMPLING: MECHANICAL SAMPLING as per ASTM STANDARDS D2234 Condition 1-B-1/ D7430 Part A. Samples collected throughout the entire loading/ discharging of the Vessel

ANALYSIS: Xxxx (xx) Sub-lot samples representing xxxxx Metric Tons were analyzed as per ASTM standards

<u>Parameter</u>	<u>Results</u>
TOTAL MOISTURE (As Received Basis)	%
INHERENT MOISTURE (Air Dried Basis)	%
ASH (As Received Basis)	%
TOTAL SULPHUR(Air Dried basis)	%
VOLATILE MATTER (Air Dried Basis)	%
FIXED CARBON (As Received Basis)	%
GROSS CALORIFIC VALUE (GAR) (As Received Basis)	KCAL / KG
NET CALORIFIC VALUE (NAR) (As Received Basis)	KCAL / KG
HARDGROVE GRINDABILITY INDEX (HGI)	
SIZE Above 50 MM	%
SIZE Below 2 MM	%
ASH FUSION TEMPERATURE (Reducing Atmosphere)	
INITIAL DEFORMATION	°C
HEMISPHERICAL	°C
FLOW	°C

Signed and Dated,
<Date><Month><Year>

Issued by

APPENDIX F FORM OF FULL CERTIFICATE OF ANALYSIS

Certificate No.: XXX/XXX

Page No. 1/2

CERTIFICATE OF SAMPLING AND ANALYSIS

Addendum to : Certificate of Sampling and Analysis No..... Issued on

Our Reference :

Name of Vessel : MV

Quantity : XX,XXX METRIC TONNES

Shipper : XXX COAL SUPPLIER XXXX

Cargo Description : INDONESIAN STEAM COAL IN BULK

Port of Loading : XXX COAL TERMINAL, INDONESIA

Date of Loading : <Date><Month><Year>

THIS IS TO REPORT that in accordance with instructions received from our principal, XXX Coal Supplier., we have performed the inspection, sampling and analysis of the coal consignment nominated above. We hereby report the following.

SAMPLING: MECHANICAL SAMPLING as per ASTM STANDARDS D2234 Condition 1-B-1/ D7430 Part A. Samples collected throughout the entire loading/ discharging of the Vessel

ANALYSIS: Xxxx (xx) Sub-lot samples representing xxxxx Metric Tons were analyzed as per ASTM standards, except as noted

ULTIMATE ANALYSIS (Dried Basis)

CARBON : %

HYDROGEN : %

NITROGEN : %

SULPHUR : %

CHLORINE : %

OXYGEN : %

ASH FUSION TEMPERATURE (Oxidizing Atmosphere)

INITIAL DEFORMATION : 0C

SPHERICAL : 0C

HEMISPHERICAL : 0C

FLOW : 0C

ASH ANALYSIS (Dried Basis)

SiO ₂	:	%
Al ₂ O ₃	:	%
Fe ₂ O ₃	:	%
CaO	:	%
MgO	:	%
TiO ₂	:	%
Na ₂ O	:	%
K ₂ O	:	%
P ₂ O ₅	:	%
Mn ₃ O ₄	:	%
SO ₃	:	%

TRACE ELEMENT (Dry basis)

Mercury	:	PPM
Cadmium	:	PPM
Arsenic	:	PPM
Lead	:	PPM
Chromium	:	PPM
Fluorine	:	PPM
Boron	:	PPM
Selenium	:	PPM
Zinc	:	PPM
Copper	:	PPM

Issued by

APPENDIX G

FORM OF BENEFICIARY CERTIFICATE, INVOICE AND DEBIT & CREDIT NOTE

FORM OF BENEFICIARY CERTIFICATE

To: [Buyer]

Att: [_____]

Contract No.: [_____]

Invoice No.: [_____]

Date: [_____]

Cargo / Terms	Bulk Shipment of Coal FOB [Loading Port], [the Country of Origin] Name of Vessel: [_____]	
	Date of Bill of Lading: [_____]	
	Bill of Lading Weight: [_____]	
	Bill of Lading No.: [_____]	
	Country of Origin: [_____]	
	Shipment from: [_____]	
	Port of discharge: [_____]	
Quality	As set out in the attached Laboratory Certificate of Analysis	
Quantity (Q _n)	As set out in the attached Certificate of Weight from the Loading Port	[_____] Tonnes
Calculation of Delivered Price (DP _n)	$DP_n = P_n + P_{NCV} - P_{TM} - P_{TS} - P_{TA} =$ $P_n = (IPV_n \times \text{BaseCV} / 6000) \times D + \text{PAF} =$ $P_{NCV} = P_n \times [(\text{Actual NCV} - \text{BaseCV}) / \text{BaseCV}] =$ $P_{TM} = P_n \times [(\text{Actual TM} - 32.0\%) / (1 - 32.0\%)] =$ $P_{TS} = (\text{U.S.}\$...../\text{Tonne}) \times (\text{Actual TS} - 0.20\%) \times 100 =$ $P_{TA} = (\text{U.S.}\$...../\text{Tonne}) \times (\text{Actual TA} - 4.00\%) \times 100 =$	USD ____/Tonne
Invoice Value (IV _n)	IV _n = Q _n × DP _n =	USD _____

Payment	Settlement by Letter of Credit To: [Seller] Beneficiary Bank: A/C No.: A/C Name:	
Calculation Sheet Shipment ____ (Invoice No. ____)		
1	Calculation of IPV_n , D and PAF $gcNEWC_n$ for this Shipment is _____, thus $IPV_n =$ _____, $D =$ _____, and $PAF =$ _____.	
2	Calculation of the Base Price (P_n) before any adjustment $P_n = (IPV_n \times BaseCV/6000) \times D + PAF =$ $Q_n \times P_n =$	USD \pm _____/Tonne USD \pm _____
3	Calculation of Price Adjustment for Net Calorific Value $P_{NCV} = P_n \times [(Actual\ NCV - BaseCV) / BaseCV] = \pm$ $Q_n \times P_{NCV} = \pm$	USD _____/Tonne USD _____
4	Price for the Shipment After Adjustment for Energy Content Only Row 2 + Row 3 : $Q_n \times P_n + Q_n \times P_{NCV} =$	USD _____
5	Adjustment to Price for the Shipment for Quality Factors Affecting Plant Operating Costs {Total Moisture, Total Sulphur and Total Ash } $P_{TM} = P_n \times [(Actual\ TM - 32.0\%) / (1 - 32.0\%)] =$ $P_{TS} = (U.S.\$...../Tonne) \times (Actual\ TS - 0.20\%) \times 100 =$ $P_{TA} = (U.S.\$...../Tonne) \times (Actual\ TA - 4.00\%) \times 100 =$ $Q_n \times (P_{TM} + P_{TS} + P_{TA}) =$	USD _____/Tonne USD _____/Tonne USD _____/Tonne USD _____
6	Delivered Price and Invoice Value $DP_n = P_n + P_{NCV} - P_{TM} - P_{TS} - P_{TA} =$ Row 4 - Row 5: $IV_n = Q_n \times DP_n =$	USD _____/Tonne USD _____

Yours sincerely,

[Seller]

By: _____

Name:

Title:

For Information Only

INVOICE

To :

NO. : XXXA/BRT/XXX/XXX/XXXX

Date : <Date><Month><Year>

NO.	DESCRIPTION	QTY (M-TON)	UNIT PRICE	AMOUNT (US\$)
	Steam Coal in bulk loaded into MV. XXX as per B/L dated <Date><Month><Year>	XXX	US \$ XX.XX	XXX
TOTAL				0.00

PLEASE TRANSFER PAYMENT IN FULL TO OUR ACCOUNT :

CORRESPONDENT BANK :
SWIFT ADDRESS :

FOR A/C OF BENEFICIARY BANK :

SWIFT ADDRESS :

BENEFICIARY NAME :
A/C NO :
ATTENTION :

MESSAGE FOR REMITTING BANK :

THE SELLER

DEBIT NOTE/CREDIT NOTE

TO:	NO.: XXX/XXX/XXX/XX
	DATE: <DATE><MONTH><YEAR>
NAME OF VESSEL	: MV
PORT OF SHIPMENT	: BALIKPAPAN OAL TERMINAL, INDONESIA
DESTINATION	
B/L DATE	: <DATE><MONTH><YEAR>
SAILING DATE	: <DATE><MONTH><YEAR>
CERTIFICATE WEIGHT NO.	: XX/XXXX/XXX
QUANTITY	: XX,XXX METRIC TONNES

RESULTS OF THE ANALYSIS OF THE SAMPLES WITHDRAW AS ABOVE AND ANALYSED IN ACCORDANCE WITH ASTM STANDARDS.

TOTAL MOISTURE	(AS RECEIVED BASIS)	XXX%
INHERENT MOISTURE	(AIR DRIED BASIS)	XXX%
TOTAL ASH	(AS RECEIVED BASIS)	XXX%
VOLATILE MATTER	(AIR DRIED BASIS)	XXX%
FIXED CARBON	(AS RECEIVED BASIS)	XXX%
TOTAL SULPHUR	(AS RECEIVED BASIS)	XXX%
GROSS CALORIFIC VALUE	(AS RECEIVED BASIS)	XXXX KCAL/KG
NET CALORIFIC VALUE	(AS RECEIVED BASIS)	XXXX KCAL/KG
GRINDABILITY (HGI)		XX
ASH FUSION TEMPERATURE (REDUCING ATMOSPHERE)		
DEFORMATION		XXXX °C
HEMISPHERE		XXXX °C
FLOW		XXXX °C

UNIT PRICE: USD XX.XX/MT FOBT BALIKPAPA COAL TERMINAL, INDONESIA
(BASE ON NET CALORIFIC VALUE XXXX KCAL/KG AS RECEIVED BASIS)

PRICE ADJUSTMENT

1) THE ACTUAL NET CALORIFIC VALUE IS XXXX KCAL/KG, THE PRICE ADJUSTMENT FOR ENERGY CONTENT IS:

PRICE INCREASED/DECREASED = USD XX.XX × (XXXX KCAL/KG -XXXX KCAL/KG)/XXXX
KCAL/KG = USD XX.XX

PAGE 1/2

2) THE ACTUAL TOTAL MOISTURE IS XXX% AND HIGHER THAN 32.0%, THE PRICE ADJUSTMENT FOR TOTAL MOISTURE IS:

$$\text{PRICE ADJUSTMENT} = \text{USD } XX.XX \times (\text{XXXX}\% - 32.0\%) / (1 - 32\%) = \text{USD } XX.XX$$

3) THE ACTUAL TOTAL SULPHUR IS XXX% AND HIGHER THAN 0.20%, THE PRICE ADJUSTMENT FOR TOTAL SULPHUR IS:

$$\begin{aligned} \text{PRICE ADJUSTMENT} &= \text{USD } XX.XX \times (\text{XXXX}\% - 0.20\%) \times 100 \\ &= \text{USD } XX.XX \end{aligned}$$

4) THE ACTUAL TOTAL ASH IS XXX% AND HIGHER THAN 4.00%, THE PRICE ADJUSTMENT FOR TOTAL ASH IS:

$$\begin{aligned} \text{PRICE ADJUSTMENT} &= \text{USD } XX.XX \times (\text{XXXX}\% - 4.00\%) \times 100 \\ &= \text{USD } XX.XX \end{aligned}$$

$$\text{FINAL FOBT PRICE } DP_n = \text{USD } XX.XX + \text{USD } XX.XX - \text{USD } XX.XX - \text{USD } XX.XX - \text{USD } XX.XX = \text{USD } XX.XX$$

$$\text{TOTAL AMOUNT: } \text{USD } XX.XX \times XX,XXX \text{ MT} = \text{USD } XXX$$

$$\text{LESS INVOICE: } XX/XXX/XXXX = (\text{USD } XXX)$$

$$\text{AMOUNT TO BE/OVER CLAIMED} = \text{USD } XXX$$

SAY (IN WORDS): US DOLLARS

PLEASE TRANSFER PAYMENT IN FULL TO OUR ACCOUNT:

CORRESPONDENT BANK :
ADDRESS :
SWIFT CODE :
FOR A/C OF BENEFICIARY BANK :
ADDRESS :
SWIFT CODE :
BENEFICIARY NAME :
A/C NO. :
ATTENTION :
MESSAGE FOR REMITTING BANK :

THE SELLER

PAGE 2/2

APPENDIX H FORM OF BILL OF LADING

Page 2

CODE NAME: "CONGENBILL", EDITION 1994

BILL OF LADING
TO BE USED WITH CHARTER-PARTIES

B/L No.

Shipper

Consignee

DRAFT B/L

Notify Party

Vessel

Voy No.

Port of loading

Port of discharge

Shipper's description of goods

Gross Weight

XX,XXX METRIC TONS

[of which on deck at Shipper's risk, the Carrier not
being responsible for loss or damage howsoever arising]

Freight payable as per CHARTER-PARTY dated FREIGHT ADVANCE Received on account of freight Time used for loading Days Hours.	<p style="text-align: center;">SHIPPED at the Port of Loading in apparent good order and condition on board the Vessel for carriage to the Port of Discharge or so near thereto as she may safely get the goods specified above</p> <p>Weight, measure, quality, quantity, condition, contents and value unknown</p> <p>IN WITNESS whereof the Master or Agent of the said Vessel has signed the number of Bills of Lading indicated below all of this tenor and date, any one of which being accomplished the others shall be void</p> <p style="text-align: center;">FOR CONDITIONS OF CARRIAGE SEE OVERLEAF</p>
---	---

Freight payable at	Place and date of issue 0 JUNE XX, 2015
Number of original B/L <p style="text-align: center;">3 (THREE)</p>	Signature FOR AND ON BEHALF OF MASTER 0 CAPT. TBA AS AGENT

Printed and sold by
 Witherby & Company Limited 32/36 Aylesbury Street,
 London EC1R 0ET
 Tel. No. 020 7251 5341 Fax No. 020 7251 1298
 by authority of The Baltic and International Maritime Council,
 (BIMCO) Copenhagen

APPENDIX J
FORM OF CERTIFICATE OF HOLDS CLEANLINESS

Certificate No.:

Page No. 1/1

CERTIFICATE OF HOLDS CLEANLINESS

Our Reference :

Name of Vessel : MV

Quantity : XX,XXX METRIC TONNES

Shipper: XXX COAL SUPPLIER XXXX

Cargo Description : INDONESIA STEAM COAL IN BULK

Port of Loading : XXXX COAL TERMINAL, INDONESIA

Date of Loading : <Date><Month><Year>

THIS IS TO REPORT that in accordance with instructions received from our principal, XXX Coal Supplier., we have attended (on board the above-mentioned Vessel for the purpose of carrying out intervention on the above Vessel hold and hatches and we report as follows:

FINDINGS:

Cargo Holds: 1, 2, 3, 4, 5, 6 and 7

Previous Cargo:

Method of Cleaning Brushed, washed and ventilated

The above Hold(s) in our opinion, as far as could be ascertained were found to be clean to receive the intended cargo.

This statement covers the cleanliness of the cargo holds of the above Vessel at the time of intervention only. It is the ship's responsibility to prepare the ship adequately for receipt to the nominated cargo.

Signed and Dated,

<Date><Month><Year>

Issued by

APPENDIX K
FORM OF CERTIFICATE OF WEIGHT

Certificate No.:

Page No. 1/1

CERTIFICATE OF WEIGHT

Our Reference :
Name of Vessel : MV
Quantity : XX,XXX METRIC TONNES
Shipper : XXX COAL SUPPLIER XXXX
Cargo Description : INDONESIAN STEAM COAL IN BULK
Port of Loading : XXXX COAL TERMINAL, INDONESIA
Date of Loading : <Date><Month><Year>

THIS IS TO REPORT that in accordance with instructions received from our principal, XXX Coal Supplier, we have attended (sub-contracted XXXXXXXX to attend) on board the above-mentioned Vessel for the purpose of conducting a draft survey of the above-mentioned commodity whose reported as follows:

XX,XXX Metric Tons

All drafts, densities, as well as fresh water, ballast, bilge and fuel oil soundings were ascertained in conjunction with the Vessel's Officers.

All calculations are based upon the Vessel's hydrostatic tables and the Vessel's calibrated tank sounding tables, as provided to the draft Surveyors.

This survey was conducted by using the internationally accepted method of determining Vessel's displacement by draft survey. This certificate is not a certificate of seaworthiness and only applies to the cargo loaded at this date, time, and place with the master being responsible for the stability and seaworthiness of his Vessel at all times.

Signed and Dated,

<Date><Month><Year>

Issued by

APPENDIX L
LOADING PORT RESTRICTIONS

The Seller shall provide to the Buyer a safe berth/anchorage facility or area at the Loading Port where the Vessel can when fully laden safely reach and safely leave and where the Vessel can always lie safely afloat during loading. The Seller guarantees that it can and will accept Vessels onto the berth/anchorage and into the Loading Port safely, if not specified therein, with the maximum beam, LOA and maximum draft of the Vessel alongside the berth/anchorage, and when sailing to leave the port, which is customary for the port/point of shipment. The Seller shall indemnify the Buyer in respect of all liabilities, losses, costs, expenses, claims demands or proceedings suffered or incurred by the Buyer as a result of any breach of such guarantee.

Loading Port			
Location			
Coordinates			
Berth Length			
Berth Depth			
Channel Depth			
Maximum Permissible Vessel Limit			
LOA			
Breadth			
D.W.T.			
Draft			
Air Draft			
Permissible Vessel Type			
Shiploader(s)			
No & Type			
Capacity			
Outreach			
Clean Height			
Travel Distance			
Vessel de-ballasting rate			

APPENDIX M
MINING RIGHTS AUTHORIZATIONS

The following Mining Rights Authorizations are attached.

For Information Only

APPENDIX N
FORM OF DEED OF NOVATION

THIS Deed of Novation (the “Deed”) is made on XXXXXXX by and between:

2. RPCL-NORINCO INTL POWER LIMITED, a joint venture company of Rural Power Company Limited (RPCL), Bangladesh and NORINCO International Corporation Ltd., China, incorporated under the laws of Bangladesh and having its principal place of business at 7th Floor, Atlanta Trade Center, House# 01, Road# 1/A, Sector# 04, Uttara Model Town, Dhaka, Bangladesh (hereinafter referred to as the “**Buyer**” or “**RNPL**”), which expression includes its successors and permitted assigns, and;
3. [**an Affiliate of RNPL**], a company duly incorporated under the laws of XXXXX and having its operations office at XXXXXXX, XXXXXXXXX, XXXXXXXXX, XXXXXXXXX, XXXXXXX, XXXX. (“**XXX**”); and
4. [**insert Seller**], a XXXXXXX, XXXXXXXXX, XXXXXXXXX, XXXXXXXXX, XXXXXXX (the “**Seller**” or “**YYY**”)

The Buyer, XXX and YYY individually may be referred as “**Party**” and, collectively, the “**Parties**”.

WHEREAS:

- A. The Buyer and YYY are parties to a Contract Agreement for the Sale and Purchase of Coal for Patuakhali 1320 (2×660) MW Coal Fired Thermal Power Plant dated [.....] and as amended from time to time (“**Contract**”).
- B. Due to certain technical issues, the Buyer wishes to assign all its rights under the Contract in relation to XXX (xx) shipments of [MT (+/-10%)] coal (“**Assigned Tonnage**”) to **XXX** for shipment during [**insert schedule**] (under mutually agreed laycan(s)).
- B. **YYY** is willing to accept such assignment as of the date hereof on the terms and conditions set out below.

WHEREBY, the Parties agree as follows:

1. Capitalised terms used but not defined in this **Deed** shall have the meaning given to them in the Contract.
2. The Buyer hereby assigns to **XXX** all of its rights under the Contract with respect to the Assigned Tonnage, and **XXX** hereby accepts the assignment of such rights from the Buyer.
3. For the purposes of Section 18.3 of the Contract, **YYY** hereby acknowledges and consents to the assignment of rights from the Buyer to **XXX** with respect to the Assigned Tonnage as set out herein, provided that:
 - a. **XXX** shall not be entitled to receive under the Contract any greater amount than that to which the Buyer would have been entitled;
 - b. notwithstanding the assignment under this Deed, except in respect of invoicing, and payment of invoices, under Article 11 of the Contract, **the Buyer** shall be entitled to continue to deal directly

with the Seller in the performance of the Seller's obligations under the Contract with respect to the Assigned Tonnage; and

- c. The Seller shall at all times remain responsible for the proper performance of its obligations under the Contract, including, without limitation, all obligations with respect to the Assigned Tonnage.
- 4. A person who is not a party to this Deed shall have no rights under the Contracts to enforce any term of, or enjoy any benefit under, this Deed.
- 5. This Deed may be executed in any number of original copies and each such copy may be executed by each of the Parties in separate counterparts, each of which copies (and counterparts) when executed and delivered by the Parties, shall constitute an original, but all of which shall together constitute one (1) and the same instrument.
- 6. This Deed and any matters arising among the Parties with respect to or related thereto and any non-contractual obligations and liabilities arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the **laws of England and Wales. Disputes** under this Deed shall be resolved in accordance with Article 15 of the Contract, as if set out, mutatis mutandis, in full in this Deed.

IN WITNESS WHEREOF, this Deed has been executed and delivered on the date first stated above.

RNPL

[an Affiliate of RNPL]

[the Seller]

Authorized Signatory

Authorized Signatory

Authorized Signatory

Authorized Signatory

Authorized Signatory

APPENDIX O
FORM OF CONFIRMATION LETTER

To: [Buyer]
 Att: [_____]
 Contract No.: [_____]
 Date: [_____]

Dear Sir,

We hereby submit a Confirmation Letter as following details.

Cargo / Terms	Bulk Shipment of Coal FOB [Loading Port], [the Country of Origin] Name of Vessel: [_____] Expected Loading Date: [_____] Bill of Lading No.: [_____] Country of Origin: [_____] Shipment from: [_____] Port of discharge: [_____]	
Approximate Quantity (Q _n)	Actual quantity will be the figure as set out in the attached Certificate of Weight from the Loading Port.	[_____] Tonnes
Calculation of Expected Delivered Price (DP _n)	1. Calculation of IPV _n , D and PAF: gcNEWCV _n for this Shipment is _____, thus IPV _n = _____, D = _____, and PAF = _____. 2. Calculation of P _n , P _{NCV} , P _{TM} , P _{TS} and P _{TA} : $P_n = (IPV_n \times \text{BaseCV}/6000) \times D + \text{PAF} =$ $P_{NCV} = P_n \times [(\text{Actual NCV} - \text{BaseCV}) / \text{BaseCV}] =$ $P_{TM} = P_n \times [(\text{Actual TM} - 32.0\%) / (1 - 32.0\%)] =$ $P_{TS} = (\text{U.S.}\$/\text{Tonne}) \times (\text{Actual TS} - 0.20\%) \times 100 =$ $P_{TA} = (\text{U.S.}\$/\text{Tonne}) \times (\text{Actual TA} - 4.00\%) \times 100 =$ 3. Calculation of Delivered Price (DP _n) $DP_n = P_n + P_{NCV} - P_{TM} - P_{TS} - P_{TA} =$	USD ____/Tonne

<p>Expected Invoice Value (IV_n)</p>	<p>$IV_n = Q_n \times DP_n =$</p>	<p>USD _____</p>
<p>Letter of Credit</p>	<p>Amount of this Letter of Credit: [_____] Beneficiary Name: [_____] Beneficiary Bank: [_____] Beneficiary's A/C No.: [_____] Beneficiary's A/C Name: [_____]</p>	

You are kindly requested to establish a Letter of Credit for the specific shipment in favour of us accordingly.

Yours sincerely,

[Seller]

By: _____

Name:

Title:

Note: In this form, the shipment from Indonesia is assumed for demonstration. For the shipment from Australia, the relevant figures in the calculations of Delivered Price shall be changed accordingly.

**APPENDIX P
BANK GUARANTEE**

AS PERFORMANCE SECURITY

*[Performance Security to be issued on non-judicial stamp paper of appropriate value by a **scheduled bank in Bangladesh or a foreign bank of international repute having correspondent bank located in Bangladesh, to make it enforceable, as stated under the relevant ITB Clause]***

Notification of Award No.: _____

Date: _____

Beneficiary: RPCL-NORINCO INTL. POWER LIMITED

Atlanta Trade Center (7th Floor)
House # 01, Road # 1/A, Sector # 04
Uttara Model Town, Dhaka-1230, Bangladesh.

PERFORMANCE SECURITY No.: _____ *(insert Performance Guarantee number)*

We have been informed that _____ *[name of the Contractor & Address]* (hereinafter called "the Contractor") has undertaken, pursuant to Notification of Award (NOA) No. *[reference number of award notification]* dated [date of NOA] (hereinafter called "the Contract") for Procurement of Coal for Patuakhali 1320 (2×660) MW Coal Fired Thermal Power Plant at Khalapar, District Patuakhali, Bangladesh under the Contract.

Furthermore, we understand that, according to your conditions, Contract must be supported by a Performance Guarantee.

At the request of the Contractor, we _____ *[name of Bank, Branch and Address]* hereby irrevocably and unconditionally undertake to pay you, without cavil or argument, any sum or sums not exceeding in total an amount of US Dollar _____ *[amount in figures]* (_____) *[amount in words]*, upon receipt by us of your written demand accompanied by a written statement stating that the Contractor is in breach of its obligation(s) under the Contract conditions, without you needing to prove or show grounds or reasons for your demand of the sum specified therein.

Unless extended by us in writing, Guarantee will expire on [date of validity of guarantee] ("Expiry Date").

Consequently, any demand for payment under this guarantee must be received by us at the office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 758.

[signature(s)]

Note: All italicized text is for use in preparing this form and shall be deleted from the final product.