

To

[Name & Address of the Assured]

Dear Mr./Ms.[\_\_\_\_\_]

Subject: Letter of Assurance

### **Preamble**

In consideration of the request by [*insert name of the applicant and address of the plant*] (hereinafter referred to as “**the Assured**”) for issuance of Letter of Assurance (hereinafter referred to as “**LOA**”) requiring [*insert quantity*]tonnes per annum (tpa)] of [*insert Grade of coal*] Grade coal for its [*insert capacity*]MW Power Plant [to be] located at [*insert name of the location of the Power Plant*] (hereinafter referred to as “**the Plant**”), from about [ *insert the date of commencement of coal supplies*], as requested by the Assured, [*insert name of the CIL subsidiary*] (hereinafter referred to as “**the Assurer**”) hereby provisionally assures that it would endeavour to supply coal to the Assured subject to the following terms and conditions:

## **1. Scope of Assurance**

### **1.1 Quantity, Grade and Source of coal**

Subject to the Assured fulfilling its obligations in accordance with Clause 2 to the satisfaction of the Assurer within the period of validity of this LOA and the signing of the Fuel Supply Agreement (FSA) within three (3) months thereafter, the Assurer shall endeavour to supply, as per the normative requirement of the Plant, [*insert quantity*] million tonnes per annum (mtpa) of [*insert Grade of coal*] Grade(s) coal to the Assured, which shall be subject to review and assessment by the Assurer of the actual coal requirement of the Assured as well as the incremental availability of coal from the mines of the Assurer and of imported coal. It is expressly clarified that in the event that the incremental coal supplies available with the Assurer (after meeting out the commitments already made) is less than the incremental coal demand, such incremental availability shall be distributed on pro-rata basis and the balance quantity of coal requirement shall be met through imported coal available with the Seller, which too shall be distributed on pro-rata basis.

### **1.2 Price of coal**

The price of coal assured herein shall be as per the notified price of CIL from time to time. Notwithstanding, in case the quantity of normative requirement, as

stated in Clause 1.1 above, necessitates opening of a dedicated mine, then coal shall be priced at the higher of the cost plus reasonable return or such notified price. The quantity of imported coal that may be supplied to the Assured, as mentioned in Clause 1.1, shall be charged at the landed cost plus service charge. Such service charge shall be notified by the Assurer from time to time. The Assured shall be liable to pay all applicable taxes and statutory levies.

### **1.3 Change in law**

In the event of an enactment, promulgation, amendment or repeal of any statute, policy, decree, notice, rule or direction by any government instrumentality that would have an impact on the coal supply terms assured hereof; the Assurer shall be free to amend or repeal this LOA without any liabilities or damages, whatsoever, payable to the Assured.

### **1.4 Force-Majeure affecting the Assurer**

In the event that development of the coal block identified by the Assurer for the purpose of meeting the normative requirement stated in Clause 1.1 is delayed or terminated for reasons including de-allocation of such block by the Government and inordinate delays faced in acquiring land or receiving environmental/forest clearances; Or that imports of coal required for the purpose of meeting the portion of normative requirement stated in Clause 1.1 is reasonably withheld owing to such factors as global shortage or a Force-Majeure event affecting the source(s) of imported coal or logistical bottlenecks faced in transportation and unloading; which are not within the control of and not caused by the negligence or fault of the Assurer; the Assurer shall be free to amend or repeal this LOA without incurring any liability whatsoever, including the liability for payment of damages to the Assured.

## **2. Fulfillment of Assured's obligations**

### **2.1 Time-bound achievement of milestones**

The Assured shall undertake to complete all the activities, as mentioned in Annexure 1 to this LOA, within twenty four (24) months from the date of issue of LOA and each activity within the time-period mentioned against it unless such completion is affected due to any Force Majeure event provided that such Force Majeure event shall not include inability or failure to obtain financing for the Plant or failure to comply with the existing rules and regulations with respect to statutory clearances applicable to the Plant or any such event resulting from the negligence, omission or default by the Assured; and the Assured notifies in

writing within seven (7) of occurrence of any such Force Majeure event along with documentary evidence of the same.

## **2.2 Reporting Requirement**

The Assured shall submit the status of each activity/milestone including the documentary evidence in relation to such status within the time-period as mentioned in Annexure 1.

## **2.3 Verification by the Assurer**

The Assurer reserves the right to independently verify the status of each milestone as mentioned in Annexure 1, and in the event of any significant or reasonable discrepancy found by the Assurer in respect of the status reported /documentary evidence submitted by the Assured, the Assurer shall notify the Assured forthwith upon which the Assured shall correct the discrepancy so noted by the Assurer within seven (7) days. Further, in the event that the Assured fails to correct the discrepancy as provided herein the Assured shall be liable to submit additional Commitment Guarantee, as per Clause 3.3.

## **3. Commitment Guarantee by the Assured**

### **3.1 Amount of Commitment Guarantee**

Prior to the date of issue of this LOA, the Assured have provided to the Assurer, a Commitment Guarantee (CG), in cash / bank guarantee, for a sum of Rs.[*insert amount in figures and words*] equivalent to ten percent (10%) of base price of Grade [*insert Grade of coal\**] Run-of-Mine (ROM) coal of the Assurer prevalent on the date of application for issue of LOA, multiplied by the quantity of coal mentioned in the Preamble. {Note: In no case shall the CG be less than Rs.2,50,00,000/- (Indian Rupees Two hundred and Fifty Million only) or be more than Rs.6,00,00,000/- (Indian Rupees Sixty Million only) per mtpa of coal quantities requested by the Assured or part thereof.} Such CG shall be non-interest bearing, and in case of it being deposited in the form of bank guarantee it should comply with the format specified by the Assurer and issued by a scheduled bank acceptable to the Assurer.

### **3.2 Validity of Commitment Guarantee**

The Commitment Guarantee (CG) shall remain valid until four (4) months after the expiry of the LOA period of twenty-four (24) months. Thereafter, the CG shall stand converted into the Contract Performance Guarantee (CPG) that would be the condition precedent to signing of the FSA, in which case, validity of the CG

shall be extended in accordance with the terms of the FSA. For the avoidance of any doubt, the Assured shall be liable to submit the guarantee for such further amount that may result from the difference between the CPG under FSA and the CG under this LOA.

### **3.3 Additional Commitment Guarantee**

If any activity/milestone is not duly performed or completed by the Assured within the time stipulated against each such activity/milestone, as specified in Annexure 1, then the Assured shall be liable to furnish to the Assurer one tenth (1/10th) of the amount of CG for each such non-performed or incomplete milestone, as additional CG, within fifteen (15) days from the date such activity/milestone is falling due for completion. For the avoidance of any doubt, such additional CG may need to be deposited multiple times subject to partial/non-fulfillment of each activity /milestone at the end of each half-yearly interval, as mentioned in Annexure 1. The aggregate of additional CG(s), however, in no case shall exceed the amount of CG, as specified in Clause 3.1 above. Further, such additional CG(s) shall at all times be deemed to be a part of the CG and all related provisions of this LOA shall be equally applicable for additional CG.

### **3.4 Encashment of Commitment Guarantee**

#### **3.4.1 Cancellation or withdrawal of LOA**

In the event that any of the activities/milestones is delayed beyond the period specified against each such activity/milestone in Annexure 1 and the Assured fails to furnish the additional CG to the Assurer in accordance with Clause 3.3 hereof, or the Assured furnishes additional CG to the Assurer in accordance with Clause 3.3 hereof but fails to fulfill all the activities/milestones within the total period of twenty-four (24) months, as specified in Annexure 1, the Assurer shall have the right to cancel or withdraw this LOA after duly notifying the Assured in writing at least seven (7) days in advance. For the avoidance of doubt, all the milestones, as specified in Annexure 1, shall need to be fully completed and any partial completion with regard to any activity/milestone at the end of validity of the LOA shall entitle the Assurer to cancel or withdraw this LOA. Upon such cancellation/ withdrawal of this LOA, the Assurer shall encash the CG including any additional CG submitted by the Assured. It is clarified for removal of doubt that this Clause shall survive the cancellation/ withdrawal of this LOA.

#### **3.4.2 Failure to sign the FSA**

The Assurer shall have the right to encash the CG in the event of failure by the Assured to sign the FSA within three (3) months from the expiry of validity of the LOA or the satisfactory achievement of all the milestones, as shown in Annexure 1, whichever is earlier. It is also clarified to the Assured that the percentage of annual contracted quantity fixed with respect to Take or Pay obligations in the FSA may be reviewed by the Seller in light of its coal availability and coal commitments, and amended on year-to-year basis during the term of the FSA.

### **3.5 Return of Commitment Guarantee**

In case of inability of the Assured to fulfill any activity/ milestone, as specified in Annexure 1, due to the occurrence of any Force Majeure event, the time period for fulfillment of such activity/milestone, shall be extended for the period of such Force Majeure event, subject to a maximum extension period of three (3) months, continuous or non-continuous in aggregate. In no case including a Force Majeure event affecting multiple activities/ milestones shall the validity of LOA be extended by more than three (3) months. Thereafter, this LOA may be cancelled/ withdrawn by the Assurer after duly notifying the Assured in writing at least seven (7) days in advance without any liabilities or damages, whatsoever, payable by the Assured to the Assurer; and the Assurer shall return the CG submitted by the Assured.

### **4. Validity of the LOA**

The LOA shall remain valid for a period of twenty-four (24) months from the date of issue of this LOA unless extended for three (3) months in accordance with Clause 3.5 hereof, and shall stand annulled upon expiry of such period..

### **5. Assignment of the LOA**

The Assured shall not, without the express prior written consent of the Assurer, assign to any third person the LOA, or any right, benefit, obligation or interest therein or thereunder.

### **6. End-use of coal**

The total quantity of coal assured pursuant to this LOA is for use at the Plant, and the Assured shall not re-sell or trade the coal assured or supplied hereunder to any third party. If at any time in the reasonable opinion of the Assurer, the Assured has entered into an arrangement for such resale or trade of such coal supplies, the Assurer shall cancel/withdraw this LOA without incurring any liability whatsoever, including the liability for payment of damages to the Assured.

*\* In case of multiple Grades mentioned in Clause 1.1, Grade with the highest Useful Heat Value (UHV) shall be considered for the purpose of calculation of Commitment Advance.*

**Annexure 1: Milestones to be achieved by the Assured during the validity of LOA – IPPs & Pvt. GENCOs**

S.No.	Activity/ Milestone	Timeline from date of LOA	Document to be submitted by the Assured on achievement of milestone	Issuing Authority	Waival	
1	Existence of business entity	within months	6	Certificate of Incorporation/ Commencement of Business Certificate	State Registrar of Companies, Ministry of Company Affairs, Government of India	-
2	Approval of the Investment Decision	within months	6	Certified copy of the decision of the Board of Directors	Company Secretary under the Company Seal	-
3	Technical Feasibility Studies &	within months	6	Detailed Project Report (DPR)	Independent Agency/ Expert	Self-attested DPR in case it is prepared in- house

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S.No.	Activity/ Milestone	Timeline from the date of LOA	Document to be submitted by the Assured on achievement of milestone			Issuing Authority	Waival
			Pvt. Land	Govt. Land	State Industrial Development Corporation (SIDC)		
4	Land acquisition	within 6 months	Notification under Section 6 of the Land Acquisition Act, 1894	Application filed by the Assured for requirement of land	Application filed by the Company for requirement of land (if applicable)	State Government (in case of proceedings under the Land Acquisition Act 1894)	In case of Pvt. Land being purchased from the owner directly, notification under Section 6 would not be applicable; and in such case Land registration/ Transfer deed/ Land lease agreement would only be applicable
	Land acquisition (At least 70% of the total land, as considered in the DPR, acquired)	within 18 months	Land Registration/ Transfer deed/ Land lease agreement	Land Registration/ Transfer deed/ Land lease agreement	Land Registration/ Transfer deed/ Land lease agreement	State Government/ SIDC	
	Land acquisition (At least 90% of the total land, as considered in the DPR, acquired)	within 24 months	Land Registration/ Transfer deed/ Land lease agreement	Land Registration/ Transfer deed/ Land lease agreement	Land Registration/ Transfer deed/ Land lease agreement	State Government /SIDC	



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S.No.	Activity/ Milestone	Timeline from date of LOA	Document to be submitted by the Assured on achievement of milestone	Issuing Authority	Waival
5	Environment Clearance	within months 6	Approved Terms of Reference (TOR)	Expert Appraisal Committee (EAC) of MoEF(Central Govt.) for Category 'A' Projects or State Expert Appraisal Committee (EAC) for Category 'B' projects, as applicable	-
		within months 12	Final clearance	MOEF (Central Govt.) for Category 'A' projects or State Environment Impact Assessment Authority (SEIAA) - for category 'B' projects, as applicable	-
6	Forest Clearance, if applicable	within months 12	Recommendation for Forest clearance	State Government	-
		within months 24	Forest Clearance	MoEF (Central Government)	-
7	Water Allocation	within months 6	In-principle water allocation	State Water Supply Authority	In case of utilisation of ground water, relevant permission from relevant department of the State Government.
		within months 6	Clearance, if applicable	Central Ground Water Authority (CGWA)	
		within months 12	Sanction Letter for firm water allocation	State Water Supply Authority	In case of utilisation of ground water, relevant permission from relevant department of the State Government.

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<b>S.No.</b>	<b>Activity/ Milestone</b>	<b>Timeline from date of LOA</b>	<b>Document to be submitted by the Assured on achievement of milestone</b>	<b>Issuing Authority</b>	<b>Waival</b>
8	Commitment of equity investment by the Company for the project.	within 18 months	Certified copy of the decision of the Board of Directors	Company Secretary under the Company Seal	-
9	Financing of the project/ Financial Closure	within 24 months	Final Sanction letters from Bank(s) / Financial Institution(s) Or Loan Agreement	Bank(s)/ Financial Institution(s)	-