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

## **DRAFT LETTER OF ASSURANCE (“LOA”)**

### **PARAGRAPH B(v) OF THE SHAKTI POLICY – SUPPLIER SELECTED UNDER RFS PROCESS CONDUCTED BY THE NODAL AGENCY**

To

[Name & Address of the Assured]

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

Subject: Letter of Assurance

## **Preamble**

Ministry of Coal has vide its letter dated May 22, 2017 dealt with matters concerning “Signing of Fuel Supply Agreement (FSA) with Letter of Assurance (LoA) holders of Thermal Power Plants - Fading Away of the existing LoA-FSA Regime and Introduction of a New More Transparent Coal Allocation Policy for Power Sector, 2017 SHAKTI (Scheme for Harnessing and Allocating Koyala (Coal) Transparently in India)” (“**Policy**”), as amended on March 25, 2019.

Paragraph B(v) of the Policy inter alia provides that “*power requirement of group of States can also be aggregated and procurement of such aggregated power can be made by an agency designated by Ministry of Power or authorized by such States on the basis of tariff-based bidding. Coal linkages will be earmarked for such agencies by predeclaring the availability of coal linkage with description, based on which such agency will undertake tariff based competitive bidding for long-term and medium-term procurement of power and recommend grant of these linkages to successful bidders. The methodology in this regard shall be formulated by Ministry of Power*”.

Subsequently, Ministry of Power (“MoP”) vide O.M. No. L-2/2018-IPC (Part-4) dated 08.03.2019 issued an office memorandum on the subject “Approval of the Government on the recommendations of Group of Ministers (GoM) constituted to examine the specific recommendations of the High Level Empowered Committee (HLEC) constituted to address the issues of Stressed Thermal Power Projects” and Para 2.1(c) of the said OM, states that “*the provisions of Para B(v) of Shakti Policy above shall also be applicable in cases where the nodal agency designated by Ministry of Power aggregates/procures the power requirement for a group of states even without requisition from such states.*”

The methodology of allocation of coal as per provisions of para B(v) of SHAKTI was issued by MoP on May 11, 2022 (“**MoP Methodology**”). As per the MoP Methodology, “*coal company(ies) will sign Fuel Supply Agreement (“FSA”) with the successful bidders, having already commissioned generating capacity or will issue Letter of Assurance (LoA) to the successful bidders, who’s generating capacity is yet to be commissioned, as per details shared by the Nodal Agency through the Ministry of Power.*”

Subsequently, the MoP vide resolution dated October 20, 2022, issued “Guidelines under Section 63 of the Electricity Act, 2003 for procurement of power on Finance, Own and Operate (FOO) basis under para B(v) of the SHAKTI Policy” (“**Guidelines**”). In accordance with the Guidelines, [PFC Consulting Limited/insert name of the nodal agency appointed by group of states]<sup>1</sup> has been designated as the Nodal Agency for conducting the bid process for the purpose of procurement of power under Para B(v) of the SHAKTI Policy (“**Nodal Agency**”).

Subsequently, the Nodal Agency issued the Request for Selection (“**RfS**”) dated [\*] and draft power purchase agreement dated [\*], collectively referred to as Bidding Document (“**BD**”) for procurement of aggregated power for group of states and bidding was conducted by the Nodal Agency.

The Assured (as defined hereinafter) who emerged as the selected bidder in the bidding process conducted in accordance with the BD would deliver a Contracted Capacity of [•] MW at the Delivery Point corresponding to [•] MW of gross generation on finance, own and operate (the “FOO”) basis from a Power Station with an Installed Capacity of [•] MW to be developed by the Assured, for supply of power under the PPA executed on [insert date] between the DISCOM and the Assured.

As provided under the MoP Methodology, this Letter of Assurance (hereinafter referred to as “**LOA**”) is issued in favor of [*insert name of the applicant (Supplier) and address of the Power Station*] (hereinafter referred to as “**the Assured**”) requiring [*insert quantity*] tonnes per annum (tpa) of [*insert Source Grade of coal*] Grade coal against Gross Capacity of [•] MW corresponding to Contracted Capacity of [•] MW from its [*insert capacity*] MW Power Station, which is yet to be commissioned and [to be located/ located]<sup>2</sup> at [*insert name of the location of the Power Station*] from [*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 endeavor 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 satisfactory fulfillment of the obligations of the Assured in accordance with Clause 2, the Assurer shall endeavor to supply, as per the normative requirement of the Power Station [*insert quantity*] million tonnes per annum (mtpa) of [*insert Source Grade of coal*] Grade(s) coal to the Assured, from [*insert Source details*] (hereinafter referred to as “**the Source**”) which shall be subject to review and assessment of the actual coal

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<sup>1</sup> To retain as applicable

requirement of the Assured by the Assurer as well as the availability of coal from the mines of the Assurer. It is expressly clarified that:

- a) the Source shall be a coal mine/coalfield/coal company, as the case may be.
- b) the Source Grade is the average/representative grade of the Source. The actual supply pursuant to the FSA may vary between the range of grades, as applicable in respect of the Source from which the coal is actually supplied under the FSA and the terms of such supply shall be as set out in the FSA.

## **1.2 Price of coal**

The price of coal shall be the sum of notified price of the relevant grade(s) of coal notified by CIL and/or its Subsidiaries and/ or the price of coal from cost plus sources as may be offered by the Assurer as the case may be, other charges (viz. transportation charges, sizing/crushing charges, rapid loading charges, any other applicable charges etc.) and Statutory Charges, as applicable at the time of delivery of Coal. 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 cost plus reasonable return or such notified price, along with other charges and Statutory Charges that shall be payable as listed above. 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 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 any liabilities or damages, whatsoever, payable to the Assured.

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

## 2.1 Notices under PPA

The Assured shall notify the Assurer of any notices under the PPA issued in respect of termination/suspension of the PPA, default under the PPA, change in term of the PPA or any change in the Contracted Capacity under the PPA by the DISCOM within 15 (fifteen) days of the receipt of any such notice. Further, the Assured shall also notify the Assurer of any of the foregoing notices served by the Assured to the DISCOM under PPA within 15 (fifteen) days of the issuance of such notice. Failure to adhere to the terms of this clause shall be considered a breach of this LOA.

## 2.2 Commissioning & COD of the Power Station

- a. The Assured shall attain the commissioning and/or COD of the Power Station in accordance with the timelines prescribed in the PPA or any extended period provided by the DISCOM to the Assured in accordance with the terms of the PPA (“**Power Station Commissioning Period**”).

Provided that any notice of such extension of time issued by the DISCOM under the PPA shall be shared by the Assured with the Assurer within fifteen days of receipt of such notice by the Assured.

- b. The Assured shall submit to the Assurer the commissioning & COD certificates issued by CEA for the Power Station within fifteen days of attaining the commissioning & COD.

## 3. Commitment Guarantee by the Assured

### 3.1 Amount of Commitment Guarantee

Prior to the date of issue of this LOA, the Assured shall have provided to the Assurer, a sum of [Rs.----- (Indian Rupees-----)] equivalent to ten percent (10%) of notified price of Source Grade [insert Source 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, as Commitment Guarantee (CG), in cash / bank guarantee; and in no case shall the CG be less than Rs.2,50,00,000/- (Indian Rupees Twenty Five 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.

*\* In case of multiple Grades mentioned in Clause 1.1, the highest Notified Price of the Grades shall be considered for the purpose of calculation of Commitment Advance.*

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

Upon execution of the FSA, the Commitment Guarantee (CG) shall stand converted into the Contract Performance Guarantee (CPG) which shall be equivalent to six percent (6%) of notified price of Source Grade [insert Source Grade of coal] of coal of the Assurer/Seller prevalent on the date of deposit. The Contract Performance Guarantee (CPG) 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 extra guarantee that may result from the difference between the CPG under FSA and the CG under this LOA.

### **3.3 Encashment of Commitment Guarantee**

In the event that the Assured fails to adhere to the terms and conditions of this LOA, including but not limited to sharing of notices issued in respect of the PPA as per Clause 2.1, commissioning & COD of the Power Station within the Power Station Commissioning Period as per Clause 2.2a and execution of the FSA as per Clause 4 the Assurer/Seller shall have the right, without prejudice to any of its other rights and remedies provided herein or in Applicable Law, to encash the Commitment Guarantee and terminate the LOA.

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

Unless terminated earlier, the LOA shall remain valid till 90 days from the Power Station Commissioning Period ("**FSA Execution Period**"). Provided, however, that in the event of any termination of the PPA, the LOA shall stand terminated. The LOA shall stand annulled upon expiry of the FSA Execution 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. Any request for assignment made by the Assured shall include a copy of recommendation/approval of the DISCOM in this regard.

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

The total quantity of coal assured pursuant to this LOA is for use at the Power Station for the purpose of the Gross Capacity and Contracted Capacity under the PPA, and the Assured shall not re-sell or trade the coal assured hereof 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 upon commencement of coal supplies at any time during the validity of this LOA, the Assurer shall have the right, without prejudice to any of its other rights and remedies provided herein or in Applicable Law, to forfeit the Commitment Guarantee provided as per Clause 3 and cancel/withdraw this LOA without any liabilities or damages, whatsoever, payable to the Assured.