

ANNEXURE II (DRAFT COAL SUPPLY AGREEMENT) TO
CORRIGENDUM NO 6 NOTICE INVITING TENDER

SUPPLY OF IMPORTED NON-COKING COAL (4200 -4800 GAR) UP
TO 0.6 MILLION TONNES +/- 50% TO ADANI DAHANU THERMAL
POWER STATION ON CIF BASIS

DOC. NO.: DTSP/IMP COAL/2018-19/001 DATE: 20TH SEPT, 2018



CONTRACT
FOR
SUPPLY & PURCHASE
OF
INDONESIAN STEAM COAL
BETWEEN

(SELLER)

AND

ADANI ELECTRICITY MUMBAI LIMITED
(BUYER)

CONTRACT REFERENCE

XXXXXXXXXX

Date: DD.MM.YYYY

**Contract for sale and purchase of Indonesian Steam Coal dated __
DDMMYY.**

Between

_____ a company incorporated under____, having its registered office address at _____ (hereinafter referred to as “SELLER” or “SUPPLIER”, which expression shall unless repugnant to the context or meaning thereof shall mean and include its successors and permitted assigns).

AND

M/s ADANI ELECTRICITY MUMBAI LIMITED, DAHANU THERMAL POWER STATION, DAHANU ROAD, DISTRICT: PALGHAR, PIN CODE: 401 608 (MAHARASHTRA) having its registered office address at **CTS 407/A (NEW), 408 OLD VILLAGE, EKSAR DEVIDAS LANE, OFF SVP ROAD, BORIVALI (W), MUMBAI 400 103 (MAHARASHTRA), INDIA** (hereinafter referred to as "BUYER" or “PURCHASER”, which expression shall unless repugnant to the context or meaning thereof shall mean and include its successors and permitted assigns).

By this agreement, the SELLER agrees to sell and the BUYER agrees to buy the material specified below as per mentioned terms and conditions:

1. DEFINITIONS

In this Agreement, unless the context otherwise requires, the following terms shall respectively have the following meanings:

- A.** 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 when otherwise.
- B.** A fraction of a tonne in any calculation shall be rounded up to the nearest tonne if such fraction is one half of a tonne or more, and shall be rounded down when otherwise.
- C.** “ASTM” means the American Society for Testing and Materials and “ISO” means International Organization for Standardization.
- D.** “Bill of Lading” Or ‘BL’ means receipt given by the vessel for the coal shipment and is a document of title.
- E.** “Coal” means Indonesian Steam Coal in bulk.
- F.** "Coal Price" has the meaning set out in, and as calculated under Clause 5, subject to adjustment in accordance with this Agreement.

- G.** "Date of Arrival" in respect to any Shipment means the date on which the Master of the Vessel on which the Shipment is made registers arrival of the Vessel with the port authorities for the purpose of discharging Coal, which date is stated in the Statement of Facts prepared at the Discharging Port.
- H.** "Date of Shipment" means the date of the Bill of Lading.
- I.** "Demurrage" means the amount payable or allowed by Buyer to Seller for Buyer's unexcused failure to discharge a Vessel within the allowed Laytime.
- J.** "Designated Plant Laboratory" shall mean the NABL accredited Plant laboratory owned by the Buyer.
- K.** "Despatch" means the amount payable or allowed by Seller to Buyer for discharging the Vessel prior to the termination of the allowed Laytime.
- L.** "Discharge Port" means Dahanu Anchorage, Maharashtra, India or, subject to the consent of Seller which consent shall not be unreasonably withheld, such other safe Discharge Port agreed to between Buyer and Seller
- M.** "Dollars", "US Dollars", "USD", "US\$", "\$", "Cents" where used shall refer to the currency of the United States of America.
- N.** "ETA" means expected time of arrival.
- O.** "FOB" means Free on Board and "CIF" means Cost, Insurance and Freight, as per INCOTERMS – 2010 (or latest available Terms of Trade)
- P.** "Force Majeure" shall have the meaning ascribed to it in Article 13 hereof.
- Q.** "INCOTERMS – 2010" means the 2010 edition of the International Rules for the Interpretation of Trade Terms published by the International Chamber of Commerce.
- R.** "Independent Laboratory" shall be an internationally recognized, reputable, capable and accredited test facility which expression shall, unless it be repugnant to the subject or context thereof, mean and include its successors and assigns appointed thereof.

- S.** “Kcal” means Kilocalorie (s) as defined in the “International System of Units”
- T.** “Kg” means Kilogram (s) as defined in “International System of Units”
- U.** "Loading Port" or “Port of Loading” means the port at which the coal is to be loaded in Indonesia.
- V.** “mm” means Millimeter as defined in “International System of Units”.
- W.** “Notice of Readiness" means a written notice tendered by the Master of a Vessel or his agent(s) to the effect that the Vessel is in all respects ready for discharging Coal.
- X.** "Shipment" means each cargo of Coal shipped by Seller to Buyer under this Agreement.
- Y.** “Statement of Facts” means a statement prepared by the ships agent at the port of loading which shows the date and time of arrival of the vessel and the commencement and completion of loading. It details the quantity of cargo loaded each day, the hours worked and the hours stopped with the reasons of stoppages.
- Z.** "SSHINC" means Saturdays, Sundays and holidays included.
- AA.** “Time Sheet” means a document which records all daily particulars relating to the loading or discharging of cargo as well as the duration of and reason for any stoppage of work and is used as a basis for the calculation of demurrage/despatch.
- BB.** “Ton (s), “Tonne (s)”, and “MT” means metric tonne of 1,000 Kgs as defined in “International System of Units”.
- CC.** “Working day” means a day upon which business is regularly transacted and unless expressly stated, the term “day” shall be deemed to mean “calendar day”.
- DD.** “Weather Working Day” means day of 24 consecutive hours on which work in loading coal on board a vessel may be carried out without loss of time due to the weather.

2. TERM OF AGREEMENT

The parties hereby agree that the term of this agreement shall commence from the date of signing of this Agreement until the sale and delivery of the contracted quantity under this agreement has been fully performed by

the parties or until both parties mutually agree to terminate this agreement, whichever comes earlier.

BUYER shall purchase the coal from SELLER on CIF basis (Incoterms 2010).

3. COMMODITY, CONTRACTED QUANTITY, SHIPMENT SCHEDULE

A. Commodity:

Indonesian Steam Coal in Bulk

B. Quantity:

6,00,000 MT +/- 50% (10 (TEN) shipments of 60,000 MT +/- 10% as per Schedule I) on Buyer's option.

C. Origin:

Country of Origin

D. Loadport Laycan:

Any Port in Origin Country.

E. Shipment:

October 2018 – April 2019

F. Port of Shipment:

Any Port in Origin Country

G. Port of discharge:

Dahanu Anchorage, Maharashtra, India

H. Schedule of arrival of shipments at Discharge Port.

- The total quantity of the coal as per clause 3(B) shall be supplied at Discharge Port in suitable Geared and grab fitted vessel(s), in accordance with the Delivery Schedule as per Schedule I.
- The maintenance of the vessels at Discharge Port and maintaining in good order the vessel's equipment and other facilities offered for unloading the cargo as per terms specified in this contract shall be entirely Seller's responsibility.
- The buyer may, only with the explicit agreement of the Seller, reschedule supply schedule.

4. Typical Specifications:

As per ASTM standard specified below:

PARAMETERS	UOM	TYPICAL	REJECTION
TOTAL MOISTURE	%	34	> 38
INHERENT MOISTURE	%	15-17	-
ASH (ADB)	%	6	> 10
VOLATILE MATTER (ADB)	%	38 – 42	22 OR > 45
FIXED CARBON (ADB)	%	BY DIFF	-

SULPHUR (ADB)	%	0.60	> 0.80
GROSS CALORIFIC VALUE (ARB)	KCAL/KG	4400	< 4000
HGI		45-55	< 45
SIZE (0 – 50 MM)	%	95	< 90
FINES (~ 2MM)	%	0	25

5. Price:

CIF Price will be FOB Price plus Ocean Freight and Insurance, Bank Charges & Other Charges as defined herein.

FOB Price: The FOB Price component shall be as per Schedule II.

Ocean Freight: Quoted Ocean Freight – Fix for the Term.

Other Charge: Quoted Value

6. Price Adjustment of Coal:

Price adjustment for variation of following parameters shall be applicable as per below formulas.

A. Gross Calorific Value (ARB)

Pro-rata adjustment in the FOB price will be made if Gross Calorific Value GCV (ARB) Kcal/Kg falls from Quoted Typical GCV (ARB) Kcal/Kg.

$$\text{Adjusted FOB Price} = \frac{\text{FOB Price} \times \text{Actual GCV (ARB) Kcal/Kg}}{4400 \text{ Kcal/kg}}$$

The Bonus / premium basis GCV (ARB) shall be capped at maximum 200 Kcal/Kg from typical value.

B. Ash (ADB)

If the Ash content is above the base parameter value, weight to be reduced shall be as per following formula.

$$\text{Weight of the coal to be reduced} = A * 1.05 * (B - (C * (100 - B) / (100 - C))) / 100.$$

(Where A is coal received weight, B is % value of Ash in coal received; C is the typical parameter of ash as mentioned in clause 4)

No correction shall be applied in case of decrease in ash content below the typical parameter value as per clause 4.

C. Sulphur (ADB)

For every 0.01% (or part thereof) increase in the maximum Sulphur content on ADB basis as guaranteed by Seller, a penalty @ USD 0.40

per MT shall be charged fraction pro-rata up to the rejection value as specified in Clause 4 above.

D. Fines Content (~ 2 mm)

For every 1% (or part thereof) increase in the maximum value of Fines content (~ 2 mm) as guaranteed by Seller, the weight shall be reduced by 0.25% and fraction pro-rata, up to the rejection value as specified in Clause 4 above.

The quality of coal shall be maintained within the rejection value as specified in Clause 4 above; otherwise the entire shipment shall be liable for rejection. If any of the above parameters are less than the rejection values specified, Buyer will have the right to reject such Coal shipment without making any payment. In such case, the Seller shall be responsible for all the expenditure that might have been incurred including supply, freight etc. Buyer shall have all the rights to recover any amount including custom duty, stevedoring, transportation etc. from the Seller, which has been incurred by the Buyer for the rejected coal. All costs required to be incurred for diverting such rejected Coal shipment shall be borne by the Seller.

7. Weight and Quality Determination:

A. Weight:

The cargo weight will be as per Bill of Lading and shipment shall be calculated to the nearest metric ton (MT).

B. Coal Quality:

Discharge Port: The BUYER shall cause the Buyer's Nominated Independent Laboratory/ Designated Plant Laboratory to take a representative sample of the coal immediately after or during unloading of the coal. The sample so taken by the Independent Laboratory/ Designated Plant Laboratory shall be divided into two parts. The first part (the "Shipment Discharge Port Sample") shall be used for preparation of the Discharge Port Certificate of Sampling and Analysis. The second part (the "Referee Sample") shall be kept in a sealed container and stored by the Buyer Safe Custody.

C. Certificate of Sampling and Analysis:

The Independent Laboratory/ Designated Plant Laboratory at discharge port shall prepare the Certificate of Sampling and Analysis based on its analysis of the Shipment Sample and shall cause the Certificate to be issued within 7 working days of discharge completion of the shipment, along with all other shipping data ("Shipping Report") by fax, telephone (to be confirmed promptly by fax), electronic means and courier, but in any event within (7) seven business days after the completion of the unloading of each Shipment.

D. Call for Test of Referee Sample

Either Party may call for the test of the Referee Sample, in case it objects to the Independent Laboratory's/ Designated Plant Laboratory Discharge Port Analysis Report and may request the Independent Inspection Agency/Laboratory with prior written approval and agreement of Buyer) to promptly analyze the Referee Sample and to promptly deliver the results thereof to the Parties.

E. Analysis of Referee Sample

Referee Sample Analysis results shall be considered final and binding for the payment, if the results of the referee sample analysis are beyond interlab tolerance; otherwise the results of discharge port analysis by independent laboratory shall remain final and binding for all commercial purposes.

F. Costs of Tests of Sample

All costs, expenses and fees associated with the testing of the Referee Sample shall be for the account of the Party who is challenging the results of the analysis.

8. Shipping Terms:

A. Discharging Rate

- The discharge rate shall be minimum 10,000 mt/9500 MT, as applicable, per weather working day of 24 consecutive hours including Saturdays, Sundays and holidays but excluding applicable port holidays.
- Discharge Rate as indicated above based on the vessels having minimum 4 Nos of Hydraulic grab cranes/radio remote controlled grab cranes each having minimum capacity of 25 MT with the grab capacity of each of 8 CBM.

B. Arrival Window At Discharge Port

The Buyer shall declare an eight (8) day disport arrival window for each Shipment, minimum forty-five days (45) days prior to the commencement of such disport arrival window. The Seller shall arrange for the Shipment to arrive at the discharge port within such declared eight (8)-day disport arrival window.

C. Demurrage and Dispatch Rate

Demurrage and Dispatch at Discharge port shall be to Seller account.

9. Stevedore Damage:

Stevedores at Discharge port are to be appointed by the BUYER at their risk and expense and the BUYER shall be responsible for any negligence, default or error in judgment of the Stevedores and/or the barges/lighters employed in discharging the vessel. Discharging is to

be done under the supervision of the Master and he has the right to stop discharging if in his opinion, it may cause any damage to the vessel. All delays due to this stoppage of work to be on BUYER's account.

Any notified damage by the master is to be settled directly between the BUYER and the owner. BUYER or their agents shall have the right to inspect any reported damage with their own surveyor.

10. Payment Terms:

Payment shall be made by LC or DA at Buyers discretion up to 90th/180th/360th day from the date of Bill of Lading or Bill of Exchange through a commercial bank in favour of a beneficiary nominated by Seller for an amount equal to one hundred and five percent (105 %) for each Shipment value, with a telegraphic transfer remittance clause, no later than 10 [ten] days prior to the scheduled Shipment reaching the discharge port. Advising and negotiating bank will be selected through mutual agreement between the Parties. The L/C shall allow for a 10% (ten percent) variation in Base CIF Price and quantity.

The payment shall be made basis discharge port quality and weight certificate as per the discharge port test results duly certified by BUYER.

DOCUMENTS REQUIRED

Copies of the following documents shall be submitted by the SELLER to BUYER before arrival of vessel for Custom Clearance purpose and this shall not be binding to Buyers.

- A.** Set of 3/3 clean on Board Ocean Bill of Lading (s) marked "Freight Payable as per charter party" issued "To Order" and endorsed in favour of the BUYER and/or the bank.
- B.** One original and three copies of SELLER's Provisional invoice for the entire quantity with price adjustments, if any based on the load port certificate of sampling and analysis by an independent inspection agency.
- C.** Two copies of Certificate of Origin issued by designated/relevant authority stating the Origin Country of the goods.
- D.** Two copies each of Certificate of Sampling & Analysis, Certificate of Hold Cleanliness and Certificate of Weight issued by the independent inspection agency at the load port. This will be used for the purpose of custom clearance and will not be binding to this contract.

- E.** Charter party Bill of Lading and third party documents acceptable except for invoice and draft.
- F.** Insurance certificate duly endorsed in favor of the BUYER or/and the bank will be provided by the SELLER for the payment.
- G.** SELLER to fax/email the full set of documents to BUYER within 5 working days before the arrival vessel at discharge port.

The Seller shall present documents to the negotiation banks as per documents requirement enlisted here below:

- Seller's signed commercial invoice in triplicate showing actual discharge port result and adjustments if applicable;
- Full set of original clean on board Bill(s) of Lading (3 original + 3 copies);
- Certificate of Sampling and Analysis in triplicate issued by an Independent Surveyor/ Designated Plant Laboratory at Discharge port duly certified by Buyer;
Certificate of Weight in triplicate and Draft Survey Report issued by Independent/ Designated Plant Laboratory Surveyor at Discharge port;

Original Certificate of Origin issued by government institution in Form AI format and based on the ASEAN INDIA FREE TRADE AREA policy if applicable, shall be provided to the Buyer in physical directly outside L/C not later than three days before arrival of vessel at Discharge port. In case any additional custom duty is levied on the buyer due to non-availability of the Original Certificate of Origin at the time of Custom clearance at Discharge port the same shall be recovered by the buyer from the seller.

11. Taxes, Duties, etc.

All import duties, levies and BUYERS's country dues etc. on the imported material from the vessel if any at discharge port shall be to BUYER's account. All taxes, duties etc. on loading goods in the country of origin / loading and SELLER's country to be SELLER's account.

12. Insurance

The Seller shall be responsible for any and all insurances necessary till the title and risk are passed on to **AEML**. Seller shall procure, maintain and pay for marine cargo insurance from financially sound and reputable insurers.

13. Force Majeure

A. Definition of Force Majeure

- i. “Force Majeure” means any event or circumstance or combination of events or circumstances met with by the Party affected, but only if and to the extent that
 - a. such event or circumstance or combination of events or circumstances, despite the exercise of reasonable diligence, cannot be, or be caused to be, prevented, avoided or removed by such Party; and
 - b. such event or circumstance or combination of events or circumstances materially and adversely affects (in cost and/or time) the ability of the Party to perform its obligation under this Agreement, and such Party has taken all reasonable precaution, due care and reasonable alternative measures in order to avoid the effect of such event or circumstance or combination of events or circumstances and to mitigate the consequences thereof.
- ii. Any event or circumstance or combination of events or circumstances meeting the description of an event of Force majeure which have the same effect upon the performance of any of the contractors/suppliers of the Seller shall constitute an event of Force majeure with respect to the Seller.

B. Instances of Force Majeure

No party shall be liable for any claim for any loss or damage whatsoever arising out of failure to carry out the terms of the Agreement to the extent that such a failure is due to force majeure events such as war, rebellion, mutiny, civil commotion, riot, strike, lock-out, forces of nature, accident, act of God and any other reason beyond the control of concerned party. But any Party claiming the benefit of this clause shall reasonably satisfy the other party of the existence of such an event and give written notice within a reasonable time to the other Party to this effect. Receipt/ supply of coal shall be started as soon as practicable by the parties concerned after such eventuality has come to an end or ceased to exist.

- i. Subject to the provisions of Section 13.A, events of Force Majeure shall include, in location/ country of Buyer and origin of coal in case of Seller, but not limited to
 - a. Fire, chemical or radioactive contamination or ionizing radiation, earthquakes, lightning, cyclones, hurricanes, floods, epidemic, quarantine and other acts of God;
 - b. explosion, accident chemical contamination (other than resulting from an act of war)

- c. strikes, lock-outs, not set forth in (vii) below (excluding such events which are site specific and attributable to the Seller)
 - d. shipwreck;
 - e. any interruption in the supply of fuel resulting from the withdrawal or material modification to any authorisation of the GoI which prevents fuel suppliers to supply fuel under a fuel supply contract;
 - f. acts of war (whether declared or undeclared), invasion, acts of terrorists, blockade and riot;
 - g. strikes, lock-outs, work to rule actions and other industrial action or labour disputes in the district or state of Maharashtra or at the national level which are not primarily motivated by the desire to influence the action of an enterprise so as to preserve or improve conditions of employment (excluding such events which are site specific and attributable to the AEML);
 - h. expropriation or compulsory acquisition of the Unit or the site or any material assets of the Seller relating to the Unit;
 - i. Plant shutdown greater than 10 days for whatsoever reason would be treated as force majeure
 - j. Change in Law
- ii. Provided further that
- a. such circumstances, despite the exercise of reasonable diligence, cannot be or be caused to be prevented, avoided or removed by such Affected party to the material contract;
 - b. such event materially and adversely affects the ability of such Affected party to such material contract to perform its obligations under the contract; and
 - c. such affected party to the material contract has taken all reasonable precautions, due care and reasonable alternative measures in order to avoid the effect of such event on the Affected party's ability to perform its obligation under the relevant contract and to mitigate the consequences thereof.

C. Effects of Force Majeure

- i. Except as provided in Section 14, either party shall be excused from performance and shall not be construed to be in default in respect of any obligation there under for so long as the failure to perform such obligation shall be due to an event of Force Majeure.

- ii. If an event of Force majeure shall have occurred, the Parties shall consult with one another as soon as practicable concerning the effect of such event of Force Majeure.
- iii. In respect of any Force Majeure event/events affecting the Seller or the Purchaser there is no payment obligations on either Party.

D. Notice of Force Majeure: Procedure

- i. As soon as possible following the date of commencement of any event of Force Majeure, if either Party desires to invoke such event of Force Majeure, (subject to Section 13.B) as a cause for delay in the performance of any obligation hereunder, it shall advise the other Party in writing of such date and the nature and expected duration of such event of Force Majeure. As soon as possible and in any event within twenty four hours following the termination of such event of Force Majeure, the Party having invoked such event of Force Majeure as a cause for such delay shall submit to the other party reasonable proof of the nature of such delay and its effect upon the time of performance.
- ii. **The Parties shall**
 - a. use their best efforts to remove or terminate as soon as practicable any event of Force majeure, including, without limitation, by recourse to mutually acceptable (which acceptance shall not be unreasonably withheld by either party) alternate sources of services, equipment material and construction equipment;
 - b. use their best efforts to prevent and reduce to a minimum and mitigate the effect or any delay occasioned by any event of Force majeure including by recourse to alternate sources of services, equipment and materials and construction equipment; and
 - c. use their best efforts to ensure resumption of normal performance of this Agreement after the termination of any event of Force majeure and shall perform their obligation to the maximum extent practicable as agreed between the Parties.

14. Default And Remedies

A. Events of Default:

An event of default ("Default") under this Agreement shall be deemed to exist upon the occurrence of any one or more of the following events:

- i. Failure by either party to make payment of any amount due to the other party under this Agreement, which failure continues for a period of 30 [thirty] days after receipt of written notice of such non-

- payment (unless Payment of such amount is contested or otherwise disputed in accordance with the provisions of this Agreement);
- ii. Subject to the following sentence, failure by Seller to deliver to AEML during any month quantity of coal ordered within Seven days of the dates specified in the Order(s) for such Coal, unless excused by Force Majeure. A Default shall be deemed to have occurred if, after a Notice of Default, Seller has failed to deliver such coal within ten days and has failed to provide adequate assurances to AEML within such cure period that such failure will not be repeated.
 - iii. Failure by Seller to meet Orders from AEML in any one month, unless excused by Force Majeure.
 - iv. Discontinuance of supply of coal and not giving any assurance when coal supplies will be resumed.
 - v. Failure by Seller to provide adequate assurances as required in connection with any provision of this Agreement within 15 [fifteen] days after notice of such failure.
 - vi. Failure of either party to perform any other covenant, agreement or undertaking provided for in this Agreement or breach of any representation or warranty of either party which has a material adverse effect on the other party, and (i) such failure or breach continues for 15 [fifteen] days after notice of such failure or breach or (ii) if the nonperforming party shall commence within such 15 [fifteen] days and shall thereafter proceed with all due diligence to cure such failure or breach, such failure or breach is not cured within such longer period (not to exceed 30 [thirty] days) as shall be necessary for such party to cure the same with all due diligence.
 - vii. An assignment of this Agreement which is not permitted or consented to pursuant to Section 24.
 - viii. The bankruptcy or insolvency of either party.

B. Remedies for Default:

Upon the occurrence and during the continuance of Default hereunder, the party not in Default shall be entitled, without limitation, to any of the following remedies:

- i. To terminate this Agreement by written notice upon the expiration of any applicable cure period or period prescribed for provision of adequate assurances.
- ii. Upon showing that its remedy at law is inadequate, to obtain an order compelling specific performance of this Agreement and injunctive relief restraining any actual or threatened breach of any

material obligation of the other party under this Agreement without the necessity for filing any bond.

- iii. To purchase replacement coal as provided in Typical Coal specifications / Mine Mouth Rejection Specification at the cost of the Seller invoking the bank guarantee referred to at Section 20.

C. Waiver of Default:

Either party may waive a Default by the other party, provided that no such waiver shall be binding unless reduced to writing, and any such waiver shall be deemed to extend only to the particular occurrence of Default waived and shall not limit or otherwise affect any rights that either party may have with respect to any prior or subsequent Default.

D. Cumulative Remedies:

None of the remedies provided in this Agreement is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to herein or otherwise available to either party at law or in equity.

E. No Consequential Damages:

Notwithstanding anything in this Agreement to the contrary, neither party shall be liable for consequential damages by virtue of its breach of any of its obligations, representations or warranties hereunder.

15. REPRESENTATIONS, WARRANTIES AND COVENANTS

A. Seller's Representations and Warranties:

In addition to the representations and warranties set forth elsewhere in this Agreement, Seller hereby represents and warrants to AEML as follows:

- i. Seller is a company duly organized and in good standing under the laws of the Republic of India and has been duly authorized by all requisite corporation action to execute and deliver this Agreement. Seller further represents that it is not involved in any litigation with any party which would jeopardize or impair Seller's ability to perform this Agreement.
- ii. The person executing and delivering this Agreement on Seller's behalf is acting pursuant to proper authorization, and this Agreement is the valid and binding obligation of Seller and is enforceable in accordance with its terms except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

- iii. Neither the execution and delivery by Seller of this Agreement nor the consummation by Seller of the transactions contemplated hereby is an event which, of itself or with the giving of notice or the passage of time or both, constitutes a violation of or will conflict with or result in any material breach of or any default under the terms, conditions or provisions of any judgment, law, rule or regulation to which Seller is subject, or of Seller's organizational documents, or of any agreement or instrument to which Seller is a party or by which it is bound.

B. Representations and Warranties of AEML:

In addition to the representations and warranties set forth elsewhere in this Agreement, AEML hereby represents and warrants to Seller as follows:

- i. AEML is a limited Liability Company registered under the Companies Act 1956 of India, validly existing and in good standing under the laws of Republic of India with full power and authority to enter into this Agreement. AEML further represents that it is not involved in any litigation with any party which would jeopardize or impair its ability to perform this Agreement.
- ii. The persons executing and delivering this Agreement on AEML's behalf are acting pursuant to proper authorization and this Agreement is the valid and binding obligation of AEML and is enforceable in accordance with its terms.
- iii. Neither the execution and delivery by AEML of this Agreement nor the consummation by AEML of the transactions contemplated hereby is an event which, of itself or with the giving of notice or the passage of time or both, constitutes a violation of or will conflict with or result in any material breach of or any default under the terms, conditions or provisions of any judgment, law, rule or regulation to which AEML is subject, or of AEML's organizational documents, or of any agreement or instrument to which AEML is a party or by which it is bound.

C. Special Covenants of Seller:

In addition to all other covenants of Seller made herein, Seller hereby covenants and agrees as follows:

- i. Seller covenants and agrees with AEML that all coal sold by Seller pursuant to this Agreement will be delivered by Seller free from all liens (except carriers' liens) and adverse claims.

- ii. Seller will own, lease or control sufficient quantities of specified coal to meet the delivery requirements of this Agreement over the specified Term.
- iii. Seller's affiliates will obtain and maintain all Permits necessary to mine and deliver the quantity of coal required to meet its obligations for the Term of this Agreement.

16. INDEMNIFICATION

A. Seller Indemnity:

Seller agrees to defend, indemnify and hold harmless AEML, its partners and affiliates and all officers, directors, employees and agents thereof, from and against any and all liabilities (including third party liabilities), lawsuits, claims, damages, losses, fines, penalties and assessments by any public agency, costs and expenses (including costs and expenses of defense, settlement and reasonable attorneys' fees), which are incurred or brought as a result of any negligent or willful act or omission of Seller, its agents, employees, representatives, contractors or subcontractors associated with, or arising from, the performance by Seller of its obligations under this Agreement, including such matters arising in connection with the docking, unloading or undocking of the vessel.

B. AEML Indemnity:

AEML agrees to defend, indemnify and hold harmless Seller and its affiliates and all officers, directors, employees and agents thereof, from and against any and all liabilities (including third party liabilities), lawsuits, claims, damages, losses, property damage, fines, penalties and assessments by any public agency, costs and expenses (including costs and expenses of defense, settlement and reasonable attorneys' fees), which are incurred or brought as a result of any negligent or willful act or omission of AEML, its agents, employees, representatives, contractors or subcontractors associated with, or arising from, the performance by AEML of its obligations under this Agreement, including such matters arising in connection with the docking, unloading or undocking of the vessel.

C. Indemnity for Warranties and Other Matters:

With respect to or arising out of any breach by a party of its warranties, representations or covenants hereunder, such party shall indemnify and hold the other party and its successors, assigns, partners, employees, contractors, subcontractors and agents harmless from and against all

damages, losses or expenses suffered or paid as a result of any and all claims, demands, suits, penalties, causes of action, proceedings, judgments, administrative and judicial orders and liabilities (including costs of defense, settlement and reasonable attorneys' fees) assessed, incurred or sustained by or against such other party and its successors, assigns, partners, employees, contractors, subcontractors and agents.

D. Effect of Indemnification:

The indemnification provided for in this Section 16 shall not provide an alternative remedy for any deficiencies in the quality of coal delivered hereunder or for any liabilities, damage or losses which are expressly addressed in any other Section of this Agreement; the remedies expressly provided for in such other Section of this Agreement shall, to the extent applicable, govern the rights and obligations of the parties instead of the remedies provided for in this Section 16.

E. Notice and Legal Defense:

Promptly upon receipt by a party entitled to indemnification under this Section 16 (the "Indemnified Party") of any claim as to which such indemnification may be applicable ("Claim"), the Indemnified Party shall notify the other party (the "Indemnifying Party") of such fact in writing with the details of such Claim. The Indemnifying Party shall assume the defense thereof with counsel of its choice, subject to the reasonable approval of the Indemnified Party. If the parties against whom the Claim is asserted include both the Indemnified Party and the Indemnifying Party, and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from, additional to or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select separate counsel to participate in the defense of such Claim on behalf of such Indemnified Party, at the Indemnifying Party's expense. The Indemnified Party shall retain authority, in the reasonable exercise of its discretion, to approve any and all communications with, and to prevent the submission of any documents to, any court or governmental authority having jurisdiction over the Claim.

F. Failure to Defend Claim:

Should the Indemnified Party be entitled to indemnification under this Section 16 as a result of a Claim by a third party, and should the Indemnifying Party fail to assume the defense of such Claim, having

received notice as required by Section 16.E, the Indemnified Party may at the expense of the Indemnifying Party contest (or, with the prior written consent of such Indemnifying Party, not to be unreasonably withheld, settle) such Claim; provided, that no such contest need be made, and settlement or full payment of any such Claim may be made upon seven days' prior written notice to but without consent of the Indemnifying Party (with such Indemnifying Party remaining obligated to indemnify the Indemnified Party under this Section 16) if, in the written opinion of the Indemnified Party's counsel, such Claim is meritorious.

G. Joint Cause:

If any Claims for indemnity arising out of Section 16.A or Section 16.B are caused by joint and concurring acts or omissions of Seller and AEML, the liability of Seller and AEML therefore shall be apportioned according to their respective degrees of fault.

H. Survival:

The provisions of this Section 16 shall survive the termination, cancellation or expiration of this Agreement, subject to applicable statutes of limitation.

17. Notices: -

Any notice required or permitted by this agreement shall be in writing and in the English Language and may be delivered personally or may be sent by telex, facsimile, or prepaid registered mail addressed to the parties, as follows:

If to BUYER:

ADANI ELECTRICITY MUMBAI LIMITED,

Address

TEL: +91-

FAX: +91-

ATT: MR. ____

EMAIL: Email@adani.com

If to SELLER:

Supplier Authorized Person
Supplier Address

TEL: _____

FAX: _____

ATT: _____

EMAIL: _____

18. Governing Law and Dispute Resolution:

This Agreement shall be governed and interpreted in accordance with the Laws of India without giving effect to its internal principles of conflict of law.

All the disputes arising out this Agreement shall be referred to Courts situated at Ahmedabad and such courts shall have exclusive jurisdiction.

19. Contract Foreclosure:

The Buyer reserves the right to foreclose the contract by giving 30 days prior written notice of such foreclosure to seller. Notwithstanding anything stated herein, the contract be foreclosed at the discretion of AEML. The buyer shall not be liable to the seller for any loss, costs, damages or expenses on account of the foreclosure of the contract.

20. Contract Performance Bank Guarantee:

The Seller shall submit a Bank Guarantee in favour of AEML, issued by a bank of repute acceptable to AEML duly confirmed by a first class International Bank and to be kept valid for till 90 days from arrival of last vessel. The Bank Guarantee will be an amount equal to Ten percent (10 %) of the value of the Contract Value. The bank guarantee is liable to be invoked when the Seller defaults and discontinues supplies of coal as per agreed schedule for whatsoever reason except under a Force Majeure situation described under Section 13.

All banking charges including without limitation, acceptance commission incurred at Sellers' drawing bank and the confirming bank shall be for the account of Seller. Also, all banking charges concerning the Bank Guarantee referred above shall be to the account of the Seller.

21. Amendments:

Any amendments of this contract shall be in the form of an addendum in writing to be signed by both parties and shall, thereafter form and become an integral part of this contract.

22. Consequences of Termination:

In the event of a termination of this Agreement pursuant to Section 14, neither party shall have any further obligation to perform hereunder, but no such termination shall excuse the payment of any amount due and owing by one party to the other hereunder prior to such termination, nor shall such termination affect the survival provisions of Section 16.H.

23. Waiver:

Any failure of either Party to insist on any or more instances upon strict performance of any provision of the contract or to exercise any of his rights herein, shall not be considered as a waiver of any such provision.

24. Assignment:

Neither party shall assign any rights or obligation under this agreement without the prior written consent of the other party.

25. Confidentiality:

Neither Party shall disclose any information contained in this Agreement to a third party without consent of each other, except to Government Authorities as required by the rules of the countries of the Parties concerned or where prior consent has been taken by a Party from the other and in those cases, the disclosure must not be made unless prior to such disclosure all reasonable and usual steps in the circumstances are taken to protect against the misuse or unauthorized disclosure of the confidential information by the third parties, including where appropriate, requiring the relevant third party to provide a written undertaking of confidentiality.

For the avoidance of doubt, no Party will use the name of the other Party for advertising or promotional purposes without prior written permission, nor are Contract materials to be used in whole or in part outside of each Party's organization without prior written approval of the other Party.

**IN WITNESS WHEREOF THE PARTIES HERETO HAVE SUBSCRIBED
THEIR RESPECTIVE HANDS THE DAY, HEREIN BELOW WRITTEN:**

BUYER

SELLER

ADANI ELECTRICITY MUMBAI LTD.

(Authorised Signatory)

(Authorised Signatory)

SCHEDULE - I

Delivery Schedule

Vessel Arrival to Dahanu Port	Ship Number	Qty.(Tons)
01-11-2018	Ship-1	60000 +/- 10%
01-12-2018	Ship-2	60000 +/- 10%
01-01-2019	Ship-3	60000 +/- 10%
18-01-2019	Ship-4	60000 +/- 10%
10-02-2019	Ship-5	60000 +/- 10%
28-02-2019	Ship-6	60000 +/- 10%
15-03-2019	Ship-7	60000 +/- 10%
07-04-2019	Ship-8	60000 +/- 10%
22-04-2019	Ship-9	60000 +/- 10%
31-04-2019	Ship-10	60000 +/- 10%
Total		600000 +/- 50%

SCHEDULE - II

PRICE

Buyer shall purchase the coal supplied to it considering the FOB Price quoted by the Bidder at Annexure IV of NIT. Based on this Base CIF/ HSS Price, the actual price to be paid for individual deliveries shall be calculated based on the methodology outlined in the clauses below”

The Price of coal to be supplied shall comprise of

CIF Coal Price: Base CIF Price of the imported Coal consists of Base FOB Price Index based methodology or Fixed Price, Freight plus Other Charges, in US\$. If quoted on index basis Base FOB Coal Price quoted is subject to variations for payment purposes, considering the specified indices as on preceding Friday to Bill of lading date