

Format of Fresh Tripartite Agreement where valid Tripartite Agreement with QCI was not existing as on 25.05.2022

This AGREEMENT is meant for Coal Quality monitoring by QCI at the loading end at different loading/Dispatch points of subsidiaries of CIL for dispatches to the customers of Power Sectors/ Non-Power Sector taking Coal under FSA/ MOU/ different auction scheme(s) or any other mechanism of coal supplies, as per the extant guidelines in vogue.

Vide letter No. CIL/C-4B/TPA/QCI/2022/53 dated 25.05.22, CIL has given extension of empanelment period of Quality Council of India (QCI) and it is also mentioned in that letter that CIL will float an open tender for empanelment of Third-party agency(s) shortly & QCI would be required to participate for continuation of their work as per terms and conditions of the open tender. The extension given by CIL, will be for a period up to 25.05.2023 (one year from 26.05.2022) or issuance of Lol / Work Order against new tender, whichever is earlier.

The validity period of empanelment of QCI will be reckoned from the date of this Agreement till 25.05.2023 or limited up to such time till the customer is entitled to take coal [under FSA / e auction scheme(s) / Any other mechanism of coal supplies, as per extant guidelines in vogue for both power & non-power sectors] or till issuance of Lol/Work order against new tender, whichever is earliest.

This AGREEMENT is made and entered into on this ___ day of ___ 2022 (_____ day of ___ Two Thousand Twenty Two) between _____, a subsidiary of Coal India Limited (CIL), a company registered under Companies Act 1956, having its registered office at _____ (hereinafter called the "Coal Company" which expression shall wherever the context so admits include its Successors and permitted assigns of the first part)

AND

-----, a company registered under Companies Act, 2013 (In case the customer is not a registered company viz. Partnership, Proprietorship etc. suitable amendment may be made here) in India and having its registered office at _____ *and having its _____ (type of plant) located at _____*)* (hereinafter called the "Customer" which expression shall whatever the context so admits include its successors and permitted assign of the second part).

*The portion in italics may be deleted in case of auctions in which traders can also participate

AND

Quality Council of India registered under Societies Act 1860, having its registered office at _____ (Hereinafter called as "QCI" which expression shall wherever the context so admits includes its successors and permitted assign of the third part)

PREAMBLE

Whereas Subsidiary coal companies of CIL produce coal from their different mines in different parts of India and market the same and other products of coal to different customers under different schemes.

And whereas the 'Customer' consequent to fulfillment of eligibility as applicable is eligible for coal supplies and for Third Party Sampling at loading end AND has expressed his desire for such purpose before both the First Party and the QCI.

And whereas CIL decides the panel of Third-Party sampling Agencies from time to time for the job of Sampling & analysis.

And whereas after understanding the job description in detail, QCI has assured the First Party & Second Party about its ability, willingness, expertise and infrastructure to undertake the job of coal quality

sampling & analysis and has agreed to undertake the sampling and analysis of coal as per the scope of work in this AGREEMENT (hereinafter called the "ACTIVITY").

And whereas it has been agreed to enter into this AGREEMENT on the following terms and conditions.

And whereas, this AGREEMENT will become an integral part of coal supply agreement(s)/order(s) signed / issued by subsidiaries of CIL for supply of coal to Customer in the instant case.

SCOPE OF AGREEMENT

This AGREEMENT details the terms and conditions, financial arrangement, responsibilities and obligation of coal companies (first party), the customer (second party) and QCI (third Party).

QCI will undertake ACTIVITY at loading points of (Name of Coal Company-----) for the dispatches to Customer in terms of this AGREEMENT. QCI, Coal Company and the Customer shall respectively and faithfully abide by and subject themselves to the terms and conditions and stipulations of this AGREEMENT.

FINANCIAL ARRANGEMENTS

In consideration of the work/ ACTIVITY to be carried out by QCI at the loading points, Coal Company AND the Customer shall pay QCI in the following manner-

Rate for the ACTIVITY at loading point will be Rs. 6.0 (Rupees six only) per metric tonne of dispatch quantity covered under sampling. GST as applicable shall be payable extra.

The cost of the ACTIVITY will be shared equally by coal company and customer i.e. 50:50 basis as per the aforesaid rate.

Within 30 days after receipt of bills and necessary documentation for processing of bills, Coal Company and the Customer shall release fund against each monthly bill raised for the quantity for which analysis results have been submitted by QCI. Any delay in payment to QCI will attract interest at the rate of prevalent Repo Rate of RBI plus three percent for delayed period by the defaulting party.

GENERAL TERMS AND CONDITIONS

QCI shall undertake the ACTIVITY and ensure smooth functioning of operational and technical issues pertaining to ACTIVITY. For any issues where consensus could not be arrived amongst Parties, the matter will be referred to Director (Marketing), CIL whose decision will be final and binding for all the three Parties.

QCI shall avoid any conflict of interest while discharging contractual obligations and bring beforehand, any possible instance of conflict of interest to the knowledge of Coal Company, while rendering service in respect of subject assignment. In case of suppressing any such information, this Agreement will be liable for termination.

SCOPE OF WORK

QCI will be wholly responsible for collection, preparation and analysis (Moisture, Ash, GCV on equilibrated basis and Total moisture). Details of coal supplied to customers by Rail/Road/ MGR etc. is to be furnished by Coal Companies which will be the basis of raising the bills on monthly basis by QCI.

MODALITIES FOR SAMPLING AND ANALYSIS

Modalities for Collection of Samples

Samples of Coal shall be collected by QCI from the Delivery Point as follows:

A. Collection of samples of coal from loaded wagons (Rail and MGR):

- (i) Rake-wise, grade-wise and customer-wise coal supplied from one Delivery Point shall be considered as one lot, in case of supplies by Rail.
- (ii) In case of Coal dispatches through MGR the sample collected from each rake(source

wise, grade wise and Customer wise) loaded from the respective Delivery Point during the day shall be pooled together to form a gross sample for the day.

B. Collection of Samples of Coal Dispatches by Road:

Samples shall be collected source-wise and grade-wise on daily basis round the clock, depending upon the timing of loading at respective dispatch point(s) only from the trucks of the customer (s) who have opted for third party sampling (“Customers Opting for Sampling”)

C. Collection of Samples of coal from Conveyor Belt / Ropeway / Pipelines:

- (i) Samples shall be taken lot-wise, grade-wise.
- (iii) The quantity that passes over the conveyor (directly or through rope way / pipeline) in a day (00 hrs to 24 hrs) constitutes one lot, which needs to be divided into a no. of sub-lots for the purpose of sampling.

For the purpose of collection, preparation, transportation and analysis of coal sample or part of the job thereof; QCI may engage Service Providers at different locations and testing laboratories having NABL accreditation. In the capacity as Principal Employer, It will be the sole responsibility of QCI to comply with all statutory requirements relating to workmen engaged for such purpose, at all material point of time.

D. Standards to be followed for Collection, preparation & analysis of coal samples –

- (i) For collection & preparation of coal samples, IS 436 Part-I, Sec-I & II, 1964 or its latest version / FSA/ model FSA for NRS at the time of loading will be applicable.
- (ii) For analysis of Total moisture, Equilibrated Moisture (at 40 Deg C & 60% RH), Ash and Volatile Matter in the prepared coal samples, latest version of IS 1350 (Part-I)1984 will be applicable.
- (iii) For analysis of GCV on equilibrated moisture basis (at 40 deg C & 60 % RH) in the prepared coal samples, latest version of IS 1350 (Part-II) 1970 will be applicable.

Photography/videography may be done at the loading end by any Party in the interest of transparency & fairness of sampling procedure.

Sample collection & preparation may be witnessed by representative(s) of Coal Company and Customer. However, their absence or participation for whatsoever reason, shall not be considered as a ground for disputing the result. If any party wants to raise the dispute during sample collection & preparation, they may do it in writing before other Parties to this Agreement for finding an amicable solution to the dispute. It is clarified that in case of Road dispatch, samples shall be collected source-wise and grade-wise on daily basis round the clock, depending upon the timing of loading at respective dispatch point (s). Composite sample collection and preparation will be done for Non-Power sector customers for supply of coal under FSA/ different schemes of e-Auction in Road mode for a day source-wise/grade-wise.

E. Total Moisture - Determination of T.M. will be done at site/nearest laboratory. For such purpose, sample of 12.5 mm shall be prepared.

F. Parting of Sample - Laboratory sample will be prepared in (-) 212 Micron size. After preparation, final sample shall be divided into four equal parts (QCI, Coal Company, Customer & Referee Samples). QCI shall ensure double blinding of QCI and referee samples part before sending it to respective labs for analysis.

For tests/analysis (moisture, ash, GCV on equilibrated moisture basis), prepared samples will be transported by QCI in tamper proof manner to NABL accredited labs.

G. Analysis through Automatic Bomb Calorimeter with print out facility will be done without manual intervention and necessary records will be kept by QCI. QCI shall communicate the analysis result of the sample within **7 (seven)** working days (considering 5 working days a week) from the date of collection of samples to the Coal Company and Customer through designated email. Each sample result also needs to be supported with original print out of Bomb Calorimeter. Additionally,

QCI shall also provide results of analysis to respective coal companies (HQ/ Area) in Excel format/ Application Program Interface (API) for online/ real-time updation of records in the coal Quality Portal and ERP, as per the requirement of Coal Company.

H. Penalties for not adhering to timelines of declaration of QCI results:

Penalty provisions beyond the timeline of 7 working days from the date of sample preparation will be as per the table below:

Sl. No.	Delay (in Days)	Penalty*
1	1-2	05 %
2	3-5	20 %
3	6-10	50 %
4	>10 days	100 %

**To be computed against the charges payable to QCI for the quantity covered under the respective sample (s).*

Coal Company/ customer shall claim/realize the penalty directly from QCI @ 50:50.

I. **Referee Sample** shall be retained in double sealed condition duly signed by representative of Coal Company and the Customer along with the signature of QCI representative and kept in safe custody at the loading point by QCI for 30 days from the date of sample collection. For safe custody of referee sample, locker of reputed make shall be provided by Seller at loading end.

J. **Raising of Dispute:** Within 7 days of the submission of the result by QCI, either party (coal company or customer) may raise dispute which invariably will be informed to the opposite Party and QCI through e-mail. However, non-receipt of information by other Party shall not affect the referee process. Referee sample shall be sent to any one of the five NABL Accredited laboratories i.e. Central Power Research Institute, Bangalore, CSIR-IMMT, Bhubaneswar, NML, Jamshedpur, CSIR-Indian Institute of Chemical Technology (IICT), Hyderabad and CSIR-NIEST, Jorhat or any other Govt. NABL Accredited laboratory which may be intimated by CIL as Referee Lab in future, on rotational basis. The choice of referee laboratory out of those empaneled, shall rest with the Party disputing the result in consultation with other Party. In case of non-receipt of mutual consent from Customer/Coal Company regarding the referee lab selection, the QCI will decide the referee lab. The payment towards referee analysis will be borne by challenging party. Findings of the referee lab shall be binding on all the parties for commercial purposes. Each result also needs to be supported with original print out of Bomb Calorimeter.

The Referee SOP for referee sample analysis is enclosed as **Annexure-I**.

K. Delays on account of reporting of referee results:

Penal provisions in case of default/ delay in submission of samples at referee labs by QCI beyond 45 days from the date of the challenge will be as per the following:

Sl. No.	Delay (in Days)	Penalty*
1	1-2	02 %
2	3-5	05 %
3	6-10	10 %
4	>10 days	20 %

**To be computed against the charges payable to QCI for the quantity covered under the respective sample (s).*

The challenging party would claim/realize the penalty directly from QCI.

ENABLING CONDITIONS

Coal Company shall provide enabling conditions including collection, sample preparation facilities/machineries and storage of sample at loading end. In addition, coal companies shall provide infrastructural facilities for sample collection i.e. smooth functioning of AMS, ramp/ladders, lighting arrangements, sample storage room etc. All the consumables, tools and tackles etc. (standard quality) required for performing the jobs shall be arranged by QCI.

FORCE MAJEURE

Neither Coal Company, Customer nor QCI shall be held responsible for non-fulfillment of their respective obligations under this Agreement due to the exigency of one or more of the force majeure events such as but not limited to Acts of God, war, flood, earthquakes, strike, lockouts, epidemics, riots, civil commotion etc., provided that on the occurrence and cessation of any such events, the affected party thereby shall give a notice in writing to the other Party(s) within one month of such occurrence or cessation. If the force majeure conditions continue beyond six months the Parties shall then mutually decide about the future course of action.

EFFECTIVE DATE, DURATION, TERMINATION OF THE AGREEMENT

This Agreement shall be valid w.e.f. the date of signing of the Agreement & shall remain in force till 25.05.2023 or limited up to such time till the customer is entitled to take coal under the applicable contract / order in this case till issuance of Lol/Work order against new tender, whichever is earliest. All samples collected till the last validity date of this agreement will be governed by the provisions herein.

During the tenure of the Agreement Parties hereto can terminate the Agreement either for breach of any of the terms and conditions of this Agreement or otherwise by giving a two months' notice in writing to the other parties. Failure of any of the parties to terminate the Agreement on account of breach or default by the other shall not constitute a waiver of that party's right to terminate.

CONFIDENTIALITY

During the tenure of Agreement and thereafter, all Parties undertake on their behalf and on behalf of their subcontractors/ employees/ representatives/ associates to maintain strict confidentiality and prevent disclosure of any/ all information & data pertaining to work under this Agreement for any purposes other than in accordance with this Agreement.

NOTICES

All notices and communications required to be served on Coal Company and customer shall be considered to be duly served if the same has been posted through any recorded mode of delivery to Coal Company and Customer at its last known address of business and/or through e mail. Similarly, any notice to be given to QCI shall be considered as duly served if the same has been posted through any recorded mode of delivery at its address and /or through e mail.

AMENDMENTS TO THE AGREEMENT

CIL will reserve the right to amend any of the provisions of this agreement, as deemed appropriate any time.

ASSIGNMENT OF THE AGREEMENT

Any rights and/or liabilities arising to any Party on account of this Agreement shall not be assigned except with the written consent of other Parties and subject to such terms and conditions as may be mutually agreed upon.

SEAL OF PARTIES

In witness whereof, the parties hereto have signed this Agreement on the ___ day of ____ of year **2022** mentioned hereinbefore.

Signature 1st Party

Signature 2nd Party

Signature of QCI

NAME, SIGNATURE & ADDRESSES OF WITNESSES

1. _____

2. _____