

**GLOBAL NOTICE INVITING TENDER (NIT)<sup>1</sup>**  
**(only through Electronic Tender)**

**NIT No:** [\*\*\*\*\*]

**Dated:** [\*\*\*\*\*]

1. The [\*\*\*\*\*insert name of subsidiary of Coal India Limited\*\*\*\*\*] (the “**Authority**”) is engaged in the development and operation of coal mines and as part of this endeavour, the Authority has decided to undertake the development and operation of [\*\*\*name of the project\*\*\*] (the “**Project**”) through a mine operator for excavation of coal and delivery thereof to the Authority.
2. Pursuant to this NIT, the Authority invites digitally signed and encrypted Bids on a “single stage two-part” bidding basis on the website, [http://www.coalindiatenders.nic.in] from reputed and experienced Bidders for the following work:

Description of work	Location of the Project	Application fee ( ₹ )	Estimated Total Project Cost ( ₹ in million)	Bid Security ( ₹ in million)	Duration of the Contract (in years)
[*****]	[*****]	Nil	[*****]	[**2% of Total Project Cost *** (rounded to next thousand rupees)** capped at Rs. 20 million]	[25 years or Life of the mine whichever is shorter]

**Note:**

The Bidding Documents will be available on the website(s)  
[http://www.coalindiatenders.nic.in]

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**<sup>1</sup>Instructions for project-specific customization**

*This NIT and Request for Bids (the “RFB”) may be customized for project-specific use in accordance with the instructions below:*

**Note 1:** Serially numbered footnotes in this RFB are for guidance of the Authority and should be omitted from the model RFB document forming part of the Bidding Documents.

**Note 2:** All project-specific provisions in this RFB have been enclosed in square parenthesis and should be modified appropriately or omitted, as necessary, before issuing/uploading this RFB for online bidding by Bidders. The values or particulars specified within square brackets are only for guidance of the Authority while customizing this RFB for a specific project.

**Note 3:** The asterisks in this RFB should be substituted by project-specific particulars by the Authority before issuing and uploading this RFB for online bidding by Bidders.

**Note 4:** The provisions of curly parenthesis are to be retained in the formats of the Appendices forming part of the Bidding Documents and shall be suitably modified by the Bidders with relevant particulars of the Bidders while submitting their Bids in order to reflect the details of their Bids.

**Note 5:** Footnotes marked “£” or in other non-numerical characters are to be retained in the RFB. These notes are for the guidance of the Bidders.

**Note 6:** The words or expressions beginning with capital letters and defined in this RFB shall, unless the context otherwise requires, have the meaning ascribed thereto herein or in the Contract Agreement provided in Appendix-VI.

### 3. Time Schedule of Tender<sup>2</sup>

Sl. No.	Activity	Date	Time (IST, hours)
1	Notice Inviting Tender	[*****]	[*****]
2	Bidding Documents download start date and time	[*****]	[*****]
3	Bidding Documents download end date and time	[*****]	[*****]
4	Start date and time for seeking clarifications online	[*****]	[*****]
5	Last date and time for seeking clarifications online (“ <b>Clarification Submission Due Date</b> ”)	[*****]	[*****]
6	Date and time of pre-bid conference	[*****]	[*****]
7	Online Bid submission start date and time	[*****]	[*****]
8	Last date and time for online Bid submission (“ <b>Bid Due Date</b> ”)	[*****]	[*****]
9	Bid opening date	[*****]	[*****]

### 4. General Instructions

- 4.1. Bidders must review the Bidding Documents as a whole, and ensure that their Bids are as per the terms of the Bidding Documents. The Authority retains the right to modify the terms of the Bidding Documents and/ or any of the sections/ attachments/ formats thereto at any time prior to the Bid Due Date.
- 4.2. The Bidders are expected to examine the Bidding Documents, including all instructions, forms, terms, specifications, conditions, and other documents and requirements of the Bidding Documents. Failure to furnish all or any information required by the Bidding Documents, or submission of a Bid which is not responsive to the Bidding Documents in every respect may result in the rejection of the Bid. Bidders shall be deemed to have understood and taken into account all the terms and conditions prescribed in the Bidding Documents.
- 4.3. Once a Bid is submitted no changes will be permitted to be made by the Bidder except as permitted under the Bidding Documents.
- 4.4. Words and expressions beginning with capital letters used in this NIT without being defined shall have the same meaning as assigned to them in the RFB, the Contract Agreement or the other Bidding Documents.

### 5. Deposit of Bid Security

- 5.1. A Bidder shall furnish, as part of its Bid, a bid security equal to Rs. [2% (two per cent) of the Total Project Cost (rounded to next thousand rupees) and capped at 20 (twenty)

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<sup>2</sup> These dates are to be given only in online mode. At least 60 days’ time period from the publication of the NIT shall be given for submission of the Bid. For second time bidding, if any, a time period of 30 days from the date of publication of the NIT shall be given for submission of the Bid.

million] (the “**Bid Security**”). The Bid Security can be deposited online on the e-procurement portal [<http://www.coalindiatenders.nic.in>] through the following modes:

- (a) Online fund transfer from [\_\_\_\_\_], or
- (b) NEFT/ RTGS from any scheduled bank, as included under the Second Schedule to the Reserve Bank of India Act, 1934.

Bid Security through NEFT/ RTGS has to be paid strictly as per the challan generated by the respective Bidders on the e-procurement portal [<http://www.coalindiatenders.nic.in>].

The Bid Security payment through NEFT/ RTGS mode should be made well before the Bid Due Date to ensure that the Bid Security amount is received in the account of the Authority before the Bid Due Date.

Bid can only be submitted when the Bid Security is received in the account of the Authority.

- 5.2 The Authority shall not be liable to pay any interest on the Bid Security so deposited.
- 5.3. For further details on Bid Security, refer to Clause 2.16 under Section II of RFB (Instruction to Bidders).

**The Bidders shall submit MANDATE FORM for e-payment as per the format given in Enclosure-II of this NIT.**

## **6. Pre-Bid Conference**

A pre-bid conference shall be held at the office of the Authority or such other address as may be specified by the Authority on [\*\*\*\*] at [\*\*\*\*am/ pm]. For further details on pre-bid conference, refer to Section V of the RFB (Pre-Bid Conference).

## **7. Clarifications**

Bidders may seek clarifications in respect of the Bidding Documents online. Such requests for clarification, if any, should be submitted on or before the Clarification Submission Due Date. The Authority shall issue written clarifications on the website [<http://www.coalindiatenders.nic.in>], to the extent it deems fit. All such written clarifications issued by the Authority shall be deemed to form a part of the Bidding Documents and shall be binding on the Bidders. The Bidders are required to check the website mentioned above for any clarifications issued by the Authority in relation to the Bidding Documents. However, any verbal clarifications or information given by the Authority or its consultants or employees shall not in any manner be binding on the Authority. No extension of time for submission of Bids shall be granted on account of Bidders’ request for clarifications or information. Any extension of time to be given for submission of Bids shall be at the sole discretion of the Authority.

- 8. The Bidders shall accept the online user portal agreement (provided at Appendix IX of RFB) which contains, *inter alia*, the Bidders’ acceptance of all terms and conditions of the NIT, the RFB, undertakings and the e-tendering system through [<http://www.coalindiatenders.nic.in>] in order to qualify as an eligible Bidder.

## 9. Qualification Criteria

### 9.1. Technical Capacity

For the qualification requirements with respect to Technical Capacity, Bidders are required to refer to Clause 2.2.2 under Section II of the RFB (Instruction to Bidders) and Clause 3.2 and Clause 3.3 under Section III of the RFB (Evaluation of Bids).

For substantiating the volume of actual work executed during the period for which experience is claimed, Bidders are required to furnish the following information online:

- (a) Start date and end date of qualifying period (such that the difference between the end date and start date does not exceed 365 days);
- (b) Nature of experience (as a contractor or sub-contractor or mine owner), of each qualifying experience;
- (c) Reference number of the document(s), of each qualifying experience in the following manner:
  - (i) in case of a contractor, work order/agreement number;
  - (ii) in case of a sub-contractor, work order/agreement number from the employer and the principal employer; and
  - (iii) in case of an owner of mine/ project, reference number of the document(s) evidencing the ownership/title rights to the mine/ project and for operation of mine/ project.
- (d) Start date and end date of each qualifying experience;  
(The start date and the end date of each qualifying experience must fall on or between the start date and the end date of the qualifying period)
- (e) Executed eligible volume of work within the start date and end date;  
(As per Sl. No. 10 of the format provided at Annex-II to Appendix I of RFB) submitted by the Bidder, for each qualifying experience)
- (f) Scanned copies of the documents as specified in Paragraph 10 of the NIT, in relation to Technical Capacity.

#### **Notes:**

**Note 1.** *In case the Bidder is a Consortium, the work experience of any or all of the Members may be furnished for evaluation by adding the Technical Capacity of each Member. If work experience of all the Members is not submitted, the system shall consider a value of zero for the Member(s) whose work experience has/ have not submitted.*

**Note 2.** *Percentage (%) share in each qualifying experience of the Bidder, any Member (in case the Bidder is a Consortium) or an Associate of the Bidder or Member, as the case may be, whose Technical Capacity is furnished and relied upon by the Bidder for the purpose of eligibility criteria under this RFB, shall be the actual percentage (%) share in the qualifying experience. Only those qualifying experiences shall be considered where the actual percentage (%) share of the Bidder, Member or Associate (as the case may be) in the qualifying experience is 26% or more.*

***Note 3.** For qualifying experience as contractor or sub-contractor, in both cases, the work execution certificate from the principal employer shall only be considered.*

## 9.2. Financial Capacity

For qualification requirements with respect to Financial Capacity, Bidders are required to refer to Clause 2.2.3 under Section II of the RFB (Instruction to Bidders) and Clause 3.4 under Section III of the RFB (Evaluation of Bids). For qualification requirements with respect to Financial Capacity, each Bidder is required to choose any 3 (three) financial years from the last 4 (four) immediately completed consecutive financial years as on date of invitation of Bids. The financial years chosen by the Bidder shall be same for each Member (if the Bidder is a Consortium) and the Associate(s), whose Financial Capacity is furnished and relied upon.

- (a) The Bidder shall have a minimum Net Worth of Rs. [a minimum of Rs. 200,00,00,000 or 10% (ten per cent) of the Total Project Cost (capped at Rs. 500,00,00,000), whichever is higher] at the close of the latest financial year among the 3 (three) financial years chosen by the Bidder. For the purposes of the Bidding Documents, the term “**Net Worth**” shall mean: (i) where the Bidder is a company, the aggregate of the subscribed and paid up capital and reserves *less* the sum of revaluation reserves, miscellaneous expenditure not written off and reserves not available for distribution to shareholders; and (ii) in all other cases, the aggregate of fixed assets, investments and current assets *less* the sum of revaluation reserves, current liabilities and long term borrowings; and
  - (b) Average Financial Turnover of the Bidder in the last 3 (three) financial years, as chosen by the Bidder, shall not be less than Rs. [\*\*\*\*\* 30% of the Total Project Cost \*\*\*\*\*]. For the purposes of the Bidding Documents, the term “**Financial Turnover**” shall mean the aggregate value of the realisation of amount made from the sale, supply or distribution of goods or on account of services rendered, or both, by the company/entity during a financial year;
10. For substantiating the Financial Capacity, the Bidders are required to furnish the following information online:
- (a) Value of Net Worth (to be submitted in Indian Rupees and in the format provided at Annex III of Appendix I of RFB);
  - (b) Value of Financial Turnover in the last 3 (three) financial years as chosen by the Bidder (to be submitted in Indian Rupees and in the format provided at Annex III of Appendix I of RFB);
  - (c) Membership number of the chartered accountant<sup>£</sup>, where applicable; and
  - (d) Scanned copies of the documents as specified in Paragraph 10 of the NIT, in relation to the Financial Capacity.

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<sup>£</sup> Any approximate equivalent of a chartered accountant may provide the relevant certificates required under this RFB. Jurisdictions which do not have a licence/ certification/ membership requirements for accountants to describe themselves or to practice as chartered accountants (or any approximate equivalent), any qualified accountant may provide the certificates required under this RFB.

**Note:** In case the Bidder is a Consortium, the aforesaid certificates and information shall be submitted in respect of all the Members and the Financial Capacity of the Consortium will be assessed by adding the information so furnished.

Bidders shall submit the information in an objective manner confirmed by the uploaded documents. The documents related to the information furnished online, based on which the auto evaluation takes place, will only be considered. If a Bidder uploads any other document, it will not be given any cognizance.

A scanned copy of the following documents shall be submitted online by the Bidders in support of the information / declaration furnished by the Bidder at the time of submission of their Bids:

Sl. No.	Submission of documents related to qualification criteria	Scanned copy of documents (self-certified and notarized/ <sup>97</sup> ) to be uploaded by Bidders in support of information / declaration furnished online by the Bidder against each qualification criteria (CONFIRMATORY DOCUMENT)
1.	Bidder's Covering Letter and acceptance of bid conditions	Copy of the Bidder's Covering Letter, acceptance of the Bid conditions and making commitments on the Bidder's letter head as per proforma (provided at Appendix I of RFB).  <b>Note: In case the Bidder is a Consortium, the above documents are to be signed by all the Members.</b>
2.	Technical Capacity	<p>i) For each qualifying experience of the Bidder against the eligibility criteria as sought online as contractor/ sub-contractor:</p> <p>(a) In case the qualifying experience of a Member of the Consortium is submitted, MOU/ consortium agreement stating the percentage (%) share of each Member in the consortium; In case the MOU/ consortium agreement or such certificate does not include the percentage (%) share of each member, equal share shall be considered.</p> <p>The Bidder may also support its claim for the share in work done for that particular work experience by producing a certificate from its statutory auditor<sup>§</sup> or the client.</p> <p>(b) Copy of the work order issued by the relevant issuing authority, employer or principal employer, as the case may be. It is hereby clarified that in case of a sub-contractor, copies of work orders issued by both the</p>

<sup>97</sup> For any document issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the document is being issued. However, any document provided by bidders from countries that have signed the Hague Convention, 1961 is not required to be legalised by the Indian Embassy if it carries a conforming apostille certificate.

<sup>§</sup> In jurisdictions that do not have statutory auditors, the firm of auditors which audits the annual accounts of the Bidder may provide the certificates required under this RFB.

		<p>employer as well as the principal employer are required.;</p> <p>(c) Copy of the employer's certificate endorsing the execution of the excavation work stating the volume (in case of Overburden) and/ or tonnage (in case of coal / lignite / iron ore/ bauxite/ manganese ore/ copper ore) along with the period during which the work was executed. In case of the sub-contractor such certificates as issued by the principal employer.</p> <p>ii) For each qualifying experience of the Bidder against the eligibility criteria as sought online as a mine/ project owner:</p> <p>(a) Copy of mining lease/rights (only relevant pages) or any other document issued or executed by the relevant statutory authority, evidencing the Bidder's right/ title of ownership of the mine/ project;</p> <p>(b) Copy of the permission for opening/ operating the mine (or coal seams)/ project, issued by the relevant statutory authority;</p> <p>(c) Copy of the latest certified mining plan (only the relevant pages) approved by the relevant statutory authority stating the planned output of coal / lignite/ iron ore/ bauxite/ manganese ore/ copper ore, Overburden, stripping ratio (average), as applicable, during the lease period; or copy of any excavation plan of the project as approved by the relevant statutory authority; and</p> <p>(d) Copy of submissions made to the relevant statutory authorities for the excavated volume/ quantity of coal, lignite/ iron ore/ bauxite/ manganese ore/ copper ore, Overburden, for the relevant period (e.g. copies of monthly/ annual return, audited annual reports, royalty payment, etc. or any other document acceptable to the Authority). The documents should be certified by the concerned statutory authority or the statutory auditor<sup>§</sup> of the Bidder, as applicable.</p> <p>iii) Annex II (provided at Appendix I of RFB) duly filled in and uploaded, for each qualifying experience.</p> <p><b>Note: In case the Bidder is a Consortium, the above documents are to be submitted in respect of any or all the Members.</b></p>
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<sup>§</sup> In jurisdictions that do not have statutory auditors, the firm of auditors which audits the annual accounts of the Bidder may provide the certificates required under this RFB.

3.	Financial Capacity	<p>i) Certificate specifying the Net Worth of the Bidder, as at the close of the latest financial year among the chosen 3 (three) financial years, from a chartered accountant based on the financial statements audited by statutory auditor<sup>∞</sup> exhibiting the information submitted by the Bidder and confirming that the methodology adopted for calculating the Net Worth conforms to the provisions of the Bidding Documents;</p> <p>ii) Certificate specifying the average financial turnover of the Bidder during the last 3 (three) financial years, as chosen by the Bidder, from a chartered accountant based on the financial statements audited by statutory auditor<sup>∞</sup> exhibiting the information submitted by the Bidder online and also specifying the methodology adopted for calculating the average Financial Turnover;</p> <p>iii) Audited annual reports of the Bidder for the last 3 (three) financial years, as chosen by the Bidder, comprising of the audited balance sheets and profit and loss accounts of the Bidder.</p> <p>iv) A duly filled in Annex III (provided at Appendix I of RFB).</p> <p><b>Notes:</b></p> <p><b>i. For the purpose of Financial Capacity, the Bidder can choose any 3 (three) financial years from the last 4 (four) immediately completed consecutive financial years as on date of invitation of Bids. However, financial years chosen by the Bidder shall be same for each Member (in case of Consortium) and the Associate(s), whose Financial Capacity is furnished and relied upon.</b></p> <p><b>ii. In case the Bidder is a Consortium, the above documents are to be submitted in respect of all the Members.</b></p>
4.	Integrity pact	<p>Duly signed and witnessed integrity pact as per proforma provided at Appendix VIII of RFB.</p> <p><b>Note: In case the Bidder is a Consortium, the integrity pact is to be signed by all the Members.</b></p>

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<sup>∞</sup> In jurisdictions that do not have statutory auditors, the firm of auditors which audits the annual accounts of the Bidder may provide the certificates required under this RFB.

<sup>∞</sup> In jurisdictions that do not have statutory auditors, the firm of auditors which audits the annual accounts of the Bidder may provide the certificates required under this RFB.



5.	Authorization for Digital Signature Certificate (“DSC”)	<p>a) If the Bidder itself is the DSC holder bidding online, then self-declaration of the Bidder to this effect; or</p> <p>b) If the DSC holder is bidding online on behalf of the bidder then the power of attorney<sup>B</sup> granted by the Bidder, evidencing authorization granted to the DSC holder to submit the Bid on behalf of the Bidder.</p>
6.	Undertaking in Support of the authenticity of submitted information and documents and other commitments	<p>An undertaking is to be given by the Bidder as per the format given at Enclosure I of this NIT, confirming the genuineness of the information furnished online, authenticity of scanned copy of documents uploaded and such other declarations.</p> <p><b>Note: In case the Bidder is a Consortium, the undertaking is to be signed by all the Members.</b></p> <p>(Original undertaking shall be submitted as per the provisions of NIT)</p>
7.	Any other document to support the qualification information as submitted by the Bidder online.	
8.	<b>Note: Only one file in .pdf format can be uploaded against each qualification criteria. Any additional/ other relevant documents to support the information/declaration furnished by Bidder online against qualification criteria may also be attached by the Bidder in the same file to be uploaded against respective qualification criteria.</b>	

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<sup>B</sup> For a power of attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the power of attorney is being issued. However, the power of attorney provided by Bidders/ Members from countries that have signed the Hague Convention, 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Apostille certificate

**Part-I/ Cover-I - Other Important Documents (“OID”):**

<b>Sl. No.</b>	<b>Criteria</b>	<b>Scanned copy of documents (self-certified and notarized/ certified<sup>¶</sup>) to be uploaded by Bidder in support of information/ declaration furnished online by the Bidder against each criteria (CONFIRMATORY DOCUMENT)</b>
1.	Legal status of the Bidder	<p>Documents to be submitted as applicable:</p> <ol style="list-style-type: none"><li>1. Affidavit or any other document to prove the proprietorship/ individual status of the Bidder (applicable only where the Bidder is an individual or sole proprietor);</li><li>2. Partnership deed/ agreement containing name of partners (applicable only where the Bidder is a partnership firm or a limited liability partnership);</li><li>3. Memorandum and Articles of Association with certificate of incorporation containing name of Bidder or any similar charter/ constitutional documents (applicable where the Bidder is a company);</li><li>4. Appropriate documents as applicable for any other Bidder not mentioned above.</li><li>5. Annex I (Appendix I of RFB) duly filled in and uploaded;</li><li>6. In case of Consortium:<ol style="list-style-type: none"><li>(i) a. Details of all Member(s) as at 1/ 2/ 3 (as applicable) above;</li><li>(ii) b. Joint Bidding Agreement as per format provided at Appendix IV of RFB;</li><li>(iii) c. Annex I (Appendix I of RFB) duly filled in and uploaded;</li><li>(iv) d. Annex IV (Appendix I of RFB) duly filled in and uploaded</li></ol></li><li>7. An undertaking in the format given in Enclosure-III in respect to the ultimate beneficial ownership of the Bidder/Members, in light of the General Financial Rules, 2017 read with the OM No. F.No.6/18/2019-PPD dated 23.07.2020 and the Press Note No. 3 (2020 Series) dated 17 April 2020 issued by the Department for Promotion of Industry and Internal Trade (FDI Policy Section), Ministry of Commerce and Industry, Government of India or as amended from time to time.</li></ol>
2.	Power of attorney <sup>¶</sup>	As per the format annexed as Appendix II (as applicable) and Appendix III (in case the Bidder is a Consortium).

<sup>¶</sup> For any document issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the document is being issued. However, any document provided by bidders from countries that have signed the Hague Convention, 1961 is not required to be legalised by the Indian Embassy if it carries a conforming Apostille certification.

<sup>¶</sup> For a power of attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the power of attorney is being issued. However, the power of attorney provided by Bidders/ Members from countries that have signed the Hague Convention, 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Apostille certificate.

Sl. No.	Criteria	Scanned copy of documents (self-certified and notarized/ certified <sup>98</sup> ) to be uploaded by Bidder in support of information/ declaration furnished online by the Bidder against each criteria (CONFIRMATORY DOCUMENT)
3.	Joint Operating Agreement (JOA)	A duly executed and adequately stamped joint operating agreement in the format set out in Appendix V, if applicable.
4.	Mandate Form for Electronic Fund Transfer	Copy of mandate form duly filled in as per proforma provided at Enclosure II of this NIT
5.	Any other document to support the qualification information as submitted by the Bidder online.	

## 11. Submission of Bids

11.1. All the Bids are to be submitted online and on the website [http://www.coalindiatenders.nic.in]. No Bid shall be accepted offline.

11.2. The Bidders should strictly comply with following instructions:

- (a) The Bidders are requested to submit their Bids online giving reference to this NIT number and date, in 2 (two) parts in the links “Part-I/ Cover I” and “Part-II/ Cover II”.
- (b) Two parts of the Bid should contain the following details:

### Part-I/ Cover I:

1. Bidder’s Covering Letter;
2. Details of Bid Security;
3. Information on qualifying criteria as detailed at Paragraph 9 and Paragraph 10 above including necessary scanned documents as elaborated there.

### Part-II/ Cover II:

Price Bid in Excel format as indicated in the Bidding Documents.

11.3. In order to submit a Bid, the Bidders have to get themselves registered online on the e-procurement portal [http://www.coalindiatenders.nic.in] with a valid digital signature certificate (“DSC”) issued from any agency authorized by the Controller of Certifying Authority, Government of India (“CCA”) and which can be traced up to the chain of trust to the root certificate of CCA. Such online registration of the Bidders on the e-procurement portal will be free of cost and one time requirement only. The registration should be in the name of the Bidder, however the DSC holder may be either the Bidder itself or its duly authorized person. The bidder is one whose name will appear as Bidder in the e-procurement portal.

11.4. Bidder’s Covering Letter (Part-I/ Cover I): The format of the “Bidder’s Covering Letter” (as given in the RFB) will be downloaded by the Bidder and will be printed/ typed on its letter head. This document will be signed by the Bidder or an authorized person of

the Bidder or the DSC holder bidding with authorization from the Bidder and a scanned copy of the same will be uploaded during bid submission in Part-I/ Cover I. This will be the covering letter of the Bidder for its submitted Bid. The content of the “Bidder's Covering Letter” uploaded by the Bidder must be the same as per the format downloaded from the website and it should not contain any other information. If there is any change or discrepancy in the contents of the Bidder's Covering Letter as uploaded by the Bidder as compared to the format of the Bidder's Covering Letter uploaded by the Authority, then the Bid will be rejected.

- 11.5. Price Bid (Part-II/ Cover II): The price bid containing the “Mining Charge” will be in Excel format and shall have to be downloaded by the Bidders. Thereafter, the Bidders will upload the same Excel file during bid submission in Part-II/ Cover II. The price bid of the Bidders shall specify (in Indian Rupees) “Mining Charge” per tonne to undertake the Project in accordance with the RFB, the Contract Agreement and the other Bidding Documents and will have no condition. The price bid which is incomplete and not submitted as per the instructions given above will be rejected. Any alteration/ modification in the Excel format may lead to the rejection of the Bid. The price bid file will be digitally signed and uploaded by the Bidder in Part-II/ Cover II.
- 11.6. It is the Bidder’s responsibility to comply with the system requirements, i.e. hardware, software and internet connectivity at the Bidder’s premises to access the e-procurement portal. Under any circumstances, the Authority shall not be liable to the Bidders for any direct/ indirect loss or damages incurred by them arising out of incorrect use of the e-tender system or internet connectivity failures.
- 11.7. The Bidders are required to understand and comply with the requirements of e-tendering procedure for submission of the Bids online and are required to submit their Bids in compliance with the e-tendering procedure. Insufficient or lack of knowledge of e-tendering shall not excuse the Bidder from complying with the requirements of the Bidding Documents and any Bids not in compliance with the requirements of e-tendering procedure shall be liable for rejection.

## **12. Bid Opening and Evaluation**

For details in relation to Bid opening and evaluation refer to Section III of the RFB (Evaluation of Bids).

## **13. Bid Validity**

The validity period of the Bids shall be not less than 180 (one hundred and eighty) days from the Bid Due Date. A Bid valid for a shorter period shall be rejected by the Authority as being non-responsive.

## **14. Modification and Withdrawal of Bids**

- 14.1 Modification or withdrawal of the Bids submitted by the Bidders shall be allowed online only before the Bid Due Date. A Bidder may modify and resubmit its Bid online as many times as required by the Bidder, till the Bid Due Date.
- 14.2 Bidders may withdraw their Bids online only within the Bid Due Date and their Bid Security will be refunded. However, if the Bidder withdraws its Bid, it will not be able

to resubmit a Bid for that particular tender. No withdrawal or modification of the Bid shall be allowed after the Bid Due Date.

15. The Authority reserves the right, at its discretion, to postpone the Bid Due Date and the date of opening of the Bids, or reject any or all Bids without giving any reason or to accept any Bid which, in the Authority's sole judgment and discretion, is the most beneficial to the Authority and/or to cancel the Bidding process and reject all the Bids, at any time prior to the award of the Project, without thereby incurring any liability to the affected Bidder or Bidders and without any obligation to inform the affected Bidder or Bidders of the grounds or reasons for the Authority's actions. The Authority further reserves the right to negotiate with any or all the Bidders in relation to their Bids. Any such action shall not be called into question and the Bidders shall have no claim or cause of action in that regard against the Authority or its officers, employees, consultants, agents, successors or assignees for rejection of its bids. Neither the Authority nor its employees or advisers shall entertain any claim of any nature, whatsoever, including without limitation, any claim seeking costs, expenses or damages in relation to the preparation or submission of Bids.
16. The Authority does not bind itself to accept the lowest Bid and reserves the right to reject any or all the Bids without assigning any reasons whatsoever and also to split up the work between two or more Bidders or accept the Bid in part and not in its entirety, at its sole discretion.
17. Any addendum/ corrigendum/ date extension etc. in respect of this tender shall be issued on the website [<http://www.coalindiatenders.nic.in>] only. No separate notification shall be issued in the press. Bidders are therefore requested to visit our website regularly to keep themselves updated.

**18. Integrity Pact**

The Bidders are required to go through the integrity pact which is a part of the Bidding Documents. Bidders shall accept the integrity pact as given in the Bidding Documents.

19. Name, address and contact number of the independent external monitor nominated for this tender:

Sl. No.	Name	Address

**20. Procurement & Sourcing of Goods and Services for the Project**

The Authority will follow and comply with the "Public Procurement (Preference to Make in India), order 2017" as per office order No. P-45021/2/2017-B.E.-II dated 15.06.2017 of Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Govt. of India and any other instruction(s) or order(s) issued by the appropriate Government in this regard. The Bidder shall also abide by any applicable order(s) or instruction(s) issued by Govt. of India for compliance in this regard.

**(Format of Undertaking)<sup>B</sup>**

(For commitment, genuineness of the information furnished online and authenticity of the documents uploaded during the Bidding Process)

**UNDERTAKING**

I/ We, ....., hereby agree, undertake and confirm that:

1. I/We am/are submitting a bid for the work.....against NIT No. .... dated..... and I/we agree and undertake to execute the work in accordance with all the terms, conditions and provisions of the Bidding Documents.
2. All information furnished by me/ us in respect of fulfillment of qualification criteria for our Bid is complete, correct and true.
3. All copies of documents uploaded along with our Bid are genuine, authentic, complete, true and valid.
4. I/ We hereby authorize the Authority and/ or its authorized representatives to seek references/ clarifications from our bankers.
5. If any information and document furnished/ uploaded by me/ us is found to be false/ incorrect at any time, the Authority may reject my/ our Bid and action as deemed fit may be taken against me/us, including termination of the Contract Agreement (if the Project is awarded to me/us), forfeiture of all dues including the Bid Security and banning/ delisting of me/ us and all members/ partners.
6. Capitalized terms used herein, unless defined herein, shall have the same meaning assigned to them in the Bidding Documents.

**Signature of the Bidder**

(In case of Consortium, signature of all the Members)

**Dated:**

**Seal of Notary**

---

<sup>B</sup> The undertaking is to be submitted on the letterhead of the Bidder.

## MANDATE FORM FOR ELECTRONIC FUND TRANSFER / INTERNET BANKING PAYMENT

1. **Name of the Bidder:** .....

2. **Address of the Bidder:** .....

City..... Pin Code.....

E-mail Id .....

Permanent Account Number .....

**3. Particulars of Bank:**

Bank Name		Branch Name	
Branch Place		Branch City	
Pin Code		Branch Code	
MICR No.		Soft Code	
Swift Code		IBAN Code	
BIC Code			
Digital Code number appearing on the MICR Band of the cheque supplied by the Bank. Please attach Xerox copy of a cheque of your Bank for ensuring accuracy of the Bank Name, Branch Name and Code Number.			
RTGS CODE			
Account Type	Savings	Current	Cash Credit
Account Number (as appearing in the Cheque Book.			

**4. Date from which the mandate should be effective:**

I/ We hereby declare that the particulars given above are correct and complete. If any transaction is delayed or not effected for reasons of incomplete or incorrect information, I/ we shall not hold the Authority responsible. I/ We also undertake to advise any change in the particulars of my/ our account to facilitate updation of records for purpose of credit of amount through SBI NEFT / RTGS transfer. I/ We agree to discharge the responsibility expected of me as a participant under the scheme. Any bank charges levied by the bank for such e-transfer shall be borne by me/ us.

Place:

Date:

Signature of the Bidder/Authorised Signatory

Certified that particulars furnished above are correct as per our records.

Banker's Stamp

Date

Signature of the authorised official from the Bank

**(Format of Undertaking)<sup>β</sup>****UNDERTAKING**

{Insert name of the Bidder}, (“**Undersigned Bidder**”) hereby agrees, undertakes, and confirms each of the following:

1. The Undersigned Bidder is submitting a Bid for the work [●] against NIT No. [●] dated [●] and agrees and undertakes to execute the work in accordance with all the terms, conditions and provisions of the Bidding Documents.
2. The Undersigned Bidder is aware of the restrictions on procurement from a “*bidder from a country which shares a land border with India*”, as defined and specified under the General Financial Rules, 2017 read with the OM no. F.No.6/18/2019-PPD dated 23 July 2020 issued by the Public Procurement Division, Department of Expenditure, Ministry of Finance, Government of India (“**Indian Public Procurement Laws**”) and the Press Note No. 3 (2020 Series) dated 17 April 2020 issued by the Department for Promotion of Industry and Internal Trade (FDI Policy Section), Ministry of Commerce and Industry, Government of India or as amended from time to time.  
I/We hereby declare and certify that:
  - (a) {[the Undersigned Bidder is not incorporated or registered in a country which shares a land border with India and is eligible to be considered, in terms of the Indian Public Procurement Laws] **OR** [the Undersigned Bidder is incorporated or registered in a country which shares a land border with India and is registered with the competent authority, as prescribed under the Indian Public Procurement Laws. A certified true copy of the registration certificate obtained by the Undersigned Bidder is submitted along with the Bid]}; and
  - (b) the Undersigned Bidder is permitted to submit the Bid and carry out all the functions of a successful Bidder in accordance with the applicable laws in India.
3. All copies of documents uploaded along with our Bid are genuine, authentic, complete, true and valid.
4. If any information and document furnished/ uploaded by the Undersigned Bidder is found to be false or incorrect at any time, the Authority may reject the Bid of the Undersigned Bidder and action(s) as deemed fit may be taken against the Undersigned Bidder, including but not limited to the termination of the Contract Agreement (if the Project is awarded to the Undersigned Bidder), forfeiture of all dues including the Bid Security and banning and/or delisting of the Undersigned Bidder and all its members, partners or other constituents.
5. All capitalised terms used herein, unless specifically defined herein, shall have the same meaning assigned to them in the Bidding Documents.

**Signature of the Bidder**

(In case of the Consortium, signature of all the Members)

**Dated:**

**Seal of Notary**

---

<sup>β</sup>This undertaking shall be submitted on the letterhead of the Bidder.



[Model]  
Request For Bid  
(RFB)

for

Coal Mining in  
[Name of the OC Project]  
through  
Mine Operator

**[Name of the subsidiary company]**  
**(A Government of India Undertaking)**

## **GLOSSARY**

<b>Abridged Project Report</b>	As defined in Clause 1.1.1 of this RFB
<b>Associate</b>	As defined in Clause 2.2.4 of this RFB
<b>Authority</b>	As defined in Clause 1.1.1 of this RFB
<b>Bid</b>	shall mean a bid submitted pursuant to this RFB
<b>Bid Due Date</b>	As defined in Paragraph 3 of NIT
<b>Bid Security</b>	As defined in Paragraph 5 of NIT
<b>Bidder(s)</b>	shall mean any single entity or a Consortium which submits a Bid pursuant to this RFB
<b>Bidding Documents</b>	shall mean the documents set forth in Clause 2.8.1 of this RFB
<b>Bidding Process</b>	As defined in Clause 1.2.1 of this RFB
<b>Clarification Submission Due Date</b>	As defined in Paragraph 3 of NIT
<b>Contract Agreement</b>	As defined in Clause 1.1.1 of this RFB
<b>Conflict of Interest</b>	As defined in Clause 2.2.1(b) of this RFB
<b>Consortium</b>	shall mean the consortium of the Lead Member and other Members, who have jointly submitted a Bid pursuant to this RFB
<b>Damages</b>	As defined in Clause 2.2.1(b) of this RFB
<b>Financial Capacity</b>	As defined in Clause 2.2.3 of this RFB
<b>Government</b>	Government of India/ Government of [****name of State****] or the Government of the country of origin of the Bidder, as the case may be
<b>Joint Bidding Agreement</b>	As defined in Clause 2.2.7(e) of this RFB
<b>Joint Operating Agreement</b>	As defined in Clause 2.2.11 of this RFB
<b>Lead Member</b>	in relation to a Consortium shall mean and refer to the entity identified/ nominated by the Members of a Consortium as the lead member of the Consortium
<b>LOA</b>	shall mean the letter of award issued by the Authority to the Successful Bidder

<b>Member</b>	in relation to a Consortium shall mean and refer to each single entity (not a consortium), which is a part of such Consortium
<b>Mine Operator</b>	As defined in Clause 1.1.2 of this RFB
<b>Mining Charge</b>	As defined in Clause 1.1.5 of this RFB
<b>Net Worth</b>	As defined in Paragraph 9.2 of NIT
<b>NIT</b>	shall mean the Notice Inviting Tender No. [****] date
<b>Overburden</b>	shall mean the rock, soil and ecosystem that lies above the coal/lignite seam or around the ore body of iron/ bauxite/ manganese/ copper (for the purpose of this RFB) and is removed during surface mining, and may be used to restore an exhausted mining site to a semblance of its appearance before mining began
<b>PAPs</b>	As defined in Clause 1.1.3 of this RFB
<b>Performance Security</b>	As defined in the Contract Agreement
<b>Project</b>	As defined in Clause 1.1.1 of this RFB
<b>Re. or Rs. or INR or ₹</b>	Indian Rupee
<b>RFB or Request for Bid</b>	shall mean this Request For Bid No. [****] (including all annexures, appendix, schedules, forms hereto), as amended from time to time
<b>Successful Bidder</b>	shall mean the Bidder selected pursuant to this RFB
<b>SPV</b>	As defined in Clause 2.2.6 of this RFB
<b>Technical Capacity</b>	As defined in Clause 2.2.2 of this RFB
<b>Total Project Cost</b>	As defined in Clause 1.1.4 of this RFB

Words and expressions beginning with capital letters, but not defined shall, unless repugnant to the context, have the meaning so ascribed in the other provisions of the Bidding Documents.

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## **Disclaimer**

The information contained in this RFB or subsequently provided to the Bidder(s), whether verbally or in documentary or in any other form, by or on behalf of the Authority or any of its employees or advisors, is provided to the Bidder(s) on the terms and conditions set out in the Bidding Documents and such other terms and conditions subject to which such information is provided.

This RFB is not an agreement and is neither an offer nor an invitation by the Authority to the prospective Bidders or any other person. The purpose of this RFB is to provide interested parties with information that may be useful to them in making their Bids including financial offers pursuant to this RFB and for no other purpose, and is not intended to form the basis of any decision on part of the Bidder(s) to proceed with the Bid.

This RFB includes statements, which reflect various assumptions and assessments arrived at by the Authority in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require. This RFB may not be appropriate for all persons, and it is not possible for the Authority, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFB. The assumptions, assessments, statements and information contained in the Bidding Documents, especially the Abridged Project Report, Geological Report and Contract Agreement may not be complete, accurate, adequate or correct. Each Bidder should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RFB and obtain independent advice in relation to the same from appropriate sources.

Information provided in the Bidding Documents to the Bidder(s) is on a wide range of matters, some of which may depend upon interpretation of law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. The Authority accepts no responsibility for the accuracy or otherwise of any interpretation or opinion on law expressed herein.

The Authority, its employees and advisors make no representation or warranty and shall have no responsibility or liability to any person, including any Bidder under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from, or be incurred or suffered on account of anything contained in the Bidding Documents or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the Bidding Documents and any assessment, assumption, statement or information contained therein or deemed to form part thereof or arising in any way from participation in the Bidding Process. Any liability is accordingly expressly disclaimed by the Authority, its consultants, partners, affiliates, their respective officers, agents and employees even if any loss or damage is caused by any act or omission on the part of the Authority, its consultants, partners, affiliates, their respective officers, agents or employees, whether negligent or otherwise. Nothing in the Bidding Documents shall be construed as legal, financial or tax advice.

The Authority also accepts no liability of any nature, whether resulting from negligence or otherwise, howsoever caused, arising from reliance of any Bidder upon the statements contained in the Bidding Documents.

By acceptance of this RFB, the Bidders agree that information contained herein supersedes document(s) or earlier information, if any, in relation to the scope of work/ Project. The Bidding Documents and any information herewith will be superseded by any later written information on the same subject made available to the recipient by or on behalf of the Authority.

Each Bidder agrees, understands and accepts that the information contained in the Bidding Documents is subject to change without notice. Further, in no event, may it be assumed that there shall be no deviation or change in any of the information mentioned herein. The Authority may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in the Bidding Documents.

The issue of the Bidding Documents does not imply that the Authority is bound to select a Bidder or to appoint the Successful Bidder for the Project and the Authority reserves the right to reject all or any of the Bidders or Bids without assigning any reason whatsoever.

The Bidding Documents have not been filed, registered or approved in any jurisdiction. Recipients of the Bidding Documents resident in jurisdictions outside India should inform themselves of, and observe any applicable legal requirements.

The Authority reserves the right at any time to alter, amend, modify, cancel and recall the RFB or any part of it.

The Authority is not bound to accept any or all the offers. The Authority reserves the right to reject any or all the offers without assigning any reason. The Authority further reserves the right to negotiate with any or all Bidders in relation to their offers. No Bidder shall have any cause of action or claim against The Authority or its officers, employees, consultants, agents, successors or assignees for rejection of its offer.

Each Bidder shall bear all its costs associated with or relating to the preparation and submission of its Bid including the price bid, but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by the Authority or any other costs incurred in connection with, or relating to, its Bid. All such costs and expenses will remain with the Bidder and the Authority shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by a Bidder in preparation or submission of its Bid, regardless of the conduct or outcome of the Bidding Process.

All Bids, including any and all supporting documents submitted therewith, pursuant to the Bidding Documents, once submitted, shall become the property of the Authority. Provided however, any intellectual property rights existing in the information contained in such Bid will remain the property of the Bidder (or other persons, as appropriate) submitting that Bid. Provided further that the Bidder shall have deemed to have licensed and authorised the Authority, its officers, employees, advisers, consultants and agents to copy, adapt, disclose or to use, as the Authority may deem fit, all information and material contained in the Bid for the purposes of the Bidding Process including, without limitation, evaluation of the Bids.



## 1. SECTION I: INTRODUCTION

### 1.1 Background

- 1.1.1 The [\*\*\*\*\*insert name of subsidiary of Coal India Limited\*\*\*\*\*] (the “**Authority**”) is engaged in the development and operation of coal mines and as part of this endeavour, the Authority has decided to undertake the development and operation of [\*\*\*name of the Project\*\*\*] (the “**Project**”) through a mine operator for excavation of coal and delivery thereof to the Authority. The description of the Project and the framework for its development and operation may be seen in the abridged project report annexed as Appendix VII (the “**Abridged Project Report**”) and the contract agreement annexed as Appendix VI (the “**Contract Agreement**”). Brief particulars of the Project are as follows:

Location of the Project	Annual Capacity <sup>3</sup> (peak) (in million tonne)	Total Project Cost <sup>4</sup> (₹.in million)
[*** in the state of ***]	[***]	[*****]

- 1.1.2 The “**Mine Operator**” i.e. the limited liability company to be promoted and incorporated under the Companies Act, 2013 by the Successful Bidder prior to execution of the Contract Agreement, shall be responsible for designing, financing, procurement, construction, operation and maintenance activities of the Project under and in accordance with the provisions of the Contract Agreement to be entered into between the Mine Operator and the Authority.
- 1.1.3 The scope of work of the Mine Operator will broadly include development of the Project (including detailed designing, financing, mine construction, procurement of mining and other equipment), operation and maintenance of the mine under the Project for excavation and delivery of the coal and performance of all other obligations of the Mine Operator in accordance with the Contract Agreement. In particular, the scope of work includes excavation of rocks and earth cutting, drilling and blasting, installation and operation of ‘in-pit’ conveying system, haul road construction, construction and operation of equipment and systems for coal handling, electrical power distribution, loading, transportation, dumping, pumping and drainage of mine water, reclamation of Overburden dump and delivery of coal.

The responsibility of the Authority broadly includes procurement of legal notifications for land acquisition, issuance of Term of Reference (ToR) for environmental clearance, submission of application to appropriate authority for forest clearance (if any), approval of mining plan and approval of plan for rehabilitation and resettlement of project affected persons (“**PAPs**”). The Authority shall be responsible for providing

<sup>3</sup> Peak Coal output as per the Annual Production Programme (Annual Capacity) during the contract period, in accordance with Article 21 of the Contract Agreement.

<sup>4</sup> Estimated capital cost of the Project arrived at as per the definition of Total Project Cost under Article 47 of the Contract Agreement.

employment to PAPs as are eligible for employment as per the approved plan for rehabilitation and resettlement of the Authority. The Authority shall be the ‘owner’ of the mines under the Project for the purposes of the Mines Act, 1952 and shall appoint the agent, manager and other statutory personnel pursuant to the requirements under the Mines Act, 1952 and rules and regulations thereunder. The Authority shall support, co-operate and facilitate the Mine Operator in the implementation and operation of the Project in accordance with and subject to the provisions of the Contract Agreement.

The responsibility of the Mine Operator includes development of the mines under the Project, including obtaining physical possession of the land in respect of which legal notification has been obtained by the Authority, undertaking rehabilitation and resettlement activities as per the approved plan of the Authority, procuring environmental clearance and forest clearance, obtaining applicable permits, licenses, etc. for development and operation of the mines, operation and maintenance of the mines for excavation and delivery of coal and performing all other obligations of the Mine Operator in accordance with the Contract Agreement. The Mine Operator shall be responsible for compliance of all conditions laid down in the environmental clearance and forest clearance as issued by the appropriate authority and such other conditions as laid down by the relevant pollution control board(s) or any other Government Instrumentality. The Mine Operator shall employ suitably qualified and skilled persons for the development and operation of the Project and shall be responsible for payment of wages to them in accordance with the applicable laws and in consonance with the recommendations of the High Power Committee Recommendation annexed as Appendix X. Environmental monitoring and management, including reclamation and progressive mine closure, will also be the responsibility of the Mine Operator. If the final mine closure occurs during the period of the Contract Agreement, the responsibility for undertaking final mine closure shall be that of the Mine Operator. The responsibility of the Mine Operator will primarily be to excavate and deliver coal in accordance with the Annual Production Programme specified in the Contract Agreement, and in consideration thereof, receive the Mining Charge from the Authority (as described in Clause 1.1.5 below). Damages shall be levied on the Mine Operator for any shortfall in actual production against targets specified in the Annual Production Programme.

Bidders should note that the matters described above in this Clause 1.1.3 are indicative in nature. Bidders are expected to review the Contract Agreement in detail which contains the detailed terms of the respective obligations and responsibilities of the Mine Operator and Authority, and which will govern the actual relationship between the parties.

- 1.1.4 Indicative capital cost of the Project (the “**Total Project Cost**”) has been specified in the Bidding Documents. The assessment of actual costs, however, shall be made by the Bidders.
- 1.1.5 In consideration of the excavation and delivery of coal, the Authority shall pay to the Mine Operator, a mining charge per tonne of coal delivered by the Mine Operator in accordance with the provisions of the Contract Agreement (the “**Mining Charge**”). Bids are invited for the Project on the basis of the lowest Mining Charge per tonne offered by a Bidder for implementing the Project. The period of the Contract Agreement shall be pre-determined. The Mining Charge shall constitute the sole

criteria for evaluation of the price bids. The Project shall be awarded to the Bidder, quoting the lowest Mining Charge and established as successful bidder. To incentivize the Mine Operator, for removal of Overburden prior to the occurrence of coal production where the planned production of coal is scheduled to start after more than 3 (three) years from the Appointed Date as per Mining Plan, the Authority shall provide the Mine Operator with an adjustable amount on a monthly basis which is to be adjusted with the Mining Charge payable by the Authority to the Mine Operator over a period of 5 (five) years, in the manner more particularly set out in the Contract Agreement. The Overburden Adjustable Amount (as defined in the Contract Agreement) shall be paid against the submission of bank guarantee(s), of an amount equivalent to the 110% (one hundred and ten per cent) of the Overburden Adjustable Amount disbursed by the Authority, from a Bank (as defined in the Contract Agreement) by the Mine Operator. It is hereby clarified that the aforesaid bank guarantee(s) is separate and in addition to the Mine Operator's obligation to furnish the Performance Security under the Contract.

- 1.1.6 As part of the Bidding Documents, the Authority has provided a Contract Agreement which sets forth the detailed terms and conditions of the Project, including the development of the mines, operation and maintenance of the mines, excavation and delivery of coal and rights and obligations of the Mine Operator. The Contract Agreement should be read and understood by the Bidders.
- 1.1.7 The statements and explanations contained in this RFB are intended to provide a better understanding to the Bidders about the subject matter of this RFB and should not be construed or interpreted, as limiting, in any way or manner the scope of services and obligations of the Mine Operator as set forth in the Contract Agreement or the Authority's rights to amend, alter, change, supplement or clarify the scope of work, the Contract Agreement or the terms thereof or herein contained. Consequently, any omissions, conflicts or contradictions in the Bidding Documents, including this RFB, are to be noted, interpreted and applied appropriately to give effect to this intent, and no claims on that account shall be entertained by the Authority.
- 1.1.8 The Bidders would be required to furnish all the information specified in this RFB. The Bidders are advised to visit the site and familiarise themselves with the Project before submitting their Bids. Further, the Bidders are invited to examine the Project in detail, and to carry out, at their cost, such studies as may be required for submitting their respective Bids.
- 1.1.9 The Authority invites Bids (through e-tendering) from eligible Bidders pursuant to this RFB in accordance with the terms set forth in the Bidding Documents for development and operation of the Project for excavation and delivery of coal to the Authority, and all the Bids shall be prepared and submitted in accordance with such terms on or before the Bid Due Date.

## **1.2 Brief description of the Bidding Process**

- 1.2.1 The Authority has adopted a single stage two-part process (referred to as the “**Bidding Process**”) for award of the Project to the Successful Bidder. All the Bids are to be submitted online and on the website [<http://www.coalindiatenders.nic.in>]. The Bidders are to submit offers in 2 (two) parts in the links “Part-I/ Cover I” and “Part-II/ Cover II” as follows:

Part-I/ Cover I:

1. Bidder's Covering Letter;
2. Details of Bid Security;
3. Information on qualifying criteria as detailed at Paragraph 9 and Paragraph 10 of NIT including necessary scanned documents as elaborated there.

Part-II/ Cover II: Price Bid in Excel format.

No Bid shall be accepted offline.

- 1.2.2 In order to submit a Bid, the Bidders have to get themselves registered online on the e-procurement portal [<http://www.coalindiatenders.nic.in>] with a valid digital signature certificate (“**DSC**”) issued from any agency authorized by the Controller of Certifying Authority, Government of India (“**CCA**”) and which can be traced up to the chain of trust to the root certificate of CCA. The online registration of the Bidders on the portal will be free of cost and one-time requirement only. The registration should be in the name of the Bidder, however the DSC holder may be either the Bidder itself or its duly authorized person. The bidder is one whose name will appear as bidder in the e-procurement portal.
- 1.2.3 In order to become an eligible bidder, the Bidders shall have to accept unconditionally the online user portal agreement, including acceptance of all the terms and conditions of the RFB, the Contract Agreement and other terms and conditions forming part of the Bidding Documents, along with the online undertaking in support of the authenticity of the declarations regarding the facts, figures, information and documents furnished by the Bidders online. No conditional Bid shall be accepted. The Authority makes no representation or warranty, express or implied, as to the accuracy, correctness and completeness of the information contained in the Bidding Documents. Each Bidder must conduct its/his own investigation and analysis and should check the accuracy, reliability and completeness of the information and obtain independent professional advice on the legal, financial, regulatory and taxation consequences of entering into any agreement or arrangement in relation to the same from appropriate sources to satisfy itself that the Bidding Documents are complete in all respects.
- 1.2.4 It shall be the Bidders' responsibility to comply with the system requirements i.e. hardware, software and internet connectivity to access the e-tender portal and to submit the Bids online. Under any circumstances, the Authority shall not be liable to any of the Bidders for any direct/indirect loss or damages incurred by any Bidder as a result of, or arising out of, or related to incorrect use of the e-tender system or internet connectivity failures.
- 1.2.5 The Bidders are required to understand and comply with the e-tendering procedure for submission of Bids online and are required to submit their Bids in compliance with the e-tendering procedure. Insufficient or lack of knowledge of e-tendering process shall not excuse the Bidder from complying with the requirements of the Bidding Document and any Bids not in compliance with the e-tendering procedure shall be liable for rejection.

**A. GENERAL****2.1 General Terms of Bidding**

- 2.1.1 The Abridged Project Report is being provided as a reference document by way of assistance to the Bidders for submitting their Bids. Nothing contained in the Abridged Project Report shall confer any right on the Bidders, and the Authority shall not be bound by, and shall have no liability whatsoever, in relation to, or arising out of, any or all contents/ provisions of the Abridged Project Report. However, the Bidders are expected to carry out their own surveys, investigations and other detailed examination of the Project before submitting their Bids.
- 2.1.2 Notwithstanding anything to the contrary contained in the Bidding Documents, the detailed terms specified in the Contract Agreement shall have an overriding effect; provided, however, that any conditions or obligations imposed on the Bidder hereunder shall continue to have effect in addition to its obligations under the Contract Agreement.
- 2.1.3 The Bids must be in compliance with the requirements, specifications, and other applicable attachments, including all other terms and conditions mentioned in this RFB and the other Bidding Documents. Any Bid containing any exceptions/ deviations to the terms and conditions (except in accordance with the Bidding Documents) shall be liable to be rejected at the sole discretion of the Authority. Any condition or qualification or any other stipulation contained in the Bid of any Bidder shall render the Bid liable for rejection as a non-responsive Bid.
- 2.1.4 The Bids and all communications/ clarifications in relation to, or concerning, the Bidding Documents shall be in English language.
- 2.1.5 The Bidding Documents provided by the Authority are, and shall remain, or become, the property of the Authority and are transmitted to the Bidders solely for the purpose of preparation and submission of a Bid in accordance herewith. The Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bids. The provisions of this Clause 2.1.5 shall also apply *mutatis mutandis* to the Bids and all other documents submitted by the Bidders, and the Authority will not return to the Bidders any Bid or document or information provided along therewith.
- 2.1.6 Non-compliance with any of the bidding instructions may lead to rejection of the Bid.
- 2.1.7 This RFB is not transferable.
- 2.1.8 Any award of the Project pursuant to this RFB shall be subject to the terms of the Contract Agreement and other Bidding Documents.
- 2.1.9 [Other Bid conditions shall include: \*\*\*\*\*]<sup>5</sup>

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<sup>5</sup> Other project-specific conditions of bidding or restrictions, if any, may be stated here.

## 2.2 Eligibility and Qualification Criteria

### 2.2.1 Eligible Bidders

- (a) Bids may be submitted by a single Bidder or a Consortium formed by a maximum of 3 (three) Members, which satisfy the qualification criteria stipulated in the Bidding Documents and has a DSC issued from any agency authorized by the CCA and which can be traced up to the chain of trust to the root certificate of the CCA. Where the Bidder is a Consortium, it shall comply with the conditions set out in Clause 2.2.7 below.
- (b) A Bidder shall not have a conflict of interest (the “**Conflict of Interest**”) that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified. In the event of disqualification, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Authority and not by way of penalty for, *inter alia*, the time, cost and effort of the Authority (the “**Damages**”), without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Contract Agreement or otherwise. A Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:
  - (i) the Bidder, its Member or Associate (or any constituent thereof) and any other Bidder, its Member or any Associate thereof (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding of a Bidder, its Member or an Associate thereof (or any shareholder thereof having a shareholding of more than 5% (five per cent) of the paid up and subscribed share capital of such Bidder, Member or Associate, as the case may be) in the other Bidder, its Member or Associate is less than 5% (five per cent) of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in section 2(72) of the Companies Act, 2013. For the purposes of this Clause 2.2.1(b), indirect shareholding held through one or more intermediate persons shall be computed as follows: (aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the “**Subject Person**”) shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (bb) subject always to sub-clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-clause (bb) if the shareholding of such person in the intermediary is less than 26% (twenty-six) percent of the subscribed and paid up equity shareholding of such intermediary; or
  - (ii) a constituent of such Bidder is also a constituent of another Bidder; or

- (iii) such Bidder, its Member or any Associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder, its Member or any Associate thereof or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Bidder, its Member or any Associate thereof; or
  - (iv) such Bidder has the same legal representative for purposes of this RFB as any other Bidder; or
  - (v) such Bidder, its Member or any Associate thereof has a relationship (arising due to ownership / holding / cross holding) with another Bidder, its Member or any Associate thereof, directly or through common third party/ parties, that puts either or both of them in a position to have access to each other's information about, or to influence the Bid of either or each other; or
  - (vi) such Bidder, its Member or any Associate thereof has participated as a consultant to the Authority in the preparation of any documents, design or technical specifications of the Project.
- (c) A Bidder shall be liable for disqualification and forfeiture of the Bid Security or Performance Security, as the case may be, if any legal, financial or technical adviser of the Authority in relation to the Project is engaged by the Bidder, its Member or any Associate thereof, as the case may be, in any manner for matters related to, or incidental to, the Project during the Bidding Process or subsequent to the (i) issue of the LOA or (ii) execution of the Contract Agreement. In the event any such adviser is engaged by the Successful Bidder after issue of the LOA or execution of the Contract Agreement for matters related or incidental to the Project, then notwithstanding anything to the contrary contained herein or in the LOA or the Contract Agreement and without prejudice to any other right or remedy of the Authority, including the forfeiture and appropriation of the Bid Security or Performance Security, as the case may be, which the Authority may have under the LOA or the Contract Agreement, as the case may be, shall be liable to be terminated without the Authority being liable in any manner whatsoever to the Successful Bidder for the same. For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Bidder, its Member or Associate in the past but its assignment expired or was terminated 6 (six) months prior to the date of issue of this RFB for the Project. In addition, this disqualification shall not apply where such adviser is engaged after a period of 3 (three) years from the Commercial Operation Date of the Project.
- (d) Any entity which has been barred by Coal India Limited or any subsidiary of Coal India Limited or the Ministry of Coal, Government of India, from participating in any project and the bar subsists as on the date of Bid, would not be eligible to submit a Bid, either individually or as Member of a Consortium.
- (e) A Bidder or any Member or its Associate (whose experience is furnished and relied upon by the Bidder for the purpose of qualification and eligibility under this RFB) in the last 3 (three) years, shall have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial

authority or a judicial pronouncement or arbitration award against the Bidder, Member or Associate, as the case may be, nor have been expelled from any project or contract by Coal India Limited or any subsidiary of Coal India Limited or the Ministry of Coal, Government of India, nor have had any contract terminated by any Coal India Limited or any subsidiary of Coal India Limited or the Ministry of Coal, Government of India, for breach by such Bidder, Member or Associate, as the case may be.

(f) [Other eligibility conditions shall include:\*\*\*]<sup>6</sup>

### 2.2.2 Technical Capacity

For demonstrating its technical capacity and experience (the “**Technical Capacity**”), the Bidder shall have carried out, for itself or as a contractor or sub-contractor, ‘*excavation and transportation*’ of Overburden by mechanized means and/or ‘*excavation and transportation*’ of coal/ lignite/ iron ore/ bauxite/ manganese ore/ copper ore by mechanized means during the past 7 (seven) years ending on the last day of the [\*\*\*\*specify month previous to the month in which Bids are invited\*\*\*\*], such that the total composite volume of such ‘*excavation and transportation*’ during any period of 1 (one) year (consecutive 365 days) (the “**qualifying period**”) during the aforesaid period of 7 (seven) years is more than [50% of the maximum annual coal and Overburden handling requirement for the Project (in million cubic meter) or 25 million cubic meter, whichever is less (the “**qualifying quantity**)], from maximum 5 (five) opencast mines of coal/ lignite/ iron/ bauxite/ manganese/ copper; provided that the quantity handled in at least one mine should not be less than [40% of the qualifying quantity].

For the purpose of the Bid, the specific gravity of coal, lignite, iron ore, bauxite, manganese ore and copper ore shall be considered as [1.6], [1.15], [4.0], [2.4], [3.7] and [3.0], respectively.

The start date and end date of the qualifying period shall be specified by the Bidder. The start date and end date of each work claimed for qualifying experience shall fall on or within the dates specified in the qualifying period.

If the Bidder was a consortium member in the claimed work experience, then the eligible executed volume of work shall be arrived at by multiplying the percentage share of the Bidder (as part of such consortium) by the actual volume of the work executed. If the percentage share of the Bidder as a consortium member was less than 26%, such work experience shall not be considered. In this regard, a certificate from the client showing the percentage share of work experience shall be submitted. In case, the percentage of share of the Bidder in the consortium is not specified, the percentage share of each member shall be considered equal for the purpose of the Technical Capacity.

In case the Bidder was a sub-contractor in the claimed work experience, the Technical Capacity will be considered on the basis of the actual volume of work executed by the sub-contractor.

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<sup>6</sup> Other Project-specific conditions of eligibility or restrictions, if any, may be stated here, such as restrictions in order to prevent the same entity from acquiring more than a pre-determined number of projects.



### 2.2.3 Financial Capacity

The Bidder shall have a minimum average Financial Turnover during the 3 (three) financial years as chosen by the Bidder from the last 4 (four) immediately completed consecutive financial years as on date of invitation of Bids, of Rs. [\*\*\*\*\*]<sup>7</sup> and a minimum Net Worth of [Rs. \*\*\* crore (Rs. \*\*\*\*\*)]<sup>8</sup> at the close of the latest financial year among the 3 (three) financial years chosen by the Bidder (the “**Financial Capacity**”).

It is hereby clarified that the financial years chosen by the Bidder shall be same for each Member (where the Bidder is a Consortium) and the Associate(s), whose Financial Capacity is furnished and relied upon.

It is further clarified that the Bidder (or each member of the Consortium where the Bidder is a Consortium) and its Associate, whose Technical Capacity and/ or Financial Capacity is furnished and relied upon, shall have positive Net Worth.

### 2.2.4 Associates

- (i) In computing the Technical Capacity and Financial Capacity of a Bidder (or any Member(s) thereof where the Bidder is a Consortium) the Technical Capacity and Financial Capacity of its Associates would also be eligible hereunder. It is clarified that a Bidder (or any Member(s) thereof where the Bidder is a Consortium) will be permitted to submit and rely upon the experience of only 1 (one) Associate for purpose of qualification and eligibility under this RFB.
- (ii) For purposes of this RFB, the expression “**Associate**” means, in relation to the Bidder/ Member, a person who is controlled by such Bidder/ Member. As used in this definition, the expression “**control**” means, with respect to a person which is a company or corporation, (a) the right to appoint, or cause the appointment of, more than 50% (fifty per cent) of the members of the board of directors (or similar governing body) of such person; or (b) ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law.
- (iii) No change in control of an Associate of the Bidder or Member whose Technical Capacity and/ or Financial Capacity is furnished and relied upon by the Bidder for the purpose of eligibility and qualification under this RFB, shall be permitted during the Bidding Process and, if the Project is awarded to such Bidder, until the expiry of a period of 2 (two) years from the Commercial Operation Date of the Project.
- (iv) Without prejudice to sub-clause (iii) above, in the event of a change in control of any Associate of the Bidder or Member (where the Bidder is a Consortium) whose Technical Capacity and/ or Financial Capacity is furnished and relied upon by the Bidder for the purpose of eligibility and qualification under this RFB, the Bidder shall inform the Authority forthwith along with all relevant particulars and the Authority may, in its sole discretion, disqualify such Bidder/ reject its Bid or withdraw the LOA, as the case may be. In the event such change

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<sup>7</sup> This amount should be 30% (thirty per cent) of the Total Project Cost

<sup>8</sup> This amount should be a minimum of Rs. 200,00,00,000 or 10% (ten per cent) of the Total Project Cost (capped at Rs. 500,00,00,000), whichever is higher.

in control occurs after signing of the Contract Agreement, it would, notwithstanding anything to the contrary contained in the Contract Agreement, be deemed a breach thereof, and the Contract Agreement may be liable to be terminated without the Authority being liable to the Bidder in any manner whatsoever.

2.2.5 The Bidder shall furnish the requisite documents listed in Paragraph 9 and Paragraph 10 of NIT.

2.2.6 The Successful Bidder (whether a single entity or a Consortium) shall be required to promote and incorporate a limited company under the provisions of the (Indian) Companies Act, 2013 as a special purpose vehicle (the “**SPV**”) to execute the Contract Agreement with the Authority for development and operation of the Project. The board of directors of the SPV so incorporated shall have at least 1 (one) director representing: (a) the Bidder (where the Bidder is a single entity); or (b) each Member of the Consortium (where the Bidder is a Consortium). In the event the Bidder is a single entity (and not a Consortium), the Bidder shall hold not less than 75% (seventy-five per cent) of the subscribed and paid up equity share capital of the SPV at all times during the tenure of the Project.

2.2.7 In case the Bidder is a Consortium, the following requirements must be complied with:

- (a) number of Members shall not exceed 3 (three); and each Member shall be a single entity (and not a consortium in itself).
- (b) the Lead Member shall hold at least 26% (twenty-six per cent) of the paid up and subscribed share capital of the SPV;
- (c) the Bid should include a brief description of the roles and responsibilities of each Member, particularly with reference to financial and technical obligations;
- (d) in case the Project is awarded to the Consortium, the Contract Agreement shall be signed so as to be legally binding on all the Members;
- (e) Members of the Consortium shall enter into a binding joint bidding agreement, substantially in the form annexed as Appendix IV (the “**Joint Bidding Agreement**”), for the purpose of making and submitted a Bid. The Joint Bidding Agreement, to be submitted along with the Bid, shall, *inter alia*:
  - (i) convey the intent to form an SPV with shareholding/ ownership equity commitment(s) in accordance with this RFB, which would enter into the Contract Agreement and subsequently perform all the obligations of the Mine Operator in terms of the Contract Agreement, in case the Project is awarded to the Consortium;
  - (ii) clearly outline the proposed roles and responsibilities of each Member;
  - (iii) commit the minimum equity stake to be held by each Member in the SPV;
  - (iv) commit that each of the Members, whose technical and financial experience will be evaluated for the purposes of this RFB, shall each

subscribe to 26% (twenty six per cent) or more of the paid up and subscribed equity share capital of the SPV and shall further commit that each such Member shall, for a period of 2 (two) years from the date of commercial operation (*as defined in the Contract Agreement*) of the Project, hold at least: (i) 26% (twenty six per cent) of the subscribed and paid up equity share capital of the SPV; (ii) such other portion of the subscribed and paid up equity share capital of the SPV which is equal to at least 5% (five per cent) of the Total Project Cost specified in the Contract Agreement; and (iii) in no case the subscribed and paid up equity share capital of the SPV will be less than 15% (fifteen per cent) of the Total Project Cost specified in the Contract Agreement; and

- (v) subject to Clause 2.2.7(e)(iv) above, commit that Members of the Consortium shall collectively hold not less than 75% (seventy-five per cent) of the subscribed and paid up equity share capital of the SPV at all times during the tenure of the Project.
- (f) except as provided under this RFB and the other Bidding Documents, there shall not be any amendment to the Joint Bidding Agreement without the prior written consent of the Authority.

2.2.8 The following conditions shall be adhered to while submitting a Bid:

- (a) Bidders should upload clearly marked and referenced continuation sheets in the event that the space provided in the prescribed forms in the annexes is insufficient. Alternatively, Bidders may format the prescribed forms making due provision for incorporation of the requested information;
- (b) information supplied by a Bidder (must apply to the Bidder, Member (s), if the Bidder is a Consortium) or Associate named in the Bid and not unless specifically requested, to other associated companies or firms;
- (c) in responding to the qualification submissions, Bidders should demonstrate their capabilities in accordance with Clause 3.1 below; and

2.2.9 [For the Bidder (including each Member of the Consortium and Associates) from any country outside India, the following provisions shall apply:

- (a) where, on the date of the Bid, not less than 15% (fifteen per cent) of the aggregate issued, subscribed and paid up share capital of a Bidder or its Member(s) is held by persons resident outside India or where a Bidder or its Member(s) is controlled by persons resident outside India; or
- (b) if at any subsequent stage after the date of the Bid, there is an acquisition of not less than 15% (fifteen per cent) of the aggregate issued, subscribed and paid up equity share capital or control, by persons resident outside India, in or of the Bidder or its Member(s);
- (c) disclosure for the ultimate beneficial ownership of the Bidder, in light of the Press Note No. 3 (2020 Series) dated 17 April 2020 issued by the Department for Promotion of Industry and Internal Trade (FDI Policy Section), Ministry of Commerce and Industry, Government of India;

- (d) the ultimate beneficial ownership of the shareholders of the Bidder do not belong to any country which shares land border with India. For the purposes of this sub-clause determination of ‘ultimate beneficial ownership’ shall be made in accordance with the Foreign Exchange Management Act, 1999 read with all rules, regulations, circulars, guidelines and notifications issued thereunder (as amended from time to time);

then the qualification of such Bidder or in the event described in sub-clause (b) above, the continued qualification of the Bidder shall be subject to approval of the Authority from national security and public interest perspective. The decision of the Authority in this behalf shall be final, conclusive and binding on the Bidder.

The holding or acquisition of equity or control, as stated above, shall include direct or indirect holding/ acquisition, including by transfer, of the direct or indirect legal or beneficial ownership or control, by persons acting for themselves or in concert and in determining such holding or acquisition, the Authority shall be guided by the principles, precedents and definitions contained in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, or any substitute thereof, as in force on the date of such acquisition.]<sup>9</sup>

The Bidder shall promptly inform the Authority of any change in the equity shareholding, as above, and failure to do so shall render the Bidder liable for disqualification from the Bidding Process.

- 2.2.10 For the purpose of Financial Capacity of the Bidder, the Bidder can choose any 3 (three) financial years from the last 4 (four) immediately completed consecutive financial years, as on date of invitation of Bids. However, financial years chosen by the Bidder shall be same for each Member (in case of Consortium) and the Associate(s), whose Financial Capacity is furnished and relied upon.
- 2.2.11 A validly executed, adequately stamped and legally enforceable Joint Operating Agreement in the form prescribed at Appendix V to this RFB (the “JOA”) is required to be submitted by the Bidder along with its Bid, where the Technical Capacity of any Associate of the Bidder (single entity or Member(s) of Consortium) or any Member of the Consortium is furnished and relied upon. The validity of the JOA shall be 2 (two) years from the COD in terms of the Contract Agreement.

In addition, each of the executants of the JOA shall be required to submit an additional performance guarantee for an amount of equivalent to 1% of the estimated annual contract value in Indian Rupees (Estimated annual contract value shall be calculated by multiplying the Contracted Capacity of the mine in tonne by the agreed mining charge), within 60 days from the date of issuance of the LOA. This additional performance guarantee in the form of an irrevocable and unconditional bank guarantee in favour of the Authority shall be kept valid and operative up to 90 days after the expiry of the validity of JOA.

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<sup>9</sup> The provisions of this Clause 2.2.9 may be modified from time to time in accordance with the extant instructions of the Government

### **2.3 Change in composition of the Consortium**

No change in the Members of a Consortium will be permitted without the prior written permission of the Authority.

### **2.4 Number of Bids and costs thereof**

2.4.1 A Bidder cannot submit multiple Bids for the Project, either as a single entity and/or as a part of a Consortium by forming multiple consortia with different Members.

2.4.2 Bidders shall be responsible for all the costs and expenses associated with the preparation, submission and negotiation of their Bid and their participation in the Bidding Process (including without limitation, costs associated with the submission of information additionally requested and with its preparation for and attendance at clarification meetings). The Authority will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bidding Process or evaluation.

### **2.5 Site visit and verification of information**

Bidders are encouraged to submit their respective Bids after visiting the Project site and ascertaining for themselves the site conditions, geological data, location, surroundings, climate, availability of power, water and other utilities for construction, access to site, handling and storage of materials, weather data, applicable laws and regulations, and any other matter considered relevant by them.

### **2.6 Acknowledgement by Bidder**

2.6.1 It shall be deemed that by submitting a Bid, the Bidder has:

- (a) made a complete and careful examination of the RFB, the Contract Agreement and other Bidding Documents;
- (b) received all relevant information requested by it from the Authority;
- (c) accepted the risk of inadequacy, error or mistake in the information provided in the RFB and other Bidding Documents or furnished by or on behalf of the Authority relating to any of the matters referred to in Clause 2.5 above;
- (d) satisfied itself about all matters, things and information including matters referred to in Clause 2.5 hereinabove, necessary and required for submitting an informed Bid, execution of the Project in accordance with the Contract Agreement and other Bidding Documents and performance of all of its obligations thereunder;
- (e) acknowledged and agreed that any inadequacy, lack of completeness or incorrectness of information provided in the Bidding Documents or ignorance of any of the matters referred to in Clause 2.5 hereinabove shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits etc. from the Authority, or a ground for termination of the Contract Agreement by the Bidder;
- (f) acknowledged that it does not have a Conflict of Interest; and

- (g) agreed to be bound by the undertakings provided under and in terms of the Bidding Documents including the Contract Agreement.

2.6.2 The Authority shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter or thing arising out of, or concerning, or relating, to the RFB or the Bidding Process, including any error or mistake therein, or in any information or data given by the Authority.

## **2.7 Right to accept any Bid, negotiate and to reject any or all Bids**

2.7.1 Notwithstanding anything contained in this RFB, the Authority reserves the right to accept, negotiate or reject any Bid and to annul the Bidding Process and reject all Bids (in whole or part) at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons therefore.

2.7.2 The Authority reserves the right to reject any Bid or price bid and appropriate the Bid Security if at any time a material misrepresentation is made or uncovered. Such misrepresentation shall lead to disqualification of the Bidder. If such disqualification/rejection occurs after the Bids have been opened and the lowest Bidder gets disqualified/ rejected, then the Authority reserves the right to take any such measure as may be deemed fit in the sole discretion of the Authority, including annulment of the Bidding Process.

In case the Bidding Process is annulled by the Authority in accordance with the Bidding Documents, it will refund the Bid Security within 30 (thirty) days without any interest.

2.7.3 In case it is found during the evaluation process or at any time before signing of the Contract Agreement or after its execution and during the period of subsistence thereof, that one or more of the conditions for qualification have not been met by the Bidder, or the Bidder has made misrepresentation or has given any incorrect or false information to the extent that had the correct or true information been made available to the Authority at the time of Bid evaluation, the Bid would have been declared ineligible or unsuccessful, its Bid shall be rejected and the concerned Bidder shall be disqualified forthwith if not yet appointed as the Mine Operator either by issue of the LOA or entering into of the Contract Agreement. If the Bidder has already been issued the LOA or has entered into the Contract Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFB, be liable to be terminated, by a communication in writing by the Authority to the Mine Operator, without the Authority being liable in any manner whatsoever. In such an event, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy which the Authority may have under this RFB, the Bidding Documents, the Contract Agreement or otherwise.

2.7.4 The Authority reserves the right to verify all statements, information and documents submitted by the Bidders in response to the RFB or the Bidding Documents and the Bidders shall, when so required by the Authority, make available all such information, evidence and documents as may be necessary for such verification. Any such verification or lack of such verification by the Authority shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Authority thereunder.

- 2.7.5 Bids not complying with the requirements of the Bidding Documents shall be liable for rejection.
- 2.7.6 Bids, which are not complete in all respects shall be liable for rejection without any requirement of intimation to the Bidders.

## **B. DOCUMENTS**

### **2.8 Contents of the Bidding Documents**

- 2.8.1 The scope of work, bidding procedures, contract terms and technical requirements are prescribed in the Bidding Documents. The “**Bidding Documents**” include the following:

- (i) NIT
- (ii) RFB containing the following:
  - Section I Introduction
  - Section II Instructions to Bidders
  - Section III Evaluation of Bids
  - Section IV Fraud & Corrupt Practices
  - Section V Pre-Bid Conference
  - Section VI Miscellaneous

#### Appendices

##### Part-I/ Cover-I: Bid for Qualification

- Appendix-I: Format of Bidder’s Covering Letter
  - Annex-I: Details of Bidders
  - Annex-II: Technical Capacity of Bidders
  - Annex-III: Financial Capacity of Bidders
  - Annex-IV: Statement of Legal Capacity
- Appendix-II: Power of Attorney for signing of Bid
- Appendix-III: Power of Attorney for Lead Member of Consortium
- Appendix-IV: Joint Bidding Agreement for Consortium
- Appendix-V: Format for Joint Operating Agreement
- Appendix-VI: Format of Contract Agreement
- Appendix-VII: Abridged Project Report
- Appendix-VIII: Proforma for Integrity Pact

##### Part-II/ Cover-II: Financial Bid

##### Part-III: General

- Appendix-IX: User Portal Agreement
- Appendix-X: High Power Committee Recommendations
- Appendix-XI: Geological Report

- 2.8.2 The Contract Agreement and the Abridged Project Report provided by the Authority as part of Bidding Documents shall be deemed to be part of this RFB.
- 2.8.3 The Bidder is expected to examine all instructions, forms, terms, conditions, specifications and other information in the Bidding Documents. Failure to furnish all information required as per the Bidding Documents or submission of a Bid not

substantially responsive to the Bidding Documents in every respect will be at the Bidder's risk and may result in rejection of its Bid.

## **2.9 Clarifications by Bidders**

- 2.9.1 The Bidder may seek clarifications online within the period specified in the NIT. The identity of the Bidder will not be disclosed by the system. The Authority will clarify only the relevant queries of Bidders and the clarifications given by the Authority will be visible to all the Bidders intending to participate in the Bidding Process. The clarifications may be asked from the next day of e-publication of NIT. The last date for seeking clarification (i.e. the Clarification Submission Due Date) will be up to 20 (twenty) days before the Bid Due Date and the last date of giving clarification by the Authority online will be up to 15 (fifteen) days before the Bid Due Date.
- 2.9.2 The Authority shall endeavour to respond to the questions raised or clarifications sought by the Bidders. However, the Authority reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this Clause shall be taken or read as compelling or requiring the Authority to respond to any question or to provide any clarification.
- 2.9.3 The Authority may also on its own motion, if deemed necessary, issue interpretations and clarifications. All clarifications and interpretations issued by the Authority shall be deemed to be part of the Bidding Documents. Verbal clarifications and information given by Authority or its employees or representatives shall not in any way or manner be binding on the Authority.

## **2.10 Amendment to Bidding Documents**

- 2.10.1 At any time prior to the Bid Due Date, the Authority may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder (or pursuant to the Pre-Bid Conference), modify the Bidding Documents by the issuance of any addendum<sup>10</sup>.
- 2.10.2 Any addendum thus issued will be uploaded on the portal and will be binding on the Bidders. In order to afford the Bidders a reasonable time for taking an addendum into account, or for any other reason, the Authority may, in its sole discretion, extend the Bid Due Date<sup>11</sup>.

## **C. PREPARATION AND SUBMISSION OF BIDS**

### **2.11 Language**

The Bids and all related correspondence, information and documents in relation to the Bids shall be in the English language. Supporting documents and printed literature/ material/ documentary evidence etc. accompanying the Bid such as copies of purchase orders, experience certificates, etc. furnished by a Bidder with its Bid may be in any

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<sup>10</sup> After pre-bid conference, if any amendments/ modification are required, same shall be referred to the FDs of Coal India Limited for approval.

<sup>11</sup> While extending the Bid Due Date on account of an addendum, the Authority shall have due regard for the time required by Bidders to address the amendments specified therein. In the case of significant amendments, at least 15 (fifteen) days shall be provided between the date of amendment and the Bid Due Date, and in the case of minor amendments, at least 7(seven) days shall be provided.



other language provided that they are accompanied by a translation in the English language (duly authenticated by the embassy of the country of the Bidder). Supporting materials, which are not translated into English, may not be considered. For the purpose of interpretation and evaluation of the Bid, the English language translation shall prevail.

## **2.12 Format and signing of Bid**

All Bids shall be prepared and submitted in accordance with the specifications in the NIT and other Bidding Documents. The Bidder shall provide all the information sought under the Bidding Documents. The Authority will evaluate only those Bids that are received in the required formats and complete in all respects. Incomplete and/or conditional Bids shall be liable for rejection.

Bids submitted by fax, telex, telegram or e-mail shall not be entertained and shall be rejected.

The Bidders are requested to submit their Bid in compliance with the Bidding Documents, and to avoid seeking deviations (i.e. any non-conformity to any of the terms, conditions etc. contained in the Bidding Documents) to the terms of the Bidding Documents.

## **2.13 Bid Due Date**

2.13.1 Bids shall be submitted online on the website [<http://www.coalindiatenders.nic.in>] within the Bid Due Date as specified in the NIT.

2.13.2 The Authority may at its discretion extend the deadline for submission of Bids by amending the Bid Due Date in the Bidding Documents, in which case all rights and obligations of the Authority and the Bidders will be subject to the Bid Due Date as extended.

## **2.14 Modifications and Withdrawal of Bids**

Modifications and withdrawal of Bids shall be permitted only in accordance with Paragraph 14 of NIT.

## **2.15 Bid Validity**

2.15.1 The Bids shall be valid for acceptance for a period of not less than 180 (one hundred and eighty) days from the Bid Due Date.

2.15.2 In exceptional circumstances, the Authority may solicit the Bidder's consent to an extension of the Bid validity period. A Bidder may refuse the request without forfeiting its Bid Security. A Bidder granting the request will not be required nor permitted to modify its Bid.

2.15.3 During the Bid validity period, the Bidders shall not withdraw or amend the Bids.

## **2.16 Bid Security**

2.16.1 The Bidder shall furnish as part of its Bid, a Bid Security in accordance with Paragraph 5 of NIT.

- 2.16.2 Any Bid not accompanied by the Bid Security shall be summarily rejected by the Authority as non-responsive.
- 2.16.3 Save and except as provided in Clauses 2.16.4 and 2.16.5 below, the Bid Security of unsuccessful Bidders will be returned by the Authority, without any interest, immediately on acceptance of the Bid of the Successful Bidder or where the Bidding Process is cancelled by the Authority, within 30 (thirty) days from such cancellation. The refund of Bid Security shall be through electronic transfer.
- 2.16.4 The Successful Bidder's Bid Security will be returned, without any interest, upon the Successful Bidder signing the Contract Agreement and furnishing the Performance Security in accordance with the provisions thereof. The Authority may, at the Successful Bidder's option, adjust the amount of Bid Security in the amount of Performance Security to be provided by it in accordance with the provisions of the Contract Agreement.
- 2.16.5 The Authority shall be entitled to forfeit and appropriate the Bid Security as Damages in case of any of the events specified in Clause 2.16.6 herein below. The Bidder, by submitting its Bid pursuant to this RFB, shall be deemed to have acknowledged and confirmed that the Authority will suffer loss and damage on account of withdrawal of its Bid or for any other default by the Bidder during the period of validity of Bid as specified in this RFB. No relaxation of any kind on Bid Security shall be given to any Bidder.
- 2.16.6 The Bid Security shall be forfeited as Damages without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or under the Contract Agreement, or otherwise, under the following conditions.
- (a) If a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in Section IV of this RFB;
  - (b) If a Bidder withdraws its Bid during the period of validity of Bid as specified in this RFB (or as extended in accordance with the terms hereof);
  - (c) In the case of the Successful Bidder, if it fails within the specified time limit:
    - (i) to sign the Contract Agreement; or
    - (ii) to furnish the Performance Security;
  - (d) Any other conditions as specified in this RFB.

In addition, upon the occurrence of any of the above set out conditions, the defaulting Bidder shall be debarred and black-listed from participating in any bids/tenders floated by Coal India Limited and/or its subsidiaries for a minimum period of [1 (one) year] from the date of getting declared as debarred/black-listed. It is further clarified that the decision of the Authority in relation to occurrence of the any of the above set out conditions shall be final and binding.

## **2.17 Proprietary data**

All documents and other information supplied by the Authority or submitted by a Bidder to the Authority shall remain or become the property of the Authority. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The Authority will not return any Bid or any information provided along therewith.

The Bidder's Covering Letter and the documents attached thereto shall be considered forming part of the Contract Agreement.

## **2.18 Correspondence with the Bidder**

Save and except as provided in the Bidding Documents, the Authority shall not entertain any correspondence with any Bidder in relation to the acceptance or rejection of any Bid.

## **2.19 Integrity pact**

Bidders are required to upload the integrity pact annexed as Appendix VIII (the "**Integrity Pact**") as part of their Bids.

Name, address and contact details of independent external monitors ("**IEMs**"):

<b>Sl. No.</b>	<b>Name</b>	<b>Address</b>
1		
2		

Any change in IEMs which will be intimated to the Bidders. However, change in IEMs will not in any way affect the enforceability of the Contract Agreement.

### **3. SECTION III: EVALUATION OF BIDS**

#### **3.1 Evaluation parameters**

- 3.1.1 Only those Bidders who meet the eligibility criteria specified in Clause 2.2 of this RFB shall qualify for evaluation under this Section III. Bids which do not meet these criteria shall be rejected.
- 3.1.2 The Bidder's competence and capability is proposed to be established by the following parameters:
- (a) Technical Capacity; and
  - (b) Financial Capacity.

#### **3.2 Technical Capacity for purposes of evaluation**

For a work experience to qualify, it should fulfill the stipulations under Clause 2.2.2 of this RFB.

#### **3.3 Details of Experience**

- 3.3.1 The Bidder should furnish the details of eligible experience during the past 7 (seven) years ending on the last day of the [\*\*\*\*specify month previous to the month in which the Bids are invited\*\*\*\*] as specified in Clause 2.2.2 of this RFB.
- 3.3.2 The Bidder shall furnish the required specific work experience information and evidence in support of its claim in relation to Technical Capacity as per the format annexed as Annex II of Appendix I of this RFB.

#### **3.4 Financial information for purposes of evaluation**

- 3.4.1 The Bid must be accompanied by certificates from a chartered accountant or its equivalent in respect of the Net Worth and average Financial Turnover (for preceding 3 (three) financial years) based on the latest audited annual accounts. The same shall be furnished with respect to each Member, in case of a Consortium.
- 3.4.2 The Bidder must establish the minimum Net Worth and the average Financial Turnover and provide evidence in support of its claim in relation to Financial Capacity as per the format annexed as Annex III of Appendix I of this RFB.
- 3.4.3 Audited annual reports for the last 3 (three) financial years, as chosen by the Bidder, comprising of the audited balance sheets and profit and loss accounts shall be furnished with respect to the Bidder and each Member (where the Bidder is a Consortium).

#### **3.5 Opening of Bids**

- 3.5.1 The Bids will be decrypted online and will be opened on the pre-scheduled date/ revised schedule date by the openers of the Bid with their DSC. The Authority shall open 'Part-I/ Cover-I' of the bid if at least 3 (three) Bids are received. However, if the number of Bids received, within the stipulated Bid Due Date, through the e-portal is less than 3 (three) then the originally stipulated Bid Due Date shall be automatically extended by 2 (two) days ("**First Extended Bid Due Date**") by the e-portal ("**First Extension**"). If after the First Extension, the number of Bids received, within the First

Extended Bid Due Date, is still less than 3 (three), the First Extended Bid Due Date shall again be automatically extended by another 5 (five) days by the e-portal (“**Second Extension**”). If after the Second Extension, even after granting two extensions as aforesaid, less than 3 (three) Bids are received, the Bids so far submitted shall be opened without any further extension. No separate corrigendum shall be issued and published by the Authority for extending Bid Due Date. In case no Bid is received, the tender will be cancelled.

- 3.5.2 The date of opening of Bids shall be as specified in Paragraph 3 of NIT. In the event such date is extended by the Authority at its discretion, then during such extended period, any new Bidder having the requisite eligibility can submit its Bid. The existing Bidders shall however be allowed to revise their Bids.
- 3.5.3 In the event of the specified date for the opening of the Bids being declared a holiday for the Authority, the Bids will be opened at the appointed time on the next working day.

### **3.6 Test of responsiveness**

- 3.6.1 Prior to evaluation of Bids, the Authority shall determine whether each Bid is responsive to the requirements of the Bidding Documents. A Bid shall be considered responsive only if:
- (a) it is received as per the format annexed as Appendix-I.
  - (b) it is received by the Bid Due Date including any extension thereof pursuant to Clause 2.13.2;
  - (c) it is accompanied by the Bid Security;
  - (d) the price bid is received as per the Excel format;
  - (e) it is accompanied by the power of attorney as specified in Paragraph 10 of NIT;
  - (f) it contains all the information and documents (complete in all respects) as requested in this RFB and/or Bidding Documents;
  - (g) it contains information in formats same as those specified in this RFB and/or Bidding Documents;
  - (h) it contains documents and/or certificates, as specified in the Bidding Documents, towards fulfilment of eligibility criteria for Technical Capacity and Financial Capacity as per Clause 2.2.2 and Clause 2.2.3;
  - (i) it is accompanied by the Joint Bidding Agreement specific to the Project, as stipulated in Clause 2.2.7(e);
  - (j) it is accompanied by the Joint Operating Agreement specific to the Project, as stipulated in Clause 2.2.11;
  - (k) it does not contain any condition or qualification; and

(l) it is not non-responsive in terms hereof.

3.6.2 The Authority reserves the right to reject any Bid which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Authority in respect of such Bid.

3.6.3 No deviation, whatsoever, is permitted by the Authority, to the terms, conditions and specifications of the Bidding Documents. In case any deviation, variations and additional conditions etc. found anywhere in a Bid, the same shall not be given effect to and (without prejudice to the right of the Authority to reject such Bid in accordance with the provisions of the Bidding Documents) it will be considered that the Bid complies with all the requirements in the Bidding Documents and the Bidders shall be required to comply with all terms, conditions and specifications of the Bidding Documents without any extra cost to the Authority irrespective of any mention to the contrary, anywhere else in the Bid, failing which the Bid Security of the Bidder may be forfeited.

### **3.7 Clarifications by Authority**

3.7.1 To facilitate evaluation of Bids, the Authority may, at its sole discretion, seek clarifications from any Bidder regarding its Bid. Such clarification(s) shall be provided within the time specified by the Authority for this purpose. Any request for clarification(s) and all clarification(s) in response thereto shall be in writing.

3.7.2 If a Bidder does not provide clarifications sought under Clause 3.7.1 within the prescribed time, its Bid shall be liable to be rejected. In case the Bid is not rejected, the Authority may proceed to evaluate the Bid by construing the particulars requiring clarification to the best of its understanding, and the Bidder shall be barred from subsequently questioning such interpretation of the Authority.

### **3.8 Evaluation of Bid**

#### **3.8.1 Techno-Commercial Evaluation of Tender:**

(a) Based on the response to TPS, the portal will initially evaluate eligible Bidders. Subsequently, the Bidder's response in the TPS will be scrutinized/ verified and evaluated by the Authority with the documents uploaded by the Bidders to determine whether they are in conformity with the Bidding Documents.

(b) Any Bid which is not accompanied with the requisite amount of Bid Security will not be considered for further evaluation.

(c) The Authority will determine the techno-commercial acceptability of the Bidders on the basis of the original offer and subsequent clarifications/ confirmation, if any. For the purpose of this determination, a techno-commercially acceptable Bid is one, which conforms to all the terms and conditions of the Bidding Documents and the requirements of all commercial terms and mandatory qualifications without deviations, exceptions, objections, conditionality or reservations.

- (d) The techno-commercial Bids which do not meet the requirements stipulated under the NIT will be rejected by the Authority.
- (e) Shortfall / confirmatory documents:
  - (i) During evaluation of the Bids, the Authority may seek any shortfall/confirmatory documents, if required.
  - (ii) Such request for documents shall be made online under the link ‘Upload Shortfall / Confirmatory Documents’ after scrutiny of the Bids, indicating the start date and end date giving 7x24 hours duration for online submission by the relevant Bidders.
  - (iii) The relevant Bidders will receive information in relation to such requests on their personalised dashboard under “Upload Shortfall/ Confirmatory Document/ Information” link. While such information shall also be sent by a system generated email and SMS, it will be the Bidder’s responsibility to check the updated status/ information on their personalised dashboard at least once daily after the opening of the Bid. Such shortfall / confirmatory documents are to be uploaded by the Bidders within the specified time period under the link ‘Upload Shortfall / Confirmatory Documents’.
  - (iv) If further clarifications/shortfall documents/confirmatory documents are required, a time frame of 5x24 hours will be provided to the relevant Bidders for online submission of such documents.
  - (v) The eligibility of the Bidder shall be evaluated based on the documents submitted by the Bidder and the clarification/shortfall/confirmatory document submitted as per sub-clauses (iii) and (iv) above. No further document shall be sought from the Bidder.
  - (vi) No changes in prices of the Bids shall be sought, offered or permitted, In addition, no modification of the Bid or any form of communication with the Authority or submission of any additional documents, not specifically asked for by the Authority, will be allowed and even if submitted, they will not be considered by the Authority.
- (f) The Authority reserves the right to verify any of the documents uploaded by the Bidder at any stage. All communication will be through system generated e-mail and SMS and no separate communication will be made in this regard. Non-receipt of e-mail and SMS will not be accepted as a reason of non-submission of requisite documents within the prescribed time.

### **3.8.2 Determination of the L-1 Bidder**

- a) Price-Bid (Part-II/Cover-II) will be opened after the evaluation of Part-I/Cover-I. The Part-II/Cover-II of only the techno-commercially acceptable Bidders (the Bidders who have qualified against Part-I/Cover-I) shall be decrypted and opened on the scheduled date and time for which intimation will be given to such techno-commercially acceptable Bidders through the e-procurement portal.

- b) On opening of the price bids, the Bidders may view the price bid online remotely on their personalized dash board and can see the price bids submitted by all participating Bidders. After opening of price bids the comparative statement of prices indicating the rates quoted by all the Bidders will be generated by the system and the lowest price bid ("**L-1 Price**") shall be determined accordingly.
- c) In the event that the same L-1 Price is quoted by more than 1 (one) Bidders, the Bidder having the highest Net Worth (as per the Bid submitted) shall be determined as the "L1 Bidder".

### **3.9 Selection of Bidder**

- 3.9.1 Subject to the provisions of this RFB, the Bidder whose Bid has been determined to be substantially responsive and who is established as techno-commercially acceptable L-1 Bidder shall be considered as the Successful Bidder for award of work subject to the reasonability of the L-1 Price and viability of the Project for the Authority on price quoted by the L-1 Bidder.

If the lowest price received is unreasonable or it is unacceptable on ground of being too high or too low compared with estimated price, the Authority reserves the right to seek justification of the price from the Bidder of such price. If the lowest price is not considered reasonable, the Authority may not accept such Bid and another tender process may be initiated.

- 3.9.2 The Authority does not bind itself to accept the lowest Bid and reserves the right to reject any or all the Bids without assigning any reasons whatsoever without thereby incurring any liability to the affected Bidder(s) or any obligation to inform the affected Bidder(s) on the ground of the Authority's action.
- 3.9.3 Prior to the expiration of the period of Bid validity, the Authority will notify the Successful Bidder that its Bid has been accepted by way of issuance of the LOA to the Successful Bidder by uploading a scanned copy of the LOA on the e-tendering portal of Coal India Limited. Additionally, it may be communicated through speed post to the registered postal address, as provided by the Successful Bidder. However online communication through e-tendering portal of Coal India Limited shall be construed as acceptance of offer and notification of award. The notification of the LOA will constitute the formation of the contract.
- 3.9.4 The Successful Bidder after furnishing the requisite Performance Security shall execute the Contract Agreement within [90 (ninety) days] from the date of issue of LOA through the SPV. The Successful Bidder shall not be entitled to seek any deviation, modification or amendment in the Contract Agreement. The Performance Security will be provided in accordance with the Contract Agreement no later than [90 (ninety)] days from the date of issue of LOA.
- 3.9.5 Bidders are advised that the assessment of qualification of Bidders will be entirely at the discretion of the Authority. Bidders will be deemed to have understood and agreed that no explanation or justification on any aspect of the Bidding Process or selection will be given by the Authority. The Authority will not entertain any query or clarification from Bidders who fail to qualify. The reason of rejection of unsuccessful Bidder(s) shall be communicated online on the portal itself.



- 3.9.6 Any information contained in the Bid shall not in any way be construed as binding on the Authority, its agents, successors or assigns, but shall be binding against the Bidder if the Project is subsequently awarded to it on the basis of such information.
- 3.9.7 The Authority reserves the right not to proceed with the Bidding Process at any time without notice or liability and to reject any or all Bid(s) without assigning any reasons.
- 3.9.8 If any information furnished by the Bidder is found to be incomplete, or contained in formats other than those specified herein, the Authority may, in its sole discretion, exclude the relevant project from computation of the eligible experience of the Bidder.
- 3.9.9 In the event that a Bidder claims credit for Technical Capacity or Financial Capacity, and such claim is determined by the Authority as incorrect or erroneous, the Authority shall reject such claim and the decision of the Authority shall be final. Where any information is found to be patently false or amounting to a material misrepresentation, the Authority reserves the right to reject the Bid in accordance with the provisions of Clauses 2.7.2 and 2.7.3.

### **3.10 Contacts during Bid Evaluation**

Bids shall be deemed to be under consideration immediately after the Bid Due Date and until such time the Authority makes official intimation of award/ rejection to the Bidders. While the Bids are under consideration, Bidders and/ or their representatives or other interested parties are advised to refrain, save and except as required under the Bidding Documents, from contacting by any means, the Authority and/ or their employees/ representatives / consultants/ advisers on matters related to the Bids under consideration.

### **3.11 Confidentiality**

Information relating to the examination, clarification, evaluation, and recommendation in relation to the Bidders shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional advisor advising the Authority in relation to, or matters arising out of, or concerning, the Bidding Process. The Authority will treat all information, submitted as part of the Bid, in confidence and will require all those who have access to such material to treat the same in confidence. The Authority may not divulge any such information unless it is directed to do so by any statutory authority that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory authority as may be required by law or in connection with any legal process.

**4.****SECTION IV: FRAUD AND CORRUPT PRACTICES**

- 4.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process. Notwithstanding anything to the contrary contained herein, the Authority may reject a Bid without being liable in any manner whatsoever to the Bidder if it determines that the Bidder has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process.
- 4.2 Without prejudice to the rights of the Authority under Clause 4.1 hereinabove, if a Bidder is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, such Bidder shall not be eligible to participate in any tender process issued by the Authority during a period of 5 (five) years from the date such Bidder is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as the case may be.
- 4.3 For the purposes of this Clause 4, the following terms shall have the meaning hereinafter respectively assigned to them:
- (a) **“corrupt practice”** means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to, or employing, or engaging in any manner whatsoever, directly or indirectly, any official of the Authority who is or has been associated in any manner, directly or indirectly, with the Bidding Process or the LOA or has dealt with matters concerning the Contract Agreement or arising therefrom, before or after the execution thereof, at any time prior to the expiry of 1 (one) year from the date such official resigns or retires from or otherwise ceases to be in the service of the Authority, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) save and except as permitted under sub clause (c) of Clause 2.2.1, engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the Contract Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Contract Agreement, who at any time has been or is a legal, financial or technical adviser of the Authority in relation to any matter concerning the Project;
  - (b) **“fraudulent practice”** means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process;
  - (c) **“coercive practice”** means impairing or harming or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Bidding Process;

- (d) **“undesirable practice”** means (i) establishing contact with any person connected with or employed or engaged by the Authority with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and
- (e) **“restrictive practice”** means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

## **5. SECTION V: PRE-BID CONFERENCE**

- 5.1 A pre-bid conference of the interested parties shall be convened at the designated date, time and place. A maximum of 2 (two) representatives of each Bidder shall be allowed to participate on production of an authority letter from the Bidder. The purpose of the pre-bid conference will be to clarify any issue regarding the Bidding Documents. The Bidder is requested to submit questions for the pre-bid conference online not later than the Clarification Submission Due Date.
- 5.2 During the course of pre-bid conference, the Bidders will be free to seek clarifications and make suggestions for consideration of the Authority no later than the Clarification Submission Due Date. The Authority shall endeavour to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process. Any clarifications provided in the pre-bid conference are only indicative and Bidders will only be entitled to rely on the clarifications subsequently provided in writing by the Authority.
- 5.3 Non-attendance of Bidders at the pre-bid conference will not be a cause for disqualification of the Bidder and it shall be presumed that the Bidder does not require any clarification.

**6.****SECTION VI: MISCELLANEOUS**

- 6.1 The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the courts at [\*\*\*\*\*] shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.
- 6.2 The Authority, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;
- (a) suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
  - (b) consult with any Bidder in order to receive clarification or further information;
  - (c) qualify or disqualify any Bidder;
  - (d) retain any information and/ or evidence submitted to the Authority by, on behalf of, and/ or in relation to any Bidder; and/ or
  - (e) independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Bidder.
- 6.3 It shall be deemed that by submitting the Bid, the Bidder agrees and releases the Authority, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder and the Bidding Documents, pursuant hereto, and/ or in connection with the Bidding Process, to the fullest extent permitted by applicable law, and waives any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future.

## **PART-I/ COVER-I: BID FOR QUALIFICATION**

APPENDIX I  
**Bidder's Covering Letter**<sup>£</sup>  
(Refer Paragraph 11.4 of NIT)

Dated:

To,  
[The \*\*\*,  
\*\*\*\*\*  
\*\*\*\*\*]

Sub: Bid for the [\*\*\* Coal Mine Project] (the “**Project**”)

Dear Sir,

1. With reference to your Request for Bid<sup>\$</sup> No. [\*\*\*\*] dated [\*\*\*\*] (the “**RFB**”), I/we, having examined the RFB and understood its contents, hereby submit my/our Bid for the aforesaid Project. The Bid is unconditional and unqualified.
2. I/ We acknowledge that the Authority will be relying on the information provided in the Bid and the documents accompanying such Bid for the aforesaid Project, and I/we certify that all information provided in the Bid and in Annexes I to IV is true, complete and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Bid are true copies of their respective originals.
3. I/ We shall make available to the Authority any additional information it may find necessary or require to supplement or authenticate my/ our Bid.
4. I/ We acknowledge the right of the Authority to reject my/our Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, my/our right to challenge the same on any account whatsoever.
5. I/ We declare that:
  - (a) I/ we have examined and have no reservations to the RFB, including any addendum issued by the Authority;
  - (b) I/ we are eligible to submit a bid in accordance with Clause 2.2.1 and in particular, do not have any Conflict of Interest in accordance with Clause 2.2.1(b);
  - (c) I/we have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable

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<sup>£</sup> To be submitted on the letterhead of the Bidder. In case the Bidder is unable to provide certification with reference to any particular paragraph or part thereof, it may precede the paragraph by the words “Except as specified in Schedule \*\*\*\* hereto”. The exceptions to the certification or any disclosures relating thereto may be clearly stated in a Schedule to be attached to the Bid. The Authority will consider the contents of such Schedule and determine whether or not the exceptions/disclosures are material to the eligibility of the Bidder hereunder.

<sup>\$</sup> All blank spaces shall be suitably filled up by the Bidder to reflect the particulars relating to such Bidder.

practice or restrictive practice, as defined in Clause 4.3 of RFB, in respect of any tender or request for bid issued by or any agreement entered into with the Authority or any other public sector enterprise or any Government;

- (d) I/ we have taken steps to ensure that in conformity with the provisions of Clause 4 of RFB, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice; and
  - (e) my/ our Bid shall be valid for a minimum period of 180 (one hundred and eighty) days from the Bid Due Date, as extended from time to time, in accordance with the Bidding Documents, and it shall remain binding upon me/ us and may be accepted at any time before the expiration of that period; and
  - (f) If my/ our Bid is accepted, we undertake to complete the Project in accordance with the Contract Agreement and the other Bidding Documents.
- 6. I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid for the Project, without incurring any liability to the Bidders.
  - 7. I/ We declare that we/ any Member, or our/ its Associates are not participating, as Bidders, in more than 1 (one) Bid in this Bidding Process in accordance with the Bidding Documents.
  - 8. I/ We certify that in regard to matters other than security and integrity of the country, we/ any Member or any of our/ their Associates have not been convicted by a court of law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.
  - 9. I/ We further certify that in regard to matters relating to security and integrity of the country, we/ any Member or any of our/ their Associates have not been charge-sheeted by any agency of the Government or convicted by a court of law.
  - 10. I/ We further certify that no investigation by a regulatory authority is pending either against us/ any Member or against our/ their Associates or against our chief executive officer or any of our directors/ managers/ employees.
  - 11. I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the provisions of the RFB, I/ we shall intimate the Authority of the same immediately.
  - 12. The 'Statement of Legal Capacity' as per format provided at Annex IV in Appendix I of RFB, and duly signed, is enclosed. The power of attorney for signing of Bid {and the power of attorney for Lead Member}<sup>£</sup>, as per format provided at Appendix II {and III respectively} of RFB, are also enclosed.

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<sup>£</sup> Omit if the Bidder is not a Consortium.



13. I/ We hereby confirm that we shall submit PAN details, GST registration details, particulars related to registration with provident fund and physical form of all the original documents scan copy of which are submitted, before execution of the Contract Agreement, if the Project is awarded to us.
14. I/ We hereby authorise the Authority to seek reference/clarifications from my/our bankers.
15. I/ We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Authority in connection with the selection of Bidders, or in connection with the selection/ Bidding Process itself, in respect of the Project and the terms and implementation thereof.
16. I/ We agree and undertake to abide by all the terms and conditions of the Bidding Documents.
17. I/ We undertake to execute the Contract Agreement within [90 days] from the date of issue of the LOA through the SPV, if the Project is awarded to me/ us.

Capitalized terms used herein, unless defined herein, shall have the same meaning assigned to them in the RFB.

In witness thereof, I/ we submit this Bid under and in accordance with the terms of the RFB.

Yours faithfully,

(Signature, name and designation of the Authorised Signatory)

Name and seal of the Bidder/ all the Members in case of Consortium

Date:

Place:

Note: Paragraphs in curly parenthesis may be omitted, if not applicable, or modified as necessary.

## ANNEX-I

### Details of Bidder

1.
  - (a) Name:
  - (b) Country of incorporation:
  - (c) Address of the corporate headquarters/ registered office and its branch office(s), if any, in India:
  - (d) Date of incorporation and/ or commencement of business:
2. Brief description of the Bidder including details of its main lines of business:
3. Details of individual(s) who will serve as the point of contact/ communication for the Bidder:
  - (a) Name:
  - (b) Designation:
  - (c) Address:
  - (d) Telephone Number:
  - (e) E-Mail Address:
  - (f) Fax Number:
4. Particulars of the Authorised Signatory of the Bidder:
  - (a) Name:
  - (b) Designation:
  - (c) Address:
  - (d) Phone Number:
  - (e) Fax Number:
5. The following information shall be provided for the Bidder:

No.	Criteria	Yes	No
1.	Has the Bidder been barred by Coal India Limited or any subsidiary of Coal India Limited or the Ministry of Coal, Government of India, from participating in any project?		
2.	If the answer to 1 is yes, does the bar subsist as on the date of the Bid?		
3.	Has the Bidder failed to perform any contract and been penalised or been expelled /terminated from any project or contract by Coal India Limited or any subsidiary of Coal India Limited or the Ministry of Coal, Government of India, in the last 3 (three) years?		

6. In case of a Consortium:

- (a) The information in 1-3 above should be provided for all the Members.
- (b) A copy of the Joint Bidding Agreement, as envisaged in Clause 2.2.7(e) should be attached to the Bid.
- (c) Information regarding the proposed role and responsibilities of each Member in the Project should be provided as per table below:

Sl. No.	Name of Member	Role* {Refer Clause 2.2.7(c)} <sup>\$</sup>	Percentage of equity in the SPV {Refer Clauses 2.2.7(b) & (e)}
1.			
2.			
3.			

*\* The role and responsibilities of each Member, as may be determined by the Bidder, should be indicated.*

- (d) The following information shall be provided for each Member:

**Name of Member of Consortium:**

No.	Criteria	Yes	No
1.	Has the Member been barred by Coal India Limited or any subsidiary of Coal India Limited or the Ministry of Coal, Government of India, from participating in any project?		
2.	If the answer to 1 is yes, does the bar subsist as on the date of the Bid?		
3.	Has the Member failed to perform any contract and been penalised or been expelled /terminated from any project or contract by Coal India Limited or any subsidiary of Coal India Limited or the Ministry of Coal, Government of India, in the last 3 (three) years?		

- 7. A statement by the Bidder and each of the Members (where applicable) or any of its/ their Associates disclosing material non-performance or contractual non-compliance in past projects, contractual disputes and litigation/ arbitration in the recent past is given below (Attach extra sheets, if necessary):

<sup>\$</sup> All provisions contained in curly parenthesis shall be suitably modified by the Bidder to reflect the particulars relating to such Bidder.

## ANNEX-II

### Technical Capacity of the Bidder <sup>@</sup>

(Refer to Clauses 2.2.2(i), 3.2 and 3.3 of RFB)

*(Individual formats to be submitted for each work experience)*

#### **Name of the sole Bidder / Member of the Consortium:**

(In case of an Associate of the Bidder/ member of the Consortium (as the case may be), state the name of the Associate, also)

Sl. No.	Items	Particulars	Reference document attached	At page no. (of uploaded pdf file)
1.	Nature of experience (as owner / contractor /sub-contractor)			
2.	Name of the mine/ project			
3.	Name and address of owner of mine/ project or employer awarding the work, as applicable			
4.	Work order ref. no. (in case of contractor / sub-contractor)/ Reference no. of document(s) showing ownership/title rights and for operation of mine/ project (in case of owner)			
5.	Percentage (%) share of the Bidder (100% in case of owner & single member; actual percentage share as consortium member)*			
6.	Period of qualifying experience <sup>#</sup> (not exceeding consecutive 365 days)			
a.	Start date (dd-mm-yyyy)			
b.	End date (dd-mm-yyyy)			
7.	Type of material handled (e.g. coal & OB, lignite & OB, coal only, OB only, lignite only, iron ore/ bauxite/ manganese ore/ copper ore etc.)			
8.	Break-up of the claimed volume in the work experience			
a.	Overburden (million m <sup>3</sup> )			
b.	Coal/ Lignite/ iron ore/ bauxite/ manganese ore/ copper ore (specify name) (million tonnes)			
c.	Specific gravity considered			
d.	Volume of Coal/ Lignite / iron ore/ bauxite/ manganese ore/ copper ore (specify name) (million m <sup>3</sup> )			
9.	Actual volume of work executed (Mm <sup>3</sup> )			
10.	<b>Eligible volume of work executed (Mm<sup>3</sup>) (5 x 9)</b>			
11.	Average stripping ratio <sup>\$</sup>			

**Note:**

- @ Provide details of only those work experience that have been undertaken by the Bidder under its own name and/or by an Associate specified in Clause 2.2.4 as eligible under Clauses 3.2 and 3.3.
- \* In case of Consortium, the percentage share, for considering qualifying experience, should not be less than 26%.
- # For each work experience, the start date should be greater than or equal to the start date of the qualifying period and the end date should be less than or equal to the end date of the qualifying period).
- \$ For estimation of volume of Overburden (OB) removal, in case a documentary evidence for Overburden removal is not submitted at Sl. No. 8.

## ANNEX-III

### Financial Capacity of the Bidder

(Refer to Clauses 2.2.3 and 3.4 of RFB)

**a) Net worth of the Bidder**

(Networth in million \$\$)

Bidder type \$	Currency	Net Worth	Exchange rate	Net Worth <sup>€</sup> (in INR)
(1)	(2)	(3)	(4)	(5)
Single Bidder				
Associate of Single Bidder, if any				
Consortium Member 1				
Associate of Member 1, if any				
Consortium Member 2				
Associate of Member 2, if any				
Consortium Member 3				
Associate of Member 3, if any				
TOTAL				

**b) Turnover of the Bidder**

(Turnover in last three years in million \$\$)

Bidder type \$	Currency	Turnover			Exchange rate	Turnover <sup>€</sup> (in INR)		
		Yr.1	Yr.2	Yr.3		Yr.1	Yr.2	Yr.3
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Single Bidder								
Associate of Single Bidder, if any								
Consortium Member 1								
Associate of Member 1, if any								
Consortium Member 2								
Associate of Member 2, if any								
Consortium Member 3								
Associate of Member 3, if any								
TOTAL								

**Name & address of Bidder's Bankers:**

<sup>\$</sup> A Bidder consisting of a single entity should fill in details as per the row titled 'Single Bidder' and ignore the rows titled 'Consortium Members'. In case of a Consortium, row titled 'Single Bidder' may be ignored.

<sup>€</sup> The Bidder should provide details of its own Financial Capacity and of the Associate whose Technical Capacity/Financial Capacity is furnished and relied upon.

<sup>\$\$</sup> For conversion of US Dollars to Rupees, the rate of conversion shall be Indian Rupees [\*\*as on 60 (sixty) days prior to the date of invitation of Bid \*\*] to a US Dollar. In case of any other currency, the same shall first be converted to US Dollars as on the date which is 60 (sixty) days prior to the date of invitation of Bid, and the amount so derived in US Dollars shall be converted into Indian Rupees at the aforesaid rate. The conversion rate of such currencies shall be the daily reference exchange rates published by the Reserve Bank of India for the relevant date. In case the reference exchange rate is not published by the Reserve

*Bank of India, any reference exchange rate referred by the Reserve Bank of India or the Government of India will be considered.*

**Instructions:**

1. The Bidder/ Members shall attach copies of audited financial statements, annual reports of the last 3 (three) financial years, as chosen by the Bidder. The financial statements/ annual reports shall:
  - (a) reflect the financial situation including balance sheets and profit and loss accounts of the Bidder or Members and its/ their Associates where the Bidder is relying on its Associate's financials;
  - (b) be audited by a statutory auditor;
  - (c) be complete, including all notes to the financial statements; and
  - (d) correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).
2. Year 1 will be the latest completed financial year out of 3 (three) financial years chosen by the Bidder. Year 2 & Year 3 shall be taken accordingly.
3. The Bidder shall provide a certificate from a chartered accountant or equivalent based on the financial statements audited by the statutory auditor specifying the Net Worth of the Bidder as at the close of the latest financial year out of the 3 (three) financial years chosen by the Bidder and also specifying the methodology adopted for calculating such Net Worth in accordance with Paragraph 9.2 of NIT.
4. The Bidder shall provide a certificate from a chartered accountant or an equivalent based on the financial statements /annual reports audited by the statutory auditor specifying the average Financial Turnover of the Bidder of last 3 (three) financial years, as chosen by the Bidder and also specifying the methodology adopted for calculating such average Financial Turnover.

ANNEX-IV

**Statement of Legal Capacity**

*(To be issued on the letterhead of the Bidder/ Lead Member)*

Ref. Date:

To,

\*\*\*\*\*

\*\*\*\*\*

Dear Sir,

We hereby confirm that we/ our members in the Consortium (constitution of which has been described in the Bid) satisfy the terms and conditions laid out in the RFB.

We have agreed that ..... (insert member's name) will act as the Lead Member of our Consortium.\*

We have agreed that ..... (insert individual's name) will act as our representative/ will act as the representative of the Consortium on its behalf\* and has been duly authorized to submit our Bid. Further, the authorised signatory is vested with requisite powers to furnish such letter and authenticate the same.

Capitalized terms used herein, unless defined herein, shall have the same meaning assigned to them in the Request for Bid No. [\*\*\*\*] dated [\*\*\*\*] (the “**RFB**”).

Thanking you,

Yours faithfully,

(Signature, name and designation of the authorised signatory)

For and on behalf of.....

*\*Please strike out whichever is not applicable.*



## APPENDIX II

### Power of Attorney for signing of Bid

#### Part I – The below power of attorney to be provided by the Bidder

Know all men by these presents, we.....  
(name and address of the corporate headquarters/ registered office) (the “**Principal**”) do hereby irrevocably constitute, nominate, appoint and authorise Mr./ Ms. (name), ..... son/daughter/wife of ..... and presently residing at ....., who is presently employed with us and holding the position of ....., as our true and lawful attorney (hereinafter referred to as the “**Attorney**”) to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with, or incidental to, submission of our Bid in response to the Request for Bid No. [\*\*\*\*] dated [\*\*\*\*] (the “**RFB**”), for the [\*\*\*\*\* Project] proposed or being developed by the [\*\*\*\*\* (the “**Authority**”)], including but not limited to, signing and submission of our Bid, applications and other documents and writings, participate in the pre-bid conference and other conferences and providing information/ responses to the Authority, representing us in all matters before the Authority, signing and execution of all contracts (including the Contract Agreement) and undertakings consequent to acceptance of our Bid, and generally dealing with the Authority in all matters in connection with, or relating to, or arising out of, our Bid for the said Project and/ or upon award thereof to us and/or till the entering into of the Contract Agreement with the Authority.

AND we hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to, and in exercise of, the powers conferred by this power of attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

Capitalized terms used herein unless defined herein, shall have the same meaning assigned to them in the RFB.

IN WITNESS WHEREOF WE, THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS ..... DAY OF ..... 2.....

For

.....

(Signature, name, designation and address)

Witnesses:

1.

(Notarised)

2.

Accepted

.....

(Signature)

(Name, Title and Address of the Attorney)

**Part 2 – The below power of attorney to be provided by each Member, where the Bidder is a Consortium**

Whereas the [\*\*\*\*\*] (“the **Authority**”) has invited bids from interested parties for the [\*\*\*\*\* Coal Mine Project] (the “**Project**”) pursuant to a Request for Bid No. [\*\*\*\*\*] dated [\*\*\*\*\*] (the “**RFB**”).

Whereas, we..... (name and address of the corporate headquarters/ registered office) along with ....., ....., and ..... (each a “**Member**” and collectively the “**Consortium**”) are interested in bidding for the Project in accordance with the terms and conditions of the RFB and other connected documents in respect of the Project.

**NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS**

We..... (name and address of the corporate headquarters/ registered office) do hereby irrevocably constitute, nominate, appoint and authorise Mr./ Ms. (name), ..... son/daughter/wife of ..... and presently residing at ....., who is presently employed with us and holding the position of ....., as our true and lawful attorney (hereinafter referred to as the “**Attorney**”) to, in our name and on our behalf and in our capacity as a Member of the Consortium, sign the Bid of the Consortium in response to the RFB for the Project proposed or being developed by the Authority, including but not limited to all applications and other documents and writings forming part of the Bid of the Consortium and required to be signed by us in our capacity as a Member.

AND we hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to, and in exercise of, the powers conferred by this power of attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

Capitalized terms used herein unless defined herein, shall have the same meaning assigned to them in the RFB.

IN WITNESS WHEREOF WE, THE ABOVE NAMED CONSORTIUM HAVE  
EXECUTED THIS POWER OF ATTORNEY ON THIS .....  
DAY OF ..... 2.....

For

.....

(Signature, name, designation and address)

For

.....

(Signature, name, designation and address)

For

.....

(Signature, name, designation and address)

Witnesses:

1.

(Notarised)

2.

Accepted

.....

(Signature)

(Name, Title and Address of the Attorney)

Notes:

- *The mode of execution of the power of attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*

- *Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney/ letter of authority in favour of the person executing this power of attorney for the delegation of power hereunder on behalf of the Bidder/ Member.*
- *For a power of attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the power of attorney is being issued. However, the power of attorney provided by Bidders/ Members from countries that have signed the Hague Convention, 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Apostille certificate.*

## APPENDIX III

### Power of Attorney for Lead Member of Consortium

*(Refer Clause 2.2.5 of RFB)*

Whereas the [\*\*\*\*\*] (“the **Authority**”) has invited bids from interested parties for the [\*\*\*\*\* Coal Mine Project] (the “**Project**”) pursuant to a Request For Bid No. [\*\*\*\*\*] dated [\*\*\*\*\*] (the “**RFB**”).

Whereas, ....., ....., ..... and ..... (each a “**Member**” and collectively the “**Consortium**”) are interested in bidding for the Project in accordance with the terms and conditions of the RFB and other connected documents in respect of the Project, and

Whereas, it is necessary for the Members to designate one of them as the Lead Member with all necessary power and authority to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium’s bid for the Project and its execution.

#### NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

We, M/s. .... having our registered office at .....,  
M/s. .... having our registered office at ....., M/s.  
..... having our registered office at ....., and M/s.  
..... having our registered office at .....,  
(hereinafter collectively referred to as the “**Principals**”) do hereby irrevocably designate, nominate, constitute, appoint and authorise M/s. ....  
having its registered office at ....., being one of the Members, as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the “**Attorney**”). We hereby irrevocably authorise the Attorney (with power to sub-delegate) to conduct all business for, and on behalf of, the Consortium and any one of us during the Bidding Process and, in the event the Consortium is awarded the Project, during the execution of the Project and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the qualification of the Consortium and submission of its Bid for the Project, including but not limited to, submission of the Bid, applications and other documents and writings, participate in pre-bid conferences, respond to queries, submit information/ documents, sign and execute contracts and undertakings consequent to acceptance of the Bid of the Consortium and generally to represent the Consortium in all its dealings with the Authority, and/ or any other Government agency or any person, in all matters in connection with, or relating to, or arising out of, the Consortium’s Bid for the Project and/ or upon award thereof till the Contract Agreement is entered into with the Authority.

AND we hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to, and in exercise of, the powers conferred by this power of attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall always be deemed to have been done by us/ Consortium.

Capitalized terms used herein unless defined herein, shall have the same meaning assigned to them in the RFB.

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE  
EXECUTED THIS POWER OF ATTORNEY ON THIS ..... DAY OF  
..... 20....

For .....  
(Signature)

.....  
(Name & Title)

For .....  
(Signature)

.....  
(Name & Title)

For .....  
(Signature)

.....  
(Name & Title)

Witnesses:

1.

2.

.....

(Executants)

(To be executed by all the Members of the Consortium)

*Notes:*

- *The mode of execution of the power of attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- *Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney/ letter of authority in favour of the person executing this power of attorney for the delegation of power hereunder on behalf of the Bidder/ Member.*
- *For a power of attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the power of attorney is being issued. However, the power of attorney provided by Bidders/ Members from countries that have signed the Hague Convention, 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Apostille certificate.*

APPENDIX IV  
**Joint Bidding Agreement**

(Refer Clause 2.2.7(e) of RFB)

(To be executed on stamp paper of appropriate value)

THIS JOINT BIDDING AGREEMENT is entered into on this ..... day of  
..... 20... (the “**Agreement**”)

**AMONGST<sup>\$</sup>**

1. {...(Member 1)..., incorporated/registered under ...(Law/Act of country of origin)... and having its corporate headquarters/ registered office/ office at ..... (hereinafter referred to as the “**First Party**” which expression shall, unless repugnant to the context include its successors and permitted assigns)}

**AND**

2. {...(Member 2)..., incorporated/registered under ...(Law/Act of country of origin)... and having its corporate headquarters/ registered office/ office at ..... (hereinafter referred to as the “**Second Party**” which expression shall, unless repugnant to the context include its successors and permitted assigns)}

**AND**

3. {...(Member 3)..., incorporated/registered under ...(Law/Act of country of origin)... and having its corporate headquarters/ registered office/ office at ..... (hereinafter referred to as the “**Third Party**” which expression shall, unless repugnant to the context include its successors and permitted assigns)}

The above mentioned First Party, Second Party, and the Third Party are collectively referred to as the “**Parties**” and each is individually referred to as a “**Party**”.

**WHEREAS,**

(A) The [\*\*\*\*\*], established/ incorporated under the (Indian) Companies Act, [●], represented by its Chairman and Managing Director and having its principal offices at [\*\*\*\*\*] (hereinafter referred to as the “**Authority**” has invited bids from eligible bidders by its Request For Bid No. .... dated ..... (the “**RFB**”) to award the work of development and operation of the [\*\*\*\*\* Coal Mine Project] (the “**Project**”) through a mine operator

(B) The Parties are interested in jointly bidding for the Project as a Consortium in accordance with the terms and conditions of the RFB and other Bidding Documents in respect of the Project, and

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<sup>\$</sup> The number of Parties (i.e. Members of the Consortium) should be shown here, as applicable, subject however to a maximum of 3 (three).

- (C) It is a necessary condition under the RFB that where the Bidder is a Consortium then the Members of the Consortium shall enter into a Joint Bidding Agreement and furnish a copy thereof with their Bid.

**NOW IT IS HEREBY AGREED as follows:**

**1. Definitions and Interpretations**

In this Agreement, the capitalised terms shall, unless the context otherwise requires, have the meaning ascribed thereto under the RFB.

**2. Consortium**

2.1 The Parties do hereby irrevocably constitute a consortium (the “**Consortium**”) for the purpose of jointly participating in the Bidding Process for the Project.

2.2 The Parties hereby undertake to participate in the Bidding Process only through the Consortium and not individually and/ or through any other consortium constituted for the Project, either directly or indirectly or through any of their Associates.

**3. Covenants**

The Parties hereby undertake that in the event that the Consortium is declared the Successful Bidder and awarded the Project, they shall incorporate a limited company under the provisions of the (Indian) Companies Act, 2013 as a special purpose vehicle (the “**SPV**”) for entering into the Contract Agreement with the Authority and for performing all the obligations of the “Mine Operator” in terms of the Contract Agreement for the Project.

**4. Role of the Parties**

The Parties hereby undertake to perform the roles and responsibilities as described below:

First Party shall be the Lead Member and shall have obtained a power of attorney from the other Parties for conducting all business for, and on behalf of, the Consortium during the Bidding Process and until the appointed date under the Contract Agreement when all the obligations of the SPV shall become effective.

{Include role and responsibilities of the Parties }

**5. Shareholding in the SPV**

5.1 The Parties agree that the proportion of shareholding among the Parties in the subscribed and paid up equity share capital of the SPV shall be as follows:

First Party (the Lead Member):

Second Party:

{Third Party: }



- 5.2 The Parties undertake that the Parties of the {First, Second and Third} Part whose technical and financial experience shall be reckoned for the purposes of qualification and evaluation of the Consortium for the Project in terms of the RFB, shall each subscribe to 26% (twenty six per cent) or more of the paid up and subscribed equity share capital of the SPV, and the Parties further undertake that each such Party shall, for a period of 2 (two) years from the date of commercial operation (as defined in the Contract Agreement) of the Project, hold at least: (i) 26% (twenty six per cent) of the subscribed and paid up equity share capital of the SPV; (ii) such other portion of the subscribed and paid up equity share capital of the SPV which is equal to at least 5% (five per cent) of the Total Project Cost specified in the Contract Agreement; and (iii) in no case the subscribed and paid up equity share capital of the SPV will be less than 15% (fifteen per cent) of the Total Project Cost specified in the Contract Agreement.
- 5.3 Without prejudice to Clause 5.2 above, the Parties undertake that they shall collectively hold not less than 75% (seventy-five per cent) of the subscribed and paid up equity share capital of the SPV at all times.
- 5.4 The Parties undertake that they shall comply with all equity lock-in requirements as set forth in the Contract Agreement.

## **6. Representation of the Parties**

Each Party represents to the other Parties as of the date of this Agreement that:

- (a) such Party is duly organised, validly existing and in good standing under the laws of its incorporation and has all the requisite power and authority to enter into this Agreement;
- (b) the execution, delivery and performance by such Party of this Agreement has been authorised by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/ power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of such Party is annexed to this Agreement, and will not, to the best of its knowledge:
  - (i) require any consent or approval not already obtained;
  - (ii) violate any applicable law presently in effect and having applicability to it;
  - (iii) violate its charter documents, by-laws or other applicable organisational documents thereof;
  - (iv) violate any clearance, permit, concession, grant, license or other governmental authorisation, approval, judgement, order or decree or any mortgage deed, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or

- (v) create or impose any liens, mortgages, pledges, claims, security interests, charges or encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;
- (c) this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and
- (d) there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its affiliates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfillment of its obligations under this Agreement.

## **7. Termination**

This Agreement shall be effective from the date hereof and shall continue in full force and effect until the execution of the Contract Agreement, in case the Consortium is declared the Successful Bidder. However, in case the Consortium is either not qualified for the Project or does not get selected as the Successful Bidder, the Agreement will stand terminated upon the disqualification of the Consortium or upon return of the Bid Security by the Authority to the Consortium, as the case may be.

## **8. Miscellaneous**

- 8.1 This Joint Bidding Agreement shall be governed by laws of {India}.
- 8.2 The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of the Authority.

IN WITNESS WHEREOF THE PARTIES ABOVE NAMED HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

SIGNED, SEALED AND DELIVERED

For and on behalf of  
LEAD MEMBER by:

(Signature)  
(Name)  
(Designation)  
(Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of  
SECOND PARTY

(Signature)  
(Name)  
(Designation)  
(Address)

{SIGNED, SEALED AND DELIVERED

For and on behalf of  
THIRD PARTY

(Signature)  
(Name)  
(Designation)  
(Address)}

In the presence of:

1. 2.

***Notes:***

1. The mode of the execution of the Joint Bidding Agreement should be in accordance with the procedure, if any, laid down by applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.
2. The Joint Bidding Agreement should attach a copy of the extract of the charter documents of the executants and documents such as resolutions/ power of attorney/ letter of authority in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the executants.
3. For a Joint Bidding Agreement executed and issued overseas, the document shall be legalised by the Indian Embassy and notarized in the jurisdiction where the Joint Bidding Agreement has been executed.

APPENDIX V  
**Joint Operating Agreement**

*(Refer Clause 2.2.11 of RFB)*

*(To be executed on Non-Judicial stamp paper of appropriate value)*

This Joint Operating Agreement ("**JOA**") is executed on this day of {\_\_\_\_\_} Two thousand [ ] between M/s { }, a company/Partnership Firm/LLP/ Sole Proprietorship/individual {resident of { } or} incorporated under the laws of { } and having its registered office or principal place of business at { } (hereinafter called the "**Lead Member**" which expression shall include its successors, executors and permitted assigns);

{ } a company/Partnership Firm/ LLP/Sole Proprietorship incorporated under the laws of {....} and having its registered office or principal place of business at { } (hereinafter called the "**Consortium Member-1**", which expression shall include its successors, executors and permitted assigns);

{ } a company / Partnership Firm/ LLP/Sole Proprietorship incorporated under the laws of { } and having its registered office or principal place of business at { } (hereinafter called the "**Consortium Member-2**", which expression shall include its successors, executors and permitted assigns);

{ } a company/Partnership Firm/ LLP/Sole Proprietorship incorporated under the laws of { } and having its registered office or principal place of business at { } (hereinafter called the "**Associate Number -1**", which expression shall include its successors, executors and permitted assigns);

{ } a company/Partnership Firm/ LLP/Sole Proprietorship incorporated under the laws of { } and having its registered office or principal place of business at { } (hereinafter called the "**Associate Number -2**", which expression shall include its successors, executors and permitted assigns); and

{ } a company/Partnership Firm/ LLP/Sole Proprietorship incorporated under the laws of { } and having its registered office or principal place of business at { } (hereinafter called the "**Associate Number -3**", which expression shall include its successors, executors and permitted assigns);

The Lead Member, Consortium Member-1 and the Consortium Member-2 are hereinafter collectively referred to as the "**Consortium Members**" or the "**Consortium**".

The Associate Number -1, Associate Number -2 and Associate Number -3 are hereinafter collectively referred to as the "**Associates**".

The Consortium Members and the Associates are hereinafter referred to individually as "**Party**" and collectively as "**Parties**".}

## **WHEREAS**

- A. [Subsidiary of Coal India Limited], a company incorporated under the Companies Act, 1956, and having its registered office at [...] ("**Authority**") intends to develop, construct and operate [...] by appointing the mine operator.
- B. The Authority has invited bids from eligible bidders by its Request for Bid No. [...] dated [...] ("**RFB**") to award the work of development and operation of [...] through a mine operator.
- C. In order to meet the eligibility and qualification criteria set out in Section 2.2 of Instructions to Bidders of the RFB, the Lead Member has relied on the strength of {Consortium Members and the Consortium Members have relied upon the technical strength of its Associates to meet the eligibility criteria contemplated in the RFB}.
- D. It is a condition under the RFB that were the Bidder is a Consortium and relies on the technical capacity of a member or associate, then all members and associates forming the bidding Consortium shall enter into a Joint Operating Agreement and furnish a copy thereof with their Bid.

## **NOW THEREFORE THIS AGREEMENT WITNESSETH AS UNDER:**

- 1. All capitalised terms used herein if not otherwise defined shall have the same meaning as those ascribed to them in the RFB.
- 2. The Parties hereby irrevocably and unconditionally agree and undertake to be jointly and severally bound and liable for any and all acts and omissions of the Consortium, in the same manner and to the same extent as set forth in the Contract Agreement. For the avoidance of doubt, it is clarified that:
  - (a) any service by Authority of a notice pursuant to terms of the Contract Agreement shall be deemed to be services of notice to the Consortium Members, on a several basis;
  - (b) the Consortium Member {the Lead Member, Consortium Member-1, Consortium Member-2, or all, as applicable} has relied on the technical capacity of an Associate of {Details of the Consortium Member and the Associate on whom Consortium Member has relied} in accordance with Clause 2.2.4 of the RFB; and
  - (c) the Consortium guarantees that it has relied on only 1 (one) Associate for each Consortium Member to qualify in this Bid.
- 3. The Parties hereby undertake that in the event the Consortium is declared as the Successful Bidder, they shall incorporate a limited company in terms of the Companies Act, 2013 as a special purpose vehicle (the "**SPV**"), as stipulated in the RFB, for entering into the Contract Agreement with the Authority and for

performing all obligations of the Mine Operator in terms of the Contract Agreement. The Parties further undertake that the SPV, so incorporated, shall enter into the Contract Agreement with the Authority within [90] days of the issuance of the LOA.

4. The SPV incorporated under clause 3 of this JOA shall have following equity shareholding:
  - (i) Lead Member- [...] per cent<sup>12</sup>;
  - (ii) Consortium Member-1 [...] per cent; and
  - (iii) Consortium Member-2 [...] per cent.
5. The Consortium further undertakes that subject to Clause 2.2.7(e)(iv) of the RFB, the Consortium shall collectively hold not less than 75% (seventy-five per cent) of the subscribed and paid up equity share capital of the SPV at all times.
6. The Consortium undertakes that each of the Consortium Members, whose technical and financial experience will be evaluated for the purposes of this RFB, shall each subscribe to at least 26% (twenty-six per cent) or more of the paid up and subscribed equity share capital of the SPV. In addition, the Consortium undertakes that each of the Consortium Members, whose technical and financial experience will be evaluated for the purposes of this RFB shall, for a period of 2 (two) years from the Commercial Operation Date, hold at least: (1) 26% (twenty six per cent) of the subscribed and paid up equity share capital of the SPV; (2) such other portion of the subscribed and paid up equity share capital of the SPV which is equal to at least 5% (five per cent) of the Total Project Cost specified in the Contract Agreement; and (3) in no case the subscribed and paid up equity share capital of the SPV will be less than 15% (fifteen per cent) of the Total Project Cost specified in the Contract Agreement.
7. The Parties hereby assume full responsibility and liability for the performance by the Consortium of its obligations in accordance with and subject to the terms of the Contract Agreement and RFB read with this JOA; the Consortium Members confirm that in the event the Consortium is the Successful Bidder, each of the Consortium Members and each of the Associates shall promptly and in no event later than 60 (sixty) days from the date of issue of the LOA, furnish additional Performance Guarantee(s) in favour of the Authority for an amount of {equivalent to 1% of the estimated annual contract value}, in addition to the contract Performance Security to be provided by the SPV. This additional Performance Guarantee in the form of an irrevocable and unconditional bank guarantee in favour of the Authority shall be kept valid and operative up to 90 days after the expiry of the validity of JOA.
8. The Parties hereby undertake to perform the roles and responsibilities as described below:
  - (i) Lead member shall be responsible for.....
  - (ii) Consortium Member 1 shall be responsible for.....
  - (iii) Consortium Member 2 shall be responsible for.....
9. Subject to Clause 10 of this JOA, upon any default, whatsoever by the Consortium in performing, meeting or otherwise complying with any of its

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<sup>12</sup> Should not be less than 26% of the paid up and subscribed share capital of the SPV.

obligations in accordance with the terms of the Contract Agreement, the Authority may at any time as it deems fit and/or appropriate in its sole discretion, without giving any opportunity of recourse to the Consortium, require the Parties to hold the Authority harmless from and against any and all damages, losses, liabilities, obligations, claims of any kind, interest, cost, fee, or expenses (including, without limitation, reasonable attorneys' fees and expenses) suffered, incurred or paid by Authority, as a result of, in connection with or arising out of such default; and the obligations of the Parties or the rights of the Authority hereunder, shall not stand revoked, or otherwise be impaired or mitigated in any manner whatsoever, if there exists at any time any dispute before any court (whether in India or abroad), arbitration, claims, settlements, obligations, expert determination or similar proceedings under the Contract Agreement between the Consortium and the Authority.

10. Notwithstanding anything to the contrary contained in this JOA or the Contract Agreement, the aggregate liabilities and obligations of the Parties under or in connection with this JOA shall not exceed the aggregate liabilities and obligations of the Consortium under the Contract Agreement and it shall continue for at least 2 (two) years; provided that nothing contained in this Clause 3 shall deem to affect the rights of the Authority that arise before such time referred to above.
11. The Parties hereby irrevocably and unconditionally undertake, agree and acknowledge that their respective obligations hereunder:
  - (a) are irrevocable, absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of the Contract Agreement, or the insolvency, bankruptcy, reorganisation, dissolution, winding-up or liquidation of the Consortium or any change in the ownership of the Consortium, or any purported assignment by the Consortium or any other circumstances whatsoever which might otherwise constitute a defence or discharge of a guarantor or surety;
  - (b) shall not be affected by the existence of or release or variation of any guarantee of or security for any of the obligations of the Consortium under the Contract Agreement;
  - (c) shall not be affected by any failure by Authority to pay or perform any of their obligations under the Contract Agreement, or any waiver of any of such obligations;
  - (d) shall not be affected by any exercise or non-exercise of any right, remedy, power or privilege of any person under or in respect of any payment obligations of the Consortium under the Contract Agreement; and
  - (e) shall not be affected by any failure, omission or delay on Authority's part to enforce, assert or to exercise any right, power or remedy conferred on Authority in this JOA or any such failure, omission or delay on Authority's part in connection with any obligation of the Consortium under the Contract Agreement.
12. Each Party hereby represents and warrants that:
  - (a) it is duly organized and validly existing under the laws of the jurisdiction of their organization, with full power, authority and capability to enter into this

JOA and to perform all acts and obligations contemplated herein;

- (b) this JOA has been duly signed and delivered by it and its obligations described in this JOA are legal, valid and binding obligations of such Party; and
  - (c) the execution, delivery and performance of this JOA has been authorised by all necessary and appropriate corporate or governmental action and the entry into and performance of this JOA:
    - (i) will not conflict with or violate any provision of any of its constitutional documents / charters or other organizational document;
    - (ii) will not require any notice to or filing with, or any Approval of, any Authority or the consent of any third party;
    - (iii) will not conflict with, result in a breach of, or constitute (with or without due notice or lapse of time or both) a default under, result in the acceleration of obligations under, create in any person the right to terminate, modify or cancel, or require any notice, consent or waiver under, any contract or instrument to which such Party is a party or by which such Party is bound or to which any of such Party's assets are subject;
    - (iv) will not result in the creation or enforcement of any Security Interest upon any assets of the Consortium; and
    - (v) will not violate any Applicable Law or any order, writ, injunction, or decree applicable to it.
  - (d) there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its affiliates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfillment of its obligations under this JOA.
13. The Parties hereby acknowledge and agree that this JOA has been executed for the sole benefit of Authority and for the specific purpose of ensuring that Authority receives the benefits of the Consortium's services under and in accordance with the Contract Agreement. Accordingly, the Authority shall, notwithstanding anything contained herein, at all times have the right to enforce the performance by the Consortium Members of their obligations pursuant to this JOA read with the Contract Agreement and the Consortium Members hereby irrevocably and unconditionally waive any defence, rights or protection that they may have in law, contract or otherwise in this regard.
14. This JOA supersedes and replaces any previous agreement or understanding between the Parties, whether oral or written, on the subject matter hereof, prior to the date of this JOA. For the avoidance of doubt, this JOA shall not supersede, and shall at all times be subject to, the Contract Agreement.



15. None of the Consortium Members or Associates shall assign or delegate its rights, duties or obligations under this JOA and the Contract Agreement in any manner whatsoever, except with prior written consent of the Authority.
16. No waiver by any Party or the Authority of any one or more obligations or defaults by any other Party in the performance of this JOA and the Contract Agreement shall operate or be construed as a waiver of any other obligations or defaults whether of a like or of a different character.
17. The terms and conditions of this JOA shall not be amended or modified, varied or supplemented, except with prior written consent of the Authority and by an instrument in writing signed by all the Parties.
18. Each of the Parties shall from time to time and at all times do all such further acts and execute and deliver all further deeds and documents as shall be reasonably required by the Authority.
19. This JOA shall be construed and interpreted in accordance with the laws of India and the courts of [...] shall have exclusive jurisdiction in all matters under this JOA.
20. We, the Parties agree that this JOA shall be irrevocable and shall form an integral part of the Contract Agreement. We further agree that this JOA shall continue to be enforceable for at least [2 (two)] years from the Commercial Operation Date.
21. This Agreement shall be effective from the date hereof, in case the Bidder is declared as the Successful Bidder. However, in case the Bidder is either not qualified for undertaking the Project or does not get selected as the Successful Bidder, the Agreement will stand terminated upon the disqualification of the Bidder or upon return of the Bid Security by the Authority to the Bidder, as the case may be.

IN WITNESS WHEREOF, the Parties have, through their authorised representatives, executed these presents and affixed the common seals of their respective companies on the day, month and year first mentioned above at (Place).

**On behalf of the Lead Member**

Name:

Designation:

Common Seal of the Lead Member

Witness-1

Witness-2

**On behalf of the Consortium Member -1**

Name:

Designation:

Common Seal of the Consortium Member 1

Witness-1

Witness-2

**On behalf of the Consortium Member —2**

Name:

Designation:

Common Seal of the Consortium Member 2

Witness-1

Witness- 2

**On behalf of the Associate Member-1**

Name:

Designation:

Common Seal of the Associate Member-1

Witness-1

Witness-2

**On behalf of the Associate Member-2**

Name:

Designation:

Common Seal of the Associate Member-2

Witness-1

Witness-2

**On behalf of the Associate Member-3**

Name:

Designation:

Common Seal of the Associate Member-3

Witness-1

Witness-2

**Note: Notarized Power of Attorney of the Persons signing the Joint Operating Agreement along with the board resolution or a letter of authority in support of such Power of Attorney shall necessarily be furnished and to be attached with the signed Joint Operating Agreement.**

## APPENDIX VI

### **Contract Agreement**

## APPENDIX VII

### **Abridged Project Report**

APPENDIX VIII

**PROFORMA FOR INTEGRITY PACT**

## **PART-II/ COVER-II: PRICE BID**

*[Upload Price Bid in the Excel format provided in the Bidding Documents]*

## **PART-III: GENERAL**



## Appendix IX

### **USER PORTAL AGREEMENT** *[The format to be updated as per the latest version]*

#### **e-Tender Portal User Agreement**

In order to create a user account and use the e-tender portal you must read and accept this e-tender portal user agreement.

#### **A. UNDERTAKINGS TO BE FURNISHED ONLINE BY THE BIDDER**

##### **I DO HEREBY UNDERTAKE**

1. That all the information being submitted by me/us is genuine, authentic, true and valid on the date of submission of the Bid and if any information is found to be false at any stage of tendering or during the tenure of the Contract Agreement, I/we will be liable to the following penal actions apart from other penal actions prescribed elsewhere in the Bidding Documents.

- a. Cancellation of my/our Bid/ Contract Agreement (as the case may be);
- b. Forfeiture of Bid Security/ performance security (as the case may be); and
- c. Punitive action as per the Bidding Documents

2. That I/we accept all terms and condition of the NIT, RFB and other Bidding Documents as available on the website.

3. That I/we accept the integrity pact as given in the Bidding Documents (if applicable).

4. That I/we am/are giving my/our consent for e-payment and submitting/shall submit the mandate form for e-payment in the format as prescribed in the Bidding Documents in case the Project is awarded to us.

5. That I/we do authorize the Authority for seeking information/clarification from my bankers having reference in this Bid.

6. That I/we will upload original/certified photo(s)/ scanned of all the relevant documents as prescribed in the Bidding Documents in support of the information and data furnished by me/us online.

7. I/we confirm that I/we have not been banned or de-listed by any Government or quasi Government agencies or public sector undertakings. In case I/ we are banned or delisted, this information shall be specifically informed to the Authority.

8. That I/we accept all the undertakings as specified elsewhere in the Bidding Documents.

9. That this online agreement will be a part of my Bid and if the Project is awarded to me/us, this will be a part of our agreement with the Authority.

10. Capitalized terms used herein, unless defined herein, shall have the same meaning assigned to them in the Bidding Documents.

## **B. TERMS AND CONDITIONS OF E-TENDER SERVICES AGREEMENT**

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YOU MAY NOT MODIFY, COPY, REPRODUCE, REPUBLISH, UPLOAD, POST, TRANSMIT, OR DISTRIBUTE, IN ANY MANNER, THE MATERIAL ON THE SITE, INCLUDING TEXT, GRAPHICS, CODE AND/ OR SOFTWARE.

You may print and download portions of material from the different areas of the website solely for your own non-commercial use provided that you agree that you shall not change or delete any copyright or proprietary materials from the site.

**www.coalindiatenders.nic.in** is an e-procurement portal of Coal India Limited.

**THIS E-TENDER PORTAL AND RELATED SERVICES SUBJECT TO YOUR COMPLIANCE WITH THE USER TERMS AND CONDITIONS SET FORTH BELOW:**

**PLEASE READ THE FOLLOWING INFORMATION CAREFULLY. YOU MAY NOT COMPLETE YOUR REGISTRATION AND USE THE E-TENDER PORTAL WITHOUT AGREEING TO COMPLY WITH ALL OF THE TERMS AND CONDITIONS SET FORTH BELOW.**

**BY REGISTERING THE USER NAME AND PASSWORD, YOU AGREE TO ABIDE BY ALL THE TERMS AND CONDITIONS SET FORTH BELOW.**

### **Bidder Registration, Password and Security**

Upon successful completion of registration online, a ‘*User ID*’ and ‘*Password*’ will be created. You can login, only by giving such valid ‘*User ID*’ and ‘*Password*’ and then signing with your valid Digital Signature Certificate (“DSC”).

The online registration/ enrollment of the Bidder on the e-tender portal should be done in the name of the Bidder. The person whose DSC is attached to the registered Bidder should be either the Bidder himself **or**, a person who has been duly authorized by the Bidder.

The ‘*User ID*’ and ‘*Password*’ are strictly personal to each authorised user and are non-transferable. The authorised users shall not divulge or disclose their ‘*User ID*’ or ‘*Password*’ to third parties. In the event that the authorised user comes to know that the ‘*User ID*’ or ‘*Password*’ has been/ might have been divulged with, disclosed to or discovered by any third party, the authorized user shall immediately modify the password using the “**Change password**” option. The Authority will have no responsibility or obligation in this regard.

At the time of enrollment in the e-tendering portal of the Authority, the Bidders should ensure that the status of the relevant DSC is active on this site. The activation of newly issued DSC may take 24 (twenty four) hours or more. Hence, Bidders who are obtaining a new DSC should register at least 24 (twenty four) hours before the submission of their respective Bids.

By registering in this portal you forthwith assume the responsibility for maintaining the confidentiality of the '*Password*' and account, and for all activities that occur under your '*Password*' or account. You also agree to (a) immediately notify by e-mail to the **Application Administrator/ Nodal officer**, of any unauthorized use of your '*Password*' or account or any other breach of security, and (b) ensure that you log-out from your account at the end of each session. The Authority shall not be liable for any loss or damage caused to you due to your failure to comply with the foregoing.

The registered user can modify or update some of the information in their profile as and when required at their own discretion. However, some information such as the "*User ID*" are protected against changes by the Bidder after enrollment and some other information such as the "Bidder Name" etc. are protected against changes by Bidder after submission of Bid.



### **Modification of software**

With the consent of **Project Advisory Committee**, the administrator of e-tender portal, reserves the right to modify, add, delete and/or change the contents, classification and presentation of the information on the marketplace at any time as it may in its absolute discretion find to be expedient and without giving any notice. It is the user's responsibility to refer to the terms and/or any change or addition to the same while accessing the site.

The Authority reserves right to interrupt/ suspend the availability of the e-tender system without any notice to the users.

### **System Requirements**

It is the user's responsibility to comply with the system requirements: hardware, software, internet connectivity at user premises to access the e-tender portal as mentioned in the home page in the link 'resources required'.

Under any circumstances, the Authority shall not be liable to the users for any direct/ indirect loss incurred by them or damages caused to them arising out of the following:

- (a) incorrect use of the e-tender System, or
- (b) internet connectivity failures in respect of the equipment used by the users or by the internet service providers, or
- (c) inability of the Bidder to submit their Bid due to any DSC related problems, hardware, software or any other factor which are personal/ special/ local to the Bidder.

### **Contents of Tender Information**

Tenders shall be published by the authorized ***Tender Inviting Authorities*** of the respective tendering entities of the Authority. In case of any clarifications arising out of the tenders, the users have to contact the respective ***Tender Inviting Authority***.

### **Bid Submission Acknowledgement**

The user should complete all the processes and steps required for submission of the Bid. The successful submission of the Bid can be ascertained once **acknowledgement** is given by the system through '**Bid Submission**' number (i.e. the **Bid ID**), after

completion of all the processes and steps. The Authority is not responsible for incomplete Bid submission by users. Users may also note that the incomplete bids will not be saved by the system and so the same will not be available to the ***Tender Inviting Authority*** for processing.

The acknowledgment is the only confirmation of submission of Bid, which the Bidder can show as a proof of participating in the tender. Other than this acknowledgement, no proof will be considered as a confirmation of the submission of a Bid. If the Bidder fails to produce this acknowledgement required for verification in case of dispute, his claim for submission of Bid may not be considered.

#### **Upload files**

The Bidders have to ensure that the files being uploaded by them are free from all kinds of viruses and contains only the relevant information as stated by the ***Tender Inviting Authorities*** for the particular tender. It is not obligatory on the part of the Authority to read each and every document uploaded by the Bidder. If any Bidder has uploaded/ attached irrelevant data, bogus or fabricated certificates towards his qualification requirements to the respective tender then their user account will be liable for permanent or temporary termination by the Authority without any prior notice.

#### **User Conduct**

You agree that all information, data, text, software, photographs, graphics, messages or other materials (“**Content**”), whether publicly posted or privately transmitted, are the sole responsibility of the person from which such Content is originated. This means that you are entirely responsible for all Content that you upload, post, email or otherwise transmit via the e-tender portal.

The Authority does not control the Content posted via the e-tender portal and, as such, does not guarantee the accuracy, integrity or quality of such Content. Hence, under no circumstances, the Authority is liable in any manner for any Content, including, but not limited to, for any errors or omissions in any Content, or for any loss or damage of any kind incurred as a result of the use of any Content posted, e-mailed or otherwise transmitted via the site.

#### **Amendments to a tender published:**

You agree that the Authority reserves the right to re-tender/ cancel a tender or extend the closing date or amend the details of tender at any time by publishing corrigendum as applicable.

#### **Special Admonitions For International Use:**

Recognizing the global nature of the internet, you agree to comply with all local rules regarding online content and acceptable Content. Specifically, you agree to comply with all applicable laws regarding the transmission of technical data to and from India or the country in which you reside.

## **Links**

The site may provide, links to other world wide web sites or resources. Because the Authority has no control over such sites and resources, you acknowledge and agree that the Authority is not responsible for the availability of such external sites or resources, and does not endorse and is not responsible or liable for any Content, advertising, products, or other materials on or available from such sites or resources. You further acknowledge and agree that the Authority shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by, or in connection with, use of or reliance on any such Content, goods or services available on or through any such site or resources.

## **Miscellaneous**

This agreement shall all be governed and construed in accordance with the laws of India and applicable to agreements made and to be performed in India. The e-tender portal's failure to insist upon or enforce strict performance of any provision of this agreement shall not be construed as a waiver of any provision or right. Neither the course of conduct between the parties nor trade practice shall act to modify any provision of this agreement. The Authority may assign its rights and duties under this agreement to any party at any time without notice to you. Any rights not expressly granted herein are reserved.

## **Governing Law**

Terms shall be governed by, and construed in accordance with, Indian law. The parties agree that the principal civil court of the place where the registered office of the Authority is situated shall have **non-exclusive** jurisdiction to entertain any dispute with the Authority. In case of the dispute being with a regional institute of Central Mine Planning & Design Institute Limited, the principle civil court where the said regional institute is situated shall be place of suing.

The Authority reserves the right to initiate any legal action against those Bidders violating all or any of the above mentioned terms and conditions of e-tender services agreement.

## **Modification of terms of Agreement**

The Authority reserves the right to add to, or change/modify, the terms of this agreement. Changes could be made by us after the first posting to the site and you will be deemed to have accepted any change if you continue to access the site after that time. The Authority reserves the right to modify, suspend/ cancel, or discontinue any or all services/ make modifications and alterations in any or all of the content, at any time without prior notice.

## **Policy and Security**

### **General Policy**

The Authority is committed to protecting the privacy of our e-tender site visitors. The Authority does not collect any personal or business information unless you provide it to us voluntarily when conducting an online enrolment, submission of Bid etc. or any other transaction on the site.

## **Information Collected**

When you choose to provide personal or business information to us to conduct an online transaction, we use it only for the purpose of conducting the specific online transaction that you requested. The information is also used for the purpose of vendor searches. For each online transaction, we require only a minimum amount of personal and business information required to process your transaction.

When you visit our portal to browse, read pages, or download information, we automatically collect and store only the following information:

- The internet domain and internet protocol address from which you access our portal;
- The date and time you access our portal;
- The pages you visit

This information would help us to make our site more useful to visitors and to learn about the number of visitors to our site and the types of technology our visitors use.

We do not give, share, sell or transfer any personal information to a third party unless required to do so by law. If you do not want any personal or business information to be collected, please do not submit it to us; however, without this required information we will be unable to process your online submission of Bid or any other online transaction. Review, update and correction of any personal or business information can be done directly on the site.

## **Use of Cookies**

When you choose to enter into an online transaction, we use cookies to save the information that you input while progressing through the transaction. A cookie is a very small amount of data that is sent from our server to your computer's hard drive. By enabling this feature, the cookie will remember the data entered by you and next time when you visit this site, the data stored in the cookie will be available in future.

## **Security**

The site has security measures in place to protect against the loss, misuse and alteration of information under our control.

## Appendix X

### **High Power Committee Recommendations**

## Appendix XI

### **Geological Report (GR)**

**Disclaimer:** “The purpose of the GR is to provide geological information and assessment carried out for the Project to assist the prospective Bidders in their bidding. The information in the GR shall not construe or form basis for any claim arising out of any information or interpretation given in the GR or any omission. No claim whatsoever will be entertained or accepted on the basis of information /data provided in the GR. The Authority shall not be responsible for the errors or mistakes, if any, in the GR. Further, if there is any deviation in the GR from the Mining Plan, the provision in the Mining Plan shall prevail. In addition, the Mining Plan will be the final document for the operation of the Contract Agreement.”



**[Model]  
Contract Agreement**

**for**

**Opencast Coal Mining**

**[Amended in September, 2020]**

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**PART I**  
**PRELIMINARY**

# COAL MINING AGREEMENT<sup>1</sup>

THIS AGREEMENT is entered into on {the ..... day of ..... 20 ..... }

## BETWEEN

- 1 [\*\*\*\*] [name of the company] represented by \*\*\* and having its offices at] (hereinafter referred to as the "**Authority**", which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns), of One Part;

## AND

- 2 {\*\*\*\*} Limited, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at {\*\*\*\*}, (hereinafter referred to as the "**Mine Operator**", which expression shall, unless repugnant to the context or meaning thereof; include its successors and permitted assigns and substitutes) of Other Part.

## WHEREAS:

- (A) The Authority had resolved to procure Coal through a contract for, *inter alia*, development of the mines at [\*\*\*\*] (the "**Mines**") in accordance with the terms and conditions set forth in this agreement (the "**Agreement**").
- (B) The Authority had accordingly invited bids from prospective bidders by its Request for Bid No. [\*\*\*\*] (the "**Request for Bid**" or "**RFB**") that prescribed the technical and commercial terms and conditions for selection of the successful Bidder.
- (C) {After evaluation of the bids received, the Authority had accepted the bid of the {the selected Bidder /consortium comprising {\*\*\*\*} and {\*\*\*\*} (collectively the "**Consortium**") with {\*\*\*\*} as its lead member (the "**Lead Member**") and issued its Letter of Award No. {\*\*\*\*} dated \*\*\*\*} (the "**LOA**") to the {selected Bidder/ Consortium} requiring, *inter alia*, the execution of this Agreement within [90 (ninety) days] of the date of issue thereof}.

---

### <sup>1</sup> Instructions for project-specific customisation of this document

This Model Contract Agreement (the "MCA") may be customised for project-specific use in accordance with the instructions below:

**Note 1:** Serially numbered footnotes in this MCA are for guidance of the Authority and should be omitted from the draft Contract Agreement forming part of Bidding Documents.

**Note 2:** All project-specific provisions in this MCA have been enclosed in square parenthesis and may be modified, as necessary, before issuing the draft Contract Agreement to Bidders.

**Note 3:** The asterisks in this MCA should be substituted by project -specific particulars before issuing the draft Contract Agreement to Bidders.

**Note 4:** The provisions in curly parenthesis are to be retained in the draft Contract Agreement forming part of Bidding Documents and shall be suitably modified after the issue of Letter of Award (LOA) in order to reflect the bid specific particulars in the Contract Agreement.

**Note 5:** Blank spaces are to be retained in the draft Contract Agreement and shall be suitably filled after the issue of LOA in order to reflect bid specific particulars in the Contract Agreement. However, blank spaces shall be retained in the Schedules E to R, which contain formats that are to be used after the Contract Agreement is executed.

**Note 6:** Footnotes marked "£" or in other non-numerical characters are to be retained in the draft Contract Agreement. These footnotes are for guidance of the selected Bidders and shall be omitted before executing the Contract Agreement. However, footnotes marked \$ or \$\$ shall be retained in the Contract Agreement as a part thereof

- (D) {The selected Bidder/ Consortium {has since promoted and incorporated the Mine Operator, being {\*\*\*\*} as a limited liability company under the Companies Act 2013, and} has requested the Authority to accept the Mine Operator as the entity which shall undertake and perform the obligations and exercise the rights of the {selected Bidder/ Consortium under the LOA,} including the obligation to enter into this Agreement pursuant to the LOA for undertaking the Project}.
- (E) {By its letter dated {\*\*\*\*}, the Mine Operator has also joined in the said request of the selected Bidder/ Consortium to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the selected Bidder/ Consortium including the obligation to enter into this Agreement pursuant to the LOA. The Mine Operator has further represented to the effect that it has been promoted by the selected Bidder/ Consortium for the purposes hereof}.
- (F) The Authority {has agreed to the said request of the selected Bidder/ Consortium and the Mine Operator, and has} accordingly agreed to enter into this Agreement with the Mine Operator for development of the Mines, and for mining of Coal and Delivery thereof, subject to and on the terms and conditions set forth hereinafter.

**NOW, THEREFORE,** in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

# ARTICLE 1

## DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 47) shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

### 1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

- (a) references to Applicable Laws or any provision thereof shall include amendment or re-enactment or consolidation of such Applicable Laws or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to laws of the State, laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (c) references to a "**person**" and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- (d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) the words "**include**" and "**including**" are to be construed without limitation and shall be deemed to be followed by "**without limitation**" or "**but not limited to**" whether or not they are followed by such phrases;
- (f) references to "**construction**" or "**building**" include, unless the context otherwise requires, investigation, design, developing, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and "**construct**" or "**build**" shall be construed accordingly;
- (g) references to "**development**" include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, upgradation and other activities incidental thereto, and "**develop**" shall be construed accordingly;
- (h) references to "**excavation**" include, unless the context otherwise requires, cutting, scooping or digging out a part of solid mass comprising earth, rocks, coal and other materials with the objective of segregating coal from earth,

rocks and other materials for lifting and transportation thereof to the Coal Depot or Delivery Point, and "**excavate**" shall be construed accordingly;

- (i) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (j) any reference to "**hour**" shall mean a period of 60 (sixty) minutes;
- (k) any reference to "**day**" shall mean a reference to a calendar day;
- (l) references to a "**business day**" shall be construed as a reference to a day (other than a Sunday or a public holiday) on which Authority is open for general business in the State in which the Project is situated ;
- (m) any reference to "**month**" shall mean a reference to a calendar month as per the Gregorian calendar;
- (n) any reference to "**quarter**" shall mean a reference to the period of three months commencing from April 1, July 1, October 1, and January 1, as the case may be;
- (o) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;
- (p) any reference to any period commencing "**from**" a specified day or date and "**till**" or "**until**" a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- (q) the words importing singular shall include plural and vice versa;
- (r) references to any gender shall include the other and the neutral gender;
- (s) "**kWh**" shall mean kilowatt hour and "**kcal**" shall mean kilocalories;
- (t) "**lakh**" shall mean a hundred thousand (100,000) and "**crore**" means ten million (10,000,000);
- (u) "**indebtedness**" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (v) references to the "**winding-up**", "**dissolution**", "**insolvency**", or "**reorganisation**" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, re-organisation, dissolution, arrangement, protection or relief of debtors;
- (w) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this sub-clause (w) shall

not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;

- (x) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party in this behalf and not otherwise;
- (y) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- (z) references to Recitals, Articles, Clauses, Sub-clauses, Provisos or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses, Provisos and Schedules of, or to, this Agreement, references to an Annex shall, subject to anything to the contrary specified therein, be construed as a reference to an Annex to the Schedule in which such reference occurs, and references to a Paragraph shall, subject to anything to the contrary specified therein, be construed as a reference to a Paragraph of the Schedule or Annex, as the case may be, in which such reference appears;
- (za) the damages payable by either Party to the other, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the "**Damages**");
- (zb) time shall be of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence;
- (zc) in the event of any disagreement or dispute between the Mine Operator and the Authority regarding the materiality or reasonableness of any matter including any event, occurrence, circumstance, change, fact, information, document, authorisation, proceeding, act, omission, claims, breach, default or otherwise, the opinion of the Authority as to the materiality or reasonableness of any of the foregoing shall be final and binding on the Mine Operator; and
- (zd) where any statement in this Agreement is qualified by the expression "**to the knowledge**" or "**to the best of the knowledge or information or belief**" or any similar expression, that statement shall, save as expressly provided to the contrary herein, be deemed to mean that it has been made after due and careful inquiry by the person making such statement.

1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Mine Operator to the Authority and/or the Engineer in charge shall be provided free of cost and in 3 (three) copies, and if the Authority and/or the Engineer in charge is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.

1.2.3 The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.

- 1.2.4 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act, 1897 shall not apply.

### **1.3 Measurements and arithmetic conventions**

All measurements and calculations shall be in the metric system and calculations done to 2 (two) decimal places, with the third digit of 5 (five) or above being rounded up and below 5 (five) being rounded down; provided that the drawings, engineering dimensions and tolerances may exceed 2 (two) decimal places, if required.

### **1.4 Priority of agreements, clauses and schedules**

- 1.4.1 This Agreement, and all other agreements and documents forming part of, or referred to in this Agreement, are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and other documents and agreements forming part hereof or referred to herein shall, in the event of any conflict between them, be in the following order:

- (a) this Agreement; and
  - (b) all other agreements and documents forming part hereof or referred to herein.
- i.e. the Agreement at (a) above shall prevail over the agreements and documents at (b) above.

- 1.4.2 Subject to the provisions of Clause 1.4.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:

- (a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
- (b) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;
- (c) between any two Schedules, the Schedule relevant to the issue shall prevail;
- (d) between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;
- (e) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and
- (f) between any value written in numerals and that in words, the latter shall prevail.

**PART II**  
**SCOPE OF THE PROJECT**



## **ARTICLE 2**

### **SCOPE OF THE PROJECT**

#### **2.1 Scope of the Project**

The scope of the Project (the "**Scope of the Project**") shall mean and include, during the Contract Period:

- (a) development of the Mines on the Site specified in Schedule-A, in accordance with the provisions of Schedule-B and Schedule-C, and conforming to the Specifications and Standards and the Mining Plan set forth in Schedule-D;
- (b) operation and maintenance of the Mines in accordance with the provisions of this Agreement;
- (c) excavation and Delivery of Coal in accordance with the provisions of this Agreement; and
- (d) performance and fulfillment of all other obligations of the Mine Operator in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Mine Operator under this Agreement.

## ARTICLE 3

### APPOINTMENT OF MINE OPERATOR

#### 3.1 Appointment of Mine Operator

- 3.1.1 Subject to and in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits, the Authority hereby appoints the Mine Operator, as the mine operator to develop and operate the Mines and to excavate Coal for Delivery thereof to the Authority for a period of [25 (*twenty five*) years or until the life of the Mine, whichever is shorter] commencing from the Appointed Date, and the Mine Operator hereby accepts such appointment and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein.

Provided that, not later than 1 (one) year before the expiry of the Contract Period, the Parties may, with mutual agreement, extend the Contract Period for such further period and on such terms and conditions as the Parties may mutually agree, but not exceeding 10 (ten) years. Provided that, unless otherwise agreed by the Parties, the terms of this Agreement shall continue to apply to any extended term subject to Clause 9.1.1.

Provided further that, the Contract Period shall be deemed to have expired in the event the Parties mutually agree that the Coal reserves in the Mines are exhausted or cannot be excavated on a commercially viable basis.

- 3.1.2 Subject to and in accordance with the provisions of this Agreement, the Mine Operator shall be obliged or entitled (as the case may be) to:
- (a) access to the Site for the purpose of, and to the extent, conferred by the provisions of this Agreement;
  - (b) finance and develop the Mines;
  - (c) manage, operate and maintain the Mines in accordance with this Agreement;
  - (d) excavate Coal for Delivery thereof to the Authority under and in accordance with the provisions of this Agreement;
  - (e) receive the Mining Charge from the Authority in respect of excavation and Delivery of Coal subject to and in accordance with this Agreement;
  - (f) perform and fulfill all of the Mine Operator's obligations under and in accordance with this Agreement;
  - (g) save as otherwise expressly provided in this Agreement, bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Mine Operator under this Agreement; and
  - (h) neither assign, transfer or sub-let or create any lien or Encumbrance on this Agreement, hereby granted or on the whole or any part of the Mines, nor sell, transfer, exchange, lease or part possession thereof, save and except as expressly permitted by this Agreement. It is hereby clarified that any

assignment, as may be permitted under this Agreement, shall be subject to the prior written consent of the Authority.

### **3.2 Substitution of the Authority**

The Parties expressly agree that the Authority may, in pursuance of any re-organisation or restructuring, substitute itself by another entity, and upon such substitution, all the functions, rights and obligations of the Authority under this Agreement shall be deemed to be transferred to the substituted entity in accordance with and subject to the Applicable Laws. Provided however that, prior to any substitution hereunder, the Parties shall, on a best endeavour basis, make such arrangements and enter into such further agreements as may be necessary for performance of their respective obligations hereunder. Provided further that the creditworthiness of the substituted entity shall be substantially similar or greater as compared to the Authority and in the event of any shortfall therein, a credit enhancement shall be arranged by the substituted entity to bridge the gap of such shortfall.

## ARTICLE 4

### CONDITIONS PRECEDENT

#### 4.1 Conditions Precedent

4.1.1 Save and except as provided in Articles 4, 5, 6, 7, 8, 9, 10, 34, 44 and 46, or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1 (the "**Conditions Precedent**"), save and except to the extent of waiver, if any, that a Party may grant in accordance with the provisions of Clauses 4.1.2 or 4.1.3, as the case may be.

4.1.2 The Mine Operator may, upon providing the Performance Security to the Authority in accordance with Article 9, at any time after 30 (thirty) days from the date of provision of such Performance Security, by notice require the Authority to satisfy any or all of the following Conditions Precedent set forth in this Clause 4.1.2 within a period not exceeding [180 (one hundred and eighty)] days from the date of the said notice:

- (a) procure the issuance of notifications for land acquisition under section 11 of Coal Bearing Areas (Acquisition & Development) Act, 1957 or section 11 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, as the case may be, in relation to the Site;
- (b) procure the terms of reference ("**TOR**") for the environmental clearance from the Ministry of Environment, Forests and Climate Change, Government of India following the procedure specified under the Environment Impact Assessment Notification, 2006;
- (c) submit online applications with the Ministry of Environment, Forests and Climate Change, Government of India for issuance of environmental clearance and/or the forest clearance (as may be applicable);
- (d) procure approval of the Mining Plan in accordance with Applicable Laws; and
- (e) procure approval of the plan for Rehabilitation and Resettlement in accordance with Applicable Laws;

Provided that if the Authority, despite its best efforts, is unable to fulfill the Conditions Precedent within the stipulated time period, as provided in this Clause 4.1.2, a further extension of a time period of [120 (one hundred and twenty)] days shall be available to the Authority to satisfy the Conditions Precedent set out above.

Provided further that, in the event the procurement of certain Conditions Precedent specified hereinabove are delayed for reasons beyond the control of the Authority, the Authority shall be entitled to such extension of time as may be reasonably required for compliance of the procedures specified under the Applicable Laws.

The details of present status of the Conditions Precedent set forth for the Authority at the time of invitation of the Bid is set out in Annex-III, Schedule-B.

4.1.3 The Mine Operator shall satisfy the following Conditions Precedent within [240 (two hundred and forty)] days from the date of this Agreement:

- (a) provide Performance Security to the Authority in accordance with Article 9;
- (b) execute and procure execution of the Substitution Agreement, if applicable;
- (c) procure all the Applicable Permits, as specified in Part-I of Schedule-E, unconditionally such that all such Applicable Permits are in full force and effect, or if the effectiveness of such Applicable Permits is subject to fulfillment of any conditions, then the Mine Operator shall procure that all such conditions required to be fulfilled by the date specified therein have been fulfilled in full such that all such Applicable Permits are in full force and effect;
- (d) execute the Financing Agreements and deliver to the Authority, 3 (three) true copies thereof, duly attested by a director of the Mine Operator, if applicable;
- (e) deliver to the Authority, 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a director of the Mine Operator, along with 3 (three) soft copies of the Financial Model in Microsoft Excel version or any substitute thereof, which is acceptable to the Senior Lenders, if applicable;
- (f) deliver to the Authority, a confirmation {from the selected Bidder/ each Consortium Member} on the correctness of the representations and warranties set forth in sub-clauses (k), (l) and (m) of Clause 7.1;
- (g) deliver to the Authority, a legal opinion from its legal counsel with respect to the authority of the Mine Operator to enter into this Agreement and the enforceability of the provisions thereof;
- (h) procure issuance the environmental clearance from the Ministry of Environment, Forests and Climate Change, Government of India;
- (i) procure issuance of the forest clearance from the Ministry of Environment, Forests and Climate Change, Government of India; and
- (j) procure all the Applicable Permits relating to environmental protection and conservation of the Site.

Provided that if the Mine Operator, despite its best efforts, is unable to fulfill the Conditions Precedent within the stipulated time period, as provided in this Clause 4.1.3, a further extension of a time period of [120 (one hundred and twenty)] days shall be available to the Mine Operator to satisfy the Conditions Precedent as set out above.

Provided further that, in the event the procurement of certain Conditions Precedent specified hereinabove are delayed for reasons beyond the control of the Mine Operator, the Mine Operator shall be entitled to such extension of time as may be reasonably required for compliance of the procedures specified under the Applicable Laws.

4.1.4 Each Party shall make all reasonable endeavours to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable co-operation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible.

- 4.1.5 The Parties shall notify each other in writing at least once in a month on the progress made in satisfying the respective Conditions Precedent. Each Party shall promptly inform the other Party when any Condition Precedent for which it is responsible has been satisfied.
- 4.1.6 Immediately upon the fulfillment or waiver of all the Conditions Precedent required to be fulfilled by a Party under Clauses 4.1.2 or 4.1.3 (as applicable to such Party), such Party shall deliver to the other Party, a notice in writing confirming that the Conditions Precedent set out in Clauses 4.1.2 or Clause 4.1.3, as the case may be, have been satisfied and/or waived (in accordance with the terms hereof), together with all necessary supporting documentation to support the statements in such notice (each a "**CP Satisfaction Notice**"). Upon receipt of the CP Satisfaction Notice from the Mine Operator, the Authority will certify and declare the satisfaction (or waiver) of all Conditions Precedent under this Clause 4.1 and the date of such certification and declaration shall be the "**Appointed Date**".

## **4.2 Damages for delay by the Authority**

In the event that (a) the Authority does not procure fulfillment or waiver of any or all of the Conditions Precedent set forth in Clause 4.1.2 within the period specified in respect thereof (including any extension of time granted), and (b) the delay has not occurred as a result of breach of this Agreement by the Mine Operator or due to Force Majeure, the Authority shall pay to the Mine Operator, Damages in an amount calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each week, or part of a week, of delay until the fulfillment of such Conditions Precedent. Provided, however, that the Damages payable hereunder shall be subject to a maximum amount of 20% (twenty per cent) of the Performance Security.

## **4.3 Damages for delay by the Mine Operator**

In the event that (a) the Mine Operator does not procure fulfillment or waiver of any or all of the Conditions Precedent set forth in Clause 4.1.3 within the period specified in respect thereof (including any extension of time granted); and (ii) the delay has not occurred as a result of failure to fulfill the obligations under Clause 4.1.2 or other breach of this Agreement by the Authority or due to Force Majeure, the Mine Operator shall pay to the Authority, Damages in an amount calculated at the rate of 0.5% (zero point five per cent) of the Performance Security for each-week, or part of a week, of delay until the fulfillment of such Conditions Precedent. Provided, however, that the Damages payable hereunder shall be subject to a maximum amount of 30% (thirty per cent) of the Performance Security and upon reaching such maximum amount of Damages payable by the Mine Operator hereunder, the Authority may terminate the Agreement.

## **4.4 Commencement of Contract Period**

The Contract Period shall commence from the Appointed Date.

## **4.5 Deemed Termination upon delay**

Without prejudice to the provisions of Clauses 4.2 and 4.3 and Article 9 of this Agreement, and unless otherwise agreed between the Parties, in the event the Appointed Date does not occur, for any reason whatsoever, before the 2<sup>nd</sup> (second)

anniversary of the date of this Agreement, or the extended period for fulfillment of the Conditions Precedent provided in accordance with this Agreement, all rights, privileges, claims and entitlements of the Mine Operator under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Mine Operator, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties. Provided that, in the event such delay in occurrence of the Appointed Date is for reasons attributable to the Mine Operator, the Authority shall, without prejudice to Clause 4.3, be entitled to appropriate the Performance Security as Damages thereof.

## **ARTICLE 5**

### **OBLIGATIONS OF THE MINE OPERATOR**

#### **5.1 Obligations of the Mine Operator**

- 5.1.1 Subject to, and on the terms and conditions of this Agreement, the Mine Operator shall, at its own cost and expense, procure, finance for, and undertake the design, engineering, procurement, construction and operation of the Mines for excavation and Delivery of Coal, and shall observe, fulfill, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 5.1.2 The Mine Operator shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- 5.1.3 Subject to the provisions of Clauses 5.1.1 and 5.1.2, the Mine Operator shall discharge its obligations in accordance with Standard Industry Practice and as a reasonable and prudent person.
- 5.1.4 The Mine Operator shall ensure compliance in all respects with all Applicable Laws in relation to its employees, independent contractors, sub-contractors, or other persons providing services to or on behalf of the Mine Operator, including all laws relating to wages, hours of work, employment standards, collective bargaining, discrimination, civil rights, safety and health, compensation.
- 5.1.5 The Mine Operator shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
  - (a) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining the Applicable Permits, and obtain and keep in force and effect such Applicable Permits in conformity with Applicable Laws;
  - (b) procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes, know-how and systems used or incorporated into the development and operation of the Mines and excavation of Coal;
  - (c) procure and maintain all Applicable Permits, including but not limited to, determination of a mechanism for procurement of explosives, drilling and blasting with the Authority and creation of an explosive storage facility considering all conditions specified in the explosive license for such facility. It is hereby clarified that the explosive license will be issued in the name of the Authority and a copy of such license shall be provided to the Mine Operator;
  - (d) perform and fulfill its obligations under the Financing Agreements;
  - (e) Procure issuance of the environmental clearance from the Ministry of Environment, Forests and Climate Change, Government of India. The Authority authorises the Mine Operator to procure the issuance of such clearance and make payment of statutory cost and fees towards such



procurement on behalf of the Authority by acting as Pure Agent. The Authority shall reimburse to the Mine Operator the payment so made in accordance with Clause 29.1.6 of this Agreement;

- (f) Procure issuance of the forest clearance from the Ministry of Environment, Forests and Climate Change, Government of India. The Authority authorizes the Mine Operator to procure the issuance of such clearance and make payment of statutory cost and fees towards such procurement on behalf of the Authority by acting as Pure Agent. The Authority shall reimburse to the Mine Operator the payment so made in accordance with Clause 29.1.6 of this Agreement;
- (g) make reasonable efforts to maintain harmony and industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;
- (h) comply with, ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Mine Operator's obligations under this Agreement, including but not limited to compliance with Applicable Laws in relation to its employees, independent contractors, sub-contractors, or other persons providing services to or on behalf of the Mine Operator;
- (i) always act in a manner consistent with the provisions of this Agreement and not cause or fail to do any act, deed or thing, whether intentionally or otherwise, which may in any manner violate any of the provisions of this Agreement;
- (j) procure that all equipment and facilities at the Mines are operated and maintained in accordance with the Specifications and Standards, Maintenance Requirements, Safety Requirements and Standard Industry Practice;
- (k) support, cooperate with and facilitate the Authority in the implementation and operation of the Project in accordance with the provisions of this Agreement;
- (l) take all reasonable precautions for the prevention of accidents at the Mines and provide all reasonable assistance and emergency medical aid to the accident victims; and
- (m) transfer the Project Assets to the Authority upon Termination of this Agreement, in accordance with the provisions thereof; and
- (n) take all necessary steps in relation to the Project Specific Assets and any other tangible assets, as required, pursuant to and in accordance with Clause 37.3 and Clause 37.5.2 of this Agreement upon Termination of this Agreement on its expiration.

## **5.2 Obligations relating to Project Agreements**

- 5.2.1 It is expressly agreed that the Mine Operator shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or any other agreement shall excuse the Mine Operator from its obligations or liability hereunder.

- 5.2.2 The Mine Operator shall maintain all Project Agreements, or any amendments or replacements thereto. The Authority reserves the right to call for any such documents as and when required. Within 7 (seven) days from the date of making of such request by the Authority, the Mine Operator shall submit with the Authority a true copy of the requested documents, duly attested by a director of the Mine Operator. The documents so submitted in the aforesaid manner shall be kept with the Authority as confidential records.
- 5.2.3 The Mine Operator shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of the Authority if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Authority. In the event that any such replacement or amendment is made to any of the Financing Agreements without such prior written consent of the Authority, the Mine Operator shall not enforce such replacement or amendment nor permit enforcement thereof against the Authority. For the avoidance of doubt, the Authority acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling the debt of the Mine Operator.
- 5.2.4 Notwithstanding anything to the contrary contained in this Agreement, the Mine Operator shall not sub-lease, sub-licence, assign or in any manner create an Encumbrance on the Site or on the Coal Depot, as the case may be, without prior written approval of the Authority, which approval the Authority may deny if such sub-licence, assignment or Encumbrance has or may have a Material Adverse Effect on the rights and obligations of the Authority under this Agreement or the Applicable Laws.
- 5.2.5 The Mine Operator shall procure that each of the Project Agreements contain provisions that entitle the Authority to step into such agreement, in its sole discretion, in substitution of the Mine Operator in the event of the Termination or Suspension (the "**Covenant**"). For the avoidance of doubt, it is expressly agreed that in the event the Authority does not exercise such rights of substitution within a period of 90 (ninety) days from the Transfer Date, the Project Agreements shall be deemed to cease to be in force and effect on the Transfer Date without any liability whatsoever on the Authority and the Covenant shall expressly provide for such eventuality. The Mine Operator expressly agrees to include the Covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to the Authority an acknowledgment and undertaking, in a form acceptable to the Authority, from the counter party(s) of each of the Project Agreements, where under such counter party(s) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the Authority in the event of Termination or Suspension.
- 5.2.6 Notwithstanding anything to the contrary contained in this Agreement, the Mine Operator agrees and acknowledges that selection or replacement of an O&M Contractor and execution of the O&M Contract shall be subject to the prior approval of the Authority and the decision of the Authority in this behalf shall be final, conclusive and binding on the Mine Operator. In this regard, the Mine Operator undertakes that it shall not give effect to any such selection or replacement of an O&M Contractor, or execution the O&M Contract, without such prior approval of the Authority. It is also agreed that the Authority shall not be liable in any manner whatsoever on account of grant or otherwise denial of such approval and that such

approval or denial thereof shall not in any manner absolve the Mine Operator or its O&M Contractors from any liability or obligation under this Agreement.

### **5.3 Obligations relating to Change in Ownership**

5.3.1 The Mine Operator shall not undertake or permit any Change in Ownership, except with the prior written approval of the Authority.

5.3.2 Notwithstanding anything to the contrary contained in this Agreement, the Mine Operator agrees and acknowledges that:

- (a) all acquisitions of Equity by an acquirer, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity, in aggregate of 25% (twenty-five per cent) or more of the total Equity of the Mine Operator; or
- (b) acquisition of any control directly or indirectly of the board of directors of the Mine Operator by any person either by himself or together with any person or persons acting in concert with him,

shall constitute a Change in Ownership requiring prior approval of the Authority, the decision of the Authority in this behalf being final, conclusive and binding on the Mine Operator, and undertakes that it shall not give effect to any such acquisition of Equity or control of the board of directors of the Mine Operator without such prior approval of the Authority. It is also agreed that the Authority shall not be liable in any manner on account of grant or denial of such approval and that such approval or denial thereof shall not in any manner absolve the Mine Operator from any liability or obligation under this Agreement. For the purposes of this Clause 5.3.2:

- (i) the expression "acquirer", "control" and "person acting in concert" shall have the meaning ascribed thereto in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 2011 or any statutory re-enactment thereof as in force as on the date of acquisition of Equity, or the control of the board of directors, as the case may be, of the Mine Operator;
- (ii) the indirect transfer or control of legal or beneficial ownership of Equity shall mean transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in the acquirer acquiring control over the shares or voting rights of shares of the Mine Operator; and
- (iii) power to appoint, whether by contract or by virtue of control or acquisition of shares of any company, holding directly or through one or more companies (whether situate in India or abroad), the Equity of the Mine Operator, not less than half of the directors on the board of directors of the Mine Operator or of any company, directly or indirectly, whether situate in India or abroad, having ultimate control of 25% (twenty five per cent) or more of the Equity of the Mine Operator shall constitute acquisition of control, directly or indirectly, of the board of directors of the Mine Operator.

5.3.3 Notwithstanding anything to the contrary contained herein, it is hereby expressly agreed by the Mine Operator that no change will be effected in its shareholding pattern

or beneficial ownership or otherwise so as to make it ineligible in terms of the Foreign Exchange Management Act, 1999 read with all rules, regulations, circulars, guidelines and notifications issued thereunder (as amended from time to time) to undertake and perform its obligations hereunder.

#### **5.4 Obligations relating to employment of foreign nationals**

The Mine Operator acknowledges, agrees and undertakes that employment of foreign personnel by the Mine Operator and/or its Contractors and their sub-contractors shall be subject to grant of requisite Applicable Permits under Applicable Laws, including employment/ residential visas and work permits, if any required, and the obligation to apply for and obtain the same shall and will always be of the Mine Operator and, notwithstanding anything to the contrary contained in this Agreement, refusal of, or inability to obtain any such Applicable Permits by the Mine Operator or any of its Contractors or sub-contractors shall not constitute a Force Majeure Event, and shall not in any manner excuse the Mine Operator from the performance and discharge of its obligations and liabilities under this Agreement.

#### **5.5 Obligations relating to employment of trained personnel**

The Mine Operator shall ensure that the personnel engaged by it for the performance of its obligations under this Agreement are at all times properly trained for their respective functions in accordance with the requirements of Applicable Laws and Standard Industry Practice.

#### **5.6 Obligations relating to Taxes**

- 5.6.1. It shall be the obligation of the Mine Operator to comply with all necessary Tax related statutory compliances, including but not limited to the payment of GST at the rates prescribed under the Applicable Laws, in relation to the Agreement.
- 5.6.2. The authority shall, upon receiving GST invoice or debit note (as applicable under GST laws and rules) and other supporting documents in relation to mining charges, defined under article 47, which is sole consideration under this agreement to the Mine Operator, pay the mining charges to the Mine Operator along with the amount of GST indicated in GST invoice. The Mine Operator shall issue GST credit note within the time limit as prescribed under GST laws and rules. The Authority shall, upon receiving the credit note adjust the basic amount and taxes thereon while making payment towards the next following GST invoice raised/ issued by the Mine Operator.
- 5.6.3. In case of any loss of input tax credit or any other benefit or incidence of interest or penalty suffered by the Authority in relation to GST due to any non-compliance by the Mine Operator of the Applicable Laws (including but not limited to the Mine Operator's failure to upload details of sale on the GST network portal, failure to issue GST compliant document(s) within the prescribed time frame or furnishing incorrect or incomplete documents with the relevant Government instrumentality), the Authority shall have the right to: (a) be compensated by the Mine Operator, or (b) set-off such loss or penalty against any next amounts payable to the Mine Operator under the Agreement. For the avoidance of doubt, any loss of input tax credit or any other benefit or incidence of interest or penalty shall be recovered/adjusted from next Monthly Invoice or from security deposit as the case may be and in case award/loss amount is greater than value of Monthly Invoice or security deposit the Mine Operator shall pay to the Authority within 30 days from the date of award. In addition, any delay

in uploading the details of sale on the GSTN portal by the Mine Operator resulting in deferment of input tax credit in accordance with the GST laws, shall entitle the Authority to charge interest at rate equivalent to the prevailing interest rate charged by GST authority for input tax credit reversal under GST laws and rules.

- 5.6.4. It is hereby clarified that the Mining Charge shall be exclusive of all royalties, statutory levies, cesses, duties and contribution to District Mineral Fund (DMF) and National Mineral Exploration Trust (NMET) and all other statutory charges applicable from time to time.
- 5.6.5. Where any damages or compensation becomes payable by either the Authority or the Mine Operator pursuant to any provision of this Agreement, appropriate GST wherever applicable as per the GST laws in force shall also be payable by the concerned Party in addition to such damages or compensation, upon issuance of GST invoice under GST laws and rules by the concerned Party.
- 5.6.6. The obligation of Authority is limited to compliance of IT TDS and GST TDS on Mining Charges or any other charges paid to the Mine Operator on which it is applicable, in accordance with their respective Applicable Laws.

## **5.7 Obligations relating to an Owner**

Subject to the provisions of this Agreement, the Authority shall be the Owner of the Mines for the purposes of the Mines Act, 1952. For the avoidance of doubt and without prejudice to Mine Operator's obligation to comply with Applicable Laws, the Parties expressly acknowledge and agree that for discharging its obligations under the Mines Act, 1952, the Authority may from time to time give directions to the Mine Operator for compliance with the provisions of the Mines Act, 1952 and the Mine Operator agrees and undertakes to abide by such directions at all times.

## **5.8 Obligations relating to the Manager and employees**

- 5.8.1 The Authority shall appoint the Agent and the Manager having the prescribed qualifications pursuant to the requirements of the Mines Act, 1952 and rules and regulations thereunder. The Manager shall be responsible for the overall management, control, supervision and direction of the Mines in conformity with the provisions of the Mines Act, 1952. The Authority shall either by itself or through its officials also be responsible to:
  - (a) procure appointment of safety officers, assistant managers, engineers, surveyors, welfare officers, other officials and competent persons; and
  - (b) make provisions for the safety and proper discipline of the persons employed in the Mines.

The list of manpower, including statutory manpower, to be provided by the Authority is set out at Schedule-N.

- 5.8.2 Notwithstanding the appointment of the Manager, the Agent and other officials by the Authority, the Mine Operator shall also be treated as an Agent and act on behalf of the Owner as per Section 2(c) of the Mines Act, 1952 and shall continue to be responsible and liable for compliance with Applicable Laws and this Agreement and

in any event, the liability and responsibilities of the Mine Operator shall be no less than that of the Agent and the Manager.

5.8.3 The Mine Operator shall ensure that the Mines are operated in a manner consistent with Applicable Laws and the provisions of this Agreement. The Mine Operator shall provide all necessary resources in terms of men and material to the Manager to undertake all required actions in conformity with Applicable Laws.

5.8.4 The Mine Operator shall employ suitably qualified and skilled persons for the development and operation of the Project and shall be responsible for payment of wages to them in accordance with Applicable Laws and in consonance with the High Power Committee Recommendations (annexed to the RFB).

## **5.9 Obligations relating to reporting requirements**

All information provided by the Mine Operator to any Government Instrumentality as a part of its operating and reporting obligations under Applicable Laws shall also be provided by the Mine Operator to the Authority simultaneously.

## **5.10 Sole purpose of the Mine Operator**

The Mine Operator having been set up for the sole purpose of exercising the rights and observing and performing its obligations and liabilities under this Agreement, the Mine Operator or any of its subsidiaries shall not, except with the previous written consent of the Authority, be or become directly or indirectly engaged, concerned or interested in any business other than as envisaged herein.

## **5.11 Obligations relating to Rehabilitation and Resettlement**

The Mine Operator shall undertake Rehabilitation and Resettlement operations including socio-economic survey in accordance with the provisions of this Agreement.

## **5.12 Obligations relating to Mining Plan**

The Mine Operator shall at all times conform with the provisions of the Mining Plan as specified in Schedule-D, or any modification thereof, as may be approved in accordance with Applicable Laws.

## **5.13 Obligations relating to land acquisition**

The Mine Operator shall, in accordance with the provisions of this Agreement and Annex-VI of Schedule B, undertake the activity of obtaining physical possession of the Site. Any failure or default of the Mine Operator to comply with its aforesaid obligation shall be deemed to be a Mine Operator Default for the purposes of Clause 37.1.1 and in addition to any other rights and remedies available to the Authority under this Agreement, the Authority shall be entitled to terminate this Agreement in accordance with Article 37.

For acquisition of land other than Government land and forest land, the cost of land shall be paid by the Mine Operator as Pure Agent as per Applicable Laws. All direct and documented cost of such payment made by the Mine Operator shall be reimbursed by the Authority to the Mine Operator in accordance with the Clause 29.1.6 of this Agreement. In case of acquired land is Government land or forest land, the Authority

shall pay directly to the concerned Government Instrumentality, the cost or net present value of such land, as the case may be.

#### **5.14 Obligations relating to progressive restoration**

The Mine Operator shall, in conformity with the approved Mine Closure Plan, Applicable Laws and Standard Industry Practice, undertake progressive restoration of the Site wherever any part of the Site can be restored and closed upon completion of excavation in such part.

The Authority shall open a fixed deposit escrow account along with Coal Controller Office as per the guidelines of Mine Closure Plan. Pursuant to the opening of such escrow account, the Authority shall deposit the requisite yearly amount in the escrow account. The Authority shall recover from Mine Operator, the yearly amount so deposited from the Monthly Invoices raised by the Mine Operator in 12 (twelve) equal installments within 1 (one) year and such recovery shall be occur from the month following the deposit of the amount in the escrow account.

The Mine Operator shall maintain proper records of all costs and expenses incurred by it in relation to the progressive restoration of the Site and upon request from the Authority, the Mine Operator shall furnish to the Authority all details and supporting documents, as may be necessary or required by the Authority to seek reimbursement of such costs and expenses from the concerned Government Instrumentalities. Such reimbursement amount released from escrow account shall be paid to the Mine Operator as and when realized.

#### **5.15 Obligations after closure of Mining**

In the event that the Mine Operator is required to undertake a final mine closure of the Mines during the Contract Period, the Mine Operator shall, at its sole cost and expense, undertake all activities for final mine closure of the Mines and restoration of the Site in accordance with the requirements of this Agreement, the approved final Mine Closure Plan, the Mining Plan, Applicable Laws and Standard Industry Practice. The Mine Operator shall maintain proper records of all costs and expenses incurred by it in relation to the final mine closure and restoration of the Site and upon request from the Authority, the Mine Operator shall furnish to the Authority all details and supporting documents, as may be necessary or required by the Authority to seek reimbursement of such costs and expenses from the concerned Government Instrumentalities. Such reimbursement amount released from the balance amount of escrow account will be paid to the Mine Operator, as and when realized.

Within the Contract Period any costs and expenses related to mine closure (progressive and final) including third party cost shall be borne by the Mine Operator.

In addition, at the time of final mine closure of the Mines, within the Contract Period, the Mine Operator shall remove and dispose all the constructions at its own cost and expenses in terms of the final Mine Closure Plan. If such final mine closure of the Mines is not completed by the Mine Operator as per the approved Mine Closure Plan within the stipulated time period, the Authority shall have right to recover from the Mine Operator, such amount as may be necessary to complete the such mine closure including appropriation of the Performance Security.

For avoidance of doubt, it is clarified that the Authority shall be responsible for undertaking the final mine closure at its cost and expense in the event that such final mine closure occurs at any time after the expiry or termination of this Agreement.

In the event that final mine closure occurs at any time after the expiry of this Agreement, an amount equal to the balance amount of the escrow account, after settlement of all periodic claims in accordance with applicable guidelines and Applicable Laws, shall be paid to the Mine Operator by the Authority, provided the Mine Operator has undertaken and completed the progressive restoration of the Mines as per Mine Closure Plan with full satisfaction to the Authority.

## **5.16 Obligation towards corporate social responsibility (CSR)**

5.16.1 If the Mine Operator, abide by any Applicable Laws for expenditure on account of CSR, then Mine Operator shall prepare CSR policy and plan, which shall be duly approved by the Authority.

5.16.2 In case above clause satisfies, total expenditure on account of CSR shall not be less than the amount derived as below in a financial year;

In case the Mine Operator is a subsidiary company =  $To (mo) \times (Tf(csrh) / To(hc))$

Where –

To (mo) - Total turnover of the Mine Operator from the Authority

Tf (csrh) - Total CSR fund of holding company of the Mine Operator

To (hc)] - Total turnover of holding company of the Mine Operator

Or

In case the Mine Operator is self holding entity, then total fund attributable under CSR shall be as per Applicable Laws.



## ARTICLE 6

### OBLIGATIONS OF THE AUTHORITY

#### 6.1 Obligations of the Authority

- 6.1.1 Except as otherwise provided in this Agreement, the Authority shall, at its own cost and expense undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 6.1.2 The Authority agrees to provide support to the Mine Operator and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and Applicable Laws, the following:
- (a) procure access to the Site;
  - (b) [provide connectivity to the rail network, road network and electricity grid in accordance with the provisions of this Agreement;]
  - (c) depute its representatives for participation in public hearings and attending the meetings with the officials and representatives of the Ministry of Environment, Forests and Climate Change, Government of India for the purposes of procuring Environmental and Forest Clearance in accordance with Applicable Laws;;
  - (d) procure issuance of notification for land acquisition for the Project under section 11 of Coal Bearing Areas (Acquisition & Development) Act, 1957 or section 11 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, as applicable, in accordance with the provisions of this Agreement;
  - (e) All direct and documented R&R Costs are to be incurred by the Authority in accordance with the R&R Policy. Except for acquisition of Government land and forest land, the Authority authorizes the Mine Operator to make payment towards such costs and expenses to third party on behalf of the Authority by acting as Pure Agent. The Authority shall reimburse to the Mine Operator the payment so made in accordance with Clause 29.1.6 of this Agreement and Applicable Laws;
  - (f) In case of acquired land is Government land or forest land, the Authority shall pay directly to the concerned Government Instrumentality, the cost or net present value of such land, as the case may be. For acquisition of land other than Government land and forest land, the cost of land shall be paid by the Mine Operator as Pure Agent as per Applicable Laws. All direct and documented cost of such payment made by the Mine Operator shall be reimbursed by the Authority to the Mine Operator in accordance with the Clause 29.1.6 of this Agreement.
  - (g) upon receipt of details and all necessary supporting Documentation, reimburse to the Mine Operator the statutory cost and fees paid by the Mine Operator for issuance of environmental clearance and forest clearance in accordance with Clause 29.1.6 of this Agreement;

- (h) upon written request from the Mine Operator, provide reasonable assistance to the Mine Operator in obtaining access to necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favourable to the Mine Operator than those generally available to commercial customers receiving substantially equivalent services;
- (i) upon written request from the Mine Operator, and subject to the Mine Operator complying with Applicable Laws, provide all reasonable support and assistance to the Mine Operator in procuring Applicable Permits required by the Mine Operator for performance of its obligations under this Agreement;
- (h) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
- (i) support, cooperate with and facilitate the Mine Operator in the implementation and operation of the Project in accordance with and subject to the provisions of this Agreement.

## **ARTICLE 7**

### **REPRESENTATION AND WARRANTIES**

#### **7.1 Representations and warranties of the Mine Operator**

The Mine Operator represents and warrants to the Authority that:

- (a) it is duly organised and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (b) it has taken all necessary corporate and other actions under Applicable Laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) the ultimate beneficial ownership of the shareholders of the Mine Operator do not belong to any country which shares land border with India. For the purposes of this sub-clause determination of 'ultimate beneficial ownership' shall be made in accordance with the Foreign Exchange Management Act, 1999 read with all rules, regulations, circulars, guidelines and notifications issued thereunder (as amended from time to time);
- (d) it has the financial standing and capacity to comply with its obligations under this Agreement and to undertake the Project in accordance with the terms of this Agreement;
- (e) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof;
- (f) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder, including any obligation, liability or responsibility hereunder;
- (g) the information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;
- (h) the execution, delivery and performance of this Agreement will not conflict with, or, result in the breach of, or, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association {or those of any of the Consortium Member} or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (i) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;

- (j) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or Government Instrumentality which results in or may result in a Material Adverse Effect and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- (j) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a Material Adverse Effect;
- (k) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3; and that the {selected Bidder/ Consortium Members}, together with {its/their} Associates, shall hold not less than 75% (seventy five per cent) of its issued and paid up Equity; and that each Consortium Member whose technical and financial capacity was evaluated for the purposes of selection in response to the Request for Bid shall, until the 2<sup>nd</sup> (second) anniversary of COD, hold not less than 26% (twenty-six per cent) of its issued and paid up Equity which shall also be not less than 5% (five per cent) of the Total Project Cost; and in no case the Equity shall be less than 15% (fifteen per cent) of the Total Project Cost.
- (l) {the selected Bidder/ Consortium Members} and {its/their} Associates have the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement;
- (m) {the selected Bidder/ each Consortium Member} is duly organized and validly existing under the laws of the jurisdiction of its incorporation, and has requested the Authority to enter into this Agreement with the Mine Operator pursuant to the LOA, and has agreed to and unconditionally accept the terms and conditions set forth in this Agreement;
- (n) all its rights and interests in the Mines and Coal Depot shall pass to and vest in the Authority, on the Transfer Date, free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Authority, and that none of the Project Assets shall be acquired by it, subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person, save and except as expressly provided in this Agreement;
- (o) it shall take all necessary steps in relation to the Project Specific Assets and any other tangible assets, as required, pursuant to and in accordance with Clause 37.5.2 of this Agreement upon Termination of this Agreement on its expiration;
- (p) no representation or warranty by it contained herein or in any other document furnished by it to the Authority or to any Government Instrumentality in relation to the Applicable Permits contains or will contain any untrue or misleading statement of a material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (q) it is in compliance in all respects with all Applicable Laws in relation to its employees, independent contractors, sub-contractors, or other persons

providing services to or on behalf of the Mine Operator, including all Applicable Laws relating to wages, hours, employment standards, collective bargaining, discrimination, civil rights, safety and health and compensation;

- (r) it has duly paid all statutory contributions when due and payable and no sum is due and outstanding by the Mine Operator towards the same;
- (s) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Agreement or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith;
- (t) all information provided by the {selected Bidder/ Consortium Members} in response to the Request for Bid or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects; and
- (u) all undertakings and obligations of the {selected Bidder/ Consortium Members} and the Mine Operator arising from the Request for Bid or otherwise shall be binding on the Mine Operator as if they form part of this Agreement, except as modified pursuant to the terms of this Agreement.

## **7.2 Representations and warranties of the Authority**

The Authority represents and warrants to the Mine Operator that:

- (a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement and exercise its rights and perform its obligations under this Agreement;
- (b) it has taken all necessary actions under Applicable Laws to authorise the execution, delivery and performance of this Agreement;
- (c) it has the financial standing and capacity to perform its obligations under this Agreement;
- (d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (e) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in a Material Adverse Effect; and
- (f) it has complied with Applicable Laws in all material respects .

## **7.3 Disclosure**

In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of the same. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any right, remedy or obligation of either Party under this Agreement.

## **ARTICLE 8**

### **DISCLAIMER**

#### **8.1 Disclaimer**

- 8.1.1 The Mine Operator acknowledges that prior to the execution of this Agreement, the Mine Operator has, after a complete and careful examination, made an independent evaluation of the Request for Bid, Scope of the Project, Specifications and Standards, Site, existing structures, local conditions, physical qualities of ground, subsoil and geology and all information provided by the Authority or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. The Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/ or completeness of any assessment, assumption, statement or information provided by it and the Mine Operator confirms that it shall have no claim whatsoever against the Authority in this regard.
- 8.1.2 The Mine Operator acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Mine Operator, {the selected Bidder/Consortium Members} and {its/ their} Associates or any person claiming through or under any of them.
- 8.1.3 The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above shall not vitiate this Agreement or render it voidable.
- 8.1.4 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 8.1.1, that Party shall immediately notify the other Party, specifying the mistake or error; provided however, that a failure on part of the Authority to give any notice pursuant to this Clause 8.1.4 shall not prejudice the disclaimer of the Authority contained in Clause 8.1.1 and shall not in any manner shift to the Authority any risks assumed by the Mine Operator pursuant to this Agreement.
- 8.1.5 Except as otherwise provided in this Agreement, all risks relating to the Agreement shall be borne by the Mine Operator and the Authority shall not be liable in any manner for such risks or the consequences thereof.

**PART III**  
**DEVELOPMENT AND OPERATIONS**

## ARTICLE 9

### PERFORMANCE SECURITY

#### 9.1 Performance Security

- 9.1.1 The Mine Operator shall, as a security for the performance of its obligations under this Agreement, provide to the Authority, no later than [90 (ninety)] days from the date of issue of the LOA, an irrevocable, unconditional, first demand bank guarantee from a Bank for a sum of [Rs. [\*\*\*\*] (Rupees [\*\*\*\*] crore)]<sup>2</sup> substantially in the form set forth in Schedule-F (the "**Performance Security**").

Provided that, in the event that the initial Contract Period is extended pursuant to Clause 3.1.1 ("**Extended Contract Period**"), the Mine Operator shall furnish a replacement Performance Security for a sum of [Rs. [\*\*\*\*] (Rupees [\*\*\*\*] crore)]<sup>3</sup>, no later than 90 (ninety) days prior to the commencement of the Extended Contract Period.

- 9.1.2 The Mine Operator shall keep the Performance Security valid, effective and in full force for such value as is required to be maintained in accordance with Clause 9.1.1, until the date that occurs 90 (ninety) days after the expiry of the Contract Period (or the Extended Contract Period, if applicable). It is hereby clarified that the Mine Operator may keep the Performance Security valid, effective and in full force in an extendable/ renewable manner revolving after a period of at least 3 (three) years. In this regard, the Authority reserves the right to call for any documentary evidence from the Mine Operator in relation to such extension or renewal of the Performance Security and the Mine Operator shall be under an obligation to furnish all documents as may be required by the Authority in this regard.
- 9.1.3 At least 30 (thirty) days prior to expiry of a Performance Security, the Mine Operator shall furnish an extended, renewed or replacement Performance Security to the Authority, failing which the Authority shall be entitled to, after giving 5 (five) days' notice to the Mine Operator, draw down the full remaining value of the Performance Security, and hold the cash as security for performance of the Mine Operator's obligations under this Agreement.

#### 9.2 Appropriation of Performance Security

The Authority shall, without prejudice to its other rights and remedies hereunder, in law or equity, have the unqualified right to encash and appropriate the Performance Security in part or in full, in the event of a failure or default of the Mine Operator to comply with its obligations hereunder, including a Mine Operator Default, the Mine Operator's failure to meet any Condition Precedent, or the Mine Operator's failure to pay any sums (including Damages) due hereunder. The Mine Operator shall, within 15 (fifteen) days from such encashment and appropriation of the Performance Security by the Authority, (i) in case of a partial appropriation, restore the value of the Performance Security to the value as is required to be maintained pursuant to Clause 9.1.1; and (ii) in case of a full appropriation, provide a fresh Performance Security in

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<sup>2</sup> To be fixed at a level equal to approximately 5% (five per cent) of the Total Project Cost.

<sup>3</sup> To be fixed at a level equal to approximately 5% (five per cent) of the Total Project Cost.



accordance with the requirements of Clause 9.1.1, failing which the Authority shall be entitled to terminate this Agreement in accordance with Article 37.

### **9.3 References to Performance Security**

- 9.3.1 References to Performance Security occurring in this Agreement for and in respect of any period prior to the delivery of the Performance Security by the Mine Operator to the Authority, or in respect of any period subsequent to the expiry or release thereof, as the case may be, shall be construed solely for the purposes of calculating the amount of Damages payable by the Mine Operator.
- 9.3.2 Until such time the Performance Security is provided by the Mine Operator pursuant to Clause 9.1.1 and the same comes into effect, the Bid Security shall remain in force and effect and the Authority shall be entitled to appropriate the Bid Security for any amounts, including Damages, due and payable by the Mine Operator to the Authority under this Agreement; provided that upon provision of the Performance Security pursuant to Clause 9.1.1, the Authority shall release the Bid Security to the Mine Operator. Notwithstanding anything to the contrary contained in this Agreement, in the event the Performance Security is not provided by the Mine Operator within a period of [90 (ninety)] days from the date of issue of LOA, the Authority shall forfeit the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Mine Operator under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Mine Operator, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

## **ARTICLE 10**

### **ACCESS TO THE SITE**

#### **10.1 The Site**

- 10.1.1 The Site shall be divided into [\*\*\*] number of blocks as demarcated in Schedule-A in conformity with the respective phases specified therein. The 1<sup>st</sup> (first) block shall comprise the land on which the [Rail Track, township, Coal Depot, Coal Handling Plant] and Project Facilities are to be constructed and shall include a mining area sufficient for excavation of Coal and dumping of Overburden in accordance with the Annual Production Programme and the terms of this Agreement, and in respect of which the access to Site shall be granted by the Authority to the Mine Operator commencing from the Appointed Date.

#### **10.2 Access to the Site**

- 10.2.1 During the Development Period, the Authority hereby grants to the Mine Operator access to the Site for carrying out any surveys, investigations and soil tests that the Mine Operator may deem necessary during the Contract Period, it being expressly agreed and understood that the Authority shall have no liability whatsoever in respect of the surveys, investigations and tests carried out or work undertaken by the Mine Operator on or about the Site pursuant hereto in the event of Termination or otherwise.
- 10.2.2 In consideration of development of Mines, this Agreement and the covenants and warranties on the part of the Mine Operator herein contained, the Authority, in accordance with the terms and conditions set forth herein, hereby grants to the Mine Operator, commencing from the Appointed Date, access to and permission to work or to use in respect of all the land (along with any buildings, constructions or immovable assets, if any, thereon) comprising the real estate, which is more particularly described, delineated and shown in Schedule-A hereto (the "**Site**"), on an "as is where is" basis to develop, operate and maintain the said Site, for the purposes permitted under this Agreement, and for no other purpose whatsoever. The Mine Operator hereby acknowledges and accepts that the entire Site shall be and shall at all times remain the exclusive and absolute property of the Authority and neither the Mine Operator nor any persons claiming through or under the Mine Operator shall have or shall at any time claim any property, right, title or interest in such Site.
- 10.2.3 The Mine Operator shall perform its obligations in a manner that the existing roads, if any, along the boundary of the Mines, or an alternative thereof are open to traffic at all times during the Contract Period.
- 10.2.4 It is expressly agreed that all rights and permissions of the Mine Operator granted hereunder in respect of the Site shall terminate automatically and forthwith, without the need for any action to be taken by the Authority, upon the Termination of this Agreement for any reason whatsoever. For the avoidance of doubt, the Parties expressly agree that notwithstanding any temporary or permanent structures erected on the Site by the Mine Operator, the rights and permissions of the Mine Operator in respect of the Site shall automatically terminate, without any further act of the Parties, upon Termination of this Agreement.

- 10.2.5 The Mine Operator hereby irrevocably appoints the Authority (acting directly or through a nominee) to be its true and lawful attorney, to execute and sign in the name of the Mine Operator a surrender of the rights granted hereunder at any time upon the Termination of this Agreement, a sufficient proof of which will be the declaration of any duly authorised officer of the Authority, and the Mine Operator consents to it being registered for this purpose.

### **10.3 Procurement of the Site**

- 10.3.1 Following the Appointed Date, the Mine Operator shall be responsible for taking over the physical possession of the Site and undertaking the associated activities in respect thereof at its own cost and expense. The Authority agrees and undertakes to provide reasonable assistance and support to the Mine Operator in relation thereto and shall reimburse to the Mine Operator in accordance with the Clause 29.1.6 all direct and documented R&R Costs incurred by the Mine Operator in relation to taking over of physical possession of the Site by the Mine Operator, upon receipt of the details and all necessary documentation in support thereof. However, the cost or net present value of Government land or forest land, as the case may be, shall be paid directly to the concerned Government Instrumentality by the Authority. Following occurrence of the Appointed Date, the Authority Representative and the Mine Operator shall, on a mutually agreed date and time, inspect the Site and prepare a memorandum containing an inventory of the Site including the vacant and unencumbered land, buildings, structures, road works, trees and any other immovable property on or attached to the Site.
- 10.3.2 Until the Transfer Date, the Mine Operator shall maintain a round-the-clock vigil over the Site and shall ensure and procure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof, the Mine Operator shall report such encroachment or occupation forthwith to the Authority and undertake its removal at its own cost and expense.
- 10.3.3 The Mine Operator shall, if so required by the Authority, procure on behalf of the Authority, on the terms and to the extent specified by the Authority, any additional land required for any ancillary buildings in accordance with this Agreement and upon procurement, such land shall vest in the Authority and form part of the Site; provided that the Authority shall be responsible for acquiring such additional land in accordance with Applicable Laws, at its cost and such additional land so acquired by the Authority hereunder shall be deemed to form part of the Site. Provided however that, the Mine Operator shall be responsible for taking over the physical possession of such additional land at its own cost and expense and the provisions of Clause 10.3.1 shall apply *mutatis mutandis* to such additional land.
- 10.3.4 In the event the Mine Operator fails to procure physical possession of the Site then required for undertaking mining operations for the immediately forthcoming period of 180 (one hundred and eighty) days from the Appointed Date or such further period as may be granted by the Authority in writing, the Authority may be entitled to terminate the Agreement.

### **10.4 Protection of Site from Encumbrances**

During the Contract Period, the Mine Operator shall protect the Site and the Mines from any and all occupations, encroachments or Encumbrances, and shall not place

or create nor permit any Contractor or other person claiming through or under the Mine Operator to place or create any Encumbrance or security interest over all or any part of the Site, the Mines and/or the Project Assets, or on any rights of the Mine Operator therein or under this Agreement, save and except as otherwise expressly permitted in this Agreement.

### **10.5 Special/ temporary right of way**

The Mine Operator shall bear all costs and charges for any special or temporary right of way required by it in connection with access to the Site. The Mine Operator shall obtain at its cost such facilities on or outside the Site as may be required by it for the purposes of the Mines and the performance of its obligations under this Agreement.

### **10.6 Geological and archaeological finds**

Save and except as provided in this Agreement, it is expressly agreed that mining, geological or archaeological rights do not form part of the permission granted to the Mine Operator under this Agreement and the Mine Operator hereby acknowledges that it shall not have any mining rights or interest in the underlying minerals, fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest and that such rights, interest and property on or under the Site shall vest in and belong to the Authority or the concerned Government Instrumentality. The Mine Operator shall take all reasonable precautions to prevent its workmen or any other person from removing or damaging such interest or property and shall inform the Authority forthwith of the discovery thereof and comply with such instructions as the Authority or the concerned Government Instrumentality may reasonably give for the removal of such interest or property. For the avoidance of doubt, it is agreed that any reasonable expenses incurred by the Mine Operator hereunder shall be reimbursed by the Authority. It is also agreed that the Authority shall procure that the instructions hereunder are issued by it or the concerned Government Instrumentality within a reasonable period so as to enable the Mine Operator to continue its mining operations with such modifications as may be deemed necessary.

### **10.7 Resettlement and Rehabilitation of PAPs**

The Mine Operator as Pure Agent shall undertake the activities for Rehabilitation and Resettlement of the PAPs in accordance with R&R Policy and Applicable Laws. All direct and documented R&R Costs incurred by the Mine Operator shall be reimbursed by the Authority in accordance with Clause 29.1.6 of this Agreement.

### **10.8 Employment of PAPs**

Without prejudice to the provisions of Clause 10.7, the Authority shall employ such PAPs as are eligible for employment as per the R&R Policy, on such terms and conditions as may be determined by the Authority in accordance with the R&R Policy.

## **ARTICLE 11**

### **UTILITIES AND ROADS**

#### **11.1 Existing utilities and roads**

Notwithstanding anything to the contrary contained herein, the Mine Operator shall ensure that the respective entities owning the existing roads, right of way or utilities on, under or above the Site are enabled by it to keep such utilities in continuous satisfactory use, if necessary, by providing suitable temporary or permanent diversions with the approval of the controlling body of that road or right of way, and the Authority shall, upon written request from the Mine Operator, initiate and undertake at the Mine Operator's cost, legal proceedings for acquisition of any right of way necessary for such diversion.

#### **11.2 Shifting of obstructing utilities**

[The Mine Operator shall, subject to Applicable Laws and with assistance of the Authority, undertake shifting of any utility including electric lines, water pipes and telephone cables, to an appropriate location or alignment within or outside the Site, if and only if, such utility causes or shall cause a Material Adverse Effect on the development, operation or maintenance of the Mines. The cost of such shifting shall be borne by the Authority or by the entity owning such utility, if the Authority so directs, and in the event of any delay in shifting thereof, the Mine Operator shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay on the part of the entity owning such electric lines, water pipes or telephone cables, as the case may be.]<sup>4</sup>

#### **11.3 New utilities**

The Mine Operator shall allow, subject to such conditions as the Authority may specify, access to, and use of the Site for laying telephone lines, water pipes, electric cables or other public utilities, but only if it does not affect the operations of the Mines. Where such access or use causes any financial loss to the Mine Operator, it may require the user of the Site to pay compensation or damages as per Applicable Laws. For the avoidance of doubt, it is agreed that use of the Site under this Clause 11.3 shall not in any manner relieve the Mine Operator of its obligations to operate and maintain the Mines in accordance with this Agreement and any damage caused by such use shall be restored forthwith.

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<sup>4</sup> This Clause may be suitably modified including indicating the specific utility to be shifted and responsibility to bear the cost of shifting in accordance with the provisions of the DPR for the Project.

## **ARTICLE 12**

### **DEVELOPMENT OF THE MINES**

#### **12.1 Development of Mines**

- 12.1.1 The Mine Operator shall design, finance, develop and operate the Mines and Equipment having a capacity to excavate and Deliver the Annual Capacity in accordance with the Annual Production Programme.
- 12.1.2 On or after the Appointed Date, the Mine Operator shall undertake development of the Mines and installation of Equipment as specified in Schedule-B and Schedule-C, and in conformity with the Specifications and Standards set forth in Schedule-D.
- 12.1.3 The Mines shall have the following and such other Equipment and facilities, conforming with the Specifications and Standards, as may be necessary for operation of the Mines in accordance with the provisions of this Agreement:
- (a) [Coal Handling Plant;
  - (b) rapid loading system;
  - (c) equipment such as draglines, shovels, dumpers, surface miners, drills, dozers, loaders, graders, etc;
  - (d) power distribution substation/system;
  - (e) effluent treatment system;
  - (f) storage space for equipment and materials;
  - (g) machine shop for machining and maintenance of equipment and machinery;
  - (h) calibration laboratory to check all tools, instruments, jigs and fixtures to ensure product conformity with Specifications and Standards;
  - (i) necessary facilities for testing of Coal;
  - (j) standby power back-up facility suitable to its requirements;
  - (k) an administrative office, canteen, rest rooms and staff facilities as required under Applicable Laws;
  - (l) internal telecommunication infrastructure catering to basic telephony and other value added telecom services;
  - (m) drainage system for storm water drainage; and
  - (n) sewage waste water disposal system];

- 12.1.4 The development of Mines shall include construction of facilities for storage of sufficient quantity Coal.
- 12.1.5 [The development of Mines shall include construction of a dedicated rail track, including electric lines and electrical plants, for operation of trains from the Mines to the railway network, as specified in Schedule-B, and in conformity with the Specifications and Standards set forth in Schedule-D (the "**Rail Track**").]

## **12.2 Obligations prior to commencement of construction**

Prior to commencement of Construction Works, the Mine Operator shall:

- (a) submit to the Authority, its general arrangement, Drawings, excavation methodology, quality assurance procedures and excavation time schedule for development of the Mines, in accordance with the Project Completion Schedule set forth in Schedule-G;
- (b) undertake and perform all such acts, deeds and things as may be necessary or required before commencement of development of the Mines under and in accordance with the provisions of this Agreement, Applicable Laws and Applicable Permits; and
- (c) make its own arrangements for quarrying and procurement of materials needed for the Mines under and in accordance with Applicable Laws and Applicable Permits.

## **12.3 Drawings**

In respect of the Mine Operator's obligations relating to the Drawings of the Mines as set forth in Schedule-H, the following shall apply:

- (a) The Mine Operator shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule, 3 (three) copies each of all Drawings to the Engineer in charge for review.
- (b) By submitting the Drawings for review to the Engineer in charge, the Mine Operator shall be deemed to have represented that it has determined and verified that the design and engineering, including field construction criteria related thereto, are in conformity with the Scope of the Project, Specifications and Standards, Applicable Laws and the Standard Industry Practice.
- (c) Within 15 (fifteen) days of the receipt of the Drawings, the Engineer in charge shall review the same and convey its observations to the Mine Operator with particular reference to their conformity or otherwise with the Scope of the Project and the Specifications and Standards. The Mine Operator shall not be obliged to await the observations of the Engineer in charge on the Drawings submitted pursuant hereto beyond the said 15 (fifteen) days period and may begin or continue Construction Works at its own discretion and risk.
- (d) If the aforesaid observations of the Engineer in charge indicate that the Drawings are not in conformity with the Scope of the Project or the Specifications and Standards, such Drawings shall be revised by the Mine Operator and resubmitted to the Engineer in charge for review. The Engineer

in charge shall give its observations, if any, within 7 (seven) days of receipt of the revised Drawings.

- (e) No review and/or observation of the Engineer in charge and/or its failure to review and/or convey its observations on any Drawings shall relieve the Mine Operator of its obligations and liabilities under this Agreement in any manner nor shall the Engineer in charge or the Authority be liable for the same in any manner.
- (f) Within 90 (ninety) days of COD, the Mine Operator shall furnish to the Authority and the Engineer in charge a complete set of as-built Drawings, in 2 (two) hard copies and in micro film form or in such other medium as may be acceptable to the Authority, reflecting the Mines as actually designed, engineered and constructed, including an as-built survey illustrating the layout of the Mines and of the buildings and structures forming part of Project Facilities.

## **12.4 Scheduled Completion Date**

- 12.4.1 The Mine Operator agrees and undertakes that development of Mines for excavation and Delivery of Coal shall be undertaken in a manner such that (i) the Commercial Operations Date occurs on or prior to [\*\*\*\*] days from the Appointed Date (“**Scheduled COD**”); and (ii) the Completion occurs on or prior to [\*\*\*\*] days from the Appointed Date (“**Scheduled Completion Date**”).
- 12.4.2 In the event that the Mine Operator fails to achieve any Project Milestone within a period of 60 (sixty) days from the date set forth for such Project Milestone in Schedule-G, unless such failure has occurred due to Force Majeure or for reasons solely attributable to the Authority, it shall pay Damages to the Authority in a sum calculated at the rate of 0.5% (zero point five per cent) of the amount of Performance Security for delay of each week, or part of the week, until such Project Milestone is achieved; provided that if any or all Project Milestones, or the Scheduled COD, or the Scheduled Completion Date are extended in accordance with the provisions of this Agreement, the dates set forth in Schedule-G shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if Schedule-G has been amended as above. For the avoidance of doubt, it is agreed that recovery of Damages under this Clause 12.4.2 shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.

## **12.5 Provision of infrastructure**

The Authority shall, at its own cost and expense, endeavour to provide, or cause to be provided, in or near the township, the following:

- (a) [a [132 kV/ 33 kV] (one hundred thirty two kilovolt to thirty three kilovolt) electric substation connected with the grid, for supplying electricity to the Mines no later than the 1<sup>st</sup> (first) anniversary of the Appointed Date;]
- (b) [road connection between the boundary of the Mines and the nearest existing road, no later than the 1<sup>st</sup> (first) anniversary of the Appointed Date];



- (c) [rail connection between the Coal Depot and the railway network, no later than the 2<sup>nd</sup> (second) anniversary of the Appointed Date]; and
- (d) [construction of administrative office building for itself.]<sup>5</sup>

## **12.6 Development of township**

- 12.6.1 The Mine Operator shall, no later than the 1<sup>st</sup> (first) anniversary of COD, construct and operate or cause to be constructed and operated, at its own cost and expense, a township comprising of commercial and residential infrastructure specified in Clauses 12.6.2, 12.6.3 and 12.6.4, which shall also be available to the Authority and its employees on a non-discriminatory basis and on the normal terms thereof.
- 12.6.2 The township specified in Clause 12.6.1 shall be constructed in conformity with Schedule-C and shall include:
  - (a) a primary health center with 6 (six) beds for in-patient care and associated diagnostic facilities, built in conformity with the standards normally followed by the State Government;
  - [(b) a secondary school in conformity with the standards specified by the Central Board of Secondary Education; and]
  - (c) a community center with an auditorium for social gatherings, functions and other special occasions.
- 12.6.3 [The commercial infrastructure specified in Clause 12.6.1 shall include:]
  - [(a) a bank with ATM;]
  - [(b) post office;]
  - [(c) business center with communication facilities including telephone, internet connectivity and data transaction processing facilities;] and
  - [(d) 10 (ten) shops or kiosks.]
- 12.6.4 [The Mine Operator shall construct, or cause to be constructed, at least [\*\*\*\*] dwelling units with a total built-up area of not less than [\*\*\*\*] for the use of its employees or tenants.]
- 12.6.5. The Mine Operator shall facilitate the establishment and operation of the infrastructure mentioned at Clause 12.6.2, Clause 12.6.3 and Clause 12.6.4.

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<sup>5</sup> If it is decided any or all work under Clause 12.5 is to be omitted, the same shall be included in scope of work of Mine operator

## **ARTICLE 13**

### **MONITORING OF CONSTRUCTION**

#### **13.1 Monthly progress reports**

During the Construction Period, the Mine Operator shall, no later than 7 (seven) days after the close of each month, furnish to the Authority and the Engineer in charge, a monthly report on progress of the Construction Works and installation of Equipment, and shall promptly give such other relevant information as may be required by the Engineer in charge.

#### **13.2 Inspection**

During the Construction Period, the Engineer in charge shall inspect the Mines regularly and make a report of such inspection (the "**Inspection Report**") stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Scope of the Project and the Specifications and Standards. It shall send a copy of the Inspection Report to the Authority and the Mine Operator within 7 (seven) days of such inspection and upon receipt thereof, the Mine Operator shall rectify and remedy the defects or deficiencies, if any, stated in the Inspection Report. Such inspection or submission of the Inspection Report by the Engineer in charge shall not relieve or absolve the Mine Operator of its obligations and liabilities hereunder in any manner whatsoever.

#### **13.3 Tests**

13.3.1 For determining that the Construction Works and Equipment conform to the Specifications and Standards, the Engineer in charge may require the Mine Operator to carry out or cause to be carried out tests, at such time and frequency and in such manner as may be specified by the Engineer in charge from time to time, in accordance with Standard Industry Practice for quality assurance. The size of sample for such tests shall, to the extent possible, not exceed 5% (five per cent) of the quantity and/or number of tests that the owner or builder of such works would normally undertake in accordance with Standard Industry Practice. The Mine Operator shall, with due diligence and at its own cost, carry out or cause to be carried out all the tests in accordance with the instructions of the Engineer in charge and furnish the results thereof to the Authority. 50% (fifty per cent) of the costs incurred by the Mine Operator in carrying out such tests to the extent certified by the Engineer in charge as having been reasonably incurred, shall be reimbursed by the Authority to the Mine Operator. For the avoidance of doubt, the Mine Operator shall carry out all tests necessary for determining the rectification of any defect or deficiency in Construction Works and Equipment, at its sole cost and expense.

13.3.2 In the event that results of any tests conducted under this Clause 13.3 establish any defects or deficiencies in the Construction Works and Equipment, the Mine Operator shall carry out remedial measures and furnish a report to the Engineer in charge in this behalf. The Engineer in charge shall require the Mine Operator to carry out or cause to be carried out tests to determine that such remedial measures have brought the Construction Works and Equipment into compliance with the Specifications and Standards, and the procedure set forth in this Clause 13.3 shall be repeated until such

Construction Works and Equipment conform to the Specifications and Standards. For the avoidance of doubt, it is agreed that tests pursuant to this Clause 13.3 shall be undertaken in addition to and of the tests that shall be carried out by the Mine Operator for its own quality assurance in accordance with Standard Industry Practice. It is also agreed that a copy of the results of such tests shall be sent by the Mine Operator to the Authority forthwith.

#### **13.4 Delays during construction**

Without prejudice to the provisions of Clause 12.4.2, if the Mine Operator does not achieve any of the Project Milestones or the Engineer in charge has reasonably determined that the rate of progress of Construction Works and installation of Equipment is delayed, it shall notify the Mine Operator to this effect, and the Mine Operator shall, within 15 (fifteen) days of such notice, by a communication inform the Engineer in charge in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve such Project Milestones.

#### **13.5 Video recording**

During the Construction Period, the Mine Operator shall provide to the Authority for every calendar quarter, a video recording, which will be compiled into a 3 (three) hour digital video disc or any substitute thereof, covering the status and progress of Construction Works and installation of Equipment in that quarter. The first such video recording shall be provided to the Authority within 30 (thirty) days of the Appointed Date and thereafter, no later than 15 (fifteen) days after the close of each quarter.

## ARTICLE 14

### COMPLETION CERTIFICATE

#### 14.1 Tests

- 14.1.1 No later than 30 (thirty) days prior to the likely achievement of the Commercial Operation Date or the Completion (as applicable), the Mine Operator shall notify the Engineer in charge of its intent to subject the Construction Works and Equipment to Tests. The date and time of each of the Tests shall be determined by the Engineer in charge in consultation with the Mine Operator. The Mine Operator shall provide such assistance as the Engineer in charge may reasonably require for conducting the Tests. In the event of the Mine Operator and the Engineer in charge failing to mutually agree on the dates for conducting the Tests, the Mine Operator shall fix the dates by not less than 10 (ten) days' notice to the Engineer in charge.
- 14.1.2 All Tests shall be conducted in accordance with Schedule-I at the cost and expense of the Mine Operator. The Engineer in charge shall observe, monitor and review the results of the Tests to determine compliance of the Mines, Construction Works and Equipment with Specifications and Standards and if it is reasonably anticipated or determined by the Engineer in charge during the course of any Test that the performance of any Construction Works or Equipment or Mines does not meet the Specifications and Standards, it shall have the right to suspend or delay such Test and require the Mine Operator to remedy and rectify the defects or deficiencies. Upon completion of each Test, the Mine Operator shall provide to the Authority copies of all Test data including detailed Test results. For the avoidance of doubt, it is expressly agreed that the Engineer in charge may require the Mine Operator to carry out or cause to be carried out additional Tests, in accordance with Standard Industry Practice, for determining the compliance of the Mines with Specifications and Standards.

#### 14.2 Commercial Operation Date

- 14.2.1 The first day of the succeeding Accounting Year of the year in which the excavation and Delivery of Coal of [...(85% of the Contracted Capacity)...] is achieved by the Mine Operator, as certified by the Engineer in charge, shall be the “**Commercial Operation Date**” or “**COD**”.
- 14.2.2 In the event that COD does not occur prior to the Scheduled COD, unless the delay is on account of reasons solely attributable to the Authority or due to Force Majeure, the Mine Operator shall pay Damages to the Authority in a sum calculated at the rate of 0.5% (zero point five per cent) of the amount of Performance Security for delay of each week or part of the week until COD is achieved.

#### 14.3 Completion

- 14.3.1 Upon completion of all Construction Works and achieving all Project Milestone as set forth in Schedule-G and the Engineer in charge determining the Tests to be successful in accordance with the provisions of this Agreement (“**Completion**”), it shall forthwith issue to the Mine Operator, a certificate substantially in the form set forth in Schedule-J (the “**Completion Certificate**”).

In the event that Completion does not occur within a period of 60 (sixty) days from the Scheduled Completion Date, unless the delay is on account of reasons solely attributable to the Authority or due to Force Majeure, an amount equivalent to [10% (ten percent)] of the amount set out in each forthcoming Monthly Invoice of the Mine Operator shall be withheld by the Authority till the Completion occurs and Completion Certificate is issued. However, upon issuance of Completion Certificate the amount so withheld shall be released to the Mine Operator without any interest. It is hereby clarified that the amount so withheld shall be in addition to the Damages recovered in accordance with the Clause 12.4.2 of this Agreement.

#### **14.4 Withholding of Completion Certificate**

- 14.4.1 If the Engineer in charge determines that the Mines and Equipment or any part thereof do not conform to the provisions of this Agreement, it shall forthwith make a report in this behalf and send copies thereof to the Mine Operator. If the Authority is of the opinion that the Mines and Equipment are not fit and safe for commercial service, it shall, within 7 (seven) days of receiving the aforesaid report, notify the Mine Operator of the defects and deficiencies in the Mines and Equipment and withhold issuance of the Completion Certificate, as the case may be. Upon receipt of such notice, the Mine Operator shall remedy and rectify such defects or deficiencies and thereupon Tests shall be undertaken in accordance with Article 14. Such procedure shall be repeated as necessary until the defects or deficiencies are rectified.
- 14.4.2 Notwithstanding anything to the contrary contained in Clause 14.4.1, the Authority may, issue a Completion Certificate under Clause 14.3.

#### **14.5 Rescheduling of Tests**

If the Authority is unable to issue the Completion Certificate because of events or circumstances on account of which the Tests could not be held or had to be suspended, the Mine Operator shall be entitled to re-schedule the Tests and hold the same as soon as reasonably practicable. Provided, however, that the Mine Operator shall be excused for the delay in Tests arising hereunder if such delay is not solely attributable to the Mine Operator.

## **ARTICLE 15**

### **CHANGE OF SCOPE**

#### **15.1 Change of Scope**

- 15.1.1 The Authority may, notwithstanding anything to the contrary contained in this Agreement, require the provision of additional works and services at the Mines, which are not included in the Scope of the Project as contemplated by this Agreement, or reduce the Scope of the Project (the "**Change of Scope**"). Any such Change of Scope shall be made in accordance with and subject to the provisions of this Article 15.
- 15.1.2 If the Mine Operator determines at any time that a Change of Scope is necessary for safety considerations or any unforeseen circumstances arising out of Force Majeure, it shall by notice in writing require the Authority to consider such Change of Scope. The Authority shall, within 15 (fifteen) days of receipt of such notice, either accept such Change of Scope with modifications, if any, and initiate proceedings in accordance with this Article 15 or inform the Mine Operator in writing of its reasons for not accepting such Change of Scope or for accepting such Change of Scope without any payment obligations hereunder, as the case maybe.
- 15.1.3 Any works or services which are provided under and in accordance with this Article 15 shall form part of the Scope of the Project and the provisions of this Agreement shall apply *mutatis mutandis* to such works or services.

#### **15.2 Procedure for Change of Scope**

- 15.2.1 In the event of the Authority determining that a Change of Scope is necessary, it shall issue to the Mine Operator, a notice specifying in reasonable detail, the change in works and services contemplated thereunder (the "**Change of Scope Notice**").
- 15.2.2 Upon receipt of a Change of Scope Notice, the Mine Operator shall, with due diligence, provide to the Authority such information as is necessary, together with preliminary Documentation in support of:
- (a) the impact, if any, which the Change of Scope is likely to have on the Project Completion Schedule if such change in works or services are required to be carried out during the Construction Period; and
  - (b) the options for implementing the proposed Change of Scope and the effects of each such option on the costs and time thereof (if any), including a detailed breakdown by work classifications specifying the material and labour costs calculated in accordance with the schedule of rates applicable to the works assigned by the Authority to its Contractors, along with the proposed premium/discount on such rates; provided that the cost incurred by the Mine Operator in providing such information shall be reimbursed by the Authority to the extent such cost is certified by the Engineer in charge as reasonable.
- 15.2.3 Upon receipt of information set forth in Clause 15.2.2, if the Authority decides to proceed with the Change of Scope, it shall convey its preferred option to the Mine Operator, and the Parties shall, thereupon make good faith efforts to agree upon the

time and costs for implementation thereof. Upon reaching an agreement, the Authority shall issue an order (the "**Change of Scope Order**") requiring the Mine Operator to proceed with the performance thereof. In the event that the Parties are unable to agree, the Authority may, by issuing a Change of Scope Order, require the Mine Operator to proceed with the performance thereof pending resolution of the Dispute.

- 15.2.4 The provisions of this Clause 15.2, are applicable to Construction Works, Tests, operation and maintenance of the Mine.

### **15.3 Payment for Change of Scope**

Pursuant to the issuance of the Change of Scope Order, the Mine Operator shall, after commencement of work, present to the Authority GST invoice/ debit note/ credit note for payment in respect of the works and services in progress or completed works and services, as the case may be, supported by such Documentation as is reasonably sufficient for the Authority to determine the accuracy thereof. In the event the Change of Scope Order results in alteration of costs, the Mine Operator shall raise GST invoice/ debit note/ credit note to reflect such additional/reduced cost incurred by it, which shall be in line with the cost estimate provided by the Mine Operator or pursuant to Clause 15.2.2(b). Within 30 (thirty) days of receipt of such bills, the Authority shall disburse to the Mine Operator such additional/reduced amounts as is evidenced in the GST invoice/debit note/ credit note raised by the Mine Operator. The Mine Operator hereby undertakes to pay, within 30 (thirty) days of the Change of Scope Order, any amount that may be payable by the Mine Operator to the Authority (in accordance with the Change of Scope Order) due to reduction in the Scope of the Project. In the event of any Dispute, final adjustments thereto shall be made under and in accordance with the Dispute Resolution Procedure.

### **15.4 Restrictions on certain works**

- 15.4.1 The Authority shall not require the Mine Operator to undertake any works or services if such works or services are likely to delay completion of the development of Mines by the Scheduled Completion Date; provided that in the event that the Authority considers such works or services to be essential, it may issue a Change of Scope Order, subject to the condition that the works forming part of, or affected by such Change of Scope Order, shall not be reckoned for purposes of determining completion of the Mines.
- 15.4.2 The Mine Operator shall be entitled to nullify any Change of Scope Order if it causes the cumulative costs relating to all the Change of Scope Orders to exceed [10% (ten per cent)] of the Total Project Cost in any continuous period of [36 (thirty six) months] immediately preceding the date of such Change of Scope Order or if such cumulative costs exceed [25% (twenty five per cent)] of the Total Project Cost at any time during the Contract Period.

## **ARTICLE 16**

### **OPERATION AND MAINTENANCE**

#### **16.1 O&M obligations of the Mine Operator**

16.1.1 During the Operation Period, the Mine Operator shall operate and maintain the Mines and Equipment in accordance with this Agreement either by itself, or through the O&M Contractor and if required, modify, repair or otherwise make improvements to the Mines and Equipment to comply with the provisions of this Agreement, Applicable Laws and Applicable Permits, and conform to the Specifications and Standards and Standard Industry Practice. The Mine Operator or the O&M Contractor can operate and maintain the Mines with leased Equipment, provided that the Specifications and Standards are in conformity with Schedule-D and the Equipment are maintained in conformity with the Maintenance Requirements. The obligations of the Mine Operator hereunder shall include:

- (a) ensuring safe, smooth and uninterrupted excavation of Coal and Delivery thereof from the Mines, including prevention of loss or damage thereto, during normal operating conditions;
- (b) undertaking operation and maintenance of the Mines in an efficient, coordinated and economical manner, in compliance with Applicable Laws and Standard Industry Practice;
- (c) procuring that the Overburden is removed and deposited in accordance with the provisions of this Agreement;
- (d) minimising disruption to operation of the Mines in the event of accidents or other incidents affecting the safety and operation of the Mines by providing a rapid and effective response and maintaining liaison with emergency services of the State;
- (e) carrying out periodic preventive maintenance of the Mines;
- (f) undertaking routine maintenance including prompt repairs of all components of the Mines and Equipment so as to ensure compliance with the Maintenance Requirements and the Specifications and Standards;
- (g) undertaking major maintenance of Equipment and installations;
- (h) preventing, with the assistance of the concerned law enforcement agencies, any encroachments on, or unauthorised entry to the Site;
- (i) protection of the environment and provision of equipment and materials therefor;
- (j) operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Mines and Equipment



and for providing safe, smooth and uninterrupted excavation of Coal and Delivery thereof from the Mines;

- (k) maintaining a public relations unit for interface with and attend to suggestions from Project Affected Persons, government agencies, media and other agencies;
- (l) complying with Safety Requirements in accordance with Article 17;
- (m) operation and maintenance of all Project Assets diligently and efficiently and in accordance with Standard Industry Practice; and
- (n) maintaining reliability in operating the Mines and Delivery of Coal.

16.1.2 The Mine Operator shall remove all Overburden excavated during the course of development and operations of the Mines in accordance with Applicable Laws, Standard Industry Practice and the provisions of this Agreement.

16.1.3 The Mine Operator shall promptly remove from the Mines, all surplus construction machinery and materials, waste materials (including hazardous materials and waste water), rubbish and other debris (including, without limitation, accident debris) and keep the Mines in a clean, tidy and orderly condition, and in conformity with Applicable Laws, Applicable Permits and Standard Industry Practice.

16.1.4 The Mine Operator shall maintain, in conformity with Standard Industry Practice, all stretches of roads and other structures situated on the Site.

16.1.5 If the Mine Operator fails to comply with any directions issued by a Government Instrumentality, and is liable to pay a penalty under the provisions of Applicable Laws, such penalty shall be borne solely by the Mine Operator, and shall not be claimed from the Authority. For the avoidance of doubt, payment of any penalty under the provisions of Applicable Laws shall be in addition to, and independent of, the Damages payable under this Agreement.

## **16.2 Maintenance Requirements**

The Mine Operator shall procure that at all times during the Operation Period, the Mines and Equipment conform to the maintenance requirements set forth in Schedule-K (the "**Maintenance Requirements**").

## **16.3 Maintenance Manual**

16.3.1 No later than 90 (ninety) days prior to the Scheduled Completion Date, the Mine Operator shall, in consultation with the Engineer in charge, evolve a repair, operation and maintenance manual (the "**Maintenance Manual**") for the regular and preventive maintenance of the Mines and Equipment in conformity with the Specifications and Standards, Maintenance Requirements, Safety Requirements and Standard Industry Practice, and shall provide 5 (five) copies thereof to the Authority and 2 (two) copies to the Engineer in charge. The Maintenance Manual shall be revised and updated once every 3 (three) Accounting Years and the provisions of this Clause 16.3 shall apply, *mutatis mutandis*, to such revisions and updates.

- 16.3.2 Without prejudice to the provision of Clause 16.3.1, the Maintenance Manual shall, in particular, provide for life cycle maintenance, routine maintenance and restorative maintenance which may be reasonably necessary for maintenance and repair of the Project Assets, including replacement thereof, such that its overall condition conforms to Standard Industry Practice.

## **16.4 Maintenance Programme**

- 16.4.1 On or before COD and no later than 45 (forty five) days prior to the beginning of each Accounting Year during the Operation Period, as the case may be, the Mine Operator shall provide to the Authority and Engineer in charge, its proposed annual programme of preventive, urgent and other scheduled maintenance (the "**Maintenance Programme**") to comply with the Maintenance Requirements, Maintenance Manual and Safety Requirements. Such Maintenance Programme shall include:
- (a) preventive maintenance schedule, including the proposed closure, if any, for maintenance;
  - (b) arrangements and procedures for carrying out urgent repairs;
  - (c) criteria to be adopted for deciding maintenance needs;
  - (d) intervals and procedures for carrying out inspection of all elements of the Mines and Equipment;
  - (e) intervals at which the Mine Operator shall carry out periodic maintenance;
  - (f) arrangements and procedures for carrying out safety related measures;
  - (g) intervals for major maintenance works and the scope thereof; and
  - (h) frequency of carrying out intermediate and periodic overhaul of the Equipment.
- 16.4.2 Within 15 (fifteen) days of receipt of the Maintenance Programme, the Engineer in charge shall review the same and convey its comments to the Mine Operator with particular reference to its conformity with the Maintenance Requirements, Maintenance Manual and Safety Requirements.
- 16.4.3 The Mine Operator may modify the Maintenance Programme as may be reasonable in the circumstances, and the procedure specified in Clauses 16.4.1 and 16.4.2 shall apply *mutatis mutandis* to such modifications.
- 16.4.4 Any maintenance carried out by the Mine Operator as per the Maintenance Programme under this Clause 16.4 shall be deemed to be scheduled maintenance (the "**Scheduled Maintenance**"). For the avoidance of doubt, any Scheduled Maintenance shall not relieve the Mine Operator from its obligation to excavate and Deliver Coal in accordance with the Annual Production Programme under Clause 21.2.1, and, the Mine Operator shall be liable to pay the Damages under Clause 21.5 for any closure, suspension or reduction of Annual Capacity arising out of Scheduled Maintenance.

## **16.5 Safety, breakdowns and accidents**

- 16.5.1 The Mine Operator shall ensure safe conditions at the Mines, and in the event of unsafe conditions, damage, breakdowns and accidents, it shall follow the relevant operating procedures and undertake removal of obstruction and debris without delay. Such procedures shall conform to the provisions of this Agreement, Applicable Laws, Applicable Permits and Standard Industry Practice.
- 16.5.2 The Mine Operator's responsibility for rescue operations at the Site shall include safe evacuation of all persons from the affected area as an initial response to any particular incident and shall also include prompt removal of debris or any other obstruction, which may endanger or interrupt the smooth excavation and Delivery of Coal.

## **16.6 De-commissioning due to Emergency**

- 16.6.1 If, in the reasonable opinion of the Mine Operator, there exists an Emergency which warrants de-commissioning or shut-down of the whole or any part of the Mines and Equipment, the Mine Operator shall be entitled to de-commission or shut down the whole or any part of the Mines and Equipment for so long as such Emergency exists and the consequences thereof warrant; provided that such de-commissioning or shut-down and particulars thereof shall be notified by the Mine Operator to the Authority without any delay, and the Mine Operator shall diligently carry out and abide by any reasonable directions that the Authority may give for dealing with such Emergency. For the avoidance of doubt, the Mine Operator acknowledges and agrees that any de-commissioning or shut-down hereunder shall conform with the provisions of the Mines Act, 1952.
- 16.6.2 The Mine Operator shall re-commission the Mines and Equipment or any part thereof as quickly as practicable after the circumstances leading to its de-commissioning or shut down have ceased to exist or have so abated as to enable the Mine Operator to re-commission the Mines and Equipment, and shall notify the Authority of the same forthwith.

## **16.7 Section closure**

- 16.7.1 Save and except as provided in Clause 16.6, the Mine Operator shall not shut down or de-commission any section of the Mines for undertaking maintenance or repair works, not forming part of the Maintenance Programme, except with the prior written approval of the Engineer in charge. Such approval shall be sought by the Mine Operator through a written request to be made to the Engineer in charge, and a copy thereof furnished to the Authority, at least 7 (seven) days before the proposed closure of such section and shall be accompanied by particulars thereof. Within 3 (three) days of receiving such request, the Engineer in charge shall grant permission with such modifications as it may deem necessary and a copy of such permission shall be sent to the Authority.
- 16.7.2 Upon receiving the permission pursuant to Clause 16.7.1, the Mine Operator shall be entitled to shut down or de-commission the designated section for the period specified therein, and in the event of any delay in re-commissioning such section, the Mine Operator shall pay Damages to the Authority calculated at the rate of 1% (one per cent) of the Average Daily Mining Charge for each day of delay until the section has been re-commissioned for excavation and Delivery of Coal.

## **16.8 Damages for breach of maintenance obligations**

- 16.8.1 In the event that the Mine Operator fails to repair or rectify any defect or deficiency set forth in the Maintenance Requirements within the period specified therein, it shall be deemed to be in breach of this Agreement and the Authority shall be entitled to recover Damages, to be calculated and paid for each day of delay until the breach is cured, at the higher of (a) 1% (one per cent) of the Average Daily Mining Charge, and (b) 0.1% (zero point one per cent) of the cost of such repair or rectification as estimated by the Engineer in charge. Recovery of such Damages shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof
- 16.8.2 The Damages set forth in Clause 16.8.1 may be assessed and specified forthwith by the Engineer in charge; provided that the Authority may demand a smaller sum as Damages, if in its opinion, the breach has been cured promptly and the Mine Operator is otherwise in compliance with its obligations hereunder. The Mine Operator shall pay such Damages forthwith and in the event that it contests such Damages, the Dispute Resolution Procedure shall apply.

## **16.9 Authority's right to take remedial measures**

- 16.9.1 In the event the Mine Operator does not maintain and/or repair the Mines and Equipment or any part thereof in conformity with the Maintenance Requirements, the Maintenance Manual or the Maintenance Programme, as the case may be, and fails to commence remedial works within 15 (fifteen) days of receipt of the O&M Inspection Report or a notice in this behalf from the Authority or Engineer in charge, as the case may be, the Authority shall, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Mine Operator, and to recover its cost from the Mine Operator. In addition to recovery of the aforesaid cost, a sum equal to 20% (twenty per cent) of such cost shall be paid by the Mine Operator to the Authority as Damages. For the avoidance of doubt, the right of the Authority under this Clause 16.9.1 shall be without prejudice to its rights and remedies provided under Clause 16.8.

## **16.10 Overriding powers of the Authority**

- 16.10.1 If in the reasonable opinion of the Authority, the Mine Operator is in material breach of its obligations under this Agreement and, in particular, the Maintenance Requirements, and such breach is causing or likely to cause material danger to any person or property, the Authority may, without prejudice to any of its rights under this Agreement including Termination thereof, by notice require the Mine Operator to take reasonable measures immediately for rectifying or removing such hardship or danger, as the case may be.
- 16.10.2 In the event that the Mine Operator, upon notice under Clause 16.10.1, fails to rectify or remove any hardship or danger within a reasonable period, the Authority may exercise overriding powers under this Clause 16.10.2 and take over the performance of any or all the obligations of the Mine Operator to the extent deemed necessary by it for rectifying or removing such hardship or danger; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required hereunder; provided further that any costs and expenses incurred by the Authority in discharge of its obligations hereunder shall be

deemed to be O&M Expenses, and the Authority shall be entitled to recover them from the Mine Operator in accordance with the provisions of Clause 16.9 along with the Damages specified therein.

16.10.3 In the event of a national emergency, civil commotion or any other act specified in Clause 34.3, the Authority may take over the performance of any or all the obligations of the Mine Operator to the extent deemed necessary by it, and exercise such control over the Mines and Equipment or give such directions to the Mine Operator as may be deemed necessary; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the Authority. For the avoidance of doubt, it is agreed that the consequences of such action shall be dealt in accordance with the provisions of Article 34. It is also agreed that the Mine Operator shall comply with such instructions as the Authority may issue in pursuance of the provisions of this Clause 16.10.3, and shall provide assistance and cooperation to the Authority, on a best effort basis, for performance of its obligations hereunder.

### **16.11 Restoration of loss or damage to the Mines**

Save and except as otherwise expressly provided in this Agreement, in the event that the Mines and Equipment or any part thereof suffers any loss or damage during the Contract Period from any cause whatsoever, the Mine Operator shall, at its cost and expense, rectify and remedy such loss or damage forthwith so that the Mines and Equipment conform to the provisions of this Agreement.

### **16.12 Modifications to the Mines**

The Mine Operator shall not carry out any material modifications to the Mines and Equipment save and except where such modifications are necessary for the Mines and Equipment to operate in conformity with the Specifications and Standards, Maintenance Requirements, Standard Industry Practice and Applicable Laws; provided that the Mine Operator shall notify the Engineer in charge of the proposed modifications along with particulars thereof at least 15 (fifteen) days before commencing work on such modifications and shall reasonably consider any suggestions that the Engineer in charge may make within 15 (fifteen) days of receiving the Mine Operator's proposal. For the avoidance of doubt, all modifications made hereunder shall comply with the Safety Requirements, Specifications and Standards, Applicable Laws, Standard Industry Practice and the provisions of this Agreement.

### **16.13 Excuse from performance of obligations**

The Mine Operator shall not be considered in breach of its obligations under this Agreement if any part of the Mines and Equipment are not available for excavation of Coal and Delivery thereof on account of any of the following for the duration thereof:

- (a) a Force Majeure Event;
- (b) measures taken to ensure the safety of the Mines except when unsafe conditions occurred because of failure of the Mine Operator to perform its obligations under this Agreement; or

- (c) compliance with a request from the Authority or the directions of any Government Instrumentality, the effect of which is to close all or any part of the Mines except when such closure occurred because of failure of the Mine Operator to perform its obligations under this Agreement or Applicable Laws.

Provided that, any such non-availability and particulars thereof shall be notified by the Mine Operator to the Authority and the Engineer in charge without any delay.

Provided further that, the Mine Operator shall keep available all unaffected parts of the Mines for excavation of Coal and Delivery thereof, provided they can be operated safely.

## **ARTICLE 17**

### **SAFETY REQUIREMENTS<sup>6</sup>**

#### **17.1 Safety Requirements**

- 17.1.1 The Mine Operator shall comply with the provisions of this Agreement, Applicable Laws and Applicable Permits and conform to Standard Industry Practice for securing the safety of the Mines, Equipment and individuals on or about the Site. In particular, the Mine Operator shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Mines, and shall comply with the safety requirements set forth in Schedule-L (the "**Safety Requirements**").
- 17.1.2 The Mine Operator shall impart safety training to its employees and shall at all times be responsible for observance of safety procedures by its staff, Contractors and agents. The Mine Operator shall request the Authority to provide statutory training under the Mines Vocational Training Rules, 1966.
- 17.1.3 The Mine Operator acknowledges and agrees that the Authority shall be entitled to inspect the Mines to verify adherence to Safety Requirements and the Mine Operator shall be obliged to facilitate such inspection and implement the corrective measures identified in such inspection.
- 17.1.4 Notwithstanding anything to the contrary contained in this Agreement, the Parties acknowledge and agree that the appropriate Government Instrumentalities shall be entitled to issue directions to the Authority and the Mine Operator for complying with the provisions of the Mines Act, 1952 and the rules made thereunder and such directions shall be binding on them.

#### **17.2 Guiding principles**

- 17.2.1 Safety Requirements aim at reduction of injuries, loss of human life and damage to property resulting from accidents on the Mines and Equipment, irrespective of the person(s) at fault.
- 17.2.2 Safety Requirements shall apply to all phases of development, operation and maintenance of the Mines with emphasis on identification of factors associated with accidents, consideration of the same, and implementation of appropriate remedial measures.

#### **17.3 Expenditure on Safety Requirements**

All costs and expenses arising out of or relating to Safety Requirements shall be borne by the Mine Operator.

#### **17.4 Annual Safety Report**

- 17.4.1 The Mine Operator shall submit to the Authority before the 15<sup>th</sup> (fifteenth) day of January of each calendar year, an annual report (in 10 (ten) copies) containing, without limitation, a detailed list and analysis of all accidents of the preceding calendar year

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<sup>6</sup> The provisions of this Article may be suitably modified to meet project -specific requirements.

and the measures taken by the Mine Operator for averting or minimizing such accidents in future ("**Annual Safety Report**").

- 17.4.2 Once in every calendar year, a safety audit shall be carried out by the Authority. It shall review and analyse the Annual Safety Report and accident data of the preceding calendar year, and undertake an inspection of the Mines. The Authority shall provide a safety report recommending specific improvements, if any, required to be made in the Mines and Equipment. Such recommendations shall be implemented by the Mine Operator in accordance with Safety Requirements, Specifications and Standards and Applicable Laws in a time bound manner as specified by the Authority in the recommendations. For the avoidance of doubt, the Parties agree that not more than 15 (fifteen) months shall elapse between 2 (two) safety audits to be conducted by the Authority hereunder.



## **ARTICLE 18**

### **SECURITY OF THE MINES**

#### **18.1 Security of the Mines**

- 18.1.1 The Mine Operator shall at all times procure the safety and security of the Mines, Equipment, Coal and all persons in or about the Mines.
- 18.1.2 The Mine Operator shall procure at all times that the Coal excavated by it shall be transported only by duly authorised personnel and vehicles through the routes notified by the Authority in consultation with the Mine Operator. The loading and movement of such vehicles shall be supervised and monitored in accordance with Standard Industry Practice.
- 18.1.3 The Coal excavated by the Mine Operator shall be processed and stored only in the areas designated for this purpose in accordance with Schedule-A and Schedule-C, and any modification in the designated areas shall be undertaken only with the prior written consent of the Authority which shall not be unreasonably withheld.

#### **18.2 Installation of Security Equipment**

The Mine Operator shall install security and surveillance equipment in conformity with Applicable Laws and Standard Industry Practice to ensure and procure the safety and security of its personnel, Mines, Equipment and Coal.

#### **18.3 Real Time Monitoring of Operations**

- 18.3.1 The Mine Operator shall, for real time monitoring of the movement of dumpers, trucks, excavators and other equipment, install and operate a suitable “Operator Truck Dispatch System”.
- 18.3.2 The Mine Operator shall further install and operate such system which shall monitor movement of Coal through trucks or conveyor belts or any other medium up to the Delivery Point, which shall include all the entry/ exit points, Coal Depot, Coal Handling Plant, buildings, structures, passages used for transporting Overburden/ Coal and other places as advised by the Authority. Such places should also have provision of closed circuit television cameras. The system should have facility of monitoring the entire information through a central control room.
- 18.3.3 All recording on such surveillance systems shall be classified and stored by the Mine Operator for a period of at least 3 (three) months from the date of such recording.

#### **18.4 Prevention of pilferage of Coal**

The Mine Operator shall install fencing and security equipment, engage security guards and take such other measures as may be necessary to prevent pilferage of Coal and shall launch criminal proceedings in cases of theft or unauthorised removal of Coal from the Mines.

## **ARTICLE 19**

### **MONITORING OF OPERATION AND MAINTENANCE**

#### **19.1 Monthly status reports**

- 19.1.1 During the Operation Period, the Mine Operator shall, no later than 7 (seven) days after the close of each month, furnish to the Authority and the Engineer in charge, a monthly report stating in reasonable detail the condition of the Mines and Equipment including their compliance or otherwise with the Mining Plan, Maintenance Requirements, Maintenance Manual, Maintenance Programme and Safety Requirements, and shall promptly give such other relevant information as may be required by the Engineer in charge or the Authority. In particular, such report shall separately identify and state in reasonable detail the defects and deficiencies that require rectification.
- 19.1.2 During the Operation Period, the Mine Operator shall, no later than 10 (ten) days after the close of each month, furnish to the Authority and the Engineer in charge, a monthly management report which shall be a summary of:
- (a) key performance indicators achieved in the month, along with an analysis of reasons for failures, if any, and proposals to remedy the same;
  - (b) key operational hurdles and deliverables expected in the succeeding month along with strategies for addressing the same and for otherwise improving the Project's operational performance; and
  - (c) key financial parameters for the month, as benchmarked against the monthly budget, the reasons for shortfall, if any, and proposals to remedy the same.

#### **19.2 Reports of unusual occurrence**

The Mine Operator shall, prior to the close of each day, send to the Authority and Engineer in charge, by facsimile or e-mail, a report stating accidents and unusual occurrences, if any, at the Mines relating to the safety and security of the Mines and persons affected by it. A weekly and monthly summary of such reports shall also be sent within 3 (three) days of the closing of each week and month, as the case may be. For the purposes of this Clause 19.2, accidents and unusual occurrences at the Mines shall include:

- (a) death or injury to any person;
- (b) any damage or obstruction at the Site;
- (c) disablement of any element of the Mines during operation thereof;
- (d) flooding of the Mines;
- (e) smoke or fire; or
- (f) such other relevant information as may be reasonably required by the Authority or the Engineer in charge.

Any occurrence as mentioned under Regulation 8 of the Coal Mine Regulations, 2017 shall be reported immediately as required.

### **19.3 Inspection**

The Engineer in charge shall inspect the Mines and Equipment regularly. It shall make a report of such inspection (the "**O&M Inspection Report**") stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Maintenance Requirements, Maintenance Manual, the Maintenance Programme and Safety Requirements, and send a copy thereof to the Authority and the Mine Operator within 7 (seven) days of such inspection.

### **19.4 Tests**

For determining that the Mines conform to the Maintenance Requirements, the Engineer in charge shall require the Mine Operator to carry out, or cause to be carried out, tests specified by it in accordance with Standard Industry Practice. The Mine Operator shall, with due diligence, carry out or cause to be carried out all such tests in accordance with the instructions of the Engineer in charge and furnish the results of such tests forthwith to the Authority and the Engineer in charge. One half of the costs incurred on such tests, and to the extent certified by the Engineer in charge as reasonable, shall be reimbursed by the Authority to the Mine Operator.

### **19.5 Remedial measures**

- 19.5.1 The Mine Operator shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report or in the test results referred to in Clause 19.4 and furnish a report in respect thereof to the Engineer in charge and the Authority within 15 (fifteen) days of receiving the O&M Inspection Report or the test results, as the case may be; provided that where the remedying of such defects or deficiencies is likely to take more than 15 (fifteen) days, the Mine Operator shall submit progress reports of the repair works once every week until such works are completed in conformity with this Agreement.
- 19.5.2 The Engineer in charge shall require the Mine Operator to carry out or cause to be carried out tests, at its own cost, to determine that such remedial measures have brought the Mines and Equipment into compliance with the Maintenance Requirements and the procedure set forth in this Clause 19.5 shall be repeated until the Mines and Equipment conform to the Maintenance Requirements. In the event that remedial measures are not completed by the Mine Operator in conformity with the provisions of this Agreement, the Authority shall be entitled to recover Damages from the Mine Operator under and in accordance with the provisions of Clause 16.8.

### **19.6 Production and Delivery Statements/ Reports**

During the Operation Period, the Mine Operator shall furnish to the Authority all the reports and statements required as per the New Code for Uniform System of Maintenance, Control and Verification of Coal Stock in all Mines of Coal India Limited. The Mine Operator shall also furnish to the Authority such other information as the Authority may reasonably require, at specified intervals, in discharge of its statutory functions.

## **19.7 Annual measurement of excavation**

- 19.7.1 On or before COD, the Engineer in charge shall cause to be measured, by Central Mine Planning and Design Institute Limited ("CMPDI"), using laser technology (the "**Laser Measurement**"), the stockpile of Coal Seams and Overburden at the Mines, and shall convey forthwith to the Authority such particulars thereof as the Authority may reasonably require. The date and time for Laser Measurement shall be notified by the Engineer in charge in consultation with CMPDI, no less than 1 (one) week in advance, to the Mine Operator and the Authority, and the Authority may designate its representative to witness such measurement or may also carry out its independent measurement. The Authority may, with the prior approval of the board of directors of Coal India Limited, engage any other reputed third party agency, other than CMPDI, for undertaking such Laser Measurement.
- 19.7.2 The Engineer in charge shall arrange, once every Accounting Year, on or before the commencement of each Accounting Year, to repeat the Laser Measurement in accordance with the provisions of Clause 19.7.1.
- 19.7.3 In the event that the quantity of Coal dispatched from the Delivery Point during any Accounting Year falls short of the quantity of excavation, as determined by measurement, in respect of that Accounting Year, the Mine Operator shall pay to the Authority, Damages at the rate of notified price of Coal for the shortfall quantity up to 2% (two per cent) and at the rate **twice** the notified price of Coal for the shortfall quantity exceeding 2% (two per cent) of excavation quantity of Coal.

The amount of Damages shall be recovered from the monthly bill of the Mine Operator. Shortfall quantity shall be reconciled every month and final adjustment shall be done at the end of each Accounting Year. The Parties further agree that conversion of volumetric content to weight of Coal in different stacks shall be in accordance with the New Code for Uniform System of Maintenance, Control and Verification of Coal Stock in all Mines of Coal India Limited. The Parties also agree that in the event of a Dispute relating to the procedure and outcome of any tests or measurements conducted hereunder, the Dispute shall be referred to an Independent Laboratory for conducting tests at such laboratory. The figures on production and Delivery of Coal during the month should be reconciled with the measurement of stockpile at the end of every month and the same should be verified from the in situ measurement to comply with the provisions of New Code for Uniform System of Maintenance, Control and Verification of Coal Stock in all Mines of Coal India Limited.

### *Explanation:*

The notified price of Coal for the purposes of this Clause 19.7.3 shall be the simple average of the notified price of similar coal most recently declared by the Authority.

## ARTICLE 20

### REMOVAL OF OVERBURDEN

#### 20.1 Removal of Overburden

- 20.1.1 The Mine Operator shall, at all times during the Contract Period, ensure and procure the fulfillment of its obligations in respect of excavation, removal and depositing of Overburden in accordance with Applicable Laws, Applicable Permits, Mining Plan, the provisions of this Agreement and Standard Industry Practice.
- 20.1.2 The Mine Operator acknowledges, agrees and undertakes that the geometry of Mines, including bench height and width of Coal Seams, Overburden and inter - burden, shall at all times conform with the provisions of this Agreement, Applicable Laws and Standard Industry Practice.
- 20.1.3 The Engineer in charge shall regularly determine the compliance of the provisions of this Article 20 by the Mine Operator.

#### 20.2 Schedule for Removal of Overburden

- 20.2.1 The Parties expressly agree that during each Accounting Year after the Appointed Date, the Mine Operator shall undertake removal of Overburden to the extent necessary for mining operation in accordance with the terms of this Agreement and the schedule given below ("**Scheduled Overburden Quantity**"):

Accounting Year	Overburden to be removed (In M M <sup>3</sup> )
1	[**] M M <sup>3</sup>
2	[**] M M <sup>3</sup>
3	[**] M M <sup>3</sup>
4	[**] M M <sup>3</sup>
5	[**] M M <sup>3</sup>
Subsequent years	[**] M M <sup>3</sup>
<b>Total</b>	[**] M M <sup>3</sup>

Provided that, in the event of any significant change in the Stripping Ratio, the Scheduled Overburden Quantity shall be modified with the approval of the Authority.

- 20.2.2 The Mine Operator may undertake advance removal of Overburden in excess of the Scheduled Overburden Quantity, with the prior written approval of the Authority.
- 20.2.3 The Authority shall conduct monthly measurement of Overburden benches, using Electronic Total Station, Laser Scanning Technology or any other suitable

methodology, in presence of a representative of the Mine Operator to determine compliance with Article 20.

## 20.3 Overburden Adjustable Amount

- 20.3.1 [Upon commencement of removal of Overburden by the Mine Operator in accordance with the terms of this Agreement, as certified and measured by the Engineer in charge during the monthly measurement, the Authority shall be liable to pay to the Mine Operator in respect of each month prior to the occurrence of Coal production during which the Overburden is removed by the Mine Operator, an adjustable sum calculated as the product of 40% (forty per cent) of the Mining Charge and the Notional Amount of Coal ("**Overburden Adjustable Amount**"). The term "**Notional Amount of Coal**" shall mean the quantity of Coal arrived at by dividing the volume of Overburden removed during the relevant month by the Notional Stripping Ratio. The Overburden Adjustable Amount shall be paid against the submission of bank guarantee(s) from a Bank by the Mine Operator. The value of such bank guarantee(s) shall, at no point of time, be less than 110% (one hundred and ten per cent) of the amount disbursed or due to be adjusted. Such bank guarantee(s) shall be valid till the full adjustment is made. It is hereby clarified that the aforesaid bank guarantees against the payment of Overburden Adjustable Amount is separate and in addition to the Mine Operator's obligation to furnish the Performance Security under Article 9.
- 20.3.2 The Overburden Adjustable Amount paid by the Authority shall be adjusted against the Mining Charge payable by the Authority to the Mine Operator, in equal instalments spread over a period of 60 (sixty) months beginning from the month in which the first Monthly Invoice is raised by the Mine Operator. In case of any shortfall in recovery, it shall be adjusted against the subsequent Monthly Invoices.]<sup>7</sup>

## 20.4 Damages for Failure to remove Overburden

- 20.4.1 In case the Overburden removed by the Mine Operator is less than the Scheduled Overburden Quantity in any Accounting Year, then the Mine Operator shall submit an irrevocable, unconditional and first demand bank guarantee in favour of the Authority, in a form and manner acceptable to the Authority from a Bank for a sum equivalent to the Mining Charge payable to the Mine Operator for the Overburden Shortfall ("**Overburden Guarantee**"). If the Mine Operator fails to submit the requisite amount of the Overburden Guarantee, the Authority shall withhold the payment of the Monthly Invoice for an equivalent amount of such Overburden Guarantee.

For the purposes of this Clause 20.4, "**Overburden Shortfall**" shall mean the quantity of Coal determined as follows:

- (a) **Prior to COD:** the difference between the Scheduled Overburden Quantity and the Overburden removed, *divided by* the Notional Stripping Ratio ;
- (b) **On or after the COD:** the difference between the Scheduled Overburden Quantity and the Overburden removed, *divided by* the Stripping Ratio.

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<sup>7</sup> The Clause 20.3 shall be applicable only for the Project when the planned production of coal is scheduled to start after more than 3 (three) years from the Appointed Date as per the approved Mining Plan. For all other projects this clause shall be deleted.

- 20.4.2 The Mine Operator shall keep the Overburden Guarantee valid and effective and in full force until the date that occurs 90 (ninety) days after the expiry of (i) 3 (three) Accounting Years following the Accounting Year in which the relevant Overburden Shortfall occurred; or (ii) Contract Period, whichever is earlier.
- 20.4.3 At least 30 (thirty) days prior to expiry of the Overburden Guarantee, the Mine Operator shall furnish a replacement Overburden Guarantee to the Authority, failing which the Authority shall be entitled to, after giving 5 (five) days' notice to the Mine Operator, draw down the full value of the Overburden Guarantee, and hold the cash as security for performance of the Mine Operator's obligations under this Clause 20.4.
- 20.4.4 The Mine Operator shall meet the Overburden Shortfall, within a period of 3 (three) Accounting Years immediately following the Accounting Year in which the relevant Overburden Shortfall occurred and in any event prior to the expiry of the Contract Period, failing which the Authority shall, without prejudice to its other rights and remedies under this Agreement, in law or equity, be entitled to appropriate the Overburden Guarantee in full, as Damages. Without prejudice to the foregoing, in the event of Termination of this Agreement, the Authority shall be entitled to appropriate the Overburden Guarantee in full, as Damages for failure of the Mine Operator to meet the Overburden Shortfall.

## ARTICLE 21

### PRODUCTION OF COAL

#### 21.1 Production of Coal

The Mine Operator shall excavate and Deliver Coal to the Authority in accordance with the Annual Production Programme specified in this Article 21.

#### 21.2 Annual Production Programme

- 21.2.1 Subject to the provisions of Clause 21.2.2, the Mine Operator shall excavate and Deliver Coal in accordance with the following annual programme of production for each Accounting Year (the "**Annual Production Programme**").

Accounting Year	Coal to be delivered
	(In MT)
1	[25% of Contracted Capacity]
2	[50% of Contracted Capacity]
3	[Contracted Capacity]
4	[Contracted Capacity]
5	[Contracted Capacity]
Subsequent years	[Contracted Capacity]
<b>Total</b>	[ **** ]

For the purposes of this Agreement, "**Contracted Capacity**" means [\*\*\*\*] Tonne of Coal per annum. The quantities specified in the Annual Production Programme for each Accounting Year shall be the "**Annual Capacity**", and the "**Monthly Capacity**" for any month in an Accounting Year shall be the Annual Capacity for such Accounting Year pro rated for the months in such Accounting Year. Where an Accounting Year is less than 12 (twelve) months, then the Annual Capacity for such Accounting Year shall be pro-rated accordingly.

- 21.2.2 The Authority may, by a notice delivered at least 3 (three) months prior to commencement of an Accounting Year after COD, subject to the condition of environment clearance, modify the Annual Production Programme specified in Clause 21.2.1 by increasing or reducing it up to 15% (fifteen per cent) with respect to such Accounting Year and thereupon the modified Annual Production Programme shall be deemed to be the Annual Production Programme for such Accounting Year for the purposes of this Agreement. However, an increase of the Annual Production Programme for any Accounting Year by more than 15% (fifteen percent) shall be made only with the mutual consent of Parties in writing. For the avoidance of doubt, the Parties agree that the Annual Production Programme in the Accounting Year in which Coal production starts or Transfer Date occurs shall be proportionate to the period of operation in that Accounting Year..



- 21.2.3 The Authority agrees and undertakes that it shall ordinarily not reduce the Annual Production Programme by more than the quantity specified in Clause 21.2.2. In the event the Authority reduces the Annual Production Programme below such quantity, it shall pay to the Mine Operator, a charge equal to 25% of the Mining Charge for and in respect of such reduction below the quantity specified in Clause 21.2.2.
- 21.2.4 Unless otherwise agreed to by the Parties, it is expressly agreed by the Mine Operator that it shall, in no month of an Accounting Year, Deliver more than 10% (ten per cent) and less than 8% (eight per cent) of the quantity of Coal specified in the Annual Production Programme for that Accounting Year. It is clarified that notwithstanding the foregoing and unless otherwise agreed to by the Parties, the Mine Operator shall not, in any Accounting Year, Deliver more than 100% (one hundred per cent) of the quantity of Coal specified in the Annual Production Programme for that Accounting Year under this Clause 21.2. It is agreed that the provisions of this Clause 21.2.4 shall not apply to any quantity of Coal that is stored in the Coal Depot, and such Coal shall be Delivered by the Mine Operator at the Delivery Points in accordance with the instructions of the Authority.
- 21.2.5 The Mine Operator shall, no later than the 21<sup>st</sup> (twenty first) day of every month, furnish to the Authority its weekly target of production for the forthcoming month, and shall make best efforts to fulfill such targets. In the event it expects any shortfall therein, it shall inform the Authority as soon as may be, and furnish its revised targets of production.
- 21.2.6 It is clarified that any modification to the Annual Production Programme pursuant to this Clause 21.2 shall not be deemed to be a Change of Scope and shall not entitle the Mine Operator to a Change of Scope Order pursuant to Article 15.

### **21.3 Delivery Point**

It is expressly agreed by the Mine Operator that unless otherwise authorised in writing by the Authority, all Coal excavated and produced by the Mine Operator shall be Delivered by the Mine Operator only at the Delivery Points and solely to the Authority or its nominees, and to no other person.

### **21.4 Extension of Annual Production Programme**

In the event the Contract Period is extended in accordance with the provisions of this Agreement, the Annual Production Programme shall be deemed to be extended by a corresponding period on the terms and conditions specified in this Agreement, other than in respect of any extension of the Contract Period pursuant to Clause 3.1.

### **21.5 Damages for shortfall**

- 21.5.1 Upon COD, in the event the excavated and Delivered Coal in any Accounting Year (“**Actual Production**”) is less than the Annual Capacity for such Accounting Year, other than where such shortfall arises directly on account of (i) Force Majeure; or (ii) a default of the Authority; or (iii) non-Delivery of Coal pursuant to Clause 16.13, the Mine Operator shall be liable to pay the following amounts as Damages for the shortfall in Actual Production of Coal, as indicated below. It is clarified that in respect of the Accounting Year during which the COD or the Transfer Date occurs, the

shortfall will be determined with respect to the Actual Production during the number of months in such Accounting Year subsequent to the COD or prior to the Transfer Date (as applicable) and the Annual Capacity for such Accounting Year shall be pro-rated for the number of months in such Accounting Year.

Shortfall in Actual Production expressed as a percentage of Annual Production Programme	Damages to be paid by the Mine Operator
100% to 90%	Nil
90% to 80%	10% of Mining Charge multiplied by the difference between the Actual Production and 90% of the Annual Production Programme.
80% to 70%	(a) 10% of Mining Charge multiplied by 10% of the Annual Production Programme (being the difference between 90% and 80% of the Annual Production Programme); and (b) 20% of Mining Charge multiplied by the difference between Actual Production and 80% of the Annual Production Programme.
70% to 50%	(a) 10% of Mining Charge multiplied by 10% of the Annual Production Programme (being the difference between 90% and 80% of the Annual Production Programme); (b) 20% of Mining Charge multiplied by 10% of the Annual Production Programme (being the difference between 80% and 70% of the Annual Production Programme); and (c) 30% of Mining Charge multiplied by the difference between Actual Production and 70% of the Annual Production Programme.  In addition, the Agreement will be reviewed by a review committee duly constituted by the Authority.

Shortfall in Actual Production expressed as a percentage of Annual Production Programme	Damages to be paid by the Mine Operator
Less than 50%	<p>(a) 10% of Mining Charge multiplied by 10% of the Annual Production Programme (being the difference between 90% and 80% of the Annual Production Programme);</p> <p>(b) 20% of Mining Charge multiplied by 10% of the Annual Production Programme (being the difference between 80% and 70% of the Annual Production Programme);</p> <p>(c) 30% of Mining Charge multiplied by 20% of the Annual Production Programme (being the difference between 70% and 50% of the Annual Production Programme); and</p> <p>(d) 40% of Mining Charge multiplied by the difference between Actual Production and 50% of the Annual Production Programme.</p> <p>In addition, the Agreement will be reviewed by a review committee duly constituted by the Authority to take appropriate decision.</p>

## **ARTICLE 22**

### **COAL DEPOT<sup>8</sup>**

#### **22.1 Coal Depot**

- 22.1.1 For discharging its obligations under and in accordance with the provisions of this Agreement, the Mine Operator shall build and operate coal depot(s) for storage of Coal in accordance with the provisions of this Article 22 (the "**Coal Depot**").
- 22.1.2 The land for the Coal Depot shall be earmarked in accordance with Schedule -A and Schedule-C, and shall form part of the Site, to be provided by the Authority in accordance with the provisions of Article 10.
- 22.1.3 The Coal Depot shall include spaces required for stocking of Coal, its processing, loading and Delivery in accordance with the provisions of this Agreement.
- 22.1.4 The Coal Depot shall have the capacity for storage of sufficient quantity of Coal, which shall in any event be not less than the [\*\*\*\*\*]. The Coal Depot shall be maintained by the Mine Operator as per Standard Industry Practices and be kept free of spontaneous heating and fire by taking suitable measures. At the beginning of each Accounting Year, the Engineer in charge shall, in consultation with the Authority and the Mine Operator, declare the capacity of storage of the Coal Depot for that Accounting Year ("**Declared Capacity**"). Such Declared Capacity may be reviewed every quarter at the written request of either Party.
- 22.1.5 Supply of electricity and water at the Coal Depot shall be procured by the Mine Operator at its own cost and expense.

#### **22.2 Facilities and equipment at Coal Depot**

- 22.2.1 The Mine Operator shall install and operate the facilities and equipment necessary for performing its obligations at the Coal Depot under and in accordance with the provisions of this Agreement.
- 22.2.2 The Parties may, by mutual agreement, change the location of the Coal Depot; provided, however, that any such change of location pursuant to this Clause 22.2.2 shall require the Authority to provide access to the Mine Operator with respect to the new location of the Coal Depot and provisions of Article 10 shall apply *mutatis mutandis* to the acquisition and takeover of physical possession of such new location.

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<sup>8</sup> The provisions of this Article may be suitably modified to meet project -specific requirements.

## **ARTICLE 23**

### **STORAGE AND TESTING**

#### **23.1 Storage of Coal**

The Mine Operator may, upon excavation in accordance with Standard Industry Practice and the provisions of this Agreement, store Coal at the Coal Depot, such that it is available for Delivery and transportation thereof in accordance with this Agreement.

#### **23.2 Testing of Coal**

- 23.2.1 For determining that the Coal Delivered conforms to the Specifications and Standards, the Coal Tests shall be conducted at the Delivery Point by an independent laboratory accredited to the National Accreditation Board of Laboratories, as selected by the Authority or any of the Buyer(s) and notified by the Authority to the Mine Operator (the "**Independent Laboratory**"). The Coal Tests shall be carried out in the presence of the representatives of the Authority, the Mine Operator and, if required, the Buyer and such representatives shall sign the results of the Coal Tests. A copy of the reports of all such Coal Tests shall be provided to the Authority and the Mine Operator forthwith and to the Buyer upon request.
- 23.2.2 The results of the Coal Tests shall be final and binding on the Mine Operator and the Authority.
- 23.2.3 Subject to Clause 30.1.2 of this Agreement, if the results of the Coal Tests conducted at the Delivery Point indicate a deterioration in grade from the Declared Grade (the "**Grade Slippage**"), then the Mine Operator shall indemnify and shall be liable to forthwith pay to the Authority, 1.25 (one point two five) times the amount equivalent to that portion of the sale price of Coal which the Authority is unable to, or fails to, realize from a Buyer on account of such Grade Slippage, as Damages. In addition, the Mine Operator shall be liable to pay to the Authority the amount of loss incurred by the Authority due to any payment of royalty to the Government. The aforesaid amounts shall be recovered by the Authority from the Monthly Invoices of the Mine Operator.
- 23.2.4 In the event the results of any of the Coal Tests conducted at the Delivery Point indicate a Grade Slippage for such number of days as may be determined by the Authority, such event shall be deemed to be a Mine Operator Default for the purposes of Clause 37.1.1 and in addition to any other rights and remedies available to the Authority under this Agreement (including pursuant to Clause 23.2.3), the Authority shall be entitled to exercise its right of Suspension under Clause 36.1.
- 23.2.5 The costs and expense incurred on all Coal Tests carried out under Clause 23.2.1 shall be borne by the Authority.

#### **23.3 Reporting of Coal stock**

The Mine Operator shall, no later than 07:00 hours on each day, provide a statement to the Authority setting out

- (i) the opening stock of Coal at 00:00 hrs of the preceding day
- (ii) the arrival of fresh stocks, if any during the preceding day,
- (iii) the Delivery of Coal during the preceding day; and
- (iv) the closing stock on the preceding day at 24:00 hours.

## **ARTICLE 24**

### **DISPATCH AND DELIVERY**

#### **24.1 Dispatch of Coal**

The Authority shall, in accordance with the provisions of this Agreement, issue instructions to the Mine Operator for dispatch of Coal during such period and in such volumes as it may specify in its instructions (the "**Dispatch Instructions**") and the Mine Operator shall plan and undertake the dispatch and Delivery of Coal thereof accordingly.

#### **24.2 Delivery and loading of Coal**

The Mine Operator shall Deliver Coal to the Authority and load it on the trucks, railway wagons or any Coal dispatch system, as the case may be, provided by the Authority at or about the Coal Depot, at its own cost and expense.

Any damages or demurrage claimed by the railway or any Coal dispatch system, as the case may be, due to delay in loading or under loading or over loading or any spillage or loss occurring during the process of Delivery of Coal shall be borne by the Mine Operator.

#### **24.3 Title and Risk in Coal**

The Mine Operator acknowledges and accepts that the entire Coal mined from the Mines shall be the property of the Authority and the right, title and interest in the Coal including after it is mined shall, at all times, vest in the Authority notwithstanding that the risk of handling the Coal till the Delivery Points and acceptance thereof shall be that of the Mine Operator. The Mine Operator shall supply all Coal mined from the Mines only to the Authority in accordance with the terms of this Agreement and shall not have any right to supply, sell or Deliver the Coal to any other person or otherwise utilize the Coal for any other purpose, except as expressly provided in this Agreement.

## ARTICLE 25

### KEY PERFORMANCE INDICATORS

#### 25.1 Key Performance Indicators

Without prejudice to the obligations specified in this Agreement, the Mine Operator shall operate and maintain the Mines and Equipment such that they achieve the performance indicators specified in this Article 25 (the "**Key Performance Indicators**").

#### 25.2 Production Programme and Project Milestones

- 25.2.1 The Mine Operator shall excavate Coal for Delivery thereof to the Authority in accordance with the Annual Production Programme specified in Article 21. The Mine Operator shall pay Damages for any shortfall in Delivery of Coal, equivalent to the Annual Production Programme, in accordance with the provisions of Clause 21.5.
- 25.2.2 The Mine Operator shall complete the Construction Works in accordance with the Project Milestones.

#### 25.3 Adjustments in Mining Charge

- 25.3.1 Any recoveries and payments, required to be made in accordance with this Article 25, shall be made on a monthly basis and adjusted in the Mining Charge payable to the Mine Operator.
- 25.3.2 The aggregate of all Incentives payable by the Authority for any month, in terms of the provisions of this Agreement, shall be deemed as the aggregate Incentive (the "**Aggregate Incentive**").
- 25.3.3 The aggregate of all Damages payable by the Mine Operator for any month, in terms of the provisions of this Agreement, shall be deemed as the aggregate Damages (the "**Aggregate Damages**").
- 25.3.4 The net of Aggregate Damages and Aggregate Incentives shall be deemed to be due and payable by the Authority or the Mine Operator, as the case may be, under this Article 25.
- 25.3.5 In the event that the amount payable by the Mine Operator in accordance with the provisions of Clause 25.3.4 shall exceed [10% (ten per cent)] of the total Mining Charge receivable during any month, the amount receivable in excess of such [10% (ten per cent)] shall be carried forward to the subsequent month. For the avoidance of doubt, if the amount carried forward under this Clause 25.3.5 cannot be adjusted in the subsequent month, it shall continue to be carried forward to the following months until it is fully adjusted, but only within the ceiling of [10% (ten per cent)] per month specified herein above.



## **25.4 Monthly Report**

The Mine Operator shall, no later than 7 (seven) days after the end of each month, furnish to the Authority, a report stating the Key Performance Indicators of the Mines or any phase thereof, as measured on a daily basis. The Mine Operator shall promptly give such other relevant information as may be required by the Authority.

## **ARTICLE 26**

### **ENGINEER IN CHARGE**

#### **26.1 Engineer in charge**

A senior level officer of the Authority shall be appointed by the Authority as the ‘Engineer in charge’ to act as its authorised representative for the purpose of administration and supervision of the Project (“**Engineer in charge**”). The appointment shall be made no later than 90 (ninety) days from the date of this Agreement. It is hereby clarified that the Engineer in charge shall always be appointed by the Authority from among its employees/officers.

The Engineer in charge shall be responsible for supervising and administering the Agreement, certifying payment due to the Mine Operator, valuing variations to the Agreement, awarding extension of time and valuing compensation events. The Engineer in charge may, on its behalf, further appoint its representatives i.e., Project manager/any other competent person for carrying out its functions as specified herein and notify to the Mine Operator / Contractor, who is directly responsible for supervising the work being executed at the Site, regarding such appointment of its representatives. However, the Engineer in charge shall at all times be responsible and liable for its obligations, duties and responsibilities under this Agreement.

#### **26.2 Duties and functions**

- 26.2.1 The Engineer in charge shall discharge its duties and functions substantially in accordance with the terms of reference set forth in Schedule-O.
- 26.2.2 The Engineer in charge shall submit regular periodic reports (at least once every month) to the Authority in respect of its duties and functions set forth in Schedule-O.
- 26.2.3 A true copy of all communications sent by the Engineer in charge to the Mine Operator and by the Mine Operator to the Engineer in charge shall be sent forthwith by the Engineer in charge to the Authority.

#### **26.3 Replacement of Engineer in charge**

- 26.3.1 The Authority may replace the Engineer in charge at any time with another suitable Engineer in charge.
- 26.3.2 If the Mine Operator has a reason to believe that the Engineer in charge is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written representation to the Authority and seek replacement of the Engineer in charge.

**PART IV**  
**FINANCIAL COVENANTS**

## **ARTICLE 27**

### **MOBILISATION ADVANCE**

#### **27.1 Mobilisation Advance**

Mobilisation advance for the Mine Operator has not been considered for this Project under the Agreement.

## ARTICLE 28

### MINING CHARGE AND OTHER CHARGES

#### 28.1 Mining Charge

28.1.1 Subject to and in accordance with the terms of this Agreement, the Authority shall pay to the Mine Operator the mining charge per Tonne of Coal Delivered by the Mine Operator at the Delivery Point(s) in accordance with the provisions of this Agreement (the "**Mining Charge**"), which shall be calculated in the following manner:

- (i) The Mining Charge quoted in the Bid is Rs.{\*\*\*\*} (Rupees{\*\*\*\*}) per Tonne (the "**Base Mining Charge**").
- (ii) The Base Mining Charge shall be adjusted yearly after COD for Actual Stripping Ratio as per the Clause no. 28.1.2 below.
- (iii) The Base Mining Charge shall be revised every quarter (commencing from the first quarter after the Bid Date) to reflect the variation in Price Index occurring between the Reference Index Date of the quarter preceding the Bid Date and the Reference Index Date for the quarter preceding the date of revision, and the amount so determined shall be the Mining Charge for that quarter.

#### 28.1.2 Adjustment of the Base Mining Charge in Stripping Ratio:

Adjusted Base Mining Charge for Stripping Ratio (MCn) =

$$MC ([0.2] + [0.8]^9 \times (1/Sg + SRn) / (1/Sg + SRO))$$

Where:

MCn = Adjusted Base Mining Charge for n-th Accounting Year.

MC = Mining Charge quoted (for Notional Stripping Ratio of [...])

SRn = Actual Stripping Ratio for the n-th Accounting Year.

SRO = Notional Stripping Ratio i.e [...]

Sg = Specific gravity of Coal = [1.6]

The Actual Stripping Ratio ("**Actual Stripping Ratio**") of any Accounting Year after COD shall mean the in-situ volume of Overburden actually removed in cubic metres for each Tonne of Coal produced during the year, as determined through measurement at the end of that Accounting Year. As the value of the Actual Stripping Ratio for a particular Accounting Year shall be known after the completion of that Accounting Year, the monthly payment for Coal production for a period of the 1<sup>st</sup> (first) 9 (nine) months of any Accounting Year shall be made on the basis of such Stripping Ratio as estimated at the beginning of that Accounting Year. The adjustment of payment shall be started from the 10<sup>th</sup> (tenth) month of the Accounting Year based on an anticipated Stripping Ratio and the final adjustment of such payment shall be made after determination of the Actual Stripping Ratio of that Accounting Year.

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<sup>9</sup> The values of 0.2 and 0.8 shall be project specific depending upon the investment on construction of the infrastructure.

## **28.2 Additional Capacity**

- 28.2.1 The Mine Operator may, upon request from the Authority and in accordance with Applicable Laws, Specifications and Standards and Maintenance Requirements, construct, install and operate any excavation capacity which is in addition to and in excess of the Contracted Capacity (the "**Additional Capacity**").
- 28.2.2 The additional Coal produced under the Additional Capacity installed hereunder shall have the same Mining Charge otherwise payable for the Contracted Capacity.

## **28.3 Taxes and duties**

- 28.3.1 It shall be the obligation of the Mine Operator to comply with all necessary Tax related statutory compliances, including but not limited to the payment of GST at the rates prescribed under the Applicable Laws, in relation to the Agreement.
- 28.3.2 The authority shall, upon receiving GST invoice or debit note (as applicable under GST laws and rules) and other supporting documents in relation to mining charges, defined under article 47, which is sole consideration under this agreement to the Mine Operator, pay the mining charges to the Mine Operator along with the amount of GST indicated in GST invoice. The Mine Operator shall issue GST credit note within the time limit as prescribed under GST laws and rules. The Authority shall, upon receiving the credit note adjust the basic amount and taxes thereon while making payment towards the next following GST invoice raised/ issued by the Mine Operator.
- 28.3.3 In case of any loss of input tax credit or any other benefit or incidence of interest or penalty suffered by the Authority in relation to GST due to any non-compliance by the Mine Operator of the Applicable Laws (including but not limited to the Mine Operator's failure to upload details of sale on the GST network portal, failure to issue GST compliant document(s) within the prescribed time frame or furnishing incorrect or incomplete documents with the relevant Government instrumentality), the Authority shall have the right to: (a) be compensated by the Mine Operator, or (b) set-off such loss or penalty against any next amounts payable to the Mine Operator under the Agreement. For the avoidance of doubt, any loss of input tax credit or any other benefit or incidence of interest or penalty shall be recovered/adjusted from next Monthly Invoice or from security deposit as the case may be and in case award/loss amount is greater than value of Monthly Invoice or security deposit the Mine Operator shall pay to the Authority within 30 days from the date of award. In addition, any delay in uploading the details of sale on the GSTN portal by the Mine Operator resulting in deferment of input tax credit in accordance with the GST laws, shall entitle the Authority to charge interest at rate equivalent to the prevailing interest rate charged by GST authority for input tax credit reversal under GST laws and rules.
- 28.3.4 It is hereby clarified that the Mining Charge shall be exclusive of all royalties, statutory levies, cesses, duties and contribution to District Mineral Fund (DMF) and National Mineral Exploration Trust (NMET) and all other statutory charges applicable from time to time.
- 28.3.5 Where any damages or compensation becomes payable by either the Authority or the Mine Operator pursuant to any provision of this Agreement, appropriate GST

wherever applicable as per the GST laws in force shall also be payable by the concerned Party in addition to such damages or compensation, upon issuance of GST invoice under GST laws and rules by the concerned Party.

- 28.3.6 The obligation of Authority is limited to compliance of IT TDS and GST TDS on Mining Charges or any other charges paid to the Mine Operator on which it is applicable, in accordance with their respective Applicable Laws.

## **28.4 Stockpiling and Re-handling**

- 28.4.1 In the event there is an insufficient supply of wagons at the Delivery Point or for any other reason the Authority opts to not take Delivery of Coal and instructs the Mine Operator in writing to stock the Coal otherwise available for Delivery, at the Coal Depot (the “**Undelivered Coal**”). , then subject to and in accordance with the terms of this Agreement, the Authority shall pay to the Mine Operator the following amounts:

- (a) 70% (seventy per cent) of the Mining Charge per Tonne of Undelivered Coal; and
- (b) 30% (thirty per cent) of the Mining Charge per Tonne of Undelivered Coal, at the time of Delivery of the Undelivered Coal (or part thereof) at the Delivery Point.

It is hereby clarified that no re-handling charge is payable by the Authority to the Mine Operator for re-handling of the Undelivered Coal and the cost of such re-handling of the Undelivered Coal shall be deemed to be included in the Mining Charge.

## ARTICLE 29

### BILLING AND PAYMENT

#### 29.1 Billing and Payment

- 29.1.1 The Mine Operator shall, by the 5<sup>th</sup> (fifth) day of each month (or, if such day is not a business day, the immediately following business day), submit in triplicate to the Authority, an invoice in the agreed form (the "**Monthly Invoice**") signed by the authorised signatory of the Mine Operator setting out the computation of the Mining Charge payable by the Authority to the Mine Operator in respect of the immediately preceding month in accordance with the provisions of this Agreement.
- 29.1.2 The Mine Operator shall, with each Monthly Invoice, submit (a) a certificate that the amounts claimed in the invoice are correct and in accordance with the provisions of the Agreement; (b) an estimate of the approximate weight of Coal stored at the Coal Depot at the close of the relevant month; (c) Delivery of Coal to the Authority during the relevant month; (d) official documents in support of the variation in Price Index; (e) detailed calculations of the Mining Charge, and any other amounts payable by the Authority in accordance with this Agreement; (f) details in respect of Taxes payable or reimbursable in accordance with the provisions of this Agreement; (g) details in respect of Aggregate Incentives and Aggregate Damages payable in accordance with the provisions of Articles 25; (h) the net amount payable under the Monthly Invoice; and (i) proof of having complied with the provisions of all Applicable Laws required to be complied with regarding payment of wages and salaries.
- 29.1.3 Except as set out in Clauses 29.1.1 and 29.1.2, in the event that any sums of money are due from one Party to the other Party under this Agreement (including any amounts payable as Damages), then the Party to whom such sums of money are owed shall send to the other Party an invoice together with relevant supporting documents showing the basis for the calculation of such sums ("**Miscellaneous Invoice**").
- 29.1.4 Due Dates
- (i) Each Monthly Invoice and/ or Miscellaneous Invoice delivered to the Authority shall become due and payable by the Authority within [30 (thirty)] days after the receipt of such Monthly Invoice and/ or Miscellaneous Invoice, as the case may be. For any Monthly Invoice and/ or Miscellaneous Invoice, 80 (eighty) % of the amount will be payable by the Authority within 10 (ten) days after receipt of such invoice complete in all respects.
  - (ii) Subject to Clause 29.2, each Party shall pay on or before the relevant due date, the amount that become due and payable by such Party to the other Party pursuant to a Monthly Invoice or a Miscellaneous Invoice. Such payments shall, unless otherwise stated, be made in Rupees and shall be made by wire transfer, to the bank account designated by the Mine Operator or the Authority, as applicable.
  - (iii) In the event the full amount under a Monthly Invoice or a Miscellaneous Invoice payable by either Party is not paid when due, any unpaid amount



thereof shall bear interest from the due date until paid, at the MCLR of State Bank of India. Interest shall be paid on the date when payment of the amount due is made.

29.1.5 The Authority shall be entitled to deduct or set off against any amounts payable by the Mine Operator under this Agreement, any amounts payable by the Authority to the Mine Operator under this Agreement.

**29.1.6 Billing and Payment when Mine Operator is Pure Agent**

- a. For purpose of undertaking the Rehabilitation and Resettlement of the PAPs for and on behalf of the Authority in accordance with Applicable Laws, R&R Policy and the terms of this Agreement and procuring issuance of the environmental clearance and forest clearance from the Ministry of Environment, Forests and Climate Change, Government of India for and on behalf of the Authority, the Mine Operator shall be appointed as Pure Agent as per Rule 33 of GST rule, 2017, set forth in Schedule-S.
- b. The Mine Operator shall submit complete details of all direct and documented R&R Costs along with underlying invoices in the name of the Authority in support of such costs and expenditure, as desired by the Authority, on monthly / quarterly basis along with Pure Agent invoice as per GST law and rules for certification/ acceptance for payment by Engineer in charge.
- c. The Mine Operator shall submit complete details of statutory cost and fees incurred along with underlying invoices in the name of the Authority in support of such costs, along with Pure Agent invoice as per GST law and rules after completion of service for certification/ acceptance for payment by Engineer in charge.
- d. Payment shall be made within 30 days from the date of receipt of complete details for reimbursement to Engineer in charge's office or approval for payment from competent authority whichever is later.

**29.2 Disputed Amounts**

29.2.1 In the event a Party disagrees with an invoice, such Party shall promptly and in no event later than [10 (ten)] days of receipt of such invoice notify the other Party of the disagreement and reasons thereof. Within [7 (seven)] days of receipt of such notice, the other Party shall present any information or evidence as may reasonably be required for determining that the disputed amounts under an invoice are payable. The disputing Party may, if necessary, meet a representative of the other Party for resolving the dispute and in the event that the dispute is not resolved amicably, the Dispute Resolution Procedure shall apply. Promptly and no later than [30 (thirty)] days after resolution of any dispute as to an invoice, the amount of any overpayment or underpayment shall be paid by the Mine Operator or Authority (as the case may be) to the other Party, together with interest thereon at the MCLR of State Bank of India from the date payment was due to the date of payment. For the avoidance of doubt, the Authority shall be entitled to raise a Dispute regarding any amounts under an invoice, whether due or already paid under this Agreement, at any time.

### **29.3 Provisional payment against Price Index**

In the event authenticated information is not available for and in respect of the Price Index as on the relevant date, the Authority shall make provisional payments on the basis of the Price Index of the last date for which such information is available and the balance shall be paid or recovered, as the case may be, within 30 (thirty) days of the publication of the Price Index for such relevant date.

## **ARTICLE 30**

### **DETERMINATION OF GRADE**

#### **30.1 Determination of Grade at Coal Seams**

- 30.1.1 The Coal grade will be declared as per the provisions of Colliery Control Rules, 2004 (as amended from time to time). The Mine Operator shall be entitled to participate in sampling and testing of samples collected from Coal Seams for the purpose of declaration of grade. At the start of each Accounting Year, the grade of Coal will be declared in accordance with this Clause 30.1.1 (the “**Declared Grade**”).
- 30.1.2 In case there is a Grade Slippage during an Accounting Year, the Mine Operator may request the revision of the Declared Grade in accordance with the provisions of Colliery Control Rules, 2004 (as amended from time to time) and notifications made thereunder.

## **ARTICLE 31**

### **REVENUE SHORTFALL LOAN**

Revenue shortfall loan for the Mine Operator has not been considered for this Project under the Agreement.

## **ARTICLE 32**

### **INSURANCE**

#### **32.1 Insurance during Contract Period**

The Mine Operator shall effect and maintain at its own cost, during the Contract Period, such insurances for such maximum sums as may be required under the Financing Agreements and Applicable Laws, and such insurances as may be necessary or prudent in accordance with Standard Industry Practice. The Mine Operator shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Authority as a consequence of any act or omission of the Mine Operator during the Contract Period. The Mine Operator shall procure that in each insurance policy, the Authority shall be a co-insured.

#### **32.2 Insurance Cover**

Without prejudice to the provisions contained in Clause 32.1, the Mine Operator shall procure and maintain Insurance Cover including, but not limited, to the following:

- (a) Loss, damage or destruction of the Project Assets, including assets handed over by the Authority to the Mine Operator, at replacement value;
- (b) comprehensive third party liability insurance including injury to or death of personnel of the Authority or others caused by the Project;
- (c) the Mine Operator's general liability arising out of the Agreement;
- (d) liability to third parties for goods or property damage;
- (e) workmen's compensation insurance;
- (f) compensation / ex-gratia for loss of life (fatal coal mine accident) shall be as per the directives of Coal India Limited. In this regard, it is hereby clarified that the Mine Operator shall have to adhere to any directive issued by Coal India Limited or any other Government Instrumentality from time to time. The present amount of such compensation / ex-gratia for loss of life is [Rs. 15 (fifteen)] lakh. However, due to revision of directive, if the Mine Operator is required to pay more than the stipulated amount, the excess amount shall be reimbursed by the Authority; and
- (g) any other insurance that may be necessary to protect the Mine Operator and its employees, including all Force Majeure Events that are insurable at commercially reasonable premiums and not otherwise covered in items (a) to (e) above.

#### **32.3 Notice to the Authority**

No later than 45 (forty-five) days prior to commencement of the Construction Period or the Operation Period, as the case may be, the Mine Operator shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 32. Within 30 (thirty) days of receipt of such notice, the Authority may require the Mine Operator to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

### **32.4 Evidence of Insurance Cover**

All insurances obtained by the Mine Operator in accordance with this Article 32 shall be maintained with insurers on terms consistent with Standard Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Mine Operator shall furnish to the Authority, notarised true copies of the certificate(s) of insurance, copies of insurance policies and premium payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or non -renewal has been delivered by the Mine Operator to the Authority.

### **32.5 Remedy for failure to insure**

If the Mine Operator shall fail to effect and keep in force all insurances for which it is responsible pursuant hereto, the Authority shall have the option to either keep in force any such insurances, and pay such premium and recover the costs thereof from the Mine Operator.

### **32.6 Waiver of subrogation**

All insurance policies in respect of the insurance obtained by the Mine Operator pursuant to this Article 32 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, *inter alia*, the Authority, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

### **32.7 Mine Operator's waiver**

The Mine Operator hereby further releases, assigns and waives any and all rights of subrogation or recovery against, *inter alia*, the Authority and its assigns, undertakings and their subsidiaries, affiliates, employees, successors, insurers and underwriters, which the Mine Operator may otherwise have or acquire in or from or in any way connected with any loss, liability or obligation covered by policies of insurance maintained or required to be maintained by the Mine Operator pursuant to this Agreement (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

### **32.8 Application of insurance proceeds**

The proceeds from all insurance claims, except life and injury, shall be applied by the Mine Operator firstly, for any necessary repair, reconstruction, reinstatement, replacement, improvement or development of the Mines, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

## ARTICLE 33

### ACCOUNTS AND AUDIT

#### 33.1 Audited accounts

- 33.1.1 The Mine Operator shall maintain books of accounts recording all its receipts (including revenues from Mining Charge and all incomes derived/collected by it from or on account of the Mines and Coal), income, expenditure, payments, assets and liabilities, in accordance with this Agreement, Standard Industry Practice, Applicable Laws and Applicable Permits. The Mine Operator shall provide the copies of its audited balance sheet and profit and loss account, as and when required by the Authority.
- 33.1.2 On or before the 31st (thirty-first) day of May each Accounting Year, the Mine Operator shall provide to the Authority, for the preceding Accounting Year, a statement duly audited by its Auditors giving summarised information on (a) receipts on account of Mining Charge, (b) all other revenues from, or account of the Mines, (c) list and values (including value addition / depreciation during the year) of the assets (including Capital Works, Project Assets, Moving Equipment etc.) and (d) such other information as the Authority may reasonably require..

#### 33.2 Appointment of auditors

- 33.2.1 The Mine Operator shall appoint, and have during the subsistence of this Agreement as its Auditors, a firm chosen by it from the list of firms of chartered accountants / cost accountants (the "**Panel of Chartered Accountants and Cost and Management Accountants**"), set forth in Schedule-P. All fees and expenses of the Auditors shall be borne by the Mine Operator. The Authority shall have right to change the Schedule-P form time to time or as and when required.
- 33.2.2 The Mine Operator may terminate the appointment of its Auditors after a notice of 45 (forty five) days to the Authority, subject to the replacement of Auditors being appointed from the Panel of Chartered Accountants.
- 33.2.3 Notwithstanding anything to the contrary contained in this Agreement, the Authority shall have the right, but not the obligation, to appoint at its cost from time to time and at any time, another firm (the "**Additional Auditors**") from the Panel of Chartered Accountants to audit and verify all those matters, expenses, costs, realisations and things which the Auditors are required to do, undertake or certify pursuant to this Agreement.

#### 33.3 Certification of claims by Auditors

Any claim or document provided by the Mine Operator to the Authority in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto, shall be valid and effective only if audited/vetted by its Auditors. For the avoidance of doubt, such certification shall not be required for exchange of information in the normal course of business.

### **33.4 Set-off**

In the event any amount is due and payable by the Authority to the Mine Operator, it may set-off any sums payable to it by the Mine Operator and pay the balance remaining. Any exercise by the Authority of its rights under this Clause 33.4 shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise.

### **33.5 Dispute resolution**

In the event of there being any difference between the findings of the Additional Auditors and the certification provided by the Auditors, such Auditors shall meet to resolve the differences and if they are unable to resolve the same, such Dispute shall be resolved by the Authority by recourse to the Dispute Resolution Procedure.



**PART V**

**FORCE MAJEURE AND TERMINATION**

## **ARTICLE 34**

### **FORCE MAJEURE**

#### **34.1 Force Majeure**

As used in this Agreement, the expression "**Force Majeure**" or "**Force Majeure Event**" shall, save and except as expressly provided otherwise, mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 34.2, 34.3 and 34.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the "**Affected Party**") of its obligations under this Agreement and which act or event (a) is beyond the reasonable control of the Affected Party, and (b) the Affected Party could not have prevented or overcome by exercise of due diligence and following Standard Industry Practice, and (c) has Material Adverse Effect on the Affected Party.

#### **34.2 Non-Political Event**

A Non-Political Event shall mean one or more of the following acts or events:

- (a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- (b) strikes or boycotts or stoppage of work or 'bandh' (other than those involving the Mine Operator, Contractors or their respective employees/ representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Mines for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 34.3;
- (c) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Mine Operator by or on behalf of such Contractor;
- (d) any delay or failure of an overseas contractor to deliver equipment in India if such delay or failure is caused outside India by any event specified in sub-clause (a) above and which does not result in any offsetting compensation being payable to the Mine Operator by or on behalf of such contractor;
- (e) any judgment or order of any court of competent jurisdiction or statutory authority made against the Mine Operator in any proceeding for reasons other than (i) on account of breach of any Applicable Law or Applicable Permit or any contract, or (ii) enforcement of this Agreement, or (iii) exercise of any of its rights under this Agreement by the Authority;
- (f) the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through inspection of the Site; or

- (g) any event or circumstances of a nature analogous to any of the foregoing.

### **34.3 Indirect Political Event**

An Indirect Political Event shall mean one or more of the following acts or events:

- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (b) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;
- (c) any civil commotion, boycott or political agitation which prevents excavation or Delivery of Coal by the Mine Operator for an aggregate period exceeding 7 (seven) days in an Accounting Year;
- (d) failure of the Authority to permit the Mine Operator to continue with the development of Mines, with or without modifications, in the event of stoppage of such works after discovery of any geological or archaeological finds;
- (e) any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Mine Operator by or on behalf of such Contractor;
- (f) any Indirect Political Event that causes a Non-Political Event; or
- (g) any event or circumstances of a nature analogous to any of the foregoing.

### **34.4 Political Event**

A Political Event shall mean one or more of the following acts or events by or on account of any Government Instrumentality:

- (a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 41 and its effect, in financial terms, exceeds the sum specified in Clause 41.1;
- (b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Mine Operator or of the Contractors;
- (c) unlawful or unauthorised or without jurisdiction, revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit, authorisation, no objection certificate, consent, approval or exemption required by the Mine Operator or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Mine Operator's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit;

- (d) any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Mine Operator by or on behalf of such Contractor; or
- (e) any event or circumstance of a nature analogous to any of the foregoing.

### **34.5 Duty to report Force Majeure Event**

34.5.1 Upon occurrence of a Force Majeure Event, the Affected Party shall by notice report such occurrence to the other Party forthwith. Any notice pursuant hereto shall include full particulars of:

- (a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 34 with evidence in support thereof,
- (b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- (c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- (d) any other information relevant to the Affected Party's claim.

34.5.2 The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event no later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

34.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 34.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

### **34.6 Effect of Force Majeure Event**

34.6.1 Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Clause 4.1 for fulfillment of Conditions Precedent shall be extended by a period equal in length to the duration of the Force Majeure Event.

34.6.2 At any time after the Appointed Date, if any Force Majeure Event occurs:

- (a) before COD, the Contract Period and the dates set forth in the Project Completion Schedule shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists; or
- (b) after COD, whereupon the Mine Operator is unable to Deliver Coal to the Authority despite making best efforts or it is directed by the Authority to suspend production during the subsistence of such Force Majeure Event, the Contract Period shall be extended by a period equal in length to the period

during which the Mine Operator was prevented from production of Coal on account thereof.

### **34.7 Allocation of costs arising out of Force Majeure**

- 34.7.1 Upon occurrence of any Force Majeure Event, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.
- 34.7.2 Save and except as expressly provided in this Article 34, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

### **34.8 Termination Notice for Force Majeure Event**

If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 34, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days' time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

### **34.9 Dispute resolution**

In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event (or an Unforeseen Event), such Dispute shall be finally settled in accordance with the Dispute Resolution Procedure; provided that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse on account of such Force Majeure Event.

### **34.10 Excuse from performance of obligations**

If the Affected Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure Event, it shall be excused from performance of such of its obligations to the extent it is unable to perform on account of such Force Majeure Event; provided that:

- (a) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
- (b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and
- (c) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.

### 34.11 [Relief for Unforeseen Events<sup>10</sup>]

[Upon occurrence of an unforeseen event, situation or similar circumstances not contemplated or referred to in this Agreement, and which could not have been foreseen by a prudent and diligent person (the "**Unforeseen Event**"), any Party may by notice inform the other Party of the occurrence of such Unforeseen Event with the particulars thereof and its effects on the Project. Within 15 (fifteen) days of such notice, the Parties shall meet and make efforts in good faith to determine if such Unforeseen Event has occurred, and upon reaching agreement on occurrence thereof, the Parties shall in good faith determine the manner in which such Unforeseen Event shall be dealt with.]

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<sup>10</sup>This Clause may be omitted, at the discretion of the Authority, prior to invitation of Bids.

## **ARTICLE 35**

### **COMPENSATION FOR BREACH OF AGREEMENT**

#### **35.1 Compensation for default by the Mine Operator**

Subject to the provisions of Clause 35.5 and 46.17, in the event of the Mine Operator being in material breach or default of this Agreement, it shall pay to the Authority by way of compensation, all direct costs suffered or incurred by the Authority as a consequence of such material breach or default, within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Clause 35.1 for any material breach or default in respect of which Damages have been expressly specified and payable under this Agreement or for any consequential losses incurred by the Authority.

#### **35.2 Compensation for default by the Authority**

Subject to the provisions of Clause 35.5 and 46.17, in the event of the Authority being in material breach or default of this Agreement at any time after the Appointed Date, it shall pay to the Mine Operator by way of compensation, all direct costs suffered or incurred by the Mine Operator as a consequence of such material breach or default within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no such compensation shall be payable for any material breach or default in respect of which Damages have been expressly specified in this Agreement or for any consequential losses incurred by the Authority.

#### **35.3 Extension of Contract Period**

Subject to the provisions of Clause 35.5 and 46.17, in the event that a material breach or default of this Agreement set forth in Clause 35.2 causes delay in achieving COD or leads to reduction in the realisation of Mining Charge, as the case may be, the Authority shall, in addition to payment of compensation under Clause 35.2, extend the Contract Period, such extension being equal in duration to the period by which COD was delayed or the payment of Mining Charge was reduced on account thereof, as the case may be; and in the event of reduction in Mining Charge where the daily collection is less than 80% (eighty per cent) of the Average Daily Mining Charge, the Authority shall, in addition to payment of compensation hereunder, extend the Contract Period in proportion to the loss of Mining Charge on a daily basis. For the avoidance of doubt, loss of 25% (twenty five per cent) in the realisation of Mining Charge, as compared to the Average Daily Mining Charge, for four days shall entitle the Mine Operator to extension of one day in the Contract Period.

#### **35.4 Compensation to be in addition**

Compensation payable under this Article 35 shall be in addition to, and not in substitution for, or derogation of, Termination Payment, if any.

#### **35.5 Mitigation of costs and damage**

The non-defaulting Party shall make all reasonable efforts to mitigate or limit the costs and damage arising out of, or as a result of, breach of this Agreement by the other Party.

## **ARTICLE 36**

### **SUSPENSION OF MINE OPERATOR'S RIGHTS**

#### **36.1 Suspension upon Mine Operator Default**

Upon occurrence of a Mine Operator Default, the Authority shall be entitled, subject to Applicable Laws and without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (a) suspend all rights of the Mine Operator under this Agreement including the Mine Operator's right to receive Mining Charge and other amounts under this Agreement, and (b) exercise such rights itself and perform the obligations hereunder or authorise any other person to exercise or perform the same on its behalf during such suspension (the "**Suspension**"). Suspension hereunder shall be effective forthwith upon issue of notice by the Authority to the Mine Operator and may extend up to a period not exceeding 180 (one hundred and eighty) days from the date of issue of such notice; provided that upon written request from the Mine Operator, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a further period not exceeding 90 (ninety) days.

#### **36.2 Authority to act on behalf of Mine Operator**

- 36.2.1 During the period of Suspension hereunder, all rights and liabilities vested in the Mine Operator in accordance with the provisions of this Agreement shall continue to vest therein and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Mine Operator under and in accordance with this Agreement and the Project Agreements, shall be deemed to have been done or taken for and on behalf of the Mine Operator and the Mine Operator undertakes to indemnify the Authority for all costs incurred during such period. The Mine Operator hereby licences and sub-licences respectively, the Authority or any other person authorised by it under Clause 36.1 to use during Suspension, all Intellectual Property belonging to or licenced to the Mine Operator with respect to the Mines and its design, engineering, construction, operation and maintenance and which is used or created by the Mine Operator in performing its obligations under the Agreement.

#### **36.3 Revocation of Suspension**

- 36.3.1 In the event that the Authority shall have rectified or removed the cause of Suspension within a period not exceeding 90 (ninety) days from the date of Suspension, it shall revoke the Suspension forthwith and restore all rights of the Mine Operator under this Agreement. For the avoidance of doubt, the Parties expressly agree that the Authority may revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.
- 36.3.2 Upon the Mine Operator having cured the Mine Operator Default within a period not exceeding 90 (ninety) days from the date of Suspension, the Authority shall revoke the Suspension forthwith and restore all rights of the Mine Operator under this Agreement.



## **36.4 Substitution of Mine Operator**

At any time during the period of Suspension, the Lenders' Representative, on behalf of Senior Lenders, shall be entitled to substitute the Mine Operator under and in accordance with the Substitution Agreement, if any, and upon receipt of notice thereunder from the Lenders' Representative, the Authority shall withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of Suspension, and any extension thereof under Clause 36.1, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Senior Lenders.

## **36.5 Termination**

- 36.5.1 At any time during the period of Suspension under this Article 36, the Mine Operator may by notice require the Authority to revoke the Suspension and issue a Termination Notice. Subject to the rights of the Lenders' Representative to undertake substitution in accordance with the provisions of this Agreement and within the period specified in Clause 36.4, the Authority shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 37. It is clarified that all the provisions of this Agreement shall apply, *mutatis mutandis*, to a termination pursuant to this Clause 36.5.1 as if a Termination Notice had been issued by the Authority upon occurrence of a Mine Operator Default
- 36.5.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 180 (one hundred and eighty) days from the date of Suspension hereunder or within the extended period, if any, set forth in Clause 36.1, then unless otherwise agreed by the Parties, this Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, *mutatis mutandis*, to such Termination as if a Termination Notice had been issued by the Authority upon occurrence of a Mine Operator Default.

## ARTICLE 37

### TERMINATION

#### 37.1 Termination for Mine Operator Default

37.1.1 Subject to Applicable Laws and save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Mine Operator fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 60 (sixty) days, the Mine Operator shall be deemed to be in default of this Agreement (the "**Mine Operator Default**"), unless the default has occurred solely as a result of any breach of this Agreement by the Authority or due to Force Majeure. The defaults referred to herein shall include:

- (a) the Performance Security has been encashed and appropriated in accordance with Clause 9.2 and the Mine Operator fails to replenish or provide fresh Performance Security within a Cure Period of 15 (fifteen) days;
- (b) the Mine Operator does not achieve the latest outstanding Project Milestone due in accordance with the provisions of Schedule-G and continues to be in default for 180 (one hundred and eighty) days;
- (c) the Mine Operator abandons or manifests intention to abandon the development or operation of the Mines without the prior written consent of the Authority;
- (d) COD or Completion do not occur within the periods specified in Clause 12.4.1;
- (e) the Mine Operator is in breach of the Maintenance Requirements or the Safety Requirements, as the case may be;
- (f) the Mine Operator has failed to make any payment to the Authority within the period specified in this Agreement;
- (g) if applicable, upon occurrence of a Financial Default, the Lenders' Representative has by notice required the Authority to undertake Suspension or Termination, as the case may be, in accordance with the Substitution Agreement and the Mine Operator fails to cure the default within the Cure Period specified hereinabove;
- (h) a breach of any Project Agreement by the Mine Operator has caused a Material Adverse Effect;
- (i) the Mine Operator supplies Coal, excavated from the Mines, to any person other than in accordance with this Agreement;
- (j) the Mine Operator commits a material breach of the Mining Plan;
- (k) the Mine Operator creates any Encumbrance except as expressly permitted under this Agreement;

- (l) the Mine Operator repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- (m) a Change in Ownership has occurred in breach of the provisions of Clause 5.3;
- (n) the Mine Operator fails to achieve a monthly Actual Production of [75% (seventy five per cent)] of the Monthly Capacity for a cumulative period of 6 (six) months within any continuous period of 18 (eighteen) months, save and except to the extent such failure is caused solely by (i) Force Majeure, or (ii) a default of the Authority, not occurring due to any act or omission of the Mine Operator;
- (o) there is a transfer, pursuant to Applicable Laws either of (i) the rights and/ or obligations of the Mine Operator under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Mine Operator, and such transfer causes a Material Adverse Effect;
- (p) an execution levied on any of the assets of the Mine Operator has caused a Material Adverse Effect;
- (q) Insolvency:
  - (i) The Mine Operator is, or is presumed or deemed to be unable or admits inability to pay its debts (or any class of them) as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors (or any class of them) with a view to rescheduling any of its indebtedness.
  - (ii) The Mine Operator commences a voluntary proceeding under any applicable bankruptcy, insolvency, reorganisation, winding up or other similar law now or hereafter in effect, or consents to the entry of an order for relief in an involuntary proceeding under any such law, or consent to the appointment or taking possession by a receiver, liquidator, assignee (or similar official) for any or a substantial part of its property.
  - (iii) An application in relation to the insolvency resolution process of the Mine Operator has been initiated under the IBC or if the Mine Operator is likely to be declared as a relief undertaking or any proceedings have been filed in relation to the same before any Government Instrumentality or any court or tribunal or a petition being presented or analogous proceeding being taken including for the liquidation, insolvency, winding up or dissolution of the Mine Operator.
  - (iv) Any analogous procedure or step is taken in any jurisdiction by or against the Mine Operator.
  - (v) No default shall occur under this Clause 37.1.1(q) if a petition for the winding up, liquidation or insolvency is filed by any person (other than the Mine Operator) and such petition is unconditionally withdrawn or discharged within [30 (thirty)] days of filing;

- (r) Any corporate action, legal proceeding or other procedure or step is taken in relation to:
  - (i) execution of an inter-creditor agreement or commencement and preparation of any resolution plan in connection with the Mine Operator under the Applicable Laws or any other rules, regulations or guidelines by any Government Instrumentality in relation to resolution of stressed assets.
  - (ii) the suspension of payments, a moratorium of any indebtedness, dissolution, liquidation, administration, provisional supervision or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Mine Operator;
- (s) the Mine Operator has been, or is in the process of being dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect;
- (t) a resolution for winding up of the Mine Operator is passed;
- (u) any petition for winding up of the Mine Operator is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Mine Operator is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Mine Operator are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Mine Operator under this Agreement and the Project Agreements; and provided that:
  - (i) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
  - (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Mine Operator as at the Appointed Date; and
  - (iii) each of the Project Agreements remains in full force and effect.
- (v) any representation or warranty of the Mine Operator herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Mine Operator is at any time hereafter found to be in breach thereof;
- (w) the Mine Operator submits to the Authority any statement, notice or other document, in written or electronic form, which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;
- (x) the Mine Operator has failed to fulfill any obligation, for which failure Termination has been specified in this Agreement;

- (y) the Mine Operator issues a Termination Notice in violation of the provisions of this Agreement;
  - (z) the Mine Operator commits a default in complying with any other provision of this Agreement if such default causes or may cause a Material Adverse Effect; or
  - (aa) any other event or occurrence, as may be identified by the Authority as 'Mine Operator Default', under this Agreement has occurred.
- 37.1.2 Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Mine Operator Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Mine Operator; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Mine Operator of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Mine Operator to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice, subject to the provisions of Clause 37.1.3.
- 37.1.3 The Authority shall, if there be Senior Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Clause 37.1.2 to inform the Lenders' Representative and grant 15 (fifteen) days to the Lenders' Representative, for making a representation on behalf of the Senior Lenders stating the intention to substitute the Mine Operator in accordance with the Substitution Agreement. In the event the Authority receives such representation on behalf of Senior Lenders, it shall either withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of such representation or exercise its right of Suspension, as the case may be, for enabling the Lenders' Representative to exercise the Senior Lenders' right of substitution in accordance with the Substitution Agreement:

Provided that the Lenders' Representative may, instead of exercising the Senior Lenders' right of substitution, procure that the default specified in the notice is cured within the aforesaid period of 180 (one hundred and eighty) days, and upon such curing thereof, the Authority shall withdraw its notice referred to above and restore all the rights of the Mine Operator:

Provided further that upon written request from the Lenders' Representative and the Mine Operator, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by such further period not exceeding 90 (ninety) days, as the Authority may deem appropriate.

## **37.2 Termination for Authority Default**

- 37.2.1 In the event that any of the defaults specified below shall have occurred, and the Authority fails to cure such default within a Cure Period of 90 (ninety) days or such longer period as has been expressly provided in this Agreement, the Authority shall be deemed to be in default of this Agreement (the "**Authority Default**") unless the default has occurred as a result of any breach of this Agreement by the Mine Operator or due to Force Majeure. The defaults referred to herein shall include:

- (a) the Authority commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Mine Operator;
- (b) the Authority has failed to make any payment (to the extent undisputed) which is due and payable to the Mine Operator under this Agreement within the period specified in this Agreement; or
- (c) the Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement.

37.2.2 Without prejudice to any other right or remedy which the Mine Operator may have under this Agreement, upon occurrence of a Authority Default, the Mine Operator shall, subject to the provisions of the Substitution Agreement, be entitled to terminate this Agreement by issuing a Termination Notice to the Authority; provided that before issuing the Termination Notice, the Mine Operator shall by a notice inform the Authority of its intention to issue the Termination Notice and grant 15 (fifteen) days to the Authority to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.

### **37.3 Termination for expiry**

37.3.1 Unless terminated earlier in accordance with Clause 37.1 and Clause 37.2, the Agreement shall be effective for a period of [25 (*twenty five*) years or until the life of the Mine, whichever is shorter] commencing from the Appointed Date or such further period as mutually extended by the Parties in accordance with Clause 3.1.1 of this Agreement.

37.3.2 Within [30 (thirty) days] from the expiry of the term of the Agreement, as set out in Clause 37.3.1, the Mine Operator shall intimate to the Authority the date on which the Agreement is set to expire through issuance of a Termination Notice. The Agreement shall stand terminated effective from the date set out in the Termination Notice.

### **37.4 Termination Payment**

37.4.1 Upon Termination on account of a Mine Operator Default or Force Majeure during the Operation Period, the Authority shall purchase from the Mine Operator the following assets and pay to the Mine Operator by way of Termination Payment, an amount equal to:

- (a) the Depreciated Value of the Capital Works; and
- (b) the Depreciated Value of the Project Specific Assets.

37.4.2 Upon termination on account of an Authority Default during the Operation Period, the Authority shall purchase from the Mine Operator the following assets and pay to the Mine Operator by way of Termination Payment, an amount equal to:

- (a) the Depreciated Value of the Capital Works;

- (b) the Depreciated Value of the Project Specific Assets; and
  - (c) an amount equivalent to 4 (four) times the Mining Charge due and payable for and in respect of the month immediately preceding the month in which the Termination Notice is issued.
- 37.4.3 Upon Termination on account of expiry of the Agreement, as specified in Clause 37.3 above, no Termination Payment shall be payable by the Authority to the Mine Operator. On Transfer date (upon termination in terms of Clauses 37.1/37.2/37.3), all the movable equipment/ machineries (including heavy earth moving machineries, vehicles) deployed by the Mine Operator shall be taken away from the Mines by the Mine Operator.
- 37.4.4 Notwithstanding anything to the contrary in this Clause 37, the Mine Operator acknowledges, agrees and undertakes that:
- (a) the Authority shall not be obligated to purchase from the Mine Operator any Capital Works and/ or Project Specific Assets or pay the Depreciated Value of any Capital Works and/or Project Specific Assets to the Mine Operator unless the Mine Operator has a valid, clear and marketable title to such Capital Works and Project Specific Assets, free and clear of all Encumbrances;
  - (b) no Termination Payment shall be made by the Authority to the Mine Operator in respect of any Moving Equipment or other movable assets (including but not limited to heavy earth moving machineries) used by the Mine Operator at the Mines;
  - (c) in the event the Mine Operator enters into any financing agreements or arrangements (including hire purchase) with respect to, or which affect, any of the Capital Works and/ or Project Specific Assets, the Mine Operator shall ensure that the financier or lender under such financing agreement or arrangement expressly recognises and accepts the preferential right of the Authority to purchase the Capital Works and the Project Specific Assets (as the case may be); and
  - (d) no Termination Payment shall be due and payable prior to COD.
  - (e) on the Transfer Date (on account of Termination in terms of Clause 37.1, Clause 37.2 or Clause 37.3), the Mine Operator shall remove all the Moving Equipment and other movable assets (including but not limited to heavy earth moving machineries, vehicles) deployed at the Mines by the Mine Operator.
- 37.4.5 Termination Payment shall be due and payable to the Mine Operator within 30 (thirty) days of acceptance of demand being made by the Mine Operator to the Authority with the necessary particulars, and in the event of any delay, the Authority shall pay interest at the MCLR of State Bank of India on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days; provided further that, the Authority shall not be required to make any Termination Payment until the Mine Operator has complied with the Divestment Requirements and has delivered to the Authority possession of the Capital Works and Project Specific Assets in good working order and free and clear of all Encumbrances, to the satisfaction of the

Authority. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Authority of its obligations hereunder.

- 37.4.6 The Mine Operator expressly agrees that Termination Payment under this Article 37 shall constitute a full and final settlement of all claims of the Mine Operator on account of Termination of this Agreement for any reason whatsoever and that the Mine Operator or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

## **37.5 Other rights and obligations of the Authority**

- 37.5.1 Upon Termination for any reason whatsoever, the Authority shall:

- (a) take possession and control of the Mines forthwith;
- (b) subject to the provisions of Clause 37.4, take possession and control of all materials, stores, implements, construction plants and equipment on or about the Site;
- (c) be entitled to restrain the Mine Operator and any person claiming through or under the Mine Operator from entering upon the Site or any part of the Project;
- (d) require the Mine Operator to comply with the Divestment Requirements set forth in Clause 38.1; and
- (e) succeed upon election by the Authority, without the necessity of any further action by the Mine Operator, to the interests of the Mine Operator under such of the Project Agreements as the Authority may deem appropriate, and shall upon such election be liable to the Contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the Authority elects to succeed to the interests of the Mine Operator. For the avoidance of doubt, the Mine Operator acknowledges and agrees that all sums claimed by such Contractors as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date of election by the Authority shall constitute debt between the Mine Operator and such Contractors, and the Authority shall not in any manner be liable for such sums. It is further agreed that in the event the Authority elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Authority for this purpose shall be deducted from the Termination Payment.

- 37.5.2 Upon Termination in terms of Clause 37.3, the Authority shall have the right, but not an obligation, to take over the Project Specific Assets and any other tangible assets (such as civil works and equipment including foundations, embankments, pavements, electrical systems, communication systems, relief centers and administrative offices) from the Mine Operator. In the event, the Authority, in its absolute discretion, elects not to take over such Project Specific Assets or other tangible assets, the Mine Operator shall take all necessary steps for the removal and disposal of the Project Specific Assets and any other tangible assets (such as civil works and equipment including foundations, embankments, pavements, electrical systems, communication systems, relief centers and administrative offices) from the Site.



## **37.6 Survival of rights**

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 37.4, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money, damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments and Divestment Requirements, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

## ARTICLE 38

### DIVESTMENT OF RIGHTS AND INTEREST

#### 38.1 Divestment Requirements

38.1.1 Upon Termination, the Mine Operator shall comply with and conform to the following divestment requirements ("**Divestment Requirements**"):

- (a) notify to the Authority forthwith the location and particulars of all Project Assets;
- (b) deliver forthwith the actual or constructive possession of the Mines and Coal Depot, free and clear of all Encumbrances, save and except to the extent set forth in the Substitution Agreement;
- (c) cure all Project Assets of all defects and deficiencies so that the Mines is compliant with the Maintenance Requirements; provided that in the event of Termination during the Construction Period, all Project Assets shall be handed over on 'as is where is' basis after bringing them to a safe condition;
- (d) cure all Coal of deficiencies so that it is compliant with Specifications and Standards and can be Delivered to the Authority upon payment of Mining Charge for the same;
- (e) deliver and transfer relevant records, reports, Intellectual Property and other licences pertaining to the Mines and its design, engineering, construction, operation and maintenance, including all programmes and manuals pertaining thereto, and complete Drawings as on the Transfer Date. For the avoidance of doubt, the Mine Operator represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for the design, engineering, construction, operation and maintenance of the Mines and shall be assigned to the Authority free of any Encumbrance;
- (f) transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;
- (g) execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Mine Operator in the Project Assets, including manufacturers' warranties in respect of any plant or equipment and the right to receive outstanding insurance claims, to the extent due and payable to the Authority, absolutely unto the Authority or its nominee; and
- (h) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Mine Operator in the Mines, free from all Encumbrances, absolutely unto the Authority or to its nominee.

38.1.2 Subject to the exercise by the Authority of its rights under this Agreement or under any of the Project Agreements to perform or procure the performance by a third party of any of the obligations of the Mine Operator, the Parties shall continue to perform

their obligations under this Agreement, notwithstanding the issuance of any Termination Notice, until the Termination of this Agreement becomes effective in accordance with its terms.

### **38.2 Inspection and cure**

Not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to the effective date of such Termination, the Engineer in charge shall verify, after giving due notice to the Mine Operator specifying the time, date and place of such verification and/or inspection, compliance by the Mine Operator with the Maintenance Requirements, and if required, cause appropriate tests to be carried out at the Mine Operator's cost for this purpose. Defaults, if any, in the Maintenance Requirements shall be cured by the Mine Operator at its cost and the provisions of Article 39 shall apply, *mutatis mutandis*, in relation to curing of defects or deficiencies under this Article 38.

### **38.3 Cooperation and assistance on transfer of Project**

- 38.3.1 The Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth transfer of the Project in accordance with the provisions of this Agreement so as to protect the safety of, and avoid undue delay or inconvenience to the Buyers and other members of the public.
- 38.3.2 The Parties shall provide to each other, immediately in the event of either Party conveying to the other Party its intent to issue a Termination Notice, as the case may be, as much information and advice as is reasonably practicable regarding the proposed arrangements for operation of the Project following the Transfer Date. The Mine Operator shall further provide such reasonable advice and assistance as the Authority or its agent may reasonably require for operation of the Project until the expiry of 6 (six) months after the Transfer Date.

### **38.4 Vesting Certificate**

The divestment of all rights, title and interest in the Mines shall be deemed to be complete on the date when all of the Divestment Requirements have been fulfilled, and the Authority shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth in Schedule-Q (the "**Vesting Certificate**"), which will have the effect of constituting evidence of divestment by the Mine Operator of all of its rights, title and interest in the Mines, and their vesting in the Authority pursuant hereto. It is expressly agreed that any defect or deficiency in the Divestment Requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by the Authority or its nominee on, or in respect of, the Mines on the footing that all Divestment Requirements have been complied with by the Mine Operator.

### **38.5 Divestment costs etc.**

- 38.5.1 The Mine Operator shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Mine Operator in the Project Assets in favour of the Authority upon Termination, save and except that all stamp duties payable on any deeds or Documents executed by the Mine Operator in connection with such divestment shall be borne by the Authority.

38.5.2 In the event of any dispute relating to matters covered by and under this Article 38, the Dispute Resolution Procedure shall apply.

## ARTICLE 39

### DEFECTS LIABILITY AFTER TERMINATION

#### 39.1 Liability for defects after Termination

The Mine Operator shall be responsible for all defects and deficiencies in the Mines for a period of 120 (one hundred and twenty) days after Termination, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Engineer in charge in the Mines during the aforesaid period. In the event that the Mine Operator fails to repair or rectify such defect or deficiency within a period of 30 (thirty) days from the date of notice issued by the Authority in this behalf, the Authority shall be entitled to get the same repaired or rectified at the Mine Operator's risk and cost so as to make the Mines conform to the Maintenance Requirements. All costs incurred by the Authority hereunder shall be reimbursed by the Mine Operator to the Authority within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Authority shall be entitled to recover the same from the funds withheld by the Authority under the provisions of Clause 39.2 or from the Performance Guarantee provided thereunder. For the avoidance of doubt, the provisions of this Article 39 shall not apply if Termination occurs prior to COD.

#### 39.2 Retention

- 39.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 39.2.3, a sum equal to the Mining Charge due and payable for the month immediately preceding the Transfer Date shall be withheld by the Authority for a period of 120 (one hundred and twenty) days after Termination for meeting the liabilities, if any, arising out of or in connection with the provisions of Clause 39.1.
- 39.2.2 Without prejudice to the provisions of Clause 39.2.1, the Engineer in charge shall carry out an inspection of the Mines at any time between 210 (two hundred and ten) and 180 (one hundred and eighty) days prior to the Termination and if it recommends that the status of the Mines is such that a sum larger than the amount stipulated in Clause 39.2.1 should be withheld and/or for a period longer than the aforesaid 120 (one hundred and twenty) days, the amount recommended by the Engineer in charge shall be withheld by the Authority for the period specified by it.
- 39.2.3 The Mine Operator may, for the performance of its obligations under this Article 39, provide to the Authority a guarantee from a Bank for a sum equivalent to the amount determined under Clause 39.2.1 or 39.2.2, as the case may be, and for the period specified therein, substantially in the form set forth in Schedule-F (the "**Performance Guarantee**"), to be modified, *mutatis mutandis*, for this purpose, and the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the required amounts from the Performance Guarantee for undertaking the repairs or rectification at the Mine Operator's risk and cost in accordance with the provisions of this Article 39. Upon furnishing of a Performance Guarantee under this Clause 39.2.3, the amounts withheld by the Authority in terms of Clause 39.2.1 or 39.2.2, as the case may be, shall be released to the Mine Operator to the extent such amounts are due and payable to the Mine Operator in accordance with the terms of this Agreement.

**PART VI**  
**OTHER PROVISIONS**

## **ARTICLE 40**

### **ASSIGNMENT AND CHARGES**

#### **40.1 Restrictions on assignment and charges**

- 40.1.1 Subject to Clauses 40.2 and 40.3, this Agreement shall not be assigned by the Mine Operator to any person, save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.
- 40.1.2 Subject to the provisions of Clause 40.2, the Mine Operator shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Mine Operator is a party except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

#### **40.2 Permitted assignment and charges**

- 40.2.1 The restraints set forth in Clause 40.1 shall not apply to:
- (a) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Mines;
  - (b) mortgages/ pledges/ hypothecation of goods/ assets other than Project Assets and their related documents of title, arising or created in the ordinary course of business of the Mines, and as security only for indebtedness to the Senior Lenders under the Financing Agreements and/or for working capital arrangements for the Mines.
  - (c) assignment of rights, interest and obligations of the Mine Operator to or in favour of the Lenders' Representative as nominee and for the benefit of the Senior Lenders, to the extent covered by and in accordance with the Substitution Agreement as security for financing provided by Senior Lenders under the Financing Agreements; and
  - (d) liens or Encumbrances required by any Applicable Law.
- 40.2.2 Notwithstanding anything to the contrary contained in this Agreement, the Mine Operator may mortgage the Moving Equipment to its lenders by way of security for any loan extended by them for acquisition of such Moving Equipment.

#### **40.3 Substitution Agreement**

- 40.3.1 Upon the occurrence of a Mine Operator Default or a Financial Default (as defined in the Substitution Agreement), the Lenders' Representative, on behalf of Senior Lenders, may, with the consent of the Authority, exercise the right to substitute the Mine Operator pursuant to the agreement for substitution of the Mine Operator (the "**Substitution Agreement**") to be entered into amongst the Mine Operator, the Authority and the Lenders' Representative, on behalf of Senior Lenders, substantially in the form set forth in Schedule-R.

40.3.2 Upon substitution of the Mine Operator under and in accordance with the Substitution Agreement, the Nominated Company shall be deemed to be the Mine Operator under this Agreement and shall enjoy all rights and be responsible for all obligations of the Mine Operator under this Agreement as if it were the original Mine Operator; provided that where the Mine Operator is in breach of this Agreement on the date of such substitution, the Authority shall by notice grant a Cure Period of 120 (one hundred and twenty) days to the Nominated Company for curing such breach.

#### **40.4 Assignment by the Authority**

Notwithstanding anything to the contrary contained in this Agreement, the Authority may, after giving 60 (sixty) days' notice to the Mine Operator, assign and/ or transfer any of its rights and benefits and/or obligations under this Agreement to an assignee who is, in the reasonable opinion of the Authority, capable of fulfilling all of the Authority's then outstanding obligations under this Agreement and has the financial standing necessary for this purpose.

#### **40.5 Approvals for assignment**

Any assignment under this Article 40 shall be subject to the approvals and consents required therefor under Applicable Laws. Provided, however, that the grant of any consent or approval under Applicable Laws shall not oblige the Authority to grant its approval to such assignment, save and except as provided herein.



## **ARTICLE 41**

### **CHANGE IN LAW**

#### **41.1 Increase in costs**

If as a result of Change in Law, the Mine Operator suffers an increase in costs or financial burden, the aggregate financial effect of which exceeds the higher of [Rs. 50,00,000/- (Rupees Fifty Lakhs only)] and [0.1% (zero point one per cent)] of the total Mining Charge payable during any Accounting Year, the Mine Operator may so notify the Authority and propose amendments to this Agreement so as to compensate the Mine Operator the increased costs or financial burden as aforesaid. Provided that, the Mine Operator's notification to the Authority and proposal to amend this Agreement shall be supported by clear evidence of the quantum of the increased costs, or financial burden, as the case may be, and a direct co-relation between such increased costs, or financial burden, as the case may be, and the Change in Law. Upon notice by the Mine Operator, the Parties shall meet, as soon as reasonably practicable, but no later than 30 (thirty) days from the date of notice, and either agree on amendments to this Agreement or on any other mutually agreed arrangement.

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Mine Operator may by written notice require the Authority to pay an amount to compensate the increased costs or financial burden and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Authority shall pay the amount specified therein; provided that if the Authority shall dispute such claim of the Mine Operator, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 41.1 shall be restricted to Changes in Law directly affecting the Mine Operator's costs of performing its obligations under this Agreement.

#### **41.2 Reduction in costs**

If as a result of Change in Law, the Mine Operator benefits from a reduction in costs or financial gains, the aggregate financial effect of which exceeds the higher of [Rs. 50,00,000/- (Rupees Fifty Lakh only)] and [0.1% (zero point one per cent)] of the total Mining Charge payable during any Accounting Year, the Authority may so notify the Mine Operator and propose amendments to this Agreement so as to pass on the decreased costs or financial gains to the Mine Operator as aforesaid. Upon notice by the Authority, the Parties shall meet, as soon as reasonably practicable, but no later than 30 (thirty) days from the date of notice, and either agree on such amendments to this Agreement or on any other mutually agreed arrangement.

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Authority may by notice require the Mine Operator to pay an amount equivalent to the decreased cost or financial gains as aforesaid, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Mine Operator shall pay the amount specified therein to the Authority or such specified amount shall be adjusted from the amount payable to the Mine Operator under this Agreement; provided that if the Mine Operator shall dispute such claim of the Authority, the same shall be settled in accordance with the Dispute Resolution

Procedure. For the avoidance of doubt, it is agreed that this Clause 41.2 shall be restricted to Changes in Law directly affecting the Mine Operator's costs of performing its obligations under this Agreement.

### **41.3 Procedure for adjustment**

In the event the Mine Operator is required to pay an amount in excess of the stipulated threshold (as mentioned in Clause 41.1) due to a Change in Law or imposition of directives by Coal India Limited or by any Government Instrumentality, such excess amount paid by the Mine Operator shall be reimbursed by the Authority, where such payment is a one-time payment by the Mine Operator. In the event such excess amount payable by the Mine Operator is of a recurring nature, such amount shall be included within the Mining Charge payable by the Authority.

In the event the Mine Operator benefits from a reduction in costs or increase financial gains, in excess of the stipulated threshold (as mentioned in Clause 41.2) due to a Change in Law or imposition of directives by Coal India Limited or by any Government Instrumentality, such excess amount gained by the Mine Operator shall be payable to the Authority, where such financial gain is a one-time. In the event such excess amount payable by the Mine Operator is of a recurring nature, such amount shall be adjusted against the Mining Charge payable by the Authority.

If any change in a particular component of the Mining Charge due to a Change in Law is not captured by the respective index already listed in Price Index (as defined in Clause 47.1.1), then the adjusted Mining Charge shall be decided on the basis of percentage of component of cost given in Price Index (as defined in Clause 47.1.1) and the effect on the component due to Change in Law.

It is hereby clarified that disputed amount, if any, under this clause 41.3 shall be decided as per the provisions given in Clause 29.2 of this Agreement.

### **41.4 Restriction on compensation**

The Parties acknowledge and agree that the demand for compensation under this Article 41 shall be restricted to the effect of Change in Law during the respective Accounting Year and shall be made at any time after commencement of such year, but no later than 1 (one) year from the close of such Accounting Year. Any demand for compensation payable for and in respect of any subsequent Accounting Year shall be made after the commencement of the Accounting Year to which the demand pertains, but no later than 2 (two) years from the close of such Accounting Year.

## ARTICLE 42

### LIABILITY AND INDEMNITY

#### 42.1 General indemnity

42.1.1 The Mine Operator will indemnify, defend, save and hold harmless the Authority and its officers, servants, agents, Government Instrumentalities and Authority owned and/or controlled entities/enterprises, (the "**Authority Indemnified Persons**") against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach or default by the Mine Operator of any of its obligations under this Agreement or any related agreement or on account of any defect or deficiency in the provision of services to the Authority or from any negligence of the Mine Operator under any contract or tort or on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Agreement on the part of the Authority Indemnified Persons.

42.1.2 The Authority will indemnify, defend, save and hold harmless the Mine Operator against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature arising out of (a) defect in title and/or the rights of the Authority in the land comprised in the Site, and/or (b) breach by the Authority of any of its obligations under this Agreement or any related agreement, which materially and adversely affect the performance by the Mine Operator of its obligations under this Agreement, save and except that where any such claim, suit, proceeding, action, and/or demand has arisen due to a negligent act or omission, or breach of any of its obligations under any provision of this Agreement or any related agreement and/or breach of its statutory duty on the part of the Mine Operator, its subsidiaries, representatives, affiliates, Contractors, servants or agents, the same shall be the liability of the Mine Operator.

#### 42.2 Indemnity by the Mine Operator

42.2.1 Without limiting the generality of Clause 42.1, the Mine Operator shall fully indemnify, hold harmless and defend the Authority and the Authority Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

- (a) failure of the Mine Operator to comply with Applicable Laws and Applicable Permits;
- (b) payment of Taxes required to be made by the Mine Operator in respect of the income or other Taxes of the Mine Operator's Contractors, suppliers and representatives; or
- (c) non-payment of amounts due as a result of materials or services furnished to the Mine Operator or any of its Contractors which are payable by the Mine Operator or any of its Contractors.

42.2.2 Without limiting the generality of the provisions of this Article 42, the Mine Operator shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other Intellectual Property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Mine Operator or by the Mine Operator's Contractors in performing the Mine Operator's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Mine Operator shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Mines, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Mine Operator shall promptly make every reasonable effort to secure for the Authority a licence, at no cost to the Authority, authorising continued use of the infringing work. If the Mine Operator is unable to secure such licence within a reasonable time, the Mine Operator shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non - infringing work or part or process, or modify the same so that it becomes non-infringing.

42.2.3 [As per the terms of allotment agreement, dated [\*\*\*\*\*] entered into by the Authority with the Government of India in relation to the Project land, the Authority is required to make upfront payment totaling to Rs. [\*\*\*\*\*] at various stages of the Construction Period and Operation Period and also required to submit a performance security amounting to Rs. [\*\*\*\*\*] to the Government of India, which is liable to be forfeited/ appropriated by Government of India in accordance with the terms of allotment agreement.

If such forfeiture/ appropriation of performance security of the Authority is due to reasons attributable to the Mine Operator, the aforesaid liability, to the extent appropriated by the Government of India, the Authority shall have a right to recover such amounts (a) from the amount payable to Mine Operator under this Agreement and/or; (b) by encashment/ appropriation of the Performance Security and/or performance guarantee pursuant to the Joint Operating Agreement furnished by the Mine Operator.]<sup>11</sup>

### 42.3 Notice and contest of claims

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 42 (the "**Indemnified Party**") it shall notify the other Party (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

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<sup>11</sup> Retain the clause 42.2.3 if allotment agreement with the Government of India in relation to the Project land is entered into by the Authority. Delete if not applicable.

## **42.4 Defense of claims**

- 42.4.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 42, the Indemnifying Party shall be entitled to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.
- 42.4.2 If the Indemnifying Party has exercised its rights under Clause 42.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).
- 42.4.3 If the Indemnifying Party exercises its rights under Clause 42.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:
- (a) the employment of counsel by such party has been authorised in writing by the Indemnifying Party;
  - (b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action;
  - (c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence of such action and shall have been so notified by the Indemnified Party; or
  - (d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:
    - (i) that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or
    - (ii) that such claim, action, suit or proceeding involves or could have a Material Adverse Effect upon it beyond the scope of this Agreement:

Provided that if sub-clauses (b), (c) or (d) of this Clause 42.4.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the

reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

#### **42.5 No consequential claims**

Notwithstanding anything to the contrary contained in this Article 42, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

#### **42.6 Survival on Termination**

The provisions of this Article 42 shall survive Termination.

## **ARTICLE 43**

### **RIGHTS TO WORK AT THE SITE**

#### **43.1 Rights to Work at the Site**

For the purpose of this Agreement, the Mine Operator shall have rights to the use of the Site in accordance with this Agreement, and to this end, it may regulate the entry and use of the Mines by third parties in accordance with and subject to the provisions of this Agreement.

#### **43.2 Access rights of the Authority and others**

43.2.1 The Mine Operator shall allow free access to the Site at all times for the authorised representatives of the Authority, Senior Lenders and the Engineer in charge, and for the persons duly authorised by any Government Instrumentality to inspect the Mines and to investigate any matter within their authority, and upon reasonable notice, the Mine Operator shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.

43.2.2 The Mine Operator shall, for the purpose of operation and maintenance of any utility or road specified in Article 11, allow free access to the Site at all times for the authorised persons and vehicles of the controlling body of such utility or road.

#### **43.3 Property Taxes**

All property Taxes on the Site shall be payable by the Authority as owner of the Site; provided, however, that any such Taxes payable by the Mine Operator under Applicable Laws for use of the Site shall not be reimbursed or payable by the Authority.

#### **43.4 Restriction on sub-license or sub-letting**

The Mine Operator shall not sub-license or sub-let the whole or any part of the Site, save and except as may be expressly set forth in this Agreement; provided that nothing contained herein shall be construed or interpreted as restricting the right of the Mine Operator to appoint Contractors for sub-contracting/novation of its rights/obligations in relation to any work involving use of Site, under this Agreement. For avoidance of doubt, it is hereby clarified that any sub-license or sub-let as provided in this Clause 43.4 shall not relieve the Mine Operator from any obligation, duty or responsibility under this Agreement.

#### **43.5 Restriction on sub-contracting or novation**

43.5.1 The Mine Operator shall not subcontract or novate any of its rights or obligations under this Agreement save and except as provided in Clause 43.5.2 below.

43.5.2 The Mine Operator shall not sub-contract and/or novate its rights or obligation under this Agreement in relation to any work (in part or full) without the prior written approval of the Authority. Notwithstanding the above, under no circumstances, sub-contracting/novation of: (a) Overburden removal shall exceed 15% (fifteen per cent)

of the Scheduled Overburden Quantity; and (b) Coal excavation shall exceed 15% (fifteen per cent) of the Annual Capacity for each Accounting Year.

The Mine Operator shall ensure that such sub-contracting is not made to an entity or person which is incorporated, established or registered in any country which shares a land border with India or whose beneficial owner is situated in such a country or who otherwise complies with all the rules and regulations prescribed by the Government of India in this regard, including but not limited to General Financial Rules, 2017 read with the OM no. F.No.6/18/2019-PPD dated 23 July 2020 issued by the Public Procurement Division, Department of Expenditure, Ministry of Finance, Government of India.

For avoidance of doubt, it is hereby clarified that nothing contained herein shall be construed or interpreted as restricting the right of the Mine Operator to hire any Equipment/vehicles or sub-contract/ novate its rights/obligations in relation to any work with prior written approval of the Authority, in accordance with this Clause 43.5, save and except work pertaining to Overburden removal and Coal excavation.



## **ARTICLE 44**

### **DISPUTE RESOLUTION**

#### **44.1 Dispute resolution**

- 44.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under, or out of, or in relation, to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the "**Dispute**") shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 44.2.
- 44.1.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other non-privileged records, information and data pertaining to any Dispute.

#### **44.2 Conciliation**

- 44.2.1 In the event of any dispute or differences arising directly or indirectly out of this Agreement or otherwise, the Parties undertake to use all reasonable endeavours to resolve such disputes amicably. In this regard, if the dispute is raised by the Mine Operator, it shall make a request in writing to the Engineer in charge for settlement of such disputes/ claims within 30 (thirty) days of arising of the cause of dispute/ claim failing which no disputes/ claims of the Mine Operator shall be entertained by the Authority.
- 44.2.2 If the disputes cannot be settled amicably, the disputes shall be taken for resolution in the manner as set out below:
- (a) In case of dispute arising in relation to the commercial contracts with central public sector enterprises ("CPSEs")/ Government departments (excluding disputes concerning railways, income tax, customs and excise departments) shall be taken up by either Party for its resolution through AMRCD or such other mechanism as may be provided under the Applicable Laws; and
  - (b) In case of any other dispute not covered in sub-clause (a) above, the resolution of dispute shall take place through arbitration mechanism as provided in Clause 44.3 below.

#### **44.3 Arbitration**

- 44.3.1 In the event of any question, dispute or difference arising under the terms and conditions or interpretation of the terms of, or in connection with this Agreement (except as to any matter the decision of which is specially provided for by these conditions), the same shall be submitted to arbitration to be conducted in accordance with the Arbitration and Conciliation Act, 1996.
- 44.3.2 There shall be an arbitral tribunal comprising 3 (three) arbitrators, of whom each Party shall select 1 (one), and the third arbitrator shall be appointed by the 2 (two) arbitrators

so selected, and in the event of disagreement between the 2 (two) arbitrators, the appointment shall be made in accordance with the Arbitration and Conciliation Act, 1996.

- 44.3.3 In the event any of the arbitrator(s), so appointed pursuant to Clause 44.3.2, dies or neglects or refuses to act or resigns or is unable to act for any reason, such arbitrator shall be replaced with another arbitrator, who shall be appointed by the concerned party in accordance with Clause 44.3.2.
- 44.3.4 The arbitral tribunal shall make a reasoned award (the "Award"). Any Award made in any arbitration held pursuant to this Article 44 shall be final and binding on the Parties as from the date it is made, and the Mine Operator and the Authority agree and undertake to carry out such Award without delay.
- 44.3.5 The Mine Operator and the Authority agree that an Award may be enforced against the Mine Operator and/or the Authority, as the case may be, and their respective assets wherever situated.
- 44.3.6 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

#### **44.4 Adjudication by a tribunal**

In the event of constitution of a statutory tribunal with powers to adjudicate upon disputes between the Mine Operator and the Authority, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 44.3, be adjudicated upon by such tribunal in accordance with Applicable Laws and all references to Dispute Resolution Procedure shall be construed accordingly.

## ARTICLE 45

### DISCLOSURE

#### 45.1 Disclosure of Specified Documents

The Mine Operator shall make available for inspection by any person, copies of this Agreement, the Maintenance Manual, the Maintenance Programme, the Maintenance Requirements and the Safety Requirements (hereinafter collectively referred to as the "**Specified Documents**"), free of charge, during normal business hours on all working days at the Mine Operator's registered office and the Mines and shall provide copies of the same to any person upon payment of copying charges on a 'no profit no loss' basis.

#### 45.2 Disclosure of Documents relating to safety

The Mine Operator shall make available for inspection by any person copies of all Documents and data relating to safety of the Mines, free of charge, during normal business hours on all working days, at the Mine Operator's registered office and the Mines. The Mine Operator shall make copies of the same available to any person upon payment of copying charges on a 'no profit no loss' basis.

#### 45.3 Withholding disclosure of Protected Documents

Notwithstanding the provisions of Clauses 45.1 and 45.2, but subject to Applicable Laws, the Authority shall be entitled to direct the Mine Operator, from time to time, to withhold the disclosure of Protected Documents (as defined herein below) to any person in pursuance of the aforesaid Clauses.

*Explanation:*

The expression "**Protected Documents**" shall mean such of the Specified Documents or documents referred to in Clauses 45.1 and 45.2, or portions thereof, the disclosure of which the Authority is entitled to withhold under the provisions of the Right to Information Act, 2005, as amended from time to time.

## **ARTICLE 46**

### **MISCELLANEOUS**

#### **46.1 Governing law and jurisdiction**

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and, subject to Clause 44.3, the courts at [\*\*\*\*]<sup>12</sup> shall have exclusive jurisdiction over all matters arising out of or relating to this Agreement.

#### **46.2 Waiver of immunity**

Each Party unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Party with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally, in respect of the enforcement of any judgment or award against it in any such proceedings and to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgment that may be made or given in connection therewith).

#### **46.3 Depreciation**

For the purposes of depreciation under Applicable Laws, the property representing the capital investment made by the Mine Operator in the Project Assets shall be deemed to be acquired and owned by the Mine Operator. For the avoidance of doubt, it is hereby clarified that the Authority shall not in any manner be liable in respect of any claims for depreciation to be made by the Mine Operator under Applicable Laws.

#### **46.4 Delayed Payment**

- 46.4.1 The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. Unless otherwise specified in this Agreement, in the event of delay beyond such period, the defaulting Party shall pay interest for the period of

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<sup>12</sup> Either one of these places or the capital of the State in which the Authority's headquarter is situate may be specified

delay calculated at the MCLR of State Bank of India and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

- 46.4.2 Unless otherwise specified, any interest payable under this Agreement shall accrue on daily outstanding basis and shall be compounded on the basis of quarterly rests.

## **46.5 Waiver**

- 46.5.1 Waiver, including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof, or of other provisions of, or obligations, under this Agreement;
- (b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

- 46.5.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

## **46.6 Liability for review of Documents and Drawings**

Except to the extent expressly provided in this Agreement:

- (a) no review, comment or approval by the Authority or the Engineer in charge of any Project Agreement, Document or Drawing submitted by the Mine Operator nor any observation or inspection of the construction, operation or maintenance of the Mines nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Mine Operator from its obligations, duties and liabilities under this Agreement, Applicable Laws and Applicable Permits; and
- (b) the Authority shall not be liable to the Mine Operator by reason of any review, comment, approval, observation or inspection referred to in sub-clause (a) above.

## **46.7 Exclusion of implied warranties etc.**

This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties or any representation by either Party not contained in a binding legal agreement executed by both Parties.

## **46.8 Survival**

### **46.8.1 Termination shall:**

- (a) not relieve the Mine Operator or the Authority, as the case may be, of any obligations hereunder which expressly or by implication survive Termination hereof; and
- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

46.8.2 All obligations surviving Termination shall only survive for a period of 3 (three) years following the date of such Termination.

## **46.9 Entire Agreement**

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn. For the avoidance of doubt, the Parties hereto agree that any obligations of the Mine Operator arising from the Request for Bid shall be deemed to form part of this Agreement and treated as such.

## **46.10 Severability**

If for any reason whatever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure set forth under this Agreement or otherwise.

## **46.11 No partnership**

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, or to impose any partnership obligation or liability upon either Party, and neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

## **46.12 Third parties**

This Agreement is intended solely for the benefit of the Parties, and their respective successors and permitted assigns, and nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, any person not a Party to this Agreement.

## **46.13 Successors and assigns**

This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns.

## **46.14 Notices**

Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing and shall:

- (a) in the case of the Mine Operator, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for the attention of the person set out below or to such other person as the Mine Operator may from time to time designate by notice to the Authority; provided that notices or other communications to be given to an address outside the city specified in this sub-clause (a) may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, or by courier, be sent by facsimile or e-mail as the Mine Operator may from time to time designate by notice to the Authority:  
Attention:  
{Designation:  
Address:  
Fax No:  
Email: }
- (b) in the case of the Authority, be given by facsimile or e-mail and by letter delivered by hand at the address given and marked to the attention of the person set out below with a copy delivered to the Authority Representative or such other person as the Authority may from time to time designate by notice to the Mine Operator; provided that if the Mine Operator does not have an office in the same city as the Authority, it may send such notice by facsimile or e-mail and by registered acknowledgement due, or by courier:  
Attention:  
{Designation:  
Address:  
Fax No:  
Email: }; and
- (c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date of delivery; provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working day following the date of its delivery.

## **46.15 Language**

All notices required to be given by one Party to the other Party and all other communications, Documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.

## **46.16 Counterparts**

This Agreement may be executed in two counterparts, each of which, when executed and delivered, shall constitute an original of this Agreement.

## **46.17 Limitation of Liability**

46.17.1. Unless otherwise specifically provided, the aggregate liability of each Party shall be determined in the following manner:

(a) During the Construction Period:

For any Accounting Year prior to COD the aggregate liability of each Party shall be limited to Rs.  $[0.10] \times \text{Total Project Cost}$ .

(b) During the Operation Period

For any Accounting Year after COD the aggregate liability of each Party shall be limited to Rs.  $[0.30] \times \text{Mining Charge} \times \text{Contracted Capacity}$ .

It is hereby further clarified that the aggregate liability in (a) & (b) above during any Accounting Year shall not be cumulated in the succeeding Accounting Year.

(c) Upon Termination

Upon the Termination pursuant to Clause 37 of this Agreement, the aggregate liability of each Party shall be limited to:

- (i) occurrence of Termination prior to COD: Rs.  $[0.10] \times \text{Total Project Cost}$ ; and
- (ii) occurrence of Termination post COD: Rs.  $[0.30] \times \text{Mining Charge} \times \text{Contracted Capacity}$ .

46.17.2. Notwithstanding the provisions of Clause 46.17.1 above, there shall not be any limitation of liability for the following:

- (a) the indemnity and other payment obligations of the Mine Operator pursuant to Clause 42.2; and
- (b) circumstances where the default is attributable to a Party's gross negligence, willful misconduct or fraudulent actions.

46.17.3. It is hereby clarified that during the period prior to the COD, the aforesaid limitation of liability upon Termination (as set out in Clause 46.17.1(c)) shall not preclude the right of the Authority to recover the expenditure incurred by it on any construction made in relation to or in connection with the Project, if any, from the Mine Operator.



## ARTICLE 47

### DEFINITIONS

#### 47.1 Definitions

- 47.1.1 In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

"**Accounting Year**" shall mean the financial year commencing from the first day of April of any calendar year and ending on the thirty-first day of March of the next calendar year, *provided that*, the first Accounting Year shall commence from the Appointed Date and end on the thirty-first day of March of the next calendar year and the last Accounting Year shall commence on the first day of April of the calendar year during which the Transfer Date occurs and shall end on the Transfer Date;

"**Actual Production**" shall have the meaning set forth in Clause 21.5;

"**Actual Stripping Ratio**" shall have the meaning set forth in Clause 28.1.2

"**Additional Auditors**" shall have the meaning set forth in Clause 33.2.3;

"**Additional Capacity**" shall have the meaning set forth in Clause 28.2.1;

"**Affected Party**" shall have the meaning set forth in Clause 34.1;

"**Agent**" shall have the same meaning ascribed to such term in the Mines Act, 1952;

"**Aggregate Damages**" shall have the meaning set forth in Clause 25.3.3;

"**Aggregate Incentive**" shall have the meaning set forth in Clause 25.3.2;

"**Agreement**" shall have the meaning set forth in Recital (A);

"**AMRCD**" shall mean 'Administrative Mechanism for Resolution of CPSEs Disputes' as provided in office memorandum bearing number F. No. 4(1)/2013-DPE(GM)/FTS-1835 dated 22 May 2018 issued by Ministry of Heavy Industries & Public Enterprises, Department of Public Enterprises, Government of India;

"**Annual Capacity**" shall have the meaning set forth in Clause 21.2.1;

"**Annual Production Programme**" shall have the meaning set forth in Clause 21.2.1;

"**Annual Safety Report**" shall have the meaning set forth in Clause 17.4.1;

"**Applicable Laws**" shall mean all laws, brought into force and effect by Government of India or the Government of any State, including rules, regulations and notifications made thereunder, and judgments, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement;

**"Applicable Permits"** shall mean all clearances, licences, permits, authorisations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the construction, operation and maintenance of the Mines during the subsistence of this Agreement;

**"Appointed Date"** shall have the meaning set forth in Clause 4.1.6;

**"Associate"** shall mean, in relation to either Party {and/or Consortium Members}, a person who controls, is controlled by, or is under the common control with such Party {or Consortium Member} (as used in this definition, the expression "control" means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person or the power or right to appoint a majority of directors on the board of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise);

**"Auditors"** shall mean a firm of chartered accountants chartered accountants /cost accountants acting as the auditors of the Mine Operator under the provisions of the Companies Act, 2013, including any re-enactment or amendment thereof, for the time being in force, and appointed in accordance with Clause 33.2.1;

**"Authority Default"** shall have the meaning set forth in Clause 37.2.1;

**"Authority Indemnified Persons"** shall have the meaning set forth in Clause 42.1.1;

**"Authority Representative"** shall mean such person or persons as may be authorised in writing by the Authority to act on its behalf under this Agreement and shall include any person or persons having authority to exercise any rights or perform and fulfill any obligations of the Authority under this Agreement;

**"Average Daily Mining Charge"** shall mean the amount arrived at by dividing the total Mining Charge due and payable for the immediately preceding Accounting Year by 365 (three hundred and sixty five), and increasing the quotient thereof by 5% (five per cent); provided that the Average Daily Mining Charge for any period prior to completion of the first Accounting Year following COD shall be a simple average of the Mining Charge due and payable with respect to every day during the period between COD and the last day of the month preceding the date on which the event requiring calculation hereof occurred, and in the event that the Mining Charge payable for any segment of the Mines has not been realised for any reason, an assessment thereof shall be made by the Engineer in charge to form part of the Average Daily Mining Charge for such period;

**"Award"** shall have the meaning set forth in Clause 44.3.3;

**"Bank"** shall mean a scheduled commercial public sector undertaking (PSU) bank or a private commercial bank with net worth over Rs.300 billion (Rupees three hundred billion only) as listed under second schedule to the Reserve Bank of India Act, 1934, and acceptable to Senior Lenders, but does not include a bank in which any Senior Lender has an interest.

**"Base Mining Charge"** shall have the meaning set forth in Clause 28.1.1;

**"Bid"** shall mean the documents in their entirety comprised in the bid submitted by the selected Bidder in response to the Request for Bid in accordance with the provisions thereof and **"Bids"** shall mean the bids submitted by any and all pre-qualified Bidders;

**"Bid Date"** shall mean the last date on which the Bid may have been submitted in accordance with the provisions of the Request for Bid;

**"Bidder"** shall have the meaning set forth in the RFB.

**"Bid Security"** shall mean the security provided by the {selected Bidder/ Consortium Member} to the Authority along with the Bid of a sum of Rs. [\*\*\*\*] (Rupees [\*\*\*\*] crores only)<sup>13</sup>, in accordance with the Request for Bid, and which is to remain in force until substituted by the Performance Security;

**"Buyer(s)"** shall mean the third parties buying Coal from the Mines, in accordance with the provisions of this Agreement and Applicable Laws;

**"Capital Works"** shall mean the Construction Works described in Annex-IV of Schedule B, the capital cost of which is provided by the Mine Operator;

**"Change in Law"** shall mean the occurrence of any of the following after the Bid Date, to the extent such occurrence was not reasonably foreseeable by the Parties prior to the Bid Date:

- (a) the enactment of any new Indian law;
- (b) the repeal, modification or re-enactment of any existing Indian law;
- (c) a change in the interpretation or application of any Indian law by a judgement of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the Bid Date; or
- (d) any change in the rates of any of the Taxes that have a direct effect on the Project;

**"Change in Ownership"** shall mean a transfer of the direct and/ or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the {selected Bidder/Consortium Members}, together with {its/their} Associates in the total Equity to decline below (a)75% (seventy five per cent) thereof during the Construction Period and until the 2<sup>nd</sup> (second) anniversary of COD, and (b) 26% (twenty six per cent) thereof, or such lower proportion as may be permitted by the Authority during the remainder of the Contract Period; provided that any material variation (as compared to the representations made by the {selected Bidder/Consortium Members} during the bidding process for the purposes of meeting the minimum conditions of eligibility or for evaluation of {its/ their} application or Bid, as the case may be,) in the proportion of the equity holding of {the selected Bidder/ any Consortium Member} to the total Equity, if it occurs prior to COD, shall constitute Change in Ownership;

**"Change of Scope"** shall have the meaning set forth in Clause 15.1.1;

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<sup>13</sup> This amount shall normally be equal to the amount specified in the Request for Bid and may be calculated @2% (one per cent) of the amount specified in the definition of Total Project Cost limited to Rs. 2.0 crore.

**"Change of Scope Notice"** shall have the meaning set forth in Clause 15.2.1;

**"Change of Scope Order"** shall have the meaning set forth in Clause 15.2.3;

**"Coal"** shall mean a fossilized solid fuel of vegetative origin;

**"Coal Depot"** shall have the meaning set forth in Clause 22.1.1;

**"Coal Handling Plant"** shall mean the coal handling plant as described in Annex-I of Schedule B of this Agreement;

**"Coal Seam"** shall have the meaning ascribed to it in the Mining Plan;

**"Coal Tests"** shall mean the tests set forth in Schedule-M to determine the conformity of Coal with the provisions of this Agreement;

**"COD"** or **"Commercial Operation Date"** shall have the meaning set forth in Clause 14.2.1;

**"Completion"** shall have the meaning as set forth in Clause 14.3.1;

**"Completion Certificate"** shall have the meaning as set forth in Clause 14.3.1;

**"Conditions Precedent"** shall have the meaning set forth in Clause 4.1.1;

{ **"Consortium"** shall have the meaning set forth in Recital (C); }

{ **"Consortium Member"** shall mean a company specified in Recital (C) as a member of the Consortium; }

**"Construction Period"** shall mean the period beginning from the Appointed Date and ending on COD;

**"Construction Works"** shall mean all excavation works and things necessary to develop the Mines in accordance with this Agreement [and includes the Rail Track];

**"Contract Period"** shall mean the period starting on and from the Appointed Date and ending on [25<sup>th</sup> (twenty fifth) or life of the Mine, whichever is shorter]<sup>14</sup> anniversary of the Appointed Date or the date of termination of the Agreement.

**"Contracted Capacity"** shall have the meaning set forth in Clause 21.2.1;

**"Contractor"** shall mean the person or persons, as the case may be, with whom the Mine Operator has entered into any EPC Contract, O&M Contract or any other material agreement or contract for construction, operation and/or maintenance of the Mines or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Mine Operator;

**"Covenant"** shall have the meaning set forth in Clause 5.2.5;

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<sup>14</sup> The Contract Period should normally be fixed for a sufficiently long period, as a longer Contract Period will enable the Contractor to optimise on costs, including life cycle costs of HEMM, and thereby offer a lower Mining Charge to the Authority. However, the likelihood of significant geological surprises may, in some cases, require a comparatively shorter period and in such cases, the Authority may, in its discretion, fix a shorter Contract Period having regard to project-specific conditions.

"**CPI (IW)**" shall mean the consumer price index for industrial workers as published by the Labour Bureau, Government of India and shall include any index which substitutes the CPI (IW), and any reference to CPI (IW) shall, unless the context otherwise requires, be construed as a reference to the CPI (IW) published for the period ending with the preceding quarter, save and except that for the purposes of quarterly revision of the Mining Charge in accordance with the provisions of Clause 28.1.1, the revision due for and in respect of any quarter shall be computed with reference to CPI (IW) as on the last date of the preceding quarter;

"**CP Satisfaction Notice**" shall have the meaning set forth in Clause 4.1.6;

"**Cure Period**" shall mean the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default and shall:

- (a) commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;
- (b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and
- (c) not in any way be extended by any period of Suspension under this Agreement;

provided that if the cure of any breach by the Mine Operator requires any reasonable action by the Mine Operator that must be approved by the Authority, the applicable Cure Period shall be extended by the period taken by the Authority to accord their approval;

"**Damages**" shall have the meaning set forth in sub-clause (za) of Clause 1.2.1;

"**Debt Service**" shall mean the sum of all payments on account of principal, interest, financing fees and charges due and payable in an Accounting Year to the Senior Lenders under the Financing Agreements;

"**Declared Capacity**" shall have the meaning set forth in Clause 22.1.4;

"**Declared Grade**" shall have the meaning set forth in Clause 30.1.1;

"**Delivery**" shall mean loading and delivery of Coal at the Delivery Point and the terms "**Deliver**" and "**Delivered**" shall be construed according;

"**Delivery Point**" shall mean any of the sidings or loading points at or adjacent to the Site or other location(s) identified by the Authority, at which the Mine Operator Delivers Coal in accordance with the terms of this Agreement;

"**Depreciated Value**" shall mean the lower of: (a) audited book value of the Capital Works or Project Specific Assets (as the case may be); and (b) value of the Capital Works or Project Specific Assets (as the case may be), as assessed by an independent third party valuer who shall be selected and appointed by the Authority, within 15 (fifteen) days of Termination for submitting his assessment within 30 (thirty) days of his appointment hereunder;

**"Development Period"** shall mean the period from the date of this Agreement until the Appointed Date;

**"Dispatch Instructions"** shall have the meaning set forth in Clause 24.1;

**"Dispute"** shall have the meaning set forth in Clause 44.1.1;

**"Dispute Resolution Procedure"** shall mean the procedure for resolution of Disputes set forth in Article 44;

**"Divestment Requirements"** shall mean the obligations of the Mine Operator for and in respect of Termination set forth in Clause 38.1.1;

**"Document"** or **"Documentation"** shall mean documentation in printed or written form, or in tapes, discs, drawings, computer programmes, writings, reports, photographs, films, cassettes, or expressed in any other written, electronic, audio or visual form;

**"Drawings"** shall mean all of the drawings, calculations and documents pertaining to the Mines as set forth in Schedule-H, and shall include 'as built' drawings of the Mines;

**"Emergency"** shall mean a condition or situation that is likely to endanger the security of the individuals on or about the Mines, including Buyers thereof, or which poses an immediate threat of material damage to any of the Project Assets;

**"Encumbrance"** shall mean, any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Mines, where applicable herein but excluding utilities referred to in Clause 11.1;

**"Engineer in charge"** shall have the meaning set forth in Clause 26.1;

**"EPC Contract"** shall mean the engineering, procurement and construction contract or contracts entered into by the Mine Operator with one or more EPC Contractors for, *inter alia*, engineering and construction of the Mines in accordance with the provisions of this Agreement;

**"EPC Contractor"** shall mean the person with whom the Mine Operator has entered into an EPC Contract;

**"Equipment"** shall mean the tools, machinery, vehicles and other equipment provided or installed at the Mines and used for excavation and Delivery of Coal for purposes incidental or consequential thereto;

**"Equity"** shall mean the sum expressed in Indian Rupees representing the issued and paid up equity share capital of the Mine Operator for meeting the equity component of the Total Project Cost, and for the purposes of this Agreement, shall include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Mine Operator, and any interest-free funds advanced by any shareholder of the Mine Operator for meeting such equity component;

**"Financial Default"** shall have the meaning set forth in Schedule-R;

**"Financial Model"** shall mean the financial model adopted by Senior Lenders, setting forth the capital and operating costs of the Project and revenues therefrom on the basis of which financial viability of the Project has been determined by the Senior Lenders, and includes a description of the assumptions and parameters used for making calculations and projections therein;

**"Financial Package"** shall mean the financing package indicating the total capital cost of the Project and the means of financing thereof, as set forth in the Financial Model and approved by the Senior Lenders, and includes Equity, all financial assistance specified in the Financing Agreements and Subordinated Debt, if any;

**"Financing Agreements"** shall mean the agreements executed by the Mine Operator in respect of financial assistance to be provided by the Senior Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security agreements, and other documents relating to the financing (including refinancing) of the Total Project Cost, and includes amendments or modifications made in accordance with Clause 5.2.2;

**"Force Majeure"** or **"Force Majeure Event"** shall have the meaning set forth in Clause 34.1;

**"Government"** shall mean the Government of India or the Government of the State having territorial jurisdiction over the Mines, as the case may be;

**"Government Instrumentality"** shall mean any department, division or sub-division of the Government of India or of any State and includes any commission, board, authority, agency or municipal and other local authority or statutory body including Panchayat, under the control of the Government of India or of any State, as the case may be, and having jurisdiction over all or any part of the Mines or the performance of all or any of the services or obligations of the Mine Operator under or pursuant to this Agreement;

**"Grade Slippage"** shall have the meaning set forth in Clause 23.2.3;

**"IBC"** shall mean the Insolvency and Bankruptcy Code, 2016, read with all rules, regulations, circulars, guidelines and notifications thereunder (as amended from time to time);

**"Incentive"** shall mean a payment due to the Mine Operator, in accordance with the provisions of this Agreement, for any delivery, performance or outcome, as the case may be, which is better than the standards specified in respect thereof;

**"Indemnified Party"** shall mean the Party entitled to the benefit of an indemnity pursuant to Clause 42.3;

**"Indemnifying Party"** shall mean the Party obligated to indemnify the other Party pursuant to Clause 42.3;

**"Independent Laboratory"** shall have the meaning set forth in Clause 23.2.1;

**"Indirect Political Event"** shall have the meaning set forth in Clause 34.3;

**"Inspection Report"** shall have the meaning set forth in Clause 13.2;

**"Insurance Cover"** shall mean the aggregate of the maximum sums insured under the insurances taken out by the Mine Operator pursuant to Article 32, and includes all insurances required to be taken out by the Mine Operator under Clause 32.2 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

**"Intellectual Property"** shall mean all patents, trademarks, service marks, logos, get-up, trade names, internet domain names, rights in designs, blue prints, programmes and manuals, drawings, copyright (including rights in computer software), database rights, semi-conductor, topography rights, utility models, rights in know-how and other intellectual property rights, in each case, whether registered or unregistered and including applications for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world;

**"Key Performance Indicators"** shall have the meaning set forth in Clause 25.1;

**"Laser Measurement"** shall have the meaning set forth in Clause 19.7.1;

{ **"Lead Member"** shall have the meaning set forth in Recital (C); }

**"Lenders' Representative"** shall mean the person duly authorised by the Senior Lenders to act for, and on behalf of, the Senior Lenders with regard to matters arising out of, or in relation to, this Agreement, and includes its successors, assigns and substitutes;

**"LOA"** or **"Letter of Award"** shall mean the letter of award referred to in Recital (C);

**"Maintenance Manual"** shall have the meaning set forth in Clause 16.3.1;

**"Maintenance Programme"** shall have the meaning set forth in Clause 16.4.1;

**"Maintenance Requirements"** shall have the meaning set forth in Clause 16.2;

**"Manager"** shall have the same meaning as ascribed to such term in the Mines Act, 1952 and rules and regulations thereunder;

**"MCLR of State Bank of India"** shall mean the marginal cost lending rates for 1(one) year as determined by State Bank of India from time to time, as the same may be announced through such media as the State Bank of India may deem fit and any such announcement through any media shall be sufficient notice to the Parties.

**"Material Adverse Effect"** shall mean any act or event that materially and adversely affects the ability of either Party to perform any of its obligations under and in accordance with the provisions of this Agreement;

**"Mine Closure Plan"** shall mean the mine closure plan prepared in accordance with the 'Guidelines for Preparation of Mine Closure Plan' issued by the Ministry of Coal, Government of India, from time to time.



**"Mine Operator Default"** shall have the meaning set forth in Clause 37.1.1;

**"Mines"** shall have the meaning set forth in Recital (A);

**"Mining Charge"** shall have the meaning set forth in Clause 28.1.1;

**"Mining Plan"** shall include Mine Closure Plan and shall mean the mining plan prepared and approved under and in accordance with the provisions of the Mineral Concession Rules, 1960, and the latest guidelines issued by the Ministry of Coal, Government of India as amended from time to time, or any substitute thereof;

**"Miscellaneous Invoice"** shall have the meaning set forth in Clause 29.1.3;

**"Monthly Capacity"** shall have the meaning set forth in Clause 21.2.1;

**"Monthly Invoice"** shall have the meaning set forth in Clause 29.1.1;

**"Moving Equipment"** shall mean any equipment or vehicle which is moved around in the normal course of its usage and does not include any equipment which is installed on the ground in a stationery position;

**"MT"** shall mean a million Tonne;

**"New Code for Uniform System of Maintenance, Control and Verification of Coal Stock in all Mines of Coal India Limited"** shall mean the codes approved in the 273<sup>rd</sup> meeting of the board of directors of Coal India Limited held on 20.09.2011 or any subsequent modifications/ order in this regard.

**"Nominated Company"** shall mean a company selected by the Lenders' Representative and proposed to the Authority for substituting the Mine Operator in accordance with the provisions of the Substitution Agreement;

**"Non-Political Event"** shall have the meaning as set forth in Clause 34.2;

**"Notional Stripping Ratio"** shall mean the anticipated average stripping ratio for the life of the Mine, which is [insert]<sup>15</sup>;

**"O&M"** shall mean the operation and maintenance of the Mines and includes all matters connected with, or incidental to, such operation and maintenance, and provision of services and facilities in accordance with the provisions of this Agreement;

**"O&M Contract"** shall mean the operation and maintenance contract that may be entered into between the Mine Operator and the O&M Contractor for performance of all or any of the O&M obligations;

**"O&M Contractor"** shall mean the person, if any, with whom the Mine Operator has entered into an O&M Contract for discharging the O&M obligations for and on behalf of the Mine Operator;

**"O&M Expenses"** shall mean expenses incurred by or on behalf of the Mine Operator or by the Authority, as the case may be, for all O&M including (a) cost of salaries and other compensation to employees, (b) cost of materials, supplies, utilities and other services, (c) premia for insurance, (d) all Taxes, duties, cess and fees due and payable

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<sup>15</sup> Insert as applicable

for O&M, (e) all repair, replacement, reconstruction, reinstatement, improvement and maintenance costs, (f) payments required to be made under the O&M Contract or any other contract in connection with, or incidental to, O&M, and (g) all other expenditure required to be incurred under Applicable Laws, Applicable Permits and this Agreement;

**"O&M Inspection Report"** shall have the meaning set forth in Clause 19.3;

**"Operation Period"** shall mean the period commencing from COD and ending on the Transfer Date;

**"Overburden"** shall mean the rock, soil and ecosystem that lies above the Coal Seam and is removed during surface mining, and may be used to restore an exhausted mining site to a semblance of its appearance before mining began;

**"Overburden Adjustable Amount"** shall have the meaning set forth in Clause 20.3.1;

**"Owner"** shall have the meaning ascribed to such term in the Mines Act, 1952;

**"Panel of Chartered Accountants and Cost and Management Accountants"** shall have the meaning set forth in Clause 33.2.1;

**"Parties"** shall mean the parties to this Agreement collectively and **"Party"** shall mean any of the parties to this Agreement individually;

**"Performance Guarantee"** shall have the meaning set forth in Clause 39.2.3;

**"Performance Security"** shall have the meaning set forth in Clause 9.1.1;

**"Political Event"** shall have the meaning set forth in Clause 34.4;

**"Price Index"** shall be construed in the following manner

- (a) [20% (twenty per cent)] of the component shall be fixed and shall not be subjected to any escalation whatsoever;
- (b) [25% (twenty five per cent)] of the percentage change in the WPI for industrial machinery published by the Ministry of Commerce and Industry, Government of India, for the category 'mining/quarrying/metallurgical machinery/parts';
- (c) [5% (five per cent)] of the percentage change in the WPI for the subcategory 'lubricants' published by the Ministry of Commerce and Industry, Government of India;
- (d) [25% (twenty five per cent)] of the percentage change in the CPI(IW); and
- (e) [25% (twenty-five per cent)] of the percentage change in the WPI for the sub-category 'high speed diesel oil'.

**"Project"** shall mean the construction, operation and maintenance of the Mines in accordance with the provisions of this Agreement, and includes all works, services and equipment relating to or in respect of the Scope of the Project;

**"Project Affected Persons"** or **"PAPs"** shall have the same meaning as ascribed to such term in the R&R Policy;

**"Project Agreements"** shall mean this Agreement, the Financing Agreements, EPC Contract, O&M Contract and any other material agreements or contracts that may be entered into by the Mine Operator with any person in connection with matters relating to, arising out of, or incidental to the Project, but does not include Substitution Agreement or any agreement for procurement of goods and services involving a consideration of upto [Rs.10 crore (Rupees ten crore)]<sup>16</sup>;

**"Project Assets"** shall mean physical and other assets relating to and forming part of the Project, including:

- (a) rights over the Site;
- (b) tangible assets such as civil works and equipment including foundations, embankments, pavements, electrical systems, communication systems, relief centres and administrative offices;
- (c) all rights of the Mine Operator under the Project Agreements;
- (d) financial assets, such as receivables, security deposits etc;
- (e) insurance proceeds; and
- (f) Applicable Permits and authorisations relating to, or in respect of, the Mines;

It is hereby clarified that the Moving Equipment and other movable assets (including but not limited to heavy earth moving machinery) shall not be included within the meaning of the Project Assets.

**"Project Completion Schedule"** shall mean the progressive Project Milestones set forth in Schedule-G for completion of the Mines on or before the Scheduled Completion Date;

**"Project Facilities"** shall mean all the amenities and facilities situated on the Site, as described in Schedule-C;

**"Project Milestones"** shall mean the project milestones set forth in Schedule-G;

**"Project Specific Assets"** shall mean the Project Assets, as listed in Annex-V of Schedule B;<sup>17</sup>

**"Pure Agent"** shall mean the pure agent as defined in rule 33 of GST rule, 2017 and as set forth in Schedule-S.

**"Rail Track"** shall have the meaning set forth in Clause 12.1.5;]

**"R&R Costs"** shall mean the costs for Rehabilitation and Resettlement including the cost of land as approved under the R&R Policy;

**"R&R Policy"** shall mean the policy on Rehabilitation and Resettlement of Project Affected Persons of the Authority or the State Government, as applicable and notified from time to time.

**"Re.", "Rs." or "Rupees"** or **"Indian Rupees"** shall mean the lawful currency of the Republic of India;

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<sup>16</sup> This may be fixed at the higher of; (a) 2% (two per cent) of Total project Cost and (b) Rs. 10 (ten) crore.

<sup>17</sup> Construction Works shall be excluded in Project Specific Assets.

**"Reference Index Date"** shall mean, in respect of the specified month or quarter, as the case may be, that last day of the preceding month or quarter with reference to which the Price Index, WPI, price of diesel or tariff of electricity, as the case may be, is revised;

**"Rehabilitation and Resettlement"** shall mean the rehabilitation and resettlement of Project Affected Persons in accordance with the R&R Policy;

**"Request for Bid"** or **"RFB"** shall have the meaning set forth in Recital (B);

**"Rules"** shall have the meaning set forth in Clause 44.3.1;

**"Safety Requirements"** shall have the meaning set forth in Clause 17.1.1;

**"Scheduled COD"** shall have the meaning set forth in Clause 12.4.1;

**"Scheduled Completion Date"** shall have the meaning set forth in Clause 12.4.1;

**"Scheduled Maintenance"** shall have the meaning set forth in Clause 16.4.4;

**"Scheduled Overburden Quantity"** shall have the meaning set forth in Clause 20.2.1;

**"Scope of the Project"** shall have the meaning set forth in Clause 2.1;

**"Senior Lenders"** shall mean the financial institutions, banks, multilateral lending agencies, trusts, funds and agents or trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide finance to the Mine Operator under any of the Financing Agreements for meeting all or any part of the Total Project Cost and who hold *pari passu* charge on the assets, rights, title and interests of the Mine Operator;

**"Site"** shall have the meaning as set forth in Clause 10.2.2;

**"Specifications and Standards"** shall mean the specifications and standards relating to the quality, quantity, capacity and other requirements for the Mines, as set forth in Schedule-D, and any modifications thereof, or additions thereto, as included in the design and engineering for the Mines submitted by the Mine Operator to, and expressly approved by, the Authority;

**"Standard Industry Practice"** shall mean the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Mine Operator in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner, and includes prudent mining practices generally accepted by mine owners and operators for ensuring safe, economic, reliable and efficient excavation, operation and maintenance of the Mines and for providing safe, economic, reliable and efficient excavation of Coal and Delivery thereof;

**"State"** shall mean the State or the Union Territory, as the case may be, in which the Project is situate and **"State Government"** means the government of that State or Union Territory;

**"Stripping Ratio"** shall mean the in-situ volume of Overburden to be removed in cubic metres for each Tonne of Coal produced. For the avoidance of doubt, the Stripping Ratio shall be reviewed at the beginning of each Accounting Year by the Mine Operator in the presence of the Engineer in charge;

**"Subordinated Debt"** shall mean the aggregate of the following sums expressed in Indian Rupees or in the currency of debt, as the case may be, outstanding as on the Transfer Date:

- (a) the principal amount of debt provided by lenders or the Mine Operator's shareholders for meeting the Total Project Cost and subordinated to the financial assistance provided by the Senior Lenders; and
- (b) all accrued interest on the debt referred to in sub-clause (a);

provided that if all or any part of the Subordinated Debt is convertible into Equity at the option of the lenders and/or the Mine Operator's shareholders, it shall for the purposes of this Agreement be deemed to be Subordinated Debt even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;

**"Substitution Agreement"** shall have the meaning set forth in Clause 40.3.1;

**"Suspension"** shall have the meaning set forth in Clause 36.1;

**"Taxes"** shall mean any Indian taxes including goods and services tax ("GST"), customs duties, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, materials, equipment and services incorporated in and forming part of the Mines, charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income;

**"Termination"** shall mean the expiry or termination of this Agreement;

**"Termination Notice"** shall mean the communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement;

**"Termination Payment"** shall mean the amount payable under, and in accordance with, this Agreement, by the Authority to the Mine Operator upon Termination. For the avoidance of doubt, it is expressly agreed that the amount payable shall be subject to the limitations specified in Clause 37.4;

**"Tests"** shall mean the tests set forth in Schedule-I to determine the completion of Mines in accordance with the provisions of this Agreement and shall, *mutatis mutandis*, include similar tests to determine completion of Additional Capacity, if any;

**"Tonne "** shall mean a metric tonne equal to 1000kg;

**"Total Project Cost"** shall mean the capital cost on construction and financing of the Project and shall be a sum of Rs. [\*\*\* amount\*\*\*\*]<sup>18</sup>

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<sup>18</sup> This amount shall be the estimated capital cost for the project.

**"Transfer Date"** shall mean the date on which this Agreement expires pursuant to the provisions of this Agreement or is terminated by a Termination Notice;

**"Undelivered Coal"** shall have the meaning set forth in Clause 28.4.1;

**"Unforeseen Event"** shall have the meaning set forth in Clause 34.11;

**"Vesting Certificate"** shall have the meaning set forth in Clause 38.4;

**"WPI"** shall mean the wholesale price index for all commodities as published by the Ministry of Commerce and Industry, Government of India and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the WPI published for the period ending with the preceding month, save and except that for the purposes of quarterly revision of the Mining Charge in accordance with the provisions of Clause 28.1.1, the revision due for and in respect of any quarter shall be computed with reference to WPI as on the last date of the preceding quarter.

**IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN.**

THE COMMON SEAL OF MINE OPERATOR has been affixed pursuant to the resolution passed by the Board of Directors of the Mine Operator at its meeting held on the ..... day of 20.... hereunto affixed in the presence of ....., Director, [who has signed these presents in token thereof and ....., Company Secretary / Authorised Officer who has countersigned the same in token thereof<sup>\$</sup>]:

SIGNED, SEALED AND DELIVERED  
For and on behalf of AUTHORITY by:

(Signature)  
(Name)  
(Designation)  
(Address)  
(Fax No.)  
(e-mail address)

(Signature)  
(Name)  
(Designation)  
(Address)  
(Fax No.)  
(e-mail address)

In the presence of:

1.

2.

---

<sup>\$</sup> To be affixed in accordance with the articles of association of the Mine Operator and the resolution passed by its Board of Directors

## **SCHEDULES**



## **SCHEDULE -- A**

*(See Clause 10.1)*

### **SITE OF THE PROJECT**

#### **1. The Site**

- 1.1 Site of the Project shall include: (a) the land, buildings, Coal Handling Plant, Coal Depot, power distribution sub-stations, workshops and any other associated structures as described in Annex-I of this Schedule A; (b) the land, buildings and bunkers/ silos as described in Annex-II of this Schedule A; [and (c) the land, buildings, Rail Track, electrical lines and electrical plants as described in Annex-III of this Schedule A].
- 1.2 Additional land required for [Overburden dumps, ancillary buildings, extension/ addition of Mines or for] construction of works specified in Change of Scope Order shall be acquired in accordance with the provisions of this Agreement. Upon acquisition, such land shall form part of the Site and vest in the Authority.

Annex - I  
(Schedule-A)

**Site of the Mines**

[**Note:** The Site may be divided into blocks and demarcated as such in pursuance of the provisions of Clause 10.1.]

{**Note:** Through suitable drawings and description in words, the land, buildings, Coal Handling Plant, Coal Depot, power distribution sub-stations, workshops and any other associated structures comprising the Site of the Mine shall be specified briefly but precisely in this Annex-I.}

Annex – II

*(Schedule-A)*

**Site for the Railway Siding/ Delivery Point**

{**Note 1:** Through suitable drawings and description in words, the land, buildings, and bunkers/ silos comprising the Site for the railway siding/ Delivery Point shall be specified briefly but precisely in this Annex-II.}

Annex - III

*(Schedule-A)*

**{Site for the Rail Track}**

{**Note** 1: Through suitable drawings and description in words, the land, buildings, rail track, electrical lines and electrical plants comprising the Site for the Rail Track shall be specified briefly but precisely in this Annex-III.}

[**Note** 2: This Annex-III may be omitted if construction of a dedicated Rail Track is not contemplated].

## **SCHEDULE — B**

*(See Clause 2.1)*

### **DEVELOPMENT OF THE MINES**

#### **1 Mines**

- 1.1 Development of the Mines shall include construction of the Coal Handling Plant, Coal Depot, power distribution sub-stations, workshops, road works and any other associated structures and installation of equipment, as described in this Schedule-B and in Schedule-C.
- 1.2 Mines shall be developed by the Mine Operator in conformity with the Mining Plan and the Specifications and Standards set forth in Annex-I and Annex-II of Schedule-D.

#### **2 Removal of Overburden**

- 2.1 Development of the Mines shall include excavation of Overburden and deposit thereof, as described in Annex-I of this Schedule-B.
- 2.2 Removal of Overburden shall be undertaken by the Mine Operator in conformity with the Mining Plan.

#### **[3 Rail Track]**

- 3.1 [Rail Track shall include electrical lines, electrical plants and other associated structures as described in Annex-II of this Schedule-B.]
- 3.2 [Rail Track shall be constructed by the Mine Operator in conformity with the Specifications and Standards set forth in Annex-IV of Schedule-D.]

[Note: Paragraph 3 shall be omitted if construction of a dedicated Rail Track is not contemplated.]

Annex – I  
(Schedule-B)

**Description of Mines<sup>19</sup>**

**1. Capacity of the Mines**

The Mine shall have a capacity to excavate and deliver Coal equivalent to the Contracted Capacity.

**2. Project Facilities**

The Project Facilities shall be constructed in conformity with Annex -I of Schedule-C.

**3. Specifications and Standards**

The development of Mines and installation of Equipment shall be in conformity with the Specifications and Standards specified in Annex -I and Annex-II respectively of Schedule-D.

**4. Description of the Mines**

The Mines shall be developed as briefly described below:

**A. Mines**

- (i) Type: [Opencast/ Underground]
- (ii) Number of Coal Seams to be mined:
- (iii) Targeted mine capacity in MT per annum:
- (iv) Geo-mining characteristics:  
(Indicate Seam Gradient — Variation, Average Gradient of quarry floor, etc.)
- (v) Details of geological disturbances: number of faults and details thereof  
(throw and extent):

<b>Fault No</b>	<b>Location &amp; Extent of Fault</b>	<b>Trend of Fault</b>	<b>Amount &amp; Direction of Throw</b>	<b>Evidence of Fault</b>

- (vi) Presence of in-seam band, Seam-wise (numbers and thicknesses of each band):

<b>Coal Seam</b>	<b>No. of dirt band</b>	<b>Cum. Th. of dirt bands (m)</b>	<b>%of dirt bands to Seam thickness</b>

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<sup>19</sup> This description of Mine should be as per approved Mining Plan/ project report.

(vii) Sequence of Coal Seam and parting:

Name of Seam/ parting	Thickness of coal/parting(m) with range		
	Av. Thickness	Minimum	Maximum

(viii) Mine parameters:

Parameters	Unit	Quarry	
		Minimum	Maximum
Dimensions of the quarry along strike (on floor)	m		
Depth of quarry	m		
Dip rise length (on floor)	m		
Final Quarry Floor area	km <sup>2</sup>		
Final Quarry Surface area	km <sup>2</sup>		
Mineable reserves	(MT)		
Total Overburden	(Mcum)		
Notional Stripping Ratio	(cum/T)		

- (ix) Mining method for Overburden removal:  
(Briefly describe the mining system for Overburden and give year-wise Overburden removal schedule)
- (x) Mining method for Coal winning:  
(Briefly describe the Coal winning method including thrust area of Government such as adaptation of advanced scientific technology, environmental friendly mining process, first mile connectivity etc.)
- (xi) Mining system and system parameters:  
(To provide Mine specific details regarding bench height, width, etc. as per Mining Plan.)

## B. [Coal Handling Plant]

Briefly describe the Coal Handling Plant indicating the following:

- (i) Capacity of the Coal Handling Plant:
- (ii) Receiving arrangement for run-off mine Coal:
- (iii) Crushing arrangement:
- (iv) Storage arrangement:
- (v) Conveying system:
- (vi) Loading arrangement:

**C. Electricity Distribution Sub-station/ Distribution System**

(Briefly describe the power distribution substation and power distribution system indicating incoming voltage, distribution voltage, estimated load, etc.)

**D. [Installation of Equipments]<sup>20</sup>**

(Briefly describe the major equipments to be installed for mining indicating the size, numbers, availability, utilisation, etc. of such equipments.)

**E. Pumping and Drainage**

(Briefly describe the pumping and drainage system, including effluent treatment system, indicating the number of pumps, lay-out, design, etc. of pumping installation and drainage system.)

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<sup>20</sup> Project specific information may be provided.



Annex - II  
(*Schedule-B*)

**[Description of Rail Track]**

**1      [Length of the Rail Track]**

- 1.1    The Rail Track shall be \* \* \* \* km in length.
- 1.2    The Rail Track shall be constructed [in tunnel/ at grade/ elevated] as briefly described below:

(Provide details here.)

**2      [Project Facilities]**

The Project Facilities shall be constructed in conformity with Annex-III of Schedule-C.

**3      [Specifications and Standards]**

The Rail Track shall be constructed in conformity with the Specifications and Standards specified in Annex-IV of Schedule-D.

Annex-III  
**(Schedule-B)**  
(Refer Clause 4.1)

**Present status of the Conditions Precedent**

*[Briefly describe the details of present status of the Conditions Precedent set forth for the Authority at the time of invitation of Bid]*

Annex-IV  
(Schedule-B)

**[Insert list, description & brief specification of Capital Works]**

Annex-V  
(*Schedule-B*)

**[Insert list of Project Specific Assets]**

[Any Construction Works, Moving Equipment and other movable assets (including but not limited to heavy earth moving machinery) shall not be included within this list]

Annex-VI  
(*Schedule-B*)

**[Insert schedule on land]**

**[Schedule of land (phase wise) to be handed over to the Mine Operator shall be provided]**

## **SCHEDULE—C**

*(See Clause 2.1)*

### **PROJECT FACILITIES**

#### **1 Project Facilities**

The Mine Operator shall construct the Project Facilities in accordance with the provisions of this Agreement.

#### **2 Project Facilities for Mines**

Project Facilities forming part of the Mines and to be completed on or before Completion have been described in Annex-I of this Schedule-C.

#### **3 Project Facilities for township**

Project Facilities forming part of the township and to be completed on or before Completion have been described in Annex-II of this Schedule-C.

#### **[4 Project Facilities for Rail Track**

Project Facilities forming part of the Rail Track and to be completed on or before Completion have been described in Annex-III of this Schedule-C.]

[Note: Paragraph 4 shall be omitted if construction of a Rail Track is not contemplated.]

Annex - I  
(Schedule-C)

**Project Facilities for Mines**

**1 Project Facilities**

The Mine Operator shall construct the Project Facilities described in this Annex -1 to form part of the Mines. The Project Facilities shall include:

- (a) Coal Depot;
- (b) Laboratory and testing facilities;
- (c) Workshops;
- (d) Fire hydrant system;
- (e) Weighbridge at the Coal Depot;
- (f) Roads;
- (g) Common facility centre;
- (h) Security equipment including closed-circuit television (“CCTV”);;
- (i) RFID system for tracking of truck movement; and
- [(k) Others (to be specified)].

**2 Description of Project Facilities**

The Project Facilities are briefly described below:

*(a) Coal Depot*

The Mine Operator shall construct and operate a Coal Depot for storage of Coal in accordance with the provisions of Article 22 of this Agreement.

*(c) Laboratory and testing facilities*

The Mine Operator shall procure and ensure provision of a laboratory with the requisite instruments and calibration facilities to check all tools, instruments, jigs and fixtures and for testing of Coal.

*(d) Workshops*

The Mine Operator shall construct the workshops with the requisite equipment, tools and other facilities to cater to the needs of daily maintenance, scheduled maintenance, lubrication, routine inspection, minor/medium repair and replacement of parts/sub-assemblies of Equipment.

(e) *Fire hydrant system*

A fire hydrant system shall be installed in conformity with Applicable Laws, Applicable Permits and Standard Industry Practice and shall include adequate water storage, pumping capacity and distribution network. Smoke detectors, fire alarms and water sprinklers shall also be provided in critical areas of the Mines.

(f) *Weighbridge at the Coal Depot*

The Mine Operator shall provide for [\*\*\*\*]<sup>21</sup> of weighbridges for weighing of truck/vehicle loaded with Coal. Suitable weighing instrumentation shall be installed at the Coal Depot. The weighbridges shall be calibrated in accordance with the Specifications and Standards.

(g) *Roads*

The Mine Operator shall construct and maintain haul roads and approach roads required for excavation and transportation of Coal equivalent to the Contracted Capacity.

(h) *Common Facility Centre*

The Mine Operator shall construct a common facility centre which shall include a cafeteria, recreation facilities, medical aid centre and restrooms for use by the personnel deployed on the Project.

(i) *Security equipment including Closed-circuit television (CCTV)*

All entry and exit points, Coal Depot, Coal Handling Plant, buildings, structures and passages used for transporting Overburden or Coal within the Mines shall be equipped with a CCTV system capable of retaining recorded footage for a period of one month. The Mine Operator shall install and operate such other equipment as may be required in accordance with Applicable Laws, Applicable Permits and Standard Industry Practice for assurance of the security of personnel and Coal at the Mines.

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<sup>21</sup> Insert number as applicable



## Annex – II

### (Schedule-C)

#### [Project Facilities for Township]<sup>22</sup>

#### **1 Project Facilities**

The Mine Operator shall construct the Project Facilities described in this Annex-II to form part of the township for the Project. These Project Facilities shall include:

- (a) Administrative and housing complex;
- (b) Primary health centre with at least 6 (six) beds;
- (c) Secondary school;
- (d) Community centre and;
- [(e) Others (to be specified)].

#### **2 Description of Project Facilities**

The Project Facilities are briefly described below:

##### *(a) Administrative and housing complex*

The Mine Operator shall construct an administrative and housing complex on or near the Site with the requisite space and facilities for office and residential buildings. The complex shall also provide for sufficient space for commercial facilities including bank, post office, business centre and shops/kiosks. [The Mine Operator shall provide a furnished project office for the personnel of the Authority deputed at the Site.]

##### *(b) Primary Health Centre*

The Mine Operator shall build a primary health centre, with at least 6 (six) beds, in conformity with standards followed by the State Government with sufficient space and facilities for in-patient care and diagnostic facilities.

##### *(c) Secondary School*

The Mine Operator shall build a secondary school in conformity with the standards specified by the Central Board of Secondary Education.

##### *(d) Community centre*

The Mine Operator shall provide a community centre with an auditorium for social gathering, functions and other special occasions.

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<sup>22</sup> Project specific requirements to be decided by subsidiary company

Annex – III  
(Schedule-C)

**[Project Facilities for Railway Siding]**

**1 Project Facilities**

The Mine Operator shall construct the Project Facilities described in this Annex - III to form part of the railway siding. The Project Facilities shall include:

- (a) Rapid loading system/ loading arrangements;
- (b) Access road to the railway siding;
- (c) Office space for the Authority at the railway siding;
- (d) Weighbridge; and
- [(e) Others (to be specified)].

**2 Description of Project Facilities**

The Project Facilities are briefly described below:

*(a) Railway Siding*

The Mine Operator shall construct the railway siding with a capacity to handle transportation of Coal equivalent to the Contracted Capacity. The Mine Operator shall at all times ensure availability of requisite facilities including silos/bunkers and system for loading of Coal on the wagons.

*(b) Access road to the Railway Siding*

The Mine Operator shall construct and maintain the approach roads required for transportation of Coal to the railway siding.

*(c) Office space*

The Mine Operator shall provide for office space with requisite facilities for use by the Authority at the railway siding to enable it to discharge its day-to-day functions.

*(d) Weighbridge*

The Mine Operator shall provide for [\*\*\*\*]<sup>23</sup> of weighbridges for weighing of truck/vehicle loaded with Coal. Suitable weighing instrumentation shall be installed at the railway siding. The weighbridges shall be calibrated in accordance with the Specifications and Standards.

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<sup>23</sup> Insert number as applicable

## **SCHEDULE – D**

*(See Clause 2.1)*

### **SPECIFICATIONS AND STANDARDS**

#### **1 Development of Mines**

The Mine Operator shall comply with the Specifications and Standards set forth in Annex-I of this Schedule-D for development of the Mines.

#### **2 Equipment**

The Mine Operator shall comply with the Specifications and Standards set forth in Annex-II of this Schedule-D for installation of Equipment.

#### **3 Mining Plan**

The Mine Operator shall comply with the Mining Plan set forth in Annex –III of this Schedule D, as may be modified from time to time in conformity with Applicable Laws.

#### **[4 Rail Track**

The Mine Operator shall comply with the Specifications and Standards set forth in Annex-IV of this Schedule-D for construction of Rail Track.]

[**Note:** Paragraph 4 shall be omitted if construction of a Rail Track is not contemplated.]

Annex - I  
(Schedule-D)

**Specifications and Standards for Development of the Mines**

**1 Standards and Specifications**

Subject to the provisions of Paragraph 2 of this Annex -I, the development of Mines shall conform with the provisions of the Mining Plan which shall be deemed to be the Specifications and Standards. An authenticated copy of the same has been provided to the Mine Operator as part of the bidding documents.

**2 Additional Specifications and Standards**

Notwithstanding anything to the contrary contained in Paragraph 1 of this Annex - I, the following additional Specifications and Standards<sup>24</sup> shall apply to the development of Mines, and for purposes of this Agreement, the Specifications and Standards referred to in Paragraph 1 shall be deemed to be amended to the extent set forth below in this Paragraph 2.

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<sup>24</sup> These additions may be in compliance to conditions of DGMS or other such regulatory authorities.

## Annex – II

### (Schedule-D)

#### Specifications and Standards for Equipment

##### 1 Standards and Specifications

Subject to the provisions of Paragraph 2 & 3 of Annex-II, the installation of Equipment at the Mines shall conform with the provisions of the Mining Plan which shall be deemed to be the minimum Specifications and Standards. An authenticated copy of the same is provided to the Mine Operator as part of the bidding documents. However, if the efficiency of the Equipment increases or on deployment of Equipment of higher size than that specified in the Mining Plan, the Mine Operator may reduce the population of the Equipment.

##### 2 Flexibility in Standards and Specifications

Subject to provisions of Paragraph 3 and the provisions of the Mining Plan for bench height or width at the Mines along with provisions under Coal Mines Regulations for opencast workings, the Mine Operator may deploy the Equipment sizes for the matching bench height as per the following table:

Sl. No.	Excavator size (m <sup>3</sup> )	Optimum bench height (m)	Minimum Matching dumper capacity (Ton)
1	3.0-4.5	6 (5-8)	35
2	5.0-6.5		
3	10.0-12.0	10 (8-12)	100
4	15.0-17.0		
5	20.0-22.0	15 (12-15)	190
6	34.0-36.0		
7	40.0-42.0	18 (15-18)	
	Note: For bench height <6m, 3.0-5.0 m <sup>3</sup> excavator may be used		

##### 3 Additional Specifications and Standards

Notwithstanding anything to the contrary contained in Paragraph 1 & 2 of this Annex - II, the following additional Specifications and Standards<sup>25</sup> shall apply to the installation of Equipment at the Mines, and for purposes of this Agreement, the Specifications and Standards referred to in Paragraph 1 & 2 shall be deemed to be amended to the extent set forth below in this Paragraph 3.

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<sup>25</sup> These additions may be in compliance to conditions of DGMS or other such regulatory authorities.

Annex – III  
(*Schedule-D*)

**Mining Plan**

The mandatory provisions of the Mining Plan for procuring compliance with Applicable Laws are specified below:

[Note: Specify briefly, but precisely, the mandatory provisions of the Mining Plan.]

## **Specifications and Standards for the Rail Track**

### **1 Manual of Specifications and Standards to apply**

Subject to the provisions of Paragraph 2 of this Annex -IV, the Rail Track shall conform to the specifications and standards of the Ministry of Railways as applicable to the Rail Track.

### **[2 Deviations from the standards and specifications]**

[Notwithstanding anything to the contrary contained in the specifications and standards referred to in Paragraph 1 of this Annex-IV, the following specifications and standards shall apply to the Rail Track, and for purposes of this Agreement, the specifications and standards referred to in Paragraph 1 shall be deemed to be amended to the extent set forth below:]

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<sup>26</sup> Annex-IV may be omitted if the Project does not include a dedicated Rail Track.

## **SCHEDULE - E**

*(See Clause 4.1.3)*

### **APPLICABLE PERMITS**

#### **PART I**

##### **1 Applicable Permits prior to Appointed Date**

The Mine Operator shall obtain, as required under Applicable Laws, the following Applicable Permits on or before the Appointed Date, save and except to the extent of a waiver granted by the Authority in accordance with Clause 4.1.3 of the Agreement:

- (a) Licence for use of explosives;
- (b) Applicable Permits for and in respect of employment of labour at the Mines and
- (c) Any other permits or clearances required under Applicable Laws.

#### **PART II**

##### **2 Applicable Permits during Contract Period**

The Mine Operator shall obtain, as required under Applicable Laws, the following Applicable Permits prior to commencement of the relevant activity:

- (a) Clearance of the Pollution Control Board of the State Government for installation of diesel generator sets;
- (b) Permission of the State Government for cutting of trees; and
- (c) Any other permits or clearances required under Applicable Laws.



## SCHEDULE - F

(See Clause 9.1 and Clause 39.2.3)

### PERFORMANCE SECURITY

[[\*\*\*\* {name of the company}]]

#### WHEREAS:

- (A) ..... (the "**Mine Operator**") and [name of the company] represented by \*\*\* and having its principal offices at \*\*\*\*\* ("**Authority**") have entered into an agreement dated .....(the "**Agreement**") whereby the Authority has agreed to the Mine Operator undertaking the development of Mines, and for mining of Coal and Delivery thereof, subject to and in accordance with the provisions of the Agreement.
- (B) The Agreement requires the Mine Operator to furnish a Performance Security to the Authority of a sum of [Rs. \* \* \* \* \* cr. (Rupees \* \* \* \* \* crores)] (the "**Guarantee Amount**") as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Contract Period and upto 90 (ninety) days after the Contract Period (the "**Guarantee Period**").
- (C) We, ..... through our branch at ..... (the "**Bank**") have agreed to furnish this bank guarantee ("**Guarantee**") by way of Performance Security.

NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees and affirms as follows:

1. The Bank hereby, unconditionally and irrevocably, guarantees and undertakes to pay to the Authority upon occurrence of any failure or default in due and faithful performance of all or any of the Mine Operator's obligations, under and in accordance with the provisions of the Agreement, on its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Mine Operator, such sum or sums upto an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/ or for the sum specified therein.
2. A letter from the Authority, under the hand of an officer not below the rank of a General Manager or equivalent, that the Mine Operator has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Mine Operator is in default in due and faithful performance of its obligations under the Agreement and its decision that the Mine Operator is in default shall be final, and binding on the Bank, notwithstanding any difference between the Authority and the Mine Operator, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Mine Operator for any reason whatsoever.
3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Mine Operator and/or the Bank, whether by their absorption with any other body or

corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.

4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Mine Operator before presenting to the Bank its demand under this Guarantee.
5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfillment and/or performance of all or any of the obligations of the Mine Operator contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Mine Operator, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/ or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under this Guarantee by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Mine Operator or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would, but for this provision, have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Guarantee is in addition to, and not in substitution of, any other guarantee or security now or which may hereafter be held by the Authority in respect of, or relating to, the Agreement or for the fulfillment, compliance and/ or performance of all or any of the obligations of the Mine Operator under the Agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force until the expiry of the Guarantee Period, and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee no later than 6 (six) months from the date of expiry of the Guarantee Period, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
9. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.

10. This Guarantee shall come into force with immediate effect and shall remain in force and effect until the expiry of the Guarantee Period or until it is released earlier by the Authority pursuant to the provisions of the Agreement.
11. Capitalised terms used herein, unless defined herein, shall have the meaning assigned to them in the Agreement.

Signed and sealed this ..... day of ..... 20 ..... at .....

SIGNED, SEALED AND DELIVERED

For and on behalf of  
the BANK by:

(Signature)  
(Name)  
(Designation)  
(Code Number)  
(Address)

NOTES:

- (i) The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.
- (ii) The address, telephone number and other details of the head office of the Bank as well as of issuing branch should be mentioned on the covering letter of issuing Branch.

## **SCHEDULE –G**

*(See Clause 12.2)*

### **PROJECT COMPLETION SCHEDULE**

#### **1 Project Completion Schedule<sup>27</sup>**

During Construction Period, the Mine Operator shall comply with the requirements set forth in this Schedule-G for each of the Project Milestones and the Scheduled Completion Date (the "**Project Completion Schedule**"). Within 15 (fifteen) days of the date of each Project Milestone, the Mine Operator shall notify the Authority of such compliance along with necessary particulars thereof.

#### **2 Project Milestone-I**

2.1 Project Milestone-I shall occur on the date falling on the [180<sup>th</sup> (one hundred and eightieth)] day from the Appointed Date (the "**Project Milestone-I**").

2.2 Prior to the occurrence of Project Milestone-I, the Mine Operator shall have commenced development of the Mines and expended not less than 5% (five per cent) of the Total Project Cost set forth in the Financial Package.

#### **3 Project Milestone-II**

3.1 Project Milestone-II shall occur on the date falling on the [(365<sup>th</sup> (three hundred and sixty fifth))] day from the Appointed Date (the "**Project Milestone-II**").

3.2 [Prior to the occurrence of Project Milestone-II, the Mine Operator shall have completed construction of haul/approach roads, power distribution substation/system, effluent treatment system and drainage system at the Mines and expended not less than 20% (twenty per cent) of the Total Project Cost set forth in the Financial Package and conveyed to the Engineer in charge, the nature and extent of physical progress comprising such expenditure so as to enable the Engineer in charge to determine that the physical progress is reasonably commensurate with the expenditure incurred.]

#### **4 Project Milestone-III**

4.1 Project Milestone-III shall occur on the date falling on the [550<sup>th</sup> (five hundred and fiftieth)] day from the Appointed Date (the "**Project Milestone-III**").

4.2 [Prior to the occurrence of Project Milestone-III, the Mine Operator shall have completed construction of Coal Depot and Coal Handling Plant and expended not less than 40% (forty per cent) of the Total Project Cost set forth in the Financial Package and conveyed to the Engineer in charge, the nature and extent of physical progress comprising such expenditure so as to enable the Engineer in charge to determine that the physical progress is reasonably commensurate with the expenditure incurred.]

#### **5 Scheduled Completion Date**

5.1 The Scheduled Completion Date shall occur on the [\*\*\*\*]<sup>th</sup> ([\*\*\*\*]) day from the Appointed Date.

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<sup>27</sup> The dates for each milestone, number of milestones and the level of expenditure for each milestone may be determined as per project-specific requirements

- 5.2 On or before the Scheduled Completion Date, the Mine Operator shall have completed the [1<sup>st</sup> (first) phase of the] development of Mines for excavation and Delivery of Contracted Capacity of Coal in accordance with this Agreement.

**6 Extension of period**

Upon extension of any or all of the aforesaid Project Milestones or the Scheduled Completion Date, as the case may be, under and in accordance with the provisions of this Agreement, the Project Completion Schedule shall be deemed to have been amended accordingly.

## **SCHEDULE - H**

*(See Clause 12.3)*

### **DRAWINGS**

#### **1 Drawings**

In compliance of the obligations set forth in Clause 12.3 of the Agreement, the Mine Operator shall furnish to the Engineer in charge, free of cost, all Drawings listed in Annex-I of this Schedule-H.

#### **2 Additional drawings**

If the Engineer in charge determines that for discharging its duties and functions under this Agreement, it requires any drawings other than those listed in Annex -I, it may by notice require the Mine Operator to prepare and furnish such drawings forthwith. Upon receiving a requisition to this effect, the Mine Operator shall promptly prepare and furnish such drawings to the Engineer in charge, as if such drawings formed part of Annex-I of this Schedule-H.

Annex - I  
(Schedule-H)

**List of Drawings**

[**Note:** The Authority shall describe in this Annex-I, all the Drawings that the Mine Operator is required to furnish under Clause 12.3. An illustrative list is given below. It may be suitably modified as per project-specific requirements.]

**I List of Drawings for the Mines<sup>28</sup>**

1. Location plan of the Mines
2. Topographical plan of the Site
3. Geographical plan
4. Floor contour plans of all Coal Seams
5. Coal Seam folio plans
6. Iso-grade plans showing iso-lines for specific gravity, Useful Heat Value, Gross Calorific Value, ash percentage and grade of Coal
7. Surface plan
8. Ultimate pit configuration plan
9. Leasehold plan
10. Initial mining cut
11. Stage plan at the intervals of five years of mining operations
12. Final stage dump plan
13. Mine cross sections at representative alignments throughout the Mines
14. Key plan and flow diagram of Coal Handling Plant
15. Plan showing incoming power supply arrangement and for power distribution
16. General layout of workshop

**II [List of Drawings for the Rail Track<sup>29</sup>]**

1. Location plan of the Rail Track.
2. Topographical plan of the Rail Track.
3. Layout plan of the loading station.

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<sup>28</sup> This list may be decided by the subsidiary company as per need of the contract.

<sup>29</sup> This Part-II may be omitted if the Project does not include a dedicated Rail Track.

## **SCHEDULE - I**

*(See Clause 14.1.2)*

### **TESTS**

#### **1. Schedule for Tests**

- 1.1 The Mine Operator shall, no later than 60 (sixty) days prior to the likely completion of the Construction Works and installation of Equipment at the Mines, notify the Engineer in charge and the Authority of its intent to subject the Mines to Tests, and no later than 10 (ten) days prior to the actual date of Tests, furnish to the Engineer in charge and the Authority particulars of all works and equipment forming part of the Mines.
- 1.2 The Mine Operator shall notify the Engineer in charge of its readiness to subject the Mines to Tests at any time after 10 (ten) days from the date of such notice, and upon receipt thereof, the Engineer in charge shall, in consultation with the Mine Operator, determine the date and time for each Test. The Engineer in charge shall thereupon conduct the Tests itself or cause any of the Tests to be conducted in accordance with Article 14 and this Schedule-I.

#### **2. Tests**

In pursuance of the provisions of Clause 14.1.2 of this Agreement, the Engineer in charge shall require the Mine Operator to carry out, or cause to be carried out, Tests on the Mines and the Rail Track as specified in Paragraphs 3 and 4 of this Schedule-I.

#### **3. Mines**

Tests for equipment

Engineer in charge shall conduct or cause to be conducted Tests, in accordance with Standard Industry Practice, for determining the compliance of Equipment with the Specification and Standards and Safety Requirements.

**[Other Tests may be added here]**

#### **4. Rail Track**

##### **4.1 Trail run of Trains:**

Engineer in charge shall conduct or cause to be conducted trail runs of trains to determine the compliance of the Rail Track with the specification and standards laid down for this purpose by the Ministry of Railways.

##### **4.2 Tests for equipment**

Engineer in charge shall conduct or cause to be conducted Tests, in accordance with Standard Industry Practice, for determining the compliance of equipment, signaling and telecommunication with the specification and standards laid down for this purpose by the Ministry of Railways.



## **5. Common Tests**

### **5.1 Visual and physical Test**

The Engineer in charge shall conduct a visual and physical check of the Mines and the Rail Track to determine that all works and equipment forming part thereof conform to the provisions of this Agreement.

### **5.2 Safety review**

Safety audit of the Mines shall have been undertaken by the safety officer as set forth in Schedule-L, and on the basis of such audit, the Engineer in charge shall determine conformity of the Mines with the provisions of this Agreement.

### **5.3 Environmental audit**

The Engineer in charge shall carry out a check to determine conformity of the Mines with the environmental requirements set forth in Applicable Laws and Applicable Permits.

## **6. Agency for conducting Tests**

All Tests set forth in this Schedule-I shall be conducted by the Engineer in charge or such other agency or person as it may specify in consultation with the Authority.

## **7. Tests for Safety Certification**

Tests for determining the conformity of the Mines with the Safety Requirements shall be conducted in accordance with Standard Industry Practice and in conformity with Applicable Laws.

## **8. Completion Certificate**

Upon successful completion of Tests, the Engineer in charge shall issue the Completion Certificate in accordance with the provisions of Article 14.

## **9. Cost of Tests**

9.1 The costs of conducting Tests shall be borne by the Mine Operator.

9.2 In the event any Test is required to be repeated by the Engineer in charge for reasons not attributable to the Mine Operator, the cost of such Test shall be borne by the Authority.

## **10. Tests during construction**

Without prejudice to the provisions of this Schedule-I, tests during construction shall be conducted in accordance with the provisions of Clause 13.3.1.

## **SCHEDULE - J**

*(See Clause 14.4)*

### **COMPLETION CERTIFICATE**

1. I/We,.....(Name of the Engineer in charge), acting as Engineer in charge, under and in accordance with the agreement dated .....(the "**Agreement**"), for development of the Mines with a Contracted Capacity of.....MT, through (Name of Mine Operator ), hereby certify that the Tests specified in Article 14 and Schedule-I of the Agreement have been successfully undertaken to determine compliance of the Mines/ phase..... of the Mines with the provisions of the Agreement.
2. It is certified that all Construction Works has been completed and all Project Milestones as set forth in Schedule-G of this Agreement have been achieved with full satisfaction.
3. It is also certified that, in terms of the aforesaid Agreement, all works forming part of the Mines/ phase.....of the Mines have been completed and Completion has been achieved.

**SIGNED, SEALED AND DELIVERED**

For and on behalf of  
Engineer in charge by:

(Signature)

(Name)

(Designation)

(Address)

## **SCHEDULE – K**

*(See Clause 16.1 and Clause 16.2)*

### **MAINTENANCE REQUIREMENTS**

#### **1. Maintenance Requirements**

- 1.1 The Mine Operator shall, at all times, operate and maintain the Mines and Equipment in accordance with the provisions of the Agreement, Applicable Laws and Applicable Permits. In particular, the Mine Operator shall, at all times during the Operation Period, conform to the maintenance requirements set forth in this Schedule-K (the "**Maintenance Requirements**").
- 1.2 The Mine Operator shall repair or rectify any defect or deficiency set forth in Paragraph 2 of this Schedule-K and any failure in this behalf shall constitute a breach of the Agreement. Upon occurrence of any breach hereunder, the Authority shall be entitled to recover Damages as set forth in Clause 16.8 of the Agreement, without prejudice to the rights of the Authority under the Agreement, including Termination thereof.

#### **2. Repair/rectification of defects and deficiencies**

The obligations of the Mine Operator in respect of Maintenance Requirements shall include repair and rectification of the defects and deficiencies, arising out of any breakdown in Equipment and machinery, or, intimated in writing during inspection, by (i) the Engineer in charge; (ii) the Manager; (iii) any representative of the Authority; or (iv) any other inspecting official belonging to any statutory or regulatory body, in accordance with Standard Industry Practice.

#### **3. Rectification**

No equipment or installation shall run or operate unless the defects and deficiencies specified in Paragraph 2 of this Schedule-K are rectified and such rectification is certified by the Engineer in charge.

#### **4. Emergency repairs/restoration**

Notwithstanding anything to the contrary contained in this Schedule-K, if any defect, deficiency or deterioration in the Mines and Equipment poses a hazard to safety or risk of damage to property, the Mine Operator shall promptly take all reasonable measures for eliminating or minimising such danger.

#### **5. Periodic inspection by the Mine Operator**

The Mine Operator shall, through its engineer, undertake a periodic visual inspection of the Mines and Equipment in accordance with the Maintenance Manual and maintain a record thereof in a register to be kept in such form and manner as the Engineer in charge may specify. Such record shall be kept in safe custody of the Mine Operator and shall be open to inspection by the Authority and the Engineer in charge at any time during office hours.

**6. Divestment Requirements**

All defects and deficiencies specified in this Schedule-K shall be repaired and rectified by the Mine Operator so that the Mines and Equipment conforms to the Maintenance Requirements on the Transfer Date.

**7. Display of Maintenance Manual**

The Mine Operator shall display a copy of the Maintenance Manual, specified in Clause 16.3, and updated list of defects and deficiencies to be rectified, as specified in Paragraph 2 of Schedule- K, at the workshop and other buildings/ structures in the Mines as per Applicable Laws.

## **SCHEDULE – L**

*(See Clause 17.1.1)*

### **SAFETY REQUIREMENTS**

#### **1 Guiding principles**

- 1.1 Safety Requirements aim at reduction in injuries, loss of life and damage to property resulting from accidents on or about the Project, irrespective of the person(s) at fault.
- 1.2 Users of the Mines include staff of the Mine Operator and its contractors working on the Project.
- 1.3 Safety Requirements apply to all phases of construction, operation and maintenance with emphasis on identification of factors associated with accidents, consideration of the same and implementation of appropriate remedial measures.
- 1.4 Safety Requirements include a safety management system comprising of reduction of, or wherever possible, mitigation of risks arising out of different operations and also principal/ major mining hazards inherently present in the Mines including a structured and scientific emergency response plan.

#### **2 Obligations of the Mine Operator**

The Mine Operator shall abide by the following insofar as they relate to safety of the users:

- (a) Applicable Laws and Applicable Permits;
- (b) guidelines/ circulars/ bye laws of Directorate General of Mine Safety, Ministry of Labour and Employment, Government of India and any order made thereunder;
- (c) provisions of this Agreement; and
- (d) relevant standards/ guidelines contained in internationally accepted codes in conformity with Applicable Laws; and
- (e) Standard Industry Practice.

#### **3 Safety measures during Development and Operation Period**

- 3.1 The Mine Operator shall provide to the safety officer, in 4 (four) copies, the relevant drawings containing the design details that have a bearing on safety of users (the "**Safety Drawings**"). Such design details shall include the design of the Mines, Coal Handling Plant [and the Rail Track] and other such installations along with other incidental or consequential information. The safety officer shall review the design details and after consulting the colliery engineer appointed pursuant to Regulation 32 of the Coal Mines Regulations, 2017, forward 3 (three) copies of the Safety Drawings with its recommendations, if any, to the Engineer in charge who shall record its comments, if any, and forward 1 (one) copy each to the Authority and the Mine Operator within 15 (fifteen) days of the receipt thereof.

- 3.2 The design details shall be compiled, analysed and used by the safety officer for evolving a package of recommendations consisting of safety related measures for the Mines [and the dedicated Rail Track]. The safety audit shall be carried out by an independent expert appointed by the Authority and be completed in a period of 3 (three) months and a report thereof (the "**Safety Report**") shall be submitted to the Authority, in 5 (five) copies. Further, 1 (one) copy each of the Safety Report shall be forwarded by the Authority to the Mine Operator and the Engineer in charge forthwith.
- 3.3 The Mine Operator shall endeavour to incorporate the recommendations of the Safety Report in the design of the Mines, as may reasonably be required in accordance with Mining Plan, Applicable Laws, Applicable Permits, guidelines/ circulars of Directorate General of Mine Safety, Specifications and Standards, and Standard Industry Practice. If the Mine Operator does not agree with any or all of such recommendations, it shall state the reasons thereof and convey them to the Authority forthwith.
- 3.4 Without prejudice to the provisions of Paragraph 3, the Mine Operator and the Engineer in charge shall, within 15 (fifteen) days of receiving the Safety Report, send their respective comments thereon to the Authority, and no later than 15 (fifteen) days of receiving such comments, the Authority shall review the same along with the Safety Report and by notice direct the Mine Operator to carry out any or all of the recommendations contained therein with such modifications as the Authority may specify.
- 3.5 The Mine Operator shall make adequate arrangements during the Operation Period for the safety of workers and other users of the Site in accordance with Applicable Laws and Standard Industry Practice for safety in Mine, and notify the Authority and the Engineer in charge about such arrangements.
- 3.6 The Mine Operator in consultation with the safety officer will prepare the safety management plan, standard operating procedures, principal hazard management plan, emergency response plan and other such plans required as per the statute.
- 3.7 Safety committee shall be constituted and will function as per statutory provisions.

#### **4 Costs and expenses**

Costs and expenses incurred in connection with the Safety Requirements set forth herein, including the provisions of Paragraph 2 of this Schedule -L, shall be met by the Mine Operator.

## **SCHEDULE - M**

*(See Clause 23.2.1)*

### **COAL SAMPLING AND TESTING**

At the Delivery Point, at least 1 (one) random sample of Coal shall be sampled and tested in each shift as per the requirements listed below to determine the conformity thereof with the Specifications and Standards

#### **Sampling:**

- a. IS:436 (Part-I), Section I for manual sampling; and
- b. IS:436 (Part-I), Section II for mechanical sampling

#### **Analysis:**

- a. IS: 1350 (Part-II) for determination of Calorific value by bomb calorimeter
- b. IS:1350 (Part-I) for Proximate analysis of Coal and coke
- c. IS: 1353-1993 for test for carbonisation – caking index, swelling no. and gray king assay (L.T.)

## **SCHEDULE - N**

*(See Clause 5.8)*

### **LIST OF MANPOWER TO BE PROVIDED BY THE AUTHORITY**

**1 Statutory Man power**

- a) Agent (in GM rank)
- b) Mine Manager
- c) Statutory Officials (Officer grade), like Safety Officer, Assistant Manager, Welfare officer, etc
- d) Supervisory staffs, including Overman, Mining Sirdar, Electrical Supervisor, Short firer etc
- e) Survey Officer & Surveyor

**2 General Administrative Manpower**

- a. Supporting office staff of Agent & mine manager.
- b. Administrative officer & its staff
- c. Finance officer & its staff
- d. Survey staff

**3 Engineer in charge**

[To be prepared according to the requirement of the Project]



## **SCHEDULE - O**

*(See Clause 26.2.1)*

### **TERMS OF REFERENCE FOR ENGINEER IN CHARGE**

#### **1 Appointment of Engineer in charge**

- 1.1 A senior level officer of the Authority shall be appointed by the Authority as the ‘Engineer in charge’ to act as its authorised representative for the purpose of administration and supervision of the Project (“**Engineer in charge**”). The appointment shall be made no later than 90 (ninety) days from the date of this Agreement. It is hereby clarified that the Engineer in charge shall always be appointed by the Authority from among its employees/officers.

#### **2 Role and functions of the Engineer in charge**

- 2.1 The role and functions of the Engineer in charge shall include the following:

- (i) review of the Drawings and Documents as set forth in Paragraph 3;
- (ii) review, inspection and monitoring of Construction Works as set forth in Paragraph 4;
- (iii) review, inspection and testing of Mines as set forth in Paragraph 4;
- (iv) conducting Tests on completion of construction and issuing Completion Certificate as set forth in Paragraph 4;
- (v) review, inspection and monitoring of O&M as set forth in Paragraph 5;
- (vi) review, inspection and monitoring of Divestment Requirements as set forth in Paragraph 6;
- (vii) determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;
- (viii) determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;
- (ix) assisting the Parties in resolution of disputes as set forth in Article 44 of the Agreement; and
- (x) undertaking all other duties and functions in accordance with the Agreement.

- 2.2 The Engineer in charge shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Standard Industry Practice.

### **3 Development Period**

- 3.1 During the Development Period, the Engineer in charge shall undertake a review of the exploration data and Drawings to be furnished by the Mine Operator along with supporting data, including the geo-technical and hydrological investigations, topographical surveys and other surveys. The Engineer in charge shall complete such review and send its comments/observations to the Authority and the Mine Operator within 15 (fifteen) days of receipt of such exploration data and Drawings. In particular, such comments shall specify the conformity or otherwise of such exploration data and Drawings with the Scope of the Project, Applicable Laws and Specifications and Standards.
- 3.2 The Engineer in charge shall review any modified Drawings or supporting Documents sent to it by the Mine Operator and furnish its comments within 7 (seven) days of receiving such Drawings or Documents.
- 3.3 The Engineer in charge shall review the Drawings, Documents and Safety Report sent to it by the safety officer in accordance with Schedule-L and furnish its comments thereon to the Authority and the Mine Operator within 15 (fifteen) days of receiving such Drawings, Documents and Safety Report, as the case may be.
- 3.4 The Engineer in charge shall review the quality assurance procedures and the procurement, engineering, excavation and construction time schedule sent to it by the Mine Operator and furnish its comments within 15 (fifteen) days of receipt thereof.
- 3.5 Upon reference by the Authority, the Engineer in charge shall review and comment on the EPC Contract or any other contract for construction, excavation, operation and maintenance of the Mines, and furnish its comments within 7 (seven) days from receipt of such reference from the Authority.

### **4 Construction Period**

- 4.1 In respect of the Drawings, Documents and safety report received by the Engineer in charge for its review and comments during the Construction Period, the provisions of Paragraph 3 shall apply *mutatis mutandis*.
- 4.2 The Engineer in charge shall review the monthly progress report furnished by the Mine Operator and send its comments thereon to the Authority and the Mine Operator within 7 (seven) days of receipt of such report.
- 4.3 The Engineer in charge shall inspect the Construction Works and Equipment once every quarter, and make out a report of such inspection (the "**Inspection Report**") setting forth an overview of the status, progress, quality and safety of construction, the materials used and their sources, and conformity of Construction Works and Equipment with the Scope of the Project and the Specifications and Standards. In a separate section of the Inspection Report, the Engineer in charge shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the construction of the Mines or in the Equipment. The Engineer in charge shall send a copy of its Inspection Report to the Authority and the Mine Operator within 7 (seven) days of the inspection.

- 4.4 The Engineer in charge may inspect the Mines more than once in a quarter if any lapses, defects or deficiencies require such inspections.
- 4.5 For determining that the Construction Works conform to Specifications and Standards, the Engineer in charge may require the Mine Operator to carry out, or cause to be carried out, tests on a sample basis, to be specified by the Engineer in charge in accordance with Standard Industry Practice for quality assurance.
- 4.6 The sample size of the tests, to be specified by the Engineer in charge under Paragraph 4.5, shall comprise 5% (five per cent) of the quantity or number of tests prescribed for each category or type of tests in accordance with Standard Industry Practice; provided that the Engineer in charge may, for reasons to be recorded in writing, increase the aforesaid sample size by up to 10% (ten per cent) for certain categories or types of tests.
- 4.7 The timing of tests referred to in Paragraph 4, and the criteria for acceptance/ rejection of their results shall be determined by the Engineer in charge in accordance with Standard Industry Practice. The tests shall be undertaken on a random sample basis and shall be in addition to, and independent of, such tests that may be carried out by the Mine Operator for its own quality assurance in accordance with Standard Industry Practice.
- 4.8 In the event that the Mine Operator carries out any remedial works for removal or rectification of any defects or deficiencies, the Engineer in charge shall require the Mine Operator to carry out, or cause to be carried out, tests to determine that such remedial works have brought the Construction Works into conformity with the Specifications and Standards, and the provisions of this Paragraph 4 shall apply to such tests.
- 4.9 In the event that the Mine Operator fails to achieve any of the Project Milestones, the Engineer in charge shall undertake a review of the progress of construction and identify potential delays, if any. If the Engineer in charge shall determine that completion of the Mines is not feasible within the time specified in the Agreement, it shall require the Mine Operator to indicate within 15 (fifteen) days the steps proposed to be taken to expedite progress, and the period within which COD shall be achieved. Upon receipt of a report from the Mine Operator, the Engineer in charge shall review the same and send its comments to the Authority and the Mine Operator forthwith.
- 4.10 The Engineer in charge shall carry out, or cause to be carried out, all the Tests specified in Schedule-I and issue a Completion Certificate. For carrying out its functions under this Paragraph 4 and all matters incidental thereto, the Engineer in charge shall act under and in accordance with the provisions of Article 14 and Schedule-I.

## **5 Operation Period**

- 5.1 In respect of the Drawings, Documents and Safety Report received by the Engineer in charge for its review and comments during the Operation Period, the provisions of Paragraph 3 shall apply, *mutatis mutandis*.
- 5.2 The Engineer in charge shall review the annual Maintenance Programme furnished by the Mine Operator and send its comments thereon to the Authority and the Mine Operator within 15 (fifteen) days of receipt of the Maintenance Programme.

- 5.3 The Engineer in charge shall review the monthly status report furnished by the Mine Operator and send its comments thereon to the Authority and the Mine Operator within 7 (seven) days of receipt of such report.
- 5.4 The Engineer in charge shall inspect the Mines and make out an inspection report ("**O&M Inspection Report**") setting forth an overview of the status, quality and safety of O&M including its conformity with the Key Performance Indicators, Maintenance Requirements and Safety Requirements. In a separate section of the O&M Inspection Report, the Engineer in charge shall describe in reasonable detail the lapses, defects or deficiencies observed by it in O&M of the Mines. The Engineer in charge shall send a copy of its O&M Inspection Report to the Authority and the Mine Operator within 7 (seven) days of the inspection.
- 5.5 The Engineer in charge shall in its O&M Inspection Report specify the tests, if any, that the Mine Operator shall carry out, or cause to be carried out, for the purpose of determining that the Mines are in conformity with the Maintenance Requirements. It shall monitor and review the results of such tests and the remedial measures, if any, taken by the Mine Operator in this behalf.
- 5.6 The Engineer in charge shall determine if any delay has occurred in completion of repair or remedial works in accordance with the Agreement, and shall also determine the Damages, if any, payable by the Mine Operator to the Authority for such delay.
- 5.7 The Engineer in charge shall examine the request of the Mine Operator for closure of any section of the Mines for undertaking maintenance/ repair thereof, keeping in view the need to minimise disruption in generation and the time required for completing such maintenance/ repair in accordance with Standard Industry Practice. It shall grant permission with such modifications, as it may deem necessary, within 3 (three) days of receiving a request from the Mine Operator. Upon expiry of the permitted period of closure, the Engineer in charge shall monitor the re-opening of such section, and in case of delay, determine the Damages payable by the Mine Operator under Clause 16.8.
- 5.8 The Engineer in charge shall inspect the geometry of the Mines once every year, and make out a report setting forth an overview of the status and safety of geometry of the Mines and its conformity with the provisions of this Agreement. In a separate section of the report, the Engineer in charge shall describe in reasonable detail the lapses, defects or deficiencies observed by it. The Engineer in charge shall send a copy of its report to the Authority and the Mine Operator within 7 (seven) days of the inspection.
- 5.9 The Engineer in charge shall conduct or cause to be conducted at the Authority's cost, testing of the samples of Coal collected from the Coal Seams from time to time for determining the grade, ash and moisture content of Coal and their conformity with the results of the tests conducted by the Mine Operator.

## **6 Termination**

- 6.1 At any time, not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to such Termination, the Engineer in charge shall, in the presence of a representative of the Mine Operator, inspect the Mines for determining compliance by the Mine Operator with the Divestment Requirements set forth in Clause 38.1 and, if required, cause tests to be carried out at the Mine Operator's cost

for determining such compliance. If the Engineer in charge determines that the status of the Mines is such that its repair and rectification would require a larger amount than the sum set forth in Clause 39.2, it shall recommend withholding of the required amount by the Authority and the period of withholding thereof.

- 6.2 The Engineer in charge shall inspect the Mines once in every 15 (fifteen) days during a period of 90 (ninety) days after Termination for determining the liability of the Mine Operator under Article 39, in respect of the defects or deficiencies specified therein. If any such defect or deficiency is found by the Engineer in charge, it shall make a report in reasonable detail and send it forthwith to the Authority and the Mine Operator.

## **7 Determination of costs and time**

- 7.1 The Engineer in charge shall determine the costs, and/or their reasonableness, that are required to be determined by it under the Agreement.
- 7.2 The Engineer in charge shall determine the period, or any extension thereof, that is required to be determined by it under the Agreement.

## **SCHEDULE - P**

*(See Clause 33.2.1)*

### **PANEL OF CHARTERED ACCOUNTANTS AND COST AND MANAGEMENT ACCOUNTANTS**

#### **1 Panel of Chartered Accountants and Cost and Management Accountants**

[Auditors (both lead auditors and branch auditors) as available with the Authority shall be listed here]

## SCHEDULE - Q

(See Clause 38.4)

### VESTING CERTIFICATE

- 1 [\*\*\*<sup>30</sup>and having its offices at \*\*\*/] (the "**Authority**") refers to the agreement dated ..... (the "**Agreement**") entered into between the Authority and ..... (the "**Mine Operator**") for the procurement of coal which, *inter alia*, includes development of the mines at \*\*\*\*\* (the "**Mines**").
- 2 The Authority hereby acknowledges compliance and fulfillment by the Mine Operator of the Divestment Requirements set forth in Clause 38.1 of the Agreement on the basis that upon issue of this Vesting Certificate, the Authority shall be deemed to have acquired, and all title and interest of the Mine Operator in or about the Mines shall be deemed to have vested unto the Authority, free from any encumbrances, charges and liens whatsoever.
- 3 Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Mine Operator to rectify and remedy any defect or deficiency in any of the Divestment Requirements and for relieving the Mine Operator in any manner of the same.
- 4 Capitalised terms used, but not defined, herein shall have the meaning ascribed to them under the Agreement.

Signed this ..... day of ..... ,20 ..... at .....

AGREED, ACCEPTED AND SIGNED

SIGNED, SEALED AND  
DELIVERED

For and on behalf of

For and on behalf of

Mine Operator by:

Authority by:

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

In the presence of:

1.

2.

---

<sup>30</sup> All asterisks in this Model Agreement should be substituted by project -specific particulars in the draft Agreement forming part of Bid Documents.

## SCHEDULE - R

(See Clause 40.3.1)

### SUBSTITUTION AGREEMENT

THIS SUBSTITUTION AGREEMENT is entered into on this the .....day of .....20.... (hereinafter referred to as the "**Agreement**")

#### AMONGST

- 1 [\*\*\*\*]<sup>31</sup> and having its offices at [\*\*\*\*] (hereinafter referred to as the "**Authority**" which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns);
- 2 [\*\*\*\*] Limited, a company incorporated under the provisions of the Companies Act, 2013 or any statutory re-enactment thereof and having its registered office at [\*\*\*\*] (hereinafter referred to as the "**Mine Operator**", which expression shall unless repugnant to the context or meaning thereof, include its successors and permitted assigns); and
- 3 [Insert name of Lenders' Representative] and having its registered office at [\*\*\*\*], acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the "**Lenders' Representative**", which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns).

#### WHEREAS:

- (A) The Authority has entered into an agreement dated [\*\*\*\*] with the Mine Operator (the "**Contract Agreement**") for the procurement of coal which, *inter alia*, include development of the mines at [\*\*\*\*] (the "**Mines**"), and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- (C) Senior Lenders have requested the Authority to enter into this Agreement for securing their interests through assignment, transfer and substitution of the Contract to a Nominated Company in accordance with the provisions of this Agreement and the Contract Agreement.
- (D) In order to enable implementation of the Project including its financing, construction, operation and maintenance, the Authority has agreed and undertaken to transfer and assign the Contract to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the Contract Agreement.

**NOW, THEREFORE**, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

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<sup>31</sup> All asterisks in this Model Agreement should be substituted by project-specific particulars in the draft Agreement forming part of Bid Documents



## **1 DEFINITIONS AND INTERPRETATION**

### **1.1 Definitions**

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

**"Financial Default"** shall mean occurrence of a material breach of the terms and conditions of the Financing Agreements or a continuous default in Debt Service by the Mine Operator for a minimum period of 3 (three) months;

**"Nominated Company"** shall mean a company incorporated under the provisions of the Companies Act, [1956/2013], including any re-enactment or amendment thereof, selected by the Lenders' Representative, on behalf of Senior Lenders, and proposed to the Authority for assignment/ transfer of the Contract as provided in this Agreement;

**"Notice of Financial Default"** shall have the meaning ascribed thereto in Clause 3.2.1; and

**"Parties"** shall mean the parties to this Agreement collectively and **"Party"** shall mean any of the Parties to this Agreement individually.

### **1.2 Interpretation**

1.2.1 References to Lenders' Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders' Representative, acting for and on behalf of Senior Lenders.

1.2.2 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.

1.2.3 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Contract Agreement shall, unless repugnant to the context or meaning thereof, have the meaning ascribed to them in the Contract Agreement.

1.2.4 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Contract Agreement shall apply, *mutatis mutandis*, to this Agreement.

## **2 ASSIGNMENT**

The Mine Operator hereby agrees to assign the rights, title and interest in the Contract to, and in favour of, the Lenders' Representative pursuant to and in accordance with the provisions of this Agreement and the Contract Agreement by way of security in respect of financing by the Senior Lenders under the Financing Agreements.

## **3 SUBSTITUTION OF THE MINE OPERATOR**

### **3.1 Rights of substitution**

- 3.1.1 Pursuant to the rights, title and interest assigned under Clause 2, the Lenders' Representative shall be entitled to substitute the Mine Operator by a Nominated Company under and in accordance with the provisions of this Agreement and the Contract Agreement.
- 3.1.2 The Authority hereby agrees to substitute the Mine Operator by endorsement on the Contract Agreement in favour of the Nominated Company selected by the Lenders' Representative in accordance with this Agreement. For the avoidance of doubt, the Senior Lenders or the Lenders' Representative shall not be entitled to operate and maintain the Mines as Mine Operator either individually or collectively.

### **3.2 Substitution upon occurrence of Financial Default**

- 3.2.1 Upon occurrence of a Financial Default, the Lenders' Representative may issue a notice to the Mine Operator (the "**Notice of Financial Default**") along with particulars thereof, and send a copy to the Authority for its information and record. A Notice of Financial Default under this Clause 3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Mine Operator for the purposes of this Agreement.
- 3.2.2 Upon issue of a Notice of Financial Default hereunder, the Lenders' Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing Agreements, substitute the Mine Operator by a Nominated Company in accordance with the provisions of this Agreement.
- 3.2.3 At any time after the Lenders' Representative has issued a Notice of Financial Default, it may by notice require the Authority to suspend all the rights of the Mine Operator and undertake the operation and maintenance of the Mines in accordance with the provisions of Clause 36 of the Contract Agreement, and upon receipt of such notice, the Authority shall undertake Suspension under and in accordance with the provisions of the Contract Agreement. The aforesaid Suspension shall be revoked upon substitution of the Mine Operator by a Nominated Company, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such Suspension, the Authority may terminate the Contract Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Contract Agreement; provided that upon written request from the Lenders' Representative and the Mine Operator, the Authority may extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days.

### **3.3 Substitution upon occurrence of Mine Operator Default**

- 3.3.1 Upon occurrence of a Mine Operator Default, the Authority shall by a notice inform the Lenders' Representative of its intention to issue a Termination Notice and grant 15 (fifteen) days' time to the Lenders' Representative to make a representation, stating the intention to substitute the Mine Operator by a Nominated Company.
- 3.3.2 In the event that the Lenders' Representative makes a representation to the Authority within the period of 15 (fifteen) days specified in Clause 3.3.1, stating that it intends to substitute the Mine Operator by a Nominated Company, the Lenders' Representative shall be entitled to undertake and complete the substitution of the Mine Operator by a Nominated Company in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) days from the date of such representation, and the Authority shall either withhold Termination or undertake

Suspension for the aforesaid period of 180 (one hundred and eighty) days; provided that upon written request from the Lenders' Representative and the Mine Operator, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days; provided further that the Lenders' Representative may at any time withdraw its representation hereunder and upon such withdrawal, the Authority may terminate the Contract Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Contract Agreement .

### **3.4 Procedure for substitution**

- 3.4.1 The Authority and the Mine Operator hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Authority under Clause 3.3.2, as the case may be, the Lenders' Representative may, without prejudice to any other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the transfer of the Contract to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Mine Operator towards the Authority under the Contract Agreement and towards the Senior Lenders under the Financing Agreements.
- 3.4.2 To be eligible for substitution in place of the Mine Operator, the Nominated Company shall be required to fulfill the eligibility criteria that were laid down by the Authority for selecting the Bidders for award of the Contract; provided that the Lenders' Representative may represent to the Authority that all or any of such criteria may be waived in the interest of the Project, and if the Authority determines that such waiver shall not have any Material Adverse Effect on the Project, it may waive all or any of such eligibility criteria.
- 3.4.3 Upon selection of a Nominated Company, the Lenders' Representative shall, request the Authority to:
- (a) accede to transfer to the Nominated Company the right to construct, operate and maintain the Mines in accordance with the provisions of the Contract Agreement;
  - (b) endorse and transfer the Contract to the Nominated Company, on the same terms and conditions, for the residual Contract Period; and
  - (c) enter into a substitution agreement with the Lenders' Representative and the Nominated Company on the same terms as are contained in this Agreement.
- 3.4.4 If the Authority has any objection to the transfer of Contract in favour of the Nominated Company in accordance with this Agreement, it shall within 15 (fifteen) days from the date of proposal made by the Lenders' Representative, give a reasoned order after hearing the Lenders' Representative. If no such objection is raised by the Authority, the Nominated Company shall be deemed to have been accepted. The Authority shall thereupon transfer and endorse the Contract within 15 (fifteen) days of its acceptance/deemed acceptance of the Nominated Company; provided that in the event of such objection by the Authority, the Lenders' Representative may propose another Nominated Company whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Nominated Company in place of the Mine Operator.

- 3.4.5 The transfer of Contract hereunder to a Nominated Company may, notwithstanding anything to the contrary in this Agreement and the Contract Agreement, be undertaken by transfer of no less than 75% (seventy-five per cent) of the equity of the Mine Operator to the Nominated Company, and upon such transfer hereunder, the Mine Operator shall be deemed to be the Nominated Company under and in accordance with the provisions of this Agreement and the Contract Agreement.

### **3.5 Selection to be binding**

The decision of the Lenders' Representative and the Authority in selection of the Nominated Company shall be final and binding on the Mine Operator. The Mine Operator irrevocably agrees and waives any right to challenge the actions of the Lenders' Representative or the Senior Lenders or the Authority taken pursuant to this Agreement including the transfer/ assignment of the Contract in favour of the Nominated Company. The Mine Operator agrees and confirms that it shall not have any right to seek revaluation of assets of the Project or its shares. It is hereby acknowledged by the Parties that the rights of the Lenders' Representative are irrevocable and shall not be contested in any proceedings before any court or authority and the Mine Operator shall have no right or remedy to prevent, obstruct or restrain the Authority or the Lenders' Representative from effecting or causing the transfer by substitution and endorsement of the Contract as requested by the Lenders' Representative.

## **4 PROJECT AGREEMENTS**

The Mine Operator shall ensure and procure that each Project Agreement contains provisions that entitle the Nominated Company to step into such Project Agreement, in its discretion, in place and substitution of the Mine Operator in the event of such Nominated Company's assumption of the liabilities and obligations of the Mine Operator under the Contract Agreement.

## **5 TERMINATION OF CONTRACT AGREEMENT**

### **5.1 Termination upon occurrence of Financial Default**

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the Authority to terminate the Contract Agreement forthwith, and upon receipt of such notice, the Authority shall undertake Termination under and in accordance with the provisions of Clause 37 of the Contract Agreement.

### **5.2 Termination when no Nominated Company is selected**

In the event that no Nominated Company acceptable to the Authority is selected and recommended by the Lenders' Representative within the period of 180 (one hundred and eighty) days or any extension thereof as set forth in Clause 3.3.2, the Authority may terminate the Contract Agreement forthwith in accordance with the provisions thereof.

## **6 DURATION OF THE AGREEMENT**

### **6.1 Duration of the Agreement**

This Agreement shall come into force from the date hereof and shall expire at the earliest to occur of the following events:

- (a) termination of this Agreement; or
- (b) no sum remains to be advanced, or is outstanding to the Senior Lenders, under the Financing Agreements.

## **7 INDEMNITY**

### **7.1 General indemnity**

- 7.1.1 The Mine Operator will indemnify, defend and hold the Authority and the Lenders' Representative harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Mine Operator of any of its obligations under this Agreement or on account of failure of the Mine Operator to comply with Applicable Laws and Applicable Permits.
- 7.1.2 The Authority will indemnify, defend and hold the Mine Operator harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfill any of its obligations under this Agreement, materially and adversely affecting the performance of the Mine Operator's obligations under the Contract Agreement or this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.
- 7.1.3 The Lenders' Representative will indemnify, defend and hold the Mine Operator harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Lenders' Representative to fulfill its obligations under this Agreement, materially and adversely affecting the performance of the Mine Operator's obligations under the Contract Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Lenders' Representative, its officers, servants and agents.

### **7.2 Notice and contest of claims**

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 7.1 or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

## **8 DISPUTE RESOLUTION**

- 8.1 Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to arbitration to a board of arbitrators comprising of one nominee of each of the Authority, the Mine Operator and the Lenders' Representative. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi and shall be subject to provisions of the Arbitration and Conciliation Act, 1996.
- 8.2 The board of arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be [\*\*\*\*] and the language of arbitration shall be English.

## **9 MISCELLANEOUS PROVISIONS**

### **9.1 Governing law and jurisdiction**

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and, subject to the provisions of Clause 8 above, the courts at [\*\*\*\*] shall have jurisdiction over all matters arising out of or relating to this Agreement.

### **9.2 Waiver of sovereign immunity**

The Authority unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this done Agreement constitute commercial acts and performed for commercial purposes;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Authority with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgment or award against it in any such proceedings and to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgment that may be made or given in connection therewith).

### **9.3 Priority of agreements**

In the event of any conflict between the Contract Agreement and this Agreement, the provisions contained in the Contract Agreement shall prevail over this Agreement.

#### **9.4 Alteration of terms**

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if it is in writing and signed by the duly authorised representatives of the Parties.

#### **9.5 Waiver**

9.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of, or obligations, under this Agreement:

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof, or of, other provisions of, or obligations under this Agreement;
- (b) shall not be effective unless, it is in writing and executed by a duly authorised representative of the Party; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

9.5.2 Neither the failure by a Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

#### **9.6 No third party beneficiaries**

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

#### **9.7 Survival**

9.7.1 Termination of this Agreement:

- (a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and
- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

9.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

#### **9.8 Severability**

If for any reason whatsoever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or

enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provision shall not be subject to dispute resolution under Clause 8 of this Agreement or otherwise.

#### **9.9 Successors and assigns**

This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

#### **9.10 Notices**

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service to each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be sent. Such change shall be effective when all the Parties have notice of it.

#### **9.11 Language**

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

#### **9.12 Authorised representatives**

Each of the Parties shall by notice in writing designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

#### **9.13 Original Document**

This Agreement may be executed in three counterparts, each of which when executed and delivered shall constitute an original of this Agreement.



**IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.**

THE COMMON SEAL OF MINE OPERATOR has been affixed pursuant to the resolution passed by the Board of Directors of the Mine Operator at its meeting held on the ..... day of 20..... hereunto affixed in the presence of ....., Director, [who has signed these presents in token thereof and ....., Company Secretary / Authorised Officer who has countersigned the same in token thereof<sup>\$</sup>]:

SIGNED, SEALED AND  
DELIVERED For and on behalf of  
AUTHORITY by:

(Signature)  
(Name)  
(Designation)  
(Address)  
(Fax No.)  
(e-mail address)

(Signature)  
(Name)  
(Designation)  
(Address)  
(Fax No.)  
(e-mail address)

SIGNED, SEALED AND DELIVERED

For and on behalf of

SENIOR LENDERS by the Lenders' Representative:

(Signature)  
(Name)  
(Designation)  
(Address)  
(Fax No.)  
(e-mail address)

In the presence of:

1.

2.

---

<sup>\$</sup> To be affixed in accordance with the articles of association of the Mine Operator and the resolution passed by its Board of Directors.

## **SCHEDULE - S**

*(See Clause 29.1.6)*

### **PURE AGENCY AGREEMENT**

This PURE Agency Agreement (the “Agreement”) is entered into \_\_\_\_\_ (the “Effective Date”), by and between \_\_\_\_\_, with an address of \_\_\_\_\_ (the “Recipient of supply i.e. Principal”) and \_\_\_\_\_, with an address of \_\_\_\_\_, (the “Service Provider i.e. Pure Agent”), collectively “the Parties.”

WHEREAS, Principal desires to engage Pure Agent to be its representative to perform the Services detailed in this Agreement on Principal’s behalf;

WHEREAS, Pure Agent agrees to represent Principal and perform the Services requested herein;

NOW, therefore, in consideration of the promises and conditions contained herein, the Parties agree as follows:

1. Services. Principal requests and Pure Agent agrees to perform the following specific Services (the “Services”):
  - a. The Pure Agent shall undertake the Rehabilitation and Resettlement of the PAPs in accordance with Applicable Laws, R&R Policy of Principal and the terms of [Model Contract Agreement].
  - b. The Pure Agent shall procure issuance of the environmental clearance from the Ministry of Environment, Forests and Climate Change, Government of India
  - c. The Pure Agent shall procure issuance of the forest clearance from the Ministry of Environment, Forests and Climate Change, Government of India
2. Appointment. Principal hereby appoints Pure Agent as Principal’s agent to perform the Services on Principal’s behalf with limited to following conditions.
  - a. Pure agent will incur expenditure or costs in the course of supply of services.
  - b. Pure agent neither intends to hold nor holds any right on services, so procured or provided as pure agent of the Principal.
  - c. Pure agent does not use for his own interest such services so procured.
  - d. Pure agent will receive only the actual amount incurred to procure such Services under this Agreement.
3. Scope of Authority. Agent’s authority to bind Principal is limited to the Services. Agent does not have the authority to bind Principal in any manner whatsoever beyond the Services stated herein.
4. Expenses. Agent shall be entitled to reimbursement for expenses incurred in the course of performing the Services in the following manner.
  - a. For the service mentioned in Para 1. a., the Agent shall submit complete details of all direct and documented R&R Costs along with underlying invoices in support of such costs and expenditure, as desired by the Principal, on monthly / quarterly basis

- along with Pure Agent invoice as per GST Law and Rules for certification/ acceptance for payment by Engineer in charge.
- b. For the services mentioned in Para 1. b. and c., only statutory cost and fees paid by the agent for performance of services shall be reimbursed. The Agent shall submit complete details of statutory cost and fees paid along with underlying invoices in support of such costs, along with Pure Agent invoice as per GST Law and Rules after completion of service for certification/ acceptance for payment by Engineer in charge.
5. **Payment Term.** Payment shall be made within 30 days from the date of receipt of complete details for reimbursement to Engineer in charge's office or approval for payment from competent authority whichever is later.
6. **Parties' Relationship.** Nothing in this Agreement shall be construed to create an employer-employee relationship between Principal and Agent.
7. **Confidentiality & Intellectual Property.** During the course of this Agreement, it may be necessary for Principal to share proprietary information, including trade secrets, industry knowledge, and other confidential information, to Agent in order for Agent to complete the Services. Agent will not share any of this proprietary information at any time. Agent also will not use any of this proprietary information for his/her personal benefit at any time. Agent acknowledges and agrees that all copyrights, trademarks and service marks and rights in the name of or licensed to Principal shall be and remain the sole and complete property of Principal and Agent shall not acquire or claim any right, title or interest of any nature in any such copyright, trademark, or service mark. This section remains in full force and effect even after termination of the Agreement by its natural termination or the early termination by either party.
8. **Termination.** As per Article 37 of [Model Contract Agreement.]
9. **Representations and Warranties.** Both Parties represent that they are fully authorized to enter into this Agreement. The performance and obligations of either Party will not violate or infringe upon the rights of any third-party or violate any other agreement between the Parties, individually, and any other person, organization, or business or any law or governmental regulation.
10. **Indemnity.** The Parties each agree to indemnify and hold harmless the other Party, its respective affiliates, officers, agents, employees, and permitted successors and assigns against any and all claims, losses, damages, liabilities, penalties, punitive damages, expenses, reasonable legal fees and costs of any kind or amount whatsoever, which result from the negligence of or breach of this Agreement by the indemnifying party, its respective successors and assigns that occurs in connection with this Agreement. This section remains in full force and effect even after termination of the Agreement by its natural termination or the early termination by either party.
11. **Limitation of Liability.** UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY DAMAGES RESULTING FROM ANY PART OF THIS AGREEMENT SUCH AS, BUT NOT LIMITED TO, LOSS OF REVENUE OR ANTICIPATED PROFIT OR LOST BUSINESS, COSTS OF DELAY OR FAILURE OF DELIVERY, WHICH ARE NOT RELATED TO OR THE DIRECT RESULT OF A PARTY'S NEGLIGENCE OR BREACH.

12. Severability. In the event any provision of this Agreement is deemed invalid or unenforceable, in whole or in part, that part shall be severed from the remainder of the Agreement and all other provisions should continue in full force and effect as valid and enforceable.
13. Waiver. The failure by either party to exercise any right, power or privilege under the terms of this Agreement will not be construed as a waiver of any subsequent or further exercise of that right, power or privilege or the exercise of any other right, power or privilege.
14. Legal Fees. In the event of a dispute resulting in legal action, the successful party will be entitled to its legal fees, including, but not limited to its attorneys' fees.
15. Legal and Binding Agreement. This Agreement is legal and binding between the Parties as stated above. This Agreement may be entered into and is legal and binding both in the United States and throughout Europe. The Parties each represent that they have the authority to enter into this Agreement.
16. Governing Law and Jurisdiction. The Parties agree that this Agreement shall be governed by the State and/or Country in which both Parties do business.
17. Entire Agreement. The Parties acknowledge and agree that this Agreement represents the entire agreement between the Parties. In the event that the Parties desire to change, add, or otherwise modify any terms, they shall do so in writing to be signed by both parties.

The Parties agree to the terms and conditions set forth above as demonstrated by their signatures as follows:

“PRINCIPAL”

Signed: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

“AGENT”

Signed: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_