

F. No. CBA2-13011/3/2020-CBA2-Part(1)/P&S-II

Government of India

Ministry of Coal

\*\*\*\*\*

Shastri Bhawan, New Delhi

Dated, the 4<sup>th</sup> December, 2023

OFFICE MEMORANDUM


**Subject: Uploading of Orders issued in furtherance of Empowered Committee of Secretaries (ECoS) decisions in the website of the Ministry**

The undersigned is directed to say that the following meeting-wise documents issued in furtherance of ECoS decisions along with this OM may be placed in the website of Ministry: -

Sl. No.	ECoS meeting held on	Decisions taken by ECoS and Orders issued (If any)
1	08.06.2020	Purpose of allocation of Schedule II and Schedule III coal mines under CMSP Act. ( <b>Annexure-1</b> ).
2.	24.08.2020	i. Estimation of Upfront amount for Schedule II Coal Mines ii. Adjustment of Upfront Amount against Monthly Payments iii. Timeline for making Monthly Payment iv. Estimation of Monthly Payment v. Extension of Time Limit in Efficiency Parameters for delays beyond bidder's control vi. Force Majeure vii. Mandatory Work Program viii. Return of Bid Security of Unsuccessful Bidders ix. Efficiency Parameters of Schedule II Coal Mines  Details in the Standard Bidding Documents at <b>Annexure-2</b> .
3.	04.03.2021	Purpose of allocation of Schedule II and Schedule III coal mines under CMSP Act. ( <b>Annexure-1</b> ).
4.	20.10.2021	i. Purpose of allocation of Schedule II and Schedule III coal mines under CMSP Act. ( <b>Annexure-1</b> ).  ii. ECoS decided on increase in rebate in revenue share to further encourage coal gasification. ( <b>Annexure-3</b> ).
5.	10.01.2022	Purpose of allocation of Schedule II and Schedule III coal mines under CMSP Act. ( <b>Annexure-1</b> ).
6.	21.03.2022	Purpose of allocation of Schedule II and Schedule III coal mines under CMSP Act. ( <b>Annexure-1</b> ).
7.	30.03.2022	Purpose of allocation of Schedule II and Schedule III coal mines under CMSP Act. ( <b>Annexure-1</b> ).
8.	27.09.2022	i. ECoS decided on revision in upfront amount. Order dated 31.10.2022 ( <b>Annexure – 4</b> ) ii. ECoS decided regarding Partial relinquishment after completion of exploration. ( <b>Annexure – 5</b> ).  iii. ECoS decided that MoC may consider allotment of coal blocks overlapping with already allocated CBM block, to CPSU allocatee of CBM block with their consent. ( <b>Annexure – 6</b> ).

9.	03.03.2023	<p>i. ECoS recommended to not consider the request of Allocate for surrendering of 74.01 Ha of Forest Land in respect of Meral Coal Mine allocated to M/s Trimula Industries Limited. ( <b>Annexure – 7</b>)</p> <p>ii. Request for lowering Peak Rated Capacity of Dahegaon Makardhokra IV Coal Mine due to a major technical flaw in the approved Mining Plan. ( <b>Annexure – 8</b>)</p>
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**Encl:** As above

  
 (Rishan Rynthathiang)  
 Under Secretary (P&S-II)

**To,**

1. STD, NIC, Ministry of Coal

List of coal mines whose purpose of allocation was decided by the ECoS				
Sl.No.	Name of coal block	Schedule	Date of ECoS Meeting	Direction issued to NA on
1	Gare-Palma-IV/1	II	08.06.2020 (1st Meeting)	15.06.2020
2	Gare-Palma-IV/7	II		15.06.2020
3	Marki Mangli II	II		15.06.2020
4	Gotitoria (East)	II		15.06.2020
5	Brahmadiha	I to III		15.06.2020
6	Chakla	I to III		15.06.2020
7	Chendipada-II	I to III		15.06.2020
8	Gondulpara	I to III		15.06.2020
9	Chitarpur	I to III		15.06.2020
10	Charitand Tiliaya	I to III		15.06.2020
11	Fatehpur East	I to III		15.06.2020
12	Mahanadi	I to III		15.06.2020
13	Sondhia	I to III		15.06.2020
14	Urtan North	I to III		15.06.2020
15	Gotitoria (West)	II		15.06.2020
16	Jaganathpur A	I to III		16.03.2021
17	Khappa & Extn.	I to III		16.03.2021
18	Jogeshwar & Khas Jogeshwar	I to III		16.03.2021
19	Gondkhari	I to III		16.03.2021
20	Parbatpur-Central	II		23.09.2021
21	Sitanala	III		23.09.2021
22	Marki Mangli IV	III		10.11.2021
23	Kosar Dongergaon	III		10.11.2021
24	Bhaskarpara	I to III	04.03.2021 (3rd meeting)	16.03.2021
25-26	Brinda & Sasai	III		16.03.2021
27	Utkal C	III		23.09.2021
28	Namchik Namphuk	II	20.10.2021 (4th meeting)	23.09.2021
29	Mandla-South	III		23.09.2021
30	Mandla North	II		23.09.2021
31	Kasta East	I to III		23.09.2021
32	Bijahan	I to III		23.09.2021
33	Rabodih OCP	I to III		10.11.2021
34	Dongeri Tal II	III	10.01.2022 (5th meeting)	10.11.2021
35	Gare Palma-IV/6	I to III		17.12.2021
36-37	Utkal-B1 and Utkal-B2	III		17.12.2021
38	Jitpur	III	21.03.2022 (6th meeting)	24.03.2022
39-40	Gare Palma-IV/2 & IV/3	II	30.03.2022 (7th meeting)	21.04.2022





सत्यमेव जयते



**SECOND ATTEMPT OF [17<sup>TH</sup> / 7<sup>TH</sup>] TRANCHE OF AUCTION**

**STANDARD [COAL/LIGNITE MINE DEVELOPMENT AND PRODUCTION AGREEMENT / COAL/LIGNITE BLOCK DEVELOPMENT AND PRODUCTION AGREEMENT]**

**FOR SALE OF COAL/LIGNITE**

**Nominated Authority, Ministry of Coal**

**Government of India**

**New Delhi**

**November 15, 2023**

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[To be executed on stamp paper of adequate value.]

This Coal Mine Development and Production Agreement is made by and between following:

**PARTIES:**

- 1 **The President of India**, acting through the Central Government represented by the Nominated Authority appointed under Section 6 of the Coal Mines (Special Provisions) Act, 2015 (the “**Nominated Authority**”) / [and authorised under Section 26 of the Mines and Minerals (Development and Regulation) Act, 1957]<sup>1</sup>.
- 2 **[Name of the Successful Bidder]**, incorporated in India under the Companies Act, [1956/2013] with corporate identity number [CIN of the Successful Bidder], whose registered office is at [address of registered office], India and principal place of business is at [address of principal place of business, if different from registered office] (the “**Successful Bidder**”).

**BACKGROUND:**

- A. [The Supreme Court of India *vide* its judgment dated August 25, 2014 read with the order dated September 24, 2014 (collectively the “**Supreme Court Judgment**”) had cancelled allotment of 204 coal blocks.
- B. Subsequent to the Supreme Court Judgment, the Coal Mines (Special Provisions) Ordinance, 2014 and Coal Mines (Special Provisions) Second Ordinance, 2014 (collectively the “**Ordinance**”) were promulgated and the Coal Mines (Special Provisions) Rules, 2014 were issued for auction and allotment of all coal blocks which were subject to cancellation pursuant to the Supreme Court Judgment. Further, the Coal Mines (Special Provisions) Act, 2015 was enacted, which replaced the Ordinance.]<sup>2</sup>
- C. [The Coal Mine (*as defined in Clause 1.1.20*) was included in the list of such 204 coal blocks and accordingly, its allotment to the Prior Allottee (*as defined in Clause 1.1.53*) was cancelled pursuant to the Supreme Court Judgment, with effect from the ‘appointed date’ (as defined in the Act).]<sup>3</sup>  
  
[The Mines and Minerals (Development and Regulation) Act, 1957 was promulgated for development and the regulation of mines and minerals. In 2010, Section 11A was introduced *vide* the Mines and Mineral (Development and Regulation) (Amendment) Act, 2010 and was subsequently amended *vide* Section 30 read with Schedule IV of the Coal Mines (Special Provisions) Act, 2015, which provides for the mechanism to auction and/or allot coal and lignite under the provisions of the Act.]<sup>4</sup>
- D. The Press Note 4 of 2019, issued by the Central Government, amended the Foreign Direct Investment Policy 2017, to permit 100% FDI under automatic route for coal mining activities, including associated processing infrastructure, subject to the Act and other Applicable Laws, for

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<sup>1</sup> To be retained as applicable.

<sup>2</sup> To be retained as applicable.

<sup>3</sup> To be retained as applicable.

<sup>4</sup> To be retained as applicable.

sale of coal. The Press Note 3 of 2020, issued by the Central Government, further amended the FDI Policy to prescribe a requirement to seek prior Government approval if such foreign direct investment is by an entity from a country which shares land borders with India or where the beneficial owner of such foreign direct investment into India is situated in or is a citizen of any such country.

- E. Subsequently, the Mineral Laws (Amendment) Act, 2020 has been notified on March 13, 2020, with effect from January 10, 2020 to amend the Act so as to permit auction of Coal Mines for own consumption, sale or for any other purpose as may be determined by the Government.
- F. The Central Government issued an order under [Rule 8(2) / Rule 3(1)] of the Rules, dated [Insert Relevant Order Date] / [[Insert Relevant Order Date]]<sup>5</sup>, as amended, to the Nominated Authority for auction of the Coal Mine for sale of coal pursuant to [Section 4(1) and 4(2) / Section 11A]<sup>6</sup> of the Act.
- G. Pursuant to a tender process conducted in accordance with the Act, the Rules, the Tender Document, dated November 15, 2023 (as amended) and receipt of a direction from the Central Government under [Rule 10(10) / Rule 5(7)]<sup>7</sup> of the Rules, the Successful Bidder has become entitled to enter into an agreement with the Nominated Authority pursuant to [Rule 13(5) / Rule 8(1) of the Rules] with respect to allocation of the Coal Mine to the Successful Bidder for sale of coal.
- H. Accordingly, the Nominated Authority and the Successful Bidder are entering into this Agreement, in accordance with [Rule 13(5) / Rule 8(1) of the Rules], with respect to matters related to allocation of the Coal Mine, including without limitation development of the Coal Mine and production and sale of coal from the Coal Mine.

**NOW THEREFORE**, in consideration of the mutual covenants, terms and conditions and understandings set forth in this Agreement, and other good and valuable consideration (the adequacy of which are hereby mutually acknowledged), the Parties with the intent to be legally bound hereby agree as follows:

## **1. DEFINITIONS AND INTERPRETATION**

The definitions and rules of interpretation in this clause apply in this Agreement.

### **1.1. Definitions**

1.1.1. “**Act**” shall mean the [CM(SP) Act, 2015 / MMDR Act, 1957]<sup>8</sup>.

1.1.2. “**Agreement**” means this [Coal Mine Development and Production Agreement / Mine Development and Production Agreement]<sup>9</sup> and all attached annexure, schedules, exhibits and instruments supplemental to or amending, modifying or confirming this Agreement in accordance

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<sup>5</sup> To be retained as applicable.

<sup>6</sup> To be retained as applicable.

<sup>7</sup> To be retained as applicable.

<sup>8</sup> To be retained as applicable.

<sup>9</sup> To be retained as applicable.

with the provisions of this Agreement.

- 1.1.3. **“Agreement Date”** shall mean the date on which execution of this Agreement by both the Successful Bidder and the Nominated Authority is completed.
- 1.1.4. **“Allocation Order”** shall have the meaning ascribed thereto in the Act and the Rules.]
- 1.1.5. **“Anti Corruption Laws”** shall have the meaning given to such expression in Clause 18.1(a).
- 1.1.6. **“Anti Corruption Policy”** shall have the meaning given to such expression in Clause 18.1(d).
- 1.1.7. **“Applicable Law”** shall mean all applicable statutes, laws, by-laws, rules, regulations, orders, ordinances, protocols, codes, guidelines, policies, notices, directions, judgments, decrees or other requirements or official directive of any Governmental Authority or court or other law, rule or regulation approval from the relevant Governmental Authority, government resolution, directive, or other government restriction or any similar form of decision of, or determination by, or any interpretation or adjudication having the force of law in India. It is hereby clarified that Applicable Law includes the consolidated Foreign Direct Investment Policy 2017 issued by the Department of Industrial Policy and Promotion, as amended from time to time including as amended by Press Note 3 of 2020 issued by the Department for Promotion of Industry and Internal Trade.
- 1.1.8. **“Appropriation Event”** shall have the meaning given to such expression in Clause 6.2.1.
- 1.1.9. **“Authorised Representative”** shall have the meaning given to such expression in Clause 4.4.
- 1.1.10. **“Award”** shall have the meaning given to such expression in Clause 27.5.
- 1.1.11. **“Base Year”** shall mean the financial year 2017-18.
- 1.1.12. **“Business Day”** shall mean a day which is not a Sunday or any other day declared as a public holiday by the Central Government.
- 1.1.13. **“CBA Act”** shall mean the Coal Bearing Areas (Acquisition and Development) Act, 1957.
- 1.1.14. **“CBM”** shall mean Natural Gas (mainly Methane) contained in coal or bituminous lignite beds.
- 1.1.15. **“Central Government”** shall mean the Government of India, acting through the Ministry of Coal.
- 1.1.16. **“Claim”** shall have the meaning given to such expression in Clause 20.3.
- 1.1.17. **“CM(SP) Act, 2015”** shall mean Coal Mines (Special Provisions) Act, 2015 as amended from time to time.
- 1.1.18. **“Coal Gasification”** shall mean the technological process wherein partial oxidation / combustion of coal in an atmosphere of air/oxygen and steam, generates a mixture of flammable gasses (Syngas, Synthesis gas, Producer gas) comprising mainly of CO and H<sub>2</sub> with small quantities of CO<sub>2</sub>, CH<sub>4</sub>, H<sub>2</sub>O etc. and slag/ash (mineral residue).

- 1.1.19. **“Coal Liquefaction”** shall mean the process of converting coal into liquid hydrocarbons i.e. liquid fuels and petrochemicals.
- 1.1.20. **“Coal Mine”** shall mean the [coal/lignite mine(s) / coal block(s)]<sup>10</sup> which is a [Fully Explored/ Partially Explored] Mine as more particularly described in SCHEDULE A.
- 1.1.21. **“Companies Act”** means the Companies Act, 1956 or the Companies Act, 2013, as applicable, as now enacted or as the same may from time to time be amended, re-enacted or replaced.
- 1.1.22. **“Control”** shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner.
- 1.1.23. **“Commencement Plan”** shall have the meaning given to such expression in Clause 5.1.
- 1.1.24. **“DGH”** shall mean Director General of Hydrocarbons.
- 1.1.25. **“Designated Bank Account”** shall mean the following bank account of the:
- NOMINATED AUTHORITY (For all payments except preparation of mine dossiers):**  
Name of the bank: Punjab National Bank (PNB)  
Account number: 0276050414586  
Name of the account holder: PAO, M/o Coal  
IFSC Code: PUNB0027620
- CMPDI (For payment related to preparation of Mine Dossiers):**  
Name of the bank: To be provided  
Account number: To be provided  
Name of the account holder: To be provided  
IFSC Code: To be provided
- 1.1.26. **“Efficiency Parameters”** shall have the meaning given to such expression in Clause 5.3.2.3.
- 1.1.27. **“Eligibility Conditions”** shall mean the eligibility conditions specified in the Act and the Rules including all the eligibility conditions listed in the Tender Document.
- 1.1.28. **“Encumbrances”** means any mortgage, pledge, equitable interest, assignment by way of security, conditional sales contract, hypothecation, right of other Persons, claim, security interest, encumbrance, title defect, title retention agreement, voting trust agreement, interest, option, lien, charge, commitment, restriction or limitation of any nature whatsoever, including restriction on use, voting rights, transfer, receipt of income or exercise of any other attribute of ownership, right of set-off, any arrangement (for the purpose of, or which has the effect of, granting security), or any other security interest of any kind whatsoever, or any agreement, whether conditional or otherwise, to create any of the same.
- 1.1.29. **“Event of Force Majeure”** shall have the meaning given to such expression in Clause 25.1.

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<sup>10</sup> To be retained as applicable.



- 1.1.30. **“Final Offer”** shall mean [insert percentage] percentage share of revenue payable to the Government per Tonne of coal, based on which the Successful Bidder was declared successful in the tender process for the Coal Mine.
- 1.1.31. **“Fully Explored Mine”** means a coal mine/ block categorised in G-1 exploration stage as per the modified Indian Standard Procedure for Coal Resource Estimation, 2017 issued by the Central Geological Programming Board of Geological Survey of India.
- 1.1.32. **“Geological Report”** shall have the meaning ascribed thereto in Rule 2(1)(iv) of the Mineral Concession Rules, 1960.
- 1.1.33. **“Governmental Approval”** means any authorization, approval, consent, licence or permit required from any Governmental Authority.
- 1.1.34. **“Governmental Authority”** means any government authority, statutory authority, government department, agency, commission, board, tribunal or court or other law, rule or regulation making entity having or purporting to have jurisdiction on behalf of the Republic of India or any state or other subdivision thereof or any municipality, district or other subdivision thereof.
- 1.1.35. **“Good Industry Practice”** means, in relation to any undertaking and any circumstances, the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced Person engaged in the same type of undertaking under the same or similar circumstances.
- 1.1.36. **“Indemnified Party”** shall have the meaning given to such expression in Clause 20.1.
- 1.1.37. **“Lock-in Period”** shall have the meaning ascribed thereto in Clause 13.1.3.
- 1.1.38. **“Mandatory Work Program”** shall mean the work program provided in Schedule I, which shall be monitored and reviewed by the Nominated Authority or the Central Government or any agency appointed by the Nominated Authority in this regard.
- 1.1.39. **“Mining Plan”** shall mean a plan which has been approved in accordance with the Applicable Laws in relation to the Coal Mine.
- 1.1.40. **“Mining Lease”** shall have the meaning given to such expression in Clause 5.3.1.1.
- 1.1.41. **“Minor Minerals”** shall have the meaning ascribed to it in the [Act / MMDR Act, 1957]<sup>11</sup>.
- 1.1.42. **“MMDR Act, 1957”** shall mean Mines and Minerals (Development and Regulation) Act, 1957 as amended from time to time.
- 1.1.43. **“Monthly Payment”** shall have the meaning given to such expression in Clause 9.1.1.
- 1.1.44. **“MoPNG”** mean the Ministry of Petroleum and Natural Gas.
- 1.1.45. **“National Coal Index”** shall mean the coal index calculated in accordance with the Office Memorandum ‘Roll-out of National Coal Index (Base ear 2017-18)’ dated June 4, 2020 and

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<sup>11</sup> To be retained as applicable.

Operational Guidelines of National Coal Index And Representative Prices dated June 17, 2020 issued by the Ministry of Coal, as may be amended, and published by the Government of India on a bi-monthly basis and includes sub-indices notified for various coal grades.

- 1.1.46. **“National Lignite Index”** shall mean the lignite index for determining representative price of the relevant grade of the lignite coal, as published by the Government of India.
- 1.1.47. **“Notional Price”** shall have the meaning ascribed thereto in Clause 9.1.1c)a.
- 1.1.48. **“Ordinance”** shall have the meaning ascribed in Recital B.
- 1.1.49. **“Partially Explored Mine”** means a coal mine/ block categorised in G-2 or G-3 exploration stage as per the modified Indian Standard Procedure for Coal Resource estimation, 2017.
- 1.1.50. **“Parties”** means and refers to the Nominated Authority and the Successful Bidder collectively and **“Party”** refers to any one of them.
- 1.1.51. **“Performance Security”** shall have the meaning given to such expression in Clause 6.1.1.
- 1.1.52. **“Person”** means any individual, sole proprietorship, unincorporated association, body corporate, corporation, company, partnership, limited liability company, joint venture, Governmental Authority or trust or any other entity or organization.
- 1.1.53. **“Prior Allottee”** shall have the meaning given to it in the [Act/ CM(SP) Act, 2015]<sup>12</sup> [and for the purposes of the Coal Mine, the Prior Allottee shall be [name] incorporated in [India] under the Companies Act with corporate identity number [CIN of the Prior Allottee], whose registered office is at [address of registered office], India]<sup>13</sup>.
- 1.1.54. **“Production Schedule”** shall have the meaning ascribed thereto in Clause 15.
- 1.1.55. **“Representative Price”** shall mean the grade-wise price as calculated per Clause 9.1.1c)a and provided as Schedule J.
- 1.1.56. **“Rules”** shall mean the [Coal Mines (Special Provisions) Rules, 2014 / Coal Blocks Allocation Rules, 2017]<sup>14</sup>.
- 1.1.57. **“Scheduled Date of Production”** shall have the meaning ascribed thereto in Clause 9.2.1.
- 1.1.58. **“Selectee”** shall have the meaning given to such expression in Clause 21.3.3(c).
- 1.1.59. **“State Government”** shall mean the Government of the state where the Coal Mine is located.
- 1.1.60. **“Substitution Notice”** shall have the meaning given to such expression in Clause 21.3.3(b).
- 1.1.61. **“Supreme Court Judgment”** shall have the meaning given to such expression in Recital A.]

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<sup>12</sup> To be retained as applicable.

<sup>13</sup> To be retained as applicable.

<sup>14</sup> To be retained as applicable.

- 1.1.62. **“Taxation”** (including with correlative meaning, the terms **“Tax”** and **“Taxes”**) means (a) any and all taxes, assessments and other charges, duties, impositions and similar liabilities imposed by any Governmental Authority, including without limitation taxes based upon or measured by gross receipts, income, profits, sales and value added, withholding, payroll, excise and property taxes, together with all interest, penalties and additions imposed with respect to such amounts; (b) any liability for the payment of any taxes, assessments and other charges, duties, impositions and similar liabilities by the Successful Bidder as a result of being a member of an affiliated, consolidated, combined or unitary group for any period; and (c) any taxes, assessments and other charges, duties, impositions and similar liabilities for the payment of any amounts by the Successful Bidder as a result of any express obligation to indemnify any other Person or as a result of any obligation under any agreement or arrangement with any other Person with respect to such amounts and including any liability for Taxes of a predecessor entity.
- 1.1.63. **“Third Party”** means any Person that is not a signatory to this Agreement.
- 1.1.64. **“Tender Document”** shall have the meaning given to it under the Rules and shall include the Tender Document dated November 15, 2023(as amended) for auction of the Coal Mine.
- 1.1.65. **“Term”** shall have the meaning given to such expression in Clause 26.2.
- 1.1.66. **“Termination Event”** shall have the meaning given to such expression in Clause 26.3.1.
- 1.1.67. **“Upfront Amount”** shall mean an amount [of INR [●]]<sup>15</sup>, which has been calculated in accordance with Clause 3.9.1 of the Tender Document and is payable in accordance with Clause 3.1 and Clause 5.2.
- 1.1.68. **“Vesting Conditions”** shall have the meaning given to such expression in Clause 3.1.
- 1.1.69. **“Vesting Date”** shall have the meaning given to such expression in Clause 4.3.
- 1.1.70. [**“Vesting Order”** shall have the meaning given to such expression in the Act and the Rules.]
- 1.1.71. **“Warranties”** shall have the meaning given to such expression in Clause 19.1.

## **1.2. Interpretation**

- 1.2.1. Any reference to any statute or statutory provision shall include:
- (i) all subordinate legislation made from time to time under that provision (whether or not amended, modified, re-enacted or consolidated);
  - (ii) such provision as from time to time amended, modified, re-enacted or consolidated (whether before or after the date of this Agreement) to the extent such amendment, modification, re-enactment or consolidation applies or is capable of applying to any transactions entered into under this Agreement prior to the Agreement Date and (to the extent liability thereunder may exist or can arise) shall include any past statutory provision (as from time to time amended, modified, re-enacted or consolidated) which the provision referred to has directly or indirectly replaced;

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<sup>15</sup> Applicable for Fully Explored Mines

- 1.2.2. Unless the context otherwise requires, words in the singular shall include the plural and the plural shall include the singular.
- 1.2.3. References to the masculine, the feminine and the neuter shall include each other.
- 1.2.4. References to a “**company**” shall include a company, corporation or other body corporate, wherever and however incorporated or established.
- 1.2.5. References to “**coal**” shall include lignite coal
- 1.2.6. The recitals and schedules form part of this Agreement and shall have the same force and effect as if expressly set out in the body of this Agreement, and any reference to this Agreement shall include any recitals and schedules to it. Any references to clauses and schedules are to clauses and schedules to this Agreement. Any references to parts or paragraphs are, unless otherwise stated, references to parts or paragraphs of the schedule in which the reference appears.
- 1.2.7. A reference to **this Agreement** or **any other document** shall be construed as references to this Agreement or that other document as amended, varied, novated, supplemented or replaced from time to time.
- 1.2.8. A reference to **this Clause** shall, unless followed by reference to a specific provision, be deemed to refer to the whole Clause (not merely the sub-Clause, paragraph or other provision) in which the expression occurs.
- 1.2.9. A reference to a **party** shall include that party’s representatives, successors and permitted assigns.
- 1.2.10. Each of the representations and warranties provided in this Agreement is independent of other representations and warranties and unless the contrary is expressly stated, no Clause in this Agreement limits the extent or application of another Clause.
- 1.2.11. Headings to Clauses, parts and paragraphs of schedules and schedules are for convenience only and do not affect the interpretation of this Agreement.
- 1.2.12. A reference to “**in writing**” includes any communication made by letter or e-mail (unless otherwise expressly provided in this Agreement.).
- 1.2.13. Unless otherwise specified, any reference to a time of day is to Indian Standard Time.
- 1.2.14. Any words following the terms **including, include, in particular, for example or any similar expression** shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.2.15. Where the context permits, **other** and **otherwise** are illustrative and shall not limit the sense of the words preceding them.
- 1.2.16. References to a document in **agreed form** are to that document in the form agreed by the parties and initialled by them or on their behalf for identification.
- 1.2.17. Any obligation on a party not to do something includes an obligation not to allow that thing to be done.



## **2. ALLOCATION OF THE COAL MINE**

- 2.1. The Successful Bidder hereby represents and warrants to the Nominated Authority that it has complied with all the terms and conditions of the Act, the Rules, the Tender Document and other Applicable Laws, as were required to be complied with by the Successful Bidder, with respect to tender process for the Coal Mine and the Successful Bidder is eligible in all respects to receive allocation of the Coal Mine. The Successful Bidder also represents and warrants to the Nominated Authority that it is in compliance with all the Eligibility Conditions and would continue to be in compliance with all the Eligibility Conditions during the term of this Agreement, the term of the Mining Lease or order by the Central Government under Section 11 (1) of the CBA Act, 1957, as the case may be.
- 2.2. Relying on the representations and warranties of the Successful Bidder and the information, documents and other undertaking provided by the Successful Bidder, including the Warranties provided under Clause 19, the Nominated Authority is pleased to enter into this Agreement with the Successful Bidder for allocation of the Coal Mine to the Successful Bidder subject to terms and conditions specified in this Agreement.

## **3. CONDITIONS FOR VESTING**

### **3.1. Vesting Conditions**

The issuance of the [Vesting Order / Allocation Order] in favour of the Successful Bidder shall be subject to satisfaction of the following conditions (collectively the “**Vesting Conditions**”):

- (a) the Successful Bidder continuing to be in compliance with all the Eligibility Conditions;
- (b) [the Successful Bidder having paid the first instalment of the Upfront Amount, in accordance with Clause 5.2.1]<sup>16</sup>;
- (c) the Successful Bidder having furnished the Performance Security;
- (d) the Successful Bidder having deposited an amount equal to INR [amount in figures] (Indian Rupees [amount in words]), being the Fixed Amount (as defined in the Tender Document), in the Designated Bank Account. It is clarified that any upward revision in the Fixed Amount on a subsequent date by the Government or the Nominated Authority consequent to any process or on the orders of any competent court of law, shall also be payable by the Successful Bidder on receipt of any notice to that effect from the Nominated Authority. Additionally, in case of any downward revision in the Fixed Amount on a subsequent date by the Government or the Nominated Authority, the same would be refunded by the Nominated Authority to the Successful Bidder;
- (e) only in the event that the Successful Bidder is a Prior Allottee of the Coal Mine or any other Schedule I coal mine (as defined in the [Act/ CM(SP) Act, 2015])<sup>17</sup>, the Successful Bidder having paid the Additional Levy within the due date for payment of such Additional Levy as specified in Rule 18 of the [Rules / Coal Mines (Special Provisions) Rules, 2014]<sup>18</sup>

<sup>16</sup> Applicable for fully explored mines

<sup>17</sup> To be retained as applicable.

<sup>18</sup> To be retained as applicable.

; and

- (f) [the Successful Bidder having provided a written intimation to the Nominated Authority in the form and substance as provided in SCHEDULE B regarding: (i) the movable property which the Successful Bidder has not negotiated to own or utilise and which it intends to move and store under Section 10(4) of the Act; (ii) the contracts which the Successful Bidder is desirous of adopting under Section 11(1) of the Act, including contracts with secured creditors; and matters incidental thereto.]<sup>19</sup>

### **3.2. Completion of Vesting Conditions and Notice**

- 3.2.1. Upon satisfaction of each of the Vesting Conditions specified in Clause 3.1, the Successful Bidder shall provide a written notice to the Nominated Authority in the form and substance as provided in SCHEDULE C (the “**Completion Notice**”)
- 3.2.2. In the event the Successful Bidder does not provide a Completion Notice with respect to each of the Vesting Conditions listed in Clauses 3.1(a); 3.1(b); 3.1(c); 3.1(d); [3.1(e) (in cases where the Successful Bidder is a Prior Allottee for the Coal Mine or any other Schedule I coal mine (*as defined in the Act*)) and Clause 3.1(f)] within [number of days] of the Agreement Date, then the Nominated Authority may terminate this Agreement without incurring any liability whatsoever by providing a written notice to the Successful Bidder. It is clarified that in such event the Successful Bidder shall not be entitled to receive the [Vesting Order / Allocation Order] and the Nominated Authority shall be entitled to dispose the Coal Mine in the manner provided in the Act and the Rules, including through re-auction/re-allotment or through appointment of a designated custodian.
- 3.2.3. [If the Successful Bidder does not provide a Completion Notice with respect to Clause 3.1(f) and fails to provide a written intimation in the form and substance as provided in SCHEDULE B within [number of days] of the Agreement Date, then it shall be deemed that the Successful Bidder is not desirous of owning or utilising any movable property or continuing any contract. In such cases, without prejudice to Clause 3.2.2, the Nominated Authority may elect to issue the Vesting Order without including aforementioned particulars in the Vesting Order; if all other Vesting Conditions have been satisfied by the Successful Bidder and corresponding Completion Notice have been provided to the Nominated Authority.]

## **4. THE VESTING ORDER**

- 4.1. Upon receipt of the Completion Notice evidencing compliance with each of the applicable Vesting Conditions, the Nominated Authority may issue the [Vesting Order / Allocation Order], subject to the Act, the Rules, the Tender Document and other Applicable Laws, in the manner provided in this Clause 4.
- 4.2. The [Vesting Order / Allocation Order] shall be issued by the Nominated Authority in the same form and substance as specified by the Central Government.
- 4.3. Prior to issuance of the [Vesting Order / Allocation Order], the Nominated Authority shall provide

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<sup>19</sup> To be retained as applicable.

a written notice to the Successful Bidder specifying the date of the [Vesting Order / Allocation Order] (the “**Vesting Date**”) and the date and time on which and place from where the [Vesting Order / Allocation Order] may be collected by the Successful Bidder.

- 4.4. The Successful Bidder shall depute an authorised representative of the Successful Bidder (“**Authorised Representative**”) to receive the [Vesting Order / Allocation Order] on behalf of the Successful Bidder on the date, time and place specified by the Nominated Authority under Clause 4.3.
- 4.5. The Authorised Representative shall be provided the [Vesting Order / Allocation Order] in duplicate and shall be required to acknowledge the receipt of the [Vesting Order / Allocation Order]. In the event, the Authorised Representative is not present on the date and time specified by the Nominated Authority under Clause 4.3, then the Nominated Authority shall dispatch the [Vesting Order / Allocation Order] by registered post with due acknowledgment, to the registered office of the Successful Bidder.
- 4.6. The Successful Bidder shall, within 7 (seven) Business Days of the receipt of the [Vesting Order / Allocation Order] through the Authorised Representative or through registered post, as the case may be, sign and return the duplicate copy of the [Vesting Order / Allocation Order] in acknowledgement thereof. In the event the duplicate copy of the [Vesting Order / Allocation Order] duly signed by the Successful Bidder is not received by the aforementioned date, the Nominated Authority may, unless it consents to extension of time for submission thereof, appropriate the Performance Security and other payments made by such Successful Bidder as damages and also terminate this Agreement and cancel and withdraw the [Vesting Order/ Allocation Order].

## **5. POST VESTING OBLIGATIONS**

### **5.1. Commencement Plan**

- 5.1.1. Within 30 (thirty) Business Days of the date of the [Vesting Order / Allocation Order], the Successful Bidder shall be required to submit a detailed plan (the “**Commencement Plan**”) towards commencement of prospecting and/or mining operations at the Coal Mine. The Commencement Plan shall include all actions that the Successful Bidder may be required to perform to commence prospecting and/or mining operations at the Coal Mine and shall include such information as may be required by the Nominated Authority, including without limitation to, information regarding the following:
  - (a) the Governmental Approvals, including a Prospecting License, Mining Lease or order by the Central Government under Section 11 (1) of the CBA Act, 1957, as the case may be, which shall be required for commencement of mining operations at the Coal Mine and the time within which the Successful Bidder would make applications for such Governmental Approvals; and
  - (b) preparation of Mining Plan including revision to the Mining Plan if any, as may be proposed by the Successful Bidder.

- 5.1.2. The Commencement Plan shall be prepared by the Successful Bidder to ensure strict compliance

with the Efficiency Parameters.

## 5.2. Payment of the Upfront Amount

5.2.1. The Upfront Amount shall be payable in four equal instalments (of 25% (twenty five per cent.) each) as follows:

Instalment	Schedule II of Coal Mines (Special Provisions) Act, 2015	Fully Explored Mines under Mines and Minerals (Development and Regulation) Act, 1957 and under Coal Mines (Special Provisions) Act, 2015 (other than Schedule II)	Partially Explored Mines under Mines and Minerals (Development and Regulation) Act, 1957 and under Coal Mines (Special Provisions) Act, 2015	Payable to
First	Within 40 (forty) Days of execution of the Agreement	Within 40 (forty) Days of execution of the Agreement	Within 40 (forty) Days of in-principle approval of the Mining Plan	Nominated Authority
Second	Within 6 (six) months from the date of issuance of [Vesting Order/ Allocation Order]	Within 15 (fifteen) Business Days of execution of the Mining Lease or order by the Central Government under Section 11 (1) of the CBA Act, 1957	Within 15 (fifteen) Business Days of execution of the Mining Lease or order by the Central Government under Section 11 (1) of the CBA Act, 1957	State Government
Third	Within 9 (nine) months from the date of issuance of [Vesting Order/ Allocation Order]	Within 15 (fifteen) Business Days of grant of the Coal Mine opening permission	Within 15 (fifteen) Business Days of grant of the Coal Mine opening permission	State Government
Fourth	Within 12 (twelve) months from the date of issuance of [Vesting Order/ Allocation Order]	Within 15 (fifteen) Business Days of date of commencement of coal production	Within 15 (fifteen) Business Days of date of commencement of coal production	State Government

Where the Upfront Amount is payable to the Nominated Authority, such payment shall be made in the Designated Bank Account. Where the Upfront Amount is payable to the State Government, such payment shall be made to the State Government with an intimation to the Nominated Authority at the email id [reports.moc@gov.in](mailto:reports.moc@gov.in).

The Upfront Amount, including the first instalment, provided in this Agreement may undergo revision pursuant to the finalisation of the provisional Representative Price. On account of this



finalisation of Representative Price, any upward or downward revision in the first instalment of the Upfront Amount shall be adjusted in the second instalment payable by the Successful Bidder to the State Government, along with revision in all the subsequent instalments.

**5.2.2. Failure to pay the Upfront Amount**

In the event the Successful Bidder fails to pay any of the instalment of the Upfront Amount within the time specified in this Clause 5.2, the Nominated Authority shall be entitled to appropriate the Performance Security in the manner stipulated in Clause 6 (PERFORMANCE SECURITY) and such failure may also result in termination of this Agreement as provided in Clause 26 (EFFECTIVE DATE, TERM AND TERMINATION).

**5.3. Prospecting License, Mining Lease and Prospecting License-cum-Mining Lease**

**5.3.1. Issuance of the Mining Lease in case of Fully Explored Mines**

5.3.1.1. Pursuant to [Section 8(4)(b) read with Section 8(8) / Section 11A] of the Act, the Successful Bidder shall become entitled to the mining lease with respect to the Coal Mine (the “**Mining Lease**”) to be granted by the State Government [or order by the Central Government under Section 11 (1) of the CBA Act, 1957, as the case may be,] upon issuance of the [Vesting Order / Allocation Order].

5.3.1.2. The Successful Bidder shall promptly, upon issuance of the [Vesting Order / Allocation Order], make an application to the State Government for grant of a Mining Lease [or take steps for order by the Central Government under Section 11 (1) of the CBA Act, 1957, as the case may be,] in the name of the Successful Bidder.

**5.3.2. Issuance of Prospecting License-cum-Mining Lease in case of Partially Explored Mines**

5.3.2.1. Pursuant to [Section 8(4)(b) read with Section 8(8) / Section 11A] of the Act, the Successful Bidder shall be eligible to receive a prospecting license-cum-mining lease with respect to the Coal Mine (the “**Prospecting License-cum-Mining Lease**”) by the State Government [or order by the Central Government under Section 11 (1) of the CBA Act, 1957, as the case may be,] upon issuance of the [Vesting Order / Allocation Order].

5.3.2.2. The Successful Bidder shall promptly, upon issuance of the [Vesting Order / Allocation Order], make an application to the State Government for grant of a Prospecting License-cum-Mining Lease [or take steps for order by the Central Government under Section 11 (1) of the CBA Act, 1957, as the case may be,] in the name of the Successful Bidder.

5.3.2.3. **Relinquishment of Partially Explored Coal Mine:** After completion of the prospecting operations as per the Mandatory Work Program and preparing the Geological Report, acceptable to the Central Government, the Successful Bidder may either

- (a) relinquish the Coal Mine (subject to the approval of Central Government) after submitting all reports, studies and other documentation related to the geological prospecting/ exploration of the area to the Nominated Authority and the State Government in accordance with SCHEDULE D (the “**Efficiency Parameters**”). Upon relinquishment, no penalty shall be levied and the Performance Security of the Successful Bidder shall be returned and this agreement shall be terminated.; or

- (b) relinquish any any part of the Coal Mine having non-coal bearing area or coal bearing area

which is technically non-viable to explore (subject to approval of MoC) after submitting all reports, studies and other documentation related to the geological prospecting/ exploration of the area to the Nominated Authority and the State Government in accordance with SCHEDULE D (the “**Efficiency Parameters**”). Such partial relinquishment shall be subject to Central Government’s approval of the detailed report submitted by the bidder. However, there will be no change in the upfront amount, Performance Security and PRC of the coal mine as determined at the time of auction.; or

- (c) retain the Coal Mine and undertake mining operations after obtaining the required permissions/ approvals/ clearances etc. in accordance with Applicable Law.

*Provided however*, if the Successful Bidder fails to complete the prospecting operations as per the Mandatory Work Program and/or does not prepare the Geological Report, the Performance Security submitted by the Successful Bidder shall be forfeited and this Agreement and the prospecting license-cum-mining lease granted thereunder shall be terminated.

In case of relinquishment or surrender of the Coal Mine, all documents and information, including the Geological Report, submitted by the Bidder to the Nominated Authority, State Government and/or Central Government, shall be the proprietary information of the Central Government and the same shall not be considered to be an assigned of the confidential information of the Bidder. The Central Government shall have the right to share the same with the Bidders of the Coal Mine being thereafter auctioned as a Partially Explored Mine or Fully Explored Mine, as the case may be.

5.3.2.4. The relinquishment of the Coal Mine or termination of this Agreement shall not absolve the Successful Bidder of any liabilities in respect of the Coal Mine during the period between Effective Date and the date of such relinquishment or termination.

5.3.2.5. The liability of the Successful Bidder shall be limited to any liability relating to or connected with this Agreement and any Claims arising out of or in relation to any act of negligence, misconduct, commission or omission of any act in undertaking prospecting or mining operations, as the case may be, during the period between Effective Date and the date of relinquishment of the Coal Mine or termination or expiry hereof, as the case may be.

5.3.2.6. Upon withdrawal of the [Vesting Order/ Allocation Order] of a Partially Explored Mine on account of any reason whatsoever, including relinquishment of Coal Mine, surrender of Coal Mine, failure to complete the prospecting operations as per the Mandatory Work Program and/ or failure to prepare the Geological Report which is acceptable to the Central Government, the Successful Bidder shall not be entitled for

- a) Reimbursement of the expenses incurred by the Successful Bidder towards prospecting/ exploration operations, preparation of Geological Report; and
- b) Compensation towards following components of Fixed Amount: [cost borne by the Prior Allottee for the preparation of geological report; cost borne by the Prior Allottee for obtaining all statutory licenses, permits, permissions, approvals, clearances or consents relevant to the mining operations;]<sup>20</sup> [cost incurred by CMPDIL and other Government agencies, if any, in deriving

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<sup>20</sup> This is to be retained for Coal Mines being auctioned under CM(SP) Act, 2015.

detailed geographical boundary coordinates and in preparing geological report, if any;]<sup>21</sup>

**5.4. Issue of order providing exception to Section 6(1)(b) of the [Act/ MMDR Act, 1957]**

5.4.1.1. In the interest of the development of the coal mining sector, the Central Government shall increase the maximum area limits in respect of prospecting license or mining lease in accordance with Section 6(1)(b) of the [Act/MMDR Act, 1957].

**5.5. Preparation, Approval, Review and Monitoring of Mining Plan**

5.5.1. The preparation and approval process of the Mining Plan shall be in accordance with the Mineral Concession Rules, 1960, as amended by the Mineral Concession (Amendment) Rules, 2020.

**6. PERFORMANCE SECURITY AND APPROPRIATION**

**6.1. Performance Security**

6.1.1. The Successful Bidder shall provide an irrevocable and unconditional guarantee from an Acceptable Bank for an amount equal to INR [amount in figures] (Indian Rupees [amount in words]) (the “**Performance Security**”) in the same form and substance as provided in SCHEDULE E for the performance of its obligations within such time as specified in Clause 3.2.2.

6.1.2. For Fully Explored Mine, the Performance Security shall be an amount which is 65% of aggregate of: (a) one year royalty computed on the basis of peak rated capacity of the Coal Mine as per the approved Mining Plan and (b) one year revenue (in accordance with Clause 9.1.1), payable to the State Government with respect to the Coal Mine computed on the basis of peak rated capacity of the Coal Mine as per the approved Mining Plan. For the purpose of calculation of Performance Security, Representative Price after adjustment with latest available sub-index of National Coal Index or National Lignite Index, as applicable, of the relevant basket of coal grade(s) shall be considered. It is clarified that relevant grade of coal shall mean weighted average grade of non-coking coal and/or weighted average grade of coking coal, as the case may be, for the Coal Mine, as per Geological Report. For Coal Mine with lignite coal, relevant grade of coal shall be as notified by Government of India separately.

In case, the approved Mining Plan of the Coal Mine is not available, Performance Security shall be estimated on the basis of an indicative peak rated capacity, as may be provided in the Tender Document. Upon in-principle approval of the Mining Plan, the Successful Bidder shall submit a revised Performance Security on the basis of approved Mining Plan.

6.1.3. For Partially Explored Mines, the Performance Security shall be equal to 25% (twenty five percent) of the estimated exploration expenses based on Mandatory Work Program as provided in Schedule I.

In such an event, the amount of Performance Security shall be revised after in-principle approval of Mining Plan, which shall be computed in the manner provided in Clause 6.1.2 hereinabove. The Successful Bidder shall be intimated by the Nominated Authority about the revised Performance

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<sup>21</sup> This is to be retained for Coal Mines being auctioned under MMDR Act, 1957.

Security to be furnished. Pursuant to such intimation, the Successful Bidder shall be required to replace the Performance Security already furnished by it to the Nominated Authority, and the provisions of this Agreement as applicable to the already submitted Performance Security shall *mutatis mutandis* apply to the revised Performance Security. The revised Performance Security shall be submitted within 30 days of the receipt of such intimation from the Nominated Authority.

6.1.4. The amount of Performance Security for Fully Explored Mines shall be revised in following events:

(a) On an annual basis:

- a. **First Revision:** Upon grant of mine opening permission basis the difference in the i) National Coal Index or National Lignite Index, as applicable, at the time of grant of mine opening permission and ii) National Coal Index or National Lignite Index, as applicable, basis which the Performance Security was first estimated in accordance with Clause 6.1.2 above.
- b. **Subsequent Revisions:** In the month of April of the year subsequent to the grant of mine opening permission, basis the difference in the i) National Coal Index or National Lignite Index, as applicable, for the month of March of previous financial year and ii) National Coal Index or National Lignite Index, as applicable, at the time when mine opening permission was granted. In all subsequent years, in the month of April, basis the difference in the i) National Coal Index or National Lignite Index, as applicable for the month of March of previous financial year and ii) National Coal Index or National Lignite Index, as applicable for the month of March of previous to previous financial year.

It is clarified that the date of grant of mine opening permission to be considered for the purpose of revision of the performance Security shall be the actual date or the date as prescribed in the efficiency parameters, whichever is earlier.

- (b) In case of any revision in the rate of royalty, the amount of Performance Security shall be revised accordingly. Such revision shall take place at the beginning of the financial year which is subsequent to the financial year in which the rate of royalty is revised, as stipulated in Clause 6.1.5; and/or
- (c) In case of any revision in the peak rated capacity as a result on any revision in the mining plan in accordance with Clause 16, the amount of Performance Security shall be revised accordingly upon approval of revision to the Mining Plan. Such revision shall take place at the beginning of the financial year which is subsequent to the financial year in which the Mining Plan is revised, as stipulated in Clause 6.1.5.

It is clarified that revisions to the amount of Performance Security may occur under sub-clause (a), (b) and (c) above, simultaneously, if such sub-clauses are applicable.

6.1.5. The revision to the amount of Performance Security shall be carried out once in every financial year upon grant of mine opening permission to the Successful Bidder. Upon such revision, the bank guarantee constituting the Performance Security shall be substituted with another bank guarantee of the revised value issued in accordance with this Clause 6, within a period of 30 days of from the beginning of financial year i.e. by April 30 of every year, in case of revision under each of sub-



clause (b) and (c) of Clause 6.1.4. In case of revision under sub-clause (a) of Clause 6.1.4, the bank guarantee constituting the Performance Security shall be substituted with another bank guarantee of the revised value issued in accordance with this Clause 6.1.4, within a period of 30 (thirty) days from the publication of the Reference Index for the month of March of previous financial year or within a period of 30 (thirty) days from the grant of mine opening permission to the Successful Bidder, as applicable.

- 6.1.6. The Performance Security should remain valid (a) until the expiry of the period for which Mining Lease (including renewed Mining Lease) has been granted or will be granted, or (b) until extractable reserves are remaining in the Coal Mine, whichever is earlier.

Provided however, upon grant of mine opening permission, the Successful Bidder shall either

- i) a separate Performance Security, in substantially the same form as provided in SCHEDULE E, shall be submitted to the State Government for the amount calculated in accordance with Clause 6.1.2 above. The Performance Security submitted to the Nominated Authority under Clause 6.1.1 shall be returned to the Successful Bidder upon submission of such separate Performance Security to the State Government, or 60 days from the termination of this Agreement as mentioned in Clause 26.2.2, whichever is earlier; 'or'
- ii) submit a request to the Nominated Authority for assigning the Performance Security submitted to the Nominated Authority under Clause 6.1.1 of this Agreement, in favour of the State Government. It is clarified that the amount of Performance Security shall be calculated in accordance with Clause 6.1.2 above. In case the Performance Security submitted to the Nominated Authority is of lesser amount, the Successful Bidder shall be required to submit a top-up bank guarantee in favour of the State Government so that the total amount of Performance Security in favour of the State Government in accordance with Clause 6.1.2. Further, the Successful Bidder shall ensure that the validity of the Performance Security is in accordance with this Clause 6.1.6.

*Provided* that the Successful Bidder may submit the bank guarantee constituting the Performance Security with a validity period of 1 (one) year. Such bank guarantee shall be replaced on an annual basis, with another bank guarantee issued by an Acceptable Bank in the same form and substance as provided in SCHEDULE E, at least 30 Business Days prior to the expiry of the first mentioned bank guarantee. The replacement bank guarantee shall come into effect at the day prior to the date of expiry of the subsisting bank guarantee (which is intended to be replaced). The subsisting bank guarantee shall upon expiry, be returned to the Successful Bidder, within 7 Business Days from the date of expiry of the same.

- 6.1.7. While submitting Performance Security as required under Clause 6.1.2 on the basis of indicative peak rated capacity, the Successful Bidder shall also provide an undertaking to submit the revised Performance Security in the form and substance as provided in SCHEDULE H. The revised Performance Security so submitted shall replace the Performance Security submitted previously. Non-submission of the revised Performance Security, shall be treated as a Termination Event for the purpose of Clause 26.3.1 of this Agreement.

## **6.2. Events for appropriation of the Performance Security**

- 6.2.1. The Performance Security may be appropriated by the Nominated Authority upon occurrence of any of the following events (the “**Appropriation Event**”), to be determined by the Nominated

Authority in its sole discretion:

- (a) failure of the Successful Bidder to provide the duly acknowledged duplicate copy of the Vesting Order as required under Clause 4.6;
- (b) failure of the Successful Bidder to make payment of any of the instalment of the Upfront Amount within the time specified in Clause 3.1(b) and Clause 5.2;
- (c) failure of submission of Commencement Plan within the time specified in Clause 5.1.1;
- (d) failure of the Successful Bidder to comply with the Efficiency Parameters as required under Clause 10;
- (e) any change in Control or transfer of right, title or interest in the Coal Mine which is not in conformity with Clause 13;
- (f) failure to make payment of the Monthly Payment in accordance with this Agreement;
- (g) any sale and/or utilisation of coal which is not in conformity with Clause 8;
- (h) failure to make payments of monthly revenue share for CBM as per Clause 8.2.3;
- (i) failure to pay revenue to the Government in case of shortfall in coal production as per Clause 16.2.2;
- (j) cessation of coal mining operation exceeding a period of one year continuously, or 18 months over a period of two years without occurrence of any event of force majeure;
- (k) surrender of the Coal Mine by the Successful Bidder or termination of the Mining Lease granted to the Successful Bidder before (a) the expiry of the period for which Mining Lease (including renewed Mining Lease) has been granted or will be granted, or (b) extractable reserves are remaining in the Coal Mine, whichever is earlier;
- (l) any other breach or non-compliance of any of the provisions of this Agreement including in case of the Warranties being untrue or misleading or incorrect in any manner whatsoever; or
- (m) failure of the Successful Bidder to submit the revised Performance Security in accordance with Clause 6.1.

6.2.2. Provided however that in the event an Appropriation Event has occurred solely on account of an Event of Force Majeure which could not have been mitigated by the Successful Bidder through Good Industry Practice as provided in Clause 25, then the Performance Security shall not be appropriated for such specific Appropriation Event.

### **6.3. Manner of appropriation of the Performance Security**

6.3.1. Upon occurrence of an Appropriation Event, to be determined by the Nominated Authority, the Nominated Authority shall have the unconditional right to appropriate the Performance Security by providing a written notice to the Successful Bidder in the following proportion:

#	Appropriation Event	Amount of the Performance Security to be appropriated
1.	Failure of the Successful Bidder to provide the duly acknowledged duplicate copy of the Vesting Order as required under Clause 4.6	Entire Performance Security.
2.	Failure of the Successful Bidder to make payment of any of the instalment of the Upfront Amount within the time specified in Clause 5.2	An amount equal to the first instalment, and/or second instalment and/or third instalment and/or fourth instalment of the Upfront Amount together with 12% per annum simple interest on such amount starting from the date on which such amount was due and until the date of appropriation of the Performance Security.
3.	Failure of submission of Commencement Plan within the time specified in Clause 5.1.1	An amount equal to 10% of the Performance Security
4.	Failure of the Successful Bidder to comply with the Efficiency Parameters as required under Clause 10	Such per cent of the Performance Security for each failure to comply with the Efficiency Parameters as specified in SCHEDULE D.
5.	Any change in Control or transfer of right, title or interest in the Coal Mine which is not in conformity with Clause 13	Entire Performance Security.
6.	Any sale and/or utilisation of coal which is not in conformity with Clause 8	Entire Performance Security.
7.	Failure of the Successful Bidder to make payment of the Monthly Payment	The amount of Monthly Payment due and payable, along with a simple interest of twelve per cent per annum starting from the date on which such amount was due and until the date of appropriation of the Performance Security.
8.	Cessation of coal mining operation exceeding a period of one year continuously, or 18 months	Entire Performance Security.

#	Appropriation Event	Amount of the Performance Security to be appropriated
	over a period of two years without occurrence of any event of force majeure	
9.	Surrender of the Coal Mine by the Successful Bidder or termination of the Mining Lease granted to the Successful Bidder before (a) the expiry of the period for which Mining Lease (including renewed Mining Lease) has been granted or will be granted, or (b) extractable reserves are remaining in the Coal Mine, whichever is earlier	Entire Performance Security.
10.	Any other breach or non-compliance with any of the provisions of this Agreement, including in case of the Warranties being untrue or misleading or incorrect in any manner whatsoever.	Such proportion as may be determined by the Nominated Authority in its sole discretion.
11.	Failure of the Successful Bidder to submit the revised Performance Security in accordance with Clause 6.1.	Entire Performance Security.
12.	Failure to make payments of monthly revenue share for CBM as per Clause 8.2.3	The amount of revenue share due and payable, along with a simple interest of 12% [twelve] per cent per annum starting from the date on which such amount was due and until the date of appropriation of the Performance Security.
13.	Failure to pay revenue to the Government in case of shortfall in coal production as per Clause 16.2.2	The amount of revenue share due and payable, along with a simple interest of 12% [twelve] per cent per annum starting from the date on which such amount was due and until the date of appropriation of the Performance Security.

6.3.2. Any Appropriation Event resulting in appropriation of the entire Performance Security shall be a Termination Event for the purposes of Clause 26 (EFFECTIVE DATE, TERM AND

TERMINATION).

- 6.3.3. In the event of a part appropriation of the Performance Security, the Successful Bidder shall be required to: (i) rectify the Appropriation Event; and (ii) top-up the bank guarantee constituting the Performance Security within fifteen Business Days of receipt of a notice under Clause 6.3.1, failure to do so shall be a Termination Event for the purposes of Clause 26 (EFFECTIVE DATE, TERM AND TERMINATION). Appropriation Event except as mentioned in Clause 6.2.1 (d) shall be rectified within seven Business Days of receipt of a notice under Clause 6.3.1. Appropriation Event mentioned in Clause 6.2.1 (d) shall be rectified within the time specified in SCHEDULE D.
- 6.3.4. In the event that on account of one or more Appropriation Events, an amount equal to hundred per cent of the Performance Security is appropriated in aggregate in one or more instances, the same shall be a Termination Event for the purposes of Clause 26 (EFFECTIVE DATE, TERM AND TERMINATION).

## 7. INFORMATION

- 7.1. In addition to information that may be required to be provided in accordance with Applicable Laws, the Successful Bidder shall provide periodic reports to the Nominated Authority (or such other Governmental Authority as may be specified by the Nominated Authority) regarding mining operations at the Coal Mine, including compliance with the Efficiency Parameters, in accordance with the following provisions:

### *(a) Pre-Commencement Report*

Prior to commencement of mining operations at the Coal Mine, the Successful Bidder shall provide a written intimation (“**Pre-commencement Report**”) to the Nominated Authority and the Central Government once every thirty calendar days regarding the following:

- (i) the actions taken by the Successful Bidder towards commencement of the mining operations at the Coal Mine, including compliance with the Commencement Plan;
- (ii) any deviations from the Commencement Plan, the reasons for such deviations and the steps taken by the Successful Bidder to rectify such deviation; and
- (iii) whether in the opinion of the Successful Bidder, it shall be able to commence the mining operations at the Coal Mine within the time mentioned in the Commencement Plan.

The Successful Bidder shall also inform the Nominated Authority in writing within 3 Business Days of receipt of the mine opening permission from the Coal Controller’s Organization.

### *(b) Commencement Report*

Within three Business Days of the commencement of mining operations at the Coal Mine, the Successful Bidder shall provide a written intimation to the Nominated Authority confirming commencement of mining operations at the Coal Mine (the “**Commencement**

**Report”).**

**(c) Monthly Report**

Subsequent to the Commencement Report, the Successful Bidder shall provide a written intimation (“**Monthly Report**”) to the Coal Controller’s Organisation within seven Business Days of end of each calendar month comprising: (i) a declaration regarding compliance with the Efficiency Parameters in the immediately preceding calendar month. In the event of a non-compliance with the Efficiency Parameters, complete particulars of the same, including the reasons for such non-compliance, and the corrective steps proposed to be undertaken; and (ii) such other information as may be required to be provided by the Nominated Authority.

**(d) Yearly Report**

Within seven Business Days of conclusion of the annual general meeting of the Successful Bidder, it shall provide the following information to the Coal Controller’s Organisation:

- (i) Two certified copies of its balance sheets, cash flow statement and profit and loss account, along with a report thereon by its statutory auditors; and
- (ii) such other information as may be required to be provided, by the Nominated Authority.

7.2. The Pre-Commencement Report, the Commencement Report, the Monthly Report and the Yearly Report shall be provided to the Nominated Authority or to the Coal Controller’s Organisation as attachments to an email addressed to the following e-mail address: (i) [email address] in case of the Nominated Authority; or (ii)[email address] in case of the Coal Controller’s Organisation. Such attachments must be digitally signed by the Successful Bidder using a Class III digital signature certificate issued by a certifying authority in India.

7.3. The Nominated Authority shall have the right to seek such further information regarding the Pre-Commencement Report, the Commencement Report, the Monthly Report or the Yearly Report and also seek independent verification of the same.

## **8. SALE OF COAL, COAL BED METHANE AND MINOR MINERALS**

### **8.1. Sale of Coal**

8.1.1. There shall be no restriction to carry on mining operations for own consumption, sale or for any other purpose. The coal produced from the Coal Mine may be sold by the Successful Bidder in any manner as may be decided by the Successful Bidder including sale to Affiliates and related parties, utilisation of coal for any purpose including but not limited to captive consumption, Coal Gasification, Coal Liquefaction and export of coal.

8.1.2. The Successful Bidder shall submit a self-declaration in the form of monthly report containing grade of coal produced, quantity produced, quantity used in self-consumption and the quantity sold along with a copy of GST invoice. This self-declaration form shall be submitted within 15 (fifteen)



days from the end of each calendar month by the Successful Bidder to the State Government. The Successful Bidder shall also submit an annual report audited by the statutory auditor of the Successful Bidder, within 2 (two) months from the end of a financial year, containing the grade of coal produced, quantity produced, quantity used in self-consumption, the quantity sold along with a copies of the relevant GST invoices in that particular year and all other document as may be demanded by the State Government.

8.1.3. The Successful Bidder shall prepare and maintain the documents related to day to day production, consumption and sale of coal which it shall have to produce whenever demanded by any Government agency/ Authority.

8.1.4. Export of coal shall be in accordance with Applicable Law.

## **8.2. Exploitation of Coal Bed Methane**

8.2.1. In case there is presence of CBM in the Coal Mine, the Successful Bidder may choose to commercially exploit the CBM present in the mining lease area. The lease/license in respect of CBM operations shall be governed by Applicable Law. The Successful Bidder shall report the existence of CBM to the Nominated Authority and other relevant authority.

8.2.2. In case the Successful Bidder decides to exploit the CBM present in the coal mining lease area, it shall be required to approach the DGH, MoPNG for its technical approval followed by the grant of CBM mining lease by State Government.

8.2.3. In addition to the Monthly Payment, the Successful Bidder shall also make payments of monthly revenue share for CBM based on the Final Offer, and the payment of the monthly revenue share for CBM shall be made within 20 days from the end of each month. Other mechanisms with regard to arriving at the price of CBM shall be subject to applicable guidelines issued by the MoPNG for this arrangement. Presently these guidelines are Policy Framework on Early Monetization of Coal Bed Methane (CBM) notified vide Gazette Notification No. O-19018/7/2016/ONG-I dated April 11, 2017.

## **8.3. Mining of Minor Minerals**

8.3.1. Mining of Minor Minerals by the Successful Bidder shall be subject to the requirements under the Minor Mineral Concession Rules of the State Government.

## **9. MONTHLY PAYMENTS AND ADJUSTMENT**

### **9.1. Monthly Payment**

9.1.1. The Successful Bidder shall be required to pay revenue on monthly basis to the State Government (the “**Monthly Payment**”) which shall be determined as product of

a) Final Offer;

b) Total quantity of coal on which the statutory royalty is payable during the month; and

c) Notional Price or Actual Price, whichever is higher, where

- a. Notional Price shall mean the price arrived at after adjusting the Representative Price with sub-index of National Coal Index or National Lignite Index, as applicable, of the relevant basket of coal grade(s) on the date on which royalty becomes payable.

Representative Price shall be a product of:

(A) weights (volume of coal in different components of notified price, auction price and imported price channel) of the Base year; and

(B) prices of these components at the time of issuance of the Tender Document. It is clarified that this shall mean the latest available prices of these components at the time of issuance of this Tender Document .

Methodology for determining the Representative Price of lignite coal shall be provided separately.

- b. Actual Price shall mean the sale invoice value of coal, net of statutory dues including taxes, levies, royalty, NMET, DMF etc.

It is clarified that in case of pithead washeries, Monthly Payment shall be made in the same manner as royalty is paid i.e. Monthly Payment shall be made on the quantity and grade of coal for which royalty is paid by washeries as per rules, during the month.

- 9.1.2. The Monthly Payment is required to be made to the State Government on the date on which the statutory royalty is payable, in the manner as may be prescribed by the State Government, [with an intimation to the Nominated Authority]. Further, the Monthly Payments may be subject to such adjustments as may be prescribed by the Nominated Authority, annually basis the audited financial statements of the Successful Bidder or at such other periodic intervals as may be prescribed. Such adjustments may be on account of the National Coal Index or National Lignite Index, as applicable, as may notified for and applicable to the Monthly Payment dates as well as higher of Actual Price and Notional Price.
- 9.1.3. It is clarified that in addition to the Monthly Payment, other statutory dues including taxes, levies, royalty, contribution to NMET and DMF, etc. shall be payable as per Applicable Law.

## **9.2. Incentive for Early Commencement of Coal Production**

- 9.2.1. A rebate of 50% on Final Offer would be allowed till the Scheduled Date of Production, for the quantity of coal produced earlier than such Scheduled Date of Production. The scheduled date of production shall be determined in the following manner (“**Scheduled Date of Production**”):
  - (a) In case of Fully Explored Mines, the scheduled date of production shall be the date of production as per the Production Schedule i.e. [insert number of months] months from the date of issuance of Vesting Order/Allocation Order. *Provided however*, in case of Schedule II Coal Mines of the CM(SP) Act, 2015, in the event any statutory permission is required to be obtained afresh by the Successful Bidder, then the Scheduled Date of Production shall

stand modified to the aggregate of the scheduled time granted for obtaining fresh permission and the scheduled time granted for completion of transfer of statutory permissions obtained by the Prior Allottee as per Clause 10 of this Agreement.

- (b) In case of Partially Explored Mines, the scheduled date of production shall be the scheduled date of production given in the approved Mining Plan.

9.2.2. Statutory dues including taxes, levies, royalty, contribution to NMET and DMF etc. shall be payable as per Applicable Law. No exemption would be given to the Successful Bidder from obtaining any approval etc. under Applicable Law required for commencing and undertaking coal production.

### **9.3. Incentive for Coal Gasification or Coal Liquefaction**

9.3.1. In the Successful Bidder consumes the coal produced from the Coal Mine either in its own plant(s) or plant of its holding, Subsidiary Company, Affiliate, Associate Company or sells the coal for Coal Gasification or Coal Liquefaction, a rebate of 50% on Final Offer will be provided on the total quantity of coal consumed or sold or both for Coal Gasification or Coal Liquefaction on an yearly basis, subject to the following conditions:

- (a) At least 10% of scheduled coal production as per approved Mining Plan for that year shall be consumed and/or sold for Coal Gasification or Coal Liquefaction; and
- (b) A certificate issued by the Coal Controller's Organisation certifying the quantity of coal consumed or sold or both for Coal Gasification or Coal Liquefaction shall be submitted by the Successful Bidder to the State Government. The said certificate shall be issued in accordance with the Guidelines issued by Coal Controller's Organisation, as may be amended.

Provided however that in no event shall the Successful Bidder be entitled to avail of the incentives available under this Clause 9.3 in respect of the quantity of coal produced earlier than the Scheduled Date of Production, if it elects to avail of the incentives under Clause 9.2 above in respect of such quantity of coal.

### **9.4. Adjustment of Monthly Payments**

9.4.1. The Upfront Amount in Clause 5.2 shall be adjusted in full, against the Monthly Payments to be made to the State Government.

9.4.2. Such adjustment of Upfront Amount shall not exceed 50% of aggregate Monthly Payments for the year. Adjustment of Upfront Amount towards Monthly Payments shall be on a monthly basis i.e. maximum 50% of the Monthly Payment for the month to be paid by the Successful Bidder shall be adjusted against Upfront Amount and would be reconciled at the end of the year. It is clarified that Upfront Amount shall not be adjusted against other statutory dues including taxes, levies, royalty, contribution to NMET and DMF, etc. and these shall be payable as per Applicable Law.

## **10. EFFICIENCY PARAMETERS**

- 10.1. The conduct of mining operations at the Coal Mine shall be subject to the Efficiency Parameters. In *bona fide* cases of delays not attributable to the Successful Bidder, the Nominated Authority will decide on case to case basis the extension of timeline in Efficiency Parameters. For the said purpose, the Nominated Authority may refer the matter to Scrutiny Committee which will consider the delay caused on case to case basis and furnish its recommendation to the Nominated Authority for taking a decision.
- 10.2. The Successful Bidder would provide periodic information to the Nominated Authority and the Central Government regarding compliance with the Efficiency Parameters in the manner stipulated in Clause 7 (INFORMATION).
- 10.3. Any non-compliance with the Efficiency Parameters would result in appropriation of the Performance Security in the manner stipulated in Clause 6 (PERFORMANCE SECURITY) and in case where such non-compliance exceeds for more than three instances, such non-compliance may also result in termination of this Agreement as provided in Clause 26 (EFFECTIVE DATE, TERM AND TERMINATION).

## **11. GENERAL RIGHTS AND OBLIGATIONS**

### **11.1. Limited Mining Rights**

The Successful Bidder shall be entitled to receive a Mining Lease [or prospecting license or Prospecting License cum Mining Lease] [or order by the Central Government under Section 11 (1) of the CBA Act, 1957, as the case may be,] for conduct of mining operations only in the Coal Mine, and shall not be entitled to conduct the mining operations in any other area pursuant to this Agreement. The rights granted to the Successful Bidder herein to conduct mining operations are exclusive within the Coal Mine. The Government undertakes not to grant any rights to mine coal in the Coal Mine to any Third Party during the Term of this Agreement or the term of the Mining Lease or order by the Central Government under Section 11 (1) of the CBA Act, 1957, as the case may be, whichever is later.

### **11.2. Authorisations**

The Successful Bidder shall obtain and maintain all Governmental Approvals required for conducting the mining operations at the Coal Mine and performing its obligations under this Agreement. The Government undertakes, on a no-obligation basis, to expeditiously provide all necessary approvals and assistance for conducting mining operations and as otherwise may be reasonably required by the Successful Bidder in relation to the rights granted to it under this Agreement.

### **11.3. Geological and Archaeological Finds**

It is expressly agreed that unless specifically permitted by the Tender Document or this Agreement, the Successful Bidder shall not have any mining rights or interest in the underlying geological or archaeological matters such as major minerals, metals (including gold, silver, etc., gas, oil, fossils, antiquities, structures or other remnants or things of interest and the Successful Bidder hereby acknowledges that it shall not have any mining rights or interest except in relation to coal, CBM or

Minor Mineral (as may be granted under any Mining Lease or Prospecting License-cum-Mining Lease or order by the Central Government under Section 11 (1) of the CBA Act, 1957, as the case may be, pursuant hereto. It is clarified that such rights, interest and property on or under the Coal Mine shall vest in and belong to the Central/ State Government or the concerned Governmental Authority. The Successful Bidder 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 Central/ State Government forthwith of the discovery thereof and comply with such instructions as the concerned Governmental Authority may reasonably give for the removal of such property.

#### **11.4. Health, Safety, Welfare, Social Security and Minimum Wages**

- 11.4.1. The Successful Bidder shall comply with all Applicable Laws and observe Good Industry Practice for the protection of the general health, safety, welfare, social security and minimum wages of employees engaged at the Coal Mine, including employees of any contractor or sub-contractor and of all other persons having legal access to the area covered by this Agreement.
- 11.4.2. Without prejudice to the generality of the foregoing, the Successful Bidder shall ensure payment of minimum wages to the employees engaged at the Coal Mine and in related activity including employees of any contractor or sub-contractor.
- 11.4.3. The Successful Bidder shall install and utilize such recognized modern safety devices and observe such recognized modern safety precautions as are provided and observed under Good Industry Practice. The Successful Bidder shall maintain in a safe and sound condition for the duration of this Agreement all infrastructure and equipment constructed or acquired in connection with mining operations and required for ongoing operations.
- 11.4.4. The Successful Bidder shall train employees engaged at the Coal Mine, including employees of any contractor or sub-contractor and of all other persons having legal access to the area covered by this Agreement, in accordance with the Good Industry Practice.
- 11.4.5. The Successful Bidder shall construct, maintain, and operate health programs and facilities to serve the employees engaged at the Coal Mine, including employees of any contractor or sub-contractor and of all other persons having legal access to the area covered by this Agreement, which programs and facilities shall install, maintain and use modern health devices and equipment and shall practice modern health procedures and precautions in accordance with Good Industry Practice.
- 11.4.6. Without prejudice to the generality of the foregoing, in the event the Successful Bidder provides housing, the same shall be built to a standard that provides suitable living environments adequate for health and well-being, and which meet applicable sanitation standards in terms of Good Industry Practice.

#### **11.5. Sustainable and Mechanised Operations**

- 11.5.1. The Successful Bidder shall implement mechanised coal extraction, transport and evacuation in the Coal Mine, in line with modern and prevalent technologies.
- 11.5.2. The Successful Bidder shall strive to minimise the carbon footprints from operations at the Coal

Mine, undertake steps to reduce environmental pollution and promote sustainability, in accordance with Good Industry Practice.

## **12. CONTRACTORS AND SUB-CONTRACTORS**

- 12.1. In the event the Successful Bidder enters into any agreement with any contractor in relation to the mining operations at the Coal Mine, then a duly certified copy of such agreement shall also be submitted to the Nominated Authority within fifteen Business Days of its execution.
- 12.2. Any Agreement between the Successful Bidder and its contractors shall contain appropriate terms by which the contractor shall acknowledge and comply with the terms of this Agreement and the contractor shall also cause its sub-contractors to acknowledge and comply with the same.
- 12.3. Nothing in this Agreement shall exempt the Successful Bidder from any and all obligations under this Agreement despite the delegation of such obligations to a contractor or its subcontractors.

## **13. CHANGE IN CONTROL AND TRANSFER**

### **13.1. Change in Control of the Bidder And Transfer of Coal Mine**

- 13.1.1. Any change in Control of the Successful Bidder or any transfer of the Coal Mine by the Successful Bidder, shall be subject to Applicable Laws and may be undertaken after the Lock-in Period, with an intimation to the Nominated Authority and the Central Government if no later than 15 (fifteen) days prior to (a) the proposed change in Control of the Successful Bidder; or (b) transfer of the Coal Mine by the Successful Bidder, as the case may be and provided that pursuant to such change in Control, the Successful Bidder continues to meet the Eligibility Conditions or in case of transfer of Coal Mine by the Successful Bidder, the transferee meets the Eligibility Conditions.

Provided however, that any change in Control of the Successful Bidder or transfer of the Coal Mine by the Successful Bidder during the Lock-in Period shall be permitted if such change in control is pursuant to an insolvency proceeding against the Successful Bidder under the Insolvency and Bankruptcy Code, 2016 or Applicable Laws or the transfer is pursuant to enforcement of security by any bank or financial institution in accordance with the terms of the Agreement and Applicable Laws, as the case may be.

- 13.1.2. In the event that any change in Control of the Successful Bidder or any transfer of the Coal Mine granted to the Successful Bidder requires prior Governmental Approval under any Applicable Laws, then such Governmental Approval shall be granted (in addition to any other requirement under Applicable Law) only if the transferee of such right, title or interest or the Successful Bidder subsequent to the change of Control, as the case may be, also meets all the applicable Eligibility Conditions.
- 13.1.3. The lock-in period shall be as follows (“**Lock-in Period**”):
  - (i) For Fully Explored Mines till the execution of Mining Lease or order by the Central Government under Section 11 (1) of the CBA Act, 1957, as the case may be.



- (ii) For Partially Explored Mines, Lock-in Periods shall be in two phases:
- (a) First, till one year of the date of issuance of [Vesting Order / Allocation Order]<sup>22</sup> provided that at least 15% of estimated exploration expense has been incurred by the Successful Bidder; or
- (b) Second, after preparation of Geological Report till the execution of Mining Lease or order by the Central Government under Section 11 (1) of the CBA Act, 1957, as the case may be.

### **13.2. Consequences of default**

- 13.2.1. In the event of any change in Control or any transfer of right, title or interest in the Coal Mine which is not in conformity with this Agreement or any Applicable Law, then in addition to any rights, remedy or consequences as may be applicable under Applicable Laws, the Nominated Authority or the Central Government may, in its sole discretion, appropriate the Performance Security, disqualify the Successful Bidder from participating in any further auction or allotment process conducted by the Nominated Authority; terminate this Agreement; and/or terminate and withdraw the [Vesting Order / Allocation Order].
- 13.2.2. Any transfer of right, title or interest which is not in conformity with this Agreement or Applicable Laws shall be deemed to be void *ab-initio*.

### **14. MANDATORY WORK PROGRAM FOR PARTIALLY EXPLORED MINES**

- 14.1.1. During the prospecting phase, the Successful Bidder shall complete the Mandatory Work Program for the Coal Mine as specified in the Schedule I. The Successful Bidder shall conduct geological prospecting/ exploration of the area as per the Mandatory Work Program provided by the Nominated Authority, so as to ascertain evidence of mineral contents and shall submit periodic reports to the Nominated Authority. Provided however that in the event the Successful Bidder is unable to conduct geological prospecting/ exploration of the area as per the Mandatory Work Program, due to any technical constraints including subsurface geological uncertainty duly accepted by the Government, the Successful Bidder may propose a revised Mandatory Work Program having estimated exploration expense not less than the estimated exploration expense as provided in the Annexure I of the Tender Document, to the Nominated Authority. The revised Mandatory Work Program shall be subject to the approval of the Nominated Authority. Notwithstanding anything to the contrary contained elsewhere in this Tender Document, the Successful Bidder may undertake geological prospecting/ exploration in excess of the Mandatory Work Program in accordance with Applicable Laws.
- 14.1.2. All reports, studies and other documentation related to the geological prospecting/ exploration of the area shall be submitted to the Nominated Authority and the State Government and they shall become the proprietary information of the Nominated Authority / State Government.

### **15. PRODUCTION SCHEDULE FOR FULLY EXPLORED MINES**

- 15.1.1. The Successful Bidder shall ensure that the scheduled coal production as per the approved Mining Plan is equal to or more than the year-on-year production schedule of the Coal Mine as specified in Schedule I (“**Production Schedule**”). In case prospecting operations are required to be carried out for any part of the Coal Mine, the same shall be carried out by the Successful Bidder in accordance with Applicable Law.

<sup>22</sup> To be retained as applicable.

## **16. REVISION IN MINING PLAN UPON ALLOCATION AND FLEXIBILITY IN PRODUCTION**

### **16.1. Revision in Mining Plan**

Upon allocation of the Coal Mine, the Mining Plan may be revised by the Successful Bidder, in accordance with the Guidelines for Preparation, Formulation, Submission, Processing, Scrutiny, Approval and Revision of Mining plan for the coal and lignite blocks issued *vide* Office Memorandum F. No. 34011/28/2019-CPAM dated May 29, 2020, as may be amended.

### **16.2. Flexibility in Coal Production**

16.2.1. In a financial year, the Successful Bidder shall produce coal not below 65% of scheduled production for that financial year as per the Mining Plan subject to the condition that in any 3 financial year block the Successful Bidder shall not produce coal less than 75% of scheduled production for the 3 financial year block as per the Mining Plan. It is clarified that 3 financial year block shall be counted from the first financial year of scheduled commencement of production in the Coal Mine.

#### **16.2.2. Revenue payable to the Government in case of shortfall in coal production:**

- (a) In the event the annual coal production is less than 65% of the scheduled production in any financial year as per approved Mining Plan, then the annual revenue share shall be paid by the Successful Bidder, within 20 days from the end of the financial year, as a sum of (a) Monthly Payments for the quantity of coal on which the statutory royalty is paid, in accordance with Clause 9 and (b) revenue share for the shortfall quantity (i.e. 65% of annual scheduled coal production in the financial year less the quantity of coal on which the statutory royalty is paid) computed on the basis of the Notional Price arrived at after adjusting the Representative Price with sub-index of National Coal Index or National Lignite Index, as applicable of the relevant basket of coal grade(s) for the relevant year. It is clarified that relevant grade of coal shall mean weighted average grade of non-coking coal and/or weighted average grade of coking coal, as the case may be, for the Coal Mine, as per grade declared by CCO / State Government concerned, as applicable. For Coal Mine with lignite coal, relevant grade shall be as notified by Government of India separately.
- (b) Further, in the event the coal production for a block of 3 financial years is less than 75% of the scheduled production in the block of 3 financial years as per approved Mining Plan, the Successful Bidder shall make payment towards such shortfall in coal production (above 65% and less than 75%) such that the revenue to the Government for a block of 3 financial years is towards at least 75% of the scheduled coal production in the block of 3 financial years within 20 days of the from the end the 3 financial year period. In such case, the revenue share payable for the shortfall quantity (75% of scheduled coal production of 3 financial years less the quantity of coal on which the statutory royalty is paid in 3 financial years) shall be computed on the basis of Notional Price arrived at after adjusting the Representative Price with sub-index of National Coal Index or National Lignite Index, as applicable of the relevant basket of coal grade(s) for the relevant block of 3 financial years. It is clarified that relevant grade of coal shall mean weighted average grade of non-coking coal and/or weighted average grade of coking coal, as the case may be, for the Coal Mine, as per grade declared by CCO / State Government concerned, as applicable. For Coal Mine

with lignite coal, relevant grade shall be as notified by Government of India separately.

- (c) Statutory dues including taxes, levies, royalty, contribution to NMET and DMF, etc. shall be payable as per Applicable Law.

## **17. MINE CLOSURE**

- 17.1. Upon exhaustion of the extractable coal reserves at the Coal Mine, the Coal Mine shall be closed, in the manner provided in the mine closure plan (as a part of the Mining Plan) and Applicable Laws, including ecological restoration, and the Successful Bidder shall observe Good Industry Practice.

## **18. COMPLIANCE WITH ANTI CORRUPTION LAWS**

### **18.1. Compliance**

The Successful Bidder and its employees shall at all times during the Term:

- (a) comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption (the “**Anti Corruption Laws**”);
- (b) not do, or omit to do, any act that will cause or lead to any breach of any of the Anti Corruption Laws;
- (c) promptly report to the Nominated Authority any breach of the Anti Corruption Laws by the Successful Bidder in connection with the Coal Mine, the mining operations or performance of this Agreement; and
- (d) have and shall maintain in place its own policies and procedures, to ensure compliance with the Anti Corruption Laws (“**Anti Corruption Policy**”) and will enforce the Anti Corruption Policy where appropriate.

### **18.2. Audit and record keeping**

- 18.2.1. The Successful Bidder shall keep at its normal place of business detailed, accurate and up to date records and books of account showing all payments made by the Successful Bidder in connection with this Agreement, the development of the Coal Mine, mining operations and matters incidental thereto and the steps taken by the Successful Bidder to comply with the Anti Corruption Laws, and the Anti Corruption Policy. Such records and books of accounts shall be required to be maintained for a period of [six] years. The Successful Bidder shall ensure that such records and books of accounts are sufficient to enable verification of the Successful Bidder’s compliance with its obligations under this Clause 18.
- 18.2.2. The Successful Bidder shall permit the Nominated Authority and its representatives, to access and take copies of the Successful Bidder’s records and any other information held at the Successful Bidder’s premises and to meet with the Successful Bidder’s personnel to audit the Successful Bidder’s compliance with its obligations under this Clause 18. Such audit rights shall continue for three years after termination of this Agreement. The Successful Bidder shall give all necessary assistance to the conduct of such audits during the Term of this Agreement and for a period of three year after termination of this Agreement.

### **18.3. Anti Corruption provisions in contracts**

Any contract or arrangements entered into by the Successful Bidder, including without limitation contracts or arrangements with any supplier, contractor, sub-contractor, employees should impose on and secure from the Subcontractor obligations, liabilities, undertakings, warranties, acknowledgements and grants of rights equivalent to those imposed on and secured from the Successful Bidder in this Clause 18, except for the requirement of Anti Corruption Policy in case of contracts or arrangements with natural persons.

## **19. REPRESENTATIONS AND WARRANTIES**

- 19.1. The Successful Bidder represents and warrants to the Nominated Authority (save as otherwise disclosed to the Nominated Authority in writing), as of the Agreement Date in the manner as detailed in SCHEDULE F (“**Warranties**”).
- 19.2. None of the representations, warranties and/ or statements contained in this Agreement shall be treated as qualified by any actual or constructive knowledge on the part of the Nominated Authority or the Central Government or any of its respective agents, representatives, officers, employees or advisers.
- 19.3. In the event that any of the representations or warranties made or given by the Successful Bidder ceases to be true or stands changed, the Successful Bidder shall promptly notify the Nominated Authority of the same. The Successful Bidder hereby waives all its rights to invoke and shall not invoke the Nominated Authority's knowledge (actual, constructive or imputed) of a fact or circumstance that might make a statement untrue, inaccurate, incomplete or misleading as a defence to a claim for breach of Warranties or covenant or obligation of the Successful Bidder.

## **20. INDEMNITIES**

- 20.1. In this clause, a reference to the Nominated Authority shall include the Nominated Authority; the Government of India; any of the departments or ministries of the Government of India; and of the officers, employees, staff, advisors, representatives or agents of the Government of India (collectively the “**Indemnified Party**”) and the provisions of this Clause shall be for the benefit of the Indemnified Party, and shall be enforceable by each such Indemnified Party.
- 20.2. The Successful Bidder shall indemnify the Indemnified Party against all liabilities, costs, expenses, damages and losses (including but not limited to any interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Indemnified Party arising out of or in connection with:
  - (a) any breach of the Warranties
  - (b) Successful Bidder's breach or negligent performance or non-performance of this Agreement;
  - (c) the enforcement of this Agreement;
  - (d) any claim made against the Indemnified Party for actual or alleged infringement of a Third Party's rights arising out of or in connection with mining operations at the Coal Mine or performance or non-performance of any of the obligations under this Agreement to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this Agreement by the Successful Bidder, its employees, agents or contractors;

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- (e) any claim made against the Indemnified Party by a Third Party for death, personal injury or damage to property arising out of or in connection with mining operations at the Coal Mine or performance or non-performance of any of the obligations under this Agreement;
  - (f) any loss or damages caused on account of breach of any Applicable Law by the Successful Bidder, including without limitation any costs incurred by the Nominated Authority in cleaning or rectifying of any environmental damages caused by the Successful Bidder on account of, lack of Good Industry Practice; breach, negligent performance or failure or delay in performance of this Agreement; or non-compliance with Applicable Law.
  - (g) Any claim made to or against the Indemnified Party hereinafter for any amount admissible as Fixed Amount in terms of the Tender Document and the Act.
- 20.3. If any Third Party makes a claim, or notifies an intention to make a claim, against the Indemnified Party which may reasonably be considered likely to give rise to a liability under this indemnity (a “**Claim**”), the Indemnified Party shall as soon as reasonably practicable, give written notice of the Claim to the Successful Bidder, specifying the nature of the Claim in reasonable detail.
- 20.4. Subject to the Successful Bidder providing security to the Indemnified Party, to the Indemnified Party's sole and absolute satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, the Successful Bidder may take such action as it may reasonably deem fit to avoid, dispute, compromise or defend the Claim.
- 20.5. Payments of the amount of Claim shall become due and payable within [thirty] Business Days of receipt of notice of Claim. If a payment due from the Successful Bidder under this clause is subject to Tax (whether by way of direct assessment or withholding at its source), the Indemnified Party shall be entitled to receive from the Successful Bidder such amounts as shall ensure that the net receipt, after Tax, to the Indemnified Party in respect of the payment is the same as it would have been were the payment not subject to Tax.

## **21. ASSIGNMENT, SECURITY FOR FINANCING**

### **21.1. Prohibition on Assignment**

- 21.1.1. Except as provided in this Clause 21, the Successful Bidder shall not assign this Agreement, either directly or indirectly, save and except with the prior consent in writing of the Nominated Authority, which consent the Nominated Authority shall be entitled to decline without assigning any reason.
- 21.1.2. Subject to compliance with provisions of Clause 21.2, this Agreement may be assigned by the Successful Bidder in the following events:
- (a) upon occurrence of a change in Control or transfer which is permissible in terms of Clause 13, to the transferee; or
  - (b) upon occurrence of an enforcement event, to a transferee as may be determined by a bank or financial institution in terms of Clause 21.3.

### **21.2. Assignment Conditions**

Assignment of this Agreement shall also be subject to the following conditions precedent:

- (a) the proposed assignee must meet the applicable Eligibility Conditions;

- (b) the proposed assignee must agree to unconditionally and irrevocably adhere to the provisions of this Agreement and must enter into a deed of adherence in the manner as prescribed by the Nominated Authority;
- (c) the proposed assignee must have furnished the Performance Security, to substitute any subsisting Performance Security provided by the Successful Bidder;
- (d) the proposed assignee must have paid any other amount due from the Successful Bidder and agree to indemnify and hold the Nominated Authority harmless in all respects against any claims from any Third Party or the Successful Bidder with respect to such assignment.

### **21.3. Security for financing, enforcement Event**

21.3.1. Subject to Applicable Laws, the Successful Bidder shall be entitled to create security by way of mortgage of the Coal Mine for the purposes of financing the mining operations at the Coal Mine from a bank or financial institution and such security creation shall not require prior approval by the Nominated Authority or the Central Government. It is clarified that the Successful Bidder shall be permitted to enter into any agreement with bank or financial institutions for creation of such security and for creation of such security, the conditions mentioned in Clause 21.2 shall not be applicable.

21.3.2. The Successful Bidder shall keep the Nominated Authority promptly informed about: (i) any default in its obligation under any arrangement with any bank or financial institution; (ii) any security interest created over the Coal Mine; and (iii) any action initiated by the bank or financial institution regarding enforcement of security.

21.3.3. In the event of a default, the banks or financial institutions, as the case may be shall be entitled to enforce their security interest, provided that the conditions listed in Clause 21.2 are met, in the manner provided below:

- (a) the security interest shall be exercised in accordance with the provisions of Applicable Laws and any inter-se agreement between the secured creditors, if any.
- (b) the lead secured creditor (in case of consortium lending) or the secured creditor with the highest exposure (in case of multiple banking), shall be entitled to seek a substitution of the Successful Bidder by providing a written notice (the “**Substitution Notice**”) to the Nominated Authority;
- (c) the Substitution Notice shall contain complete particulars of the proposed transferee (the “**Selectee**”), particulars of compliance of the Selectee with all the Eligibility Conditions, particulars of the debt due and such data and information as would be necessary and relevant for the Nominated Authority to decide as to the acceptability of the Selectee;
- (d) the Nominated Authority may require such other information as it may deem fit regarding the suitability of the Selectee to receive rights and obligations with respect to the Coal Mine;
- (e) the Substitution Notice must be accompanied by an unconditional undertaking of the Selectee to the effect that it shall upon acceptance by the Nominated Authority observe, comply with, perform and fulfil the residual terms, conditions and covenants of this



Agreement as if the Selectee had been the Successful Bidder under this Agreement and to assume, discharge and pay the debt due on the terms and conditions agreed to by the Selectee with the secured creditors. The Selectee shall also undertake to enter into such documents and agreements with Nominated Authority as may be necessary or required to give effect to the substitution of the Successful Bidder by the Selectee;

- (f) the Nominated Authority shall convey its acceptance or otherwise of the Selectee within sixty Business Days of (a) the date of receipt of the Substitution Notice; or (b) the date of receipt of the additional information and clarifications requested in respect of any data, particulars or information comprised in the Substitution Notice, whichever is later.
- (g) In the event that the Nominated Authority fails to communicate its acceptance or otherwise or the objections if any it has to the acceptance of the Substitution Notice, within the time specified in sub-clause (f) above, the Nominated Authority shall be deemed to have accepted the Substitution Notice and the Selectee.

21.3.4. Upon acceptance of the Selectee by the Nominated Authority or the Nominated Authority having been deemed to have accepted the Substitution Notice, this Agreement shall be deemed to be assigned in favour of the Selectee without any further act or deed of the Successful Bidder.

## **22. INSURANCE**

22.1. At all times during the Term hereof, the Successful Bidder will maintain, and cause its contractors and sub-contractors to maintain, with financially sound and reputable insurers, insurance against such casualties and contingencies, of such types, on such terms and in such amounts (including deductibles, co-insurance and self-insurance, if adequate reserves are maintained with respect thereto) as is consistent with Good Industry Practice.

## **23. ACCOUNTS AND AUDIT**

### **23.1. Audited Accounts**

The Successful Bidder shall maintain books of accounts recording all its receipts, income, expenditure, payment, assets and liabilities in accordance with Good Industry Practice and Applicable Laws.

### **23.2. Appointment of Auditors**

The Nominated Authority shall have the right, but not the obligation, to appoint at its cost, from time to time and at any time, an auditing firm or an auditor to audit and verify all those matters, expenses, costs, realizations and things with respect to the Coal Mine or which the statutory auditors are required to do, undertake or certify pursuant to this Agreement.

### **23.3. Certification of claims by Statutory Auditors**

Any claim or document provided by the Successful Bidder to the Nominated 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 certified by its statutory auditors.

## **24. GOVERNMENT INSPECTION**

24.1. The Nominated Authority, through its authorized representatives shall have the right to free ingress

and egress within any part of the Coal Mine at any time to inspect works or activities being undertaken or implemented by the Successful Bidder in order to monitor and verify compliance with the terms of this Agreement and all Applicable Laws.

- 24.2. The Nominated Authority, through its authorized representatives, shall have access to the Successful Bidder's financial and other records and transactions (relatable to any period) at any time upon reasonable advance notice, the right to copy therefrom, for the purpose of assessing the performance and compliance of the Successful Bidder with the terms of this Agreement and all Applicable Laws, rules and regulations or to aid in the enforcement of the same.
- 24.3. The Nominated Authority shall have the right to conduct, either directly or indirectly through any Third Party, a performance audit to verify compliance by the Successful Bidder, of its obligations hereunder.

## **25. EVENT OF FORCE MAJEURE**

- 25.1. Event of Force Majeure means any of the following events or circumstances or combination of the following events or circumstances which are beyond the reasonable control of the Successful Bidder, which could not have been prevented by Good Industry Practice or by the exercise of reasonable skill and care and which or any consequences of which, have a material and adverse effect upon the performance by the Successful Bidder of its obligations or enjoyment of its rights:
- (i) acts of God, flood, drought, earthquake or other natural disaster;
  - (ii) epidemic or pandemic;
  - (iii) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
  - (iv) nuclear, chemical or biological contamination or sonic boom;
  - (v) collapse of buildings, fire, explosion or accident;
  - (vi) any labour or trade dispute, strikes, industrial action or lockouts (other than those solely affecting Successful Bidder claiming the same as an Event of Force Majeure and attributable to such Successful Bidder's policies regarding labour, compensation or employment or labour related conditions);
  - (vii) Any change in law or government policy making the performance of obligations under this Agreement impossible.
- 25.2. Provided it has complied with Clause 25.3, if the Successful Bidder is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by an Event of Force Majeure, the Successful Bidder shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations.
- 25.3. Upon occurrence of an Event of Force Majeure, the Successful Bidder shall:
- (i) as soon as reasonably practicable after the start of the Event of Force Majeure but no later than thirty Business Days from its start, notify the Nominated Authority and the Central Government in writing of the Event of Force Majeure, the date on which it started, its likely or potential duration, and the effect of the Event of Force Majeure on its ability to perform

any of its obligations under this Agreement; and

- (ii) use all reasonable endeavours to mitigate the effect of the Event of Force Majeure on the performance of its obligations including following of Good Industry Practice.

25.4. If an obligation is suspended by reason of an Event of Force Majeure for more than one month continuously, the Parties shall enter into good faith negotiations to revise the terms of this Agreement to reflect the changed circumstances, provided that this Agreement shall remain in effect during the period during which the Parties are negotiating the terms of any such revision.

25.5. Notwithstanding Clause 25.4, in the event that, performance of obligations under this Agreement remain suspended for a period of: (a) six months continuously; (b) or nine months over a period of one year, then the Nominated Authority may in its sole discretion terminate this Agreement in the manner provided in Clause 26 (EFFECTIVE DATE, TERM AND TERMINATION).

## **26. EFFECTIVE DATE, TERM AND TERMINATION**

### **26.1. Effective Date**

This Agreement, except for Clauses [●] shall come into effect on the Agreement Date. Clauses [●] shall come into effect on the date on which the [Vesting Order / Allocation Order] is issued by the Nominated Authority. It is clarified that the provisions of this Agreement shall also be included in the Mining Lease or Prospecting License-cum-Mining Lease [or in the order by the Central Government under Section 11 (1) of the CBA Act, 1957, as the case may be].

### **26.2. Term**

26.2.1. This Agreement shall commence on the dates mentioned in Clause 26.1 and shall continue for the period till the mine opening permission under rule 9 of the Colliery Control Rules, 2004 is granted to the Successful Bidder or the order under Section 11 (1) of the CBA Act, 1957 is issued by the Central Government, as the case may be (“**Term**”), unless agreed otherwise by the Parties and unless this Agreement is terminated earlier in accordance with its terms prior to the expiry of the Term. Upon termination of the Agreement, the rights of the Nominated Authority under the Agreement shall vest into State Government.

26.2.2. The terms and conditions of this Agreement shall be included in terms and conditions of the Mining Lease for the Coal Mine along with any other terms and conditions that the Central Government or the State Government may deem fit under the Mineral Concession Rules, 1960.

### **26.3. Termination**

26.3.1. This Agreement may be terminated upon occurrence of any of the following events (each a “**Termination Event**”):

- (a) violation of the provisions of the Act and the Rules;
- (b) failure of the Successful Bidder to make payment of the Upfront Amount in the manner provided in Clause 5.2;
- (c) failure of the Successful Bidder to submit the revised Performance Security in accordance with Clause 6.1;

- (d) failure of the Successful Bidder to complete the Vesting Conditions within the time specified in Clause 3.2;
- (e) failure of the Successful Bidder to make payment of additional levy within the time specified under Rule 18 of the Rules, if required to be paid;
- (f) occurrence of any Appropriation Event resulting in appropriation of the entire Performance Security or on account of one or more Appropriation Events, an amount equal to hundred per cent of the Performance Security being appropriated in aggregate (in one or more instances) as provided in Clause 6.3;
- (g) failure of the Successful Bidder to replenish the Performance Security within a period of 15 Business Days, in the event that a part of the Performance Security has been appropriated;
- (h) delay in achievement of the Efficiency Parameters (Milestones) by the Successful Bidder for more than three instances (in aggregate and not over a specified period) as provided in Clause 10.3;
- (i) any breach of compliance requirements with anti corruption laws as provided in Clause 18;
- (j) suspension of obligations on account of an Event of Force Majeure for a period longer than as specified in Clause 25.5;
- (k) failure to make payment of the Monthly Payment for more than three instances (in aggregate and not over a specified period) in terms of Clause 9.1;
- (l) failure to provide any information requested by the Nominated Authority in terms of this Agreement;
- (m) failure of the Successful Bidder to ensure continued compliance with the Eligibility Conditions;
- (n) the Successful Bidder dissolves, liquidates, commits an act of bankruptcy, petitions or applies to any tribunal for the appointment of a trustee or receiver for itself, resulting in the extinguishment of the existence of the Successful Bidder;
- (o) any other breach of any of the provisions of this Agreement (including in case of the Warranties being untrue or misleading or incorrect in any manner whatsoever), which is not cured by the Successful Bidder within thirty Business Days of becoming aware of the same, on its own accord or upon receipt of a notice from the Nominated Authority;
- (p) on recommendation of the State Government concerned in the event of breach of terms and conditions of prospecting license or mining lease;
- (q) surrender of the Coal Mine by the Successful Bidder;
- (r) cessation of coal mining operation exceeding a period of one year continuously, or 18 months over a period of two years without occurrence of any event of force majeure;
- (s) termination of the Mining Lease or Prospecting License-cum-Mining Lease granted to the Successful Bidder or order by the Central Government under Section 11 (1) of the CBA Act, 1957, as the case may be; or

- (t) in the opinion of the Central Government, it is expedient in public interest to terminate this Agreement.

- 26.3.2. Upon occurrence of a Termination Event, the Nominated Authority may elect to terminate this Agreement by providing a 15 Business Days written notice to the Successful Bidder. The determination of the Nominated Authority regarding occurrence of a Termination Event shall be final and binding on the Successful Bidder.
- 26.3.3. In case the Nominated Authority elects to terminate this Agreement except under Clause 26.3.1(j), then the Performance Security and all other payments made by the Successful Bidder shall be forfeited and the Successful Bidder shall not be entitled to any benefits under this Agreement but would continue to be liable towards any antecedent liability, all obligations accrued before the effective date of the surrender/ termination and also for the obligations that must be fulfilled after termination. In case Nominated Authority elects to terminate this Agreement under Clause 26.3.1(j) after accepting the Event of Force Majeure, then i) the Performance Security submitted by the Successful Bidder shall not be forfeited and ii) the balance Upfront Amount, if any, after adjustment of Monthly Payments in accordance with Clause 9.4 shall be refunded. The Successful Bidder shall not be entitled to any benefits under this Agreement but would continue to be liable towards any antecedent liability, all obligations accrued before the effective date of the surrender/ termination and also for the obligations that must be fulfilled after termination.
- 26.3.4. In case the Successful Bidder faces severe impediment in mining operation owing to factors beyond its control such as difficult mining conditions arising out of geological features, issues in land acquisition including law and order issues and protests against land acquisition, declaration of national parks, wildlife sanctuaries, eco-sensitive zones, high conservation value areas, environmental constraints due to specific conditions in Environment Clearance / Forest Clearance, then the request for surrender for the Coal Mine and termination of the Agreement shall be examined on a case to case basis. In case Nominated Authority elects to terminate this Agreement under this clause, then i) the Performance Security submitted by the Successful Bidder shall not be forfeited; ii) the balance Upfront Amount, if any, after adjustment of Monthly Payments in accordance with Clause 9.4 and compensation to Prior Allottee shall not be refunded; and (iii) any pending show-cause notices issued by Nominated Authority shall stand withdrawn. The Successful Bidder shall not be entitled to any other benefits under this Agreement but would continue to be liable towards any antecedent liability, all obligations accrued before the effective date of the surrender/ termination and also for the obligations that must be fulfilled after termination.

## **26.4. Retention of Books and Records**

Upon termination of this Agreement, the Successful Bidder shall retain all documents, books and records related to the Coal Mine for a period of three years or such longer period as may specified under Applicable Law. It is clarified that the Successful Bidder may also retain such books and records in electronic form if permitted under Applicable Laws.

## **27. GOVERNING LAW AND DISPUTE RESOLUTION**

- 27.1. This Agreement and all questions of its interpretation shall be construed in accordance with the laws of India, without regard to its principles of conflicts of laws.
- 27.2. Any dispute, controversy or claim arising out of or relating to or in connection with the Agreement including a dispute as to the validity or existence of this Agreement, or any breach or alleged breach

thereof, shall be settled through mutual discussions between the Parties. In this regard, the Successful Bidder shall nominate an officer not below the rank of a director to participate in the discussions on its behalf.

- 27.3. [In the event that the Successful Bidder fails to nominate an officer in the manner required under Clause 27.2; or the Parties are unable to resolve any dispute in accordance with Clause 27.2 within a period of [30] Business Days starting from the date on which the first notice of dispute was provided by either Party, such dispute shall be resolved in accordance with Section 27 of the Act.]
- 27.4. [In the event that the Successful Bidder fails to nominate an officer in the manner required under Clause 27.2; or the Parties are unable to resolve any dispute in accordance with Clause 27.2 within period of [30] Business Days stating from the date on which the first notice of dispute was provided by either Party, such dispute shall be referred to arbitration by in accordance with Clause 27.5. Such arbitration shall be subject to the provisions of the Arbitration and Conciliation Act, 1996. The venue of such arbitration shall be Delhi, and the language of arbitration proceedings shall be English.
- 27.5. There shall be a 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 two arbitrators, the appointment shall be made in accordance with the Arbitration Rules. The arbitrators' award (the "**Award**") shall be final and binding on the Parties as from the date it is made, and the Parties agree and undertake to carry out such Award without delay. 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.
- 27.6. The Parties agree that an Award may be enforced against them and their assets wherever situated.]<sup>23</sup>
- 27.7. [In the event that the Successful Bidder fails to nominate an officer in the manner required under Clause 27.2; or the Parties are unable to resolve any dispute in accordance with Clause 27.2 within period of [30] Business Days stating from the date on which the first notice of dispute was provided by either Party, such dispute shall be taken by either Party for resolution through AMRCD as mentioned in DPE OM No. 4(1)/2013-DPE(GM)/FTS-1835 dated May 22, 2018.]<sup>24</sup>
- 27.8. It is expressly agreed between the Parties, that any existence of a dispute shall not affect in any manner any of the rights of the Nominated Authority under this Agreement, including without limitation the right to appropriate Performance Security or terminate this Agreement, until a final determination in this regard is made.
- 27.9. The provisions contained in this Clause 27 shall survive the termination of this Agreement.

## **28. MISCELLANEOUS**

### **28.1. Time of Essence**

Each of the Parties hereby agrees that, with regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

<sup>23</sup> To be retained appropriately.

<sup>24</sup> This is only applicable in the event the Successful Bidder is a Central Public Sector Enterprises which has been awarded a coal block under the MMDR Act.



## **28.2. Publicity**

The Successful Bidder shall not issue any information, document or article for publication in any news or communications media or make any public statement in relation to this Agreement without the prior written consent of the Nominated Authority unless required to do so by Applicable Law, provided that prior to any disclosure of any such information required by Applicable Law, the Successful Bidder must first notify the Nominated Authority, who shall then have the opportunity to respond to and/or dispute such intended disclosure.

## **28.3. Severability**

28.3.1. If any term, provision, covenant or restriction of this Agreement or the application thereof to any Person or circumstance shall be held invalid, void or unenforceable by a court of competent jurisdiction or other Governmental Authority to any extent, the remainder of the terms, provisions, covenants and restrictions of this Agreement and the application thereof to Persons or circumstances (other than those as to which any portion of this Agreement is held invalid, void or unenforceable) shall not be affected thereby and shall remain in full force and effect to the fullest extent permitted by law, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party.

28.3.2. Upon such a determination, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

## **28.4. Costs and Expenses**

28.4.1. The Successful Bidder shall bear its own costs in connection with the negotiation, preparation and execution of this Agreement.

28.4.2. The stamp duty payable for this Agreement shall be borne by the Successful Bidder.

## **28.5. Further Assurance**

The Successful Bidder shall cooperate with the Nominated Authority and execute and deliver to the Nominated Authority such instruments and documents and take such other actions as may be requested from time to time in order to carry out, evidence and confirm their rights and the intended purpose of this Agreement.

## **28.6. Legal And Prior Rights**

All rights and remedies of the Nominated Authority hereto shall be in addition to all other legal rights and remedies belonging to the Nominated Authority and the same shall be deemed to be cumulative and not alternative to such legal rights and remedies aforesaid and it is hereby expressly agreed and declared by and between the Parties hereto, that the determination of this Agreement for any cause whatsoever shall be without prejudice to any and all rights and claims of the Nominated Authority, which shall or may have accrued prior thereto.

## **28.7. Waiver**

- 28.7.1. The waiver of any default or breach under this Agreement by the Nominated Authority shall not constitute a waiver of the right to terminate this Agreement for any substantial default of a similar nature or under any other terms and conditions of this Agreement.
- 28.7.2. No failure or delay by the Nominated Authority in exercising any right or remedy provided by Applicable Law under or pursuant to this Agreement shall impair such right or remedy or operate or be construed as a waiver or variation of it or preclude its exercise at any subsequent time and no single or partial exercise of any such right or remedy shall preclude any other or further exercise of it or the exercise of any other right or remedy. The rights and remedies of the Nominated Authority under or pursuant to this Agreement are cumulative, may be exercised as often as it considers appropriate and are in addition to its rights and remedies under Applicable Law.
- 28.7.3. Submission of any document, information, report or notice, which contains any information or reference to any default or breach under this Agreement or any Applicable Law, to the Nominated Authority shall not be construed to be a deemed approval of such breach or default and the Nominated Authority may exercise any rights or remedies with respect to such default at any time.

## **28.8. Amendments**

No amendment of this Agreement (or of any of the documents referred to in this Agreement) shall be valid unless it is in writing and signed by or on behalf of each of the Parties to it. The expression “amendment” shall include any amendment, variation, supplement, deletion or replacement however effected. Unless expressly agreed, no amendment shall constitute a general waiver of any provisions of this Agreement, nor shall it affect any rights, obligations or liabilities under or pursuant to this Agreement which have already accrued up to the date of amendment, and the rights and obligations of the Parties under or pursuant to this Agreement shall remain in full force and effect, except and only to the extent that they are so amended.

## **28.9. Counterparts**

This Agreement may be executed in two counterparts, each of which will be deemed an original, with the same effect as if the signatures thereto and hereto were upon the same instrument, but all of which together will constitute one and the same instrument.

## **28.10. No Agency or partnership**

The Parties agree that nothing in this Agreement shall be in any manner interpreted to constitute an agency for and on behalf of any other Party. None of the provisions of this Agreement shall be deemed to constitute a partnership between the Parties hereto and no Party shall have any authority to bind the other Party or shall be deemed to be the agent of the other Party in any way.

## **28.11. Notices**

All notices, requests, demands or other communication (“**Notice**”) required or permitted to be given under this Agreement and the provisions contained herein shall be written in English and shall be deemed to be duly sent by speed post or registered post with acknowledgment due, or transmitted by e-mail to the other Parties at the address/ e-mail id indicated in SCHEDULE G hereof or at such other address/ email id as the Party to whom such notices, requests, demands or other communication is to be given shall have last notified to the Party giving the same in the manner provided in this Clause, but no such change of address shall be deemed to have been given until it

is actually received by the Party sought to be charged with the knowledge of its contents. Any notice, request, demand or other communication delivered to the Party to whom it is addressed as provided in this Clause 28.11 shall be deemed to have been given and received on the day of its receipt at such address.

#### **28.12. Entire Agreement**

This Agreement (including all such deeds and documents issued or executed pursuant hereto or referred to herein) and the Tender Document constitutes and represents the entire agreement between the Parties with regard to the rights and obligations of each of the Parties and cancels and supersedes all prior arrangements, agreements or understandings, if any, whether oral or in writing, between the Parties on the subject matter hereof or in respect of matters dealt with herein. In the event of a conflict between this Agreement and the Tender Document, the provisions of this Agreement shall prevail to the extent of the conflict.

#### **28.13. Specific Performance of Obligations**

The Nominated Authority shall be entitled to an injunction or injunctions to prevent breaches of this Agreement or to seek or enforce specific performance of this Agreement, in addition to any other legal rights and remedies, without the necessity of demonstrating the inadequacy of monetary damages.

#### **28.14. Power of the Central Government**

The Successful Bidder acknowledges that for the purposes of this Agreement, the Central Government is acting through the Nominated Authority pursuant to the Act and the Rules. However, for the purposes of exercise of rights and obligations hereunder and any Applicable Law, the Central Government shall be entitled to act through any of its relevant departments, ministries or any Governmental Agencies and all such relevant departments, ministries or any Governmental Agencies shall be entitled to exercise rights and obligations under this Agreement as if such relevant departments, ministries or any Governmental Agencies were a Party hereto.

#### **28.15. Change Notice**

Notwithstanding anything contained herein, the Nominated Authority may issue a change notice ("Change Notice") for change in particulars of:

- (a) the Designated Bank Account;
- (b) the number of days within which the Completion Notice is required to be provided in terms of Clauses 3.2.2 and 3.2.3 of the Agreement, by extending the time period provided in Clauses 3.2.2 and 3.2.3 of the Agreement, prior to the expiry of such periods; or
- (c) the e-mail address for submission of the Pre-Commencement Report, the Commencement Report, the Monthly Report and the Yearly Report, as specified in Clause 7.2 of the Agreement.

The change notice shall be issued in writing by the Nominated Authority and shall be sent by speed post or by registered post with acknowledgment due, or transmitted by email at the address/ email id of the Successful Bidder as specified in Clause 28.11 for providing Notices.

Within 5 Business Days of receipt of the Change Notice, the Successful Bidder shall provide a written acknowledgment of its receipt to the Nominated Authority through email. The Change Notice shall take effect from: (a) the date specified in the Change Notice – if such date has been specified in the Change Notice; or (b) the date of its receipt – if no effective date has been specified in the Change Notice.”

**[Remaining part of this page intentionally left blank, schedules follow.]**

**SCHEDULE A - PARTICULARS OF THE COAL MINE**

[Particulars of be provided to identify the Coal Mine in detail, including name, mine area, etc.]

**SCHEDULE B - FORMAT OF INTIMATION TO THE NOMINATED AUTHORITY**

To

The Nominated Authority  
[address]

[date]

**Sub: Intimation under Clause 3.1(f) of the Coal Mine Development And Production Agreement (the “Agreement”).**

Dear Sir,

We write with reference to Clause 3.1(f) of the Agreement read with the Act and the Rules, including Section 10 and Section 11 of the Act in terms of which we intend to own and utilise certain movable property of the Prior Allottee and also adopt certain contracts as detailed below:

particulars of movable property along with the details of the current owner, the terms of negotiations, related documentation and other details, which we intend to own and use in terms of Section 10(1) of the Act is enclosed as Annexure A;

particulars of movable property along with the details of the current owner, the terms of negotiations, related documentation and other details, which we do not intend to own and use and which we intend to move in terms of Section 10(4) of the Act is enclosed as Annexure B;

the list of contracts (including contracts with secured creditors<sup>25</sup>) which we intend to adopt and continue, along with complete particulars of such contracts is enclosed as Annexure C;

the list of contracts (including contracts with secured creditors) which we do not intend to adopt and continue, along with complete particulars of such contracts is enclosed as Annexure D.

Apart from the particulars of the movable property and the contracts listed in this letter, we do not intend to own, use, continue or adopt any other movable property or contracts, as the case may be and do hereby relinquish our rights with respect to the same. We acknowledge that any information not provided in this letter may not be included by the Nominated Authority in the Vesting Order.

Your Sincerely,

.....

(Authorised Signatory)

Name:

Designation:

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<sup>25</sup> Not applicable if the Successful Bidder is the Prior Allottee in which case the secured creditors shall have an option to continue in terms of Section 12(1) of the Act.

Enclosed: As Above

Annexure A

Annexure B

Annexure C

Annexure D

**SCHEDULE C - FORMAT OF THE COMPLETION NOTICE**

To  
The Nominated Authority  
[address]

[date]

**Sub: Completion Notice under Clause 3.2.1 of the Coal Mine Development And Production Agreement (the “Agreement”).**

Dear Sir,

We write with reference to Clause 3.2.1 of the Agreement. We have completed each of the Vesting Conditions specified in Clause 3.1 of the Agreement and the particulars of the same are provided below:

- (a) We continue to be in compliance with all the Eligibility Conditions;
- (b) [we have paid the first instalment of the Upfront Amount, in accordance with Clause 5.2.1 through *[particulars of payment to be mentioned]*<sup>26</sup>;
- (c) we have furnished the Performance Security through *[particulars of performance security and its manner of delivery to be mentioned]*;
- (d) we have paid the Fixed Amount through *[particulars of payment to be mentioned]*;
- (e) Additional Levy as was required to be paid has been paid through *[particulars of payment to be mentioned]*<sup>27</sup>; and
- (f) we have provided a written intimation as was required under Clause 3.1(f) of the Agreement through a letter dated *[particulars to be mentioned]*.

Documentary evidence with respect to completion of each of the Vesting Conditions is enclosed.

Your Sincerely,

.....

(Authorised Signatory)

Name:

Designation:

Enclosed: As Above

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<sup>26</sup>Applicable for fully explored mines

<sup>27</sup> Not applicable if the Successful Bidder/JV Partner is not the Prior Allottee.



## SCHEDULE D - EFFICIENCY PARAMETERS

For Coal Mines under the Mines and Mineral (Development and Regulation) Act, 1957 and under the Coal Mines (Special Provisions) Act, 2015 (other than Schedule II coal mines)

Activities	Completion time	Milestone (MS) No.	Fully Explored Mines	Partially Explored Mines
			% of Performance Security to be appropriated for delay in completion of MS	% of Performance Security to be appropriated for delay in completion of MS
Prospecting Licence or Notification under section 4 of the CBA Act, 1957, as applicable	-	MS-1	Not Applicable	-
Completion of Drilling/ Exploration in accordance with the provisions of Clause 14	-			-
Preparation of Geological Report (GR)	Within 15 months from the date of allocation			0
	After 15 months upto 24 months from the date of allocation			25%
	After 24 months upto 30 months from the date of allocation			25 % (in addition to previous 25%)
Mining Lease Application	-	MS-2	10%	-
Submission of Mining Plan subject to the provisions of Clause 15	-			-
Approval of Mining Plan/Project Report subject to the provisions of Clause 15	6 months from the completion of previous MS/ If MS-1 is not applicable, 6 months from the date of allocation			
Forest Clearance Application	-	MS-3	10%	-
Environment Clearance Application	-			-
Forest Clearance (FC)-stage 1	-			-
Forest Clearance (FC)-stage 2	-			-
Wildlife Clearance	-			-
Approval under PESA	-			-
Environment Clearance (EC)	18 months from the completion of previous MS			

Activities	Completion time	Milestone (MS) No.	Fully Explored Mines	Partially Explored Mines
			% of Performance Security to be appropriated for delay in completion of MS	% of Performance Security to be appropriated for delay in completion of MS
Approval for Nallah /River Diversion	-	MS-4	-	
Approval for diversion of Power line/Rail/Road	-		-	
Permission to draw Water	-		-	
Permission to draw Power	-		-	
Consent to Establish /Operate	-		-	
Grant of Mining Lease or order by the Central Government under section 11 of CBA Act, 1957, as applicable	-		-	
Land Acquisition & possession of land and R&R required to reach rated capacity as per approved mining plan	21 months from the completion of previous MS		25%	
Intimation to DGMS for Mine opening	-	MS-5	-	
Approval for use of Explosive & Licence for Storage of Petroleum	-		-	
Permission under Factories Act, 1948	-		-	
Permission for use of Radio Frequency Communication System	-		-	
Labour related Permissions	-		-	
Escrow Account	-		-	
Application for Opening permission	-		-	
Mine Opening Permission	6 months from the completion of previous MS		25%	

**Note:**

1. Only the activity within the Milestone Number, against which percentage of appropriation of performance security has been assigned in the last column ('Main Activity'), will be monitored for the purpose of appropriation of performance security.

2. Activities other than Main Activity, against which percentage of appropriation of performance security has not been assigned, will be monitored for the purpose of early development of mines. However, in case of default in such activities, penalty will not be imposed.

3. The completion time provided for the Milestones does not bar the successful bidder from obtaining clearances concurrently, if allowed under the Applicable Laws.

4. In *bona fide* cases of delays not attributable to the Successful Bidder the Nominated Authority will decide on case to case basis the extension of timeline in Efficiency Parameters from the total time granted for all the Milestones, i.e. 66 months in case of mine where GR is to be prepared (Partially Explored Mines) and 51 months in case of mines where GR is not required to be prepared (Fully Explored Mines). For the said purpose, the Nominated Authority may refer the matter to Scrutiny Committee which will consider the delay caused on case to case basis and furnish its recommendation to the Nominated Authority for taking a decision.

5. For Partially Explored Mines, appropriation for delay in completion of MS-1 and MS-2 shall be from the performance security submitted pursuant to clause 6.1.3 of the Agreement and appropriation for delay in completion of remaining milestones shall be from the revised performance security submitted pursuant the said clause.

6. If the Successful Bidder is able to complete the last Milestone (i.e. Mine Opening Permission/ MS-5) within the total time granted for all the Milestones, i.e. 66 months in case of mine where GR is to be prepared (partially explored mines) and 51 months in case of mines where GR is not required to be prepared (fully explored mines), then the amount of performance security appropriated for delay in completion of any previous Milestone (if any) may be refunded to the Successful Bidder.

**For Schedule II Coal Mines of the Coal Mines (Special Provisions) Act, 2015**

MS No.	Milestone (MS)	Time Limit in Months (From the date of the Vesting Order/ zero date)	Percentage of Performance Security to be appropriated for delay in completion of MS
1	Completion of transfer of statutory permissions obtained by Prior Allottee / obtaining fresh statutory permissions, if required	9	10
2	Opening of Escrow Account (if not opened earlier)	9	10

**Note:**

1. In the event any statutory permission is required to be obtained afresh by the Successful Bidder, then the time line for obtaining the said statutory permission (milestone) and percentage appropriation of performance security in case of delay shall be same as that for Coal Mines under the Mines and Mineral (Development and Regulation) Act, 1957 and under the Coal Mines (Special Provisions) Act, 2015 (other than Schedule II coal mines). Further, in such event, if transfer of any statutory permission is contingent upon the aforementioned statutory permission which is required to be obtained afresh by the Successful Bidder, then the time limit for completion of transfer of such statutory permission obtained by Prior Allottee, would be 9 months from the scheduled timeline for obtaining fresh statutory permission.

2. In *bona fide* cases of delays not attributable to the Successful Bidder, the Nominated Authority will decide on case to case basis the extension of timeline in Efficiency Parameters from the total time granted for all the Milestones, i.e. 9 months. For the said purpose, the Nominated Authority may refer the matter to Scrutiny Committee which will consider the delay caused on case to case basis and furnish its recommendation to the Nominated Authority for taking a decision.

## SCHEDULE E - FORMAT OF PERFORMANCE SECURITY

[Reference number of the bank]

[date]

To

The Nominated Authority

[address]

### WHEREAS

- A. [Name of the Successful Bidder] incorporated in India under the Companies Act, [1956/2013] with corporate identity number [CIN of the Successful Bidder], whose registered office is at [address of registered office], India and principal place of business is at [address of principal place of business, if different from registered office] (the “**Successful Bidder**”) is required to provide an unconditional and irrevocable bank guarantee for an amount equal to INR [figures] (Indian Rupees [words]) as a performance security for a period of [period of performance bank guarantee].
- B. The Performance Security is required to be provided to **The President of India**, acting through the Central Government represented by the Nominated Authority appointed under Section 6 of the Coal Mines (Special Provisions) Act, 2015 (the “**Nominated Authority**”) for discharge of certain obligations under the Coal Mine Development and Production Agreement dated [date] (the “**Agreement**”) for [insert name] Coal Mine.
- C. We, [name of the bank] (the “**Bank**”) at the request of the Successful Bidder do hereby undertake to pay to the Central Government an amount not exceeding INR [figures] (Indian Rupees [words]) to secure the obligations of the Successful Bidder under the Agreement on demand from the Nominated Authority on the terms and conditions herein contained herein.

**NOW THEREFORE**, the Bank hereby issues in favour of the Nominated Authority this irrevocable and unconditional payment bank guarantee (the “**Guarantee**”) on behalf of the Successful Bidder in the amount INR [figures] (Indian Rupees [words]).

1. The Bank for the purpose hereof unconditionally and irrevocably undertakes to pay to the Nominated Authority without any demur, reservation, caveat, protest or recourse, immediately on receipt of first written demand from the Nominated Authority, a sum or sums (by way of one or more claims) not exceeding in the aggregate the amount of INR [figures] (Indian Rupees [words]) without the Nominated Authority needing to prove or to show to the Bank grounds or reasons for such demand for the sum specified therein and notwithstanding any dispute or difference between the Nominated Authority and Successful Bidder on any matter whatsoever. The Bank undertakes to pay to the Nominated Authority any money so demanded notwithstanding any dispute or disputes raised by the Successful Bidder in any suit or proceeding pending before any court or tribunal relating thereto the Bank’s liability under this present being absolute and unequivocal.

2. The Bank acknowledges that any such demand by the Nominated Authority of the amounts payable by the Bank to the Nominated Authority shall be final, binding and conclusive evidence in respect of the amounts payable by Successful Bidder to the Nominated Authority under the Agreement.
3. The Bank hereby waives the necessity for the Nominated Authority from demanding the aforesaid amount or any part thereof from the Successful Bidder and also waives any right that the Bank may have of first requiring the Nominated Authority to pursue its legal remedies against the Successful Bidder, before presenting any written demand to the Bank for payment under this Guarantee.
4. The Bank further unconditionally agrees with the Nominated Authority that the Nominated Authority shall be at liberty, without the Bank's consent and without affecting in any manner the Bank's obligation under this Guarantee, from time to time to:
  - (i) vary and/or modify and of the terms and conditions of the Agreement;
  - (ii) extend and / or postpone the time for performance of the obligations of the Successful Bidder under the Agreement, or
  - (iii) forbear or enforce any of the rights exercisable by the Nominated Authority against the Successful Bidder under the terms and conditions of the Agreement.

and the Bank shall not be relieved from its liability by reason of any such act or omission on the part of the Nominated Authority or any indulgence by the Nominated Authority to the Successful Bidder or other thing whatsoever which under the law relating to sureties would, but for this provision, have the effect of relieving the Bank of its obligations under this Guarantee.

5. Any payment made hereunder shall be made free and clear of and without deduction for, or on account of, any present or future taxes, levies, imposts, duties, charges, fees, commissions, deductions or withholdings of any nature whatsoever and by whom ever imposed; and where any withholding on a payment is required by law, the Bank shall comply with such withholding obligations and shall pay such additional amount in respect of such payment such that the Nominated Authority receives the full amount due hereunder as if no such withholding had occurred. It is clarified that even in such case the obligation of the Bank shall not in any manner exceed in the aggregate the amount of INR [figures] (Indian Rupees [words]).
6. The Bank agrees that Nominated Authority at its option shall be entitled to enforce this Guarantee against the Bank, as a principal debtor in the first instance without proceeding at the first instance against the Successful Bidder.
7. The Bank further agree that the guarantee herein contained shall remain in full force and effect during the period that specified in the Agreement and that it shall continue to be enforceable till all the obligations of the Successful Bidder under or by virtue of the said Agreement with respect to the Performance Security have been fully paid and its claims satisfied or discharged or till the Nominated Authority certifies that the terms and conditions of the Agreement with respect to the Performance Security have been fully and properly carried out by the Successful Bidder and accordingly discharges this guarantee. Notwithstanding anything contained herein, unless a demand or claim under this guarantee is made on the Bank in writing on or before the [date of

expiry of claim period of the bank guarantee] which is at least 1 year from the date of expiry of the validity of bank guarantee i.e. [date of expiry of bank guarantee] the Bank shall be discharged from all liability under this guarantee thereafter.

8. The payment so made by the Bank under this Guarantee shall be a valid discharge of Bank's liability for payment thereunder and the Nominated Authority shall have no claim against the Bank for making such payment.
9. This Guarantee is subject to the laws of India. Any suit, action, or other proceedings arising out of this Guarantee or the subject matter hereof shall be subject to the exclusive jurisdiction of courts at Delhi.
10. The Bank has the power to issue this Guarantee in favour of the Nominated Authority. This guarantee will not be discharged due to the change in the constitution of the Bank.
11. The Bank undertakes not to revoke this Guarantee during its currency except with the previous consent of the Nominated Authority in writing.
12. The Nominated Authority may, with prior intimation to the Bank, assign the right under this Guarantee to any other departments, ministries or any governmental agencies, which may act in the name of the President of India. The Nominated Authority may also assign this Guarantee in favour of the Governor of a State, with prior intimation to the Bank. Save as provided in this Clause 12, this Guarantee shall not be assignable or transferable.

Dated the [day] day of [month] [year] for the Bank.

In witness whereof the Bank, through its authorized officer, has set its hand and stamp.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name and Designation)

\_\_\_\_\_  
(Bank Stamp)

## **SCHEDULE F - WARRANTIES**

### **1. INFORMATION**

- 1.1. The information, provided to the Nominated Authority during the tender process and any time thereafter, including but not limited to the information contained in this Agreement, by the Successful Bidder is true, accurate and not misleading in any manner whatsoever.
- 1.2. Neither this Agreement nor any of the information and documents provided during the tender process exercise contains any untrue statement of fact, or omits to state a material fact necessary to make the statements herein or therein not misleading. The documents provided to the Nominated Authority and/or its advisors during the conduct of the tender process, are true and complete copies of such documents and none of the information provided to the Nominated Authority and/or its advisors during the tender process was incorrect, inaccurate or misleading in any manner whatsoever.

### **2. AUTHORITY**

- 2.1 The Successful Bidder has full legal capacity to enter into this Agreement and to perform its obligations under it and has taken all action necessary to authorise such execution and delivery and the performance of such obligations.
- 2.2 This Agreement has been duly executed and delivered by the Successful Bidder, and (assuming due authorisation, execution and delivery and performance by the Parties), constitutes a legal, valid and binding obligation of the Successful Bidder, enforceable against the Successful Bidder in accordance with the terms of the Agreement.
- 2.3 The Successful Bidder has obtained requisite corporate authorisation, including passing of all necessary resolutions at the meeting of its Board of Directors held on [●] to execute this Agreement and carry out all transactions and actions contemplated under this Agreement and do all necessary acts incidental to this Agreement.
- 2.4 The execution and delivery of this Agreement by the Successful Bidder and the performance of the obligations under it do not and shall not:
  - (a) conflict with or violate any provision of the memorandum of association or articles of association of the Successful Bidder;
  - (b) require on the part of the Successful Bidder, any filing with, or permission, authorisation, consent or approval of, any Governmental Authority;
  - (c) conflict with, result in breach of, constitute (with or without due notice or lapse of time or both) a default under, result in the acceleration of obligations under, create in favour of any party any right to terminate, modify or cancel, or require any notice, consent or waiver under, any contract or instrument to which the Successful Bidder is party or by which it is bound or to which its assets are subject;

- (d) violate, conflict with or constitute a default under any Applicable Law, lien, lease, judgement, award, ordinance, order, writ, injunction, decree, statute, rule or regulation or any other restriction of any kind or character applicable to the Successful Bidder or its properties or assets;

2.5 No person is entitled to any brokerage, finder's, or other similar fee or commission in connection with the transactions contemplated by this Agreement.

### **3. GENERAL**

#### **3.1 The Successful Bidder**

- (e) is duly organised, validly existing and in good standing under the laws of India;
- (f) meets all the Eligibility Conditions prescribed under the Act read with the Rules and the Tender Documents;
- (g) has the financial standing and capacity to undertake mining operations at the Coal Mine in accordance with the Efficiency Parameters;
- (h) is subject to civil and commercial laws of India with respect to this Agreement and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof;
- (i) there are no actions, suits, proceedings or investigations pending or to the Successful Bidder's 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 constitute an event of default hereunder;
- (j) has neither violated or defaulted nor has 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 Governmental Authority;
- (k) has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities;
- (l) except as set forth in any Mining Lease or in the order by the Central Government under Section 11 (1) of the CBA Act, 1957, as the case may be, all rights and interests of the Successful Bidder in and to the Coal Mine shall pass to and vest in the relevant Governmental Authority on the date of termination or expiry hereof, free and clear of all Encumbrances without any further act or deed on the part of the Successful Bidder or the Central Government;
- (m) no bribe or illegal gratification or any other illegal amount has been paid or will be paid in cash or kind by or on behalf of the Successful Bidder to any Person to procure the rights granted hereunder; and
- (n) Without prejudice to any express provision contained in this Agreement, the Successful



Bidder acknowledges that prior to the execution of this Agreement, the Successful Bidder has after a complete and careful examination made an independent evaluation of the Coal Mine and the information provided by the Nominated Authority, and has determined to its satisfaction the nature and extent of risks and hazards as are likely to arise or may be faced by the Successful Bidder in the course of performance of its obligations hereunder. The Successful Bidder also acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth above and hereby confirms that the Nominated Authority and any Governmental Authority shall not be liable for the same in any manner whatsoever to the Successful Bidder.

**SCHEDULE G - ADDRESS FOR PROVIDING NOTICES**

**A. Notice to the Nominated Authority**

<b>Address</b>	
<b>Telephone</b>	
<b>E-mail</b>	

**B. With CC to the Central Government**

<b>Address</b>	Ministry of Coal
<b>Telephone</b>	
<b>E-mail</b>	

**C. Notice to the Successful Bidder**

<b>Address</b>	
<b>Telephone</b>	
<b>E-mail</b>	

## SCHEDULE H - FORMAT OF DEED OF UNDERTAKING

*(Must be submitted by the Successful Bidder pursuant to Clause 6.1)*

*(To be executed on non-judicial Stamp Paper of requisite value)*

Ref. No.

Date: [insert date]

To

Nominated Authority

[Address]

Dear Sir,

We, [name of the Successful Bidder] (the “Allottee”) have read and examined the Agreement dated [date] (the “Agreement”) relating to Auction of [Name of Coal Mine] coal mine through the auction process which commenced on [date of issuance of Tender Document], and the Order of Ministry of Coal dated [insert date].

Capitalised expressions used in this undertaking but not defined herein have the same meaning as ascribed to them in the Agreement.

The Successful Bidder hereby unconditionally and irrevocably undertakes to submit the revised Performance Security (pursuant to clause 6.1) as required under the Agreement as and when the same is directed to be furnished and paid by Central Government or Nominated Authority, as the case may be.

We acknowledge that our failure to comply with the terms of this undertaking and the terms of the Agreement will be dealt with in accordance with the Agreement.

This undertaking has been issued pursuant to a [particulars of corporate authorisation of the Successful Bidder e.g. date of board resolution etc, as applicable]

Signature along with seal of the Company

(Duly authorized to sign the Undertaking on behalf of the Successful Bidder)

Name:

Designation:

Date:

Name of Company:

Address:

Witness:

Signature:

Name & Address:

Date:

**SCHEDULE I - MANDATORY WORK PROGRAM AND PRODUCTION SCHEDULE**

**Mandatory Work Program for Partially Explored Mines**

[insert]

Estimated Exploration Expense - INR [●] (Indian Rupees [●]) exclusive of taxes

**Production Schedule for Fully Explored Mines**

[insert]

## SCHEDULE J - REPRESENTATIVE PRICE

### A. Non-coking coal

Grade of Coal	Representative Price (Rs./tonne)
G1	11,236
G2	6,287
G3	5,976
G4	6,026
G5	5,814
G6	5,444
G7	3,413
G8	3,237
G9	2,791
G10	2,625
G11	1,932
G12	1,851
G13	1,745
G14	1,405
G15	1,286
G16	4,591
G17	709

### B. Coking coal

Grade of Coal	Representative Price (Rs./tonne)
Steel Grade I	21,074
Steel Grade II	19,134
Washery Grade I	5,736
Washery Grade II	5,050
Washery Grade III	4,671
Washery Grade IV	3,243
Washery Grade V*	2,791
Washery Grade VI**	1,851

\*Representative Price on the basis of corresponding grade of non-coking coal as G9

\*\*Representative Price on the basis of corresponding grade of non-coking coal as G12

Note: The abovementioned Representative Price is of September 2023 (provisional) i.e. the latest available Representative Price at the time of issuance of this Tender Document. In the event, there is any revision in the Representative Price of September 2023, the abovementioned Representative Price shall be replaced by such revised Representative Price.

Note: The representative price of the relevant grade of the lignite coal shall be published by Ministry of Coal separately.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be duly executed by their duly authorised representatives on the date and year written below, at [New Delhi]:

**Signatories**

The Nominated Authority

[Name of the Successful Bidder]

.....  
Name:

Date:

.....  
Name:

Designation

Date:

Duly authorized to execute this Agreement pursuant to [resolution passed by the board of directors of the *[name of the Successful Bidder]* on *[date]*].



सत्यमेव जयते



**[18<sup>TH</sup> / 8<sup>TH</sup>] TRANCHE OF AUCTION**

**STANDARD [COAL/LIGNITE MINE DEVELOPMENT AND PRODUCTION AGREEMENT / COAL/LIGNITE BLOCK DEVELOPMENT AND PRODUCTION AGREEMENT]**

**FOR SALE OF COAL/LIGNITE**

**Nominated Authority, Ministry of Coal**

**Government of India**

**November 15, 2023**



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[To be executed on stamp paper of adequate value.]

This Coal Mine Development and Production Agreement is made by and between following:

**PARTIES:**

- 1 **The President of India**, acting through the Central Government represented by the Nominated Authority appointed under Section 6 of the Coal Mines (Special Provisions) Act, 2015 (the “**Nominated Authority**”) / [and authorised under Section 26 of the Mines and Minerals (Development and Regulation) Act, 1957]<sup>1</sup>.
- 2 **[Name of the Successful Bidder]**, incorporated in India under the Companies Act, [1956/2013] with corporate identity number [CIN of the Successful Bidder], whose registered office is at [address of registered office], India and principal place of business is at [address of principal place of business, if different from registered office] (the “**Successful Bidder**”).

**BACKGROUND:**

- A. [The Supreme Court of India *vide* its judgment dated August 25, 2014 read with the order dated September 24, 2014 (collectively the “**Supreme Court Judgment**”) had cancelled allotment of 204 coal blocks.
- B. Subsequent to the Supreme Court Judgment, the Coal Mines (Special Provisions) Ordinance, 2014 and Coal Mines (Special Provisions) Second Ordinance, 2014 (collectively the “**Ordinance**”) were promulgated and the Coal Mines (Special Provisions) Rules, 2014 were issued for auction and allotment of all coal blocks which were subject to cancellation pursuant to the Supreme Court Judgment. Further, the Coal Mines (Special Provisions) Act, 2015 was enacted, which replaced the Ordinance.]<sup>2</sup>
- C. [The Coal Mine (*as defined in Clause 1.1.20*) was included in the list of such 204 coal blocks and accordingly, its allotment to the Prior Allottee (*as defined in Clause 1.1.53*) was cancelled pursuant to the Supreme Court Judgment, with effect from the ‘appointed date’ (as defined in the Act).]<sup>3</sup>  
  
[The Mines and Minerals (Development and Regulation) Act, 1957 was promulgated for development and the regulation of mines and minerals. In 2010, Section 11A was introduced *vide* the Mines and Mineral (Development and Regulation) (Amendment) Act, 2010 and was subsequently amended *vide* Section 30 read with Schedule IV of the Coal Mines (Special Provisions) Act, 2015, which provides for the mechanism to auction and/or allot coal and lignite under the provisions of the Act.]<sup>4</sup>
- D. The Press Note 4 of 2019, issued by the Central Government, amended the Foreign Direct Investment Policy 2017, to permit 100% FDI under automatic route for coal mining activities, including associated processing infrastructure, subject to the Act and other Applicable Laws, for

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<sup>1</sup> To be retained as applicable.

<sup>2</sup> To be retained as applicable.

<sup>3</sup> To be retained as applicable.

<sup>4</sup> To be retained as applicable.

sale of coal. The Press Note 3 of 2020, issued by the Central Government, further amended the FDI Policy to prescribe a requirement to seek prior Government approval if such foreign direct investment is by an entity from a country which shares land borders with India or where the beneficial owner of such foreign direct investment into India is situated in or is a citizen of any such country.

- E. Subsequently, the Mineral Laws (Amendment) Act, 2020 has been notified on March 13, 2020, with effect from January 10, 2020 to amend the Act so as to permit auction of Coal Mines for own consumption, sale or for any other purpose as may be determined by the Government.
- F. The Central Government issued an order under [Rule 8(2) / Rule 3(1)] of the Rules, dated [Insert Relevant Order Date] / [[Insert Relevant Order Date]]<sup>5</sup>, as amended, to the Nominated Authority for auction of the Coal Mine for sale of coal pursuant to [Section 4(1) and 4(2) / Section 11A]<sup>6</sup> of the Act.
- G. Pursuant to a tender process conducted in accordance with the Act, the Rules, the Tender Document, dated November 15, 2023 (as amended) and receipt of a direction from the Central Government under [Rule 10(10) / Rule 5(7)]<sup>7</sup> of the Rules, the Successful Bidder has become entitled to enter into an agreement with the Nominated Authority pursuant to [Rule 13(5) / Rule 8(1) of the Rules] with respect to allocation of the Coal Mine to the Successful Bidder for sale of coal.
- H. Accordingly, the Nominated Authority and the Successful Bidder are entering into this Agreement, in accordance with [Rule 13(5) / Rule 8(1) of the Rules], with respect to matters related to allocation of the Coal Mine, including without limitation development of the Coal Mine and production and sale of coal from the Coal Mine.

**NOW THEREFORE**, in consideration of the mutual covenants, terms and conditions and understandings set forth in this Agreement, and other good and valuable consideration (the adequacy of which are hereby mutually acknowledged), the Parties with the intent to be legally bound hereby agree as follows:

## **1. DEFINITIONS AND INTERPRETATION**

The definitions and rules of interpretation in this clause apply in this Agreement.

### **1.1. Definitions**

1.1.1. “**Act**” shall mean the [CM(SP) Act, 2015 / MMDR Act, 1957]<sup>8</sup>.

1.1.2. “**Agreement**” means this [Coal Mine Development and Production Agreement / Mine Development and Production Agreement]<sup>9</sup> and all attached annexure, schedules, exhibits and instruments supplemental to or amending, modifying or confirming this Agreement in accordance

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<sup>5</sup> To be retained as applicable.

<sup>6</sup> To be retained as applicable.

<sup>7</sup> To be retained as applicable.

<sup>8</sup> To be retained as applicable.

<sup>9</sup> To be retained as applicable.

with the provisions of this Agreement.

- 1.1.3. **“Agreement Date”** shall mean the date on which execution of this Agreement by both the Successful Bidder and the Nominated Authority is completed.
- 1.1.4. **“Allocation Order”** shall have the meaning ascribed thereto in the Act and the Rules.]
- 1.1.5. **“Anti Corruption Laws”** shall have the meaning given to such expression in Clause 18.1(a).
- 1.1.6. **“Anti Corruption Policy”** shall have the meaning given to such expression in Clause 18.1(d).
- 1.1.7. **“Applicable Law”** shall mean all applicable statutes, laws, by-laws, rules, regulations, orders, ordinances, protocols, codes, guidelines, policies, notices, directions, judgments, decrees or other requirements or official directive of any Governmental Authority or court or other law, rule or regulation approval from the relevant Governmental Authority, government resolution, directive, or other government restriction or any similar form of decision of, or determination by, or any interpretation or adjudication having the force of law in India. It is hereby clarified that Applicable Law includes the consolidated Foreign Direct Investment Policy 2017 issued by the Department of Industrial Policy and Promotion, as amended from time to time including as amended by Press Note 3 of 2020 issued by the Department for Promotion of Industry and Internal Trade.
- 1.1.8. **“Appropriation Event”** shall have the meaning given to such expression in Clause 6.2.1.
- 1.1.9. **“Authorised Representative”** shall have the meaning given to such expression in Clause 4.4.
- 1.1.10. **“Award”** shall have the meaning given to such expression in Clause 27.5.
- 1.1.11. **“Base Year”** shall mean the financial year 2017-18.
- 1.1.12. **“Business Day”** shall mean a day which is not a Sunday or any other day declared as a public holiday by the Central Government.
- 1.1.13. **“CBA Act”** shall mean the Coal Bearing Areas (Acquisition and Development) Act, 1957.
- 1.1.14. **“CBM”** shall mean Natural Gas (mainly Methane) contained in coal or bituminous lignite beds.
- 1.1.15. **“Central Government”** shall mean the Government of India, acting through the Ministry of Coal.
- 1.1.16. **“Claim”** shall have the meaning given to such expression in Clause 20.3.
- 1.1.17. **“CM(SP) Act, 2015”** shall mean Coal Mines (Special Provisions) Act, 2015 as amended from time to time.
- 1.1.18. **“Coal Gasification”** shall mean the technological process wherein partial oxidation / combustion of coal in an atmosphere of air/oxygen and steam, generates a mixture of flammable gasses (Syngas, Synthesis gas, Producer gas) comprising mainly of CO and H<sub>2</sub> with small quantities of CO<sub>2</sub>, CH<sub>4</sub>, H<sub>2</sub>O etc. and slag/ash (mineral residue).

- 1.1.19. **“Coal Liquefaction”** shall mean the process of converting coal into liquid hydrocarbons i.e. liquid fuels and petrochemicals.
- 1.1.20. **“Coal Mine”** shall mean the [coal/lignite mine(s) / coal block(s)]<sup>10</sup> which is a [Fully Explored/ Partially Explored] Mine as more particularly described in SCHEDULE A.
- 1.1.21. **“Companies Act”** means the Companies Act, 1956 or the Companies Act, 2013, as applicable, as now enacted or as the same may from time to time be amended, re-enacted or replaced.
- 1.1.22. **“Control”** shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner.
- 1.1.23. **“Commencement Plan”** shall have the meaning given to such expression in Clause 5.1.
- 1.1.24. **“DGH”** shall mean Director General of Hydrocarbons.
- 1.1.25. **“Designated Bank Account”** shall mean the following bank account of the:
- NOMINATED AUTHORITY (For all payments except preparation of mine dossiers):**  
Name of the bank: Punjab National Bank (PNB)  
Account number: 0276050414586  
Name of the account holder: PAO, M/o Coal  
IFSC Code: PUNB0027620
- CMPDI (For payment related to preparation of Mine Dossiers):**  
Name of the bank: To be provided  
Account number: To be provided  
Name of the account holder: To be provided  
IFSC Code: To be provided
- 1.1.26. **“Efficiency Parameters”** shall have the meaning given to such expression in Clause 5.3.2.3.
- 1.1.27. **“Eligibility Conditions”** shall mean the eligibility conditions specified in the Act and the Rules including all the eligibility conditions listed in the Tender Document.
- 1.1.28. **“Encumbrances”** means any mortgage, pledge, equitable interest, assignment by way of security, conditional sales contract, hypothecation, right of other Persons, claim, security interest, encumbrance, title defect, title retention agreement, voting trust agreement, interest, option, lien, charge, commitment, restriction or limitation of any nature whatsoever, including restriction on use, voting rights, transfer, receipt of income or exercise of any other attribute of ownership, right of set-off, any arrangement (for the purpose of, or which has the effect of, granting security), or any other security interest of any kind whatsoever, or any agreement, whether conditional or otherwise, to create any of the same.
- 1.1.29. **“Event of Force Majeure”** shall have the meaning given to such expression in Clause 25.1.

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<sup>10</sup> To be retained as applicable.

- 1.1.30. **“Final Offer”** shall mean [insert percentage] percentage share of revenue payable to the Government per Tonne of coal, based on which the Successful Bidder was declared successful in the tender process for the Coal Mine.
- 1.1.31. **“Fully Explored Mine”** means a coal mine/ block categorised in G-1 exploration stage as per the modified Indian Standard Procedure for Coal Resource Estimation, 2017 issued by the Central Geological Programming Board of Geological Survey of India.
- 1.1.32. **“Geological Report”** shall have the meaning ascribed thereto in Rule 2(1)(iv) of the Mineral Concession Rules, 1960.
- 1.1.33. **“Governmental Approval”** means any authorization, approval, consent, licence or permit required from any Governmental Authority.
- 1.1.34. **“Governmental Authority”** means any government authority, statutory authority, government department, agency, commission, board, tribunal or court or other law, rule or regulation making entity having or purporting to have jurisdiction on behalf of the Republic of India or any state or other subdivision thereof or any municipality, district or other subdivision thereof.
- 1.1.35. **“Good Industry Practice”** means, in relation to any undertaking and any circumstances, the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced Person engaged in the same type of undertaking under the same or similar circumstances.
- 1.1.36. **“Indemnified Party”** shall have the meaning given to such expression in Clause 20.1.
- 1.1.37. **“Lock-in Period”** shall have the meaning ascribed thereto in Clause 13.1.3.
- 1.1.38. **“Mandatory Work Program”** shall mean the work program provided in Schedule I, which shall be monitored and reviewed by the Nominated Authority or the Central Government or any agency appointed by the Nominated Authority in this regard.
- 1.1.39. **“Mining Plan”** shall mean a plan which has been approved in accordance with the Applicable Laws in relation to the Coal Mine.
- 1.1.40. **“Mining Lease”** shall have the meaning given to such expression in Clause 5.3.1.1.
- 1.1.41. **“Minor Minerals”** shall have the meaning ascribed to it in the [Act / MMDR Act, 1957]<sup>11</sup>.
- 1.1.42. **“MMDR Act, 1957”** shall mean Mines and Minerals (Development and Regulation) Act, 1957 as amended from time to time.
- 1.1.43. **“Monthly Payment”** shall have the meaning given to such expression in Clause 9.1.1.
- 1.1.44. **“MoPNG”** mean the Ministry of Petroleum and Natural Gas.
- 1.1.45. **“National Coal Index”** shall mean the coal index calculated in accordance with the Office Memorandum ‘Roll-out of National Coal Index (Base ear 2017-18)’ dated June 4, 2020 and

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<sup>11</sup> To be retained as applicable.



Operational Guidelines of National Coal Index And Representative Prices dated June 17, 2020 issued by the Ministry of Coal, as may be amended, and published by the Government of India on a bi-monthly basis and includes sub-indices notified for various coal grades.

- 1.1.46. **“National Lignite Index”** shall mean the lignite index for determining representative price of the relevant grade of the lignite coal, as published by the Government of India.
- 1.1.47. **“Notional Price”** shall have the meaning ascribed thereto in Clause 9.1.1c)a.
- 1.1.48. **“Ordinance”** shall have the meaning ascribed in Recital B.
- 1.1.49. **“Partially Explored Mine”** means a coal mine/ block categorised in G-2 or G-3 exploration stage as per the modified Indian Standard Procedure for Coal Resource estimation, 2017.
- 1.1.50. **“Parties”** means and refers to the Nominated Authority and the Successful Bidder collectively and **“Party”** refers to any one of them.
- 1.1.51. **“Performance Security”** shall have the meaning given to such expression in Clause 6.1.1.
- 1.1.52. **“Person”** means any individual, sole proprietorship, unincorporated association, body corporate, corporation, company, partnership, limited liability company, joint venture, Governmental Authority or trust or any other entity or organization.
- 1.1.53. **“Prior Allottee”** shall have the meaning given to it in the [Act/ CM(SP) Act, 2015]<sup>12</sup> [and for the purposes of the Coal Mine, the Prior Allottee shall be [name] incorporated in [India] under the Companies Act with corporate identity number [CIN of the Prior Allottee], whose registered office is at [address of registered office], India]<sup>13</sup>.
- 1.1.54. **“Production Schedule”** shall have the meaning ascribed thereto in Clause 15.
- 1.1.55. **“Representative Price”** shall mean the grade-wise price as calculated per Clause 9.1.1c)a and provided as Schedule J.
- 1.1.56. **“Rules”** shall mean the [Coal Mines (Special Provisions) Rules, 2014 / Coal Blocks Allocation Rules, 2017]<sup>14</sup>.
- 1.1.57. **“Scheduled Date of Production”** shall have the meaning ascribed thereto in Clause 9.2.1.
- 1.1.58. **“Selectee”** shall have the meaning given to such expression in Clause 21.3.3(c).
- 1.1.59. **“State Government”** shall mean the Government of the state where the Coal Mine is located.
- 1.1.60. **“Substitution Notice”** shall have the meaning given to such expression in Clause 21.3.3(b).
- 1.1.61. **“Supreme Court Judgment”** shall have the meaning given to such expression in Recital A.]

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<sup>12</sup> To be retained as applicable.

<sup>13</sup> To be retained as applicable.

<sup>14</sup> To be retained as applicable.

- 1.1.62. **“Taxation”** (including with correlative meaning, the terms **“Tax”** and **“Taxes”**) means (a) any and all taxes, assessments and other charges, duties, impositions and similar liabilities imposed by any Governmental Authority, including without limitation taxes based upon or measured by gross receipts, income, profits, sales and value added, withholding, payroll, excise and property taxes, together with all interest, penalties and additions imposed with respect to such amounts; (b) any liability for the payment of any taxes, assessments and other charges, duties, impositions and similar liabilities by the Successful Bidder as a result of being a member of an affiliated, consolidated, combined or unitary group for any period; and (c) any taxes, assessments and other charges, duties, impositions and similar liabilities for the payment of any amounts by the Successful Bidder as a result of any express obligation to indemnify any other Person or as a result of any obligation under any agreement or arrangement with any other Person with respect to such amounts and including any liability for Taxes of a predecessor entity.
- 1.1.63. **“Third Party”** means any Person that is not a signatory to this Agreement.
- 1.1.64. **“Tender Document”** shall have the meaning given to it under the Rules and shall include the Tender Document dated November 15, 2023(as amended) for auction of the Coal Mine.
- 1.1.65. **“Term”** shall have the meaning given to such expression in Clause 26.2.
- 1.1.66. **“Termination Event”** shall have the meaning given to such expression in Clause 26.3.1.
- 1.1.67. **“Upfront Amount”** shall mean an amount [of INR [●]]<sup>15</sup>, which has been calculated in accordance with Clause 3.9.1 of the Tender Document and is payable in accordance with Clause 3.1 and Clause 5.2.
- 1.1.68. **“Vesting Conditions”** shall have the meaning given to such expression in Clause 3.1.
- 1.1.69. **“Vesting Date”** shall have the meaning given to such expression in Clause 4.3.
- 1.1.70. [**“Vesting Order”** shall have the meaning given to such expression in the Act and the Rules.]
- 1.1.71. **“Warranties”** shall have the meaning given to such expression in Clause 19.1.

## **1.2. Interpretation**

- 1.2.1. Any reference to any statute or statutory provision shall include:
- (i) all subordinate legislation made from time to time under that provision (whether or not amended, modified, re-enacted or consolidated);
  - (ii) such provision as from time to time amended, modified, re-enacted or consolidated (whether before or after the date of this Agreement) to the extent such amendment, modification, re-enactment or consolidation applies or is capable of applying to any transactions entered into under this Agreement prior to the Agreement Date and (to the extent liability thereunder may exist or can arise) shall include any past statutory provision (as from time to time amended, modified, re-enacted or consolidated) which the provision referred to has directly or indirectly replaced;

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<sup>15</sup> Applicable for Fully Explored Mines

- 1.2.2. Unless the context otherwise requires, words in the singular shall include the plural and the plural shall include the singular.
- 1.2.3. References to the masculine, the feminine and the neuter shall include each other.
- 1.2.4. References to a “**company**” shall include a company, corporation or other body corporate, wherever and however incorporated or established.
- 1.2.5. References to “**coal**” shall include lignite coal
- 1.2.6. The recitals and schedules form part of this Agreement and shall have the same force and effect as if expressly set out in the body of this Agreement, and any reference to this Agreement shall include any recitals and schedules to it. Any references to clauses and schedules are to clauses and schedules to this Agreement. Any references to parts or paragraphs are, unless otherwise stated, references to parts or paragraphs of the schedule in which the reference appears.
- 1.2.7. A reference to **this Agreement** or **any other document** shall be construed as references to this Agreement or that other document as amended, varied, novated, supplemented or replaced from time to time.
- 1.2.8. A reference to **this Clause** shall, unless followed by reference to a specific provision, be deemed to refer to the whole Clause (not merely the sub-Clause, paragraph or other provision) in which the expression occurs.
- 1.2.9. A reference to a **party** shall include that party’s representatives, successors and permitted assigns.
- 1.2.10. Each of the representations and warranties provided in this Agreement is independent of other representations and warranties and unless the contrary is expressly stated, no Clause in this Agreement limits the extent or application of another Clause.
- 1.2.11. Headings to Clauses, parts and paragraphs of schedules and schedules are for convenience only and do not affect the interpretation of this Agreement.
- 1.2.12. A reference to “**in writing**” includes any communication made by letter or e-mail (unless otherwise expressly provided in this Agreement.).
- 1.2.13. Unless otherwise specified, any reference to a time of day is to Indian Standard Time.
- 1.2.14. Any words following the terms **including, include, in particular, for example or any similar expression** shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.2.15. Where the context permits, **other** and **otherwise** are illustrative and shall not limit the sense of the words preceding them.
- 1.2.16. References to a document in **agreed form** are to that document in the form agreed by the parties and initialled by them or on their behalf for identification.
- 1.2.17. Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

## **2. ALLOCATION OF THE COAL MINE**

- 2.1. The Successful Bidder hereby represents and warrants to the Nominated Authority that it has complied with all the terms and conditions of the Act, the Rules, the Tender Document and other Applicable Laws, as were required to be complied with by the Successful Bidder, with respect to tender process for the Coal Mine and the Successful Bidder is eligible in all respects to receive allocation of the Coal Mine. The Successful Bidder also represents and warrants to the Nominated Authority that it is in compliance with all the Eligibility Conditions and would continue to be in compliance with all the Eligibility Conditions during the term of this Agreement, the term of the Mining Lease or order by the Central Government under Section 11 (1) of the CBA Act, 1957, as the case may be.
- 2.2. Relying on the representations and warranties of the Successful Bidder and the information, documents and other undertaking provided by the Successful Bidder, including the Warranties provided under Clause 19, the Nominated Authority is pleased to enter into this Agreement with the Successful Bidder for allocation of the Coal Mine to the Successful Bidder subject to terms and conditions specified in this Agreement.

## **3. CONDITIONS FOR VESTING**

### **3.1. Vesting Conditions**

The issuance of the [Vesting Order / Allocation Order] in favour of the Successful Bidder shall be subject to satisfaction of the following conditions (collectively the “**Vesting Conditions**”):

- (a) the Successful Bidder continuing to be in compliance with all the Eligibility Conditions;
- (b) [the Successful Bidder having paid the first instalment of the Upfront Amount, in accordance with Clause 5.2.1]<sup>16</sup>;
- (c) the Successful Bidder having furnished the Performance Security;
- (d) the Successful Bidder having deposited an amount equal to INR [amount in figures] (Indian Rupees [amount in words]), being the Fixed Amount (as defined in the Tender Document), in the Designated Bank Account. It is clarified that any upward revision in the Fixed Amount on a subsequent date by the Government or the Nominated Authority consequent to any process or on the orders of any competent court of law, shall also be payable by the Successful Bidder on receipt of any notice to that effect from the Nominated Authority. Additionally, in case of any downward revision in the Fixed Amount on a subsequent date by the Government or the Nominated Authority, the same would be refunded by the Nominated Authority to the Successful Bidder;
- (e) only in the event that the Successful Bidder is a Prior Allottee of the Coal Mine or any other Schedule I coal mine (as defined in the [Act/ CM(SP) Act, 2015])<sup>17</sup>, the Successful Bidder having paid the Additional Levy within the due date for payment of such Additional Levy as specified in Rule 18 of the [Rules / Coal Mines (Special Provisions) Rules, 2014]<sup>18</sup>

<sup>16</sup> Applicable for fully explored mines

<sup>17</sup> To be retained as applicable.

<sup>18</sup> To be retained as applicable.

; and

- (f) [the Successful Bidder having provided a written intimation to the Nominated Authority in the form and substance as provided in SCHEDULE B regarding: (i) the movable property which the Successful Bidder has not negotiated to own or utilise and which it intends to move and store under Section 10(4) of the Act; (ii) the contracts which the Successful Bidder is desirous of adopting under Section 11(1) of the Act, including contracts with secured creditors; and matters incidental thereto.]<sup>19</sup>

### **3.2. Completion of Vesting Conditions and Notice**

- 3.2.1. Upon satisfaction of each of the Vesting Conditions specified in Clause 3.1, the Successful Bidder shall provide a written notice to the Nominated Authority in the form and substance as provided in SCHEDULE C (the “**Completion Notice**”)
- 3.2.2. In the event the Successful Bidder does not provide a Completion Notice with respect to each of the Vesting Conditions listed in Clauses 3.1(a); 3.1(b); 3.1(c); 3.1(d); [3.1(e) (in cases where the Successful Bidder is a Prior Allottee for the Coal Mine or any other Schedule I coal mine (*as defined in the Act*)) and Clause 3.1(f)] within [number of days] of the Agreement Date, then the Nominated Authority may terminate this Agreement without incurring any liability whatsoever by providing a written notice to the Successful Bidder. It is clarified that in such event the Successful Bidder shall not be entitled to receive the [Vesting Order / Allocation Order] and the Nominated Authority shall be entitled to dispose the Coal Mine in the manner provided in the Act and the Rules, including through re-auction/re-allotment or through appointment of a designated custodian.
- 3.2.3. [If the Successful Bidder does not provide a Completion Notice with respect to Clause 3.1(f) and fails to provide a written intimation in the form and substance as provided in SCHEDULE B within [number of days] of the Agreement Date, then it shall be deemed that the Successful Bidder is not desirous of owning or utilising any movable property or continuing any contract. In such cases, without prejudice to Clause 3.2.2, the Nominated Authority may elect to issue the Vesting Order without including aforementioned particulars in the Vesting Order; if all other Vesting Conditions have been satisfied by the Successful Bidder and corresponding Completion Notice have been provided to the Nominated Authority.]

## **4. THE VESTING ORDER**

- 4.1. Upon receipt of the Completion Notice evidencing compliance with each of the applicable Vesting Conditions, the Nominated Authority may issue the [Vesting Order / Allocation Order], subject to the Act, the Rules, the Tender Document and other Applicable Laws, in the manner provided in this Clause 4.
- 4.2. The [Vesting Order / Allocation Order] shall be issued by the Nominated Authority in the same form and substance as specified by the Central Government.
- 4.3. Prior to issuance of the [Vesting Order / Allocation Order], the Nominated Authority shall provide

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<sup>19</sup> To be retained as applicable.

a written notice to the Successful Bidder specifying the date of the [Vesting Order / Allocation Order] (the “**Vesting Date**”) and the date and time on which and place from where the [Vesting Order / Allocation Order] may be collected by the Successful Bidder.

- 4.4. The Successful Bidder shall depute an authorised representative of the Successful Bidder (“**Authorised Representative**”) to receive the [Vesting Order / Allocation Order] on behalf of the Successful Bidder on the date, time and place specified by the Nominated Authority under Clause 4.3.
- 4.5. The Authorised Representative shall be provided the [Vesting Order / Allocation Order] in duplicate and shall be required to acknowledge the receipt of the [Vesting Order / Allocation Order]. In the event, the Authorised Representative is not present on the date and time specified by the Nominated Authority under Clause 4.3, then the Nominated Authority shall dispatch the [Vesting Order / Allocation Order] by registered post with due acknowledgment, to the registered office of the Successful Bidder.
- 4.6. The Successful Bidder shall, within 7 (seven) Business Days of the receipt of the [Vesting Order / Allocation Order] through the Authorised Representative or through registered post, as the case may be, sign and return the duplicate copy of the [Vesting Order / Allocation Order] in acknowledgement thereof. In the event the duplicate copy of the [Vesting Order / Allocation Order] duly signed by the Successful Bidder is not received by the aforementioned date, the Nominated Authority may, unless it consents to extension of time for submission thereof, appropriate the Performance Security and other payments made by such Successful Bidder as damages and also terminate this Agreement and cancel and withdraw the [Vesting Order/ Allocation Order].

## **5. POST VESTING OBLIGATIONS**

### **5.1. Commencement Plan**

- 5.1.1. Within 30 (thirty) Business Days of the date of the [Vesting Order / Allocation Order], the Successful Bidder shall be required to submit a detailed plan (the “**Commencement Plan**”) towards commencement of prospecting and/or mining operations at the Coal Mine. The Commencement Plan shall include all actions that the Successful Bidder may be required to perform to commence prospecting and/or mining operations at the Coal Mine and shall include such information as may be required by the Nominated Authority, including without limitation to, information regarding the following:
  - (a) the Governmental Approvals, including a Prospecting License, Mining Lease or order by the Central Government under Section 11 (1) of the CBA Act, 1957, as the case may be, which shall be required for commencement of mining operations at the Coal Mine and the time within which the Successful Bidder would make applications for such Governmental Approvals; and
  - (b) preparation of Mining Plan including revision to the Mining Plan if any, as may be proposed by the Successful Bidder.

- 5.1.2. The Commencement Plan shall be prepared by the Successful Bidder to ensure strict compliance

with the Efficiency Parameters.

## 5.2. Payment of the Upfront Amount

5.2.1. The Upfront Amount shall be payable in four equal instalments (of 25% (twenty five per cent.) each) as follows:

Instalment	Schedule II of Coal Mines (Special Provisions) Act, 2015	Fully Explored Mines under Mines and Minerals (Development and Regulation) Act, 1957 and under Coal Mines (Special Provisions) Act, 2015 (other than Schedule II)	Partially Explored Mines under Mines and Minerals (Development and Regulation) Act, 1957 and under Coal Mines (Special Provisions) Act, 2015	Payable to
First	Within 40 (forty) Days of execution of the Agreement	Within 40 (forty) Days of execution of the Agreement	Within 40 (forty) Days of in-principle approval of the Mining Plan	Nominated Authority
Second	Within 6 (six) months from the date of issuance of [Vesting Order/ Allocation Order]	Within 15 (fifteen) Business Days of execution of the Mining Lease or order by the Central Government under Section 11 (1) of the CBA Act, 1957	Within 15 (fifteen) Business Days of execution of the Mining Lease or order by the Central Government under Section 11 (1) of the CBA Act, 1957	State Government
Third	Within 9 (nine) months from the date of issuance of [Vesting Order/ Allocation Order]	Within 15 (fifteen) Business Days of grant of the Coal Mine opening permission	Within 15 (fifteen) Business Days of grant of the Coal Mine opening permission	State Government
Fourth	Within 12 (twelve) months from the date of issuance of [Vesting Order/ Allocation Order]	Within 15 (fifteen) Business Days of date of commencement of coal production	Within 15 (fifteen) Business Days of date of commencement of coal production	State Government

Where the Upfront Amount is payable to the Nominated Authority, such payment shall be made in the Designated Bank Account. Where the Upfront Amount is payable to the State Government, such payment shall be made to the State Government with an intimation to the Nominated Authority at the email id [reports.moc@gov.in](mailto:reports.moc@gov.in).

The Upfront Amount, including the first instalment, provided in this Agreement may undergo revision pursuant to the finalisation of the provisional Representative Price. On account of this



finalisation of Representative Price, any upward or downward revision in the first instalment of the Upfront Amount shall be adjusted in the second instalment payable by the Successful Bidder to the State Government, along with revision in all the subsequent instalments.

**5.2.2. Failure to pay the Upfront Amount**

In the event the Successful Bidder fails to pay any of the instalment of the Upfront Amount within the time specified in this Clause 5.2, the Nominated Authority shall be entitled to appropriate the Performance Security in the manner stipulated in Clause 6 (PERFORMANCE SECURITY) and such failure may also result in termination of this Agreement as provided in Clause 26 (EFFECTIVE DATE, TERM AND TERMINATION).

**5.3. Prospecting License, Mining Lease and Prospecting License-cum-Mining Lease**

**5.3.1. Issuance of the Mining Lease in case of Fully Explored Mines**

5.3.1.1. Pursuant to [Section 8(4)(b) read with Section 8(8) / Section 11A] of the Act, the Successful Bidder shall become entitled to the mining lease with respect to the Coal Mine (the “**Mining Lease**”) to be granted by the State Government [or order by the Central Government under Section 11 (1) of the CBA Act, 1957, as the case may be,] upon issuance of the [Vesting Order / Allocation Order].

5.3.1.2. The Successful Bidder shall promptly, upon issuance of the [Vesting Order / Allocation Order], make an application to the State Government for grant of a Mining Lease [or take steps for order by the Central Government under Section 11 (1) of the CBA Act, 1957, as the case may be,] in the name of the Successful Bidder.

**5.3.2. Issuance of Prospecting License-cum-Mining Lease in case of Partially Explored Mines**

5.3.2.1. Pursuant to [Section 8(4)(b) read with Section 8(8) / Section 11A] of the Act, the Successful Bidder shall be eligible to receive a prospecting license-cum-mining lease with respect to the Coal Mine (the “**Prospecting License-cum-Mining Lease**”) by the State Government [or order by the Central Government under Section 11 (1) of the CBA Act, 1957, as the case may be,] upon issuance of the [Vesting Order / Allocation Order].

5.3.2.2. The Successful Bidder shall promptly, upon issuance of the [Vesting Order / Allocation Order], make an application to the State Government for grant of a Prospecting License-cum-Mining Lease [or take steps for order by the Central Government under Section 11 (1) of the CBA Act, 1957, as the case may be,] in the name of the Successful Bidder.

5.3.2.3. **Relinquishment of Partially Explored Coal Mine:** After completion of the prospecting operations as per the Mandatory Work Program and preparing the Geological Report, acceptable to the Central Government, the Successful Bidder may either

- (a) relinquish the Coal Mine (subject to the approval of Central Government) after submitting all reports, studies and other documentation related to the geological prospecting/ exploration of the area to the Nominated Authority and the State Government in accordance with SCHEDULE D (the “**Efficiency Parameters**”). Upon relinquishment, no penalty shall be levied and the Performance Security of the Successful Bidder shall be returned and this agreement shall be terminated.; or

- (b) relinquish any any part of the Coal Mine having non-coal bearing area or coal bearing area



which is technically non-viable to explore (subject to approval of MoC) after submitting all reports, studies and other documentation related to the geological prospecting/ exploration of the area to the Nominated Authority and the State Government in accordance with SCHEDULE D (the “**Efficiency Parameters**”). Such partial relinquishment shall be subject to Central Government’s approval of the detailed report submitted by the bidder. However, there will be no change in the upfront amount, Performance Security and PRC of the coal mine as determined at the time of auction.; or

- (c) retain the Coal Mine and undertake mining operations after obtaining the required permissions/ approvals/ clearances etc. in accordance with Applicable Law.

*Provided however*, if the Successful Bidder fails to complete the prospecting operations as per the Mandatory Work Program and/or does not prepare the Geological Report, the Performance Security submitted by the Successful Bidder shall be forfeited and this Agreement and the prospecting license-cum-mining lease granted thereunder shall be terminated.

In case of relinquishment or surrender of the Coal Mine, all documents and information, including the Geological Report, submitted by the Bidder to the Nominated Authority, State Government and/or Central Government, shall be the proprietary information of the Central Government and the same shall not be considered to be an assigned of the confidential information of the Bidder. The Central Government shall have the right to share the same with the Bidders of the Coal Mine being thereafter auctioned as a Partially Explored Mine or Fully Explored Mine, as the case may be.

5.3.2.4. The relinquishment of the Coal Mine or termination of this Agreement shall not absolve the Successful Bidder of any liabilities in respect of the Coal Mine during the period between Effective Date and the date of such relinquishment or termination.

5.3.2.5. The liability of the Successful Bidder shall be limited to any liability relating to or connected with this Agreement and any Claims arising out of or in relation to any act of negligence, misconduct, commission or omission of any act in undertaking prospecting or mining operations, as the case may be, during the period between Effective Date and the date of relinquishment of the Coal Mine or termination or expiry hereof, as the case may be.

5.3.2.6. Upon withdrawal of the [Vesting Order/ Allocation Order] of a Partially Explored Mine on account of any reason whatsoever, including relinquishment of Coal Mine, surrender of Coal Mine, failure to complete the prospecting operations as per the Mandatory Work Program and/ or failure to prepare the Geological Report which is acceptable to the Central Government, the Successful Bidder shall not be entitled for

- a) Reimbursement of the expenses incurred by the Successful Bidder towards prospecting/ exploration operations, preparation of Geological Report; and
- b) Compensation towards following components of Fixed Amount: [cost borne by the Prior Allottee for the preparation of geological report; cost borne by the Prior Allottee for obtaining all statutory licenses, permits, permissions, approvals, clearances or consents relevant to the mining operations;]<sup>20</sup> [cost incurred by CMPDIL and other Government agencies, if any, in deriving

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<sup>20</sup> This is to be retained for Coal Mines being auctioned under CM(SP) Act, 2015.

detailed geographical boundary coordinates and in preparing geological report, if any;]<sup>21</sup>

**5.4. Issue of order providing exception to Section 6(1)(b) of the [Act/ MMDR Act, 1957]**

5.4.1.1. In the interest of the development of the coal mining sector, the Central Government shall increase the maximum area limits in respect of prospecting license or mining lease in accordance with Section 6(1)(b) of the [Act/MMDR Act, 1957].

**5.5. Preparation, Approval, Review and Monitoring of Mining Plan**

5.5.1. The preparation and approval process of the Mining Plan shall be in accordance with the Mineral Concession Rules, 1960, as amended by the Mineral Concession (Amendment) Rules, 2020.

**6. PERFORMANCE SECURITY AND APPROPRIATION**

**6.1. Performance Security**

6.1.1. The Successful Bidder shall provide an irrevocable and unconditional guarantee from an Acceptable Bank for an amount equal to INR [amount in figures] (Indian Rupees [amount in words]) (the “**Performance Security**”) in the same form and substance as provided in SCHEDULE E for the performance of its obligations within such time as specified in Clause 3.2.2.

6.1.2. For Fully Explored Mine, the Performance Security shall be an amount which is 65% of aggregate of: (a) one year royalty computed on the basis of peak rated capacity of the Coal Mine as per the approved Mining Plan and (b) one year revenue (in accordance with Clause 9.1.1), payable to the State Government with respect to the Coal Mine computed on the basis of peak rated capacity of the Coal Mine as per the approved Mining Plan. For the purpose of calculation of Performance Security, Representative Price after adjustment with latest available sub-index of National Coal Index or National Lignite Index, as applicable, of the relevant basket of coal grade(s) shall be considered. It is clarified that relevant grade of coal shall mean weighted average grade of non-coking coal and/or weighted average grade of coking coal, as the case may be, for the Coal Mine, as per Geological Report. For Coal Mine with lignite coal, relevant grade of coal shall be as notified by Government of India separately.

In case, the approved Mining Plan of the Coal Mine is not available, Performance Security shall be estimated on the basis of an indicative peak rated capacity, as may be provided in the Tender Document. Upon in-principle approval of the Mining Plan, the Successful Bidder shall submit a revised Performance Security on the basis of approved Mining Plan.

6.1.3. For Partially Explored Mines, the Performance Security shall be equal to 25% (twenty five percent) of the estimated exploration expenses based on Mandatory Work Program as provided in Schedule I.

In such an event, the amount of Performance Security shall be revised after in-principle approval of Mining Plan, which shall be computed in the manner provided in Clause 6.1.2 hereinabove. The Successful Bidder shall be intimated by the Nominated Authority about the revised Performance

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<sup>21</sup> This is to be retained for Coal Mines being auctioned under MMDR Act, 1957.

Security to be furnished. Pursuant to such intimation, the Successful Bidder shall be required to replace the Performance Security already furnished by it to the Nominated Authority, and the provisions of this Agreement as applicable to the already submitted Performance Security shall *mutatis mutandis* apply to the revised Performance Security. The revised Performance Security shall be submitted within 30 days of the receipt of such intimation from the Nominated Authority.

6.1.4. The amount of Performance Security for Fully Explored Mines shall be revised in following events:

(a) On an annual basis:

- a. **First Revision:** Upon grant of mine opening permission basis the difference in the i) National Coal Index or National Lignite Index, as applicable, at the time of grant of mine opening permission and ii) National Coal Index or National Lignite Index, as applicable, basis which the Performance Security was first estimated in accordance with Clause 6.1.2 above.
- b. **Subsequent Revisions:** In the month of April of the year subsequent to the grant of mine opening permission, basis the difference in the i) National Coal Index or National Lignite Index, as applicable, for the month of March of previous financial year and ii) National Coal Index or National Lignite Index, as applicable, at the time when mine opening permission was granted. In all subsequent years, in the month of April, basis the difference in the i) National Coal Index or National Lignite Index, as applicable for the month of March of previous financial year and ii) National Coal Index or National Lignite Index, as applicable for the month of March of previous to previous financial year.

It is clarified that the date of grant of mine opening permission to be considered for the purpose of revision of the performance Security shall be the actual date or the date as prescribed in the efficiency parameters, whichever is earlier.

- (b) In case of any revision in the rate of royalty, the amount of Performance Security shall be revised accordingly. Such revision shall take place at the beginning of the financial year which is subsequent to the financial year in which the rate of royalty is revised, as stipulated in Clause 6.1.5; and/or
- (c) In case of any revision in the peak rated capacity as a result on any revision in the mining plan in accordance with Clause 16, the amount of Performance Security shall be revised accordingly upon approval of revision to the Mining Plan. Such revision shall take place at the beginning of the financial year which is subsequent to the financial year in which the Mining Plan is revised, as stipulated in Clause 6.1.5.

It is clarified that revisions to the amount of Performance Security may occur under sub-clause (a), (b) and (c) above, simultaneously, if such sub-clauses are applicable.

6.1.5. The revision to the amount of Performance Security shall be carried out once in every financial year upon grant of mine opening permission to the Successful Bidder. Upon such revision, the bank guarantee constituting the Performance Security shall be substituted with another bank guarantee of the revised value issued in accordance with this Clause 6, within a period of 30 days of from the beginning of financial year i.e. by April 30 of every year, in case of revision under each of sub-

clause (b) and (c) of Clause 6.1.4. In case of revision under sub-clause (a) of Clause 6.1.4, the bank guarantee constituting the Performance Security shall be substituted with another bank guarantee of the revised value issued in accordance with this Clause 6.1.4, within a period of 30 (thirty) days from the publication of the Reference Index for the month of March of previous financial year or within a period of 30 (thirty) days from the grant of mine opening permission to the Successful Bidder, as applicable.

- 6.1.6. The Performance Security should remain valid (a) until the expiry of the period for which Mining Lease (including renewed Mining Lease) has been granted or will be granted, or (b) until extractable reserves are remaining in the Coal Mine, whichever is earlier.

Provided however, upon grant of mine opening permission, the Successful Bidder shall either

- i) a separate Performance Security, in substantially the same form as provided in SCHEDULE E, shall be submitted to the State Government for the amount calculated in accordance with Clause 6.1.2 above. The Performance Security submitted to the Nominated Authority under Clause 6.1.1 shall be returned to the Successful Bidder upon submission of such separate Performance Security to the State Government, or 60 days from the termination of this Agreement as mentioned in Clause 26.2.2, whichever is earlier; 'or'
- ii) submit a request to the Nominated Authority for assigning the Performance Security submitted to the Nominated Authority under Clause 6.1.1 of this Agreement, in favour of the State Government. It is clarified that the amount of Performance Security shall be calculated in accordance with Clause 6.1.2 above. In case the Performance Security submitted to the Nominated Authority is of lesser amount, the Successful Bidder shall be required to submit a top-up bank guarantee in favour of the State Government so that the total amount of Performance Security in favour of the State Government in accordance with Clause 6.1.2. Further, the Successful Bidder shall ensure that the validity of the Performance Security is in accordance with this Clause 6.1.6.

*Provided* that the Successful Bidder may submit the bank guarantee constituting the Performance Security with a validity period of 1 (one) year. Such bank guarantee shall be replaced on an annual basis, with another bank guarantee issued by an Acceptable Bank in the same form and substance as provided in SCHEDULE E, at least 30 Business Days prior to the expiry of the first mentioned bank guarantee. The replacement bank guarantee shall come into effect at the day prior to the date of expiry of the subsisting bank guarantee (which is intended to be replaced). The subsisting bank guarantee shall upon expiry, be returned to the Successful Bidder, within 7 Business Days from the date of expiry of the same.

- 6.1.7. While submitting Performance Security as required under Clause 6.1.2 on the basis of indicative peak rated capacity, the Successful Bidder shall also provide an undertaking to submit the revised Performance Security in the form and substance as provided in SCHEDULE H. The revised Performance Security so submitted shall replace the Performance Security submitted previously. Non-submission of the revised Performance Security, shall be treated as a Termination Event for the purpose of Clause 26.3.1 of this Agreement.

## **6.2. Events for appropriation of the Performance Security**

- 6.2.1. The Performance Security may be appropriated by the Nominated Authority upon occurrence of any of the following events (the “**Appropriation Event**”), to be determined by the Nominated

Authority in its sole discretion:

- (a) failure of the Successful Bidder to provide the duly acknowledged duplicate copy of the Vesting Order as required under Clause 4.6;
- (b) failure of the Successful Bidder to make payment of any of the instalment of the Upfront Amount within the time specified in Clause 3.1(b) and Clause 5.2;
- (c) failure of submission of Commencement Plan within the time specified in Clause 5.1.1;
- (d) failure of the Successful Bidder to comply with the Efficiency Parameters as required under Clause 10;
- (e) any change in Control or transfer of right, title or interest in the Coal Mine which is not in conformity with Clause 13;
- (f) failure to make payment of the Monthly Payment in accordance with this Agreement;
- (g) any sale and/or utilisation of coal which is not in conformity with Clause 8;
- (h) failure to make payments of monthly revenue share for CBM as per Clause 8.2.3;
- (i) failure to pay revenue to the Government in case of shortfall in coal production as per Clause 16.2.2;
- (j) cessation of coal mining operation exceeding a period of one year continuously, or 18 months over a period of two years without occurrence of any event of force majeure;
- (k) surrender of the Coal Mine by the Successful Bidder or termination of the Mining Lease granted to the Successful Bidder before (a) the expiry of the period for which Mining Lease (including renewed Mining Lease) has been granted or will be granted, or (b) extractable reserves are remaining in the Coal Mine, whichever is earlier;
- (l) any other breach or non-compliance of any of the provisions of this Agreement including in case of the Warranties being untrue or misleading or incorrect in any manner whatsoever; or
- (m) failure of the Successful Bidder to submit the revised Performance Security in accordance with Clause 6.1.

6.2.2. Provided however that in the event an Appropriation Event has occurred solely on account of an Event of Force Majeure which could not have been mitigated by the Successful Bidder through Good Industry Practice as provided in Clause 25, then the Performance Security shall not be appropriated for such specific Appropriation Event.

### **6.3. Manner of appropriation of the Performance Security**

6.3.1. Upon occurrence of an Appropriation Event, to be determined by the Nominated Authority, the Nominated Authority shall have the unconditional right to appropriate the Performance Security by providing a written notice to the Successful Bidder in the following proportion:

#	Appropriation Event	Amount of the Performance Security to be appropriated
1.	Failure of the Successful Bidder to provide the duly acknowledged duplicate copy of the Vesting Order as required under Clause 4.6	Entire Performance Security.
2.	Failure of the Successful Bidder to make payment of any of the instalment of the Upfront Amount within the time specified in Clause 5.2	An amount equal to the first instalment, and/or second instalment and/or third instalment and/or fourth instalment of the Upfront Amount together with 12% per annum simple interest on such amount starting from the date on which such amount was due and until the date of appropriation of the Performance Security.
3.	Failure of submission of Commencement Plan within the time specified in Clause 5.1.1	An amount equal to 10% of the Performance Security
4.	Failure of the Successful Bidder to comply with the Efficiency Parameters as required under Clause 10	Such per cent of the Performance Security for each failure to comply with the Efficiency Parameters as specified in SCHEDULE D.
5.	Any change in Control or transfer of right, title or interest in the Coal Mine which is not in conformity with Clause 13	Entire Performance Security.
6.	Any sale and/or utilisation of coal which is not in conformity with Clause 8	Entire Performance Security.
7.	Failure of the Successful Bidder to make payment of the Monthly Payment	The amount of Monthly Payment due and payable, along with a simple interest of twelve per cent per annum starting from the date on which such amount was due and until the date of appropriation of the Performance Security.
8.	Cessation of coal mining operation exceeding a period of one year continuously, or 18 months	Entire Performance Security.

#	Appropriation Event	Amount of the Performance Security to be appropriated
	over a period of two years without occurrence of any event of force majeure	
9.	Surrender of the Coal Mine by the Successful Bidder or termination of the Mining Lease granted to the Successful Bidder before (a) the expiry of the period for which Mining Lease (including renewed Mining Lease) has been granted or will be granted, or (b) extractable reserves are remaining in the Coal Mine, whichever is earlier	Entire Performance Security.
10.	Any other breach or non-compliance with any of the provisions of this Agreement, including in case of the Warranties being untrue or misleading or incorrect in any manner whatsoever.	Such proportion as may be determined by the Nominated Authority in its sole discretion.
11.	Failure of the Successful Bidder to submit the revised Performance Security in accordance with Clause 6.1.	Entire Performance Security.
12.	Failure to make payments of monthly revenue share for CBM as per Clause 8.2.3	The amount of revenue share due and payable, along with a simple interest of 12% [twelve] per cent per annum starting from the date on which such amount was due and until the date of appropriation of the Performance Security.
13.	Failure to pay revenue to the Government in case of shortfall in coal production as per Clause 16.2.2	The amount of revenue share due and payable, along with a simple interest of 12% [twelve] per cent per annum starting from the date on which such amount was due and until the date of appropriation of the Performance Security.

6.3.2. Any Appropriation Event resulting in appropriation of the entire Performance Security shall be a Termination Event for the purposes of Clause 26 (EFFECTIVE DATE, TERM AND

TERMINATION).

- 6.3.3. In the event of a part appropriation of the Performance Security, the Successful Bidder shall be required to: (i) rectify the Appropriation Event; and (ii) top-up the bank guarantee constituting the Performance Security within fifteen Business Days of receipt of a notice under Clause 6.3.1, failure to do so shall be a Termination Event for the purposes of Clause 26 (EFFECTIVE DATE, TERM AND TERMINATION). Appropriation Event except as mentioned in Clause 6.2.1 (d) shall be rectified within seven Business Days of receipt of a notice under Clause 6.3.1. Appropriation Event mentioned in Clause 6.2.1 (d) shall be rectified within the time specified in SCHEDULE D.
- 6.3.4. In the event that on account of one or more Appropriation Events, an amount equal to hundred per cent of the Performance Security is appropriated in aggregate in one or more instances, the same shall be a Termination Event for the purposes of Clause 26 (EFFECTIVE DATE, TERM AND TERMINATION).

## 7. INFORMATION

- 7.1. In addition to information that may be required to be provided in accordance with Applicable Laws, the Successful Bidder shall provide periodic reports to the Nominated Authority (or such other Governmental Authority as may be specified by the Nominated Authority) regarding mining operations at the Coal Mine, including compliance with the Efficiency Parameters, in accordance with the following provisions:

### *(a) Pre-Commencement Report*

Prior to commencement of mining operations at the Coal Mine, the Successful Bidder shall provide a written intimation (“**Pre-commencement Report**”) to the Nominated Authority and the Central Government once every thirty calendar days regarding the following:

- (i) the actions taken by the Successful Bidder towards commencement of the mining operations at the Coal Mine, including compliance with the Commencement Plan;
- (ii) any deviations from the Commencement Plan, the reasons for such deviations and the steps taken by the Successful Bidder to rectify such deviation; and
- (iii) whether in the opinion of the Successful Bidder, it shall be able to commence the mining operations at the Coal Mine within the time mentioned in the Commencement Plan.

The Successful Bidder shall also inform the Nominated Authority in writing within 3 Business Days of receipt of the mine opening permission from the Coal Controller’s Organization.

### *(b) Commencement Report*

Within three Business Days of the commencement of mining operations at the Coal Mine, the Successful Bidder shall provide a written intimation to the Nominated Authority confirming commencement of mining operations at the Coal Mine (the “**Commencement**



**Report”).**

**(c) Monthly Report**

Subsequent to the Commencement Report, the Successful Bidder shall provide a written intimation (“**Monthly Report**”) to the Coal Controller’s Organisation within seven Business Days of end of each calendar month comprising: (i) a declaration regarding compliance with the Efficiency Parameters in the immediately preceding calendar month. In the event of a non-compliance with the Efficiency Parameters, complete particulars of the same, including the reasons for such non-compliance, and the corrective steps proposed to be undertaken; and (ii) such other information as may be required to be provided by the Nominated Authority.

**(d) Yearly Report**

Within seven Business Days of conclusion of the annual general meeting of the Successful Bidder, it shall provide the following information to the Coal Controller’s Organisation:

- (i) Two certified copies of its balance sheets, cash flow statement and profit and loss account, along with a report thereon by its statutory auditors; and
- (ii) such other information as may be required to be provided, by the Nominated Authority.

7.2. The Pre-Commencement Report, the Commencement Report, the Monthly Report and the Yearly Report shall be provided to the Nominated Authority or to the Coal Controller’s Organisation as attachments to an email addressed to the following e-mail address: (i) [email address] in case of the Nominated Authority; or (ii) [email address] in case of the Coal Controller’s Organisation. Such attachments must be digitally signed by the Successful Bidder using a Class III digital signature certificate issued by a certifying authority in India.

7.3. The Nominated Authority shall have the right to seek such further information regarding the Pre-Commencement Report, the Commencement Report, the Monthly Report or the Yearly Report and also seek independent verification of the same.

## **8. SALE OF COAL, COAL BED METHANE AND MINOR MINERALS**

### **8.1. Sale of Coal**

8.1.1. There shall be no restriction to carry on mining operations for own consumption, sale or for any other purpose. The coal produced from the Coal Mine may be sold by the Successful Bidder in any manner as may be decided by the Successful Bidder including sale to Affiliates and related parties, utilisation of coal for any purpose including but not limited to captive consumption, Coal Gasification, Coal Liquefaction and export of coal.

8.1.2. The Successful Bidder shall submit a self-declaration in the form of monthly report containing grade of coal produced, quantity produced, quantity used in self-consumption and the quantity sold along with a copy of GST invoice. This self-declaration form shall be submitted within 15 (fifteen)

days from the end of each calendar month by the Successful Bidder to the State Government. The Successful Bidder shall also submit an annual report audited by the statutory auditor of the Successful Bidder, within 2 (two) months from the end of a financial year, containing the grade of coal produced, quantity produced, quantity used in self-consumption, the quantity sold along with a copies of the relevant GST invoices in that particular year and all other document as may be demanded by the State Government.

8.1.3. The Successful Bidder shall prepare and maintain the documents related to day to day production, consumption and sale of coal which it shall have to produce whenever demanded by any Government agency/ Authority.

8.1.4. Export of coal shall be in accordance with Applicable Law.

## **8.2. Exploitation of Coal Bed Methane**

8.2.1. In case there is presence of CBM in the Coal Mine, the Successful Bidder may choose to commercially exploit the CBM present in the mining lease area. The lease/license in respect of CBM operations shall be governed by Applicable Law. The Successful Bidder shall report the existence of CBM to the Nominated Authority and other relevant authority.

8.2.2. In case the Successful Bidder decides to exploit the CBM present in the coal mining lease area, it shall be required to approach the DGH, MoPNG for its technical approval followed by the grant of CBM mining lease by State Government.

8.2.3. In addition to the Monthly Payment, the Successful Bidder shall also make payments of monthly revenue share for CBM based on the Final Offer, and the payment of the monthly revenue share for CBM shall be made within 20 days from the end of each month. Other mechanisms with regard to arriving at the price of CBM shall be subject to applicable guidelines issued by the MoPNG for this arrangement. Presently these guidelines are Policy Framework on Early Monetization of Coal Bed Methane (CBM) notified vide Gazette Notification No. O-19018/7/2016/ONG-I dated April 11, 2017.

## **8.3. Mining of Minor Minerals**

8.3.1. Mining of Minor Minerals by the Successful Bidder shall be subject to the requirements under the Minor Mineral Concession Rules of the State Government.

## **9. MONTHLY PAYMENTS AND ADJUSTMENT**

### **9.1. Monthly Payment**

9.1.1. The Successful Bidder shall be required to pay revenue on monthly basis to the State Government (the “**Monthly Payment**”) which shall be determined as product of

a) Final Offer;

b) Total quantity of coal on which the statutory royalty is payable during the month; and

c) Notional Price or Actual Price, whichever is higher, where

- a. Notional Price shall mean the price arrived at after adjusting the Representative Price with sub-index of National Coal Index or National Lignite Index, as applicable, of the relevant basket of coal grade(s) on the date on which royalty becomes payable.

Representative Price shall be a product of:

(A) weights (volume of coal in different components of notified price, auction price and imported price channel) of the Base year; and

(B) prices of these components at the time of issuance of the Tender Document. It is clarified that this shall mean the latest available prices of these components at the time of issuance of this Tender Document .

Methodology for determining the Representative Price of lignite coal shall be provided separately.

- b. Actual Price shall mean the sale invoice value of coal, net of statutory dues including taxes, levies, royalty, NMET, DMF etc.

It is clarified that in case of pithead washeries, Monthly Payment shall be made in the same manner as royalty is paid i.e. Monthly Payment shall be made on the quantity and grade of coal for which royalty is paid by washeries as per rules, during the month.

- 9.1.2. The Monthly Payment is required to be made to the State Government on the date on which the statutory royalty is payable, in the manner as may be prescribed by the State Government, [with an intimation to the Nominated Authority]. Further, the Monthly Payments may be subject to such adjustments as may be prescribed by the Nominated Authority, annually basis the audited financial statements of the Successful Bidder or at such other periodic intervals as may be prescribed. Such adjustments may be on account of the National Coal Index or National Lignite Index, as applicable, as may notified for and applicable to the Monthly Payment dates as well as higher of Actual Price and Notional Price.
- 9.1.3. It is clarified that in addition to the Monthly Payment, other statutory dues including taxes, levies, royalty, contribution to NMET and DMF, etc. shall be payable as per Applicable Law.

## **9.2. Incentive for Early Commencement of Coal Production**

- 9.2.1. A rebate of 50% on Final Offer would be allowed till the Scheduled Date of Production, for the quantity of coal produced earlier than such Scheduled Date of Production. The scheduled date of production shall be determined in the following manner ("**Scheduled Date of Production**"):
- (a) In case of Fully Explored Mines, the scheduled date of production shall be the date of production as per the Production Schedule i.e. [insert number of months] months from the date of issuance of Vesting Order/Allocation Order. *Provided however*, in case of Schedule II Coal Mines of the CM(SP) Act, 2015, in the event any statutory permission is required to be obtained afresh by the Successful Bidder, then the Scheduled Date of Production shall

stand modified to the aggregate of the scheduled time granted for obtaining fresh permission and the scheduled time granted for completion of transfer of statutory permissions obtained by the Prior Allottee as per Clause 10 of this Agreement.

- (b) In case of Partially Explored Mines, the scheduled date of production shall be the scheduled date of production given in the approved Mining Plan.

9.2.2. Statutory dues including taxes, levies, royalty, contribution to NMET and DMF etc. shall be payable as per Applicable Law. No exemption would be given to the Successful Bidder from obtaining any approval etc. under Applicable Law required for commencing and undertaking coal production.

### **9.3. Incentive for Coal Gasification or Coal Liquefaction**

9.3.1. In the Successful Bidder consumes the coal produced from the Coal Mine either in its own plant(s) or plant of its holding, Subsidiary Company, Affiliate, Associate Company or sells the coal for Coal Gasification or Coal Liquefaction, a rebate of 50% on Final Offer will be provided on the total quantity of coal consumed or sold or both for Coal Gasification or Coal Liquefaction on an yearly basis, subject to the following conditions:

- (a) At least 10% of scheduled coal production as per approved Mining Plan for that year shall be consumed and/or sold for Coal Gasification or Coal Liquefaction; and
- (b) A certificate issued by the Coal Controller's Organisation certifying the quantity of coal consumed or sold or both for Coal Gasification or Coal Liquefaction shall be submitted by the Successful Bidder to the State Government. The said certificate shall be issued in accordance with the Guidelines issued by Coal Controller's Organisation, as may be amended.

Provided however that in no event shall the Successful Bidder be entitled to avail of the incentives available under this Clause 9.3 in respect of the quantity of coal produced earlier than the Scheduled Date of Production, if it elects to avail of the incentives under Clause 9.2 above in respect of such quantity of coal.

### **9.4. Adjustment of Monthly Payments**

9.4.1. The Upfront Amount in Clause 5.2 shall be adjusted in full, against the Monthly Payments to be made to the State Government.

9.4.2. Such adjustment of Upfront Amount shall not exceed 50% of aggregate Monthly Payments for the year. Adjustment of Upfront Amount towards Monthly Payments shall be on a monthly basis i.e. maximum 50% of the Monthly Payment for the month to be paid by the Successful Bidder shall be adjusted against Upfront Amount and would be reconciled at the end of the year. It is clarified that Upfront Amount shall not be adjusted against other statutory dues including taxes, levies, royalty, contribution to NMET and DMF, etc. and these shall be payable as per Applicable Law.

## **10. EFFICIENCY PARAMETERS**

- 10.1. The conduct of mining operations at the Coal Mine shall be subject to the Efficiency Parameters. In *bona fide* cases of delays not attributable to the Successful Bidder, the Nominated Authority will decide on case to case basis the extension of timeline in Efficiency Parameters. For the said purpose, the Nominated Authority may refer the matter to Scrutiny Committee which will consider the delay caused on case to case basis and furnish its recommendation to the Nominated Authority for taking a decision.
- 10.2. The Successful Bidder would provide periodic information to the Nominated Authority and the Central Government regarding compliance with the Efficiency Parameters in the manner stipulated in Clause 7 (INFORMATION).
- 10.3. Any non-compliance with the Efficiency Parameters would result in appropriation of the Performance Security in the manner stipulated in Clause 6 (PERFORMANCE SECURITY) and in case where such non-compliance exceeds for more than three instances, such non-compliance may also result in termination of this Agreement as provided in Clause 26 (EFFECTIVE DATE, TERM AND TERMINATION).

## **11. GENERAL RIGHTS AND OBLIGATIONS**

### **11.1. Limited Mining Rights**

The Successful Bidder shall be entitled to receive a Mining Lease [or prospecting license or Prospecting License cum Mining Lease] [or order by the Central Government under Section 11 (1) of the CBA Act, 1957, as the case may be,] for conduct of mining operations only in the Coal Mine, and shall not be entitled to conduct the mining operations in any other area pursuant to this Agreement. The rights granted to the Successful Bidder herein to conduct mining operations are exclusive within the Coal Mine. The Government undertakes not to grant any rights to mine coal in the Coal Mine to any Third Party during the Term of this Agreement or the term of the Mining Lease or order by the Central Government under Section 11 (1) of the CBA Act, 1957, as the case may be, whichever is later.

### **11.2. Authorisations**

The Successful Bidder shall obtain and maintain all Governmental Approvals required for conducting the mining operations at the Coal Mine and performing its obligations under this Agreement. The Government undertakes, on a no-obligation basis, to expeditiously provide all necessary approvals and assistance for conducting mining operations and as otherwise may be reasonably required by the Successful Bidder in relation to the rights granted to it under this Agreement.

### **11.3. Geological and Archaeological Finds**

It is expressly agreed that unless specifically permitted by the Tender Document or this Agreement, the Successful Bidder shall not have any mining rights or interest in the underlying geological or archaeological matters such as major minerals, metals (including gold, silver, etc., gas, oil, fossils, antiquities, structures or other remnants or things of interest and the Successful Bidder hereby acknowledges that it shall not have any mining rights or interest except in relation to coal, CBM or

Minor Mineral (as may be granted under any Mining Lease or Prospecting License-cum-Mining Lease or order by the Central Government under Section 11 (1) of the CBA Act, 1957, as the case may be, pursuant hereto. It is clarified that such rights, interest and property on or under the Coal Mine shall vest in and belong to the Central/ State Government or the concerned Governmental Authority. The Successful Bidder 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 Central/ State Government forthwith of the discovery thereof and comply with such instructions as the concerned Governmental Authority may reasonably give for the removal of such property.

#### **11.4. Health, Safety, Welfare, Social Security and Minimum Wages**

- 11.4.1. The Successful Bidder shall comply with all Applicable Laws and observe Good Industry Practice for the protection of the general health, safety, welfare, social security and minimum wages of employees engaged at the Coal Mine, including employees of any contractor or sub-contractor and of all other persons having legal access to the area covered by this Agreement.
- 11.4.2. Without prejudice to the generality of the foregoing, the Successful Bidder shall ensure payment of minimum wages to the employees engaged at the Coal Mine and in related activity including employees of any contractor or sub-contractor.
- 11.4.3. The Successful Bidder shall install and utilize such recognized modern safety devices and observe such recognized modern safety precautions as are provided and observed under Good Industry Practice. The Successful Bidder shall maintain in a safe and sound condition for the duration of this Agreement all infrastructure and equipment constructed or acquired in connection with mining operations and required for ongoing operations.
- 11.4.4. The Successful Bidder shall train employees engaged at the Coal Mine, including employees of any contractor or sub-contractor and of all other persons having legal access to the area covered by this Agreement, in accordance with the Good Industry Practice.
- 11.4.5. The Successful Bidder shall construct, maintain, and operate health programs and facilities to serve the employees engaged at the Coal Mine, including employees of any contractor or sub-contractor and of all other persons having legal access to the area covered by this Agreement, which programs and facilities shall install, maintain and use modern health devices and equipment and shall practice modern health procedures and precautions in accordance with Good Industry Practice.
- 11.4.6. Without prejudice to the generality of the foregoing, in the event the Successful Bidder provides housing, the same shall be built to a standard that provides suitable living environments adequate for health and well-being, and which meet applicable sanitation standards in terms of Good Industry Practice.

#### **11.5. Sustainable and Mechanised Operations**

- 11.5.1. The Successful Bidder shall implement mechanised coal extraction, transport and evacuation in the Coal Mine, in line with modern and prevalent technologies.
- 11.5.2. The Successful Bidder shall strive to minimise the carbon footprints from operations at the Coal

Mine, undertake steps to reduce environmental pollution and promote sustainability, in accordance with Good Industry Practice.

## **12. CONTRACTORS AND SUB-CONTRACTORS**

- 12.1. In the event the Successful Bidder enters into any agreement with any contractor in relation to the mining operations at the Coal Mine, then a duly certified copy of such agreement shall also be submitted to the Nominated Authority within fifteen Business Days of its execution.
- 12.2. Any Agreement between the Successful Bidder and its contractors shall contain appropriate terms by which the contractor shall acknowledge and comply with the terms of this Agreement and the contractor shall also cause its sub-contractors to acknowledge and comply with the same.
- 12.3. Nothing in this Agreement shall exempt the Successful Bidder from any and all obligations under this Agreement despite the delegation of such obligations to a contractor or its subcontractors.

## **13. CHANGE IN CONTROL AND TRANSFER**

### **13.1. Change in Control of the Bidder And Transfer of Coal Mine**

- 13.1.1. Any change in Control of the Successful Bidder or any transfer of the Coal Mine by the Successful Bidder, shall be subject to Applicable Laws and may be undertaken after the Lock-in Period, with an intimation to the Nominated Authority and the Central Government if no later than 15 (fifteen) days prior to (a) the proposed change in Control of the Successful Bidder; or (b) transfer of the Coal Mine by the Successful Bidder, as the case may be and provided that pursuant to such change in Control, the Successful Bidder continues to meet the Eligibility Conditions or in case of transfer of Coal Mine by the Successful Bidder, the transferee meets the Eligibility Conditions.

Provided however, that any change in Control of the Successful Bidder or transfer of the Coal Mine by the Successful Bidder during the Lock-in Period shall be permitted if such change in control is pursuant to an insolvency proceeding against the Successful Bidder under the Insolvency and Bankruptcy Code, 2016 or Applicable Laws or the transfer is pursuant to enforcement of security by any bank or financial institution in accordance with the terms of the Agreement and Applicable Laws, as the case may be.

- 13.1.2. In the event that any change in Control of the Successful Bidder or any transfer of the Coal Mine granted to the Successful Bidder requires prior Governmental Approval under any Applicable Laws, then such Governmental Approval shall be granted (in addition to any other requirement under Applicable Law) only if the transferee of such right, title or interest or the Successful Bidder subsequent to the change of Control, as the case may be, also meets all the applicable Eligibility Conditions.
- 13.1.3. The lock-in period shall be as follows (“**Lock-in Period**”):

- (i) For Fully Explored Mines till the execution of Mining Lease or order by the Central Government under Section 11 (1) of the CBA Act, 1957, as the case may be.

- (ii) For Partially Explored Mines, Lock-in Periods shall be in two phases:
- (a) First, till one year of the date of issuance of [Vesting Order / Allocation Order]<sup>22</sup> provided that at least 15% of estimated exploration expense has been incurred by the Successful Bidder; or
- (b) Second, after preparation of Geological Report till the execution of Mining Lease or order by the Central Government under Section 11 (1) of the CBA Act, 1957, as the case may be.

### **13.2. Consequences of default**

- 13.2.1. In the event of any change in Control or any transfer of right, title or interest in the Coal Mine which is not in conformity with this Agreement or any Applicable Law, then in addition to any rights, remedy or consequences as may be applicable under Applicable Laws, the Nominated Authority or the Central Government may, in its sole discretion, appropriate the Performance Security, disqualify the Successful Bidder from participating in any further auction or allotment process conducted by the Nominated Authority; terminate this Agreement; and/or terminate and withdraw the [Vesting Order / Allocation Order].
- 13.2.2. Any transfer of right, title or interest which is not in conformity with this Agreement or Applicable Laws shall be deemed to be void *ab-initio*.

### **14. MANDATORY WORK PROGRAM FOR PARTIALLY EXPLORED MINES**

- 14.1.1. During the prospecting phase, the Successful Bidder shall complete the Mandatory Work Program for the Coal Mine as specified in the Schedule I. The Successful Bidder shall conduct geological prospecting/ exploration of the area as per the Mandatory Work Program provided by the Nominated Authority, so as to ascertain evidence of mineral contents and shall submit periodic reports to the Nominated Authority. Provided however that in the event the Successful Bidder is unable to conduct geological prospecting/ exploration of the area as per the Mandatory Work Program, due to any technical constraints including subsurface geological uncertainty duly accepted by the Government, the Successful Bidder may propose a revised Mandatory Work Program having estimated exploration expense not less than the estimated exploration expense as provided in the Annexure I of the Tender Document, to the Nominated Authority. The revised Mandatory Work Program shall be subject to the approval of the Nominated Authority. Notwithstanding anything to the contrary contained elsewhere in this Tender Document, the Successful Bidder may undertake geological prospecting/ exploration in excess of the Mandatory Work Program in accordance with Applicable Laws.
- 14.1.2. All reports, studies and other documentation related to the geological prospecting/ exploration of the area shall be submitted to the Nominated Authority and the State Government and they shall become the proprietary information of the Nominated Authority / State Government.

### **15. PRODUCTION SCHEDULE FOR FULLY EXPLORED MINES**

- 15.1.1. The Successful Bidder shall ensure that the scheduled coal production as per the approved Mining Plan is equal to or more than the year-on-year production schedule of the Coal Mine as specified in Schedule I (“**Production Schedule**”). In case prospecting operations are required to be carried out for any part of the Coal Mine, the same shall be carried out by the Successful Bidder in accordance with Applicable Law.

<sup>22</sup> To be retained as applicable.



## **16. REVISION IN MINING PLAN UPON ALLOCATION AND FLEXIBILITY IN PRODUCTION**

### **16.1. Revision in Mining Plan**

Upon allocation of the Coal Mine, the Mining Plan may be revised by the Successful Bidder, in accordance with the Guidelines for Preparation, Formulation, Submission, Processing, Scrutiny, Approval and Revision of Mining plan for the coal and lignite blocks issued *vide* Office Memorandum F. No. 34011/28/2019-CPAM dated May 29, 2020, as may be amended.

### **16.2. Flexibility in Coal Production**

16.2.1. In a financial year, the Successful Bidder shall produce coal not below 65% of scheduled production for that financial year as per the Mining Plan subject to the condition that in any 3 financial year block the Successful Bidder shall not produce coal less than 75% of scheduled production for the 3 financial year block as per the Mining Plan. It is clarified that 3 financial year block shall be counted from the first financial year of scheduled commencement of production in the Coal Mine.

#### **16.2.2. Revenue payable to the Government in case of shortfall in coal production:**

- (a) In the event the annual coal production is less than 65% of the scheduled production in any financial year as per approved Mining Plan, then the annual revenue share shall be paid by the Successful Bidder, within 20 days from the end of the financial year, as a sum of (a) Monthly Payments for the quantity of coal on which the statutory royalty is paid, in accordance with Clause 9 and (b) revenue share for the shortfall quantity (i.e. 65% of annual scheduled coal production in the financial year less the quantity of coal on which the statutory royalty is paid) computed on the basis of the Notional Price arrived at after adjusting the Representative Price with sub-index of National Coal Index or National Lignite Index, as applicable of the relevant basket of coal grade(s) for the relevant year. It is clarified that relevant grade of coal shall mean weighted average grade of non-coking coal and/or weighted average grade of coking coal, as the case may be, for the Coal Mine, as per grade declared by CCO / State Government concerned, as applicable. For Coal Mine with lignite coal, relevant grade shall be as notified by Government of India separately.
- (b) Further, in the event the coal production for a block of 3 financial years is less than 75% of the scheduled production in the block of 3 financial years as per approved Mining Plan, the Successful Bidder shall make payment towards such shortfall in coal production (above 65% and less than 75%) such that the revenue to the Government for a block of 3 financial years is towards at least 75% of the scheduled coal production in the block of 3 financial years within 20 days of the from the end the 3 financial year period. In such case, the revenue share payable for the shortfall quantity (75% of scheduled coal production of 3 financial years less the quantity of coal on which the statutory royalty is paid in 3 financial years) shall be computed on the basis of Notional Price arrived at after adjusting the Representative Price with sub-index of National Coal Index or National Lignite Index, as applicable of the relevant basket of coal grade(s) for the relevant block of 3 financial years. It is clarified that relevant grade of coal shall mean weighted average grade of non-coking coal and/or weighted average grade of coking coal, as the case may be, for the Coal Mine, as per grade declared by CCO / State Government concerned, as applicable. For Coal Mine

with lignite coal, relevant grade shall be as notified by Government of India separately.

- (c) Statutory dues including taxes, levies, royalty, contribution to NMET and DMF, etc. shall be payable as per Applicable Law.

## **17. MINE CLOSURE**

- 17.1. Upon exhaustion of the extractable coal reserves at the Coal Mine, the Coal Mine shall be closed, in the manner provided in the mine closure plan (as a part of the Mining Plan) and Applicable Laws, including ecological restoration, and the Successful Bidder shall observe Good Industry Practice.

## **18. COMPLIANCE WITH ANTI CORRUPTION LAWS**

### **18.1. Compliance**

The Successful Bidder and its employees shall at all times during the Term:

- (a) comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption (the “**Anti Corruption Laws**”);
- (b) not do, or omit to do, any act that will cause or lead to any breach of any of the Anti Corruption Laws;
- (c) promptly report to the Nominated Authority any breach of the Anti Corruption Laws by the Successful Bidder in connection with the Coal Mine, the mining operations or performance of this Agreement; and
- (d) have and shall maintain in place its own policies and procedures, to ensure compliance with the Anti Corruption Laws (“**Anti Corruption Policy**”) and will enforce the Anti Corruption Policy where appropriate.

### **18.2. Audit and record keeping**

- 18.2.1. The Successful Bidder shall keep at its normal place of business detailed, accurate and up to date records and books of account showing all payments made by the Successful Bidder in connection with this Agreement, the development of the Coal Mine, mining operations and matters incidental thereto and the steps taken by the Successful Bidder to comply with the Anti Corruption Laws, and the Anti Corruption Policy. Such records and books of accounts shall be required to be maintained for a period of [six] years. The Successful Bidder shall ensure that such records and books of accounts are sufficient to enable verification of the Successful Bidder’s compliance with its obligations under this Clause 18.
- 18.2.2. The Successful Bidder shall permit the Nominated Authority and its representatives, to access and take copies of the Successful Bidder’s records and any other information held at the Successful Bidder’s premises and to meet with the Successful Bidder’s personnel to audit the Successful Bidder’s compliance with its obligations under this Clause 18. Such audit rights shall continue for three years after termination of this Agreement. The Successful Bidder shall give all necessary assistance to the conduct of such audits during the Term of this Agreement and for a period of three year after termination of this Agreement.

### **18.3. Anti Corruption provisions in contracts**

Any contract or arrangements entered into by the Successful Bidder, including without limitation contracts or arrangements with any supplier, contractor, sub-contractor, employees should impose on and secure from the Subcontractor obligations, liabilities, undertakings, warranties, acknowledgements and grants of rights equivalent to those imposed on and secured from the Successful Bidder in this Clause 18, except for the requirement of Anti Corruption Policy in case of contracts or arrangements with natural persons.

## **19. REPRESENTATIONS AND WARRANTIES**

- 19.1. The Successful Bidder represents and warrants to the Nominated Authority (save as otherwise disclosed to the Nominated Authority in writing), as of the Agreement Date in the manner as detailed in SCHEDULE F (“**Warranties**”).
- 19.2. None of the representations, warranties and/ or statements contained in this Agreement shall be treated as qualified by any actual or constructive knowledge on the part of the Nominated Authority or the Central Government or any of its respective agents, representatives, officers, employees or advisers.
- 19.3. In the event that any of the representations or warranties made or given by the Successful Bidder ceases to be true or stands changed, the Successful Bidder shall promptly notify the Nominated Authority of the same. The Successful Bidder hereby waives all its rights to invoke and shall not invoke the Nominated Authority's knowledge (actual, constructive or imputed) of a fact or circumstance that might make a statement untrue, inaccurate, incomplete or misleading as a defence to a claim for breach of Warranties or covenant or obligation of the Successful Bidder.

## **20. INDEMNITIES**

- 20.1. In this clause, a reference to the Nominated Authority shall include the Nominated Authority; the Government of India; any of the departments or ministries of the Government of India; and of the officers, employees, staff, advisors, representatives or agents of the Government of India (collectively the “**Indemnified Party**”) and the provisions of this Clause shall be for the benefit of the Indemnified Party, and shall be enforceable by each such Indemnified Party.
- 20.2. The Successful Bidder shall indemnify the Indemnified Party against all liabilities, costs, expenses, damages and losses (including but not limited to any interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Indemnified Party arising out of or in connection with:
  - (a) any breach of the Warranties
  - (b) Successful Bidder's breach or negligent performance or non-performance of this Agreement;
  - (c) the enforcement of this Agreement;
  - (d) any claim made against the Indemnified Party for actual or alleged infringement of a Third Party's rights arising out of or in connection with mining operations at the Coal Mine or performance or non-performance of any of the obligations under this Agreement to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this Agreement by the Successful Bidder, its employees, agents or contractors;

- 
- (e) any claim made against the Indemnified Party by a Third Party for death, personal injury or damage to property arising out of or in connection with mining operations at the Coal Mine or performance or non-performance of any of the obligations under this Agreement;
  - (f) any loss or damages caused on account of breach of any Applicable Law by the Successful Bidder, including without limitation any costs incurred by the Nominated Authority in cleaning or rectifying of any environmental damages caused by the Successful Bidder on account of, lack of Good Industry Practice; breach, negligent performance or failure or delay in performance of this Agreement; or non-compliance with Applicable Law.
  - (g) Any claim made to or against the Indemnified Party hereinafter for any amount admissible as Fixed Amount in terms of the Tender Document and the Act.
- 20.3. If any Third Party makes a claim, or notifies an intention to make a claim, against the Indemnified Party which may reasonably be considered likely to give rise to a liability under this indemnity (a “**Claim**”), the Indemnified Party shall as soon as reasonably practicable, give written notice of the Claim to the Successful Bidder, specifying the nature of the Claim in reasonable detail.
- 20.4. Subject to the Successful Bidder providing security to the Indemnified Party, to the Indemnified Party's sole and absolute satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, the Successful Bidder may take such action as it may reasonably deem fit to avoid, dispute, compromise or defend the Claim.
- 20.5. Payments of the amount of Claim shall become due and payable within [thirty] Business Days of receipt of notice of Claim. If a payment due from the Successful Bidder under this clause is subject to Tax (whether by way of direct assessment or withholding at its source), the Indemnified Party shall be entitled to receive from the Successful Bidder such amounts as shall ensure that the net receipt, after Tax, to the Indemnified Party in respect of the payment is the same as it would have been were the payment not subject to Tax.

## **21. ASSIGNMENT, SECURITY FOR FINANCING**

### **21.1. Prohibition on Assignment**

- 21.1.1. Except as provided in this Clause 21, the Successful Bidder shall not assign this Agreement, either directly or indirectly, save and except with the prior consent in writing of the Nominated Authority, which consent the Nominated Authority shall be entitled to decline without assigning any reason.
- 21.1.2. Subject to compliance with provisions of Clause 21.2, this Agreement may be assigned by the Successful Bidder in the following events:
- (a) upon occurrence of a change in Control or transfer which is permissible in terms of Clause 13, to the transferee; or
  - (b) upon occurrence of an enforcement event, to a transferee as may be determined by a bank or financial institution in terms of Clause 21.3.

### **21.2. Assignment Conditions**

Assignment of this Agreement shall also be subject to the following conditions precedent:

- (a) the proposed assignee must meet the applicable Eligibility Conditions;

- (b) the proposed assignee must agree to unconditionally and irrevocably adhere to the provisions of this Agreement and must enter into a deed of adherence in the manner as prescribed by the Nominated Authority;
- (c) the proposed assignee must have furnished the Performance Security, to substitute any subsisting Performance Security provided by the Successful Bidder;
- (d) the proposed assignee must have paid any other amount due from the Successful Bidder and agree to indemnify and hold the Nominated Authority harmless in all respects against any claims from any Third Party or the Successful Bidder with respect to such assignment.

### **21.3. Security for financing, enforcement Event**

21.3.1. Subject to Applicable Laws, the Successful Bidder shall be entitled to create security by way of mortgage of the Coal Mine for the purposes of financing the mining operations at the Coal Mine from a bank or financial institution and such security creation shall not require prior approval by the Nominated Authority or the Central Government. It is clarified that the Successful Bidder shall be permitted to enter into any agreement with bank or financial institutions for creation of such security and for creation of such security, the conditions mentioned in Clause 21.2 shall not be applicable.

21.3.2. The Successful Bidder shall keep the Nominated Authority promptly informed about: (i) any default in its obligation under any arrangement with any bank or financial institution; (ii) any security interest created over the Coal Mine; and (iii) any action initiated by the bank or financial institution regarding enforcement of security.

21.3.3. In the event of a default, the banks or financial institutions, as the case may be shall be entitled to enforce their security interest, provided that the conditions listed in Clause 21.2 are met, in the manner provided below:

- (a) the security interest shall be exercised in accordance with the provisions of Applicable Laws and any inter-se agreement between the secured creditors, if any.
- (b) the lead secured creditor (in case of consortium lending) or the secured creditor with the highest exposure (in case of multiple banking), shall be entitled to seek a substitution of the Successful Bidder by providing a written notice (the “**Substitution Notice**”) to the Nominated Authority;
- (c) the Substitution Notice shall contain complete particulars of the proposed transferee (the “**Selectee**”), particulars of compliance of the Selectee with all the Eligibility Conditions, particulars of the debt due and such data and information as would be necessary and relevant for the Nominated Authority to decide as to the acceptability of the Selectee;
- (d) the Nominated Authority may require such other information as it may deem fit regarding the suitability of the Selectee to receive rights and obligations with respect to the Coal Mine;
- (e) the Substitution Notice must be accompanied by an unconditional undertaking of the Selectee to the effect that it shall upon acceptance by the Nominated Authority observe, comply with, perform and fulfil the residual terms, conditions and covenants of this

Agreement as if the Selectee had been the Successful Bidder under this Agreement and to assume, discharge and pay the debt due on the terms and conditions agreed to by the Selectee with the secured creditors. The Selectee shall also undertake to enter into such documents and agreements with Nominated Authority as may be necessary or required to give effect to the substitution of the Successful Bidder by the Selectee;

- (f) the Nominated Authority shall convey its acceptance or otherwise of the Selectee within sixty Business Days of (a) the date of receipt of the Substitution Notice; or (b) the date of receipt of the additional information and clarifications requested in respect of any data, particulars or information comprised in the Substitution Notice, whichever is later.
- (g) In the event that the Nominated Authority fails to communicate its acceptance or otherwise or the objections if any it has to the acceptance of the Substitution Notice, within the time specified in sub-clause (f) above, the Nominated Authority shall be deemed to have accepted the Substitution Notice and the Selectee.

21.3.4. Upon acceptance of the Selectee by the Nominated Authority or the Nominated Authority having been deemed to have accepted the Substitution Notice, this Agreement shall be deemed to be assigned in favour of the Selectee without any further act or deed of the Successful Bidder.

## **22. INSURANCE**

22.1. At all times during the Term hereof, the Successful Bidder will maintain, and cause its contractors and sub-contractors to maintain, with financially sound and reputable insurers, insurance against such casualties and contingencies, of such types, on such terms and in such amounts (including deductibles, co-insurance and self-insurance, if adequate reserves are maintained with respect thereto) as is consistent with Good Industry Practice.

## **23. ACCOUNTS AND AUDIT**

### **23.1. Audited Accounts**

The Successful Bidder shall maintain books of accounts recording all its receipts, income, expenditure, payment, assets and liabilities in accordance with Good Industry Practice and Applicable Laws.

### **23.2. Appointment of Auditors**

The Nominated Authority shall have the right, but not the obligation, to appoint at its cost, from time to time and at any time, an auditing firm or an auditor to audit and verify all those matters, expenses, costs, realizations and things with respect to the Coal Mine or which the statutory auditors are required to do, undertake or certify pursuant to this Agreement.

### **23.3. Certification of claims by Statutory Auditors**

Any claim or document provided by the Successful Bidder to the Nominated 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 certified by its statutory auditors.

## **24. GOVERNMENT INSPECTION**

24.1. The Nominated Authority, through its authorized representatives shall have the right to free ingress

and egress within any part of the Coal Mine at any time to inspect works or activities being undertaken or implemented by the Successful Bidder in order to monitor and verify compliance with the terms of this Agreement and all Applicable Laws.

- 24.2. The Nominated Authority, through its authorized representatives, shall have access to the Successful Bidder's financial and other records and transactions (relatable to any period) at any time upon reasonable advance notice, the right to copy therefrom, for the purpose of assessing the performance and compliance of the Successful Bidder with the terms of this Agreement and all Applicable Laws, rules and regulations or to aid in the enforcement of the same.
- 24.3. The Nominated Authority shall have the right to conduct, either directly or indirectly through any Third Party, a performance audit to verify compliance by the Successful Bidder, of its obligations hereunder.

## **25. EVENT OF FORCE MAJEURE**

- 25.1. Event of Force Majeure means any of the following events or circumstances or combination of the following events or circumstances which are beyond the reasonable control of the Successful Bidder, which could not have been prevented by Good Industry Practice or by the exercise of reasonable skill and care and which or any consequences of which, have a material and adverse effect upon the performance by the Successful Bidder of its obligations or enjoyment of its rights:
- (i) acts of God, flood, drought, earthquake or other natural disaster;
  - (ii) epidemic or pandemic;
  - (iii) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
  - (iv) nuclear, chemical or biological contamination or sonic boom;
  - (v) collapse of buildings, fire, explosion or accident;
  - (vi) any labour or trade dispute, strikes, industrial action or lockouts (other than those solely affecting Successful Bidder claiming the same as an Event of Force Majeure and attributable to such Successful Bidder's policies regarding labour, compensation or employment or labour related conditions);
  - (vii) Any change in law or government policy making the performance of obligations under this Agreement impossible.
- 25.2. Provided it has complied with Clause 25.3, if the Successful Bidder is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by an Event of Force Majeure, the Successful Bidder shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations.
- 25.3. Upon occurrence of an Event of Force Majeure, the Successful Bidder shall:
- (i) as soon as reasonably practicable after the start of the Event of Force Majeure but no later than thirty Business Days from its start, notify the Nominated Authority and the Central Government in writing of the Event of Force Majeure, the date on which it started, its likely or potential duration, and the effect of the Event of Force Majeure on its ability to perform

any of its obligations under this Agreement; and

- (ii) use all reasonable endeavours to mitigate the effect of the Event of Force Majeure on the performance of its obligations including following of Good Industry Practice.

25.4. If an obligation is suspended by reason of an Event of Force Majeure for more than one month continuously, the Parties shall enter into good faith negotiations to revise the terms of this Agreement to reflect the changed circumstances, provided that this Agreement shall remain in effect during the period during which the Parties are negotiating the terms of any such revision.

25.5. Notwithstanding Clause 25.4, in the event that, performance of obligations under this Agreement remain suspended for a period of: (a) six months continuously; (b) or nine months over a period of one year, then the Nominated Authority may in its sole discretion terminate this Agreement in the manner provided in Clause 26 (EFFECTIVE DATE, TERM AND TERMINATION).

## **26. EFFECTIVE DATE, TERM AND TERMINATION**

### **26.1. Effective Date**

This Agreement, except for Clauses [●] shall come into effect on the Agreement Date. Clauses [●] shall come into effect on the date on which the [Vesting Order / Allocation Order] is issued by the Nominated Authority. It is clarified that the provisions of this Agreement shall also be included in the Mining Lease or Prospecting License-cum-Mining Lease [or in the order by the Central Government under Section 11 (1) of the CBA Act, 1957, as the case may be].

### **26.2. Term**

26.2.1. This Agreement shall commence on the dates mentioned in Clause 26.1 and shall continue for the period till the mine opening permission under rule 9 of the Colliery Control Rules, 2004 is granted to the Successful Bidder or the order under Section 11 (1) of the CBA Act, 1957 is issued by the Central Government, as the case may be (“**Term**”), unless agreed otherwise by the Parties and unless this Agreement is terminated earlier in accordance with its terms prior to the expiry of the Term. Upon termination of the Agreement, the rights of the Nominated Authority under the Agreement shall vest into State Government.

26.2.2. The terms and conditions of this Agreement shall be included in terms and conditions of the Mining Lease for the Coal Mine along with any other terms and conditions that the Central Government or the State Government may deem fit under the Mineral Concession Rules, 1960.

### **26.3. Termination**

26.3.1. This Agreement may be terminated upon occurrence of any of the following events (each a “**Termination Event**”):

- (a) violation of the provisions of the Act and the Rules;
- (b) failure of the Successful Bidder to make payment of the Upfront Amount in the manner provided in Clause 5.2;
- (c) failure of the Successful Bidder to submit the revised Performance Security in accordance with Clause 6.1;



- (d) failure of the Successful Bidder to complete the Vesting Conditions within the time specified in Clause 3.2;
- (e) failure of the Successful Bidder to make payment of additional levy within the time specified under Rule 18 of the Rules, if required to be paid;
- (f) occurrence of any Appropriation Event resulting in appropriation of the entire Performance Security or on account of one or more Appropriation Events, an amount equal to hundred per cent of the Performance Security being appropriated in aggregate (in one or more instances) as provided in Clause 6.3;
- (g) failure of the Successful Bidder to replenish the Performance Security within a period of 15 Business Days, in the event that a part of the Performance Security has been appropriated;
- (h) delay in achievement of the Efficiency Parameters (Milestones) by the Successful Bidder for more than three instances (in aggregate and not over a specified period) as provided in Clause 10.3;
- (i) any breach of compliance requirements with anti corruption laws as provided in Clause 18;
- (j) suspension of obligations on account of an Event of Force Majeure for a period longer than as specified in Clause 25.5;
- (k) failure to make payment of the Monthly Payment for more than three instances (in aggregate and not over a specified period) in terms of Clause 9.1;
- (l) failure to provide any information requested by the Nominated Authority in terms of this Agreement;
- (m) failure of the Successful Bidder to ensure continued compliance with the Eligibility Conditions;
- (n) the Successful Bidder dissolves, liquidates, commits an act of bankruptcy, petitions or applies to any tribunal for the appointment of a trustee or receiver for itself, resulting in the extinguishment of the existence of the Successful Bidder;
- (o) any other breach of any of the provisions of this Agreement (including in case of the Warranties being untrue or misleading or incorrect in any manner whatsoever), which is not cured by the Successful Bidder within thirty Business Days of becoming aware of the same, on its own accord or upon receipt of a notice from the Nominated Authority;
- (p) on recommendation of the State Government concerned in the event of breach of terms and conditions of prospecting license or mining lease;
- (q) surrender of the Coal Mine by the Successful Bidder;
- (r) cessation of coal mining operation exceeding a period of one year continuously, or 18 months over a period of two years without occurrence of any event of force majeure;
- (s) termination of the Mining Lease or Prospecting License-cum-Mining Lease granted to the Successful Bidder or order by the Central Government under Section 11 (1) of the CBA Act, 1957, as the case may be; or

- 
- (t) in the opinion of the Central Government, it is expedient in public interest to terminate this Agreement.
- 26.3.2. Upon occurrence of a Termination Event, the Nominated Authority may elect to terminate this Agreement by providing a 15 Business Days written notice to the Successful Bidder. The determination of the Nominated Authority regarding occurrence of a Termination Event shall be final and binding on the Successful Bidder.
- 26.3.3. In case the Nominated Authority elects to terminate this Agreement except under Clause 26.3.1(j), then the Performance Security and all other payments made by the Successful Bidder shall be forfeited and the Successful Bidder shall not be entitled to any benefits under this Agreement but would continue to be liable towards any antecedent liability, all obligations accrued before the effective date of the surrender/ termination and also for the obligations that must be fulfilled after termination. In case Nominated Authority elects to terminate this Agreement under Clause 26.3.1(j) after accepting the Event of Force Majeure, then i) the Performance Security submitted by the Successful Bidder shall not be forfeited and ii) the balance Upfront Amount, if any, after adjustment of Monthly Payments in accordance with Clause 9.4 shall be refunded. The Successful Bidder shall not be entitled to any benefits under this Agreement but would continue to be liable towards any antecedent liability, all obligations accrued before the effective date of the surrender/ termination and also for the obligations that must be fulfilled after termination.
- 26.3.4. In case the Successful Bidder faces severe impediment in mining operation owing to factors beyond its control such as difficult mining conditions arising out of geological features, issues in land acquisition including law and order issues and protests against land acquisition, declaration of national parks, wildlife sanctuaries, eco-sensitive zones, high conservation value areas, environmental constraints due to specific conditions in Environment Clearance / Forest Clearance, then the request for surrender for the Coal Mine and termination of the Agreement shall be examined on a case to case basis. In case Nominated Authority elects to terminate this Agreement under this clause, then i) the Performance Security submitted by the Successful Bidder shall not be forfeited; ii) the balance Upfront Amount, if any, after adjustment of Monthly Payments in accordance with Clause 9.4 and compensation to Prior Allottee shall not be refunded; and (iii) any pending show-cause notices issued by Nominated Authority shall stand withdrawn. The Successful Bidder shall not be entitled to any other benefits under this Agreement but would continue to be liable towards any antecedent liability, all obligations accrued before the effective date of the surrender/ termination and also for the obligations that must be fulfilled after termination.

## **26.4. Retention of Books and Records**

Upon termination of this Agreement, the Successful Bidder shall retain all documents, books and records related to the Coal Mine for a period of three years or such longer period as may specified under Applicable Law. It is clarified that the Successful Bidder may also retain such books and records in electronic form if permitted under Applicable Laws.

## **27. GOVERNING LAW AND DISPUTE RESOLUTION**

- 27.1. This Agreement and all questions of its interpretation shall be construed in accordance with the laws of India, without regard to its principles of conflicts of laws.
- 27.2. Any dispute, controversy or claim arising out of or relating to or in connection with the Agreement including a dispute as to the validity or existence of this Agreement, or any breach or alleged breach

thereof, shall be settled through mutual discussions between the Parties. In this regard, the Successful Bidder shall nominate an officer not below the rank of a director to participate in the discussions on its behalf.

- 27.3. [In the event that the Successful Bidder fails to nominate an officer in the manner required under Clause 27.2; or the Parties are unable to resolve any dispute in accordance with Clause 27.2 within a period of [30] Business Days starting from the date on which the first notice of dispute was provided by either Party, such dispute shall be resolved in accordance with Section 27 of the Act.]
- 27.4. [In the event that the Successful Bidder fails to nominate an officer in the manner required under Clause 27.2; or the Parties are unable to resolve any dispute in accordance with Clause 27.2 within period of [30] Business Days stating from the date on which the first notice of dispute was provided by either Party, such dispute shall be referred to arbitration by in accordance with Clause 27.5. Such arbitration shall be subject to the provisions of the Arbitration and Conciliation Act, 1996. The venue of such arbitration shall be Delhi, and the language of arbitration proceedings shall be English.
- 27.5. There shall be a 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 two arbitrators, the appointment shall be made in accordance with the Arbitration Rules. The arbitrators' award (the "**Award**") shall be final and binding on the Parties as from the date it is made, and the Parties agree and undertake to carry out such Award without delay. 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.
- 27.6. The Parties agree that an Award may be enforced against them and their assets wherever situated.]<sup>23</sup>
- 27.7. [In the event that the Successful Bidder fails to nominate an officer in the manner required under Clause 27.2; or the Parties are unable to resolve any dispute in accordance with Clause 27.2 within period of [30] Business Days stating from the date on which the first notice of dispute was provided by either Party, such dispute shall be taken by either Party for resolution through AMRCD as mentioned in DPE OM No. 4(1)/2013-DPE(GM)/FTS-1835 dated May 22, 2018.]<sup>24</sup>
- 27.8. It is expressly agreed between the Parties, that any existence of a dispute shall not affect in any manner any of the rights of the Nominated Authority under this Agreement, including without limitation the right to appropriate Performance Security or terminate this Agreement, until a final determination in this regard is made.
- 27.9. The provisions contained in this Clause 27 shall survive the termination of this Agreement.

## **28. MISCELLANEOUS**

### **28.1. Time of Essence**

Each of the Parties hereby agrees that, with regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

<sup>23</sup> To be retained appropriately.

<sup>24</sup> This is only applicable in the event the Successful Bidder is a Central Public Sector Enterprises which has been awarded a coal block under the MMDR Act.

## **28.2. Publicity**

The Successful Bidder shall not issue any information, document or article for publication in any news or communications media or make any public statement in relation to this Agreement without the prior written consent of the Nominated Authority unless required to do so by Applicable Law, provided that prior to any disclosure of any such information required by Applicable Law, the Successful Bidder must first notify the Nominated Authority, who shall then have the opportunity to respond to and/or dispute such intended disclosure.

## **28.3. Severability**

28.3.1. If any term, provision, covenant or restriction of this Agreement or the application thereof to any Person or circumstance shall be held invalid, void or unenforceable by a court of competent jurisdiction or other Governmental Authority to any extent, the remainder of the terms, provisions, covenants and restrictions of this Agreement and the application thereof to Persons or circumstances (other than those as to which any portion of this Agreement is held invalid, void or unenforceable) shall not be affected thereby and shall remain in full force and effect to the fullest extent permitted by law, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party.

28.3.2. Upon such a determination, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

## **28.4. Costs and Expenses**

28.4.1. The Successful Bidder shall bear its own costs in connection with the negotiation, preparation and execution of this Agreement.

28.4.2. The stamp duty payable for this Agreement shall be borne by the Successful Bidder.

## **28.5. Further Assurance**

The Successful Bidder shall cooperate with the Nominated Authority and execute and deliver to the Nominated Authority such instruments and documents and take such other actions as may be requested from time to time in order to carry out, evidence and confirm their rights and the intended purpose of this Agreement.

## **28.6. Legal And Prior Rights**

All rights and remedies of the Nominated Authority hereto shall be in addition to all other legal rights and remedies belonging to the Nominated Authority and the same shall be deemed to be cumulative and not alternative to such legal rights and remedies aforesaid and it is hereby expressly agreed and declared by and between the Parties hereto, that the determination of this Agreement for any cause whatsoever shall be without prejudice to any and all rights and claims of the Nominated Authority, which shall or may have accrued prior thereto.

## **28.7. Waiver**

- 28.7.1. The waiver of any default or breach under this Agreement by the Nominated Authority shall not constitute a waiver of the right to terminate this Agreement for any substantial default of a similar nature or under any other terms and conditions of this Agreement.
- 28.7.2. No failure or delay by the Nominated Authority in exercising any right or remedy provided by Applicable Law under or pursuant to this Agreement shall impair such right or remedy or operate or be construed as a waiver or variation of it or preclude its exercise at any subsequent time and no single or partial exercise of any such right or remedy shall preclude any other or further exercise of it or the exercise of any other right or remedy. The rights and remedies of the Nominated Authority under or pursuant to this Agreement are cumulative, may be exercised as often as it considers appropriate and are in addition to its rights and remedies under Applicable Law.
- 28.7.3. Submission of any document, information, report or notice, which contains any information or reference to any default or breach under this Agreement or any Applicable Law, to the Nominated Authority shall not be construed to be a deemed approval of such breach or default and the Nominated Authority may exercise any rights or remedies with respect to such default at any time.

## **28.8. Amendments**

No amendment of this Agreement (or of any of the documents referred to in this Agreement) shall be valid unless it is in writing and signed by or on behalf of each of the Parties to it. The expression “amendment” shall include any amendment, variation, supplement, deletion or replacement however effected. Unless expressly agreed, no amendment shall constitute a general waiver of any provisions of this Agreement, nor shall it affect any rights, obligations or liabilities under or pursuant to this Agreement which have already accrued up to the date of amendment, and the rights and obligations of the Parties under or pursuant to this Agreement shall remain in full force and effect, except and only to the extent that they are so amended.

## **28.9. Counterparts**

This Agreement may be executed in two counterparts, each of which will be deemed an original, with the same effect as if the signatures thereto and hereto were upon the same instrument, but all of which together will constitute one and the same instrument.

## **28.10. No Agency or partnership**

The Parties agree that nothing in this Agreement shall be in any manner interpreted to constitute an agency for and on behalf of any other Party. None of the provisions of this Agreement shall be deemed to constitute a partnership between the Parties hereto and no Party shall have any authority to bind the other Party or shall be deemed to be the agent of the other Party in any way.

## **28.11. Notices**

All notices, requests, demands or other communication (“**Notice**”) required or permitted to be given under this Agreement and the provisions contained herein shall be written in English and shall be deemed to be duly sent by speed post or registered post with acknowledgment due, or transmitted by e-mail to the other Parties at the address/ e-mail id indicated in SCHEDULE G hereof or at such other address/ email id as the Party to whom such notices, requests, demands or other communication is to be given shall have last notified to the Party giving the same in the manner provided in this Clause, but no such change of address shall be deemed to have been given until it

is actually received by the Party sought to be charged with the knowledge of its contents. Any notice, request, demand or other communication delivered to the Party to whom it is addressed as provided in this Clause 28.11 shall be deemed to have been given and received on the day of its receipt at such address.

#### **28.12. Entire Agreement**

This Agreement (including all such deeds and documents issued or executed pursuant hereto or referred to herein) and the Tender Document constitutes and represents the entire agreement between the Parties with regard to the rights and obligations of each of the Parties and cancels and supersedes all prior arrangements, agreements or understandings, if any, whether oral or in writing, between the Parties on the subject matter hereof or in respect of matters dealt with herein. In the event of a conflict between this Agreement and the Tender Document, the provisions of this Agreement shall prevail to the extent of the conflict.

#### **28.13. Specific Performance of Obligations**

The Nominated Authority shall be entitled to an injunction or injunctions to prevent breaches of this Agreement or to seek or enforce specific performance of this Agreement, in addition to any other legal rights and remedies, without the necessity of demonstrating the inadequacy of monetary damages.

#### **28.14. Power of the Central Government**

The Successful Bidder acknowledges that for the purposes of this Agreement, the Central Government is acting through the Nominated Authority pursuant to the Act and the Rules. However, for the purposes of exercise of rights and obligations hereunder and any Applicable Law, the Central Government shall be entitled to act through any of its relevant departments, ministries or any Governmental Agencies and all such relevant departments, ministries or any Governmental Agencies shall be entitled to exercise rights and obligations under this Agreement as if such relevant departments, ministries or any Governmental Agencies were a Party hereto.

#### **28.15. Change Notice**

Notwithstanding anything contained herein, the Nominated Authority may issue a change notice ("Change Notice") for change in particulars of:

- (a) the Designated Bank Account;
- (b) the number of days within which the Completion Notice is required to be provided in terms of Clauses 3.2.2 and 3.2.3 of the Agreement, by extending the time period provided in Clauses 3.2.2 and 3.2.3 of the Agreement, prior to the expiry of such periods; or
- (c) the e-mail address for submission of the Pre-Commencement Report, the Commencement Report, the Monthly Report and the Yearly Report, as specified in Clause 7.2 of the Agreement.

The change notice shall be issued in writing by the Nominated Authority and shall be sent by speed post or by registered post with acknowledgment due, or transmitted by email at the address/ email id of the Successful Bidder as specified in Clause 28.11 for providing Notices.

Within 5 Business Days of receipt of the Change Notice, the Successful Bidder shall provide a written acknowledgment of its receipt to the Nominated Authority through email. The Change Notice shall take effect from: (a) the date specified in the Change Notice – if such date has been specified in the Change Notice; or (b) the date of its receipt – if no effective date has been specified in the Change Notice.”

**[Remaining part of this page intentionally left blank, schedules follow.]**

**SCHEDULE A - PARTICULARS OF THE COAL MINE**

[Particulars of be provided to identify the Coal Mine in detail, including name, mine area, etc.]



**SCHEDULE B - FORMAT OF INTIMATION TO THE NOMINATED AUTHORITY**

To

The Nominated Authority  
[address]

[date]

**Sub: Intimation under Clause 3.1(f) of the Coal Mine Development And Production Agreement (the “Agreement”).**

Dear Sir,

We write with reference to Clause 3.1(f) of the Agreement read with the Act and the Rules, including Section 10 and Section 11 of the Act in terms of which we intend to own and utilise certain movable property of the Prior Allottee and also adopt certain contracts as detailed below:

particulars of movable property along with the details of the current owner, the terms of negotiations, related documentation and other details, which we intend to own and use in terms of Section 10(1) of the Act is enclosed as Annexure A;

particulars of movable property along with the details of the current owner, the terms of negotiations, related documentation and other details, which we do not intend to own and use and which we intend to move in terms of Section 10(4) of the Act is enclosed as Annexure B;

the list of contracts (including contracts with secured creditors<sup>25</sup>) which we intend to adopt and continue, along with complete particulars of such contracts is enclosed as Annexure C;

the list of contracts (including contracts with secured creditors) which we do not intend to adopt and continue, along with complete particulars of such contracts is enclosed as Annexure D.

Apart from the particulars of the movable property and the contracts listed in this letter, we do not intend to own, use, continue or adopt any other movable property or contracts, as the case may be and do hereby relinquish our rights with respect to the same. We acknowledge that any information not provided in this letter may not be included by the Nominated Authority in the Vesting Order.

Your Sincerely,

.....

(Authorised Signatory)

Name:

Designation:

---

<sup>25</sup> Not applicable if the Successful Bidder is the Prior Allottee in which case the secured creditors shall have an option to continue in terms of Section 12(1) of the Act.

Enclosed: As Above

Annexure A

Annexure B

Annexure C

Annexure D

## SCHEDULE C - FORMAT OF THE COMPLETION NOTICE

To  
The Nominated Authority  
[address]

[date]

**Sub: Completion Notice under Clause 3.2.1 of the Coal Mine Development And Production Agreement (the “Agreement”).**

Dear Sir,

We write with reference to Clause 3.2.1 of the Agreement. We have completed each of the Vesting Conditions specified in Clause 3.1 of the Agreement and the particulars of the same are provided below:

- (a) We continue to be in compliance with all the Eligibility Conditions;
- (b) [we have paid the first instalment of the Upfront Amount, in accordance with Clause 5.2.1 through *[particulars of payment to be mentioned]*<sup>26</sup>;
- (c) we have furnished the Performance Security through *[particulars of performance security and its manner of delivery to be mentioned]*;
- (d) we have paid the Fixed Amount through *[particulars of payment to be mentioned]*;
- (e) Additional Levy as was required to be paid has been paid through *[particulars of payment to be mentioned]*<sup>27</sup>; and
- (f) we have provided a written intimation as was required under Clause 3.1(f) of the Agreement through a letter dated *[particulars to be mentioned]*.

Documentary evidence with respect to completion of each of the Vesting Conditions is enclosed.

Your Sincerely,

.....

(Authorised Signatory)

Name:

Designation:

Enclosed: As Above

---

<sup>26</sup>Applicable for fully explored mines

<sup>27</sup> Not applicable if the Successful Bidder/JV Partner is not the Prior Allottee.

## SCHEDULE D - EFFICIENCY PARAMETERS

For Coal Mines under the Mines and Mineral (Development and Regulation) Act, 1957 and under the Coal Mines (Special Provisions) Act, 2015 (other than Schedule II coal mines)

Activities	Completion time	Milestone (MS) No.	Fully Explored Mines	Partially Explored Mines
			% of Performance Security to be appropriated for delay in completion of MS	% of Performance Security to be appropriated for delay in completion of MS
Prospecting Licence or Notification under section 4 of the CBA Act, 1957, as applicable	-	MS-1	Not Applicable	-
Completion of Drilling/ Exploration in accordance with the provisions of Clause 14	-			-
Preparation of Geological Report (GR)	Within 15 months from the date of allocation			0
	After 15 months upto 24 months from the date of allocation			25%
	After 24 months upto 30 months from the date of allocation			25 % (in addition to previous 25%)
Mining Lease Application	-	MS-2	10%	-
Submission of Mining Plan subject to the provisions of Clause 15	-			-
Approval of Mining Plan/Project Report subject to the provisions of Clause 15	6 months from the completion of previous MS/ If MS-1 is not applicable, 6 months from the date of allocation			
Forest Clearance Application	-	MS-3	10%	-
Environment Clearance Application	-			-
Forest Clearance (FC)-stage 1	-			-
Forest Clearance (FC)-stage 2	-			-
Wildlife Clearance	-			-
Approval under PESA	-			-
Environment Clearance (EC)	18 months from the completion of previous MS			

Activities	Completion time	Milestone (MS) No.	Fully Explored Mines	Partially Explored Mines
			% of Performance Security to be appropriated for delay in completion of MS	% of Performance Security to be appropriated for delay in completion of MS
Approval for Nallah /River Diversion	-	MS-4	-	
Approval for diversion of Power line/Rail/Road	-		-	
Permission to draw Water	-		-	
Permission to draw Power	-		-	
Consent to Establish /Operate	-		-	
Grant of Mining Lease or order by the Central Government under section 11 of CBA Act, 1957, as applicable	-		-	
Land Acquisition & possession of land and R&R required to reach rated capacity as per approved mining plan	21 months from the completion of previous MS		25%	
Intimation to DGMS for Mine opening	-	MS-5	-	
Approval for use of Explosive & Licence for Storage of Petroleum	-		-	
Permission under Factories Act, 1948	-		-	
Permission for use of Radio Frequency Communication System	-		-	
Labour related Permissions	-		-	
Escrow Account	-		-	
Application for Opening permission	-		-	
Mine Opening Permission	6 months from the completion of previous MS		25%	

**Note:**

1. Only the activity within the Milestone Number, against which percentage of appropriation of performance security has been assigned in the last column ('Main Activity'), will be monitored for the purpose of appropriation of performance security.

2. Activities other than Main Activity, against which percentage of appropriation of performance security has not been assigned, will be monitored for the purpose of early development of mines. However, in case of default in such activities, penalty will not be imposed.

3. The completion time provided for the Milestones does not bar the successful bidder from obtaining clearances concurrently, if allowed under the Applicable Laws.

4. In *bona fide* cases of delays not attributable to the Successful Bidder the Nominated Authority will decide on case to case basis the extension of timeline in Efficiency Parameters from the total time granted for all the Milestones, i.e. 66 months in case of mine where GR is to be prepared (Partially Explored Mines) and 51 months in case of mines where GR is not required to be prepared (Fully Explored Mines). For the said purpose, the Nominated Authority may refer the matter to Scrutiny Committee which will consider the delay caused on case to case basis and furnish its recommendation to the Nominated Authority for taking a decision.

5. For Partially Explored Mines, appropriation for delay in completion of MS-1 and MS-2 shall be from the performance security submitted pursuant to clause 6.1.3 of the Agreement and appropriation for delay in completion of remaining milestones shall be from the revised performance security submitted pursuant the said clause.

6. If the Successful Bidder is able to complete the last Milestone (i.e. Mine Opening Permission/ MS-5) within the total time granted for all the Milestones, i.e. 66 months in case of mine where GR is to be prepared (partially explored mines) and 51 months in case of mines where GR is not required to be prepared (fully explored mines), then the amount of performance security appropriated for delay in completion of any previous Milestone (if any) may be refunded to the Successful Bidder.

**For Schedule II Coal Mines of the Coal Mines (Special Provisions) Act, 2015**

MS No.	Milestone (MS)	Time Limit in Months (From the date of the Vesting Order/ zero date)	Percentage of Performance Security to be appropriated for delay in completion of MS
1	Completion of transfer of statutory permissions obtained by Prior Allottee / obtaining fresh statutory permissions, if required	9	10
2	Opening of Escrow Account (if not opened earlier)	9	10

**Note:**

1. In the event any statutory permission is required to be obtained afresh by the Successful Bidder, then the time line for obtaining the said statutory permission (milestone) and percentage appropriation of performance security in case of delay shall be same as that for Coal Mines under the Mines and Mineral (Development and Regulation) Act, 1957 and under the Coal Mines (Special Provisions) Act, 2015 (other than Schedule II coal mines). Further, in such event, if transfer of any statutory permission is contingent upon the aforementioned statutory permission which is required to be obtained afresh by the Successful Bidder, then the time limit for completion of transfer of such statutory permission obtained by Prior Allottee, would be 9 months from the scheduled timeline for obtaining fresh statutory permission.

2. In *bona fide* cases of delays not attributable to the Successful Bidder, the Nominated Authority will decide on case to case basis the extension of timeline in Efficiency Parameters from the total time granted for all the Milestones, i.e. 9 months. For the said purpose, the Nominated Authority may refer the matter to Scrutiny Committee which will consider the delay caused on case to case basis and furnish its recommendation to the Nominated Authority for taking a decision.

## SCHEDULE E - FORMAT OF PERFORMANCE SECURITY

[Reference number of the bank]

[date]

To

The Nominated Authority

[address]

### WHEREAS

- A. [Name of the Successful Bidder] incorporated in India under the Companies Act, [1956/2013] with corporate identity number [CIN of the Successful Bidder], whose registered office is at [address of registered office], India and principal place of business is at [address of principal place of business, if different from registered office] (the “**Successful Bidder**”) is required to provide an unconditional and irrevocable bank guarantee for an amount equal to INR [figures] (Indian Rupees [words]) as a performance security for a period of [period of performance bank guarantee].
- B. The Performance Security is required to be provided to **The President of India**, acting through the Central Government represented by the Nominated Authority appointed under Section 6 of the Coal Mines (Special Provisions) Act, 2015 (the “**Nominated Authority**”) for discharge of certain obligations under the Coal Mine Development and Production Agreement dated [date] (the “**Agreement**”) for [insert name] Coal Mine.
- C. We, [name of the bank] (the “**Bank**”) at the request of the Successful Bidder do hereby undertake to pay to the Central Government an amount not exceeding INR [figures] (Indian Rupees [words]) to secure the obligations of the Successful Bidder under the Agreement on demand from the Nominated Authority on the terms and conditions herein contained herein.

**NOW THEREFORE**, the Bank hereby issues in favour of the Nominated Authority this irrevocable and unconditional payment bank guarantee (the “**Guarantee**”) on behalf of the Successful Bidder in the amount INR [figures] (Indian Rupees [words]).

1. The Bank for the purpose hereof unconditionally and irrevocably undertakes to pay to the Nominated Authority without any demur, reservation, caveat, protest or recourse, immediately on receipt of first written demand from the Nominated Authority, a sum or sums (by way of one or more claims) not exceeding in the aggregate the amount of INR [figures] (Indian Rupees [words]) without the Nominated Authority needing to prove or to show to the Bank grounds or reasons for such demand for the sum specified therein and notwithstanding any dispute or difference between the Nominated Authority and Successful Bidder on any matter whatsoever. The Bank undertakes to pay to the Nominated Authority any money so demanded notwithstanding any dispute or disputes raised by the Successful Bidder in any suit or proceeding pending before any court or tribunal relating thereto the Bank’s liability under this present being absolute and unequivocal.

2. The Bank acknowledges that any such demand by the Nominated Authority of the amounts payable by the Bank to the Nominated Authority shall be final, binding and conclusive evidence in respect of the amounts payable by Successful Bidder to the Nominated Authority under the Agreement.
3. The Bank hereby waives the necessity for the Nominated Authority from demanding the aforesaid amount or any part thereof from the Successful Bidder and also waives any right that the Bank may have of first requiring the Nominated Authority to pursue its legal remedies against the Successful Bidder, before presenting any written demand to the Bank for payment under this Guarantee.
4. The Bank further unconditionally agrees with the Nominated Authority that the Nominated Authority shall be at liberty, without the Bank's consent and without affecting in any manner the Bank's obligation under this Guarantee, from time to time to:
  - (i) vary and/or modify and of the terms and conditions of the Agreement;
  - (ii) extend and / or postpone the time for performance of the obligations of the Successful Bidder under the Agreement, or
  - (iii) forbear or enforce any of the rights exercisable by the Nominated Authority against the Successful Bidder under the terms and conditions of the Agreement.

and the Bank shall not be relieved from its liability by reason of any such act or omission on the part of the Nominated Authority or any indulgence by the Nominated Authority to the Successful Bidder or other thing whatsoever which under the law relating to sureties would, but for this provision, have the effect of relieving the Bank of its obligations under this Guarantee.

5. Any payment made hereunder shall be made free and clear of and without deduction for, or on account of, any present or future taxes, levies, imposts, duties, charges, fees, commissions, deductions or withholdings of any nature whatsoever and by whom ever imposed; and where any withholding on a payment is required by law, the Bank shall comply with such withholding obligations and shall pay such additional amount in respect of such payment such that the Nominated Authority receives the full amount due hereunder as if no such withholding had occurred. It is clarified that even in such case the obligation of the Bank shall not in any manner exceed in the aggregate the amount of INR [figures] (Indian Rupees [words]).
6. The Bank agrees that Nominated Authority at its option shall be entitled to enforce this Guarantee against the Bank, as a principal debtor in the first instance without proceeding at the first instance against the Successful Bidder.
7. The Bank further agree that the guarantee herein contained shall remain in full force and effect during the period that specified in the Agreement and that it shall continue to be enforceable till all the obligations of the Successful Bidder under or by virtue of the said Agreement with respect to the Performance Security have been fully paid and its claims satisfied or discharged or till the Nominated Authority certifies that the terms and conditions of the Agreement with respect to the Performance Security have been fully and properly carried out by the Successful Bidder and accordingly discharges this guarantee. Notwithstanding anything contained herein, unless a demand or claim under this guarantee is made on the Bank in writing on or before the [date of



expiry of claim period of the bank guarantee] which is at least 1 year from the date of expiry of the validity of bank guarantee i.e. [date of expiry of bank guarantee] the Bank shall be discharged from all liability under this guarantee thereafter.

8. The payment so made by the Bank under this Guarantee shall be a valid discharge of Bank's liability for payment thereunder and the Nominated Authority shall have no claim against the Bank for making such payment.
9. This Guarantee is subject to the laws of India. Any suit, action, or other proceedings arising out of this Guarantee or the subject matter hereof shall be subject to the exclusive jurisdiction of courts at Delhi.
10. The Bank has the power to issue this Guarantee in favour of the Nominated Authority. This guarantee will not be discharged due to the change in the constitution of the Bank.
11. The Bank undertakes not to revoke this Guarantee during its currency except with the previous consent of the Nominated Authority in writing.
12. The Nominated Authority may, with prior intimation to the Bank, assign the right under this Guarantee to any other departments, ministries or any governmental agencies, which may act in the name of the President of India. The Nominated Authority may also assign this Guarantee in favour of the Governor of a State, with prior intimation to the Bank. Save as provided in this Clause 12, this Guarantee shall not be assignable or transferable.

Dated the [day] day of [month] [year] for the Bank.

In witness whereof the Bank, through its authorized officer, has set its hand and stamp.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name and Designation)

\_\_\_\_\_  
(Bank Stamp)

## **SCHEDULE F - WARRANTIES**

### **1. INFORMATION**

- 1.1. The information, provided to the Nominated Authority during the tender process and any time thereafter, including but not limited to the information contained in this Agreement, by the Successful Bidder is true, accurate and not misleading in any manner whatsoever.
- 1.2. Neither this Agreement nor any of the information and documents provided during the tender process exercise contains any untrue statement of fact, or omits to state a material fact necessary to make the statements herein or therein not misleading. The documents provided to the Nominated Authority and/or its advisors during the conduct of the tender process, are true and complete copies of such documents and none of the information provided to the Nominated Authority and/or its advisors during the tender process was incorrect, inaccurate or misleading in any manner whatsoever.

### **2. AUTHORITY**

- 2.1 The Successful Bidder has full legal capacity to enter into this Agreement and to perform its obligations under it and has taken all action necessary to authorise such execution and delivery and the performance of such obligations.
- 2.2 This Agreement has been duly executed and delivered by the Successful Bidder, and (assuming due authorisation, execution and delivery and performance by the Parties), constitutes a legal, valid and binding obligation of the Successful Bidder, enforceable against the Successful Bidder in accordance with the terms of the Agreement.
- 2.3 The Successful Bidder has obtained requisite corporate authorisation, including passing of all necessary resolutions at the meeting of its Board of Directors held on [●] to execute this Agreement and carry out all transactions and actions contemplated under this Agreement and do all necessary acts incidental to this Agreement.
- 2.4 The execution and delivery of this Agreement by the Successful Bidder and the performance of the obligations under it do not and shall not:
  - (a) conflict with or violate any provision of the memorandum of association or articles of association of the Successful Bidder;
  - (b) require on the part of the Successful Bidder, any filing with, or permission, authorisation, consent or approval of, any Governmental Authority;
  - (c) conflict with, result in breach of, constitute (with or without due notice or lapse of time or both) a default under, result in the acceleration of obligations under, create in favour of any party any right to terminate, modify or cancel, or require any notice, consent or waiver under, any contract or instrument to which the Successful Bidder is party or by which it is bound or to which its assets are subject;

- (d) violate, conflict with or constitute a default under any Applicable Law, lien, lease, judgement, award, ordinance, order, writ, injunction, decree, statute, rule or regulation or any other restriction of any kind or character applicable to the Successful Bidder or its properties or assets;

2.5 No person is entitled to any brokerage, finder's, or other similar fee or commission in connection with the transactions contemplated by this Agreement.

### **3. GENERAL**

#### **3.1 The Successful Bidder**

- (e) is duly organised, validly existing and in good standing under the laws of India;
- (f) meets all the Eligibility Conditions prescribed under the Act read with the Rules and the Tender Documents;
- (g) has the financial standing and capacity to undertake mining operations at the Coal Mine in accordance with the Efficiency Parameters;
- (h) is subject to civil and commercial laws of India with respect to this Agreement and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof;
- (i) there are no actions, suits, proceedings or investigations pending or to the Successful Bidder's 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 constitute an event of default hereunder;
- (j) has neither violated or defaulted nor has 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 Governmental Authority;
- (k) has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities;
- (l) except as set forth in any Mining Lease or in the order by the Central Government under Section 11 (1) of the CBA Act, 1957, as the case may be, all rights and interests of the Successful Bidder in and to the Coal Mine shall pass to and vest in the relevant Governmental Authority on the date of termination or expiry hereof, free and clear of all Encumbrances without any further act or deed on the part of the Successful Bidder or the Central Government;
- (m) no bribe or illegal gratification or any other illegal amount has been paid or will be paid in cash or kind by or on behalf of the Successful Bidder to any Person to procure the rights granted hereunder; and
- (n) Without prejudice to any express provision contained in this Agreement, the Successful

Bidder acknowledges that prior to the execution of this Agreement, the Successful Bidder has after a complete and careful examination made an independent evaluation of the Coal Mine and the information provided by the Nominated Authority, and has determined to its satisfaction the nature and extent of risks and hazards as are likely to arise or may be faced by the Successful Bidder in the course of performance of its obligations hereunder. The Successful Bidder also acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth above and hereby confirms that the Nominated Authority and any Governmental Authority shall not be liable for the same in any manner whatsoever to the Successful Bidder.

**SCHEDULE G - ADDRESS FOR PROVIDING NOTICES**

**A. Notice to the Nominated Authority**

<b>Address</b>	
<b>Telephone</b>	
<b>E-mail</b>	

**B. With CC to the Central Government**

<b>Address</b>	Ministry of Coal
<b>Telephone</b>	
<b>E-mail</b>	

**C. Notice to the Successful Bidder**

<b>Address</b>	
<b>Telephone</b>	
<b>E-mail</b>	

## SCHEDULE H - FORMAT OF DEED OF UNDERTAKING

*(Must be submitted by the Successful Bidder pursuant to Clause 6.1)*

*(To be executed on non-judicial Stamp Paper of requisite value)*

Ref. No.

Date: [insert date]

To

Nominated Authority

[Address]

Dear Sir,

We, [name of the Successful Bidder] (the “Allottee”) have read and examined the Agreement dated [date] (the “Agreement”) relating to Auction of [Name of Coal Mine] coal mine through the auction process which commenced on [date of issuance of Tender Document], and the Order of Ministry of Coal dated [insert date].

Capitalised expressions used in this undertaking but not defined herein have the same meaning as ascribed to them in the Agreement.

The Successful Bidder hereby unconditionally and irrevocably undertakes to submit the revised Performance Security (pursuant to clause 6.1) as required under the Agreement as and when the same is directed to be furnished and paid by Central Government or Nominated Authority, as the case may be.

We acknowledge that our failure to comply with the terms of this undertaking and the terms of the Agreement will be dealt with in accordance with the Agreement.

This undertaking has been issued pursuant to a [particulars of corporate authorisation of the Successful Bidder e.g. date of board resolution etc, as applicable]

Signature along with seal of the Company

(Duly authorized to sign the Undertaking on behalf of the Successful Bidder)

Name:

Designation:

Date:

Name of Company:

Address:

Witness:

Signature:

Name & Address:

Date:

**SCHEDULE I - MANDATORY WORK PROGRAM AND PRODUCTION SCHEDULE**

**Mandatory Work Program for Partially Explored Mines**

[insert]

Estimated Exploration Expense - INR [●] (Indian Rupees [●]) exclusive of taxes

**Production Schedule for Fully Explored Mines**

[insert]

## SCHEDULE J - REPRESENTATIVE PRICE

### A. Non-coking coal

Grade of Coal	Representative Price (Rs./tonne)
G1	11,236
G2	6,287
G3	5,976
G4	6,026
G5	5,814
G6	5,444
G7	3,413
G8	3,237
G9	2,791
G10	2,625
G11	1,932
G12	1,851
G13	1,745
G14	1,405
G15	1,286
G16	4,591
G17	709

### B. Coking coal

Grade of Coal	Representative Price (Rs./tonne)
Steel Grade I	21,074
Steel Grade II	19,134
Washery Grade I	5,736
Washery Grade II	5,050
Washery Grade III	4,671
Washery Grade IV	3,243
Washery Grade V*	2,791
Washery Grade VI**	1,851

\*Representative Price on the basis of corresponding grade of non-coking coal as G9

\*\*Representative Price on the basis of corresponding grade of non-coking coal as G12

Note: The abovementioned Representative Price is of September 2023 (provisional) i.e. the latest available Representative Price at the time of issuance of this Tender Document. In the event, there is any revision in the Representative Price of September 2023, the abovementioned Representative Price shall be replaced by such revised Representative Price.

Note: The representative price of the relevant grade of the lignite coal shall be published by Ministry of Coal separately.



**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be duly executed by their duly authorised representatives on the date and year written below, at [New Delhi]:

**Signatories**

The Nominated Authority

[Name of the Successful Bidder]

.....  
Name:

Date:

.....  
Name:

Designation

Date:

Duly authorized to execute this Agreement pursuant to [resolution passed by the board of directors of the *[name of the Successful Bidder]* on *[date]*].



सत्यमेव जयते



**SECOND ATTEMPT OF [17<sup>TH</sup> / 7<sup>TH</sup>] TRANCHE OF AUCTION  
UNDER THE [COAL MINES (SPECIAL PROVISIONS) ACT, 2015 / MINES AND  
MINERAL (DEVELOPMENT AND REGULATIONS) ACT, 1957]**

**STANDARD TENDER DOCUMENT  
AUCTION OF COAL MINES FOR SALE OF COAL/LIGNITE**

**[Insert Name] COAL/LIGNITE MINE**

**Nominated Authority, Ministry of Coal  
Government of India  
New Delhi  
November 15, 2023**

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**Important Notice:**

*The information contained in this tender document (“**Tender Document**”) or any information subsequently provided to Bidder(s), by or on behalf of the Nominated Authority and/or any of its employees or advisors, shall be provided to prospective Bidder(s) on the terms and conditions set out in this Tender Document.*

*This Tender Document is neither an agreement nor an offer by the Nominated Authority to the prospective Bidders or any other Person. The purpose of this Tender Document is to provide prospective Bidders with information that may be relevant in making and submitting Bids pursuant to this Tender Document. This Tender Document is based on various assumptions arrived at and/or assessments made by the Nominated Authority in relation to the [coal/lignite mine / coal/lignite block] (“**Coal Mine**”). The statements contained in this Tender Document do not purport to cover and does not cover all such assumptions, assessments or information that each Bidder may require. This Tender Document may not be suitable for all Persons, and it is not possible for the Nominated Authority, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or refers to this Tender Document. The assumptions, assessments, statements and information contained in this Tender Document, including specifically the Mine Dossier, may not be complete, accurate, adequate or correct and shall not be referred to by any Bidder as an exhaustive reference of such assessments, statements or information. Each prospective 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 Tender Document and obtain independent advice from appropriate sources before submitting a Bid.*

*The information provided in this Tender Document has been collated from several sources some of which may depend upon interpretation of Applicable Law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as comprehensive advice on such matter. The Nominated Authority accepts no responsibility for the accuracy or otherwise for any statement contained in this Tender Document.*

*The Nominated Authority, its employees and advisors make no representation or warranty and shall have no 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 this Tender Document or otherwise, including on account of the accuracy, adequacy, correctness, completeness or reliability of this Tender Document and any assessment, assumption, statement or information contained therein or deemed to form part of this Tender Document or arising in any way from participation in this tender process.*

*The Nominated Authority shall not accept any liability of any nature whatsoever, whether resulting from negligence or otherwise howsoever caused arising from reliance of any Bidder upon the statements contained in this Tender Document.*

*Notwithstanding anything contained in this Tender Document, the Nominated 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 this Tender Document.*

*The issue of this Tender Document does not imply that the Nominated Authority is bound to select or shortlist a Bidder as the Preferred Bidder or to appoint the Preferred Bidder as Successful Bidder for*

*the Coal Mine and the Nominated Authority reserves the right (without incurring any liability whatsoever) to reject all or any of the Bidders or Bids without assigning any reason whatsoever.*

*Each Bidder shall bear all its costs associated with or relating to the preparation and submission of its Bid including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by the Nominated Authority or any other costs incurred in connection with or relating to its Bid. This Tender Document is not transferable. Nothing contained in this Tender Document shall be binding on the Nominated Authority or confer any rights on the prospective Bidders. The examples set out in this Tender Document are for illustrative purposes only.*

*The Mine Dossier of the Coal Mine is being provided only as a preliminary reference document to the prospective Bidders, who are expected to carry out their own surveys, investigations and other detailed examination of the Coal Mine before submitting their Bids. Nothing contained in the Mine Dossier shall be binding on the Nominated Authority nor confer any right on the Bidders, and the Nominated Authority shall have no liability whatsoever in relation to or arising out of any or all contents of the Mine Dossier.*

## 1 Definitions

- 1.1 Unless the context otherwise requires, capitalised terms and expressions used in this Tender Document and not defined in this Tender Document, but defined in the Act or the Rules shall have the meaning assigned to it in the Act or in the Rules, as the case may be. Further references to “**coal**” in this Tender Document shall include lignite coal.
- 1.1.1 “**Acceptable Bank**” shall mean a Scheduled Bank as listed in the Second Schedule of the Reserve Bank of India Act, 1934 excluding Gramin Banks, Urban Co-operative Banks and State Co-operative Banks.
- 1.1.2 “**Act**” shall mean the [CM(SP) Act, 2015/ MMDR Act, 1957.]<sup>1</sup>
- 1.1.3 “**Affiliates**” with respect to a Bidder shall mean a person who, directly or indirectly: (1) Controls such Bidder; (2) is Controlled by such Bidder; (3) is Controlled by the same person, who directly or indirectly, controls such Bidder; or (4) is an Associate Company of such Bidder.
- 1.1.4 “**Agreement**” shall mean the [Coal Mine Development and Production Agreement to be executed by Nominated Authority with the Successful Bidder pursuant to Rule 13(5) of the Rules / Coal Block Development and Production Agreement to be executed by Nominated Authority with the Successful Bidder pursuant to Rule 8(1) of the Rules]<sup>2</sup> in the form and substance as provided in **Annexure IX**.
- 1.1.5 [“**Allocation Order**” shall have the meaning ascribed to it in the Rules.]<sup>3</sup>
- 1.1.6 “**Applicable Floor Price**” shall have the meaning ascribed thereto in Clause 3.3.2(c).
- 1.1.7 “**Applicable Law**” shall mean all applicable statutes, laws, by-laws, rules, regulations, orders, ordinances, protocols, codes, guidelines, policies, notices, directions, judgments, decrees or other requirements or official directive of any governmental authority or court or other law, rule or regulation approval from the relevant governmental authority, government resolution, directive, or other government restriction or any similar form of decision of, or determination by, or any interpretation or adjudication having the force of law in India. It is hereby clarified that Applicable Law includes the consolidated Foreign Direct Investment Policy 2017 issued by the Department of Industrial Policy and Promotion, as amended from time to time including as amended by Press Note 3 of 2020 issued by the Department for Promotion of Industry and Internal Trade.
- 1.1.8 “**Associate Company**” shall have the meaning ascribed thereto in clause (6) of section 2 of the Companies Act, 2013.
- 1.1.9 “**Authorised Signatory**” shall mean the individual representing a Bidder who has been duly authorised on behalf of such Bidder to execute and submit the Bid in accordance with the terms hereof.
- 1.1.10 “**Base Year**” shall mean the financial year 2017-18.
- 1.1.11 “**Bid**” shall mean the binding Technical Bid, the Initial Offer and the Final Offer, as applicable,

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<sup>1</sup> To be retained as applicable.

<sup>2</sup> To be retained as applicable.

<sup>3</sup> To be retained for mines being auctioned under MMDR Act 1957.

submitted by the Bidders in accordance with this Tender Document pursuant to a unique MSTC Registration Number.

- 1.1.12 **“Bidder”** with respect to a Bid shall mean a Company or corporation which participates in such Bid.
- 1.1.13 **“Bid Due Date”** shall mean the date and time on which the Technical Bid and the Initial Offer are required to be submitted in accordance with Clause 3.8.
- 1.1.14 **“Bid Security”** shall have the meaning ascribed thereto in Clause 6.1.1.
- 1.1.15 **“CBA Act”** shall mean the Coal Bearing Areas (Acquisition and Development) Act, 1957.
- 1.1.16 **“CBM”** shall mean Natural Gas (mainly Methane) contained in coal or bituminous lignite beds.
- 1.1.17 **“CMPDIL”** shall mean the Central Mine Planning and Design Institute Limited (a Government of India undertaking).
- 1.1.18 **“CM(SP) Act, 2015”** shall mean Coal Mines (Special Provisions) Act, 2015, as amended from time to time.
- 1.1.19 **“Coal Gasification”** shall mean the technological process wherein partial oxidation / combustion of coal in an atmosphere of air/oxygen and steam, generates a mixture of flammable gasses (Syngas, Synthesis gas, Producer gas) comprising mainly of CO and H<sub>2</sub> with small quantities of CO<sub>2</sub>, CH<sub>4</sub>, H<sub>2</sub>O etc. and slag/ash (mineral residue).
- 1.1.20 **“Coal Liquefaction”** shall mean the process of converting coal into liquid hydrocarbons i.e. liquid fuels and petrochemicals.
- 1.1.21 **“Coal Mine”** means [insert name] coal/lignite mine(s) located in [insert name of state] listed at Sl. No. [\*] of Schedule [I/II/III] of the Act/ [insert name] coal block(s) located in [insert name of state]<sup>4</sup>, which is a [Fully Explored/ Partially Explored] Mine being placed for auction by this Tender Document.
- 1.1.22 **“Company”** shall have the meaning ascribed thereto in clause (20) of section 2 of the Companies Act, 2013.
- 1.1.23 **“Control”** shall have the meaning ascribed thereto in clause (27) of section 2 of the Companies Act, 2013.
- 1.1.24 **“Eligibility Conditions”** shall mean the eligibility conditions specified in the Act and the Rules including all the eligibility conditions listed in Clause 4.
- 1.1.25 **“FDI”** shall mean Foreign Direct Investment, i.e. investment by non-resident entity or person resident outside India in the capital of an Indian company in accordance with Foreign Exchange Management (Non-Debt Instrument) Rules, 2019.
- 1.1.26 **“Final Offer”** shall mean the percentage share of revenue quoted by the Bidder in the second round of the Financial Bid as payable to the Government per Tonne of coal.
- 1.1.27 **“Financial Bid”** shall have the meaning ascribed therein in Clause 3.3.1(b).

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<sup>4</sup> To be retained as applicable.



- 1.1.28 **“Fixed Amount”** shall have the meaning ascribed thereto in Clause 3.3.2(h)(ii).
- 1.1.29 **“Floor Price”** means the percentage share of revenue prescribed under this Tender Document in Clause 3.3.2.
- 1.1.30 **“Fully Explored Mine”** means a coal mine/ block categorised in G-1 exploration stage as per the modified Indian Standard Procedure for Coal Resource Estimation, 2017 issued by the Central Geological Programming Board of Geological Survey of India.
- 1.1.31 **“Geological Report”** shall have the meaning ascribed in Rule 2(1)(iv) of the Mineral Concession Rules, 1960.
- 1.1.32 **“Geological Reserves”** shall mean [(i) for Schedule II Coal Mines, the gross reserves mentioned in the Geological Report under the Act less the coal reserves extracted from the Coal/ Mine till March 31, 2020 and ii) for mines other than Schedule II Coal Mines, the gross reserves mentioned in the Geological Report.]<sup>5</sup> [gross reserves mentioned in the Geological Report.]<sup>6</sup>.
- 1.1.33 **“Initial Offer”** shall mean the percentage share of revenue quoted by the Bidder in the Financial Bid as payable to the Government per Tonne of coal, and which must be above the Floor Price in accordance with Clause 3.3.2(a).
- 1.1.34 **“Lock-in Period”** shall have the meaning ascribed thereto in Clause 5.2.1.3.
- 1.1.35 **“Mandatory Work Program”** shall mean the work program as provided in **Annexure I** and shall be monitored and reviewed by the Nominated Authority or the Central Government or any agency appointed by the Nominated Authority in this regard.
- 1.1.36 **“Mine Dossier”** shall have the meaning ascribed [to it in the Rules/ to Block Dossier in the Rules]<sup>7</sup>.
- 1.1.37 **“Mining Lease”** shall mean the lease to be granted by the State Government in accordance with [Section 8(4)(b) read with Section 8(8) of the Act / Section 11A of the Act]<sup>8</sup>.
- 1.1.38 **“Mining Plan”** shall mean a plan which has been approved in accordance with the Applicable Laws in relation to the Coal Mine.
- 1.1.39 **“Minor Minerals”** shall have the meaning ascribed to it in the [Act / MMDR Act, 1957]<sup>9</sup>.
- 1.1.40 **“MMDR Act, 1957”** shall mean Mines and Minerals (Development and Regulation) Act, 1957, as amended from time to time.
- 1.1.41 **“Monthly Payment”** shall have the meaning ascribed thereto in Clause 3.10.1.
- 1.1.42 **“MoPNG”** shall mean the Ministry of Petroleum and Natural Gas, Government of India.
- 1.1.43 **“MSTC”** shall mean MSTC Limited (a Government of India undertaking).
- 1.1.44 **“National Coal Index”** shall mean the coal index determined in accordance with the Office

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<sup>5</sup> To be retained for mines being auctioned under CM(SP) Act 2015.

<sup>6</sup> To be retained for mines being auctioned under MMDR Act 1957.

<sup>7</sup> To be retained as applicable.

<sup>8</sup> To be retained as applicable.

<sup>9</sup> To be retained as applicable.

Memorandum ‘Roll-out of National Coal Index (Base Year 2017-18)’ dated June 04, 2020 and Operational Guidelines of National Coal Index and Representative Prices dated June 17, 2020 issued by the Ministry of Coal, as may be amended, and published by the Government of India on a bi-monthly basis and includes sub-indices notified for various coal grades.

- 1.1.45 **“National Lignite Index”** shall mean the lignite index for determining representative price of the relevant grade of the lignite coal, as published by the Government of India separately.
- 1.1.46 **“Nominated Authority”** shall mean the Nominated Authority [appointed under Section 6 (1) of the Act and Rule 3 of the Rules made thereunder.] / [appointed under Section 6 (1) of the CM(SP) Act, 2015 and Rule 3 of the Coal Mines (Special Provisions) Rules, 2014 made thereunder and authorised under Section 26 of the Act.]<sup>10</sup>
- 1.1.47 **“Notional Price”** shall have the meaning ascribed thereto in Clause 3.10.1(c)(i).
- 1.1.48 **“Partially Explored Mine”** means a coal mine/ block categorised in G-2 or G-3 exploration stage as per the modified Indian Standard Procedure for Coal Resource Estimation, 2017 issued by the Central Geological Programming Board of Geological Survey of India.
- 1.1.49 **“Performance Security”** shall have the meaning ascribed thereto in Clause 7.
- 1.1.50 **“Person”** shall include any Company or association or body of individuals, whether incorporated or not.
- 1.1.51 **“Preferred Bidder”** shall have the meaning ascribed to it in Clause 3.3.2(c).
- 1.1.52 **“Prior Allottee”** shall have the meaning ascribed thereto in the [Act and for the purposes of this Tender Document, the Prior Allottee shall be [name and particulars of the prior allottee]]<sup>11</sup> / [CM(SP) Act, 2015.]<sup>12</sup>
- 1.1.53 **“Production Schedule”** shall have the meaning ascribed thereto in Clause 9.2.1.
- 1.1.54 **“Qualified Bidder(s)”** shall have the meaning ascribed to it in Clause 3.3.2(b).
- 1.1.55 **“Representative Price”** shall mean the grade-wise price calculated in accordance with Clause 3.10.1 and further detailed in **Annexure II**.
- 1.1.56 **“Rules”** shall mean the [Coal Mines (Special Provisions) Rules, 2014 / Coal Blocks Allocation Rules, 2017]<sup>13</sup> or any other rules framed pursuant to the Act.
- 1.1.57 **“[Rule 8(2) Order / Rule 3(1) Order]”**<sup>14</sup> shall mean an order issued by the Central Government under [Rule 8(2) / Rule 3(1)]<sup>15</sup> of the Rules.
- 1.1.58 **“Scheduled Date of Production”** shall have the meaning ascribed thereto in Clause 3.11.1.
- 1.1.59 **“State Government”** shall mean the Government of the state where the Coal Mine is located.

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<sup>10</sup> To be retained as applicable.

<sup>11</sup> To be retained for mines being auctioned under CM(SP) Act 2015.

<sup>12</sup> To be retained for mines being auctioned under MMDR Act 1957.

<sup>13</sup> To be retained as applicable.

<sup>14</sup> To be retained as applicable.

<sup>15</sup> To be retained as applicable.

- 1.1.60 **“Subsidiary Company”** shall have the meaning thereto in clause (87) of section 2 of the Companies Act, 2013.
- 1.1.61 **“Successful Bidder”** shall have the meaning ascribed thereto in Clause 3.3.2(d).
- 1.1.62 **“Supreme Court Judgment”** shall have the meaning ascribed thereto in Clause 2.1.1.]<sup>16</sup>
- 1.1.63 **“Technical Bid”** shall mean a confirmation of compliance with the Eligibility Conditions along with necessary supporting documents and information.
- 1.1.64 **“Technically Qualified Bidder”** shall have the meaning ascribed thereto in Clause 3.3.2(b).
- 1.1.65 **“Tender Document”** shall mean this document including its Annexures including specifically the Agreement, the Mine Dossier, order F. No. 13011/2/2020-CBA2-Part(2) dated May 28, 2020 of Ministry of Coal, any addenda to this Tender Document and any other document issued pursuant hereto.
- 1.1.66 **“Upfront Amount”** shall mean an amount [of INR [●]]<sup>17</sup>, which has been calculated in accordance with Clause 3.9.1 and payable in accordance with Clause 3.9.2.
- 1.1.67 **“Value of Estimated Geological Reserves”** shall mean an amount which is a product of the estimated quantity of Geological Reserves in the Coal Mine and the Representative Price of the relevant grade of coal. It is clarified that relevant grade of coal shall mean weighted average grade of non-coking coal and/or weighted average grade of coking coal, as the case may be, for the Coal Mine, as per Geological Report. For Coal Mine with lignite coal, relevant grade of coal shall be as notified by Government of India separately.
- 1.1.68 **“Vesting Order”** shall have the meaning ascribed thereto in the Act.]<sup>18</sup>
- 1.1.69 **“Designated Bank Account shall mean”** “Bank Account of Nominated Authority, Ministry of Coal, Government of India” whose details are provided below:

Bank Name-Punjab National Bank (PNB)  
Bank Branch- Connaught Circus  
Account Number-0276050414586  
IFSC - PUNB0027620  
MICR Code- 110024773  
Bank Address - J.C. Das Building, 90/8, Connaught Circus, New Delhi –110001  
Bank Contact Number- (011)-23360661, 23347012

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<sup>16</sup> To be retained for mines being auctioned under CM(SP) Act 2015.

<sup>17</sup> Applicable for Fully Explored Mines

<sup>18</sup> To be retained for mines being auctioned under CM(SP) Act 2015.

## 2 Introduction

### 2.1 Background<sup>19</sup>

2.1.1 [The Supreme Court of India, *vide* its judgment dated August 25, 2014, read with its order dated September 24, 2014 (collectively the “**Supreme Court Judgment**”), had cancelled allotment of 204 coal blocks. The Coal Mine was one of the 204 cancelled coal blocks and accordingly, its allotment to the Prior Allottee was cancelled pursuant to the Supreme Court Judgment, with effect from the ‘appointed date’ (*as defined in the Act*).

2.1.2 Subsequent to the Supreme Court Judgment, the Coal Mines (Special Provisions) Ordinance, 2014; the Coal Mines (Special Provisions) Second Ordinance, 2014 were promulgated, the Rules were notified; and the Act was passed and notified for auction and allotment of all coal blocks, the earlier allotment of which were cancelled pursuant to the Supreme Court Judgment.]

[The Act, was promulgated for development and regulation of mines and minerals. In 2010, Section 11A was introduced *vide* the Mines and Mineral (Development and Regulation) (Amendment) Act, 2010 and was subsequently amended *vide* Section 30 read with Schedule IV of the Coal Mines (Special Provisions) Act, 2015, which provides for the mechanism to auction and/or allot coal and lignite mines under the provisions of the Act. ]<sup>20</sup>

2.1.3 The Press Note 4 of 2019, issued by the Central Government, amended FDI Policy 2017, to permit 100% FDI under automatic route in coal mining activities, including associated processing infrastructure subject to the Act and other Applicable Laws, for sale of coal. The Press Note 3 of 2020, issued by the Central Government, further amended the FDI Policy to prescribe a requirement to seek prior Government approval if such foreign direct investment is by an entity from a country which shares land borders with India or where the beneficial owner of such foreign direct investment into India is situated in or is a citizen of any such country.

2.1.4 Subsequently, the Mineral Laws (Amendment) Act, 2020 has been notified on March 13, 2020, with effect from January 10, 2020 to amend the Act so as to permit auction of Coal Mines for own consumption, sale or for any other purpose as may be determined by the Government.

2.1.5 Pursuant to [Rule 8(2) / Rule 3(1)]<sup>21</sup> of the Rules, the Central Government has issued a ‘[Rule 8(2) Order’ / Rule 3(1) Order]<sup>22</sup> dated [Insert Relevant Order Date]<sup>23</sup>/ [Insert Relevant Order Date]<sup>24</sup>, to the Nominated Authority for auction of the Coal Mine pursuant to [Section 4(1) and 4(2) / Section 11A] of the Act. A copy of such [Rule 8(2) Order / Rule 3(1) Order]<sup>25</sup> is available at <http://coal.nic.in>.

2.1.6 Accordingly, the tender process for the Coal Mine was conducted by the Nominated Authority *vide* tender document dated March 29, 2023. However, since the number of Technically Qualified Bidders pursuant to this tender process were less than 2, the tender process for the Coal Mines was annulled *vide* notice dated June 28, 2023.

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<sup>19</sup> To be retained as applicable.

<sup>20</sup> To be retained as applicable.

<sup>21</sup> To be retained as applicable.

<sup>22</sup> To be retained as applicable.

<sup>23</sup> To be retained for mines being auctioned under CM(SP) Act 2015

<sup>24</sup> To be retained for mines being auctioned under MMDR Act 1957

<sup>25</sup> To be retained as applicable.

- 2.1.7 Pursuant to Para 2.2.(b) of the Office Memorandum No. CBA2-13011/2/2020-CBA2 dated June 01, 2020 issued by Ministry of Coal, the Nominated Authority is initiating the second attempt of auction of the Coal Mine with the same terms and conditions as in the first annulled attempt of auction i.e. vide tender document dated March 29, 2023, and with the highest Initial Offer of Technically Qualified Bidder, if any, in the first annulled attempt of auction as the Floor Price for the second attempt of auction. A copy of such Office Memorandum is available at <http://coal.nic.in>.
- 2.1.8 Accordingly, this Tender Document is being issued by the Central Government, through the Nominated Authority, for auction of the Coal Mine. The auction would be conducted in accordance with the Act, the Rules, any other order issued by the Central Government and this Tender Document. [In pursuance of the order dated September 12, 2022 passed by the National Green Tribunal in Original Application No. 104/ 2018 (Shivpal Bhagat & Ors. Vs. Union of India & Ors.), for the mines located in Chhattisgarh, the bidders will have to comply with the orders passed by the National Green Tribunal.]
- 2.1.9 [Pursuant to Section 6 of the Act, the Central Government has appointed the Nominated Authority to conduct the tender process./ Pursuant to Section 26 of the Act, the Central Government has authorised the Nominated Authority to conduct the tender process.]<sup>26</sup> Subsequently, the Nominated Authority shall execute the Agreement with the Successful Bidder in accordance with [Rule 13(5)/ Rule 8(1)] of the Rules<sup>27</sup>.

## **2.2 The Act and the Rules**

- 2.2.1 This tender and auction process is subject to and in accordance with the Act, the Rules and this Tender Document, and the rights and obligations of all the Bidders is subject to the Act and the Rules. All Bidders are encouraged to familiarise themselves with the Act and the Rules. As of the date of this Tender Document, the Act and the Rules are available at <http://coal.nic.in>.

## **2.3 The Coal Mine**

- 2.3.1 The Coal Mine is being auctioned strictly for the purpose of sale of coal as mentioned in the [Rule 8(2) Order/ Rule 3(1) Order]<sup>28</sup>. The mining operations are required to be conducted strictly in accordance with all Applicable Law, including without limitation the Act, the Rules, the [Vesting Order / Allocation Order]<sup>29</sup> and this Tender Document and any document referred herein, including the Agreement.

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<sup>26</sup> To be retained as applicable.

<sup>27</sup> To be retained as applicable.

<sup>28</sup> To be retained as applicable.

<sup>29</sup> To be retained as applicable.

### **3 Tender Process**

#### **3.1 Electronic Auction**

- 3.1.1 The auction of the Coal Mine shall be conducted on electronic platform created by MSTC and no physical bids shall be accepted or considered.
- 3.1.2 The technical details with respect to access to such electronic platform are provided in **Annexure III** (*Technical Details with respect to electronic auction*).
- 3.1.3 In case of any technical clarification regarding access to the electronic auction platform or conduct of the auction process, the Bidders may contact MSTC directly at the address provided in **Annexure III**.

#### **3.2 Tender Document**

- 3.2.1 In order to participate in the tender process, each Bidder shall be required to make a non-refundable payment of INR 5,00,000 (Indian Rupees Five Lakh) with respect to each Bid. Please refer to **Annexure III** for technical details regarding the aforementioned payment.
- 3.2.2 Upon payment of the abovementioned fee, the Bidder shall be eligible to download the specific Tender Document from website of the MSTC.

#### **3.3 Description of the Tender Process**

- 3.3.1 Pursuant to [Rule 10(4)(a) / Rule 5(5)]<sup>32</sup> of the Rules, the auction would be conducted through a two stage process comprising of:
- a) Technical Bid in which the Bidders would be required to provide details regarding compliance with the Eligibility Conditions; and
  - b) Financial Bid comprising of: (i) the Initial Offer; and (ii) the Final Offer. The Initial Offer is required to be submitted along with the Technical Bid. It is hereby clarified that the Financial Bid will comprise of two rounds. In the first round the Initial Offer of the Technically Qualified Bidders would be opened and ranked on the basis of descending order for determination of the Qualified Bidders as provided in Clause 3.3.2(b) below. The Qualified Bidders shall be eligible to participate in the electronic auction and submit their Final Offer.
- 3.3.2 The two stage tender process would be conducted in the following sequence:
- (a) **Technical Qualification:**  
  
In the first stage, the Bidders would be required to submit: (i) the Bid Security; (ii) the Technical Bid in the form and substance specified in **Annexure IV**; and (iii) the Financial Bid to the extent of specifying the Initial Offer, which should be higher than the Floor Price in multiples of 0.5% of revenue share till Initial Offer reaches 10% and thereafter in multiples of 0.25% revenue share. The Floor Price for the Coal Mine is [%] of revenue share.

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<sup>32</sup> To be retained as applicable.

The Technical Bid of each Bidder, which is duly submitted in accordance with this Tender Document along with the Bid Security shall be opened by the Nominated Authority on the date mentioned in Clause 3.8.1, at such time and place as notified subsequently and in presence of the Bidders who choose to attend. The Nominated Authority reserves the right to ask for any details, clarifications or any other information, in writing based on information submitted by Bidders for the purpose of evaluation of Technical Bids or otherwise.

The Technical Bid shall be evaluated against the Eligibility Conditions and against the test of responsiveness (in accordance with Clause 3.4). The Nominated Authority may appoint an evaluation committee for evaluation of the Technical Bids.

(b) **Ranking and Qualification:**

The Bidders who meet all the Eligibility Conditions (the “**Technically Qualified Bidders**”) shall be ranked, and thereafter a determination shall be made in the following manner to identify the qualified bidders, who shall be qualified for participating in the electronic auction and shall be eligible to submit a Final Offer (the “**Qualified Bidders**”):

- I. **Ranking:** The Technically Qualified Bidders shall be ranked in a descending order on the basis of the respective Initial Offer. The Technically Qualified Bidders who have submitted the same Initial Offer, shall be assigned the same rank.

**II. Determination of Qualified Bidders:**

- (i) If there are only 2 or 3 Technically Qualified Bidders, all the Technically Qualified Bidders shall be considered as Qualified Bidders.
- (ii) If there are 4 to 6 Technically Qualified Bidders, the lowest ranked Technically Qualified Bidder(s) shall be eliminated and the remaining Technically Qualified Bidders shall be considered as Qualified Bidders.
- (iii) If there are 7 or more Technically Qualified Bidders, 1/3<sup>rd</sup> of the Technically Qualified Bidders (taking from the lowest rank(s) holding Technically Qualified Bidders) and subject to a maximum of 3, shall be eliminated. In the event the number of Technically Qualified Bidders at the lowest ranks, as per this Clause, is more than 3, then all such Technically Qualified Bidders holding the lowest ranks shall be eliminated notwithstanding the cap of 3 Technically Qualified Bidders to be eliminated. The remaining Technically Qualified Bidders shall be considered as Qualified Bidders. While calculating the one third, fractions will be ignored.

Provided however, no Technically Qualified Bidder shall be eliminated in the event the number of Qualified Bidders after elimination pursuant to this Clause is less than 3.

Provided however that in the event that there is only 1 Technically Qualified Bidder, then the Technically Qualified Bidder shall be considered as the Qualified Bidder. Provided further, that in the event there is no Technically Qualified Bidder, then the tender process for the Coal Mine shall stand annulled.

**Illustration 1:**

Solely for the purposes of reference of the Bidders, the methodology of determination of Qualified Bidders is illustrated below:

(i) In case 10 Bids are received which are referred to as bid *A* to *J* and no two Initial Offers are identical.

Then,

**Step 1 – Ranking:** Upon ranking them in descending order of Initial Offers, the Technically Qualified Bidders would be ranked in the following manner: *I, D, B, A, C, F, E, G, J*, and *H* [i.e. *I* being the highest Initial Offer and *H* being the lowest]. The number of Technically Qualified Bidders shall be 10.

**Step 2 – Determination of Qualified Bidders:** Eliminating the bottom 3 Technically Qualified Bidders (1/3<sup>rd</sup> of 10 being 3.33 and ignoring 0.33), the Qualified Bidders shall be *I, D, B, A, C, F, and E*.

(ii) In the aforementioned illustration no. (i), if Initial Offer against Bids *F, E, G and J* is equal;

Then,

**Step 1 – Ranking:** Upon ranking them in descending order of Initial Offers, the Technically Qualified Bidders would be ranked in the following manner:

Rank 1: *I*

Rank 2: *D*

Rank 3: *B*

Rank 4: *A*

Rank 5: *C*

Rank 6: *F, E, G and J*

Rank 7: *H*

**Step 2 – Determination of Qualified Bidders:** Eliminating the Technically Qualified Bidders at lowest ranks:

- 1/3<sup>rd</sup> of 10 Technically Qualified Bidders being 3.33 and ignoring 0.33, 3 Technically Qualified Bidders who ranked last should be eliminated.
- However, the total number of the Technically Qualified Bidders at the lowest ranks is 5. After elimination of 5 these last ranked 5 Technically Qualified Bidders, the number of Qualified Bidders would be 5. Accordingly, the Qualified Bidders shall be *I, D, B, A, and C*.

(iii) In the aforementioned illustration no. (i), if Initial Offer against Bids *B, A, C, F, E, G, J and H* is equal;



Then,

**Step 1 – Ranking:** Upon ranking them in descending order of Initial Offers, the Technically Qualified Bidders would be ranked in the following manner:

Rank 1: I

Rank 2: D

Rank 3: B, A, C, F, E, G, J and H

**Step 2 – Determination of Qualified Bidders:** Eliminating the Technically Qualified Bidders at lowest ranks:

- 1/3<sup>rd</sup> of 10 Technically Qualified Bidders being 3.33 and ignoring 0.33, 3 Technically Qualified Bidders who ranked last should be eliminated.
- However, the total number of the Technically Qualified Bidders at the lowest ranks is 8. After elimination of these last ranked 8 Technically Qualified Bidders, the number of Qualified Bidders would be 2. Since the remaining number of Qualified Bidders is less than 3, no elimination of Technically Qualified Bidders shall take place.

The Qualified Bidders shall be **I, D, B, A, C, F, E, G, J, and H.**(iii) In case that instead of 10 Bids only 2 Bids are received, then both the Technically Qualified Bidders shall be Qualified Bidders. This would be the case even if the Initial Offer of two or more of such Technically Qualified Bidders is identical.

***Note:** The above mentioned illustrations are merely for reference purpose and in case of inconsistency, the provision of Clause 3.3.2(b) shall prevail.*

(c) **Final Offer:**

The “**Applicable Floor Price**” for electronic auction shall be the highest Initial Offer received from the Qualified Bidders. The Qualified Bidders shall be permitted to place their Final Offer on the electronic auction platform, which is higher than the Applicable Floor Price. The Final Offer shall be accepted in multiple of 0.5% of revenue share till the Final Offer reaches 10% and thereafter in multiple of 0.25% of revenue share.

The Qualified Bidder that submits the highest Final Offer during the electronic auction process shall be declared as the “**Preferred Bidder**”.

In the event that the Qualified Bidder that submitted the highest Initial Offer i.e. the “**Applicable Floor Price**”, becomes ineligible to participate in the electronic auction, the next highest Initial Offer shall become the Applicable Floor Price.

In case the auction process is annulled due to non-submission of at least one Final Offer on the electronic auction platform, the Bid Security of the Qualified Bidder(s) who has submitted the highest Initial Offer i.e. the Applicable Floor Price, shall be forfeited in accordance with Clause 6.1.5.

Provided however, in the event there is only one Qualified Bidder pursuant to Clause 3.3.2(b) above, then the Initial Offer submitted by the Qualified Bidder shall be considered as the Final Offer submitted by the Qualified Bidder and the matter will be

referred to Empowered Committee of Secretaries (ECoS) for appropriate decision with respect to allocation of the Coal Mine. In the event the ECoS decides that the Coal Mine shall be allocated to the Qualified Bidder, the Qualified Bidder shall be declared as the Preferred Bidder. However, in the event the ECoS decides that the Coal Mine shall not be allocated to the Qualified Bidder, the tender process for the Coal Mine shall stand annulled.

(d) **Recommendation to Central Government:**

Pursuant to [Rule 10(9)/ Rule 5(7)]<sup>31</sup> of the Rules, the Nominated Authority shall recommend the name of the Preferred Bidder to the Central Government. Upon receipt of a direction from the Central Government that a [Vesting Order/ Allocation Order]<sup>32</sup> should be issued to the Preferred Bidder, the Preferred Bidder shall be declared as the “Successful Bidder”.

(e) **Preferred Bidder not to become Successful Bidder in certain cases:**

Notwithstanding the above, in the event that the Nominated Authority or the Central Government determines that a Preferred Bidder should not be declared as the Successful Bidder on account of any reason whatsoever, including without limitation, the withdrawal of the Preferred Bidder from the auction process for the Coal Mine or ceasing to comply with the Eligibility Conditions, the tender process shall stand terminated and the Nominated Authority shall have the power to re-initiate the tender process in accordance with [Rule 17 / Rule 9]<sup>33</sup> of the Rules, provided the Nominated Authority has not received any [Rule 8(2) Order / Rule 3(1) Order]<sup>34</sup> from the Central Government afresh.

(f) **Issue of order providing exception to Section 6(1)(b) of the [Act/ MMDR Act, 1957]**<sup>35</sup>

In the interest of the development of the coal mining sector, the Central Government shall increase the maximum area limits in respect of prospecting license or mining lease in accordance with Section 6(1)(b) of the [Act/MMDR Act, 1957]<sup>36</sup>.

(g) **Signing of the Agreement:**

Upon receipt of the necessary direction from Central Government under [Rule 10(10) / Rule 5(7) of the Rules]<sup>37</sup>, the Nominated Authority shall inform the Successful Bidder and execute the Agreement in accordance with [Rule 13(5)/ Rule 8(1) of the Rules]<sup>38</sup>. The Successful Bidder shall not be entitled to seek any deviation, modification or amendment in the Agreement, except with the prior approval of the Central Government.

(h) **Payments by the Successful Bidder:**

On signing the Agreement, the Successful Bidder, within such period as prescribed in Clause 3.8, shall, to the Nominated Authority:

(i) furnish the Performance Security as specified in Clause 7;

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<sup>31</sup> To be retained as applicable.

<sup>32</sup> To be retained as applicable.

<sup>33</sup> To be retained as applicable.

<sup>34</sup> To be retained as applicable.

<sup>35</sup> To be retained as applicable.

<sup>36</sup> To be retained as applicable.

<sup>37</sup> To be retained as applicable.

<sup>38</sup> To be retained as applicable.

- (ii) [pay a fixed amount for the compensation for land and mine infrastructure; cost borne by the Prior Allottee for the preparation of geological report; cost borne by the Prior Allottee for obtaining all statutory licenses, permits, permissions, approvals, clearances or consents relevant to the mining operations; cost incurred by CMPDIL for preparation of the mine dossier including block boundary and financial valuation along with applicable taxes; (collectively the “**Fixed Amount**”). If the Successful Bidder is a Prior Allottee, then, the compensation payable to such Successful Bidder shall be set off or adjusted against the Fixed Amount payable by such Successful Bidder.

The Fixed Amount is required to be deposited by the Successful Bidder in accordance with the relevant provisions of the Act and the Rules and as provided in the Agreement. The payment related to preparation of mine dossiers is required to be made directly to CMPDIL whereas, the remaining fixed amount is required to be deposited with the office of Nominated Authority. The Fixed Amount payable is based on the available information and the assessment made by the competent authority and will be uploaded as a part of this Tender Document. Any upward revision in the Fixed Amount on a subsequent date by the Government or the Nominated Authority consequent to any process or on the orders of any competent court of law, shall also be payable by the Successful Bidder. Additionally, in case of any downward revision in the Fixed Amount on a subsequent date by the Government or the Nominated Authority, the same would be refunded by the Nominated Authority to the Successful Bidder.]<sup>39</sup>

[cost incurred by CMPDIL and other Government agencies, if any, in deriving detailed geographical boundary coordinates and in preparing geological report, if any; cost incurred by CMPDIL for preparation of the mine dossier including block boundary and financial valuation along with applicable taxes; (collectively the “**Fixed Amount**”). The Fixed Amount is required to be deposited by the Successful Bidder as provided in the Agreement. The payment related to preparation of mine dossiers is required to be made directly to CMPDIL whereas, the remaining fixed amount is required to be deposited with the office of Nominated Authority. The Fixed Amount payable is based on the available information and the assessment made by the competent authority and will be uploaded as a part of this Tender Document. Any upward revision in the Fixed Amount on a subsequent date by the Government or the Nominated Authority consequent to any process or on the orders of any competent court of law, shall also be payable by the Successful Bidder. Additionally, in case of any downward revision in the Fixed Amount on a subsequent date by the Government or the Nominated Authority, the same would be refunded by the Nominated Authority to the Successful Bidder.]<sup>40</sup>

- (iii) For Fully Explored Mines, pay an amount equal to INR [●] (Indian Rupees ([●]) as the first instalment of the Upfront Amount.

- (i) **Issuance of the [Vesting Order / Allocation Order]<sup>41</sup>:**

Upon receipt of Performance Security and other payments mentioned in sub-clause (h) above, the [Vesting Order / Allocation Order] shall be issued, in duplicate, by the

<sup>39</sup> This is to be retained only for Coal Mines being auctioned under the CMSP Act.

<sup>40</sup> This is to be retained only for Coal Mines being auctioned under the MMDR Act.

<sup>41</sup> To be retained as applicable.

Nominated Authority to the Successful Bidder and the Successful Bidder shall, within 7 (seven) days of the receipt of the [Vesting Order / Allocation Order], sign and return the duplicate copy of the [Vesting Order / Allocation Order] in acknowledgement thereof. In the event that the duplicate copy of the [Vesting Order / Allocation Order] duly signed by the Successful Bidder is not received within the stipulated date, the Nominated Authority may, unless it consents to extension of time for submission thereof, appropriate the Performance Security and other payments made by the Successful Bidder as damages and also terminate the Agreement.

### **3.4 Tests of Responsiveness**

Prior to evaluation of the Technical Bid, the Nominated Authority shall determine whether each Technical Bid is responsive to the requirements of this Tender Document. The Nominated Authority reserves the right to reject any Technical Bid which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be considered or permitted by the Nominated Authority in respect of such Technical Bid. While making any determination with respect to responsiveness of a Technical Bid, the Nominated Authority may consider such parameters as it may deem relevant, including considerations that the Technical Bid:

- a) is received as per the prescribed formats along with documentary evidence required to support its ability to meet the Eligibility Conditions and other conditions prescribed elsewhere in this Tender Document;
- b) is received by the Bid Due Date including any extension thereof;
- c) is submitted in the manner prescribed in this Tender Document;
- d) is accompanied by the Bid Security as specified in Clause 6;
- e) is accompanied by a Power of Attorney as specified in **Annexure V** and an Affidavit as specified in **Annexure VI**;
- f) contains all the information (complete in all respects) including the Initial Offer as requested in this Tender Document;
- g) does not contain any condition or qualification;
- h) only 1 (one) Technical Bid has been made for the Coal Mine by the Bidder and/or its Affiliate; and
- i) is generally not considered to be non-responsive in terms of any other parameters as may be considered relevant by the Nominated Authority.

### **3.5 Pre-Bid Conference**

3.5.1 Pre-Bid conference(s) of the Bidders shall be convened at the designated date as mentioned in Clause 3.8 at a time and place specified by the Nominated Authority. Only those persons who have purchased the Tender Document shall be allowed to participate in the pre-bid conferences.

3.5.2 A maximum of 3 (three) representatives of each Bidder shall be allowed to participate on production of duly issued authority letter from the Bidder and identity documents. During the course of Pre-Bid conference(s), the Bidders will be free to seek clarifications and make suggestions for consideration of the Nominated Authority.

3.5.3 The Nominated 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 tender process.

### **3.6 Site visits and Information**

- 3.6.1 Prior to submission of Technical Bid, the Bidders are encouraged to undertake the site visit to Coal Mine, at their own cost and risk and ascertain for themselves the site conditions, location, communication, climate, availability of power, Applicable Laws and regulations, and any other matter considered relevant by them in the manner provided herein. This Tender Document does not however give the unconditional or unrestricted right to access the Coal Mine or the right to the Bidders to prospect for coal in the Coal Mine or carry out any drilling in the Coal Mine.
- 3.6.2 The Bidders which have made payment of INR 5,00,000 (Indian Rupees Five lakhs) for this Tender Document in accordance with Clause 3.2 shall be eligible to make request for visit to the Coal Mine until the Bid Due Date. The site visit to the Coal Mine shall be coordinated through the following e-mail address [na.moc@nic.in](mailto:na.moc@nic.in). The email should clearly bear the following subject line: “*Site Visit for [insert name of the coal mine]*”.
- 3.6.3 In the event a Bidder undertakes a site visit, then such Bidder shall be liable for any loss or damage caused to the site [and/or the Prior Allottee], on account of any act or omission of such Bidder or its employees, authorised representatives, agents, advisors etc.
- 3.6.4 Bidders are advised to email their request for site visit in the manner specified in Clause 3.6.2 on or before 1600 hours on the date specified in Clause 3.8 for receiving request for site visit and any request received thereafter shall not be considered.
- 3.6.5 The documents pertaining to land, as submitted by the Prior Allottee, are available on the website of MSTC. It is clarified that the Nominated Authority shall have no responsibility for any non-availability of documents pertaining to land or the contents of the documents pertaining to land. Irrespective of the availability/non-availability or contents of documents related to land, the Bidders are required to have satisfied themselves on all matters related to the Coal Mine, before submitting a Bid.

### **3.7 Tender Document Queries and Clarifications**

- 3.7.1 Any queries or request for additional information concerning this Tender Document may be sent by e-mail to the Nominated Authority at [nomauthority.moc@nic.in](mailto:nomauthority.moc@nic.in) in the format specified in **Annexure VII** (*Format for seeking clarifications regarding the Tender Document*). The email should clearly bear the following subject line: “*Queries/Request for Additional Information: Tender Document for [insert name of the coal mine]*”.
- 3.7.2 Each query should contain complete details of facts, information and Applicable Law germane to the query and also the particulars of the person posing the query. The Nominated Authority reserves the right to not answer any query, including any query which is incomplete or anonymous.
- 3.7.3 The queries should be emailed in .doc, .docx, .xls, .xlsx format, on or before 1600 hours on the date specified in Clause 3.8 for receiving queries.
- 3.7.4 The Nominated Authority shall endeavour to respond to the queries within the period specified in Clause 3.8. However, the Nominated Authority reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this Clause 3.7 shall be taken or read as compelling or requiring the Nominated Authority to respond to any question or to provide any clarification. The Nominated Authority may publish the queries and its responses thereto on the website of Ministry of Coal, without identifying the source of queries.

- 3.7.5 The Nominated Authority may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued by the Nominated Authority shall be deemed to be part of this Tender Document. Provided however that, any non-written clarifications and information provided by the Nominated Authority, its employees or representatives in any manner whatsoever shall not in any way or manner be binding on the Nominated Authority.
- 3.7.6 The Nominated Authority shall not entertain any query or clarification from Bidders who fail to meet the Eligibility Conditions.
- 3.7.7 Bids shall be deemed to be under consideration immediately after the Technical Bids are opened and until such time the Nominated 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 this Tender Document, from contacting by any means, the Nominated Authority and/ or their employees/ representatives on matters related to the Bids under consideration.
- 3.7.8 Save and except as provided in this Tender Document, the Nominated Authority shall not entertain any correspondence with any Bidder in relation to acceptance or rejection of any Bid.

### **3.8 Schedule of the Tender Process**

- 3.8.1 The schedule of the Tender Process shall be as per the tentative timelines specified below:

<b>Sl. No.</b>	<b>Event Description</b>	<b>Estimated Date</b>	
1	(i) Publication of notice inviting tender (NIT) in one English and one Hindi national newspaper (ii) Publication of NIT on the website of MoC (iii) Publication of NIT and Tender Document on the website of MSTC Ltd (iv) Commencement of sale of Tender Document on the website of MSTC Ltd The date of completion of the last sub-event among the above sub-events shall be considered $T_0$	$T_0$	Wednesday, November 15, 2023
2	Pre-bid meeting	$T_0 + 14$	Wednesday, November 29, 2023
3	Last date of receiving written queries from Bidders	$T_0 + 21$	1600 hours IST on Wednesday, December 06, 2023
4	Last date for written responses to queries by the Nominated Authority	$T_0 + 36$	Thursday, December 21, 2023
5	Last date of receiving written requests for Site Visit	$T_0 + 43$	1600 hours IST on Thursday, December 28, 2023
6	Last date for registration of bidder at the website of MSTC	$T_0 + 50$	Thursday, January 04, 2024
7	Last date for sale of Tender Document at the website of MSTC	$T_0 + 56$	Wednesday, January 10, 2024
8	Bid Due Date	$T_0 + 58$	Online Submission on MSTC Platform in accordance with Clause 3.A.(i) of Annexure III: 1200 hours IST on Friday, January 12, 2024

Sl. No.	Event Description	Estimated Date	
			Offline submission at Office of Nominated Authority in accordance with Clause 3.A.(ii) of Annexure III: 1600 hours IST on Friday, January 12, 2024
9	Opening of the Technical Bid (s)	T <sub>0</sub> + 61	Monday, January 15, 2024
10	Start date of examination of the Technical Bid (s)	T <sub>0</sub> + 62	Tuesday, January 16, 2024
11	End date of examination of the Technical Bid (s)	T <sub>0</sub> + 86	Tuesday, January 30, 2024
12	Conduct of electronic auction (Financial Bid – Final Offer) for the Qualified Bidders	T <sub>0</sub> + 87 - T <sub>0</sub> + 100	Wednesday, January 31, 2024 - Tuesday, February 13, 2024
13	Recommendation by the Nominated Authority to the Central Government for selection of Successful Bidder	T <sub>0</sub> + 107	Tuesday, February 20, 2024
14	Approval of Successful Bidder by the Central Government	T <sub>1</sub>	
15	Intimation to the Successful Bidder (subject to receipt of instruction from the Central Government)	T <sub>1</sub> + 2	
16	Execution of the Agreement between the Successful Bidder and Nominated Authority	T <sub>1</sub> + 7	
17	Last date for furnishing of Performance Security and payment of Fixed and Upfront Amount by the Successful Bidder	T <sub>1</sub> + 47	
18	Issuance of Vesting/Allocation Order by Nominated Authority	T <sub>1</sub> + 50	
<p>Note: *Registration on the website of MSTC Ltd. will commence immediately after publication of the NIT on the website of MSTC Ltd.</p> <p>*Above schedule is on assumption that electronic auction round for each mine will be completed in 1 day. In the event electronic auction round of any mine continues beyond 1 day, time schedule for the remaining events shall be extended.</p> <p>*Any change in the timeline will be communicated through an addendum/ corrigendum to the Tender Document.</p>			

### 3.9 Value of Estimated Geological Reserves and Upfront Amount

3.9.1 The Upfront Amount shall be estimated as follows: Equivalent to 0.20% (zero point twenty percent) of the Value of Estimated Geological Reserves of the Coal Mine, subject to following ceiling conditions:

- For Coal Mines with Geological Reserves up to 200 MT, Upfront Amount shall be lower of i) 0.20% (zero point twenty percent) of the Value of Estimated Geological Reserves of the Coal Mine and ii) Rs. 75 Crore.
- For Coal Mines with Geological Reserves above 200 MT, Upfront Amount shall be lower of i) 0.20% (zero point twenty percent) of the Value of Estimated Geological Reserves of the Coal Mine and ii) Rs. 500 Crore.

[Where the Value of Estimated Geological Reserves of the Coal Mine shall be an amount of INR [●], which is a product of the Geological Reserves in the Coal Mine (MT) and

Representative Price of relevant grade(s) of coal, where the relevant grade of coal is [●]:

Geological Reserves in the Coal Mine (MT)	[●]
Representative Price of relevant grade(s) of coal (Rs./tonne)	[●]

<sup>42</sup>

3.9.2 The Upfront Amount shall be payable by the Successful Bidder in four equal instalments (of 25% (twenty five per cent.) each) as follows:

<b>Instalment</b>	<b>Schedule II of the Coal Mines (Special Provisions) Act, 2015</b>	<b>Fully Explored Mines under Mines and Mineral (Development and Regulation) Act, 1957 and under Coal Mines (Special Provisions) Act, 2015 (other than Schedule II)</b>	<b>Partially Explored Mines under Mines and Mineral (Development and Regulation) Act, 1957 and under Coal Mines (Special Provisions) Act, 2015</b>	<b>Payable to</b>
First	Within 40 (forty) days of execution of the Agreement	Within 40 (forty) days of execution of the Agreement	Within 40 (forty) days of in-principle approval of the Mining Plan	Nominated Authority
Second	Within 6 (six) months from the date of issuance of [Vesting Order/ Allocation Order] <sup>43</sup>	Within 15 (fifteen) business days of execution of the Mining Lease or order by the Central Government under Section 11 (1) of the CBA Act, 1957, as the case may be	Within 15 (fifteen) business days of execution of the Mining Lease or order by the Central Government under Section 11 (1) of the CBA Act, 1957, as the case may be	State Government
Third	Within 9 (nine) months from the date of issuance of [Vesting Order/ Allocation Order]	Within 15 (fifteen) business days of grant of the Coal Mine opening permission	Within 15 (fifteen) business days of grant of the Coal Mine opening permission	State Government
Fourth	Within 12 (twelve) months from the date of issuance of [Vesting Order/ Allocation Order]	Within 15 (fifteen) business days of date of commencement of coal production	Within 15 (fifteen) business days of date of commencement of coal production	State Government

3.9.3 The Upfront Amount shall be adjusted in full, against the Monthly Payments to be made to the State Government. Provided however, such adjustment of Upfront Amount shall not exceed 50% of aggregate Monthly Payments for the year. Adjustment of Upfront Amount towards Monthly Payments shall be on a monthly basis i.e. maximum 50% of the Monthly Payment for the month to be paid by the Successful Bidder shall be adjusted against Upfront Amount and would be reconciled at the end of the year. It is clarified that Upfront Amount shall not be adjusted against other statutory dues including taxes, levies, royalty, contribution to NMET and DMF, etc. and these shall be payable as per Applicable Law.

<sup>42</sup> To be retained for Fully Explored Mines

<sup>43</sup> To be retained as applicable



3.9.4 The Upfront Amount, including the first instalment, provided in the Tender Document may undergo revision pursuant to the finalisation of the provisional Representative Price. On account of this finalisation of Representative Price, any upward or downward revision in the first instalment of the Upfront Amount shall be adjusted in the second instalment payable by the Successful Bidder to the State Government, along with revision in all the subsequent instalments.

### 3.10 Periodic Payments by the Successful Bidder

3.10.1 In addition to the payments specified in Clause 3.3.2(h), the Successful Bidder will be required to pay revenue on monthly basis to the State Government (the “**Monthly Payment**”) which shall be determined as product of

- a) Final Offer;
- b) Total quantity of coal on which the statutory royalty is payable during the month; and
- c) Notional Price or Actual Price, whichever is higher, where
  - (i) Notional Price shall mean the price arrived at after adjusting the Representative Price with sub-index of National Coal Index or National Lignite Index, as applicable, of the relevant basket of coal grade(s) on the date on which royalty becomes payable.

Representative Price shall be a product of:

- (A) Weights (volume of coal in different components of notified price, auction price and imported price channel) of the Base year; and
- (B) prices of these components at the time of issuance of this Tender Document. It is clarified that this shall mean the latest available prices of these components at the time of issuance of this Tender Document .

Methodology for determining the Representative Price of lignite coal shall be provided separately by Government of India.

- (ii) Actual Price shall mean the sale invoice value of coal, net of statutory dues including taxes, levies, royalty, contribution to NMET and DMF etc.

It is clarified that in case of pithead washeries, Monthly Payment shall be made in the same manner as royalty is paid i.e. Monthly Payment shall be made on the quantity and grade of coal for which royalty is paid by washeries as per rules, during the month.

**Illustration 2:** Solely for the purposes of reference of the Bidders, the methodology of determination of Monthly Payment for a Successful Bidder who has quoted Final Offer of 10% is illustrated below:

Assuming that the Representative Price and National Coal Index of relevant basket of Coal Grade on the date of Representative Price are as follows:

Particulars	G11	G12	G13
Representative Price (Rs./tonne) (A)	1640	1420	1380

Particulars	G11	G12	G13
National Coal Index of the relevant basket of Coal Grade – latest available as on the date of issuance of Tender Document (B)	105	105	105
National Coal Index of the relevant basket of Coal Grade on the date on which royalty becomes payable (C)	115	115	115

Grade of Coal	Quantity of coal on which the statutory royalty is payable during the month (MT) (D)	Notional Price (Rs./tonne) (A*C/B)	Actual Price (Rs./tonne)	Max of Notional Price & Actual Price (Rs./tonne) (E)	Revenue Share (Rs. Crore) (D*E*Final Offer/10)
G11	0.50	1796	1800	1800	9.00
G12	0.70	1555	1550	1555	10.89
G13	0.60	1511	1500	1511	9.07
<b>Total</b>	<b>1.80</b>				<b>28.96</b>

***Note:** The above-mentioned illustration is merely for reference purpose and in case of inconsistency, the provision of Clause 3.10.1 shall prevail.*

***Note:** For the purpose of determining monthly payments for successful bidder, the applicable representative price of the lignite coal and National Lignite Index shall be published separately by Government of India.*

- 3.10.2 Such payment is required to be made to the State Government on the date on which the statutory royalty is payable in the manner as may be prescribed by the State Government. Further, the Monthly Payments may be subject to such adjustments as may be prescribed by the Nominated Authority, annually basis the audited financial statements of the Successful Bidder or at such other periodic intervals as may be prescribed. Such adjustments may be on account of the National Coal Index or National Lignite Index, as applicable, as may be notified for and applicable to the Monthly Payment dates as well as higher of Actual Price and Notional Price.
- 3.10.3 It may be clarified that in addition to the Monthly Payment, other statutory dues including taxes, levies, royalty, contribution to NMET and DMF, etc. shall be payable as per Applicable Law.

### **3.11 Incentive for Early Commencement of Coal Production**

- 3.11.1 A rebate of 50% on the Final Offer would be allowed till the Scheduled Date of Production, for the quantity of coal produced earlier than the Scheduled Date of Production prescribed in this Tender Document. The scheduled date of production shall be determined in the following manner (“**Scheduled Date of Production**”):

- (a) In case of Fully Explored Mines, the scheduled date of production shall be the date of production as per the Production Schedule [i.e. [insert] months from the date of issuance of [Vesting Order/ Allocation Order]<sup>44</sup>/<sup>45</sup>. *Provided however*, in case of Schedule II Coal Mines of the CM(SP) Act, 2015, in the event any statutory permission is required to be obtained afresh by the Successful Bidder, then the Scheduled Date of Production shall stand modified to the aggregate of the scheduled time granted for

<sup>44</sup> To be retained as applicable

<sup>45</sup> To be retained for Fully Explored Mines

obtaining fresh permission and the scheduled time granted for completion of transfer of statutory permissions obtained by the Prior Allottee as per Clause 10 of the Agreement.

- (b) In case of Partially Explored Mines, the scheduled date of production shall be the scheduled date of production given in the approved Mining Plan.

**Illustration 3:** Solely for the purposes of reference of the Bidders, the methodology of determination of incentive for early commencement of coal production for a Successful Bidder who has quoted Final Offer of 10% and where Scheduled Date of Production is June 1, 2024 is illustrated below:

Particulars	G11	G12	G13
Representative Price (Rs./tonne) (A)	1640	1420	1380
National Coal Index of the relevant basket of Coal Grade – latest available as on the date of issuance of Tender Document (B)	105	105	105
National Coal Index of the relevant basket of Coal Grade on the date on which royalty became payable (C)	115	115	115

It is assumed that the Successful Bidder commenced coal production on May 1, 2024 i.e. earlier than the Scheduled Date of Production. Accordingly, incentive for early commencement of coal production and Monthly Payment shall be determined as provided below:

Grade of Coal	Quantity of coal on which the statutory royalty is payable during the month (MT) (D)	Notional Price (Rs./tonne) (A*C/B)	Actual Price (Rs./tonne)	Max of Notional Price & Actual Price (Rs./tonne) (E)	Applicable Final Offer (F = 50%* Final Offer)	Revenue Share (Rs. Crore) (D*E*F/10)
G11	0.50	1796	1800	1800	5%	4.50
G12	0.70	1555	1550	1555	5%	5.44
G13	0.60	1511	1500	1511	5%	4.53
<b>Total</b>	<b>1.80</b>					<b>14.48</b>

**Note:** The above mentioned illustration is merely for reference purpose and in case of inconsistency, the provision of Clause 3.10.1 and Clause 3.11.1 shall prevail.

**Note:** For the purpose of determination of incentive for early commencement of lignite production by successful bidder, the applicable representative price of the lignite coal and National Lignite Index shall be published separately by Government of India.

3.11.2 Statutory dues including taxes, levies, royalty, contribution to NMET and DMF etc. shall be payable as per Applicable Law. No exemption would be given to the Successful Bidder from obtaining any approval etc. under Applicable Law required for commencing and undertaking coal production.

### 3.12 Incentive for Coal Gasification or Coal Liquefaction

3.12.1 If the Successful Bidder consumes the coal produced from the Coal Mine either in its own plant(s) or plant of its holding, Subsidiary Company, Affiliate, Associate Company or sells the coal for Coal Gasification or Coal Liquefaction, a rebate of 50% on Final Offer will be provided on the total quantity of coal consumed or sold or both for Coal Gasification or Coal Liquefaction on an yearly basis, subject to the following conditions:

- (a) At least 10% of scheduled coal production as per approved Mining Plan for that year shall be consumed and/or sold for Coal Gasification or Coal Liquefaction; and
- (b) A certificate issued by the Coal Controller's Organisation, certifying the quantity of coal consumed or sold or both for Coal Gasification or Coal Liquefaction, shall be submitted by the Successful Bidder to the State Government. The said certificate shall be issued in accordance with the Guidelines issued by Coal Controller's Organisation, as may be amended.

Provided however that in no event shall the Successful Bidder be entitled to avail of the incentives available under this Clause 3.12 in respect of the quantity of coal produced earlier than the Scheduled Date of Production, if it elects to avail of the incentives under Clause 3.11 above in respect of such quantity of coal.

**Illustration 4:** Solely for the purposes of reference of the Bidders, the methodology of determination of incentive for Coal Gasification or Coal Liquefaction of coal is illustrated below:

Particulars		
Final Offer (%)	(A)	10%
Scheduled Coal Production during the year as per approved Mining Plan – G11 Grade (MT)	(B)	15
Total quantity of coal consumed or sold or both for Coal Gasification or Coal Liquefaction during the year – G11 Grade (MT)	(C)	2
Quantity of coal consumed or sold or both for Coal Gasification or Coal Liquefaction as % of Scheduled Coal Production (%)	(D = C/B)	13.33%
Rebate in Final Offer applicable for total quantity of coal consumed or sold or both for Coal Gasification or Coal Liquefaction during the year (%)	(E)	50%
Revenue share payable for the year for quantity of coal consumed or sold or both for Coal Gasification or Coal Liquefaction - calculated in accordance with Clause 3.10.1 and Clause 3.11.1 above (Rs. Crore)	(F)	30
<b>Applicable revenue share payable for the year for quantity of coal consumed or sold or both for Coal Gasification or Coal Liquefaction after considering the incentive for Coal Gasification or Coal Liquefaction of coal (Rs. Crore)</b>	<b>(F*(1-E))</b>	<b>15</b>

**Note:** The above-mentioned illustration is merely for reference purpose and in case of inconsistency, the provision of Clause 3.12.1 shall prevail.

**Note:** For the purpose of determination of incentive for lignite gasification and lignite liquefaction of lignite, the applicable representative price of the lignite mineral shall be published separately by Government of India.

#### **4 Eligibility Conditions**

- 4.1.1 In accordance with [Section 4(2) / Section 11A]<sup>46</sup> of the Act, following entities shall be eligible to participate in the auction of the Coal Mine:
- (a) a Government company or corporation or a joint venture company formed by such company or corporation or between the Central Government or the State Government, as the case may be, or any other company incorporated in India; or
  - (b) a company or a joint venture company formed by two or more companies.
- 4.1.2 Additional Conditions for Prior Allottee: In the event the Bidder is a Prior Allottee, then such Bidder must also meet the following conditions for being eligible to participate in the tender process:
- (i) The Bidder who is a Prior Allottee must have paid the additional levy within the time period prescribed under Rule 18 of the Rules. It is clarified that if a Prior Allottee has not made payment of the applicable additional levy within the time prescribed under Rule 18 of the Rules, then such Prior Allottee, its promoter or any of its company of such Prior Allottee shall not be eligible to participate in the auction process either directly or indirectly, including without limitation as a JV Partner of a joint venture, or through any Affiliate.
  - (ii) The Bidder who is a Prior Allottee, who is convicted of an offence relating to coal block allocation and sentenced with imprisonment for more than 3 (three) years, shall not be eligible to participate in the auction.
- 4.1.3 If any company or corporation has failed to pay the Fixed Amount, upward revision in Fixed Amount or any other dues payable to the Nominated Authority in respect of any mine allocated to it then such company or corporation, its affiliates, subsidiaries, group companies or joint venture companies comprising such company or corporation shall not be eligible to participate in the auction unless such Fixed Amount, upward revision in Fixed Amount and such other dues have been paid for with interest, if any.
- 4.1.4 Limitations on total number of Bids: A Bidder shall submit only 1 (one) bid for a particular Coal Mine. No Affiliate(s) of such Bidder shall submit a bid for the said Coal Mine. In case an Affiliate(s) of a Bidder also submits a bid for the said Coal Mine, the bids submitted by both the Bidder and its Affiliate(s) shall be rejected.

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<sup>46</sup> To be retained as applicable.

## **5 Instructions to Bidders**

### **5.1 General Terms of Bidding**

- 5.1.1 Notwithstanding anything to the contrary contained in this Tender Document, in the event of any conflict between this Tender Document and the Agreement, the relevant provisions of the Agreement shall have overriding effect.
- 5.1.2 Bidders are required to deposit the Bid Security with respect to the Bid being submitted by the Bidder in accordance with Clause 6.1 of this Tender Document. The Bid Security is required to be provided in the form of a Bank Guarantee in the format provided in **Annexure VIII** (*Bank Guarantee for Bid Security*) or cash transfer through RTGS/NEFT into the Designated Bank Account.
- 5.1.3 The Bidder are also required to submit a Power of Attorney as per the format provided in **Annexure V** (*Power of Attorney for Signing the Bid*), authorising the signatory of the Bid to participate in the tender process and do all acts pursuant thereto on behalf of the Bidder, including usage of the digital signature on behalf of the Bidder
- 5.1.4 The Bid and all communications in relation to or concerning this Tender Document and the Bid are required to be in the English language.
- 5.1.5 The documents including this Tender Document and all documents attached, as provided by the Nominated Authority are and shall remain or become the property of the Nominated Authority and are being transmitted to the Bidders solely for the purpose of preparation and the submission of a Bid in accordance herewith. The Bidders are required to treat all such information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The provisions of this Clause 5.1.5 shall also apply *mutatis mutandis* to Bids and all other documents submitted by the Bidders in relation to the Bid, and the Nominated Authority shall not return to the Bidders any Bid, document or any information provided along therewith.
- 5.1.6 Any Agreement executed pursuant to this Tender Document shall be subject to the terms hereof and any documents issued pursuant to the Act, the Rules, this Tender Document or any other document referred herein.
- 5.1.7 Bidders are also encouraged to mine at an accelerated rate, to the best of their capabilities and are permitted to increase mine production to the maximum possible extent. After the Coal Mine is exhausted Bidders are encouraged to bid for new coal mines.

### **5.2 Change in Control and transfer**

#### **5.2.1 Change in Control or transfer subsequent to determination of Successful Bidder**

- 5.2.1.1 Any change in Control of the Successful Bidder or any transfer of the Coal Mine by the Successful Bidder, shall be subject to Applicable Laws and may be undertaken after the Lock-in Period, with an intimation to the Nominated Authority, no later than 15 (fifteen) days prior to (a) the proposed change in Control of the Successful Bidder; or (b) transfer of the Coal Mine by the Successful Bidder, as the case may be and provided that pursuant to such change in Control, the Successful Bidder continues to meet the Eligibility Conditions or in case of transfer of Coal Mine by the Successful Bidder, the transferee meets the Eligibility Conditions:

Provided however, that any change in Control of the Successful Bidder or transfer of the Coal Mine by the Successful Bidder during the Lock-in Period shall be permitted if such change in control is pursuant to an insolvency proceeding against the Successful Bidder under the Insolvency and Bankruptcy Code, 2016 or Applicable Laws or the transfer is pursuant to enforcement of security by any bank or financial institution in accordance with the terms of the Agreement and Applicable Laws, as the case may be.

5.2.1.2 In the event that any change in Control of the Successful Bidder or any proposed transfer of the Coal Mine granted to the Successful Bidder which requires prior consent, approval, no-objection certificate or the like of the relevant authority or authorities under any Applicable Laws, then such approval shall be granted only if the transferee of such right, title or interest or the Successful Bidder subsequent to the change of Control, as the case may be, also meets all the Eligibility Conditions.

5.2.1.3 The lock-in period shall be as follows (“**Lock-in Period**”):

- (i) For Fully Explored Mines, till the execution of Mining Lease or order by the Central Government under Section 11 (1) of the CBA Act, 1957, as the case may be.
- (ii) For Partially Explored Mines, Lock-in Periods shall be in two phases:
  - a) First, till one year of the date of issuance of [Vesting Order / Allocation Order]<sup>47</sup> provided that at least 15% of estimated exploration expense has been incurred by the Successful Bidder; or
  - b) Second, after preparation of Geological Report till the execution of Mining Lease or order by the Central Government under Section 11 (1) of the CBA Act, 1957, as the case may be.

## **5.2.2 Change in Control prior to determination of Successful Bidder**

5.2.2.1 Upon submission of the Technical Bid but prior to determination of the Successful Bidder, no change in Control of a Bidder shall be permitted without the prior approval of the Nominated Authority.

5.2.2.2 The Nominated Authority shall grant such approval only if such change in Control does not result in the Bidder becoming non-compliant with any of the Eligibility Conditions.

5.2.2.3 By submitting the Bid, the Bidder acknowledges and agrees that in the event of a change in Control of a Bidder during the tender process, or change in Control of the Bidder, at any time until the determination of the Successful Bidder would be deemed to have knowledge of the same and shall be required to inform the Nominated Authority forthwith along with all relevant particulars about the same.

## **5.2.3 Consequences of default**

5.2.3.1 In the event of any change in Control or any transfer of right, title or interest in the Coal Mine which is not in conformity with this Tender Document or any Applicable Law, then in addition to any rights, remedy or consequences as may be applicable under Applicable Laws, the Nominated Authority, the State Government, or the Central Government, as the case may be, may, in its sole discretion, appropriate the Bid Security or the Performance Security,

disqualify the Bidder; terminate the Agreement executed with the Successful Bidder; and/or terminate and withdraw the [Vesting Order / Allocation Order]<sup>48</sup>.

5.2.3.2 Any transfer of right, title or interest which is not in conformity with this Tender Document or Applicable Laws shall be void *ab-initio*.

#### **5.2.4 Security**

5.2.4.1 Subject to Applicable Laws, the Successful Bidder shall be entitled to create security over the Coal Mine through mortgage for the purposes of availing financing from a bank or financial institutions for the purposes of financing mining operations at the Coal Mine and such security creation shall not require prior approval by the Nominated Authority or the Central Government.

5.2.4.2 In the event of a default, the financial creditors, shall be entitled to enforce their security interest in the manner provided by Applicable Law, including the Insolvency and Bankruptcy Code, 2016, provided that any transferee of the Coal Mine meets all the Eligibility Conditions.

#### **5.3 Cost of Bidding**

5.3.1 The Bidders shall be responsible for all of the costs associated with the preparation of their Bids and their participation in the tender process. The Nominated Authority will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the tender process.

#### **5.4 Verification of information by the Bidders**

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

- a) made a complete and careful examination of this Tender Document and unconditionally and irrevocably accepted the terms thereof;
- b) reviewed all relevant information provided by the Nominated Authority, as may be relevant to the Bid;
- c) accepted the risk of inadequacy, error or mistake in the information provided in this Tender Document or furnished by or on behalf of the Nominated Authority relating to any of the matters related to the auction process or the Coal Mine;
- d) satisfied itself about all matters regarding the auction process and the Coal Mine required for submitting an informed Bid, in accordance with this Tender Document and performance of all of its obligations;
- e) acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in this Tender Document or ignorance of any of the matters related to the auction process or the Coal Mine 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 Nominated Authority, or a ground for termination of the Agreement by the Successful Bidder; and
- f) agreed to be bound by the undertakings provided by it under and in terms hereof.

5.4.2 The Nominated Authority shall not be liable for any omission, mistake or error in respect of any of the information provided or on account of any matter or thing arising out of or concerning or relating to this Tender Document, this Tender Document or the tender process, including any error or mistake therein or in any information or data given by the Nominated Authority.



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## **5.5 Verification by the Nominated Authority**

- 5.5.1 The Nominated Authority reserves the right to verify all statements, information and documents submitted by the Bidder in response to this Tender Document and the Bidder shall, when so required by the Nominated Authority, make available all such information, evidence and documents as may be necessary for such verification. The Nominated Authority may, in its sole discretion, share/ disclose all statements, information and documents submitted by the Bidder in response to this Tender Document to any governmental authority / instrumentality for their verification. Any such verification or lack of such verification by the Nominated Authority shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Nominated Authority thereunder.

## **5.6 Sale of Coal, Coal Bed Methane and Minor Minerals**

- 5.6.1 **Sale of Coal:** There shall be no restriction to carry on mining operations for own consumption, sale or for any other purpose. The coal produced from the Coal Mine may be sold by the Successful Bidder in any manner as may be decided by the Successful Bidder including sale to Affiliates and related parties, utilisation of coal for any purpose including but not limited to captive consumption, Coal Gasification, Coal Liquefaction and export of coal.

### **5.6.2 Exploitation of Coal Bed Methane**

- 5.6.2.1 In case there is presence of CBM in the Coal Mine, the Successful Bidder may choose to commercially exploit the CBM present in the mining lease area. The lease/license in respect of CBM operations shall be governed by Applicable Law. The Successful Bidder shall report the existence of CBM to the Nominated Authority and other relevant authority.
- 5.6.2.2 In case the Successful Bidder decides to exploit the CBM present in the coal mining lease area, it shall be required to approach the Directorate General of Hydrocarbon (DGH), MoPNG for its technical approval followed by the grant of CBM mining lease by State Government.
- 5.6.2.3 In addition to the Monthly Payment, the Successful Bidder shall also make payments of monthly revenue share for CBM based on the Final Offer, and the payment of the monthly revenue share for CBM shall be made within 20 days from the end of each month. Other mechanisms with regard to arriving at the price of CBM shall be subject to applicable guidelines issued by the MoPNG for this arrangement. Presently these guidelines are Policy Framework on Early Monetization of Coal Bed Methane (CBM) notified vide Gazette Notification No. O-19018/7/2016/ONG-I dated April 11, 2017.

### **5.6.3 Mining of Minor Minerals**

- 5.6.3.1 Mining of Minor Minerals by the Successful Bidder shall be subject to the requirements of the Minor Mineral Concession Rules of the State Government.

## **5.7 Amendment of Tender Document**

- 5.7.1 At any time prior to the Bid Due Date, the Nominated Authority may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify this Tender Document by the issuance of an Addendum and/or Corrigendum.
- 5.7.2 Any clarification, Addendum and/or Corrigendum issued hereunder will be in writing and shall be accessible to all the Bidders and shall be deemed to be part of this Tender Document. Any verbal clarification shall not be binding on Nominated Authority.

- 5.7.3 In order to afford the Bidders a reasonable time for taking an Addendum and/or Corrigendum into account, or for any other reason, the Nominated Authority may, in its sole discretion, extend the Bid Due Date in accordance with Clause 5.9.

## **5.8 Preparation and Submission of Bids**

- 5.8.1 The Bids shall be submitted in accordance with the process specified in **Annexure III** (*Technical Details with respect to electronic auction*).

## **5.9 Bid Due Date and Extension**

- 5.9.1 Technical Bids and the Initial Offer should be submitted/ uploaded before the Bid Due Date in accordance with the process specified in **Annexure III** (*Technical Details with respect to electronic auction*).
- 5.9.2 The Nominated Authority may, in its sole discretion, extend the Bid Due Date by issuing an Addendum and/or Corrigendum in accordance with Clause 5.7 uniformly accessible for all Bidders.

## **5.10 Late Bids**

- 5.10.1 Technical Bids and the Initial Offer received by the Nominated Authority after the specified time on the Bid Due Date shall not be eligible for consideration and shall be summarily rejected.

## **5.11 Modifications/ Substitution/ Withdrawal of Bids**

- 5.11.1 The Bidder may modify, substitute or withdraw its Technical Bid after submission, provided that written notice of the modification, substitution or withdrawal is received by the Nominated Authority prior to the Bid Due Date in accordance with the process specified in **Annexure III**. No Technical Bid shall be modified, substituted or withdrawn by the Bidder after the specified time on the Bid Due Date.
- 5.11.2 Any alteration or modification in the Technical Bid or additional information supplied subsequent to the Bid Due Date, unless the same has been expressly sought for by the Nominated Authority, shall be disregarded.

## **5.12 Rejection of Bids, Appropriation of Bid Security and Disqualification**

- 5.12.1 Notwithstanding anything in this Tender Document, the Nominated Authority reserves the right to reject any Bid and/or to annul the tender process and reject all Bids at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons thereof. In case such cancellation is pursuant to non-compliance by the relevant Bidders *vis-à-vis* submissions of Bid then the Nominated Authority reserves the right to appropriate the relevant Bid Security submitted by such non-compliant Bidders.
- 5.12.2 The Nominated Authority reserves the right not to proceed with the tender process at any time, without notice or liability, and to reject any Bid without assigning any reasons.
- 5.12.3 Without prejudice to the generality of the foregoing, the Nominated Authority reserves the right to reject any Bid on any criteria specified in this Tender Document, including without limitation, the following:

- a) Any misrepresentation made by the Bidder is uncovered.
- b) Bids have not been submitted with all the information and details listed in this Tender Document.

- c) The Bidder does not provide for supplemental information sought by the Nominated Authority within specified time for evaluation of the Bid.
- d) Bid is non responsive in terms of Clause 3.4.
- e) Bids have been submitted without Bid Security or period of validity.
- f) A Bidder withdraws the Bid during the period of validity.
- g) Bids have otherwise not been submitted in accordance with this Tender Document.
- h) If a Bidder engages in any Corrupt Practice, Fraudulent Practice, Coercive Practice, Undesirable Practice or Restrictive Practice per Clause 8 of this Tender Document.
- i) Any act or omission of the Bidder resulting in a violation or non-compliance with Applicable Laws, this Tender Document, the Agreement and any other documents referred to or issued pursuant to such Applicable Law, this Tender Document and/or the Agreement.
- j) A Bidder who is a Qualified Bidder who has submitted the highest Initial Offer i.e. the Applicable Floor Price, fails to submit at least 1 (one) Final Offer on the electronic auction platform, resulting in an annulment of the auction process.
- k) In the event a Bidder is declared as the Successful Bidder, and such Successful Bidder, within the specified time limits, fails to:
  - (i) execute the Agreement;
  - (ii) furnish Performance Security;
  - (iii) pay the Fixed Amount; or
  - (iv) pay the Upfront Amount.

5.12.4 (i) Furthermore, in the event of any rejection of Bids pursuant to Clause 5.12.3(a) & 5.12.3(h), the Bidder may be disqualified from participating in any auction / allotment of coal mine / coal block conducted by the Nominated Authority for a period of 2 (two) years, calculated from the date of appropriation of the Bid Security or such earlier date as may be specified by the Nominated Authority.

Provided that the aforementioned disqualifications would also extend to each JV Partners of a joint venture company participating in the Bid as a Bidder, and the Nominated Authority, in its sole discretion, shall have the right to take any such measure, as may be necessary, including annulling the tender process.

(ii) In the event a Successful Bidder is found to be ineligible due to violation or non-compliance with *inter alia* Clause 5.12.3 of this Tender Document or does not fulfil the Eligibility Conditions, then the Agreement may be terminated. In the event of termination of the Agreement pursuant to Clause 5.12.3(a) & 5.12.3(h), the Successful Bidder may be disqualified from participating in any auction / allotment of coal mine / coal block conducted by the Nominated Authority for a period of 2 (two) years, calculated from the date of termination of the Agreement.

### **5.13 Validity of Bids**

5.13.1 The Bids shall be valid for a period of not less than 210 (two hundred and ten) days from the

Bid Due Date. The validity of Bids may be extended by mutual consent of the respective Bidders and the Nominated Authority.

- 5.13.2 In the event that pursuant to the tender process a Bidder has been declared to be the Preferred Bidder or the Successful Bidder, then the validity of Bids submitted by such Preferred Bidder or Successful Bidder shall stand extended by the mutual consent of the Preferred Bidder or the Successful Bidder, as the case may be and the Nominated Authority.

#### **5.14 Termination of the Agreement**

- 5.14.1 The terms and conditions of the Agreement shall be included in terms and conditions of the Mining Lease for the Coal Mine along with any other terms and conditions that the Central Government or the State Government may deem fit under the Mineral Concession Rules, 1960<sup>49</sup> and upon grant of the mine opening permission under rule 9 of the Colliery Control Rules, 2004, the Agreement shall stand terminated. Upon termination of the Agreement, the rights of the Nominated Authority under the Agreement shall vest into State Government.

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<sup>49</sup> The terms and the conditions of the Agreement will be suitably incorporated into the order by the Central Government under Section 11 (1) of the CBA Act, 1957, as applicable.

## **6 Bid Security**

### **6.1 Bid Security**

- 6.1.1 The Bidder shall furnish, as part of its Technical Bid, a security in the form of cash transfer through RTGS/NEFT into the Designated Bank Account or a bank guarantee by an Acceptable Bank, in favour of the Nominated Authority in the form and substance as prescribed at **Annexure VIII** (the “**Bid Security**”) and having a validity period of not less than 210 (two hundred and ten) days from the Bid Due Date and a claim period of minimum 60 (sixty) days from the date of expiry of validity period of bank guarantee for Bid Security, and may be substituted with another bank guarantee of the same value issued in accordance with this Clause 6, which is valid for an extended period as may be mutually agreed between the Nominated Authority and the Bidder from time to time. In case, the Bid Security is provided in the form of bank guarantee, it shall be issued in paper form as well as under Structured Financial Messaging System (SFMS) platform. For example, if the Bid Due Date is January 12, 2024, then the Bid Security should be valid till at least August 09, 2024 and the claim period should be till at least October 08, 2024.
- 6.1.2 The Bid Security shall be for an amount of INR [●] (Indian Rupees [●]), which has been calculated as provided below:
- (a) For Fully Explored Mine, the Bid Security shall be equal to 20% (twenty percent) of the Upfront Amount.
  - (b) For Partially Explored Mine, the Bid Security shall be equal to 25% (twenty five percent) of the estimated exploration expenses based on Mandatory Work Program as provided in **Annexure I**.
- 6.1.3 Save and except as provided in this Tender Document, the Bid Security of unsuccessful Bidders will be returned by the Nominated Authority, without any interest, upon recommendation of the name of the Preferred Bidder to the Central Government by the Nominated Authority as per Clause 3.3.2(d) of the Tender Document or when the tender process is cancelled by the Nominated Authority.
- 6.1.4 The Successful Bidder’s Bid Security will be returned, without any interest, upon the signing of the Agreement and furnishing of the Performance Security in accordance with the provisions thereof.
- 6.1.5 The Nominated Authority shall be entitled to forfeit and appropriate the Bid Security as damages, *inter-alia* in any of the events specified in Clause 5.12.3 of this Tender Document, without prejudice to its other rights or remedy available under this Tender Document, the Agreement or Applicable Law, without incurring any liability whatsoever. The Bidder, by submitting its Bid pursuant to this Tender Document, shall be deemed to have acknowledged and confirmed that the Nominated 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 Bid validity as specified in this Tender Document. No relaxation of any kind on Bid Security shall be given to any Bidder.

## 7 Performance Security

### 7.1 Performance Security

- 7.1.1 For Fully Explored Mine, the Successful Bidder shall provide to the Nominated Authority an irrevocable and unconditional guarantee from an Acceptable Bank, for the performance of its obligations within such time as specified in Clause 3.8. The Performance Security shall be an amount which is 65% of aggregate of: (a) one year royalty computed on the basis of peak rated capacity of the Coal Mine as per the approved Mining Plan and (b) one year revenue (in accordance with Clause 3.10), payable to the State Government with respect to the Coal Mine computed on the basis of peak rated capacity of the Coal Mine as per the approved Mining Plan. For the purpose of calculation of Performance Security, Representative Price after adjustment with latest available sub-index of National Coal Index or National Lignite Index, as applicable, of the relevant basket of coal grade(s) on the date of execution of the Agreement shall be considered. It is clarified that relevant grade of coal shall mean weighted average grade of non-coking coal and/or weighted average grade of coking coal, as the case may be, for the Coal Mine, as per Geological Report. For Coal Mine with lignite coal, relevant grade of coal shall be as notified by Government of India separately.

In case, the approved Mining Plan of the Coal Mine is not available, Performance Security shall be estimated on the basis of an indicative peak rated capacity, as provided in this Tender Document. Upon in-principle approval of the Mining Plan, the Successful Bidder shall submit a revised Performance Security on the basis of approved Mining Plan.

**Illustration 5:** Solely for the purposes of reference of the Bidders, the methodology of estimating Performance Security is illustrated below:

Peak Rated Capacity	A	MTPA	10
Representative Price for the average grade of the Coal Mine (Rs./tonne)	B	Rs./tonne	1600
National Coal Index of the relevant basket of coal grade - latest available as on the date of issuance of Tender Document	C		110
National Coal Index of the relevant basket of coal grade - latest available on the date of execution of Agreement	D		118
Rate of Royalty	E	%	14%
One Year Royalty	$F = A \times B \times D/C \times E/10$	Rs. Crore	240.29
<b>65% of One Year Royalty</b>	$G = 65\% \text{ of } F$	Rs. Crore	<b>156.19</b>
Final Offer	H	%	25%
One Year Revenue to the Government	$I = A \times B \times D/C \times H/10$	Rs. Crore	429.09
<b>65% of One Year Revenue to the Government</b>	$J = 65\% \text{ of } I$	Rs. Crore	<b>278.91</b>
<b>Total Performance Security</b>	$K = G + J$	Rs. Crore	<b>435.10</b>

*Note: The above mentioned illustration is merely for reference purpose and in case of inconsistency, the provision of Clause 7.1.1 shall prevail.*

*Note: For the purpose of estimating performance security amount, the applicable representative price of the lignite coal and National Lignite Index shall be published separately by Government of India.*

7.1.2 For Partially Explored Mines, the Performance Security shall be equal to 25% (twenty five percent) of the estimated exploration expenses based on Mandatory Work Program as provided in **Annexure I**. The amount of Performance Security shall be revised after receipt of an in-principle approval of Mining Plan, which shall be computed in accordance with the formula provided in Clause 7.1.1 above. The Successful Bidder shall be intimated by the Nominated Authority about the revised Performance Security to be furnished and pursuant to such intimation, the Successful Bidder shall be required to replace the Performance Security already furnished by it to the Nominated Authority, and the provisions of this Agreement shall *mutatis mutandis* apply to the revised Performance Security. The revised Performance Security shall be submitted within 30 (thirty) days of the receipt of such intimation from the Nominated Authority.

7.1.3 The amount of Performance Security for Fully Explored Mines shall be revised in following events:

(a) on an annual basis as follows:

- a. **First Revision:** Upon grant of mine opening permission, basis the difference in the i) National Coal Index or National Lignite Index, as applicable, at the time of grant of mine opening permission and ii) National Coal Index or National Lignite Index, as applicable, basis which the Performance Security was first estimated in accordance with Clause 7.1.1 above.
- b. **Subsequent Revisions:** In the month of April of the year subsequent to the grant of mine opening permission, basis the difference in the i) National Coal Index or National Lignite Index, as applicable, for the month of March of previous financial year and ii) National Coal Index or National Lignite Index, as applicable, at the time when mine opening permission was granted. In all subsequent years, in the month of April, basis the difference in the i) National Coal Index or National Lignite Index, as applicable, for the month of March of previous financial year and ii) National Coal Index or National Lignite Index, as applicable, for the month of March of previous to previous financial year.

It is clarified that the date of grant of mine opening permission to be considered for the purpose of revision of the performance Security shall be the actual date or the date as prescribed in the efficiency parameters, whichever is earlier.

- (b) In case of any revision in rate of royalty, the amount of Performance Security shall be revised accordingly. Such revision shall take place at the beginning of the financial year which is subsequent to the financial year in which the rate of royalty is revised, as stipulated in Clause 7.1.3(d); and/or
- (c) In case of any revision in the peak rated capacity as a result of any revision in the mining plan in accordance with Clause 9.3, the amount of Performance Security shall be revised accordingly upon approval of revision to the Mining Plan. Such revision shall take place at the beginning of the financial year which is subsequent to the financial year in which the Mining Plan is revised, as stipulated in Clause 7.1.3(d).

- (d) The revision to the amount of Performance Security shall be carried out once in every financial year upon grant of mine opening permission to the Successful Bidder.. Upon such revision, the bank guarantee constituting the Performance Security shall be substituted with another bank guarantee of the revised value issued in accordance with this Clause 7, within a period of 30 (thirty) days from the beginning of financial year i.e. by April 30 of every year, in case of revision under each of sub-clause (b) and (c) above. In case of revision under sub-clause (a), the bank guarantee constituting the Performance Security shall be substituted with another bank guarantee of the revised value issued in accordance with this Clause 7, within a period of 30 (thirty) days from the publication of the reference index for the month of March of previous financial year or within a period of 30 (thirty) days from the grant of mine opening permission to the Successful Bidder, as applicable.

It is clarified that revisions to the amount of Performance Security may occur under sub-clause (a), (b) and (c) above, simultaneously, if such sub-clauses are applicable.

7.1.4 The Performance Security should remain valid for such duration as specified in the Agreement. Upon grant of mine opening permission under rule 9 of the Colliery Control Rules, 2004, the Successful Bidder shall either

- (i) submit a separate Performance Security (in the form of an unconditional and irrevocable performance bank guarantee) in favour of the State Government for the amount calculated in accordance with Clause 7.1.1 above for ensuring the production of coal as per the Mining Plan. Upon submission of such separate Performance Security to the State Government or after 60 days of the termination of the Agreement in accordance with Clause 5.14, whichever is earlier, the Performance Security submitted to the Nominated Authority under Clause 7.1.1 of this Tender Document shall be returned to the Successful Bidder; 'or'
- (ii) submit a request to the Nominated Authority for assigning the Performance Security submitted to the Nominated Authority under Clause 7.1.1 of this Tender Document, in favour of the State Government. It is clarified that the amount of Performance Security shall be calculated in accordance with Clause 7.1.1. In case the Performance Security submitted to the Nominated Authority is of lesser amount, the Successful Bidder shall be required to submit a top-up bank guarantee in favour of the State Government so that the total amount of Performance Security in favour of the State Government in accordance with Clause 7.1.1. Further, the Successful Bidder shall ensure that the validity of the Performance Security is in accordance with this Clause 7.1.4.

#### **7.1.5 Appropriation of Performance Security**

The Performance Security may be appropriated by the Nominated Authority or the State Government, as the case may be, in the manner specified in the Agreement, and shall be without prejudice to the other rights and remedies available under this Tender Document, the Agreement or Applicable Law, without incurring any liability whatsoever.



## 8 Fraud and Corrupt Practices

- 8.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the tender process and subsequent to the issue of the [Vesting Order / Allocation Order]<sup>50</sup> and during the subsistence of the Agreement. Notwithstanding anything to the contrary contained herein, or in the [Vesting Order / Allocation Order]<sup>51</sup> or the Agreement, the Nominated Authority may reject a Bid, withdraw the [Vesting Order / Allocation Order]<sup>52</sup>, or terminate the Agreement, as the case may be, without being liable in any manner whatsoever to the Bidder, Qualified Bidder, Preferred Bidder, or the Successful Bidder, as the case may be, if the Nominated Authority determines that the Bidder, Qualified Bidder, Preferred Bidder, or Successful Bidder, as the case may be, has, directly or indirectly or through an agent, engaged in Corrupt Practice, Fraudulent Practice, Coercive Practice, Undesirable Practice or Restrictive Practice in the tender process. In such an event, the Nominated 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 that may be available to the Nominated Authority under this Tender Document and/ or the Agreement, or otherwise.
- 8.2 Without prejudice to the rights of the Nominated Authority under Clause 8.1 hereinabove and the rights and remedies which the Nominated Authority may have under the [Vesting Order / Allocation Order]<sup>53</sup> or the Agreement, or otherwise if a Bidder, Preferred Bidder or Successful Bidder, as the case may be, is found by the Nominated 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 tender process, or after the issuance of the [Vesting Order / Allocation Order]<sup>54</sup> or the execution of the Agreement, such Bidder, Preferred Bidder or Successful Bidder shall not be eligible to participate in any process undertaken by the Nominated Authority for auction or allotment of any Schedule I coal mine (as defined in the Act) during a period of 1 (one) year from the date such Bidder, Preferred Bidder or Successful Bidder, as the case may be, is found by the Nominated 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 Practices, as the case may be.
- 8.3 For the purposes of this Clause 8, 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 tender process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Nominated Authority who is or has been associated in any manner, directly or indirectly, with the tender process or the [Vesting Order / Allocation Order]<sup>55</sup> or has dealt with matters concerning the Agreement or arising therefrom, before or after the execution thereof, at any time prior to

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<sup>50</sup> To be retained as applicable.

<sup>51</sup> To be retained as applicable.

<sup>52</sup> To be retained as applicable.

<sup>53</sup> To be retained as applicable.

<sup>54</sup> To be retained as applicable.

<sup>55</sup> To be retained as applicable.

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 Nominated Authority, shall be deemed to constitute influencing the actions of a person connected with the tender process); or (ii) save and except as permitted under this Tender Document, engaging in any manner whatsoever, whether during the tender process or after the issue of the [Vesting Order / Allocation Order]<sup>56</sup> or after the execution of the Agreement, as the case may be, any person in respect of any matter relating to the Coal Mine or the [Vesting Order / Allocation Order]<sup>57</sup> or the Agreement, who at any time has been or is a legal, financial or technical adviser of the Nominated Authority in relation to any matter concerning the Coal Mine;

- b) “**Fraudulent Practice**” means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the tender 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 tender process;
- d) “**Undesirable Practice**” means (i) establishing contact with any person connected with or employed or engaged by the Nominated Authority with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the tender process; (ii) having a conflict of interest; or (iii) violating of any Applicable Law; 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 tender process.

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<sup>56</sup> To be retained as applicable.

<sup>57</sup> To be retained as applicable.

## **9 Other Provisions**

### **9.1 Mandatory Work Program for Partially Explored Mines**

- 9.1.1 During prospecting phase, the Successful Bidder shall complete the Mandatory Work Program. The Successful Bidder shall conduct geological prospecting/ exploration of the area as per the Mandatory Work Program provided by the Nominated Authority, so as to ascertain evidence of mineral contents and shall submit periodic reports to the Nominated Authority. Provided however that in the event the Successful Bidder is unable to conduct geological prospecting/ exploration of the area as per the Mandatory Work Program, due to any technical constraints including subsurface geological uncertainty duly accepted by the Government, the Successful Bidder may propose a revised Mandatory Work Program having estimated exploration expense not less than the estimated exploration expense as provided in the Annexure I of the Tender Document, to the Nominated Authority. The revised Mandatory Work Program shall be subject to the approval of the Nominated Authority. Notwithstanding anything to the contrary contained elsewhere in this Tender Document, the Successful Bidder may undertake geological prospecting/ exploration in excess of the Mandatory Work Program in accordance with Applicable Laws.
- 9.1.2 All reports, studies and other documentation related to the geological prospecting/ exploration of the area shall be submitted to the Nominated Authority and the State Government and they shall become the proprietary information of the Nominated Authority / State Government.

### **9.2 Production Schedule for Fully Explored Mines**

- 9.2.1 The Successful Bidder shall ensure that the scheduled coal production as per the approved Mining Plan is equal to or more than the year-on-year production schedule of the Coal Mine as specified in **Annexure I** (“**Production Schedule**”). In case prospecting operations are required to be carried out for any part of the Coal Mine, the same shall be carried out by the Successful Bidder in accordance with Applicable Law.

### **9.3 Revision in Mining Plan upon allocation**

Upon allocation of the Coal Mine, the Mining Plan may be revised by the Successful Bidder, in accordance with the Guidelines for Preparation, Formulation, Submission, Processing, Scrutiny, Approval and Revision of Mining plan for the coal and lignite blocks issued *vide* Office Memorandum F. No. 34011/28/2019-CPAM dated May 29, 2020, as may be amended.

### **9.4 Flexibility in Production**

- 9.4.1 The Successful Bidder shall produce coal not below 65% (sixty five per cent) of scheduled production in a financial year subject to the condition that Successful Bidder shall not produce coal less than 75% (seventy five per cent.) of scheduled production in any three financial year block. It is clarified that three financial year block shall be counted from the first financial year of scheduled commencement of production in the Coal Mine.

#### **9.4.2 Revenue payable to the Government in case of shortfall in coal production:**

- 9.4.2.1 In the event the annual coal production is less than 65% of the scheduled production in any financial year as per approved Mining Plan, then the annual revenue share shall be paid by Successful Bidder, within 20 days from the end of the financial year, as a sum of (a) Monthly

Payments for the quantity of coal on which the statutory royalty is paid, in accordance with Clause 3.10 and (b) revenue share for the shortfall quantity (i.e. 65% of annual scheduled coal production in the financial year less the quantity of coal on which the statutory royalty is paid) computed on the basis of the Notional Price arrived at after adjusting the Representative Price with sub-index of National Coal Index or National Lignite Index, as applicable, of the relevant basket of coal grade(s) for the relevant year. It is clarified that relevant grade of coal shall mean weighted average grade of non-coking coal and/or weighted average grade of coking coal, as the case may be, for the Coal Mine, as per grade declared by CCO / State Government concerned, as applicable. For Coal Mine with lignite coal, relevant grade of coal shall be as notified by Government of India separately.

9.4.2.2 Further, in the event the coal production for a block of 3 financial years is less than 75% of the scheduled production in the block of 3 financial years as per approved Mining Plan, the Successful Bidder shall make payment towards such shortfall in coal production (above 65% and less than 75%) such that the revenue to the Government for a block of 3 financial years is towards at least 75% of the scheduled coal production in the block of 3 financial years within 20 days of the from the end the 3 financial year period. In such case, the revenue share payable for the shortfall quantity (75% of scheduled coal production of 3 financial years less the quantity of coal on which the statutory royalty is paid in 3 financial years) shall be computed on the basis of Notional Price arrived at after adjusting the Representative Price with sub-index of National Coal Index or National Lignite Index, as applicable, of the relevant basket of coal grade(s) for the relevant block of 3 financial years. It is clarified that relevant grade of coal shall mean weighted average grade of non-coking coal and/or weighted average grade of coking coal, as the case may be, for the Coal Mine, as per grade declared by CCO / State Government concerned, as applicable. For Coal Mine with lignite coal, relevant grade shall be as notified by Government of India separately.

**Illustration 6:** Solely for the purposes of reference of the Bidders, the methodology of estimating revenue payable to the Government on account of shortfall in coal production is illustrated below:

Particulars							
National Coal Index of the relevant basket of Coal Grade – latest available as on the date of issuance of Tender Document (A)							120
Representative Price for the average grade of the Coal Mine (Rs./tonne) (B)							1800
Final Offer (C)							25%
Year	Scheduled Production as per approved Mining Plan (MT)	Actual Production (MT)	Actual Production as % Scheduled Production	Shortfall in Production (MT)	Penalty Trigger Event	Value of Index applicable	Revenue Payable to the Government on account of shortfall in production (Rs. Crore)
	D	E	F = E/D	G = max of (0% or 65% - F)		H	I = D x G x B x H/A x C/10
Y1	2	1.7	85.00%	0.00%	Event 1	127	-
Y2	4	2.5	62.50%	2.50%		128	5
Y3	7	5.6	80.00%	0.00%		129	-
Block 1	13	9.8	75.38%	0.00%		128	-
Y4	10	7.9	79.00%	0.00%		130	-
Y5	10	6.5	65.00%	0.00%		131	-

Year	Scheduled Production as per approved Mining Plan (MT)	Actual Production (MT)	Actual Production as % Scheduled Production	Shortfall in Production (MT)	Penalty Trigger Event	Value of Index applicable	Revenue Payable to the Government on account of shortfall in production (Rs. Crore)
	<b>D</b>	<b>E</b>	<b>F = E/D</b>	<b>G = max of (0% or 65% - F)</b>		<b>H</b>	<b>I = D x G x B x H/A x C/10</b>
Y6	10	6.6	66.00%	0.00%		131	-
Block 2	30	21	70.00%	5.00%	Event 2	131	74

*Note: The above mentioned illustration is merely for reference purpose and in case of inconsistency, the provision of Clause 9.4.2 shall prevail.*

*Note: For the purpose of estimating revenue payable to the Government on account of shortfall in lignite production, the applicable representative price of the lignite mineral shall be published separately by Government of India.*

9.4.2.3 Statutory dues including taxes, levies, Royalty, contribution to DMF and NMET etc. shall be payable as per Applicable Law.

## 9.5 Relinquishment of Partially Explored Mine

9.5.1 After completing the prospecting operations as per the Mandatory Work Program and preparing the Geological Report, acceptable to the Central Government, the Successful Bidder may either

i) relinquish the Coal Mine (subject to the approval of Central Government) after submitting all reports, studies and other documentation related to the geological prospecting/ exploration of the area to the Nominated Authority and the State Government. In such an event, no penalty shall be levied and the Performance Security of the Successful Bidder shall be returned in accordance with the Agreement.; or

ii) relinquish any part of the Coal Mine having non-coal bearing area or coal bearing area which is technically non-viable to explore (subject to approval of MoC) after submitting all reports, studies and other documentation related to the geological prospecting/ exploration. Such partial relinquishment shall be subject to Central Government's approval of the detailed report submitted by the bidder. However, there will be no change in the upfront amount, Performance Security and PRC of the coal mine as determined at the time of auction.; or

iii) retain the Coal Mine and carry out mining operations after obtaining the required permissions/ approvals/ clearances etc. in accordance with Applicable Law.

Provided however, if the Successful Bidder fails to complete the prospecting operations as per the Mandatory Work Program and/ or does not prepare the Geological Report which is acceptable to the Central Government, the Performance Security submitted by the Successful Bidder shall be forfeited and the Agreement and the prospecting license granted thereunder shall be terminated and the [Vesting Order/ Allocation Order]<sup>58</sup> shall be withdrawn.

<sup>58</sup> To be retained as applicable.

9.5.2 Upon withdrawal of the [Vesting Order/ Allocation Order]<sup>59</sup> of a Partially Explored Mine on account of any reason whatsoever, including relinquishment of Coal Mine, surrender of Coal Mine, failure to complete the prospecting operations as per the Mandatory Work Program and/ or failure to prepare the Geological Report which is acceptable to the Central Government, the Successful Bidder shall not be entitled for

- a) Reimbursement of the expenses incurred by the Successful Bidder towards prospecting/ exploration operations, preparation of Geological Report; and
- b) Compensation towards following components of Fixed Amount: [cost borne by the Prior Allottee for the preparation of geological report; cost borne by the Prior Allottee for obtaining all statutory licenses, permits, permissions, approvals, clearances or consents relevant to the mining operations;]<sup>60</sup> [cost incurred by CMPDIL and other Government agencies, if any, in deriving detailed geographical boundary coordinates and in preparing geological report, if any;]<sup>61</sup>.

## **9.6 Miscellaneous**

9.6.1 The tender process shall be governed by, and construed in accordance with, the laws of India and the dispute resolution shall be subject to the Act.

9.6.2 The Nominated 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 tender process and/ or amend and/ or supplement the tender 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) retain any information and/ or evidence submitted to the Nominated Authority by, on behalf of, and/ or in relation to any Bidder; and/ or
- d) 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.

9.6.3 It shall be deemed that by submitting the Bid, the Bidder agrees and releases the Nominated 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, pursuant hereto and/ or in connection with the tender process and waives, to the fullest extent permitted by Applicable Laws, any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future.

### **9.6.4 Proprietary data**

All documents and other information supplied by a Bidder to the Nominated Authority shall remain or become the property of the Nominated Authority. It will not return any Bid or any information provided by the Bidder.

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<sup>59</sup> To be retained as applicable.

<sup>60</sup> This is to be retained only for Coal Mines being auctioned under the CMSP Act, 2015

<sup>61</sup> This is to be retained only for Coal Mines being auctioned under the MMDR Act, 1957

In case of relinquishment or surrender of the Coal Mine, all documents and information, including the Geological Report, submitted by the Bidder to the Nominated Authority, State Government and/or Central Government, shall be the proprietary information of the Central Government and the same shall not be considered to be an assigned of the confidential information of the Bidder. The Central Government shall have the right to share the same with the Bidders of the Coal Mine being thereafter auctioned as a Partially Explored Mine or Fully Explored Mine, as the case may be.

**[Remaining part of this page intentionally left blank, Annexures follow.]**

**Annexure I: Mandatory Work Program and Production Schedule****Mandatory Work Program for Partially Explored Mines<sup>62</sup>**

Area (sq. km.)	No. of boreholes drilled	Meterage Drilled (m)	Additional boreholes required	Additional meterage required (m)	Target Seam
<i>tbp</i>	<i>tbp</i>	<i>tbp</i>	<i>tbp</i>	<i>tbp</i>	<i>tbp</i>

Preparation of Geological Report for the Coal Mine as per Rules 21A, 21B and 21C under Chapter- IIIA of Mineral Concession (Amendment) Rules, 2020 (as may be amended) and submission of approved Geological Report to the Nominated Authority.

Note: Along with the additional number of boreholes and meterage to be drilled, the requirement of tests and number of samples for such tests will have to be carried out in accordance with the standards as per the “Modified Indian Standard Procedure for Coal Resource Estimation: 2017” or subsequent modification thereof.

**Estimated Exploration Expense - INR [\*] (Indian Rupees\_\_\_\_\_)** exclusive of taxes.

**Production Schedule for Fully Explored Mines<sup>63</sup>**

Year	Production Schedule (MTPA)
Peak Rated Capacity	<i>tbp</i>
Y1	<i>tbp</i>
Y2	<i>tbp</i>
Y3	<i>tbp</i>
Y4	<i>tbp</i>
Y5	<i>tbp</i>
Y6	<i>tbp</i>
Y7	<i>tbp</i>
Y8	<i>tbp</i>
Y9	<i>tbp</i>
Y10	<i>tbp</i>
Y11	<i>tbp</i>
Y12	<i>tbp</i>
Y13	<i>tbp</i>
Y14	<i>tbp</i>
Y15	<i>tbp</i>
Y16	<i>tbp</i>
Y17	<i>tbp</i>
Y18	<i>tbp</i>
Y19	<i>tbp</i>
Y20	<i>tbp</i>
Y21	<i>tbp</i>
Y22	<i>tbp</i>
Y23	<i>tbp</i>
Y24	<i>tbp</i>
Y25	<i>tbp</i>

<sup>62</sup> Not Applicable for Fully Explored Mines

<sup>63</sup> Not Applicable for Partially Explored Mines



## Annexure II – Representative Price

### A. Non-coking coal

Grade of Coal	Representative Price (Rs./tonne)
G1	11,236
G2	6,287
G3	5,976
G4	6,026
G5	5,814
G6	5,444
G7	3,413
G8	3,237
G9	2,791
G10	2,625
G11	1,932
G12	1,851
G13	1,745
G14	1,405
G15	1,286
G16	4,591
G17	709

### B. Coking coal

Grade of Coal	Representative Price (Rs./tonne)
Steel Grade I	21,074
Steel Grade II	19,134
Washery Grade I	5,736
Washery Grade II	5,050
Washery Grade III	4,671
Washery Grade IV	3,243
Washery Grade V*	2,791
Washery Grade VI**	1,851

\*Representative Price on the basis of corresponding grade of non-coking coal as G9

\*\*Representative Price on the basis of corresponding grade of non-coking coal as G12

Note: The abovementioned Representative Price is of September 2023 (provisional) i.e. the latest available Representative Price at the time of issuance of this Tender Document. In the event, there is any revision in the Representative Price of September 2023, the abovementioned Representative Price shall be replaced by such revised Representative Price.

Note: The representative price of the relevant grade of the lignite mineral shall be published separately by Government of India.

**Annexure III - Technical Details with respect to electronic auction.**

**1. Registration Methodology:**

In order to submit Bids for the Coal Mine, a Bidder would be required to register itself with the e-auction website of MSTC. For this the Bidder should visit the Coal Mine Auction website of MSTC “<https://www.mstcecommerce.com/auctionhome/coalblock/index.jsp>” and click on the button “**Registration**”.

An online Registration Form will appear on screen and Bidder would be required to fill up the same. During this process, Bidder would be required to create its “user id” and “password” and keep note of the same. Bidder should ensure that the secrecy of its user id and password is maintained at all time and Bidder shall alone be responsible for any misuse of the user id and password. Bidder may also refer to the “Bidder’s Guide” available online in the above mentioned website for assistance.

On successful submission of the online registration Form, Bidder shall receive a confirmation e-mail at the registered email address advising the Bidder to submit the following documents:

1. Self attested Income Tax PAN Card.
2. Two passport size photographs of the Authorized Signatory.
3. Letter of Authorization from Chairman/MD/Directors/CEO/Company Secretary of a Bidder in favour of the Authorized Signatory in the standard format available in the website. The Authorized Signatory shall be the person who shall be responsible for submission of Bid. For this purpose, the Authorized Signatory will need to be in possession of a Class III signing type digital signature issued by an Indian certifying authority, the details of which shall be provided in this authorization letter.
4. Proof of Identity of the Authorized Signatory in the form of Company ID Card/PAN Card/Voter ID Card
5. In case of Joint Venture company the copy of the JV/Consortium Agreement.
6. Copy of the confirmation email.

Bidder shall be required to submit all the above documents to MSTC for verification and activation of their account. Bidders may send scanned copies of the aforementioned documents to the following designated email address:

**[coalblock@mstcindia.co.in](mailto:coalblock@mstcindia.co.in)**

It may be noted that Bidders need not visit any of the offices of MSTC for submission of the aforementioned documents. However, the Bidders may contact the following offices of MSTC for seeking assistance on the login or registration process.

MSTC Limited (E-Commerce Department) 225-F, A.J.C Bose Road, 2 <sup>nd</sup> Floor, Kolkata - 700 020 Helpdesk-03340645207, 03340609118, 03340645316, 03340602403	MSTC Limited, Northern Regional Office 30/31A Jeevan Vikas Building, 1st Floor, Asaf Ali Road (opp. Hamdard) New Delhi - 110 002 Helpdesk- 01123212357, 01123215163
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Once the complete set of aforementioned documents is electronically received from a Bidder, MSTC shall activate such Bidder's login after verification / scrutiny of the documents. MSTC reserves the right to call for additional documents from the Bidder if required, prior to registration and activation of the Bidder's login.

On completion of the above stated registration process, a Bidder shall be able to log in to MSTC's website.

Bidders who have registered as Independent Company with MSTC website for earlier tranches of coal mine auction/allotment need not register again. **The Joint Venture Companies who had registered prior to September 2018 have to register fresh by selecting the name of the JV partners and they have to participate with the new registration only.**

## **2. Downloading information about coal mines**

There are two sets of documents available for downloading from the website of MSTC.

First set of documents will be available free of cost and can be downloaded without registration on MSTC's website. These documents may include the following:

- (a) Standard Tender Document; and
- (b) Mine summaries

The above information would be made available free of cost to all potential Bidders in order to assist the potential Bidders to make a determination regarding their participation in the tender process. Based on such determination, potential Bidders may decide to participate in the tender process with respect to one or more coal mines and purchase detailed mine-wise information.

Certain other detailed documents shall be paid documents and can be downloaded only subsequent to payment of a fee of Rs 5,00,000/- per coal mine and such documents will be available after a Bidder logs in. Therefore, Bidders need to complete the registration process with MSTC to be able to download such documents.

Bidders shall login with its user id and password. Bidder shall have the facility to make payment towards the documents through the link 'e-Payment' provided under the login of the Bidder. Payment for multiple mines can be made through a single transaction. The Bidder should fill an online RTGS application form and take a printout of the same before proceeding to transfer the fund to the beneficiary account. In case the Bidder has an online banking facility, it can make this payment online as well. After transferring the fund, the Bidder shall be required to communicate the UTR No, copy of RTGS application form generated on MSTC portal and other details to MSTC through email at [coalblock@mstcindia.co.in](mailto:coalblock@mstcindia.co.in).

Once MSTC receives the payment in the designated account as specified in the RTGS application form, it shall activate the link for downloading of the paid documents for the respective coal mine(s).

The Bidder may note that the files containing information about the coal mines can be in various formats like doc, xls, ppt, pdf, jpg, jpeg, zip etc and it shall be the responsibility of the Bidder to have suitable facilities at its end to download the uploaded files.

## **3. Preparation and Submission of Bid**

The complete process of bid submission will be divided into 2 stages as follows:

**A. Stage 1: Technical Bid**

This stage will comprise of (i) online submission of the Technical Bid and the Financial Bid to the extent of the Initial Offer; and (ii) offline submission of certain original documents as detailed below.

**(i) Online submission of Technical Bid and Initial Offer with supporting documents**

This stage shall be open to all Bidders who have purchased the paid document(s) for the specific coal mine(s). In this process, the Bidder, after logging in to the above stated website, will have to click on the link “Click for Auction”. In the next page, the Bidder shall have to go to the link “Stage 1 Bid Submission”. Thereafter, the Bidder will have a bouquet under “My Menu” having 3 (three) sub-menus – “Bid Floor Manager”, “Upload Documents” and “Attach Documents”.

**Bid Floor Manager**

Once the Bidder clicks on this sub-menu followed by ‘Click Here’ under Live Auctions, it will display a list of mine(s) for which the Bidder has paid the fees for downloading the paid documents. On clicking on any of the mine(s), the Bidder will be directed to a screen where it can fill up the technical bid template and save the data. The Bidder can edit such data as many times as it wishes till the final submission is made by clicking the “Final Submission” button.

After saving the Technical Bid, the link / button for Initial Offer shall get activated. The Bidder, on clicking this button, will be directed to a screen having a template where it can fill up its Initial Offer. The Bidder can edit such data as many times as it wishes till the final submission is made by clicking the “Final Submission” button.

The Bidder shall have to submit the Initial Offer, which should be higher than the Floor Price in multiples of 0.5% of revenue share till Initial Offer reaches 10% and thereafter in multiples of 0.25% revenue share.

The final submission of Technical Bid and the Initial Offer shall be digitally signed by the Bidder using the digital signature the use of which has been duly authorized on behalf of the Bidder and which was used at the time of registration. Any digital signature certificate other than the above shall not be acceptable for bid submission by the system.

*The Bidder may note that the “Final Submission” button for both Technical Bid and Initial Offer is common and will be activated only after both the Technical Bid and the Initial Offer have been saved and the necessary documents have been uploaded and attached against the auction.*

**Upload Documents**

The Bidder shall also have to upload the supporting documents along with the

Technical Bid, as required under this Tender Document. These supporting documents will need to be uploaded in pdf format only (the file size may be limited to 4 MB). Files in formats other than pdf shall not be accepted. For this, the Bidder shall first click on the link “Upload documents” and upload the files in support of its Technical Bid.

The files uploaded shall be as per the list of documents displayed under “Attach Documents” link after selection of the respective auction. If there are multiple files against one document mentioned in the list, they have to be merged into one file before uploading.

### **Attach Documents**

After uploading these documents, the Bidder shall have to attach them, through the “Attach Document” link, with the specific mine(s) for which it is intending to submit the Technical Bid. It may be noted by the Bidder that in case it intends to use the same supporting document for more than one mine, it does not need to upload the same document every time. The supporting document, once uploaded, can be attached with Technical Bid for multiple mine(s), if desired.

The Bidder has to attach documents as per the list displayed against the respective auction. The Bidder can attach only one file against a document. Same file cannot be attached for more than one document. Multiple files cannot be attached for one document. If required the bidder may attach one additional file through the ‘Others’ option.

***The Bidder should note that only a file which is “attached” with a specific mine(s) shall be considered during evaluation of the Technical Bid. Files which are not attached to any mine(s) shall not be considered for evaluation.***

***The Bidder should also note that a Bid will be considered as submitted if and only if the Bidder has clicked on the “Final Submission” button. Only such Bids will be opened which have been finally submitted. It is further clarified that saving of Technical Bid and the Initial Offer without final submission will be treated as non submission of bid.***

Upon successful final submission, the Bidder shall receive a bid acknowledgement from the system automatically.

The Bidders may note that the Technical Bid and the Initial Offer submitted online as above will be encrypted by MSTC’s own software before storage in the database. This will be done to protect the sanctity and confidentiality of the Bids before the actual opening of the same.

### **Modification / Withdrawal of Bid**

If after final submission of Bid and before the scheduled closing time for Bid submission a Bidder wishes to make changes in its Bid, it can do so by clicking the

“Delete Bid” option. By doing so, the entire Bid submitted by the Bidder will get deleted. A system generated email will be sent to the Bidder acknowledging the deletion. The Bidder will be able to save and submit its new Bid again. If a Bidder deletes its Bid and does not submit its new Bid in the same manner as stated above, its Bid will not come up for opening or further processing.

If after final submission of Bid and before the scheduled closing time for Bid submission a Bidder wishes to withdraw its Bid, it can do so by clicking the “Withdraw Bid” option. By withdrawing a bid, a Bidder will lose the opportunity to re-submit its Bid against the same mine(s).

**(ii) Offline submission of certain original documents**

The Bidders shall have to submit the following documents in original in sealed cover within the scheduled closing time for bid in accordance with Clause 3.8. The sealed cover should clearly bear the following identification: *Original Documents (Technical Bid) for [insert name of the Coal Mine]* and shall indicate the name, MSTC Registration No. and address of the Bidder. In addition, an index of documents submitted should be annexed and the documents shall contain page numbers: *Page [●] of [●]*

- (a) Bid Security in the form and substance as provided in Annexure VIII or cash transfer through RTGS/NEFT into the Designated Bank Account;
- (b) Power of Attorney in the form and substance as provided in Annexure V;
- (c) Certified extract of the charter documents and certified true copy of the documents such as a board or shareholders resolution authorizing the execution of this power of attorney; and
- (d) Affidavit in the form and substance as provided in Annexure VI.

The aforementioned documents shall be submitted in person at the following address:  
The Nominated Authority  
Ministry of Coal  
Room No. 120, F-Wing,  
1st Floor, Shastri Bhawan  
New Delhi - 110001

***Submission of documents at the address other than the one mentioned above and/or by means other than physical submission in person shall not be considered and such bid shall be rejected.***

***Deadline for online submission of (i) Technical Bid and the Initial Offer with supporting documents; and (ii) offline submission of certain original documents***

The Bidders shall also note that online submission of ***Technical Bid and the Initial Offer*** with supporting documents and offline submission of certain original documents shall be allowed only up to time specified in Clause 3.8.1. Bidders in their own interest are advised to complete the entire process well in advance to avoid any last minute hiccup / technical problems. No complaints shall be entertained in this regard at any

stage.

**(iii) Evaluation of Technical Bid**

**a. Evaluation of Technical Bid**

Technical Bids shall be evaluated in the manner provided in this Tender Document.

**b. Opening of Initial Offer**

Initial Offers shall be opened one day before the scheduled date of e-auction of the respective Coal Mine. For example, Initial Offer for coal mine(s) scheduled for e-auction on 04.09.2020 will be opened on 03.09.2020. All Technically Qualified Bidders will be ranked in accordance with Clause 3.3.2(b) and the determination of Qualified Bidders shall be made in accordance with Clause 3.3.2(b). Only the Qualified Bidders shall be intimated about their qualification for participation in electronic auction through notification on MSTC website within their secured login as well as a system generated email. Such intimation shall be sent 2 hours prior to the scheduled start of e-auction. The remaining Technically Qualified Bidder (i.e. Technically Qualified Bidder who is not a Qualified Bidder), if any, should note that it may become a Qualified Bidder if one or more of the original Qualified Bidders become ineligible to bid.

**B.**

**Stage 2: electronic auction – Final Offer**

**a. Intimation to Qualified Bidders**

The Qualified Bidders will be intimated about their qualification for electronic auction against specific mine(s) in accordance with Annexure III – 3.A.(iii)(b), through notification in the MSTC website within their secured login as well as a system generated email. Along with the above intimation, they shall also receive information on Applicable Floor Price for e-auction of the Coal Mine which is the highest Initial Offer received from the Technically Qualified Bidders.

In certain cases, where considered necessary, the Qualified Bidders may also receive the information on the second highest Initial Offer received from the Technically Qualified Bidders. In the event the Bidder(s) who has quoted the Applicable Floor Price is no longer eligible to bid for that Coal Mine, the Applicable Floor Price shall stand revised to second highest Initial Offer received from the Technically Qualified Bidder(s).

It is expressly clarified that Bidders should not expect to receive the information on the second highest Initial Offer received from the Technically Qualified Bidders as a matter of usual course.

It shall be the sole responsibility of the Bidder to regularly check the MSTC website and log in to see whether it has qualified for a certain mine or not. MSTC/ Nominated Authority will not be responsible for non-receipt of email by the Bidder and its

consequences.

**b. Conduct of e-auction**

E-auction is the process of inviting binding Final Offer(s) from Qualified Bidders through internet for the purpose of determination of the Preferred Bidder. During this process, the Qualified Bidder will be able to submit its Final Offer as many times as it wishes against the same Coal Mine. The Qualified Bidder will remain anonymous to other Qualified Bidders participating in the electronic auction process as well as to MSTC / Nominated Authority. The Qualified Bidder will be able to see the prevailing highest Final Offer against the Coal Mine, but the name of the highest Qualified Bidder at any point of time will not be displayed. The Qualified Bidder shall have to put its Final Offer over and above the displayed highest bid in multiple of 0.5% of revenue share till the Final Offer reaches 10% and thereafter in multiple of 0.25% of revenue share. The electronic auction process will have a scheduled start and close time which will be displayed on screen. A Qualified Bidder will be able to put its Final Offer after the start of bid time and till the close time of electronic auction. The current server time (IST) will also be displayed on the screen. In the event a bid is received during the last 8 (eight) minutes before the scheduled close time of electronic auction, the close time of electronic auction will be automatically extended by 8 (eight) minutes from the last received bid time to give equal opportunity to all other Qualified Bidders. This process of auto extension will continue till there is a period of 8 (eight) minutes during which no Final Offer is received.

For example, assuming that the initial scheduled close time for a particular electronic auction is 1:00 pm and a Final Offer is received at 12:55 pm, the scheduled close time shall be revised to 1:03 pm. Again if a Final Offer is received at 1:01 pm, the scheduled close time shall be revised to 1:09 pm and so on. In the event that there is no further Final Offer received till 1:09 pm, the electronic auction will close at 1:09 pm. The revised close time will be displayed on screen and the Qualified Bidders are advised to keep refreshing its webpage to get the latest information.

The above example is only illustrative and meant for guidance only.

During the tender process for electronic auction, the Bidder shall be required to sign their Bids with their respective digital signature certificate (DSC) the use of which has been duly authorized on behalf of the Bidder and which was used at the time of registration. Any digital signature certificate other than the above shall not be acceptable for bid submission by the system

Bidders in their own interest are advised to get themselves acquainted with the electronic auction process of MSTC by getting their Authorized Representative trained beforehand through some demo electronic -auctions, schedule of which will be declared later on MSTC website.

**Digital Signature Certificate**

A Bidder shall be required to possess a valid Digital Signature Certificate (DSC) of signing type to be able to submit its Bid and to participate in the electronic auction on MSTC's website. For this purpose, Bidders shall be required to authorize its Authorized Signatory to procure a Class III DSC of signing



type from any Certifying Authority or their authorized agencies in India.

The competent authority of the Bidder shall be required to issue a Letter of Authority in favour of the Authorized Representative in the standard format provided on the homepage of the website on MSTC mentioning therein the serial number of the DSC of the Authorized Representative. The competent authority shall be one of the following:

- Chairman of the Company
- Managing Director of the Company
- Chief Executive Officer of the Company
- Company Secretary of the Company

The Bidder may note that only 1 (one) user id will be mapped with a given DSC for the Authorised Representative. DSC once mapped with a particular user id of a Bidder will normally not be changed and therefore Bidders are advised to carefully select the DSC before forwarding the same to MSTC for mapping.

The Digital Signature Certificate will be used to digitally sign the Bids that the Bidder will submit online.

It will be the sole responsibility of the Bidder and its respective Authorised Representative to maintain the secrecy of the password for the Digital Signature Certificate. The Bidder and its contact person shall be solely responsible for any misuse of the DSC and no complain / representation in this regard shall be entertained at any stage by MSTC / Nominated Authority.

The Bidder may note that the following configurations will be required to be undertaken in their Internet Explorer browsers for smooth functioning of the website and the e-auction portal.

The system requirements are as follows:

- Operating System –Windows 8.1 and above
- Web Browser- Preferred ‘Internet Explorer version 9’ and above.
- IE Settings:

a) Tools→Compatibility View Settings→Add <https://www.mstcecommerce.com>

Check the box for ‘Microsoft compatibility list’.

b) Security Settings:

1) Tools→Internet Options→General→Check box for ‘Delete browsing history on exit’, Click on ‘Settings’→ ‘Every time I visit the webpage’→OK.

2) Tools →Internet Options → Security → Un-check the box for ‘Enable protected mode’→

Custom Level→

- Enable: Access data sources across domains
- Disable “Use Pop-up Blocker”
- Scripting: Enable “Allow Status Bar Update Via Script”
- Tools→Internet Options → Security →Selected Trusted Sites→Add

Website <https://www.mstcecommerce.com> →OK→Trusted Sites→Select 'Custom Level→ Active X control & plug-ins: Enable all

ActiveX Controls

- Disable “Use Pop-up Blocker”
- Tools → Internet Options → Advance→Select boxes for SSL 3.0,TLS(1.0,1.1,1.2)→Apply→OK.

c) Java: JRE 8, latest X86 offline file, Configure JAVA→Security, add <https://www.mstcecommerce.com>

‘Exception site list’ and save.

d) Other Settings:

1) View → Toolbars→ “Tick” Status Bar.

2) For new Version of IE or other “Active –X Filtering” under Tools should not be ticked.

**Annexure IV – Letter Comprising the Technical Bid**

[To be submitted on Company Letterhead of the Bidder]

Date:

To,

The Nominated Authority  
Ministry of Coal  
Room No. 120, F-Wing,  
1<sup>st</sup> Floor, Shastri Bhawan  
New Delhi - 110001

**Sub: Technical Bid for [Name of] Coal Mine; insert name of Bidder and MSTC Registration No. of Bidder**

Dear Sir,

With reference to your Tender Document dated [insert date], I, having examined the Tender Document and understood their contents, hereby submit my Technical Bid for the aforesaid Coal Mine. The Bid is unconditional and unqualified.

1. I have reviewed the terms of the Tender Document and hereby unconditionally and irrevocably accept, agree and acknowledge the terms thereof. Capitalised expressions used in this letter have the same meaning as ascribed thereto in the Tender Document.
2. I acknowledge that the Nominated Authority will be relying on the information provided in the Bid and the documents accompanying the Bid for recommendation of the Preferred Bidder and subsequent selection of the Successful Bidder for the aforesaid Coal Mine, and we certify that all information provided therein is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying the Bid are true copies of their respective originals.
3. This statement is made for the express purpose of our participation in the tender process and possible selection as Successful Bidder.
4. I shall make available to the Nominated Authority any additional information it may find necessary or require to supplement or to authenticate the Bid.
5. I acknowledge the right of the Nominated Authority to reject our Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by Applicable Law, our right to challenge the same on any account whatsoever.
6. For the purposes of classification under Clause 4.1.4 of the Tender Document, the particulars of our Affiliates (*as defined in the Tender Document*), which are also participating in the tender process for the Coal Mine are set-out below:

Sl.	Name of the Company	Corporate Identity Number (CIN)	Registered Address


*Note: Indicate nil if none of the Affiliates are participating in the tender process for the Coal Mine.*

7. I declare that:

- a) I have examined and understood the Act and the Rules;
- b) I have examined and have no reservations to the Tender Document, including any addendum and/or corrigendum issued by the Nominated Authority;
- c) I have not directly or indirectly or through an agent engaged or indulged in any Corrupt Practice, Fraudulent Practice, Coercive Practice, Undesirable Practice or Restrictive Practice, as defined in Clause 8 of the Tender Document, in respect of any tender or request for proposal issued by or any agreement entered into with the Nominated Authority or any other public sector enterprise or any government, central or state; and
- d) I hereby certify that we have taken steps to ensure that in conformity with the provisions of Clause 8 of the Tender Document, 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;

8. I understand that you may cancel the tender process at any time and that you are neither bound to accept any Bid that you may receive nor to invite the Bidders to Bid for the Coal Mine, without incurring any liability to the Bidders, in accordance with the Tender Document.

9. I unconditionally represent that we meet all the Eligibility Conditions as specified in the Tender Document.

10. I unconditionally represent that we are eligible to participate in the tender process in accordance with the Foreign Direct Investment Policy 2020 issued by Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India, as may be amended from time to time and including Press Note 4 of 2019 and Press Note 3 of 2020.

11. I unconditionally declare that the 'Fixed Amount', any upward revision in 'Fixed Amount' or any other dues payable to the Nominated Authority in respect of any other coal mine allocated to the bidder has been paid for, with interest, if any.

12. [I hereby confirm that the Bidder is permitted by its Memorandum of Association and Articles of Association to undertake coal mining activity.] 'or' [I hereby undertake to ensure that the main object under the Memorandum of Association of the Bidder will be duly revised and updated, if necessary, to allow mining activity in case of Bidder being declared as a Preferred Bidder]<sup>64</sup>.

13. I 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 Nominated Authority in connection with the selection of the Preferred Bidder, or in connection with the tender process itself, in respect of the above mentioned Coal Mine and the terms and implementation thereof.

<sup>64</sup> Retain whichever is applicable for the Bidder

14. In the event of my being declared as the Successful Bidder, I agree to enter into an Agreement in accordance with the Tender Document and pay such amounts and provide such security as required therein
15. Any payments required to be made by me shall be subject to set-off in accordance with Section 16(3) of the Act, if applicable.
16. I have ensured compliance with Clause 3.4 of the Tender Document and to the best of my knowledge this Bid is responsive in terms thereof.
17. I agree and understand that the Bid is subject to the provisions of the Tender Document. In no case, I shall have any claim or right of whatsoever nature if the Coal Mine is not awarded to me or my Bid is not opened or rejected.
18. The Initial Offer has been and the Final Offer shall be quoted by me after taking into consideration all the terms and conditions stated in the Tender Document, the Agreement, our own estimates of costs and feasibility and after a careful assessment of the Coal Mine and all the conditions that may affect the Coal Mine.
19. I would ensure that all documents required to be submitted electronically on the electronic auction platform and the following documents required to be submitted physically with the Nominated Authority are duly submitted: (a) power of attorney in the form and substance as specified in Annexure V of the Tender Document; (b) affidavit in the form and substance as specified in Annexure VI of the Tender Document; (c) Bid Security in the form and substance as specified in Annexure VIII of the Tender Document or cash transfer through RTGS/NEFT into the Designated Bank Account.
20. I shall keep this offer valid for 210 (two hundred and ten) days from the Bid Due Date specified in the Tender Document or such extended duration as may be agreed with the Nominated Authority

In witness thereof, I submit this Technical Bid under and in accordance with the terms of the Tender Document.

Yours faithfully,

(Signature, name, designation and contact details of the Authorised signatory)

Name and seal of Bidder

Date:

Place:

**Annexure V – Power of Attorney for Signing the Bid**

[To be stamped in accordance with the relevant Stamp Act and duly sworn before Notary public]

**Power of Attorney for signing of Bid**

Know all men by these presents, We, ..... (name and address of the 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 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 for the [insert name] Coal Mine (“**Coal Mine**”) in response to the Tender Document dated [insert date] issued by Nominated Authority, Ministry of Coal (the “**Nominated Authority**”) including but not limited to signing and submission of all applications, affidavits, bids and other documents and writings, participate in Bidders’ and other conferences and providing information / responses to the Nominated Authority, representing us in all matters before the Nominated Authority, and generally dealing with the Nominated Authority in all matters in connection with or relating to or arising out of our bid for the said Coal Mine and/or upon award thereof to us and/or execution of the Coal Mine Development and Production Agreement/ Coal Block Development and Production Agreement with the Nominated 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.

[AND we hereby confirm we do not have a common seal and therefore no common seal is required to be affixed hereto per applicable laws.]\*

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

For.....

(Signature, name, designation and address)

Witnesses:

1.

2.

Accepted

(Signature, name, designation and address of the Attorney)

Notarized<sup>65</sup>

<sup>65</sup> Date of execution and date of notarization of Power of Attorney should be same.

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 authorizing the execution of this power of attorney.*
- *For a power of attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and appropriately notarised in the relevant jurisdiction. However, the power of attorney provided by Bidders from countries that have signed the Hague Legislation Convention, 1961 are not required to be legalised by the Indian Embassy if it carries a conforming apostille certificate.*

*\* To be deleted if the company seal is duly affixed to the power of attorney.*

### Annexure VI – Format of Affidavit

(To be submitted as per Rule 31 of the Coal Mines (Special Provisions) Rules, 2014/ Rule 13 of the Coal Blocks Allocation Rules, 2017)

(To be stamped in accordance with the relevant Stamp act and duly sworn before Notary public<sup>66</sup>)

#### Affidavit

I, \_\_\_\_\_ aged \_\_\_\_\_ years, resident of \_\_\_\_\_ working as \_\_\_\_\_ an authorised signatory on behalf of \_\_\_\_\_ (name of bidder) (the “**Bidder**”) hereby state as under:

1. I say that I am the [Insert designation of the deponent] of the Bidder. I am conversant with the facts and circumstances surrounding the subject of this Affidavit and have been authorized to depose to the same pursuant to the power of attorney dated [insert date of execution of Power of Attorney]. I am filing this Affidavit to place on record verification of facts and documents in connection with the tender process concerning [name of the coal mine].
2. The following documents are brought on record on the website of MSTC or physically submitted with the Nominated Authority:

#### A. Documents submitted on the website of MSTC

1. Letter comprising the technical bid as per Annexure IV of the Tender Document
2. Power of Attorney as per Annexure V of the Tender Document
3. This Affidavit as per Annexure VI of the Tender Document
4. Bid Security as per Annexure VIII of the Tender Document or details of payment made through RTGS/NEFT like UTR No, amount, date of remittance, remitting bank etc. as applicable
5. Certified true copy of board resolution authorising execution of abovementioned Power of Attorney
6. Certified extract of charter documents i.e. Memorandum of Association and Articles of Association
7. [insert any other document submitted by the Bidder]

#### B. Documents submitted physically with the Nominated Authority

1. Original Power of Attorney as per Annexure V of the Tender Document
2. Original Affidavit as per Annexure VI of the Tender Document
3. Original Bid Security as per Annexure VIII of the Tender Document or details of payment made through RTGS/NEFT like UTR No, amount, date of remittance, remitting bank etc. as applicable
4. Certified true copy of board resolution authorising execution of abovementioned Power of Attorney
5. Certified extract of charter documents i.e. Memorandum of Association and Articles of Association
6. [insert any other document submitted by the Bidder]
3. For the purposes of classification under Clause 4.1.4 of the Tender Document, the particulars of our Affiliates (*as defined in the Tender Document*), which are also participating in the tender process for the Coal Mine are set-out below:

<sup>66</sup> Date of execution and date of notarization of the Affidavit should be same



Sl. No.	Name of the Company	Corporate Identity Number (CIN)	Registered Address

*Note: Indicate nil if none of the Affiliates are participating in the tender process for the Coal Mine.*

4. I unconditionally represent that we are eligible to participate in the tender process in accordance with the Foreign Direct Investment Policy 2020 issued by Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India, as may be amended from time to time and including Press Note 4 of 2019 and Press Note 3 of 2020.
5. I unconditionally represent that we have not and will not, directly or indirectly or through an agent engaged or indulged in any Corrupt Practice, Fraudulent Practice, Coercive Practice, Undesirable Practice or Restrictive Practice, as defined in Clause 8 of the Tender Document or enter to arrangement with a intent to form a cartel, in respect of any tender or request for proposal issued by or any agreement entered into with the Nominated Authority or any other public sector enterprise or any government, central or state.
6. I unconditionally declare that the 'Fixed Amount', any upward revision in 'Fixed Amount' or any other dues payable to the Nominated Authority in respect of any other coal mine allocated to the bidder has been paid for, with interest, if any.<sup>67</sup>
7. That nothing has been concealed in the information submitted as mentioned above.

Solemnly affirmed and verified on this \_\_\_\_\_ day of \_\_\_\_\_ (month) 20\_\_\_\_ (Year) at \_\_\_\_\_ (place).

(Signature)

Name, Designation & Seal

### VERIFICATION

I, [●], the [Insert designation of the deponent] of the Bidder above named, having my office at [●], do hereby solemnly declare that what is stated above are on the basis of the books and records of the Bidders, and verify that the contents of the above affidavit are true and correct, no part of it is false and nothing material has been concealed therefrom.

Verified at \_\_\_\_\_ day of \_\_\_\_\_ (month) 20\_\_\_\_ (Year) at \_\_\_\_\_ (place).

Deponent

(Signature)

Name, Designation & Seal

<sup>67</sup> To be retained in case of CM(SP) Act, 2015

Annexure VII – Format for seeking clarifications regarding the Tender Document

(Applicable only for the submission of the queries up to the last date of submission of queries as per Clause 3.8.1)

S. No	Document	Clause No. and Existing Provision	Clarification Required	Suggested Text for Amendment, if any	Rationale for Clarification or Amendment

**Annexure VIII – Bank Guarantee for Bid Security**

[To be stamped in accordance with the relevant Stamp Act]

**Bank Guarantee**

Bank Guarantee. No.

Date:

To

The Nominated Authority  
Ministry of Coal  
Room No. 120, F-Wing,  
1<sup>st</sup> Floor, Shastri Bhawan  
New Delhi - 110001

1. In consideration of you, being the Nominated Authority under the Coal Mines (Special Provisions) Act, 2015 (hereinafter referred to as the “**Nominated Authority**”, which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns) having agreed to receive, pursuant to the provisions of the relevant tender document, the Bid of ..... (a company registered under the Companies Act, [1956/2013]) and having its registered office at ..... (hereinafter referred to as the “**Bidder**” which expression shall unless it be repugnant to the subject or context thereof include its/their executors, administrators, successors and assigns), for the [insert name] Coal Mine (“**Coal Mine**”) pursuant to the Tender Document dated [insert date] issued in respect of the Coal Mine (hereinafter collectively referred to as “**Tender Document**”), we (Name of the Bank) having our registered office at .....and one of its branches located at ..... (“**Bank**”), at the request of the Bidder, do hereby in terms of the Tender Document, irrevocably, unconditionally and without reservations guarantee the due and faithful fulfilment and compliance of the terms and conditions of the Tender Document by the Bidder and unconditionally and irrevocably undertake to pay forthwith to the Nominated Authority an amount of INR [insert amount] (Indian Rupees [insert amount] only) (hereinafter referred to as the “**Guarantee**”) as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder if the Bidder shall fail to fulfil or comply with all or any of the terms and conditions contained in the said Tender Document.
2. Any such written demand made by the Nominated Authority stating that the Bidder is in default of the due and faithful fulfilment and compliance with the terms and conditions contained in the Tender Document shall be final, conclusive and binding on the Bank.
3. We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of the Nominated Authority is disputed by the Bidder or not, merely on the first demand from the Nominated Authority stating that the amount claimed is due to the Nominated Authority by reason of failure of the Bidder to fulfil and comply with the terms and conditions contained in the Tender Document. Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount

not exceeding INR [insert amount] (Indian Rupees [insert amount] only).

4. This Guarantee shall be irrevocable and remain in full force till [insert bank guarantee expiry date] and claims can be lodged till [insert last date of lodgement of claim] or for such extended period as may be mutually agreed between the Nominated Authority and the Bidder, and agreed to by the Bank, and shall continue to be enforceable till all amounts under this Guarantee have been paid.
5. We, the Bank, further agree that the Nominated Authority shall be the sole judge to decide as to whether the Bidder is in default of due and faithful fulfilment and compliance with the terms and conditions contained in the Tender Document including, inter alia, the failure of the Bidder to keep its Bid open during the Bid validity period set forth in the said Tender Document, and the decision of the Nominated Authority that the Bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between the Nominated Authority and the Bidder or any dispute pending before any Court, Tribunal, Arbitrator or any other authority.
6. The Guarantee shall not be affected by any change in the constitution, winding up, liquidation, or dissolution of the Bidder or the Bank or any absorption, merger or amalgamation of the Bidder or the Bank with any other person.
7. In order to give full effect to this Guarantee, the Nominated Authority shall be entitled to treat the Bank as the principal debtor. The Nominated Authority shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee from time to time to vary any of the terms and conditions contained in the said Tender Document or to extend time for submission of the Bids or the Bid validity period or the period for conveying acceptance of [Vesting Order / Allocation Order]<sup>68</sup> by the Bidder or the period for fulfilment and compliance with all or any of the terms and conditions contained in the said Tender Document by the said Bidder or to postpone for any time and from time to time any of the powers exercisable by it against the said Bidder and either to enforce or forbear from enforcing any of the terms and conditions contained in the said Tender Document or the securities available to the Nominated Authority, and the Bank shall not be released from its liability under these presents by any exercise by the Nominated Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the said Bidder or any other forbearance, act or omission on the part of the Nominated Authority or any indulgence by the Nominated Authority to the said Bidder or by any change in the constitution of the Nominated Authority or its absorption, merger or amalgamation with any other person or governmental department or instrumentality,, but for this provision, have the effect of releasing the Bank from its such liability.
8. Any notice by way of request, demand or otherwise hereunder shall be sufficiently given or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein.
9. We undertake to make the payment on receipt of your notice of claim on us addressed to [insert name of Bank along with branch address] and delivered at our above branch which shall be deemed to have been duly authorised to receive the said notice of claim.
10. It shall not be necessary for the Nominated Authority to proceed against the said Bidder before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which the Nominated Authority may have obtained from

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<sup>68</sup> To be retained as applicable

the said Bidder or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealised.

11. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of the Nominated Authority in writing.
12. The Bank declares that it has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorised and has full power to execute this Guarantee for and on behalf of the Bank.

Signed and Delivered by ..... Bank

**Annexure IX – Coal Mine Development and Production Agreement/ Coal Block Development and Production Agreement**

Provided separately.





सत्यमेव जयते



**[18<sup>TH</sup> / 8<sup>TH</sup>] TRANCHE OF AUCTION  
UNDER THE [COAL MINES (SPECIAL PROVISIONS) ACT, 2015 / MINES AND  
MINERAL (DEVELOPMENT AND REGULATIONS) ACT, 1957]**

**STANDARD TENDER DOCUMENT  
AUCTION OF COAL MINES FOR SALE OF COAL/LIGNITE**

**[Insert Name] COAL/LIGNITE MINE**

**Nominated Authority, Ministry of Coal  
Government of India  
New Delhi  
November 15, 2023**

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**Important Notice:**

*The information contained in this tender document (“**Tender Document**”) or any information subsequently provided to Bidder(s), by or on behalf of the Nominated Authority and/or any of its employees or advisors, shall be provided to prospective Bidder(s) on the terms and conditions set out in this Tender Document.*

*This Tender Document is neither an agreement nor an offer by the Nominated Authority to the prospective Bidders or any other Person. The purpose of this Tender Document is to provide prospective Bidders with information that may be relevant in making and submitting Bids pursuant to this Tender Document. This Tender Document is based on various assumptions arrived at and/or assessments made by the Nominated Authority in relation to the [coal/lignite mine / coal/lignite block] (“**Coal Mine**”). The statements contained in this Tender Document do not purport to cover and does not cover all such assumptions, assessments or information that each Bidder may require. This Tender Document may not be suitable for all Persons, and it is not possible for the Nominated Authority, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or refers to this Tender Document. The assumptions, assessments, statements and information contained in this Tender Document, including specifically the Mine Dossier, may not be complete, accurate, adequate or correct and shall not be referred to by any Bidder as an exhaustive reference of such assessments, statements or information. Each prospective 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 Tender Document and obtain independent advice from appropriate sources before submitting a Bid.*

*The information provided in this Tender Document has been collated from several sources some of which may depend upon interpretation of Applicable Law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as comprehensive advice on such matter. The Nominated Authority accepts no responsibility for the accuracy or otherwise for any statement contained in this Tender Document.*

*The Nominated Authority, its employees and advisors make no representation or warranty and shall have no 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 this Tender Document or otherwise, including on account of the accuracy, adequacy, correctness, completeness or reliability of this Tender Document and any assessment, assumption, statement or information contained therein or deemed to form part of this Tender Document or arising in any way from participation in this tender process.*

*The Nominated Authority shall not accept any liability of any nature whatsoever, whether resulting from negligence or otherwise howsoever caused arising from reliance of any Bidder upon the statements contained in this Tender Document.*

*Notwithstanding anything contained in this Tender Document, the Nominated 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 this Tender Document.*

*The issue of this Tender Document does not imply that the Nominated Authority is bound to select or shortlist a Bidder as the Preferred Bidder or to appoint the Preferred Bidder as Successful Bidder for*

*the Coal Mine and the Nominated Authority reserves the right (without incurring any liability whatsoever) to reject all or any of the Bidders or Bids without assigning any reason whatsoever.*

*Each Bidder shall bear all its costs associated with or relating to the preparation and submission of its Bid including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by the Nominated Authority or any other costs incurred in connection with or relating to its Bid. This Tender Document is not transferable. Nothing contained in this Tender Document shall be binding on the Nominated Authority or confer any rights on the prospective Bidders. The examples set out in this Tender Document are for illustrative purposes only.*

*The Mine Dossier of the Coal Mine is being provided only as a preliminary reference document to the prospective Bidders, who are expected to carry out their own surveys, investigations and other detailed examination of the Coal Mine before submitting their Bids. Nothing contained in the Mine Dossier shall be binding on the Nominated Authority nor confer any right on the Bidders, and the Nominated Authority shall have no liability whatsoever in relation to or arising out of any or all contents of the Mine Dossier.*

## 1 Definitions

- 1.1 Unless the context otherwise requires, capitalised terms and expressions used in this Tender Document and not defined in this Tender Document, but defined in the Act or the Rules shall have the meaning assigned to it in the Act or in the Rules, as the case may be. Further references to “**coal**” in this Tender Document shall include lignite coal.
- 1.1.1 “**Acceptable Bank**” shall mean a Scheduled Bank as listed in the Second Schedule of the Reserve Bank of India Act, 1934 excluding Gramin Banks, Urban Co-operative Banks and State Co-operative Banks.
- 1.1.2 “**Act**” shall mean the [CM(SP) Act, 2015/ MMDR Act, 1957.]<sup>1</sup>
- 1.1.3 “**Affiliates**” with respect to a Bidder shall mean a person who, directly or indirectly: (1) Controls such Bidder; (2) is Controlled by such Bidder; (3) is Controlled by the same person, who directly or indirectly, controls such Bidder; or (4) is an Associate Company of such Bidder.
- 1.1.4 “**Agreement**” shall mean the [Coal Mine Development and Production Agreement to be executed by Nominated Authority with the Successful Bidder pursuant to Rule 13(5) of the Rules / Coal Block Development and Production Agreement to be executed by Nominated Authority with the Successful Bidder pursuant to Rule 8(1) of the Rules]<sup>2</sup> in the form and substance as provided in **Annexure IX**.
- 1.1.5 [“**Allocation Order**” shall have the meaning ascribed to it in the Rules.]<sup>3</sup>
- 1.1.6 “**Applicable Floor Price**” shall have the meaning ascribed thereto in Clause 3.3.2(c).
- 1.1.7 “**Applicable Law**” shall mean all applicable statutes, laws, by-laws, rules, regulations, orders, ordinances, protocols, codes, guidelines, policies, notices, directions, judgments, decrees or other requirements or official directive of any governmental authority or court or other law, rule or regulation approval from the relevant governmental authority, government resolution, directive, or other government restriction or any similar form of decision of, or determination by, or any interpretation or adjudication having the force of law in India. It is hereby clarified that Applicable Law includes the consolidated Foreign Direct Investment Policy 2017 issued by the Department of Industrial Policy and Promotion, as amended from time to time including as amended by Press Note 3 of 2020 issued by the Department for Promotion of Industry and Internal Trade.
- 1.1.8 “**Associate Company**” shall have the meaning ascribed thereto in clause (6) of section 2 of the Companies Act, 2013.
- 1.1.9 “**Authorised Signatory**” shall mean the individual representing a Bidder who has been duly authorised on behalf of such Bidder to execute and submit the Bid in accordance with the terms hereof.
- 1.1.10 “**Base Year**” shall mean the financial year 2017-18.
- 1.1.11 “**Bid**” shall mean the binding Technical Bid, the Initial Offer and the Final Offer, as applicable,

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<sup>1</sup> To be retained as applicable.

<sup>2</sup> To be retained as applicable.

<sup>3</sup> To be retained for mines being auctioned under MMDR Act 1957.

submitted by the Bidders in accordance with this Tender Document pursuant to a unique MSTC Registration Number.

- 1.1.12 **“Bidder”** with respect to a Bid shall mean a Company or corporation which participates in such Bid.
- 1.1.13 **“Bid Due Date”** shall mean the date and time on which the Technical Bid and the Initial Offer are required to be submitted in accordance with Clause 3.8.
- 1.1.14 **“Bid Security”** shall have the meaning ascribed thereto in Clause 6.1.1.
- 1.1.15 **“CBA Act”** shall mean the Coal Bearing Areas (Acquisition and Development) Act, 1957.
- 1.1.16 **“CBM”** shall mean Natural Gas (mainly Methane) contained in coal or bituminous lignite beds.
- 1.1.17 **“CMPDIL”** shall mean the Central Mine Planning and Design Institute Limited (a Government of India undertaking).
- 1.1.18 **“CM(SP) Act, 2015”** shall mean Coal Mines (Special Provisions) Act, 2015, as amended from time to time.
- 1.1.19 **“Coal Gasification”** shall mean the technological process wherein partial oxidation / combustion of coal in an atmosphere of air/oxygen and steam, generates a mixture of flammable gasses (Syngas, Synthesis gas, Producer gas) comprising mainly of CO and H<sub>2</sub> with small quantities of CO<sub>2</sub>, CH<sub>4</sub>, H<sub>2</sub>O etc. and slag/ash (mineral residue).
- 1.1.20 **“Coal Liquefaction”** shall mean the process of converting coal into liquid hydrocarbons i.e. liquid fuels and petrochemicals.
- 1.1.21 **“Coal Mine”** means [insert name] coal/lignite mine(s) located in [insert name of state] listed at Sl. No. [\*] of Schedule [I/II/III] of the Act/ [insert name] coal block(s) located in [insert name of state]<sup>4</sup>, which is a [Fully Explored/ Partially Explored] Mine being placed for auction by this Tender Document.
- 1.1.22 **“Company”** shall have the meaning ascribed thereto in clause (20) of section 2 of the Companies Act, 2013.
- 1.1.23 **“Control”** shall have the meaning ascribed thereto in clause (27) of section 2 of the Companies Act, 2013.
- 1.1.24 **“Eligibility Conditions”** shall mean the eligibility conditions specified in the Act and the Rules including all the eligibility conditions listed in Clause 4.
- 1.1.25 **“FDI”** shall mean Foreign Direct Investment, i.e. investment by non-resident entity or person resident outside India in the capital of an Indian company in accordance with Foreign Exchange Management (Non-Debt Instrument) Rules, 2019.
- 1.1.26 **“Final Offer”** shall mean the percentage share of revenue quoted by the Bidder in the second round of the Financial Bid as payable to the Government per Tonne of coal.
- 1.1.27 **“Financial Bid”** shall have the meaning ascribed therein in Clause 3.3.1(b).

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<sup>4</sup> To be retained as applicable.

- 1.1.28 **“Fixed Amount”** shall have the meaning ascribed thereto in Clause 3.3.2(h)(ii).
- 1.1.29 **“Floor Price”** means the percentage share of revenue prescribed under this Tender Document in Clause 3.3.2.
- 1.1.30 **“Fully Explored Mine”** means a coal mine/ block categorised in G-1 exploration stage as per the modified Indian Standard Procedure for Coal Resource Estimation, 2017 issued by the Central Geological Programming Board of Geological Survey of India.
- 1.1.31 **“Geological Report”** shall have the meaning ascribed in Rule 2(1)(iv) of the Mineral Concession Rules, 1960.
- 1.1.32 **“Geological Reserves”** shall mean [(i) for Schedule II Coal Mines, the gross reserves mentioned in the Geological Report under the Act less the coal reserves extracted from the Coal/ Mine till March 31, 2020 and ii) for mines other than Schedule II Coal Mines, the gross reserves mentioned in the Geological Report.]<sup>5</sup> [gross reserves mentioned in the Geological Report.]<sup>6</sup>.
- 1.1.33 **“Initial Offer”** shall mean the percentage share of revenue quoted by the Bidder in the Financial Bid as payable to the Government per Tonne of coal, and which must be above the Floor Price in accordance with Clause 3.3.2(a).
- 1.1.34 **“Lock-in Period”** shall have the meaning ascribed thereto in Clause 5.2.1.3.
- 1.1.35 **“Mandatory Work Program”** shall mean the work program as provided in **Annexure I** and shall be monitored and reviewed by the Nominated Authority or the Central Government or any agency appointed by the Nominated Authority in this regard.
- 1.1.36 **“Mine Dossier”** shall have the meaning ascribed [to it in the Rules/ to Block Dossier in the Rules]<sup>7</sup>.
- 1.1.37 **“Mining Lease”** shall mean the lease to be granted by the State Government in accordance with [Section 8(4)(b) read with Section 8(8) of the Act / Section 11A of the Act]<sup>8</sup>.
- 1.1.38 **“Mining Plan”** shall mean a plan which has been approved in accordance with the Applicable Laws in relation to the Coal Mine.
- 1.1.39 **“Minor Minerals”** shall have the meaning ascribed to it in the [Act / MMDR Act, 1957]<sup>9</sup>.
- 1.1.40 **“MMDR Act, 1957”** shall mean Mines and Minerals (Development and Regulation) Act, 1957, as amended from time to time.
- 1.1.41 **“Monthly Payment”** shall have the meaning ascribed thereto in Clause 3.10.1.
- 1.1.42 **“MoPNG”** shall mean the Ministry of Petroleum and Natural Gas, Government of India.
- 1.1.43 **“MSTC”** shall mean MSTC Limited (a Government of India undertaking).
- 1.1.44 **“National Coal Index”** shall mean the coal index determined in accordance with the Office

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<sup>5</sup> To be retained for mines being auctioned under CM(SP) Act 2015.

<sup>6</sup> To be retained for mines being auctioned under MMDR Act 1957.

<sup>7</sup> To be retained as applicable.

<sup>8</sup> To be retained as applicable.

<sup>9</sup> To be retained as applicable.

Memorandum ‘Roll-out of National Coal Index (Base Year 2017-18)’ dated June 04, 2020 and Operational Guidelines of National Coal Index and Representative Prices dated June 17, 2020 issued by the Ministry of Coal, as may be amended, and published by the Government of India on a bi-monthly basis and includes sub-indices notified for various coal grades.

- 1.1.45 **“National Lignite Index”** shall mean the lignite index for determining representative price of the relevant grade of the lignite coal, as published by the Government of India separately.
- 1.1.46 **“Nominated Authority”** shall mean the Nominated Authority [appointed under Section 6 (1) of the Act and Rule 3 of the Rules made thereunder.] / [appointed under Section 6 (1) of the CM(SP) Act, 2015 and Rule 3 of the Coal Mines (Special Provisions) Rules, 2014 made thereunder and authorised under Section 26 of the Act.]<sup>10</sup>
- 1.1.47 **“Notional Price”** shall have the meaning ascribed thereto in Clause 3.10.1(c)(i).
- 1.1.48 **“Partially Explored Mine”** means a coal mine/ block categorised in G-2 or G-3 exploration stage as per the modified Indian Standard Procedure for Coal Resource Estimation, 2017 issued by the Central Geological Programming Board of Geological Survey of India.
- 1.1.49 **“Performance Security”** shall have the meaning ascribed thereto in Clause 7.
- 1.1.50 **“Person”** shall include any Company or association or body of individuals, whether incorporated or not.
- 1.1.51 **“Preferred Bidder”** shall have the meaning ascribed to it in Clause 3.3.2(c).
- 1.1.52 **“Prior Allottee”** shall have the meaning ascribed thereto in the [Act and for the purposes of this Tender Document, the Prior Allottee shall be [name and particulars of the prior allottee]]<sup>11</sup> / [CM(SP) Act, 2015.]<sup>12</sup>
- 1.1.53 **“Production Schedule”** shall have the meaning ascribed thereto in Clause 9.2.1.
- 1.1.54 **“Qualified Bidder(s)”** shall have the meaning ascribed to it in Clause 3.3.2(b).
- 1.1.55 **“Representative Price”** shall mean the grade-wise price calculated in accordance with Clause 3.10.1 and further detailed in **Annexure II**.
- 1.1.56 **“Rules”** shall mean the [Coal Mines (Special Provisions) Rules, 2014 / Coal Blocks Allocation Rules, 2017]<sup>13</sup> or any other rules framed pursuant to the Act.
- 1.1.57 **“[Rule 8(2) Order / Rule 3(1) Order]”**<sup>14</sup> shall mean an order issued by the Central Government under [Rule 8(2) / Rule 3(1)]<sup>15</sup> of the Rules.
- 1.1.58 **“Scheduled Date of Production”** shall have the meaning ascribed thereto in Clause 3.11.1.
- 1.1.59 **“State Government”** shall mean the Government of the state where the Coal Mine is located.

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<sup>10</sup> To be retained as applicable.

<sup>11</sup> To be retained for mines being auctioned under CM(SP) Act 2015.

<sup>12</sup> To be retained for mines being auctioned under MMDR Act 1957.

<sup>13</sup> To be retained as applicable.

<sup>14</sup> To be retained as applicable.

<sup>15</sup> To be retained as applicable.

- 1.1.60 **“Subsidiary Company”** shall have the meaning thereto in clause (87) of section 2 of the Companies Act, 2013.
- 1.1.61 **“Successful Bidder”** shall have the meaning ascribed thereto in Clause 3.3.2(d).
- 1.1.62 **“Supreme Court Judgment”** shall have the meaning ascribed thereto in Clause 2.1.1.]<sup>16</sup>
- 1.1.63 **“Technical Bid”** shall mean a confirmation of compliance with the Eligibility Conditions along with necessary supporting documents and information.
- 1.1.64 **“Technically Qualified Bidder”** shall have the meaning ascribed thereto in Clause 3.3.2(b).
- 1.1.65 **“Tender Document”** shall mean this document including its Annexures including specifically the Agreement, the Mine Dossier, order F. No. 13011/2/2020-CBA2-Part(2) dated May 28, 2020 of Ministry of Coal, any addenda to this Tender Document and any other document issued pursuant hereto.
- 1.1.66 **“Upfront Amount”** shall mean an amount [of INR [●]]<sup>17</sup>, which has been calculated in accordance with Clause 3.9.1 and payable in accordance with Clause 3.9.2.
- 1.1.67 **“Value of Estimated Geological Reserves”** shall mean an amount which is a product of the estimated quantity of Geological Reserves in the Coal Mine and the Representative Price of the relevant grade of coal. It is clarified that relevant grade of coal shall mean weighted average grade of non-coking coal and/or weighted average grade of coking coal, as the case may be, for the Coal Mine, as per Geological Report. For Coal Mine with lignite coal, relevant grade of coal shall be as notified by Government of India separately.
- 1.1.68 **“Vesting Order”** shall have the meaning ascribed thereto in the Act.]<sup>18</sup>
- 1.1.69 **“Designated Bank Account shall mean”** “Bank Account of Nominated Authority, Ministry of Coal, Government of India” whose details are provided below:

Bank Name-Punjab National Bank (PNB)  
Bank Branch- Connaught Circus  
Account Number-0276050414586  
IFSC - PUNB0027620  
MICR Code- 110024773  
Bank Address - J.C. Das Building, 90/8, Connaught Circus, New Delhi –110001  
Bank Contact Number- (011)-23360661, 23347012

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<sup>16</sup> To be retained for mines being auctioned under CM(SP) Act 2015.

<sup>17</sup> Applicable for Fully Explored Mines

<sup>18</sup> To be retained for mines being auctioned under CM(SP) Act 2015.



## 2 Introduction

### 2.1 Background<sup>19</sup>

2.1.1 [The Supreme Court of India, *vide* its judgment dated August 25, 2014, read with its order dated September 24, 2014 (collectively the “**Supreme Court Judgment**”), had cancelled allotment of 204 coal blocks. The Coal Mine was one of the 204 cancelled coal blocks and accordingly, its allotment to the Prior Allottee was cancelled pursuant to the Supreme Court Judgment, with effect from the ‘appointed date’ (*as defined in the Act*).

2.1.2 Subsequent to the Supreme Court Judgment, the Coal Mines (Special Provisions) Ordinance, 2014; the Coal Mines (Special Provisions) Second Ordinance, 2014 were promulgated, the Rules were notified; and the Act was passed and notified for auction and allotment of all coal blocks, the earlier allotment of which were cancelled pursuant to the Supreme Court Judgment.]

[The Act, was promulgated for development and regulation of mines and minerals. In 2010, Section 11A was introduced *vide* the Mines and Mineral (Development and Regulation) (Amendment) Act, 2010 and was subsequently amended *vide* Section 30 read with Schedule IV of the Coal Mines (Special Provisions) Act, 2015, which provides for the mechanism to auction and/or allot coal and lignite mines under the provisions of the Act. ]<sup>20</sup>

2.1.3 The Press Note 4 of 2019, issued by the Central Government, amended FDI Policy 2017, to permit 100% FDI under automatic route in coal mining activities, including associated processing infrastructure subject to the Act and other Applicable Laws, for sale of coal. The Press Note 3 of 2020, issued by the Central Government, further amended the FDI Policy to prescribe a requirement to seek prior Government approval if such foreign direct investment is by an entity from a country which shares land borders with India or where the beneficial owner of such foreign direct investment into India is situated in or is a citizen of any such country.

2.1.4 Subsequently, the Mineral Laws (Amendment) Act, 2020 has been notified on March 13, 2020, with effect from January 10, 2020 to amend the Act so as to permit auction of Coal Mines for own consumption, sale or for any other purpose as may be determined by the Government.

2.1.5 Pursuant to [Rule 8(2) / Rule 3(1)]<sup>21</sup> of the Rules, the Central Government has issued a ‘[Rule 8(2) Order’ / Rule 3(1) Order]<sup>22</sup> dated [Insert Relevant Order Date]<sup>23</sup>/ [Insert Relevant Order Date]<sup>24</sup>, to the Nominated Authority for auction of the Coal Mine pursuant to [Section 4(1) and 4(2) / Section 11A] of the Act. A copy of such [Rule 8(2) Order / Rule 3(1) Order]<sup>25</sup> is available at <http://coal.nic.in>.

2.1.6 Accordingly, this Tender Document is being issued by the Central Government, through the Nominated Authority, for auction of the Coal Mine. The auction would be conducted in accordance with the Act, the Rules, any other order issued by the Central Government and this Tender Document.

<sup>19</sup> To be retained as applicable.

<sup>20</sup> To be retained as applicable.

<sup>21</sup> To be retained as applicable.

<sup>22</sup> To be retained as applicable.

<sup>23</sup> To be retained for mines being auctioned under CM(SP) Act 2015

<sup>24</sup> To be retained for mines being auctioned under MMDR Act 1957

<sup>25</sup> To be retained as applicable.

[In pursuance of the order dated September 12, 2022 passed by the National Green Tribunal in Original Application No. 104/ 2018 (Shivpal Bhagat & Ors. Vs. Union of India & Ors.), for the mines located in Chhattisgarh, the bidders will have to comply with the orders passed by the National Green Tribunal.]

- 2.1.7 [Pursuant to Section 6 of the Act, the Central Government has appointed the Nominated Authority to conduct the tender process./ Pursuant to Section 26 of the Act, the Central Government has authorised the Nominated Authority to conduct the tender process.]<sup>26</sup> Subsequently, the Nominated Authority shall execute the Agreement with the Successful Bidder in accordance with [Rule 13(5)/ Rule 8(1)] of the Rules<sup>27</sup>.

## **2.2 The Act and the Rules**

- 2.2.1 This tender and auction process is subject to and in accordance with the Act, the Rules and this Tender Document, and the rights and obligations of all the Bidders is subject to the Act and the Rules. All Bidders are encouraged to familiarise themselves with the Act and the Rules. As of the date of this Tender Document, the Act and the Rules are available at <http://coal.nic.in>.

## **2.3 The Coal Mine**

- 2.3.1 The Coal Mine is being auctioned strictly for the purpose of sale of coal as mentioned in the [Rule 8(2) Order/ Rule 3(1) Order]<sup>28</sup>. The mining operations are required to be conducted strictly in accordance with all Applicable Law, including without limitation the Act, the Rules, the [Vesting Order / Allocation Order]<sup>29</sup> and this Tender Document and any document referred herein, including the Agreement.

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<sup>26</sup> To be retained as applicable.

<sup>27</sup> To be retained as applicable.

<sup>28</sup> To be retained as applicable.

<sup>29</sup> To be retained as applicable.

### **3 Tender Process**

#### **3.1 Electronic Auction**

- 3.1.1 The auction of the Coal Mine shall be conducted on electronic platform created by MSTC and no physical bids shall be accepted or considered.
- 3.1.2 The technical details with respect to access to such electronic platform are provided in **Annexure III** (*Technical Details with respect to electronic auction*).
- 3.1.3 In case of any technical clarification regarding access to the electronic auction platform or conduct of the auction process, the Bidders may contact MSTC directly at the address provided in **Annexure III**.

#### **3.2 Tender Document**

- 3.2.1 In order to participate in the tender process, each Bidder shall be required to make a non-refundable payment of INR 5,00,000 (Indian Rupees Five Lakh) with respect to each Bid. Please refer to **Annexure III** for technical details regarding the aforementioned payment.
- 3.2.2 Upon payment of the abovementioned fee, the Bidder shall be eligible to download the specific Tender Document from website of the MSTC.

#### **3.3 Description of the Tender Process**

- 3.3.1 Pursuant to [Rule 10(4)(a) / Rule 5(5)]<sup>30</sup> of the Rules, the auction would be conducted through a two stage process comprising of:
- a) Technical Bid in which the Bidders would be required to provide details regarding compliance with the Eligibility Conditions; and
  - b) Financial Bid comprising of: (i) the Initial Offer; and (ii) the Final Offer. The Initial Offer is required to be submitted along with the Technical Bid. It is hereby clarified that the Financial Bid will comprise of two rounds. In the first round the Initial Offer of the Technically Qualified Bidders would be opened and ranked on the basis of descending order for determination of the Qualified Bidders as provided in Clause 3.3.2(b) below. The Qualified Bidders shall be eligible to participate in the electronic auction and submit their Final Offer.
- 3.3.2 The two stage tender process would be conducted in the following sequence:
- (a) **Technical Qualification:**  
  
In the first stage, the Bidders would be required to submit: (i) the Bid Security; (ii) the Technical Bid in the form and substance specified in **Annexure IV**; and (iii) the Financial Bid to the extent of specifying the Initial Offer, which should be higher than the Floor Price in multiples of 0.5% of revenue share till Initial Offer reaches 10% and thereafter in multiples of 0.25% revenue share. The Floor Price for the Coal Mine is 4% of revenue share.

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<sup>30</sup> To be retained as applicable.

The Technical Bid of each Bidder, which is duly submitted in accordance with this Tender Document along with the Bid Security shall be opened by the Nominated Authority on the date mentioned in Clause 3.8.1, at such time and place as notified subsequently and in presence of the Bidders who choose to attend. The Nominated Authority reserves the right to ask for any details, clarifications or any other information, in writing based on information submitted by Bidders for the purpose of evaluation of Technical Bids or otherwise.

The Technical Bid shall be evaluated against the Eligibility Conditions and against the test of responsiveness (in accordance with Clause 3.4). The Nominated Authority may appoint an evaluation committee for evaluation of the Technical Bids.

(b) **Ranking and Qualification:**

The Bidders who meet all the Eligibility Conditions (the “**Technically Qualified Bidders**”) shall be ranked, and thereafter a determination shall be made in the following manner to identify the qualified bidders, who shall be qualified for participating in the electronic auction and shall be eligible to submit a Final Offer (the “**Qualified Bidders**”):

- I. **Ranking:** The Technically Qualified Bidders shall be ranked in a descending order on the basis of the respective Initial Offer. The Technically Qualified Bidders who have submitted the same Initial Offer, shall be assigned the same rank.

**II. Determination of Qualified Bidders:**

- (i) If there are only 2 or 3 Technically Qualified Bidders, all the Technically Qualified Bidders shall be considered as Qualified Bidders.
- (ii) If there are 4 to 6 Technically Qualified Bidders, the lowest ranked Technically Qualified Bidder(s) shall be eliminated and the remaining Technically Qualified Bidders shall be considered as Qualified Bidders.
- (iii) If there are 7 or more Technically Qualified Bidders, 1/3<sup>rd</sup> of the Technically Qualified Bidders (taking from the lowest rank(s) holding Technically Qualified Bidders) and subject to a maximum of 3, shall be eliminated. In the event the number of Technically Qualified Bidders at the lowest ranks, as per this Clause, is more than 3, then all such Technically Qualified Bidders holding the lowest ranks shall be eliminated notwithstanding the cap of 3 Technically Qualified Bidders to be eliminated. The remaining Technically Qualified Bidders shall be considered as Qualified Bidders. While calculating the one third, fractions will be ignored.

Provided however, no Technically Qualified Bidder shall be eliminated in the event the number of Qualified Bidders after elimination pursuant to this Clause is less than 3.

Provided however that in the event that there are less than 2 Technically Qualified Bidders, then no Technically Qualified Bidder shall be considered to be a Qualified Bidder, and the tender process for the Coal Mine shall stand annulled.

**Illustration 1:**

Solely for the purposes of reference of the Bidders, the methodology of determination of Qualified Bidders is illustrated below:

(i) In case 10 Bids are received which are referred to as bid *A* to *J* and no two Initial Offers are identical.

Then,

**Step 1 – Ranking:** Upon ranking them in descending order of Initial Offers, the Technically Qualified Bidders would be ranked in the following manner: *I, D, B, A, C, F, E, G, J*, and *H* [i.e. *I* being the highest Initial Offer and *H* being the lowest]. The number of Technically Qualified Bidders shall be 10.

**Step 2 – Determination of Qualified Bidders:** Eliminating the bottom 3 Technically Qualified Bidders (1/3<sup>rd</sup> of 10 being 3.33 and ignoring 0.33), the Qualified Bidders shall be *I, D, B, A, C, F, and E*.

(ii) In the aforementioned illustration no. (i), if Initial Offer against Bids *F, E, G and J* is equal;

Then,

**Step 1 – Ranking:** Upon ranking them in descending order of Initial Offers, the Technically Qualified Bidders would be ranked in the following manner:

Rank 1: *I*

Rank 2: *D*

Rank 3: *B*

Rank 4: *A*

Rank 5: *C*

Rank 6: *F, E, G and J*

Rank 7: *H*

**Step 2 – Determination of Qualified Bidders:** Eliminating the Technically Qualified Bidders at lowest ranks:

- 1/3<sup>rd</sup> of 10 Technically Qualified Bidders being 3.33 and ignoring 0.33, 3 Technically Qualified Bidders who ranked last should be eliminated.
- However, the total number of the Technically Qualified Bidders at the lowest ranks is 5. After elimination of 5 these last ranked 5 Technically Qualified Bidders, the number of Qualified Bidders would be 5. Accordingly, the Qualified Bidders shall be *I, D, B, A, and C*.

(iii) In the aforementioned illustration no. (i), if Initial Offer against Bids *B, A, C, F, E, G, J and H* is equal;

Then,

**Step 1 – Ranking:** Upon ranking them in descending order of Initial Offers, the Technically Qualified Bidders would be ranked in the following manner:

Rank 1: I

Rank 2: D

Rank 3: B, A, C, F, E, G, J and H

**Step 2 – Determination of Qualified Bidders:** Eliminating the Technically Qualified Bidders at lowest ranks:

- 1/3<sup>rd</sup> of 10 Technically Qualified Bidders being 3.33 and ignoring 0.33, 3 Technically Qualified Bidders who ranked last should be eliminated.
- However, the total number of the Technically Qualified Bidders at the lowest ranks is 8. After elimination of these last ranked 8 Technically Qualified Bidders, the number of Qualified Bidders would be 2. Since the remaining number of Qualified Bidders is less than 3, no elimination of Technically Qualified Bidders shall take place.

The Qualified Bidders shall be **I, D, B, A, C, F, E, G, J, and H.** (iii) In case that instead of 10 Bids only 2 Bids are received, then both the Technically Qualified Bidders shall be Qualified Bidders. This would be the case even if the Initial Offer of two or more of such Technically Qualified Bidders is identical.

***Note:** The above mentioned illustrations are merely for reference purpose and in case of inconsistency, the provision of Clause 3.3.2(b) shall prevail.*

(c) **Final Offer:**

The “**Applicable Floor Price**” for electronic auction shall be the highest Initial Offer received from the Qualified Bidders. The Qualified Bidders shall be permitted to place their Final Offer on the electronic auction platform, which is higher than the Applicable Floor Price. The Final Offer shall be accepted in multiple of 0.5% of revenue share till the Final Offer reaches 10% and thereafter in multiple of 0.25% of revenue share.

The Qualified Bidder that submits the highest Final Offer during the electronic auction process shall be declared as the “**Preferred Bidder**”.

In the event that the Qualified Bidder that submitted the highest Initial Offer i.e. the “**Applicable Floor Price**”, becomes ineligible to participate in the electronic auction, the next highest Initial Offer shall become the Applicable Floor Price.

In case the auction process is annulled due to non-submission of at least one Final Offer on the electronic auction platform, the Bid Security of the Qualified Bidder(s) who has submitted the highest Initial Offer i.e. the Applicable Floor Price, shall be forfeited in accordance with Clause 6.1.5.

(d) **Recommendation to Central Government:**

Pursuant to [Rule 10(9)/ Rule 5(7)]<sup>31</sup> of the Rules, the Nominated Authority shall recommend the name of the Preferred Bidder to the Central Government. Upon receipt

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<sup>31</sup> To be retained as applicable.

of a direction from the Central Government that a [Vesting Order/ Allocation Order]<sup>32</sup> should be issued to the Preferred Bidder, the Preferred Bidder shall be declared as the “**Successful Bidder**”.

(e) **Preferred Bidder not to become Successful Bidder in certain cases:**

Notwithstanding the above, in the event that the Nominated Authority or the Central Government determines that a Preferred Bidder should not be declared as the Successful Bidder on account of any reason whatsoever, including without limitation, the withdrawal of the Preferred Bidder from the auction process for the Coal Mine or ceasing to comply with the Eligibility Conditions, the tender process shall stand terminated and the Nominated Authority shall have the power to re-initiate the tender process in accordance with [Rule 17 / Rule 9]<sup>33</sup> of the Rules, provided the Nominated Authority has not received any [Rule 8(2) Order / Rule 3(1) Order]<sup>34</sup> from the Central Government afresh.

(f) **Issue of order providing exception to Section 6(1)(b) of the [Act/ MMDR Act, 1957]**<sup>35</sup>

In the interest of the development of the coal mining sector, the Central Government shall increase the maximum area limits in respect of prospecting license or mining lease in accordance with Section 6(1)(b) of the [Act/MMDR Act, 1957]<sup>36</sup>.

(g) **Signing of the Agreement:**

Upon receipt of the necessary direction from Central Government under [Rule 10(10) / Rule 5(7) of the Rules]<sup>37</sup>, the Nominated Authority shall inform the Successful Bidder and execute the Agreement in accordance with [Rule 13(5)/ Rule 8(1) of the Rules]<sup>38</sup>. The Successful Bidder shall not be entitled to seek any deviation, modification or amendment in the Agreement, except with the prior approval of the Central Government.

(h) **Payments by the Successful Bidder:**

On signing the Agreement, the Successful Bidder, within such period as prescribed in Clause 3.8, shall, to the Nominated Authority:

- (i) furnish the Performance Security as specified in Clause 7;
- (ii) [pay a fixed amount for the compensation for land and mine infrastructure; cost borne by the Prior Allottee for the preparation of geological report; cost borne by the Prior Allottee for obtaining all statutory licenses, permits, permissions, approvals, clearances or consents relevant to the mining operations; cost incurred by CMPDIL for preparation of the mine dossier including block boundary and financial valuation along with applicable taxes; (collectively the “**Fixed Amount**”). If the Successful Bidder is a Prior Allottee, then, the compensation payable to such Successful Bidder shall be set off or adjusted against the Fixed Amount payable by such Successful Bidder.

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<sup>32</sup> To be retained as applicable.

<sup>33</sup> To be retained as applicable.

<sup>34</sup> To be retained as applicable.

<sup>35</sup> To be retained as applicable.

<sup>36</sup> To be retained as applicable.

<sup>37</sup> To be retained as applicable.

<sup>38</sup> To be retained as applicable.

The Fixed Amount is required to be deposited by the Successful Bidder in accordance with the relevant provisions of the Act and the Rules and as provided in the Agreement. The payment related to preparation of mine dossiers is required to be made directly to CMPDIL whereas, the remaining fixed amount is required to be deposited with the office of Nominated Authority. The Fixed Amount payable is based on the available information and the assessment made by the competent authority and will be uploaded as a part of this Tender Document. Any upward revision in the Fixed Amount on a subsequent date by the Government or the Nominated Authority consequent to any process or on the orders of any competent court of law, shall also be payable by the Successful Bidder. Additionally, in case of any downward revision in the Fixed Amount on a subsequent date by the Government or the Nominated Authority, the same would be refunded by the Nominated Authority to the Successful Bidder.]<sup>39</sup>

[cost incurred by CMPDIL and other Government agencies, if any, in deriving detailed geographical boundary coordinates and in preparing geological report, if any; cost incurred by CMPDIL for preparation of the mine dossier including block boundary and financial valuation along with applicable taxes; (collectively the “Fixed Amount”). The Fixed Amount is required to be deposited by the Successful Bidder as provided in the Agreement. The payment related to preparation of mine dossiers is required to be made directly to CMPDIL whereas, the remaining fixed amount is required to be deposited with the office of Nominated Authority. The Fixed Amount payable is based on the available information and the assessment made by the competent authority and will be uploaded as a part of this Tender Document. Any upward revision in the Fixed Amount on a subsequent date by the Government or the Nominated Authority consequent to any process or on the orders of any competent court of law, shall also be payable by the Successful Bidder. Additionally, in case of any downward revision in the Fixed Amount on a subsequent date by the Government or the Nominated Authority, the same would be refunded by the Nominated Authority to the Successful Bidder.]<sup>40</sup>

- (iii) For Fully Explored Mines, pay an amount equal to INR [●] (Indian Rupees ([●]) as the first instalment of the Upfront Amount.

(i) **Issuance of the [Vesting Order / Allocation Order]**<sup>41</sup>:

Upon receipt of Performance Security and other payments mentioned in sub-clause (h) above, the [Vesting Order / Allocation Order] shall be issued, in duplicate, by the Nominated Authority to the Successful Bidder and the Successful Bidder shall, within 7 (seven) days of the receipt of the [Vesting Order / Allocation Order], sign and return the duplicate copy of the [Vesting Order / Allocation Order] in acknowledgement thereof. In the event that the duplicate copy of the [Vesting Order / Allocation Order] duly signed by the Successful Bidder is not received within the stipulated date, the Nominated Authority may, unless it consents to extension of time for submission thereof, appropriate the Performance Security and other payments made by the Successful Bidder as damages and also terminate the Agreement.

<sup>39</sup> This is to be retained only for Coal Mines being auctioned under the CMSP Act.

<sup>40</sup> This is to be retained only for Coal Mines being auctioned under the MMDR Act.

<sup>41</sup> To be retained as applicable.



### **3.4 Tests of Responsiveness**

Prior to evaluation of the Technical Bid, the Nominated Authority shall determine whether each Technical Bid is responsive to the requirements of this Tender Document. The Nominated Authority reserves the right to reject any Technical Bid which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be considered or permitted by the Nominated Authority in respect of such Technical Bid. While making any determination with respect to responsiveness of a Technical Bid, the Nominated Authority may consider such parameters as it may deem relevant, including considerations that the Technical Bid:

- a) is received as per the prescribed formats along with documentary evidence required to support its ability to meet the Eligibility Conditions and other conditions prescribed elsewhere in this Tender Document;
- b) is received by the Bid Due Date including any extension thereof;
- c) is submitted in the manner prescribed in this Tender Document;
- d) is accompanied by the Bid Security as specified in Clause 6;
- e) is accompanied by a Power of Attorney as specified in **Annexure V** and an Affidavit as specified in **Annexure VI**;
- f) contains all the information (complete in all respects) including the Initial Offer as requested in this Tender Document;
- g) does not contain any condition or qualification;
- h) only 1 (one) Technical Bid has been made for the Coal Mine by the Bidder and/or its Affiliate; and
- i) is generally not considered to be non-responsive in terms of any other parameters as may be considered relevant by the Nominated Authority.

### **3.5 Pre-Bid Conference**

- 3.5.1 Pre-Bid conference(s) of the Bidders shall be convened at the designated date as mentioned in Clause 3.8 at a time and place specified by the Nominated Authority. Only those persons who have purchased the Tender Document shall be allowed to participate in the pre-bid conferences.
- 3.5.2 A maximum of 3 (three) representatives of each Bidder shall be allowed to participate on production of duly issued authority letter from the Bidder and identity documents. During the course of Pre-Bid conference(s), the Bidders will be free to seek clarifications and make suggestions for consideration of the Nominated Authority.
- 3.5.3 The Nominated 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 tender process.

### **3.6 Site visits and Information**

- 3.6.1 Prior to submission of Technical Bid, the Bidders are encouraged to undertake the site visit to Coal Mine, at their own cost and risk and ascertain for themselves the site conditions, location,

communication, climate, availability of power, Applicable Laws and regulations, and any other matter considered relevant by them in the manner provided herein. This Tender Document does not however give the unconditional or unrestricted right to access the Coal Mine or the right to the Bidders to prospect for coal in the Coal Mine or carry out any drilling in the Coal Mine.

- 3.6.2 The Bidders which have made payment of INR 5,00,000 (Indian Rupees Five lakhs) for this Tender Document in accordance with Clause 3.2 shall be eligible to make request for visit to the Coal Mine until the Bid Due Date. The site visit to the Coal Mine shall be coordinated through the following e-mail address [na.moc@nic.in](mailto:na.moc@nic.in). The email should clearly bear the following subject line: “Site Visit for [insert name of the coal mine]”.
- 3.6.3 In the event a Bidder undertakes a site visit, then such Bidder shall be liable for any loss or damage caused to the site [and/or the Prior Allottee], on account of any act or omission of such Bidder or its employees, authorised representatives, agents, advisors etc.
- 3.6.4 Bidders are advised to email their request for site visit in the manner specified in Clause 3.6.2 on or before 1600 hours on the date specified in Clause 3.8 for receiving request for site visit and any request received thereafter shall not be considered.
- 3.6.5 The documents pertaining to land, as submitted by the Prior Allottee, are available on the website of MSTC. It is clarified that the Nominated Authority shall have no responsibility for any non-availability of documents pertaining to land or the contents of the documents pertaining to land. Irrespective of the availability/non-availability or contents of documents related to land, the Bidders are required to have satisfied themselves on all matters related to the Coal Mine, before submitting a Bid.

### **3.7 Tender Document Queries and Clarifications**

- 3.7.1 Any queries or request for additional information concerning this Tender Document may be sent by e-mail to the Nominated Authority at [nomauthority.moc@nic.in](mailto:nomauthority.moc@nic.in) in the format specified in **Annexure VII** (*Format for seeking clarifications regarding the Tender Document*). The email should clearly bear the following subject line: “Queries/Request for Additional Information: Tender Document for [insert name of the coal mine]”.
- 3.7.2 Each query should contain complete details of facts, information and Applicable Law germane to the query and also the particulars of the person posing the query. The Nominated Authority reserves the right to not answer any query, including any query which is incomplete or anonymous.
- 3.7.3 The queries should be emailed in .doc, .docx, .xls, .xlsx format, on or before 1600 hours on the date specified in Clause 3.8 for receiving queries.
- 3.7.4 The Nominated Authority shall endeavour to respond to the queries within the period specified in Clause 3.8. However, the Nominated Authority reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this Clause 3.7 shall be taken or read as compelling or requiring the Nominated Authority to respond to any question or to provide any clarification. The Nominated Authority may publish the queries and its responses thereto on the website of Ministry of Coal, without identifying the source of queries.
- 3.7.5 The Nominated Authority may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued by

the Nominated Authority shall be deemed to be part of this Tender Document. Provided however that, any non-written clarifications and information provided by the Nominated Authority, its employees or representatives in any manner whatsoever shall not in any way or manner be binding on the Nominated Authority.

- 3.7.6 The Nominated Authority shall not entertain any query or clarification from Bidders who fail to meet the Eligibility Conditions.
- 3.7.7 Bids shall be deemed to be under consideration immediately after the Technical Bids are opened and until such time the Nominated 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 this Tender Document, from contacting by any means, the Nominated Authority and/ or their employees/ representatives on matters related to the Bids under consideration.
- 3.7.8 Save and except as provided in this Tender Document, the Nominated Authority shall not entertain any correspondence with any Bidder in relation to acceptance or rejection of any Bid.

### 3.8 Schedule of the Tender Process

- 3.8.1 The schedule of the Tender Process shall be as per the tentative timelines specified below:

Sl. No.	Event Description	Estimated Date	
1	(i) Publication of notice inviting tender (NIT) in one English and one Hindi national newspaper (ii) Publication of NIT on the website of MoC (iii) Publication of NIT and Tender Document on the website of MSTC Ltd (iv) Commencement of sale of Tender Document on the website of MSTC Ltd The date of completion of the last sub-event among the above sub-events shall be considered $T_0$	$T_0$	Wednesday, November 15, 2023
2	Pre-bid meeting	$T_0 + 14$	Wednesday, November 29, 2023
3	Last date of receiving written queries from Bidders	$T_0 + 21$	1600 hours IST on Wednesday, December 06, 2023
4	Last date for written responses to queries by the Nominated Authority	$T_0 + 36$	Thursday, December 21, 2023
5	Last date of receiving written requests for Site Visit	$T_0 + 43$	1600 hours IST on Thursday, December 28, 2023
6	Last date for registration of bidder at the website of MSTC	$T_0 + 50$	Thursday, January 04, 2024
7	Last date for sale of Tender Document at the website of MSTC	$T_0 + 56$	Wednesday, January 10, 2024
8	Bid Due Date	$T_0 + 58$	Online Submission on MSTC Platform in accordance with Clause 3.A.(i) of Annexure III: 1200 hours IST on Friday, January 12, 2024

Sl. No.	Event Description	Estimated Date	
			Offline submission at Office of Nominated Authority in accordance with Clause 3.A.(ii) of Annexure III: 1600 hours IST on Friday, January 12, 2024
9	Opening of the Technical Bid (s)	T <sub>0</sub> + 61	Monday, January 15, 2024
10	Start date of examination of the Technical Bid (s)	T <sub>0</sub> + 62	Tuesday, January 16, 2024
11	End date of examination of the Technical Bid (s)	T <sub>0</sub> + 86	Tuesday, January 30, 2024
12	Conduct of electronic auction (Financial Bid – Final Offer) for the Qualified Bidders	T <sub>0</sub> + 87 - T <sub>0</sub> + 100	Wednesday, January 31, 2024 - Tuesday, February 13, 2024
13	Recommendation by the Nominated Authority to the Central Government for selection of Successful Bidder	T <sub>0</sub> + 107	Tuesday, February 20, 2024
14	Approval of Successful Bidder by the Central Government	T <sub>1</sub>	
15	Intimation to the Successful Bidder (subject to receipt of instruction from the Central Government)	T <sub>1</sub> + 2	
16	Execution of the Agreement between the Successful Bidder and Nominated Authority	T <sub>1</sub> + 7	
17	Last date for furnishing of Performance Security and payment of Fixed and Upfront Amount by the Successful Bidder	T <sub>1</sub> + 47	
18	Issuance of Vesting/Allocation Order by Nominated Authority	T <sub>1</sub> + 50	
<p>Note: *Registration on the website of MSTC Ltd. will commence immediately after publication of the NIT on the website of MSTC Ltd.</p> <p>*Above schedule is on assumption that electronic auction round for each mine will be completed in 1 day. In the event electronic auction round of any mine continues beyond 1 day, time schedule for the remaining events shall be extended.</p> <p>*Any change in the timeline will be communicated through an addendum/ corrigendum to the Tender Document.</p>			

### 3.9 Value of Estimated Geological Reserves and Upfront Amount

3.9.1 The Upfront Amount shall be estimated as follows: Equivalent to 0.20% (zero point twenty percent) of the Value of Estimated Geological Reserves of the Coal Mine, subject to following ceiling conditions:

- For Coal Mines with Geological Reserves up to 200 MT, Upfront Amount shall be lower of i) 0.20% (zero point twenty percent) of the Value of Estimated Geological Reserves of the Coal Mine and ii) Rs. 75 Crore.
- For Coal Mines with Geological Reserves above 200 MT, Upfront Amount shall be lower of i) 0.20% (zero point twenty percent) of the Value of Estimated Geological Reserves of the Coal Mine and ii) Rs. 500 Crore.

[Where the Value of Estimated Geological Reserves of the Coal Mine shall be an amount of INR [●], which is a product of the Geological Reserves in the Coal Mine (MT) and

Representative Price of relevant grade(s) of coal, where the relevant grade of coal is [●]:

Geological Reserves in the Coal Mine (MT)	[●]
Representative Price of relevant grade(s) of coal (Rs./tonne)	[●]

<sup>42</sup>

3.9.2 The Upfront Amount shall be payable by the Successful Bidder in four equal instalments (of 25% (twenty five per cent.) each) as follows:

<b>Instalment</b>	<b>Schedule II of the Coal Mines (Special Provisions) Act, 2015</b>	<b>Fully Explored Mines under Mines and Mineral (Development and Regulation) Act, 1957 and under Coal Mines (Special Provisions) Act, 2015 (other than Schedule II)</b>	<b>Partially Explored Mines under Mines and Mineral (Development and Regulation) Act, 1957 and under Coal Mines (Special Provisions) Act, 2015</b>	<b>Payable to</b>
First	Within 40 (forty) days of execution of the Agreement	Within 40 (forty) days of execution of the Agreement	Within 40 (forty) days of in-principle approval of the Mining Plan	Nominated Authority
Second	Within 6 (six) months from the date of issuance of [Vesting Order/ Allocation Order] <sup>43</sup>	Within 15 (fifteen) business days of execution of the Mining Lease or order by the Central Government under Section 11 (1) of the CBA Act, 1957, as the case may be	Within 15 (fifteen) business days of execution of the Mining Lease or order by the Central Government under Section 11 (1) of the CBA Act, 1957, as the case may be	State Government
Third	Within 9 (nine) months from the date of issuance of [Vesting Order/ Allocation Order]	Within 15 (fifteen) business days of grant of the Coal Mine opening permission	Within 15 (fifteen) business days of grant of the Coal Mine opening permission	State Government
Fourth	Within 12 (twelve) months from the date of issuance of [Vesting Order/ Allocation Order]	Within 15 (fifteen) business days of date of commencement of coal production	Within 15 (fifteen) business days of date of commencement of coal production	State Government

3.9.3 The Upfront Amount shall be adjusted in full, against the Monthly Payments to be made to the State Government. Provided however, such adjustment of Upfront Amount shall not exceed 50% of aggregate Monthly Payments for the year. Adjustment of Upfront Amount towards Monthly Payments shall be on a monthly basis i.e. maximum 50% of the Monthly Payment for the month to be paid by the Successful Bidder shall be adjusted against Upfront Amount and would be reconciled at the end of the year. It is clarified that Upfront Amount shall not be adjusted against other statutory dues including taxes, levies, royalty, contribution to NMET and DMF, etc. and these shall be payable as per Applicable Law.

<sup>42</sup> To be retained for Fully Explored Mines

<sup>43</sup> To be retained as applicable

3.9.4 The Upfront Amount, including the first instalment, provided in the Tender Document may undergo revision pursuant to the finalisation of the provisional Representative Price. On account of this finalisation of Representative Price, any upward or downward revision in the first instalment of the Upfront Amount shall be adjusted in the second instalment payable by the Successful Bidder to the State Government, along with revision in all the subsequent instalments.

### 3.10 Periodic Payments by the Successful Bidder

3.10.1 In addition to the payments specified in Clause 3.3.2(h), the Successful Bidder will be required to pay revenue on monthly basis to the State Government (the “**Monthly Payment**”) which shall be determined as product of

- a) Final Offer;
- b) Total quantity of coal on which the statutory royalty is payable during the month; and
- c) Notional Price or Actual Price, whichever is higher, where
  - (i) Notional Price shall mean the price arrived at after adjusting the Representative Price with sub-index of National Coal Index or National Lignite Index, as applicable, of the relevant basket of coal grade(s) on the date on which royalty becomes payable.

Representative Price shall be a product of:

- (A) Weights (volume of coal in different components of notified price, auction price and imported price channel) of the Base year; and
- (B) prices of these components at the time of issuance of this Tender Document. It is clarified that this shall mean the latest available prices of these components at the time of issuance of this Tender Document .

Methodology for determining the Representative Price of lignite coal shall be provided separately by Government of India.

- (ii) Actual Price shall mean the sale invoice value of coal, net of statutory dues including taxes, levies, royalty, contribution to NMET and DMF etc.

It is clarified that in case of pithead washeries, Monthly Payment shall be made in the same manner as royalty is paid i.e. Monthly Payment shall be made on the quantity and grade of coal for which royalty is paid by washeries as per rules, during the month.

**Illustration 2:** Solely for the purposes of reference of the Bidders, the methodology of determination of Monthly Payment for a Successful Bidder who has quoted Final Offer of 10% is illustrated below:

Assuming that the Representative Price and National Coal Index of relevant basket of Coal Grade on the date of Representative Price are as follows:

Particulars	G11	G12	G13
Representative Price (Rs./tonne) (A)	1640	1420	1380

Particulars	G11	G12	G13
National Coal Index of the relevant basket of Coal Grade – latest available as on the date of issuance of Tender Document (B)	105	105	105
National Coal Index of the relevant basket of Coal Grade on the date on which royalty becomes payable (C)	115	115	115

Grade of Coal	Quantity of coal on which the statutory royalty is payable during the month (MT) (D)	Notional Price (Rs./tonne) (A*C/B)	Actual Price (Rs./tonne)	Max of Notional Price & Actual Price (Rs./tonne) (E)	Revenue Share (Rs. Crore) (D*E*Final Offer/10)
G11	0.50	1796	1800	1800	9.00
G12	0.70	1555	1550	1555	10.89
G13	0.60	1511	1500	1511	9.07
<b>Total</b>	<b>1.80</b>				<b>28.96</b>

***Note:** The above-mentioned illustration is merely for reference purpose and in case of inconsistency, the provision of Clause 3.10.1 shall prevail.*

***Note:** For the purpose of determining monthly payments for successful bidder, the applicable representative price of the lignite coal and National Lignite Index shall be published separately by Government of India.*

- 3.10.2 Such payment is required to be made to the State Government on the date on which the statutory royalty is payable in the manner as may be prescribed by the State Government. Further, the Monthly Payments may be subject to such adjustments as may be prescribed by the Nominated Authority, annually basis the audited financial statements of the Successful Bidder or at such other periodic intervals as may be prescribed. Such adjustments may be on account of the National Coal Index or National Lignite Index, as applicable, as may be notified for and applicable to the Monthly Payment dates as well as higher of Actual Price and Notional Price.
- 3.10.3 It may be clarified that in addition to the Monthly Payment, other statutory dues including taxes, levies, royalty, contribution to NMET and DMF, etc. shall be payable as per Applicable Law.

### **3.11 Incentive for Early Commencement of Coal Production**

- 3.11.1 A rebate of 50% on the Final Offer would be allowed till the Scheduled Date of Production, for the quantity of coal produced earlier than the Scheduled Date of Production prescribed in this Tender Document. The scheduled date of production shall be determined in the following manner (“**Scheduled Date of Production**”):

- (a) In case of Fully Explored Mines, the scheduled date of production shall be the date of production as per the Production Schedule [i.e. [insert] months from the date of issuance of [Vesting Order/ Allocation Order]<sup>44</sup>/<sup>45</sup>. *Provided however*, in case of Schedule II Coal Mines of the CM(SP) Act, 2015, in the event any statutory permission is required to be obtained afresh by the Successful Bidder, then the Scheduled Date of Production shall stand modified to the aggregate of the scheduled time granted for

<sup>44</sup> To be retained as applicable

<sup>45</sup> To be retained for Fully Explored Mines

obtaining fresh permission and the scheduled time granted for completion of transfer of statutory permissions obtained by the Prior Allottee as per Clause 10 of the Agreement.

- (b) In case of Partially Explored Mines, the scheduled date of production shall be the scheduled date of production given in the approved Mining Plan.

**Illustration 3:** Solely for the purposes of reference of the Bidders, the methodology of determination of incentive for early commencement of coal production for a Successful Bidder who has quoted Final Offer of 10% and where Scheduled Date of Production is June 1, 2024 is illustrated below:

Particulars	G11	G12	G13
Representative Price (Rs./tonne) (A)	1640	1420	1380
National Coal Index of the relevant basket of Coal Grade – latest available as on the date of issuance of Tender Document (B)	105	105	105
National Coal Index of the relevant basket of Coal Grade on the date on which royalty became payable (C)	115	115	115

It is assumed that the Successful Bidder commenced coal production on May 1, 2024 i.e. earlier than the Scheduled Date of Production. Accordingly, incentive for early commencement of coal production and Monthly Payment shall be determined as provided below:

Grade of Coal	Quantity of coal on which the statutory royalty is payable during the month (MT) (D)	Notional Price (Rs./tonne) (A*C/B)	Actual Price (Rs./tonne)	Max of Notional Price & Actual Price (Rs./tonne) (E)	Applicable Final Offer (F = 50%* Final Offer)	Revenue Share (Rs. Crore) (D*E*F/10)
G11	0.50	1796	1800	1800	5%	4.50
G12	0.70	1555	1550	1555	5%	5.44
G13	0.60	1511	1500	1511	5%	4.53
<b>Total</b>	<b>1.80</b>					<b>14.48</b>

**Note:** The above mentioned illustration is merely for reference purpose and in case of inconsistency, the provision of Clause 3.10.1 and Clause 3.11.1 shall prevail.

**Note:** For the purpose of determination of incentive for early commencement of lignite production by successful bidder, the applicable representative price of the lignite coal and National Lignite Index shall be published separately by Government of India.

3.11.2 Statutory dues including taxes, levies, royalty, contribution to NMET and DMF etc. shall be payable as per Applicable Law. No exemption would be given to the Successful Bidder from obtaining any approval etc. under Applicable Law required for commencing and undertaking coal production.

### 3.12 Incentive for Coal Gasification or Coal Liquefaction



3.12.1 If the Successful Bidder consumes the coal produced from the Coal Mine either in its own plant(s) or plant of its holding, Subsidiary Company, Affiliate, Associate Company or sells the coal for Coal Gasification or Coal Liquefaction, a rebate of 50% on Final Offer will be provided on the total quantity of coal consumed or sold or both for Coal Gasification or Coal Liquefaction on an yearly basis, subject to the following conditions:

- (a) At least 10% of scheduled coal production as per approved Mining Plan for that year shall be consumed and/or sold for Coal Gasification or Coal Liquefaction; and
- (b) A certificate issued by the Coal Controller's Organisation, certifying the quantity of coal consumed or sold or both for Coal Gasification or Coal Liquefaction, shall be submitted by the Successful Bidder to the State Government. The said certificate shall be issued in accordance with the Guidelines issued by Coal Controller's Organisation, as may be amended.

Provided however that in no event shall the Successful Bidder be entitled to avail of the incentives available under this Clause 3.12 in respect of the quantity of coal produced earlier than the Scheduled Date of Production, if it elects to avail of the incentives under Clause 3.11 above in respect of such quantity of coal.

**Illustration 4:** Solely for the purposes of reference of the Bidders, the methodology of determination of incentive for Coal Gasification or Coal Liquefaction of coal is illustrated below:

Particulars		
Final Offer (%)	(A)	10%
Scheduled Coal Production during the year as per approved Mining Plan – G11 Grade (MT)	(B)	15
Total quantity of coal consumed or sold or both for Coal Gasification or Coal Liquefaction during the year – G11 Grade (MT)	(C)	2
Quantity of coal consumed or sold or both for Coal Gasification or Coal Liquefaction as % of Scheduled Coal Production (%)	(D = C/B)	13.33%
Rebate in Final Offer applicable for total quantity of coal consumed or sold or both for Coal Gasification or Coal Liquefaction during the year (%)	(E)	50%
Revenue share payable for the year for quantity of coal consumed or sold or both for Coal Gasification or Coal Liquefaction - calculated in accordance with Clause 3.10.1 and Clause 3.11.1 above (Rs. Crore)	(F)	30
<b>Applicable revenue share payable for the year for quantity of coal consumed or sold or both for Coal Gasification or Coal Liquefaction after considering the incentive for Coal Gasification or Coal Liquefaction of coal (Rs. Crore)</b>	<b>(F*(1-E))</b>	<b>15</b>

**Note:** The above-mentioned illustration is merely for reference purpose and in case of inconsistency, the provision of Clause 3.12.1 shall prevail.

**Note:** For the purpose of determination of incentive for lignite gasification and lignite liquefaction of lignite, the applicable representative price of the lignite mineral shall be published separately by Government of India.

#### **4 Eligibility Conditions**

- 4.1.1 In accordance with [Section 4(2) / Section 11A]<sup>46</sup> of the Act, following entities shall be eligible to participate in the auction of the Coal Mine:
- (a) a Government company or corporation or a joint venture company formed by such company or corporation or between the Central Government or the State Government, as the case may be, or any other company incorporated in India; or
  - (b) a company or a joint venture company formed by two or more companies.
- 4.1.2 Additional Conditions for Prior Allottee: In the event the Bidder is a Prior Allottee, then such Bidder must also meet the following conditions for being eligible to participate in the tender process:
- (i) The Bidder who is a Prior Allottee must have paid the additional levy within the time period prescribed under Rule 18 of the Rules. It is clarified that if a Prior Allottee has not made payment of the applicable additional levy within the time prescribed under Rule 18 of the Rules, then such Prior Allottee, its promoter or any of its company of such Prior Allottee shall not be eligible to participate in the auction process either directly or indirectly, including without limitation as a JV Partner of a joint venture, or through any Affiliate.
  - (ii) The Bidder who is a Prior Allottee, who is convicted of an offence relating to coal block allocation and sentenced with imprisonment for more than 3 (three) years, shall not be eligible to participate in the auction.
- 4.1.3 If any company or corporation has failed to pay the Fixed Amount, upward revision in Fixed Amount or any other dues payable to the Nominated Authority in respect of any mine allocated to it then such company or corporation, its affiliates, subsidiaries, group companies or joint venture companies comprising such company or corporation shall not be eligible to participate in the auction unless such Fixed Amount, upward revision in Fixed Amount and such other dues have been paid for with interest, if any.
- 4.1.4 Limitations on total number of Bids: A Bidder shall submit only 1 (one) bid for a particular Coal Mine. No Affiliate(s) of such Bidder shall submit a bid for the said Coal Mine. In case an Affiliate(s) of a Bidder also submits a bid for the said Coal Mine, the bids submitted by both the Bidder and its Affiliate(s) shall be rejected.

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<sup>46</sup> To be retained as applicable.

## **5 Instructions to Bidders**

### **5.1 General Terms of Bidding**

- 5.1.1 Notwithstanding anything to the contrary contained in this Tender Document, in the event of any conflict between this Tender Document and the Agreement, the relevant provisions of the Agreement shall have overriding effect.
- 5.1.2 Bidders are required to deposit the Bid Security with respect to the Bid being submitted by the Bidder in accordance with Clause 6.1 of this Tender Document. The Bid Security is required to be provided in the form of a Bank Guarantee in the format provided in **Annexure VIII** (*Bank Guarantee for Bid Security*) or cash transfer through RTGS/NEFT into the Designated Bank Account.
- 5.1.3 The Bidder are also required to submit a Power of Attorney as per the format provided in **Annexure V** (*Power of Attorney for Signing the Bid*), authorising the signatory of the Bid to participate in the tender process and do all acts pursuant thereto on behalf of the Bidder, including usage of the digital signature on behalf of the Bidder
- 5.1.4 The Bid and all communications in relation to or concerning this Tender Document and the Bid are required to be in the English language.
- 5.1.5 The documents including this Tender Document and all documents attached, as provided by the Nominated Authority are and shall remain or become the property of the Nominated Authority and are being transmitted to the Bidders solely for the purpose of preparation and the submission of a Bid in accordance herewith. The Bidders are required to treat all such information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The provisions of this Clause 5.1.5 shall also apply *mutatis mutandis* to Bids and all other documents submitted by the Bidders in relation to the Bid, and the Nominated Authority shall not return to the Bidders any Bid, document or any information provided along therewith.
- 5.1.6 Any Agreement executed pursuant to this Tender Document shall be subject to the terms hereof and any documents issued pursuant to the Act, the Rules, this Tender Document or any other document referred herein.
- 5.1.7 Bidders are also encouraged to mine at an accelerated rate, to the best of their capabilities and are permitted to increase mine production to the maximum possible extent. After the Coal Mine is exhausted Bidders are encouraged to bid for new coal mines.

### **5.2 Change in Control and transfer**

#### **5.2.1 Change in Control or transfer subsequent to determination of Successful Bidder**

- 5.2.1.1 Any change in Control of the Successful Bidder or any transfer of the Coal Mine by the Successful Bidder, shall be subject to Applicable Laws and may be undertaken after the Lock-in Period, with an intimation to the Nominated Authority, no later than 15 (fifteen) days prior to (a) the proposed change in Control of the Successful Bidder; or (b) transfer of the Coal Mine by the Successful Bidder, as the case may be and provided that pursuant to such change in Control, the Successful Bidder continues to meet the Eligibility Conditions or in case of transfer of Coal Mine by the Successful Bidder, the transferee meets the Eligibility Conditions:

Provided however, that any change in Control of the Successful Bidder or transfer of the Coal Mine by the Successful Bidder during the Lock-in Period shall be permitted if such change in control is pursuant to an insolvency proceeding against the Successful Bidder under the Insolvency and Bankruptcy Code, 2016 or Applicable Laws or the transfer is pursuant to enforcement of security by any bank or financial institution in accordance with the terms of the Agreement and Applicable Laws, as the case may be.

5.2.1.2 In the event that any change in Control of the Successful Bidder or any proposed transfer of the Coal Mine granted to the Successful Bidder which requires prior consent, approval, no-objection certificate or the like of the relevant authority or authorities under any Applicable Laws, then such approval shall be granted only if the transferee of such right, title or interest or the Successful Bidder subsequent to the change of Control, as the case may be, also meets all the Eligibility Conditions.

5.2.1.3 The lock-in period shall be as follows (“**Lock-in Period**”):

- (i) For Fully Explored Mines, till the execution of Mining Lease or order by the Central Government under Section 11 (1) of the CBA Act, 1957, as the case may be.
- (ii) For Partially Explored Mines, Lock-in Periods shall be in two phases:
  - a) First, till one year of the date of issuance of [Vesting Order / Allocation Order] provided that at least 15% of estimated exploration expense has been incurred by the Successful Bidder; or
  - b) Second, after preparation of Geological Report till the execution of Mining Lease or order by the Central Government under Section 11 (1) of the CBA Act, 1957, as the case may be.

## **5.2.2 Change in Control prior to determination of Successful Bidder**

5.2.2.1 Upon submission of the Technical Bid but prior to determination of the Successful Bidder, no change in Control of a Bidder shall be permitted without the prior approval of the Nominated Authority.

5.2.2.2 The Nominated Authority shall grant such approval only if such change in Control does not result in the Bidder becoming non-compliant with any of the Eligibility Conditions.

5.2.2.3 By submitting the Bid, the Bidder acknowledges and agrees that in the event of a change in Control of a Bidder during the tender process, or change in Control of the Bidder, at any time until the determination of the Successful Bidder would be deemed to have knowledge of the same and shall be required to inform the Nominated Authority forthwith along with all relevant particulars about the same.

## **5.2.3 Consequences of default**

5.2.3.1 In the event of any change in Control or any transfer of right, title or interest in the Coal Mine which is not in conformity with this Tender Document or any Applicable Law, then in addition to any rights, remedy or consequences as may be applicable under Applicable Laws, the Nominated Authority, the State Government, or the Central Government, as the case may be, may, in its sole discretion, appropriate the Bid Security or the Performance Security,

disqualify the Bidder; terminate the Agreement executed with the Successful Bidder; and/or terminate and withdraw the [Vesting Order / Allocation Order].

5.2.3.2 Any transfer of right, title or interest which is not in conformity with this Tender Document or Applicable Laws shall be void *ab-initio*.

#### **5.2.4 Security**

5.2.4.1 Subject to Applicable Laws, the Successful Bidder shall be entitled to create security over the Coal Mine through mortgage for the purposes of availing financing from a bank or financial institutions for the purposes of financing mining operations at the Coal Mine and such security creation shall not require prior approval by the Nominated Authority or the Central Government.

5.2.4.2 In the event of a default, the financial creditors, shall be entitled to enforce their security interest in the manner provided by Applicable Law, including the Insolvency and Bankruptcy Code, 2016, provided that any transferee of the Coal Mine meets all the Eligibility Conditions.

#### **5.3 Cost of Bidding**

5.3.1 The Bidders shall be responsible for all of the costs associated with the preparation of their Bids and their participation in the tender process. The Nominated Authority will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the tender process.

#### **5.4 Verification of information by the Bidders**

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

- a) made a complete and careful examination of this Tender Document and unconditionally and irrevocably accepted the terms thereof;
- b) reviewed all relevant information provided by the Nominated Authority, as may be relevant to the Bid;
- c) accepted the risk of inadequacy, error or mistake in the information provided in this Tender Document or furnished by or on behalf of the Nominated Authority relating to any of the matters related to the auction process or the Coal Mine;
- d) satisfied itself about all matters regarding the auction process and the Coal Mine required for submitting an informed Bid, in accordance with this Tender Document and performance of all of its obligations;
- e) acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in this Tender Document or ignorance of any of the matters related to the auction process or the Coal Mine 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 Nominated Authority, or a ground for termination of the Agreement by the Successful Bidder; and
- f) agreed to be bound by the undertakings provided by it under and in terms hereof.

5.4.2 The Nominated Authority shall not be liable for any omission, mistake or error in respect of any of the information provided or on account of any matter or thing arising out of or concerning or relating to this Tender Document, this Tender Document or the tender process, including any error or mistake therein or in any information or data given by the Nominated Authority.

## **5.5 Verification by the Nominated Authority**

- 5.5.1 The Nominated Authority reserves the right to verify all statements, information and documents submitted by the Bidder in response to this Tender Document and the Bidder shall, when so required by the Nominated Authority, make available all such information, evidence and documents as may be necessary for such verification. The Nominated Authority may, in its sole discretion, share/ disclose all statements, information and documents submitted by the Bidder in response to this Tender Document to any governmental authority / instrumentality for their verification. Any such verification or lack of such verification by the Nominated Authority shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Nominated Authority thereunder.

## **5.6 Sale of Coal, Coal Bed Methane and Minor Minerals**

- 5.6.1 **Sale of Coal:** There shall be no restriction to carry on mining operations for own consumption, sale or for any other purpose. The coal produced from the Coal Mine may be sold by the Successful Bidder in any manner as may be decided by the Successful Bidder including sale to Affiliates and related parties, utilisation of coal for any purpose including but not limited to captive consumption, Coal Gasification, Coal Liquefaction and export of coal.

### **5.6.2 Exploitation of Coal Bed Methane**

- 5.6.2.1 In case there is presence of CBM in the Coal Mine, the Successful Bidder may choose to commercially exploit the CBM present in the mining lease area. The lease/license in respect of CBM operations shall be governed by Applicable Law. The Successful Bidder shall report the existence of CBM to the Nominated Authority and other relevant authority.
- 5.6.2.2 In case the Successful Bidder decides to exploit the CBM present in the coal mining lease area, it shall be required to approach the Directorate General of Hydrocarbon (DGH), MoPNG for its technical approval followed by the grant of CBM mining lease by State Government.
- 5.6.2.3 In addition to the Monthly Payment, the Successful Bidder shall also make payments of monthly revenue share for CBM based on the Final Offer, and the payment of the monthly revenue share for CBM shall be made within 20 days from the end of each month. Other mechanisms with regard to arriving at the price of CBM shall be subject to applicable guidelines issued by the MoPNG for this arrangement. Presently these guidelines are Policy Framework on Early Monetization of Coal Bed Methane (CBM) notified vide Gazette Notification No. O-19018/7/2016/ONG-I dated April 11, 2017.

### **5.6.3 Mining of Minor Minerals**

- 5.6.3.1 Mining of Minor Minerals by the Successful Bidder shall be subject to the requirements of the Minor Mineral Concession Rules of the State Government.

## **5.7 Amendment of Tender Document**

- 5.7.1 At any time prior to the Bid Due Date, the Nominated Authority may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify this Tender Document by the issuance of an Addendum and/or Corrigendum.
- 5.7.2 Any clarification, Addendum and/or Corrigendum issued hereunder will be in writing and shall be accessible to all the Bidders and shall be deemed to be part of this Tender Document. Any verbal clarification shall not be binding on Nominated Authority.

- 5.7.3 In order to afford the Bidders a reasonable time for taking an Addendum and/or Corrigendum into account, or for any other reason, the Nominated Authority may, in its sole discretion, extend the Bid Due Date in accordance with Clause 5.9.

## **5.8 Preparation and Submission of Bids**

- 5.8.1 The Bids shall be submitted in accordance with the process specified in **Annexure III** (*Technical Details with respect to electronic auction*).

## **5.9 Bid Due Date and Extension**

- 5.9.1 Technical Bids and the Initial Offer should be submitted/ uploaded before the Bid Due Date in accordance with the process specified in **Annexure III** (*Technical Details with respect to electronic auction*).
- 5.9.2 The Nominated Authority may, in its sole discretion, extend the Bid Due Date by issuing an Addendum and/or Corrigendum in accordance with Clause 5.7 uniformly accessible for all Bidders.

## **5.10 Late Bids**

- 5.10.1 Technical Bids and the Initial Offer received by the Nominated Authority after the specified time on the Bid Due Date shall not be eligible for consideration and shall be summarily rejected.

## **5.11 Modifications/ Substitution/ Withdrawal of Bids**

- 5.11.1 The Bidder may modify, substitute or withdraw its Technical Bid after submission, provided that written notice of the modification, substitution or withdrawal is received by the Nominated Authority prior to the Bid Due Date in accordance with the process specified in **Annexure III**. No Technical Bid shall be modified, substituted or withdrawn by the Bidder after the specified time on the Bid Due Date.
- 5.11.2 Any alteration or modification in the Technical Bid or additional information supplied subsequent to the Bid Due Date, unless the same has been expressly sought for by the Nominated Authority, shall be disregarded.

## **5.12 Rejection of Bids, Appropriation of Bid Security and Disqualification**

- 5.12.1 Notwithstanding anything in this Tender Document, the Nominated Authority reserves the right to reject any Bid and/or to annul the tender process and reject all Bids at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons thereof. In case such cancellation is pursuant to non-compliance by the relevant Bidders *vis-à-vis* submissions of Bid then the Nominated Authority reserves the right to appropriate the relevant Bid Security submitted by such non-compliant Bidders.
- 5.12.2 The Nominated Authority reserves the right not to proceed with the tender process at any time, without notice or liability, and to reject any Bid without assigning any reasons.
- 5.12.3 Without prejudice to the generality of the foregoing, the Nominated Authority reserves the right to reject any Bid on any criteria specified in this Tender Document, including without limitation, the following:

- a) Any misrepresentation made by the Bidder is uncovered.
- b) Bids have not been submitted with all the information and details listed in this Tender Document.

- c) The Bidder does not provide for supplemental information sought by the Nominated Authority within specified time for evaluation of the Bid.
- d) Bid is non responsive in terms of Clause 3.4.
- e) Bids have been submitted without Bid Security or period of validity.
- f) A Bidder withdraws the Bid during the period of validity.
- g) Bids have otherwise not been submitted in accordance with this Tender Document.
- h) If a Bidder engages in any Corrupt Practice, Fraudulent Practice, Coercive Practice, Undesirable Practice or Restrictive Practice per Clause 8 of this Tender Document.
- i) Any act or omission of the Bidder resulting in a violation or non-compliance with Applicable Laws, this Tender Document, the Agreement and any other documents referred to or issued pursuant to such Applicable Law, this Tender Document and/or the Agreement.
- j) A Bidder who is a Qualified Bidder who has submitted the highest Initial Offer i.e. the Applicable Floor Price, fails to submit at least 1 (one) Final Offer on the electronic auction platform, resulting in an annulment of the auction process.
- k) In the event a Bidder is declared as the Successful Bidder, and such Successful Bidder, within the specified time limits, fails to:
  - (i) execute the Agreement;
  - (ii) furnish Performance Security;
  - (iii) pay the Fixed Amount; or
  - (iv) pay the Upfront Amount.

5.12.4 (i) Furthermore, in the event of any rejection of Bids pursuant to Clause 5.12.3(a) & 5.12.3(h), the Bidder may be disqualified from participating in any auction / allotment of coal mine / coal block conducted by the Nominated Authority for a period of 2 (two) years, calculated from the date of appropriation of the Bid Security or such earlier date as may be specified by the Nominated Authority.

Provided that the aforementioned disqualifications would also extend to each JV Partners of a joint venture company participating in the Bid as a Bidder, and the Nominated Authority, in its sole discretion, shall have the right to take any such measure, as may be necessary, including annulling the tender process.

(ii) In the event a Successful Bidder is found to be ineligible due to violation or non-compliance with *inter alia* Clause 5.12.3 of this Tender Document or does not fulfil the Eligibility Conditions, then the Agreement may be terminated. In the event of termination of the Agreement pursuant to Clause 5.12.3(a) & 5.12.3(h), the Successful Bidder may be disqualified from participating in any auction / allotment of coal mine / coal block conducted by the Nominated Authority for a period of 2 (two) years, calculated from the date of termination of the Agreement.

### **5.13 Validity of Bids**

5.13.1 The Bids shall be valid for a period of not less than 210 (two hundred and ten) days from the



Bid Due Date. The validity of Bids may be extended by mutual consent of the respective Bidders and the Nominated Authority.

- 5.13.2 In the event that pursuant to the tender process a Bidder has been declared to be the Preferred Bidder or the Successful Bidder, then the validity of Bids submitted by such Preferred Bidder or Successful Bidder shall stand extended by the mutual consent of the Preferred Bidder or the Successful Bidder, as the case may be and the Nominated Authority.

#### **5.14 Termination of the Agreement**

- 5.14.1 The terms and conditions of the Agreement shall be included in terms and conditions of the Mining Lease for the Coal Mine along with any other terms and conditions that the Central Government or the State Government may deem fit under the Mineral Concession Rules, 1960<sup>47</sup> and upon grant of the mine opening permission under rule 9 of the Colliery Control Rules, 2004, the Agreement shall stand terminated. Upon termination of the Agreement, the rights of the Nominated Authority under the Agreement shall vest into State Government.

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<sup>47</sup> The terms and the conditions of the Agreement will be suitably incorporated into the order by the Central Government under Section 11 (1) of the CBA Act, 1957, as applicable.

## **6 Bid Security**

### **6.1 Bid Security**

- 6.1.1 The Bidder shall furnish, as part of its Technical Bid, a security in the form of cash transfer through RTGS/NEFT into the Designated Bank Account or a bank guarantee by an Acceptable Bank, in favour of the Nominated Authority in the form and substance as prescribed at **Annexure VIII** (the “**Bid Security**”) and having a validity period of not less than 210 (two hundred and ten) days from the Bid Due Date and a claim period of minimum 60 (sixty) days from the date of expiry of validity period of bank guarantee for Bid Security, and may be substituted with another bank guarantee of the same value issued in accordance with this Clause 6, which is valid for an extended period as may be mutually agreed between the Nominated Authority and the Bidder from time to time. In case, the Bid Security is provided in the form of bank guarantee, it shall be issued in paper form as well as under Structured Financial Messaging System (SFMS) platform. For example, if the Bid Due Date is January 12, 2024, then the Bid Security should be valid till at least August 09, 2024 and the claim period should be till at least October 08, 2024.
- 6.1.2 The Bid Security shall be for an amount of INR [●] (Indian Rupees [●]), which has been calculated as provided below:
- (a) For Fully Explored Mine, the Bid Security shall be equal to 20% (twenty percent) of the Upfront Amount.
  - (b) For Partially Explored Mine, the Bid Security shall be equal to 25% (twenty five percent) of the estimated exploration expenses based on Mandatory Work Program as provided in **Annexure I**.
- 6.1.3 Save and except as provided in this Tender Document, the Bid Security of unsuccessful Bidders will be returned by the Nominated Authority, without any interest, upon recommendation of the name of the Preferred Bidder to the Central Government by the Nominated Authority as per Clause 3.3.2(d) of the Tender Document or when the tender process is cancelled by the Nominated Authority.
- 6.1.4 The Successful Bidder’s Bid Security will be returned, without any interest, upon the signing of the Agreement and furnishing of the Performance Security in accordance with the provisions thereof.
- 6.1.5 The Nominated Authority shall be entitled to forfeit and appropriate the Bid Security as damages, *inter-alia* in any of the events specified in Clause 5.12.3 of this Tender Document, without prejudice to its other rights or remedy available under this Tender Document, the Agreement or Applicable Law, without incurring any liability whatsoever. The Bidder, by submitting its Bid pursuant to this Tender Document, shall be deemed to have acknowledged and confirmed that the Nominated 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 Bid validity as specified in this Tender Document. No relaxation of any kind on Bid Security shall be given to any Bidder.

## 7 Performance Security

### 7.1 Performance Security

- 7.1.1 For Fully Explored Mine, the Successful Bidder shall provide to the Nominated Authority an irrevocable and unconditional guarantee from an Acceptable Bank, for the performance of its obligations within such time as specified in Clause 3.8. The Performance Security shall be an amount which is 65% of aggregate of: (a) one year royalty computed on the basis of peak rated capacity of the Coal Mine as per the approved Mining Plan and (b) one year revenue (in accordance with Clause 3.10), payable to the State Government with respect to the Coal Mine computed on the basis of peak rated capacity of the Coal Mine as per the approved Mining Plan. For the purpose of calculation of Performance Security, Representative Price after adjustment with latest available sub-index of National Coal Index or National Lignite Index, as applicable, of the relevant basket of coal grade(s) on the date of execution of the Agreement shall be considered. It is clarified that relevant grade of coal shall mean weighted average grade of non-coking coal and/or weighted average grade of coking coal, as the case may be, for the Coal Mine, as per Geological Report. For Coal Mine with lignite coal, relevant grade of coal shall be as notified by Government of India separately.

In case, the approved Mining Plan of the Coal Mine is not available, Performance Security shall be estimated on the basis of an indicative peak rated capacity, as provided in this Tender Document. Upon in-principle approval of the Mining Plan, the Successful Bidder shall submit a revised Performance Security on the basis of approved Mining Plan.

**Illustration 5:** Solely for the purposes of reference of the Bidders, the methodology of estimating Performance Security is illustrated below:

Peak Rated Capacity	A	MTPA	10
Representative Price for the average grade of the Coal Mine (Rs./tonne)	B	Rs./tonne	1600
National Coal Index of the relevant basket of coal grade - latest available as on the date of issuance of Tender Document	C		110
National Coal Index of the relevant basket of coal grade - latest available on the date of execution of Agreement	D		118
Rate of Royalty	E	%	14%
One Year Royalty	$F = A \times B \times D/C \times E/10$	Rs. Crore	240.29
<b>65% of One Year Royalty</b>	$G = 65\% \text{ of } F$	Rs. Crore	<b>156.19</b>
Final Offer	H	%	25%
One Year Revenue to the Government	$I = A \times B \times D/C \times H/10$	Rs. Crore	429.09
<b>65% of One Year Revenue to the Government</b>	$J = 65\% \text{ of } I$	Rs. Crore	<b>278.91</b>
<b>Total Performance Security</b>	$K = G + J$	Rs. Crore	<b>435.10</b>

*Note: The above mentioned illustration is merely for reference purpose and in case of inconsistency, the provision of Clause 7.1.1 shall prevail.*

*Note: For the purpose of estimating performance security amount, the applicable representative price of the lignite coal and National Lignite Index shall be published separately by Government of India.*

7.1.2 For Partially Explored Mines, the Performance Security shall be equal to 25% (twenty five percent) of the estimated exploration expenses based on Mandatory Work Program as provided in **Annexure I**. The amount of Performance Security shall be revised after receipt of an in-principle approval of Mining Plan, which shall be computed in accordance with the formula provided in Clause 7.1.1 above. The Successful Bidder shall be intimated by the Nominated Authority about the revised Performance Security to be furnished and pursuant to such intimation, the Successful Bidder shall be required to replace the Performance Security already furnished by it to the Nominated Authority, and the provisions of this Agreement shall *mutatis mutandis* apply to the revised Performance Security. The revised Performance Security shall be submitted within 30 (thirty) days of the receipt of such intimation from the Nominated Authority.

7.1.3 The amount of Performance Security for Fully Explored Mines shall be revised in following events:

(a) on an annual basis as follows:

- a. **First Revision:** Upon grant of mine opening permission, basis the difference in the i) National Coal Index or National Lignite Index, as applicable, at the time of grant of mine opening permission and ii) National Coal Index or National Lignite Index, as applicable, basis which the Performance Security was first estimated in accordance with Clause 7.1.1 above.
- b. **Subsequent Revisions:** In the month of April of the year subsequent to the grant of mine opening permission, basis the difference in the i) National Coal Index or National Lignite Index, as applicable, for the month of March of previous financial year and ii) National Coal Index or National Lignite Index, as applicable, at the time when mine opening permission was granted. In all subsequent years, in the month of April, basis the difference in the i) National Coal Index or National Lignite Index, as applicable, for the month of March of previous financial year and ii) National Coal Index or National Lignite Index, as applicable, for the month of March of previous to previous financial year.

It is clarified that the date of grant of mine opening permission to be considered for the purpose of revision of the performance Security shall be the actual date or the date as prescribed in the efficiency parameters, whichever is earlier.

- (b) In case of any revision in rate of royalty, the amount of Performance Security shall be revised accordingly. Such revision shall take place at the beginning of the financial year which is subsequent to the financial year in which the rate of royalty is revised, as stipulated in Clause 7.1.3(d); and/or
- (c) In case of any revision in the peak rated capacity as a result of any revision in the mining plan in accordance with Clause 9.3, the amount of Performance Security shall be revised accordingly upon approval of revision to the Mining Plan. Such revision shall take place at the beginning of the financial year which is subsequent to the financial year in which the Mining Plan is revised, as stipulated in Clause 7.1.3(d).

- (d) The revision to the amount of Performance Security shall be carried out once in every financial year upon grant of mine opening permission to the Successful Bidder.. Upon such revision, the bank guarantee constituting the Performance Security shall be substituted with another bank guarantee of the revised value issued in accordance with this Clause 7, within a period of 30 (thirty) days from the beginning of financial year i.e. by April 30 of every year, in case of revision under each of sub-clause (b) and (c) above. In case of revision under sub-clause (a), the bank guarantee constituting the Performance Security shall be substituted with another bank guarantee of the revised value issued in accordance with this Clause 7, within a period of 30 (thirty) days from the publication of the reference index for the month of March of previous financial year or within a period of 30 (thirty) days from the grant of mine opening permission to the Successful Bidder, as applicable.

It is clarified that revisions to the amount of Performance Security may occur under sub-clause (a), (b) and (c) above, simultaneously, if such sub-clauses are applicable.

7.1.4 The Performance Security should remain valid for such duration as specified in the Agreement. Upon grant of mine opening permission under rule 9 of the Colliery Control Rules, 2004, the Successful Bidder shall either

- (i) submit a separate Performance Security (in the form of an unconditional and irrevocable performance bank guarantee) in favour of the State Government for the amount calculated in accordance with Clause 7.1.1 above for ensuring the production of coal as per the Mining Plan. Upon submission of such separate Performance Security to the State Government or after 60 days of the termination of the Agreement in accordance with Clause 5.14, whichever is earlier, the Performance Security submitted to the Nominated Authority under Clause 7.1.1 of this Tender Document shall be returned to the Successful Bidder; 'or'
- (ii) submit a request to the Nominated Authority for assigning the Performance Security submitted to the Nominated Authority under Clause 7.1.1 of this Tender Document, in favour of the State Government. It is clarified that the amount of Performance Security shall be calculated in accordance with Clause 7.1.1. In case the Performance Security submitted to the Nominated Authority is of lesser amount, the Successful Bidder shall be required to submit a top-up bank guarantee in favour of the State Government so that the total amount of Performance Security in favour of the State Government in accordance with Clause 7.1.1. Further, the Successful Bidder shall ensure that the validity of the Performance Security is in accordance with this Clause 7.1.4.

#### **7.1.5 Appropriation of Performance Security**

The Performance Security may be appropriated by the Nominated Authority or the State Government, as the case may be, in the manner specified in the Agreement, and shall be without prejudice to the other rights and remedies available under this Tender Document, the Agreement or Applicable Law, without incurring any liability whatsoever.

## 8 Fraud and Corrupt Practices

- 8.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the tender process and subsequent to the issue of the [Vesting Order / Allocation Order]<sup>48</sup> and during the subsistence of the Agreement. Notwithstanding anything to the contrary contained herein, or in the [Vesting Order / Allocation Order]<sup>49</sup> or the Agreement, the Nominated Authority may reject a Bid, withdraw the [Vesting Order / Allocation Order]<sup>50</sup>, or terminate the Agreement, as the case may be, without being liable in any manner whatsoever to the Bidder, Qualified Bidder, Preferred Bidder, or the Successful Bidder, as the case may be, if the Nominated Authority determines that the Bidder, Qualified Bidder, Preferred Bidder, or Successful Bidder, as the case may be, has, directly or indirectly or through an agent, engaged in Corrupt Practice, Fraudulent Practice, Coercive Practice, Undesirable Practice or Restrictive Practice in the tender process. In such an event, the Nominated 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 that may be available to the Nominated Authority under this Tender Document and/ or the Agreement, or otherwise.
- 8.2 Without prejudice to the rights of the Nominated Authority under Clause 8.1 hereinabove and the rights and remedies which the Nominated Authority may have under the [Vesting Order / Allocation Order]<sup>51</sup> or the Agreement, or otherwise if a Bidder, Preferred Bidder or Successful Bidder, as the case may be, is found by the Nominated 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 tender process, or after the issuance of the [Vesting Order / Allocation Order]<sup>52</sup> or the execution of the Agreement, such Bidder, Preferred Bidder or Successful Bidder shall not be eligible to participate in any process undertaken by the Nominated Authority for auction or allotment of any Schedule I coal mine (as defined in the Act) during a period of 1 (one) year from the date such Bidder, Preferred Bidder or Successful Bidder, as the case may be, is found by the Nominated 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 Practices, as the case may be.
- 8.3 For the purposes of this Clause 8, 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 tender process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Nominated Authority who is or has been associated in any manner, directly or indirectly, with the tender process or the [Vesting Order / Allocation Order]<sup>53</sup> or has dealt with matters concerning the Agreement or arising therefrom, before or after the execution thereof, at any time prior to

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<sup>48</sup> To be retained as applicable.

<sup>49</sup> To be retained as applicable.

<sup>50</sup> To be retained as applicable.

<sup>51</sup> To be retained as applicable.

<sup>52</sup> To be retained as applicable.

<sup>53</sup> To be retained as applicable.

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 Nominated Authority, shall be deemed to constitute influencing the actions of a person connected with the tender process); or (ii) save and except as permitted under this Tender Document, engaging in any manner whatsoever, whether during the tender process or after the issue of the [Vesting Order / Allocation Order]<sup>54</sup> or after the execution of the Agreement, as the case may be, any person in respect of any matter relating to the Coal Mine or the [Vesting Order / Allocation Order]<sup>55</sup> or the Agreement, who at any time has been or is a legal, financial or technical adviser of the Nominated Authority in relation to any matter concerning the Coal Mine;

- b) “**Fraudulent Practice**” means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the tender 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 tender process;
- d) “**Undesirable Practice**” means (i) establishing contact with any person connected with or employed or engaged by the Nominated Authority with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the tender process; (ii) having a conflict of interest; or (iii) violating of any Applicable Law; 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 tender process.

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<sup>54</sup> To be retained as applicable.

<sup>55</sup> To be retained as applicable.

## **9 Other Provisions**

### **9.1 Mandatory Work Program for Partially Explored Mines**

- 9.1.1 During prospecting phase, the Successful Bidder shall complete the Mandatory Work Program. The Successful Bidder shall conduct geological prospecting/ exploration of the area as per the Mandatory Work Program provided by the Nominated Authority, so as to ascertain evidence of mineral contents and shall submit periodic reports to the Nominated Authority. Provided however that in the event the Successful Bidder is unable to conduct geological prospecting/ exploration of the area as per the Mandatory Work Program, due to any technical constraints including subsurface geological uncertainty duly accepted by the Government, the Successful Bidder may propose a revised Mandatory Work Program having estimated exploration expense not less than the estimated exploration expense as provided in the Annexure I of the Tender Document, to the Nominated Authority. The revised Mandatory Work Program shall be subject to the approval of the Nominated Authority. Notwithstanding anything to the contrary contained elsewhere in this Tender Document, the Successful Bidder may undertake geological prospecting/ exploration in excess of the Mandatory Work Program in accordance with Applicable Laws.
- 9.1.2 All reports, studies and other documentation related to the geological prospecting/ exploration of the area shall be submitted to the Nominated Authority and the State Government and they shall become the proprietary information of the Nominated Authority / State Government.

### **9.2 Production Schedule for Fully Explored Mines**

- 9.2.1 The Successful Bidder shall ensure that the scheduled coal production as per the approved Mining Plan is equal to or more than the year-on-year production schedule of the Coal Mine as specified in **Annexure I** (“**Production Schedule**”). In case prospecting operations are required to be carried out for any part of the Coal Mine, the same shall be carried out by the Successful Bidder in accordance with Applicable Law.

### **9.3 Revision in Mining Plan upon allocation**

Upon allocation of the Coal Mine, the Mining Plan may be revised by the Successful Bidder, in accordance with the Guidelines for Preparation, Formulation, Submission, Processing, Scrutiny, Approval and Revision of Mining plan for the coal and lignite blocks issued *vide* Office Memorandum F. No. 34011/28/2019-CPAM dated May 29, 2020, as may be amended.

### **9.4 Flexibility in Production**

- 9.4.1 The Successful Bidder shall produce coal not below 65% (sixty five per cent) of scheduled production in a financial year subject to the condition that Successful Bidder shall not produce coal less than 75% (seventy five per cent.) of scheduled production in any three financial year block. It is clarified that three financial year block shall be counted from the first financial year of scheduled commencement of production in the Coal Mine.

#### **9.4.2 Revenue payable to the Government in case of shortfall in coal production:**

- 9.4.2.1 In the event the annual coal production is less than 65% of the scheduled production in any financial year as per approved Mining Plan, then the annual revenue share shall be paid by Successful Bidder, within 20 days from the end of the financial year, as a sum of (a) Monthly



Payments for the quantity of coal on which the statutory royalty is paid, in accordance with Clause 3.10 and (b) revenue share for the shortfall quantity (i.e. 65% of annual scheduled coal production in the financial year less the quantity of coal on which the statutory royalty is paid) computed on the basis of the Notional Price arrived at after adjusting the Representative Price with sub-index of National Coal Index or National Lignite Index, as applicable, of the relevant basket of coal grade(s) for the relevant year. It is clarified that relevant grade of coal shall mean weighted average grade of non-coking coal and/or weighted average grade of coking coal, as the case may be, for the Coal Mine, as per grade declared by CCO / State Government concerned, as applicable. For Coal Mine with lignite coal, relevant grade of coal shall be as notified by Government of India separately.

9.4.2.2 Further, in the event the coal production for a block of 3 financial years is less than 75% of the scheduled production in the block of 3 financial years as per approved Mining Plan, the Successful Bidder shall make payment towards such shortfall in coal production (above 65% and less than 75%) such that the revenue to the Government for a block of 3 financial years is towards at least 75% of the scheduled coal production in the block of 3 financial years within 20 days of the from the end the 3 financial year period. In such case, the revenue share payable for the shortfall quantity (75% of scheduled coal production of 3 financial years less the quantity of coal on which the statutory royalty is paid in 3 financial years) shall be computed on the basis of Notional Price arrived at after adjusting the Representative Price with sub-index of National Coal Index or National Lignite Index, as applicable, of the relevant basket of coal grade(s) for the relevant block of 3 financial years. It is clarified that relevant grade of coal shall mean weighted average grade of non-coking coal and/or weighted average grade of coking coal, as the case may be, for the Coal Mine, as per grade declared by CCO / State Government concerned, as applicable. For Coal Mine with lignite coal, relevant grade shall be as notified by Government of India separately.

**Illustration 6:** Solely for the purposes of reference of the Bidders, the methodology of estimating revenue payable to the Government on account of shortfall in coal production is illustrated below:

Particulars							
National Coal Index of the relevant basket of Coal Grade – latest available as on the date of issuance of Tender Document (A)							120
Representative Price for the average grade of the Coal Mine (Rs./tonne) (B)							1800
Final Offer (C)							25%
Year	Scheduled Production as per approved Mining Plan (MT)	Actual Production (MT)	Actual Production as % Scheduled Production	Shortfall in Production (MT)	Penalty Trigger Event	Value of Index applicable	Revenue Payable to the Government on account of shortfall in production (Rs. Crore)
	D	E	F = E/D	G = max of (0% or 65% - F)		H	I = D x G x B x H/A x C/10
Y1	2	1.7	85.00%	0.00%	Event 1	127	-
Y2	4	2.5	62.50%	2.50%		128	5
Y3	7	5.6	80.00%	0.00%		129	-
Block 1	13	9.8	75.38%	0.00%		128	-
Y4	10	7.9	79.00%	0.00%		130	-
Y5	10	6.5	65.00%	0.00%		131	-

Year	Scheduled Production as per approved Mining Plan (MT)	Actual Production (MT)	Actual Production as % Scheduled Production	Shortfall in Production (MT)	Penalty Trigger Event	Value of Index applicable	Revenue Payable to the Government on account of shortfall in production (Rs. Crore)
	<b>D</b>	<b>E</b>	<b>F = E/D</b>	<b>G = max of (0% or 65% - F)</b>		<b>H</b>	<b>I = D x G x B x H/A x C/10</b>
Y6	10	6.6	66.00%	0.00%		131	-
Block 2	30	21	70.00%	5.00%	Event 2	131	74

*Note: The above mentioned illustration is merely for reference purpose and in case of inconsistency, the provision of Clause 9.4.2 shall prevail.*

*Note: For the purpose of estimating revenue payable to the Government on account of shortfall in lignite production, the applicable representative price of the lignite mineral shall be published separately by Government of India.*

9.4.2.3 Statutory dues including taxes, levies, Royalty, contribution to DMF and NMET etc. shall be payable as per Applicable Law.

## 9.5 Relinquishment of Partially Explored Mine

9.5.1 After completing the prospecting operations as per the Mandatory Work Program and preparing the Geological Report, acceptable to the Central Government, the Successful Bidder may either

i) relinquish the Coal Mine (subject to the approval of Central Government) after submitting all reports, studies and other documentation related to the geological prospecting/ exploration of the area to the Nominated Authority and the State Government. In such an event, no penalty shall be levied and the Performance Security of the Successful Bidder shall be returned in accordance with the Agreement.; or

ii) relinquish any part of the Coal Mine having non-coal bearing area or coal bearing area which is technically non-viable to explore (subject to approval of MoC) after submitting all reports, studies and other documentation related to the geological prospecting/ exploration. Such partial relinquishment shall be subject to Central Government's approval of the detailed report submitted by the bidder. However, there will be no change in the upfront amount, Performance Security and PRC of the coal mine as determined at the time of auction.; or

iii) retain the Coal Mine and carry out mining operations after obtaining the required permissions/ approvals/ clearances etc. in accordance with Applicable Law.

Provided however, if the Successful Bidder fails to complete the prospecting operations as per the Mandatory Work Program and/ or does not prepare the Geological Report which is acceptable to the Central Government, the Performance Security submitted by the Successful Bidder shall be forfeited and the Agreement and the prospecting license granted thereunder shall be terminated and the [Vesting Order/ Allocation Order]<sup>56</sup> shall be withdrawn.

<sup>56</sup> To be retained as applicable.

9.5.2 Upon withdrawal of the [Vesting Order/ Allocation Order]<sup>57</sup> of a Partially Explored Mine on account of any reason whatsoever, including relinquishment of Coal Mine, surrender of Coal Mine, failure to complete the prospecting operations as per the Mandatory Work Program and/ or failure to prepare the Geological Report which is acceptable to the Central Government, the Successful Bidder shall not be entitled for

- a) Reimbursement of the expenses incurred by the Successful Bidder towards prospecting/ exploration operations, preparation of Geological Report; and
- b) Compensation towards following components of Fixed Amount: [cost borne by the Prior Allottee for the preparation of geological report; cost borne by the Prior Allottee for obtaining all statutory licenses, permits, permissions, approvals, clearances or consents relevant to the mining operations;]<sup>58</sup> [cost incurred by CMPDIL and other Government agencies, if any, in deriving detailed geographical boundary coordinates and in preparing geological report, if any;]<sup>59</sup>.

## **9.6 Miscellaneous**

9.6.1 The tender process shall be governed by, and construed in accordance with, the laws of India and the dispute resolution shall be subject to the Act.

9.6.2 The Nominated 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 tender process and/ or amend and/ or supplement the tender 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) retain any information and/ or evidence submitted to the Nominated Authority by, on behalf of, and/ or in relation to any Bidder; and/ or
- d) 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.

9.6.3 It shall be deemed that by submitting the Bid, the Bidder agrees and releases the Nominated 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, pursuant hereto and/ or in connection with the tender process and waives, to the fullest extent permitted by Applicable Laws, any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future.

### **9.6.4 Proprietary data**

All documents and other information supplied by a Bidder to the Nominated Authority shall remain or become the property of the Nominated Authority. It will not return any Bid or any information provided by the Bidder.

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<sup>57</sup> To be retained as applicable.

<sup>58</sup> This is to be retained only for Coal Mines being auctioned under the CMSP Act, 2015

<sup>59</sup> This is to be retained only for Coal Mines being auctioned under the MMDR Act, 1957

In case of relinquishment or surrender of the Coal Mine, all documents and information, including the Geological Report, submitted by the Bidder to the Nominated Authority, State Government and/or Central Government, shall be the proprietary information of the Central Government and the same shall not be considered to be an assigned of the confidential information of the Bidder. The Central Government shall have the right to share the same with the Bidders of the Coal Mine being thereafter auctioned as a Partially Explored Mine or Fully Explored Mine, as the case may be.

**[Remaining part of this page intentionally left blank, Annexures follow.]**

**Annexure I: Mandatory Work Program and Production Schedule****Mandatory Work Program for Partially Explored Mines<sup>60</sup>**

Area (sq. km.)	No. of boreholes drilled	Meterage Drilled (m)	Additional boreholes required	Additional meterage required (m)	Target Seam
<i>tbp</i>	<i>tbp</i>	<i>tbp</i>	<i>tbp</i>	<i>tbp</i>	<i>tbp</i>

Preparation of Geological Report for the Coal Mine as per Rules 21A, 21B and 21C under Chapter- IIIA of Mineral Concession (Amendment) Rules, 2020 (as may be amended) and submission of approved Geological Report to the Nominated Authority.

Note: Along with the additional number of boreholes and meterage to be drilled, the requirement of tests and number of samples for such tests will have to be carried out in accordance with the standards as per the “Modified Indian Standard Procedure for Coal Resource Estimation: 2017” or subsequent modification thereof.

**Estimated Exploration Expense - INR [\*] (Indian Rupees\_\_\_\_\_)** exclusive of taxes.

**Production Schedule for Fully Explored Mines<sup>61</sup>**

Year	Production Schedule (MTPA)
Peak Rated Capacity	<i>tbp</i>
Y1	<i>tbp</i>
Y2	<i>tbp</i>
Y3	<i>tbp</i>
Y4	<i>tbp</i>
Y5	<i>tbp</i>
Y6	<i>tbp</i>
Y7	<i>tbp</i>
Y8	<i>tbp</i>
Y9	<i>tbp</i>
Y10	<i>tbp</i>
Y11	<i>tbp</i>
Y12	<i>tbp</i>
Y13	<i>tbp</i>
Y14	<i>tbp</i>
Y15	<i>tbp</i>
Y16	<i>tbp</i>
Y17	<i>tbp</i>
Y18	<i>tbp</i>
Y19	<i>tbp</i>
Y20	<i>tbp</i>
Y21	<i>tbp</i>
Y22	<i>tbp</i>
Y23	<i>tbp</i>
Y24	<i>tbp</i>
Y25	<i>tbp</i>

<sup>60</sup> Not Applicable for Fully Explored Mines

<sup>61</sup> Not Applicable for Partially Explored Mines

**Annexure II – Representative Price****A. Non-coking coal**

<b>Grade of Coal</b>	<b>Representative Price (Rs./tonne)</b>
G1	11,236
G2	6,287
G3	5,976
G4	6,026
G5	5,814
G6	5,444
G7	3,413
G8	3,237
G9	2,791
G10	2,625
G11	1,932
G12	1,851
G13	1,745
G14	1,405
G15	1,286
G16	4,591
G17	709

**B. Coking coal**

<b>Grade of Coal</b>	<b>Representative Price (Rs./tonne)</b>
Steel Grade I	21,074
Steel Grade II	19,134
Washery Grade I	5,736
Washery Grade II	5,050
Washery Grade III	4,671
Washery Grade IV	3,243
Washery Grade V*	2,791
Washery Grade VI**	1,851

*\*Representative Price on the basis of corresponding grade of non-coking coal as G9*

*\*\*Representative Price on the basis of corresponding grade of non-coking coal as G12*

Note: The abovementioned Representative Price is of September 2023 (provisional) i.e. the latest available Representative Price at the time of issuance of this Tender Document. In the event, there is any revision in the Representative Price of September 2023, the abovementioned Representative Price shall be replaced by such revised Representative Price.

Note: The representative price of the relevant grade of the lignite mineral shall be published separately by Government of India.

**Annexure III - Technical Details with respect to electronic auction.**

**1. Registration Methodology:**

In order to submit Bids for the Coal Mine, a Bidder would be required to register itself with the e-auction website of MSTC. For this the Bidder should visit the Coal Mine Auction website of MSTC “<https://www.mstcecommerce.com/auctionhome/coalblock/index.jsp>” and click on the button “**Registration**”.

An online Registration Form will appear on screen and Bidder would be required to fill up the same. During this process, Bidder would be required to create its “user id” and “password” and keep note of the same. Bidder should ensure that the secrecy of its user id and password is maintained at all time and Bidder shall alone be responsible for any misuse of the user id and password. Bidder may also refer to the “Bidder’s Guide” available online in the above mentioned website for assistance.

On successful submission of the online registration Form, Bidder shall receive a confirmation e-mail at the registered email address advising the Bidder to submit the following documents:

1. Self attested Income Tax PAN Card.
2. Two passport size photographs of the Authorized Signatory.
3. Letter of Authorization from Chairman/MD/Directors/CEO/Company Secretary of a Bidder in favour of the Authorized Signatory in the standard format available in the website. The Authorized Signatory shall be the person who shall be responsible for submission of Bid. For this purpose, the Authorized Signatory will need to be in possession of a Class III signing type digital signature issued by an Indian certifying authority, the details of which shall be provided in this authorization letter.
4. Proof of Identity of the Authorized Signatory in the form of Company ID Card/PAN Card/Voter ID Card
5. In case of Joint Venture company the copy of the JV/Consortium Agreement.
6. Copy of the confirmation email.

Bidder shall be required to submit all the above documents to MSTC for verification and activation of their account. Bidders may send scanned copies of the aforementioned documents to the following designated email address:

**[coalblock@mstcindia.co.in](mailto:coalblock@mstcindia.co.in)**

It may be noted that Bidders need not visit any of the offices of MSTC for submission of the aforementioned documents. However, the Bidders may contact the following offices of MSTC for seeking assistance on the login or registration process.

MSTC Limited (E-Commerce Department) 225-F, A.J.C Bose Road, 2 <sup>nd</sup> Floor, Kolkata - 700 020 Helpdesk-03340645207, 03340609118, 03340645316, 03340602403	MSTC Limited, Northern Regional Office 30/31A Jeevan Vikas Building, 1st Floor, Asaf Ali Road (opp. Hamdard) New Delhi - 110 002 Helpdesk- 01123212357, 01123215163
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Once the complete set of aforementioned documents is electronically received from a Bidder, MSTC shall activate such Bidder's login after verification / scrutiny of the documents. MSTC reserves the right to call for additional documents from the Bidder if required, prior to registration and activation of the Bidder's login.

On completion of the above stated registration process, a Bidder shall be able to log in to MSTC's website.

Bidders who have registered as Independent Company with MSTC website for earlier tranches of coal mine auction/allotment need not register again. **The Joint Venture Companies who had registered prior to September 2018 have to register fresh by selecting the name of the JV partners and they have to participate with the new registration only.**

## **2. Downloading information about coal mines**

There are two sets of documents available for downloading from the website of MSTC.

First set of documents will be available free of cost and can be downloaded without registration on MSTC's website. These documents may include the following:

- (a) Standard Tender Document; and
- (b) Mine summaries

The above information would be made available free of cost to all potential Bidders in order to assist the potential Bidders to make a determination regarding their participation in the tender process. Based on such determination, potential Bidders may decide to participate in the tender process with respect to one or more coal mines and purchase detailed mine-wise information.

Certain other detailed documents shall be paid documents and can be downloaded only subsequent to payment of a fee of Rs 5,00,000/- per coal mine and such documents will be available after a Bidder logs in. Therefore, Bidders need to complete the registration process with MSTC to be able to download such documents.

Bidders shall login with its user id and password. Bidder shall have the facility to make payment towards the documents through the link 'e-Payment' provided under the login of the Bidder. Payment for multiple mines can be made through a single transaction. The Bidder should fill an online RTGS application form and take a printout of the same before proceeding to transfer the fund to the beneficiary account. In case the Bidder has an online banking facility, it can make this payment online as well. After transferring the fund, the Bidder shall be required to communicate the UTR No, copy of RTGS application form generated on MSTC portal and other details to MSTC through email at [coalblock@mstcindia.co.in](mailto:coalblock@mstcindia.co.in).

Once MSTC receives the payment in the designated account as specified in the RTGS application form, it shall activate the link for downloading of the paid documents for the respective coal mine(s).

The Bidder may note that the files containing information about the coal mines can be in various formats like doc, xls, ppt, pdf, jpg, jpeg, zip etc and it shall be the responsibility of the Bidder to have suitable facilities at its end to download the uploaded files.

## **3. Preparation and Submission of Bid**



The complete process of bid submission will be divided into 2 stages as follows:

**A. Stage 1: Technical Bid**

This stage will comprise of (i) online submission of the Technical Bid and the Financial Bid to the extent of the Initial Offer; and (ii) offline submission of certain original documents as detailed below.

**(i) Online submission of Technical Bid and Initial Offer with supporting documents**

This stage shall be open to all Bidders who have purchased the paid document(s) for the specific coal mine(s). In this process, the Bidder, after logging in to the above stated website, will have to click on the link “Click for Auction”. In the next page, the Bidder shall have to go to the link “Stage 1 Bid Submission”. Thereafter, the Bidder will have a bouquet under “My Menu” having 3 (three) sub-menus – “Bid Floor Manager”, “Upload Documents” and “Attach Documents”.

**Bid Floor Manager**

Once the Bidder clicks on this sub-menu followed by ‘Click Here’ under Live Auctions, it will display a list of mine(s) for which the Bidder has paid the fees for downloading the paid documents. On clicking on any of the mine(s), the Bidder will be directed to a screen where it can fill up the technical bid template and save the data. The Bidder can edit such data as many times as it wishes till the final submission is made by clicking the “Final Submission” button.

After saving the Technical Bid, the link / button for Initial Offer shall get activated. The Bidder, on clicking this button, will be directed to a screen having a template where it can fill up its Initial Offer. The Bidder can edit such data as many times as it wishes till the final submission is made by clicking the “Final Submission” button.

The Bidder shall have to submit the Initial Offer, which should be higher than the Floor Price in multiples of 0.5% of revenue share till Initial Offer reaches 10% and thereafter in multiples of 0.25% revenue share.

The final submission of Technical Bid and the Initial Offer shall be digitally signed by the Bidder using the digital signature the use of which has been duly authorized on behalf of the Bidder and which was used at the time of registration. Any digital signature certificate other than the above shall not be acceptable for bid submission by the system.

*The Bidder may note that the “Final Submission” button for both Technical Bid and Initial Offer is common and will be activated only after both the Technical Bid and the Initial Offer have been saved and the necessary documents have been uploaded and attached against the auction.*

**Upload Documents**

The Bidder shall also have to upload the supporting documents along with the

Technical Bid, as required under this Tender Document. These supporting documents will need to be uploaded in pdf format only (the file size may be limited to 4 MB). Files in formats other than pdf shall not be accepted. For this, the Bidder shall first click on the link “Upload documents” and upload the files in support of its Technical Bid.

The files uploaded shall be as per the list of documents displayed under “Attach Documents” link after selection of the respective auction. If there are multiple files against one document mentioned in the list, they have to be merged into one file before uploading.

### **Attach Documents**

After uploading these documents, the Bidder shall have to attach them, through the “Attach Document” link, with the specific mine(s) for which it is intending to submit the Technical Bid. It may be noted by the Bidder that in case it intends to use the same supporting document for more than one mine, it does not need to upload the same document every time. The supporting document, once uploaded, can be attached with Technical Bid for multiple mine(s), if desired.

The Bidder has to attach documents as per the list displayed against the respective auction. The Bidder can attach only one file against a document. Same file cannot be attached for more than one document. Multiple files cannot be attached for one document. If required the bidder may attach one additional file through the ‘Others’ option.

***The Bidder should note that only a file which is “attached” with a specific mine(s) shall be considered during evaluation of the Technical Bid. Files which are not attached to any mine(s) shall not be considered for evaluation.***

***The Bidder should also note that a Bid will be considered as submitted if and only if the Bidder has clicked on the “Final Submission” button. Only such Bids will be opened which have been finally submitted. It is further clarified that saving of Technical Bid and the Initial Offer without final submission will be treated as non submission of bid.***

Upon successful final submission, the Bidder shall receive a bid acknowledgement from the system automatically.

The Bidders may note that the Technical Bid and the Initial Offer submitted online as above will be encrypted by MSTC’s own software before storage in the database. This will be done to protect the sanctity and confidentiality of the Bids before the actual opening of the same.

### **Modification / Withdrawal of Bid**

If after final submission of Bid and before the scheduled closing time for Bid submission a Bidder wishes to make changes in its Bid, it can do so by clicking the

“Delete Bid” option. By doing so, the entire Bid submitted by the Bidder will get deleted. A system generated email will be sent to the Bidder acknowledging the deletion. The Bidder will be able to save and submit its new Bid again. If a Bidder deletes its Bid and does not submit its new Bid in the same manner as stated above, its Bid will not come up for opening or further processing.

If after final submission of Bid and before the scheduled closing time for Bid submission a Bidder wishes to withdraw its Bid, it can do so by clicking the “Withdraw Bid” option. By withdrawing a bid, a Bidder will lose the opportunity to re-submit its Bid against the same mine(s).

**(ii) Offline submission of certain original documents**

The Bidders shall have to submit the following documents in original in sealed cover within the scheduled closing time for bid in accordance with Clause 3.8. The sealed cover should clearly bear the following identification: *Original Documents (Technical Bid) for [insert name of the Coal Mine]* and shall indicate the name, MSTC Registration No. and address of the Bidder. In addition, an index of documents submitted should be annexed and the documents shall contain page numbers: *Page [●] of [●]*

- (a) Bid Security in the form and substance as provided in Annexure VIII or cash transfer through RTGS/NEFT into the Designated Bank Account;
- (b) Power of Attorney in the form and substance as provided in Annexure V;
- (c) Certified extract of the charter documents and certified true copy of the documents such as a board or shareholders resolution authorizing the execution of this power of attorney; and
- (d) Affidavit in the form and substance as provided in Annexure VI.

The aforementioned documents shall be submitted in person at the following address:  
The Nominated Authority  
Ministry of Coal  
Room No. 120, F-Wing,  
1st Floor, Shastri Bhawan  
New Delhi - 110001

***Submission of documents at the address other than the one mentioned above and/or by means other than physical submission in person shall not be considered and such bid shall be rejected.***

***Deadline for online submission of (i) Technical Bid and the Initial Offer with supporting documents; and (ii) offline submission of certain original documents***

The Bidders shall also note that online submission of ***Technical Bid and the Initial Offer*** with supporting documents and offline submission of certain original documents shall be allowed only up to time specified in Clause 3.8.1. Bidders in their own interest are advised to complete the entire process well in advance to avoid any last minute hiccup / technical problems. No complaints shall be entertained in this regard at any

stage.

**(iii) Evaluation of Technical Bid**

**a. Evaluation of Technical Bid**

Technical Bids shall be evaluated in the manner provided in this Tender Document.

**b. Opening of Initial Offer**

Initial Offers shall be opened one day before the scheduled date of e-auction of the respective Coal Mine. For example, Initial Offer for coal mine(s) scheduled for e-auction on 04.09.2020 will be opened on 03.09.2020. All Technically Qualified Bidders will be ranked in accordance with Clause 3.3.2(b) and the determination of Qualified Bidders shall be made in accordance with Clause 3.3.2(b). Only the Qualified Bidders shall be intimated about their qualification for participation in electronic auction through notification on MSTC website within their secured login as well as a system generated email. Such intimation shall be sent 2 hours prior to the scheduled start of e-auction. The remaining Technically Qualified Bidder (i.e. Technically Qualified Bidder who is not a Qualified Bidder), if any, should note that it may become a Qualified Bidder if one or more of the original Qualified Bidders become ineligible to bid.

**B.**

**Stage 2: electronic auction – Final Offer**

**a. Intimation to Qualified Bidders**

The Qualified Bidders will be intimated about their qualification for electronic auction against specific mine(s) in accordance with Annexure III – 3.A.(iii)(b), through notification in the MSTC website within their secured login as well as a system generated email. Along with the above intimation, they shall also receive information on Applicable Floor Price for e-auction of the Coal Mine which is the highest Initial Offer received from the Technically Qualified Bidders.

In certain cases, where considered necessary, the Qualified Bidders may also receive the information on the second highest Initial Offer received from the Technically Qualified Bidders. In the event the Bidder(s) who has quoted the Applicable Floor Price is no longer eligible to bid for that Coal Mine, the Applicable Floor Price shall stand revised to second highest Initial Offer received from the Technically Qualified Bidder(s).

It is expressly clarified that Bidders should not expect to receive the information on the second highest Initial Offer received from the Technically Qualified Bidders as a matter of usual course.

It shall be the sole responsibility of the Bidder to regularly check the MSTC website and log in to see whether it has qualified for a certain mine or not. MSTC/ Nominated Authority will not be responsible for non-receipt of email by the Bidder and its

consequences.

**b. Conduct of e-auction**

E-auction is the process of inviting binding Final Offer(s) from Qualified Bidders through internet for the purpose of determination of the Preferred Bidder. During this process, the Qualified Bidder will be able to submit its Final Offer as many times as it wishes against the same Coal Mine. The Qualified Bidder will remain anonymous to other Qualified Bidders participating in the electronic auction process as well as to MSTC / Nominated Authority. The Qualified Bidder will be able to see the prevailing highest Final Offer against the Coal Mine, but the name of the highest Qualified Bidder at any point of time will not be displayed. The Qualified Bidder shall have to put its Final Offer over and above the displayed highest bid in multiple of 0.5% of revenue share till the Final Offer reaches 10% and thereafter in multiple of 0.25% of revenue share. The electronic auction process will have a scheduled start and close time which will be displayed on screen. A Qualified Bidder will be able to put its Final Offer after the start of bid time and till the close time of electronic auction. The current server time (IST) will also be displayed on the screen. In the event a bid is received during the last 8 (eight) minutes before the scheduled close time of electronic auction, the close time of electronic auction will be automatically extended by 8 (eight) minutes from the last received bid time to give equal opportunity to all other Qualified Bidders. This process of auto extension will continue till there is a period of 8 (eight) minutes during which no Final Offer is received.

For example, assuming that the initial scheduled close time for a particular electronic auction is 1:00 pm and a Final Offer is received at 12:55 pm, the scheduled close time shall be revised to 1:03 pm. Again if a Final Offer is received at 1:01 pm, the scheduled close time shall be revised to 1:09 pm and so on. In the event that there is no further Final Offer received till 1:09 pm, the electronic auction will close at 1:09 pm. The revised close time will be displayed on screen and the Qualified Bidders are advised to keep refreshing its webpage to get the latest information.

The above example is only illustrative and meant for guidance only.

During the tender process for electronic auction, the Bidder shall be required to sign their Bids with their respective digital signature certificate (DSC) the use of which has been duly authorized on behalf of the Bidder and which was used at the time of registration. Any digital signature certificate other than the above shall not be acceptable for bid submission by the system

Bidders in their own interest are advised to get themselves acquainted with the electronic auction process of MSTC by getting their Authorized Representative trained beforehand through some demo electronic -auctions, schedule of which will be declared later on MSTC website.

**Digital Signature Certificate**

A Bidder shall be required to possess a valid Digital Signature Certificate (DSC) of signing type to be able to submit its Bid and to participate in the electronic auction on MSTC's website. For this purpose, Bidders shall be required to authorize its Authorized Signatory to procure a Class III DSC of signing

type from any Certifying Authority or their authorized agencies in India.

The competent authority of the Bidder shall be required to issue a Letter of Authority in favour of the Authorized Representative in the standard format provided on the homepage of the website on MSTC mentioning therein the serial number of the DSC of the Authorized Representative. The competent authority shall be one of the following:

- Chairman of the Company
- Managing Director of the Company
- Chief Executive Officer of the Company
- Company Secretary of the Company

The Bidder may note that only 1 (one) user id will be mapped with a given DSC for the Authorised Representative. DSC once mapped with a particular user id of a Bidder will normally not be changed and therefore Bidders are advised to carefully select the DSC before forwarding the same to MSTC for mapping.

The Digital Signature Certificate will be used to digitally sign the Bids that the Bidder will submit online.

It will be the sole responsibility of the Bidder and its respective Authorised Representative to maintain the secrecy of the password for the Digital Signature Certificate. The Bidder and its contact person shall be solely responsible for any misuse of the DSC and no complain / representation in this regard shall be entertained at any stage by MSTC / Nominated Authority.

The Bidder may note that the following configurations will be required to be undertaken in their Internet Explorer browsers for smooth functioning of the website and the e-auction portal.

The system requirements are as follows:

- Operating System –Windows 8.1 and above
- Web Browser- Preferred ‘Internet Explorer version 9’ and above.
- IE Settings:

a) Tools→Compatibility View Settings→Add <https://www.mstcecommerce.com>

Check the box for ‘Microsoft compatibility list’.

b) Security Settings:

1) Tools→Internet Options→General→Check box for ‘Delete browsing history on exit’, Click on ‘Settings’→ ‘Every time I visit the webpage’→OK.

2) Tools →Internet Options → Security → Un-check the box for ‘Enable protected mode’→

Custom Level→

- Enable: Access data sources across domains
- Disable “Use Pop-up Blocker”
- Scripting: Enable “Allow Status Bar Update Via Script”
- Tools→Internet Options → Security →Selected Trusted Sites→Add

Website <https://www.mstcecommerce.com> →OK→Trusted Sites→Select 'Custom Level→ Active X control & plug-ins: Enable all

ActiveX Controls

- Disable “Use Pop-up Blocker”
- Tools → Internet Options → Advance→Select boxes for SSL 3.0,TLS(1.0,1.1,1.2)→Apply→OK.

c) Java: JRE 8, latest X86 offline file, Configure JAVA→Security, add <https://www.mstcecommerce.com>

‘Exception site list’ and save.

d) Other Settings:

1) View → Toolbars→ “Tick” Status Bar.

2) For new Version of IE or other “Active –X Filtering” under Tools should not be ticked.

**Annexure IV – Letter Comprising the Technical Bid**

[To be submitted on Company Letterhead of the Bidder]

Date:

To,

The Nominated Authority  
Ministry of Coal  
Room No. 120, F-Wing,  
1<sup>st</sup> Floor, Shastri Bhawan  
New Delhi - 110001

**Sub: Technical Bid for [Name of] Coal Mine; insert name of Bidder and MSTC Registration No. of Bidder**

Dear Sir,

With reference to your Tender Document dated [insert date], I, having examined the Tender Document and understood their contents, hereby submit my Technical Bid for the aforesaid Coal Mine. The Bid is unconditional and unqualified.

1. I have reviewed the terms of the Tender Document and hereby unconditionally and irrevocably accept, agree and acknowledge the terms thereof. Capitalised expressions used in this letter have the same meaning as ascribed thereto in the Tender Document.
2. I acknowledge that the Nominated Authority will be relying on the information provided in the Bid and the documents accompanying the Bid for recommendation of the Preferred Bidder and subsequent selection of the Successful Bidder for the aforesaid Coal Mine, and we certify that all information provided therein is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying the Bid are true copies of their respective originals.
3. This statement is made for the express purpose of our participation in the tender process and possible selection as Successful Bidder.
4. I shall make available to the Nominated Authority any additional information it may find necessary or require to supplement or to authenticate the Bid.
5. I acknowledge the right of the Nominated Authority to reject our Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by Applicable Law, our right to challenge the same on any account whatsoever.
6. For the purposes of classification under Clause 4.1.4 of the Tender Document, the particulars of our Affiliates (*as defined in the Tender Document*), which are also participating in the tender process for the Coal Mine are set-out below:

Sl.	Name of the Company	Corporate Identity Number (CIN)	Registered Address




*Note: Indicate nil if none of the Affiliates are participating in the tender process for the Coal Mine.*

7. I declare that:

- a) I have examined and understood the Act and the Rules;
- b) I have examined and have no reservations to the Tender Document, including any addendum and/or corrigendum issued by the Nominated Authority;
- c) I have not directly or indirectly or through an agent engaged or indulged in any Corrupt Practice, Fraudulent Practice, Coercive Practice, Undesirable Practice or Restrictive Practice, as defined in Clause 8 of the Tender Document, in respect of any tender or request for proposal issued by or any agreement entered into with the Nominated Authority or any other public sector enterprise or any government, central or state; and
- d) I hereby certify that we have taken steps to ensure that in conformity with the provisions of Clause 8 of the Tender Document, 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;

8. I understand that you may cancel the tender process at any time and that you are neither bound to accept any Bid that you may receive nor to invite the Bidders to Bid for the Coal Mine, without incurring any liability to the Bidders, in accordance with the Tender Document.

9. I unconditionally represent that we meet all the Eligibility Conditions as specified in the Tender Document.

10. I unconditionally represent that we are eligible to participate in the tender process in accordance with the Foreign Direct Investment Policy 2020 issued by Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India, as may be amended from time to time and including Press Note 4 of 2019 and Press Note 3 of 2020.

11. I unconditionally declare that the 'Fixed Amount', any upward revision in 'Fixed Amount' or any other dues payable to the Nominated Authority in respect of any other coal mine allocated to the bidder has been paid for, with interest, if any.

12. [I hereby confirm that the Bidder is permitted by its Memorandum of Association and Articles of Association to undertake coal mining activity.] 'or' [I hereby undertake to ensure that the main object under the Memorandum of Association of the Bidder will be duly revised and updated, if necessary, to allow mining activity in case of Bidder being declared as a Preferred Bidder]<sup>62</sup>.

13. I 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 Nominated Authority in connection with the selection of the Preferred Bidder, or in connection with the tender process itself, in respect of the above mentioned Coal Mine and the terms and implementation thereof.

<sup>62</sup> Retain whichever is applicable for the Bidder

14. In the event of my being declared as the Successful Bidder, I agree to enter into an Agreement in accordance with the Tender Document and pay such amounts and provide such security as required therein
15. Any payments required to be made by me shall be subject to set-off in accordance with Section 16(3) of the Act, if applicable.
16. I have ensured compliance with Clause 3.4 of the Tender Document and to the best of my knowledge this Bid is responsive in terms thereof.
17. I agree and understand that the Bid is subject to the provisions of the Tender Document. In no case, I shall have any claim or right of whatsoever nature if the Coal Mine is not awarded to me or my Bid is not opened or rejected.
18. The Initial Offer has been and the Final Offer shall be quoted by me after taking into consideration all the terms and conditions stated in the Tender Document, the Agreement, our own estimates of costs and feasibility and after a careful assessment of the Coal Mine and all the conditions that may affect the Coal Mine.
19. I would ensure that all documents required to be submitted electronically on the electronic auction platform and the following documents required to be submitted physically with the Nominated Authority are duly submitted: (a) power of attorney in the form and substance as specified in Annexure V of the Tender Document; (b) affidavit in the form and substance as specified in Annexure VI of the Tender Document; (c) Bid Security in the form and substance as specified in Annexure VIII of the Tender Document or cash transfer through RTGS/NEFT into the Designated Bank Account.
20. I shall keep this offer valid for 210 (two hundred and ten) days from the Bid Due Date specified in the Tender Document or such extended duration as may be agreed with the Nominated Authority

In witness thereof, I submit this Technical Bid under and in accordance with the terms of the Tender Document.

Yours faithfully,

(Signature, name, designation and contact details of the Authorised signatory)

Name and seal of Bidder

Date:

Place:

### Annexure V – Power of Attorney for Signing the Bid

[To be stamped in accordance with the relevant Stamp Act and duly sworn before Notary public]

#### Power of Attorney for signing of Bid

Know all men by these presents, We, ..... (name and address of the 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 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 for the [insert name] Coal Mine (“**Coal Mine**”) in response to the Tender Document dated [insert date] issued by Nominated Authority, Ministry of Coal (the “**Nominated Authority**”) including but not limited to signing and submission of all applications, affidavits, bids and other documents and writings, participate in Bidders’ and other conferences and providing information / responses to the Nominated Authority, representing us in all matters before the Nominated Authority, and generally dealing with the Nominated Authority in all matters in connection with or relating to or arising out of our bid for the said Coal Mine and/or upon award thereof to us and/or execution of the Coal Mine Development and Production Agreement/ Coal Block Development and Production Agreement with the Nominated 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.

[AND we hereby confirm we do not have a common seal and therefore no common seal is required to be affixed hereto per applicable laws.]\*

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

For.....

(Signature, name, designation and address)

Witnesses:

1.

2.

Accepted

(Signature, name, designation and address of the Attorney)

Notarized<sup>63</sup>

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<sup>63</sup> Date of execution and date of notarization of Power of Attorney should be same.

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 authorizing the execution of this power of attorney.*
- *For a power of attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and appropriately notarised in the relevant jurisdiction. However, the power of attorney provided by Bidders from countries that have signed the Hague Legislation Convention, 1961 are not required to be legalised by the Indian Embassy if it carries a conforming apostille certificate.*

*\* To be deleted if the company seal is duly affixed to the power of attorney.*

### Annexure VI – Format of Affidavit

(To be submitted as per Rule 31 of the Coal Mines (Special Provisions) Rules, 2014/ Rule 13 of the Coal Blocks Allocation Rules, 2017)

(To be stamped in accordance with the relevant Stamp act and duly sworn before Notary public<sup>64</sup>)

#### Affidavit

I, \_\_\_\_\_ aged \_\_\_\_\_ years, resident of \_\_\_\_\_ working as \_\_\_\_\_ an authorised signatory on behalf of \_\_\_\_\_ (name of bidder) (the “**Bidder**”) hereby state as under:

1. I say that I am the [Insert designation of the deponent] of the Bidder. I am conversant with the facts and circumstances surrounding the subject of this Affidavit and have been authorized to depose to the same pursuant to the power of attorney dated [insert date of execution of Power of Attorney]. I am filing this Affidavit to place on record verification of facts and documents in connection with the tender process concerning [name of the coal mine].
2. The following documents are brought on record on the website of MSTC or physically submitted with the Nominated Authority:

#### A. Documents submitted on the website of MSTC

1. Letter comprising the technical bid as per Annexure IV of the Tender Document
2. Power of Attorney as per Annexure V of the Tender Document
3. This Affidavit as per Annexure VI of the Tender Document
4. Bid Security as per Annexure VIII of the Tender Document or details of payment made through RTGS/NEFT like UTR No, amount, date of remittance, remitting bank etc. as applicable
5. Certified true copy of board resolution authorising execution of abovementioned Power of Attorney
6. Certified extract of charter documents i.e. Memorandum of Association and Articles of Association
7. [insert any other document submitted by the Bidder]

#### B. Documents submitted physically with the Nominated Authority

1. Original Power of Attorney as per Annexure V of the Tender Document
2. Original Affidavit as per Annexure VI of the Tender Document
3. Original Bid Security as per Annexure VIII of the Tender Document or details of payment made through RTGS/NEFT like UTR No, amount, date of remittance, remitting bank etc. as applicable
4. Certified true copy of board resolution authorising execution of abovementioned Power of Attorney
5. Certified extract of charter documents i.e. Memorandum of Association and Articles of Association
6. [insert any other document submitted by the Bidder]
3. For the purposes of classification under Clause 4.1.4 of the Tender Document, the particulars of our Affiliates (*as defined in the Tender Document*), which are also participating in the tender process for the Coal Mine are set-out below:

<sup>64</sup> Date of execution and date of notarization of the Affidavit should be same

Sl. No.	Name of the Company	Corporate Identity Number (CIN)	Registered Address

*Note: Indicate nil if none of the Affiliates are participating in the tender process for the Coal Mine.*

4. I unconditionally represent that we are eligible to participate in the tender process in accordance with the Foreign Direct Investment Policy 2020 issued by Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India, as may be amended from time to time and including Press Note 4 of 2019 and Press Note 3 of 2020.
5. I unconditionally represent that we have not and will not, directly or indirectly or through an agent engaged or indulged in any Corrupt Practice, Fraudulent Practice, Coercive Practice, Undesirable Practice or Restrictive Practice, as defined in Clause 8 of the Tender Document or enter to arrangement with a intent to form a cartel, in respect of any tender or request for proposal issued by or any agreement entered into with the Nominated Authority or any other public sector enterprise or any government, central or state.
6. I unconditionally declare that the 'Fixed Amount', any upward revision in 'Fixed Amount' or any other dues payable to the Nominated Authority in respect of any other coal mine allocated to the bidder has been paid for, with interest, if any.<sup>65</sup>
7. That nothing has been concealed in the information submitted as mentioned above.

Solemnly affirmed and verified on this \_\_\_\_\_ day of \_\_\_\_\_ (month) 20\_\_\_\_ (Year) at \_\_\_\_\_ (place).

(Signature)

Name, Designation & Seal

### VERIFICATION

I, [●], the [Insert designation of the deponent] of the Bidder above named, having my office at [●], do hereby solemnly declare that what is stated above are on the basis of the books and records of the Bidders, and verify that the contents of the above affidavit are true and correct, no part of it is false and nothing material has been concealed therefrom.

Verified at \_\_\_\_\_ day of \_\_\_\_\_ (month) 20\_\_\_\_ (Year) at \_\_\_\_\_ (place).

Deponent

(Signature)

Name, Designation & Seal

<sup>65</sup> To be retained in case of CM(SP) Act, 2015

Annexure VII – Format for seeking clarifications regarding the Tender Document

(Applicable only for the submission of the queries up to the last date of submission of queries as per Clause 3.8.1)

S. No	Document	Clause No. and Existing Provision	Clarification Required	Suggested Text for Amendment, if any	Rationale for Clarification or Amendment

**Annexure VIII – Bank Guarantee for Bid Security**

[To be stamped in accordance with the relevant Stamp Act]

**Bank Guarantee**

Bank Guarantee. No.

Date:

To

The Nominated Authority  
Ministry of Coal  
Room No. 120, F-Wing,  
1<sup>st</sup> Floor, Shastri Bhawan  
New Delhi - 110001

1. In consideration of you, being the Nominated Authority under the Coal Mines (Special Provisions) Act, 2015 (hereinafter referred to as the “**Nominated Authority**”, which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns) having agreed to receive, pursuant to the provisions of the relevant tender document, the Bid of ..... (a company registered under the Companies Act, [1956/2013]) and having its registered office at ..... (hereinafter referred to as the “**Bidder**” which expression shall unless it be repugnant to the subject or context thereof include its/their executors, administrators, successors and assigns), for the [insert name] Coal Mine (“**Coal Mine**”) pursuant to the Tender Document dated [insert date] issued in respect of the Coal Mine (hereinafter collectively referred to as “**Tender Document**”), we (Name of the Bank) having our registered office at .....and one of its branches located at ..... (“**Bank**”), at the request of the Bidder, do hereby in terms of the Tender Document, irrevocably, unconditionally and without reservations guarantee the due and faithful fulfilment and compliance of the terms and conditions of the Tender Document by the Bidder and unconditionally and irrevocably undertake to pay forthwith to the Nominated Authority an amount of INR [insert amount] (Indian Rupees [insert amount] only) (hereinafter referred to as the “**Guarantee**”) as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder if the Bidder shall fail to fulfil or comply with all or any of the terms and conditions contained in the said Tender Document.
2. Any such written demand made by the Nominated Authority stating that the Bidder is in default of the due and faithful fulfilment and compliance with the terms and conditions contained in the Tender Document shall be final, conclusive and binding on the Bank.
3. We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of the Nominated Authority is disputed by the Bidder or not, merely on the first demand from the Nominated Authority stating that the amount claimed is due to the Nominated Authority by reason of failure of the Bidder to fulfil and comply with the terms and conditions contained in the Tender Document. Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount



not exceeding INR [insert amount] (Indian Rupees [insert amount] only).

4. This Guarantee shall be irrevocable and remain in full force till [insert bank guarantee expiry date] and claims can be lodged till [insert last date of lodgement of claim] or for such extended period as may be mutually agreed between the Nominated Authority and the Bidder, and agreed to by the Bank, and shall continue to be enforceable till all amounts under this Guarantee have been paid.
5. We, the Bank, further agree that the Nominated Authority shall be the sole judge to decide as to whether the Bidder is in default of due and faithful fulfilment and compliance with the terms and conditions contained in the Tender Document including, inter alia, the failure of the Bidder to keep its Bid open during the Bid validity period set forth in the said Tender Document, and the decision of the Nominated Authority that the Bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between the Nominated Authority and the Bidder or any dispute pending before any Court, Tribunal, Arbitrator or any other authority.
6. The Guarantee shall not be affected by any change in the constitution, winding up, liquidation, or dissolution of the Bidder or the Bank or any absorption, merger or amalgamation of the Bidder or the Bank with any other person.
7. In order to give full effect to this Guarantee, the Nominated Authority shall be entitled to treat the Bank as the principal debtor. The Nominated Authority shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee from time to time to vary any of the terms and conditions contained in the said Tender Document or to extend time for submission of the Bids or the Bid validity period or the period for conveying acceptance of [Vesting Order / Allocation Order]<sup>66</sup> by the Bidder or the period for fulfilment and compliance with all or any of the terms and conditions contained in the said Tender Document by the said Bidder or to postpone for any time and from time to time any of the powers exercisable by it against the said Bidder and either to enforce or forbear from enforcing any of the terms and conditions contained in the said Tender Document or the securities available to the Nominated Authority, and the Bank shall not be released from its liability under these presents by any exercise by the Nominated Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the said Bidder or any other forbearance, act or omission on the part of the Nominated Authority or any indulgence by the Nominated Authority to the said Bidder or by any change in the constitution of the Nominated Authority or its absorption, merger or amalgamation with any other person or governmental department or instrumentality,, but for this provision, have the effect of releasing the Bank from its such liability.
8. Any notice by way of request, demand or otherwise hereunder shall be sufficiently given or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein.
9. We undertake to make the payment on receipt of your notice of claim on us addressed to [insert name of Bank along with branch address] and delivered at our above branch which shall be deemed to have been duly authorised to receive the said notice of claim.
10. It shall not be necessary for the Nominated Authority to proceed against the said Bidder before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which the Nominated Authority may have obtained from

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<sup>66</sup> To be retained as applicable

the said Bidder or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealised.

11. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of the Nominated Authority in writing.
12. The Bank declares that it has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorised and has full power to execute this Guarantee for and on behalf of the Bank.

Signed and Delivered by ..... Bank

**Annexure IX – Coal Mine Development and Production Agreement/ Coal Block Development and Production Agreement**

Provided separately.

F.No.13011/2/2020-CBA2-Part (2)/P&S-II

Annexure 3

Government of India

Ministry of Coal

\*\*\*\*\*

Shastri Bhawan, New Delhi

Dated the 24th November, 2021

**ORDER**

**Subject: Methodology for Auction of Coal Mines/Blocks for sale of coal under the Coal Mines (Special Provisions) Act, 2015 and the Mines and Minerals (Development and Regulation) Act, 1957.**

The undersigned is directed to refer to Order dated 28.05.2020 (Copy enclosed) on the subject mentioned above and to say that on the recommendation of Empowered Committee of Secretaries, the Central Government has approved the following modification in the methodology for auction of coal mines/blocks identified under the relevant Act for sale of coal as mentioned in *para* 2 below:

2. The para 2.1.4 (b) of Order dated 28.05.2020 (Copy enclosed) on the subject mentioned above shall stand modified as under:

**Gasification or Liquefaction of coal:** If the successful bidder consumes the coal produced either in its own plant(s) or plant of its holding, subsidiary, affiliate, associate for coal gasification or liquefaction or sells the coal for coal gasification or liquefaction process, a rebate of 50% on the percentage revenue share quoted by the successful bidder will be allowed on the total quantity of coal consumed or sold or both for gasification or liquefaction on an yearly basis, subject to the following conditions:

- (i) At least 10% of scheduled coal production as per approved mining plan for that year shall be consumed or sold for gasification or liquefaction;
- (ii) that Coal Controller's certification would be required for the quantity of coal consumed or sold or both for gasification or liquefaction.

3. The aforesaid modification shall be applicable for ongoing and successive tranches of auction for sale of coal.

4. All other terms of Order dated 28.05.2020 shall remain the same.

This issues with the approval of Competent Authority.

**Encl:** As above

(Byasadev Naik)  
Deputy Director (P&S-II)  
Tel. 23070378

To

(1) The Nominated Authority, Ministry of Coal

(2) JS (P&S), Ministry of Coal

(3) Director (CLD), Ministry of Coal

Copy to:

1. PS to Hon'ble Minister of Coal
2. PSO to Secretary (Coal)
3. PPS to AS (Coal)
4. PPS to AS (MN) & NA
5. PPS to JS (P&S)
6. DS (NA)/DS (P&S-II/P&S-I)
7. STD, NIC, Ministry of Coal.....for uploading on the website of Ministry.

**F.No.13011/2/2020-CBA2-Part(2)**  
**Government of India**  
**Ministry of Coal**  
 \*\*\*\*\*

Shastri Bhawan, New Delhi  
 Dated the 28<sup>th</sup> May, 2020

**ORDER**

**Subject: Methodology for Auction of Coal Mines/Blocks for sale of coal under the Coal Mines (Special Provisions) Act, 2015 and the Mines and Minerals (Development and Regulation) Act, 1957.**

The undersigned is directed to refer to Rule 8 (2) and 8 (3) of the Coal Mines (Special Provisions) Rules, 2014 read with Section 8 (5) of the Coal Mines (Special Provisions) Act, 2015 and Rule 3(1) (d) of the Coal Blocks Allocation Rules, 2017 read with Section 11A of the Mines and Minerals (Development and Regulation) Act, 1957 and to say that the Competent Authority has approved the methodology for auction of coal mines/blocks identified under the relevant Act for sale of coal as mentioned in para 2 below:

**2.1 Methodology and other conditions for auction of coal mines for sale of coal:-**

**2.1.1 Applicability:** It shall be applicable on auction of all fully explored coal blocks/mines (categorised in G-1 exploration stage as per the modified Indian Standard Procedure for Coal Resource estimation, 2017) and partially explored coal blocks/mines (categorised in G-2 or G-3 exploration stage) for sale of coal under the CMSP Act and MMDR Act. The Methodology and other conditions shall also be applicable on lignite blocks, *mutatis mutandis*.

**2.1.2 Bid Parameter:** The bid parameter will be revenue share for both fully explored coal mines (categorised in G-1 exploration stage) and partially explored coal mines (categorised in G-2 or G-3 exploration stage). The auction will be an ascending forward auction where the bidders would be required to bid for a percentage share of revenue which would be payable to the State Government. The floor percentage of revenue share shall be 4%. The bid increments will be accepted in multiples of 0.5 % of revenue share till the percentage (%) of revenue share reaches 10% and thereafter, bid increments will be accepted in multiples of 0.25% of revenue share. The bidder that submits the highest percentage (%) of revenue share in the bidding shall be declared the preferred bidder.

**2.1.3 Revenue share payable:**

(A) The successful bidder shall be required to pay revenue share on monthly basis which shall be determined as product of:

- (i) percentage (%) of revenue share (final bid) quoted by the successful bidder;
- (ii) total quantity of coal on which the statutory royalty is payable during the month; and
- (iii) notional price or actual price, whichever is higher, where





**228824(12)/2020/CBA-II**

(a) 'notional price' refers to the price arrived at after adjusting the representative price with sub-index of NCI of relevant basket of coal grade(s) on the date on which royalty becomes payable, where 'representative price' is product of-

- (1) weights (volume of coal in different components of notified price, auction price and imported price channels) of base year, and
- (2) prices of these components at the time of issuance of tender, and

(b) 'actual price' refers to the sale invoice value of coal, net of statutory dues including taxes, levies, royalty, NMET, DMF, etc.

(B) In addition to revenue share, other statutory dues including taxes, levies, royalty, NMET, DMF, etc. shall be payable under applicable laws.

**2.1.4 Incentives in revenue sharing model in certain events:**

The successful bidder shall be provided with incentives in the following events:

**(a) Early production:**

- (i) In case of fully explored blocks, a rebate of 50% on revenue share quoted by the successful bidder would be allowed, till the scheduled date of production as per the production schedule given in the tender document, for the quantity of coal produced earlier than such scheduled date of production.
- (ii) In case of partially explored blocks, a rebate of 50% on revenue share quoted by successful bidder would be allowed, till the scheduled date of production, for the quantity of coal produced earlier than the scheduled date of production given in the approved mining plan.
- (iii) Statutory dues including taxes, levies, royalty, NMET, DMF, etc. shall be payable as per law. No exemption would be given to the successful bidder from obtaining any approval etc. under applicable laws required for start of production.

**(b) Gasification or Liquefaction of coal:** If the successful bidder consumes the coal produced either in its own plant(s) or plant of its holding, subsidiary, affiliate, associate for coal gasification or liquefaction or sells the coal for coal gasification or liquefaction process, a rebate of 20% on the percentage revenue share quoted by the successful bidder will be allowed on the total quantity of coal consumed or sold or both for gasification or liquefaction on an yearly basis, subject to the following conditions:

- (i) At least 10% of scheduled coal production as per approved mining plan for that year shall be consumed or sold for gasification or liquefaction;
- (ii) that Coal Controller's certification would be required for the quantity of coal consumed or sold or both for gasification or liquefaction.

**(c)** Empowered Committee of Secretaries may review and determine the incentives on revenue share from time to time.

**2.1.5 Upfront Amount:**

(A) The Upfront Amount shall be calculated at 0.25% of the value of estimated geological reserves of the coal mine. Value of estimated geological reserves shall be equal to the product of the following:



- (i) estimated quantity of geological reserves in the coal mine, and
- (ii) the representative price of relevant grade(s) of coal referred in para 2.1.3 (A)(iii)(a) above.

However, the upfront amount payable shall be as per actual calculation as per above method or as per ceiling mentioned here below, whichever is lower:-

Geological Reserves in mine (MT)	Upper ceiling of Upfront Amount (Rs. cr)
Upto 200	100
Above 200	500

(B) The ceilings are calculated as per prevalent market conditions and the same is liable to be revised in case there is substantial upward/downward change in market conditions by Empowered Committee of Secretaries.

(C) The Successful Bidder shall have the option to get the Upfront Amount adjusted against the revenue share payable subject to the condition that such adjustment of upfront amount shall not exceed 50% of the revenue share payable in the year.

(D) The Upfront Amount shall be payable by the successful bidder in 4 equal installments as provided in the tender document.

#### 2.1.6 Sale and/or Utilisation of Coal

There shall be no restriction on the sale and/ or utilisation of coal from the coal mine. The successful bidder shall be free to sell coal in any manner as may be decided by the successful bidder including sale to affiliates and related parties, utilise coal for any purpose including but not limited to captive consumption, gasification, liquefaction and export of coal.

#### 2.1.7 Flexibility in Coal Production

(A) The successful bidder shall produce coal not below 65% of the scheduled production as per approved mine plan in a year subject to the condition that the successful bidder shall not produce coal less than 75% of the scheduled production as per approved mine plan in any block of three years. The three-year block shall be counted from the first financial year of scheduled commencement of production in the coal mine.

#### (B) Revenue share payable to the Government in case of shortfall in coal production in a financial year:

(i) In the event the annual coal production is less than 65% of the scheduled production in any financial year, the successful bidder shall be required to pay the revenue share (for both, coal produced and shortfall) so that the total revenue share paid is equal to 65% of scheduled coal production for that financial year.

(ii) In such cases, the annual revenue share payable for the shortfall quantity (65% of scheduled coal production *less* the quantity of coal on which the statutory royalty is paid) shall be computed on the basis of notional price.

#### (C) Revenue share payable to the Government in case of shortfall in coal production in a block of three financial years:

(i) Further, in event the coal production in a block of three financial years is less than 75% of the scheduled production for that block, the successful bidder shall be required to pay the revenue share (for both, coal produced and shortfall) so that the total revenue share paid is equal to 75% of scheduled coal production for that block of three financial years.



(ii) In such cases, the revenue share payable for the shortfall quantity (75% of scheduled coal production of three years *less* the quantity of coal on which the statutory royalty is paid in three years) shall be computed on the basis of notional price.

(D) However, statutory dues including taxes, levies, royalty, NMET, DMF, etc. shall be payable as per the applicable law.

### **2.1.8 Exploitation of Coal Bed Methane**

In case there is presence of coal bed methane (CBM) in the coal mine, the successful bidder may also commercially exploit the CBM present in the mining lease area and shall approach the Directorate General of Hydrocarbon (DGH) for its technical approval followed by the grant of CBM mining lease by respective State Government. In addition to monthly revenue share payable for coal, the successful bidder shall also make payments of monthly revenue share for CBM based on same percentage revenue share quoted (final bid) by it during auction of coal mine. Other mechanisms with regard to arriving at the price of CBM shall be governed by the applicable Policy issued by M/o Petroleum and Natural Gas being the administrative Ministry.

### **2.1.9 Relinquishment of the block**

A successful bidder of a partially explored coal block shall be permitted to relinquish the coal block on meeting the conditions given in the tender documents.

**2.1.10** Other terms and conditions/ modalities of auction including eligibility criteria shall be decided by the M/o Coal.

**2.1.11** Existing CCEA approved methodologies applicable on allotment of coal mines under the CMSP Act shall be applicable on allotment of blocks under the MMDR Act.

**2.1.12** No limit on number of coal mines or reserves or any other parameter regarding production of coal or any combination thereof that can be allocated to a company or its affiliate company, associate company, holding company or subsidiary is to be imposed in the first tranche of auction for sale of coal. Based on the learnings, suitable limits in subsequent tranches of auction may be placed as per decision /recommendation of an Empowered Committee of Secretaries.

**2.1.13** The CCEA approved methodology dated 27.02.2018 for auction of coal mines for sale of coal shall stand modified to the extent covered in the proposal.

**2.2** A National Coal Index (NCI) along with its sub-indices of relevant basket of coal grades shall be developed in accordance with 2nd report of High Power Expert Committee (HPEC) with following modifications:

- I. NCI shall be computed on bi-monthly basis.
- II. Bifurcation of the coking coal into two parts: Steel Grade, into which the price of the imported component of coking coal would be included and second the Washery Grade (consisting of W-1, 2, 3 and 4), in which there would be no import component. Rest of the Coking Coal, i.e. W-5 and W-6 may be treated as the corresponding Grade of Non-Coking Coal.
- III. Revenue Share Payable: As proposed in para 2.1.3 above.





2.3 With the approval of Competent Authority, an Empowered Committee of Secretaries has been constituted *vide* OM of even number dated 28.05.2020 to deliberate and decide/recommend on the miscellaneous terms and conditions for successive rounds of auction and also on the operationalisation aspects of coal mines as detailed in the OM dated 28.05.2020 referred to in this para.

#### 2.4 Increasing the tenure of coking coal linkage

The coking coal linkage in the non-regulated sector linkage auction may be granted for a tenure upto 30 years.

This issues with the approval of Competent Authority.



(Rishan Ryntathiang)  
Under Secretary to the Govt. of India  
Tel. 23384104

To

- (1) The Nominated Authority, Ministry of Coal
- (2) JS (BPP), Ministry of Coal: For appropriate necessary action in respect of auction of coal mines under the relevant provisions of the MMDR Act, 1957 and Rules made there under.
- (3) Director (CLD), Ministry of Coal

Copy to:

1. PS to Hon'ble Minister of Coal
2. PSO to Secretary (Coal)
3. PPS to AS (Coal)
4. PPS to JS (MN)/ PPS to JS (RKS)/PS to JS (BPP)
5. DS (NA)/DS (CBA-II)/DS(CBA-I)
6. STD, NIC, Ministry of Coal.....for uploading on the website of Ministry.

**F.No.13011/2/2020-CBA2-Part(2)/P&S-II**  
**Government of India**  
**Ministry of Coal**  
 \*\*\*\*\*

Shastri Bhawan, New Delhi  
 Dated the      October, 2022

31/5

**ORDER**

**Subject: Methodology for Auction of Coal Mines/Blocks for sale of coal under the Coal Mines (Special Provisions) Act, 2015 and the Mines and Minerals (Development and Regulation) Act, 1957.**

The undersigned is directed to refer to Orders dated 28.05.2020 and 24.11.2021 (copy enclosed) on the subject mentioned above and to say that on the recommendations of the Empowered Committee of Secretaries, the Central Government has approved the following modification in the methodology for auction of coal mines/blocks identified under the relevant Act for sale of coal as mentioned in *para 2* below:

2. The para 2.1.5 (A) of Order dated 28.05.2020 on the subject mentioned above shall stand modified as under:-

**Upfront Amount:**

(A) The Upfront Amount shall be calculated at 0.20% of the value of estimated geological reserves of the coal mine. Value of estimated geological reserves shall be equal to the product of the following:

- (i) estimated quantity of geological reserves in the coal mine, and
- (ii) the representative price of relevant grade(s) of coal referred in para 2.1.3 (A)(iii)(a) of OM of even number dated 28.05.2020.

However, the upfront amount payable shall be as per actual calculation as per above method or as per ceiling mentioned here below, whichever is lower:-

Geological Reserves in mine (MT)	Upper ceiling of Upfront Amount (Rs. cr)
Upto 200	75
Above 200	500

3. All other terms & conditions will remain the same.

This issues with the approval of Competent Authority.



(Rishan Rynthathiang)  
 Under Secretary to the Govt. of India  
 Tel. 23073936

**To,**

(1) Additional Secretary & Nominated Authority, Ministry of Coal

(2) Director (NA)/Director (P&S-I/P&S-II)

**Copy to:**

1. PS to Hon'ble Minister of Coal
2. PSO to Secretary (Coal)
3. PPS to AS (Coal)
4. PPS to AS (MN)& NA
5. STD, NIC, Ministry of Coal.....for uploading on the website of Ministry.

F.No.13011/2/2020-CBA2-Part (2)/P&S-II

Government of India

Ministry of Coal

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Shastri Bhawan, New Delhi

Dated the 24th November, 2021

**ORDER**

**Subject: Methodology for Auction of Coal Mines/Blocks for sale of coal under the Coal Mines (Special Provisions) Act, 2015 and the Mines and Minerals (Development and Regulation) Act, 1957.**

The undersigned is directed to refer to Order dated 28.05.2020 (Copy enclosed) on the subject mentioned above and to say that on the recommendation of Empowered Committee of Secretaries, the Central Government has approved the following modification in the methodology for auction of coal mines/blocks identified under the relevant Act for sale of coal as mentioned in *para 2* below:

2. The para 2.1.4 (b) of Order dated 28.05.2020 (Copy enclosed) on the subject mentioned above shall stand modified as under:

**Gasification or Liquefaction of coal:** If the successful bidder consumes the coal produced either in its own plant(s) or plant of its holding, subsidiary, affiliate, associate for coal gasification or liquefaction or sells the coal for coal gasification or liquefaction process, a rebate of 50% on the percentage revenue share quoted by the successful bidder will be allowed on the total quantity of coal consumed or sold or both for gasification or liquefaction on an yearly basis, subject to the following conditions:

- (i) At least 10% of scheduled coal production as per approved mining plan for that year shall be consumed or sold for gasification or liquefaction;
- (ii) that Coal Controller's certification would be required for the quantity of coal consumed or sold or both for gasification or liquefaction.

3. The aforesaid modification shall be applicable for ongoing and successive tranches of auction for sale of coal.

4. All other terms of Order dated 28.05.2020 shall remain the same.

This issues with the approval of Competent Authority.

**Encl:** As above

(Byasadev Naik)  
Deputy Director (P&S-II)  
Tel. 23070378

To

(1) The Nominated Authority, Ministry of Coal

(2) JS (P&S), Ministry of Coal

(3) Director (CLD), Ministry of Coal

Copy to:

1. PS to Hon'ble Minister of Coal
2. PSO to Secretary (Coal)
3. PPS to AS (Coal)
4. PPS to AS (MN) & NA
5. PPS to JS (P&S)
6. DS (NA)/DS (P&S-II/P&S-I)
7. STD, NIC, Ministry of Coal.....for uploading on the website of Ministry.



**F.No.13011/2/2020-CBA2-Part(2)**  
**Government of India**  
**Ministry of Coal**  
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Shastri Bhawan, New Delhi  
 Dated the 28<sup>th</sup> May, 2020

**ORDER**

**Subject: Methodology for Auction of Coal Mines/Blocks for sale of coal under the Coal Mines (Special Provisions) Act, 2015 and the Mines and Minerals (Development and Regulation) Act, 1957.**

The undersigned is directed to refer to Rule 8 (2) and 8 (3) of the Coal Mines (Special Provisions) Rules, 2014 read with Section 8 (5) of the Coal Mines (Special Provisions) Act, 2015 and Rule 3(1) (d) of the Coal Blocks Allocation Rules, 2017 read with Section 11A of the Mines and Minerals (Development and Regulation) Act, 1957 and to say that the Competent Authority has approved the methodology for auction of coal mines/blocks identified under the relevant Act for sale of coal as mentioned in para 2 below:

**2.1 Methodology and other conditions for auction of coal mines for sale of coal:-**

**2.1.1 Applicability:** It shall be applicable on auction of all fully explored coal blocks/mines (categorised in G-1 exploration stage as per the modified Indian Standard Procedure for Coal Resource estimation, 2017) and partially explored coal blocks/mines (categorised in G-2 or G-3 exploration stage) for sale of coal under the CMSP Act and MMDR Act. The Methodology and other conditions shall also be applicable on lignite blocks, *mutatis mutandis*.

**2.1.2 Bid Parameter:** The bid parameter will be revenue share for both fully explored coal mines (categorised in G-1 exploration stage) and partially explored coal mines (categorised in G-2 or G-3 exploration stage). The auction will be an ascending forward auction where the bidders would be required to bid for a percentage share of revenue which would be payable to the State Government. The floor percentage of revenue share shall be 4%. The bid increments will be accepted in multiples of 0.5 % of revenue share till the percentage (%) of revenue share reaches 10% and thereafter, bid increments will be accepted in multiples of 0.25% of revenue share. The bidder that submits the highest percentage (%) of revenue share in the bidding shall be declared the preferred bidder.

**2.1.3 Revenue share payable:**

(A) The successful bidder shall be required to pay revenue share on monthly basis which shall be determined as product of:

- (i) percentage (%) of revenue share (final bid) quoted by the successful bidder;
- (ii) total quantity of coal on which the statutory royalty is payable during the month; and
- (iii) notional price or actual price, whichever is higher, where





**228824(12)/2020/CBA-II**

(a) 'notional price' refers to the price arrived at after adjusting the representative price with sub-index of NCI of relevant basket of coal grade(s) on the date on which royalty becomes payable, where 'representative price' is product of-

- (1) weights (volume of coal in different components of notified price, auction price and imported price channels) of base year, and
- (2) prices of these components at the time of issuance of tender, and

(b) 'actual price' refers to the sale invoice value of coal, net of statutory dues including taxes, levies, royalty, NMET, DMF, etc.

(B) In addition to revenue share, other statutory dues including taxes, levies, royalty, NMET, DMF, etc. shall be payable under applicable laws.

**2.1.4 Incentives in revenue sharing model in certain events:**

The successful bidder shall be provided with incentives in the following events:

**(a) Early production:**

(i) In case of fully explored blocks, a rebate of 50% on revenue share quoted by the successful bidder would be allowed, till the scheduled date of production as per the production schedule given in the tender document, for the quantity of coal produced earlier than such scheduled date of production.

(ii) In case of partially explored blocks, a rebate of 50% on revenue share quoted by successful bidder would be allowed, till the scheduled date of production, for the quantity of coal produced earlier than the scheduled date of production given in the approved mining plan.

(iii) Statutory dues including taxes, levies, royalty, NMET, DMF, etc. shall be payable as per law. No exemption would be given to the successful bidder from obtaining any approval etc. under applicable laws required for start of production.

**(b) Gasification or Liquefaction of coal:** If the successful bidder consumes the coal produced either in its own plant(s) or plant of its holding, subsidiary, affiliate, associate for coal gasification or liquefaction or sells the coal for coal gasification or liquefaction process, a rebate of 20% on the percentage revenue share quoted by the successful bidder will be allowed on the total quantity of coal consumed or sold or both for gasification or liquefaction on an yearly basis, subject to the following conditions:

(i) At least 10% of scheduled coal production as per approved mining plan for that year shall be consumed or sold for gasification or liquefaction;

(ii) that Coal Controller's certification would be required for the quantity of coal consumed or sold or both for gasification or liquefaction.

**(c)** Empowered Committee of Secretaries may review and determine the incentives on revenue share from time to time.

**2.1.5 Upfront Amount:**

(A) The Upfront Amount shall be calculated at 0.25% of the value of estimated geological reserves of the coal mine. Value of estimated geological reserves shall be equal to the product of the following:



- (i) estimated quantity of geological reserves in the coal mine, and
- (ii) the representative price of relevant grade(s) of coal referred in para 2.1.3 (A)(iii)(a) above.

However, the upfront amount payable shall be as per actual calculation as per above method or as per ceiling mentioned here below, whichever is lower:-

Geological Reserves in mine (MT)	Upper ceiling of Upfront Amount (Rs. cr)
Upto 200	100
Above 200	500

(B) The ceilings are calculated as per prevalent market conditions and the same is liable to be revised in case there is substantial upward/downward change in market conditions by Empowered Committee of Secretaries.

(C) The Successful Bidder shall have the option to get the Upfront Amount adjusted against the revenue share payable subject to the condition that such adjustment of upfront amount shall not exceed 50% of the revenue share payable in the year.

(D) The Upfront Amount shall be payable by the successful bidder in 4 equal installments as provided in the tender document.

#### 2.1.6 Sale and/or Utilisation of Coal

There shall be no restriction on the sale and/ or utilisation of coal from the coal mine. The successful bidder shall be free to sell coal in any manner as may be decided by the successful bidder including sale to affiliates and related parties, utilise coal for any purpose including but not limited to captive consumption, gasification, liquefaction and export of coal.

#### 2.1.7 Flexibility in Coal Production

(A) The successful bidder shall produce coal not below 65% of the scheduled production as per approved mine plan in a year subject to the condition that the successful bidder shall not produce coal less than 75% of the scheduled production as per approved mine plan in any block of three years. The three-year block shall be counted from the first financial year of scheduled commencement of production in the coal mine.

#### (B) Revenue share payable to the Government in case of shortfall in coal production in a financial year:

(i) In the event the annual coal production is less than 65% of the scheduled production in any financial year, the successful bidder shall be required to pay the revenue share (for both, coal produced and shortfall) so that the total revenue share paid is equal to 65% of scheduled coal production for that financial year.

(ii) In such cases, the annual revenue share payable for the shortfall quantity (65% of scheduled coal production *less* the quantity of coal on which the statutory royalty is paid) shall be computed on the basis of notional price.

#### (C) Revenue share payable to the Government in case of shortfall in coal production in a block of three financial years:

(i) Further, in event the coal production in a block of three financial years is less than 75% of the scheduled production for that block, the successful bidder shall be required to pay the revenue share (for both, coal produced and shortfall) so that the total revenue share paid is equal to 75% of scheduled coal production for that block of three financial years.



(ii) In such cases, the revenue share payable for the shortfall quantity (75% of scheduled coal production of three years *less* the quantity of coal on which the statutory royalty is paid in three years) shall be computed on the basis of notional price.

(D) However, statutory dues including taxes, levies, royalty, NMET, DMF, etc. shall be payable as per the applicable law.

### **2.1.8 Exploitation of Coal Bed Methane**

In case there is presence of coal bed methane (CBM) in the coal mine, the successful bidder may also commercially exploit the CBM present in the mining lease area and shall approach the Directorate General of Hydrocarbon (DGH) for its technical approval followed by the grant of CBM mining lease by respective State Government. In addition to monthly revenue share payable for coal, the successful bidder shall also make payments of monthly revenue share for CBM based on same percentage revenue share quoted (final bid) by it during auction of coal mine. Other mechanisms with regard to arriving at the price of CBM shall be governed by the applicable Policy issued by M/o Petroleum and Natural Gas being the administrative Ministry.

### **2.1.9 Relinquishment of the block**

A successful bidder of a partially explored coal block shall be permitted to relinquish the coal block on meeting the conditions given in the tender documents.

**2.1.10** Other terms and conditions/ modalities of auction including eligibility criteria shall be decided by the M/o Coal.

**2.1.11** Existing CCEA approved methodologies applicable on allotment of coal mines under the CMSP Act shall be applicable on allotment of blocks under the MMDR Act.

**2.1.12** No limit on number of coal mines or reserves or any other parameter regarding production of coal or any combination thereof that can be allocated to a company or its affiliate company, associate company, holding company or subsidiary is to be imposed in the first tranche of auction for sale of coal. Based on the learnings, suitable limits in subsequent tranches of auction may be placed as per decision /recommendation of an Empowered Committee of Secretaries.

**2.1.13** The CCEA approved methodology dated 27.02.2018 for auction of coal mines for sale of coal shall stand modified to the extent covered in the proposal.

**2.2** A National Coal Index (NCI) along with its sub-indices of relevant basket of coal grades shall be developed in accordance with 2nd report of High Power Expert Committee (HPEC) with following modifications:

- I. NCI shall be computed on bi-monthly basis.
- II. Bifurcation of the coking coal into two parts: Steel Grade, into which the price of the imported component of coking coal would be included and second the Washery Grade (consisting of W-1, 2, 3 and 4), in which there would be no import component. Rest of the Coking Coal, i.e. W-5 and W-6 may be treated as the corresponding Grade of Non-Coking Coal.
- III. Revenue Share Payable: As proposed in para 2.1.3 above.





2.3 With the approval of Competent Authority, an Empowered Committee of Secretaries has been constituted *vide* OM of even number dated 28.05.2020 to deliberate and decide/recommend on the miscellaneous terms and conditions for successive rounds of auction and also on the operationalisation aspects of coal mines as detailed in the OM dated 28.05.2020 referred to in this para.

#### 2.4 Increasing the tenure of coking coal linkage

The coking coal linkage in the non-regulated sector linkage auction may be granted for a tenure upto 30 years.

This issues with the approval of Competent Authority.



(Rishan Ryntathiang)  
Under Secretary to the Govt. of India  
Tel. 23384104

To

- (1) The Nominated Authority, Ministry of Coal
- (2) JS (BPP), Ministry of Coal: For appropriate necessary action in respect of auction of coal mines under the relevant provisions of the MMDR Act, 1957 and Rules made there under.
- (3) Director (CLD), Ministry of Coal

Copy to:

1. PS to Hon'ble Minister of Coal
2. PSO to Secretary (Coal)
3. PPS to AS (Coal)
4. PPS to JS (MN)/ PPS to JS (RKS)/PS to JS (BPP)
5. DS (NA)/DS (CBA-II)/DS(CBA-I)
6. STD, NIC, Ministry of Coal.....for uploading on the website of Ministry.

F. No. 13011/2/2020-CBA2-Part(2)/P&amp;S-II

Government of India

Ministry of Coal

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Shastri Bhawan, New Delhi

Dated the 31<sup>st</sup> October, 2022**OFFICE MEMORANDUM**

**Subject: Direction of the Central Government to the Nominated Authority under Section 6 (7) of the Coal Mines (Special Provisions) Act, 2015 read with Rule 8 (2) (c) & (d) of the Coal Mines (Special Provisions) Rules, 2014**

The undersigned is directed to refer to OM dated 01.06.2020 (copy enclosed) on the subject mentioned above and to say that on the recommendations of the Emowered Committee of Secretaries, the Central Government has approved the following modifications in the directions issued to Nominated Authority as mentioned in para 2 below:-

2. The para 2.5 of OM dated 01.06.2020 (copy enclosed) on the subject mentioned above shall stand modified as under:-

**Relinquishment of Coal block:**

After completing the prospecting operations as per the Mandatory Work Program and preparing the Geological Report, acceptable to the M/o Coal, the Successful Bidder may relinquish the coal mine or any part thereof having non-coal bearing area or coal bearing area which is technically non-viable to explore (subject to the approval of MoC) after submitting all reports, studies and other documentation related to the geological prospecting/ exploration. However, there will be no change in the upfront payment, PBG and PRC of the mine as determined in the time of auction. If the Successful Bidder fails to complete the prospecting operations as per the Mandatory Work Program and does not prepare the Geological Report, the Performance Security shall be forfeited and the Agreement will be terminated. For partial relinquishment, the bidder shall submit a detailed report to mine plan approving committee. CMPDIL will examine the report for a nominal fee and produce its observation on the report to mine plan approving committee. The committee will submit the report to Nominated Authority for a decision.

3. All other terms and conditions of OM dated 01.06.2020 shall remain the same.

  
(Rishan Ryntathiang)

Under Secretary to the Govt. of India

Tel. 23073936

To:

1. Nominated Authority, MoC
2. Advisor (Project), MoC

Copy also for information to:-

1. PS to Hon'ble Minister of Coal
2. PSO to Secretary (Coal)/PPS to AS (Coal)
3. PPS to AS (MN)
4. Director (NA)/ Director (P&S-I/P&S-II)
5. Director (CPD), Ministry of Coal



**F. No. CBA2-13011/2/2020-CBA2****Government of India****Ministry of Coal**

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**Shastri Bhawan, New Delhi****Dated the 1<sup>st</sup> June, 2020****OFFICE MEMORANDUM**

**Subject: Direction of the Central Government to the Nominated Authority under Section 6 (7) of the Coal Mines (Special Provisions) Act, 2015 read with Rule 8 (2) (c) & (d) of the Coal Mines (Special Provisions) Rules, 2014**

The undersigned is directed to say that High Level Committee (HLC) under the Chairmanship of Dr. Rajiv Kumar, Vice-Chairman, NITI Aayog was constituted on Mines, Minerals & Coal Sectors with the objective of enhancing exploration, domestic production, reducing imports, giving impetus to value addition and achieving rapid growth in exports. The HLC has submitted its report in the Ministry vide letter dated 07.01.2020.

2. After detailed discussion on the recommendations of HLC, the following has been decided with the approval of the Competent Authority:

**2.1 Bid Process:** In order to avoid cartelization and to encourage competition during tender process, following is to be considered for short listing of Technically Qualified Bidders (TQBs) for Final Price Offer (FPO) round:-

- i. If there are 2 or 3 TQBs in IPO round, no TQB may be eliminated,
- ii. If there are 4 to 6 TQBs in IPO round, only one i.e. the last ranked TQB may be eliminated,
- iii. If there are 7 or more TQBs in IPO round, one third of TQBs in IPO round (who ranked last), subject to a maximum of 3, may be eliminated. While calculating the one third, fractions will be ignored

**2.2 Number of Minimum Bidders:** In case of less than 2 Technically Qualified Bidders, the first attempt of auction shall be annulled and the second attempt of auction may be initiated with the approval of Competent Authority in the following manner:-

- a. De novo with a separate set of terms and conditions and floor percentage of revenue share as it may be deemed fit (on the lines of provisions of Mineral (Auction) Rules, as amended vide 2017 Rules notified by Ministry of Mines). OR
- b. With the same terms and conditions as in the first annulled attempt of auction, and with the highest Initial Price Offer of TQB, if any, in the first annulled attempt of auction as the floor percentage of revenue share for the second attempt of auction. However, in case of only one bidder in the second attempt, the matter will be referred to ECoS for appropriate decision with respect to allocation of mine.



### 2.3 Performance Security:-

#### a. Explored blocks

- i. Performance Security is proposed to be 65% of aggregate of:-
  - a) One year royalty, based on PRC; and
  - b) One year revenue share to the Government calculated on the basis of PRC
- ii. The level of Performance Security has been linked to the minimum annual production requirement to be met by the Successful Bidder.
- iii. After mine opening permission, performance security is to be returned to Successful Bidder. State government shall take a separate performance security for the same amount from the Successful Bidder and shall monitor the coal production. This provision is suitably being inserted in the Rules.

#### b. Partially Explored

- i. The exploration expenses shall be on the basis of estimated exploration expenses based on Mandatory Work Program which will be provided in the tender document
  - a) Performance Security shall be equal to 25% of the estimated exploration expense till in principle approval of mining plan by MoC.
  - b) The amount of Performance Security shall be revised after in-principle approval of the mining plan by MoC, which shall be estimated in the same manner as specified for fully explored mines.
- ii. The Performance Security shall be submitted by the Successful Bidder in the form of a bank guarantee, prior to issuance of Vesting Order within such time as may be stipulated by the Nominated Authority.

### 2.4 Partially Explored Coal Block-change in control of the Successful Bidder or transfer of the coal block is proposed to be allowed as below:

- a. Allowed after one year of the vesting order provided that at least 15% of the estimated exploration expense has been incurred; or
- b. After execution of Mining Lease.

### 2.5 Relinquishment of Coal block:

After completing the prospecting operations as per the Mandatory Work Program and preparing the Geological Report, acceptable to the M/o Coal, the Successful Bidder may relinquish the coal mine (subject to the approval of MoC) after submitting all reports, studies and other documentation related to the geological prospecting/ exploration. If the Successful Bidder fails to complete the prospecting operations as per the Mandatory Work Program and does not prepare the Geological Report, the Performance Security shall be forfeited and the Agreement will be terminated.

### 2.6 Mining of associated minerals (Other than CBM):

Mining of minor minerals except precious metals, rare earths, atomic and strategic minerals, by the same Successful Bidder has been agreed in principle by the State






Governments in the interaction held on 05.02.2020 for ease of mining operations. As the allocation of minor minerals is dealt by State Government under the MMDR Act and the Act itself is administered by the Ministry of Mines, the Ministry of Mines was requested vide letter dated 14.02.2020 to build consensus of coal bearing State Governments so that the enabling provisions may be made in the tender document. Ministry of Mines vide letter dated 09.03.2020 has requested concerned State Governments (Jharkhand, Odisha, Chhatisgarh, West Bengal, Madhya Pradesh, Telangana and Maharashtra) to include appropriate provisions in the Minor Mineral Concession Rules of the State and allow the sale of minor minerals obtained during coal mining operations by the allottee of the coal mine.

3. Accordingly, in pursuance of Section 6 (7) of the Coal Mines (Special Provisions) Act, 2015 read with Rule 8 (2) (c) & (d) of the Coal Mines (Special Provisions) Rules, 2014 and with the approval of the competent authority, Nominated Authority is hereby directed to note the above decisions and take necessary action accordingly.

4. Directions contained in OM No.13011/4/2018-CBA2 dated 12.10.2018 shall stand modified to the extent covered in this OM.

  
(Rishan Ryntathiang)  
Under Secretary to the Govt. of India  
Tel. 23073936

To

The Nominated Authority,  
Ministry of Coal

Copy also for information to:-

1. PS to Minister of Coal
2. PSO to Secretary (Coal)/PPS to AS (Coal)
3. PPS to JS (MN)/PPS to JS (RKS)/PPS to JS (BPP)
4. DS (NA)/ DS (CBA-II)/ DS (CBA-I)
4. Director (CLD), Ministry of Coal



**F.No. 13011/2/2020-CBA2-Part(2)/(P&S-II)**  
**Government of India**  
**Ministry of Coal**  
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Shastri Bhawan, New Delhi  
Dated: the 31<sup>st</sup> October, 2022

To,

1. Chairman, Coal India Limited, Kolkata
2. CMD, ONGC, New Delhi
3. CMD, IOC, New Delhi

**Subject: Allotment of coal blocks overlapping with already allocated Coal Bed Methane (CBM) Blocks to CPSUs**


Sir,

I am directed to refer to the subject mentioned above and to say that on the recommendations of the Empowered Committee of Secretaries, it has been decided that the Government Company which is allottee of a CBM block may be allotted the overlapping coal blocks for simultaneous/ sequential extraction of coal and to apply conditions like bank guarantee or performance security, efficiency parameters, upfront payment, etc. when the coal block becomes operational. Both the Coal Mines (Special Provisions) Act, 2015 (Section 5) and the Mines and Mineral (Development and Regulation) Act, 1957 (Section 11A) provides that the Government companies may be allotted the coal block through allotment.

2. Ministry of Coal has issued a CCEA approved methodology for fixing up of upfront payment and reserve price for allotment of the coal mines/ blocks for sale of coal to PSU under the CMSP Act *vide* OM dated 08.01.2016 and the same is also made applicable on allotment of the blocks under MMDR Act *vide* order dated 28.05.2020.

3. CIL, ONGC and IOC are requested to submit detailed proposals for consideration of allotment of coal blocks overlapping with CBM blocks of CIL, ONGC and IOC.

Yours faithfully,

  
(Rishan Ryntathiang)  
Under Secretary (P&S-II)  
Tel. 23073936

**Copy to:**

1. US (P&S-I)
2. US (NA)

Through E-Mail/Speed Post

F No. 104/23/2015/NA  
Government of India  
Ministry of Coal  
O/o Nominated Authority

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F- Wing 1st Floor, Shastri Bhawan,  
New Delhi Dated : 23rd March, 2023

To,  
The Chairman-cum-Managing Director,  
Trimula Industries Limited,  
H. No. 45, Ward No. 5,  
Main road, Singrauli Dist,  
Madhya Pradesh- 486889

**Subject: Regarding surrendering of Forest land of Meral coal mine.**

**Ref.: Letter No. TIL/Meral/2019/43 dated 06.12.2019.**

Sir,

I am directed to refer to the subject mentioned above and to say that a letter dated 06.12.2019 has been received in the Ministry from M/s Trimula Industries Limited regarding surrendering of 74.01 Ha of forest land in respect of Meral coal mine claiming as non-coal bearing area. After due examination, the Competent Authority has not acceded to the request of surrender of 74.01 Ha of forest land of Meral coal mine.

Yours faithfully,



(Manish Uniyal)

Under Secretary to the Government of India

Tel. No. 011-23384106



**F.No. NA-102/1/2022-NA(FTS: 351366)**

Government of India/भारत सरकार

Ministry of Coal/कोयला मंत्रालय

O/o Nominated Authority / नामनिर्दिष्ट प्राधिकारी का कार्यालय

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Shastri Bhawan, New Delhi

Date : 16.06.2023

### **RECOMMENDATION**

**Subject:** Annulment of auction process for Dahegaon/Makardhokra-IV Coal Mine.

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The Notice Inviting Tender (NIT) for e-auction of coal mines under 15<sup>th</sup> Tranche of auction under CMSP Act, including Dahegaon/Makardhokra-IV Coal Mine, was issued on 30.03.2022.

2. Directions of the undersign dated 22.09.2022, recommending the Central Government for declaring the name of the preferred bidder, M/s Avassa Ferro Alloys Private Limited, for aforementioned mine may be found enclosed (**Annexure-1**).

3. M/s. Avassa Ferro Alloys Pvt. Ltd. informed about a major flaw in the approved mining plan and requested to downgrade the PRC to 0.6 MTY on technical grounds.

4. The matter was referred to CMPDIL to examine the possibility of achieving the PRC of 1.5 MT with other mining methods or to indicate the highest achievable capacity. CMPDIL suggested that the PRC of 0.6 MTY could be agreed upon, and the PRC may vary during the preparation of the revised mining plan.

5. None of the concerning clauses in the guidelines (Guidelines for Preparation, Formulation, Submission, Processing, Scrutiny, Approval, and Revision of Mining plan for the coal and lignite blocks issued by the Office Memorandum dated May 29, 2020) allow for reducing PRC on technical grounds as submitted by Bidder.

6. Matter was referred D/o. Legal Affairs (DoLA) which suggested that it may not be legally correct to invoke the clause of Standard Tender Document when allocation is yet to be done to consider the bidder's request, as it could alter the terms and conditions of the bid. DoLA requested Ministry of Coal to review the matter and take further action accordingly

7. Matter was deliberated in 9<sup>th</sup> meeting of ECoS held on 03.03.2023 whose minutes may be found enclosed (**Annexure-2**). After deliberation, recommendation of Committee was as below:

*"considering technical flaw in achieving given PRC auction of coal mine to be cancelled. As bidder can't be held responsible for technical flaw in mine plan, bid security submitted by bidder should be returned"*

8. Matter was put up before Hon'ble minister to return the bid security. However, Hon'ble Minister directed to first inquire the cause of this flaw in the approved mine plan.


9. Input were requested from MPS Section, MoC. MPS section furnished comments vide OM dated 10.05.2023. (**Annexure-3**)

11. Comments of Mine plan section (MPS) were forwarded to Hon'ble Minister for his consideration. Hon'ble Minister approved for returning the Bid Security.

12. Bid Security in original has been returned to the Bidder.

13. In view of above, it is informed that auction process of aforementioned coal mine has been annulled.

Encl(s): As above.

  
[ M. NAGARAJU ]  
Nominated Authority

To,

**The Secretary,**  
Ministry of Coal,  
Shastri Bhawan,  
New Delhi.