

STANDARD ALLOTMENT AGREEMENT
FOR
TRANCHE 1 OF ALLOTMENT
TO
POWER SECTOR FOR OWN CONSUMPTION OF COAL FOR GENERATION OF
ELECTRICITY
UNDER THE MINES AND MINERAL (DEVELOPMENT AND REGULATIONS) ACT,
1957

Ministry of Coal
Government of India
New Delhi

June 11, 2018

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This Allotment Agreement is made by and between following:

PARTIES:

- 1 **The President of India**, acting through the Ministry of Coal, Government of India (hereinafter referred to as the “**Ministry of Coal**” or the “**Government**”).
- 2 **[Name of the Allottee]** incorporated in India under the Companies Act, 1956 with corporate identity number **CIN of the Allottee**, 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 “**Allottee**”).

BACKGROUND:

- A. The Mines and Minerals (Development and Regulation) Act, 1957 (No. 67 of 1957) (the “Act”) and The Mineral Concession Rules, 1960 made thereunder provides, inter alia, for the development and regulation of mines and minerals including coal and lignite.
- B. Section 11A of the Act authorizes the Government to select for the purposes of granting Prospecting Licence or Mining Lease in respect of an area containing Coal (i) through auction by competitive bidding, a company or a joint venture to carry on coal mining operation in India any from either for own consumption, sale or for any other purpose in accordance with the prospecting license or mining lease, as the case may be ; (ii) for allocation to a government company; and (iii) through competitive bids for tariff, a company that has been awarded a power project.
- C. Section 13 (1) of the Act authorizes the Government to make rules for regulating the grant of Prospecting Licenses and Mining Leases in respect of Coal. Specifically, Section 13 (2) (d) of the Act authorizes the Government to make rules to provide for the terms and conditions of the auction by competitive bidding referred to in Recital B above.
- D. Pursuant to the aforesaid, the Government has made the Coal Block Allocation Rules, 2017 (the “**Rules**”).
- E. Thereafter, the Government issued an order under Rule 3(1) of the Rules, dated April 2, 2018, as amended, to the Nominated Authority for allotment of the Coal Block pursuant to Rule 6 of the Rules. In such order, own consumption for generation of electricity through generating station was the “**Specified End Use**” with respect to the Coal Block.
- F. Pursuant to an allotment process conducted in accordance with the Act, the Rules, the Allotment Document, dated **[insert date]** and approval of the Government under Rule 6(9) of the Rules, the Allottee has become entitled to enter into an agreement with the Government pursuant to Rule 8(1) of the Rules with respect to allocation of the Coal Block to the Allottee for use in the Specified End Use Plant (*as defined in Clause 1.1.43*).

G. Accordingly, the Government and the Allottee are entering into this Agreement with respect to matters related to allocation of the Coal Block, including without limitation development of the Coal Block and production and utilisation of coal from the Coal Block.

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 Mines and Minerals (Development and Regulation) Act, 1957.

1.1.2. “**Acceptable Bank**” shall mean a Scheduled Bank as listed in the Second Schedule of the Reserve Bank of India Act, 1934 excluding those listed under the headings of Gramin Banks, Urban Co-operative Banks and State Co-operative Banks.

1.1.3. “**Agreement**” means this Allotment Agreement and all attached annexure, schedules, exhibits and instruments supplemental to or amending, modifying or confirming this Agreement in accordance with the provisions of this Agreement.

1.1.4. “**Agreement Date**” shall mean the date on which execution of this Agreement by both the Allottee and the Government is completed.

1.1.5. “**Allotment Conditions**” shall have the meaning given to such expression in Clause 3.1.

1.1.6. “**Allotment Date**” shall have the meaning given to such expression in Clause 4.3.

1.1.7. “**Allotment Document**” shall have the meaning given to it under the Rules and shall include the Allotment Document dated [insert date] for allotment of the Coal Block.

1.1.8. “**Allocation order**” shall have the meaning given to such expression in the Act and the Rules.

1.1.9. “**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.

- 1.1.10. “**Appropriation Event**” shall have the meaning given to such expression in Clause 6.2.1.
- 1.1.11. “**Arrangement**” shall have the meaning given to such expression in Clause 8.3.1.
- 1.1.12. “**Arrangement Application**” shall have the meaning given to such expression in Clause 8.3.1.
- 1.1.13. “**Authorised Representative**” shall have the meaning given to such expression in Clause 4.4.
- 1.1.14. “**Business Day**” shall mean a day which is not a Saturday, Sunday or any other day declared as a public holiday by the Central Government.
- 1.1.15. “**CIL**” shall mean Coal India Limited (a Government of India undertaking).
- 1.1.16. “**CIL Notified Price**” shall mean the prevailing notified price of relevant grade(s) of coal by CIL or any of its subsidiaries, as may be territorially relevant to the Coal Block, as on the date of sale of coal.
- 1.1.17. “**Claim**” shall have the meaning given to such expression in Clause 18.3.
- 1.1.18. “**Coal Block**” shall mean the coal block as more particularly described in SCHEDULE A.
- 1.1.19. “**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.
- 1.1.20. “**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.
- 1.1.21. “**Commencement Plan**” shall have the meaning given to such expression in Clause 5.1.
- 1.1.22. “**Development Area**” means the whole or any particular part of the Mining Area which is established for commercial development and which is delineated as such in a Mine Plan.
- 1.1.23. “**Diversions Notice**” shall have the meaning given to such expression in Clause 8.4.1.
- 1.1.24. “**Efficiency Parameters**” shall have the meaning given to such expression in Clause 10.1.

- 1.1.25. **“Eligibility Conditions”** shall mean the eligibility conditions specified in the Act and the Rules including all the eligibility conditions listed in Clause 3.2 of the Allotment Document.
- 1.1.26. **“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.
- 1.1.27. **“Governmental Approval”** means any authorization, approval, consent, licence or permit required from any Governmental Authority.
- 1.1.28. **“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.
- 1.1.29. **“Event of Force Majeure”** shall have the meaning given to such expression in Clause 23.1.
- 1.1.30. **“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.
- 1.1.31. **“Indemnified Party”** shall have the meaning given to such expression in Clause 18.1.
- 1.1.32. **“Mine Plan”** shall mean a plan which has been approved in accordance with the Applicable Laws in relation to the Coal Block.
- 1.1.33. **“Mining Lease”** shall have the meaning given to such expression in Clause 5.3.1.
- 1.1.34. **“Monthly Payment”** shall have the meaning given to such expression in Clause 9.1.1.
- 1.1.35. **“Other Plants”** shall have the meaning given to such expression in Clause 8.4.1.
- 1.1.36. **“Parties”** means and refers to the Government and the Allottee collectively and **“Party”** refers to any one of them.

- 1.1.37. “**Performance Security**” shall have the meaning given to such expression in Clause 6.1.1.
- 1.1.38. “**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.
- 1.1.39. “**Reference Index**” shall have the meaning given to such expression in Clause 9.2.1.
- 1.1.40. “**Reserve Price**” shall mean INR 100/Tonne (Indian Rupees One hundred/Tonne).
- 1.1.41. “**Rules**” shall have the meaning given to such expression in Clause D of the Background.
- 1.1.42. “**Selectee**” shall have the meaning given to such expression in Clause 19.3.3(b).
- 1.1.43. “**Specified End Use Plant**” shall mean the plant engaged in generation of electricity situated at [address], India, as prescribed for the Coal Block under Rule 3(1) of the Rules, as more particularly described in SCHEDULE B.
- 1.1.44. “**State Government**” shall mean the Government of [insert name of the State] i.e. the Government of the state where the Coal Block is located.
- 1.1.45. “**Substitution Notice**” shall have the meaning given to such expression in Clause 19.3.3(b).
- 1.1.46. “**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 Allottee 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 Allottee 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.
- 1.1.47. “**Third Party**” means any Person that is not a signatory to this Agreement.
- 1.1.48. “**Term**” shall have the meaning given to such expression in Clause 24.2.
- 1.1.49. “**Termination Event**” shall have the meaning given to such expression in Clause 24.3.1.

1.1.50. “**Upfront Amount**” shall mean an amount equal to INR [amount in figures] (Indian Rupees [amount in words]) payable by the Allottee in terms of Clause 5.2, and the same shall include any revisions made pursuant to Clause 5.2.5 (applicable in case the approved Mine Plan is not available).

1.1.51. “**Warranties**” shall have the meaning given to such expression in Clause 17.1.

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 there under 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;

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. 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.

1.2.6. 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.

1.2.7. 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.

- 1.2.8. A reference to a **party** shall include that party's representatives, successors and permitted assigns.
- 1.2.9. 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.
- 1.2.10. Headings to Clauses, parts and paragraphs of schedules and schedules are for convenience only and do not affect the interpretation of this Agreement.
- 1.2.11. A reference to "**in writing**" includes any communication made by letter or fax **but not e-mail** (unless otherwise expressly provided in this Agreement).
- 1.2.12. Unless otherwise specified, any reference to a time of day is to Indian Standard Time.
- 1.2.13. 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.
- 1.2.14. Where the context permits, **other** and **otherwise** are illustrative and shall not limit the sense of the words preceding them.
- 1.2.15. 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.
- 1.2.16. 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 BLOCK

- 2.1. The Allottee hereby represents and warrants to the Government that it has complied with all the terms and conditions of the Act, the Rules, the Allotment Document and other Applicable Laws, as were required to be complied with by the Allottee, with respect to allotment process for the Coal Block and the Allottee is eligible in all respects to receive allocation of the Coal Block. The Allottee also represents and warrants to the Government 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 the Agreement and the Mining Lease.
- 2.2. Relying on the representations and warranties of the Allottee and the information, documents and other undertaking provided by the Allottee, including the Warranties provided under Clause 17, the Government is pleased to enter into this Agreement with the Allottee for allocation of the Coal Block to the Allottee subject to terms and conditions specified in this Agreement.

3. CONDITIONS FOR ALLOTMENT

3.1. Allotment Conditions

The issuance of the Allocation order in favour of the Allottee shall be subject to satisfaction of the following conditions (collectively the “**Allotment Conditions**”):

- (a) the Allottee continuing to be in compliance with all the Eligibility Conditions;
- (b) the Allottee having paid the first instalment of the Upfront Amount, in accordance with Clause 5.2.1, and having provided such undertaking as specified in SCHEDULE G, in case the approved Mine Plan is not available; and
- (c) the Allottee having furnished the Performance Security, and having provided such undertaking as specified in SCHEDULE G, in case the approved Mine Plan is not available;

3.2. Completion of Allotment Conditions and Notice

3.2.1. Upon satisfaction of each of the Allotment Conditions specified in Clause 3.1, the Allottee shall provide a written notice to the Government in substantially the same format as provided in SCHEDULE C (the “**Completion Notice**”)

3.2.2. In the event the Allottee does not provide a Completion Notice with respect to each of the Allotment Conditions listed in Clauses 3.1(a); 3.1(b) and 3.1(c), within [number of days] Days of the Agreement Date, then the Government may terminate this Agreement without incurring any liability whatsoever by providing a written notice to the Allottee. It is clarified that in such event the Allottee shall not be entitled to receive the Allocation Order and the Government shall be entitled to dispose the Coal Block in the manner provided in the Act and the Rules, including through re-auction/re-allotment.

4. THE ALLOCATION ORDER

4.1. Upon receipt of the Completion Notice evidencing compliance with each of the applicable Allotment Conditions, the Government may issue the Allocation Order, subject to the Act, the Rules, the Allotment Document and other Applicable Laws, in the manner provided in this Clause 4.

4.2. The Allocation Order shall be issued by the Government in substantially the same format as approved by the Government.

4.3. Prior to issuance of the Allocation Order, the Government shall provide a written notice to the Allottee specifying the date of the Allocation Order (the “**Allotment Date**”) and the date and time on which and place from where the Allocation Order may be collected by the Allottee.

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

5. POST ALLOTMENT OBLIGATIONS

5.1. Commencement Plan

- 5.1.1. Within [number of days] Business Days of the date of the Allocation Order, the Allottee shall be required to submit a detailed plan (the “**Commencement Plan**”) towards commencement of mining operations at the Coal Block. The Commencement Plan shall include all actions that the Allottee may be required to perform to commence mining operations at the Coal Block and shall include such information as may be required by the Government, including without limitation, information regarding the following:
 - (a) the Governmental Approvals, including the Mining Lease, or notification under Section 11 (1) of the Coal Bearing Areas (Acquisition And Development) Act, 1957 (hereinafter “CBA Act, 1957”), as the case may be, which shall be required for commencement of mining operations at the Coal Block and the time within which the Allottee would make applications for such Governmental Approvals; and
 - (b) revisions to the Mine Plan if any, as may be proposed by the Allottee.
- 5.1.2. The Commencement Plan shall be prepared by the Allottee to ensure strict compliance with the Efficiency Parameters.

5.2. Payment of the Upfront Amount

The Upfront Amount is required to be made to the State Government in the manner as may be prescribed by the State Government, with an intimation to the Government.

5.2.1. First Instalment of fifty per cent

The first instalment of fifty per cent of the Upfront Amount being an amount equal to INR [amount in figures] (Indian Rupees [amount in words]), shall be deposited by the Allottee to the State Government in the manner provided in Clause 3.1(b) as an Allotment Condition.

5.2.2. Second Instalment of twenty five per cent

The second instalment of twenty five per cent of the Upfront Amount being an amount equal to INR [amount in figures] (Indian Rupees [amount in words]), shall be deposited by the Allottee to the State Government, on or before 15 Business Days from the date of notification under Section 11(1) of the CBA Act, 1957 OR on or prior to expiry of 15 Business Days from the date of execution of the Mining Lease by the relevant State Government.

5.2.3. Third Instalment of twenty five per cent

The third instalment of twenty five per cent of the Upfront Amount being an amount equal to INR [amount in figures] (Indian Rupees [amount in words]), shall be deposited by the Allottee to the State Government, on or prior to expiry of 15 Business Days from the date of grant of mine opening permission from the Coal Controller's Organization.

5.2.4. Failure to pay the Upfront Amount

In the event the Allottee fails to pay the second instalment or the third instalment of the Upfront Amount within the time specified in Clause 5.2.2 or Clause 5.2.3, respectively, then the Government 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 24 (EFFECTIVE DATE, TERM AND TERMINATION).

5.2.5. Undertaking to pay revised Upfront Amount, applicable in case the approved Mine Plan is not available

The Parties acknowledge that approved Mine Plan is not available with respect to the Coal Block, and accordingly, the Upfront Amount payable hereunder is on an estimation basis. The Government may revise the amount of Upfront Amount payable pursuant to this Agreement, and such revision shall be deemed to be included in the expression "Upfront Amount" as defined in Clause 1.1.50. As an assurance for making payments as

may be necessary on account of the above revision, the Allottee shall provide an undertaking to pay the revised Upfront Amount in substantially the same form as provided in SCHEDULE G.

In the event that the Allottee fails to pay the revised first instalment of the Upfront Amount, then the Government shall be entitled to appropriate the Performance Security in the manner stipulated in Clause 6 and such failure may also result in termination of this Agreement as provided in Clause 24.

5.3. The Mining Lease

- 5.3.1. Pursuant to Section 8(4)(b) and Section 8(8), read with Section 8(12) of the Act, the Allottee shall become entitled to the mining lease with respect to the Coal Block (the “**Mining Lease**”) to be granted by the State Government or notification under Section 11 (1) of the CBA Act, 1957, as the case may be, upon issuance of the Allocation order.
- 5.3.2. The Allottee shall promptly upon issuance of the Allocation order make an application to the State Government for grant of a Mining Lease or take steps for notification under Section 11 (1) of the CBA Act, 1957, as the case may be, in the name of the Allottee.
- 5.3.3. In case of a Regionally Explored Coal Block, following provisions shall also be applicable:
 - (a) Subject to the approval of the Government, after completing Detailed Exploration Operations in the Mining Area i.e. Exploration Period (i.e. Events up to Completion of Exploration and Preparation of Geological Report (GR) as set forth in SCHEDULE E (the “Efficiency Parameters”) hereof), the Allottee may relinquish whole or any portion of the Mining Area after submitting the Geological Report and drilling logs to the Government in accordance with SCHEDULE E (the “Efficiency Parameters”).
 - (b) The Allottee shall notify the Government the portion of the Mining Area it intend to relinquish and the portion it intend to retain at the time of submitting the Geological Report and the drilling logs. On receipt of such notice, the Government shall communicate its decision on such notice to the Allottee. On approval of the Government for the relinquishment of whole or any portion of the Mining Area, this Agreement shall terminate with respect to the portion of the Mining Area so relinquished and continue with respect to the portion of the Mining Area so retained by the Allottee. The Allottee shall retain only that part of the Development Area which the Allottee has not relinquished.
 - (c) This Agreement shall remain enforceable only for that part of the Development Area which has been retained by the Allottee pursuant to Clause 5.3.3.

- (d) Relinquishment of all or part of the Mining Area or termination of this Agreement shall not be construed as absolving the Allottee of any liability undertaken or incurred by the Allottee in respect of the Mining Area during the period between Effective Date and the date of such relinquishment or termination.
- (e) The liability of the Allottee shall be limited to any liability undertaken or incurred in respect of, relating to or connected with this Agreement and any Claims arising out of or in relation to the act of negligence, misconduct, commission or omission in carrying out Mining Operations during the period between Effective Date and the date of relinquishment of the Mining Area or termination or expiry hereof, as the case may be.

6. PERFORMANCE SECURITY AND APPROPRIATION

6.1. Performance Security

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

The Performance Security shall be an amount which is equal to aggregate of:

- (a) one year royalty calculated on the basis of peak rated capacity of the Coal Block as per the approved Mine Plan, payable to respective State Government with respect to the Coal Block;

and

- (b) the annual peak rated capacity of the Coal Block as per the approved Mine Plan multiplied by the Reserve Price.

However, in case of regionally explored coal blocks, the Performance Security shall be equal to 10% (ten percent) of the estimated exploration expense during the exploration period i.e. till completion of exploration and preparation and submission of Geological Report in accordance with the Allotment Agreement.

In the event that approved Mine Plan is not available, then the amount of Performance Security shall be revised after approval of the Mine Plan. The Allottee shall be intimated about the revised Performance Security to be furnished. Pursuant to such intimation, the Allottee shall be obliged to replace the Performance Security already furnished by it to the Government, 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 Government.

6.1.2. The amount of Performance Security shall be revised in following events:

- (a) Every financial year, the amount of Performance Security shall be revised upwards on the basis of escalation to the amount of Reserve Price as specified in Clause 9.2.1. It is clarified that for the purposes of escalation in a subsequent financial year, the escalated Reserve Price of the immediately preceding year shall be considered. The subject escalation would be applicable after the issuance of the Allocation order;
- (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 6.1.3; and/or
- (c) In case of any revision in CIL Notified Price, 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 CIL Notified Price is revised, as stipulated in Clause 6.1.3; and/or
- (d) In case of any revision in the Mine Plan in accordance with Clause 14, the amount of Performance Security shall be revised accordingly upon approval of revision to the Mine Plan. Such revision shall take place at the beginning of the financial year which is subsequent to the financial year in which the Mine Plan is revised, as stipulated in Clause 6.1.3.

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

6.1.3. The revision to the amount of Performance Security shall be carried out once in every financial year. 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 revision of the Reference Index in the month of April, in case of revision under each of sub-clause (a), (b), (c) and (d) of Clause 6.1.2.

6.1.4. The Performance Security should remain valid (a) until the expiry of the period for which Mining Lease (including renewed Mining Lease) or the notification under Section 11 (1) of the CBA Act, 1957, as the case may be, has been granted or will be granted, or (b) until no extractable reserves are remaining in the Coal Block, whichever is earlier.

6.1.5. While submitting Performance Security as required under Clause **Error! Reference**

source not found., the Allottee shall also provide an undertaking to submit the revised Performance Security in substantially the same form as provided in SCHEDULE G. 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 Section 24.3.1 of this Agreement.

6.1.6. It is clarified that prior to the execution of Mining Lease, the Performance Security shall be provided in favour of the Government and upon execution of Mining Lease, the Performance Security shall be provided in favour of the State Government.

6.1.7. The Performance Security provided in favour of the Government shall be returned to the Allottee after submission of the Performance Security to the State Government under Clause 6.1.6 or after 60 days of termination of the Agreement on account of execution of Mining Lease, whichever is earlier.

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

6.2.1. The Performance Security may be appropriated by the Government and/or the State Government, as the case may be, upon occurrence of any of the following events (the “**Appropriation Event**”), to be determined by the Government and/or the State Government, as the case may be, in its sole discretion:

- (a) failure of the Allottee to provide the duly acknowledged duplicate copy of the Allocation Order as required under Clause 4.6;
- (b) failure of the Allottee to make payment of the first instalment, second instalment or the third instalment of the Upfront Amount within the time specified in Clause 3.1(b), Clause 5.2.2 or Clause 5.2.3, respectively, or revised Upfront Amount as specified in Clause 5.2.5 within a time period of 30 days from the date of receipt of intimation from the Government, in cases where approved Mine Plan is not available;
- (c) failure of submission of Commencement Plan within the time specified in Clause 5.1.1;
- (d) failure of the Allottee 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 Block which is not in conformity with Clause 13;
- (f) failure to make payment of the Monthly Payment in accordance with this Agreement;
- (g) any utilisation of coal which is not in conformity with Clause 8;

- (h) 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;
- (i) surrender of the Coal Block by the Allottee or termination of the Mining Lease granted to the Allottee before (a) the expiry of the period for which Mining Lease (including renewed Mining Lease) or the notification under Section 11 (1) of the CBA Act, 1957, as the case may be, has been granted or will be granted, or (b) extractable reserves are remaining in the Coal Block, whichever is earlier, except as provided in Clause 5.3.3; or
- (j) failure of the Allottee to submit the revised Performance Security in accordance with Clause **Error! Reference source not found.** or Clause **Error! Reference source not found.**;
- (k) 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.

6.2.2. Provided however that in the event an Appropriation Event has occurred solely on account of an Event of Force Majeure as provided in Clause 23, which could not have been mitigated by the Allottee through Good Industry Practice, 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 Government and/or the State Government, as the case may be, the Government and/or the State Government, as the case may be, shall have the unconditional right to appropriate the Performance Security by providing a written notice to the Allottee, in the following proportion:

#	Appropriation Event	Amount of the Performance Security to be appropriated
1.	Failure of the Allottee to provide the duly acknowledged duplicate copy of the Allocation Order as required under Clause 4.6	Entire Performance Security.

#	Appropriation Event	Amount of the Performance Security to be appropriated
2.	Failure of the Allottee to make payment of the first instalment, second instalment or the third instalment of the Upfront Amount within the time specified in Clause 3.1(b), Clause 5.2.2 or Clause 5.2.3, respectively; or revised Upfront Amount as specified in Clause 5.2.5 within a time period of 30 days from the date of receipt of intimation from the Government, in cases where approved Mine Plan is not available.	An amount equal to the first instalment, and/or second instalment and/or third instalment of the Upfront Amount; or the extent of difference in case of revised Upfront Amount as specified in Clause 5.2.5, as the case may be, 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 Allottee 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 Block which is not in conformity with Clause 13	Entire Performance Security.
6.	Any utilisation of coal which is not in conformity with Clause 8	Entire Performance Security.

#	Appropriation Event	Amount of the Performance Security to be appropriated
7.	Failure of the Allottee 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 over a period of two years without occurrence of any event of force majeure	Entire Performance Security.
9.	Surrender of the Coal Block by the Allottee or termination of the Mining Lease granted to the Allottee before (a) the expiry of the period for which Mining Lease (including renewed Mining Lease) or the notification under Section 11 (1) of the CBA Act, 1957, as the case may be, has been granted or will be granted, or (b) extractable reserves are remaining in the Coal Block, whichever is earlier, except as provided in Clause 5.3.3	Entire Performance Security.
10.	Failure of the Allottee to submit the revised Performance Security in accordance with Clause Error! Reference source not found. or Clause Error! Reference source not found.	Entire Performance Security.

#	Appropriation Event	Amount of the Performance Security to be appropriated
11.	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 Government in its sole discretion.

- 6.3.2. Any Appropriation Event resulting in appropriation of the entire Performance Security shall be a Termination Event for the purposes of Clause 24 (EFFECTIVE DATE, TERM AND TERMINATION).
- 6.3.3. In the event of a part appropriation of the Performance Security, the Allottee 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 24 (EFFECTIVE DATE, TERM AND TERMINATION). Appropriation Event, except as mentioned in Clause 6.2.1(d**Error! Reference source not found.**, 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**Error! Reference source not found.** 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 24(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 Allottee shall provide periodic reports to the Government (or such other Governmental Authority as may be specified by the Government) regarding mining operations at the Coal Block, 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 Block, the Allottee shall provide a written intimation (“**Pre-commencement Report**”) to the Government once every [thirty] calendar days regarding the following:

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

The Allottee shall also inform the Government 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 Block, the Allottee shall provide a written intimation to the Government confirming commencement of mining operations at the Coal Block (the "**Commencement Report**").

(c) Monthly Report

Subsequent to the Commencement Report, the Allottee 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 Government and/or the State Government.

(d) Yearly Report

Within [seven] Business Days of conclusion of the annual general meeting of the Allottee, 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

Government and/or the State Government.

- 7.2. The Pre-Commencement Report, the Commencement Report, the Monthly Report and the Yearly Report shall be provided to the Government or the Coal Controller's Organisation as attachments to an email addressed to the following e-mail address: (i) nomauthority.moc@nic.in in case of the Government; or (ii) coalcont-wb@nic.in in case of the Coal Controller's Organisation. Such attachments must be digitally signed by the Allottee using a Class III digital signature certificate issued by a certifying authority in India.
- 7.3. The Government 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. UTILISATION OF COAL

8.1. Utilisation of Coal in the Specified End Use Plant

- 8.1.1. Except as otherwise provided in this Clause 8, the coal extracted from the Coal Block shall be utilised by the Allottee strictly in the Specified End Use Plant; and shall not be utilised for any other purpose whatsoever, either directly or indirectly.
- 8.1.2. The Allottee shall utilise coal for the Specified End Use Plants for which power purchase agreement had been signed as per the prevailing policy issued by the Government of India from time to time.

8.2. Middling or washery rejects

- 8.2.1. The Allottee shall adhere to Good Industry Practice with respect to mining of coal and make best efforts to reduce generation of middling or washery rejects or tailings, jhama or any other type of coal obtained on washing and utilise the same in any captive power plant of the Allottee. In any case the middling or washery rejects or tailings, jhama or any other type of coal obtained on washing, generated from the Coal Block shall not exceed normative limits.
- 8.2.2. If the Allottee washes coal obtained from the Coal Block, then the middlings, rejects, tailings, jhama or any other type of coal obtained on washing, which cannot be utilised for the Specified End Use, shall be sold or disposed of by the Allottee only with the prior approval of the Coal Controller's Organisation. The Allottee shall maintain separate records for the middling or washery rejects or tailings, jhama or any other type of coal obtained on washing, generated, utilised and sold.

8.3. Arrangements for optimal utilisation

- 8.3.1. In terms of Rule 10 of the Rules, the Allottee shall be permitted to enter into

arrangements for optimum utilisation of the Coal Block (the “**Arrangement**”). In the event the Allottee is desirous of entering into an Arrangement, it shall make an application (the “**Arrangement Application**”) to the Government in accordance with Rule 10 of the Rules.

- 8.3.2. The Arrangement Application shall be filed by the Allottee prior to undertaking any Arrangement and no Arrangement shall be given effect to until the Arrangement Application has been approved by the Government.
- 8.3.3. Before submitting the Arrangement Application, the parties shall ensure that all parties to the Arrangement are otherwise eligible for the allocation of the Coal Block or grant of coal linkage, as the case may be, which are subject matter of such Arrangement.
- 8.3.4. The Arrangement Application shall be made in writing and shall include complete particulars of the proposed Arrangement, including the particulars required to be provided under Rule 10(3) of the Rules i.e. (a) parties to the proposed Arrangement; (b) the proposed Arrangement; (c) the manner in which such Arrangement would achieve optimal utilisation of the relevant coal blocks and cost efficiencies and (d) details of coal linkages of the parties, if any.
- 8.3.5. In the event that the Government grants its approval to the Arrangement, then prior to implementation of the Arrangement, the Allottee shall provide to the Government duly certified copy of all agreements and other documents related to the Arrangement.
- 8.3.6. The Government while granting its approval may impose any condition which shall be binding on the parties to such Arrangement.
- 8.3.7. Upon execution of such Arrangement, the party carrying out the mining operations in the Coal Block or receiving coal under coal linkage shall bear the liabilities in relation to such Coal Block or coal linkage.

8.4. Utilisation in any other plant of the Allottee

- 8.4.1. In the event that the Allottee is desirous of utilising the coal extracted from the Coal Block in any other plants of the Allottee or its subsidiary company or holding company or its joint venture company or corporation formed with other government companies or corporations where the Allottee company has majority shareholding in the joint venture company or corporation (in terms of the Companies Act, 2013) engaged in the same specified end use as the Specified End Use Plant (“**Other Plant(s)**”) pursuant to Rule 11 of the Rules, then the Allottee shall provide a written intimation (“**Diversions Notice**”) to the Government.
- 8.4.2. In accordance with Rule 11 of the Rules, the Diversions Notice shall be provided at least thirty Business Days prior to the intended date of such utilisation.

- 8.4.3. In the event that, upon submission of the Diversion Notice the Government seeks further information regarding the aforementioned utilisation, then the Allottee shall provide the same within [seven] Business Days. The Allottee shall not utilise the coal extracted from the Coal Block in any Other Plant(s) if: (i) the Government determines in its sole discretion that such utilisation is not in accordance with Rule 11 of the Rules; or (ii) information regarding compliance with Rule 11 of the Rules with respect to such utilisation is not provided to the Government in the manner stipulated under this Clause 8.4.
- 8.4.4. The Diversion Notice shall include complete particulars of the proposed utilisation of coal extracted from the Coal Block in any Other Plant, including without limitation:
- (i) name and address of the Other Plant(s);
 - (ii) the ownership of the Other Plant(s). It is clarified that such Other Plant(s) should be owned solely by the Allottee or its subsidiary company or holding company or its joint venture company or corporation formed with other government companies or corporations where the Allottee company has majority shareholding in the joint venture company or corporation (in terms of the Companies Act, 2013) to be eligible to get coal in terms of Rule 11;
 - (iii) the mechanism for transportation of coal from the Coal Block to the Other Plant(s);
 - (iv) the requirement of coal of the Other Plant(s); the sources from which such requirement is being met; and the per cent of such requirement being proposed to be met from the Coal Block; and the manner in which such diversion would affect the Specified End Use Plant originally associated with the Coal Block.
- 8.4.5. In the event that coal extracted from the Coal Block is being diverted to any Other Plant(s) pursuant to this Clause 8.4, then the Allottee or any of its subsidiary company or holding company or its joint venture company or corporation formed with other government companies or corporations where the Allottee company has majority shareholding in the joint venture company or corporation owning such Other Plant(s) shall also be required to adhere to the stipulations under this Agreement with respect to the utilisation of coal from the Coal Block and the Specified End Use and any Applicable Law.
- 8.5. Sale to CIL**
- 8.5.1. Any coal extracted from the Coal Block which is in excess of the requirements of coal for the Specified End Use Plant and the Other Plant(s) shall be required to be supplied to CIL at the terms and conditions specified at Clause 8.5.3.

Provided however, such sale should not exceed 50% of the annual production of coal from the Coal Block.

8.5.2. It is further clarified that the Allottee shall continue to make Monthly Payments with respect to the coal extracted from the Coal Block as per Clause 9 including on the coal sold to CIL.

8.5.3. Sale of coal and/or middling, as the case may be, to CIL shall be on the following terms & conditions:

- (i) Allottee shall be responsible to make the coal available at the dispatch point at its own cost and arrangement.
- (ii) The sale of excess coal shall be Free On Rail siding basis from the siding of the Allottee, in case of rail dispatch and Free On Road basis in case of road dispatch.
- (iii) CIL shall not be responsible for delay in dispatch due to various reasons including lack of demand and logistics.
- (iv) CIL shall also not be responsible for pilferage of coal from the dispatch points.
- (v) Allottee shall be responsible for loading wagons/trucks at its own arrangement.
- (vi) All expenses and deposits to railways relating to rake placement and draw, demurrage, overloading and idle freight shall be borne by the Allottee and/or the purchaser, as the case may be.
- (vii) Responsibility of adhering to all statutory rules of the State and Central Government on environmental, safety etc. would be with the Allottee.
- (viii) Billing will be on the basis of the grade ascertained by the results of the 'Third Party' sampling and analysis agency appointed by CIL and the purchaser. The Allottee shall reimburse CIL its share of the expenditure incurred on this account.
- (ix) CIL shall have the full authority to sell this coal through any scheme, however, price payable to the Allottee shall be limited to the CIL Notified Price of equivalent GCV grade (as per the results of 'Third Party' sampling and analysis agency appointed by CIL and the purchaser) for 'Power Utilities (including IPPs), Fertilizer & Defence Sector' as per the analyzed grade *less* 15 percent of such CIL Notified Price plus applicable tax.
- (x) CIL shall make the payment to the Allottee only after full reconciliation of its bill with the purchaser.

9. MONTHLY PAYMENTS AND ESCALATION

9.1. Monthly Payment

- 9.1.1. The Allottee shall be required to make monthly payments (the “**Monthly Payment**”) with respect to the coal extracted from the Coal Block on the basis of the Reserve Price (as escalated in accordance with Clause 9.2).
- 9.1.2. The Monthly Payment is required to be made to the State Government where the Coal Block is located i.e. the State Government of [insert name of the State], within 20 calendar days of expiry of each month with respect to coal extracted from the Coal Block in such calendar month, in the manner as may be prescribed by the State Government, with an intimation to the Government.
- 9.1.3. All payments required to be made by the Allottee shall be made net of all applicable Taxes. In the event, Taxes are payable, the Allottee shall gross-up the amount payable and make payment of the aggregate amount.

9.2. Escalation

- 9.2.1. For the purposes of computation of the Monthly Payment, the Reserve Price shall be subject to an escalation on a year-on-year basis every financial year on the basis of the pre-specified escalation formula that is prescribed in the relevant Standard Bidding Document for Design, Build, Finance, Own and Operate (DBFOO) bidding as formulated by Ministry of Power for escalation of fuel cost from captive blocks (the “**Reference Index**”), and the Reserve Price shall stand increased by the per cent increase of the Reference Index on a year-on-year basis. It is clarified that for the purposes of escalation in a subsequent financial year, the escalated Reserve Price of the immediately preceding year shall be considered. The last published Reference Index shall be used for computing the escalation. The subject escalation would be applicable after the issuance of the Allocation order.
- 9.2.2. In the event that the failure of the Allottee to make payment of the Monthly Payment exceeds for more than three instances, such non-compliance may also result in termination of this Agreement as provided in Clause 24 (EFFECTIVE DATE, TERM AND TERMINATION).
- 9.3. It is clarified that in addition to the aforementioned payments any royalty payable under Applicable Laws shall be payable additionally.

10. EFFICIENCY PARAMETERS

- 10.1. The conduct of mining operations at the Coal Block shall be subject to the milestones listed in SCHEDULE D (the “**Efficiency Parameters**”).
- 10.2. The Allottee would provide periodic information to the 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 five instances, such non-compliance may also result in termination of this Agreement as provided in Clause 24 (EFFECTIVE DATE, TERM AND TERMINATION).

11. GENERAL RIGHTS AND OBLIGATIONS

11.1. Limited Mining Rights

- 11.1.1. The Allottee shall be entitled to receive a Mining Lease or the notification under Section 11 (1) of the CBA Act, 1957, as the case may be, for conduct of mining operations only in the Coal Block and shall not be entitled to conduct the mining operations in any other area pursuant to this Agreement. The rights granted to the Allottee herein to conduct mining operations are exclusive within the Coal Block. The Government undertakes not to grant any rights to mine coal in the Coal Block to any Third Party during the Term.

11.2. Authorisations

The Allottee shall obtain and maintain all Governmental Approvals required for conducting the mining operations at the Coal Block 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 Allottee in relation to the rights granted to it under this Agreement.

11.3. Geological and Archaeological Finds

It is expressly agreed that other than rights to mine for coal (as may be granted under any Mining Lease or the notification under Section 11 (1) of the CBA Act, 1957, as the case may be, pursuant hereto), geological or archaeological rights do not form part of the rights granted to the Allottee under this Agreement and the Allottee hereby acknowledges that except in relation to coal (as may be granted under any Mining Lease or notification under Section 11 (1) of the CBA Act, 1957, as the case may be, pursuant hereto), it shall not have any mining rights or interest in the underlying minerals, metals (including gold, silver etc.), gas, oil, fossils, antiquities, structures or other remnants or things either of particular geological or archeological interest and that such rights, interest and property on or under the Coal Block shall vest in and belong to the relevant Central/ State Government or the concerned Governmental Authority. The Allottee 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 relevant 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 Allottee 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 Block, 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 Allottee shall ensure payment of minimum wages to the employees engaged at the Coal Block and in related activity including employees of any contractor or sub-contractor.

11.4.3. The Allottee 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 Allottee 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 Allottee shall train employees engaged at the Coal Block, 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 Allottee shall construct, maintain, and operate health programs and facilities to serve the employees engaged at the Coal Block, 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 Allottee 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.

12. CONTRACTORS AND SUB-CONTRACTORS

12.1. In the event the Allottee enters into any agreement with any contractor in relation to the mining operations at the Coal Block, then a duly certified copy of such agreement shall

also be submitted to the Government within [fifteen] Business Days of its execution.

- 12.2. Any Agreement between the Allottee 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 Allottee from any and all obligations under this Agreement despite the delegation of such obligations to a contractor or its subcontractors.
- 12.4. Terms and Conditions for appointment of contractor(s) in relation to coal mining operations may be formulated in line with the terms and conditions specified in the Coal Block Allocation Rules, 2017 framed under Sec. 11A of the Mines and Minerals (Development and Regulation) Act, 1957. The terms and conditions may be as follows:
 - 12.4.1. In case the Coal Block is developed through contractor(s), the selection of the contractor(s) in relation to coal mining operation shall be through a competitive bidding process and the Allottee company shall inform the State Government concerned, and the Government about the engagement of such contractor(s) and the terms and conditions of such engagement, as soon as it is finalised.
 - 12.4.2. The Allottee shall ensure that the criteria of bidding for engagement of the contractor(s) are not linked to CIL Notified Price.
 - 12.4.3. The contractor(s) shall maintain all records as required to be maintained and shall provide such records for the inspection by the Allottee, the State Government concerned, and the Government.

13. CHANGE IN CONTROL AND TRANSFER

13.1. Change in Control of the Allottee

- 13.1.1. Change in Control of the Allottee or any transfer of the Specified End Use Plant with or without the rights in relation to the Coal Block, shall be permissible with prior intimation to the Government if:
 - (a) such change in Control does not result in the Allottee becoming non compliant with any of the Eligibility Conditions or the transferee is also compliant with the applicable Eligibility Conditions, as the case may be. It is clarified that no company other than a Government company or corporation shall be permitted to hold more than twenty-six per cent of the paid up share capital in the Allottee, either directly or through any of its subsidiary company or associate company; and

- (b) such change in Control or transfer does not require any prior consent, approval, no-objection certificate or the like under any Applicable Law; and
- (c) such transfer of any of the Specified End Use Plant(s) without the rights in relation to the Coal Block shall not result in the Coal Block being without any Specified End Use Plant(s) for utilisation of coal mined.

13.1.2. In the event that any change in Control of the Allottee or any proposed transfer of the Specified End Use Plant with or without the rights in relation to the Coal Block 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:

- (a) the transferee of such right, title or interest or the Allottee subsequent to change of Control, as the case may be, also meets all the applicable Eligibility Conditions; or
- (b) the Allottee continues to meet all the applicable Eligibility Conditions, as the case may be.

13.2. Change in Control in case of a joint venture

13.2.1. In the cases where allotment has been made to a joint venture of any two or more Government companies or corporations, such companies shall be prohibited from alienating or transferring any interest, except for taking of loans or advances from a bank or financial institution, in the joint venture of whatsoever nature including ownership in favour of a Third Party.

13.3. Consequences of default

13.3.1. In the event of any change in Control or any transfer of right, title or interest in the Coal Block 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 Government or the State Government may, in its sole discretion, appropriate the Performance Security, disqualify the Allottee from participating in any further auction or allotment process conducted by the Government; terminate this Agreement; and/or terminate and withdraw the Allocation order as the case may be.

13.3.2. 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. MINE PLAN

14.1. Mine Plan

- 14.1.1. The Mine Plan approved, if any, shall also be applicable to the Allottee.
- 14.1.2. Upon allocation of Coal Block, the Allottee may revise the Mine Plan for extraction of more coal as compared to the Mine Plan being subject to revision in accordance with the provisions of Applicable Law and the Agreement.
- 14.1.3. The Allottee may increase mine production to the maximum possible extent and utilise the coal in accordance with Clause 8. Subject to Applicable Laws, the Allottee may apply for coal linkages or participate in auction/ allotment for the Specified End Use Plant three years prior to the exhaustion of extractable reserves in the Coal Block.

15. MINE CLOSURE

- 15.1. Upon exhaustion of the extractable coal reserves at the Coal Block the Coal Block shall be closed, in the manner provided in the mine closure plan and Applicable Laws.

16. COMPLIANCE AND RECORD KEEPING

- 16.1. The Allottee 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 Allottee in connection with this Agreement, the development of the Coal Block, mining operations and matters incidental thereto and the steps taken by the Allottee to comply with Applicable Laws. Such records and books of accounts shall be required to be maintained for a period of six years. The Allottee shall ensure that such records and books of accounts are sufficient to enable verification of the Allottee's compliance with its obligations under this Agreement.
- 16.2. The Allottee shall permit the Government and its representatives, to access and take copies of the Allottee's records and any other information held at the Allottee's premises and to meet with the Allottee's personnel to audit the Allottee's compliance with its obligations under this Agreement. Such audit rights shall continue for three years after termination of this Agreement. The Allottee 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.

17. REPRESENTATIONS AND WARRANTIES

- 17.1. The Allottee represents and warrants to the Government (save as otherwise disclosed to the Government in writing), as of the Agreement Date, in the manner as detailed in SCHEDULE F ("**Warranties**").
- 17.2. 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 Government or any of its respective agents, representatives, officers, employees or

advisers.

- 17.3. In the event that any of the representations or warranties made or given by the Allottee ceases to be true or stands changed, the Allottee shall promptly notify the Government of the same. The Allottee hereby waives all its rights to invoke and shall not invoke the Government'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 Allottee.

18. INDEMNITIES

- 18.1. In this clause, a reference to the Government shall include the Government of India; any of the departments or ministries of 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.
- 18.2. The Allottee 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) Allottee'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 Block 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 Allottee, 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 Block 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 Allottee, including without limitation any costs incurred by the Government in

cleaning or rectifying of any environmental damages caused by the Allottee 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.

- 18.3. 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 Allottee, specifying the nature of the Claim in reasonable detail.
- 18.4. Subject to the Allottee 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 Allottee may take such action as it may reasonably deem fit to avoid, dispute, compromise or defend the Claim.
- 18.5. 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 Allottee 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 Allottee 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.

19. ASSIGNMENT, SECURITY FOR FINANCING

19.1. Prohibition on Assignment

- 19.1.1. Except as provided in this Clause 19, the Allottee shall not assign this Agreement, either directly or indirectly, save and except with the prior consent in writing of the Government, which consent the Government shall be entitled to decline without assigning any reason.
- 19.1.2. Subject to compliance with provisions of Clause 19.2, this Agreement may be assigned by the Allottee 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 19.3.

19.2. 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 Government;
- (c) the proposed assignee must have furnished the Performance Security, to substitute any subsisting Performance Security provided by the Allottee;
- (d) the proposed assignee must have paid any other amount due from the Allottee and agree to indemnify and hold the Government harmless in all respects against any claims from any Third Party or the Allottee with respect to such assignment.

19.3. **Security for financing, enforcement Event**

19.3.1. Subject to Applicable Laws, the Allottee shall be entitled to create security over the Coal Block through mortgage for the purposes of availing financing from a bank or financial institutions for the purposes of financing of the Specified End Use Plant or mining operations at the Coal Block and such security creation shall not require prior approval by the Government. It is clarified that the Allottee shall be permitted to enter into any agreement with bank or financial institutions with respect to assignment of this Agreement in terms of this Clause 19 and in such case the assignment conditions mentioned in Clause 19.2 shall not be applicable and the conditions specified in Clause 19.3 shall be applicable.

19.3.2. The Allottee shall keep the Government 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 Block; and (iii) any action initiated by the bank or financial institution regarding enforcement of security.

19.3.3. 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 19.2 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 Allottee by providing a written notice (the “**Substitution Notice**”) to the Government;
- (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 Government to decide as to the acceptability of the Selectee;

- (d) the Government 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 Block;
- (e) the Substitution Notice must be accompanied by an unconditional undertaking of the Selectee to the effect that it shall upon acceptance by the Government observe, comply with, perform and fulfil the residual terms, conditions and covenants of this Agreement as if the Selectee had been the Allottee 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 the Government as may be necessary or required to give effect to the substitution of the Allottee by the Selectee;
- (f) the Government 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 Government 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 Government shall be deemed to have accepted the Substitution Notice and the Selectee.

19.3.4. Upon acceptance of the Selectee by the Government or the Government 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 Allottee.

20. INSURANCE

20.1. At all times during the Term hereof, the Allottee 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.

21. ACCOUNTS AND AUDIT

21.1. Audited Accounts

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

21.2. Appointment of Auditors

The Government 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 Block or which the statutory auditors are required to do, undertake or certify pursuant to this Agreement.

21.3. Certification of claims by Statutory Auditors

Any claim or document provided by the Allottee to the Government 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.

22. GOVERNMENT INSPECTION

22.1. The Government, through its authorized representatives shall have the right to free ingress and egress within any part of the Coal Block at any time to inspect works or activities being undertaken or implemented by the Allottee in order to monitor and verify compliance with the terms of this Agreement and all Applicable Laws.

22.2. The Government, through its authorized representatives, shall have access to the Allottee'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 Allottee with the terms of this Agreement and all Applicable Laws, rules and regulations or to aid in the enforcement of the same.

22.3. The Government shall have the right to conduct, either directly or indirectly through any Third Party, a performance audit to verify compliance by the Allottee, of its obligations hereunder.

23. EVENT OF FORCE MAJEURE

23.1. 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 Allottee, 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 Allottee 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 Allottee claiming the same as an Event of Force Majeure and attributable to such Allottee's policies regarding labour, compensation or employment or labour related conditions).
- 23.2. Provided it has complied with Clause 23.3, if the Allottee is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by an Event of Force Majeure, the Allottee shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations.
- 23.3. Upon occurrence of an Event of Force Majeure, the Allottee 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 Government 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.
- 23.4. 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.
- 23.5. Notwithstanding Clause 23.4, 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 Government may in its sole discretion terminate this Agreement in the manner provided in Clause 24 (EFFECTIVE DATE, TERM AND TERMINATION).

24. EFFECTIVE DATE, TERM AND TERMINATION

24.1. Effective Date

This Agreement shall come into effect on the Agreement Date. It is clarified that the provisions of this Agreement shall also be included in the Mining Lease or the notification under Section 11 (1) of the CBA Act, 1957, as the case may be.

24.2. 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, this Agreement shall commence on the dates mentioned in Clause 24.1 and upon execution of the Mining Lease, the Agreement shall stand terminated (“**Term**”). The provisions of this Agreement shall also be included in the Mining Lease or the notification under Section 11 (1) of the CBA Act, 1957, as the case may be.

24.3. Termination

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

- (a) failure of the Allottee to make payment of the Upfront Amount in the manner provided in Clause 5.2;
- (b) failure of the Allottee to complete the Allotment Conditions within the time specified in Clause 3.2;
- (c) 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;
- (d) failure of the Allottee 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;
- (e) non compliance of the Allottee with the Efficiency Parameters for more than [five] instances (in aggregate and not over a specified period) as provided in Clause 10.3;
- (f) suspension of obligations on account of an Event of Force Majeure for a period longer than as specified in Clause 23.5;
- (g) 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 9.2.2;
- (h) failure to provide any information requested by the Government in terms of this Agreement;
 - (i) failure of the Allottee to ensure continued compliance with the Eligibility Conditions;
 - (j) in case the Allottee is a joint venture company, alienation or transfer of any interest, except the taking of loans or advances from a bank or financial institution, in the joint venture of whatsoever nature including ownership in favour of a Third Party;
 - (k) a company other than a Government company or corporation holding more than twenty-six per cent of the paid up share capital of the Allottee, either directly or through any of its subsidiary company or associate company (such expressions having meaning ascribed under the Companies Act, 2013);
 - (l) the Allottee dissolves, liquidates, becomes insolvent, commits an act of bankruptcy, makes an assignment for the benefit of creditors, petitions or applies to any tribunal for the appointment of a trustee or receiver for itself, or commences any proceedings concerning itself under a law concerning bankruptcy, or insolvency other than for the purposes of corporate reorganization;
 - (m) 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 Allottee within [thirty] Business Days of becoming aware of the same, on its own accord or upon receipt of a notice from the Government;
 - (n) surrender of the Coal Block by the Allottee except as provided in Clause 5.3.3;
 - (o) 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;
 - (p) termination of the Mining Lease granted to the Allottee or the notification under Section 11 (1) of the CBA Act, 1957, as the case may be;
 - (q) failure of the Allottee to submit revised Performance Security in accordance with Clause 6.1; or
 - (r) in the opinion of the Central Government, it is expedient in public interest to terminate this Agreement.

24.3.2. Upon occurrence of a Termination Event, the Government may elect to terminate this Agreement by providing a [15] Business Days written notice to the Allottee. The determination of the Government regarding occurrence of a Termination Event shall be

final and binding on the Allottee.

- 24.3.3. In case the Government elects to terminate this Agreement, then the Performance Security and all other payments made by the Allottee shall be forfeited and the Allottee 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.

24.4. Retention of Books and Records

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

25. GOVERNING LAW AND DISPUTE RESOLUTION

- 25.1. 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.
- 25.2. 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 Allottee shall nominate an officer not below the rank of a director to participate in the discussions on its behalf.
- 25.3. In the event that the Allottee fails to nominate an officer in the manner required under Clause 25.2; or the Parties are unable to resolve any dispute in accordance with Clause 25.2 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.
- 25.4. 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 Government 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.
- 25.5. The provisions contained in this Clause 25 shall survive the termination of this Agreement.

26. MISCELLANEOUS

26.1. 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.

26.2. Publicity

The Allottee 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 Government unless required to do so by Applicable Law, provided that prior to any disclosure of any such information required by Applicable Law, the Allottee must first notify the Government, who shall then have the opportunity to respond to and/or dispute such intended disclosure.

26.3. Severability

26.3.1. 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.

26.3.2. 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.

26.4. Costs and Expenses

26.4.1. The Allottee shall bear its own costs in connection with the negotiation, preparation and execution of this Agreement.

26.4.2. The stamp duty payable for this Agreement shall be borne by the Allottee.

26.5. Further Assurance

The Allottee shall cooperate with the Government and execute and deliver to the Government 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.

26.6. Legal And Prior Rights

All rights and remedies of the Government hereto shall be in addition to all other legal rights and remedies belonging to the Government 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 Government, which shall or may have accrued prior thereto.

26.7. Waiver

26.7.1. The waiver of any default or breach under this Agreement by the Government 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.

26.7.2. No failure or delay by the Government 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 Government 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.

26.7.3. 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 Government shall not be construed to be a deemed approval of such breach or default and the Government may exercise any rights or remedies with respect to such default at any time.

26.8. 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.

26.9. 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.

26.10. 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.

26.11. 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 registered post with acknowledgment due, or transmitted by facsimile transmission to the other Parties at the address indicated in SCHEDULE H here of or at such other address 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 26.11 shall be deemed to have been given and received on the day of its receipt at such address.

A copy of the Notice sent by registered post with acknowledgment due, or transmitted by facsimile transmission may also be sent through email to the email addresses specified in SCHEDULE H solely for the information of the recipient and shall take effect only when the registered post is actually delivered or the fax is received by the recipient, as the case may be.

26.12. Entire Agreement

This Agreement (including all such deeds and documents issued or executed pursuant hereto or referred to herein) and the Allotment 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 Allotment Document, the provisions of this Agreement shall prevail to the extent of the conflict.

26.13. **Specific Performance of Obligations**

The Government 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.

26.14. **Power of the Government**

For the purposes of exercise of rights and obligations hereunder and any Applicable Law, the 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.

26.15. **Change Notice**

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

- (a) the number of days within which the Completion Notice is required to be provided in terms of Clauses 3.2.2 of the Agreement, by extending the time period provided in Clauses 3.2.2 of the Agreement, prior to the expiry of such periods; or
- (b) 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 Government and shall be sent by registered post with acknowledgment due, or transmitted by facsimile transmission at the address of the Allottee as specified in Clause 26.11 for providing Notices. A copy of the Change Notice sent by registered post with acknowledgment due, or transmitted by facsimile transmission may also be sent through email to the email addresses specified pursuant to Clause 26.11 solely for the information of the Allottee and shall be deemed to be delivered when the registered post is actually delivered or the fax is received by the Allottee, as the case may be.

Within 5 Business Days of receipt of the Change Notice, the Allottee shall provide a written acknowledgment of its receipt to the Government 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 BLOCK

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

SCHEDULE B - PARTICULARS OF THE SPECIFIED END USE PLANT

[Particulars of be provided to identify the Specified End Use Plant in detail]

SCHEDULE C - FORMAT OF THE COMPLETION NOTICE

To
The Ministry of Coal
[address]

[date]

Sub: Completion Notice under Clause 3.2.1 of the Allotment Agreement (the “Agreement”).

Dear Sir,

We write with reference to Clause 3.2.1 of the Agreement. We have completed each of the Allotment 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] and have provided such undertaking as specified in SCHEDULE G, in case the approved Mine Plan is not available;
- (c) we have furnished the Performance Security through [particulars of performance security and its manner of delivery to be mentioned] and have provided such undertaking as specified in SCHEDULE G, in case the approved Mine Plan is not available;

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

Yours Sincerely,

.....

(Authorised Signatory)

Name:

Designation:

Enclosed: As Above

SCHEDULE D - EFFICIENCY PARAMETERS

S. No.	Milestone	Time Limit in Months (From the date of the Allocation order/ zero date)		Weightage for calculating deduction of Performance Security (in case of failure/ delay in achieving milestone)	
		Regionally Explored Blocks	Explored Blocks ¹	Regionally Explored Blocks	Explored Blocks ²
1	Prospecting License or notification under Section 4 of the CBA Act, 1957, as applicable	4	0	5	5
2	Completion of Exploration and Preparation of Geological Report (GR)	22	0		
	Events after preparation of GR	Time Limit in Months (From the date of preparation of GR)			
3	Mining Lease Application or notification under Section 7 of the CBA Act, 1957, as applicable	3	3	7	7
4	Submission of Mining Plan	6	6	8	8
5	Mining Plan Approval	11	11	8	8
6	Previous Approval Application	12	12	6	6
7	Previous Approval	13	13	5	5
8	Forest Clearance Application	11	11	8	8
9	Forest Clearance	21	21	5	5
10	Environment Clearance Application	11	11	8	8
11	Environment Clearance	21	21	5	5
12	Grant of Mining Lease or notification under Section 11 of the CBA Act, 1957, as applicable	24	24	5	5
13	Land Acquisition (To reach	36/42(in case of	36/42(in case of	5	5

¹ One of these two columns may be retained depending on state of the Coal Block

² One of these two columns may be retained depending on state of the Coal Block

S. No.	Milestone	Time Limit in Months (From the date of the Allocation order/ zero date)		Weightage for calculating deduction of Performance Security (in case of failure/ delay in achieving milestone)	
		Regionally Explored Blocks	Explored Blocks ¹	Regionally Explored Blocks	Explored Blocks ²
	rated capacity)	forest land)	forest land)		
14	Opening of Escrow Account	37/43(in case of forest land)	37/43(in case of forest land)	8	8
15	Application for Opening Permission	37/43(in case of forest land)	37/43(in case of forest land)	2	2
16	Grant of Opening Permission	38/44(in case of forest land)	38/44(in case of forest land)	2	2
17	Schedule of Production/ Reaching Rated Capacity	At least 90% of the annual scheduled production/ reaching rated capacity as per approved mining plan in case of opencast mines and at least 80% of the annual scheduled production/ reaching rated capacity as per approved mining plan for underground mines	At least 90% of the annual scheduled production/ reaching rated capacity as per approved mining plan in case of opencast mines and at least 80% of the annual scheduled production/ reaching rated capacity as per approved mining plan for underground mines	8	8
18	EUP Synchronisation	As per approved Mining Plan	As per approved Mining Plan	5	5

(a) The percentage for appropriation of Performance Security shall be calculated in proportion to the failure/ delay in compliance with the timelines mentioned for achievement of Efficiency Parameters which shall be broadly based on the abovementioned weightages.

(b) In case of non-compliance with the Efficiency Parameters mentioned above, the Allottee shall be required to rectify the same within such time as may be prescribed by the competent authority after examination on a case to case basis.

(c) The provisions relating to Efficiency Parameters and Schedule of Production as mentioned in this Agreement may be changed before the signing of Allotment Agreement in line with the recommendations of the High Power Expert Committee constituted by Ministry of Coal.

SCHEDULE E - FORMAT OF PERFORMANCE SECURITY

[Reference number of the bank]

[date]

To

The Ministry of Coal

[address]

WHEREAS

- A. [Name of the Allottee] incorporated in India under the Companies Act, [1956/2013] with corporate identity number [CIN of the Allottee], 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 “Allottee”) 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 Government for discharge of certain obligations under the Allotment Agreement dated [date] (the “Agreement”).
- C. We, [name of the bank] (the “Bank”) at the request of the Allottee do hereby undertake to pay to the Government an amount not exceeding INR [figures] (Indian Rupees [words]) to secure the obligations of the Allottee under the Agreement on demand from the Government on the terms and conditions herein contained herein.

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

1. The Bank for the purpose hereof unconditionally and irrevocably undertakes to pay to the Government without any demur, reservation, caveat, protest or recourse, immediately on receipt of first written demand from the Government, 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 Government 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 Government and Allottee on any matter whatsoever. The Bank undertakes to pay to the Government any money so demanded notwithstanding any dispute or disputes raised by the Allottee 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 Government of the amounts payable by the Bank to the Government shall be final, binding and conclusive evidence in respect of the amounts payable by Allottee to the Governemnt under the Agreement.
3. The Bank hereby waives the necessity for the Government from demanding the aforesaid amount or any part thereof from the Allottee and also waives any right that the Bank may have of first requiring the Government to pursue its legal remedies against the Allottee, before presenting any written demand to the Bank for payment under this Guarantee.
4. The Bank further unconditionally agrees with the Government that the Government 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 Allottee under the Agreement, or
 - (iii) forbear or enforce any of the rights exercisable by the Government against the Allottee 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 Government or any indulgence by the Government to the Allottee 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 Government 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 Governemnt 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 Allottee.
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 Allottee 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 Government certifies that the terms and conditions of the Agreement with respect to the Performance Security have been fully and properly carried out by the Allottee 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 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 Government 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 Government. 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 Government in writing.
12. The Government 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 Government 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 Government during the allotment process and any time thereafter, including but not limited to the information contained in this Agreement, by the Allottee 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 allotment 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 Government and/or its advisors during the conduct of the allotment process, are true and complete copies of such documents and none of the information provided to the Government and/or its advisors during the allotment process was incorrect, inaccurate or misleading in any manner whatsoever.

2. AUTHORITY

- 2.1. The Allottee 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 Allottee, and (assuming due authorisation, execution and delivery and performance by the Parties), constitutes a legal, valid and binding obligation of the Allottee, enforceable against the Allottee in accordance with the terms of the Agreement.
- 2.3. The Allottee has obtained requisite corporate authorisation, including passing of all necessary resolutions 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 Allottee 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 Allottee;
 - (b) require on the part of the Allottee, 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 Allottee 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 Allottee 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**

The Allottee

- (a) is a Government company duly organised, validly existing and in good standing under the laws of India;
- (b) meets all the Eligibility Conditions prescribed under the Act read with the Rules and the Allotment Document;
- (c) has the financial standing and capacity to undertake mining operations at the Coal Block in accordance with the Efficiency Parameters;
- (d) 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;
- (e) there are no actions, suits, proceedings or investigations pending or to the Allottee'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;
- (f) 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;
- (g) has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities;
- (h) except as set forth in any Mining Lease or in the notification under Section 11 (1) of the CBA Act, 1957, as the case may be, all rights and interests of the Allottee in and to the Coal Block 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 Allottee or the

Central Government;

- (i) 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 Allottee to any Person to procure the rights granted hereunder; and
- (j) Without prejudice to any express provision contained in this Agreement, the Allottee acknowledges that prior to the execution of this Agreement, the Allottee has after a complete and careful examination made an independent evaluation of the Coal Block and the information provided by the Government, 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 Allottee in the course of performance of its obligations hereunder. The Allottee 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 Government and any Governmental Authority shall not be liable for the same in any manner whatsoever to the Allottee.

SCHEDULE G - FORMAT OF DEED OF UNDERTAKING

(Must be submitted by the Allottee pursuant to Clause 5.2.5 and 6.1.6)

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

Ref. No.

Date: [insert date]

To

The Ministry of Coal

[Address]

Dear Sir,

We, [name of the allottee company] (the “**Allottee**”) have read and examined the Allotment Agreement dated [date] (the “Allotment Agreement”) relating to Allotment of [Name of Coal Block] coal block through the application process which commenced on [date of issuance of Allotment 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 Allotment Agreement.

The Allottee hereby unconditionally and irrevocably undertakes to submit the revised Performance Security and the revised Upfront Amount (including pursuant to the installments payable pursuant to clause 5.2.1, 5.2.2 and 5.2.3, respectively) as required under the Allotment Agreement as and when the same is directed to be furnished and paid by the Government.

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

This undertaking has been issued pursuant to a [particulars of corporate authorisation of the Allottee 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 Allottee)

Name:

Designation:

Date:

Name of Company:

Address:

Witness:

Signature:

Name & Address:

Date:

SCHEDULE H - ADDRESS FOR PROVIDING NOTICES

A. Notice to the Government

Address	
Telephone	
Fax	
E-mail (only for information)	

With CC to the State Government

Address	
Telephone	
Fax	
E-mail (only for information)	

B. Notice to the Allottee

Address	
Telephone	
Fax	
E-mail (only for information)	

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 Ministry of Coal

[Name of the Allottee]

.....
Name:

Designation:

Date:

.....
Name:

Designation

Date:

Duly authorized to execute this Agreement pursuant to resolution passed by the board of directors of the [name of the Allottee].