

6<sup>TH</sup> TRANCHE OF AUCTION

UNDER THE COAL MINES (SPECIAL PROVISIONS) ACT, 2015

STANDARD TENDER DOCUMENT  
AUCTION OF COAL MINES FOR IRON AND STEEL, CEMENT  
AND CAPTIVE POWER PLANT (EXCLUDING STEEL (COKING)  
SECTOR)

[Insert Name]Coal Mine

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Nominated Authority

Ministry of Coal

Government of India

New Delhi

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## **Table of Contents**

1	Definitions .....	6
2	Introduction .....	9
2.1	Background .....	9
2.2	The Act and the Rules .....	9
2.3	The Coal Mine .....	9
3	Tender Process .....	10
3.1	Electronic Auction .....	10
3.2	Tender Document .....	10
3.3	Description of the Tender Process .....	10
3.4	Tests of Responsiveness.....	14
3.5	Pre-Bid Conference .....	15
3.6	Site visits and Information .....	15
3.7	Tender Document Queries and Clarifications.....	16
3.8	Schedule of the Tender Process.....	17
3.9	Upfront Amount.....	18
3.10	Periodic Payments by the Successful Bidder .....	19
4	Bid Criteria .....	21
4.1	Eligibility Conditions.....	21
5	Instructions to Bidders.....	26
5.1	General Terms of Bidding .....	26
5.2	Joint Venture Company as the Bidder .....	26
5.3	Change in Control and transfer.....	27
5.4	Cost of Bidding .....	28
5.5	Verification of information by the Bidders .....	28
5.6	Verification by the Nominated Authority and Disqualification .....	29
5.7	Utilisation of Coal.....	30
5.8	Amendment of Tender Document.....	32
5.9	Preparation and Submission of Bids .....	32
5.10	Bid Due Date and Extension.....	32
5.11	Late Bids .....	32
5.12	Modifications/ Substitution/ Withdrawal of Bids.....	32
5.13	Rejection of Bids .....	33
5.14	Validity of Bids .....	33

6	Bid Security and Transaction Fee Security.....	34
6.1	Bid Security .....	34
6.2	Transaction Fee Security.....	35
7	Performance Security.....	36
7.1	Performance Security.....	36
8	Fraud and Corrupt Practices .....	39
9	Other Provisions.....	41
9.1	Revision in Mine Plan upon allocation.....	41
9.2	Miscellaneous .....	41
10	Annexures .....	43
10.1	Annexure I: Information for Computing Eligibility on the basis of Coal Requirement .....	43
10.2	Annexure II - Technical Details with respect to electronic auction. ....	45
10.3	Annexure III – Format for Technical Bid.....	57
10.4	Annexure IV – Letter Comprising the Technical Bid .....	60
10.5	Annexure V – Power of Attorney for Signing the Bid.....	65
10.6	Annexure VI – Format of Affidavit .....	67
10.7	Annexure VII – Format for seeking clarifications regarding the Tender Document .....	68
10.8	Annexure VIII – Bank Guarantee for Bid Security .....	69
10.9	Annexure IX – Bank Guarantee for Transaction Fee Security.....	72
10.10	Annexure X – Coal Mine Development and Production Agreement .....	75

## **Important Notice:**

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

*This Tender Document is neither an agreement nor an offer by the Nominated Authority to the prospective Bidders or any other Person. The purpose of this Tender Document is to provide interested parties with information that may be useful to them in making their Bids pursuant to this Tender Document. This Tender Document includes statements which reflect various assumptions and assessments arrived at by the Nominated Authority in relation to the Coal Mine. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require. This Tender Document may not be appropriate for all Persons, and it is not possible for the Nominated Authority, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this Tender Document. The assumptions, assessments, statements and information contained in the Tender Document, including specifically the Mine Dossier, may not be complete, accurate, adequate or correct. Each Bidder should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this Tender Document and obtain independent advice from appropriate sources.*

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

*The Nominated Authority, its employees and advisors make no representation or warranty and shall have no liability to any Person, including any Bidder under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this Tender Document or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the Tender Document and any assessment, assumption, statement or information contained therein or deemed to form part of this Tender Document or arising in any way from participation in this tender process.*

*The Nominated Authority also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Bidder upon the statements contained in this Tender Document.*

*The Nominated Authority may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this Tender Document.*

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

*Authority reserves the right to reject all or any of the Bidders or Bids without assigning any reason whatsoever.*

*Each Bidder shall bear all its costs associated with or relating to the preparation and submission of its Bid including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by the Nominated Authority or any other costs incurred in connection with or relating to its Bid. This Tender Document is not transferable.*

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

## **1 Definitions**

- 1.1 Unless the context otherwise requires, expressions not defined in this Tender Document, but defined in the Act or the Rules shall have the meaning assigned thereto in the Act or the Rules, as the case may be.
- 1.1.1 **“Acceptable Bank”** shall mean a Scheduled Bank as listed in the Second Schedule of the Reserve Bank of India Act, 1934 excluding those listed under the headings of Gramin Banks, Urban Co-operative Banks and State Co-operative Banks.
- 1.1.2 **“Act”** shall mean the Coal Mines (Special Provisions) Act, 2015.
- 1.1.3 **“Affiliates”** with respect to any Person shall mean any other Person which, directly or indirectly: (1) Controls such Person; or (2) is Controlled by such Person; or (3) is Controlled by the same Person who, directly or indirectly, Controls such Person; or (4) is an associate company of such Person. In such context, "associate company", in relation to another Company, means a Company in which that other Company has a significant influence, but which is not a subsidiary Company of the Company having such influence and includes a joint venture Company. For the purposes of this clause, "significant influence" means control of at least twenty per cent of total share capital, or of business decisions under an agreement.
- 1.1.4 **“Agreement”** shall mean the Coal Mine Development and Production Agreement to be executed pursuant to Rule 13(5) of the Rules in substantially the same form as specified in **Annexure X**.
- 1.1.5 **“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.
- 1.1.6 **“Authorised Signatory”** shall mean the individual representing a Bidder who has been duly authorised on behalf of such Bidder to execute and submit the Bid in accordance with the terms hereof.
- 1.1.7 **“Available Slot”** shall have the meaning ascribed to it in Clause 3.3.2(b).
- 1.1.8 **“Bid”** shall mean the binding Technical Bid, the Initial Price Offer and the Final Price Offer, as applicable, submitted by the Bidders for a Specified End Use Plant in accordance with the Tender Document pursuant to a unique MSTC Registration Number.
- 1.1.9 **“Bidder”** with respect to a Bid shall mean a Company which submitted such Bid.
- 1.1.10 **“Bid Due Date”** shall mean the date on which the Technical Bid is required to be submitted in accordance with Clause 3.8.
- 1.1.11 **“Bid Security”** shall have the meaning ascribed to it in Clause 6.

- 1.1.12 **“CIL”** shall mean Coal India Limited (a Government of India undertaking).
- 1.1.13 **“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 Mine, as on the date of sale of coal.
- 1.1.14 **“Cluster”** shall have the meaning ascribed to it in Clause 3.3.2(b).
- 1.1.15 **“Coal Mine”** means [particulars of the Coal Mine].
- 1.1.16 **“Company”** shall have the meaning ascribed thereto in clause (20) of section 2 of the Companies Act, 2013.
- 1.1.17 **“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.
- 1.1.18 **“Eligibility Conditions”** shall mean the eligibility conditions specified in the Act and the Rules including all the eligibility conditions listed in Clause 4.1.
- 1.1.19 **“Final Price Offer”** shall mean the price per tonne of coal extracted, required to be submitted as part of the Financial Bid on the electronic auction platform in accordance with Clause 3.3.2(c).
- 1.1.20 **“Fixed Amount”** shall have the meaning ascribed thereto in Clause 3.3.2(g)(ii).
- 1.1.21 **“Group”** shall mean two or more Group Companies.
- 1.1.22 **“Group Company”** means a Company which is an Affiliate of another Company. Provided however that notwithstanding anything contained herein a Government Company (as defined in Section 2(45) of the Companies Act, 2013) shall not be considered to be a Group Company of another Government Company.
- 1.1.23 **“Initial Price Offer”** shall mean the price per tonne of coal extracted, required to be submitted as part of the Financial Bid and which must be above the Floor Price in accordance with Clause 3.3.2.(a).
- 1.1.24 **“JV Partners”** shall have the meaning ascribed thereto in Clause 4.1.2(c).
- 1.1.25 **“Mine Dossier”** shall have the meaning ascribed thereto in the Rules.
- 1.1.26 **“MSTC”** shall mean MSTC Limited (a Government of India undertaking).
- 1.1.27 **“Nominated Authority”** shall mean the Nominated Authority appointed under section 6 (1) of the Act and the Rules thereunder.
- 1.1.28 **“Performance Security”** shall have the meaning ascribed thereto in Clause 7.
- 1.1.29 **“Person”** shall include any Company or association or body of individuals, whether incorporated or not.

- 1.1.30 **“Preferred Bidder”** shall have the meaning ascribed thereto in Clause 3.3.2(c).
- 1.1.31 **“Prior Allottee”** shall have the meaning ascribed thereto in the Act and for the purposes of this Tender Document, the Prior Allottee shall be [name and particulars of the prior allottee].
- 1.1.32 **“Qualified Bid(s)”** shall have the meaning ascribed to it in Clause 3.3.2(b).
- 1.1.33 **“Qualified Bidder(s)”** shall have the meaning ascribed thereto in Clause 3.3.2(b).
- 1.1.34 **“Reference Index”** shall mean the Wholesale Price Index.
- 1.1.35 **“Rules”** shall mean the Coal Mines (Special Provisions) Rules, 2014 or any other rules framed pursuant to the Act.
- 1.1.36 **“Rule 8(2) Order”** shall mean an order issued by the Central Government under Rule 8(2) of the Rules.
- 1.1.37 **“Specified End Use”** shall have the meaning ascribed thereto in Clause 2.3.1.
- 1.1.38 **“Specified End Use Plant”** shall mean a plant owned by the Bidder or each of the JV Partners (in case the Bidder is a joint venture Company), located in India and engaged in the Specified End Use.
- 1.1.39 **“Successful Bidder”** shall have the meaning ascribed thereto in Clause 3.3.2(d).
- 1.1.40 **“Supreme Court Judgment”** shall have the meaning ascribed thereto in Clause 2.1.1.
- 1.1.41 **“Technical Bid”** shall mean a confirmation of compliance with the Eligibility Conditions along with necessary supporting documents and information.
- 1.1.42 **“Technically Qualified Bid(s)”** shall have the meaning ascribed to it in Clause 3.3.2(b).
- 1.1.43 **“Technically Qualified Bidder”** shall have the meaning ascribed thereto in Clause 3.3.2(b).
- 1.1.44 **“Tender Document”** shall mean this document including its Annexures including specifically the Agreement, the Mine Dossier, notification No. 13016/9/2014-CA-III dated December 26, 2014 of Ministry of Coal, any addenda to this Tender Document and any other document issued pursuant hereto.
- 1.1.45 **“Total Project Cost”** shall mean the total project cost certified pursuant to Clause 4.1.2(e).
- 1.1.46 **“Transaction Expense”** shall mean a fixed amount of INR 17,70,000 (Indian Rupees Seventeen Lakh and Seventy Thousand) towards cost and expenses incurred by the Nominated Authority for conduct of auction process.
- 1.1.47 **“Upfront Amount”** shall have the meaning ascribed thereto in Clause 3.9.1.
- 1.1.48 **“Vesting Order”** shall have the meaning ascribed thereto in the Act and the Rules.



## **2 Introduction**

### **2.1 Background**

- 2.1.1 The Supreme Court of India through its judgment dated August 25, 2014 read with its order dated September 24, 2014 (collectively the “**Supreme Court Judgment**”) had cancelled allotment of 204 coal blocks. The Coal Mine was included in the list of such 204 coal blocks and accordingly, its allotment to the Prior Allottee was cancelled pursuant to the Supreme Court Judgment, with effect from the ‘appointed date’ (*as defined in the Act*).
- 2.1.2 Subsequent to the Supreme Court Judgment, the Coal Mines (Special Provisions) Ordinance, 2014; the Coal Mines (Special Provisions) Second Ordinance, 2014 were promulgated, the Rules were framed; and the Act was passed for auction and allotment of all blocks which suffered cancellation pursuant to Supreme Court Judgment.
- 2.1.3 Pursuant to Section 6 of the Act, the Central Government appointed the Nominated Authority. In terms of Section 6(3) of the Act the Central Government is required to act through the Nominated Authority for conduct of the tender process.
- 2.1.4 The Central Government has also issued a ‘Rule 8(2) Order’ dated March 30, 2017, as amended, under Rule 8(2) of the Rules to the Nominated Authority for auction of the Coal Mine pursuant to Section 4(1) of the Act. A copy of such Rule 8(2) Order is available at <http://coal.nic.in>.
- 2.1.5 Accordingly, this Tender Document is being issued by the Central Government, through the Nominated Authority for auction of the Coal Mine. The auction would be conducted in accordance with the Act, the Rules, any other order issued by the Central Government and this Tender Document.

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

- 2.2.1 Bidders are encouraged to familiarise themselves with the Act and the Rules. As of the date of this Tender Document, the Act and the Rules are available at <http://coal.nic.in>.

### **2.3 The Coal Mine**

- 2.3.1 The Coal Mine is being auctioned strictly for the purpose of utilisation of coal for the specified end use as mentioned in the Rule 8(2) Order, which is production of iron and steel, cement and generation of power for captive use [excluding steel (coking)] (the “**Specified End Use**”). The Mining operations are required to be conducted strictly in accordance with all Applicable Law, including without limitation the Act, the Rules, the Vesting Order and this Tender Document and any document referred herein, including the Agreement.

### **3 Tender Process**

#### **3.1 Electronic Auction**

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

#### **3.2 Tender Document**

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

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

- 3.3.1 Pursuant to Rule 10(4)(a) of the Rules, the auction would be conducted through a two stage process comprising of:
- a) Technical Bid in which the Bidders would be required to provide details regarding compliance with the Eligibility Conditions; and
  - b) Financial Bid comprising of: (i) the Initial Price Offer; and (ii) the Final Price Offer. The Initial Price Offer is required to be submitted along with the Technical Bid. It is hereby clarified that the Financial Bid will comprise of two rounds. In the first round the Initial Price Offer of the Technically Qualified Bids would be opened and ranked on the basis of descending order for determination of the Qualified Bidders as provided in Clause 3.3.2(b) below. The Qualified Bidders shall be eligible to participate in the electronic auction and submit their Final Price Offer with respect to each Qualified Bid.
- 3.3.2 The two stage tender process would be conducted in the following sequence:
- (a) **Technical Qualification:**  
In the first stage, with respect to each Bid, the Bidders would be required to submit: (i) the Bid Security and the Transaction Fee Security; (ii) the Technical Bid in substantially the same format as specified in **Annexure III** along with a covering letter in substantially the same format as specified in **Annexure IV**; and (iii) the Financial Bid to the extent of specifying the Initial Price Offer, which should be higher than the Floor Price. The Floor Price for the Coal Mine is INR [●]/Tonne. It is

clarified that, subject to compliance with the Eligibility Conditions, a Bidder may submit a separate Bid with respect to each Specified End Use Plant.

The Technical Bid of each Bidder, which is duly submitted in accordance with the Tender Document along with the Bid Security shall be opened by the Nominated Authority on the date mentioned in Clause 3.8.1. Technical Bids shall be opened before two independent witnesses and the proceedings shall be video recorded. The original of such recording along with a copy (only one copy to be made) will be sealed (in the presence of the two witness) separately and kept in the custody of two designated senior officers in sealed condition, to be opened in case of any dispute or verification. In the light of this procedure to ensure integrity of the process, the representatives of Bidders shall not be allowed at the time of opening of the Technical Bids. The Nominated Authority reserves the right to ask for any details, clarifications or any other information, in writing based on information submitted by Bidders for the purpose of evaluation of Technical Bids or otherwise.

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

(b) **Ranking and Qualification:**

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

- I. **Ranking:** The Technically Qualified Bids shall be ranked in a descending order on the basis of the respective Initial Price Offer. The Initial Price Offers which are equal shall be assigned the same rank.
- II. **Clustering:**
  - (i). If A) any Technically Qualified Bidder, which has submitted a Bid, is a Group Company of another Technically Qualified Bidder which has submitted a separate Bid; and/or B) any Technically Qualified Bidder has submitted more than one Bid; then, for the purposes of assigning the Available Slots, all such Bids shall be considered a single “Cluster” and shall be assigned a single Available Slot of the highest rank among the Bids being Clustered.
  - (ii). Any of the Available Slots which becomes unoccupied after Clustering as above shall be filled by the Technically Qualified Bids which hold the immediately succeeding rank to such Bids in the ranking, in the same manner as specified in sub-clause (A) above, with each remaining Available Slot being occupied by independent Technically Qualified Bids and/or a Cluster, as the case may be.
- III. **Determination of Qualified Bids:**

(i) If there are 3 independent Technically Qualified Bids and/or Clusters in IPO round, no independent Technically Qualified Bids shall be eliminated, and there would be 3 slots (the “Available Slots”)

(ii) If there are 4 to 6 independent Technically Qualified Bids and/ or Clusters in IPO round, only the last ranked independent Technically Qualified Bids shall be eliminated, and there would be one slot lesser than independent Technically Qualified Bids (including any Cluster), as the case may be (the “Available Slots”)

(iii) If there are 7 or more independent Technically Qualified Bids and/ or Clusters in IPO round, one third of independent Technically Qualified Bids and/ or Clusters in IPO round (who ranked last), subject to a maximum of 3, shall be eliminated, and remaining shall be the number of slots (the “Available Slots”). While calculating the one third, fractions will be ignored.

Provided however that in the event that the aggregate of total number of independent Technically Qualified Bids and/or Cluster, is less than 3, then no Technically Qualified Bid shall be considered to be Qualified Bid(s), the tender process for the Coal Mine shall stand terminated and would be dealt in the manner as provided in clause 3.3.3.

(c) **Final Price Offer:**

The “**Applicable Floor Price**” for electronic auction shall be the highest Initial Price Offer received from the Qualified Bidders. The Qualified Bidders shall be permitted to place their Final Price Offer on the electronic auction platform, which is higher than the Applicable Floor Price. It is clarified that a separate Final Price Offer may be submitted with respect to each Qualified Bid.

The Qualified Bidder that submits the highest Final Price Offer during the electronic auction process shall be declared as the “**Preferred Bidder**” vis-à-vis the Qualified Bid with respect to which such Final Price Offer was submitted.

In the event that the Qualified Bidder that submitted the highest Initial Price Offer i.e. the “**Applicable Floor Price**”, becomes ineligible to participate in the electronic auction, the next highest Initial Price Offer shall become the Applicable Floor Price.

In case the auction process is annulled due to non-submission of at least one Final Price Offer on the electronic auction platform, the Bid Security of the Qualified Bidder(s) who has submitted the highest Initial Price Offer i.e. the Applicable Floor Price, shall be forfeited in accordance with Clause 6.1.6.

(d) **Recommendation to Central Government:**

Pursuant to Rule 10(9) of the Rules, the Nominated Authority shall recommend the name of the Preferred Bidder to the Central Government. Upon receipt of a direction from the Central Government that a vesting order should be issued to the

Preferred Bidder, the Preferred Bidder shall be declared as the “**Successful Bidder**” vis-à-vis the Qualified Bid with respect to which it was declared the Preferred Bidder.

(e) **Preferred Bidder not to become Successful Bidder in certain cases:**

Notwithstanding the above, in the event that the Nominated Authority or the Central Government determines that a Preferred Bidder should not be declared the Successful Bidder on account of any reason whatsoever, including without limitation the withdrawal of the Preferred Bidder from the auction process for the Coal Mine or the Preferred Bidder ceasing to comply with the Eligibility Conditions, then the tender process shall stand terminated and the Nominated Authority shall have the power to re-initiate the tender process in accordance with Rule 10 of the Rules, provided the Nominated Authority has not received any other Rule 8(2) Order from the Central Government.

(f) **Signing of the Agreement:**

Upon receiving the direction from Central Government, the Nominated Authority shall inform the Successful Bidder and execute the Agreement. The Successful Bidder shall not be entitled to seek any deviation, modification or amendment in the Agreement, except with the prior approval of the Central Government.

(g) **Payments by the Successful Bidder:**

Subsequent to signing of the Agreement the Successful Bidder shall, within such period as prescribed in Clause 3.8:

- (i) furnish the Performance Security as specified in Clause 7;
- (ii) pay a fixed amount for the value of Land and Mine Infrastructure, cost of preparation of geological report borne by the Prior Allottee, cost incurred by CMPDIL in deriving detailed geological boundary coordinates, cost of obtaining all statutory licenses, permits, permissions, approvals, clearances or consents relevant to the mining operations, borne by the Prior Allottee, and the Transaction Expense (collectively the “**Fixed Amount**”). If the Successful Bidder is a Prior Allottee, then, the compensation payable to such Successful Bidder shall be set off or adjusted against the Fixed Amount payable by such Successful Bidder. The Fixed Amount is required to be deposited by the Successful Bidder with the Nominated Authority in accordance with the relevant provisions of the Act and the Rules. The Fixed Amount based on the available information and the assessment made by the competent authority will be uploaded as a part of the Tender Document. Any upward revision in the Fixed Amount on a subsequent date by the Government or the Nominated Authority consequent upon any process or on the orders of any competent court of law, shall also be payable by the Successful Bidder.
- (iii) pay an amount equal to INR [●] (Indian Rupees ([●])) as the first instalment of the Upfront Amount.

(h) **Issuance of the Vesting Order:**

Upon receipt of Performance Security and other payments mentioned in sub-clause (g) above, the Vesting Order shall be issued, in duplicate, by the Nominated Authority to the Successful Bidder and the Successful Bidder shall, within 7 (seven) days of the receipt of the Vesting Order, sign and return the duplicate copy of the Vesting Order in acknowledgement thereof. In the event the duplicate copy of the Vesting Order duly signed by the Successful Bidder is not received by the stipulated date, the Nominated Authority may, unless it consents to extension of time for submission thereof, appropriate the Performance Security and other payments made by such Successful Bidder as damages and also terminate the Agreement.

### **3.3.3 Number of Minimum Bidders**

In the event that the aggregate of total number of independent Technically Qualified Bids and/or Cluster in IPO round is less than 3, then no Technically Qualified Bid shall be considered to be Qualified Bid(s) and the tender process for the Coal Mine shall stand annulled.

## **3.4 Tests of Responsiveness**

Prior to evaluation of the Technical Bid, the Nominated Authority shall determine whether each Technical Bid is responsive to the requirements of this Tender Document. The Nominated Authority reserves the right to reject any Technical Bid which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be considered or permitted by the Nominated Authority in respect of such Technical Bid. While making any determination with respect to responsiveness of a Technical Bid, the Nominated Authority may consider such parameters as it may deem relevant, including considerations that the Technical Bid:

- a) is received as per the prescribed formats along with documentary evidence required (a) to support its ability to meet the Eligibility Conditions and (b) elsewhere in this Tender Document;
- b) is received by the Bid Due Date including any extension thereof;
- c) is submitted in the manner prescribed in this Tender Document;
- d) is accompanied by the Bid Security and Transaction Fee Security as specified in Clause 6;
- e) is accompanied by a Power of Attorney as specified in **Annexure V** and an Affidavit as specified in **Annexure VI**;
- f) contains all the information (complete in all respects) including the Initial Price Offer as requested in this Tender Document;
- g) does not contain any condition or qualification;
- h) only 1 (one) Technical Bid has been made for the Coal Mine with reference to a particular End Use Plant; and
- i) is generally not considered to be non-responsive in terms of any other parameters as

may be considered relevant by the Nominated Authority.

### **3.5 Pre-Bid Conference**

- 3.5.1 Pre-Bid conference(s) of the Bidders shall be convened at the designated date as mentioned in Clause 3.8 at a time and place specified by the Nominated Authority. Only those persons who have purchased the Tender Document shall be allowed to participate in the pre-bid conferences.
- 3.5.2 A maximum of 3 (three) representatives of each Bidder shall be allowed to participate on production of duly issued authority letter from the Bidder and identity documents. During the course of Pre-Bid conference(s), the Bidders will be free to seek clarifications and make suggestions for consideration of the Nominated Authority.
- 3.5.3 The Nominated Authority shall endeavour to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive tender process.

### **3.6 Site visits and Information**

- 3.6.1 Prior to submission of Technical Bid, the Bidders are encouraged to undertake the site visit to Coal Mine, at their cost and ascertain for themselves the site conditions, location, communication, climate, availability of power, Applicable Laws and regulations, and any other matter considered relevant by them in the manner provided herein. This Tender Document does not however give the unconditional or unrestricted right to access the Coal Mine or the right to the Bidders to prospect for coal in the Coal Mine or carry out any drilling in the Coal Mine.
- 3.6.2 The Bidders which have made payment of INR 5,00,000 (Indian Rupees Five lakhs) in accordance with Clause 3.2 shall be eligible to make request for visit to the Coal Mine until the Bid Due Date. The site visit to the Coal Mine shall be coordinated through the following e-mail address [na.moc@nic.in](mailto:na.moc@nic.in). The email should clearly bear the following subject line: “*Site Visit for [insert name of the coal mine]*”.
- 3.6.3 The site visit to the Coal Mine shall be at the cost and risk of the Bidders making such request.
- 3.6.4 In the event a Bidder undertakes a site visit, then such Bidder shall be liable towards any loss or damage caused to the site and/or the Prior Allottee, on account of any act or omission of such Bidder or its employees, authorised representatives, agents, advisors etc.
- 3.6.5 Bidders are advised to email their request for site visit in the manner specified in clause 3.6.2 on or before 1600 hours on the date specified in Clause 3.8 for receiving request for site visit and any request received thereafter shall not be considered.
- 3.6.6 The documents pertaining to land, as submitted by the Prior Allottee, are available on the website of MSTC. It is clarified that the Nominated Authority shall have no responsibility for any non-availability of documents pertaining to land or the contents of the documents

pertaining to land. Irrespective of the availability/non-availability or contents of documents related to land, the Bidders are required to have satisfied themselves on all matters related to the Coal Mine, before submitting a Bid.

### **3.7 Tender Document Queries and Clarifications**

- 3.7.1 Any queries or request for additional information concerning this Tender Document may be sent by e-mail to the Nominated Authority at [nomauthority.moc@nic.in](mailto:nomauthority.moc@nic.in) in the format specified in **Annexure VII** (*Format for seeking clarifications regarding the Tender Document*). The email should clearly bear the following subject line: *“Queries/Request for Additional Information: Tender Document for [insert name of the coal mine]”*.
- 3.7.2 Each query should contain complete details of facts, information and Applicable Law germane to the query and also the particulars of the person posing the query. The Nominated Authority reserves the right to not answer any query, including any query which is incomplete or anonymous.
- 3.7.3 The queries should be emailed in .doc, .docx, .xls, .xlsx format, on or before 1600 hours on the date specified in Clause 3.8 for receiving queries.
- 3.7.4 The Nominated Authority shall endeavour to respond to the queries within the period specified in Clause 3.8. However, the Nominated Authority reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this Clause 3.7 shall be taken or read as compelling or requiring the Nominated Authority to respond to any question or to provide any clarification. The Nominated Authority may publish the queries and its responses thereto on the website of Ministry of Coal, without identifying the source of queries.
- 3.7.5 The Nominated Authority may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued by the Nominated Authority shall be deemed to be part of the Tender Document. Provided however that, any non-written clarifications and information provided by the Nominated Authority, its employees or representatives in any manner whatsoever shall not in any way or manner be binding on the Nominated Authority.
- 3.7.6 The Nominated Authority shall not entertain any query or clarification from Bidders who fail to meet the Eligibility Conditions.
- 3.7.7 Bids shall be deemed to be under consideration immediately after the Technical Bids are opened and until such time the Nominated Authority makes official intimation of award/rejection to the Bidders. While the Bids are under consideration, Bidders and/ or their representatives or other interested parties are advised to refrain, save and except as required under the Tender Document, from contacting by any means, the Nominated Authority and/ or their employees/ representatives on matters related to the Bids under consideration.
- 3.7.8 Save and except as provided in this Tender Document, the Nominated Authority shall not entertain any correspondence with any Bidder in relation to acceptance or rejection of any



Bid.

### 3.8 Schedule of the Tender Process

3.8.1 The schedule of the Tender Process shall be as per the tentative timelines specified below:

<b>Sl.No.</b>	<b>Event Description</b>	<b>Estimated Date</b>	
1	<i>(i) Publication of notice inviting tender (NIT) in one English and one Hindi national newspaper, (ii) Publication of NIT on the website of MoC, (iii) Publication of NIT and Tender Documents on website of MSTC Ltd, (iv) Commencement of sale of Tender Document at the website of MSTC. The date of completion of the last sub-event among the above sub-events shall be considered <math>T_0</math></i>	$T_0$	
2	<i>Last date of receiving written queries from Bidders</i>	$T_0 + 12$	
3	<i>Last date of receiving written requests for Site Visit/Land Document Inspection</i>	$T_0 + 14$	
4	<i>Pre-bid meeting</i>	$T_0 + 16$	
5	<i>Last date for written responses to queries by the Nominated Authority</i>	$T_0 + 26$	
6	<i>Last date for registration of bidder at the website of MSTC</i>	$T_0 + 32$	
7	<i>Last date for sale of Tender Document at the website of MSTC</i>	$T_0 + 33$	
8	<i>Bid Due Date</i>	$T_0 + 35$	
9	<i>Opening of the Technical Bid (s)</i>	$T_0 + 36$	
10	<i>Start date of examination of the</i>	$T_0 + 37$	

	<i>Technical Bid (s)</i>		
11	<i>End date of examination of the Technical Bid (s)</i>	$T_0 + 44$	
12	<i>Conduct of electronic auction (Financial Bid) for the Qualified Bidders</i>	$T_0 + 46-58$	
13	<i>Recommendation by the Nominated Authority to the Central Government for selection of Successful Bidder</i>	$T_0 + 63$	
14	<i>Approval of Successful Bidder by the Central Government</i>	$T_1$	
15	<i>Intimation to the Successful Bidder (subject to receipt of instruction from the Central Government)</i>	$T_1 + 2$	
16	<i>Execution of the Agreement between the Successful Bidder and Nominated Authority</i>	$T_1 + 7$	
17	<i>Last date for furnishing of Performance Security and payment of Fixed and Upfront Amount by the Successful Bidder</i>	$T_1 + 17$	
18	<i>Issuance of Vesting Order by Nominated Authority</i>	$T_1 + 19$	
<p><i>Note: *Registration on the website of MSTC Ltd. will commence immediately after publication of the NIT on the website of MSTC Ltd.</i></p> <p><i>* Above schedule is on assumption that electronic auction round for each mine will be completed in 1 day. In the event electronic auction round of any mine continues beyond 1 day, time schedule for the remaining events shall be extended.</i></p> <p><i>* Any change in the timeline will be communicated through an addendum to the Tender Document.</i></p>			

### **3.9 Upfront Amount**

- 3.9.1 The Successful Bidder shall be required to pay an amount equal to INR [●] (Indian Rupees ([●]) (“**Upfront Amount**”).
- 3.9.2 In case of a Schedule II Coal Mine, the Upfront Amount shall be payable in following three instalments:
- (a) 50% of the Upfront Amount shall be payable in accordance with Clause 3.3.2(g);
  - (b) 25% of the Upfront Amount shall be paid within six months from the date of issuance of the Vesting Order; and

- (c) the remaining 25% of the Upfront Amount shall be paid within twelve months from the date of issuance of the Vesting Order.

3.9.3 In case of a Schedule III Coal Mine, the Upfront Amount shall be payable in following three instalments:

- (a) 50% of the Upfront Amount shall be payable in accordance with Clause 3.3.2(g);
- (b) 25% of the Upfront Amount shall be paid on or prior to expiry of 15 (fifteen) Business Days from the date of execution of Mining Lease or, notification under Section 11 (1) of the Coal Bearing Areas (Acquisition and Development) Act, 1957, as the case may be; and
- (c) the remaining 25% of the Upfront Amount shall be paid on or prior to expiry of 15 Business Days from the date of grant of mine opening permission.

### **3.10 Periodic Payments by the Successful Bidder**

3.10.1 In addition to the payments specified in Clause 3.3.2(g), the Successful Bidder shall be required to make monthly payments with respect to the coal extracted from the Coal Mine on the basis of the Final Price Offer pursuant to which the Successful Bidder has received the Vesting Order. Such payment is required to be made within 20 (twenty) calendar days of expiry of each month with respect to coal extracted from the Coal Mine in the previous calendar month.

3.10.2 The aforementioned payments shall be subject to a yearly adjustment (upward or downward, as applicable) on the basis of a Reference Index, with the prevailing Reference Index on the date on which the Vesting Order has been issued being considered as the base. The Reference Index published for the month of April of the relevant Financial Year shall be used for computing the annual adjustment (upward or downward, as applicable).

*Provided however,* in case the revised Final Price Offer on account of above mentioned adjustment becomes lower than the Final Price Offer pursuant to which the Successful Bidder has received the Vesting Order, then for the purpose of computation of the monthly payment, the revised Final Price Offer for that year shall be equal to the Final Price Offer pursuant to which the Successful Bidder has received the Vesting Order.

Illustration: Solely for the purpose of reference of the Bidders, the methodology of yearly adjustment of Final Price Offer is illustrated below:

In case the Final Price Offer pursuant to which the Successful Bidder has received the Vesting Order is Rs. 2000 per tonne and the date of issuance of Vesting Order is January 31, 2018. The Reference Index i.e. Wholesale Price Index for the month of January 2018 is 190. Annual adjustment in the Final Price Offer for FY 2018-19 shall be estimated in the following manner: Assuming the Wholesale Price Index for April 2018 becomes 200, the revised Final Price Offer shall be Rs. 2105.26 per tonne (i.e. Final Price Offer \* Reference Index for April 2018/Reference Index for January 2018) and the monthly payments for FY 2018-19 shall be

made on the basis of revised Final Price Offer of Rs. 2105.26 per tonne.

However, in case in the abovementioned example, Wholesale Price Index for April 2018 becomes 180, then the revised Final Price Offer shall be Rs. 1894.74 per tonne i.e. lower than the Final Price Offer of Rs. 2000 per tonne pursuant to which the Successful Bidder has received the Vesting Order. Therefore, in such a case, monthly payments for FY 2018-19 shall be made on the basis of Final Price Offer of Rs. 2000 per tonne i.e. on the basis of Final Price Offer pursuant to which the Successful Bidder has received the Vesting Order.

3.10.3 It may be clarified that the statutory royalty payable on coal shall be payable additionally as per extant law.

## **4 Bid Criteria**

### **4.1 Eligibility Conditions**

4.1.1 Section 4(3) of the Act and Rule 10(4)(d) of the Rules prescribes eligibility to bid in an auction of Schedule II and/or III coal mine, which includes the Coal Mine.

Bidders are required to ensure that they meet the conditions mentioned in Section 4(3) of the Act and Rule 10(4)(d) of the Rules which are quoted below for reference:

Section 4(3) of the Act:

*“(3) Subject to the provisions of section 5, the following persons who fulfil such norms as may be prescribed, shall be eligible to bid in an auction of Schedule II coal mines and Schedule III coal mines and to engage in coal mining operations in the event they are successful bidders, namely:—”*

*(a) a company engaged in specified end use including a company having a coal linkage which has made such investment as may be prescribed;*

*Explanation.—A “company with a coal linkage” includes any such company whose application is pending with the Central Government on the date of commencement of this Act.*

*(b) a joint venture company formed by two or more companies having a common specified end use and are independently eligible to bid in accordance with this Act;*

*(c) a Government company or corporation or a joint venture company formed by such company or corporation or with any other company having common specified end use.”*

Rule 10(4)(d) of the Rules:

*“A person who is eligible under sub-section (3) of section 4 of the Ordinance shall also meet the following eligibility criteria, namely:—*

*(i) a company eligible to bid for any Schedule II coal mine under sub-section (3) of Section 4 of the Ordinance shall have incurred an expenditure of not less than eighty per cent of the total project cost of the unit or phase of the specified end use plant for which the company is bidding,*

*Explanation.— For the purposes of this sub-clause in case the end use project is being commissioned in units or phases and one or more units or phases are eligible under the provisions of this sub-clause, the other unit or phase shall also be eligible provided that not less than forty per cent expenditure of the cost has been incurred for such other unit or phase;*

*(ii) a company eligible to bid for any Schedule III coal mine under sub-section (3)*

*of Section 4 of the Ordinance shall have incurred an expenditure of not less than sixty per cent of the total project cost of the unit or phase of the specified end use plant for which the company is bidding,*

*Explanation.— For the purposes of this sub-clause in case the end use project is being commissioned in units or phases and one or more units or phases are eligible under the provisions of this sub-clause, the other unit or phase shall also be eligible provided that not less than thirty per cent expenditure of the cost has been incurred for such other unit or phase;*

- (iii) capacity of the specified end use project shall be in proportion to the capacity of the Schedule II coal mine or Schedule III coal mine, as the case may be, for which a company is bidding;*
- (iv) in case a company is the successful bidder, then the entitlement to receive coal pursuant to such coal linkage shall stand proportionately reduced on the basis of the requirement of coal being met from the mine allocated to such company;*
- (v) for the purposes of sub-clauses (i) and (ii), the total project cost and expenditure incurred shall be determined on the basis of a certificate issued by the relevant company, duly certified by the statutory auditors and/ or secured creditors, if any, of the relevant company.”*

4.1.2 In addition to the aforementioned conditions, a Bidder would also be required to comply with the following eligibility conditions:

(a) **Additional conditions for Prior Allottee:**

In the event the Bidder is a Prior Allottee, then such Bidder must also meet the following conditions for being eligible to participate in the tender process:

- (i) The Bidder who is a Prior Allottee must have paid the additional levy within the time period prescribed under Rule 18 of the Rules. It is clarified that if a Prior Allottee has not made payment of the applicable additional levy within the time prescribed under Rule 18 of the Rules, then such Prior Allottee, its promoter or any of its company of such Prior Allottee shall not be eligible to participate in the auction process either directly or indirectly, including without limitation as a JV Partner of a joint venture, or through any Affiliate.
- (ii) The Bidder who is a Prior Allottee, who is convicted of an offence relating to coal block allocation and sentenced with imprisonment for more than 3 (three) years, shall not be eligible to participate in the auction.

(b) **Eligibility on the basis of coal requirements:**

- (i) A Bidder shall be considered eligible for bidding for the Coal Mine only if its requirement of coal for Specified End Use matches the reserves of the Coal Mine, in accordance with the parameters specified below:  
Extractable reserves of the Coal Mine should not exceed 150% of the annual

coal requirement of the Specified End Use Plant(s), taken over a period of 30 (thirty) years, less the requirement of coal of such Specified End Use Plant met from any other coal mine allocated to the Preferred Bidder, Successful Bidder, Preferred Allottee or Allottee, as the case may be, pursuant to any other auction or allotment process conducted by the Nominated Authority under the Act and the Rules or any other coal mine for which Mining Lease has been granted to the Bidder under Applicable Law.

- (ii) For the purposes of this Clause, the annual coal requirements of the Specified End Use Plant would be determined on the basis of a certificate from the Bidder regarding its entire coal requirements at 85% plant load factor or capacity utilization as the case may be. Such self certification shall be required to be in conformity with the benchmark coal requirement provided by Central Electricity Authority/ MECON Limited / relevant Ministry or agency of the Central Government, as provided in **Annexure I** (*Information for Computing Eligibility on the basis of Coal Requirement*). Coal requirement shall be considered only for the end-uses as provided in **Annexure I**.
- (iii) It is clarified that a Bidder shall not be eligible to participate in any other auction conducted by the Nominated Authority for the same End Use Plant if such participation may result in the Bidder holding coal mines capable of generating coal in excess of 150% of its annual coal requirement as specified in Clause 4.1.2(b)(i) above.
- (iv) In the event that a Bidder submits multiple Technical Bids for different coal mines for the same Specified End Use Plant (individually or in combination with other Specified End Use Plant(s)), and if the Bidder becomes Preferred Bidder, Successful Bidder, Preferred Allottee or Allottee, as the case may be for a coal mine which fulfils a certain percentage of the total coal requirement of the Specified End Use Plant(s), it will be deemed that the coal requirement of each of the Specified End Use Plant(s) have been fulfilled to that extent. For computing its eligibility on the basis of coal requirement for such Specified End Use Plant(s) for a subsequent auction, the eligibility shall be determined in accordance with Clause 4.1.2 (b)(i) above.

(c) **Additional Eligibility conditions for Bidders which is a joint-venture:**

In the event that, a Bidder is a joint venture Company formed by two or more companies (“**JV Partners**”), then each such JV Partner should: (i) independently meet all the Eligibility Conditions as mentioned in this Clause 4.1; and (ii) hold at least twenty per cent of voting rights; off-take and utilize at least twenty per cent of the coal reckoned on an annual basis, in accordance with the provisions of the Tender Document; and have at least twenty per cent economic interest in the joint venture Company.

It is clarified that in such cases, the JV Partners would be required to independently meet the requirements regarding specified expenditure of the total project cost.

However, for the purposes of Clause 4.1.2(b), the coal requirements for Specified End Use Plant of each of the JV Partners shall be considered collectively. Further, the JV Company is required to be incorporated prior to registration for the tender process. The tender document should be purchased only by and in the name of the entity which will bid for the Coal Mine.

(d) **Limitations on total number of Bids**

With respect to 1 (one) Specified End Use Plant, only 1 (one) Bid may be submitted for the Coal Mine, either individually or as a part of joint-venture, either directly or indirectly.

(e) **Certification of total project cost and expenditure**

In the event a Bidder is eligible for participating in the auction, pursuant to Rule 10(4)(d) of the Rules i.e. on the basis of having made an expenditure of the total project cost, then each such Bidder would be required to submit:

- (i) a certificate confirming the total project cost issued by the Bidder and duly certified by the lead secured creditor (in case of consortium lending) or the secured creditor with the highest exposure (in case of multiple banking), where the Specified End Use Plant is financed by creditors. In case the Specified End Use Plant has not been financed by creditors then such certificate should be duly certified by the statutory auditors of the Bidder. In case of a joint venture Company, the aforementioned certificate should be issued by the Bidders and duly supported by confirmations issued by the secured creditors and/or statutory auditors of the JV Partners, as the case may be; and
- (ii) a certificate confirming the actual expenditure incurred towards the Specified End Use Plant, issued by the Bidder and duly certified by the statutory auditor of the Bidder. In case of a joint venture Company such certificate should be issued by the Bidder and supported by confirmation issued by the statutory auditor of the JV Partner, as the case may be.

The actual expenditure incurred with respect to the Specified End Use Plant until September 30, 2018 or the date of submission of the Technical Bid, shall be considered relevant for the purposes of this Clause.

The Nominated Authority may direct the Bidder to submit such additional documents as may be required to verify the total project cost.

For participation in the auction process of Schedule II Coal Mines, in case of Specified End Use Plant which has been developed or is being developed in units or phases, and one or more units or phases are eligible on the basis of having made an expenditure of eighty per cent of the total project cost, then the other units or phases of such project shall also be eligible, if with respect to each such other units or phases an expenditure of at least forty per cent of total project cost has



independently been incurred and a certificate is provided to substantiate such expenditure for each such other units or phases, in the manner provided above.

For participation in the auction process of Schedule III Coal Mines, in case of Specified End Use Plant which has been developed or is being developed in units or phases, and one or more units or phases are eligible on the basis of having made an expenditure of sixty per cent of the total project cost, then the other units or phases of such project shall also be eligible, if with respect to each such other units or phases an expenditure of at least thirty per cent of total project cost has independently been incurred and a certificate is provided to substantiate such expenditure for each such other units or phases, in the manner provided above.

It is clarified that in case the Specified End Use Plant is operational, Bidders are required to submit either i) a certificate from statutory auditor confirming the Specified End Use Plant is operational and its capacity or ii) Consent to Operate certificate issued by State Pollution Control Board for the Specified End Use Plant. In such a case, the project cost and expenditure certificates are not required to be submitted.

(f) **Additional conditions for Bidders with a coal linkage or Memorandum of Understanding:**

(i) As per Rule 10(4)(d)(iv) of the Rules, the entitlement to receive coal pursuant to existing coal linkage shall stand proportionately reduced on the basis of the requirement of coal being met from the mine allocated to such company. Thus, reduction / tapering in linkage would be on the basis of the requirement of coal of the SEUP being met by the mine allocated.

For example: (a) if out of 10 MTPA Specified EUP requirement, 5 MTPA is met by linkage coal and 5 MTPA requirement is met by allocated mine, then there would not be any reduction/ tapering in the linkage. (b) if out of 10 MTPA Specified EUP requirement, 5 MTPA is met by linkage coal and 7 MTPA is produced from allocated mine, then there would be proportionate reduction/ tapering of 2 MTPA of the linkage.

(ii) Coal Linkage will be reduced/ tapered on the basis of actual coal production from the coal mine.

## **5 Instructions to Bidders**

### **5.1 General Terms of Bidding**

- 5.1.1 Notwithstanding anything to the contrary contained in this Tender Document, in the event of a conflict, the relevant provisions of the Agreement shall have overriding effect.
- 5.1.2 Bidders are required to deposit a Bid Security with respect to each Bid being submitted by the Bidder pursuant to Clause 6.1 of the Tender Document. The Bid Security is required to be provided in the form of a Bank Guarantee as per format provided in **Annexure VIII** (*Bank Guarantee for Bid Security*).
- 5.1.3 Bidders are required to deposit a Transaction Fee Security with respect to each Bid being submitted by the Bidder pursuant to Clause 6.2 of the Tender Document. The Transaction Fee Security is required to be provided in the form of a Bank Guarantee as per format provided in **Annexure IX** (*Bank Guarantee for Transaction Fee Security*).
- 5.1.4 The Bidder are also required to submit a Power of Attorney as per the format provided in **Annexure V** (*Power of Attorney for Signing the Bid*), authorising the signatory of the Bid to participate in the tender process and do all acts pursuant thereto on behalf of the Bidder, including usage of the digital signature on behalf of the Bidder
- 5.1.5 The Bid and all communications in relation to or concerning the Tender Document and the Bid are required to be in the English language.
- 5.1.6 The documents including this Tender Document and all attached documents, provided by the Nominated Authority are and shall remain or become the properties of the Nominated Authority and are transmitted to the Bidders solely for the purpose of preparation and the submission of a Bid in accordance herewith. Bidders are required to treat all such information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The provisions of this Clause 5.1.6 shall also apply *mutatis mutandis* to Bids and all other documents submitted by the Bidders in relation to the Bid, and the Nominated Authority will not return to the Bidders any Bid, document or any information provided along therewith.
- 5.1.7 Any award of Agreement pursuant to this Tender Document shall be subject to the terms hereof and any documents issued pursuant to the Act, the Rules, this Tender Document or any other document referred herein.
- 5.1.8 Bidders are also encouraged to mine at an accelerated rate, to the best of their capabilities and are permitted to increase mine production to the maximum possible extent and utilise the coal for the same Specified End Use Plant(s). After the Coal Mine is exhausted Bidders are encouraged to apply for coal linkages or bid for new coal mines.

### **5.2 Joint Venture Company as the Bidder**

- 5.2.1 In the event, a Bidder is a joint venture Company, which has become eligible for participating in the auction process on account of its JV Partners meeting all the Eligibility Conditions,

then during the auction process:

- (a) no change in shareholding (directly or indirectly) of the joint venture Company shall be permitted, without the prior approval of the Central Government as may be required under Applicable Laws. Such approval shall be granted only if the new shareholder meets all the Eligibility Conditions (other than the condition specified in Clause 4.1.2(d));
- (b) in the event that one of the JV Partner becomes ineligible or ceases to operate the Specified End Use Plant or ceases to be a JV Partner, then: (i) the joint venture Company may supply coal to the remaining JV Partners subject to the condition that each such remaining JV Partners shall not be entitled to receive coal in excess of limit specified under Clause 4.1.2(b), which limit shall be computed independently for each Specified End Use Plant of the other JV Partners, based on information provided in the Technical Bid; and (ii) coal extracted in excess of the limit specified in sub-clause (i) above shall be required to be sold to CIL at the terms and conditions specified at Clause 5.7.7.

### **5.3 Change in Control and transfer**

#### **5.3.1 Change in Control or transfer subsequent to determination of Successful Bidder**

5.3.1.1 Change in Control of the Successful Bidder or any transfer of the Specified End Use Plant along with or without the rights in relation to the Coal Mine, shall be permissible with prior intimation to the Nominated Authority and the Central Government if:

- (a) such change in Control does not result in the Successful Bidder becoming non compliant with any of the Eligibility Conditions or the transferee is also compliant with the Eligibility Conditions (other than the condition specified in Clause 4.1.2(d)), as the case may be; and
- (b) any prior consent, approval, no-objection certificate or the like required for such Change in control or transfer under any Applicable Law has been obtained prior to submission of prior intimation.

5.3.1.2 In the event that any change in Control of the Successful Bidder or any proposed transfer of the Specified End Use Plant along with or without the rights in relation to the Coal Mine which requires prior consent approval, no-objection certificate or the like of the relevant authority or authorities under any Applicable Laws, then such approval shall be granted only if:

- (i) the transferee of such right, title or interest or the Successful Bidder subsequent to change of Control, as the case may be, also meets all the Eligibility Conditions (other than the condition specified in Clause 4.1.2(d)); or
- (ii) the Successful Bidder continues to meet all the Eligibility Conditions (other than the condition specified in Clause 4.1.2(d)), as the case may be.

**(iii)**

**5.3.2 Change in Control prior to determination of Successful Bidder**

5.3.2.1 Upon submission of the Technical Bid but prior to determination of the Successful Bidder, no change in Control of a Bidder or any of its JV Partners shall be permitted without the prior approval of the Nominated Authority

5.3.2.2 The Nominated Authority shall grant such approval only if such change in Control does not result in the Bidder becoming non-compliant with any of the Eligibility Conditions.

5.3.2.3 By submitting the Bid, the Bidder acknowledges and agrees that in the event of a change in Control of a Bidder during the tender process, or change in Control of the JV Partner or the Successful Bidder, at any time until the determination of the Successful Bidder would be deemed to have knowledge of the same and shall be required to inform the Nominated Authority forthwith along with all relevant particulars about the same.

**5.3.3 Consequences of default**

5.3.3.1 In the event of any change in Control or any transfer of right, title or interest in the Coal Mine which is not in conformity with this Tender Document or any Applicable Law, then in addition to any rights, remedy or consequences as may be applicable under Applicable Laws, the Nominated Authority or the Central Government may, in its sole discretion, appropriate the Bid Security or the Performance Security, disqualify the Bidder; terminate the Agreement executed with the Successful Bidder; or terminate and withdraw the Vesting Order as the case may be.

5.3.3.2 Any transfer of right, title or interest which is not in conformity with this Tender Document or Applicable Laws shall be deemed to be void *ab-initio*.

**5.3.4 Security**

5.3.4.1 Subject to Applicable Laws, the Successful Bidder shall be entitled to create security over the Coal Mine through mortgage for the purposes of availing financing from a bank or financial institutions for the purposes of financing of the Specified End Use Plant or mining operations at the Coal Mine and such security creation shall not require prior approval by the Nominated Authority or the Central Government.

5.3.4.2 In the event of a default, the banks or financial institutions, as the case may be, shall be entitled to enforce their security interest in the manner provided by Applicable Law, provided that any transferee of the Coal Mine meets all the Eligibility Conditions.

**5.4 Cost of Bidding**

5.4.1 The Bidders shall be responsible for all of the costs associated with the preparation of their Bids and their participation in the tender process. The Nominated Authority will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the tender process.

**5.5 Verification of information by the Bidders**

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

- a) made a complete and careful examination of the Tender Document and unconditionally and irrevocably accepted the terms thereof;
- b) reviewed all relevant information provided by the Nominated Authority, as may be relevant to the Bid;
- c) accepted the risk of inadequacy, error or mistake in the information provided in the Tender Document or furnished by or on behalf of the Nominated Authority relating to any of the matters related to the auction process or the Coal Mine;
- d) satisfied itself about all matters regarding the auction process and the Coal Mine required for submitting an informed Bid, in accordance with this Tender Document and performance of all of its obligations;
- e) acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Tender Document or ignorance of any of the matters related to the auction process or the Coal Mine hereinabove shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits etc. from the Nominated Authority, or a ground for termination of the Agreement by the Successful Bidder; and
- f) agreed to be bound by the undertakings provided by it under and in terms hereof.

5.5.2 The Nominated Authority shall not be liable for any omission, mistake or error in respect of any of the information provided or on account of any matter or thing arising out of or concerning or relating to the Tender Document, the Tender Document or the tender process, including any error or mistake therein or in any information or data given by the Nominated Authority.

## **5.6 Verification by the Nominated Authority and Disqualification**

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

5.6.2 The Nominated Authority reserves the right to reject any Bid and appropriate the entire Bid Security if:

- a) at any time, a misrepresentation is made or uncovered,
- b) the Bidder does not provide, within the time specified by the Nominated Authority, the supplemental information sought by the Nominated Authority for evaluation of the Bid, or

- c) any act or omission of the Bidder results in violation of or non-compliance with the Act, the Rules, this Tender Document, the Agreement or any other document referred therein or issued pursuant thereto or any Applicable Law relevant for the tender process or mining of coal.
- 5.6.3 The rejection of a bid under Clause 5.6.2 shall lead to the disqualification of the Bidder for participating in any auction or allotment conducted by the Nominated Authority for a period of one year starting from the date of appropriation of the Bid Security or any other earlier date specified by the Nominated Authority ("**Disqualification**"). Such Disqualification would also extend to each of the JV Partners in case the Bidder is a joint venture Company. In such cases, the Nominated Authority reserves the right to take any such measure as may be deemed fit in the sole discretion of the Nominated Authority, including annulment of the tender process
- 5.6.4 In the event that at any time after execution of the Agreement it is discovered that one or more disqualification conditions specified in Clause 5.6.2 were met, or any of the Eligibility Conditions have not been met by the Successful Bidder, then the Agreement shall be terminated and the Vesting Order (if issued) shall be cancelled and withdrawn. In such case, the Successful Bidder shall also be disqualified from participating in any auction/ allotment conducted by the Nominated Authority for a period of one year from the date of termination of the Agreement.
- 5.6.5 In the aforementioned events, the Nominated Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, without prejudice to any other right or remedy that may be available to the Nominated Authority under the Tender Document and/ or the Agreement, or otherwise, without any liability whatsoever.

## **5.7 Utilisation of Coal**

- 5.7.1 The Successful Bidder shall not be permitted to use the coal extracted from the Coal Mine for any purposes other than utilisation in the Specified End Use Plant. Any middling or washery rejects generated from the Coal Mine may be utilised in any captive power plant of the Successful Bidder.
- 5.7.2 Notwithstanding anything contained in this Tender Document, the Successful Bidder shall utilise a minimum of 75% of the actual production (ROM basis) in the specified end use plants and is allowed to sell upto 25% of the actual production (ROM basis) in open market. No additional premium will be charged on such sale in the open market.
- 5.7.3 Any washery rejects and middlings generated from the Coal Mine which cannot be utilised in the manner specified hereinabove may be sold by the Successful Bidder, only with the prior approval of the Coal Controller's Organisation.
- 5.7.4 In such case, the Successful Bidder shall maintain separate records for the middling or washery rejects generated, utilised and sold. However, the middling or washery rejects generated from the Coal Mine should in no event, exceed the normative limits. The normative limits for this purpose shall be decided as per the results of the washability test conducted by National Accreditation Board for Testing and Calibration Laboratories (NABL)

certified laboratory. The Nominated Authority and/or Central Government shall reserve the right to conduct a separate washability test for this purpose. The Successful Bidder shall be required to bear the cost of such washability test and the test report shall be submitted within one month from the start of coal production from the Coal Mine.

Utilisation of coal for any other Specified End Use Plant of the Successful Bidder or its subsidiary shall also be permitted in accordance with Rule 20 of the Rules. Additionally, the Successful Bidder shall also be permitted to enter into arrangements for optimal utilisation of the Coal Mine in accordance with Rule 19 of the Rules.

- 5.7.5 Any coal which is extracted in excess of the requirement of the Bidder in terms of this Tender Document shall be required to be sold to CIL at the terms and conditions specified at Clause 5.7.7. Provided however, such sale should not exceed 50% of the annual coal production from the Coal Mine.
- 5.7.6 Any non-compliance with the aforementioned requirement shall result in cancellation of the Agreement, the Vesting Order and the Mining Lease or, notification under Section 11 (1) of the Coal Bearing Areas (Acquisition and Development) Act, 1957, as the case maybe; and appropriation of the Performance Security.
- 5.7.7 Sale of coal, as the case may be, to CIL shall be on the following terms & conditions:
- (i) Successful Bidder 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 Successful Bidder, 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) Successful Bidder 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 Successful Bidder and/or the purchase, as the case may be.
  - (vii) Responsibility in adhering to all statutory rules of the State and Central Government on environmental, safety etc. would be with the Successful Bidder.
  - (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 Successful Bidder 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 Successful Bidder 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 analysed grade less 15 percent of such CIL Notified Price plus applicable tax.

- (x) CIL shall make the payment to the Successful Bidder only after full reconciliation of its bill with the purchaser.

## **5.8 Amendment of Tender Document**

- 5.8.1 At any time prior to the Bid Due Date, the Nominated Authority may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the Tender Document by the issuance of an Addendum and/or Corrigendum.
- 5.8.2 Any clarification, Addendum and/or Corrigendum issued hereunder will be in writing and shall be accessible to all the Bidders and shall be deemed to be part of the Tender Document. Any verbal clarification shall not be binding on Nominated Authority.
- 5.8.3 In order to afford the Bidders a reasonable time for taking an Addendum and/or Corrigendum into account, or for any other reason, the Nominated Authority may, in its sole discretion, extend the Bid Due Date in accordance with Clause 5.10.

## **5.9 Preparation and Submission of Bids**

- 5.9.1 The Bids shall be submitted in accordance with the process specified in **Annexure II** (*Technical Details with respect to electronic auction*).

## **5.10 Bid Due Date and Extension**

- 5.10.1 Technical Bids should be submitted/ uploaded before 1400 hours IST on the Bid Due Date in accordance with the process specified in **Annexure II** (*Technical Details with respect to electronic auction*).
- 5.10.2 The Nominated Authority may, in its sole discretion, extend the Bid Due Date by issuing an Addendum and/or Corrigendum in accordance with Clause 5.8 uniformly accessible for all Bidders.

## **5.11 Late Bids**

- 5.11.1 Technical Bids received by the Nominated Authority after the specified time on the Bid Due Date shall not be eligible for consideration and shall be summarily rejected.

## **5.12 Modifications/ Substitution/ Withdrawal of Bids**

- 5.12.1 The Bidder may modify, substitute or withdraw its Technical Bid after submission, provided that written notice of the modification, substitution or withdrawal is received by the Nominated Authority prior to the Bid Due Date in accordance with the process specified in **Annexure II**. No Technical Bid shall be modified, substituted or withdrawn by the Bidder after the specified time on the Bid Due Date.



5.12.2 Any alteration or modification in the Technical Bid or additional information supplied subsequent to the Bid Due Date, unless the same has been expressly sought for by the Nominated Authority, shall be disregarded.

### **5.13 Rejection of Bids**

5.13.1 Notwithstanding anything contained in this Tender Document, the Nominated Authority reserves the right to reject any Bid and/or to annul the tender process and reject all Bids at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons thereof. In case such cancellation is pursuant to non-compliance by the relevant Bidders vis-à-vis submissions of Bid then the Nominated Authority reserves the right to appropriate the relevant Bid Security submitted by such non-compliant Bidders.

5.13.2 The Nominated Authority reserves the right not to proceed with the tender process at any time, without notice or liability, and to reject any Bid without assigning any reasons.

5.13.3 Without prejudice to the generality of the foregoing, the Nominated Authority reserves the right to reject any Bid on any criteria specified in this Tender Document, including without limitation, the following:

- a) Bids have not been submitted with all the information and details listed in this Tender Document.
- b) Bid is non responsive in terms of Clause 3.4.
- c) Bids have been submitted without Bid Security and/or Transaction Fee Security or period of validity.
- d) Bids have otherwise not been submitted in accordance with the Tender Document.

### **5.14 Validity of Bids**

5.14.1 The Bids shall be valid for a period of not less than 180 (one hundred and eighty) days from the Bid Due Date. The validity of Bids may be extended by mutual consent of the respective Bidders and the Nominated Authority.

5.14.2 In the event that pursuant to the tender process a Bidder has been declared to be the Preferred Bidder or the Successful Bidder, then the validity of Bids submitted by such Preferred Bidder or Successful Bidder shall stand extended by the mutual consent of the Preferred Bidder or the Successful Bidder, as the case may be and the Nominated Authority.

## 6 Bid Security and Transaction Fee Security

### 6.1 Bid Security

- 6.1.1 The Bidder shall furnish as part of its Technical Bid, a security in the form of a bank guarantee by an Acceptable Bank, in favour of the Nominated Authority in substantially the same format as prescribed at **Annexure VIII** (the “**Bid Security**”) and having a validity period of not less than 240 (two hundred and forty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, and may be substituted with another bank guarantee of the same value issued in accordance with this Clause 6, which is valid for an extended period as may be mutually agreed between the Nominated Authority and the Bidder from time to time.
- 6.1.2 The Bid Security shall be for an amount of INR [●] (Indian Rupees [●]).
- 6.1.3 Save and except as provided in this Tender Document, the Bid Security of unsuccessful Bidders will be returned by the Nominated Authority, without any interest, as promptly as possible on issuance of Vesting Order or when the tender process is cancelled by the Nominated Authority.
- 6.1.4 The Successful Bidder’s Bid Security will be returned, without any interest, upon the signing of the Agreement and furnishing of the Performance Security in accordance with the provisions thereof.
- 6.1.5 The Nominated Authority shall be entitled to forfeit and appropriate the Bid Security as damages, *inter-alia* in any of the events specified in this Tender Document. The Bidder, by submitting its Bid pursuant to this Tender Document, shall be deemed to have acknowledged and confirmed that the Nominated Authority will suffer loss and damage on account of withdrawal of its Bid or for any other default by the Bidder during the period of Bid validity as specified in this Tender Document. No relaxation of any kind on Bid Security shall be given to any Bidder.
- 6.1.6 The Bid Security shall be forfeited as damages without prejudice to any other right or remedy that may be available to the Nominated Authority under the Tender Document and/or under the Agreement, or otherwise, under, *inter-alia*, the following conditions:
- a) If a Bidder submits a non-responsive Technical Bid;
  - b) If a Bidder engages in a Corrupt practice, Fraudulent practice, Coercive practice, Undesirable practice or Restrictive practice as specified in Clause 8 of this Tender Document;
  - c) If a Bidder withdraws its Bid during the period of Bid validity as specified in this Tender Document or as extended by mutual consent of the respective Bidder(s) and the Nominated Authority;
  - d) In the case of Successful Bidder, if it fails within the specified time limit -
    - (i) to sign the Agreement; or

(ii) to furnish the Performance Security and make payment of the Fixed Amount and Upfront Amount within the period prescribed in this Tender Document.

e) In the case of Qualified Bidder(s) who has submitted the highest Initial Price Offer i.e. the Applicable Floor Price, if the auction process is annulled due to non-submission of at least 1 (one) Final Price Offer on the electronic auction platform.

## **6.2 Transaction Fee Security**

6.2.1 The Bidder shall furnish as part of its Technical Bid, a security in the form of a bank guarantee by an Acceptable Bank, in favour of the Nominated Authority in substantially the same format as prescribed at **Annexure IX** (the “**Transaction Fee Security**”) and having a validity period of not less than 300 (three hundred) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, and may be substituted with another bank guarantee of the same value issued in accordance with this Clause 6, which is valid for an extended period as may be mutually agreed between the Nominated Authority and the Bidder from time to time.

6.2.2 The Transaction Fee Security shall be for an amount of INR 17,70,000 (Indian Rupees Seventeen Lakh and Seventy Thousand).

6.2.3 Save and except as provided in this Tender Document, the Transaction Fee Security of unsuccessful Bidders will be returned by the Nominated Authority, without any interest, as promptly as possible on issuance of Vesting Order or when the tender process is cancelled by the Nominated Authority.

6.2.4 The Successful Bidder’s Transaction Fee Security will be returned, without any interest, upon the issuance of Vesting Order.

6.2.5 The Nominated Authority shall be entitled to forfeit and appropriate the Transaction Fee Security as damages, in case of non-execution of Agreement and/or non-issuance of Vesting Order due to failure on part of the Successful Bidder. The Bidder, by submitting its Bid pursuant to this Tender Document, shall be deemed to have acknowledged and confirmed that the Nominated Authority will suffer irreparable loss on account of non-execution of Agreement and/or non-issuance of Vesting Order due to failure on part of the Successful Bidder. No relaxation of any kind on Transaction Fee Security shall be given to any Bidder.

6.2.6 The Transaction Fee Security shall be forfeited as damages without prejudice to any other right or remedy that may be available to the Nominated Authority under the Tender Document and/ or under the Agreement, or otherwise, under, *inter alia*, in the event that the Successful Bidder fails within the specified time limit -

(i) to sign the Agreement; or

(ii) to furnish the Performance Security and make payment of the Fixed Amount and Upfront Amount within the period prescribed in this Tender Document.

## 7 Performance Security

### 7.1 Performance Security

7.1.1 The Successful Bidder shall provide to the Government an irrevocable and unconditional guarantee from an Acceptable Bank, for the performance of its obligations within such time as specified in Clause 3.8. The Performance Security shall be an amount which is aggregate of: (a) 1 (one) year royalty to be computed on the basis of peak rated capacity of the Coal Mine as per the approved Mine Plan, payable to respective State Government with respect to the Coal Mine; and (b) the annual peak rated capacity of the Coal Mine as per the approved Mine Plan multiplied by the Final Price Offer based on which the Successful Bidder has been selected. The Performance Security shall be in substantially the form as provided in the Agreement. For the purpose of computation of the amount of Performance Security, 90% of peak rated capacity shall be considered in case of opencast mines and 80% of peak rated capacity shall be considered in case of underground mines.

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

- a) Every financial year, upon publication of the Reference Index for the month of April, the amount of Performance Security shall be revised on the basis of revision to the amount of Final Price Offer used for computation of the Performance Security. For the purposes of computation of revised Performance Security, the amount of Final Price Offer shall stand revised by the per cent increase or decrease, as applicable, of the Reference Index on a year-on-year basis. It is clarified that for the purposes of adjustment (upward or downward, as applicable in a subsequent financial year, the revised Final Price Offer of the immediately preceding year shall be considered. The Reference Index published for the month of April of the relevant financial year shall be used for computing the annual adjustment (upward or downward, as applicable). The subject revision would be applicable after the issuance of the Vesting Order;

*Provided however,* in case the revised Final Price Offer on account of above mentioned adjustment becomes lower than the Final Price Offer pursuant to which the Successful Bidder has received the Vesting Order, then for the purposes of computation of revised Performance Security, the revised Final Price Offer for that year shall be equal to the Final Price Offer pursuant to which the Successful Bidder has received the Vesting Order.

Illustration: Solely for the purpose of reference of the Bidders, the methodology of annual adjustment of Performance Security is illustrated below:

In case the Final Price Offer pursuant to which the Successful Bidder has received the Vesting Order is Rs. 2000 per tonne and the date of issuance of Vesting Order is January 31, 2018. The Reference Index i.e. Wholesale Price Index for the month of January 2018 is 190. Annual adjustment in the Final Price Offer for FY 2018-19 shall be estimated in the following manner: Assuming the Wholesale Price Index for April 2018 becomes 200, the revised Final Price Offer shall be Rs. 2105.26 per tonne (i.e. Final Price Offer \* Reference Index for April 2018/Reference Index for January 2018)

and the amount of Performance Security for FY 2018-19 shall be estimated on the basis of revised Final Price Offer of Rs. 2105.26 per tonne.

However, in case in the abovementioned mentioned example, Wholesale Price Index for April 2018 becomes 180, then the revised Final Price Offer shall be Rs. 1894.74 per tonne i.e. lower than the Final Price Offer of Rs. 2000 per tonne pursuant to which the Successful Bidder has received the Vesting Order. Therefore, in such a case, the amount of Performance Security for FY 2018-19 shall be estimated on the basis of Final Price Offer of Rs. 2000 per tonne i.e. on the basis of Final Price Offer pursuant to which the Successful Bidder has received the Vesting Order.

- b) 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 7.1.2 (e); and/or
- c) In case of any revision in rate of royalty, the amount of Performance Security shall be revised accordingly. Such revision shall take place at the beginning of the financial year which is subsequent to the financial year in which the rate of royalty is revised, as stipulated in Clause 7.1.2 (e); and/or
- d) In case of any revision in the Mine Plan in accordance with Clause 9.1, 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 7.1.2 (e).
- e) 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 7, within a period of 30 (thirty) days from the beginning of financial year i.e. by April 30 of every year, in case of revision under each of sub-clause (b), (c) and (d) above. In case of revision under sub-clause (a), the bank guarantee constituting the Performance Security shall be substituted with another bank guarantee of the revised value issued in accordance with this Clause 7, within a period of 30 (thirty) days from the publication of the Reference Index for the month of April for the relevant financial year.

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.

7.1.3 The Performance Security should remain valid for such duration as specified in the Agreement

**7.1.4 Appropriation of Performance Security**

The Performance Security may be appropriated by the Nominated Authority in the manner specified in the Agreement.



## **8 Fraud and Corrupt Practices**

- 8.1.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the tender process and subsequent to the issue of the Vesting Order and during the subsistence of the Agreement. Notwithstanding anything to the contrary contained herein, or in the Vesting Order or the Agreement, the Nominated Authority may reject a Bid, withdraw the Vesting Order, or terminate the Agreement, as the case may be, without being liable in any manner whatsoever to the Bidder, Qualified Bidder, Preferred Bidder, or the Successful Bidder, as the case may be, if the Nominated Authority determines that the Bidder, Qualified Bidder, Preferred Bidder, or Successful Bidder, as the case may be, has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the tender process. In such an event, the Nominated Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as damages, without prejudice to any other right or remedy that may be available to the Nominated Authority under the Tender Document and/ or the Agreement, or otherwise.
- 8.1.2 Without prejudice to the rights of the Nominated Authority under Clause 8.1.1 hereinabove and the rights and remedies which the Nominated Authority may have under the Vesting Order or the Agreement, or otherwise if a Bidder, Preferred Bidder or Successful Bidder, as the case may be, is found by the Nominated Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the tender process, or after the issuance of the Vesting Order or the execution of the Agreement, such Bidder, Preferred Bidder or Successful Bidder shall not be eligible to participate in any process undertaken by the Nominated Authority for auction or allotment of any Schedule I coal mine (as defined in the Act) during a period of 1 (one) year from the date such Bidder, Preferred Bidder or Successful Bidder, as the case may be, is found by the Nominated Authority to have directly or indirectly or through an agent, engaged or indulged in any Corrupt Practice, Fraudulent Practice, Coercive Practice, Undesirable Practice or Restrictive Practices, as the case may be.
- 8.1.3 For the purposes of this Clause 8, the following terms shall have the meaning hereinafter respectively assigned to them:
- a) **“Corrupt Practice”** means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the tender process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Nominated Authority who is or has been associated in any manner, directly or indirectly, with the tender process or the Vesting Order or has dealt with matters concerning the Agreement or arising therefrom, before or after the execution thereof, at any time prior to the expiry of 1 (one) year from the date such official resigns or retires from or otherwise ceases to be in the service of the Nominated Authority, shall be deemed to constitute influencing the actions of a person connected with the tender process); or (ii) save and except as permitted under this

Tender Document, engaging in any manner whatsoever, whether during the tender process or after the issue of the Vesting Order or after the execution of the Agreement, as the case may be, any person in respect of any matter relating to the Coal Mine or the Vesting Order or the Agreement, who at any time has been or is a legal, financial or technical adviser of the Nominated Authority in relation to any matter concerning the Coal Mine;

- b) **“Fraudulent Practice”** means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the tender process;
- c) **“Coercive Practice”** means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the tender process;
- d) **“Undesirable Practice”** means (i) establishing contact with any person connected with or employed or engaged by the Nominated Authority with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the tender process; (ii) having a conflict of interest; or (iii) violating of any Applicable Law; and
- e) **“Restrictive Practice”** means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the tender process.



## **9 Other Provisions**

### **9.1 Revision in Mine Plan upon allocation and Flexibility in Production**

- 9.1.1 Upon allocation of Coal Mine, the Successful Bidder 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.

### **9.2 Flexibility in Production**

- 9.2.1 The Successful Bidder shall produce coal not below 80% of scheduled production in a year in opencast mine and not below 70% in case of underground mine subject to the condition that Successful Bidder shall not produce coal less than 90% of scheduled production in any five year block in opencast mine and 80% in case of underground mine. It is clarified that five year block shall be counted from the first financial year of commencement of production in the Coal Mine.

### **9.3 Miscellaneous**

- 9.3.1 The tender process shall be governed by, and construed in accordance with, the laws of India and the dispute resolution shall be subject to the Act.
- 9.3.2 The Nominated Authority, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;
- a) suspend and/ or cancel the tender process and/ or amend and/ or supplement the tender process or modify the dates or other terms and conditions relating thereto;
  - b) consult with any Bidder in order to receive clarification or further information;
  - c) retain any information and/ or evidence submitted to the Nominated Authority by, on behalf of, and/ or in relation to any Bidder; and/ or
  - d) independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Bidder.
- 9.3.3 It shall be deemed that by submitting the Bid, the Bidder agrees and releases the Nominated Authority, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder, pursuant hereto and/ or in connection with the tender process and waives, to the fullest extent permitted by Applicable Laws, any and all rights and/or claims it may have in this respect, whether actual or contingent, whether present or in future.
- 9.3.4 **Proprietary data**  
All documents and other information supplied by a Bidder to the Nominated Authority shall remain or become the property of the Nominated Authority. It will not return any Bid or any information provided by the Bidder.



## 10 Annexures

### 10.1 Annexure I: Information for Computing Eligibility on the basis of Coal Requirement

The following information to be used for the purpose of computing eligibility in accordance with clause 4.1.2 (b) the Tender Document:

1. **Average Grade of Coal** : [●]
2. **Extractable Reserves** : [●] Million Tonnes

#### **Important Notice**

The above figures for average grade of coal and Extractable Reserves are being provided for the purpose of eligibility determination only and no warranty is being made either explicit or implied with respect to the actual grade of coal or extractable reserves which the Successful Bidder may be able to extract. The Bidders are encouraged to undertake necessary due diligence to form their opinion about the same.

#### **3. Coal Consumption Norms**

For CPP, the coal consumption norm given is on per annum basis at 85% PLF. For estimating their eligibility, Bidders will have to calculate their coal requirement for 30 years.

For steel and cement, the coal consumption given is on kg/tonne basis. For estimating their eligibility, Bidders will have to calculate their coal requirement for 30 years at 85% capacity utilisation.

Grade	Captive Power (tonnes of coal/MW/annum)					Steel (kg of coal/tonne of DRI)	Cement (kg of coal/tonne of clinker)	
	Sub Critical Technology							Super Critical Units \$
	Less than 50 MW	50 MW to less than 100 MW	100 MW to less than 200 MW	200 MW to less than 250 MW @	250 MW and above \$			
	Unit Heat Rate (kCal / kWh)#							
	2770	2770	2615	2500	2375	2250		

# In case of power projects where approved heat rate by the Regulator is higher than above considered values, the Heat Rate approved by the Regulator would be considered for the purpose of working out normative coal requirement.

@ In case of main steam pressure 150 ata or above the Unit Heat rate shall be reduced by 100 kcal/kWh.

§ In case of units having Motor Driven Boiler Feed Pump (MDBFP) of 500 MW and above size units including super critical units the Unit Heat Rate shall be reduced by 50 kcal/kWh.

**Note:** For the purpose of determination of eligibility on the basis of coal requirement as per Clause 4.1.2 (b), coal requirement shall be considered only for the abovementioned specified end-uses.

1. For the sake of clarity, it is mentioned that where specified end-use is production of iron and steel, capacity of DRI plant as mentioned above shall be considered for determination of eligibility on the basis of coal requirement. Coal requirement of any other upstream and downstream products and corresponding plants like rolling mill, sinter plant, producer gas plant, iron ore pellets, ferro alloys, rolled and structural steel, other steel products, washery and transit losses, etc. shall not be considered for the purpose of determination of eligibility.
2. It is clarified that where captive power is utilised for the production of iron & steel as end-use including production of upstream and downstream products, then total coal requirement for such captive power plant can be considered for the purpose of determination of eligibility.
3. While iron & steel and captive power generation are separate end-uses, if captive power is utilised for the production of iron & steel as end-use including production of upstream and downstream products, then total coal requirement to be considered for the purpose of determination of eligibility shall be the aggregate of coal requirement for production of iron and steel as specified in point no. 1 above and coal requirement for generation of power for captive use as specified in point no. 2 above.
4. While cement and captive power generation are separate end-uses, if captive power is utilised for the production of cement as end-use, then total coal requirement to be considered for the purpose of determination of eligibility shall be the aggregate of coal requirement for production of cement and coal requirement for generation of captive power.

## **10.2 Annexure II - Technical Details with respect to electronic auction.**

### **1. Registration Methodology & Adding End Use Plants (EUPs):**

(a) **Registration:** In order to submit Bids for the Coal Mine, a Bidder would be required to register itself with the e-auction website of MSTC. For this the Bidder should visit the Coal Mine Allocation website of MSTC “<http://www.mstcecommerce.com/auctionhome/coalblock/index.jsp>” and click on the button “**Registration**”.

An online Registration Form will appear on screen and Bidder would be required to fill up the same. During this process, Bidder would be required to create its “user id” and “password” and keep note of the same. Bidder should ensure that the secrecy of its user id and password is maintained at all time and Bidder shall alone be responsible for any misuse of the user id and password. Bidder may also refer to the “Bidder’s Guide” available online in the above mentioned website for assistance. On successful submission of the online registration Form, Bidder shall receive a confirmation e-mail at the registered email address advising the Bidder to submit the following documents:

1. Self attested Income Tax PAN Card.
2. Two passport size photographs of the Authorized Signatory.
3. Letter of Authorization from Chairman/MD/Directors/CEO/Company Secretary of a Bidder in favour of the Authorized Signatory in the standard format available in the website. The Authorized Signatory shall be the person who shall be responsible for submission of Bid. For this purpose, the Authorized Signatory will need to be in possession of a Class III signing type digital signature issued by an Indian certifying authority, the details of which shall be provided in this authorization letter.
4. Proof of Identity of the Authorized Signatory in the form of Company ID Card/PAN Card/Voter ID Card
5. In case of Joint Venture company the copy of the JV/Consortium Agreement.
6. Copy of the confirmation email.

Bidder shall be required to submit all the above documents to MSTC for verification and activation of their account. Bidders may send scanned copies of the aforementioned documents to the following designated email address: [coalblock@mstcindia.co.in](mailto:coalblock@mstcindia.co.in)

It may be noted that Bidders need not visit any of the offices of MSTC for submission of the aforementioned documents. However, the Bidders may contact the following offices of MSTC for seeking assistance on the login or registration process.

MSTC Limited E-Commerce Division 225-F, A.J.C Bose Road, 2nd Floor Kolkata -700 020	MSTC Limited Northern Regional Office 30/31A Jeevan Vikas Building, 1st Floor, Asaf Ali Road (opp. Hamdard), New Delhi - 110 002	MSTC Limited Western Regional Office 607-608 Raheja Centre, Nariman Point, Mumbai - 400 021.
--	--	--

Once the complete set of aforementioned documents is electronically received from a Bidder, MSTC shall activate such Bidder's login after verification / scrutiny of the documents. MSTC reserves the right to call for additional documents from the Bidder if required, prior to registration and activation of the Bidder's login.

On completion of the above stated registration process, a Bidder shall be able to log in to MSTC's website.

It is clarified that Bidders who wish to submit more than one Bid for the same Coal Mine subject to Eligibility Conditions, are required to have a separate MSTC registration with respect to each such Bid.

Bidders who have registered as **independent Company** with MSTC website for earlier tranches of coal mine auction/allotment need not register again. **The Joint Venture Companies who had registered prior to September 2018 have to register fresh by selecting the name of the JV partners and they have to participate with the new registration only.**

b. **Adding End Use Plants (EUPs):** The registered independent company has to add their End Use Plants (EUPs) by clicking "Add EUP" link. The Joint Venture Companies are not allowed to add EUPs. The partners of the JV Company have to add their EUPs through their respective logins.

## 2. Downloading information about coal mines

There are two sets of documents available for downloading from the website of MSTC.

First set of documents will be available free of cost and can be downloaded without registration on MSTC's website. These documents may include the following:

(a) Standard Tender Document; and

(b) Mine summaries

The above information would be made available free of cost to all potential Bidders in order to assist the potential Bidders to make a determination regarding their participation in the tender process. Based on such determination, potential Bidders may decide to participate in the tender process with respect to one or more coal mines and purchase detailed mine-wise information.

Certain other detailed documents shall be paid documents and can be downloaded only subsequent to payment of a fee of Rs 5,00,000/- per coal mine per Bid and such documents will

be available after a Bidder logs in. Therefore, Bidders need to complete the registration process with MSTC to be able to download such documents.

Bidders shall login with its user id and password. Bidder shall have the facility to make payment towards the documents through the link e-Payment provided under the login of the Bidder. Payment for multiple mines can be made through a single transaction. The Bidder should fill an online RTGS application form and take a printout of the same before proceeding to transfer the fund to the beneficiary account. In case the Bidder has an online banking facility, it can make this payment online as well. After transferring the fund, the Bidder shall be required to communicate the UTR No and other details to MSTC through email at: [coalblock@mstcindia.co.in](mailto:coalblock@mstcindia.co.in).

Once MSTC receives the payment in the designated account as specified in the RTGS application form, it shall activate the link for downloading of the paid documents for the respective coal mine(s).

The Bidder may note that the files containing information about the coal mines can be in various formats like doc, xls, ppt, pdf, jpg, jpeg, zip etc and it shall be the responsibility of the Bidder to have suitable facilities at its end to download the uploaded files.

### **3. Preparation and Submission of Bid**

The complete process of bid submission will be divided into 2 stages as follows:

#### **a. Stage 1: Technical Bid**

This stage will comprise of (i) online submission of the Technical Bid and the Financial Bid to the extent of the Initial Price Offer; and (ii) offline submission of certain original documents as detailed below.

##### ***(i) Online submission of Technical Bid and Initial Price Offer with supporting documents***

This stage shall be open to all Bidders who have purchased the paid document(s) for the specific coal mine(s). In this process, the Bidder, after logging in to the above stated website, will have to click on the link "View Details". In the next page, the Bidder shall have to go to the link "Stage 1 Bid Submission". Thereafter, the Bidder will have a bouquet under "My Menu" having 3 (three) sub-menus – "Bid Floor Manager", "Upload Documents" and "Attach Documents".

##### ***Bid Floor Manager***

Once the Bidder clicks on this sub-menu, it will display a list of mine(s) for which the Bidder has paid the fees for downloading the paid documents. On clicking on any of these mine(s), a pop-up message will appear on the screen displaying the

list of End Use Plant/s already added by the bidder Company. The bidder has to select the End Use Plant/s to submit bid for the Coal Mine. After selection of the End Use Plant/s the Bidder will be directed to a screen where it can fill up the technical bid template and save the data. The Bidder can edit such data as many times as it wishes till the final submission is made by clicking the “Final Submission” button.

After saving the Technical Bid, the link / button for Initial Price Offer shall get activated. The Bidder, on clicking this button, will be directed to a screen having a template where it can fill up its Initial Price Offer in INR per tonne of coal extracted and save the same. The Bidder can edit such data as many times as it wishes till the final submission is made by clicking the “Final Submission” button. The final submission of Technical Bid and the Initial Price Offer shall be digitally signed by the Bidder using the digital signature the use of which has been duly authorized on behalf of the Bidder and which was used at the time of registration. Any digital signature certificate other than the above shall not be acceptable for bid submission by the system.

*The Bidder may note that the “Final Submission” button for both Technical Bid and Initial Price Offer is common and will be activated only after both the Technical Bid and the Initial Price Offer have been saved. If the bidder wants to change the End Use Plant selected for the mine, the entire bid has to be deleted after Final Submission and the bid can be resubmitted within the schedule time.*

#### **Upload Documents**

The Bidder shall also have to upload the supporting documents along with the Technical Bid, as required under the Tender Document. These supporting documents will need to be uploaded in pdf format only (the file size should be limited to 4 MB; in case of larger files, they may be split into multiple files with suitable nomenclature). Files in formats other than pdf shall not be accepted. For this, the Bidder shall first click on the link “Upload documents” and upload the files in support of its Technical Bid.

#### **Attach Documents**

After uploading these documents, the Bidder shall have to attach them with the specific mine(s) for which it is intending to submit the Technical Bid. It may be noted by the Bidder that in case it intends to use the same supporting document for more than one mine, it does not need to upload the same document every time. The supporting document, once uploaded, can be attached with Technical Bid for multiple mine(s), if desired.

***The Bidder should note that only a file which is “attached” with a specific mine(s) shall be considered during evaluation of the Technical Bid. Files which are not attached to any mine(s) shall not be considered for evaluation.***



***The Bidder should also note that a Bid will be considered as submitted if and only if the Bidder has clicked on the “Final Submission” button. Only such Bids will be opened which have been finally submitted. It is further clarified that saving of Technical Bid and the Initial Price Offer without final submission will be treated as non submission of bid.***

Upon successful final submission, the Bidder shall receive a bid acknowledgement from the system automatically.

The Bidders may note that the Technical Bid and the Initial Price Offer submitted online as above will be encrypted by MSTC’s own software before storage in the database. This will be done to protect the sanctity and confidentiality of the Bids before the actual opening of the same.

### **Modification / Withdrawal of Bid**

If after final submission of Bid and before the scheduled closing time for Bid submission a Bidder wishes to make changes in its Bid, it can do so by clicking the "Delete Bid" option. By doing so, the entire Bid submitted by the Bidder will get deleted. A system generated email will be sent to the Bidder acknowledging the deletion. The Bidder will be able to save and submit its new Bid again. If a Bidder deletes its Bid and does not submit its new Bid in the same manner as stated above, its Bid will not come up for opening or further processing.

If after final submission of Bid and before the scheduled closing time for Bid submission a Bidder wishes to withdraw its bid, it can do so by clicking the "Withdraw Bid" option. By withdrawing a bid, a Bidder will lose the opportunity to re-submit its Bid against the same mine(s).

#### **(ii) Offline submission of certain original documents**

The Bidders shall have to submit the following documents in original in sealed cover within the scheduled closing time for bid in accordance with Schedule 3.8. The sealed cover should clearly bear the following identification: *Original Documents (Technical Bid) for [insert name of the Coal Mine]* and shall indicate the name, MSTC Registration No. and address of the Bidder. In addition, the documents shall contain page numbers: *Page [●] of [●]*

- (a) Bid Security in substantially the same format as provided in Annexure VIII and Transaction Fee Security in substantially the same format as provided in Annexure IX;
- (b) Power of Attorney in substantially the same format as provided in Annexure V;
- (c) Certified extract of the charter documents and certified true copy of the documents such as a board or shareholders resolution authorizing the execution of this power of attorney; and
- (d) Affidavit in substantially the same format as provided in Annexure VI.

The aforementioned documents shall be submitted at the following address:

The Nominated Authority  
Ministry of Coal  
Room No. 120, F-Wing,  
1<sup>st</sup> Floor, Shastri Bhawan  
New Delhi – 110001

***Deadline for online submission of (i) Technical Bid and the Initial Price Offer with supporting documents; and (ii) offline submission of certain original documents***

The Bidders shall also note that online submission of ***Technical Bid and the Initial Price Offer*** with supporting documents and offline submission of certain original documents shall be allowed only up to time specified in Clause 3.8.1. Bidders in their own interest are advised to complete the entire process well in advance to avoid any last minute hiccup / technical problems. No complaints shall be entertained in this regard at any stage.

**(iii) Evaluation of Technical Bid**

**a. Evaluation of Technical Bid**

Technical Bids shall be evaluated in the manner provided in the Tender Document.

**b. Opening of Initial Price Offer**

Initial Price Offers (IPOs) shall be opened 1 (one) day before the scheduled date of e-auction of the respective Coal Mine. For example, IPO for coal mine(s) scheduled for e-auction on 29.05.2017 will be opened on 28.05.2017. All Technically Qualified Bids will be ranked in accordance with Clause 3.3.2(b) and the determination of Qualified Bids and Qualified Bidders shall be made in accordance with Clause 3.3.2(b). Only the Qualified Bidders shall be intimated about their qualification for participation in electronic auction through notification on MSTC website within their secured login as well as a system generated email. Such intimation shall be sent 2 hours prior to the scheduled start of e-auction. The remaining Technically Qualified Bidder (i.e. Technically Qualified Bidder who is not a Qualified Bidder), if any, should note that it may become a Qualified Bidder if one or more of the original Qualified Bids become ineligible to bid as per Clause 4.1.2(b).

**b. Stage 2: electronic auction – Final Price Offer**

**a. Intimation to Qualified Bidders**

The Qualified Bidders will be intimated about their qualification for electronic auction against specific mine(s) in accordance with Clause 10.2 Annexure II – 3.a.(iii)(b), through notification on MSTC website within their secured login as well as a system generated email. Along with the above intimation, they shall also receive information on Applicable Floor Price for e-auction of the Coal Mine which is the highest Initial Price Offer received from the Technically Qualified Bidders. In certain cases, where considered necessary, the Technically Qualified Bidders may also receive the information on the second highest Initial Price Offer received from the Technically Qualified Bidders. In the event the Bidder(s) who has quoted the Applicable Floor Price is no longer eligible to bid for that Coal Mine, the Applicable Floor Price shall stand revised to second highest Initial Price Offer received from the Technically Qualified Bidder(s).

It is expressly clarified that Bidders should not expect to receive the information on the second highest Initial Price Offer received from the Technically Qualified Bidders as a matter of usual course. It shall be the sole responsibility of the Bidder to regularly check MSTC website and log in to see whether it has qualified for a certain mine or not. MSTC/ Nominated Authority will not be responsible for non-receipt of email by the Bidder and its consequences.



**b. Conduct of e-auction**

E-auction is the process of inviting binding Final Price Offer(s) from Qualified Bidders through internet for the purpose of determination of the Preferred Bidder. During this process, the Qualified Bidder will be able to submit its Final Price Offer as many times as it wishes against the same Coal Mine. It is clarified that a separate Final Price Offer may be submitted against each Qualified Bid. The Qualified Bidder will remain anonymous to other Qualified Bidders participating in the electronic auction process as well as to MSTC / Nominated Authority. The Qualified Bidder will be able to see the prevailing highest Final Price Offer against the Coal Mine, but the name of the highest Qualified Bidder at any point of time will not be displayed. The Qualified Bidder shall have to put its Final Price Offer over and above the displayed highest bid by a minimum increment of Rs 2 per tonne to become the highest Qualified Bidder. The electronic auction process will have a scheduled start and close time which will be displayed on screen. A Qualified Bidder will be able to put its Final Price Offer after the start of bid time and till the close time of electronic auction. The current server time (IST) will also be displayed on the screen. In the event a bid is received during the last 8 (eight) minutes before the scheduled close time of electronic auction, the close time of electronic auction will be automatically extended by 8 (eight) minutes from the last received bid time to give equal opportunity to all other Qualified Bidders. This process of auto extension will continue till there is a period of 8 (eight) minutes during which no Final Price Offer is received.

For example, assuming that the initial scheduled close time for a particular electronic auction is 1:00 pm and a Final Price Offer is received at 12:55 pm, the scheduled close time shall be revised to 1:03 pm. Again if a Final Price Offer is received at 1:01 pm, the scheduled close time shall be revised to 1:09 pm and so on. In the event that there is no further Final Price Offer received till 1:09 pm, the electronic auction will close at 1:09 pm. The revised close time will be displayed on screen and the Qualified Bidders are advised to keep refreshing its webpage to get the latest information.

The above example is only illustrative and meant for guidance only.

During the tender process for electronic auction, the Bidder shall be required to sign their Bids with their respective digital signature certificate (DSC) the use of which has been duly authorized on behalf of the Bidder and which was used at the time of registration. Any digital signature certificate other than the above shall not be acceptable for bid submission by the system.

Bidders in their own interest are advised to get themselves acquainted with the electronic auction process of MSTC by getting their Authorized Representative trained beforehand through some demo electronic -auctions, schedule of which will be declared later on MSTC website.

### **Digital Signature Certificate**

A Bidder shall be required to possess a valid Digital Signature Certificate (DSC) of signing type to be able to submit its Bid and to participate in the electronic auction on MSTC's website. For this purpose, Bidders shall be required to authorize its Authorized Signatory to procure a class III DSC of signing type from any Certifying Authority or their authorized agencies in India.

The competent authority of the Bidder shall be required to issue a Letter of Authority in favour of the Authorized Representative in the standard format provided on the homepage of the website on MSTC mentioning therein the serial number of the DSC of the Authorized Representative. The competent authority shall be one of the following:

- Chairman of the Company
- Managing Director of the Company
- Chief Executive Officer of the Company
- Company Secretary of the Company

The Bidder may note that only 1 (one) user id will be mapped with a given DSC for the Authorised Representative. DSC once mapped with a particular user id of a Bidder will normally not be changed and therefore Bidders are advised to carefully select the DSC before forwarding the same to MSTC for mapping.

The Digital Signature Certificate will be used to digitally sign the Bids that the Bidder will submit online.

It will be the sole responsibility of the Bidder and its respective Authorised Representative to maintain the secrecy of the password for the Digital Signature Certificate. The Bidder and its contact person shall be solely responsible for any misuse of the DSC and no complain / representation in this regard shall be entertained at any stage by MSTC / Nominated Authority.

The Bidder may note that the following configurations will be required to be undertaken in their Internet Explorer browsers for smooth functioning of the website and the e-auction portal.

The system requirements are as follows:

- a) Operating System –Windows 7 and above
- b) Web Browser- Preferred 'IE 8' and above.
- c) Security Settings :
  - i) Tools=>Internet Options=>Security=>Disable protected Mode If enabled-i.e., Remove the tick from the box mentioning "Enable Protected Mode".
  - ii) Tools => Internet Options => Security =>Custom Level=>
    - Active X control & plug-ins: Enable all Active-X Controls
    - Scripting: Enable "Allow Status Bar Update Via Script"

- Disable “Use Pop-up Blocker”
- d) Java: JRE 8 Latest update
- e) Other Settings:
- i) View => Toolbars=> “Tick” Status Bar.
  - ii) Tools=>Internet Options=> General=> Click on Settings under “Browsing history/Delete Browsing History”=> Temporary Internet Files=>Activate “Every time I Visit the Webpage”.
- f) For new Version of IE or other “Active –X Filtering” under Tools should not be ticked.
- g) Tools =>Internet Options=> Security=> Selected Trusted Sites=> Add Website <http://www.mstcecommerce.com>.



### 10.3 Annexure III – Format for Technical Bid

#### Technical Bid of the Bidder

(On the letter head of the Bidder)

Date:

To,

The Nominated Authority  
Ministry of Coal  
Room No. 120, F-Wing,  
1<sup>st</sup> Floor, Shastri Bhawan  
New Delhi - 110001

**Sub: Technical Bid for [Name of] Coal Mine; [insert name and MSTC Registration No. of Bidder]**

Ref: Tender Document dated [insert Date] (“Tender Document”)

Dear Sir,

With reference to the Tender Document we hereby confirm that we satisfy all the Eligibility Conditions prescribed in the Tender Document. Specific confirmations with respect to our compliance with the Eligibility Conditions are provided below:

1. [Insert separate clauses for compliance with each of the Eligibility Conditions listed in Clause 4.1 of the Tender Documents and attach relevant documents to evidence such compliance, including certificates as required from secured creditors and/or statutory auditors].

We hereby acknowledge that if we submit or produce any document and it is discovered subsequently that such document was false or incorrect then we shall be liable under the law for the time being in force.

Sincerely,

.....

Signature of Authorised Signatory:

Name:

Designation:

Company:

Address:

Mobile No.

Ph. No:

Fax:

Email Address:

Date:

Place:

Enclosed: As above.

**Illustration**

For the purposes of illustration, with respect to compliance with Eligibility Conditions listed in Clauses 4.1.2(b) and 4.1.2(c) the following format may be used with respect to each Specified End Use Plant.

Our coal requirement and total project cost has been computed in accordance with the instruction provided in the Tender Document. The unit-wise details of the Specified End Use Plant are indicated below:

Particulars	Capacity (MTPA/ MW)	Configuration # (No. of Units X Unit Size) (TPA/TPD/ MW)	Coal Requirement for 30 years (MTPA) (at 85% PLF/ Capacity Utilization)*
Unit/ Phase I			
Unit/ Phase II			
--			
--			
--			
<b>Total</b>			

\* The Coal Requirement shall be calculated using the consumption norms provided for the Coal Mine in Annexure I.

# In case unit size is between 200-250 MW, please mention the main steam pressure. Further, in case unit size is 500 MW or above, including supercritical unit, please mention if Boiler Feed Pump is Motor Driven or Turbine Driven.

Explanation: Where there is more than one Specified End Use (for example Captive Power Plant, Sponge Iron, Clinker) for each Specified End Use Plant, the above details shall be provided separately for each Specified End Use.

Particulars	Capacity (MTPA/ MW)	Expenditure Incurred as on 30 September 2018 (Rs. Lakhs)	Total Project Cost (Rs. Lakhs)	Percentage Expenditure Incurred
Unit/ Phase I				
Unit/ Phase II				
--				
--				
--				
<b>Total</b>				

Certificates/confirmations with respect to total project cost and expenditure incurred as required under the Tender Document to confirm the aforementioned details are enclosed herewith.

Explanation: Where there is more than one Specified End Use for each Specified End Use Plant, combined project cost and expenditure may be provided for the Specified End Use Plant.

## 10.4 Annexure IV – Letter Comprising the Technical Bid

[To be submitted on Company Letterhead of the Bidder]

Date:

To,

The Nominated Authority  
–Ministry of Coal  
Room No. 120, F-Wing,  
1<sup>st</sup> Floor, Shastri Bhawan  
New Delhi - 110001

**Sub: Technical Bid for [Name of] Coal Mine; [insert name and MSTC Registration No. of Bidder]**

Dear Sir,

With reference to your Tender Document dated [insert date], I, having examined the Tender Document and understood their contents, hereby submit my Technical Bid for the aforesaid Coal Mine. The Bid is unconditional and unqualified.

1. I have reviewed the terms of the Tender Document and hereby unconditionally and irrevocably accept, agree and acknowledge the terms thereof. Capitalised expressions used in this letter have the same meaning as ascribed thereto in the Tender Document.
2. I acknowledge that the Nominated Authority will be relying on the information provided in the Bid and the documents accompanying the Bid for recommendation of the Preferred Bidder and subsequent selection of the Successful Bidder for the aforesaid Coal Mine, and we certify that all information provided therein is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying the Bid are true copies of their respective originals.
3. This statement is made for the express purpose of our participation in the tender process and possible selection as Successful Bidder.
4. I am eligible to participate in the tender process on the basis of the following Specified End Use Plant(s):

#	Name and address of the Specified End Use Plant	Capacity (name plate capacity in MW in case of power projects; MTPA in case of iron and steel plants and cement plants)	Ownership of the Specified End Use Plant	Shareholding of the owner of the Specified End Use Plant in the Bidder (to be provided in case the Bidder is a joint venture company).

#	Name and address of the Specified End Use Plant	Capacity (name plate capacity in MW in case of power projects; MTPA in case of iron and steel plants and cement plants)	Ownership of the Specified End Use Plant	Shareholding of the owner of the Specified End Use Plant in the Bidder (to be provided in case the Bidder is a joint venture company).
1				
2				
3				

5. Upon execution of the Vesting Order and commencement of production from the Coal Mine my linkage of coal and/ or memorandum of understanding from/ with [Coal India Limited/ name of relevant subsidiaries/ The Singareni Collieries Company Limited] as detailed below shall stand proportionately reduced in accordance with the Rules.

#	Date of fuel supply agreement / letter of assurance	Annual contracted quantity (MT)	Gross calorific value (Kcal/kg)*	Capacity of End Use Plant or any of its units for which coal linkage / memorandum of understanding has been granted
1				

*\* GCV to be quoted as per LOA/FSA, if provided in the LOA/FSA. However, if GCV is not provided in the LOA/FSA and only the Grade of coal is indicated in the LOA/FSA, then mid point of GCV based on the Grade of the Coal is required to be quoted.*

**[Note:** This clause may be deleted in the Bidder does not have a subsisting coal linkage or memorandum of understanding.]

6. In the event, I become the Preferred Bidder, Successful Bidder, preferred allottee or allottee, as the case may be, the extractable reserves of the Coal Mine allocated to me, would not exceed 150% of the annual coal requirement of the Specified End Use Plant(s), specified above taken over a period of 30 (thirty) years, less the requirement of coal of such Specified End Use Plant met from any other coal mine allocated to me pursuant to any other auction or allotment process conducted by the Nominated Authority under the Act and the Rules or any other coal mine for which I have been granted Mining Lease under Applicable Law.

The details of other coal mine for which I have been granted Mining Lease under Applicable Law are as under:

S. No.	Coal Mine	Specified End Use Plant	Average Grade of Coal	PRC (MTPA)

7. I shall make available to the Nominated Authority any additional information it may find necessary or require to supplement or to authenticate the Bid.
8. I acknowledge the right of the Nominated Authority to reject our Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by Applicable Law, our right to challenge the same on any account whatsoever.
9. For the purposes of classification under Clause 3.3.2(b) of the Tender Document, the particulars of our Group Companies (*as defined in the Tender Document*) and companies in the same Group (*as defined in the Tender Document*), which are also participating in the tender process for the Coal Mine are set-out below:

Sl.	Name of the Company	Corporate Identity Number (CIN)	Registered Address

10. I declare that:
  - a) I have examined and understood the Act and the Rules;
  - b) I have examined and have no reservations to the Tender Document, including any addendum and/or corrigendum issued by the Nominated Authority;
  - c) I have not directly or indirectly or through an agent engaged or indulged in any Corrupt Practice, Fraudulent Practice, Coercive Practice, Undesirable Practice or Restrictive Practice, as defined in Clause 8 of the Tender Document, in respect of any tender or request for proposal issued by or any agreement entered into with the Nominated Authority or any other public sector enterprise or any government, central or state; and
  - d) I hereby certify that we have taken steps to ensure that in conformity with the provisions of Clause 8 of the Tender Document, no person acting for us or on our behalf has engaged or will engage in any Corrupt Practice, Fraudulent Practice, Coercive Practice, Undesirable Practice or Restrictive Practice;

11. I understand that you may cancel the tender process at any time and that you are neither bound to accept any Bid that you may receive nor to invite the Bidders to Bid for the Coal Mine, without incurring any liability to the Bidders, in accordance with the Tender Document.
12. I unconditionally represent that we meet all the Eligibility Conditions as specified in the Tender Document.
13. I declare that with respect to 1 (one) Specified End Use Plant only 1 (one) Bid is being submitted for the Coal Mine, either individually or as a part of joint-venture, either directly or indirectly.
14. I hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Nominated Authority in connection with the selection of the Preferred Bidder, or in connection with the tender process itself, in respect of the above mentioned Coal Mine and the terms and implementation thereof.
15. In the event of my being declared as the Successful Bidder, I agree to enter into an Agreement in accordance with the Tender Document and pay such amounts and provide such security as required therein
16. Any payments required to be made by me shall be subject to set-off in accordance with Section 16(3) of the Act, if applicable.
17. I have ensured compliance with Clause 3.4 of the Tender Document and to the best of my knowledge this Bid is responsive in terms thereof.
18. I agree and understand that the Bid is subject to the provisions of the Tender Document. In no case, I shall have any claim or right of whatsoever nature if the Coal Mine is not awarded to me or my Bid is not opened or rejected.
19. The Initial Price Offer has been and the Final Price Offer shall be quoted by me after taking into consideration all the terms and conditions stated in the Tender Document, the Agreement, our own estimates of costs and feasibility and after a careful assessment of the Coal Mine and all the conditions that may affect the Coal Mine or the Specified End Use Plant.
20. I would ensure that all documents required to be submitted electronically on the electronic auction platform and the following documents required to be submitted physically with the Nominated Authority are duly submitted: (a) power of attorney in substantially the same format as specified in Annexure V of the Tender Document; (b) affidavit in substantially the same format as specified in Annexure VI of the Tender Document;(c) Bid Security in substantially the same format as specified in Annexure VIII of the Tender Document and d) Transaction Fee Security in substantially the same format as specified in Annexure IX of the Tender Document.
21. I shall keep this offer valid for 180 (one hundred and eighty) days from the Bid Due Date specified in the Tender Document or such extended duration as may be agreed with the Nominated Authority

In witness thereof, I submit this Technical Bid under and in accordance with the terms of the Tender

Document.

Yours faithfully,

(Signature, name and designation of the Authorised signatory)

Name and seal of Bidder

Date:

Place:



## 10.5 Annexure V – Power of Attorney for Signing the Bid

[To be stamped in accordance with the relevant Stamp Act]

### Power of Attorney for signing of Bid

Know all men by these presents, We, ..... (name and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorise Mr. / Ms (Name), son/daughter/wife of ..... and presently residing at ....., who is presently employed with us and holding the position of ....., as our true and lawful attorney (hereinafter referred to as the “**Attorney**”) to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our bid for the [insert name] Coal Mine (“**Coal Mine**”) in response to the Tender Document dated [insert date] issued by Nominated Authority, Ministry of Coal (the “**Nominated Authority**”) including but not limited to signing and submission of all applications, affidavits, bids and other documents and writings, participate in Bidders’ and other conferences and providing information / responses to the Nominated Authority, representing us in all matters before the Nominated Authority, and generally dealing with the Nominated Authority in all matters in connection with or relating to or arising out of our bid for the said Coal Mine and/or upon award thereof to us and/or till the entering into of the Coal Mine Development and Production Agreement with the Nominated Authority.

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

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

For.....

(Signature, name, designation and address)

Witnesses:

1.

2.

Accepted Notarised

(Signature, name, designation and address of the Attorney)

Notes:

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

*required procedure.*

- *Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders resolution authorizing the execution of this power of attorney.*
- *For a power of attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and appropriately notarised in the relevant jurisdiction. However, the power of attorney provided by Bidders from countries that have signed the Hague Legislation Convention, 1961 are not required to be legalised by the Indian Embassy if it carries a conforming appostille certificate.*

## 10.6 Annexure VI – Format of Affidavit

(To be stamped in accordance with the relevant Stamp act and duly sworn before Notary public)

### Affidavit

I, \_\_\_\_\_ aged \_\_\_\_\_ years, resident of \_\_\_\_\_ working as \_\_\_\_\_ an authorised signatory on behalf of \_\_\_\_\_ (name of bidder) (the “Bidder”) hereby state as under:

1. I say that I am the [Insert designation of the deponent] of the Bidder. I am conversant with the facts and circumstances surrounding the subject of this Affidavit and have been authorized to depose to the same pursuant to the power of attorney dated \_\_\_\_\_. I am filing this Affidavit to place on record verification of facts and documents in connection with the tender process concerning [name of the coal mine].
2. [Insert separate paragraphs for each document brought on record on the website of MSTC or physically submitted with the Nominated Authority, in a chronological sequence].
3. For the purposes of classification under Clause 3.3.2(b) of the Tender Document, the particulars of our Group Companies (as defined in the Tender Document) and companies in the same Group (as defined in the Tender Document), which are also participating in the tender process for the Coal Mine are set-out below:

Sl. No.	Name of the Company	Corporate Identity Number (CIN)	Registered Address

4. That nothing has been concealed in the information submitted as mentioned above.

Solemnly affirmed and verified on this \_\_\_\_\_ day of (month) 20\_\_\_\_ (Year) at \_\_\_\_\_ (place).

(Signature)

Name, Designation & Seal

### VERIFICATION

I, [●], the [Insert designation of the deponent] of the Bidder above named, having my office at [●], do hereby solemnly declare that what is stated above in paragraphs [●] to [●] are on the basis of the books and records of the Bidders, and verify that the contents of the above affidavit are true and correct, no part of it is false and nothing material has been concealed therefrom.

Verified at \_\_\_\_\_ day of (month) 20\_\_\_\_ (Year) at \_\_\_\_\_ (place).

Deponent

(Signature)

Name, Designation & Seal

## 10.7 Annexure VII – Format for seeking clarifications regarding the Tender Document

(Applicable only for the submission of the queries up to the last date of submission of queries as per Clause 3.8.1)

S. No	Document	Clause No. and Existing Provision	Clarification Required	Suggested Text for Amendment, if any	Rationale for Clarification or Amendment

## 10.8 Annexure VIII – Bank Guarantee for Bid Security

[To be stamped in accordance with the relevant Stamp Act]

### Bank Guarantee

Bank Guarantee. No.

Date:

To

The Nominated Authority  
Ministry of Coal  
Room No. 120, F-Wing,  
1<sup>st</sup> Floor, Shastri Bhawan  
New Delhi - 110001

1. In consideration of you, being the Nominated Authority under the Coal Mines (Special Provisions) Act, 2015 (hereinafter referred to as the “**Nominated Authority**”, which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns) having agreed to receive, pursuant to the provisions of the relevant tender document, the Bid of ..... (a company registered under the Companies Act, [1956/2013]) and having its registered office at ..... (hereinafter referred to as the “**Bidder**” which expression shall unless it be repugnant to the subject or context thereof include its/their executors, administrators, successors and assigns), for the [insert name] Coal Mine (“**Coal Mine**”) pursuant to the Tender Document dated ..... issued in respect of the Coal Mine (hereinafter collectively referred to as “**Tender Document**”), we (Name of the Bank) having our registered office at ..... and one of its branches located at Delhi at..... (“**Bank**”), at the request of the Bidder, do hereby in terms of the Tender Document, irrevocably, unconditionally and without reservations guarantee the due and faithful fulfilment and compliance of the terms and conditions of the Tender Document by the Bidder and unconditionally and irrevocably undertake to pay forthwith to the Nominated Authority an amount of INR [insert amount](Indian Rupees [insert amount] only) (hereinafter referred to as the “**Guarantee**”) as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder if the Bidder shall fail to fulfil or comply with all or any of the terms and conditions contained in the said Tender Document.
2. Any such written demand made by the Nominated Authority stating that the Bidder is in default of the due and faithful fulfilment and compliance with the terms and conditions contained in the Tender Document shall be final, conclusive and binding on the Bank.
3. We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of the Nominated Authority is disputed by the Bidder or not, merely on the first demand from the Nominated Authority stating that the amount claimed is due to the Nominated Authority by

reason of failure of the Bidder to fulfil and comply with the terms and conditions contained in the Tender Document. Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding INR [insert amount] (Indian Rupees [insert amount] only).

4. This Guarantee shall be irrevocable and remain in full force for a period of 240 (two hundred and forty) days from the Bid Due Date i.e. \_\_\_\_\_ inclusive of a claim period of 60 (sixty) days or for such extended period as may be mutually agreed between the Nominated Authority and the Bidder, and agreed to by the Bank, and shall continue to be enforceable till all amounts under this Guarantee have been paid.
5. We, the Bank, further agree that the Nominated Authority shall be the sole judge to decide as to whether the Bidder is in default of due and faithful fulfilment and compliance with the terms and conditions contained in the Tender Document including, inter alia, the failure of the Bidder to keep its Bid open during the Bid validity period set forth in the said Tender Document, and the decision of the Nominated Authority that the Bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between the Nominated Authority and the Bidder or any dispute pending before any Court, Tribunal, Arbitrator or any other authority.
6. The Guarantee shall not be affected by any change in the constitution or winding up of the Bidder or the Bank or any absorption, merger or amalgamation of the Bidder or the Bank with any other person.
7. In order to give full effect to this Guarantee, the Nominated Authority shall be entitled to treat the Bank as the principal debtor. The Nominated Authority shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee from time to time to vary any of the terms and conditions contained in the said Tender Document or to extend time for submission of the Bids or the Bid validity period or the period for conveying acceptance of Vesting Order by the Bidder or the period for fulfilment and compliance with all or any of the terms and conditions contained in the said Tender Document by the said Bidder or to postpone for any time and from time to time any of the powers exercisable by it against the said Bidder and either to enforce or forbear from enforcing any of the terms and conditions contained in the said Tender Document or the securities available to the Nominated Authority, and the Bank shall not be released from its liability under these presents by any exercise by the Nominated Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the said Bidder or any other forbearance, act or omission on the part of the Nominated Authority or any indulgence by the Nominated Authority to the said Bidder or by any change in the constitution of the Nominated Authority or its absorption, merger or amalgamation with any other person or governmental department or instrumentality,, but for this provision, have the effect of releasing the Bank from its such liability.
8. Any notice by way of request, demand or otherwise hereunder shall be sufficiently given or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein.
9. We undertake to make the payment on receipt of your notice of claim on us addressed to [name

of Bank along with branch address] and delivered at our above branch which shall be deemed to have been duly authorised to receive the said notice of claim.

10. It shall not be necessary for the Nominated Authority to proceed against the said Bidder before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which the Nominated Authority may have obtained from the said Bidder or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealised.
11. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of the Nominated Authority in writing.
12. The Bank declares that it has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorised and has full power to execute this Guarantee for and on behalf of the Bank.

Signed and Delivered by ..... Bank

## 10.9 Annexure IX – Bank Guarantee for Transaction Fee Security

[To be stamped in accordance with the relevant Stamp Act]

### Bank Guarantee

Bank Guarantee. No.

Date:

To

The Nominated Authority  
Ministry of Coal  
Room No. 120, F-Wing,  
1<sup>st</sup> Floor, Shastri Bhawan  
New Delhi - 110001

1. In consideration of you, being the Nominated Authority under the Coal Mines (Special Provisions) Act, 2015 (hereinafter referred to as the “**Nominated Authority**”, which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns) having agreed to receive, pursuant to the provisions of the relevant tender document, the Bid of ..... (a company registered under the Companies Act, [1956/2013]) and having its registered office at ..... (hereinafter referred to as the “**Bidder**” which expression shall unless it be repugnant to the subject or context thereof include its/their executors, administrators, successors and assigns), for the [insert name] Coal Mine (“**Coal Mine**”) pursuant to the Tender Document dated ..... issued in respect of the Coal Mine (hereinafter collectively referred to as “**Tender Document**”), we (Name of the Bank) having our registered office at ..... and one of its branches located at Delhi at..... (“**Bank**”), at the request of the Bidder, do hereby in terms of the Tender Document, irrevocably, unconditionally and without reservations guarantee the due and faithful fulfilment and compliance of the terms and conditions of the Tender Document by the Bidder and unconditionally and irrevocably undertake to pay forthwith to the Nominated Authority an amount of INR [insert amount](Indian Rupees [insert amount] only) (hereinafter referred to as the “**Guarantee**”) as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder if the Bidder shall fail to fulfil or comply with all or any of the terms and conditions contained in the said Tender Document.
2. Any such written demand made by the Nominated Authority stating that the Bidder is in default of the due and faithful fulfilment and compliance with the terms and conditions contained in the Tender Document shall be final, conclusive and binding on the Bank.
3. We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of the



Nominated Authority is disputed by the Bidder or not, merely on the first demand from the Nominated Authority stating that the amount claimed is due to the Nominated Authority by reason of failure of the Bidder to fulfil and comply with the terms and conditions contained in the Tender Document. Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding INR [insert amount] (Indian Rupees [insert amount] only).

4. This Guarantee shall be irrevocable and remain in full force for a period of 300 (three hundred) days from the Bid Due Date i.e. \_\_\_\_\_ inclusive of a claim period of 60 (sixty) days or for such extended period as may be mutually agreed between the Nominated Authority and the Bidder, and agreed to by the Bank, and shall continue to be enforceable till all amounts under this Guarantee have been paid.
5. We, the Bank, further agree that the Nominated Authority shall be the sole judge to decide as to whether the Bidder is in default of due and faithful fulfilment and compliance with the terms and conditions contained in the Tender Document including, inter alia, the failure of the Bidder to keep its Bid open during the Bid validity period set forth in the said Tender Document, and the decision of the Nominated Authority that the Bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between the Nominated Authority and the Bidder or any dispute pending before any Court, Tribunal, Arbitrator or any other authority.
6. The Guarantee shall not be affected by any change in the constitution or winding up of the Bidder or the Bank or any absorption, merger or amalgamation of the Bidder or the Bank with any other person.
7. In order to give full effect to this Guarantee, the Nominated Authority shall be entitled to treat the Bank as the principal debtor. The Nominated Authority shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee from time to time to vary any of the terms and conditions contained in the said Tender Document or to extend time for submission of the Bids or the Bid validity period or the period for conveying acceptance of Vesting Order by the Bidder or the period for fulfilment and compliance with all or any of the terms and conditions contained in the said Tender Document by the said Bidder or to postpone for any time and from time to time any of the powers exercisable by it against the said Bidder and either to enforce or forbear from enforcing any of the terms and conditions contained in the said Tender Document or the securities available to the Nominated Authority, and the Bank shall not be released from its liability under these presents by any exercise by the Nominated Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the said Bidder or any other forbearance, act or omission on the part of the Nominated Authority or any indulgence by the Nominated Authority to the said Bidder or by any change in the constitution of the Nominated Authority or its absorption, merger or amalgamation with any other person or governmental department or instrumentality,, but for this provision, have the effect of releasing the Bank from its such liability.
8. Any notice by way of request, demand or otherwise hereunder shall be sufficiently given or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein.

9. We undertake to make the payment on receipt of your notice of claim on us addressed to [name of Bank along with branch address] and delivered at our above branch which shall be deemed to have been duly authorised to receive the said notice of claim.
10. It shall not be necessary for the Nominated Authority to proceed against the said Bidder before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which the Nominated Authority may have obtained from the said Bidder or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealised.
11. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of the Nominated Authority in writing.
12. The Bank declares that it has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorised and has full power to execute this Guarantee for and on behalf of the Bank.

Signed and Delivered by ..... Bank

## **10.10 Annexure X – Coal Mine Development and Production Agreement**

[To be provided separately]