

**8th TRANCHE OF AUCTION**

**STANDARD**

**COAL MINE DEVELOPMENT AND PRODUCTION AGREEMENT**

**FOR**

**IRON AND STEEL, CEMENT AND CAPTIVE POWER PLANT [EXCLUDING STEEL  
(COKING) COAL SECTOR]**

**03 August 2019**

**Nominated Authority**

**Ministry of Coal**

**Government of India**

**New Delhi**

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

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

**PARTIES:**

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

**BACKGROUND:**

- A. The Supreme Court of India 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.
- B. Subsequent to the Supreme Court Judgment, the Coal Mines (Special Provisions) Ordinance, 2014 and Coal Mines (Special Provisions) Second Ordinance, 2014 (collectively the “**Ordinance**”) were promulgated and the Coal Mines (Special Provisions) Rules, 2014 (the “**Rules**”) were framed for auction and allotment of all blocks which were subject to cancellation pursuant to the Supreme Court Judgment. Further, the Coal Mines (Special Provisions) Act, 2015 (the “**Act**”) was enacted which replaced the Ordinance.
- C. The Coal Mine (*as defined in Clause 1.1.16*) was included in the list of such 204 coal blocks and accordingly, its allotment to the Prior Allottee (*as defined in Clause 1.1.39*) was cancelled pursuant to the Supreme Court Judgment, with effect from the ‘appointed date’ (as defined in the Act).
- D. Thereafter, the Central Government issued an order under Rule 8(2) of the Rules, dated [provide date of the order as per the tranche of auction], to the Nominated Authority for auction of the Coal Mine pursuant to Section 4(1) of the Act. In such order, production of iron and steel, cement and captive power plant [excluding steel (coking) coal] was the Specified End Use with respect to the Coal Mine.
- E. Pursuant to a tender process conducted in accordance with the Act, the Rules, the Tender

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<sup>1</sup> To be deleted if Successful Bidder is not a joint venture company

Document, dated [insert the date] (as amended) and receipt of a direction from the Central Government under Rule 10(10) of the Rules, the Successful Bidder has become entitled to enter into an agreement with the Nominated Authority pursuant to Rule 13(5) of the Rules with respect to allocation of the Coal Mine to the Successful Bidder for use in the Specified End Use Plant (*as defined in Clause 1.1.43*).

- F. Accordingly, the Nominated Authority and the Successful Bidder are entering into this Agreement with respect to matters related to allocation of the Coal Mine, including without limitation development of the Coal Mine and production and utilisation of coal from the Coal Mine.

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

## **1. DEFINITIONS AND INTERPRETATION**

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

### **1.1. Definitions**

- 1.1.1. “**Act**” shall mean the Coal Mines (Special Provisions) Act, 2015.
- 1.1.2. “**Agreement**” means this Coal Mine Development and Production Agreement and all attached annexure, schedules, exhibits and instruments supplemental to or amending, modifying or confirming this Agreement in accordance with the provisions of this Agreement.
- 1.1.3. “**Agreement Date**” shall mean the date on which execution of this Agreement by both the Successful Bidder and the Nominated Authority is completed.
- 1.1.4. “**Anti Corruption Laws**” shall have the meaning given to such expression in Clause 16.1(a).
- 1.1.5. “**Anti Corruption Policy**” shall have the meaning given to such expression in Clause 16.1(d).
- 1.1.6. “**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.

- 1.1.7. “**Appropriation Event**” shall have the meaning given to such expression in Clause 6.2.1.
- 1.1.8. “**Arrangement**” shall have the meaning given to such expression in Clause 8.3.1.
- 1.1.9. “**Arrangement Application**” shall have the meaning given to such expression in Clause 8.3.1.
- 1.1.10. “**Authorised Representative**” shall have the meaning given to such expression in Clause 4.4.
- 1.1.11. “**Business Day**” shall mean a day which is not a Saturday, Sunday or any other day declared as a public holiday by the Central Government.
- 1.1.12. “**Central Government**” shall mean the Government of India, acting through the Ministry of Coal.
- 1.1.13. “**CIL**” shall mean Coal India Limited (a Government of India undertaking).
- 1.1.14. “**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.
- 1.1.15. “**Claim**” shall have the meaning given to such expression in Clause 18.3.
- 1.1.16. “**Coal Mine**” shall mean the coal mine as more particularly described in SCHEDULE A.
- 1.1.17. “**Companies Act**” means the Companies Act, 1956 or the Companies Act, 2013, as applicable, as now enacted or as the same may from time to time be amended, re-enacted or replaced.
- 1.1.18. “**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.
- 1.1.19. “**Commencement Plan**” shall have the meaning given to such expression in Clause 5.1.
- 1.1.20. “**Designated Bank Account**” shall mean the following bank account of the Nominated Authority:
- Name of the bank: *[to be mentioned]*  
Account number: *[to be mentioned]*  
Name of the account holder: *[to be mentioned]*  
IFSC Code: *[to be mentioned]*
- 1.1.21. “**Diversion Notice**” shall have the meaning given to such expression in Clause 8.4.1.

- 1.1.22. “**Efficiency Parameters**” shall have the meaning given to such expression in Clause 10.1.
- 1.1.23. “**Eligibility Conditions**” shall mean the eligibility conditions specified in the Act and the Rules including all the eligibility conditions listed in Clause 4.1 of the Tender Document.
- 1.1.24. “**Encumbrances**” means any mortgage, pledge, equitable interest, assignment by way of security, conditional sales contract, hypothecation, right of other Persons, claim, security interest, encumbrance, title defect, title retention agreement, voting trust agreement, interest, option, lien, charge, commitment, restriction or limitation of any nature whatsoever, including restriction on use, voting rights, transfer, receipt of income or exercise of any other attribute of ownership, right of set-off, any arrangement (for the purpose of, or which has the effect of, granting security), or any other security interest of any kind whatsoever, or any agreement, whether conditional or otherwise, to create any of the same.
- 1.1.25. “**Governmental Approval**” means any authorization, approval, consent, licence or permit required from any Governmental Authority.
- 1.1.26. “**Governmental Authority**” means any government authority, statutory authority, government department, agency, commission, board, tribunal or court or other law, rule or regulation making entity having or purporting to have jurisdiction on behalf of the Republic of India or any state or other subdivision thereof or any municipality, district or other subdivision thereof.
- 1.1.27. “**Event of Force Majeure**” shall have the meaning given to such expression in Clause 23.1.
- 1.1.28. “**Final Price Offer**” shall mean an amount equal to INR [amount of final price offer of the successful bidder] (Indian Rupees [amount in words]) per Tonne of coal, based on which the Successful Bidder was declared successful in the tender process for the Coal Mine.
- 1.1.29. “**Good Industry Practice**” means, in relation to any undertaking and any circumstances, the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced Person engaged in the same type of undertaking under the same or similar circumstances.
- 1.1.30. “**Indemnified Party**” shall have the meaning given to such expression in Clause 18.1.
- 1.1.31. “**JV Partners**” shall have the meaning given to such expression in Clause 13.2.1 and for the purposes of the Coal Mine, the JV Partners shall be [name of first JV Partner] incorporated in [India] under the Companies Act with corporate identity number [CIN of the first JV Partner], whose registered office is at [address of registered office], India and



[name of second JV Partner] incorporated in [India] under the Companies Act with corporate identity number [CIN of the second JV Partner], whose registered office is at [address of registered office], India.

- 1.1.32. “**Mining Plan**” shall mean a plan which has been approved in accordance with the Applicable Laws in relation to the Coal Mine.
- 1.1.33. “**Mining Lease**” shall have the meaning given to such expression in Clause 5.3.1.
- 1.1.34. “**Monthly Payment**” shall have the meaning given to such expression in Clause 9.1.1.
- 1.1.35. “**Other Plants**” shall have the meaning given to such expression in Clause 8.4.1.
- 1.1.36. “**Parties**” means and refers to the Nominated Authority and the Successful Bidder collectively and “**Party**” refers to any one of them.
- 1.1.37. “**Performance Security**” shall have the meaning given to such expression in Clause 6.1.1.
- 1.1.38. “**Person**” means any individual, sole proprietorship, unincorporated association, body corporate, corporation, company, partnership, limited liability company, joint venture, Governmental Authority or trust or any other entity or organization.
- 1.1.39. “**Prior Allottee**” shall have the meaning given to it in the Act and for the purposes of the Coal Mine, the Prior Allottee shall be [name] incorporated in [India] under the Companies Act with corporate identity number [CIN of the Prior Allottee], whose registered office is at [address of registered office], India.
- 1.1.40. “**Reference Index**” shall have the meaning given to such expression in Clause 6.1.3 (a).
- 1.1.41. “**Rules**” shall have the meaning given to such expression in Clause B of the Background.
- 1.1.42. “**Selectee**” shall have the meaning given to such expression in Clause 19.3.3(c).
- 1.1.43. “**Specified End Use Plant**” shall mean the plant owned by the Successful Bidder and engaged in production of [enter Specified End Use] situated at [address], India, as prescribed for the Coal Mine under Rule 8(2) of the Rules, as more particularly described in SCHEDULE B
- 1.1.44. “**State Government**” shall mean the Government of the state where the Coal Mine is located.
- 1.1.45. “**Substitution Notice**” shall have the meaning given to such expression in Clause 19.3.3(b).
- 1.1.46. “**Supreme Court Judgment**” shall have the meaning given to such expression in Clause

A of the Background.

1.1.47. **“Taxation”** (including with correlative meaning, the terms **“Tax”** and **“Taxes”**) means (a) any and all taxes, assessments and other charges, duties, impositions and similar liabilities imposed by any Governmental Authority, including without limitation taxes based upon or measured by gross receipts, income, profits, sales and value added, withholding, payroll, excise and property taxes, together with all interest, penalties and additions imposed with respect to such amounts; (b) any liability for the payment of any taxes, assessments and other charges, duties, impositions and similar liabilities by the Successful Bidder as a result of being a member of an affiliated, consolidated, combined or unitary group for any period; and (c) any taxes, assessments and other charges, duties, impositions and similar liabilities for the payment of any amounts by the Successful Bidder as a result of any express obligation to indemnify any other Person or as a result of any obligation under any agreement or arrangement with any other Person with respect to such amounts and including any liability for Taxes of a predecessor entity.

1.1.48. **“Third Party”** means any Person that is not a signatory to this Agreement.

1.1.49. **“Tender Document”** shall have the meaning given to it under the Rules and shall include the Tender Document dated [date] for auction of the Coal Mine.

1.1.50. **“Term”** shall have the meaning given to such expression in Clause 24.2.

1.1.51. **“Termination Event”** shall have the meaning given to such expression in Clause 24.3.1.

1.1.52. **“Upfront Amount”** shall mean an amount equal to INR [amount in figures] (Indian Rupees [amount in words]) payable by the Successful Bidder in terms of Clauses 3.1 and 5.2.

1.1.53. **“Utilisation Notice”** shall have the meaning given to such expression in Clause 3.1.

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

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

1.1.56. **“Vesting Order”** shall have the meaning given to such expression in the Act and the Rules.

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

## 1.2. Interpretation

1.2.1. Any reference to any statute or statutory provision shall include:

- (i) all subordinate legislation made from time to time under that provision (whether or not amended, modified, re-enacted or consolidated);

- (ii) such provision as from time to time amended, modified, re-enacted or consolidated (whether before or after the date of this Agreement) to the extent such amendment, modification, re-enactment or consolidation applies or is capable of applying to any transactions entered into under this Agreement prior to the Agreement Date and (to the extent liability thereunder may exist or can arise) shall include any past statutory provision (as from time to time amended, modified, re-enacted or consolidated) which the provision referred to has directly or indirectly replaced;
- 1.2.2. Unless the context otherwise requires, words in the singular shall include the plural and the plural shall include the singular.
  - 1.2.3. References to the masculine, the feminine and the neuter shall include each other.
  - 1.2.4. References to a “**company**” shall include a company, corporation or other body corporate, wherever and however incorporated or established.
  - 1.2.5. The recitals and schedules form part of this Agreement and shall have the same force and effect as if expressly set out in the body of this Agreement, and any reference to this Agreement shall include any recitals and schedules to it. Any references to clauses and schedules are to clauses and schedules to this Agreement. Any references to parts or paragraphs are, unless otherwise stated, references to parts or paragraphs of the schedule in which the reference appears.
  - 1.2.6. A reference to **this Agreement** or **any other document** shall be construed as references to this Agreement or that other document as amended, varied, novated, supplemented or replaced from time to time.
  - 1.2.7. A reference to **this Clause** shall, unless followed by reference to a specific provision, be deemed to refer to the whole Clause (not merely the sub-Clause, paragraph or other provision) in which the expression occurs.
  - 1.2.8. A reference to a **party** shall include that party’s representatives, successors and permitted assigns.
  - 1.2.9. Each of the representations and warranties provided in this Agreement is independent of other representations and warranties and unless the contrary is expressly stated, no Clause in this Agreement limits the extent or application of another Clause.
  - 1.2.10. Headings to Clauses, parts and paragraphs of schedules and schedules are for convenience only and do not affect the interpretation of this Agreement.
  - 1.2.11. A reference to “**in writing**” includes any communication made by letter or fax **but not e-mail** (unless otherwise expressly provided in this Agreement.).

- 1.2.12. Unless otherwise specified, any reference to a time of day is to Indian Standard Time.
- 1.2.13. Any words following the terms **including, include, in particular, for example or any similar expression** shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.2.14. Where the context permits, **other** and **otherwise** are illustrative and shall not limit the sense of the words preceding them.
- 1.2.15. References to a document in **agreed form** are to that document in the form agreed by the parties and initialled by them or on their behalf for identification.
- 1.2.16. Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

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

- 2.1. The Successful Bidder hereby represents and warrants to the Nominated Authority that it has complied with all the terms and conditions of the Act, the Rules, the Tender Document and other Applicable Laws, as were required to be complied with by the Successful Bidder, with respect to tender process for the Coal Mine and the Successful Bidder is eligible in all respects to receive allocation of the Coal Mine. The Successful Bidder also represents and warrants to the Nominated Authority that it is in compliance with all the Eligibility Conditions and would continue to be in compliance with all the Eligibility Conditions during the Term.
- 2.2. Relying on the representations and warranties of the Successful Bidder and the information, documents and other undertaking provided by the Successful Bidder, including the Warranties provided under Clause 17, the Nominated Authority is pleased to enter into this Agreement with the Successful Bidder for allocation of the Coal Mine to the Successful Bidder subject to terms and conditions specified in this Agreement.

## **3. CONDITIONS FOR VESTING**

### **3.1. Vesting Conditions**

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

- (a) the Successful Bidder continuing to be in compliance with all the Eligibility Conditions;
- (b) the Successful Bidder having paid the first instalment of the Upfront Amount, in accordance with Clause 5.2.1;

- (c) the Successful Bidder having furnished the Performance Security;
- (d) the Successful Bidder having deposited an amount equal to INR [amount in figures] (Indian Rupees [amount in words]), being the Fixed Amount (*as defined in the Tender Document*), in the Designated Bank Account. It is clarified that any upward revision in the Fixed Amount on a subsequent date by the Government or the Nominated Authority consequent to any process or on the orders of any competent court of law, shall also be payable by the Successful Bidder on receipt of any notice to that effect from the Nominated Authority;
- (e) only in the event that the Successful Bidder is a Prior Allottee for the Coal Mine or any other Schedule I coal mine (as defined in the Act), the Successful Bidder having paid the Additional Levy within the due date for payment of such Additional Levy as specified in Rule 18 of the Rules; and
- (f) The Successful Bidder having provided a written intimation to the Nominated Authority in substantially the same form as provided in SCHEDULE C regarding:
  - (i) the movable property which the Successful Bidder has not negotiated to own or utilise and which it intends to move and store under Section 10(4) of the Act;
  - (ii) the contracts which the Successful Bidder is desirous of adopting under Section 11(1) of the Act, including contracts with secured creditors; and matters incidental thereto.

### 3.2. Completion of Vesting Conditions and Notice

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

shall be deemed that the Successful Bidder is not desirous of owning or utilising any movable property or continuing any contract. In such cases, without prejudice to Clause 3.2.2, the Nominated Authority may elect to issue the Vesting Order without including aforementioned particulars in the Vesting Order; if all other Vesting Conditions have been satisfied by the Successful Bidder and corresponding Completion Notice have been provided to the Nominated Authority.

#### **4. THE VESTING ORDER**

- 4.1. Upon receipt of the Completion Notice evidencing compliance with each of the applicable Vesting Conditions, the Nominated Authority may issue the Vesting Order, subject to the Act, the Rules, the Tender Document and other Applicable Laws, in the manner provided in this Clause 4.
- 4.2. The Vesting Order shall be issued by the Nominated Authority in substantially the same format as specified by the Central Government.
- 4.3. Prior to issuance of the Vesting Order, the Nominated Authority shall provide a written notice to the Successful Bidder specifying the date of the Vesting Order (the “**Vesting Date**”) and the date and time on which and place from where the Vesting Order may be collected by the Successful Bidder.
- 4.4. The Successful Bidder shall depute an authorised representative of the Successful Bidder (“**Authorised Representative**”) to receive the Vesting Order on behalf of the Successful Bidder on the date, time and place specified by the Nominated Authority under Clause 4.3.
- 4.5. The Authorised Representative shall be provided the Vesting Order in duplicate and shall be required to acknowledge the receipt of the Vesting Order. In the event, the Authorised Representative is not present on the date and time specified by the Nominated Authority under Clause 4.3, then the Nominated Authority shall dispatch the Vesting Order by registered post with acknowledgment due, to the registered office of the Successful Bidder.
- 4.6. The Successful Bidder shall, within seven Business Days of the receipt of the Vesting Order through the Authorised Representative or through registered post, as the case may be, 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 aforementioned date, the Nominated Authority may, unless it consents to extension of time for submission thereof, appropriate the Performance Security and other payments made by such Successful Bidder as damages and also terminate this Agreement and cancel and withdraw the Vesting Order.

## 5. POST VESTING OBLIGATIONS

### 5.1. Commencement Plan

5.1.1. Within 30 Business Days of the date of the Vesting Order, the Successful Bidder shall be required to submit a detailed plan (the “**Commencement Plan**”) towards commencement of mining operations at the Coal Mine. The Commencement Plan shall include all actions that the Successful Bidder may be required to perform to commence mining operations at the Coal Mine and shall include such information as may be required by the Nominated Authority, including without limitation, information regarding the following:

- (a) the Governmental Approvals, including Mining Lease or notification under Section 11 (1) of the CBA Act, 1957, as the case may be, which shall be required for commencement of mining operations at the Coal Mine and the time within which the Successful Bidder would make applications for such Governmental Approvals; and
- (b) revisions to the Mining Plan if any, as may be proposed by the Successful Bidder.

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

### 5.2. Payment of the Upfront Amount

#### 5.2.1. *First Instalment of fifty per cent*

The first instalment of fifty per cent of the Upfront Amount being an amount equal to INR [amount in figures] (Indian Rupees [amount in words]), shall be deposited by the Successful Bidder in the Designated Bank Account in the manner provided in Clause 3.1(b) as a Vesting Condition.

#### 5.2.2. *Second Instalment of twenty five per cent*

The second instalment of twenty five per cent of the Upfront Amount being an amount equal to INR [amount in figures] (Indian Rupees [amount in words]), shall be deposited by the Successful Bidder, on or before 15 Business Days from the date of notification under Section 11(1) of the CBA Act, 1957 OR on or prior to expiry of 15 Business Days from the date of execution of the Mining Lease by the relevant State Government. Such payment shall be made to the State Government where the Coal Mine is located i.e. the State Government of [insert name of the State], with an intimation to the Nominated Authority at the email id reports.moc@gov.in.

#### 5.2.3. *Third Instalment of twenty five per cent*

The third instalment of twenty five per cent of the Upfront Amount being an amount equal to INR [amount in figures] (Indian Rupees [amount in words]), shall be deposited by the Successful Bidder, on or prior to expiry of 15 Business Days from the date of grant of mine opening permission from the Coal Controller's Organization. Such payment shall be made to the State Government where the Coal Mine is located i.e. the State Government of [insert name of the State], with an intimation to the Nominated Authority at the email id reports.moc@gov.in.

#### 5.2.4. *Failure to pay the Upfront Amount*

In the event the Successful Bidder fails to pay the second instalment or the third instalment of the Upfront Amount within the time specified in Clause 5.2.2 or Clause 5.2.3, respectively, then the Nominated Authority shall be entitled to appropriate the Performance Security in the manner stipulated in Clause 6 (PERFORMANCE SECURITY) and such failure may also result in termination of this Agreement as provided in Clause 24 (EFFECTIVE DATE, TERM AND TERMINATION).

### 5.3. **The Mining Lease**

5.3.1. Pursuant to Section 8(4)(b) read with Section 8(8) of the Act, the Successful Bidder shall become entitled to the mining lease with respect to the Coal Mine (the "**Mining Lease**") to be granted by the State Government or notification under Section 11 (1) of the CBA Act, 1957, as the case may be, upon issuance of the Vesting Order.

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

## 6. **PERFORMANCE SECURITY AND APPROPRIATION**

### 6.1. **Performance Security**

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

6.1.2. The Performance Security shall be an amount which is equal to aggregate of: (a) one year royalty, to be computed on the basis of peak rated capacity of the Coal Mine as per the approved Mining Plan, payable to the relevant State Government with respect to the Coal



Mine; and (b) the annual peak rated capacity of the Coal Mine as per the approved Mining Plan multiplied by the Final Price Offer. 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.

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

- (a) Every financial year, upon publication of the Wholesale Price Index (the “**Reference Index**”) for the month of April, the amount of Performance Security shall be revised upwards 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 escalation of the Reference Index on a year-on-year basis. It is clarified that for the purposes of escalation in a subsequent financial year, the 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 escalation. The subject revision would be applicable after the issuance of 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 6.1.4; 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 6.1.4; and/or
- (d) In case of any revision in the Mining Plan in accordance with Clause 14, the amount of Performance Security shall be revised accordingly upon approval of revision to the Mining Plan. Such revision shall take place at the beginning of the financial year which is subsequent to the financial year in which the Mining Plan is revised, as stipulated in Clause 6.1.4.

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

6.1.4. The revision to the amount of Performance Security shall be carried out once in every financial year. Upon such revision, the bank guarantee constituting the Performance Security shall be substituted with another bank guarantee of the revised value issued in accordance with this Clause 6, within a period of 30 days of 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) of Clause 6.1.3. In case of revision under sub-clause (a) of Clause 6.1.3, the bank guarantee constituting the Performance Security shall be substituted with another bank guarantee of the revised value issued in accordance with this Clause 6, within a period of 30 (thirty) days from the publication of the Reference Index for the month of April for the relevant financial year.

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

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

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

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

- (a) failure of the Successful Bidder to provide the duly acknowledged duplicate copy of the Vesting Order as required under Clause 4.6;
- (b) failure of the Successful Bidder to make payment of the first instalment, second instalment or the third instalment of the Upfront Amount within the time specified in Clause 3.1(b), Clause 5.2.2 or Clause 5.2.3, respectively;
- (c) failure of submission of Commencement Plan within the time specified in Clause 5.1.1
- (d) failure of the Successful Bidder to comply with the Efficiency Parameters as required under Clause 10;
- (e) any change in Control or transfer of right, title or interest in the Coal Mine which is not in conformity with Clause 13;
- (f) failure to make payment of the Monthly Payment in accordance with this

Agreement;

- (g) any utilisation of coal which is not in conformity with Clause 8;
- (h) cessation of coal mining operation exceeding a period of one year continuously, or 18 months over a period of two years without occurrence of any event of force majeure;
- (i) surrender of the Coal Mine by the Successful Bidder or termination of the Mining Lease granted to the Successful Bidder before (a) the expiry of the period for which Mining Lease (including renewed Mining Lease) has been granted or will be granted, or (b) extractable reserves are remaining in the Coal Mine, whichever is earlier;
- (j) any other breach or non-compliance of any of the provisions of this Agreement including in case of the Warranties being untrue or misleading or incorrect in any manner whatsoever; or
- (k) failure of the Successful Bidder to replace a bank guarantee with a new bank guarantee, within the time specified in Clause 6.1.5.

6.2.2. Provided however that in the event an Appropriation Event has occurred solely on account of an Event of Force Majeure which could not have been mitigated by the Successful Bidder through Good Industry Practice as provided in Clause 23, then the Performance Security shall not be appropriated for such specific Appropriation Event.

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

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

#	Appropriation Event	Amount of the Performance Security to be appropriated
1.	Failure of the Successful Bidder to provide the duly acknowledged duplicate copy of the Vesting Order as required under Clause 4.6	Entire Performance Security.
2.	Failure of the Successful Bidder to make payment of the first instalment, second	An amount equal to the first instalment, and/or second

#	Appropriation Event	Amount of the Performance Security to be appropriated
	instalment or the third instalment of the Upfront Amount within the time specified in Clause 3.1(b), Clause 5.2.2 or Clause 5.2.3, respectively	instalment and/or third instalment of the Upfront Amount together with [12% per annum] simple interest on such amount starting from the date on which such amount was due and until the date of appropriation of the Performance Security.
3.	Failure of submission of Commencement Plan within the time specified in Clause 5.1.1	An amount equal to 10% of the Performance Security
4.	Failure of the Successful Bidder to comply with the Efficiency Parameters as required under Clause 10	Such Per cent of the Performance Security for each failure to comply with the Efficiency Parameters as specified in SCHEDULE E.
5.	Any change in Control or transfer of right, title or interest in the Coal Mine which is not in conformity with Clause 13	Entire Performance Security.
6.	Any utilisation of coal which is not in conformity with Clause 8	Entire Performance Security.
7.	Failure of the Successful Bidder to make payment of the Monthly Payment	The amount of Monthly Payment due and payable, along with a simple interest of [twelve] per cent per annum starting from the date on which such amount was due and until the date of appropriation of the Performance Security.
8.	Cessation of coal mining operation exceeding a period of one year continuously, or 18 months over a period of two years without occurrence of any	Entire Performance Security.

#	Appropriation Event	Amount of the Performance Security to be appropriated
	event of force majeure	
9.	Surrender of the Coal Mine by the Successful Bidder or termination of the Mining Lease granted to the Successful Bidder before (a) the expiry of the period for which Mining Lease (including renewed Mining Lease) has been granted or will be granted, or (b) extractable reserves are remaining in the Coal Mine, whichever is earlier	Entire Performance Security.
10.	Any other breach or non-compliance with any of the provisions of this Agreement, including in case of the Warranties being untrue or misleading or incorrect in any manner whatsoever.	Such proportion as may be determined by the Nominated Authority in its sole discretion.
11.	Failure of the Successful Bidder to replace a bank guarantee with a new bank guarantee, within the time specified in Clause 6.1.5.	Entire Performance Security.

6.3.2. Any Appropriation Event resulting in appropriation of the entire Performance Security shall be a Termination Event for the purposes of Clause 24 (EFFECTIVE DATE, TERM AND TERMINATION).

6.3.3. In the event of a part appropriation of the Performance Security, the Successful Bidder shall be required to: (i) rectify the Appropriation Event; and (ii) top-up the bank guarantee constituting the Performance Security within fifteen Business Days of receipt of a notice under Clause 6.3.1, failure to do so shall be a Termination Event for the purposes of Clause 24 (EFFECTIVE DATE, TERM AND TERMINATION). Appropriation Event except as mentioned in clause 6.2.1 (d) shall be rectified within seven Business Days of receipt of a notice under Clause 6.3.1. Appropriation Event mentioned in clause 6.2.1 (d) shall be rectified within the time specified in SCHEDULE E.

6.3.4. In the event that on account of one or more Appropriation Events, an amount equal to

hundred per cent of the Performance Security is appropriated in aggregate in one or more instances, the same shall be a Termination Event for the purposes of Clause 24(EFFECTIVE DATE, TERM AND TERMINATION).

## 7. INFORMATION

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

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

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

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

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

### (b) *Commencement Report*

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

### (c) *Monthly Report*

Subsequent to the Commencement Report, the Successful Bidder shall provide a

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

**(d) Yearly Report**

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

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

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

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

## **8. UTILISATION OF COAL**

### **8.1. Utilisation of Coal in the Specified End Use Plant**

8.1.1. Except as otherwise provided in this Clause 8, the coal extracted from the Coal Mine shall be utilised by the Successful Bidder strictly in the Specified End Use Plant; and shall not be utilised for any other purpose whatsoever, either directly or indirectly.

8.1.2. Notwithstanding anything contained in this Agreement, 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. The successful bidder shall be required to pay an additional premium of 15% of its final bid price on per tonne basis, for the actual quantity of coal sold in open market. The additional premium will be over and above the final bid price. The Successful Bidder shall adhere to following modalities/ guidelines for sale of coal in open market:

- (a) In order to maintain transparency in sale of coal, the Successful Bidder shall arrange to publish the pre-sale notice and post-sale notice on the website of respective State Government department, Ministry of Coal and Coal Controller's Organisation (CCO).

**Pre-Sale Notice**

The Pre-Sale Notice shall be published 15 days before the sale of coal. The Notice shall contain the following:

- i. Grade of Coal
- ii. Quantity of Coal available for sale
- iii. Point of sale

**Post Sale Notice**

After the completion of sale of the quantity offered, a post-sale notice shall be published by the Successful Bidder in three working days after the sale of coal. The notice of post-sale information shall contain the following:

- i. Grade of coal
- ii. Quantity of Coal sold
- iii. Point of sale
- iv. Name and address of the party to which sale has been made
- v. The post-sale notice shall also be accompanied with copy of the GST invoice.

The Successful Bidder shall also be required to send this information vide email to the office of CCO.

- (b) The Successful Bidder shall submit a self-declaration in the form of monthly report containing grade of coal produced, quantity produced, quantity used in self-consumption and the quantity sold. This self-declaration form shall be submitted monthly by the Successful Bidder to CCO so as to enable CCO to determine the deviation on quarterly basis. In case of sale in excess of 25% production in any particular quarter, CCO shall issue directions to the Successful Bidder that this excess sale of coal be adjusted in the next quarter.
- (c) In case of any such excess sale, the Successful Bidder shall not be able to offer any further quantity for sale till the production level from the Coal Mine reaches such a level so as to produce surplus after 75% self-consumption.
- (d) If the Successful Bidder breaches the conditions of this Agreement by selling coal in excess of 25% of actual production in a year, a penalty equivalent to the highest sale price of coal obtained in CIL auction for the same grade of coal, or the actual sale value of coal, whichever is higher, shall be levied on such excess quantity sold, in the



following year after reconciling the quantities.

- (e) However, to provide a tolerance/ flexibility in margin of error, if, at the end of a year, such excess sale of coal is within 2% of the total coal production and has happened due to any *bona fide* reason, then penalty will not be levied and the Successful Bidder shall ensure that in the first quarter of the following year, it shall not sell such equal quantity so as to adjust this margin of error of 2% of the total coal production in the year.
- (f) CCO shall decide on the *bona fide* of the reasons for such excess sale of coal up to 2%.
- (g) If the excess sale of coal by the Successful Bidder is beyond the flexibility of 2% of the total coal production, then penalty shall be charged on the full quantity of coal sold in excess of the permissible limit of 25% of the total coal production.
- (h) In the event of three continuous penalties or a total of five penalties over the life of the coal mine for sale of excess coal beyond the permissible limit as specified in this Clause, the facility of sale of coal up to 25% of actual production in open market shall stand withdrawn.
- (i) The Successful Bidder shall prepare and maintain the documents related to day to day production, consumption and sale of coal which it shall have to produce whenever demanded by any Government agency/ Authority.

## **8.2. Middling or washery rejects**

- 8.2.1. The Successful Bidder shall adhere to Good Industry Practice with respect to mining of coal and make best efforts to reduce generation of middling or washery rejects and utilise the same in any captive power plant of the Successful Bidder.
- 8.2.2. Any middlings or washery rejects 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.
- 8.2.3. 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.
- 8.2.4. 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.

## **8.3. Arrangements for optimal utilisation**

- 8.3.1. In terms of Section 20 of the Act and Rule 19 of the Rules, the Successful Bidder shall be

permitted to enter into arrangements for optimum utilisation of the Coal Mine (the “**Arrangement**”). In the event the Successful Bidder is desirous of entering into an Arrangement, it shall make an application (the “**Arrangement Application**”) to the Central Government in accordance with Rule 19 of the Rules.

- 8.3.2. The Arrangement Application shall be filed by the Successful Bidder prior to undertaking any Arrangement and no Arrangement shall be given effect to until the Arrangement Application has been approved by the Central Government.
- 8.3.3. The Arrangement Application shall be made in writing and shall include complete particulars of the proposed Arrangement, including the particulars required to be provided under Rule 19(2) of the Rules i.e. (a) parties to the proposed Arrangement; (b) the proposed Arrangement; (c) the manner in which such Arrangement would achieve optimal utilisation of the relevant coal mines and cost efficiencies.
- 8.3.4. In the event that the Central Government grants its approval to the Arrangement, then prior to implementation of the Arrangement, the Successful Bidder shall provide to the Central Government duly certified copy of all agreements and other documents related to the Arrangement.

#### 8.4. **Utilisation in any other plant of the Successful Bidder**

- 8.4.1. In the event that the Successful Bidder is desirous of utilising the coal extracted from the Coal Mine in any other plants of the Successful Bidder or its subsidiary company (in terms of the Companies Act, 2013) engaged in the same specified end use as the Specified End Use Plant (“**Other Plant(s)**”) pursuant to Section 20(2) of the Act, then the Successful Bidder shall provide a written intimation (“**Diversion Notice**”) to the Central Government.
- 8.4.2. In accordance with Rule 20(2) of the Rules, the Diversion Notice shall be provided at least thirty Business Days prior to the intended date of such utilisation.
- 8.4.3. In the event that, upon submission of the Diversion Notice the Central Government seeks further information regarding the aforementioned utilisation, then the Successful Bidder shall provide the same within [seven] Business Days. The Successful Bidder shall not utilise the coal extracted from the Coal Mine in any Other Plant(s) if: (i) the Central Government determines in its sole discretion that such utilisation is not in accordance with Section 20(2) of the Act or Rule 20(2) of the Rules; or (ii) information regarding compliance with Section 20(2) of the Act or Rule 20(2) of the Rules with respect to such utilisation is not provided to the Central Government in the manner stipulated under this Clause 8.4.
- 8.4.4. The Diversion Notice shall include complete particulars of the proposed utilisation of

coal extracted from the Coal Mine in any Other Plant, including without limitation:

- (i) name and address of the Other Plant(s);
- (ii) the ownership of the Other Plant(s). It is clarified that such Other Plant(s) should be owned solely by the Successful Bidder or its subsidiary company (in terms of the Companies Act, 2013) to be eligible to get coal in terms of Section 20(2);
- (iii) the mechanism for transportation of coal from the Coal Mine to the Other Plant(s);
- (iv) the requirement of coal of the Other Plant(s); the sources from which such requirement is being met; and the per cent of such requirement being proposed to be met from the Coal Mine; and the manner in which such diversion would affect the Specified End Use Plant originally associated with the Coal Mine.

8.4.5. In the event that coal extracted from the Coal Mine is being diverted to any Other Plant(s) pursuant to this Clause 8.4, then the Successful Bidder or any of its subsidiary company owning such Other Plant(s) shall also be required to adhere to the stipulations under this Agreement with respect to the utilisation of coal from the Coal Mine and the Specified End Use and any Applicable Law.

## 8.5. **Sale to CIL**

8.5.1. Any coal extracted from the Coal Mine which is in excess of the requirements/ utilisation of coal in accordance with the provisions of Clauses 8.1, 8.2, 8.3 and 8.4, i.e., if due to maintenance or shutdown or such other unavoidable reasons, beyond the control of allocattee, during any part of the year, the allocattee is not able to use a minimum of 75% of actual production (ROM basis), in specified end use plant or own consumption, such excess coal shall be required to be sold to CIL at the terms and conditions specified at Clause 8.5.3.

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

8.5.2. It is clarified that the Successful Bidder shall continue to make Monthly Payments with respect to the coal extracted from the Coal Mine as per clause 9 including on the coal sold to CIL.

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

- (i) 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 purchaser, 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 on 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 analyzed 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.

**Illustration for utilization of coal**

Step No.	Clause	Example
1	As per clause 8.1 of Standard CMDPA, the Successful Bidder shall utilise minimum 75% of the actual production (ROM basis) in specified end use plant(s) and is allowed to sell upto 25% of the actual production (ROM) in open market.	If in a financial year, 100 MT coal is actually produced (ROM) – minimum 75 MT is to be utilised in SEUP(s) and 25 can be sold in market

2.	As per clause 8.2, Middlings & Rejects which cannot be utilised in the CPP of the Successful Bidder, may be sold with prior approval of CCO	So, out of 75 MT [i.e. minimum required to be utilised in SEUP(s)], if 30% Middlings and Rejects are obtained on washing which cannot be utilised in CPP, then such 30% of 75 MT (=22.5 MT) can be sold and remaining 70% of 75 MT (=52.5 MT) is to be utilised in SEUPs
3.	As per clause 8.3 and 8.4, the Successful Bidder can make arrangement for optimum utilisation and utilise coal in other end use, respectively.	So, Successful Bidder can utilise coal as per clause 8.3 and 8.4 out of 100 MT (ROM) or 75 MT (which is required to be utilised in SEUP) or 70% of 75 MT (after washing), as the case may be
4.	(a) As per clause 8.5, any coal extracted which is in excess of requirement / utilisation of coal in accordance with provision of 8.1, 8.2, 8.3 & 8.4 is to be required to be sold to CIL.  (b) Provided that sale should not exceed 50% of annual production.	So, out of 70% of 75 MT = 52.5 MT (which is to be utilised in SEUP(s) as per step 2), any quantity which cannot be utilised is to be sold to CIL.  This sale is subject to 50% limit as mentioned in proviso of clause 8.5

*Note: The above mentioned illustrations are merely for reference purpose and in case of inconsistency, the provision of Clause 8 shall prevail.*

## 8.6. Additional conditions for Successful Bidder having coal linkage or Memorandum of Understanding

8.6.1. 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. The existing coal linkage shall then be tapered off/ reduced as per extant policy/ procedure specified by the Government.

## 9. MONTHLY PAYMENTS AND ESCALATION

### 9.1. Monthly Payment

9.1.1. 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 (the “**Monthly Payment**”).

9.1.2. The Monthly Payment is required to be made to the State Government where the Coal Mine is located i.e. the State Government of [insert name of the state], within 20 calendar

days of expiry of each month with respect to coal extracted from the Coal Mine in such calendar month, in the manner as may be prescribed by the State Government, with an intimation to the Nominated Authority.

- 9.1.3. All payments required to be made by the Successful Bidder shall be made net of all applicable Taxes. In the event, Taxes are payable, the Successful Bidder shall gross-up the amount payable and make payment of the aggregate amount.
- 9.1.4. It is clarified that in addition to the aforementioned payments any royalty payable under Applicable Laws shall be payable additionally.

## 9.2. **Revision**

- 9.2.1. The Monthly Payment shall be subject to an escalation every financial year, on the basis of the Reference Index and the Monthly Payment shall stand revised by the per cent revision of the Reference Index on a year-on-year basis. It is clarified that for the purposes of escalation in a subsequent financial year, the revised Monthly Payment 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 escalation. The subject escalation would be applicable after the issuance of the Vesting Order.
- 9.2.2. In the event that the failure of the Successful Bidder to make payment of the Monthly Payment exceeds for more than [three] instances, such non-compliance may also result in termination of this Agreement as provided in Clause 24 (EFFECTIVE DATE, TERM AND TERMINATION).

## 10. **EFFICIENCY PARAMETERS**

- 10.1. The conduct of mining operations at the Coal Mine shall be subject to the milestones listed in SCHEDULE E (the “**Efficiency Parameters**”). In *bona fide* cases of delays not attributable to the Successful Bidder and based on the recommendation of the Scrutiny Committee, a grace period of maximum 30% for each Main Activity/ milestone may be allowed subject to the condition that overall grace period shall not exceed 15% of the time granted for the last milestone of development (i.e. MS-7).
- 10.2. The Successful Bidder would provide periodic information to the Nominated Authority and the Central Government regarding compliance with the Efficiency Parameters in the manner stipulated in Clause 7 (INFORMATION).
- 10.3. Any non compliance with the Efficiency Parameters would result in appropriation of the Performance Security in the manner stipulated in Clause 6 (PERFORMANCE SECURITY) and in case where such non-compliance exceeds for more than five instances, such non-compliance may also result in termination of this Agreement as

provided in Clause 24 (EFFECTIVE DATE, TERM AND TERMINATION).

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

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

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

### **11.2. Authorisations**

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

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

It is expressly agreed that other than rights to mine for coal (as may be granted under any Mining Lease or notification under Section 11 (1) of the CBA Act, 1957, as the case may be, pursuant hereto), geological or archaeological rights do not form part of the rights granted to the Successful Bidder under this Agreement and the Successful Bidder hereby acknowledges that except in relation to coal (as may be granted under any Mining Lease or notification under Section 11 (1) of the CBA Act, 1957, as the case may be, pursuant hereto), it shall not have any mining rights or interest in the underlying minerals, metals (including gold, silver etc.), gas, oil, fossils, antiquities, structures or other remnants or things either of particular geological or archeological interest and that such rights, interest and property on or under the Coal Mine shall vest in and belong to the Central/ relevant State Government or the concerned Governmental Authority. The Successful Bidder shall take all reasonable precautions to prevent its workmen or any other person from removing or damaging such interest or property and shall inform the Central/ relevant State Government forthwith of the discovery thereof and comply with such instructions as the concerned Governmental Authority may reasonably give for the removal of such property.

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

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

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

- 12.1. In the event the Successful Bidder enters into any agreement with any contractor in relation to the mining operations at the Coal Mine, then a duly certified copy of such agreement shall also be submitted to the Nominated Authority within [fifteen] Business Days of its execution.
- 12.2. Any Agreement between the Successful Bidder and its contractors shall contain appropriate terms by which the contractor shall acknowledge and comply with the terms of this Agreement and the contractor shall also cause its sub-contractors to acknowledge



and comply with the same.

- 12.3. Nothing in this Agreement shall exempt the Successful Bidder from any and all obligations under this Agreement despite the delegation of such obligations to a contractor or its subcontractors.

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

#### **13.1. Change in Control of the Bidder**

- 13.1.1. 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 applicable Eligibility Conditions, 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.

- 13.1.2. 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 requires prior Governmental Approval under any Applicable Laws, then such Governmental Approval shall be granted (in addition to any other requirement under Applicable Law) only if:

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

#### **13.2. Change in Control in case of a joint venture**

- 13.2.1. In the event, a Bidder is a joint venture company formed by two or more companies (the “**JV Partners**”), which has become eligible for participating in the auction process on account of its JV Partners meeting all the Eligibility Conditions, then:

- (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 applicable Eligibility Conditions;

- (b) in the event that, one of the JV Partners 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 the requirement of coal for their Specified End Use Plant, based on information provided during the tender process and contained in SCHEDULE B and (ii) coal extracted in excess of the limit specified in sub-clause (i) above shall be required to be sold at CIL at the terms and conditions mentioned at Clause 8.5.3.

13.2.2. Additionally, in case the Successful Bidder is a joint venture company, it should ensure that each of the JV Partners (i) independently meets all the Eligibility Conditions; 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 Agreement; and have at least twenty percent economic interest in the joint venture company. Failure to comply with such conditions by a particular JV Partner would disentitle such JV Partner to receive any coal from the Coal Mine and in such case provisions of Clause 13.2.1(b) shall apply.

### 13.3. **Consequences of default**

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

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

## 14. **REVISION IN MINE PLAN UPON ALLOCATION AND FLEXIBILITY IN PRODUCTION**

14.1. The Mining Plan approved in relation to the Prior Allottee, if any shall also be applicable to the Successful Bidder.

14.2. Upon allocation of Coal Mine, the Successful Bidder may revise the Mining Plan for extraction of more coal as compared to the Mining Plan being subject to revision in accordance with the provisions of Applicable Law and the Agreement.

14.3. **Flexibility in Production:** 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.

## **15. MINE CLOSURE**

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

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

### **16.1. Compliance**

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

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

### **16.2. Audit and record keeping**

16.2.1. The Successful Bidder shall keep at its normal place of business detailed, accurate and up to date records and books of account showing all payments made by the Successful Bidder in connection with this Agreement, the development of the Coal Mine, mining operations and matters incidental thereto and the steps taken by the Successful Bidder to comply with the Anti Corruption Laws, and the Anti Corruption Policy. Such records and books of accounts shall be required to be maintained for a period of [six] years. The Successful Bidder shall ensure that such records and books of accounts are sufficient to enable verification of the Successful Bidder’s compliance with its obligations under this Clause 16.

16.2.2. The Successful Bidder shall permit the Nominated Authority and its representatives, to access and take copies of the Successful Bidder’s records and any other information held

at the Successful Bidder's premises and to meet with the Successful Bidder's personnel to audit the Successful Bidder's compliance with its obligations under this Clause 16. Such audit rights shall continue for [three] years after termination of this Agreement. The Successful Bidder shall give all necessary assistance to the conduct of such audits during the Term of this Agreement and for a period of [three] year after termination of this Agreement.

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

Any contract or arrangements entered into by the Successful Bidder, including without limitation contracts or arrangements with any supplier, contractor, sub-contractor, employees should impose on and secure from the Subcontractor obligations, liabilities, undertakings, warranties, acknowledgements and grants of rights equivalent to those imposed on and secured from the Successful Bidder in this Clause 16, except for the requirement of Anti Corruption Policy in case of contracts or arrangements with natural persons.

## 17. **REPRESENTATIONS AND WARRANTIES**

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

## 18. **INDEMNITIES**

- 18.1. In this clause, a reference to the Nominated Authority shall include the Nominated Authority; the Government of India; any of the departments or ministries of the Government of India; and of the officers, employees, staff, advisors, representatives or agents of the Government of India (collectively the "**Indemnified Party**") and the provisions of this Clause shall be for the benefit of the Indemnified Party, and shall be

enforceable by each such Indemnified Party.

- 18.2. The Successful Bidder shall indemnify the Indemnified Party against all liabilities, costs, expenses, damages and losses (including but not limited to any interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Indemnified Party arising out of or in connection with:
- (a) any breach of the Warranties
  - (b) Successful Bidder's breach or negligent performance or non-performance of this Agreement;
  - (c) the enforcement of this Agreement;
  - (d) any claim made against the Indemnified Party for actual or alleged infringement of a Third Party's rights arising out of or in connection with mining operations at the Coal Mine or performance or non performance of any of the obligations under this Agreement to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this Agreement by the Successful Bidder, its employees, agents or contractors;
  - (e) any claim made against the Indemnified Party by a Third Party for death, personal injury or damage to property arising out of or in connection with mining operations at the Coal Mine or performance or non performance of any of the obligations under this Agreement;
  - (f) any loss or damages caused on account of breach of any Applicable Law by the Successful Bidder, including without limitation any costs incurred by the Nominated Authority in cleaning or rectifying of any environmental damages caused by the Successful Bidder on account of, lack of Good Industry Practice; breach, negligent performance or failure or delay in performance of this Agreement; or non-compliance with Applicable Law.
  - (g) Any claim made to or against the Indemnified Party hereinafter for any amount admissible as Fixed Amount in terms of the Tender Document and the Act.
- 18.3. If any Third Party makes a claim, or notifies an intention to make a claim, against the Indemnified Party which may reasonably be considered likely to give rise to a liability under this indemnity (a “**Claim**”), the Indemnified Party shall as soon as reasonably practicable, give written notice of the Claim to the Successful Bidder, specifying the nature of the Claim in reasonable detail.
- 18.4. Subject to the Successful Bidder providing security to the Indemnified Party, to the

Indemnified Party's sole and absolute satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, the Successful Bidder may take such action as it may reasonably deem fit to avoid, dispute, compromise or defend the Claim.

- 18.5. Payments of the amount of Claim shall become due and payable within [thirty] Business Days of receipt of notice of Claim. If a payment due from the Successful Bidder under this clause is subject to Tax (whether by way of direct assessment or withholding at its source), the Indemnified Party shall be entitled to receive from the Successful Bidder such amounts as shall ensure that the net receipt, after Tax, to the Indemnified Party in respect of the payment is the same as it would have been were the payment not subject to Tax.

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

### **19.1. Prohibition on Assignment**

19.1.1. Except as provided in this Clause 19, the Successful Bidder shall not assign this Agreement, either directly or indirectly, save and except with the prior consent in writing of the Nominated Authority, which consent the Nominated Authority shall be entitled to decline without assigning any reason.

19.1.2. Subject to compliance with provisions of Clause 19.2, this Agreement may be assigned by the Successful Bidder in the following events:

- (a) upon occurrence of a change in Control or transfer which is permissible in terms of Clause 13, to the transferee; or
- (b) upon occurrence of an enforcement event, to a transferee as may be determined by a bank or financial institution in terms of Clause 19.3.

### **19.2. Assignment Conditions**

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

- (a) the proposed assignee must meet the applicable Eligibility Conditions;
- (b) the proposed assignee must agree to unconditionally and irrevocably adhere to the provisions of this Agreement and must enter into a deed of adherence in the manner as prescribed by the Nominated Authority;
- (c) the proposed assignee must have furnished the Performance Security, to substitute any subsisting Performance Security provided by the Successful Bidder;
- (d) the proposed assignee must have paid any other amount due from the Successful Bidder and agree to indemnify and hold the Nominated Authority harmless in all

respects against any claims from any Third Party or the Successful Bidder with respect to such assignment.

### 19.3. Security for financing, enforcement Event

19.3.1. 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. It is clarified that the Successful Bidder shall be permitted to enter into any agreement with bank or financial institutions with respect to assignment of this Agreement in terms of this Clause 19 and in such case the assignment conditions mentioned in clause 19.2 shall not be applicable and the conditions specified in Clause 19.3 shall be applicable.

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

19.3.3. In the event of a default, the banks or financial institutions, as the case may be shall be entitled to enforce their security interest, provided that the conditions listed in Clause 19.2 are met, in the manner provided below:

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

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

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

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

## **20. INSURANCE**

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

## **21. ACCOUNTS AND AUDIT**

### **21.1. Audited Accounts**

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



## 21.2. **Appointment of Auditors**

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

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

Any claim or document provided by the Successful Bidder to the Nominated Authority in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective only if certified by its statutory auditors.

## 22. **GOVERNMENT INSPECTION**

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

22.2. The Nominated Authority, through its authorized representatives, shall have access to the Successful Bidder's financial and other records and transactions (relatable to any period) at any time upon reasonable advance notice, the right to copy therefrom, for the purpose of assessing the performance and compliance of the Successful Bidder with the terms of this Agreement and all Applicable Laws, rules and regulations or to aid in the enforcement of the same.

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

## 23. **EVENT OF FORCE MAJEURE**

23.1. Event of Force Majeure means any of the following events or circumstances or combination of the following events or circumstances which are beyond the reasonable control of the Successful Bidder, which could not have been prevented by Good Industry Practice or by the exercise of reasonable skill and care and which or any consequences of which, have a material and adverse effect upon the performance by the Successful Bidder of its obligations or enjoyment of its rights:

- (i) acts of God, flood, drought, earthquake or other natural disaster;
- (ii) epidemic or pandemic;

- (iii) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
  - (iv) nuclear, chemical or biological contamination or sonic boom;
  - (v) collapse of buildings, fire, explosion or accident;
  - (vi) any labour or trade dispute, strikes, industrial action or lockouts (other than those solely affecting Successful Bidder claiming the same as an Event of Force Majeure and attributable to such Successful Bidder's policies regarding labour, compensation or employment or labour related conditions).
- 23.2. Provided it has complied with Clause 23.3, if the Successful Bidder is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by an Event of Force Majeure, the Successful Bidder shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations.
- 23.3. Upon occurrence of an Event of Force Majeure, the Successful Bidder shall:
- (i) as soon as reasonably practicable after the start of the Event of Force Majeure but no later than thirty Business Days from its start, notify the Nominated Authority and the Central Government in writing of the Event of Force Majeure, the date on which it started, its likely or potential duration, and the effect of the Event of Force Majeure on its ability to perform any of its obligations under this Agreement; and
  - (ii) use all reasonable endeavours to mitigate the effect of the Event of Force Majeure on the performance of its obligations including following of Good Industry Practice.
- 23.4. If an obligation is suspended by reason of an Event of Force Majeure for more than [one] month continuously, the Parties shall enter into good faith negotiations to revise the terms of this Agreement to reflect the changed circumstances, provided that this Agreement shall remain in effect during the period during which the Parties are negotiating the terms of any such revision.
- 23.5. Notwithstanding Clause 23.4, in the event that, performance of obligations under this Agreement remain suspended for a period of: (a) [six] months continuously; (b) or [nine] months over a period of [one] year, then the Nominated Authority may in its sole discretion terminate this Agreement in the manner provided in Clause 24 (EFFECTIVE DATE, TERM AND TERMINATION).

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

### **24.1. Effective Date**

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

### **24.2. Term**

This Agreement shall commence on the dates mentioned in Clause 24.1 and shall continue for the period of validity of the Mining Lease granted to the Successful Bidder or the notification under Section 11 (1) of the CBA Act, 1957, as the case may be (“**Term**”), unless agreed otherwise by the Parties and unless this Agreement is terminated earlier in accordance with its terms prior to the expiry of the Term.

### **24.3. Termination**

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

- (a) failure of the Successful Bidder to make payment of the Upfront Amount in the manner provided in Clause 5.2;
- (b) failure of the Successful Bidder to complete the Vesting Conditions within the time specified in Clause 3.2;
- (c) failure of the Successful Bidder to make payment of additional levy within the time specified under Rule 18 of the Rules, if required to be paid;
- (d) occurrence of any Appropriation Event resulting in appropriation of the entire Performance Security or on account of one or more Appropriation Events, an amount equal to hundred per cent of the Performance Security being appropriated in aggregate (in one or more instances) as provided in Clause 6.3;
- (e) failure of the Successful Bidder to replenish the Performance Security within a period of [15] Business Days, in the event that a part of the Performance Security has been appropriated;
- (f) non compliance of the Successful Bidder with the Efficiency Parameters for more than five instances (in aggregate and not over a specified period) as provided in Clause 10.3;

- (g) any breach of compliance requirements with anti corruption laws as provided in Clause 16;
- (h) suspension of obligations on account of an Event of Force Majeure for a period longer than as specified in Clause 23.5;
- (i) failure to make payment of the Monthly Payment for more than [three] instances (in aggregate and not over a specified period) in terms of Clause 9.2.2;
- (j) failure to provide any information requested by the Nominated Authority in terms of this Agreement;
- (k) failure of the Successful Bidder to ensure continued compliance with the Eligibility Conditions;
- (l) in case the Successful Bidder is a joint venture company, failure of all the JV Partners to meet the requirements listed in Clause 13.2.2;
- (m) the Successful Bidder dissolves, liquidates, becomes insolvent, commits an act of bankruptcy, makes an assignment for the benefit of creditors, petitions or applies to any tribunal for the appointment of a trustee or receiver for itself, or commences any proceedings concerning itself under a law concerning bankruptcy, or insolvency other than for the purposes of corporate reorganization;
- (n) any other breach of any of the provisions of this Agreement (including in case of the Warranties being untrue or misleading or incorrect in any manner whatsoever), which is not cured by the Successful Bidder within [thirty] Business Days of becoming aware of the same, on its own accord or upon receipt of a notice from the Nominated Authority;
- (o) surrender of the Coal Mine by the Successful Bidder;
- (p) cessation of coal mining operation exceeding a period of [one year continuously, or 18 months over a period of two years] without occurrence of any event of force majeure;
- (q) termination of the Mining Lease granted to the Successful Bidder or notification under Section 11 (1) of the CBA Act, 1957, as the case may be; or
- (r) in the opinion of the Central Government, it is expedient in public interest to terminate this Agreement.

24.3.2. Upon occurrence of a Termination Event, the Nominated Authority may elect to terminate this Agreement by providing a [15] Business Days written notice to the Successful Bidder. The determination of the Nominated Authority regarding occurrence

of a Termination Event shall be final and binding on the Successful Bidder.

24.3.3. In case the Nominated Authority elects to terminate this Agreement, then the Performance Security and all other payments made by the Successful Bidder shall be forfeited and the Successful Bidder shall not be entitled to any benefits under this Agreement but would continue to be liable towards any antecedent liability, all obligations accrued before the effective date of the surrender/ termination and also for the obligations that must be fulfilled after termination.

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

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

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

25.1. This Agreement and all questions of its interpretation shall be construed in accordance with the laws of India, without regard to its principles of conflicts of laws.

25.2. Any dispute, controversy or claim arising out of or relating to or in connection with the Agreement including a dispute as to the validity or existence of this Agreement, or any breach or alleged breach thereof, shall be settled through mutual discussions between the Parties. In this regard, the Successful Bidder shall nominate an officer not below the rank of a director to participate in the discussions on its behalf.

25.3. In the event that the Successful Bidder fails to nominate an officer in the manner required under Clause 25.2; or the Parties are unable to resolve any dispute in accordance with Clause 25.2 within a period of [30] Business Days starting from the date on which the first notice of dispute was provided by either Party, such dispute shall be resolved in accordance with Section 27 of the Act.

25.4. It is expressly agreed between the Parties, that any existence of a dispute shall not affect in any manner any of the rights of the Nominated Authority under this Agreement, including without limitation the right to appropriate Performance Security or terminate this Agreement, until a final determination in this regard is made.

25.5. The provisions contained in this Clause 25 shall survive the termination of this Agreement.

### **26. MISCELLANEOUS**

#### **26.1. Time of Essence**

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

## 26.2. **Publicity**

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

## 26.3. **Severability**

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

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

## 26.4. **Costs and Expenses**

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

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

## 26.5. **Further Assurance**

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

## 26.6. **Legal And Prior Rights**

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

## 26.7. **Waiver**

26.7.1. The waiver of any default or breach under this Agreement by the Nominated Authority shall not constitute a waiver of the right to terminate this Agreement for any substantial default of a similar nature or under any other terms and conditions of this Agreement.

26.7.2. No failure or delay by the Nominated Authority in exercising any right or remedy provided by Applicable Law under or pursuant to this Agreement shall impair such right or remedy or operate or be construed as a waiver or variation of it or preclude its exercise at any subsequent time and no single or partial exercise of any such right or remedy shall preclude any other or further exercise of it or the exercise of any other right or remedy. The rights and remedies of the Nominated Authority under or pursuant to this Agreement are cumulative, may be exercised as often as it considers appropriate and are in addition to its rights and remedies under Applicable Law.

26.7.3. Submission of any document, information, report or notice, which contains any information or reference to any default or breach under this Agreement or any Applicable Law, to the Nominated Authority shall not be construed to be a deemed approval of such breach or default and the Nominated Authority may exercise any rights or remedies with respect to such default at any time.

## 26.8. **Amendments**

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

## 26.9. **Counterparts**

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

#### **26.10. No Agency or partnership**

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

#### **26.11. Notices**

All notices, requests, demands or other communication (“**Notice**”) required or permitted to be given under this Agreement and the provisions contained herein shall be written in English and shall be deemed to be duly sent by registered post with acknowledgment due, or transmitted by facsimile transmission to the other Parties at the address indicated in SCHEDULE H hereof or at such other address as the Party to whom such notices, requests, demands or other communication is to be given shall have last notified to the Party giving the same in the manner provided in this Clause, but no such change of address shall be deemed to have been given until it is actually received by the Party sought to be charged with the knowledge of its contents. Any notice, request, demand or other communication delivered to the Party to whom it is addressed as provided in this Clause 26.11 shall be deemed to have been given and received on the day of its receipt at such address.

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

#### **26.12. Entire Agreement**

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



### 26.13. **Specific Performance of Obligations**

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

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

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

### 26.15. **Change Notice**

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

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

The change notice shall be issued in writing by the Nominated Authority and shall be sent by registered post with acknowledgment due, or transmitted by facsimile transmission at the address of the Successful Bidder as specified in Clause 26.11 for providing Notices. A copy of the Change Notice sent by registered post with acknowledgment due, or transmitted by facsimile transmission may also be sent through email to the email addresses specified pursuant to Clause 26.11 solely for the information of the Successful Bidder and shall be deemed to be delivered when the registered post is actually delivered or the fax is received by the Successful Bidder, as the case may be.

Within 5 Business Days of receipt of the Change Notice, the Successful Bidder shall

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

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

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

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

**SCHEDULE B - PARTICULARS OF THE SPECIFIED END USE PLANT**

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

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

To  
The Nominated Authority

[address]

[date]

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

Dear Sir,

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

- (a) particulars of movable property along with the details of the current owner, the terms of negotiations, related documentation and other details, which we intend to own and use in terms of Section 10(1) of the Act is enclosed as Annexure A;
- (b) particulars of movable property along with the details of the current owner, the terms of negotiations, related documentation and other details, which we do not intend to own and use and which we intend to move in terms of Section 10(4) of the Act is enclosed as Annexure B;
- (c) the list of contracts (including contracts with secured creditors<sup>2</sup>) which we intend to adopt and continue, along with complete particulars of such contracts is enclosed as Annexure C;
- (d) the list of contracts (including contracts with secured creditors) which we do not intend to adopt and continue, along with complete particulars of such contracts is enclosed as Annexure D.

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

Your Sincerely,

.....

(Authorised Signatory)

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<sup>2</sup> Not applicable if the Successful Bidder is the Prior Allottee in which case the secured creditors shall have an option to continue in terms of Section 12(1) of the Act.

Name:

Designation:

**Enclosed: As Above**

**Annexure A**

**Annexure B**

**Annexure C**

**Annexure D**

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

To  
The Nominated Authority

[address]

[date]

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

Dear Sir,

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

- (a) we continue to be in compliance with all the Eligibility Conditions;
- (b) we have paid the first instalment of the Upfront Amount, in accordance with Clause 5.2.1 through [particulars of payment to be mentioned];
- (c) we have furnished the Performance Security through [particulars of performance security and its manner of delivery to be mentioned];
- (d) we have paid the Fixed Amount through [particulars of payment to be mentioned];
- (e) Additional Levy as was required to be paid has been paid through [particulars of payment to be mentioned]<sup>3</sup>; and
- (f) we have provided a written intimation as was required under Clause 3.1(f) of the Agreement through a letter dated [particulars to be mentioned].

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

Your Sincerely,

.....

(Authorised Signatory)

Name:

Designation:

Enclosed: As Above

<sup>3</sup> Not applicable if the Successful Bidder/JV Partner is not the Prior Allottee.

## SCHEDULE E - EFFICIENCY PARAMETERS

**For Schedule II Coal Mines<sup>4</sup>:**

S. No.	Milestone	Time Limit in Months (From the date of the Vesting Order/ zero date)	Percentage of Performance Security to be appropriated
1	Application for transfer of Statutory permission to the Successful Bidder	1	12
2	Completion of transfer of statutory permissions obtained by Prior Allottee / obtaining fresh statutory permissions, if required	9	8
3	Reporting of Deviations from approved Mining Plan (if any)	10	8
4	Ratification of Deviations/ Approval of Revised Mining Plan including Mine Closure Plan (if necessary)	16	15
5	Approval of Mine Closure Plan (if not approved earlier)	9 (In case of no deviation)	10
6	Opening of Escrow Account (if not opened earlier)	9 (In case of no deviation)	15
7	Schedule of Production as per approved mining plan (annual)	As per clause 14.3 of Tender Document (Flexibility in Production)	20
8	EUP Synchronisation	As per approved Mining Plan	12
<b>Total</b>			<b>100</b>

*Note:*

1. In bona fide cases of delays not attributable to the Successful Bidder and based on the recommendation of the Scrutiny Committee, a grace period of maximum 30% for each milestone may be allowed subject to the condition that overall grace period shall not exceed 15% of the time granted for the last milestone of development, i.e. 9 months.

2. Appropriation of Performance Security in case of 7<sup>th</sup> Milestone, i.e. "Schedule of Production as per approved mining plan (annual)" would be as follows:

1. The appropriation of performance security will be applicable annually on the basis of actual production in the year with respect to the production scheduled as per the approved mining plan.

2. For this purpose, year-wise percentage of performance security will be calculated by equally dividing 20% percentage (i.e. percentage to be appropriated) amongst the years from the year of start of production to the year of achievement of peak rated production capacity as per the production schedule of the approved mining plan.

<sup>4</sup> To be retained for Schedule II coal mines



**For Schedule III Coal Mines<sup>5</sup>:**

<b>Activities</b>	<b>Completion time from Date of Vesting (in Months)</b>	<b>Milestone (No.)</b>	<b>Percentage of Performance Security to be appropriated</b>
Prospecting Licence or Notification under section 4 of the CBA Act, 1957, as applicable	3	MS-1	
Completion of Drilling/ Exploration	11		
Preparation of Geological Report (GR)	15		5
<b>Events after preparation of GR</b>			
Mining Lease Application	18	MS-2	
Submission of Mining Plan	19		
Approval of Mining Plan/Project Report	21		16
Application of Previous approval	22	MS-3A	
Forest Clearance Application	22		
Environment Clearance Application	23		
Previous Approval	23		
Forestry Clearance(FC)-stage 1	33	MS-3B	7
Forestry Clearance(FC)-stage 2	39		6
Wild life Clearance	39	MS-4	
Approval under PESA	39		
Environment Clearance (EC)	39		13
Approval for Nallah /River Diversion	45	MS-5	
Approval for diversion of Power line/Rail/Road	45		
Permission to draw Water	45		
Permission to draw Power	45		
Consent to Establish /Operate	51		
Grant of Mining Lease or Notification under section 11 of CBA Act,1957, as applicable	55		15
Land Acquisition	60	MS-6	
possession of land and R&R to reach rated capacity as per approved mining plan	60		10
Intimation to DGMS for Mine opening	62	MS-7	
Approval for use of Explosive & Licence for Storage of Petroleum	62		
Permission under Factories Act,1948	62		
Permission for use of Radio Frequency Communication System	62		
Labour related Permissions	62		

<sup>5</sup> To be retained for Schedule II coal mines

Escrow Account	62		
Application for Opening permission	63		
Mine Opening Permission	66		12
Schedule of production as per the approved mining Plan (annual)	As per clause 14.3 of Tender Document (Flexibility in Production)	MS-8	16
<b>Total</b>			<b>100</b>

**Note:**

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

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

3. If any of the above activities/ milestones is not applicable for the Coal Mine, the corresponding period for completion shall not be reckoned for appropriation of performance security. In case of coal mines where Geological Report is already available at the time of vesting, MS-1 shall not be applicable for such mines and Milestones shall be reckoned from MS-2 in such case.

4. In bona fide cases of delays not attributable to the Successful Bidder and based on the recommendation of the Scrutiny Committee, a grace period of maximum 30% for each Main Activity/ milestone may be allowed subject to the condition that overall grace period shall not exceed 15% of the time granted for the last milestone of development (i.e. MS-7).

5. Appropriation of Performance Security in case of MS-8, i.e. “Schedule of Production as per approved mining plan (annual)” would be as follows:

1. The appropriation of performance security will be applicable annually on the basis of actual production in the year with respect to the production scheduled as per the approved mining plan.

2. For this purpose, year-wise percentage of performance security will be calculated by equally dividing 16% percentage (i.e. percentage to be appropriated) amongst the years from the year of start of production to the year of achievement of peak rated production capacity as per the production schedule of the approved mining plan.

## SCHEDULE F - FORMAT OF PERFORMANCE SECURITY

[Reference number of the bank]

[date]

To  
The Nominated Authority  
[address]

### WHEREAS

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

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

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

raised by the Successful Bidder in any suit or proceeding pending before any court or tribunal relating thereto the Bank's liability under this present being absolute and unequivocal.

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

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

5. Any payment made hereunder shall be made free and clear of and without deduction for, or on account of, any present or future taxes, levies, imposts, duties, charges, fees, commissions, deductions or withholdings of any nature whatsoever and by whom ever imposed; and where any withholding on a payment is required by law, the Bank shall comply with such withholding obligations and shall pay such additional amount in respect of such payment such that the Nominated Authority receives the full amount due hereunder as if no such withholding had occurred. It is clarified that even in such case the obligation of the Bank shall not in any manner exceed in the aggregate the amount of INR [figures] (Indian Rupees [words]).

6. The Bank agrees that Nominated Authority at its option shall be entitled to enforce this Guarantee against the Bank, as a principal debtor in the first instance without proceeding at the first instance against the Successful Bidder.
7. The Bank further agree that the guarantee herein contained shall remain in full force and effect during the period that specified in the Agreement and that it shall continue to be enforceable till all the obligations of the Successful Bidder under or by virtue of the said Agreement with respect to the Performance Security have been fully paid and its claims satisfied or discharged or till the Nominated Authority certifies that the terms and conditions of the Agreement with respect to the Performance Security have been fully and properly carried out by the Successful Bidder and accordingly discharges this guarantee. Notwithstanding anything contained herein, unless a demand or claim under this guarantee is made on the Bank in writing on or before the [date of expiry of bank guarantee] the Bank shall be discharged from all liability under this guarantee thereafter.
8. The payment so made by the Bank under this Guarantee shall be a valid discharge of Bank's liability for payment thereunder and the Nominated Authority shall have no claim against the Bank for making such payment.
9. This Guarantee is subject to the laws of India. Any suit, action, or other proceedings arising out of this Guarantee or the subject matter hereof shall be subject to the exclusive jurisdiction of courts at Delhi.
10. The Bank has the power to issue this Guarantee in favour of the Nominated Authority. This guarantee will not be discharged due to the change in the constitution of the Bank.
11. The Bank undertakes not to revoke this Guarantee during its currency except with the previous consent of the Nominated Authority in writing.
12. The Nominated Authority may, with prior intimation to the Bank, assign the right under this Guarantee to any other departments, ministries or any governmental agencies, which may act in the name of the President of India. The Nominated Authority may also assign this Guarantee in favour of the Governor of a State, with prior intimation to the Bank. Save as provided in this Clause 12, this Guarantee shall not be assignable or transferable.

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

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

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(Signature)

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(Name and Designation)

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(Bank Stamp)

## **SCHEDULE G - WARRANTIES**

### **1. INFORMATION**

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

### **2. AUTHORITY**

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

in favour of any party any right to terminate, modify or cancel, or require any notice, consent or waiver under, any contract or instrument to which the Successful Bidder is party or by which it is bound or to which its assets are subject;

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

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

### 3. **GENERAL**

#### The Successful Bidder

- (a) is duly organised, validly existing and in good standing under the laws of India;
- (b) meets all the Eligibility Conditions prescribed under the Act read with the Rules and the Tender Documents;
- (c) has the financial standing and capacity to undertake mining operations at the Coal Mine in accordance with the Efficiency Parameters;
- (d) is subject to civil and commercial laws of India with respect to this Agreement and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof;
- (e) there are no actions, suits, proceedings or investigations pending or to the Successful Bidder's knowledge threatened against it at law or in equity before any court or before any other judicial, quasi judicial or other authority, the outcome of which may constitute an event of default hereunder;
- (f) has neither violated or defaulted nor has knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Governmental Authority;
- (g) has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities;
- (h) except as set forth in any Mining Lease or in the notification under Section 11 (1) of the CBA Act, 1957, as the case may be, all rights and interests of the Successful Bidder in and to the Coal Mine shall pass to and vest in the relevant Governmental Authority on the date of termination or expiry hereof, free and



clear of all Encumbrances without any further act or deed on the part of the Successful Bidder or the Central Government;

- (i) no bribe or illegal gratification or any other illegal amount has been paid or will be paid in cash or kind by or on behalf of the Successful Bidder to any Person to procure the rights granted hereunder; and
- (j) Without prejudice to any express provision contained in this Agreement, the Successful Bidder acknowledges that prior to the execution of this Agreement, the Successful Bidder has after a complete and careful examination made an independent evaluation of the Coal Mine and the information provided by the Nominated Authority, and has determined to its satisfaction the nature and extent of risks and hazards as are likely to arise or may be faced by the Successful Bidder in the course of performance of its obligations hereunder. The Successful Bidder also acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth above and hereby confirms that the Nominated Authority and any Governmental Authority shall not be liable for the same in any manner whatsoever to the Successful Bidder.

**SCHEDULE H - ADDRESS FOR PROVIDING NOTICES**

**A. Notice to the Nominated Authority**

<b>Address</b>	
<b>Telephone</b>	
<b>Fax</b>	
<b>E-mail (only for information)</b>	

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

<b>Address</b>	Ministry of Coal
<b>Telephone</b>	
<b>Fax</b>	
<b>E-mail (only for information)</b>	

**C. Notice to the Successful Bidder**

<b>Address</b>	
<b>Telephone</b>	
<b>Fax</b>	
<b>E-mail (only for information)</b>	

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

**Signatories**

The Nominated Authority

[Name of the Successful Bidder]

.....

.....

Name:

Name:

Date:

Designation

Date:

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