

Contract Agreement

for

**Re-opening, Development & Operation
Of _____ Underground Coal Mine
on
Revenue sharing basis**

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PART I
PRELIMINARY

COAL MINING AGREEMENT

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

BETWEEN

Western Coalfields Limited represented by *** and having its offices at Coal Estate, Civil Lines, Nagpur-440001(MS)(hereinafter referred to as the "**Authority**", which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns), of First Part;

AND

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

WHEREAS:

- (A) The Authority for re-opening, development and operation of the _____ Underground Mine in accordance with the terms and conditions set forth in this agreement (the "**Agreement**"), has invited bids from prospective bidders by its Request for Bid No. [****] (the "**Request for Bid**" or "**RFB**") that prescribed the technical and commercial terms and conditions for selection of the successful Bidder.

- (B) {After evaluation of the bids received, the Authority has accepted the bid of the {the selected Bidder/consortium comprising of {****} (referred individually as "Bidder") or otherwise {****} and {****} (collectively referred as the "**Consortium**") with {****} as its lead member (the "**Lead Member**"), duly authorized by authority letter dated {****}. The Authority has issued its Letter of Award No. {**** dated ****} (the "**Letter of Award**" or "**LOA**") to the {selected Bidder/ Consortium} requiring, inter alia, the execution of this Agreement within [90 (ninety) days] of the date of issue thereof or within such period as extended by the Authority in accordance with the RFB}.

- (C) The selected Bidder/ Consortium has promoted and incorporated the Mine Operator, being {****} as a company limited by shares under the Companies Act 2013. The Mine Operator incorporated as a Special Purpose Vehicle (SPV) to enter in this agreement pursuant to LOA and undertake all the obligations for re-opening, development, operation and safety of the Mine and recruitment of manager and other manpower for its operations. The Mine Operator further undertakes to be the

defacto occupier of the mine and shall accordingly be solely responsible to perform the obligations of the Owner/occupier under the Mines Act, 1952 ('the Act'). The Mine Operator understand its absolute responsibility to indemnify and reimburse the Authority any fines, penalty, losses, compensation, damages, payments etc. incurred by Authority.

- (D) {By its letter dated {****}, the Mine Operator has also joined in the said request of the selected Bidder/ Consortium to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the selected Bidder/ Consortium including the obligation to enter into this Agreement pursuant to the LOA. The Mine Operator has further represented to the effect that it has been promoted by the selected Bidder/ Consortium for the purposes hereof}.
- (E) The Authority {has agreed to the said request of the selected Bidder/ Consortium and the Mine Operator, and has} accordingly agreed to enter into this Agreement with the Mine Operator for development of the Mines, and for mining of Coal and Delivery thereof, subject to and on the terms and conditions set forth hereinafter.
- (F) The Mine(s) shall be handed over to the Mine Operator on "as is where is" basis. The existing infrastructure and project facilities may be utilized by the Mine Operator for the purpose of the Project without any additional payment to the Authority,subject to the condition that a prior written notice regarding such utilization is provided by the Mine Operator to the Authority. However any cost and expensetowards repair, refurbishment, renovation, upgradation etc. of such infrastructure and project facilities utilized by Mine Operator shall be borne by the Mine Operator.Further, the Mine Operator undertakes to utilize such existing infrastructure and project facilities solely for the Project and not otherwise.
- (G) The percentage of Revenue Share of Authority is {.....}.

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

ARTICLE 1

DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

- (a) references to Applicable Laws or any provision thereof shall include amendment or re-enactment or consolidation of such Applicable Laws or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to laws of the State, laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (c) references to a "**person**" and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- (d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) the words "**include**" and "**including**" are to be construed without limitation and shall be deemed to be followed by "**without limitation**" or "**but not limited to**" whether or not they are followed by such phrases;
- (f) references to "**construction**" or "**building**" include, unless the context otherwise requires, investigation, design, developing, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and "**construct**" or "**build**" shall be construed accordingly;
- (g) references to "**re-opening of the Mines**" include re-opening of the Mines or seam(s) after its abandonment, closure or discontinuance, using existing mine infrastructure and facilities, additional infrastructure and facilities, additional exploration, preparatory works for recovery of the mine workings and all other matters and activities in connection therewith or incidental to re-open the Mines for further Mines development and operation for excavation/extraction of Coal.

- (h) references to "**development**" include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, upgradation and other activities incidental thereto including, but not limited to, construction of Mines infrastructure such as box cut, haul road, Mines shafts, inclines/drifts, main/ trunk roadway, transport network for Coal, men and material supply, storage of Coal, ventilation network, backfilling or stowing arrangement, electric power supply network, water drainage and pumping network, water supply arrangement or any other infrastructure facilities, as required, along with the procurement, supply, erection/installation and commissioning of the equipment/items and all matters in connection therewith or incidental to facilitate operation and maintenance of the Mines for excavation/extraction and Delivery of Coal, and "develop" shall be construed accordingly;
- (i) references to "**operation and maintenance**" include, unless the context otherwise requires, operation and maintenance of all development, construction, accesses, machineries, services and facilities of the Mines at surface and below ground and all matters connected therewith or incidental to the operation and maintenance for excavation/extraction and Delivery of Coal, and "operate and maintain" shall be construed accordingly;
- (j) references to "**excavation**" include, unless the context otherwise requires, cutting, drilling and blasting, scooping or digging out a part of solid mass comprising earth, rocks, Coal and other materials with the objective of segregating Coal from earth, rocks and other materials by Opencast Working for lifting and transportation thereof to the Coal Depot or Delivery Point, and "**excavate**" shall be construed accordingly;
- (k) references to "**extraction**" include, unless the context otherwise requires, cutting, drilling and blasting, strata monitoring and support, scooping or digging out a part of solid mass comprising earth, rocks, Coal and other materials by Underground Working with the objective of segregating Coal from earth, rocks and other materials for lifting and transportation thereof to the Coal Depot or Delivery Point, and "extract" shall be construed accordingly;
- (l) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (m) any reference to "**hour**" shall mean a period of 60 (sixty) minutes;
- (n) any reference to "**day**" shall mean a reference to a calendar day;
- (o) references to a "**business day**" shall be construed as a reference to a day (other than a Sunday or a public holiday) on which Authority is open for general business in the State in which the Project is situated ;
- (p) any reference to "**month**" shall mean a reference to a calendar month as per the Gregorian calendar;
- (q) any reference to "**quarter**" shall mean a reference to the period of three months commencing from April 1, July 1, October 1, and January 1, as the case may be;

- (r) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;
- (s) any reference to any period commencing "**from**" a specified day or date and "**till**" or "**until**" a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- (t) the words importing singular shall include plural and vice versa;
- (u) references to any gender shall include male, female and the thirdgender;
- (v) "**kWh**" shall mean kilowatt hour and "**kcal**" shall mean kilocalories;
- (w) "**lakh**" shall mean a hundred thousand (100,000) and "**crore**" means ten million (10,000,000);
- (x) "**indebtedness**" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (y) references to the "**winding-up**", "**dissolution**", "**insolvency**", or "**reorganization**" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, re-organization, dissolution, arrangement, protection or relief of debtors;
- (z) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this sub-clause (z) shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;
- (aa) any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party in this behalf and not otherwise;
- (bb) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- (cc) references to Recitals, Articles, Clauses, Sub-clauses, Provisos or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses, Provisos and Schedules of, or to this Agreement, references to an Annex shall, subject to anything to the contrary specified therein, be construed as a reference to an Annex to the Schedule in which such reference occurs, and references to a

Paragraph shall, subject to anything to the contrary specified therein, be construed as a reference to a Paragraph of the Schedule or Annex, as the case may be, in which such reference appears;

- (dd) the damages payable by either Party to the other, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the "**Damages**");
- (ee) time shall be of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence;
- (ff) in the event of any disagreement or dispute between the Mine Operator, and the Authority regarding the materiality or reasonableness of any matter including any event, occurrence, circumstance, change, fact, information, document, authorisation, proceeding, act, omission, claims, breach, default or otherwise, the opinion of the Authority as to the materiality or reasonableness of any of the foregoing shall be final and binding on the Mine Operator;
- (gg) where any statement in this Agreement is qualified by the expression "**to the knowledge**" or "**to the best of the knowledge or information or belief**" or any similar expression, that statement shall, save as expressly provided to the contrary herein, be deemed to mean that it has been made after due and careful inquiry by the person making such statement;
- (hh) an action taken by a Person will be deemed to have been taken in the "**ordinary course of business**" or "**ordinary course**" only if such action is consistent with the past practices of such Person and is taken in the ordinary course of the normal day-to-day operations of such Person, in each case in accordance with Applicable Law; and
- (ii) the interpretation of any provision of this Agreement shall not be in favour of or against any party notwithstanding their participation in the drafting or as per the provisions of any prior draft.

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

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

1.3 Measurements and arithmetic conventions

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

engineering dimensions and tolerances may exceed 2 (two) decimal places, if required.

1.4 Priority of agreements, clauses and schedules

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

- (a) this Agreement; and
- (b) all other agreements and documents forming part hereof or referred to herein.

i.e. the Agreement at (a) above shall prevail over the agreements and documents at (b) above.

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

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

PART II

SCOPE OF THE PROJECT

ARTICLE 2

SCOPE OF THE PROJECT

2.1 Scope of the Project

The scope of the Project (the "**Scope of the Project**") for the Mine Operator shall mean and include, after Appointed Date and during the Contract Period:

- (a) all incidental works prior to commencement of Coal production including those required during re-opening and development, creation of Mines entry (box cut/shafts/inclines);
- (b) acquiring required land, obtaining physical possession of land, Rehabilitation and Resettlement ('**R&R**') of Project Affected Persons ('**PAPs**') in accordance with the R&R Plan;
- (c) procurement of the Applicable Permits, including those set out at Schedule E of this Agreement, required for re-opening, development, excavation/extraction of Coal, Selling of Coal on behalf of the Authority;
- (d) undertaking/conducting scientific studies as recommended by the Directorate General of Mines Safety ("**DGMS**") or any other regulatory authority during re-opening, development and excavation/extraction of Coal, in accordance with Clause 5.15 of this Agreement;
- (e) re-opening and development of the Mines on the Sites specified in Schedule-A, Schedule-C and conforming to the Specifications and Standards of the Mining Plan;
- (f) removal and dumping of Overburden, Overburden loading and transportation and haul road construction with due regard to safety, in case of Opencast Working;
- (g) strata monitoring and support during re-opening, development and extraction of Coal in case of Underground Working;
- (h) excavation/extraction and Delivery of Coal with due regard to safety in accordance with the provisions of this Agreement;
- (i) operation and maintenance of the Mines in accordance with the provisions of this Agreement and the Applicable Laws;
- (j) storage, handling and use of explosives;
- (k) performance of all activities related to progressive mine closure, final mine closure, reclamation {including re-handling of externally dumped Overburden} as per the Mining Plan ;
- (l) safety of Mines;

- (m) recruitment and payment of wages and other benefits to workmen and manpower as per the statutes/Applicable Laws;
- (n) statutory responsibilities and obligations of the Owner under the Mines Act,1952;
- (o) performance and fulfillment of all other obligations of the Mine Operator in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Mine Operator under this Agreement; and
- (p) The Mine Operator shall bear all unforeseen and residual expenses applicable upon the Project.

2.2 Provisions to exit from the Agreement

The Mine Operator shall prepare and procure approval of the Mining Plan and Detailed Project Report ('DPR') on the basis of Geological Report and the Mining Scheme submitted along with the Bid and revised Coal Production Schedule, if applicable]. During the Contract Period, the Mine Operator shall fulfill all its obligations in accordance with the provisions of the approved Mining Plan. After approval of the Mining Plan and preparation of DPR, if it is assessed by the Mine Operator that the Project is not viable for the Mine Operator with the revenue to be received, the Mine Operator may terminate the Agreement and in such case, the Performance Security and additional performance guarantee, if any, deposited with the Authority shall not be forfeited. It is hereby clarified that the Authority shall not be liable to pay any amount to the Mine Operator for preparation of the Mining Plan and DPR or any other expenses in this regard.

Similarly on receiving of the DPR, if it is determined by the Authority that the Project is not viable for the Authority, the Authority may terminate the Agreement with no obligation towards the Mine Operator. However in such case, the Authority shall return the Performance Security and additional performance guarantee, if any, deposited with the Authority.

The provision to terminate the Agreement for either Party i.e., the Authority and the Mine Operator shall be valid only for the duration of 60 (sixty) days from the date of submission of approved Mining Plan or date of submission of DPR, whichever is later. If neither Party exercises its right to terminate the Agreement within the stipulated time period of 60 (sixty) days, this Agreement shall continue to be in full force and effect.

ARTICLE 3

APPOINTMENT OF MINE OPERATOR

3.1 Appointment of Mine Operator

3.1.1 Subject to and in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits, the Authority hereby authorizes the Mine Operator, to re-open, develop and operate the Mines and to excavate/extract Coal for Delivery and Selling of Coal thereof for a period of 25 (*twenty five*) years or until the proposed life of the Mine, whichever is shorter, commencing from the Appointed Date and thus the Mine Operator hereby accepts and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein.

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

Provided further that, the Contract Period shall be deemed to have expired in the event the Parties mutually agree that the Coal reserves in the Mines are exhausted. In case any dispute arises with respect to exhaustion of Coal reserves, the decision of Coal Controller Office (“CCO”) shall be final and binding.

3.1.2 Subject to and in accordance with the provisions of this Agreement, the Mine Operator shall be responsible, liable and/or entitled (as the case may be) to:

- (a) access to the Site for the purpose of, and to the extent, conferred by the provisions of this Agreement;
- (b) prepare and procure approval of the Mining Plan including the plan for mine closure, R&R Plan;
- (c) obtain the Applicable Permits;
- (d) finance, re-open and develop the Mines;
- (e) manage, operate and maintain the Mines in accordance with this Agreement;
- (f) safety of the Mines
- (g) excavate/extract Coal for Delivery thereof under and in accordance with the provisions of this Agreement;
- (h) receive the revenue share of Mine Operator on Selling of Coal subject to and in accordance with this Agreement;
- (i) perform and fulfill all of the Mine Operator's obligations under and in accordance with this Agreement;

- (j) save as otherwise expressly provided in this Agreement or impliedly, bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Mine Operator under this Agreement; and
- (k) neither assign, mortgage, transfer or sub-let or create any lien or Encumbrance on this Agreement, or on the whole or any part of the Mines, nor sell, transfer, exchange, lease, encumber or part possession thereof, save and except as expressly permitted by this Agreement. It is hereby clarified that any assignment, transfer or sub-let of, or creation of any lien or Encumbrance on, this Agreement or on the whole or any part of the Mines as may be expressly permitted under this Agreement, shall be subject to the prior written consent of the Authority, and in case, the permission sought for consent is withheld by the Authority for any reason, then the same cannot be deemed to be a consent by the Authority.

3.2 Substitution of the Authority

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

ARTICLE 4

CONDITIONS PRECEDENT

4.1 Conditions Precedent

- 4.1.1 Save and except as provided in Articles 4, 5, 6, 7, 8, 9, 10, 34, 44 and 46, or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1 (the "**Conditions Precedent**"), save and except to the extent of waiver, if any, that a Party may grant in accordance with the provisions of Clauses 4.1.2 or 4.1.3, as the case may be.
- 4.1.2 The Mine Operator shall, upon providing the Performance Security to the Authority in accordance with Article 9, satisfy the following Conditions Precedent within 1 year from the date of this Agreement:
- (a) procure (including preparation of application for) the issuance of notifications for land acquisition under Applicable Laws for prospecting and mining, as the case may be, in relation to the Site/part of Site as given in the Mine Profile (annexed as Appendix VII to RFB), as required;
 - (b) prepare a Geological Report, if required;
 - (c) procure approval of the Mining Plan including its preparation in accordance with the Applicable Laws, terms and conditions of the Bid document and this Agreement as agreed by the Authority;
 - (d) prepare Detailed Project Report in accordance with the Mining Scheme submitted during the time of Bid;
 - (e) prepare the terms of reference ("**TOR**") for environmental clearance;
 - (f) procure approval of the R&R Plan including its preparation in accordance with Applicable Laws;
 - (g) conduct socio-economic impact assessment, land use pattern study, environmental impact assessment and submit the reports to the Authority;
 - (h) procure all the Applicable Permits from the relevant Government Instrumentality: (a) relating to environmental protection and conservation of the Site, including environmental clearance (following the procedure specified under the Environment Impact Assessment Notification, 2006) and forest clearance in accordance with the Forest (Conservation) Act, 1980; and (b) as specified in Part I of Schedule E of this Agreement;
 - (i) execute and procure execution of the Substitution Agreement, if applicable;
 - (j) execute the Financing Agreements and deliver to the Authority, 3 (three) true copies thereof, duly attested by a director of the Mine Operator, if applicable;

- (k) deliver to the Authority, 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a director of the Mine Operator, along with 3 (three) soft copies of the Financial Model in Microsoft Excel version or any substitute thereof, which is acceptable to the Senior Lenders, if applicable;
- (l) deliver to the Authority, a confirmation {from the selected Bidder/ each Consortium Member} on the correctness of the representations and warranties set forth in sub-clauses (k), (1) , (m), (n), (u), (v) and (w) of Clause 7.1; and
- (m) deliver to the Authority, a legal opinion from its legal counsel with respect to the authority of the Mine Operator to enter into this Agreement and the enforceability of the provisions thereof; and

Provided that if the Mine Operator, despite its best efforts, is unable to fulfill the Conditions Precedent within the stipulated time period, as provided in this Clause 4.1.2, a further extension of a time period of 180 (one hundred and eighty) days shall be available to the Mine Operator to satisfy the Conditions Precedent as set out above.

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

4.1.3 The Mine Operator may, by notice require the Authority to satisfy any or all of the following Conditions Precedent set forth in this Clause within a period not exceeding 120 (one hundred and twenty) days from the date of receipt of the Mining Plan and R&R Plan:

- (a) submit application for approval of the Mining Plan prepared by the Mine Operator;
- (b) submit application (as prepared by the Mine Operator in terms of Clause 4.1.2(a)) for issuance of notifications for land acquisition (if any) under Applicable Laws in relation to the Site/part of Site as given in the Mine Profile (annexed as Appendix VII to RFB)
- (c) submit an online application for the TOR including environment clearance and forest clearance (if required) as prepared by the Mine Operator with the Ministry of Environment, Forests and Climate Change, Government of India.

Provided that if the Authority, despite its best efforts, is unable to fulfill the Conditions Precedent within the stipulated time period, as provided in this Clause, a further extension of a time period of 60 (sixty) days shall be available to the Authority to satisfy the Conditions Precedent set out above.

Provided further that, in the event the procurement of certain Conditions Precedent specified hereinabove are delayed for reasons beyond the control of the Authority,

the Authority shall be entitled to such extension of time as may be reasonably required for compliance of the procedures specified under the Applicable Laws.

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

4.2 Damages for delay by the Authority

In the event that (a) the Authority does not procure fulfillment or waiver of any or all of the Conditions Precedent set forth in Clause 4.1.3 within the period specified in respect thereof (including any extension of time granted), and (b) the delay has not occurred as a result of failure of the Mine Operator to fulfill the obligations under Clause 4.1.2 or as a result of breach of any provisions of this Agreement by the Mine Operator or due to Force Majeure, the Authority shall pay to the Mine Operator, Damages in an amount calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each week, or part of a week, of delay until the fulfillment of such Conditions Precedent. Provided, however, that the Damages payable hereunder shall be subject to a maximum amount of 20% (twenty per cent) of the Performance Security.

4.3 Damages for delay by the Mine Operator

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

4.4 Commencement of Contract Period

The Contract Period shall commence from the Appointed Date.

4.5 Deemed Termination upon delay

Without prejudice to the Clauses 4.2 and 4.3 and Article 9 of this Agreement, and unless otherwise agreed between the Parties, in the event the Appointed Date does not occur, for any reason whatsoever, before the 2nd (second) anniversary of the date of this Agreement, or the extended period for fulfillment of the Conditions Precedent provided in accordance with this Agreement, all rights, privileges, claims and entitlements of the Mine Operator under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Mine Operator, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties. Provided that, in the event such delay in occurrence of the Appointed Date is for reasons attributable to the Mine Operator, the Authority shall, without prejudice to Clause 4.3, be entitled to appropriate the Performance Security as Damages thereof.

ARTICLE 5
OBLIGATIONS OF THE MINE OPERATOR

5.1 Obligations of the Mine Operator

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

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

5.2 Obligations relating to Project Agreements

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

any Project Agreement or any other agreement shall excuse the Mine Operator from its obligations or liability hereunder.

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

undertakes that it shall not give effect to any such selection or replacement of an O&M Contractor, or execution of the O&M Contract, without such prior approval of the Authority. It is also agreed that the Authority shall not be liable in any manner whatsoever on account of grant or otherwise denial of such approval and that such approval or denial thereof shall not in any manner absolve the Mine Operator or its O&M Contractors from any liability or obligation under this Agreement.

5.3 Obligations relating to Change in Ownership

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

5.3.2 The Mine Operator agrees and acknowledges that:

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

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

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

- 5.3.3 Notwithstanding anything to the contrary contained herein, it is hereby expressly agreed by the Mine Operator that no change shall be effected in its shareholding pattern or beneficial ownership or otherwise so as to make it ineligible in terms of the General Financial Rules, 2017 read with the OM no. F.No.6/18/2019-PPD dated 23 July 2020 issued by the Public Procurement Division, Department of Expenditure, Ministry of Finance, Government of India (as amended or supplemented) and the Foreign Exchange Management Act, 1999 read with all rules, regulations, circulars, guidelines and notifications issued thereunder (as amended or supplemented from time to time) to undertake and perform its obligations hereunder.
- 5.3.4 The Mine Operator understands and agrees that the prior written approval of the Authority in case of Change in Ownership as described in Clause 5.3.1 and 5.3.2 is mandatory condition and if the Mine Operator is found to be in violation of the same then the Authority may exercise its right to terminate this contract and also forfeit the Performance Security to make good, any of its losses and damages caused due to such Change in Ownership.

5.4 Obligations relating to employment of foreign nationals

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

5.5 Obligations relating to employment of trained personnel

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

5.6 Obligations relating to Taxes

- 5.6.1. It shall be the joint obligation of the Mine Operator and Authority to comply with all necessary Tax related statutory compliances, including but not limited to the payment of GST at the rates prescribed under the Applicable Laws, in relation to the Agreement. In this regard the Mine Operator will cooperate with the Authority for all statutory compliances.
- 5.6.2. The Authority shall, upon receiving the GST invoice or debit note (as applicable under the GST Laws) and other supporting documents in relation to the revenue share of Mine Operator (inclusive of GST), remit the revenue share of Mine Operator to the Mine Operator along with the amount of GST indicated in GST invoice, in reference to Article 28 and 29. The Mine Operator shall issue a GST credit note within the time limit as prescribed under the GST Laws. The Authority shall, upon receiving the credit note adjust the basic amount and taxes thereon while making remittance towards the GST invoice raised/issued by the Mine Operator.

- 5.6.3. In case of any loss of input tax credit or any other benefit or incidence of interest or penalty suffered by the Authority in relation to GST due to any non-compliance by the Mine Operator of the Applicable Laws (including but not limited to the Mine Operator's failure to upload details of sale on the GSTN portal, failure to issue GST compliant document(s) within the prescribed time frame or furnishing incorrect or incomplete documents with the relevant Government Instrumentality), the Authority shall have the right to: (a) be compensated by the Mine Operator for such amount of loss or penalty suffered by the Authority, or (b) set-off such loss or penalty against any next amounts payable by the Authority to the Mine Operator under the Agreement. For the avoidance of doubt, it is hereby clarified that any loss of input tax credit or any other benefit or incidence of interest or penalty shall be recovered/adjusted from next Monthly Invoice or against the Performance Security, as the case may be, at the discretion of the Authority and in case award/loss amount is greater than value of Monthly Invoice or the Performance Security, as the case may be, the Mine Operator shall pay such differential amount to the Authority within 30 (thirty) days from the date of demand raised by the Authority. In addition, any delay in uploading the details of sale on the GSTN portal by the Mine Operator resulting in deferment of input tax credit in accordance with the GST Laws, shall entitle the Authority to charge interest at the rate equivalent to the prevailing interest rate charged by the relevant Government Instrumentality for input tax credit reversal under GST Laws.
- 5.6.4. Where any damages or compensation becomes payable by either the Authority or the Mine Operator pursuant to any provision of this Agreement, appropriate GST wherever applicable as per the GST Laws in force shall also be payable by the concerned Party in addition to such damages or compensation, upon issuance of GST invoice under GST Laws by the concerned Party which is entitled to receive such payments.
- 5.6.5. The obligation of the Authority shall include compliances regarding tax deduction at source in relation to income tax and GST on the revenue share of Mine Operator or any other charges paid to the Mine Operator, as applicable, in accordance with the respective Applicable Laws.
- 5.6.6. Any penalty, interest, fine etc. applicable by the Government upon the Authority for non-compliance of GST or other taxes for default arising on part of the Mine operator shall be payable or reimbursed, as the case may be, by the Mine Operator. It is clarified that the Mine Operator will also be responsible to pay any professional fee or liability accruing out of legal disputes relating to GST or any other Applicable Laws for the Project.

5.7 Obligations relating to an Owner

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

In case the Authority makes any payment to the Government towards statutory obligations of the Owner as per the Act, then the Mine Operator undertake to indemnify and reimburse the Authority of any such statutory payments, fines, penalty, losses, compensation, damages etc.

5.8 Obligations relating to the Manager and Statutory employees

- 5.8.1 The Mine Operator as the Owner of the Mines as declared in the Clause 5.7, shall appoint the Agent and the Manager having the prescribed qualifications pursuant to the requirements of the Mines Act, 1952 and rules and regulations thereunder. The Manager shall be responsible for the overall management, control, supervision and direction of the Mines in conformity with the provisions of the Applicable Laws. The Mine Operator shall either by itself or through its officials also be responsible to:
- (a) procure appointment of safety officers, assistant managers, ventilation officers, engineers, welfare officers and other statutory employees;
and
 - (b) make provisions for the safety and proper discipline of the persons employed in the Mines.
- 5.8.2 In case the Authority makes any payment of salaries and wages to the Agent, Manager and other statutory manpower, then the Mine Operator undertakes to indemnify and reimburse the Authority of any such payments.
- 5.8.3 The Mine Operator shall ensure that the Mines are operated in a manner consistent with Applicable Laws and the provisions of this Agreement. The Mine Operator shall provide all necessary resources in terms of men and material to the Manager to undertake all required actions in conformity with Applicable Laws.
- 5.8.4 The Mine Operator shall employ suitably qualified and skilled persons for the re-opening, development and operation of the Project and shall be responsible for payment of wages to them in accordance with Applicable Laws and in consonance with the High Power Committee Recommendations (annexed to the RFB).

5.9 Obligations relating to reporting requirements

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

5.10 Sole purpose of the Mine Operator

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

5.11 Obligations relating to Rehabilitation and Resettlement and R&R Plan

The Mine Operator shall prepare and procure approval of the plan on Rehabilitation and Resettlement of PAPs in accordance with Applicable Laws (“**R&R Plan**”), as provided in Clause 4.1.2 (f) of this Agreement. The Mine Operator shall undertake actions and comply with the Rehabilitation and Resettlement obligations including

socio-economic survey in accordance with the approved R&R Plan and the provisions of the Agreement. The R&R Costs for any land required by the Mine Operator shall be solely borne by the Mine Operator.

5.12 Obligations relating to Geological Report

The Mine Operator shall prepare a geological report (“**Geological Report**”) as per the following terms and conditions mentioned:

- (a) The Mine Operator shall conduct exploration including drilling of boreholes, geophysical logging, testing of samples for the unexplored/under-explored regions/Coal Seams.
- (b) The Mine Operator shall incorporate all exploration data with previous Geological Report/data available with the Authority to prepare a composite Geological Report.
- (c) The exploration work shall be completed by the Mine Operator itself or by engaging suitable exploration agency. In this regard, the Mine Operator shall furnish the credentials of the proposed exploration agency and obtain prior written approval from the Authority for awarding the work to such exploration agency.
- (d) Preparation of Geological Report will include activities like drilling, core logging, sampling, packing and transportation of cores to laboratories for testing and sealing/plugging of boreholes.
- (e) Geophysical logging should be done for all the boreholes for the entire depth.
- (f) Coal analysis should be done by carrying out the laboratory tests in a reputed accredited/ISO certified laboratory including proximate analysis (moisture, ash, VM & FC) and gross calorific value (band by band samples) and other tests including specific gravity, total & distribution of sulphur, ultimate analysis, ash analysis, ash fusion temperature range, hard groove index (“HGI”).
- (g) Sampling and packaging of non-Coal core samples should be done for carrying out the physico-mechanical tests including RQD, density, porosity, compressive strength, tensile strength, cohesion, angle of internal friction, young’s modulus of elasticity, point load test, slake durability test in a reputed accredited/ ISO certified laboratory/ educational institution and the test result should be incorporated in the Geological Report.
- (h) Geological block modeling/grid modeling should be done using a geological modelling software and all available geological and geophysical data of the block should be used for preparation and submission of Geological Report.
- (i) The Mine Operator shall prepare and submit 2 (two) copies of the Geological Report or the composite Geological Report, as the case may be, to the Authority along with soft electronic copy in editable format of text, annexure and plates for acceptance.

- (j) The Mine Operator shall follow the applicable standards and the best industry practices while preparing the Geological Report.
- (k) The Mine Operator shall solely bear the costs and expenses incurred due to the exploration including drilling of boreholes, geophysical logging, testing of samples and Geological Report preparation and all other incidental activities.

5.13 Obligations relating to Mining Plan

The Mine Operator shall prepare and procure approval of the Mining Plan, as provided in Clause 4.1.2 (c) of this Agreement. The Mining Plan shall be prepared and certified in accordance with the latest guidelines issued by the Ministry of Coal, Government of India. The Authority shall submit application for the approval of the Mining Plan after its preparation and notice given by the Mine Operator as mentioned in Clause 4.1.3(a) of this Agreement. The Mine Operator shall at all times conform to the provisions of the Mining Plan, or any modification thereof, as may be approved in accordance with Applicable Laws. The Mine Operator may propose the method of mining either by Opencast Working, Underground Working, Highwall Working or any combination of Opencast Working, Underground Working and Highwall Working in the Mining Plan.

The Mine Operator shall submit 2 (two) copies of the Mining Plan to the Authority. The Mining Plan shall be prepared in accordance with the Specifications and Standards and Standard Industry Practice.

If extraction and commercial utilization of AMM or CMM is undertaken for the Project or any improvement in mining methodology is required to be adopted, the Mine Operator shall revise the Mining Plan as may be necessary due to extraction of AMM or CMM or adoption of any improved methodology. In such case, the Mine Operator shall prepare and procure approval of the revised Mining Plan in accordance with this Clause 5.13 and the Mine Operator shall follow such revised Mining Plan for the Project. In addition, the Mine Operator shall obtain Applicable Permits, as may be relevant for such extraction and commercial utilization of AMM or CMM. However, in no case the rated production should be less than the rated production given in mining scheme / approved Mining Plan.

5.14 Obligations relating to Detailed Project Report

The Mine Operator shall prepare a detailed project report (“**Detailed Project Report**” or “**DPR**”) in accordance with the available data set out in the Mines Profile (annexed as Appendix VII to RFB), and the Mining Scheme submitted with the Bid or any modification thereof. The chapters for the preparation of DPR is set out in more detail at **Schedule-B** of this Agreement.

5.15 Obligations relating to other scientific studies

The Mine Operator shall conduct all the scientific studies required for various activities for re-opening, salvaging, development and excavation/extraction Coal and/or Coal Seams as recommended by DGMS or any other regulatory authority. The Mine Operator shall obtain Applicable Permits from DGMS and other Government Instrumentality for the mining method under the Mining Plan. The Mine Operator shall carry out subsidence prediction studies as and when required to carry out the re-opening operation.

The Mine Operator shall submit 2 (two) copies of any such scientific study report or subsidence prediction study report to the Authority.

5.16 Obligations relating to land acquisition

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

Cost for acquisition of any land required by the Mine Operator, shall be solely borne by the Mine Operator. In addition, the Mine Operator shall be solely liable to ensure compliance with Applicable Laws, at its own costs and expenses, in relation to the acquired land. However, the title of the land acquired (within or outside of the leasehold area) for the Project, shall vest with the Authority. The land already acquired by the Authority within the leasehold area may be utilised by the Mine Operator for the purpose of the Project without any additional payment to the Authority.

The Mine Operator shall be responsible for obtaining the physical possession and provision of financial compensation and compensation for Rehabilitation and Resettlement for any land acquired or to be acquired for the Project, under Applicable Laws in accordance with the provisions of this Agreement.

5.17 Obligations relating to progressive restoration

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

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

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

- days of realization of such reimbursements, the Authority shall pay such amounts to the Mine Operator.

5.18 Obligations after closure of Mining

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

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

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

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

In the event that final closure of the Mines occurs at any time after the expiry of this Agreement, an amount equal to the balance amount of the escrow account opened in accordance with Clause 5.17 of this Agreement, after settlement of all periodic claims in accordance with the Applicable Laws and after realizing all dues payable to the Authority, shall be paid to the Mine Operator by the Authority, provided that the Mine Operator has undertaken and completed the progressive restoration of the Mines in accordance with the Mine Closure Plan, to the full satisfaction of the Authority.

5.19 Obligation related to exploration and extraction of methane:

The Mine Operator can explore and extract CMM/AMM. However, if methane is extracted and sold in the market as natural gas, provision as given in Clauses 24.4.5, 24.4.6 and 28.5 will be applicable.

Within 2 (two) years from the Appointed Date, the Mine Operator shall conduct exploration including drilling of boreholes, testing of samples to assess the potentiality of the Mines for AMM or CMM, strictly in accordance with the Applicable Laws including the Coal Mines Regulations, 2017 ("CMR").

If it is found that the Mines has potential to extract and utilize AMM or CMM, the Mine Operator shall undertake all necessary actions and make necessary arrangements to extract the AMM or CMM for its internal use or commercial utilization in

accordance with the Mining Plan, Applicable Laws, Applicable Permits and this Agreement (including Clause 24.4). In this regard, Mine Operator shall, on behalf of the Authority, procure: (a) necessary amendments in environmental clearance(s) and forest clearance(s) obtained from the Ministry of Environment, Forests and Climate Change, Government of India; and (b) any other permissions required in compliance with the Applicable Laws and Applicable Permits, if required.

All necessary arrangements (including exploration, operation and maintenance, procurement of requisite permissions, extraction, transportation, storage, selection of consumer/buyer etc.) shall be undertaken by the Mine Operator at its own cost and risk. The following options shall be available to the Mine Operator for the extraction of AMM /CMM and shall be subject to Clause 28.5 of this Agreement:

- (a) In case of methane drainage, it shall be undertaken as per the Mining Plan. The drainage gas should be either flared or put into use.
- (b) The Mine Operator may use the extracted gas for power generation.
- (c) The Mine Operator will be allowed for commercial utilization of the extracted gas.

It is hereby clarified that extraction and utilization of AMM/CMM shall be undertaken by the Mine Operator without hampering any obligation of the Mine Operator in relation to extraction and Delivery of Coal and the Project as per the provisions of this Agreement. In addition, the Authority may undertake (or require the Mine Operator to undertake) revision of the Mining Plan in relation to such extraction and utilization (internal or commercial) of the CMM, in accordance with Applicable Laws. Accordingly, the Mine Operator shall comply with the Authority's instructions and conform to the revised Mining Plan.

(ii) Changes for AMM and CMM- Clause 28.5 of MCA shall be amended as under:

Charges for AMM/CMM

The following mechanism shall be applicable for payment of charges for AMM/CMM:

- (a) No claim shall be made by the Authority from the Mine Operator if power is generated with the extracted AMM/CMM gas and used internally for the project.
- (b) Excess power generated from AMM/CMM after its consumption by the Mine Operator for undertaking the Project, it shall be [supplied to] the grid of the Authority and the Mine Operator shall be paid by the Authority at the rate of [0.7 times of the tariff].
- (c) In case AMM/CMM is captured for commercial purpose, the revenue generated is to be shared with the Authority at the same rate at which revenue is contracted to be shared with respect to the selling of coal.

5.20 Obligation towards corporate social responsibility (CSR)

- 5.20.1 If the Mine Operator, is liable to undertake CSR activities and incur expenditure on account of such CSR activities in accordance with the Applicable Laws, then the Mine Operator shall prepare a CSR policy and plan, in accordance with which the Mine Operator shall discharge its obligations towards CSR. Such CSR policy and plan shall be duly approved by the Authority. In addition, the Mine Operator shall comply with the requirements in relation to the CSR as stipulated under the Applicable Laws, including Section 135 of the Companies Act, 2013 read with the rules made thereunder.

5.21 Selling of Coal

The parties to this Agreement agree that the Coal extracted/ excavated from the Mines belongs to the Authority (having proprietary rights over the extracted/ excavated Coal), however, the Mine Operator shall act as an agency responsible for Selling of Coal at market driven price through auction process on behalf of the Authority. The auction will be conducted by the Mine Operator in an open and efficiently transparent manner on a portal decided by the Authority and any charges related to auction shall be borne by the Mine Operator. The total sale proceeds received from the Buyer(s) shall be deposited into an escrow account opened by the Authority and Mine Operator for the purpose of this Agreement.

Sales billing (including issuance of sale order, debit note/credit note and adjustment of short lifting) and related statutory compliance will be done by the Authority.

Money shall be remitted from the escrow account on monthly basis in the following manner subject to the terms and conditions of escrow agreement.

First charge: Amount of applicable statutory charges related to production and Selling of Coal including royalty, cess, GST and any other tax and after adjustment on account of debit/credit note, grade slippage or upgradation and quantity, if any on production of documentary evidences.

Second Charge: Amount of money as Revenue Share of Authority and amount of money with respect to all reimbursement to be made by the Mine Operator to the Authority for the applicable period.

Third charge: Remaining amount of money includes revenue share of Mine Operator and liability of all applicable taxes including GST on revenue share of Mine Operator. The revenue share of Mine Operator includes payments made by the Mine Operator for statutory wages, etc.

Notwithstanding anything contained in the Agreement, GST or any other tax shall not be deducted from the second charge.

5.22 Obligations towards all other cost and expenses:

Except as otherwise expressly provided in this Agreement, the Mine Operator shall bear all the cost and expenses related to the Project including cost and expenses for scientific studies and reports, shifting of obstructing utilities, security of the Mines, testing of equipment, measurement of Coal and Overburden (if applicable), testing of Coal, declaration of grade of Coal, Selling of Coal, siding etc. It is clarified that any residuary cost or expense, other than specifically agreed between the parties, accruing during the contract period shall be liability of the Mine operator. Upon failure of the Mine Operator to pay towards such residuary cost, obligation or expenses than the same may be adjusted from the Performance Security.

5.23 General: Incentive for Coal gasification or Coal Liquefaction:

If the Mine Operator sells the coal for Coal Gasification or Coal Liquefaction, a rebate of 50% on contracted percentage of Revenue Share of Authority will be provided on the total quantity of coal sold for Coal Gasification or Coal Liquefaction on an yearly basis, subject to the following conditions:

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

5.24 Permission for Ash Dumping after exhaustion of the reserve and closure of mine:

Permission relating to Ash Dumping post exhaustion of reserve and closure of the Mine:

Post exhaustion of the reserve and closure of the mine, the bidder should be allowed to use the mine for ash dumping only in case of underground mining. Pollution control norms as per CPCB shall be followed under the guidance of CIL.

ARTICLE 6

OBLIGATIONS OF THE AUTHORITY

6.1 Obligations of the Authority

- 6.1.1 The obligations of the Authority are limited and specifically enumerated hereunder in this Agreement.
- 6.1.2 The Authority agrees to provide support to the Mine Operator, subject to and in accordance with the provisions of this Agreement and Applicable Laws, the following:
- (a) allow access to the Site;
 - (b) depute its representatives for participation in public hearings and attending the meetings with the officials and representatives of the Ministry of Environment, Forests and Climate Change, Government of India for the purposes of procuring environmental clearance and/or forest clearance in accordance with Applicable Laws;
 - (c) the land already acquired by the Authority within the leasehold area, if required by the Mine Operator for the Project, shall be made available to the Mine Operator for physical possession.
 - (d) upon written request from the Mine Operator, provide reasonable assistance to the Mine Operator in obtaining access to necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favorable to the Mine Operator than those generally available to commercial customers receiving substantially equivalent services;
 - (e) upon written request from the Mine Operator, and subject to the Mine Operator complying with Applicable Laws, provide all reasonable support and assistance to the Mine Operator in procuring Applicable Permits required by the Mine Operator for performance of its obligations under this Agreement;
 - (f) not do or omit to do any act, deed or thing which may in any manner be in violation of any of the provisions of this Agreement;
 - (g) support, cooperate with and facilitate the Mine Operator in the implementation and operation of the Project in accordance with and subject to the provisions of this Agreement;
 - (h) undertake revision of the Mining Plan as may be necessary, if extraction and utilization (commercial or internal) of AMM/CMM is proposed to be undertaken by the Mine Operator for the Project.
 - (i) the obligation of the Authority for tax compliance including GST is enumerated in Clause 5.6 of this Agreement; and
 - (j) to supervise the activities in relation to this Agreement and to ensure timely completion of milestones by the Mine Operator.

6.1.3 The Mine Operator, being the occupier of the Mines under this Agreement, shall comply with the obligations of the Owner under the Mines Act, 1952. However, except for the obligations of the Owner under the Mines Act, 1952, the Authority shall remain as Owner for all other purposes.

ARTICLE 7

REPRESENTATION AND WARRANTIES

7.1 Representations and warranties of the Mine Operator

The Mine Operator represents and warrants to the Authority that:

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

- (j) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or Government Instrumentality which results in or may result in a Material Adverse Effect and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- (k) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a Material Adverse Effect;
- (l) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3; and that the {selected Bidder/ Consortium Members}, shall hold not less than 75% (seventy five per cent) of its subscribed and paid up Equity; and that each Consortium Member whose technical and financial capacity was evaluated for the purposes of selection in response to the Request for Bid shall, until the 2nd (second) anniversary of COD, hold not less than 26% (twenty-six per cent) of its subscribed and paid up Equity; and in no case the Equity shall be less than 15% (fifteen percent) of the Annual Sale Value.
- (m) {the selected Bidder/ Consortium Members} have the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement;
- (n) {the selected Bidder/ each Consortium Member} is duly organized and validly existing under the laws of the jurisdiction of its incorporation, and has requested the Authority to enter into this Agreement with the Mine Operator pursuant to the LOA, and has agreed to and unconditionally accept the terms and conditions set forth in this Agreement;
- (o) all its rights and interests in the Mines and Coal Depot shall pass to and vest in the Authority on the Transfer Date, free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Authority, and that none of the Project Assets shall be acquired by it, subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person, save and except as expressly provided in this Agreement. The Authority shall purchase immovable assets on the Transfer Date at depreciated value as per the valuation made by CMPDIL. However, the Authority shall not acquire any movable assets of Mine Operator;
- (p) it shall take all necessary steps in relation to the Project Specific Assets and any other tangible assets, as required, pursuant to and in accordance with Clause 37.3 and Clause 37.5.2 of this Agreement upon Termination of this Agreement on its expiration;
- (q) no representation or warranty by it contained herein or in any other document furnished by it to the Authority or to any Government Instrumentality in relation to the Applicable Permits contains or will contain any untrue or misleading statement of a material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;

- (r) it is in compliance in all respects with all Applicable Laws in relation to its employees, independent contractors, sub-contractors, or other persons providing services to or on behalf of the Mine Operator, including all Applicable Laws relating to wages, hours, employment standards, collective bargaining, discrimination, civil rights, safety and health and compensation;
- (s) it will duly pay all statutory contributions when due and payable and no sum is due and outstanding by the Mine Operator towards the same;
- (t) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Agreement or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith;
- (u) the Mine Operator warrants that the finances used for the mine operation activities under this Agreement are not proceeds of crime as described under Section 2(u) of the Prevention of Money laundering Act, 2002;
- (v) all information provided by the {selected Bidder/ Consortium Members} in response to the Request for Bid or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects; and
- (w) all undertakings and obligations of the {selected Bidder/ Consortium Members} and the Mine Operator arising from the Request for Bid or otherwise shall be binding on the Mine Operator as if they form part of this Agreement, except as modified pursuant to the terms of this Agreement.

7.2 Representations and warranties of the Authority

The Authority represents and warrants to the Mine Operator that:

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

7.3 Disclosure

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

ARTICLE 8

DISCLAIMER

8.1 Disclaimer

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

PART III
DEVELOPMENT AND OPERATIONS

ARTICLE 9

PERFORMANCE SECURITY

9.1 Performance Security

9.1.1 The Mine Operator shall, as a security for the performance of its obligations under this Agreement, provide to the Authority, not later than 90 (ninety) days from the date of issue of the LOA, or within such period as may be extended by the Authority, an irrevocable, unconditional, first demand bank guarantee from a Bank for a sum equivalent to 5% (five percent) of the Annual Sale Value substantially in the form set forth in Schedule-F (the "**Performance Security**").

Provided that, in the event that the initial Contract Period is extended pursuant to Clause 3.1.1 ("**Extended Contract Period**"), the Mine Operator shall furnish a replacement Performance Security of an equal amount (i.e., a sum equivalent to 5% (five percent) of the Annual Sale Value), not later than 90 (ninety) days prior to the commencement of the Extended Contract Period in the form set forth in Schedule-F.

9.1.2 The Mine Operator shall keep the bank guarantees in relation to the Performance Security valid, effective and in full force for such value as is required to be maintained in accordance with Clause 9.1.1, for the period of 90 (ninety) days after the expiry of the Contract Period (or the Extended Contract Period, if applicable). It is hereby clarified that the Mine Operator shall keep the bank guarantees against the Performance Security valid, effective and in full force in an extendable/ renewable manner revolving after a period of at least 3 (three) years. In this regard, the Authority reserves the right to call for any documentary evidence from the Mine Operator in relation to such extension or renewal of the Performance Security, as the case may be, and the Mine Operator shall be under an obligation to furnish all documents as may be required by the Authority in this regard.

9.1.3 At least 30 (thirty) days prior to expiry of a Performance Security, the Mine Operator shall furnish an extended, renewed or replacement Performance Security to the Authority, failing which the Authority shall be entitled to, after giving 5 (five) days' notice to the Mine Operator, draw down the full remaining value of the Performance Security, and hold the cash as security for performance of the Mine Operator's obligations under this Agreement.

9.2 Appropriation of Performance Security

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

failing which the Authority shall be entitled to terminate this Agreement in accordance with Article 37.

9.3 References to Performance Security

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

ARTICLE 10

ACCESS TO THE SITE

10.1 The Site

10.1.1 The _____ underground Mine is located in the _____ district of Maharashtra. The Coal block of Western Coalfields Limited falls in the _____ Area and covers an area of ____ sq.km. The nearest railway station, _____ Station is at a distance of _____ kms from the Mines. All other details related to the Site and the Mines are provided in Schedule–A of this Agreement.

10.2 Access to the Site

10.2.1 The Mine Operator or its authorised representatives, on any date after the date of this Agreement and before taking physical possession of the Site shall be allowed to conduct a detailed Site visit including the Mines, in consultation with the Authority. The Mine Operator may collect available plans and data/information in addition to the data provided in the Mine Profile (annexed as Appendix VII to RFB) and Schedule A of this Agreement. The Authority shall facilitate Mine Operator's visit to the Site including the Mines.

10.2.2 During the Development Period, the Authority hereby grants to the Mine Operator access to the Site for carrying out any surveys, exploration if required, scientific studies and subsidence prediction studies required for re-opening, investigations and soil tests that the Mine Operator may deem necessary, being expressly agreed and understood that the Authority shall have no liability whatsoever in respect of the surveys, exploration, scientific studies and subsidence prediction studies required for re-opening, investigations and tests carried out or work undertaken by the Mine Operator on or about the Site pursuant hereto in the event of Termination or otherwise.

10.2.3 In consideration of re-opening and development of Mines, this Agreement and the covenants and warranties on the part of the Mine Operator herein contained, the Authority, in accordance with the terms and conditions set forth herein, hereby grants to the Mine Operator, commencing from the Appointed Date, access to and permission to work or to use in respect of acquired land along with any buildings, constructions or immovable assets, if any, thereon comprising the real estate, which is more particularly described in Schedule-A hereto (the "Site"), on an "as is where is" basis to re-open, develop, operate and maintain the said Site, for the purposes permitted under this Agreement, and for no other purpose whatsoever. The Mine Operator hereby acknowledges and accepts that the entire Site shall be and shall at all times remain the exclusive and absolute property of the Authority and neither the Mine Operator nor any persons claiming through or under the Mine Operator shall have or shall at any time claim any property, right, title or interest in such Site. The Mine Operator is the occupier of the Mines under this Agreement and shall comply with the obligations of the Owner under the Mines Act, 1952.

10.2.4 The Mine Operator shall perform its obligations in a manner that the existing roads, if any, along the boundary of the Mines, or an alternative thereof are open to traffic at all times during the Contract Period.

- 10.2.5 It is expressly agreed that all rights and permissions of the Mine Operator granted hereunder in respect of the Site shall terminate automatically and forthwith, without the need for any action to be taken by the Authority, upon the Termination of this Agreement for any reason whatsoever. For the avoidance of doubt, the Parties expressly agree that notwithstanding any temporary or permanent structures erected on the Site by the Mine Operator, the rights and permissions of the Mine Operator in respect of the Site shall automatically terminate, without any further act of the Parties, upon Termination of this Agreement.
- 10.2.6 The Mine Operator hereby irrevocably appoints the Authority (acting directly or through a nominee) to be its true and lawful attorney, to execute and sign in the name of the Mine Operator a surrender of the rights granted hereunder at any time upon the Termination of this Agreement, a sufficient proof of which will be the declaration of any duly authorised officer of the Authority, and the Mine Operator consents to it being registered for this purpose.

10.3 Procurement of the Site

- 10.3.1 Following the Appointed Date, the Mine Operator shall be responsible for taking over the physical possession of the Site including the Mines for undertaking the associated activities in respect thereof at its own cost and expense. Following occurrence of the Appointed Date, the Authority Representative and the Mine Operator shall, on a mutually agreed date and time, inspect the Site including the Mines and prepare a memorandum containing an inventory of the Site including the vacant and unencumbered land, buildings, structures, road works, trees any other immovable property and existing infrastructure (as mentioned in Annexure I of Schedule A) on or attached to the Site including the Mines.
- 10.3.2 Until the Transfer Date, the Mine Operator shall maintain a round-the-clock vigil over the Site including the Mines and shall ensure and procure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof, the Mine Operator shall report such encroachment or occupation forthwith to the Authority and undertake its removal at its own cost and expense.
- 10.3.3 In the event the Mine Operator fails to procure physical possession of the Site then required for undertaking mining operations for the immediately forthcoming period of 180 (one hundred and eighty) days from the Appointed Date, or such further period as may be granted by the Authority in writing, the Authority may be entitled to terminate the Agreement.

10.4 Protection of Site from Encumbrances

During the Contract Period, the Mine Operator shall protect the Site and the Mines from any and all occupations, encroachments or Encumbrances, and shall not place or create nor permit any Contractor or other person claiming through or under the Mine Operator to place or create any Encumbrance or security interest over all or any part of the Site, the Mines and/or the Project Assets, or on any rights of the Mine Operator therein or under this Agreement, save and except as otherwise expressly permitted in this Agreement.

10.5 Special/ temporary right of way

The Mine Operator shall bear all costs and charges for any special or temporary right of way required by it in connection with access to the Site. The Mine Operator shall

obtain at its cost such facilities on or outside the Site as may be required by it for the purposes of the Mines and the performance of its obligations under this Agreement.

10.6 Geological and archaeological finds

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

10.7 Rehabilitation and Resettlement of PAPs

The Mine Operator shall be solely responsible for undertaking the Rehabilitation and Resettlement of the PAPs in accordance with the approved R&R Plan, Applicable Laws and this Agreement at its own cost and expense.

10.8 Employment of PAPs

No employment to the PAPs shall be given by the Authority.

10.9 Existing infrastructural assets of the Site including the Mines

The list of existing infrastructure at the Site (including the Mines) is set out in Annex-I of Schedule-A. The handed over assets may be utilized by the Mine Operator, solely for the Project and without any additional payment to the Authority, subject to the condition that a prior written notice regarding such utilization is provided by the Mine Operator to the Authority. In this regard, it is hereby clarified that: (a) the Authority shall continue to be the owner of such infrastructure or project facilities and any such utilization by the Mine Operator shall not create any right/interest in its favour; and (b) pursuant to such utilization, the Mine Operator shall be responsible for compliance with Applicable Laws and maintenance (including continuation of validity of any Applicable Permit (if any) of such infrastructure and/or project facilities.

ARTICLE 11

UTILITIES AND ROADS

11.1 Existing utilities and roads

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

11.2 Shifting of obstructing utilities

The Mine Operator shall, subject to Applicable Laws and with assistance of the Authority, undertake shifting of any utility including electric lines, water pipes and telephone cables, to an appropriate location or alignment within or outside the Site, if and only if, such utility causes or shall cause Material Adverse Effect on the development, operation or maintenance of the Mines, making the shifting unavoidable.

11.3 New utilities

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

ARTICLE 12

RE-OPENING & DEVELOPMENT OF THE MINES

12.1 Reopening of the Mines

- 12.1.1 The _____ Underground Mine which was earlier abandoned/ closed/discontinued, is to be re-opened, salvaged, rehabilitated, explored, planned, developed and operated by the Mine Operator for a guaranteed quantity of Coal production per annum (as per the Mining Plan) by exploitation of residual Coal reserves available in the Mines, with due regard to conservation of Coal and safety of Mines, personnel and the property, including surface structures.
- 12.1.2 The Mine Operator shall re-open the Mines in accordance with the Applicable Laws including the CMR after duly obtaining Applicable Permits, as may be required, from the DGMS, Coal Controller, Coal Controllers Organisation and any other relevant Government Instrumentality.
- 12.1.3 The Mine Operator, through the Authority, shall notify and communicate in writing about re-opening of the Mines to DGMS and other Government Instrumentality in accordance with the Applicable Laws including the CMR.

12.2 Development of Mines

- 12.2.1 The Mine Operator shall design, finance, develop and operate the Mines and Equipment having a capacity to extract and Deliver the Annual Capacity in accordance with the Annual Production Programme, approved Mining Plan and DPR. The Mine Operator shall develop and operate the Mines in accordance with the Applicable Laws.
- 12.2.2 On or after the Appointed Date, the Mine Operator shall undertake development of the Mines and installation of Equipment as specified in Schedule-C, and in conformity with the Specifications and Standards set forth in Schedule-D.
- 12.2.3 The Mines shall have the following and such other Equipment and facilities, conforming with the Specifications and Standards, as may be necessary for operation of the Mines in accordance with the provisions of this Agreement:
- (a) {Coal Handling Plant;
 - (b) rapid loading system;
 - (c) equipment such as draglines, shovels, dumpers, surface miners, drills, dozers, loaders, graders, etc. in case of Opencast Working;
 - (d) equipment such as powered support longwall equipment, continuous miners package equipment, utility vehicles, man-riding system, conveyors, haulages, winders etc. in case of Underground Working;
 - (e) power distribution substation/system;
 - (f) effluent treatment system;

- (g) storage space for equipment and materials;
- (h) machine shop for machining and maintenance of equipment and machinery;
- (i) calibration laboratory to check all tools, instruments, jigs and fixtures to ensure product conformity with Specifications and Standards;
- (j) necessary facilities for testing of Coal;
- (k) alternative source of power supply or standby power back-up facility suitable to its requirements;
- (l) an administrative office, lamp room, room for self-rescuers, rooms for attendance/ time keepers and register keepers, haulage or winding engine room, canteen, rest rooms and staff facilities, etc. as required under Applicable Laws;
- (m) internal telecommunication infrastructure catering to basic telephony and other value added telecom services;
- (n) drainage system for storm water drainage; and
- (o) sewage waste water disposal system};

12.2.4 The development of Mines shall include construction of facilities for storage of sufficient quantity Coal.

12.3 Obligations prior to commencement of construction

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

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

12.4 Drawings

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

- (a) The Mine Operator shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the submitted Project Completion

Schedule, 3 (three) copies each of all Drawings to the Engineer in charge for review.

- (b) By submitting the Drawings for review to the Engineer in charge, the Mine Operator shall be deemed to have represented that it has determined and verified that the design and engineering, including field construction criteria related thereto, are in conformity with the Scope of the Project, Specifications and Standards, Applicable Laws and the Standard Industry Practice.
- (c) Within 15 (fifteen) days of the receipt of the Drawings, the Engineer in charge shall review the same and convey its observations to the Mine Operator with particular reference to their conformity or otherwise with the Scope of the Project and the Specifications and Standards. The Mine Operator shall not be obliged to await the observations of the Engineer in charge on the Drawings submitted pursuant hereto beyond the said 15 (fifteen) days period and may begin or continue Construction Works at its own discretion and risk.
- (d) If the aforesaid observations of the Engineer in charge indicate that the Drawings are not in conformity with the Scope of the Project or the Specifications and Standards, such Drawings shall be revised by the Mine Operator and resubmitted to the Engineer in charge for review. The Engineer in charge shall give its observations, if any, within 7 (seven) days of receipt of the revised Drawings.
- (e) No review and/or observation of the Engineer in charge and/or its failure to review and/or convey its observations on any Drawings shall relieve the Mine Operator of its obligations and liabilities under this Agreement in any manner nor shall the Engineer in charge or the Authority be liable for the same in any manner.
- (f) Within 90 (ninety) days of COD, the Mine Operator shall furnish to the Authority and the Engineer in charge a complete set of as-built Drawings, in 2 (two) hard copies and in soft copy or in such other medium as may be acceptable to the Authority, reflecting the Mines as actually designed, engineered and constructed, including an as-built survey illustrating the layout of the Mines and of the buildings and structures forming part of Project Facilities.

12.5 Scheduled Completion Date

- 12.5.1 The Mine Operator agrees and undertakes that development of Mines for excavation/extraction and Delivery of Coal shall be undertaken in a manner such that the Commercial Operations Date occur on or prior to the Scheduled COD; and the Completion occurs on or prior to the Scheduled Completion Date.
- 12.5.2 On or before the Appointed Date, the Mine Operator shall have to submit a Project Completion Schedule (containing the Project Milestone) in accordance with the Mining Plan and Schedule-G of this Agreement. Each Project Milestone in the Project Completion Schedule shall have a completion date. In the event that the Mine Operator fails to achieve any Project Milestone within a period of 60 (sixty) days from the date set forth for such Project Milestone, unless such failure has

occurred due to Force Majeure or for reasons solely attributable to the Authority, it shall pay Damages to the Authority in a sum calculated at the rate of 0.2% (zero point two per cent) of the amount of Performance Security for delay of each week, or part of the week, beyond the such period of 60 (sixty) days and until such Project Milestone is achieved; provided that if any or all Project Milestones, or the Scheduled COD, or the Scheduled Completion Date are extended in accordance with the provisions of this Agreement, Project Completion Schedule shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if Project Completion Schedule has been amended as above. For the avoidance of doubt, it is agreed that recovery of Damages under this Clause 12.5.2 shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.

12.6 Provision of infrastructure

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

- (a) Electric substation connected with the grid, for supplying electricity to the Mines no later than the 1st (first) anniversary of the Appointed Date;
- (b) road connection between the boundary of the Mines and the nearest existing road, no later than the 1st (first) anniversary of the Appointed Date;
- (c) rail connection between the Coal Depot and the railway network, no later than the 2nd (second) anniversary of the Appointed Date; and
- (d) construction of administrative office building for the Authority.

12.7 Development of township

- 12.7.1 The Mine Operator shall, no later than the 1st (first) anniversary of COD, construct and operate or cause to be constructed and operated, at its own cost and expense, a township comprising of commercial and residential infrastructure as specified in Clauses 12.7.2, 12.7.3 and 12.7.4, which shall also be available to the Authority and its employees on a non-discriminatory basis and on the normal terms thereof. This infrastructure shall be in addition to the existing infrastructure made available by the Authority.
- 12.7.2 The township specified in Clause 12.7.1 shall be constructed in conformity with Schedule-C and shall include a primary health center with 6 (six) beds for in-patient care and associated diagnostic facilities, built in conformity with the standards normally followed by the State Government;
- 12.7.3 The commercial infrastructure specified in Clause 12.7.1 shall include:
 - (a) a bank with ATM;
 - (b) post office;
 - (c) business center with communication facilities including telephone, internet connectivity and data transaction processing facilities; and
 - (d) 10 (ten) shops or kiosks.

- 12.7.4 The Mine Operator shall construct, or cause to be constructed, at least ~~****~~dwelling units with a total built-up area of not less than ~~****~~ for the use of its employees or tenants.
- 12.7.5. The Mine Operator shall facilitate the establishment and operationof the infrastructure mentioned at Clause 12.7.2, Clause 12.7.3 and Clause 12.7.4.

ARTICLE 13

MONITORING OF CONSTRUCTION

13.1 Monthly progress reports

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

13.2 Inspection

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

13.3 Tests

- 13.3.1 For determining that the Construction Works and Equipment conform to the Specifications and Standards, the Engineer in charge may require the Mine Operator to carry out or cause to be carried out tests, at such time and frequency and in such manner as may be specified by the Engineer in charge from time to time, in accordance with Standard Industry Practice for quality assurance. The size of sample for such tests shall, to the extent possible, not exceed 5% (five per cent) of the quantity and/or number of tests that the owner or builder of such works would normally undertake in accordance with Standard Industry Practice. The Mine Operator shall, with due diligence and at its own cost, carry out or cause to be carried out all the tests in accordance with the instructions of the Engineer in charge and furnish the results thereof to the Authority. 50% (fifty percent) of the costs incurred by the Mine Operator in carrying out such tests to the extent certified by the Engineer in charge as having been reasonably incurred, shall be reimbursed by the Authority to the Mine Operator. For the avoidance of doubt, the Mine Operator shall carry out all tests necessary for determining the rectification of any defect or deficiency in Construction Works and Equipment, at its sole cost and expense.
- 13.3.2 In the event that results of any tests conducted under this Clause 13.3 establish any defects or deficiencies in the Construction Works and Equipment, the Mine Operator shall carry out remedial measures and furnish a report to the Engineer in charge in this behalf. The Engineer in charge shall require the Mine Operator to carry out or cause to be carried out tests to determine that such remedial measures have brought the Construction Works and Equipment into compliance with the Specifications and Standards, and the procedure set forth in this Clause 13.3 shall be repeated until such Construction Works and Equipment conform to the Specifications and Standards. For the avoidance of doubt, it is agreed that tests pursuant to this Clause 13.3 shall be undertaken in addition to and of the tests that shall be carried out by the Mine

Operator for its own quality assurance in accordance with Standard Industry Practice. It is also agreed that a copy of the results of such tests shall be sent by the Mine Operator to the Authority forthwith.

13.4 Delays during construction

Without prejudice to the provisions of Clause 12.5.2, if the Mine Operator does not achieve any of the Project Milestones or the Engineer in charge has reasonably determined that the rate of progress of Construction Works and installation/deployment of Equipment is delayed, it shall notify the Mine Operator to this effect, and the Mine Operator shall, within 15 (fifteen) days of such notice, by a communication inform the Engineer in charge in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve such Project Milestones.

13.5 Video recording

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

ARTICLE 14

COMPLETION CERTIFICATE

14.1 Tests

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

14.2 Commercial Operation Date

- 14.2.1 The first day of the succeeding Accounting Year of the year in which the excavation/extraction and Delivery of Coal of at least 50% (fifty per cent) of the Contracted Capacity is achieved by the Mine Operator, as certified by the Engineer in charge, shall be the “**Commercial Operation Date**” or “**COD**”.
- 14.2.2 In the event that COD does not occur prior to the Scheduled COD, unless the delay is on account of reasons solely attributable to the Authority or due to Force Majeure, the Mine Operator shall pay Damages to the Authority in a sum calculated at the rate of 0.5% (zero point five per cent) of the amount of Performance Security for delay of each week or part of the week until COD is achieved.

14.3 Completion

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

In the event that Completion does not occur within a period of 60 (sixty) days from the Scheduled Completion Date, unless the delay is on account of reasons solely attributable to the Authority or due to Force Majeure, an amount equivalent to 10% (ten percent) of the amount set out in each forthcoming Monthly Invoice of the Mine Operator shall be withheld by the Authority until the Completion occurs and the Completion Certificate is issued in accordance with the Agreement. However, upon the issuance of the Completion Certificate the amount so withheld by the Authority shall be released to the Mine Operator without incurring any interest thereon. It is hereby clarified that the amount so withheld shall be in addition to the Damages which the Authority is entitled to in accordance with Clause 12.5.2 of this Agreement.

14.4 Withholding of Completion Certificate

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

14.5 Rescheduling of Tests

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

ARTICLE 15

CHANGE OF SCOPE AND MODIFICATION OF TERMS

15.1 Change of Scope

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

15.2 Procedure for Change of Scope

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

- 15.2.3 Upon receipt of information set forth in Clause 15.2.2, if the Authority decides to proceed with the Change of Scope, it shall convey its preferred option to the Mine Operator, and the Parties shall, thereupon make good faith efforts to agree upon the time and costs for implementation thereof. Upon reaching an agreement, the Authority shall issue an order (the "**Change of Scope Order**") requiring the Mine Operator to proceed with the performance thereof. In the event that the Parties are unable to agree, the Authority may, by issuing a Change of Scope Order, require the Mine Operator to proceed with the performance thereof pending resolution of the Dispute.
- 15.2.4 The provisions of this Clause 15.2, are applicable to Construction Works, Tests, operation and maintenance of the Mines.

15.3 Payment for Change of Scope

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

15.4 Restrictions on certain works

- 15.4.1 The Authority shall not require the Mine Operator to undertake any works or services if such works or services are likely to delay completion of the development of Mines by the Scheduled Completion Date; provided that in the event that the Authority considers such works or services to be essential, it may issue a Change of Scope Order, subject to the condition that the works forming part of, or affected by such Change of Scope Order, shall not be reckoned for purposes of determining completion of the Mines.
- 15.4.2 The Mine Operator shall be entitled to nullify any Change of Scope Order if it causes the cumulative costs relating to all the Change of Scope Orders to exceed 20% (twenty per cent) of the Annual Sale Value in any continuous period of 36 (thirty six) months immediately preceding the date of such Change of Scope Order or if such cumulative costs exceed 50% (fifty per cent) of the Annual Sale Value at any time during the Contract Period.

ARTICLE 16

OPERATION AND MAINTENANCE

16.1 O&M obligations of the Mine Operator

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

- (a) ensuring safe, smooth and uninterrupted excavation/extraction of Coal and Delivery thereof from the Mines, including prevention of loss or damage thereto, during normal operating conditions;
- (b) undertaking operation and maintenance of the Mines in an efficient, coordinated and economical manner, in compliance with Applicable Laws and Standard Industry Practice;
- (c) undertaking development (for Underground Working)/removal of Overburden(for Opencast Working) in accordance with the provisions of this Agreement;
- (d) if applicable undertaking appropriate measures for supporting of the roof and strata control and monitoring of the same to ensure compliance with Applicable Laws, Applicable Permits and Specifications and Standards;
- (e) undertaking proper ventilation of the Underground Working and its monitoring to ensure compliance with Applicable Laws, Applicable Permits and Specifications and Standards. On completion of exploration of methane, if it is proved that the Mine has no potential for AMM or CMM, the Mine Operator shall make necessary arrangement for methane drainage or proper ventilation to ensure safety compliance as per the provisions of this Agreement.
- (f) if applicable, undertaking monitoring of surface subsidence and proper management including fencing, backfilling, etc. to ensure compliance with Applicable Laws, Applicable Permits and Specification and Standards;
- (g) providing appropriate signaling and communication system for the Mines to ensure proper communication and monitoring of the Mines;
- (h) minimizing disruption to operation of the Mines in the event of accidents or other incidents affecting the safety and operation of the Mines by providing a rapid and effective response and maintaining liaison with emergency services of the State;

- (i) carrying out periodic preventive maintenance of the Mines;
- (j) undertaking routine maintenance including prompt repairs of all components of the Mines and Equipment so as to ensure compliance with the Maintenance Requirements and the Specifications and Standards;
- (k) undertaking major maintenance of Equipment and installations;
- (l) preventing, with the assistance of the concerned law enforcement agencies, any encroachments on, or unauthorised entry to the Site;
- (m) protection of the environment and provision of equipment and materials therefor;
- (n) operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Mines and Equipment and for providing safe, smooth and uninterrupted extraction of Coal and Delivery thereof from the Mines;
- (o) maintaining a public relations unit for interface with and attend to suggestions from Project Affected Persons, government agencies, media and other agencies;
- (p) complying with Safety Requirements in accordance with Article 17;
- (q) operation and maintenance of all Project Assets including the infrastructure and facilities handed over to the Mine Operator by the Authority diligently and efficiently and in accordance with Standard Industry Practice; and
- (r) maintaining reliability in operating the Mines and Delivery of Coal.

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

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

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

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

16.2 Maintenance Requirements

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

16.3 Maintenance Manual

- 16.3.1 No later than 90 (ninety) days prior to the Scheduled Completion Date, the Mine Operator shall, in consultation with the Engineer in charge, evolve a repair, operation and maintenance manual (the "**Maintenance Manual**") for the regular and preventive maintenance of the Mines and Equipment in conformity with the Specifications and Standards, Maintenance Requirements, Safety Requirements and Standard Industry Practice, and shall provide 5 (five) copies thereof to the Authority and 2 (two) copies to the Engineer in charge. The Maintenance Manual shall be revised and updated once every 3 (three) Accounting Years and the provisions of this Clause 16.3 shall apply, *mutatis mutandis* to such revisions and updates.
- 16.3.2 Without prejudice to the provision of Clause 16.3.1, the Maintenance Manual shall, in particular, provide for life cycle maintenance, routine maintenance and restorative maintenance which may be reasonably necessary for maintenance and repair of the Project Assets, including replacement thereof, such that its overall condition conforms to Standard Industry Practice.

16.4 Maintenance Programme

- 16.4.1 On or before the COD and no later than 45 (forty five) days prior to the beginning of each Accounting Year during the Operation Period, as the case may be, the Mine Operator shall provide to the Authority and Engineer in charge, its proposed annual programme of preventive, urgent and other scheduled maintenance (the "**Maintenance Programme**") to comply with the Maintenance Requirements, Maintenance Manual and Safety Requirements. Such Maintenance Programme shall include:
- (a) preventive maintenance schedule, including the proposed closure, if any, for maintenance;
 - (b) arrangements and procedures for carrying out urgent repairs;
 - (c) criteria to be adopted for deciding maintenance needs;
 - (d) intervals and procedures for carrying out inspection of all elements of the Mines and Equipment;
 - (e) intervals at which the Mine Operator shall carry out periodic maintenance;
 - (f) arrangements and procedures for carrying out safety related measures;
 - (g) intervals for major maintenance works and the scope thereof; and
 - (h) frequency of carrying out intermediate and periodic overhaul of the Equipment.
- 16.4.2 Within 15 (fifteen) days of receipt of the Maintenance Programme, the Engineer in charge shall review the same and convey its comments to the Mine Operator with

particular reference to its conformity with the Maintenance Requirements, Maintenance Manual and Safety Requirements.

- 16.4.3 The Mine Operator may modify the Maintenance Programme as may be reasonable in the circumstances, and the procedure specified in Clauses 16.4.1 and 16.4.2 shall apply *mutatis mutandis* to such modifications.
- 16.4.4 Any maintenance carried out by the Mine Operator as per the Maintenance Programme under this Clause 16.4 shall be deemed to be scheduled maintenance (the "**Scheduled Maintenance**"). For the avoidance of doubt, any Scheduled Maintenance shall not relieve the Mine Operator from its obligation to excavate/extract and Deliver Coal in accordance with the Annual Production Programme as provided in the Mining Plan to be prepared by the Mine Operator and, the Mine Operator shall be liable to pay the Damages under Clause 21.5 for any closure, suspension or reduction of Annual Capacity arising out of Scheduled Maintenance.

16.5 Safety, breakdowns and accidents

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

16.6 De-commissioning due to Emergency

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

16.7 Section closure

- 16.7.1 Save and except as provided in Clause 16.6, the Mine Operator shall not shut down or de-commission any section of the Mines for undertaking maintenance or repair

works, not forming part of the Maintenance Programme, except with the prior written approval of the Engineer in charge. Such approval shall be sought by the Mine Operator through a written request to be made to the Engineer in charge, and a copy thereof furnished to the Authority, at least 7 (seven) days before the proposed closure of such section and shall be accompanied by particulars thereof. Within 3 (three) days of receiving such request, the Engineer in charge shall grant permission with such modifications as it may deem necessary and a copy of such permission shall be sent to the Authority.

- 16.7.2 Upon receiving the permission pursuant to Clause 16.7.1, the Mine Operator shall be entitled to shut down or decommission the designated section for the period specified therein, and in the event of any delay in re-commissioning such section, the Mine Operator shall pay Damages to the Authority calculated at the rate of 1% (one percent) of the Average Daily Revenue Share for each day of delay until the section has been re-commissioned for excavation/extraction and Delivery of Coal.

16.8 Maintenance obligations

- 16.8.1 The Mine Operator shall repair or rectify any defect or deficiency set forth in the Maintenance Requirements within the period specified therein.

16.9 Authority's right to take remedial measures

- 16.9.1 In the event the Mine Operator does not maintain and/or repair the Mines and Equipment or any part thereof in conformity with the Maintenance Requirements, the Maintenance Manual or the Maintenance Programme, as the case may be, and fails to commence remedial works within 15 (fifteen) days of receipt of the O&M Inspection Report or a notice in this behalf from the Authority or Engineer in charge, as the case may be, the Authority shall, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Mine Operator, and to recover its cost from the Mine Operator.

16.10 Overriding powers of the Authority

- 16.10.1 If in the reasonable opinion of the Authority, the Mine Operator is in material breach of its obligations under this Agreement and, in particular, the Maintenance Requirements, and such breach is causing or likely to cause material danger to any person or property, the Authority may, without prejudice to any of its rights under this Agreement including Termination thereof, by notice require the Mine Operator to take reasonable measures immediately for rectifying or removing such hardship or danger, as the case may be.
- 16.10.2 In the event that the Mine Operator, upon notice under Clause 16.10.1, fails to rectify or remove any hardship or danger within a reasonable period, the Authority may exercise overriding powers under this Clause 16.10.2 and take over the performance of any or all the obligations of the Mine Operator to the extent deemed necessary by it for rectifying or removing such hardship or danger; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required hereunder; provided further that any costs and expenses incurred by the Authority in discharge of its obligations hereunder shall be deemed to be O&M Expenses, and the Authority shall be entitled to recover them from the Mine Operator in accordance with the provisions of Clause 16.9.

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

16.11 Restoration of loss or damage to the Mines

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

16.12 Modifications to the Mines

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

16.13 Excuse from performance of obligations

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

- (a) a Force Majeure Event;
- (b) measures taken to ensure the safety of the Mines except when unsafe conditions occurred because of failure of the Mine Operator to perform its obligations under this Agreement; or
- (c) compliance with a request from the Authority or the directions of any Government Instrumentality, the effect of which is to close all or any part of the Mines except when such closure occurred because of failure and breach

of the Mine Operator to perform its obligations under this Agreement or Applicable Laws.

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

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

ARTICLE 17

SAFETY REQUIREMENTS

17.1 Safety Requirements

- 17.1.1 The Mine Operator shall comply with the provisions of this Agreement, Applicable Laws, Applicable Permits and conform to Standard Industry Practice for securing the safety of the Mines, Equipment and individuals on or about the Site. In particular, the Mine Operator shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Mines, and shall comply with the safety requirements set forth in Schedule-L (the "**Safety Requirements**").
- 17.1.2 The Mine Operator shall have the sole responsibility to verify and take necessary actions and measures to ensure that all safety measures at the Mines are fully implemented, maintained and kept in proper working order. In addition, the Mine Operator shall ensure adherence to the safety code of practices in accordance with the provisions of this Agreement, Applicable Laws (including but not limited to the CMR) and Applicable Permits and the Safety Requirements by its employees, Contractors or any other persons working or performing, directly or indirectly, for the Mine Operator in relation to the Mines and/ or on or about the Site.
- 17.1.3 The Mine Operator shall, during re-opening, development and/or operation and maintenance of the Mines, undertake appropriate and adequate risk and safety assessment of the Mines for potential safety and health hazards, including possible dangers due to inflammable and noxious gases, respirable and inflammable dust, inrush water, spontaneous heating, fire, use of electricity, roof fall and strata control of surrounding rocks, moving equipment, machinery, etc. and prepare a risk mitigation and management plan. The Mine Operator shall, at all times, be responsible for making appropriate arrangements and provisions for a safe and healthy working environment in the Mines.
- 17.1.4 The Mine Operator shall provide and maintain adequate lighting, fencing, communication system, dust suppression and other facilities, wherever required, within the premises of the Mines, both surface and underground (in case of Underground Working), for proper execution of work and protection of such facilities for the safety of employees and public.
- 17.1.5 The Mine Operator shall arrange and provide personal protective equipment including but not limited to helmets, footwear, lamps and other safety appliances and devices, as may be necessary, to carry out the work in the Mines, both surface and underground to its employees and all other person(s) deployed (directly or indirectly) by the Mine Operator for working in the Mines. The Mine Operator shall further ensure that its employees and other deployed person(s) use such personal protective equipment, at all times, during the course of their work in the Mines. The Mine Operator shall, under any circumstances, not pay any cash amount in lieu of providing such personal protective equipment.
- 17.1.6 The Mine Operator shall provide adequate and appropriate rest shelters, first aid station, ambulances, fire stations, fire hydrants, drinking water and other facilities/ amenities at conspicuous places as required under the Applicable Laws, Applicable Permits and Standard Industry Practice for ensuring safety, health and welfare of the

employees other persons, as may be deployed directly or indirectly by the Mine Operator, for working in the Mines in accordance with the provisions of this Agreement.

- 17.1.7 In case of Underground Working, the mining machinery, electrical equipment, personal protective equipment, safety devices and appliances and all other equipment and devices as provided by the Mine Operator in the Mines and underground, shall strictly conform to the standards and specifications approved by the relevant Government Instrumentality, as applicable, for use in the Mines.
- 17.1.8 The Mine Operator shall periodically impart safety training to its employees and shall at all times be responsible for observance of safety procedures by its staff, employees, contract labourers, Contractors, consultants and agents. The Mine Operator shall comply with all the obligations, as provided under the Act and Mines Vocational Training Rules, 1966, including but not limited to requesting the Authority to provide statutory training to the person(s) employed or to be employed (directly or indirectly) at the Mines.
- 17.1.9 The Mine Operator acknowledges and agrees that the Authority shall be entitled to inspect the Mines to verify adherence to the requirements under the Applicable Law, Applicable Permits and Safety Requirements and the Mine Operator shall be obliged to facilitate such inspection and implement the corrective measures identified in such inspection.
- 17.1.10 Notwithstanding anything to the contrary contained in this Agreement, the Parties acknowledge and agree that the appropriate Government Instrumentalities may issue directions to the Authority and the Mine Operator for complying with the provisions of the Mines Act, 1952 and the rules and regulations made thereunder and such directions shall be binding on them.
- 17.1.11 If the Mine Operator fails to ensure safety measures regarding usage of machinery, equipment, safety devices and/ or appliances required to carry out the tasks/work as required under this Agreement, the Applicable Law, Applicable Permits and Safety Requirements or fails to ensure that its employees, Contractors, contract labourers, consultants, agents or any other person, as deployed by the Mine Operator to work at the Mines, use the personal protective equipment, as needed, for safe working or other provisions, procedures and practices, the Authority, upon the satisfaction that the Mine Operator is not conforming to the safety and health requirements, may direct the Mine Operator for stoppage of work and require the Mine Operator to remedy the defects within a stipulated time period, as determined by the Authority. The Mine Operator shall not proceed with the work in the Mines until it has complied with each direction of the Authority to the satisfaction of the statutory officials appointed by the Authority for the Mines.

17.2 Guiding principles

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

with accidents, consideration of the same, and implementation of appropriate remedial measures.

17.3 Expenditure on Safety Requirements

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

17.4 Annual Safety Report

17.4.1 The Mine Operator shall submit to the Authority before the 15th (fifteenth) day of January of each calendar year, an annual report (in 10 (ten) copies) containing, without limitation, a detailed list and analysis of all accidents of the preceding calendar year and the measures taken by the Mine Operator for averting or minimizing such accidents in future ("**Annual Safety Report**").

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

17.5 Rescue Operation:

Assistance for rescue & recovery of the mine may be given by Subsidiary Company on chargeable basis.

If the Mine Operator does not have the requisite resources for rescue operation, on request of the Mine Operator, the Authority may assist in the rescue operation by providing rescue trained persons whenever required during re-opening of the mine only. The cost incurred by the Authority to carry out the rescue operation shall be reimbursed by the Mine Operator. It is hereby clarified that the Mine Operator shall carry out scientific studies etc. in accordance with the Clause 5.15.

ARTICLE 18

SECURITY OF THE MINES

18.1 Security of the Mines

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

18.2 Installation of Security Equipment

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

18.3 Real Time Monitoring of Operations

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

18.4 Prevention of pilferage of Coal

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

ARTICLE 19

MONITORING OF OPERATION AND MAINTENANCE

19.1 Monthly status reports

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

19.2 Reports of unusual occurrence

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

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

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

19.3 Inspection

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

19.4 Tests

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

19.5 Remedial measures

- 19.5.1 The Mine Operator shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report or in the test results referred to in Clause 19.4 and furnish a report in respect thereof to the Engineer in charge and the Authority within 15 (fifteen) days of receiving the O&M Inspection Report or the test results, as the case may be; provided that where the remedying of such defects or deficiencies is likely to take more than 15 (fifteen) days, the Mine Operator shall submit progress reports of the repair works once every week until such works are completed in conformity with this Agreement.
- 19.5.2 The Engineer in charge shall require the Mine Operator to carry out or cause to be carried out tests, at its own cost, to determine that such remedial measures have brought the Mines and Equipment into compliance with the Maintenance Requirements and the procedure set forth in this Clause 19.5 shall be repeated until the Mines and Equipment conform to the Maintenance Requirements.

19.6 Production and Delivery Statements/ Reports

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

19.7 Annual measurement of extraction of Coal

- 19.7.1 On or before COD, the Engineer in charge shall cause to be measured, by Central Mines Planning and Design Institute Limited ("CMPDI"), using latest applicable technology or laser technology or photogrammetry method or any other latest available technology (the "**Measurement**"), the stockpile and Coal Seams and the Overburden (in case of Opencast Working) at the Mines, and shall convey forthwith to the Authority such particulars thereof as the Authority may reasonably require. The above Measurement shall be undertaken in accordance with the provisions of yellow book of Coal India Limited. The date and time for Measurement shall be notified by the Engineer in charge in consultation with

CMPDI, no less than 1 (one) week in advance, to the Mine Operator and the Authority, and the Authority may designate its representative to witness such Measurement or may also carry out its independent Measurement. The Authority may engage any other reputed third party agency, other than CMPDI, for undertaking such Measurement.

- 19.7.2 The Engineer in charge shall arrange, once every Accounting Year, on or before the commencement of each Accounting Year, to repeat the Measurement in accordance with the provisions of Clause 19.7.1.
- 19.7.3 In the event that the quantity of Coal dispatched from the Delivery Point during any Accounting Year falls short of the quantity of excavation/extraction (with due consideration of Coal stock at Coal Depot), as determined by Measurement, in respect of that Accounting Year, the Mine Operator shall pay to the Authority, Damages equivalent to the loss of revenue of the Authority for the shortfall quantity up to 2% (two per cent) and equivalent to **twice** the loss of revenue of the Authority for the shortfall quantity exceeding 2% (two per cent) of excavation/extraction quantity of Coal.

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

Explanation:

For determination of revenue loss, weighted average selling price of coal sold during the Accounting Year, shall be considered.

- 19.7.4 In the event Coal is excavated/ extracted by different methods of mining and delivered simultaneously, suitable arrangements for stacking and Delivery of Coal shall be established by the Mine Operator so that quantity of Coal excavated/ extracted by each method of mining shall be measured separately.

ARTICLE 20

MINES DEVELOPMENT/ REMOVAL OF OVERBURDEN

20.1 Mines Development

- 20.1.1 The Mine Operator shall, at all times during the Contract Period, ensure and procure the fulfilment of its obligations in respect of development of the Mines/ removal and depositing of Overburden, as the case may be, in accordance with Applicable Laws, Applicable Permits, Mining Plan, the provisions of this Agreement and Standard Industry Practice.
- 20.1.2 In case of Opencast Working, the Mine Operator acknowledges, agrees and undertakes that the geometry of Mines, including bench height and width of Coal Seams, Overburden and inter-burden, shall at all times conform with the provisions of this Agreement, Applicable Laws and Standard Industry Practice. Further, in case of Underground Working, the Mine Operator acknowledges, agrees and undertakes that the layout and geometry of Mines, including underground development in rock and/ or Coal for access and development of trunk roadways in Coal Seams, layout of panels in the Coal Seams, panel length and width, method of underground development and working height or thickness of galleries or roadways during underground development in rock and Coal Seams etc., shall at all times conform with the provisions of this Agreement, Applicable Laws and Standard Industry Practice.
- 20.1.3 The Engineer in charge shall regularly determine the compliance of the provisions of this Article 20 by the Mine Operator.

20.2 Schedule of Mines Development/Removal of Overburden

- 20.2.1 On or before the Appointed Date the Mine Operator shall submit a schedule for development length in case of Underground Working ("**Scheduled Development Length**") and/or a schedule for removal of Overburden in case of Opencast Working ("**Scheduled Overburden Quantity**") in accordance with the Mining Plan in the following format(s) which shall be deemed to be a part of the Agreement. The Parties expressly agree that during each Accounting Year after the Appointed Date, the Mine Operator shall undertake development of the Mines/ removal of Overburden in accordance with the Agreement.

Format for Scheduled Development Length :

Accounting Years	Scheduled Development Length (m)		
	Development 1 (Dia. / Cross section)	Development 2 (Dia. / Cross section)	Development 3 (Dia. / Cross section)
1			
2			
3			
Subsequent years			
Total			

Provided that, in the event of any significant change in the cross section area and length, the Scheduled Development Length shall be modified with the prior written approval of the Authority.

Format for Scheduled Overburden Quantity :

Accounting Year	Overburden to be removed(In M M³)
1	
2	
3	
4	
Subsequent years	
Total	

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

Provided further that, in the event of the actual overburden removal in any Accounting Year is less than the scheduled quantity for that Accounting Year due to the Force Majeure or Authority Default, the Scheduled Overburden Quantity for such Accounting Year shall be prorated accordingly on the basis of the loss of working shifts due to such Force Majeure or Authority Default. In this regard, a lossof at least 5 (five) working hours in a working shift shall be considered as loss of 1(one) working shift.

- 20.2.2 The Mine Operator may undertake advance development/removal of Overburden of the Mines in excess of the Scheduled Development Length/Scheduled Overburden Quantity with the prior written approval of the Authority.
- 20.2.3 The Authority shall conduct monthly measurement of development of the Mines/removal of Overburden, using appropriate approved technology or any other suitable methodology, in presence of a representative of the Mine Operator to determine compliance with Article 20.

20.3 Damages for Failure to adhere to Schedule of Development / Removal of Overburden

- 20.3.1 In case the actual development length of the Mines done by the Mine Operator is less than the Scheduled Development Length in any Accounting Year, or the Overburden removed by the Mine Operator is less than the Scheduled Overburden Quantity in any Accounting Year, then the Mine Operator shall submit an irrevocable, unconditional and first demand bank guarantee in favour of the Authority, in a form and manner acceptable to the Authority from a Bank for a sum equivalent to:

- i) in case of Underground Working, the percentage of Development Shortfall of the Performance Security ("**Development Guarantee**"). For the purposes of this Clause, "**Development Shortfall**" shall mean the sum of the positive difference(s) for each of the Scheduled Development Length(s) and the actual development length(s); or
- ii) in case of Opencast Working, the percentage of Overburden Shortfall of the Performance Security ("**Overburden Guarantee**"). "**Overburden Shortfall**" shall mean the difference (shortfall) of actual quantity of Overburden removed from the Scheduled Overburden Quantity.

Illustration for calculation of percentage of Development Shortfall:

In an Accounting Year, if Scheduled Development Length(s) for 'Development 1', 'Development 2', 'Development 3' and 'Development 4' are 100m, 100m, 100m and 200m respectively and actual development lengths are 120m, 50m, 50m and 200m respectively, then, the Development Shortfall is 100m (i.e., 0m+50m+50m+0m) and the percentage of Development Shortfall is 20 (Development Shortfall X 100/ Scheduled Development Length, i.e. 100m X 100/500m = 20). Hence, the Development Guarantee shall be 20% of the Performance Security.

If the Mine Operator fails to submit the requisite amount of the Development Guarantee/Overburden Guarantee, the Authority shall withhold the payment of the Monthly Invoice for an equivalent amount of such Development Guarantee/Overburden Guarantee.

- 20.3.2 The Mine Operator shall keep the Development Guarantee/Overburden Guarantee valid and effective and in full force until the date that occurs 90 (ninety) days after the expiry of (i) 3 (three) Accounting Years following the Accounting Year in which the relevant Development Shortfall occurred; or (ii) Contract Period, whichever is earlier.
- 20.3.3 At least 30 (thirty) days prior to expiry of the Development Guarantee/ Overburden Guarantee, the Mine Operator shall furnish a replacement Development Guarantee/ Overburden Guarantee to the Authority, failing which the Authority shall be entitled to, after giving 5 (five) days' notice to the Mine Operator, draw down the full value of the Development Guarantee/ Overburden Guarantee, and hold the cash as security for performance of the Mine Operator's obligations under this Clause 20.3.
- 20.3.4 The Mine Operator shall meet the Development Shortfall/ Overburden Shortfall, within a period of 3 (three) Accounting Years immediately following the Accounting Year in which the relevant Development Shortfall/ Overburden Shortfall occurred and in any event prior to the expiry of the Contract Period, failing which the Authority shall, without prejudice to its other rights and remedies under this Agreement, in law or equity, be entitled to appropriate the Development Guarantee/ Overburden Guarantee in full, as Damages. Without prejudice to the foregoing, in the event of Termination of this Agreement, the Authority shall be entitled to appropriate the Development Guarantee/ Overburden Guarantee in full, as Damages for failure of the Mine Operator to meet the Development Shortfall/Overburden Shortfall.

ARTICLE 21

PRODUCTION OF COAL

21.1 Production of Coal

The Mine Operator shall excavate/extract and Deliver Coal to the Authority in accordance with the Annual Production Programme specified in the Mining Plan and as per the provisions of this Agreement and Applicable Laws.

21.2 Annual Production Programme

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

On or before the Appointed Date the Mine Operator shall submit to the Authority an Annual Production Programme in accordance with the Mining Plan in the format given below, which shall be a part of this Agreement:

Accounting Year	Coal to be Delivered from			Total
	Opencast Working	Underground Working	Highwall Working	
1				
2				
3				
Subsequent years				
Total				

For the purposes of this Agreement, "**Contracted Capacity**" means peak rated capacity as per the Mining Plan. The quantities specified in the Annual Production Programme for each Accounting Year shall be the "**Annual Capacity**", and the "**Monthly Capacity**" for any month in an Accounting Year shall be the Annual Capacity for such Accounting Year pro rated for the months in such Accounting Year. Where an Accounting Year is less than 12 (twelve) months, then the Annual Capacity for such Accounting Year shall be prorated accordingly.

In the event that the actual quantity of Coal Delivered in any Accounting Year is less than the scheduled Annual Capacity of that Accounting Year due to the Force Majeure or Authority Default, the Annual Capacity of such Accounting Year shall be prorated accordingly on the basis of the loss of working shifts due to Force Majeure or Authority Default, as the case may be. In this regard, a loss of at least 5 (five) working hours in a working shift shall be considered as loss of 1 (one) working shift.

21.2.2 The Authority may, by a notice delivered at least 3 (three) months prior to commencement of an Accounting Year after COD, subject to the condition of environment clearance, modify the Annual Production Programme specified in Clause 21.2.1 by increasing or reducing it up to 15% (fifteen per cent) with respect to such Accounting Year and thereupon the modified Annual Production Programme shall be deemed to be the Annual Production Programme for such Accounting Year

for the purposes of this Agreement. However, an increase of the Annual Production Programme for any Accounting Year by more than 15% (fifteen percent) shall be made only with the mutual consent of the Parties in writing. It is hereby clarified that no claim for idling of the equipment, or otherwise, due to a reduction in Annual Production Programme shall be entertained by the Authority except as set out in Clause 21.2.3. For the avoidance of doubt, the Parties agree that the Annual Production Programme in the Accounting Year in which the Coal production starts or Transfer Date occurs shall be proportionate to the period of operation in that Accounting Year.

- 21.2.3 Unless otherwise agreed to by the Parties, it is expressly agreed by the Mine Operator that it shall, in no month of an Accounting Year, Deliver more than 20% (twenty per cent) of the quantity of Coal specified in the Annual Production Programme for that Accounting Year. It is clarified that notwithstanding the foregoing and unless otherwise agreed to by the Parties, the Mine Operator shall not, in any Accounting Year, Deliver more than 100% (one hundred percent) of the quantity of Coal specified in the Annual Production Programme for that Accounting Year under this Clause 21.2. It is agreed that the provisions of this Clause 21.2.4 shall not apply to any quantity of Coal that is stored in the Coal Depot, and such Coal shall be Delivered by the Mine Operator at the Delivery Points in accordance with the instructions of the Authority.
- 21.2.4 The Mine Operator shall, no later than the 21st (twenty first) day of every month, furnish to the Authority its weekly target of production for the forthcoming month, and shall make best efforts to fulfill such targets. In the event it expects any shortfall therein, it shall inform the Authority as soon as may be, and furnish its revised targets of production.
- 21.2.5 It is clarified that any modification to the Annual Production Programme pursuant to this Clause 21.2 shall not be deemed to be a Change of Scope and shall not entitle the Mine Operator to a Change of Scope Order pursuant to Article 15.

21.3 Delivery Point

It is expressly agreed by the Mine Operator that unless otherwise authorised in writing by the Authority, all Coal excavated/extracted and produced by the Mine Operator shall be Delivered by the Mine Operator only at the Delivery Points and solely to the Authority or its nominees, and to no other person. In addition, mixing of different grades of Coal shall not be allowed at the Delivery Point.

21.4 Extension of Annual Production Programme

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

21.5 Damages for shortfall

- 21.5.1 Upon COD, in the event the excavated/extracted Coal in any Accounting Year (“**Actual Production**”) for each method of mining is less than the corresponding Annual Capacity for such Accounting Year, other than where such shortfall arises directly on account of (a) Force Majeure; or (b) a default of the Authority; or (c) non-performance pursuant to Clause 16.13, the Mine Operator shall be liable to pay

the following amounts as Damages for the shortfall in Actual Production of Coal, as indicated below. It is clarified that in respect of the Accounting Year during which the COD or the Transfer Date occurs, the shortfall will be determined with respect to the Actual Production during the number of months in such Accounting Year subsequent to the COD or prior to the Transfer Date (as applicable) and the Annual Capacity for such Accounting Year shall be pro-rated for the number of months in such Accounting Year.

Actual Production expressed as a percentage of Annual Production Programme	Damages to be paid by the Mine Operator for each method of mining
100 % to 90 %	Nil
Less than 90%	Amount equivalent to the revenue loss of the Authority (on prevailing coal price as per National Coal Index of coal of similar grade) for the 'production shortfall from 90% of Annual Production Programme' (i.e. difference between 90% of the Annual Production Programme and the actual Production)

ARTICLE 22

COAL DEPOT

22.1 Coal Depot

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

22.2 Facilities and equipment at Coal Depot

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

ARTICLE 23

STORAGE AND TESTING

23.1 Storage of Coal

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

23.2 Testing of Coal

23.2.1 For determining that the Coal Delivered conforms to the Specifications and Standards, the Coal Tests shall be conducted at the Delivery Point by an independent laboratory accredited to the National Accreditation Board of Laboratories, as selected by the Authority or any of the Buyer(s) and notified by the Authority to the Mine Operator (the "**Independent Laboratory**"). The Coal Tests shall be carried out in the presence of the representatives of the Authority, the Mine Operator and, if required, the Buyer and such representatives shall sign the results of the Coal Tests. A copy of the reports of all such Coal Tests shall be provided to the Authority and the Mine Operator forthwith and to the Buyer upon request.

23.2.2 The results of the Coal Tests shall be final and binding on the parties.

23.2.3 Subject to Clause 30.1.2 of this Agreement, if the results of the Coal Tests conducted at the Delivery Point indicate a deterioration in grade from the Declared Grade (the "**Grade Slippage**"), then the Mine Operator shall indemnify and shall be liable to forthwith pay to the Authority, 1.25 (one point two five) times the amount equivalent to the loss of revenue of the Authority on account of such Grade Slippage, as Damages. The aforesaid amounts shall be recovered by the Authority from the Monthly Invoice.

23.2.4 In the event the results of any of the Coal Tests conducted at the Delivery Point indicate a Grade Slippage for such number of days as may be determined by the Authority, such event shall be deemed to be a Mine Operator Default for the purposes of Clause 37.1.1 and in addition to any other rights and remedies available to the Authority under this Agreement (including pursuant to Clause 23.2.3), the Authority shall be entitled to exercise its right of Suspension under Clause 36.1.

23.2.5 The costs and expense incurred on all Coal Tests carried out under Clause 23.2.1 shall be borne by the Mine Operator.

23.3 Reporting of Coal stock

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

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

ARTICLE 24

DISPATCH AND DELIVERY

24.1 Dispatch of Coal

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

24.2 Delivery and loading of Coal

The Mine Operator shall Deliver Coal from the Coal Depot. Delivery Point shall be the outlet of Coal Depot from where Coal shall be made available for the Coal dispatch system as provided by the Buyer. Coal shall be sold by the Mine Operator on behalf of the Authority through auction process at market determined price. Necessary measurement system at the Delivery Point shall be provided by the Mine Operator.

Any incidental cost, expenses, demurrage, all charges related to siding, penalty etc. related to Delivery of Coal, loading of Coal and Selling of Coal shall be borne by the Mine Operator.

24.3 Title and Risk in Coal

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

ARTICLE 25

KEY PERFORMANCE INDICATORS

25.1 Key Performance Indicators

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

25.2 Production Programme and Project Milestones

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

25.3 Adjustments in Revenue Share

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

25.4 Monthly Report

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

ARTICLE 26

ENGINEER IN CHARGE

26.1 Engineer in charge

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

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

26.2 Duties and functions

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

26.3 Replacement of Engineer in charge

- 26.3.1 The Authority may replace the Engineer in charge at any time with another suitable Engineer in charge.

PART IV
FINANCIAL COVENANTS

ARTICLE 27
MOBILISATION ADVANCE

27.1 Mobilisation Advance

No mobilisation advance for the Project under this Agreement shall be provided to the Mine Operator.

ARTICLE 28

REVENUE SHARING

28.1 Revenue Sharing

28.1.1 Subject to and in accordance with the terms of this Agreement, the net revenue generated by Selling the Coal (the “**Net Revenue**”) shall be shared between the Authority and the Mine Operator in accordance with the provisions of this Agreement.

The Net Revenue shall be the amount received from the Buyer(s) on Selling of Coal after deducting the applicable statutory charges related to production and Selling of Coal including royalty, cess, GST and any other tax and after adjustment on account of debit/credit note, grade slippage or upgradation and quantity, if any.

The portion of Net Revenue shared with the Authority (the “**Revenue Share of Authority**”) shall be calculated in the following manner:

- i) The Revenue Share of Authority shall be equal to Net Revenue multiplied by the contracted percentage of Revenue Share of Authority.
- ii) The contracted percentage of Revenue Share of Authority shall be the same as mentioned in Recital (G) of this Agreement.

Total sale proceeds received from the Buyer(s) shall be distributed in accordance with the Clause 5.21 of the Agreement.

28.2 Additional Capacity

28.2.1 The Mine Operator may, upon request from the Authority and in accordance with Applicable Laws, Specifications and Standards and Maintenance Requirements, construct, install and operate any excavation/extraction capacity which is in addition to and in excess of the Contracted Capacity (the “**Additional Capacity**”).

28.2.2 The additional Coal produced under the Additional Capacity installed hereunder shall have the same (percentage) Revenue Share of Authority as for the Contracted Capacity.

28.3 Taxes and duties

28.3.1 It shall be the joint obligation of the Mine Operator and the Authority to comply with all necessary Tax related statutory compliances, including but not limited to the payment of GST at the rates prescribed under the Applicable Laws, in relation to the Agreement. In this regard the mine operator will cooperate with Authority for all statutory compliances.

28.3.2 The Authority shall, upon receiving the GST invoice or debit note (as applicable under the GST Laws) and other supporting documents in relation to the revenue share of Mine Operator (inclusive of GST), remit the revenue share of Mine Operator to the Mine Operator along with the amount of GST indicated in GST invoice, in reference to Article 28 and 29. The Mine Operator shall issue a GST

credit note within the time limit as prescribed under the GST Laws. The Authority shall, upon receiving the credit note adjust the basic amount and taxes thereon while making remittance towards the GST invoice raised/issued by the Mine Operator.

- 28.3.3 In case of any loss of input tax credit or any other benefit or incidence of interest or penalty suffered by the Authority in relation to GST due to any non-compliance by the Mine Operator of the Applicable Laws (including but not limited to the Mine Operator's failure to upload details of sale on the GSTN portal, failure to issue GST compliant document(s) within the prescribed time frame or furnishing incorrect or incomplete documents with the relevant Government Instrumentality), the Authority shall have the right to: (a) be compensated by the Mine Operator for such amount of loss or penalty suffered by the Authority, or (b) set-off such loss or penalty against any next amounts payable by the Authority to the Mine Operator under the Agreement. For the avoidance of doubt, it is hereby clarified that any loss of input tax credit or any other benefit or incidence of interest or penalty shall be recovered/adjusted from next Monthly Invoice or against the Performance Security, as the case may be, at the discretion of the Authority and in case award/loss amount is greater than value of Monthly Invoice or the Performance Security, as the case may be, the Mine Operator shall pay such differential amount to the Authority within 30 (thirty) days from the date of demand raised by the Authority. In addition, any delay in uploading the details of sale on the GSTN portal by the Mine Operator resulting in deferment of input tax credit in accordance with the GST Laws, shall entitle the Authority to charge interest at the rate equivalent to the prevailing interest rate charged by the relevant Government Instrumentality for input tax credit reversal under GST Laws
- 28.3.4 Where any damages or compensation becomes payable by either the Authority or the Mine Operator pursuant to any provision of this Agreement, appropriate GST wherever applicable as per the GST Laws in force shall also be payable by the concerned Party in addition to such damages or compensation, upon issuance of GST invoice under GST Laws by the concerned Party which is entitled to receive such payments.
- 28.3.5 The obligation of the Authority shall include compliances regarding tax deduction at source in relation to income tax and GST on the revenue share of Mine Operator or any other charges paid to the Mine Operator, as applicable, in accordance with the respective Applicable Laws.
- 28.3.6 Any penalty, interest, fine etc. applicable by the Government upon the Authority for non-compliance of GST or other taxes for default arising on part of Mine Operator shall be payable or reimbursed to the Authority, as the case may be, by the Mine Operator. It is clarified that the Mine Operator will also be responsible to pay any professional fee or liability accruing out of legal disputes relating to GST or any other applicable Act for the Project.

28.4 Stockpiling

- 28.4.1 In the event there is an insufficient supply of dispatch system provided by the Buyer at the Delivery Point or for any other reason the Authority instructs the Mine Operator in writing to stock the Coal at the Coal Depot.

ARTICLE 29

BILLING AND PAYMENT

29.1 Billing and Payment

- 29.1.1 The Mine Operator shall, by the 15th (fifteenth) day of each month (or, if such day is not a business day, the immediately following business day), submit in triplicate to the Authority, an invoice in the agreed form (the "**Monthly Invoice**") signed by the authorised signatory of the Mine Operator setting out the computation of therevenue shareofMine Operator in respect of the immediately preceding month in accordance with the provisions of this Agreement.
- 29.1.2 The Mine Operator shall, with each Monthly Invoice, submit (a) a certificate that the amounts claimed in the invoice are correct and in accordance with the provisions of the Agreement; (b) an estimate of the approximate weight of Coal stored at the Coal Depot at the close of the relevant month; (c) excavation/extraction of Coalduring the relevant month; (d) weight of Coal sold in the relevant month(e) detailed calculations of the revenue share of Mine Operator, and any other amounts payable by the Authority in accordance with this Agreement; (f) details in respect of Taxes payable or reimbursable in accordance with the provisions of this Agreement; (g) details in respect of Aggregate Incentives and Aggregate Damages payable in accordance with the provisions of Articles 25; (h) the net amount payable after all adjustment under the Monthly Invoice as per Clause 5.21 & Article 28; and (i) proof of having complied with the provisions of all Applicable Laws required to be complied with regarding payment of wages and salaries.
- 29.1.3 Except as set out in Clauses 29.1.1 and 29.1.2, in the event that any sums of money are due from one Party to the other Party under this Agreement (including any amounts payable as Damages), then the Party to whom such sums of money are owed shall send to the other Party an invoice together with relevant supporting documents showing the basis for the calculation of such sums ("**Miscellaneous Invoice**").
- 29.1.4 Due Dates
- (i) Subject to and limited to the balance remaining in the escrow account for that particular month as per adjustment of Clause 5.21, Monthly Invoice and/ or Miscellaneous Invoice delivered to the Authority shall become due and payable by the Authority within 30 (thirty) days after the receipt of such Monthly Invoice and/ or Miscellaneous Invoice, as the case may be. It is clarified that the liability of the Authority for each particular month shall be limited to the balance amount remaining in the escrow account as per the adjustment of Clause 5.21, in case of any non-payment due to lack of funds in the escrow account the same shall be carry forwarded to the subsequent month. Further in case any amount remains to be paid towards the Miscellaneous Invoices at the time of termination or completion of this Agreement, then the same shall stand waived of in absence of any funds remaining in the escrow account. In other words the liability of the Authority is limited to the extent of money received in the escrow account upon Selling of Coal or otherwise as per this Agreement.

- (ii) Subject to Clause 29.2, each Party shall pay on or before the relevant due date, the amount that become due and payable by such Party to the other Party pursuant to a Monthly Invoice or a Miscellaneous Invoice. Such payments shall, unless otherwise stated, be made in Rupees and shall be made by wire transfer, to the bank account designated by the Mine Operator or the Authority, as applicable.
- (iii) In the event the full amount under a Monthly Invoice or a Miscellaneous Invoice payable by either Party is not paid when due, any unpaid amount thereof shall bear interest from the due date until paid, at the MCLR of State Bank of India. Interest shall be paid on the date when payment of the amount due is made.

29.1.5 The Authority shall be entitled to deduct or set off against any amounts payable by the Mine Operator under this Agreement, any amounts payable by the Authority to the Mine Operator under this Agreement.

29.2 Disputed Amounts

29.2.1 In the event a Party disagrees with an invoice, such Party shall promptly and in no event later than 10 (ten) days of receipt of such invoice notify the other Party of the disagreement and reasons thereof. Within 7 (seven) days of receipt of such notice, the other Party shall present any information or evidence as may reasonably be required for determining that the disputed amounts under an invoice are payable. The disputing Party may, if necessary, meet a representative of the other Party for resolving the dispute and in the event that the dispute is not resolved amicably, the Dispute Resolution Procedure shall apply. Promptly and no later than 30 (thirty) days after resolution of any dispute as to an invoice, the amount of any overpayment or underpayment shall be paid by the Mine Operator or Authority (as the case may be) to the other Party, together with interest thereon at the MCLR of State Bank of India from the date payment was due to the date of payment. For the avoidance of doubt, the Authority shall be entitled to raise a Dispute regarding any amounts under an invoice, whether due or already paid under this Agreement, at any time.

ARTICLE 30

DETERMINATION OF GRADE

30.1 Determination of Grade at Coal Seams

- 30.1.1 The Coal grade will be declared as per the provisions of Colliery Control Rules, 2004 (as amended from time to time). The Mine Operator shall be entitled to participate in sampling and testing of samples collected from Coal Seams for the purpose of declaration of grade. At the start of each Accounting Year, the grade of Coal will be declared in accordance with this Clause 30.1.1 (the “**Declared Grade**”).
- 30.1.2 In case there is a Grade Slippage during an Accounting Year, the Mine Operator may request the revision of the Declared Grade in accordance with the provisions of Colliery Control Rules, 2004 (as amended from time to time) and notifications made thereunder.

ARTICLE 31
REVENUE SHORTFALL LOAN

Revenue shortfall loan for the Mine Operator has not been considered for this Project under the Agreement.

ARTICLE 32

INSURANCE

32.1 Insurance during Contract Period

The Mine Operator shall effect and maintain at its own cost, during the Contract Period, such insurances for such maximum sums as may be required under the Financing Agreements and Applicable Laws, and such insurances as may be necessary or prudent in accordance with Standard Industry Practice. The Mine Operator shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Authority as a consequence of any act or omission of the Mine Operator during the Contract Period and in each such insurance policy, the Authority shall be co-insured.

32.2 Insurance Cover

Without prejudice to the provisions contained in Clause 32.1, the Mine Operator shall procure and maintain Insurance Cover including, but not limited, to the following:

- (a) Loss, damage or destruction of the Project Assets, including assets handed over by the Authority to the Mine Operator, at replacement value;
- (b) comprehensive third party liability insurance including injury to or death of personnel of the Authority or others caused by the Project;
- (c) the Mine Operator's general liability arising out of the Agreement;
- (d) liability to third parties for goods or property damage;
- (e) workmen's compensation insurance;
- (f) compensation/ex-gratia for loss of life (fatal coal mine accident) or any injury shall be as per the directives of Coal India Limited. In this regard, it is hereby clarified that the Mine Operator shall have to adhere to any directive issued by Coal India Limited or any other Government Instrumentality from time to time. The present amount of such compensation / ex-gratia for loss of life is Rs.15 (fifteen)lakh. However, due to revision of directive, if the Mine Operator is required to pay more than the stipulated amount, the excess amount shall also be borne by the Mine Operator; and
- (g) any other insurance that may be necessary to protect the Mine Operator and its employees, including all Force Majeure Events that are insurable at commercially reasonable premiums and not otherwise covered in items (a) to (f) above.

32.3 Notice to the Authority

No later than 45 (forty-five) days prior to commencement of the Construction Period or the Operation Period, as the case may be, the Mine Operator shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 32. Within 30 (thirty) days of receipt of such notice, the Authority may require the Mine Operator to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

32.4 Evidence of Insurance Cover

All insurances obtained by the Mine Operator in accordance with this Article 32 shall be maintained with insurers on terms consistent with Standard Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Mine Operator shall furnish to the Authority, notarised true copies of the certificate(s) of insurance, copies of insurance policies and premium payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Mine Operator to the Authority.

32.5 Remedy for failure to insure

If the Mine Operator shall fail to effect and keep in force all insurances for which it is responsible pursuant hereto, the Authority shall have the option to either keep in force any such insurances, and pay such premium and recover the costs thereof from the Mine Operator.

32.6 Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Mine Operator pursuant to this Article 32 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, *inter alia*, the Authority, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

32.7 Mine Operator's waiver

The Mine Operator hereby further releases, assigns and waives any and all rights of subrogation or recovery against, *inter alia*, the Authority and its assigns, undertakings and their subsidiaries, affiliates, employees, successors, insurers and underwriters, which the Mine Operator may otherwise have or acquire in or from or in any way connected with any loss, liability or obligation covered by policies of insurance maintained or required to be maintained by the Mine Operator pursuant to this Agreement (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

32.8 Application of insurance proceeds

The proceeds from all insurance claims, except life and injury, shall be applied by the Mine Operator firstly, for any necessary repair, reconstruction, reinstatement, replacement, improvement or development of the Mines, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

ARTICLE 33

ACCOUNTS AND AUDIT

33.1 Audited accounts

- 33.1.1 The Mine Operator shall maintain books of accounts recording all its receipts (including revenue share of Mine Operator and all incomes derived/collected by it from or on account of the Mines and Coal), income, expenditure, payments, assets and liabilities, in accordance with this Agreement, Standard Industry Practice, Applicable Laws and Applicable Permits. The Mine Operator shall provide the copies of its audited balance sheet and profit and loss account, as and when required by the Authority.
- 33.1.2 On or before the 31st (thirty-first) day of May each Accounting Year, the Mine Operator shall provide to the Authority, for the preceding Accounting Year, a statement duly audited by its Auditors giving summarised information on (a) receipts on account of revenue share of Mine Operator; (b) all other revenues from, or account of the Mines; (c) list and values (including value addition / depreciation during the year) of the assets (including Capital Works, Project Assets, Moving Equipment etc.); and (d) such other information as the Authority may reasonably require.

33.2 Appointment of auditors

- 33.2.1 The Mine Operator shall appoint, and have during the subsistence of this Agreement as its Auditors, a firm chosen by it from the list of firms of chartered accountants (the "**Panel of Chartered Accountants**"), set forth in Schedule-P. All fees and expenses of the Auditors shall be borne by the Mine Operator. The Authority shall have right to change the Schedule-P form time to time or as and when required.
- 33.2.2 The Mine Operator may terminate the appointment of its Auditors after a notice of 45 (forty five) days to the Authority, subject to the replacement of Auditors being appointed from the Panel of Chartered Accountants.
- 33.2.3 Notwithstanding anything to the contrary contained in this Agreement, the Authority shall have the right, but not the obligation, to appoint at its cost from time to time and at anytime, another firm (the "**Additional Auditors**") from the Panel of Chartered Accountants to audit and verify all those matters, expenses, costs, realisations and things which the Auditors are required to do, undertake or certify pursuant to this Agreement.

33.3 Certification of claims by Auditors

Any claim or document provided by the Mine Operator to the Authority in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto, shall be valid and effective only if audited/vetted by its Auditors. For the avoidance of doubt, such certification shall not be required for exchange of information in the normal course of business.

33.4 Set-off

In the event any amount is due and payable by the Authority to the Mine Operator, it may set-off any sums payable to it by the Mine Operator and pay the balance

remaining. Any exercise by the Authority of its rights under this Clause 33.4 shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise.

33.5 Dispute resolution

In the event of there being any difference between the findings of the Additional Auditors and the certification provided by the Auditors, such Auditors shall meet to resolve the differences and if they are unable to resolve the same, such Dispute shall be resolved by the Authority by recourse to the Dispute Resolution Procedure.

PART V

FORCE MAJEURE AND TERMINATION

ARTICLE 34

FORCE MAJEURE

34.1 Force Majeure

As used in this Agreement, the expression "**Force Majeure**" or "**Force Majeure Event**" shall, save and except as expressly provided otherwise, mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 34.2, 34.3 and 34.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the "**Affected Party**") of its obligations under this Agreement and which act or event (a) is beyond the reasonable control of the Affected Party, and (b) the Affected Party could not have prevented or overcome by exercise of due diligence and following Standard Industry Practice, and (c) has Material Adverse Effect on the Affected Party.

34.2 Non-Political Event

A Non-Political Event shall mean one or more of the following acts or events:

- (a) act of God, epidemics, pandemics, outbreak of diseases (including the COVID-19 virus), quarantines, national or regional emergencies, government acts or orders (which a Party is not responsible for), extremely adverse weather conditions, natural disaster, war, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosions (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- (b) strikes or boycotts or stoppage of work or 'bandh' (other than those involving the Mine Operator, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Mines for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 34.3;
- (c) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Mine Operator by or on behalf of such Contractor;
- (d) any delay or failure of an overseas contractor to deliver equipment in India if such delay or failure is caused outside India by any event specified in sub-clause (a) above and which does not result in any offsetting compensation being payable to the Mine Operator by or on behalf of such contractor;
- (e) any judgment or order of any court of competent jurisdiction or statutory authority made against the Mine Operator in any proceeding for reasons other than (i) on account of breach of any Applicable Law or Applicable Permit or any contract, or (ii) enforcement of this Agreement, or (iii) exercise of any of its rights under this Agreement by the Authority;

- (f) the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through inspection of the Site; or
- (g) any event or circumstances of a nature analogous to any of the foregoing.

34.3 Indirect Political Event

An Indirect Political Event shall mean one or more of the following acts or events:

- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (b) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;
- (c) any civil commotion, boycott or political agitation which prevents excavation/extraction or Delivery of Coal by the Mine Operator for an aggregate period exceeding 7 (seven) days in an Accounting Year;
- (d) failure of the Authority to permit the Mine Operator to continue with the development of Mines, with or without modifications, in the event of stoppage of such works after discovery of any geological or archaeological finds;
- (e) any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Mine Operator by or on behalf of such Contractor;
- (f) any Indirect Political Event that causes a Non-Political Event; or
- (g) any event or circumstances of a nature analogous to any of the foregoing.

34.4 Political Event

A Political Event shall mean one or more of the following acts or events by or on account of any Government Instrumentality:

- (a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 41 and its effect, in financial terms, exceeds the sum specified in Clause 41.1;
- (b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Mine Operator or of the Contractors;
- (d) any event or circumstance of a nature analogous to any of the foregoing.

34.5 Duty to report Force Majeure Event

- 34.5.1 Upon occurrence of a Force Majeure Event, the Affected Party shall by notice report such occurrence to the other Party forthwith. Any notice pursuant hereto shall include full particulars of:

- (a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 34 with evidence in support thereof,
- (b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- (c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- (d) any other information relevant to the Affected Party's claim.

34.5.2 The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event no later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

34.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 34.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

34.6 Effect of Force Majeure Event

34.6.1 Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Clause 4.1 for fulfillment of Conditions Precedent shall be extended by a period equal in length to the duration of the Force Majeure Event.

34.6.2 At any time after the Appointed Date, if any Force Majeure Event occurs:

- (a) before COD, the Contract Period and the dates set forth in the Project Completion Schedule shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists; or
- (b) after COD, whereupon the Mine Operator is unable to Deliver Coal to the Authority despite making best efforts or it is directed by the Authority to suspend production during the subsistence of such Force Majeure Event, the Contract Period shall be extended by a period equal in length to the period during which the Mine Operator was prevented from production of Coal on account thereof.

34.7 Allocation of costs arising out of Force Majeure

34.7.1 Upon occurrence of any Force Majeure Event, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.

34.7.2 Save and except as expressly provided in this Article 34, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

34.8 Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 34, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days' time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

34.9 Dispute resolution

In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event (or an Unforeseen Event), such Dispute shall be finally settled in accordance with the Dispute Resolution Procedure; provided that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse on account of such Force Majeure Event.

34.10 Excuse from performance of obligations

If the Affected Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure Event, it shall be excused from performance of such of its obligations to the extent it is unable to perform on account of such Force Majeure Event; provided that:

- (a) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
- (b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and
- (c) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.

34.11 Relief for Unforeseen Events

Upon occurrence of an unforeseen event, situation or similar circumstances not contemplated or referred to in this Agreement, and which could not have been foreseen by a prudent and diligent person (the "**Unforeseen Event**"), any Party may by notice inform the other Party of the occurrence of such Unforeseen Event with the particulars thereof and its effects on the Project. Within 15 (fifteen) days of such notice, the Parties shall meet and make efforts in good faith to determine if such Unforeseen Event has occurred, and upon reaching agreement on occurrence thereof, the Parties shall in good faith determine the manner in which such Unforeseen Event shall be dealt with. In case no consensus or arrangement is arrived between the parties then the matter may be referred to Dispute Resolution Procedure.

ARTICLE 35

COMPENSATION FOR BREACH OF AGREEMENT

35.1 Compensation for default by the Mine Operator

Subject to the provisions of Clause 35.5 and Clause 46.17, in the event of the Mine Operator being in material breach or default of this Agreement, it shall pay to the Authority by way of compensation, all direct costs suffered or incurred by the Authority as a consequence of such material breach or default, within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Clause 35.1 for any material breach or default in respect of which Damages and compensation have been specified under any other Clause of this Agreement.

35.2 Compensation for default by the Authority

Subject to the provisions of Clause 35.5 and 46.17, in the event of the Authority being in material breach or default of this Agreement at any time after the Appointed Date, it shall pay to the Mine Operator by way of compensation, all direct costs suffered or incurred by the Mine Operator as a consequence of such material breach or default within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no such compensation shall be payable for any material breach or default in respect of which Damages have been expressly specified in this Agreement or for any consequential losses incurred by the Authority.

35.3 Extension of Contract Period

Subject to the provisions of Clause 35.5 and 46.17, in the event that a material breach or default of this Agreement set forth in Clause 35.2 causes delay in achieving COD or leads to reduction in the realisation of revenue share of Mine Operator, as the case may be, the Authority shall, in addition to payment of compensation under Clause 35.2, extend the Contract Period, such extension being equal in duration to the period by which COD was delayed or the payment of revenue share of Mine Operator was reduced on account thereof, as the case may be; and in the event of reduction in revenue share of Mine Operator where the daily collection is less than 80% (eighty per cent) of the Average Daily revenue share of Mine Operator, the Authority shall, in addition to payment of compensation hereunder, extend the Contract Period in proportion to the loss of revenue share of Mine Operator on a daily basis. For the avoidance of doubt, loss of 25% (twenty five per cent) in the realisation of revenue share of Mine Operator, as compared to the Average Daily Revenue Share, for four days shall entitle the Mine Operator to extension of one day in the Contract Period.

35.4 Compensation to be in addition

Compensation payable under this Article 35 shall be in addition to, and not in substitution for, or derogation of, Termination Payment, if any.

35.5 Mitigation of costs and damage

The non-defaulting Party shall make all reasonable efforts to mitigate or limit the costs and damage arising out of, or as a result of, breach of this Agreement by the other Party.

ARTICLE 36

SUSPENSION OF MINE OPERATOR'S RIGHTS

36.1 Suspension upon Mine Operator Default

Upon occurrence of a Mine Operator Default, the Authority shall be entitled, subject to Applicable Laws and without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (a) suspend all rights of the Mine Operator under this Agreement including the Mine Operator's right to receive revenue share and other amounts under this Agreement, and (b) exercise such rights itself and perform the obligations hereunder or authorise any other person to exercise or perform the same on its behalf during such suspension (the "**Suspension**"). Suspension hereunder shall be effective forthwith upon issue of notice by the Authority to the Mine Operator and may extend up to a period not exceeding 180 (one hundred and eighty) days from the date of issue of such notice; provided that upon written request from the Mine Operator, the Authority may extend the aforesaid period of 180 (one hundred and eighty) days by a further period not exceeding 90 (ninety) days.

36.2 Authority to act on behalf of Mine Operator

36.2.1 During the period of Suspension hereunder, all rights and liabilities vested in the Mine Operator in accordance with the provisions of this Agreement shall continue to vest therein and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Mine Operator under and in accordance with this Agreement and the Project Agreements, shall be deemed to have been done or taken for and on behalf of the Mine Operator and the Mine Operator undertakes to indemnify the Authority for all costs incurred during such period. The Mine Operator hereby licences and sub-licences respectively, the Authority or any other person authorised by it under Clause 36.1 to use during Suspension, all Intellectual Property belonging to or licenced to the Mine Operator with respect to the Mines and its design, engineering, construction, operation and maintenance and which is used or created by the Mine Operator in performing its obligations under the Agreement.

36.3 Revocation of Suspension

36.3.1 In the event that the Authority shall have rectified or removed the cause of Suspension within a period not exceeding 90 (ninety) days from the date of Suspension, it shall revoke the Suspension forthwith and restore all rights of the Mine Operator under this Agreement. For the avoidance of doubt, the Parties expressly agree that the Authority may revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.

36.3.2 Upon the Mine Operator having cured the Mine Operator Default within a period not exceeding 90 (ninety) days from the date of Suspension, the Authority shall revoke the Suspension forthwith and restore all rights of the Mine Operator under this Agreement.

36.4 Substitution of Mine Operator

At any time during the period of Suspension, the Lenders' Representative, on behalf of Senior Lenders, shall be entitled to substitute the Mine Operator under and in

accordance with the Substitution Agreement, if any, and upon receipt of notice thereunder from the Lenders' Representative, the Authority shall withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of Suspension, and any extension thereof under Clause 36.1, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Senior Lenders.

36.5 Termination

- 36.5.1 At any time during the period of Suspension under this Article 36, the Mine Operator may by notice require the Authority to revoke the Suspension and issue a Termination Notice. Subject to the rights of the Lenders' Representative to undertake substitution in accordance with the provisions of this Agreement and within the period specified in Clause 36.4, the Authority shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 37. It is clarified that all the provisions of this Agreement shall apply, *mutatis mutandis*, to a termination pursuant to this Clause 36.5.1 as if a Termination Notice had been issued by the Authority upon occurrence of a Mine Operator Default
- 36.5.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 180 (one hundred and eighty) days from the date of Suspension hereunder or within the extended period, if any, set forth in Clause 36.1, then unless otherwise agreed by the Parties, this Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, *mutatis mutandis*, to such Termination as if a Termination Notice had been issued by the Authority upon occurrence of a Mine Operator Default.

ARTICLE 37

TERMINATION

37.1 Termination for Mine Operator Default

37.1.1 Subject to Applicable Laws and save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Mine Operator fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 60 (sixty) days, the Mine Operator shall be deemed to be in default of this Agreement (the "**Mine Operator Default**"), unless the default has occurred solely as a result of any breach of this Agreement by the Authority or due to Force Majeure. The defaults referred to herein shall include but not be limited to:

- (a) the Performance Security has been encashed and appropriated in accordance with Clause 9.2 and thereupon, the Mine Operator fails to replenish or provide fresh Performance Security within a Cure Period of 15 (fifteen) days;
- (b) the Mine Operator does not achieve the Project Milestone as provided to the Authority in terms of Schedule-G and continues to be in default or delay in completion of the Project Milestone for 180 (one hundred and eighty) days;
- (c) the Mine Operator abandons or manifests intention to abandon the re-opening, development or operation of the Mines without the prior written consent of the Authority;
- (d) COD or Completion do not occur within the periods specified in Clause 12.5.1;
- (e) the Mine Operator is in breach of the Maintenance Requirements or the Safety Requirements, as the case may be;
- (f) the Mine Operator has failed to make any payment to the Authority within the period specified in this Agreement;
- (g) if applicable, upon occurrence of a Financial Default, the Lenders' Representative has by notice required the Authority to undertake Suspension or Termination, as the case may be, in accordance with the Substitution Agreement and the Mine Operator fails to cure the default within the Cure Period specified hereinabove;
- (h) a breach of any Project Agreement by the Mine Operator has caused a Material Adverse Effect;
- (i) the Mine Operator supplies Coal, excavated/extracted from the Mines, to any person other than in accordance with this Agreement;
- (j) the Mine Operator commits a material breach of the Mining Plan;
- (k) the Mine Operator creates any Encumbrance except as expressly permitted under this Agreement;

- (l) the Mine Operator repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- (m) a Change in Ownership has occurred in breach of the provisions of Clause 5.3;
- (n) the Mine Operator fails to achieve a monthly Actual Production of 75% (seventy five per cent) of the Monthly Capacity for a cumulative period of 6 (six) months within any continuous period of 18 (eighteen) months, save and except to the extent such failure is caused solely by (i) Force Majeure, or (ii) a default of the Authority, not occurring due to any act or omission of the Mine Operator;
- (o) there is a transfer, pursuant to Applicable Laws either of (i) the rights and/ or obligations of the Mine Operator under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Mine Operator, and such transfer causes a Material Adverse Effect;
- (p) an execution levied on any of the assets of the Mine Operator has caused a Material Adverse Effect;
- (q) Insolvency:
 - (i) The Mine Operator is, or is presumed or deemed to be unable or admits inability to pay its debts (or any class of them) as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors (or any class of them) with a view to reschedule any of its indebtedness.
 - (ii) The Mine Operator commences a voluntary proceeding under any applicable bankruptcy, insolvency, reorganisation, winding up or other similar law now or hereafter in effect, or consents to the entry of an order for relief in an involuntary proceeding under any such law, or consent to the appointment or taking possession by a receiver, liquidator, assignee (or similar official) for any or a substantial part of its property.
 - (iii) An application in relation to the insolvency resolution process of the Mine Operator has been initiated under the IBC or if the Mine Operator is likely to be declared as a relief undertaking or any proceedings have been filed in relation to the same before any Government Instrumentality or any court or tribunal or a petition being presented or analogous proceeding being taken including for the liquidation, insolvency, winding up or dissolution of the Mine Operator.
 - (iv) Any analogous procedure or step is taken in any jurisdiction by or against the Mine Operator.
 - (v) No default shall occur under this Clause 37.1.1(q) if a petition for the winding up, liquidation or insolvency is filed by any person (other

than the Mine Operator) and such petition is unconditionally withdrawn or discharged within 30 (thirty) days of filing;

- (r) Any corporate action, legal proceeding or other procedure or step is taken in relation to:
 - (i) execution of an inter-creditor agreement or commencement and preparation of any resolution plan in connection with the Mine Operator under the Applicable Laws or any other rules, regulations or guidelines by any Government Instrumentality in relation to resolution of stressed assets.
 - (ii) the suspension of payments, a moratorium of any indebtedness, dissolution, liquidation, administration, provisional supervision or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Mine Operator;
- (s) the Mine Operator has been, or is in the process of being dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect;
- (t) a resolution for winding up of the Mine Operator is passed;
- (u) any petition for winding up of the Mine Operator is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Mine Operator is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Mine Operator are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Mine Operator under this Agreement and the Project Agreements; and provided that:
 - (i) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
 - (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Mine Operator as on the Appointed Date; and
 - (iii) each of the Project Agreements remains in full force and effect.
- (v) any representation or warranty of the Mine Operator herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Mine Operator is at any time hereafter found to be in breach thereof;
- (w) the Mine Operator submits to the Authority any statement, notice or other document, in written or electronic form, which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;

- (x) the Mine Operator has failed to fulfill any obligation, for which failure Termination has been specified in this Agreement;
- (y) the Mine Operator issues a Termination Notice in violation of the provisions of this Agreement;
- (z) the Mine Operator commits a default in complying with any other provision of this Agreement if such default causes or may cause a Material Adverse Effect; or
- (aa) any other event or occurrence, as may be identified by the Authority as 'Mine Operator Default', under this Agreement has occurred.

37.1.2 Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Mine Operator Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Mine Operator; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Mine Operator of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Mine Operator to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice, subject to the provisions of Clause 37.1.3.

37.1.3 The Authority shall, if there be Senior Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Clause 37.1.2 to inform the Lenders' Representative and grant 15 (fifteen) days to the Lenders' Representative, for making a representation on behalf of the Senior Lenders stating the intention to substitute the Mine Operator in accordance with the Substitution Agreement. In the event the Authority receives such representation on behalf of Senior Lenders, it shall either withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of such representation or exercise its right of Suspension, as the case may be, for enabling the Lenders' Representative to exercise the Senior Lenders' right of substitution in accordance with the Substitution Agreement:

Provided that the Lenders' Representative may, instead of exercising the Senior Lenders' right of substitution, ensure that the default specified in the notice is cured within the aforesaid period of 180 (one hundred and eighty) days, and upon such curing thereof, the Authority shall withdraw its notice referred to above and restore all the rights of the Mine Operator:

Provided further that upon written request from the Lenders' Representative and the Mine Operator, the Authority may extend the aforesaid period of 180 (one hundred and eighty) days by such further period not exceeding 90 (ninety) days, as the Authority may deem appropriate.

37.2 Termination for Authority Default

37.2.1 In the event that any of the defaults specified below occur, and the Authority fails to cure such default within a Cure Period of 90 (ninety) days or such longer period as has been expressly provided in this Agreement, the Authority shall be deemed to be in default of this Agreement (the "**Authority Default**") unless the default has

occurred as a result of any breach of this Agreement by the Mine Operator or due to Force Majeure. The defaults referred to herein shall include:

- (a) the Authority commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Mine Operator;
- (b) the Authority has failed to make any payment (to the extent undisputed) which is due and payable to the Mine Operator under this Agreement within the period specified in this Agreement; or
- (c) the Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement.

37.2.2 Without prejudice to any other right or remedy which the Mine Operator may have under this Agreement, upon occurrence of a Authority Default, the Mine Operator shall, subject to the provisions of the Substitution Agreement, be entitled to terminate this Agreement by issuing a Termination Notice to the Authority; provided that before issuing the Termination Notice, the Mine Operator shall by a notice inform the Authority of its intention to issue the Termination Notice and grant 15 (fifteen) days to the Authority to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.

37.3 Termination for expiry

37.3.1 Unless terminated earlier in accordance with Clause 37.1 and Clause 37.2, the Agreement shall be effective for a period of 25 (*twenty five*) years or until the proposed life of the Mines, whichever is shorter commencing from the Appointed Date or such further period as mutually extended by the Parties in accordance with Clause 3.1.1 of this Agreement.

37.3.2 Within 30 (thirty) days from the expiry of the term of the Agreement, as set out in Clause 37.3.1, the Mine Operator shall intimate to the Authority the date on which the Agreement is set to expire through issuance of a Termination Notice. The Agreement shall stand terminated effective from the date set out in the Termination Notice.

37.4 Termination Payment

37.4.1 Upon Termination on account of a Force Majeure during the Operation Period, the Authority shall purchase from the Mine Operator the following assets and pay to the Mine Operator by way of Termination Payment, an amount equal to:

- (a) the Depreciated Value of the Capital Works; and
- (b) the Depreciated Value of the Project Specific Assets.

37.4.2 Upon termination on account of an Authority Default during the Operation Period, the Authority shall purchase from the Mine Operator the following assets and pay to the Mine Operator by way of Termination Payment, an amount equal to:

- (a) the Depreciated Value of the Capital Works;

- (b) the Depreciated Value of the Project Specific Assets; and
 - (c) an amount equivalent to 4 (four) times the revenue share of Mine Operator due and payable for and in respect of the month immediately preceding the month in which the Termination Notice is issued.
- 37.4.3 Upon Termination on account of expiry of the Agreement, as specified in Clause 37.3 above, no Termination Payment shall be payable by the Authority to the Mine Operator.
- 37.4.4 Notwithstanding anything to the contrary in this Clause 37, the Mine Operator acknowledges, agrees and undertakes that:
- (a) the Authority shall not be obligated to purchase from the Mine Operator any Capital Works and/ or Project Specific Assets or pay the Depreciated Value of any Capital Works and/or Project Specific Assets to the Mine Operator unless the Mine Operator has a valid, clear and marketable title to such Capital Works and Project Specific Assets, free and clear of all Encumbrances;
 - (b) no Termination Payment shall be made by the Authority to the Mine Operator in respect of any Moving Equipment or other movable assets (including but not limited to mass production technology package/ heavy earth moving machineries used by the Mine Operator at the Mines;
 - (c) in the event the Mine Operator enters into any financing agreements or arrangements (including hire purchase) with respect to, or which affect, any of the Capital Works and/ or Project Specific Assets, the Mine Operator shall ensure that the financier or lender under such financing agreement or arrangement expressly recognises and accepts the preferential right of the Authority to purchase the Capital Works and the Project Specific Assets (as the case may be);
 - (d) no Termination Payment shall be due and payable prior to COD; and
 - (e) on the Transfer Date (on account of Termination in terms of Clause 37.1, Clause 37.2 or Clause 37.3), the Mine Operator shall remove all the Moving Equipment and other movable assets or machineries (including but not limited to, mass production technology package/ heavy earth moving machineries and vehicles) deployed at the Mines by the Mine Operator.
- 37.4.5 Termination Payment shall be due and payable to the Mine Operator within 30 (thirty) days of acceptance of demand being made by the Mine Operator to the Authority with the necessary particulars, and in the event of any delay, the Authority shall pay interest at the MCLR of State Bank of India on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days; provided further that, the Authority shall not be required to make any Termination Payment until the Mine Operator has complied with the Divestment Requirements and has delivered to the Authority possession of the Capital Works and Project Specific Assets in good working order and free and clear of all Encumbrances, to the satisfaction of the Authority. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Authority of its obligations hereunder.

37.4.6 The Mine Operator expressly agrees that Termination Payment under this Article 37 shall constitute a full and final settlement of all claims and/or rights of the Mine Operator on account of Termination of this Agreement for any reason whatsoever and that the Mine Operator, or any shareholder thereof, or any other person claiming through or under the Mine Operator shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

37.5 Other rights and obligations of the Authority

37.5.1 Upon Termination for any reason whatsoever, the Authority shall:

- (a) take possession and control of the Mines forthwith;
- (b) subject to the provisions of Clause 37.4, take possession and control of all materials, stores, implements, construction plants and equipment on or about the Site;
- (c) be entitled to restrain the Mine Operator and any person claiming through or under the Mine Operator from entering upon the Site or any part of the Project;
- (d) require the Mine Operator to comply with the Divestment Requirements set forth in Clause 38.1; and
- (e) succeed upon election by the Authority, without the necessity of any further action by the Mine Operator, to the interests of the Mine Operator under such of the Project Agreements as the Authority may deem appropriate, and shall upon such election be liable to the Contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the Authority elects to succeed to the interests of the Mine Operator. For the avoidance of doubt, the Mine Operator acknowledges and agrees that all sums claimed by such Contractors as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date of election by the Authority shall constitute debt between the Mine Operator and such Contractors, and the Authority shall not in any manner be liable for such sums. It is further agreed that in the event the Authority elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Authority for this purpose shall be deducted from the Termination Payment.

37.5.2 Upon Termination in terms of Clause 37.3, the Authority shall have the right, but not an obligation, to take over the Project Specific Assets and any other tangible assets (such as civil works and equipment including foundations, embankments, pavements, electrical systems, communication systems, relief centers and administrative offices) from the Mine Operator. In the event, the Authority, in its absolute discretion, elects not to take over such Project Specific Assets or other tangible assets, the Mine Operator shall take all necessary steps for the removal and disposal of the Project Specific Assets and any other tangible assets (such as civil works and equipment including foundations, embankments, pavements, electrical systems, communication systems, relief centers and administrative offices) from the Site.

37.6 Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 37.4, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money, damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments and Divestment Requirements, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

ARTICLE 38

DIVESTMENT OF RIGHTS AND INTEREST

38.1 Divestment Requirements

- 38.1.1 Upon Termination, the Mine Operator shall comply with and conform to the following divestment requirements ("**Divestment Requirements**"):
- (a) notify to the Authority forthwith the location and particulars of all Project Assets;
 - (b) deliver forthwith the actual or constructive possession of the Minesand Coal Depot, free and clear of all Encumbrances, save and except to the extent set forth in the Substitution Agreement;
 - (c) cure all Project Assets of all defects and deficiencies so that the Mines is compliant with the Maintenance Requirements; provided that in the event of Termination during the Construction Period, all Project Assets shall be handed over on 'as is where is' basis after bringing them to a safe condition;
 - (d) cure all Coal of deficiencies so that it is compliant with Specifications and Standards and can be Delivered upon payment of revenue share of Mine Operator for the same;
 - (e) deliver and transfer relevant records, reports, Intellectual Property and other licences pertaining to the Mines and its design, engineering, construction, operation and maintenance, including all programmes and manuals pertaining thereto, and complete Drawings as on the Transfer Date. For the avoidance of doubt, the Mine Operator represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for the design, engineering, construction, operation and maintenance of the Mines and shall be assigned to the Authority free of any Encumbrance;
 - (f) transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;
 - (g) execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Mine Operator in the Project Assets, including manufacturers' warranties in respect of any plant or equipment and the right to receive outstanding insurance claims, to the extent due and payable to the Authority, absolutely unto the Authority or its nominee; and
 - (h) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Mine Operator in the Mines, free from all Encumbrances, absolutely unto the Authority or to its nominee.
- 38.1.2 Subject to the exercise by the Authority of its rights under this Agreement or under any of the Project Agreements to perform or procure the performance by a third party of any of the obligations of the Mine Operator, the Parties shall continue to perform their obligations under this Agreement, notwithstanding the issuance of any

Termination Notice, until the Termination of this Agreement becomes effective in accordance with its terms.

38.2 Inspection and cure

Not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to the effective date of such Termination, the Engineer in charge shall verify, after giving due notice to the Mine Operator specifying the time, date and place of such verification and/or inspection, compliance by the Mine Operator with the Maintenance Requirements, and if required, cause appropriate tests to be carried out at the Mine Operator's cost for this purpose. Defaults, if any, in the Maintenance Requirements shall be cured by the Mine Operator at its cost and the provisions of Article 39 shall apply, *mutatis mutandis*, in relation to curing of defects or deficiencies under this Article 38.

38.3 Cooperation and assistance on transfer of Project

- 38.3.1 The Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth transfer of the Project in accordance with the provisions of this Agreement so as to protect the safety of, and avoid undue delay or inconvenience to the Buyers and other members of the public.
- 38.3.2 The Parties shall provide to each other, immediately in the event of either Party conveying to the other Party its intent to issue a Termination Notice, as the case may be, as much information and advice as is reasonably practicable regarding the proposed arrangements for operation of the Project following the Transfer Date. The Mine Operator shall further provide such reasonable advice and assistance as the Authority or its agent may reasonably require for operation of the Project until the expiry of 6 (six) months after the Transfer Date.

38.4 Vesting Certificate

The divestment of all rights, title and interest in the Mines shall be deemed to be complete on the date when all of the Divestment Requirements have been fulfilled, and the Authority shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth in Schedule-Q (the "**Vesting Certificate**"), which will have the effect of constituting evidence of divestment by the Mine Operator of all of its rights, title and interest in the Mines, and their vesting in the Authority pursuant hereto. It is expressly agreed that any defect or deficiency in the Divestment Requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by the Authority or its nominee on, or in respect of, the Mines on the footing that all Divestment Requirements have been complied with by the Mine Operator.

38.5 Divestment costs etc.

- 38.5.1 The Mine Operator shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Mine Operator in the Project Assets in favour of the Authority upon Termination, save and except that all stamp duties payable on any deeds or Documents executed by the Mine Operator in connection with such divestment shall be borne by the Mine Operator.
- 38.5.2 In the event of any dispute relating to matters covered by and under this Article 38, the Dispute Resolution Procedure shall apply.

ARTICLE 39

DEFECTS LIABILITY AFTER TERMINATION

39.1 Liability for defects after Termination

The Mine Operator shall be responsible for all defects and deficiencies in the Mines for a period of 120 (one hundred and twenty) days after Termination, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Engineer in charge in the Mines during the aforesaid period. In the event that the Mine Operator fails to repair or rectify such defect or deficiency within a period of 30 (thirty) days from the date of notice issued by the Authority in this behalf, the Authority shall be entitled to get the same repaired or rectified at the Mine Operator's risk and cost so as to make the Mines conform to the Maintenance Requirements. All costs incurred by the Authority hereunder shall be reimbursed by the Mine Operator to the Authority within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Authority shall be entitled to recover the same from the funds withheld by the Authority under the provisions of Clause 39.2 or from the Performance Guarantee provided thereunder. For the avoidance of doubt, the provisions of this Article 39 shall not apply if Termination occurs prior to COD.

39.2 Retention

- 39.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 39.2.3, a sum equal to the revenue share of Mine Operator due and payable for the month immediately preceding the Transfer Date shall be withheld by the Authority for a period of 120 (one hundred and twenty) days after Termination for meeting the liabilities, if any, arising out of or in connection with the provisions of Clause 39.1.
- 39.2.2 Without prejudice to the provisions of Clause 39.2.1, the Engineer in charge shall carry out an inspection of the Mines at any time between 210 (two hundred and ten) and 180 (one hundred and eighty) days prior to the Termination and if it recommends that the status of the Mines is such that a sum larger than the amount stipulated in Clause 39.2.1 should be withheld and/or for a period longer than the aforesaid 120 (one hundred and twenty) days, the amount recommended by the Engineer in charge shall be withheld by the Authority for the period specified by it.
- 39.2.3 The Mine Operator may, for the performance of its obligations under this Article 39, provide to the Authority a guarantee from a Bank for a sum equivalent to the amount determined under Clause 39.2.1 or 39.2.2, as the case may be, and for the period specified therein, substantially in the form set forth in Schedule-F (the "**Performance Guarantee**"), to be modified, *mutatis mutandis*, for this purpose, and the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the required amounts from the Performance Guarantee for undertaking the repairs or rectification at the Mine Operator's risk and cost in accordance with the provisions of this Article 39. Upon furnishing of a Performance Guarantee under this Clause 39.2.3, the amounts withheld by the Authority in terms of Clause 39.2.1 or 39.2.2, as the case may be, shall be released to the Mine Operator to the extent such amounts are due and payable to the Mine Operator in accordance with the terms of this Agreement.

PART VI
OTHER PROVISIONS

ARTICLE 40

ASSIGNMENT AND CHARGES

40.1 Restrictions on assignment and charges

- 40.1.1 Subject to Clauses 40.2 and 40.3, this Agreement shall not be assigned by the Mine Operator to any person, save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.
- 40.1.2 Subject to the provisions of Clause 40.2, the Mine Operator shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Mine Operator is a party except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

40.2 Permitted assignment and charges

- 40.2.1 The restraints set forth in Clause 40.1 shall not apply to:
- (a) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Mines;
 - (b) mortgages/ pledges/ hypothecation of goods/ assets other than Project Assets and their related documents of title, arising or created in the ordinary course of business of the Mines, and as security only for indebtedness to the Senior Lenders under the Financing Agreements and/or for working capital arrangements for the Mines.
 - (c) assignment of rights, interest and obligations of the Mine Operator to or in favour of the Lenders' Representative as nominee and for the benefit of the Senior Lenders, to the extent covered by and in accordance with the Substitution Agreement as security for financing provided by Senior Lenders under the Financing Agreements; and
 - (d) liens or Encumbrances required by any Applicable Law.
- 40.2.2 Notwithstanding anything to the contrary contained in this Agreement, the Mine Operator may mortgage the Moving Equipment to its lenders by way of security for any loan extended by them for acquisition of such Moving Equipment.

40.3 Substitution Agreement

- 40.3.1 Upon the occurrence of a Mine Operator Default or a Financial Default (as defined in the Substitution Agreement), the Lenders' Representative, on behalf of Senior Lenders, may, with the consent of the Authority, exercise the right to substitute the Mine Operator pursuant to the agreement for substitution of the Mine Operator (the "**Substitution Agreement**") to be entered into amongst the Mine Operator, the Authority and the Lenders' Representative, on behalf of Senior Lenders, substantially in the form set forth in Schedule-R.
- 40.3.2 Upon substitution of the Mine Operator under and in accordance with the Substitution Agreement, the Nominated Company shall be deemed to be the Mine

Operator under this Agreement and shall enjoy all rights and be responsible for all obligations of the Mine Operator under this Agreement as if it were the original Mine Operator; provided that where the Mine Operator is in breach of this Agreement on the date of such substitution, the Authority shall by notice grant a Cure Period of 120 (one hundred and twenty) days to the Nominated Company for curing such breach.

40.4 Assignment by the Authority

Notwithstanding anything to the contrary contained in this Agreement, the Authority may, after giving 60 (sixty) days' notice to the Mine Operator, assign and/ or transfer any of its rights and benefits and/or obligations under this Agreement to an assignee who is, in the reasonable opinion of the Authority, capable of fulfilling all of the Authority's then outstanding obligations under this Agreement and has the financial standing necessary for this purpose.

40.5 Approvals for assignment

Any assignment under this Article 40 shall be subject to the approvals and consents required therefor under Applicable Laws. Provided, however, that the grant of any consent or approval under Applicable Laws shall not oblige the Authority to grant its approval to such assignment, save and except as provided herein.

ARTICLE 41

CHANGE IN LAW

41.1 Increase in costs

If as a result of Change in Law, the Mine Operator suffers an increase in costs which exceeds the higher of Rs. 50,00,000/- (Rupees Fifty Lakhs only) and 0.1% (zero point one per cent) of the total revenue share of Mine Operator payable during any Accounting Year, the Mine Operator may so notify the Authority and propose amendments to this Agreement so as to compensate the Mine Operator the increased costs as aforesaid. Provided that, the Mine Operator's notification to the Authority and proposal to amend this Agreement shall be supported by clear evidence of the quantum of the increased costs and a direct co-relation between such increased costs and the Change in Law. Upon notice by the Mine Operator, the Parties shall meet, as soon as reasonably practicable, but no later than 30 (thirty) days from the date of notice, and either agree on amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 41.1 shall be restricted to Changes in Law directly affecting the Mine Operator's costs of performing its obligations under this Agreement.

41.2 Reduction in costs

If as a result of Change in Law, the Mine Operator benefits from a reduction in costs which exceeds the higher of Rs. 50,00,000/- (Rupees Fifty Lakh only) and 0.1% (zero point one per cent) of the total revenue share of Mine Operator payable during any Accounting Year, the Authority may so notify the Mine Operator and propose amendments to this Agreement so as to pass on the decreased costs of the Mine Operator as aforesaid. Upon notice by the Authority, the Parties shall meet, as soon as reasonably practicable, but no later than 30 (thirty) days from the date of notice, and either agree on such amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Authority may by notice require the Mine Operator to pay an amount equivalent to the decreased cost as aforesaid, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Mine Operator shall pay the amount specified therein to the Authority or such specified amount shall be adjusted from the amount payable to the Mine Operator under this Agreement; provided that if the Mine Operator shall dispute such claim of the Authority, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 41.2 shall be restricted to Changes in Law directly affecting the Mine Operator's costs of performing its obligations under this Agreement.

41.3 Procedure for adjustment

In the event the Mine Operator is required to pay an amount in excess of the stipulated threshold (as mentioned in Clause 41.1) due to a Change in Law or imposition of directives by Coal India Limited or by any Government

Instrumentality, such excess amount paid by the Mine Operator shall be shared by the Authority at the same proportion of revenue sharing,

In the event the Mine Operator benefits from a reduction in costs or increase financial gains, in excess of the stipulated threshold (as mentioned in Clause 41.2) due to a Change in Law or imposition of directives by Coal India Limited or by any Government Instrumentality, such excess amount gained by the Mine Operator shall be payable to the Authority at the same proportion of revenue sharing.

It is hereby clarified that disputed amount, if any, under this Clause 41.3 shall be decided as per the provisions given in Clause 29.2 of this Agreement.

41.4 Restriction on compensation

The Parties acknowledge and agree that the demand for compensation under this Article 41 shall be restricted to the effect of Change in Law during the respective Accounting Year and shall be made at any time after commencement of such year, but no later than 1 (one) year from the close of such Accounting Year. Any demand for compensation payable for and in respect of any subsequent Accounting Year shall be made after the commencement of the Accounting Year to which the demand pertains, but no later than 2 (two) years from the close of such Accounting Year.

ARTICLE 42

LIABILITY AND INDEMNITY

42.1 General indemnity

- 42.1.1 The Mine Operator will indemnify, defend, save and hold harmless the Authority and its officers, servants, agents, Government Instrumentalities and Authority owned and/or controlled entities/enterprises, (the "**Authority Indemnified Persons**") against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach or default by the Mine Operator of any of its obligations under this Agreement or any related agreement or on account of any defect or deficiency in the provision of services to the Authority or from any negligence of the Mine Operator under any contract or tort or on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Agreement on the part of the Authority Indemnified Persons.
- 42.1.2 The Authority will indemnify, defend, save and hold harmless the Mine Operator against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature arising out of (a) defect in title and/or the rights of the Authority in the land comprised in the Site, and/or (b) breach by the Authority of any of its obligations under this Agreement or any related agreement, which materially and adversely affect the performance by the Mine Operator of its obligations under this Agreement, save and except that where any such claim, suit, proceeding, action, and/or demand has arisen due to a negligent act or omission, or breach of any of its obligations under any provision of this Agreement or any related agreement and/or breach of its statutory duty on the part of the Mine Operator, its subsidiaries, representatives, affiliates, Contractors, servants or agents, the same shall be the liability of the Mine Operator.

42.2 Indemnity by the Mine Operator

- 42.2.1 Without limiting the generality of Clause 42.1, the Mine Operator shall fully indemnify, hold harmless and defend the Authority and the Authority Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:
- (a) failure of the Mine Operator to comply with Applicable Laws and Applicable Permits;
 - (b) payment of Taxes required to be made by the Mine Operator in respect of the income or other Taxes of the Mine Operator's Contractors, suppliers and representatives; or
 - (c) non-payment of amounts due as a result of materials or services furnished to the Mine Operator or any of its Contractors which are payable by the Mine Operator or any of its Contractors.
- 42.2.2 Without limiting the generality of the provisions of this Article 42, the Mine Operator shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority Indemnified Persons may hereafter

suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other Intellectual Property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Mine Operator or by the Mine Operator's Contractors in performing the Mine Operator's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Mine Operator shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Mines, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Mine Operator shall promptly make every reasonable effort to secure for the Authority a licence, at no cost to the Authority, authorising continued use of the infringing work. If the Mine Operator is unable to secure such licence within a reasonable time, the Mine Operator shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non -infringing work or part or process, or modify the same so that it becomes non-infringing.

42.3 Notice and contest of claims

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 42 (the "**Indemnified Party**") it shall notify the other Party (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

42.4 Defense of claims

42.4.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 42, the Indemnifying Party shall be entitled to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.

- 42.4.2 If the Indemnifying Party has exercised its rights under Clause 42.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).
- 42.4.3 If the Indemnifying Party exercises its rights under Clause 42.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:
- (a) the employment of counsel by such party has been authorised in writing by the Indemnifying Party;
 - (b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action;
 - (c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence of such action and shall have been so notified by the Indemnified Party; or
 - (d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:
 - (i) that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or
 - (ii) that such claim, action, suit or proceeding involves or could have a Material Adverse Effect upon it beyond the scope of this Agreement:

Provided that if sub-clauses (b), (c) or (d) of this Clause 42.4.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

42.5 No consequential claims

Notwithstanding anything to the contrary contained in this Article 42, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

42.6 Survival on Termination

The provisions of this Article 42 shall survive Termination.

ARTICLE 43

RIGHTS TO WORK AT THE SITE

43.1 Rights to Work at the Site

For the purpose of this Agreement, the Mine Operator shall have rights to the use of the Site in accordance with this Agreement, and to this end, it may regulate the entry and use of the Mines by third parties in accordance with and subject to the provisions of this Agreement.

43.2 Access rights of the Authority and others

- 43.2.1 The Mine Operator shall allow free access to the Site at all times for the authorised representatives of the Authority, Senior Lenders and the Engineer in charge, and for the persons duly authorised by any Government Instrumentality to inspect the Mines and to investigate any matter within their authority, and upon reasonable notice, the Mine Operator shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.
- 43.2.2 The Mine Operator shall, for the purpose of operation and maintenance of any utility or road specified in Article 11, allow free access to the Site at all times for the authorised persons and vehicles of the controlling body of such utility or road.

43.3 Property Taxes

All property Taxes on the Site or for use of the Site shall be borne by the Mine Operator.

43.4 Restriction on sub-license or sub-letting

The Mine Operator shall not sub-license or sub-let the whole or any part of the Site, save and except as may be expressly set forth in this Agreement; provided that nothing contained herein shall be construed or interpreted as restricting the right of the Mine Operator to appoint Contractors for sub-contracting of its rights/obligations in relation to any work involving use of Site, under this Agreement. For avoidance of doubt, it is hereby clarified that any sub-license or sub-let or sub-contracting as provided in this Clause 43.4 shall not relieve the Mine Operator from any obligation, duty or responsibility under this Agreement.

43.5 Restriction on sub-contracting or novation

- 43.5.1 The Mine Operator shall not subcontract or novate any of its rights or obligations under this Agreement save and except as provided in Clause 43.5.2 below.
- 43.5.2 The Mine Operator shall not sub-contract and/or novate its rights or obligation under this Agreement in relation to any work (in part or full) without the prior written approval of the Authority. Notwithstanding the above, under no circumstances, sub-contracting/ novation of:
- (a) Coal excavation/extraction shall exceed **25% (twenty-five per cent)** of the Annual Capacity for each Accounting Year; and
 - (b) Overburden removal shall exceed **25% (twenty-five per cent)** of the Scheduled Overburden Quantity, as applicable.

The Mine Operator shall ensure that such sub-contracting is not made to an entity or person which is incorporated, established or registered in any country which shares a

land border with India or whose beneficial owner is situated in such a country or who otherwise complies with all the rules and regulations prescribed by the Government of India in this regard, including but not limited to General Financial Rules, 2017 read with the OM no. F.No.6/18/2019-PPD dated 23 July 2020 issued by the Public Procurement Division, Department of Expenditure, Ministry of Finance, Government of India.

For avoidance of doubt, it is hereby clarified that nothing contained herein shall be construed or interpreted as restricting the right of the Mine Operator to hire any Equipment/vehicles or sub-contract/ novate its rights/obligations in relation to any work with prior written approval of the Authority, in accordance with this Clause 43.5, save and except work pertaining to Coalexavation/extraction,Overburden removal.

ARTICLE 44

DISPUTE RESOLUTION

44.1 Dispute resolution

44.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under, or out of, or in relation, to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the "**Dispute**") shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 44.2.

44.1.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other non-privileged records, information and data pertaining to any Dispute.

44.2 Conciliation

44.2.1 In the event of any dispute or differences arising directly or indirectly out of this Agreement or otherwise, the Parties undertake to use all reasonable endeavours to resolve such disputes amicably. In this regard, if the dispute is raised by the Mine Operator, it shall make a request in writing to the Engineer in charge for settlement of such disputes/ claims within 30 (thirty) days of arising of the cause of dispute/ claim failing which no disputes/ claims of the Mine Operator shall be entertained by the Authority.

For an amicable resolution of a dispute arising out of difference of opinion between the Mine Operator and the Authority, a high level committee shall be constituted and such committee shall be headed by a board level officer of the Authority. The committee shall have equal representatives from the Mine Operator and the Authority for resolution of such dispute.

44.2.2 If the disputes cannot be settled amicably, the disputes shall be taken for resolution in the manner as set out below:

- (a) In case of dispute arising in relation to the commercial contracts with central public sector enterprises ("**CPSEs**")/ Government departments (excluding disputes concerning railways, income tax, customs and excise departments) shall be taken up by either Party for its resolution through AMRCD or such other mechanism as may be provided under the Applicable Laws; and
- (b) In case of any other dispute not covered in sub-clause (a) above, the resolution of dispute shall take place through arbitration mechanism as provided in Clause 44.3 below.

44.3 Arbitration

44.3.1 In the event of any question, dispute or difference arising under the terms and conditions or interpretation of the terms of, or in connection with this Agreement (except as to any matter the decision of which is specially provided for by these conditions), the same shall be submitted to arbitration to be conducted in accordance with the Arbitration and Conciliation Act, 1996.

- 44.3.2 There shall be an arbitral tribunal comprising 3 (three) arbitrators, of whom each Party shall select 1 (one), and the third arbitrator shall be appointed by the 2 (two) arbitrators so selected, and in the event of disagreement between the 2 (two) arbitrators, the appointment shall be made in accordance with the Arbitration and Conciliation Act, 1996.
- 44.3.3 In the event any of the arbitrator(s), so appointed pursuant to Clause 44.3.2, dies or neglects or refuses to act or resigns or is unable to act for any reason, such arbitrator shall be replaced with another arbitrator, who shall be appointed by the concerned party in accordance with Clause 44.3.2.
- 44.3.4 The arbitral tribunal shall make a reasoned award (the "**Award**"). Any Award made in any arbitration held pursuant to this Article 44 shall be final and binding on the Parties as from the date it is made, and the Mine Operator and the Authority agree and undertake to carry out such Award without delay.
- 44.3.5 The Mine Operator and the Authority agree that an Award may be enforced against the Mine Operator and/or the Authority, as the case may be, and their respective assets wherever situated.
- 44.3.6 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.
- 44.3.7 The seat of the arbitration shall be Nagpur, Maharashtra and shall be governed by Arbitration and Conciliation Act, 1996 and other Indian statutes/laws applicable to the dispute. The venue of the Arbitration may be the same as the seat or be changed upon mutual agreement between the parties.

44.4 Adjudication by a tribunal

In the event of constitution of a statutory tribunal with powers to adjudicate upon disputes between the Mine Operator and the Authority, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 44.3, be adjudicated upon by such tribunal in accordance with Applicable Laws and all references to Dispute Resolution Procedure shall be construed accordingly.

ARTICLE 45

DISCLOSURE

45.1 Disclosure of Specified Documents

The Mine Operator shall make available for inspection by any person of the Authority or any Government Instrumentality, copies of this Agreement, the Maintenance Manual, the Maintenance Programme, the Maintenance Requirements and the Safety Requirements (hereinafter collectively referred to as the "**Specified Documents**"), free of charge, during normal business hours on all working days at the Mine Operator's registered office and the Mines and shall provide copies of the same to any person upon payment of copying charges on a 'no profit no loss' basis.

45.2 Disclosure of Documents relating to safety

The Mine Operator shall make available for inspection by any person copies of all Documents and data relating to safety of the Mines, free of charge, during normal business hours on all working days, at the Mine Operator's registered office and the Mines. The Mine Operator shall make copies of the same available to any person upon payment of copying charges on a 'no profit no loss' basis.

45.3 Withholding disclosure of Protected Documents

Notwithstanding the provisions of Clauses 45.1 and 45.2, but subject to Applicable Laws, the Authority shall be entitled to direct the Mine Operator, from time to time, to withhold the disclosure of Protected Documents (as defined herein below) to any person in pursuance of the aforesaid Clauses.

Explanation:

The expression "**Protected Documents**" shall mean such of the Specified Documents or documents referred to in Clauses 45.1 and 45.2, or portions thereof, the disclosure of which the Authority is entitled to withhold under the provisions of the Right to Information Act, 2005, as amended from time to time.

ARTICLE 46

MISCELLANEOUS

46.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and, subject to Clause 44.3, the courts at Nagpur, Maharashtra shall have exclusive jurisdiction over all matters arising out of or relating to this Agreement.

46.2 Waiver of immunity

Each Party unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Party with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally, in respect of the enforcement of any judgment or award against it in any such proceedings and to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgment that may be made or given in connection therewith).

46.3 Depreciation

For the purposes of depreciation under Applicable Laws, the property representing the capital investment made by the Mine Operator in the Project Assets shall be deemed to be acquired and owned by the Mine Operator. For the avoidance of doubt, it is hereby clarified that the Authority shall not in any manner be liable in respect of any claims for depreciation to be made by the Mine Operator under Applicable Laws.

46.4 Delayed Payment

- 46.4.1 The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. Unless otherwise specified in this Agreement, in the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at the MCLR of State Bank of India and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

46.4.2 Unless otherwise specified, any interest payable under this Agreement shall accrue on daily outstanding basis and shall be compounded on the basis of quarterly rests.

46.5 Waiver

46.5.1 Waiver, including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof, or of other provisions of, or obligations, under this Agreement;
- (b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

46.5.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

46.6 Liability for review of Documents and Drawings

Except to the extent expressly provided in this Agreement:

- (a) no review, comment or approval by the Authority or the Engineer in charge of any Project Agreement, Document or Drawing submitted by the Mine Operator nor any observation or inspection of the construction, operation or maintenance of the Mines nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Mine Operator from its obligations, duties and liabilities under this Agreement, Applicable Laws and Applicable Permits; and
- (b) the Authority shall not be liable to the Mine Operator by reason of any review, comment, approval, observation or inspection referred to in sub-clause (a) above.

46.7 Exclusion of implied warranties etc.

This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties or any representation by either Party not contained in a binding legal agreement executed by both Parties.

46.8 Survival

46.8.1 Termination shall:

- (a) not relieve the Mine Operator or the Authority, as the case may be, of any obligations hereunder which expressly or by implication survive Termination hereof; and

- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

46.8.2 All obligations surviving Termination shall only survive for a period of 3 (three) years following the date of such Termination.

46.9 Entire Agreement

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn. For the avoidance of doubt, the Parties hereto agree that any obligations of the Mine Operator arising from the Request for Bid shall be deemed to form part of this Agreement and treated as such.

46.10 Severability

If for any reason whatever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure set forth under this Agreement or otherwise.

46.11 No partnership

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, or to impose any partnership obligation or liability upon either Party, and neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party. It is clarified that Authority shall not be held vicariously liable for the acts of Mine Operator and its agents/contractors/employees/ workmen.

46.12 Third parties

This Agreement is intended solely for the benefit of the Parties, and their respective successors and permitted assigns, and nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, any person not a Party to this Agreement.

46.13 Successors and assigns

This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns.

46.14 Notices

Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing and shall:

- (a) in the case of the Mine Operator, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for the attention of the person set out below or to such other person as the Mine Operator may from time to time designate by notice to the Authority; provided that notices or other communications to be given to an address outside the city specified in this sub-clause (a) may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, or by courier, be sent by facsimile or e-mail as the Mine Operator may from time to time designate by notice to the Authority:

Attention:
{Designation:
Address:
Fax No:
Email:}

- (b) in the case of the Authority, be given by facsimile or e-mail and by letter delivered by hand at the address given and marked to the attention of the person set out below with a copy delivered to the Authority Representative or such other person as the Authority may from time to time designate by notice to the Mine Operator; provided that if the Mine Operator does not have an office in the same city as the Authority, it may send such notice by facsimile or e-mail and by registered acknowledgement due, or by courier:

Attention:
{Designation:
Address:
Fax No:
Email:}; and

- (c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date of delivery; provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working day following the date of its delivery.

46.15 Language

All notices required to be given by one Party to the other Party and all other communications, Documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.

46.16 Counterparts

This Agreement may be executed in two counterparts, each of which, when executed and delivered, shall constitute an original of this Agreement.

46.17 Limitation of Liability

46.17.1. Unless otherwise specifically provided, the aggregate liability of each Party shall be determined in the following manner:

(a) During the Construction Period:

For any Accounting Year prior to COD the aggregate liability of each Party shall be limited to Rs. 0.20XAnnual Sale Value.

(b) During the Operation Period

For any Accounting Year after COD the aggregate liability of each Party shall be limited to Rs. 0.25X Annual Sale Value

It is hereby clarified that the aggregate liability in (a) & (b) above during any Accounting Year shall not be cumulated in the succeeding Accounting Year. Further, the above limitation shall not apply to the Termination Payment as per Clause 37.4

46.17.2. Notwithstanding the provisions of Clause 46.17.1 above, there shall not be any limitation of liability for the following:

(a) the indemnity and other payment obligations of the Mine Operator pursuant to Clause 42.2; and

(b) circumstances where the default is attributable to a Party's gross negligence, willful misconduct or fraudulent actions.

46.17.3. It is hereby clarified that during the period prior to the COD, the aforesaid limitation of liability upon Termination shall not preclude the right of the Authority to recover the expenditure incurred by it on any construction made in relation to or in connection with the Project, if any, from the Mine Operator.

ARTICLE 47

DEFINITIONS

47.1 47.1 Definitions

47.1.1 In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

"**Accounting Year**" shall mean the financial year commencing from the first day of April of any calendar year and ending on the thirty-first day of March of the next calendar year, *provided that*, the first Accounting Year shall commence from the Appointed Date and end on the thirty-first day of March of the next calendar year and the last Accounting Year shall commence on the first day of April of the calendar year during which the Transfer Date occurs and shall end on the Transfer Date;

"**Actual Production**" shall have the meaning set forth in Clause 21.5;

"**Additional Auditors**" shall have the meaning set forth in Clause 33.2.3;

"**Additional Capacity**" shall have the meaning set forth in Clause 28.2.1;

"**Affected Party**" shall have the meaning set forth in Clause 34.1;

"**Agent**" shall have the same meaning ascribed to such term in the Mines Act, 1952;

"**Aggregate Damages**" shall have the meaning set forth in Clause 25.3.3;

"**Aggregate Incentive**" shall have the meaning set forth in Clause 25.3.2;

"**Agreement**" shall have the meaning set forth in Recital (A);

"**AMM**" or "**Abandoned Mine Methane**" means methane recovered from coal seams of abandoned mine by the coal mining lessee or CMM from abandoned mine.

"**AMRCD**" shall mean 'Administrative Mechanism for Resolution of CPSEs Disputes' as provided in office memorandum bearing number F. No. 4(1)/2013-DPE(GM)/FTS-1835 dated 22 May 2018 issued by Ministry of Heavy Industries & Public Enterprises, Department of Public Enterprises, Government of India;

"**Annual Capacity**" shall have the meaning set forth in Clause 21.2.1;

"**Annual Sale Value**" shall mean the value estimated by multiplying the maximum Coal production in a year (as proposed in the Mining Scheme) with the coal price as per National Coal Index (as on Bid Due Date) for the average grade of Coal given in the Mine Profile.

"**Annual Production Programme**" shall have the meaning set forth in Clause 21.2.1;

"**Annual Safety Report**" shall have the meaning set forth in Clause 17.4.1;

"Applicable Laws" shall mean all laws, brought into force and effect by Government of India or the Government of any State, including rules, regulations and notifications made thereunder, and judgments, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement;

"Applicable Permits" shall mean all clearances, licences, permits, authorisations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the Project;

"Appointed Date" shall have the meaning set forth in Clause 4.1.6;

"Associate" shall mean, in relation to either Party {and/or Consortium Members}, a person who controls, is controlled by, or is under the common control with such Party {or Consortium Member} (as used in this definition, the expression "control" means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person or the power or right to appoint or cause the appointment of a majority of directors on the board directors (or similar governing body) of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise);

"Auditors" shall mean a firm of chartered accountants acting as the auditors of the Mine Operator under the provisions of the Companies Act, 2013, including any re-enactment or amendment thereof, for the time being in force, and appointed in accordance with Clause 33.2.1;

"Authority Default" shall have the meaning set forth in Clause 37.2.1;

"Authority Indemnified Persons" shall have the meaning set forth in Clause 42.1.1;

"Authority Representative" shall mean such person or persons as may be authorised in writing by the Authority to act on its behalf under this Agreement and shall include any person or persons having authority to exercise any rights or perform and fulfill any obligations of the Authority under this Agreement;

"Average Daily Revenue Share" shall mean the amount arrived at by dividing the total revenue share of Mine Operator due and payable for the immediately preceding Accounting Year by 365 (three hundred and sixty five), and increasing the quotient thereof by 5% (five per cent); provided that the Average Daily Revenue Share for any period prior to completion of the first Accounting Year following COD shall be a simple average of the revenue share of Mine Operator due and payable with respect to every day during the period between COD and the last day of the month preceding the date on which the event requiring calculation hereof occurred, and in the event that the revenue share of Mine Operator payable for any segment of the Mines has not been realised for any reason, an assessment thereof shall be made by the Engineer in charge to form part of the Average Daily Revenue Share for such period;

"Award" shall have the meaning set forth in Clause 44.3.3;

"Bank" shall mean a scheduled commercial public sector undertaking bank or a private commercial bank with net worth over Rs.30,000,00,00,000 (Rupees thirty

thousand crore only) as listed under second schedule to the Reserve Bank of India Act, 1934, and acceptable to Senior Lenders, but does not include a bank in which any Senior Lender has an interest.

"Bid" shall mean the documents in their entirety comprised in the bid submitted by the selected Bidder in response to the Request for Bid in accordance with the provisions thereof and **"Bids"** shall mean the bids submitted by any and all pre-qualified Bidders;

"Bid Date" shall mean the last date on which the Bid may have been submitted in accordance with the provisions of the Request for Bid;

"Bidder" shall have the meaning set forth in the RFB.

"Bid Security" shall mean the security provided by the {selected Bidder/ Consortium Member} to the Authority along with the Bid of a sum of Rs.10,000,000 (Rupees ten million only), in accordance with the Request for Bid, and which is to remain in force until substituted by the Performance Security;

"Buyer(s)" shall mean the third parties buying Coal from the Mines, in accordance with the provisions of this Agreement and Applicable Laws;

"Capital Works" shall mean the Construction Works, the capital cost of which is provided by the Mine Operator as described in Annexure IV of Schedule C;

"Change in Law" shall mean the occurrence of any of the following after the Bid Date, to the extent such occurrence was not reasonably foreseeable by the Parties prior to the Bid Date:

- (a) the enactment of any new Indian law;
- (b) the repeal, modification or re-enactment of any existing Indian law;
- (c) a change in the interpretation or application of any Indian law by a judgement of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the Bid Date; or
- (d) any change in the rates of any of the Taxes that have a direct effect on the Project;

"Change in Ownership" shall mean a transfer of the direct and/ or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the {selected Bidder/Consortium Members}, in the total Equity to decline below (a) 75% (seventy five percent) thereof during the Construction Period and until the 2nd (second) anniversary of COD, and (b) 26% (twenty six per cent) thereof, or such lower proportion as may be permitted by the Authority during the remainder of the Contract Period; provided that any material variation (as compared to the representations made by the {selected Bidder/Consortium Members} during the bidding process for the purposes of meeting the minimum conditions of eligibility or for evaluation of {its/ their} application or Bid, as the case may be,) in the proportion of the equity holding of {the selected

Bidder/ any Consortium Member} to the total Equity, if it occurs prior to COD, shall constitute Change in Ownership;

"**Change of Scope**" shall have the meaning set forth in Clause 15.1.1;

"**Change of Scope Notice**" shall have the meaning set forth in Clause 15.2.1;

"**Change of Scope Order**" shall have the meaning set forth in Clause 15.2.3;

"**CMM**" or "**Coal Mine Methane**" means methane recovered by the coal mining allottee or the lessee from existing coal mining leased areas in pre, concurrent and post-mining scenarios through vertical/ inclined / horizontal drilling.

"**Coal**" shall mean a fossilized solid fuel of vegetative origin;

"**Coal Depot**" shall have the meaning set forth in Clause 22.1.1;

"**Coal Handling Plant**" or "**CHP**" shall mean Coalhandling plant at surface as per the Mining Plan;

"**Coal Seam**" shall have the meaning ascribed to it in the Mining Plan;

"**Coal Tests**" shall mean the tests set forth in Schedule-M to determine the conformity of Coal with the provisions of this Agreement;

"**COD**" or "**Commercial Operation Date**" shall have the meaning set forth in Clause 14.2.1;

"**Completion**" shall have the meaning as set forth in Clause 14.3.1;

"**Completion Certificate**" shall have the meaning as set forth in Clause 14.3.1;

"**Conditions Precedent**" shall have the meaning set forth in Clause 4.1.1;

{"**Consortium**" shall have the meaning set forth in Recital (C) ;}

{"**Consortium Member**" shall mean a company specified in Recital (C) as a member of the Consortium ;}

"**Construction Period**" shall mean the period beginning from the Appointed Date and ending on COD;

"**Construction Works**" shall mean all construction works and things necessary to develop the Mines in accordance with this Agreement;

"**Contract Period**" shall mean the period starting on and from the Appointed Date and ending on Transfer Date;

"**Contracted Capacity**" shall have the meaning set forth in Clause 21.2.1;

"**Contractor**" shall mean the person or persons, as the case may be, with whom the Mine Operator has entered into any EPC Contract, O&M Contract or any other material agreement or contract for construction, operation and/or maintenance of the

Mines or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Mine Operator;

"**Covenant**" shall have the meaning set forth in Clause 5.2.5;

"**CP Satisfaction Notice**" shall have the meaning set forth in Clause 4.1.6;

"**Cure Period**" shall mean the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default and shall:

- (a) commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;
- (b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and
- (c) not in any way be extended by any period of Suspension under this Agreement;

provided that if the cure of any breach by the Mine Operator requires any reasonable action by the Mine Operator that must be approved by the Authority, the applicable Cure Period shall be extended by the period taken by the Authority to accord their approval;

"**Damages**" shall have the meaning set forth in sub-clause (dd) of Clause 1.2.1;

"**Debt Service**" shall mean the sum of all payments on account of principal, interest, financing fees and charges due and payable in an Accounting Year to the Senior Lenders under the Financing Agreements;

"**Declared Capacity**" shall have the meaning set forth in Clause 22.1.4;

"**Declared Grade**" shall have the meaning set forth in Clause 30.1.1;

"**Delivery**" shall mean delivery of Coal at the Delivery Point and the terms "**Deliver**" and "**Delivered**" shall be construed according;

"**Delivery Point**" shall mean any of the sidings or loading points at or adjacent to the Site or other location(s) identified by the Authority, at which the Mine Operator Delivers Coal in accordance with the terms of this Agreement;

"**Depreciated Value**" shall mean the lower of: (a) audited book value of the Capital Works or Project Specific Assets (as the case may be); and (b) value of the Capital Works or Project Specific Assets (as the case may be), as assessed by an independent third party valuer who shall be selected and appointed by the Authority, within 15 (fifteen) days of Termination for submitting his assessment within 30 (thirty) days of his appointment hereunder;

"**Detailed Project Report**" or "**DPR**" shall have the meaning set forth in Clause 5.14;

"**Development Guarantee**" shall have the meaning set forth in Clause 20.3.1 (i);

"Development Period" shall mean the period from the date of this Agreement until the Appointed Date;

"DGMS" shall have the meaning set forth in Clause 2.1 (e);

"Development Shortfall" shall have the meaning set forth in Clause 20.3.1 (i);

"Dispatch Instructions" shall have the meaning set forth in Clause 24.1;

"Dispute" shall have the meaning set forth in Clause 44.1.1;

"Dispute Resolution Procedure" shall mean the procedure for resolution of Disputes set forth in Article 44;

"Divestment Requirements" shall mean the obligations of the Mine Operator for and in respect of Termination set forth in Clause 38.1.1;

"Document" or **"Documentation"** shall mean documentation in printed or written form, or in tapes, discs, drawings, computer programmes, writings, reports, photographs, films, cassettes, or expressed in any other written, electronic, audio or visual form;

"Drawings" shall mean all of the drawings, calculations and documents pertaining to the Mines as set forth in Schedule-H, and shall include 'as built' drawings of the Mines;

"Emergency" shall mean a condition or situation that is likely to endanger the security of the individuals on or about the Mines, including Buyers thereof, or which poses an immediate threat of material damage to any of the Project Assets;

"Encumbrance" shall mean, any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Mines, where applicable herein but excluding utilities referred to in Clause 11.1;

"Engineer in charge" shall have the meaning set forth in Clause 26.1;

"EPC Contract" shall mean the engineering, procurement and construction contract or contracts entered into by the Mine Operator with one or more EPC Contractors for, *inter alia*, engineering and construction of the Mines in accordance with the provisions of this Agreement;

"EPC Contractor" shall mean the person with whom the Mine Operator has entered into an EPC Contract;

"Equipment" shall mean the tools, machinery, vehicles and other equipment provided or installed at the Mines and used for excavation/extraction and Delivery of Coal for purposes incidental or consequential thereto;

"Equity" shall mean the sum expressed in Indian Rupees representing the issued and paid up equity share capital of the Mine Operator for meeting the equity component of the Annual Sale Value, and for the purposes of this Agreement, shall include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Mine Operator, and any interest-free funds advanced by any shareholder of the Mine Operator for meeting such equity component;

"Financial Close" shall mean the fulfillment of all Conditions Precedent to the initial availability of funds under the Financing Agreements;

"Financial Default" shall have the meaning set forth in Schedule-R;

"Financial Model" shall mean the financial model adopted by Senior Lenders, setting forth the capital and operating costs of the Project and revenues therefrom on the basis of which financial viability of the Project has been determined by the Senior Lenders, and includes a description of the assumptions and parameters used for making calculations and projections therein;

"Financial Package" shall mean the financing package indicating the total capital cost of the Project and the means of financing thereof, as set forth in the Financial Model and approved by the Senior Lenders, and includes Equity, all financial assistance specified in the Financing Agreements and Subordinated Debt, if any;

"Financing Agreements" shall mean the agreements executed by the Mine Operator in respect of financial assistance to be provided by the Senior Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security agreements, and other documents relating to the financing (including refinancing) for the Project, and includes amendments or modifications made in accordance with Clause 5.2.3;

"Geological Report" shall have the meaning set forth in clause 5.12;

"Force Majeure" or **"Force Majeure Event"** shall have the meaning set forth in Clause 34.1;

"Government" shall mean the Government of India or the Government of the State having territorial jurisdiction over the Mines, as the case may be;

"Government Instrumentality" shall mean any department, division or sub-division of the Government of India or of any State and includes any commission, board, authority, agency or municipal and other local authority or statutory body including Panchayat, under the control of the Government of India or of any State, as the case may be, and having jurisdiction over all or any part of the Mines or the performance of all or any of the services or obligations of the Mine Operator under or pursuant to this Agreement;

"Grade Slippage" shall have the meaning set forth in Clause 23.2.3;

"GST" shall mean the goods and services tax levied and collected in India;

“**GST Laws**” shall mean the Applicable Laws in relation to GST;

“**Highwall Working**” shall mean an adaptation of augur mining that involves driving of entries into the Coal Seamby remotely controlled continuous mining machine to extract Coal;

“**IBC**” shall mean the Insolvency and Bankruptcy Code, 2016, read with all rules, regulations, circulars, guidelines and notifications thereunder (as amended from time to time);

"**Incentive**" shall mean a payment due to the Mine Operator, in accordance with the provisions of this Agreement, for any delivery, performance or outcome, as the case may be, which is better than the standards specified in respect thereof;

"**Indemnified Party**" shall mean the Party entitled to the benefit of an indemnity pursuant to Clause 42.3;

"**Indemnifying Party**" shall mean the Party obligated to indemnify the other Party pursuant to Clause 42.3;

“**Independent Laboratory**” shall have the meaning set forth in Clause 23.2.1;

"**Indirect Political Event**" shall have the meaning set forth in Clause 34.3;

"**Inspection Report**" shall have the meaning set forth in Clause 13.2;

"**Insurance Cover**" shall mean the aggregate of the maximum sums insured under the insurances taken out by the Mine Operator pursuant to Article 32, and includes all insurances required to be taken out by the Mine Operator under Clause 32.2 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

"**Intellectual Property**" shall mean all patents, trademarks, service marks, logos, get-up, trade names, internet domain names, rights in designs, blue prints, programmes and manuals, drawings, copyright (including rights in computer software), database rights, semi-conductor, topography rights, utility models, rights in know-how and other intellectual property rights, in each case, whether registered or unregistered and including applications for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world;

"**Key Performance Indicators**" shall have the meaning set forth in Clause 25.1;

{"**Lead Member**" shall have the meaning set forth in Recital (B);}

"**Lenders' Representative**" shall mean the person duly authorised by the Senior Lenders to act for, and on behalf of, the Senior Lenders with regard to matters arising out of, or in relation to, this Agreement, and includes its successors, assigns and substitutes;

"**LOA**" or "**Letter of Award**" shall mean the letter of award referred to in Recital (B);

"**Maintenance Manual**" shall have the meaning set forth in Clause 16.3.1;

"**Maintenance Programme**" shall have the meaning set forth in Clause 16.4.1;

"**Maintenance Requirements**" shall have the meaning set forth in Clause 16.2;

"**Manager**" shall have the same meaning as ascribed to such term in the Mines Act, 1952 and rules and regulations thereunder;

"**MCLR of State Bank of India**" shall mean the marginal cost lending rates for 1(one) year as determined by State Bank of India from time to time, as the same may be announced through such media as the State Bank of India may deem fit and any such announcement through any media shall be sufficient notice to the Parties.

"**Material Adverse Effect**" shall mean any act or event that materially and adversely affects the ability of either Party to perform any of its obligations under and in accordance with the provisions of this Agreement;

"**Measurement**" shall have the meaning set forth in Clause 19.7.1;

"**Mine Closure Plan**" shall mean the mine closure plan prepared in accordance with the 'Guidelines for Preparation of Mine Closure Plan' issued by the Ministry of Coal, Government of India, from time to time;

"**Mine Operator Default**" shall have the meaning set forth in Clause 37.1.1;

"**Mines**" shall have the meaning set forth in Recital (A);

"**Mining Scheme**" shall have the meaning set forth in Clause no 1.1.4 of RFB;

"**Mining Plan**" shall include Mines Closure Plan and shall mean the mining plan prepared by the Mine Operator and approved under and in accordance with the provisions of the Mineral Concession Rules, 1960 and the latest guidelines issued by the Ministry of Coal, Government of India, as amended from time to time, or any substitute thereof;

"**Mine Profile**" shall have the meaning set forth in RFB;

"**Miscellaneous Invoice**" shall have the meaning set forth in Clause 29.1.3;

"**Monthly Capacity**" shall have the meaning set forth in Clause 21.2.1;

"**Monthly Invoice**" shall have the meaning set forth in Clause 29.1.1;

"**Moving Equipment**" shall mean any equipment or vehicle which is moved around in the normal course of its usage and does not include any equipment which is installed on the ground in a stationary position;

"**MT**" shall mean a million Tonne;

"**Net Revenue**" shall have the meaning set forth in Clause 28.1.1;

"**New Code for Uniform System of Maintenance, Control and Verification of Coal Stock in all Mines of Coal India Limited**" shall mean the codes approved

in the 273rd meeting of the board of directors of Coal India Limited held on 20.09.2011 or any subsequent modifications/ order in this regard.

"Nominated Company" shall mean a company selected by the Lenders' Representative and proposed to the Authority for substituting the Mine Operator in accordance with the provisions of the Substitution Agreement;

"Non-Political Event" shall have the meaning as set forth in Clause 34.2;

"O&M" shall mean the operation and maintenance of the Mines and includes all matters connected with, or incidental to, such operation and maintenance, and provision of services and facilities in accordance with the provisions of this Agreement;

"O&M Contract" shall mean the operation and maintenance contract that may be entered into between the Mine Operator and the O&M Contractor for performance of all or any of the O&M obligations;

"O&M Contractor" shall mean the person, if any, with whom the Mine Operator has entered into an O&M Contract for discharging the O&M obligations for and on behalf of the Mine Operator;

"O&M Expenses" shall mean expenses incurred by or on behalf of the Mine Operator or by the Authority, as the case may be, for all O&M including (a) cost of salaries and other compensation to employees, (b) cost of materials, supplies, utilities and other services, (c) premia for insurance, (d) all Taxes, duties, cess and fees due and payable for O&M, (e) all repair, replacement, reconstruction, reinstatement, improvement and maintenance costs, (f) payments required to be made under the O&M Contract or any other contract in connection with, or incidental to, O&M, and (g) all other expenditure required to be incurred under Applicable Laws, Applicable Permits and this Agreement;

"O&M Inspection Report" shall have the meaning set forth in Clause 19.3;

"Opencast Working" a quarry, that is to say an excavation where any operation for the purpose of searching for or obtaining minerals/Coal has been or is being carried on, not being a shaft or an excavation which extends below superjacent ground, in accordance with the Mines Act, 1952;

"Operation Period" shall mean the period commencing from COD and ending on the Transfer Date;

"Overburden" shall mean the rock, soil and ecosystem that lies above the Coal Seam and is removed during surface mining, and may be used to restore an exhausted mining Site to a semblance of its appearance before mining began;

"Overburden Guarantee" shall have the meaning set forth in Clause 20.3.1 (ii);

"Owner" shall have the meaning ascribed to such term in the Mines Act, 1952; i.e. "owner, when used in relation to a mine, means any person who is the immediate proprietor or lessee or occupier of the mine or of any part thereof and in the case of a mine the business whereof is being carried on by a liquidator or receiver, such liquidator or receiver but does not include a person who merely receives a royalty, rent or fine from

the mine, or is merely the proprietor of the mine, subject to any lease, grant or licence for the working thereof, or is merely the owner of the soil and not interested in the minerals of the mine but any contractor or sub-lessee for the working of a mine or any part thereof shall be subject to this Act in like manner as if he were an owner, but not so as to exempt the owner from any liability”;

"Panel of Chartered Accountants" shall have the meaning set forth in Clause 33.2.1;

"Parties" shall mean the parties to this Agreement collectively and **"Party"** shall mean any of the parties to this Agreement individually;

"Performance Guarantee" shall have the meaning set forth in Clause 39.2.3;

"Performance Security" shall have the meaning set forth in Clause 9.1.1;

"Political Event" shall have the meaning set forth in Clause 34.4;

"Project" shall mean the reopening, salvaging, rehabilitation, development, construction, operation and maintenance of the Mines in accordance with the provisions of this Agreement, and includes all works, services and equipment relating to or in respect of the Scope of the Project;

"Project Affected Persons" or **"PAPs"** shall have the same meaning as ascribed to such term in the R&R Plan;

"Project Agreements" shall mean this Agreement, the Financing Agreements, EPC Contract, O&M Contract and any other material agreements or contracts that may be entered into by the Mine Operator with any person in connection with matters relating to, arising out of, or incidental to the Project, but does not include Substitution Agreement or any agreement for procurement of goods and services involving a consideration of upto Rs.100,000,000(Indian Rupees ten crore);

"Project Assets" shall mean physical and other assets relating to and forming part of the Project, including:

- (a) rights over the Site;
- (b) tangible assets such as civil works and equipment including foundations, embankments, pavements, electrical systems, communication systems, relief centres and administrative offices;
- (c) all rights of the Mine Operator under the Project Agreements;
- (d) financial assets, such as receivables, security deposits etc;
- (e) insurance proceeds; and
- (f) Applicable Permits and authorisations relating to, or in respect of, the Mines;

It is hereby clarified that the Moving Equipment and other movable assets (including but not limited to mass production technology package, heavy earth moving machinery) shall not be included within the meaning of the Project Assets.

"Project Completion Schedule" shall mean the progressive Project Milestones set forth in Schedule-G(to be prepared and submitted by the Mine Operator) for completion of the Mines on or before the Scheduled Completion Date;

"Project Facilities" shall mean all the amenities and facilities situated on the Site, as described in Schedule-C;

"Project Milestones" shall mean the project milestones set forth in Schedule- G;

"Project Specific Assets" shall mean the Project Assets, as listed in Annex-IV of Schedule C;

"R&R Costs" shall mean the costs for Rehabilitation and Resettlement of the PAPs as approved under the R&R Plan;

"R&R Plan" shall have the meaning set forth in Clause 5.11;

"Re.", "Rs." or "Rupees" or "Indian Rupees" shall mean the lawful currency of the Republic of India;

"Rehabilitation and Resettlement" shall mean the rehabilitation and resettlement of Project Affected Persons in accordance with the R&R Plan;

"Request for Bid" or "RFB" shall have the meaning set forth in Recital (B);

"Revenue Share of Authority" shall have the meaning set forth in Clause 28.1.1;

"Safety Requirements" shall have the meaning set forth in Clause 17.1.1;

"Scheduled COD" shall mean 1st day of the succeeding Accounting Year of the year in which production of Coal for at least (50%(fifty percent) of the Contracted Capacity is scheduled at earliest as per the Annual Production Programme;

"Scheduled Completion Date" shall mean the date on which all the Project Milestones (Project Milestone I, Project Milestone II, Project Milestone III) as submitted by the Mine Operator in Schedule G are scheduled to be completed;

"Scheduled Development Length"/ "Scheduled Overburden Quantity" shall have the meaning set forth in Clause 20.2.1;

"Scheduled Maintenance" shall have the meaning set forth in Clause 16.4.4;

"Scope of the Project" shall have the meaning set forth in Clause 2.1;

"Selling of Coal" in reference to this Agreement shall mean and include marketing and auction sale (on a portal decided by the Authority) of the extracted/ excavated Coal from the Mines at market driven price by the Mine Operator on behalf of the Authority.

"Senior Lenders" shall mean the financial institutions, banks, multilateral lending agencies, trusts, funds and agents or trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide finance to the Mine Operator under any of the Financing Agreements for meeting all or any part of the investment for the Project and who hold *paripassu* charge on the assets, rights, title and interests of the Mine Operator;

"Site" shall have the meaning as set forth in Clause 10.1;

"Specifications and Standards" shall mean the specifications and standards relating to the quality, quantity, capacity and other requirements for the Mines, as set forth in Schedule-D, and any modifications thereof, or additions thereto, as included in the design and engineering for the Mines submitted by the Mine Operator to, and expressly approved by, the Authority;

"Standard Industry Practice" shall mean the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Mine Operator in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner, and includes prudent mining practices generally accepted by the Authority and the Mine Operator for ensuring safe, economic, reliable and efficient extraction, operation and maintenance of the Mines and for providing safe, economic, reliable and efficient extraction of Coal and Delivery thereof;

"State" shall mean the State or the Union Territory, as the case may be, in which the Project is situate and **"State Government"** means the government of that State or Union Territory;

"Stripping Ratio" shall mean the in-situ volume of Overburden to be removed in cubic metres for each Tonne of Coal produced. For the avoidance of doubt, the Stripping Ratio shall be reviewed at the beginning of each Accounting Year by the Mine Operator in the presence of the Engineer in charge;

"Subordinated Debt" shall mean the aggregate of the following sums expressed in Indian Rupees or in the currency of debt, as the case may be, outstanding as on the Transfer Date:

- (a) the principal amount of debt provided by lenders or the Mine Operator's shareholders for meeting the investment for the Project and subordinated to the financial assistance provided by the Senior Lenders; and
- (b) all accrued interest on the debt referred to in sub-clause (a);

provided that if all or any part of the Subordinated Debt is convertible into Equity at the option of the lenders and/or the Mine Operator's shareholders, it shall for the purposes of this Agreement be deemed to be Subordinated Debt even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;

"Substitution Agreement" shall have the meaning set forth in Clause 40.3.1;

"Suspension" shall have the meaning set forth in Clause 36.1;

"Taxes" shall mean any Indian taxes including GST, customs duties, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, materials, equipment and services incorporated in and forming part of the Mines, charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account

whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income;

"Termination" shall mean the expiry or termination of this Agreement;

"Termination Notice" shall mean the communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement;

"Termination Payment" shall mean the amount payable under, and in accordance with, this Agreement, by the Authority to the Mine Operator upon Termination. For the avoidance of doubt, it is expressly agreed that the amount payable shall be subject to the limitations specified in Clause 37.4;

"Tests" shall mean the tests set forth in Schedule-I to determine the completion of Mines in accordance with the provisions of this Agreement and shall, *mutatismutandis*, include similar tests to determine completion of Additional Capacity, if any;

"Tonne" shall mean a metric tonne equal to 1000kg;

"Transfer Date" shall mean the date on which this Agreement expires pursuant to the provisions of this Agreement or is terminated by a Termination Notice;

"Underground Working" shall mean working in a shaft which has been or in the course of being sunk or in any excavation which extends below superjacent ground in accordance with the Mines Act, 1952;

"Unforeseen Event" shall have the meaning set forth in Clause 34.11;

"Vesting Certificate" shall have the meaning set forth in Clause 38.4;

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN.

<p>THE COMMON SEAL OF MINE OPERATOR has been affixed pursuant to the resolution passed by the Board of Directors of the Mine Operator at its meeting held on the day of 20..... hereunto affixed in the presence of, Director, [who has signed these presents in token thereof and, Company Secretary / Authorised Officer who has countersigned the same in token thereof[§]]:</p> <p>(Signature) (Name) (Designation) (Address) (Fax No.) (e-mail address)</p>	<p>SIGNED, SEALED AND DELIVERED For and on behalf of AUTHORITY by:</p> <p>(Signature) (Name) (Designation) (Address) (Fax No.) (e-mail address)</p>
<p>In the presence of:</p> <p>1. _____ 2. _____</p>	

[§] To be affixed in accordance with the articles of association of the Mine Operator and the resolution passed by its Board of Directors

SCHEDULES

SCHEDULE – A

(To be provided by the Authority during the time of the Bid)

DESCRIPTION OF THE SITE AND MINES

[Refer Mine Profile in Appendix VII of RFB]

Annex - I
(Schedule-A)

(See Clause 10.9)

Existing infrastructure at Site and Mines

1. List of Infrastructure available at the Site and Mines:

(Refer Mine Profile in Appendix VII of RFB)

2. List of Infrastructure to be handed over to the Mine Operator:

(Refer Mine Profile in Appendix VII of RFB)

Annex – II

(Schedule-A)

[Existing Railway Siding at Site and Mines]

Annex – III

(Schedule-A)

[Existing and/or proposed Delivery Point/Depot at the Site and Mines]

Mine Operator may decide the best suited location depending upon the respective method of mining

SCHEDULE — B

(See Clause 5.14)

DPR Preparation

A Detailed Project Report (DPR) shall be prepared by the Mine Operator in accordance with the available data set out in the Mines Profile(annexed as Appendix VII to RFB), Geological Report, and Mining Scheme submittedwith the Bid or any modification thereof. The DPR shall have the following chapters:

1. Introduction
2. Project Site Information
3. Geology
4. Mines Boundary Reserve and Mines Life
5. {Mines Entries}
6. Mining & {Dumping} Strategy
7. Method of Mining/Mining System and Equipment
8. Mining Schedule
9. {Horizontal and Vertical Transport}
10. {Ventilation}
11. Water Management, Pumping and Drainage
12. CHP & Surface Dispatch Arrangement
13. Workshop, Stores & Magazine
14. Power Supply, Illumination and Communication
15. Civil Construction
16. Manpower Productivity and Training
17. Safety and Conservation
18. Environment Management
19. Mine Closure Planning
20. Land Requirement, R&R Package and Project Implementation Schedule
21. Financial Evaluation

SCHEDULE—C

PROJECT FACILITIES

1 Project Facilities

The Mine Operator shall construct the Project Facilities in accordance with the provisions of the Mining Plan.

2 Project Facilities for Mines

Project Facilities forming part of the Mines and to be completed on or before Completion have been described in Annex-I of this Schedule-C.

3 Project Facilities for township

Project Facilities forming part of the township and to be completed on or before Completion have been described in Annex-II of this Schedule-C.

4 Project Specific Assets

The list is given in Annexure IV

5 Capital Works

The list is given in Annexure IV

Annex - I
(Schedule-C)

Project Facilities for Mines

1 Project Facilities

The Mine Operator shall construct the Project Facilities in this Annex -1 to form part of the Mines as per the Detailed Project Report /Mining Plan to be prepared by the Mine Operator. The Project Facilities may include but not limited to the following:

- (a) Coal Depot;
- (b) Laboratory and testing facilities;
- (c) Workshops;
- (d) Fire hydrant system;
- (e) Weighbridge at the Coal Depot;
- (f) Roads;
- (g) Common facility centre;
- (h) Security equipment including closed-circuit television (“CCTV”);;
- (i) RFID system for tracking of truck movement, if applicable;
- (j) Storage and maintenance of Mines lamps and self-rescuers; and

2 Description of Project Facilities

The Project Facilities are briefly described below:

(a) Coal Depot

The Mine Operator shall construct and operate a Coal Depot for storage of Coal in accordance with the provisions of Article 22 of this Agreement.

(b) Storage and maintenance of Mines lamps and self-rescuers(if applicable)

The Mine Operator shall procure Mines lamps and self-rescuers, ensure provision for its storage and maintenance with requisite instruments, facilities and suitable tools including arrangement for charging, topping, etc, as required.

(c) Laboratory and testing facilities

The Mine Operator shall procure and ensure provision of a laboratory with the requisite instruments and calibration facilities to check all tools, instruments, jigs and fixtures and for testing of Coal.

(d) Workshops

The Mine Operator shall construct the workshops with the requisite equipment, tools and other facilities to cater to the needs of daily maintenance, scheduled maintenance,

lubrication, routine inspection, minor/medium repair and replacement of parts/sub-assemblies of Equipment.

(e) *Fire hydrant system*

A fire hydrant system shall be installed in conformity with Applicable Laws, Applicable Permits and Standard Industry Practice and shall include adequate water storage, pumping capacity and distribution network. Smoke detectors, fire alarms and water sprinklers shall also be provided in critical areas of the Mines.

(f) *Weighbridge at the Coal Depot*

The Mine Operator shall provide for required number of weighbridges for weighment of truck/vehicle loaded with Coal as per the Detailed Project Report/Mining Plan. Suitable weighing instrumentation shall be installed at the Coal Depot. The weighbridges shall be calibrated in accordance with the Specifications and Standards.

(g) *Roads*

The Mine Operator shall construct and maintain haul roads (if applicable) and approach roads required for excavation/extraction and transportation of Coal equivalent to the Contracted Capacity.

(h) *Common Facility Centre*

The Mine Operator shall construct a common facility centre which shall include a cafeteria, recreation facilities, medical aid centre and restrooms for use by the personnel deployed on the Project.

(i) *Security equipment including Closed-circuit television (CCTV)*

All entry and exit points, Coal Depot, Coal Handling Plant, buildings, structures and passages used for transporting of Overburden/Coal within the Mines shall be equipped with a CCTV system capable of retaining recorded footage for a period of one month. The Mine Operator shall install and operate such other equipment as may be required in accordance with Applicable Laws, Applicable Permits and Standard Industry Practice for assurance of the security of personnel and Coal at the Mines.

(Schedule-C)

Project Facilities for Township

1 Project Facilities

The Mine Operator shall construct the Project Facilities described in this Annex-II as per the Detailed Project Report to form part of the township for the Project. These Project Facilities may include but not limited to the following:

- (a) Administrative and housing complex;
- (b) Primary health centre with at least 6 (six) beds;

2 Description of Project Facilities

The Project Facilities are briefly described below:

(a) Administrative and housing complex

The Mine Operator shall construct an administrative and housing complex on or near the Site with the requisite space and facilities for office and residential buildings. The complex shall also provide for sufficient space for commercial facilities including bank, post office, business centre and shops/kiosks. The Mine Operator shall provide a furnished project office for the personnel of the Authority deputed at the Site.

(b) Primary Health Centre

The Mine Operator shall build a primary health centre, with at least 6 (six) beds, in conformity with standards followed by the State Government with sufficient space and facilities for in-patient care and diagnostic facilities.

(Schedule-C)

Project Facilities for Railway Siding

1 Project Facilities

The Mine Operator shall construct the Project Facilities described in this Annex -III to form part of the railway siding. The Project Facilities shall include:

- (a) Rapid loading system/ loading arrangements;
- (b) Access road to the railway siding;
- (c) Office space for the Authority at the railway siding;
- (d) Weighbridge; and

2 Description of Project Facilities

The Project Facilities are briefly described below:

(a) Railway Siding

The Mine Operator shall construct the railway siding with a capacity to handle transportation of Coal equivalent to the Contracted Capacity. The Mine Operator shall at all times ensure availability of requisite facilities including silos/bunkers and system for loading of Coal on the wagons.

(b) Access road to the Railway Siding

The Mine Operator shall construct and maintain the approach roads required for transportation of Coal to the railway siding.

(c) Office space

The Mine Operator shall provide for office space with requisite facilities for use by the Authority at the railway siding to enable it to discharge its day-to-day functions.

(d) Weighbridge

The Mine Operator shall provide for required number of weighbridges as per the Mining Plan/ Detailed Project Report for weighing of truck/vehicle loaded with Coal. Suitable weighing instrumentation shall be installed at the railway siding. The weighbridges shall be calibrated in accordance with the Specifications and Standards.

Annex-IV
(Schedule-C)

The list of Project Specific Assets and Capital Works shall be prepared by the Mine Operator in consultation with the Authority in accordance with the Mining Plan and Detailed Project Report. Such list so prepared and submitted shall deemed to be a part of this Annexure.

Insert list of Project Specific Assets

Insert the list of Capital Works

SCHEDULE – D

SPECIFICATIONS AND STANDARDS

1 Development of Mines

The Mine Operator shall comply with the Specifications and Standards set forth in Annex-I of this Schedule-D for development of the Mines.

2 Equipment

The Mine Operator shall comply with the Specifications and Standards set forth in Annex-II of this Schedule-D for installation/ deployment of Equipment.

3 Mining Plan

The Mining Plan shall be prepared by the Mine Operator as per the existing guidelines issued from time to time by the Ministry of Coal, Government of India, in conformity with the Mining Scheme submitted along with the Bid or any modification thereof, and the Detailed Project Report.

The Mine Operator shall comply with the Mining Plan thus prepared, as may be modified from time to time in conformity with Applicable Laws.

Annex - I
(Schedule-D)

Specifications and Standards for Development of the Mines

1 Standards and Specifications

The development of Mines shall conform to the provisions of the Mining Plan/ Detailed Project Report which shall be deemed to be the Specifications and Standards.

Annex – II

(Schedule-D)

Specifications and Standards for Equipment

1 Standards and Specifications

The installation /deployment of Equipment at the Mines shall conform to the provisions of the Mining Plan/ Detailed Project Report, which shall be deemed to be the Specifications and Standards.

SCHEDULE - E

(See Clause 4.1.2)

APPLICABLE PERMITS

PART I

1 Applicable Permits prior to Appointed Date

The Mine Operator shall obtain, as required under Applicable Laws, the following Applicable Permits on or before the Appointed Date, save and except to the extent of a waiver granted by the Authority in accordance with Clause 4.1.3 of the Agreement:

- (a) Licence for use of explosives;
- (b) Applicable Permits for and in respect of employment of labour at the Mines;
and
- (c) Any other permits or clearances required under Applicable Laws.

PART II

2 Applicable Permits during Contract Period

The Mine Operator shall obtain, as required under Applicable Laws, the following Applicable Permits prior to commencement of the relevant activity:

- (a) Clearance of the Pollution Control Board of the State Government for installation of diesel generator sets;
- (b) Permission of the State Government for cutting of trees;
- (c) Statutory and Regulatory permits for selling of Coal on behalf of the Authority; and
- (d) Any other permits or clearances required under Applicable Laws.

SCHEDULE - F

(See Clause 9.1 and Clause 39.2.3)

PERFORMANCE SECURITY

Western Coalfields Limited

WHEREAS:

- (A) (the "**Mine Operator**") and Western Coalfields Limited represented by *** and having its principal offices at Coal Estate, Civil Lines, Nagpur-440001(MS) ("**Authority**") have entered into an agreement dated(the "**Agreement**") whereby the Authority has agreed to the Mine Operator undertaking the development of Mines, and for mining of Coal and Delivery thereof, subject to and in accordance with the provisions of the Agreement.
- (B) The Agreement requires the Mine Operator to furnish a Performance Security to the Authority of a sum of Rs. * * * * * cr. (Rupees * * * * * crores) (the "**Guarantee Amount**") as security i.e., a sum equivalent to 5% (five percent) of the Annual Sale Value, for due and faithful performance of its obligations, under and in accordance with the Agreement, which shall remain valid, effective and in full force in an extendable/ renewable manner during the Contract Period (includes initial contract period and extended contract period) and upto 90 (ninety) days after the Contract Period (the "**Guarantee Period**"). The Performance Security shall be furnished by the Mine Operator not later than 90 (ninety) days from the date of issue of the LOA (in case of initial contract period) or not later than 90 (ninety) days from the commencement of the Extended Contract Period, as the case may be.
- (C) The Mine Operator shall keep the Performance Security valid, effective and in full force in an extendable/ renewable manner revolving after a period of at least 3 (three) years.
- (D) We, through our branch at (the "**Bank**") have agreed to furnish this bank guarantee ("**Guarantee**") by way of Performance Security.

NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees and affirms as follows:

1. The Bank hereby, unconditionally and irrevocably, guarantees and undertakes to pay to the Authority upon occurrence of any failure or default in due and faithful performance of all or any of the Mine Operator's obligations, under and in accordance with the provisions of the Agreement, on its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Mine Operator, such sum or sums upto an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/ or for the sum specified therein.
2. A letter from the Authority, under the hand of an officer not below the rank of a General Manager or equivalent, that the Mine Operator has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank

further agrees that the Authority shall be the sole judge as to whether the Mine Operator is in default in due and faithful performance of its obligations under the Agreement and its decision that the Mine Operator is in default shall be final, and binding on the Bank, notwithstanding any difference between the Authority and the Mine Operator, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Mine Operator for any reason whatsoever.

3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Mine Operator and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity for, or obligation of, the Authority to proceed against the Mine Operator before presenting to the Bank its demand under this Guarantee.
5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee and without any liability towards the Bank, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfillment and/or performance of all or any of the obligations of the Mine Operator contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Mine Operator, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/ or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under this Guarantee by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Mine Operator or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would, but for this provision, have the effect of releasing or discharging the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights, remedies or recourse under any such law.
6. This Guarantee is in addition to, and not in substitution of, any other guarantee or security now or which may hereafter be held by the Authority in respect of, or relating to, the Agreement or for the fulfillment, compliance and/ or performance of all or any of the obligations of the Mine Operator under the Agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force until the expiry of the Guarantee Period, and upon the expiry of the Guarantee Period, unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee no later than 6 (six) months from the date of expiry of the Guarantee Period, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers and authority to execute this Guarantee for and on behalf of the Bank.

9. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive and binding on the Bank.
10. Subject to Clause 7 hereinabove, this Guarantee shall come into force with immediate effect and shall remain in force and effect until the expiry of the Guarantee Period or until it is released earlier by the Authority pursuant to the provisions of the Agreement.
11. Capitalised terms used herein, unless specifically defined herein, shall have the meaning assigned to them in the Agreement and the RFB.
12. The disputes between the parties relating to the terms of this Agreement shall be subject to Clause 44 of the Agreement and the same shall be governed by the laws applicable to the territory of India.

Signed and sealed this day of 20 at

SIGNED, SEALED AND DELIVERED

For and on behalf of
the BANK by:

(Signature)
(Name)
(Designation)
(Code Number)
(Address)

NOTES:

- (i) The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.
- (ii) The address, telephone number and other details of the head office of the Bank as well as of issuing branch should be mentioned on the covering letter of issuing Branch.
- (iii) The bank guarantee issued in favour of the Authority shall be in paper form as well as issued under structured financial messaging system (SFMS). The details of beneficiary shall be provided to the successful bidder in due course of time.

SCHEDULE –G

(See Clause 12.3)

PROJECT COMPLETION SCHEDULE

1 Project Completion Schedule[#]

On or before the Appointed Date, the Mine Operator shall submit a Project Completion Schedule in accordance with the Detailed Project Report and MiningPlan by the Mine Operator and this Schedule-G.

All the major activities during the Construction Period shall be classified as project milestone (the “**Project Milestones**”) such as Project Milestone-I, Project Milestone-II, Project Milestone-III and so on. Start date and completion date against each Project Milestone shall be provided.

During Construction Period, the Mine Operator shall comply with the requirements set forth in this Schedule for each of the Project Milestones and the Scheduled Completion Date (the “**Project Completion Schedule**”). At least 15 (fifteen) days prior to the completion date of each Project Milestone, the Mine Operator shall notify the Authority of such compliance along with necessary particulars thereof.

2 Scheduled Completion Date

2.1 The Scheduled Completion Date will be the date on which all the project milestones (Project Milestone I, Project Milestone II, Project Milestone III) as above are scheduled to be completed.

2.2 On or before the Scheduled Completion Date, the Mine Operator shall have completed the {1st (first) phase of the} development of Mines for excavation/extraction and Delivery of Coal in accordance with this Agreement.

3 Extension of period

Upon extension of any or all of the aforesaid Project Milestones or the Scheduled Completion Date, as the case may be, under and in accordance with the provisions of this Agreement, the Project Completion Schedule shall be deemed to have been amended accordingly.

[#] The dates of each milestone, number of milestones shall be determined by the Mine Operatoras per the Project requirements

SCHEDULE - H

(See Clause 12.4)

DRAWINGS

1 Drawings

In compliance of the obligations set forth in Clause 12.4 of the Agreement, the Mine Operator shall furnish to the Engineer in charge, free of cost, all Drawings listed in Annex-I of this Schedule-H.

2 Additional drawings

If the Engineer in charge determines that for discharging its duties and functions under this Agreement, it requires any drawings other than those listed in Annex -I, it may by notice require the Mine Operator to prepare and furnish such drawings forthwith. Upon receiving a requisition to this effect, the Mine Operator shall promptly prepare and furnish such drawings to the Engineer in charge, as if such drawings formed part of Annex-I of this Schedule-H.

Annex - I

(Schedule-H)

List of Drawings

Note: The Authority shall describe in this Annex-I, all the Drawings that the Mine Operator is required to furnish under Clause 12.4. An illustrative list is given below. It may be suitably modified as per project-specific requirements.

I {List of Drawings for Underground Working

1. Location plan of the Mines
2. Topographical plan of the Site
3. Geographical plan
4. Floor contour plans of all Coal Seams
5. Coal Seam folio plans
6. Iso-grade plans showing iso-lines for specific gravity, Useful Heat Value, Gross Calorific Value, ash percentage and grade of Coal
7. Surface plan
8. Seam-wise Mines projection/working plan
9. Leasehold plan
10. Ventilation Plan
11. Stage plan at the intervals of five years of mining operations
12. Plan showing underground transportation network in the Mines
13. Plan showing the drainage and pumping network in the Mines
14. Mines cross sections at representative alignments throughout the Mines
15. Key plan and flow diagram of Coal Handling Plant
16. Plan showing incoming power supply arrangement and for power distribution
17. General layout of workshop}

II {List of Drawings for Opencast Working

1. Location plan of the Mines
2. Topographical plan of the Site
3. Geographical plan
4. Floor contour plans of all Coal Seams
5. Coal Seam folio plans
6. Iso-grade plans showing iso-lines for specific gravity, Useful Heat Value, Gross Calorific Value, ash percentage and grade of Coal
7. Surface plan
8. Ultimate pit configuration plan
9. Leasehold plan
10. Initial mining cut
11. Stage plan at the intervals of five years of mining operations

12. Final stage dump plan
13. Mines cross sections at representative alignments throughout the Mines
14. Key plan and flow diagram of Coal Handling Plant
15. Plan showing incoming power supply arrangement and for power distribution
16. General layout of workshop}

(NOTE: Mine Operator May Furnish Drawings As Per The Respective Method Of Mining Adopted)

SCHEDULE - I

(See Clause 14.1.2)

TESTS

1. Schedule for Tests

1.1 The Mine Operator shall, no later than 60 (sixty) days prior to the likely completion of the Construction Works and installation of Equipment at the Mines, notify the Engineer in charge and the Authority of its intent to subject the Mines to Tests, and no later than 10 (ten) days prior to the actual date of Tests, furnish to the Engineer in charge and the Authority particulars of all works and equipment forming part of the Mines.

1.2 The Mine Operator shall notify the Engineer in charge of its readiness to subject the Mines to Tests at any time after 10 (ten) days from the date of such notice, and upon receipt thereof, the Engineer in charge shall, in consultation with the Mine Operator, determine the date and time for each Test. The Engineer in charge shall thereupon conduct the Tests itself or cause any of the Tests to be conducted in accordance with Article 14 and this Schedule-I.

2. Tests

In pursuance of the provisions of Clause 14.1.2 of this Agreement, the Engineer in charge shall require the Mine Operator to carry out, or cause to be carried out, Tests on the Mines as specified in Paragraphs 3 of this Schedule-I.

3. Mines

Tests for equipment

Engineer in charge shall conduct or cause to be conducted Tests, in accordance with Standard Industry Practice, for determining the compliance of Equipment with the Specification and Standards and Safety Requirements.

[Other Tests may be added here]

4. Common Tests

4.1 Visual and physical Test

The Engineer in charge shall conduct a visual and physical check of the Mines to determine that all works and equipment forming part thereof conform to the provisions of this Agreement.

4.2 Safety review

Safety audit of the Mines shall have been undertaken by the safety officer as set forth in Schedule-L, and on the basis of such audit, the Engineer in charge shall determine conformity of the Mines with the provisions of this Agreement.

4.3 Environmental audit

The Engineer in charge shall carry out a check to determine conformity of the Mines with the environmental requirements set forth in Applicable Laws and Applicable Permits.

5. Agency for conducting Tests

All Tests set forth in this Schedule-I shall be conducted by the Engineer in charge or such other agency or person as it may specify in consultation with the Authority.

6. Tests for Safety Certification

Tests for determining the conformity of the Mines with the Safety Requirements shall be conducted in accordance with Standard Industry Practice and in conformity with Applicable Laws.

7. Completion Certificate

Upon successful completion of Tests, the Engineer in charge shall issue the Completion Certificate in accordance with the provisions of Article 14.

8. Cost of Tests

8.1 The costs of conducting Tests shall be borne by the Mine Operator.

8.2 In the event any Test is required to be repeated by the Engineer in charge for reasons attributable to the Authority, the cost of such repeated Test shall be borne by the Authority.

9. Tests during construction

Without prejudice to the provisions of this Schedule-I, tests during construction shall be conducted in accordance with the provisions of Clause 13.3.1.

SCHEDULE - J

(See Clause 14.4)

COMPLETION CERTIFICATE

1. I/We.....(Name of the Engineer in charge), acting as Engineer in charge, under and in accordance with the agreement dated(the "**Agreement**"), for re-opening and development of the Mines with a Contracted Capacity of.....MT, through (Name of Mine Operator), hereby certify that the Tests specified in Article 14 and Schedule-I of the Agreement have been successfully undertaken to determine compliance of the Mines/ phase..... of the Mines with the provisions of the Agreement.
2. It is certified that all Construction Works has been completed and all Project Milestones as set forth in Schedule-G of this Agreement have been achieved with full satisfaction.
3. It is also certified that, in terms of the aforesaid Agreement, all works forming part of the Mines/ phase.....of the Mines have been completed and Completion has been achieved.

SIGNED, SEALED AND DELIVERED

For and on behalf of
Engineer in charge by:

(Signature)

(Name)

(Designation)

(Address)

SCHEDULE – K

(See Clause 16.1 and Clause 16.2)

MAINTENANCE REQUIREMENTS

1. Maintenance Requirements

- 1.1 The Mine Operator shall, at all times, operate and maintain the Mines and Equipment in accordance with the provisions of the Agreement, Applicable Laws and Applicable Permits. In particular, the Mine Operator shall, at all times during the Operation Period, conform to the maintenance requirements set forth in this Schedule-K (the "**Maintenance Requirements**").
- 1.2 The Mine Operator shall repair or rectify any defect or deficiency set forth in Paragraph 2 of this Schedule-K.

2. Repair/rectification of defects and deficiencies

The obligations of the Mine Operator in respect of Maintenance Requirements shall include repair and rectification of the defects and deficiencies, arising out of any breakdown in Equipment and machinery, or, intimated in writing during inspection, by (i) the Engineer in charge; (ii) the Manager; (iii) any representative of the Authority; or (iv) any other inspecting official belonging to any statutory or regulatory body, in accordance with Standard Industry Practice.

3. Rectification

Noequipment or installation shall run or operate unless the defects and deficiencies specified in Paragraph 2 of this Schedule-K are rectified and such rectification is certified by the Engineer in charge.

4. Emergency repairs/restoration

Notwithstanding anything to the contrary contained in this Schedule-K, if any defect, deficiency or deterioration in the Mines and Equipment poses a hazard to safety or risk of damage to property, the Mine Operator shall promptly take all reasonable measures for eliminating or minimising such danger.

5. Periodic inspection by the Mine Operator

The Mine Operator shall, through its engineer, undertake a periodic visual inspection of the Mines and Equipment in accordance with the Maintenance Manual and maintain a record thereof in a register to be kept in such form and manner as the Engineer in charge may specify. Such record shall be kept in safe custody of the Mine Operator and shall be open to inspection by the Authority and the Engineer in charge at any time during office hours.

6. Divestment Requirements

All defects and deficiencies specified in this Schedule-K shall be repaired and rectified by the Mine Operator so that the Mines and Equipment conforms to the Maintenance Requirements on the Transfer Date.

7. Display of Maintenance Manual

The Mine Operator shall display a copy of the Maintenance Manual, specified in Clause 16.3, and updated list of defects and deficiencies to be rectified, as specified in Paragraph 2 of Schedule- K, at the workshop and other buildings/ structures in the Mines as per Applicable Laws.

SCHEDULE – L

(See Clause 17.1.1)

SAFETY REQUIREMENTS

1 Guiding principles

- 1.1 Safety Requirements aim at reduction in injuries, loss of life and damage to property resulting from accidents on or about the Project, irrespective of the person(s) at fault.
- 1.2 Users of the Mines include staff of the Mine Operator and its contractors working on the Project.
- 1.3 Safety Requirements apply to all phases of construction, operation and maintenance with emphasis on identification of factors associated with accidents, consideration of the same and implementation of appropriate remedial measures.
- 1.4 Safety Requirements include a safety management system comprising of reduction of, or wherever possible, mitigation of risks arising out of different operations and also principal/ major mining hazards inherently present in the Mines including a structured and scientific emergency response plan.

2 Obligations of the Mine Operator

The Mine Operator shall abide by the following insofar as they relate to safety of the users:

- (a) Applicable Laws and Applicable Permits;
- (b) guidelines/ circulars/ bye laws of DGMS, Ministry of Labour and Employment, Government of India and any order made thereunder;
- (c) provisions of this Agreement; and
- (d) relevant standards/ guidelines contained in internationally accepted codes in conformity with Applicable Laws; and
- (e) Standard Industry Practice.

3 Safety measures during Re-opening, Development and Operation Period

- 3.1 The Mine Operator shall provide to the safety officer, in 4 (four) copies, the relevant drawings containing the design details that have a bearing on safety of users (the "**Safety Drawings**"). Such design details shall include the design of the Mines, Coal Handling Plant and other such installations along with other incidental or consequential information. The safety officer shall review the design details and after consulting the colliery engineer appointed pursuant to Regulation 32 of the CoalMines Regulations, 2017, forward 3 (three) copies of the Safety Drawings with its recommendations, if any, to the Engineer in charge who shall record its comments, if any, and forward 1 (one) copy each to the Authority and the Mine Operator within 15 (fifteen) days of the receipt thereof.

- 3.2 The design details shall be compiled, analysed and used by the safety officer for evolving a package of recommendations consisting of safety related measures for the Mines. The safety audit shall be carried out by an independent expert appointed by the Authority and be completed in a period of 3 (three) months and a report thereof (the "**Safety Report**") shall be submitted to the Authority, in 5 (five) copies. Further, 1 (one) copy each of the Safety Report shall be forwarded by the Authority to the Mine Operator and the Engineer in charge forthwith.
- 3.3 The Mine Operator shall endeavour to incorporate the recommendations of the Safety Report in the design of the Mines, as may reasonably be required in accordance with Mining Plan, Applicable Laws, Applicable Permits, guidelines/circulars of Directorate General of Mines Safety, Specifications and Standards, and Standard Industry Practice. If the Mine Operator does not agree with any or all of such recommendations, it shall state the reasons thereof and convey them to the Authority forthwith.
- 3.4 Without prejudice to the provisions of Paragraph 3, the Mine Operator and the Engineer in charge shall, within 15 (fifteen) days of receiving the Safety Report, send their respective comments thereon to the Authority, and no later than 15 (fifteen) days of receiving such comments, the Authority shall review the same along with the Safety Report and by notice direct the Mine Operator to carry out any or all of the recommendations contained therein with such modifications as the Authority may specify.
- 3.5 The Mine Operator shall make adequate arrangements during the Operation Period for the safety of workers and other users of the Site in accordance with Applicable Laws and Standard Industry Practice for safety in Mines, and notify the Authority and the Engineer in charge about such arrangements.
- 3.6 The Mine Operator in consultation with the safety officer will prepare the safety management plan, standard operating procedures, principal hazard management plan, emergency response plan and other such plans required as per the statute.
- 3.7 Safety committee shall be constituted and will function as per statutory provisions.
- 3.8 For safety and conservation, the provisions given in the Mining Plan shall be deemed to be a part of this Schedule-L.

4 Costs and expenses

Costs and expenses incurred in connection with the Safety Requirements set forth herein, including the provisions of Paragraph 2 of this Schedule -L, shall be met by the Mine Operator.

SCHEDULE - M

(See Clause 23.2.1)

COAL SAMPLING AND TESTING

At the Delivery Point, at least 1 (one) random sample of Coal shall be sampled and tested in each shift as per the requirements listed below to determine the conformity thereof with the Specifications and Standards

Sampling:

- a. IS:436 (Part-I), Section I for manual sampling; and
- b. IS:436 (Part-I), Section II for mechanical sampling

Analysis:

- a. IS: 1350 (Part-II) for determination of Calorific value by bomb calorimeter
- b. IS:1350 (Part-I) for Proximate analysis of Coal and coke
- c. IS: 1353-1993 for test for carbonisation – caking index, swelling no. and gray king assay (L.T.)

SCHEDULE - N

(See Clause 5.8)

LIST OF MANPOWER TO BE PROVIDED BY THE AUTHORITY

- 1 General Administrative Manpower : NA**

- 2 Engineer in charge**

SCHEDULE - O

(See Clause 26.2.1)

TERMS OF REFERENCE FOR ENGINEER IN CHARGE

1 Appointment of Engineer in charge

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

2 Role and functions of the Engineer in charge

2.1 The role and functions of the Engineer in charge shall include the following:

- (i) review of the Drawings and Documents as set forth in Paragraph 3;
- (ii) review, inspection and monitoring of Construction Works as set forth in Paragraph 4;
- (iii) review, inspection and testing of Mines as set forth in Paragraph 4;
- (iv) conducting Tests on completion of construction and issuing Completion Certificate as set forth in Paragraph 4;
- (v) review, inspection and monitoring of O&M as set forth in Paragraph 5;
- (vi) review, inspection and monitoring of Divestment Requirements as set forth in Paragraph 6;
- (vii) determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;
- (viii) determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;
- (ix) assisting the Parties in resolution of disputes as set forth in Article 44 of the Agreement; and
- (x) undertaking all other duties and functions in accordance with the Agreement.

2.2 The Engineer in charge shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Standard Industry Practice.

3 Development Period

- 3.1 During the Development Period, the Engineer in charge shall undertake a review of the exploration data and Drawings to be furnished by the Mine Operator along with supporting data, including the geo-technical and hydrological investigations, topographical surveys and other surveys. The Engineer in charge shall complete such review and send its comments/observations to the Authority and the Mine Operator within 15 (fifteen) days of receipt of such exploration data and Drawings. In particular, such comments shall specify the conformity or otherwise of such exploration data and Drawings with the Scope of the Project, Applicable Laws and Specifications and Standards.
- 3.2 The Engineer in charge shall review any modified Drawings or supporting Documents sent to it by the Mine Operator and furnish its comments within 7 (seven) days of receiving such Drawings or Documents.
- 3.3 The Engineer in charge shall review the Drawings, Documents and Safety Report sent to it by the safety officer in accordance with Schedule-L and furnish its comments thereon to the Authority and the Mine Operator within 15 (fifteen) days of receiving such Drawings, Documents and Safety Report, as the case may be.
- 3.4 The Engineer in charge shall review the quality assurance procedures and the procurement, engineering, excavation/extraction and construction time schedule sent to it by the Mine Operator and furnish its comments within 15 (fifteen) days of receipt thereof.
- 3.5 Upon reference by the Authority, the Engineer in charge shall review and comment on the EPC Contract or any other contract for construction, excavation/extraction, operation and maintenance of the Mines, and furnish its comments within 7 (seven) days from receipt of such reference from the Authority.

4 Construction Period

- 4.1 In respect of the Drawings, Documents and safety report received by the Engineer in charge for its review and comments during the Construction Period, the provisions of Paragraph 3 shall apply *mutatis mutandis*.
- 4.2 The Engineer in charge shall review the monthly progress report furnished by the Mine Operator and send its comments thereon to the Authority and the Mine Operator within 7 (seven) days of receipt of such report.
- 4.3 The Engineer in charge shall inspect the Construction Works and Equipment once every quarter, and make out a report of such inspection (the "**InspectionReport**") setting forth an overview of the status, progress, quality and safety of construction, the materials used and their sources, and conformity of Construction Works and Equipment with the Scope of the Project and the Specifications and Standards. In a separate section of the Inspection Report, the Engineer in charge shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the construction of the Mines or in the Equipment. The Engineer in charge shall send a copy of its Inspection Report to the Authority and the Mine Operator within 7 (seven) days of the inspection.

- 4.4 The Engineer in charge may inspect the Mines more than once in a quarter if any lapses, defects or deficiencies require such inspections.
- 4.5 For determining that the Construction Works conform to Specifications and Standards, the Engineer in charge may require the Mine Operator to carry out, or cause to be carried out, tests on a sample basis, to be specified by the Engineer in charge in accordance with Standard Industry Practice for quality assurance.
- 4.6 The sample size of the tests, to be specified by the Engineer in charge under Paragraph 4.5, shall comprise 5% (five per cent) of the quantity or number of tests prescribed for each category or type of tests in accordance with Standard Industry Practice; provided that the Engineer in charge may, for reasons to be recorded in writing, increase the aforesaid sample size by up to 10% (ten per cent) for certain categories or types of tests.
- 4.7 The timing of tests referred to in Paragraph 4, and the criteria for acceptance/rejection of their results shall be determined by the Engineer in charge in accordance with Standard Industry Practice. The tests shall be undertaken on a random sample basis and shall be in addition to, and independent of, such tests that may be carried out by the Mine Operator for its own quality assurance in accordance with Standard Industry Practice.
- 4.8 In the event that the Mine Operator carries out any remedial works for removal or rectification of any defects or deficiencies, the Engineer in charge shall require the Mine Operator to carry out, or cause to be carried out, tests to determine that such remedial works have brought the Construction Works into conformity with the Specifications and Standards, and the provisions of this Paragraph 4 shall apply to such tests.
- 4.9 In the event that the Mine Operator fails to achieve any of the Project Milestones, the Engineer in charge shall undertake a review of the progress of construction and identify potential delays, if any. If the Engineer in charge shall determine that completion of the Mines is not feasible within the time specified in the Agreement, it shall require the Mine Operator to indicate within 15 (fifteen) days the steps proposed to be taken to expedite progress, and the period within which COD shall be achieved. Upon receipt of a report from the Mine Operator, the Engineer in charge shall review the same and send its comments to the Authority and the Mine Operator forthwith.
- 4.10 The Engineer in charge shall carry out, or cause to be carried out, all the Tests specified in Schedule-I and issue a Completion Certificate. For carrying out its functions under this Paragraph 4 and all matters incidental thereto, the Engineer in charge shall act under and in accordance with the provisions of Article 14 and Schedule-I.

5 Operation Period

- 5.1 In respect of the Drawings, Documents and Safety Report received by the Engineer in charge for its review and comments during the Operation Period, the provisions of Paragraph 3 shall apply, *mutatis mutandis*.

- 5.2 The Engineer in charge shall review the annual Maintenance Programme furnished by the Mine Operator and send its comments thereon to the Authority and the Mine Operator within 15 (fifteen) days of receipt of the Maintenance Programme.
- 5.3 The Engineer in charge shall review the monthly status report furnished by the Mine Operator and send its comments thereon to the Authority and the Mine Operator within 7 (seven) days of receipt of such report.
- 5.4 The Engineer in charge shall inspect the Mines and make out an inspection report ("**O&M Inspection Report**") setting forth an overview of the status, quality and safety of O&M including its conformity with the Key Performance Indicators, Maintenance Requirements and Safety Requirements. In a separate section of the O&M Inspection Report, the Engineer in charge shall describe in reasonable detail the lapses, defects or deficiencies observed by it in O&M of the Mines. The Engineer in charge shall send a copy of its O&M Inspection Report to the Authority and the Mine Operator within 7 (seven) days of the inspection.
- 5.5 The Engineer in charge shall in its O&M Inspection Report specify the tests, if any, that the Mine Operator shall carry out, or cause to be carried out, for the purpose of determining that the Mines are in conformity with the Maintenance Requirements. It shall monitor and review the results of such tests and the remedial measures, if any, taken by the Mine Operator in this behalf.
- 5.6 The Engineer in charge shall determine if any delay has occurred in completion of repair or remedial works in accordance with the Agreement.
- 5.7 The Engineer in charge shall examine the request of the Mine Operator for closure of any section of the Mines for undertaking maintenance/ repair thereof, keeping in view the need to minimise disruption in generation and the time required for completing such maintenance/ repair in accordance with Standard Industry Practice. It shall grant permission with such modifications, as it may deem necessary, within 3 (three) days of receiving a request from the Mine Operator. Upon expiry of the permitted period of closure, the Engineer in charge shall monitor the re-opening of such section.
- 5.8 The Engineer in charge shall inspect the geometry of the Mines once every year, and make out a report setting forth an overview of the status and safety of geometry of the Mines and its conformity with the provisions of this Agreement. In a separate section of the report, the Engineer in charge shall describe in reasonable detail the lapses, defects or deficiencies observed by it. The Engineer in charge shall send a copy of its report to the Authority and the Mine Operator within 7 (seven) days of the inspection.
- 5.9 The Engineer in charge shall conduct or cause to be conducted at the Authority's cost, testing of the samples of Coal collected from the Coal Seams from time to time for determining the grade, ash and moisture content of Coal and their conformity with the results of the tests conducted by the Mine Operator.

6 Termination

- 6.1 At any time, not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to such Termination, the Engineer in charge shall, in the

presence of a representative of the Mine Operator, inspect the Mines for determining compliance by the Mine Operator with the Divestment Requirements set forth in Clause 38.1 and, if required, cause tests to be carried out at the Mine Operator's cost for determining such compliance. If the Engineer in charge determines that the status of the Mines is such that its repair and rectification would require a larger amount than the sum set forth in Clause 39.2, it shall recommend withholding of the required amount by the Authority and the period of withholding thereof.

- 6.2 The Engineer in charge shall inspect the Mines once in every 15 (fifteen) days during a period of 90 (ninety) days after Termination for determining the liability of the Mine Operator under Article 39, in respect of the defects or deficiencies specified therein. If any such defect or deficiency is found by the Engineer in charge, it shall make a report in reasonable detail and send it forthwith to the Authority and the Mine Operator.

7 Determination of costs and time

- 7.1 The Engineer in charge shall determine the costs, and/or their reasonableness, that are required to be determined by it under the Agreement.
- 7.2 The Engineer in charge shall determine the period, or any extension thereof, that is required to be determined by it under the Agreement.

SCHEDULE - P

(See Clause 33.2.1)

PANEL OF CHARTERED ACCOUNTANTS

- 1 Panel of Chartered Accountants
(Provided in Separate Document)**

SCHEDULE - Q

(See Clause 38.4)

VESTING CERTIFICATE

- 1 Western Coalfields Limited represented by***and having its offices at Coal Estate, Civil Lines, Nagpur-440001(MS) and having its offices at Nagpur(the "**Authority**") refers to the agreement dated (the "**Agreement**") entered into between the Authority and (the "**Mine Operator**") for the procurement of Coal which, *inter alia*, includes development of the Mines at _____ Underground Mine (the "**Mines**").
- 2 The Authority hereby acknowledges compliance and fulfillment by the Mine Operator of the Divestment Requirements set forth in Clause 38.1 of the Agreement on the basis that upon issue of this Vesting Certificate, the Authority shall be deemed to have acquired, and all title and interest of the Mine Operator in or about the Mines shall be deemed to have vested unto the Authority, free from any encumbrances, charges and liens whatsoever.
- 3 Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Mine Operator to rectify and remedy any defect or deficiency in any of the Divestment Requirements and for relieving the Mine Operator in any manner of the same.
- 4 Capitalised terms used, but not defined, herein shall have the meaning ascribed to them under the Agreement.

Signed this day of ,20 at

AGREED, ACCEPTED AND SIGNED

SIGNED, SEALED AND
DELIVERED

For and on behalf of

For and on behalf of

Mine Operator by:

Authority by:

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

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

In the presence of:

1.

2.

SCHEDULE - R

(See Clause 40.3.1)

SUBSTITUTION AGREEMENT

THIS SUBSTITUTION AGREEMENT is entered into on this theday of20.... (hereinafter referred to as the "**Agreement**")

AMONGST

- 1 Western Coalfields Limited represented by***and having its offices at Coal Estate, Civil Lines, Nagpur-440001(MS) and having its offices at Nagpur(hereinafter referred to as the "**Authority**" which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns);
- 2 [****] Limited, a company incorporated under the provisions of the Companies Act, 2013 or any statutory re-enactment thereof and having its registered office at [****] (hereinafter referred to as the "**Mine Operator**", which expression shall unless repugnant to the context or meaning thereof, include its successors and permitted assigns); and
- 3 [Insert name of Lenders' Representative] and having its registered office at [****], acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the "**Lenders' Representative**", which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns).

WHEREAS:

- (A) The Authority has entered into an agreement dated [****] with the Mine Operator (the "**Contract Agreement**") for the procurement of Coal which, *inter alia*, include development of the Mines at _____ Underground Mine (the "**Mines**"), and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- (C) Senior Lenders have requested the Authority to enter into this Agreement for securing their interests through assignment, transfer and substitution of the Contract to a Nominated Company in accordance with the provisions of this Agreement and the Contract Agreement.
- (D) In order to enable implementation of the Project including its financing, construction, operation and maintenance, the Authority has agreed and undertaken to transfer and assign the Contract to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the Contract Agreement.

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

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

"Financial Default" shall mean occurrence of a material breach of the terms and conditions of the Financing Agreements or a continuous default in Debt Service by the Mine Operator for a minimum period of 3 (three) months;

"Nominated Company" shall mean a company incorporated under the provisions of the Companies Act, [1956/2013], including any re-enactment or amendment thereof, selected by the Lenders' Representative, on behalf of Senior Lenders, and proposed to the Authority for assignment/ transfer of the Contract as provided in this Agreement;

"Notice of Financial Default" shall have the meaning ascribed thereto in Clause 3.2.1; and

"Parties" shall mean the parties to this Agreement collectively and **"Party"** shall mean any of the Parties to this Agreement individually.

1.2 Interpretation

1.2.1 References to Lenders' Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders' Representative, acting for and on behalf of Senior Lenders.

1.2.2 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.

1.2.3 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Contract Agreement shall, unless repugnant to the context or meaning thereof, have the meaning ascribed to them in the Contract Agreement.

1.2.4 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Contract Agreement shall apply, *mutatis mutandis*, to this Agreement.

2 ASSIGNMENT

The Mine Operator hereby agrees to assign the rights, title and interest in the Contract to, and in favour of, the Lenders' Representative pursuant to and in accordance with the provisions of this Agreement and the Contract Agreement by way of security in respect of financing by the Senior Lenders under the Financing Agreements.

3 SUBSTITUTION OF THE MINE OPERATOR

3.1 Rights of substitution

3.1.1 Pursuant to the rights, title and interest assigned under Clause 2, the Lenders' Representative shall be entitled to substitute the Mine Operator by a Nominated Company under and in accordance with the provisions of this Agreement and the Contract Agreement.

3.1.2 The Authority hereby agrees to substitute the Mine Operator by endorsement on the Contract Agreement in favour of the Nominated Company selected by the Lenders' Representative in accordance with this Agreement. For the avoidance of doubt, the Senior Lenders or the Lenders' Representative shall not be entitled to operate and maintain the Mines as Mine Operator either individually or collectively.

3.2 Substitution upon occurrence of Financial Default

3.2.1 Upon occurrence of a Financial Default, the Lenders' Representative may issue a notice to the Mine Operator (the "**Notice of Financial Default**") along with particulars thereof, and send a copy to the Authority for its information and record. A Notice of Financial Default under this Clause 3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Mine Operator for the purposes of this Agreement.

3.2.2 Upon issue of a Notice of Financial Default hereunder, the Lenders' Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing Agreements, substitute the Mine Operator by a Nominated Company in accordance with the provisions of this Agreement.

3.2.3 At any time after the Lenders' Representative has issued a Notice of Financial Default, it may by notice require the Authority to suspend all the rights of the Mine Operator and undertake the operation and maintenance of the Mines in accordance with the provisions of Clause 36 of the Contract Agreement, and upon receipt of such notice, the Authority shall undertake Suspension under and in accordance with the provisions of the Contract Agreement. The aforesaid Suspension shall be revoked upon substitution of the Mine Operator by a Nominated Company, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such Suspension, the Authority may terminate the Contract Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Contract Agreement; provided that upon written request from the Lenders' Representative and the Mine Operator, the Authority may extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days.

3.3 Substitution upon occurrence of Mine Operator Default

3.3.1 Upon occurrence of a Mine Operator Default, the Authority shall by a notice inform the Lenders' Representative of its intention to issue a Termination Notice and grant 15 (fifteen) days' time to the Lenders' Representative to make a representation, stating the intention to substitute the Mine Operator by a Nominated Company.

3.3.2 In the event that the Lenders' Representative makes a representation to the Authority within the period of 15 (fifteen) days specified in Clause 3.3.1, stating that it intends to substitute the Mine Operator by a Nominated Company, the Lenders' Representative shall be entitled to undertake and complete the substitution of the Mine Operator by a Nominated Company in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) days from the date of such representation, and the Authority shall either withhold Termination or undertake Suspension for the aforesaid period of 180 (one hundred and eighty) days; provided that upon written request from the Lenders' Representative and the Mine Operator, the Authority may extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days; provided further that the Lenders' Representative may at any time withdraw its representation hereunder and upon such withdrawal, the Authority may terminate the Contract Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Contract Agreement .

3.4 Procedure for substitution

3.4.1 The Authority and the Mine Operator hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Authority under Clause 3.3.2, as the case may be, the Lenders' Representative may, without prejudice to any other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the transfer of the Contract to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Mine Operator towards the Authority under the Contract Agreement and towards the Senior Lenders under the Financing Agreements.

3.4.2 To be eligible for substitution in place of the Mine Operator, the Nominated Company shall be required to fulfill the eligibility criteria that were laid down by the Authority for selecting the Bidders for award of the Contract; provided that the Lenders' Representative may represent to the Authority that all or any of such criteria may be waived in the interest of the Project, and if the Authority determines that such waiver shall not have any Material Adverse Effect on the Project, it may waive all or any of such eligibility criteria.

3.4.3 Upon selection of a Nominated Company, the Lenders' Representative shall, request the Authority to:

- (a) accede to transfer to the Nominated Company the right to construct, operate and maintain the Mines in accordance with the provisions of the Contract Agreement;
- (b) endorse and transfer the Contract to the Nominated Company, on the same terms and conditions, for the residual Contract Period; and
- (c) enter into a substitution agreement with the Lenders' Representative and the Nominated Company on the same terms as are contained in this Agreement.

3.4.4 If the Authority has any objection to the transfer of Contract in favour of the Nominated Company in accordance with this Agreement, it shall within 15 (fifteen) days from the date of proposal made by the Lenders' Representative, give a reasoned order after hearing the Lenders' Representative. If no such objection is raised by the Authority, the Nominated Company shall be deemed to have been accepted. The

Authority shall thereupon transfer and endorse the Contract within 15 (fifteen) days of its acceptance/deemed acceptance of the Nominated Company; provided that in the event of such objection by the Authority, the Lenders' Representative may propose another Nominated Company whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Nominated Company in place of the Mine Operator.

- 3.4.5 The transfer of Contract hereunder to a Nominated Company may, notwithstanding anything to the contrary in this Agreement and the Contract Agreement, be undertaken by transfer of no less than 75% (seventy-five per cent) of the equity of the Mine Operator to the Nominated Company, and upon such transfer hereunder, the Mine Operator shall be deemed to be the Nominated Company under and in accordance with the provisions of this Agreement and the Contract Agreement.

3.5 Selection to be binding

The decision of the Lenders' Representative and the Authority in selection of the Nominated Company shall be final and binding on the Mine Operator. The Mine Operator irrevocably agrees and waives any right to challenge the actions of the Lenders' Representative or the Senior Lenders or the Authority taken pursuant to this Agreement including the transfer/ assignment of the Contract in favour of the Nominated Company. The Mine Operator agrees and confirms that it shall not have any right to seek revaluation of assets of the Project or its shares. It is hereby acknowledged by the Parties that the rights of the Lenders' Representative are irrevocable and shall not be contested in any proceedings before any court or authority and the Mine Operator shall have no right or remedy to prevent, obstruct or restrain the Authority or the Lenders' Representative from effecting or causing the transfer by substitution and endorsement of the Contract as requested by the Lenders' Representative.

4 PROJECT AGREEMENTS

The Mine Operator shall ensure and procure that each Project Agreement contains provisions that entitle the Nominated Company to step into such Project Agreement, in its discretion, in place and substitution of the Mine Operator in the event of such Nominated Company's assumption of the liabilities and obligations of the Mine Operator under the Contract Agreement.

5 TERMINATION OF CONTRACT AGREEMENT

5.1 Termination upon occurrence of Financial Default

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the Authority to terminate the Contract Agreement forthwith, and upon receipt of such notice, the Authority shall undertake Termination under and in accordance with the provisions of Clause 37 of the Contract Agreement.

5.2 Termination when no Nominated Company is selected

In the event that no Nominated Company acceptable to the Authority is selected and recommended by the Lenders' Representative within the period of 180 (one hundred

and eighty) days or any extension thereof as set forth in Clause 3.3.2, the Authority may terminate the Contract Agreement forthwith in accordance with the provisions thereof.

6 DURATION OF THE AGREEMENT

6.1 Duration of the Agreement

This Agreement shall come into force from the date hereof and shall expire at the earliest to occur of the following events:

- (a) termination of this Agreement; or
- (b) no sum remains to be advanced, or is outstanding to the Senior Lenders, under the Financing Agreements.

7 INDEMNITY

7.1 General indemnity

7.1.1 The Mine Operator will indemnify, defend and hold the Authority and the Lenders' Representative harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Mine Operator of any of its obligations under this Agreement or on account of failure of the Mine Operator to comply with Applicable Laws and Applicable Permits.

7.1.2 The Authority will indemnify, defend and hold the Mine Operator harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfill any of its obligations under this Agreement, materially and adversely affecting the performance of the Mine Operator's obligations under the Contract Agreement or this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.

7.1.3 The Lenders' Representative will indemnify, defend and hold the Mine Operator harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Lenders' Representative to fulfill its obligations under this Agreement, materially and adversely affecting the performance of the Mine Operator's obligations under the Contract Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Lenders' Representative, its officers, servants and agents.

7.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 7.1 or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the

claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

8 DISPUTE RESOLUTION

- 8.1 Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to arbitration to a board of arbitrators comprising of one nominee of each of the Authority, the Mine Operator and the Lenders' Representative. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi and shall be subject to provisions of the Arbitration and Conciliation Act, 1996.
- 8.2 The board of arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be Nagpur, Maharashtra and the language of arbitration shall be English.

9 MISCELLANEOUS PROVISIONS

9.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and, subject to the provisions of Clause 8 above, the courts at Nagpur, Maharashtra shall have jurisdiction over all matters arising out of or relating to this Agreement.

9.2 Waiver of sovereign immunity

The Authority unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purposes;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Authority with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgment or award against it in any such proceedings and to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgment that may be made or given in connection therewith).

9.3 Priority of agreements

In the event of any conflict between the Contract Agreement and this Agreement, the provisions contained in the Contract Agreement shall prevail over this Agreement.

9.4 Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if it is in writing and signed by the duly authorised representatives of the Parties.

9.5 Waiver

9.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of, or obligations, under this Agreement:

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof, or of, other provisions of, or obligations under this Agreement;
- (b) shall not be effective unless, it is in writing and executed by a duly authorised representative of the Party; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

9.5.2 Neither the failure by a Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

9.6 No third party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

9.7 Survival

9.7.1 Termination of this Agreement:

- (a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and
- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

9.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

9.8 Severability

If for any reason whatsoever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provision shall not be subject to dispute resolution under Clause 8 of this Agreement or otherwise.

9.9 Successors and assigns

This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

9.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service to each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be sent. Such change shall be effective when all the Parties have notice of it.

9.11 Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

9.12 Authorised representatives

Each of the Parties shall by notice in writing designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

9.13 Original Document

This Agreement may be executed in three counterparts, each of which when executed and delivered shall constitute an original of this Agreement.

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

THE COMMON SEAL OF MINE OPERATOR has been affixed pursuant to the resolution passed by the Board of Directors of the Mine Operator at its meeting held on the day of 20.... hereunto affixed in the presence of, Director, [who has signed these presents in token thereof and, Company Secretary / Authorised Officer who has countersigned the same in token thereof[§]]:

SIGNED, SEALED AND DELIVERED For and on behalf of AUTHORITY by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

SIGNED, SEALED AND DELIVERED

For and on behalf of SENIOR LENDERS by the Lenders' Representative:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

In the presence of:

- 1. _____
- 2. _____

[§] To be affixed in accordance with the articles of association of the Mine Operator and the resolution passed by its Board of Directors.