

No. 48023/1/2015-CA-II

**Government of India
Ministry of Coal**

Shastri Bhawan, New Delhi
Dated the 22nd April, 2015

To

The Chief Secretaries / Administrators of all the States/Union Territories.

Sub : Draft Model Contract Agreement for Coal Mining-Reg.

Sir,

In reference to the Coal Blocks auctioned/allocated under the Coal Mines (Special Provisions) Act, 2015 and on the request of many State Governments, a draft Model Contract Agreement for coal mining has been prepared by the Ministry.

2. All the State Governments/Union Territories are therefore requested to submit their comments/views to this Ministry on the said document by 29th April, 2015.

Yours faithfully



(Kishore Kumar)

Under Secretary to the Government of India

Email:soca2.moc@nic.in

Copy To: NIC Cell for uploading the same on the website of MoC.

Model Contract Agreement

for

Coal Mining

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PART I
PRELIMINARY

COAL MINING AGREEMENT¹

THIS AGREEMENT is entered into on {the day of20

BETWEEN

1 [****] {name of the company} represented by *** and having its offices at (hereinafter referred to as the ["**Authority**"]², which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns), of One Part;

AND

2 [****] Limited, a company incorporated under the provisions of the Companies Act, 1956/2013 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 Other Part.

WHEREAS:

(A) The Authority had resolved to procure Coal through a contract for, *inter alia*, development of the mines at [****] (the "**Mines**") in accordance with the terms and conditions set forth in this agreement (the "**Agreement**").

(B) The Authority had accordingly invited proposals by its Request for Qualification

¹ Instructions for project-specific customisation of this document

This Model Contract Agreement (the "MCA") may be customised for project-specific use in accordance with the instructions below:

Note 1: Serially numbered footnotes in this MCA are for guidance of the Authority and should be omitted from the draft Contract Agreement forming part of Bidding Documents.

Note 2: All project-specific provisions in this MCA have been enclosed in square parenthesis and may be modified, as necessary, before issuing the draft Contract Agreement to Bidders.

Note 3: The asterisks in this MCA should be substituted by project-specific particulars before issuing the draft Contract Agreement to Bidders.

Note 4: The provisions in curly parenthesis are to be retained in the draft Contract Agreement forming part of Bidding Documents and shall be suitably modified after the issue of Letter of Award (LOA) in order to reflect the bid specific particulars in the Contract Agreement.

Note 5: Blank spaces are to be retained in the draft Contract Agreement and shall be suitably filled after the issue of LOA in order to reflect bid specific particulars in the Contract Agreement. However, blank spaces shall be retained in the Schedules E to R, which contain formats that are to be used after the Contract Agreement is executed.

Note 6: Footnotes marked "£" or in other non-numerical characters are to be retained in the draft Contract Agreement. These footnotes are for guidance of the selected Bidders and shall be omitted before executing the Contract Agreement. However, footnotes marked \$ or \$\$ shall be retained in the Contract Agreement as a part thereof.

² Where the entity executing this Agreement is a company / corporation, utilising the name of the Company / corporation rather than 'authority' could be considered.

No. [****] (the "**Request for Qualification**" or "**RFQ**") for short listing of bidders and had shortlisted certain bidders including, *inter alia*, the {the selected bidder/consortium comprising [****] and [****] (collectively the "**Consortium**") with [****] as its lead member (the "**Lead Member**")}.

- (C) The Authority had prescribed the technical and commercial terms and conditions, and invited bids (the "**Request for Proposal**" or "**RFP**") from the bidders shortlisted pursuant to the RFQ for undertaking the Project.
- (D) After evaluation of the bids received, the Authority had accepted the bid of the {selected bidder/ Consortium} and issued its Letter of Award No [****] dated [****] (hereinafter called the "**LOA**") to the {selected bidder/ Consortium} requiring, *inter alia*, the execution of this Agreement within 30 (thirty) days of the date of issue thereof.
- (E) The selected bidder/ Consortium {has since promoted and incorporated the Mine Operator, being [****] as a limited liability company under the Companies Act 2013, and} has requested the Authority to accept the Mine Operator as the entity which shall undertake and perform the obligations and exercise the rights of the {selected bidder/ Consortium under the LOA,} including the obligation to enter into this Agreement pursuant to the LOA for undertaking the Project.
- (F) {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}.
- (G) 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.

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 "**development**" include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, upgradation and other activities incidental thereto, and "**develop**" shall be construed accordingly;
- (h) references to "**excavation**" include, unless the context otherwise requires,

cutting, 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 for lifting and transportation thereof to the Coal Depot, and "**excavate**" shall be construed accordingly;

- (i) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (j) any reference to "**hour**" shall mean a period of 60 (sixty) minutes;
- (k) any reference to "**day**" shall mean a reference to a calendar day;
- (l) references to a "**business day**" shall be construed as a reference to a day (other than a Sunday) on which banks in the State in which the Project is situate are generally open for business;
- (m) any reference to "**month**" shall mean a reference to a calendar month as per the Gregorian calendar;
- (n) 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;
- (o) 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;
- (p) 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;
- (q) the words importing singular shall include plural and vice versa;
- (r) references to any gender shall include the other and the neutral gender;
- (s) "**kWh**" shall mean kilowatt hour and "**kcal**" shall mean kilocalories;
- (t) "**lakh**" shall mean a hundred thousand (100,000) and "**crore**" means ten million (10,000,000);
- (u) "**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;
- (v) references to the "**winding-up**", "**dissolution**", "**insolvency**", or "**reorganisation**" 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-organisation, dissolution, arrangement, protection or relief of debtors;
- (w) save and except as otherwise provided in this Agreement, any reference,

at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this sub-clause (w) shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;

- (x) any agreement, consent, approval, authorisation, 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;
- (y) 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;
- (z) 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;
- (za) 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**"); and
- (zb) 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.

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 Independent Engineer shall be provided free of cost and in three copies, and if the Authority and/or the Independent Engineer 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 The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.

1.2.4 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**") shall mean and include, during the Contract Period:

- (a) development of Mines on the Site specified in Schedule-A, in accordance with the provisions of Schedule-B and Schedule-C, and conforming to the Specifications and Standards and the Mining Plan set forth in Schedule-D;
- (b) operation and maintenance of Mines in accordance with the provisions of this Agreement;
- (c) excavation and Delivery of Coal in accordance with the provisions of this Agreement; and
- (d) 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.

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, Applicable Laws and the Applicable Permits, the Authority hereby appoints the Mine Operator, as the mine operator to develop and operate the Mines and to excavate Coal for Delivery thereof to the Authority for a period of [15 (fifteen)] years commencing from the Appointed Date, and the Mine Operator hereby accepts such appointment and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein.

Provided that, not later than 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 or cannot be excavated on a commercially viable basis.

3.1.2 Subject to and in accordance with the provisions of this Agreement, the Mine Operator shall be obliged 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) finance and develop the Mines;
- (c) manage, operate and maintain the Mines in accordance with this Agreement;
- (d) excavate Coal for Delivery thereof to the Authority under and in accordance with the provisions of this Agreement;
- (e) receive Mining Charge from the Authority in respect of excavation and Delivery of Coal subject to and in accordance with this Agreement;
- (f) perform and fulfill all of the Mine Operator's obligations under and in accordance with this Agreement;
- (g) save as otherwise expressly provided in this Agreement, 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

- (h) neither assign, transfer or sub-let or create any lien or Encumbrance on this Agreement, hereby granted or on the whole or any part of the Mines, nor sell, transfer, exchange, lease or part possession thereof, save and except as expressly permitted by this Agreement.

3.2 Substitution of the Authority

The Parties expressly agree that the Authority may, in pursuance of any re-organisation 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 Applicable Laws. Provided however that, prior to any substitution hereunder, the Parties shall, on a best endeavour 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, credit enhancement shall be arranged by the substituted entity to bridge the gap.

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 may, upon providing the Performance Security to the Authority in accordance with Article 9, at any time after 30 (thirty) days from the date of provision of such Performance Security, by notice require the Authority to satisfy any or all of the following Conditions Precedent set forth in this Clause 4.1.2 within a period not exceeding 120 (one hundred and twenty) days from the date of the said notice:

- (a) procure the issuance of notifications for land acquisition under section 11 of Coal Bearing Areas (Acquisition & Development) Act, 1957 or section 11 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, as the case may be, in relation to the Site;
- (b) procure issuance of the environmental clearance from the Ministry of Environment & Forests, Government of India;
- (c) procure issuance of the forest clearance from the Ministry of Environment & Forests, Government of India;
- (d) procure approval of the Mining Plan in accordance with Applicable Laws; and
- (e) procure approval of the plan for Rehabilitation and Resettlement in accordance with Applicable Laws;

Provided that, upon request in writing by the Authority, the Mine Operator may, in its discretion, waive any of the Conditions Precedent set forth in this Clause 4.1.2 or grant extension of time, not exceeding 180 (one hundred and eighty) days for fulfillment thereof, as the case may be.

Provided further that, in respect of the approvals specified above, the Authority shall be entitled to such extension of time as may be reasonably required for compliance of the procedures specified under Applicable Laws for grant of such approvals.

4.1.3 The Mine Operator shall satisfy the following Conditions Precedent within 180

(one hundred and eighty) days from the date of this Agreement:

- (a) provide Performance Security to the Authority in accordance with Article 9;
- (b) execute and procure execution of the Substitution Agreement, if applicable;
- (c) procure all the Applicable Permits, specified in Part-I of Schedule-E unconditionally, such that all such Applicable Permits are in full force and effect, or if the effectiveness of such Applicable Permits is subject to fulfillment of any conditions, then the Mine Operator shall procure that all such conditions required to be fulfilled by the date specified therein have been fulfilled in full such that all such Applicable Permits are in full force and effect;
- (d) 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;
- (e) 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;
- (f) deliver to the Authority {from the selected bidder/Consortium Members, their respective} confirmation on the correctness of the representations and warranties set forth in sub-clauses (k), (l) and (m) of Clause 7.1; and
- (g) deliver to the Authority, a legal opinion from the legal counsel of the Mine Operator with respect to the authority of the Mine Operator to enter into this Agreement and the enforceability of the provisions thereof.

Provided that upon request in writing by the Mine Operator, the Authority may, in its discretion, waive any of the Conditions Precedent set forth in this Clause 4.1.3 or grant extension of time not exceeding 180 (one hundred and eighty) days for fulfillment thereof, as the case may be. For the avoidance of doubt, the Authority may, in its sole discretion, grant any waiver of the Conditions Precedent set forth in this Clause 4.1.3 with such conditions as it may deem fit.

- 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 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**"). 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 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 (i) the Authority 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 (ii) the delay has not occurred as a result of breach 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 day's delay until the fulfillment of such Conditions Precedent, subject to a maximum of 20% (twenty per cent) of the Performance Security.

4.3 Damages for delay by the Mine Operator

In the event that (i) the Mine Operator 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 (ii) the delay has not occurred as a result of failure to fulfill the obligations under Clause 4.1.2 or other 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 day's delay until the fulfillment of such Conditions Precedent. Provided, however, that the Damages payable hereunder shall be subject to a maximum amount equal to 30% (thirty per cent) of the Performance Security and upon reaching such maximum, the Authority may, in its sole discretion, terminate the Agreement.

4.4 Commencement of Contract Period

This Contract Period shall commence from the Appointed Date.

4.5 Deemed Termination upon delay

Without prejudice to the provisions of Clauses 4.2 and 4.3 and Article 9, 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 and operation of the Mines for excavation and Delivery 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 and as a reasonable and prudent person.
- 5.1.4 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 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 development and operation of the Mines and excavation of Coal;
 - (c) perform and fulfill its obligations under the Financing Agreements;
 - (d) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;
 - (e) 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;
 - (f) 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;
 - (g) procure 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;

- (h) support, cooperate with and facilitate the Authority in the implementation and operation of the Project in accordance with the provisions of this Agreement;
- (i) take all reasonable precautions for the prevention of accidents at the Mines and provide all reasonable assistance and emergency medical aid to accident victims; and
- (j) transfer the Project Assets to the Authority upon Termination of this Agreement, in accordance with the provisions thereof.

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 agreement shall excuse the Mine Operator from its obligations or liability hereunder.

5.2.2 The Mine Operator shall submit to the Authority the drafts of all Project Agreements, or any amendments or replacements thereto, for its review and comments, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Mine Operator within 15 (fifteen) days of the receipt of such drafts. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Mine Operator shall submit to the Authority a true copy thereof, duly attested by a director of the Mine Operator, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that any failure or omission of the Authority to review and/ or comment hereunder shall not be construed or deemed as acceptance of any such agreement or document by the Authority. No review and/or observation of the Authority and/or its failure to review and/or convey its observations on any document shall relieve the Mine Operator of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner whatsoever.

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, and in the event that any replacement or amendment is made without such consent, 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-licence, assign 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, in its discretion, deny if such sub-licence, assignment or Encumbrance has or may have a Material Adverse Effect on the rights and obligations of the Authority under this Agreement or 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 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 not exceeding 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 being final, conclusive and binding on the Mine Operator, and the Mine Operator undertakes that it shall not give effect to any such selection or contract without prior approval of the Authority. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Mine Operator or its 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 Notwithstanding anything to the contrary contained in this Agreement, the Mine Operator agrees and acknowledges that:

- (a) all acquisitions of Equity by an acquirer, either by himself 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 himself 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 otherwise 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 5.3.2:

- (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 as 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 situate in India or abroad), the Equity of the Mine Operator, not less than half of the directors on the board of directors of the Mine Operator or of any company, directly or indirectly, whether situate in India or abroad, having 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.

5.4 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 in 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

The Mine Operator shall pay, at all times during the subsistence of this Agreement, all Taxes, levies, duties, royalties, cesses and all other statutory charges payable in respect of excavation and Delivery thereof. Provided however, that all payments made by the Mine Operator with respect to such Taxes, levies, duties, royalties, cesses and other statutory charges shall be reimbursed, as applicable, by the Authority upon receipt of particulars thereof.

5.7 Obligations relating to an Owner

Subject to the provisions of this Agreement, the Authority shall be the Owner of the Mines for the purposes of the Mines Act, 1952. 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.

5.8 Obligations relating to the Manager and employees

5.8.1 The Authority 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 Mines Act, 1952. The Authority shall either by itself or through its officials also be entitled to:

(a) procure appointment of safety officers, assistant managers, ventilation officers, engineers, surveyors, welfare officers, other officials and competent persons; and

(b) provide for the safety and proper discipline of the persons employed in the Mines.

5.8.2 Notwithstanding the appointment of the Manager, the Agent and other officials by the Authority, the Mine Operator and its personnel shall continue to be responsible and liable for compliance with Applicable Laws and this Agreement and in any event, the liability and responsibilities of the Mine Operator shall be no less than that of the Agent and the Manager.

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.

5.9 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 provided by the Mine Operator to the Authority simultaneously.

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 previous 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 Mining Plan

The Mine Operator shall at all times conform with the provisions of the Mining Plan as specified in Schedule-D, or any modification thereof, as may be approved in accordance with Applicable Laws.

5.12 Obligations after closure of Mining

In the event that the Mine Operator is required to undertake a final mine closure of the Mines during the Contract Period, the Mine Operator shall, [at its sole cost and expense]³, undertake all activities for final mine closure of the Mines and restoration of the Site in accordance with the requirements of this Agreement, the approved Mine Closure Plan, the Mining Plan, Applicable Laws and Standard Industry Practice. 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.

5.13 Obligations relating to progressive restoration

The Mine Operator shall, in conformity with approved 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 in such part.

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

³ The Authority may determine at whose cost such mine closure (during the Contract Period) shall be undertaken.

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.

5.14 [Clean Development Mechanism]

[The Mine Operator shall endeavour to earn revenues or other benefits in relation to, or arising out of this Project, under the Clean Development Mechanism (CDM) of Kyoto Protocol of United Nations Framework Convention on Climate Change (UNFCCC) or any other such mechanism. The Mine Operator expressly agrees and undertakes to transfer, free of cost, forthwith to the Authority, one-half of all such revenues, credits or other benefits accruing to, or earned by it, from such mechanism.]

ARTICLE 6

OBLIGATIONS OF THE AUTHORITY

6.1 Obligations of the Authority

- 6.1.1 Except as otherwise provided in this Agreement, the Authority shall, at its own cost and expense undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 6.1.2 The Authority agrees to provide support to the Mine Operator and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and Applicable Laws, the following:
- (a) procure access to the Site;
 - (b) provide connectivity to the rail network, road network and electricity grid in accordance with the provisions of this Agreement;
 - (c) depute its representatives for participation in public hearings for the purposes of procuring environmental and forest clearance in accordance with Applicable Laws;
 - (d) procure issuance of notification for land acquisition for the Project under section 11 of Coal Bearing Areas (Acquisition & Development) Act, 1957 or section 11 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, as applicable, in accordance with the provisions of this Agreement;
 - (e) 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 favourable to the Mine Operator than those generally available to commercial customers receiving substantially equivalent services;
 - (f) not do or omit to do any act, deed or thing which may in any manner be violative 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.

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) 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;
- (d) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof;
- (e) 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;
- (f) 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;
- (g) 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 member of the Consortium} 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;
- (h) there are no actions, suits, proceedings, or investigations pending or, 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;
- (i) 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;

- (j) 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;
- (k) 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}, together with {its/their} Associates, shall hold not less than 51% (fifty one per cent) of its issued and paid up Equity; and that each Consortium Member whose technical and financial capacity was evaluated for the purposes of pre-qualification and short-listing in response to the Request for Qualification shall, until the 2nd (second) anniversary of COD, hold not less than 26% (twenty-six per cent) of its issued and paid up Equity which shall also be no less than 5% (five per cent) of the Total Project Cost; and in no case shall the Equity held by the {selected bidder/ Consortium Members} together with {its/their} Associates be less than 15% (fifteen percent) of the Total Project Cost.
- (l) {the selected bidder/ Consortium Members} and {its/their} Associates 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;
- (m) {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 accepted the terms and conditions set forth in this Agreement;
- (n) 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;
- (o) 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 Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (p) 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;

- (q) all information provided by the {selected bidder/ Consortium Members} in response to the Request for Qualification and Request for Proposal or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects;
- (r) all undertakings and obligations of the {selected bidder/ Consortium Members} and the Mine Operator arising from the Request for Qualification and Request for Proposal 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.

7.4 Allotment Agreement

The Mine Operator confirms that it has read and understood the terms of the allotment agreement dated [●] entered into between the Government of India and the Authority (the “**Allotment Agreement**”). The Mine Operator further agrees and undertakes that it shall observe and comply with the terms and conditions of the Allotment Agreement, and shall ensure that the Contractors, if any, observe and comply with the terms and conditions of the Allotment 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 Qualification, Request for Proposal, Scope of the Project, Specifications and Standards, Site, existing structures, 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, no later than 90 (ninety) days from the date of this Agreement, an irrevocable, unconditional, first demand bank guarantee from a Bank for a sum of [Rs. [****]] (Rupees [****] crore)⁴ substantially in the form set forth in Schedule-F (the "**Performance Security**"); provided that upon occurrence of COD, a replacement Performance Security shall be provided by the Mine Operator to the Authority in accordance with the following requirements and for the values set out below⁵:

- (i) at least 30 (thirty) days prior to each anniversary of COD, the amount of the Performance Security shall be increased by a sum of [Rs. [****]] (Rupees [****])⁶ till such anniversary of COD when the amount of Performance Security reaches a sum of [Rs. [****]] (Rupees [****] crores)⁷,
- (ii) thereafter, at least 30 (thirty) days prior to each anniversary of COD, the amount of the Performance Security shall be decreased by a sum of [Rs. [****]] (Rupees [****])⁸, till such anniversary of COD when the amount of Performance Security reaches a sum of [Rs. [****]] (Rupees [****] crores)⁹, and
- (iii) thereafter, the Performance Security shall be maintained for a sum of [Rs. [****]] (Rupees [****] crores)¹⁰ until the date that occurs 90 (ninety) days after the expiry of the Contract Period.

For the avoidance of doubt, it is clarified that the Performance Security shall in no event be for a sum less than Rs. [****] (Rupees [****])¹¹ or more than Rs. [****] (Rupees [****])¹².

Provided that, in the event that the initial Contract Period is extended pursuant to

⁴ To be fixed at a level equal to approximately 3% (three percent) of the Total Project Cost.

⁵ It is expected that the contract (proposed for 15 years) will cover 2 equipment life cycles (on the assumption that an equipment life cycle is approximately 6-7 years). In order to avoid a situation where the Mine Operator may terminate the contract at a time when it has recovered most of its investment in the equipment, a curve in the performance security is proposed. This is to ensure that the value of the performance security would be at its highest when the value of the equipment would be at its lowest.

⁶ To be fixed at a level equal to approximately 1.5% (one point five percent) of the Total Project Cost.

⁷ To be fixed at a level equal to approximately 13.5% (thirteen point five percent) of the Total Project Cost.

⁸ To be fixed at a level equal to approximately 1.5% (one point five percent) of the Total Project Cost.

⁹ To be fixed at a level equal to approximately 3% (three percent) of the Total Project Cost.

¹⁰ To be fixed at a level equal to approximately 3% (three percent) of the Total Project Cost.

¹¹ To be fixed at a level equal to approximately 3% (three percent) of the Total Project Cost.

¹² To be fixed at a level equal to approximately 13.5% (thirteen point five percent) of the Total Project Cost.

Clause 3.1.1 (“**Extended Contract Period**”) the Mine Operator shall furnish a replacement Performance Security for a sum of [Rs. [****] (Rupees [****] crore)]¹³, no later than 90 (ninety) days prior to the commencement of the Extended Contract Period, and for each subsequent year thereafter, a replacement Performance Security shall be provided by the Mine Operator to the Authority in accordance with the following requirements and for the values set out below:

- (i) at least 30 (thirty) days prior to each anniversary of the first day of the Extended Contract Period and upto the first half of the Extended Contract Period, the amount of the Performance Security shall be increased by a sum of [Rs. [****] (Rupees [****])] ¹⁴;
- (ii) thereafter, at least 30 (thirty) days prior to each anniversary of the first day of the Extended Contract Period and for the remaining half of the Extended Contract Period, the amount of the Performance Security shall be decreased by a sum of [Rs. [****] (Rupees [****])] ¹⁵. For the avoidance of doubt, it is clarified that the Performance Security shall in no event be for a sum less than [Rs. [****] (Rupees [****])] ¹⁶ during the Extended Contract Period.

9.1.2 The Mine Operator shall keep 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, until the date that occurs 90 (ninety) days after the expiry of the Contract Period (or the Extended Contract Period, if applicable).

9.1.3 At least 30 (thirty) days prior to expiry of a Performance Security, the Mine Operator shall furnish a 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 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, (i) 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 (ii) 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

¹³ To be fixed at a level equal to approximately 3% (three percent) of the Total Project Cost.

¹⁴ To be fixed at a level equal to approximately 1.5% (one point five percent) of the Total Project Cost.

¹⁵ To be fixed at a level equal to approximately 1.5% (one point five percent) of the Total Project Cost.

¹⁶ To be fixed at a level equal to approximately 3% (three percent) of the Total Project Cost.

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 this Agreement, the Authority may, at its option, encash 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 Site shall be divided into [***] number of blocks as demarcated in Schedule-A in conformity with the respective phases specified therein. The 1st (first) block shall comprise the land on which the [Rail Track,] township, Coal Depot, Coal Handling Plant and Project Facilities are to be constructed and shall include a mining area sufficient for excavation of Coal and dumping of Overburden in accordance with the Annual Production Programme and the terms of this Agreement, and in respect of which the access to Site shall be granted by the Authority to the Mine Operator commencing from the Appointed Date.

10.2 Access to the Site

10.2.1 During the Development Period, the Authority hereby grants to the Mine Operator access to the Site for carrying out any surveys, investigations and soil tests that the Mine Operator may deem necessary during the Contract Period, it being expressly agreed and understood that the Authority shall have no liability whatsoever in respect of the surveys, 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.

10.2.2 In consideration of 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 all the land (along with any buildings, constructions or immovable assets, if any, thereon) comprising the real estate, which is more particularly described, delineated and shown in Schedule A hereto (the "Site"), on an "as is where is" basis to 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.

10.2.3 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.

10.2.4 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.

- 10.2.5 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 Authority shall be responsible for taking over physical possession of the Site and undertaking the associated activities in respect thereof at its own cost and expense.

- 10.3.2 Until the Transfer Date, the Mine Operator shall maintain a round-the-clock vigil over the Site 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 The Authority shall, if so required, procure any additional land required for any ancillary buildings in accordance with this Agreement and upon procurement, such land shall vest in the Authority and form part of the Site; provided that the Authority shall be responsible for acquiring such additional land in accordance with Applicable Laws, at its cost and such additional land so acquired by the Authority hereunder shall be deemed form part of the Site.

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 property. For the avoidance of doubt, it is agreed that any reasonable expenses incurred by the Mine Operator hereunder shall be reimbursed by the Authority. 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 Resettlement and Rehabilitation of PAPs

The Authority shall be responsible for undertaking the Rehabilitation and Resettlement of the PAPs in accordance with Applicable Laws at its own cost and expense.

10.8 Employment of PAPs

Without prejudice to the provisions of Clause 10.7, the Authority shall employ such PAPs as are eligible for employment as per the R&R Policy, on such terms and conditions as may be determined by the Authority in accordance with the R&R Policy.

ARTICLE 11

UTILITIES, ROADS AND TREES

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 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 a Material Adverse Effect on the development, operation or maintenance of the Mines. The cost of such shifting shall be borne by the Authority or by the entity owning such utility, if the Authority so directs, and in the event of any delay in shifting thereof, the Mine Operator shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay on the part of the entity owning such electric lines, water pipes or telephone cables, as the case may be.

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 obligation to operate and maintain the Mines in accordance with this Agreement and any damage caused by such use shall be restored forthwith.

ARTICLE 12

DEVELOPMENT OF THE MINES

12.1 Development of Mines

12.1.1 The Mine Operator shall design, finance, develop and operate the Mines and Equipment having a capacity to excavate and Deliver the Annual Capacity in accordance with the Annual Production Programme.

12.1.2 On or after the Appointed Date, the Mine Operator shall undertake development of the Mines and installation of Equipment as specified in Schedule-B and Schedule-C, and in conformity with the Specifications and Standards set forth in Schedule-D.

12.1.3 The Mines shall have the following and such other Equipment and facilities, conforming with 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, drills, dozers, loaders, graders, etc;
- (d) power distribution substation/system;
- (e) effluent treatment system;
- (f) storage space for equipment and materials;
- (g) machine shop for machining and maintenance of equipment and machinery;
- (h) calibration laboratory to check all tools, instruments, jigs and fixtures to ensure product conformity with Specifications and Standards;
- (i) necessary facilities for testing of Coal;
- (j) standby power back-up facility suitable to its requirements;
- (k) an administrative office, canteen, rest rooms and staff facilities as required under Applicable Laws;
- (l) internal telecommunication infrastructure catering to basic telephony and other value added telecom services;
- (m) drainage system for storm water drainage;
- (n) sewage waste water disposal system; and

(o) [Washery]

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

12.1.5 [The development of Mines shall include construction of a dedicated rail track, including electric lines and electrical plants, for operation of trains from the Mines to the railway network, as specified in Schedule-B, and in conformity with the Specifications and Standards set forth in Schedule-D (the "**Rail Track**").]

12.2 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, excavation methodology, quality assurance procedures and excavation time schedule for development of the Mines in accordance with the Project Completion Schedule set forth in Schedule-G;
- (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.

12.3 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 Project Completion Schedule, three copies each of all Drawings to the Independent Engineer for review.
- (b) By submitting the Drawings for review to the Independent Engineer, 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 Standard Industry Practice.
- (c) Within 15 (fifteen) days of the receipt of the Drawings, the Independent Engineer 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 Independent Engineer 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 Independent Engineer 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 Independent Engineer for review. The Independent Engineer shall give its observations, if any, within 7 (seven) days of receipt of the revised Drawings.
- (e) No review and/or observation of the Independent Engineer 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 Independent Engineer 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 Independent Engineer a complete set of as-built Drawings, in 2 (two) hard copies and in micro film form 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.

12.4 Scheduled Completion Date

- 12.4.1 The Mine Operator agrees and undertakes that development of Mines for excavation and Delivery of Coal shall be undertaken in a manner such that (i) the Commercial Operations Date occurs on or prior to [***] days from the Appointed Date (“**Scheduled COD**”); and (ii) the Completion occurs on or prior to [***] days from the Appointed Date (“**Scheduled Completion Date**”).
- 12.4.2 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 in Schedule-G, 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 0.5% (zero point five per cent) of the amount of Performance Security for delay of each day 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, the dates set forth in Schedule-G shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if Schedule-G has been amended as above. For the avoidance of doubt, it is agreed that recovery of Damages under this Clause 12.4.2 shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.

12.5 Provision of infrastructure

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

- (a) a [132 kV/ 33 kV] (one hundred thirty two kilovolt to thirty three kilovolt) 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; and
- (c) rail connection between the Coal Depot and the railway network, no later than the 2nd (second) anniversary of the Appointed Date, including a railway siding for loading of Coal.

12.6 Development of township

12.6.1 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 commercial and residential infrastructure specified in Clauses 12.6.2, 12.6.3 and 12.6.4, which shall also be available to the Authority and its employees on a non-discriminatory basis and on the normal terms thereof.

12.6.2 The township specified in Clause 12.6.1 shall be constructed in conformity with Schedule-C and shall include:

- (a) a primary health centre with 6 (six) beds for in-patient care and associated diagnostic facilities, built in conformity with the standards normally followed by the State Government;
- [(b) a secondary school in conformity with the standards specified by the Central Board of Secondary Education; and]
- (c) a community center with an auditorium for social gatherings, functions and other special occasions.

12.6.3 [The commercial infrastructure specified in Clause 12.6.1 shall include:]

- [(a) A bank with ATM;]
- [(b) post office;]
- [(c) business centre with communication facilities including telephone, internet connectivity and data transaction processing facilities; and]
- [(d) 10 (ten) shops or kiosks.]

12.6.4 [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 Construction of Funded Works¹⁷

- 12.7.1 The Authority has determined that the capital cost of the Funded Works specified in Clause 12.7.2 shall not be expended by the Mine Operator and these Funded Works are, therefore, not included in the Total Project Cost, and shall be reimbursed by the Authority in accordance with the provisions of this Clause 12.7.
- 12.7.2 The Construction Works, as described in Schedule-B (the "**Funded Works**"), shall be constructed by the Mine Operator as if they are Construction Works forming part of the Project, and the provisions of this Agreement shall apply *mutatis mutandis* to such Funded Works, save and except as otherwise provided in this Clause 12.7.
- 12.7.3 The Mine Operator expressly acknowledges, agrees and undertakes that the capital cost to be reimbursed by the Authority for and in respect of each of the Funded Works shall not exceed the pre-determined lump sum amount specified in Schedule-B and any expenditure in excess thereof shall, save and except where such excess is on account of Force Majeure, Change of Scope or Change in Law, as the case may be, borne entirely and solely by the Mine Operator. For the avoidance of doubt, any additional documented costs incurred by the Mine Operator on account of Force Majeure, Change of Scope or Change in Law, as the case may be, shall be reimbursed forthwith by the Authority to the Mine Operator.
- 12.7.4 The Authority acknowledges, agrees and undertakes that it shall reimburse the documented costs and expenses incurred by the Mine Operator on each of the Funded Works in four equal installments upon receiving certification from the Independent Engineer stating that the Mine Operator has completed about 20% (twenty percent), 40% (forty percent), 60% (sixty percent) and 100% (one hundred percent) of the respective Funded Works referred to in Clause 12.7.3, and upon receipt of an invoice from the Mine Operator in respect of the amounts payable/ recoverable from the Authority in respect of such Funded Works, together with all necessary supporting documentation. For the avoidance of doubt, the provision of this Clause 12.7 shall be applied individually, and not collectively or severally, to each of the Funded Works.

¹⁷ This Clause 12.7 may be retained only when the Authority decides to finance some of the works out of its own resources and to reduce the Total Project Cost to be financed by the Mine Operator. It may, however, be omitted if no Funded Works are to be undertaken and in such case, the definition of Funded Works in Clause 47.1 may also be omitted.

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 Independent Engineer, 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 Independent Engineer.

13.2 Inspection

During the Construction Period, the Independent Engineer shall inspect the Mines at least once a quarter 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 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 Inspection Report by the Independent Engineer 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 Independent Engineer 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 Independent Engineer 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 Independent Engineer and furnish the results thereof to the Authority and the Independent Engineer. 50% (fifty percent) of the costs incurred by the Mine Operator in carrying out such tests to the extent certified by the Independent Engineer 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 Independent Engineer in this behalf. The Independent Engineer 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 independent 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 and the Independent Engineer forthwith.

13.4 Delays during construction

Without prejudice to the provisions of Clause 12.4.2, if the Mine Operator does not achieve any of the Project Milestones or the Independent Engineer shall have reasonably determined that the rate of progress of Construction Works and installation 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 Independent Engineer 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 Independent Engineer 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 Independent Engineer in consultation with the Mine Operator, and notified to the Authority who may designate its representative to witness the Tests. The Mine Operator shall provide such assistance as the Independent Engineer may reasonably require for conducting the Tests. In the event of the Mine Operator and the Independent Engineer 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 Independent Engineer and in the event the Independent Engineer shall delay the Tests hereunder, the Authority shall impose exemplary penalties on the Independent Engineer and shall ensure that Tests are completed in time either by the Independent Engineer or any substitute thereof.

14.1.2 All Tests shall be conducted in accordance with Schedule-I at the cost and expense of the Mine Operator. The Independent Engineer shall observe, monitor and review the results of the Tests to determine compliance of the Mines with Specifications and Standards and if it is reasonably anticipated or determined by the Independent Engineer during the course of any Test that the performance of any Construction Works or Equipment 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 Independent Engineer shall provide to the Mine Operator and the Authority copies of all Test data including detailed Test results. For the avoidance of doubt, it is expressly agreed that the Independent Engineer 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 month in any Accounting Year in which the quantity of Coal produced from the Mine equals [***]¹⁸ Tons, as certified by the Independent Engineer, 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

¹⁸ The amount should be equal to the Annual Capacity for the 1st Accounting Year (as per the Annual Production Programme in Article 21) divided by (a) 12, or (b) in case the 1st Accounting Year (as per the Annual Production Programme in Article 21) is less than 12 (twelve) months, then by such number.

calculated at the rate of 0.5% (zero point five per cent) of the amount of Performance Security for delay of each day until COD is achieved.

14.3 Completion

14.3.1 Upon completion of Construction Works during any Accounting Year and provided that the quantity of Coal produced from the Mine in such Accounting Year equals the Contracted Capacity, and the Independent Engineer determining the Tests to be successful in accordance with the provisions of this Agreement (“**Completion**”), it shall forthwith issue to the Mine Operator and the Authority, a certificate substantially in the form set forth in Schedule-J (the "**Completion Certificate**"). In the event that Completion does not occur prior to the Scheduled Completion Date, 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 day until Completion is achieved.

14.4 Withholding of Completion Certificate

14.4.1 If the Independent Engineer 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 Authority and the Mine Operator. Upon receipt of such a report from the Independent Engineer and after conducting its own inspection, 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 direct the Independent Engineer to 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 procedure shall be repeated as necessary until the defects or deficiencies are rectified.

14.4.2 Notwithstanding anything to the contrary contained in Clause 14.4.1, the Authority may, at any time after receiving a report from the Independent Engineer under that Clause, direct the Independent Engineer to issue a Completion Certificate under Clause 14.3, and such direction shall be complied forthwith.

14.5 Rescheduling of Tests

If the Independent Engineer certifies to the Authority and the Mine Operator that it 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

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 providing safer and improved excavation and Delivery of Coal, it shall by notice in writing require 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 the 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 effect, if any, each such option would have on the costs and time thereof, including a detailed breakdown by work classifications 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 Independent Engineer as reasonable.

- 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, with assistance of the Independent Engineer, 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 Agreement, insofar as they relate to Construction Works and Tests, shall apply *mutatis mutandis* to the works undertaken by the Mine Operator under this Article 15.

15.3 Payment for Change of Scope

Within 7 (seven) days of issuing a Change of Scope Order and provided that the Change of Scope Order results in an obligation on the Mine Operator to carry out additional works and services, the Authority shall make an advance payment to the Mine Operator of a sum equal to 20% (twenty per cent) of the cost of Change of Scope as agreed hereunder, and in the event of a Dispute, 20% (twenty per cent) of the cost assessed by the Independent Engineer. The Mine Operator shall, after commencement of work, present to the Authority bills for payment 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. Within 30 (thirty) days of receipt of such bills, the Authority shall disburse to the Mine Operator such amounts as are reasonable and after making a proportionate deduction for the advance payment made hereunder, and 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 10% (ten per cent) of the Total Project Cost 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 25% (twenty five per cent) of the Total Project Cost at any time during the Contract Period.

15.5 Reduction in Scope of the Project

- 15.5.1 If the Change of Scope Order results in a reduction in Scope of the Project, the Mine Operator shall pay to the Authority [80% (eighty per cent) of the sum saved therefrom] within 30 (thirty) days from the date of Change of Scope Order, and upon such payment to the Authority, the obligations of the Mine Operator in respect of such works shall be deemed to have been fulfilled.
- 15.5.2 For determining the obligations of the Mine Operator under this Clause 15.5, the provisions of Clauses 15.1, 15.2 and 15.4 shall apply *mutatis mutandis*, and upon issue of Change of Scope Order by the Authority hereunder, the Mine Operator shall pay forthwith the sum specified therein.

ARTICLE 16

OPERATION AND MAINTENANCE

16.1 O&M obligations of the Mine Operator

16.1.1 During the Operation Period, the Mine Operator shall operate and maintain the Mines and Equipment in accordance with this Agreement 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 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) procuring that the Overburden is removed and deposited in accordance with the provisions of this Agreement;
- (d) minimising 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;
- (e) carrying out periodic preventive maintenance of the Mines;
- (f) 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;
- (g) undertaking major maintenance of Equipment and installations;
- (h) preventing, with the assistance of the concerned law enforcement agencies, any encroachments on, or unauthorised entry to the Site;
- (i) protection of the environment and provision of equipment and materials therefor;
- (j) 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 excavation of Coal and Delivery thereof from the Mines;

- (k) maintaining a public relations unit to interface with and attend to suggestions from Project Affected Persons, government agencies, media and other agencies;
- (l) complying with Safety Requirements in accordance with Article 17;
- (m) operation and maintenance of all Project Assets diligently and efficiently and in accordance with Standard Industry Practice; and
- (n) maintaining reliability in operating the Mines and Delivery of Coal.

16.1.2 The Mine Operator shall remove all Overburden excavated 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 remove promptly 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 statutory authority, 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 Independent Engineer, 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 Independent Engineer. 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

revision.

- 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 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 the Independent Engineer, 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 Independent Engineer 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 and Deliver Coal in accordance with the Annual Production Programme under Clause 21.2.1, 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 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 de-commissioning or shut-down of the whole or any part of the Mines and Equipment, the Mine Operator shall be entitled to de-commission 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 de-commissioning 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 de-commissioning 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 Independent Engineer. Such approval shall be sought by the Mine Operator through a written request to be made to the Independent Engineer, 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 Independent Engineer 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 de-commission 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 Mining Charge for each day of delay until the section has been re-commissioned for excavation and Delivery of Coal.

16.8 Damages for breach of maintenance obligations

16.8.1 In the event that the Mine Operator fails to repair or rectify any defect or deficiency set forth in the Maintenance Requirements within the period specified therein, it shall be deemed to be in breach of this Agreement and the Authority shall be entitled to recover Damages, to be calculated and paid for each day of delay until the breach is cured, at the higher of (a) 1% (one per cent) of the Average Daily Mining Charge, and (b) 0.1% (zero point one per cent) of the cost of such repair or rectification as estimated by the Independent Engineer. Recovery of such Damages shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof

16.8.2 The Damages set forth in Clause 16.8.1 may be assessed and specified forthwith by the Independent Engineer; provided that the Authority may, in its discretion, demand a smaller sum as Damages, if in its opinion, the breach has been cured promptly and the Mine Operator is otherwise in compliance with its obligations hereunder. The Mine Operator shall pay such Damages forthwith and in the event that it contests such Damages, the Dispute Resolution Procedure shall apply.

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 the Independent Engineer, 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. In addition to recovery of the aforesaid cost, a sum equal to 20% (twenty per cent) of such cost shall be paid by the Mine Operator to the Authority as Damages. For the avoidance of doubt, the right of the Authority under this Clause 16.9.1 shall be without prejudice to its rights and remedies provided under Clause 16.8.

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 along with the Damages specified therein.
- 16.10.3 In the event of a national emergency, civil commotion or any other act specified in Clause 34.3, the [Authority/Governmental Instrumentality] 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 Authority shall make reasonable endeavours to ensure that the exercise of such overriding powers by the [Authority/Governmental Instrumentality (as the case may be)] 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/Governmental Instrumentality (as the case may be)]. 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/Governmental Authority (as the case may be)] may issue in pursuance of the provisions of this Clause 16.10.3, and shall provide assistance and cooperation to the [Authority/Governmental Authority (as the case may be)], 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 notify the Independent Engineer 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 Independent Engineer 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 of Coal and Delivery thereof on account of any of the following for the duration thereof:

- (a) an event of Force Majeure;
- (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 of 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 Independent Engineer without any delay.

Provided further that, the Mine Operator shall keep available all unaffected parts of the Mines, provided they can be operated safely.

ARTICLE 17

SAFETY REQUIREMENTS¹⁹

17.1 Safety Requirements

- 17.1.1 The Mine Operator shall comply with the provisions of this Agreement, Applicable Laws and 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 impart safety training to its employees and shall at all times be responsible for observance of safety procedures by its staff, Contractors and agents. The Mine Operator shall request the Authority to provide statutory training under the Mines Vocational Training Rules, 1966.
- 17.1.3 The Mine Operator acknowledges and agrees that the Authority shall be entitled to inspect the Mines to verify adherence to Safety Requirements and the Mine Operator shall be obliged to facilitate such inspection and implement the corrective measures identified in such inspection.
- 17.1.4 Notwithstanding anything to the contrary contained in this Agreement, the Parties acknowledge and agree that the appropriate Government Instrumentalities shall be entitled to issue directions to the Authority and the Mine Operator for complying with the provisions of the Mines Act, 1952 and the rules made thereunder and such directions shall be binding on them.

17.2 Guiding principles

- 17.2.1 Safety Requirements aim at reduction in 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 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.

¹⁹ The provisions of this Article may be suitably modified to meet project-specific requirements.

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 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 two safety audits to be conducted by the Authority hereunder.

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.
- 18.1.2 The Mine Operator shall procure at all times that the Coal excavated by it shall be transported only by duly authorised personnel and vehicles on 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 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 movement of dumpers, trucks, excavators and other equipment, install and operate a suitable “Operator Independent 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 Independent Engineer, 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 Independent Engineer 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 Independent Engineer, 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 the Independent Engineer, 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 Independent Engineer.

Any occurrence as mentioned under Regulation 9 of the Coal Mine Regulations, 1957 shall be reported immediately as required.

19.3 Inspection

The Independent Engineer shall inspect the Mines and Equipment at least once a quarter. 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 conforms to the Maintenance Requirements, the Independent Engineer 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 Independent Engineer and furnish the results of such tests forthwith to the Authority and the Independent Engineer. One half of the costs incurred on such tests, and to the extent certified by the Independent Engineer as reasonable, shall be reimbursed by the Authority to the Mine Operator.

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 Independent Engineer 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 Independent Engineer 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. In the event that remedial measures are not completed by the Mine Operator in conformity with the provisions of this Agreement, the Authority shall be entitled to recover Damages from the Mine Operator under and in accordance with the provisions of Clause 16.8.

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 [*insert reference to relevant code/ policy of the Authority*]. 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 excavation

- 19.7.1 On or before COD, the Independent Engineer shall measure, or cause to be measured, by using laser technology (the "**Laser Measurement**"), the stockpile of Coal Seams and Overburden at the Mines, and shall convey forthwith to the Authority such particulars thereof as the Authority may reasonably require. The date and time for Laser Measurement shall be notified by the Independent Engineer, no less than 1 (one) week in advance, to the Mine Operator and the Authority, and the Authority may, in its discretion, designate its representative to witness such measurement or may carry out its independent measurement also.
- 19.7.2 The Independent Engineer shall, once every Accounting Year, on or before the commencement of each Accounting Year, repeat the Laser Measurement in accordance with the provisions of Clause 19.7.1
- 19.7.3 In the event that the quantity of Coal received at the Delivery Point during any Accounting Year falls short of the quantity of excavation, as determined by Laser Measurement, for and in respect of that Accounting Year, the Mine Operator shall pay to the Authority, Damages equal to [●]²⁰, which amount of Damages shall be recovered from the monthly bill of the Mine Operator. The Parties further agree that conversion of volumetric content to weight of Coal in different stacks shall be in accordance with the [*insert mechanism/ relevant policy or code of the Authority*]. 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 [*insert mechanism/relevant policy or code of the Authority*].

²⁰ A formula for computation of liquidated damages will need to be inserted. Potential options need to be discussed and provided in the model document.

ARTICLE 20

REMOVAL OF OVERBURDEN

20.1 Removal of Overburden

- 20.1.1 The Mine Operator shall, at all times during the Contract Period, ensure and procure the fulfillment of its obligations in respect of excavation, removal and depositing of Overburden in accordance with Applicable Laws, Applicable Permits, Mining Plan, the provisions of this Agreement and Standard Industry Practice.
- 20.1.2 The Mine Operator acknowledges, agrees and undertakes that the geometry of Mines, including bench height and width of Coal Seams, Overburden and interburden, shall at all times conform with the provisions of this Agreement, Applicable Laws and Standard Industry Practice.
- 20.1.3 The Independent Engineer shall, during the course of its quarterly inspections, determine the compliance of the provisions of this Article 20 by the Mine Operator.

20.2 Schedule for Removal of Overburden

- 20.2.1 The Parties expressly agree that during each Accounting Year after the Appointed Date, the Mine Operator shall undertake removal of Overburden to the extent necessary for mining operation in accordance with the terms of this Agreement and the schedule given below ("**Scheduled Overburden Quantity**"):

Accounting Year	Overburden to be removed (In M M ³)
1	[***] M M ³
2	[***] M M ³
3	[***] M M ³
4	[***] M M ³
5	[***] M M ³
Subsequent years	[***] M M ³
Total	[***] M M ³

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

- 20.2.2 The Mine Operator may undertake advance removal of Overburden in excess of the Scheduled Overburden Quantity, with the prior written approval of the Authority.

20.2.3 The Authority shall conduct monthly measurement of Overburden benches, using Electronic Total Station, Laser Scanning Technology or any other suitable methodology, in presence of the Independent Engineer and a representative of the Mine Operator to determine compliance with Article 20.

20.3 Overburden Advance²¹

20.3.1 Upon commencement of removal of Overburden by the Mine Operator in accordance with the terms of this Agreement, as certified by the Independent Engineer and measured by the Independent Engineer during the monthly measurement, the Authority shall be liable to pay to the Mine Operator in respect of each month prior to the occurrence of COD during which the Overburden is removed by the Mine Operator, a non-refundable sum calculated as the product of 40% (forty percent) of the Mining Charge and Notional Amount of Coal ("**Overburden Advance**"). "**Notional Amount of Coal**" shall mean the quantity of Coal arrived at by dividing the volume of Overburden removed during the relevant month by the Notional Stripping Ratio.

20.3.2 The Overburden Advance paid by the Authority shall be adjusted against the Mining Charge payable by the Authority to the Mine Operator after the occurrence of COD, in equal instalments spread over a period of 60 (sixty) months beginning from the month in which the COD occurs.

20.4 Damages for Failure to remove Overburden

20.4.1 In case 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 the Mining Charge payable to the Mine Operator for the Overburden Shortfall ("**Overburden Guarantee**"). For the purposes of this Clause 20.4, "**Overburden Shortfall**" shall mean the quantity of Coal determined as follows:

- (a) **Prior to COD:** the difference between the Scheduled Overburden Quantity and the Overburden removed, **divided by** the Notional Stripping Ratio ;
- (b) **On or after the COD:** the difference between the Scheduled Overburden Quantity and the Overburden removed, **divided by** the Stripping Ratio.

20.4.2 The Mine Operator shall keep the 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 Overburden Shortfall occurred; or (ii) Contract Period, whichever is earlier.

²¹ The provisions with respect to Overburden Advance will only operate prior to COD and are intended to provide comfort to the Mine Operator that the Authority will not terminate the contract after removal of overburden by the Mine Operator. To be deleted in cases where an overburden advance will not be provided by the Authority.

- 20.4.3 At least 30 (thirty) days prior to expiry of the Overburden Guarantee, the Mine Operator shall furnish a replacement 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 Overburden Guarantee, and hold the cash as security for performance of the Mine Operator's obligations under this Clause 20.4.
- 20.4.4 The Mine Operator shall meet the Overburden Shortfall, within a period of 3 (three) Accounting Years immediately following the Accounting Year in which the relevant 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 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 Overburden Guarantee in full, as Damages for failure of the Mine Operator to meet the Overburden Shortfall.

ARTICLE 21

PRODUCTION OF COAL

21.1 Production of Coal

The Mine Operator shall excavate and Deliver Coal to the Authority in accordance with the Annual Production Programme specified in this Article 21.

21.2 Annual Production Programme

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

Accounting Year	Coal to be delivered
	(In MT)
1	[25% of Contracted Capacity]
2	[50% of Contracted Capacity]
3	[Contracted Capacity]
4	[Contracted Capacity]
5	[Contracted Capacity]
Subsequent years	[Contracted Capacity]
Total	[****]

For the purposes of this Agreement, "**Contracted Capacity**" means [****] Tons of Coal per annum. 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 pro-rated accordingly.

21.2.2 The Authority may, by a notice delivered at least 3 (three) months prior to commencement of an Accounting Year, modify the Annual Production Programme specified in Clause 21.2.1 by up to 10% (ten per cent) thereof 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. For the avoidance of doubt, the Parties agree that the Annual Production Programme in the Accounting Year in which the COD or Transfer Date occurs shall be proportionate to the period of operation in that Accounting Year. The Parties further agree that for and in respect of the 1st (first) and 2nd (second) Accounting Years, the Authority may modify the Annual Production Programme by upto 25% (twenty five per cent) thereof, instead of 10% (ten per cent) specified hereinabove.

- 21.2.3 The Authority agrees and undertakes that it shall ordinarily not reduce the Annual Production Programme by more than the quantity specified in Clause 21.2.2. In the event the Authority reduces the Annual Production Programme below such quantity, it shall pay to the Mine Operator, a charge equal to 25% of the Mining Charge for and in respect of such reduction below the quantity specified in Clause 21.2.2.
- 21.2.4 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 10% (ten per cent) and less than 8% (eight per cent) of the quantity of Coal specified in the Annual Production Programme for that Accounting Year. Provided, however, that during each of the months of July, August and September in an Accounting Year, it shall Deliver no more than 7% (seven per cent) and no less than 5% (five per cent) of the Annual Production Programme. 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 per cent) 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.
- 21.2.5 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.
- 21.2.6 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 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.

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 and Delivered Coal in any Accounting Year (“**Actual Production**”) is less than the Annual Capacity for such Accounting Year, other than where such shortfall arises directly on account of (i) Force Majeure; or (ii) a default of the Authority; or (iii) non-Delivery of Coal 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.

Shortfall in Actual Production expressed as a percentage of Annual Production Programme	Damages to be paid by the Mine Operator
100% to 90%	Nil
90% to 80%	10% of Mining Charge multiplied by the difference between the Actual Production and 90% of the Annual Production Programme.
80% to 70%	(a) 10% of Mining Charge multiplied by 10% of the Annual Production Programme (being the difference between 90% and 80% of the Annual Production Programme); and (b) 20% of Mining Charge multiplied by the difference between Actual Production and 80% of the Annual Production Programme.
70% to 50%	(a) 10% of Mining Charge multiplied by 10% of the Annual Production Programme (being the difference between 90% and 80% of the Annual Production Programme); (b) 20% of Mining Charge multiplied by 10% of the Annual Production Programme (being the difference between 80% and 70% of the Annual Production Programme); and (c) 30% of Mining Charge multiplied by the difference between Actual Production and 70% of the Annual Production Programme. In addition, the Agreement will be reviewed by a review committee duly constituted by the Authority which may consider termination of the Agreement if the shortfall in Actual Production is for reasons attributable to the Mine Operator.

Shortfall in Actual Production expressed as a percentage of Annual Production Programme	Damages to be paid by the Mine Operator
Less than 50%	<p>(a) 10% of Mining Charge multiplied by 10% of the Annual Production Programme (being the difference between 90% and 80% of the Annual Production Programme);</p> <p>(b) 20% of Mining Charge multiplied by 10% of the Annual Production Programme (being the difference between 80% and 70% of the Annual Production Programme); and</p> <p>(c) 30% of Mining Charge multiplied by 20% of the Annual Production Programme (being the difference between 70% and 50% of the Annual Production Programme).</p> <p>In addition, occurrence of such shortfall in Actual Production shall be deemed to be a Mine Operator Default for the purposes of Clause 37.1.1 and the Authority shall be entitled to appropriate 50% (fifty percent) of the Performance Security and the Mine Operator shall replenish the Performance Security to its original level before such appropriation in accordance with Clause 9.2.</p> <p>In addition to and without prejudice to the foregoing, the Authority shall be entitled to terminate this Agreement in accordance with Article 37 for Mine Operator Default.</p>

21.6 [Washing of Coal²²]

- 21.6.1 [The Mine Operator shall install and operate a Washery on the Site and shall undertake Washing to reduce the ash content of Coal to the level specified in Applicable Laws for transportation thereof beyond the distance specified therein.]
- 21.6.2 [Washing shall be undertaken to segregate and reduce the ash content of Coal such that the ash content of raw Coal washed hereunder shall be reduced to [34% (thirty four per cent)] of the washed Coal. For the avoidance of doubt, the Parties expressly agree that the Mine Grade and Revenue Grade shall be deemed to be modified to account for the reduction of ash content hereunder.]
- 21.6.3 [In the event that the ash content is reduced below the proportion specified in Clause 21.6.2, but no less than [30% (thirty per cent)], the Authority shall pay to the Mine Operator an Incentive which shall be the product of the weight of such excess ash and the Mining Charge. Provided, however, that no Incentive shall be payable if the yield of Coal is less than the proportion specified by the Authority at the commencement of each Accounting Year.]

²² Clauses 21.6, 21.7 and other relevant Clauses may be omitted if Washing is to be excluded from the scope of the Agreement.

21.6.4 [In the event of any shortfall in removal of ash content specified in Clause 21.6.2, the Authority shall recover from the Mine Operator, Damages equal to thrice the product of the weight of such shortfall in removal of ash content and the Mining Charge.]

21.6.5 [The Parties expressly agree that the Mining Charge and all other amounts due and payable to the Mine Operator in accordance with the provisions of this Agreement shall be paid as if the provisions of this Clause 21.6 are not applicable thereto, save and except the Incentives and Damages payable hereunder.]

21.7 [Disposal of rejects]

21.7.1 [The rejects from the Washery shall be the property of the Authority and the Mine Operator shall maintain separate records of rejects generated and utilized.]

ARTICLE 22

COAL DEPOT²³

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 (the "**Coal Depot**").
- 22.1.2 The land for the Coal Depot shall be earmarked in accordance with Schedule-A and Schedule-C, and shall form part of the Site, to be provided by the Authority in accordance with the provisions of Article 10.
- 22.1.3 The Coal Depot shall include spaces required for stocking of Coal, its processing, [Washing,] 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 [***]. 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 Independent Engineer 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 to the Independent Engineer.
- 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 take over of physical possession of such new location.

²³ The provisions of this Article may be suitably modified to meet project-specific requirements.

ARTICLE 23

STORAGE AND TESTING

23.1 Storage of Coal

The Mine Operator may, upon excavation [and Washing] 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 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 and the Mine Operator 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.

23.2.2 The results of the Coal Tests shall be final and binding on the Mine Operator and the Authority.

23.2.3 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, an amount equivalent to [●] on account of such Grade Slippage, as Damages.²⁴

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 in its sole discretion, 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 Authority.

23.3 Reporting of Coal stock

The Mine Operator shall, no later than 07:00 hours on each day, provide a

²⁴ Note: Where the Authority will not have the ability to undertake commercial sale of Coal and therefore will utilise the entire coal for self-consumption, a formula for computation of liquidated damages will need to be inserted. Potential options need to be discussed and provided in the model document.

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 to the Authority and load it on the trucks, railway wagons or any Coal dispatch system, as the case may be, provided by the Authority at or about the Coal Depot, at its own cost and expense.

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 Coal for Delivery thereof to the Authority 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 Mining Charge

25.3.1 Any recoveries and payments, required to be made in accordance with this Article 25, shall be made on a monthly basis and adjusted in the Mining Charge 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 In the event that the amount payable by the Mine Operator in accordance with the provisions of Clause 25.3.4 shall exceed [10% (ten per cent)] of the total Mining Charge 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

INDEPENDENT ENGINEER

26.1 Appointment of Independent Engineer

The Authority shall appoint a consulting engineering firm substantially in accordance with the selection criteria set forth in Schedule-N, to be the independent consultant under this Agreement (the "**Independent Engineer**"). The appointment shall be made no later than 90 (ninety) days from the date of this Agreement and shall be for a period of 3 (three) years. On expiry or termination of the aforesaid appointment, the Authority shall appoint an Independent Engineer for a further term of 3 (three) years in accordance with the provisions of Schedule-N, and such procedure shall be repeated after expiry of each appointment.

26.2 Duties and functions

26.2.1 The Independent Engineer shall discharge its duties and functions substantially in accordance with the terms of reference set forth in Schedule-O.

26.2.2 The Independent Engineer 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 Authority to the Independent Engineer and by the Independent Engineer to the Authority shall be sent forthwith by the Independent Engineer to the Mine Operator.

26.2.4 A true copy of all communications sent by the Independent Engineer to the Mine Operator and by the Mine Operator to the Independent Engineer shall be sent forthwith by the Independent Engineer to the Authority.

26.3 Remuneration

The remuneration, cost and expenses of the Independent Engineer shall be paid by the Authority and subject to the limits set forth in Schedule-N, one-half of such remuneration, cost and expenses shall be reimbursed by the Mine Operator to the Authority within 15 (fifteen) days of receiving a statement of expenditure from the Authority.

26.4 Termination of appointment

26.4.1 The Authority may, in its discretion, terminate the appointment of the Independent Engineer at any time, but only after appointment of another Independent Engineer in accordance with Clause 26.1.

26.4.2 If the Mine Operator has reason to believe that the Independent Engineer is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written representation to the Authority and seek termination of the

appointment of the Independent Engineer. Upon receipt of such representation, the Authority shall hold a tripartite meeting with the Mine Operator and the Independent Engineer for an amicable resolution of the Dispute, and if any difference or disagreement between the Authority and the Mine Operator remains unresolved, the Dispute shall be settled in accordance with the Dispute Resolution Procedure. Pending resolution of such Dispute and unless otherwise specified by the Authority, the Independent Engineer shall continue to perform its functions under this Agreement. In the event that the appointment of the Independent Engineer is terminated hereunder, the Authority shall appoint forthwith another Independent Engineer in accordance with Clause 26.1.

26.5 Authorised signatories²⁵

The Authority shall require the Independent Engineer to designate and notify to the Authority and the Mine Operator up to 2 (two) persons employed in its firm to sign for and on behalf of the Independent Engineer for the advice and directions provided under the scope of its duties and functions, and any communication or document required to be signed by the Independent Engineer shall be valid and effective only if signed by any of the designated persons; provided that the Independent Engineer may, by notice in writing, substitute any of the designated persons by any of its employees.

26.6 Dispute resolution

If either Party disputes any advice, instruction, decision, direction or award of the Independent Engineer, or, as the case may be, the assertion or failure to assert jurisdiction, the Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

²⁵ Suitable qualifications may be mentioned prior to appointment of the independent engineer.

PART IV
FINANCIAL COVENANTS

ARTICLE 27

MOBILISATION ADVANCE

27.1 [Mobilisation Advance]²⁶

- 27.1.1 [The Mine Operator may require the Authority to provide a mobilisation advance by way of loan (the "**Mobilisation Advance**") which shall carry interest at the Prime Lending Rate of State Bank of India from time to time.]
- 27.1.2 [The Mobilisation Advance shall be equal to [10% (ten per cent)] of the Total Project Cost and shall be disbursed in 2 (two) equal installments upon the Mine Operator furnishing a bank guarantee of an amount equal to 135% (One hundred and thirty five percent) of such advance in the form specified at Schedule-F. The 1st (first) installment shall be disbursed by the Authority to the Mine Operator upon demand at any time after the Appointed Date and prior to [****] provided that the Mine Operator shall have funded and expended at least 25% (twenty five per cent) of the Total Project Cost in the Equity. The 2nd (second) installment shall be disbursed upon demand at any time after [****] days from the disbursement of 1st (first) instalment of the Mobilisation Advance, provided that the Mine Operator has funded and expended at least 50% (Fifty per cent) of the Total Project Cost in the Equity.]
- 27.1.3 [The Mobilisation Advance shall be recovered with interest in such instalments and in such amounts as determined by the Authority by making a deduction from the Mining Charge, as and when due and payable. Provided that, the Mobilisation Advance shall be recovered with interest over a period of not more than 5 (five) consecutive Accounting Years from COD and each instalment for recovery of Mobilisation Advance shall be equal to or less than 10% (ten per cent) of the Mining Charge, then payable.]

²⁶ To be retained in cases where a mobilization advance is being provided by the Authority. The provisions of this Article 27 may be modified on a case to case basis.

ARTICLE 28

MINING CHARGE AND OTHER CHARGES

28.1 Mining Charge

28.1.1 Subject to and in accordance with the terms of this Agreement, the Authority shall pay to the Mine Operator the mining charge per Ton of Coal Delivered by the Mine Operator at the Delivery Point(s) in accordance with the provisions of this Agreement (the "**Mining Charge**"), which shall be calculated in the following manner:

- (i) The Mining Charge quoted in the Bid is Rs. [****] (Rupees [****]) per Ton (the "**Base Mining Charge**").
- (ii) The Base Mining Charge shall be revised every quarter (commencing from the first quarter after the Bid Date) to reflect the variation in Price Index occurring between the Reference Index Date of the quarter preceding the Bid Date and the Reference Index Date for the quarter preceding the date of revision, and the amount so determined shall be the Mining Charge for that quarter.

28.1.2 Provided that in respect of the Coal produced and Delivered by the Mine Operator during any Accounting Year prior to COD, references to "**Mining Charge**" shall mean an amount of 80% (eighty percent) of the Mining Charge as calculated in accordance with sub-clauses (i) and (ii) above.

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 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 Mining Charge otherwise payable for the Contracted Capacity.

28.3 Taxes and duties

28.3.1 It is expressly agreed by the Parties that the Mining Charge payable by the Authority under this Article 28 shall be exclusive of all royalties, statutory levies, Taxes, cesses and duties in respect of excavation of Coal and Delivery thereof, which shall be payable by the Mine Operator. It is further agreed that such royalties, statutory levies, Taxes, cesses and duties, if any, paid by the Mine Operator shall be reimbursed by the Authority upon submission of supporting documents evidencing the payment by the Mine Operator.

28.3.2 Any payment to be made by the Authority shall be subject to any tax deduction at source and other applicable taxes, if required to be made by the Authority as

per Applicable Laws.

28.4 Stockpiling and Re-handling Charges

28.4.1 In the event there is insufficient supply of wagons at the Delivery Point or for any other reason the Authority opts to not take Delivery of Coal and instructs the Mine Operator in writing to stock the Coal otherwise available for Delivery, at the Coal Depot (the “**Undelivered Coal**”), then subject to and in accordance with the terms of this Agreement, the Authority shall pay to the Mine Operator the following amounts:

- (a) 80% (eighty percent) of the Mining Charge per Ton of Undelivered Coal; and
- (b) 20% (twenty percent) of the Mining Charge per Ton of Undelivered Coal, together with Re-handling Charges per Ton of Undelivered Coal at the time of Delivery of the Undelivered Coal (or part thereof) at the Delivery Point.²⁷

“**Re-handling Charges**” shall mean charges for re-handling of coal, which shall be calculated in the following manner:

(i) The Re-handling Charge as on the Bid Date is Rs. [****] (Rupees [****])²⁸ per Ton (the “**Base Re-handling Charge**”).

(ii) The Base Re-handling Charge shall be revised every quarter (commencing from the first quarter after the Bid Date) to reflect the variation in Price Index occurring between the Reference Index Date of the quarter preceding the Bid Date and the Reference Index Date for the quarter preceding the date of revision, and the amount so determined shall be the Rehandling Charge for that quarter.

28.5 [Washing charges]

[The cost of Washing, to be determined in accordance with the provisions of Clause 21.6, shall be deemed to be part of the Mining Charge.]

²⁷ It is felt that it would be unfair to penalize the Mine Operator (by way of non-payment of Mining Charge) in case of failure of the Authority to take delivery of Coal due to non-availability of wagons at the Delivery Point or for any other reason not attributable to the Mine Operator. Hence, 80% of the Mining Charge may be paid at the time of stocking of coal at the Coal Depot. The remaining 20% together with rehandling Charges may be payable by the Authority to the Mine Operator at the time of actual delivery of the Coal at the Delivery Point.

²⁸To be filled up at the time of finalization of the bid document.

ARTICLE 29

BILLING AND PAYMENT

29.1 Billing and Payment

- 29.1.1 The Mine Operator shall, by the 5th (fifth) 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 the Mining Charge (and Re-handling Charges, if any) payable by the Authority to the Mine 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) Delivery of Coal to the Authority during the relevant month; (d) official documents in support of the variation in Price Index; (e) detailed calculations of the Mining Charge, Re-handling Charge, Washing charges 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 under the Monthly Invoice; 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) Each Monthly Invoice and/ or Miscellaneous Invoice delivered to the Authority shall become due and payable by the Authority within [60 (sixty)] days after the receipt of such Monthly Invoice and/ or Miscellaneous Invoice, as the case may be;
 - (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 [Prime Lending Rate] 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 [60 (sixty)] 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 [Prime Lending Rate] 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.

29.3 Provisional payment against Price Index

In the event authenticated information is not available for and in respect of the Price Index as on the relevant date, the Authority shall make provisional payments on the basis of the Price Index of the last date for which such information is available and the balance shall be paid or recovered, as the case may be, within 30 (thirty) days of the publication of the Price Index for such relevant date.

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. 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 grade in accordance with the provisions of Colliery Control Rules, 2004 and notifications made thereunder.

30.2 [Adjustments for Washed Coal]

[The Parties agree that the improvement in grade on account of Washing shall be computed separately and the outcome thereof shall be adjusted and reflected in a corresponding increase in the Mine Grade and Revenue Grade. The Parties expressly agree that all provisions of this Agreement insofar as they relate to determination of grade shall be deemed to be modified to take account of such improvement in grade on account of Washing, save and except as provided in Clause 21.6.2].

ARTICLE 31

[REVENUE SHORTFALL LOAN]²⁹

31.1 Revenue Shortfall Loan

- 31.1.1 If the Realisable Mining Charge in any Accounting Year shall fall short of the Subsistence Revenue as a result of an Authority Default, the Authority shall, depending on the availability of funds with the Authority, upon request of the Mine Operator, provide a loan for meeting such shortfall (the "**Revenue Shortfall Loan**") at an interest rate equal to 2% (two per cent) above the Bank Rate against a bank guarantee.
- 31.1.2 If the half-yearly results of the Mine Operator indicate that the shortfall referred to in Clause 31.1.1 and contemplated for an Accounting Year has arisen in respect of the first 6 (six) months thereof, the Mine Operator shall be entitled to a provisional Revenue Shortfall Loan depending on the availability of funds with the Authority; provided that, no later than 60 (sixty) days after the close of such Accounting Year, the Mine Operator shall either repay the provisional Revenue Shortfall Loan with interest at an interest rate equal to 2% (two per cent) above the Bank Rate or adjust it against the Revenue Shortfall Loan, if any, as may be due to it under this Clause 31.1.
- 31.1.3 The Authority shall disburse the Revenue Shortfall Loan or the provisional Revenue Shortfall Loan, as the case may be, within 30 (thirty) days of receiving a valid request from the Mine Operator along with the particulars thereof including a detailed account of the Authority Default and its impact on the collection of Realisable Mining Charge.

31.2 Repayment of Revenue Shortfall Loan

- 31.2.1 A sum equal to 50% (fifty per cent) of the surplus in excess of Subsistence Revenue, as and when it accrues, shall be earmarked for repayment of the Revenue Shortfall Loan and interest thereon, and paid by the Mine Operator to the Authority within 90 (ninety) days of the close of the Accounting Year in which such profits have been made; provided that the Mine Operator shall repay the entire Revenue Shortfall Loan and interest thereon in 12 (twelve) equal installments and no later than one year prior to the expiry of the Contract Period and in the event that any sum remains due or outstanding at any time during such period of one year, the Authority shall be entitled to terminate this Agreement forthwith.
- 31.2.2 The Mine Operator shall become eligible for another Revenue Shortfall Loan only after fully repaying the previous Revenue Shortfall Loan and depending upon the availability of funds with the Authority.

²⁹ May be retained on a case specific basis.

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. The Mine Operator shall procure that in each insurance policy, the Authority shall be a 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; and
- (f) 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 (e) 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 revenues from Mining Charge 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 2 (two) copies of its balance sheet, cash flow statement and profit and loss account, along with a report thereon by its Statutory Auditors, within [90 (ninety)] days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. The Authority shall have the right to inspect the records of the Mine Operator during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to the Authority for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.
- 33.1.2 The Mine Operator shall, within 30 (thirty) days of the close of each quarter of an Accounting Year, furnish to the Authority its unaudited financial results in respect of the preceding quarter, in the manner and form prescribed by the Securities and Exchange Board of India for publication of quarterly results by companies listed on a stock exchange.
- 33.1.3 On or before the 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 Statutory Auditors giving summarised information on (a) receipts on account of Mining Charge, (b) all other revenues from, or account of the Mines, and (c) 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 Statutory Auditors, a firm chosen by it from the mutually agreed list of 5 (five) reputable firms of chartered accountants (the "**Panel of Chartered Accountants**"), such list to be prepared substantially in accordance with the criteria set forth in Schedule-P. All fees and expenses of the Statutory Auditors shall be borne by the Mine Operator.
- 33.2.2 The Mine Operator may terminate the appointment of its Statutory Auditors after a notice of 45 (forty five) days to the Authority, subject to the replacement of Statutory 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 Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.

33.3 Certification of claims by Statutory 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 certified by its Statutory 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 Statutory 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, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (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 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;
- (c) unlawful or unauthorised or without jurisdiction, revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit, authorisation, no objection certificate, consent, approval or exemption required by the Mine Operator or any of the Contractors to perform their

respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Mine Operator's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit;

- (d) any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Mine Operator by or on behalf of such Contractor; or
- (e) 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 in its discretion 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 Events³⁰]

[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.]

³⁰ This Clause may be omitted, at the discretion of the Authority.

ARTICLE 35

COMPENSATION FOR BREACH OF AGREEMENT

35.1 Compensation for default by the Mine Operator

Subject to the provisions of Clause 35.5, 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 have been expressly specified and payable under this Agreement or for any consequential losses incurred by the Authority.

35.2 Compensation for default by the Authority

Subject to the provisions of Clause 35.5, 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, 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 Mining Charge, 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 Mining Charge was reduced on account thereof, as the case may be; and in the event of reduction in Mining Charge where the daily collection is less than 80% (eighty per cent) of the Average Daily Mining Charge, the Authority shall, in addition to payment of compensation hereunder, extend the Contract Period in proportion to the loss of Mining Charge on a daily basis. For the avoidance of doubt, loss of 25% (twenty five per cent) in the realisation of Mining Charge, as compared to the Average Daily Mining Charge, 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 Mining Charge 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 shall 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, in its discretion, 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:

- (a) the Performance Security has been encashed and appropriated in accordance with Clause 9.2 and 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 latest outstanding Project Milestone due in accordance with the provisions of Schedule-G and continues to be in default for 180 (one hundred and eighty) days;
- (c) the Mine Operator abandons or manifests intention to abandon the 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 12.4.1;
- (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 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 law 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) the Mine Operator is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Mine Operator or for the whole or material part of its assets that has a material bearing on the Project;
- (r) the Mine Operator has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect;
- (s) a resolution for winding up of the Mine Operator is passed;
- (t) 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 at the Appointed Date; and

- (iii) each of the Project Agreements remains in full force and effect.
- (u) 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;
- (v) 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;
- (w) the Mine Operator has failed to fulfill any obligation, for which failure Termination has been specified in this Agreement;
- (x) the Mine Operator issues a Termination Notice in violation of the provisions of this Agreement;
- (y) 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
- (z) any other event or occurrence identified as a '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, in its discretion, 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, procure 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 shall 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 shall have occurred, 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 Payment

37.3.1 Upon Termination on account of a Mine Operator Default or 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 Purchase Value of the Non-Funded Works; and
- (b) the Purchase Value of the Project Specific Assets.

37.3.2 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 Purchase Value of the Non-Funded Works;
- (b) the Purchase Value of the Project Specific Assets; and
- (c) an amount equivalent to 4 (four) times the Mining Charge due and payable for and in respect of the month immediately preceding the month in which the Termination Notice is issued.³¹

37.3.3 Notwithstanding anything to the contrary in this Article 37, the Mine Operator acknowledges, agrees and undertakes that:

- (a) the Authority shall not be obligated to purchase from the Mine Operator any Non-Funded Works and/ or Project Specific Assets or pay the Purchase Value of any Non-Funded Works and/or Project Specific Assets to the Mine Operator unless the Mine Operator has a valid, clear and marketable title to such Non-Funded Works and Project Specific Assets, free and clear of all Encumbrances;
- (b) subject to (a) above, the Authority shall not be obligated to purchase or make any Termination Payment in respect of any Moving Equipment used by the Mine Operator at the Mines unless such Moving Equipment is a Project Specific Asset;
- (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 Non-Funded 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 Non-Funded Works and the Project Specific Assets (as the case may be); and
- (d) no Termination Payment shall be due and payable prior to COD.

37.3.4 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 Bank Rate 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 Non-Funded

³¹ Bidders should find it attractive to bid if they are provided with adequate assurance that their investment in equipment will be protected. Such protection is sought to be provided in the form of the Authority purchasing the fixed assets and the project specific assets of the Mine Operator at their actual value in case of a termination. With respect to the balance movable assets, the same can be re-deployed by the Mine Operator at other projects directly or through a lease structure. However, it is understood that such re-deployment may not be immediate and the Mine Operator may be constrained to hold its movable assets idle for some period. The 4 months compensation is intended to cover this risk, it being understood that 4 months mining charge will correspond to nearly 18 months of charges relating to the equipment.

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.

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

37.4 Other rights and obligations of the Authority

37.4.1 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 37.3, 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 in its discretion 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 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 Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 37.3, 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 Mines and 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 to the Authority upon payment of Mining Charge 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 'as built' 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 Independent Engineer 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.
- 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 Authority.

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 Independent Engineer 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 Mining Charge 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 Independent Engineer 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 Independent Engineer 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 The Lenders' Representative, on behalf of Senior Lenders, may 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 or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds the higher of [Rs. 50,00,000/- (Rupees Fifty Lakhs only)] and [0.1% (zero point one per cent)] of the total Mining Charge payable during any [Accounting Year], the Mine Operator may so notify the Authority and propose amendments to this Agreement so as to place the Mine Operator in the same financial position as it would have enjoyed had there been no such Change in Law resulting in increased costs, reduction in return or other financial burden 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, reduction in return or other financial burden, as the case may be, and a direct co-relation between such increased costs, reduction in return or other financial burden, as the case may be, 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 Mine Operator may by notice require the Authority to pay an amount that would place the Mine Operator in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Authority shall pay the amount specified therein; provided that if the Authority shall dispute such claim of the Mine Operator, 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 or increase in net after-tax return or other financial gains, the aggregate financial effect of which exceeds the higher of [Rs. 50,00,000/- (Rupees Fifty Lakh only)] and [0.1% (zero point one per cent)] of the total Mining Charge payable during any [Accounting Year], the Authority may so notify the Mine Operator and propose amendments to this Agreement so as to place the Mine Operator in the same financial position as it would have enjoyed had there been no such Change in Law resulting in decreased costs, increase in return or other financial gains 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 that would place the Mine Operator in the same financial position that it would have enjoyed had there been no such Change in Law, 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; 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 Protection of NPV

Pursuant to the provisions of Clauses 41.1 and 41.2 and for the purposes of placing the Mine Operator in the same financial position as it would have enjoyed had there been no Change in Law affecting the costs, returns or other financial burden or gains, the Parties shall rely on the Financial Model to establish a net present value (the "NPV") of the net cash flow and make necessary adjustments in costs, revenues, compensation or other relevant parameters, as the case may be, to procure that the NPV of the net cash flow is the same as it would have been if no Change in Law had occurred.

41.4 Restriction on cash compensation

The Parties acknowledge and agree that the demand for cash 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 one year from the close of such [Accounting Year]. Any demand for cash 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, 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, at its option, 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 Independent Engineer, 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 shall be payable by the Authority as owner of the Site; provided, however, that any such Taxes payable by the Mine Operator under Applicable Laws for use of the Site shall not be reimbursed or payable by the Authority.

43.4 Restriction on 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 the performance of its obligations hereunder including for operation and maintenance of all or any part of the Mines.

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 with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

44.2 Conciliation

In the event of any Dispute between the Parties, either Party may call upon the Independent Engineer to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Independent Engineer or without the intervention of the Independent Engineer, either Party may require such Dispute to be referred to a first stage 'joint management committee' comprising of one member of the Mine Operator and one member of the Authority of the rank of 'General Manager' for amicable settlement and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting, either Party may require such Dispute to be referred to a second stage 'joint management committee' comprising of one member of the Mine Operator and one member of the Authority of the rank of 'Director' for amicable settlement and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting, or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 44.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 44.3.³²

44.3 Arbitration

- 44.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 44.2, shall be finally decided by reference to arbitration by an arbitral tribunal constituted in accordance with Clause 44.3.2. Such arbitration shall be

³² The number of rounds of conciliation attempts may be reduced at the discretion of the Authority.

held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "**Rules**") and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996. The place of such arbitration shall be [insert]³³, and the language of arbitration proceedings shall be English.

- 44.3.2 There shall be an arbitral tribunal comprising three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected, and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.
- 44.3.3 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.
- 44.3.4 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.
- 44.3.5 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.

44.4 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.

³³ Authority should identify an appropriate seat for arbitration

ARTICLE 45

DISCLOSURE

45.1 Disclosure of Specified Documents

The Mine Operator shall make available for inspection by any person, 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.

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 [****]³⁴ 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, 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

³⁴ Either one of these places or the capital of the State in which the Authority's headquarter is situate may be specified.

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 60 (sixty) 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 Bank Rate 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 Independent Engineer 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 Qualification or Request for Proposals, as the case may be, 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.

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 sub-clause (b) below 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 to the number 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.

ARTICLE 47

DEFINITIONS

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);

"**Allotment Agreement**" shall have the meaning set forth in Clause 7.4;

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

"**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 or government authority, 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 construction, operation and maintenance of the Mines during the subsistence of this Agreement;

"**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 a majority of directors on the board 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);

"**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 Mining Charge**" shall mean the amount arrived at by dividing the total Mining Charge 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 Mining Charge for any period prior to completion of the first Accounting Year following COD shall be a simple average of the Mining Charge 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 Mining Charge payable for any segment of the Mines has not been realised for any reason, an assessment thereof shall be made by the Independent Engineer to form part of the Average Daily Mining Charge for such period;

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

"**Bank**" shall mean a bank incorporated in India and having a minimum net worth of [Rs.1,000 crore (Rupees one thousand crore only)] or any other bank acceptable to the Authority, but does not include a bank in which any Senior Lender has an interest;

"**Bank Rate**" shall mean the rate of interest specified by the Reserve Bank of India from time to time in pursuance of section 49 of the Reserve Bank of India Act, 1934 or any replacement of such Bank Rate for the time being in effect;

"**Base Mining Charge**" shall have the meaning set forth in Clause 28.1.1;

"Base Re-handling Charge" shall have the meaning set forth in Clause 28.4.1;

"Bid" shall mean the documents in their entirety comprised in the bid submitted by the selected bidder in response to the Request for Proposal 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 Proposal;

"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. [***] (Rupees [***] crores only)³⁵, in accordance with the Request for Proposal, and which is to remain in force until substituted by the Performance Security;

"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}, together with {its/their} Associates in the total Equity to decline below (i) 51% (fifty one per cent) thereof during the Construction Period and until the 2nd (second) anniversary of COD, and (ii) 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

³⁵ This amount shall normally be equal to the amount specified in the Request for Proposal and may be calculated @1% (one per cent) of the amount specified in the definition of Total Project Cost. The Authority may, if deemed necessary, prescribe a higher Bid Security not exceeding 2% of the Total Project Cost. In the case of a project having a Total Project Cost of Rs. 2,000 cr. or above, the Authority may reduce the Bid Security, but not less than 0.5% of the Total Project Cost in any case

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;

"**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**" shall mean the coal handling plant as described in Annex-I of Schedule B of this Agreement;

"**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 (B);}

{"**Consortium Member**" shall mean a company specified in Recital (B) 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 excavation works and things necessary to develop the Mines in accordance with this Agreement [and includes the Rail Track];

"**Contract Period**" shall mean the period starting on and from the Appointed Date and ending on the earlier of the [15th(fifteenth)]³⁶ anniversary of the Appointed Date or the date of termination of the Agreement;

³⁶ The Contract Period should normally be fixed for a sufficiently long period, as a longer Contract Period will enable the Contractor to optimise on costs, including life cycle costs of HEMM, and thereby offer a lower Mining Charge to the Authority. However, the likelihood of significant geological surprises may, in some cases, require a comparatively shorter period and in such cases, the Authority may, in its discretion, fix a shorter Contract Period having regard to project-specific conditions, but in no case less than a minimum Contract Period that allows mining for 15 (fifteen) years commencing from the Scheduled Completion Date occurring after completion of the initial development of mines.

"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;

"CPI (IW)" shall mean the consumer price index for industrial workers as published by the Labour Bureau, Government of India and shall include any index which substitutes the CPI (IW), and any reference to CPI (IW) shall, unless the context otherwise requires, be construed as a reference to the CPI (IW) published for the period ending with the preceding quarter, save and except that for the purposes of quarterly revision of the Mining Charge in accordance with the provisions of Clause 28.1.1, the revision due for and in respect of any quarter shall be computed with reference to CPI (IW) as on the last date of the preceding quarter;

"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 or the Independent Engineer hereunder, the applicable Cure Period shall be extended by the period taken by the Authority or the Independent Engineer to accord their approval;

"Damages" shall have the meaning set forth in sub-clause (za) 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 loading and 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;

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

"**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, 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;

"**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 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 Total Project Cost, 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 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) of the Total Project Cost, and includes amendments or modifications made in accordance with Clause 5.2.2;

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

"Funded Works" shall have the meaning set forth in Clause 12.7.2;

"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;

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

"**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;

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

{ "**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 (D); }

"**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;

"**Material Adverse Effect**" shall mean a 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;

"**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 Grade**" shall mean [***]³⁷;

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

"**Mining Plan**" shall mean the mining plan approved under and in accordance with the provisions of the Mineral Concession Rules, 1960 or any substitute thereof;

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

"**Mobilisation Advance**" shall have the meaning set forth in Clause 27.1.1;

"**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 stationery position;

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

"**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-Funded Works**" shall mean the Construction Works described in Annex-IV of Schedule B, the capital cost of which is financed by the Mine Operator;

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

"**Notional Stripping Ratio**" shall mean the anticipated stripping ratio for the Accounting Year in which the Scheduled COD is to occur, which is [insert]³⁸;

"**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

³⁷ Project specific

³⁸ Insert as applicable

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;

"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 Advance" shall have the meaning set forth in Clause 20.3.1;

"Owner" shall have the meaning ascribed to such term in the Mines Act, 1952;

"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;

"Price Index" shall be construed in the following manner

(a) [20% (twenty per cent)] of the component will be fixed and will not be subjected to any escalation whatsoever

(b) [25% (twenty five per cent)] of WPI;

(c) [25% (twenty five per cent)] of CPI (IW); and

(d) [30% (thirty per cent)] of WPI for high speed diesel oil;

“Prime Lending Rate of State Bank of India” shall mean the benchmark prime lending rate 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.

"Project" shall mean the 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 Policy;

"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.10 crore (Rupees ten crore)³⁹;

"Project Assets" shall mean all 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;

"Project Completion Schedule" shall mean the progressive Project Milestones set forth in Schedule-G 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;

³⁹ This may be fixed at the higher of; (a) 2% (two per cent) of Total project Cost and (b) Rs. 10 (ten) crore.

“**Project Specific Assets**” shall mean the movable Project Assets which are specific to the Project, as more particularly listed in Annex-V of Schedule B, but not including heavy earth moving machinery usually used in open cast mines;

“**Purchase Value**” shall mean the lower of, (a) audited book value of the Non-Funded Works or Project Specific Assets (as the case may be); and (b) value of the Non-Funded 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;

[“**Rail Track**” shall have the meaning set forth in Clause 12.1.5;]

“**R&R Costs**” shall mean the costs for Rehabilitation and Resettlement as approved under the R&R Policy;

“**R&R Policy**” shall mean the policy on rehabilitation and resettlement of project affected persons of the [Authority or the State Government], as applicable and notified from time to time.

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

“**Realisable Mining Charge**” shall mean the Mining Charge due and realisable under this Agreement, but does not include the Mining Charge that the Mine Operator has not been able to realise after due diligence and best efforts. For the avoidance of doubt, Realisable Mining Charge shall be the amount so declared by the Mine Operator on the basis of its provisional accounts or the audited accounts, as the case may be, and in the event of a dispute thereto, the Dispute Resolution Procedure shall apply;

“**Reference Index Date**” shall mean, in respect of the specified month or quarter, as the case may be, that last day of the preceding month or quarter with reference to which the Price Index, WPI, price of diesel or tariff of electricity, as the case may be, is revised;

“**Rehabilitation and Resettlement**” shall mean the rehabilitation and resettlement of Project Affected Persons in accordance with the R&R Policy;

“**Re-handling Charges**” shall have the meaning set forth in Clause 28.4.1;

{ “**Request for Proposal**” or “**RFP**” shall have the meaning set forth in Recital (C); }

{ “**Request for Qualification**” or “**RFQ**” shall have the meaning set forth in Recital (B); }

"**Revenue Grade**" shall mean [***]⁴⁰;

"**Revenue Shortfall Loan**" shall have the meaning set forth in Clause 31.1.1;

"**Rules**" shall have the meaning set forth in Clause 44.3.1;

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

"**Scheduled COD**" shall have the meaning set forth in Clause 12.4.1;

"**Scheduled Completion Date**" shall have the meaning set forth in Clause 12.4.1;

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

"**Scheduled Overburden Quantity**" shall have the meaning set forth in Clause 20.2.1;

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

"**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 Total Project Cost and who hold *pari passu* charge on the assets, rights, title and interests of the Mine Operator;

"**Site**" shall have the meaning as set forth in Clause 10.2.2;

"**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 mine owners and operators for ensuring safe, economic, reliable and efficient excavation, operation and maintenance of the Mines and for providing safe, economic, reliable and efficient excavation 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

⁴⁰ Project specific

Union Territory;

"Statutory Auditors" shall mean a reputable firm of chartered accountants acting as the statutory auditors of the Mine Operator under the provisions of the Companies Act, 1956, including any re-enactment or amendment thereof, for the time being in force, and appointed in accordance with Clause 33.2.1;

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

"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 Total Project Cost 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;

"Subsistence Revenue" shall mean the total amount of revenue from the Project that is required by the Mine Operator in an Accounting Year to meet the sum of (a) the O&M Expenses, subject to an annual ceiling of 10% (ten percent) of the Total Project Cost, during the first Accounting Year after COD, to be revised for each subsequent Accounting Year to reflect the variations in Price Index occurring between COD and commencement of such Accounting Year, and (b) Debt Service in such Accounting Year.

"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 excise duties, customs duties, value added tax, sales tax, local taxes, 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 37.3;

"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, *mutatis mutandis*, include similar Tests to determine completion of Additional Capacity, if any;

"Ton" shall mean a metric tonne of Coal;

"Total Project Cost" shall mean the capital cost incurred on construction and financing of the Project and shall be limited to the lowest of:

- (a) the capital cost of the Project as set forth in the Financial Package; and
- (b) a sum of Rs. [***] (Rupees [***] crores only)⁴¹;

provided that the Total Project Cost shall not exceed the actual capital cost of the Project;

"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;

"Undelivered Coal" shall have the meaning set forth in Clause 28.4.1;

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

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

["Washery" shall mean the Site, plant and equipment installed and used for Washing;]

"Washing" shall mean the separation of heterogeneous materials from Coal at the coal preparation plant and includes the following processes:

- (a) blending and homogenisation;

⁴¹ This amount may be indicated on the basis of project-specific cost estimates, including financing charges. In case project-specific estimates have not been prepared, average industry-wide costs may be used for specifying the amount herein. In determining this amount, the estimated cost of construction shall be increased by 25% thereof to account for physical and price contingencies, risk premia and financing costs. These costs should be reviewed and firmed up during pre-bid consultations. For the avoidance of doubt, the Total Project Cost shall not include Funded Works.

- (b) size reduction;
- (c) screening and handling; and
- (d) beneficiation or cleaning;

"**WPI**" shall mean the wholesale price index for all commodities as published by the Ministry of Industry, Government of India and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the WPI published for the period ending with the preceding month, save and except that for the purposes of quarterly revision of the Mining Charge in accordance with the provisions of Clause 28.1.1, the revision due for and in respect of any quarter shall be computed with reference to WPI as on the last date of the preceding quarter.

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

SIGNED, SEALED AND DELIVERED

For and on behalf of

{THE AUTHORITY} by:

same in token thereof[§]:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

((e-mail address)

Signature)

(Name)

(Designation)

(Address)

(Fax No.)

((e-mail address)

In the presence of:

2.

1.

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 theday 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

_____ [§] 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

(See Clause 10.1)

SITE OF THE PROJECT

1. The Site

- 1.1 Site of the Project shall include: (a) the land, buildings, Coal Handling Plant, Coal Depot, power distribution sub-stations, workshops and any other associated structures as described in Annex-I of this Schedule A; (b) the land, buildings and bunkers/ silos as described in Annex-II of this Schedule A; [and (c) the land, buildings, Rail Track, electrical lines and electrical plants as described in Annex-III of this Schedule A].
- 1.2 Additional land required for [Overburden dumps, ancillary buildings, extension/ addition of Mines or for] construction of works specified in Change of Scope Order shall be acquired in accordance with the provisions of this Agreement. Upon acquisition, such land shall form part of the Site and vest in the Authority.

Annex - I
(Schedule-A)

Site of the Mines

[Note: The Site may be divided into blocks and demarcated as such in pursuance of the provisions of Clause 10.1.]

{Note: Through suitable drawings and description in words, the land, buildings, Coal Handling Plant, Coal Depot, power distribution sub-stations, workshops and any other associated structures comprising the Site of the Mine shall be specified briefly but precisely in this Annex-I.}

Annex – II

(Schedule-A)

Site for the Railway Siding/ Delivery Point

{**Note 1:** Through suitable drawings and description in words, the land, buildings, and bunkers/ silos comprising the Site for the railway siding/ Delivery Point shall be specified briefly but precisely in this Annex-II. }

Annex - III

(Schedule-A)

{Site for the Rail Track}

{**Note** 1: Through suitable drawings and description in words, the land, buildings, rail track, electrical lines and electrical plants comprising the Site for the Rail Track shall be specified briefly but precisely in this Annex-III. }

[**Note** 2: This Annex-III may be omitted if construction of a dedicated Rail Track is not contemplated].

SCHEDULE — B

(See Clause 2.1)

DEVELOPMENT OF THE MINES

1 Mines

- 1.1 Development of the Mines shall include construction of the Coal Handling Plant, Coal Depot, power distribution sub-stations, workshops, road works and any other associated structures and installation of equipment, as described in this Schedule-B and in Schedule-C.
- 1.2 Mines shall be developed by the Mine Operator in conformity with the Mining Plan and the Specifications and Standards set forth in Annex-I and Annex-II of Schedule-D.

2 Removal of Overburden

- 2.1 Development of the Mines shall include excavation of Overburden and deposit thereof, as described in Annex-I of this Schedule-B.
- 2.2 Removal of Overburden shall be undertaken by the Mine Operator in conformity with the Mining Plan.

[3 Rail Track]

- 3.1 [Rail Track shall include electrical lines, electrical plants and other associated structures as described in Annex-II of this Schedule-B.]
- 3.2 [Rail Track shall be constructed by the Mine Operator in conformity with the Specifications and Standards set forth in Annex-IV of Schedule-D.]

[Note: Paragraph 3 shall be omitted if construction of a dedicated Rail Track is not contemplated.]

Description of Mines⁴²

1. Capacity of the Mines

The Mine shall have a capacity to excavate and deliver Coal equivalent to the Contracted Capacity.

2. Project Facilities

The Project Facilities shall be constructed in conformity with Annex-I of Schedule-C.

3. Specifications and Standards

The development of Mines and installation of Equipment shall be in conformity with the Specifications and Standards specified in Annex-I and Annex-II respectively of Schedule-D.

4. Description of the Mines

The Mines shall be developed as briefly described below:

A. Mines

- (i) Type: [Opencast/ Underground]
- (ii) Number of Coal Seams to be mined:
- (iii) Targeted mine capacity in MT per annum:
- (iv) Geo-mining characteristics:

(Indicate Seam Gradient — Variation, Average Gradient of quarry floor, etc.)

- (v) Details of geological disturbances: number of faults and details thereof (throw and extent):

Fault No	Location & Extent of Fault	Trend of Fault	Amount & Direction of Throw	Evidence of Fault

⁴²This description of Mine should be as per approved Mining Plan/ project report.

- (vi) Presence of in-seam band, Seam-wise (numbers and thicknesses of each band):

Coal Seam	No. of dirt band	Cum. Th. of dirt bands (m)	%of dirt bands to Seam thickness

- (vii) Sequence of Coal Seam and parting:

Name of Seam/ parting	Thickness of coal/parting(m) with range		
	Av. Thickness	Minimum	Maximum

- (viii) Mine parameters:

Parameters	Unit	Quarry	
		Minimum	Maximum
Dimensions of the quarry along strike (on floor)	m		
Depth of quarry	m		
Dip rise length (on floor)	m		
Final Quarry Floor area	km ²		
Final Quarry Surface area	km ²		
Mineable reserves	(MT)		
Total Overburden	(Mcum)		
Average Stripping Ratio	(cum/T)		

- (ix) Mining method for Overburden removal:

(Briefly describe the mining system for Overburden and give year-wise Overburden removal schedule)

- (x) Mining method for Coal winning:

(Briefly describe the Coal winning method)

- (xi) Mining system and system parameters:

(To provide Mine specific details regarding bench height, width, etc. as per Mining Plan.)

B. [Coal Handling Plant]

Briefly describe the Coal Handling Plant indicating the following:

- (i) Capacity of the Coal Handling Plant:
- (ii) Receiving arrangement for run-off mine Coal:

- (iii) Crushing arrangement:
- (iv) Storage arrangement:
- (v) Conveying system:
- (vi) Loading arrangement:

C. Electricity Distribution Sub-station/ Distribution System

(Briefly describe the power distribution substation and power distribution system indicating incoming voltage, distribution voltage, estimated load, etc.)

D. [Installation of Equipments]⁴³

(Briefly describe the major equipments to be installed for mining indicating the size, numbers, availability, utilisation, etc. of such equipments.)

E. Pumping and Drainage

(Briefly describe the pumping and drainage system, including effluent treatment system, indicating the number of pumps, lay-out, design, etc. of pumping installation and drainage system.)

⁴³ Project specific information may be provided.

[Description of Rail Track]

1 [Length of the Rail Track]

1.1 The Rail Track shall be * * * * km in length.

1.2 The Rail Track shall be constructed [in tunnel/ at grade/ elevated] as briefly described below:

(Provide details here.)

2 [Project Facilities]

The Project Facilities shall be constructed in conformity with Annex-III of Schedule-C.

3 [Specifications and Standards]

The Rail Track shall be constructed in conformity with the Specifications and Standards specified in Annex-IV of Schedule-D.

Description of Funded Works

1 Funded Works

[**Note:** Through suitable drawings and description in words, buildings, Coal Handling Plant, power distribution sub-stations, workshops and any other associated structures comprising the Funded Works shall be described here, briefly but precisely, with reference to the Standards and Specifications.]

[Provide details here]

2 Cost of Funded Works

[The estimated lump sum cost of each of the Funded Works shall be specified here. While specifying the cost, the date of estimate shall be indicated and the specified amount shall be deemed to be revised to adjust for the variation in WPI occurring between the date of estimate and the Appointed Date.]

[Provide details here]

Annex-IV
(Schedule-B)

[Insert description of Non Funded Works]

Annex-V
(Schedule-B)

[Insert list of Project Specific Assets]

Annex-VI
(Schedule-B)

[Insert schedule on land]

SCHEDULE—C

(See Clause 2.1)

PROJECT FACILITIES

1 Project Facilities

The Mine Operator shall construct the Project Facilities in accordance with the provisions of this Agreement.

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 Facilities for Rail Track

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

[Note: Paragraph 4 shall be omitted if construction of a Rail Track is not contemplated.]

Project Facilities for Mines

1 Project Facilities

The Mine Operator shall construct the Project Facilities described in this Annex-1 to form part of the Mines. The Project Facilities shall include:

- (a) Coal Depot;
- (b) Washery;
- (c) Laboratory and testing facilities;
- (d) Workshops;
- (e) Fire hydrant system;
- (f) Weighbridge at the Coal Depot;
- (g) Roads;
- (h) Common facility centre;
- (i) Security equipment including closed-circuit television (CCTV);
- (j) RFID system for tracking of truck movement; and
- [(k) Others (to be specified)].

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) *[Washery]*

The Mine Operator shall procure and ensure that a Washery is so constructed that it has an annual raw Coal throughput capacity equivalent to the Contracted Capacity. The Mine Operator shall at all times ensure availability of requisite facilities including power, water and storage space for raw and washed Coal.

(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 [***]⁴⁴ of weighbridges for weighing of truck/vehicle loaded with Coal. 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 and approach roads required for excavation 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 Overburden or 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.

⁴⁴ Insert number as applicable

[Project Facilities for Township]⁴⁵

1 Project Facilities

The Mine Operator shall construct the Project Facilities described in this Annex-II to form part of the township for the Project. These Project Facilities shall include:

- (a) Administrative and housing complex;
- (b) Primary health centre with at least 6 (six) beds;
- (c) Secondary school;
- (d) Community centre and;
- [(e) Others (to be specified)].

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.

(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.

(c) Secondary School

The Mine Operator shall build a secondary school in conformity with the standards specified by the Central Board of Secondary Education.

(d) Community centre

The Mine Operator shall provide a community centre with an auditorium for social gathering, functions and other special occasions.

⁴⁵ Project specific requirements to be decided by the Authority.

[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
- [(e) Others (to be specified)].

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 [****]⁴⁶ of weighbridges for weighment 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.

⁴⁶ Insert number as applicable

SCHEDULE – D

(See Clause 2.1)

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 of Equipment.

3 Mining Plan

The Mine Operator shall comply with the Mining Plan set forth in Annex-III, as may be modified from time to time in conformity with Applicable Laws.

[4 Rail Track

The Mine Operator shall comply with the Specifications and Standards set forth in Annex-IV of this Schedule-D for construction of Rail Track.]

[**Note:** Paragraph 4 shall be omitted if construction of a Rail Track is not contemplated.]

Specifications and Standards for Development of the Mines

1 Standards and Specifications

Subject to the provisions of Paragraph 2 of this Annex-I, the development of Mines shall conform with the provisions of the Mining Plan which shall be deemed to be the Specifications and Standards. An authenticated copy of the same has been provided to the Mine Operator as part of the bidding documents.

2 Additional Specifications and Standards

Notwithstanding anything to the contrary contained in Paragraph 1 of this Annex-I, the following additional Specifications and Standards⁴⁷ shall apply to the development of Mines, and for purposes of this Agreement, the Specifications and Standards referred to in Paragraph 1 shall be deemed to be amended to the extent set forth below in this Paragraph 2.

⁴⁷ These additions may be in compliance to conditions of DGMS or other such regulatory authorities.

Specifications and Standards for Equipment

1 Standards and Specifications

Subject to the provisions of Paragraph 2 of Annex-II, the installation of Equipment at the Mines shall conform with the provisions of the Mining Plan which shall be deemed to be the Specifications and Standards. An authenticated copy of the same has been provided to the Mine Operator as part of the bidding documents.

2 Additional Specifications and Standards

Notwithstanding anything to the contrary contained in Paragraph 1 of this Annex-II, the following additional Specifications and Standards⁴⁸ shall apply to the installation of Equipment at the Mines, and for purposes of this Agreement, the Specifications and Standards referred to in Paragraph 1 shall be deemed to be amended to the extent set forth below in this Paragraph 2.

⁴⁸ These additions may be in compliance to conditions of DGMS or other such regulatory authorities.

Mining Plan

The mandatory provisions of the Mining Plan for procuring compliance with Applicable Laws are specified below:

[Note: Specify briefly, but precisely, the mandatory provisions of the Mining Plan.]

Specifications and Standards for the Rail Track

1 Manual of Specifications and Standards to apply

Subject to the provisions of Paragraph 2 of this Annex-IV, the Rail Track shall conform to the specifications and standards of the Ministry of Railways as applicable to the Rail Track.

[2 Deviations from the standards and specifications]

[Notwithstanding anything to the contrary contained in the specifications and standards referred to in Paragraph I of this Annex-IV, the following specifications and standards shall apply to the Rail Track, and for purposes of this Agreement, the specifications and standards referred to in Paragraph 1 shall be deemed to be amended to the extent set forth below:]

⁴⁹ Annex-IV may be omitted if the Project does not include a dedicated Rail Track.

SCHEDULE - E

(See Clause 4.1.3)

APPLICABLE PERMITS

PART I

1 Applicable Permits prior to Appointed Date⁵⁰

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; and
- (b) Applicable Permits for and in respect of employment of labour at the Mines.

PART II

2 Applicable Permits during Contract Period⁵¹

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; and

PERMISSION OF THE STATE GOVERNMENT FOR CUTTING OF TREES.

⁵⁰ The Authority may include any other Applicable Permits which the Mine Operator would need to procure in relation to the mining operation.

⁵¹ The Authority may include any other Applicable Permits which the Mine Operator would need to procure in relation to the mining operation.

SCHEDULE - F

(See Clause 9.1)

PERFORMANCE SECURITY

[[**** {name of the company}]]

WHEREAS:

- (A) (the "**Mine Operator**") and [name of the company] represented by *** and having its principal offices at ***** ("**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 for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Contract Period and upto 90 (ninety) days after the Contract Period (the "**Guarantee Period**").
- (C) 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 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, 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 the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights 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 unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee no later than 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 to do so 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.

10. 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 defined herein, shall have the meaning assigned to them in the Agreement.

Signed and sealed thisday of20 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.

SCHEDULE –G

(See Clause 12.2)

PROJECT COMPLETION SCHEDULE⁵²

1 Project Completion Schedule⁵³

During Construction Period, the Mine Operator shall comply with the requirements set forth in this Schedule-G for each of the Project Milestones and the Scheduled Completion Date (the "**Project Completion Schedule**"). Within 15 (fifteen) days of the date of each Project Milestone, the Mine Operator shall notify the Authority of such compliance along with necessary particulars thereof.

2 Project Milestone-I

2.1 Project Milestone-I shall occur on the date falling on the [180th (one hundred and eightieth)] day from the Appointed Date (the "**Project Milestone-I**").

2.2 Prior to the occurrence of Project Milestone-I, the Mine Operator shall have commenced development of the Mines and expended not less than 5% (five per cent) of the Total Project Cost set forth in the Financial Package.

3 Project Milestone-II

3.1 Project Milestone-II shall occur on the date falling on the [(365th (three hundred and sixty fifth))] day from the Appointed Date (the "**Project Milestone-II**").

3.2 [Prior to the occurrence of Project Milestone-II, the Mine Operator shall have completed construction of haul/approach roads, power distribution substation/system, effluent treatment system and drainage system at the Mines and expended not less than 20% (twenty per cent) of the Total Project Cost set forth in the Financial Package and conveyed to the Independent Engineer, the nature and extent of physical progress comprising such expenditure so as to enable the Independent Engineer to determine that the physical progress is reasonably commensurate with the expenditure incurred.]

4 Project Milestone-III

4.1 Project Milestone-III shall occur on the date falling on the [550th (five hundred and fiftieth)] day from the Appointed Date (the "**Project Milestone-III**").

4.2 [Prior to the occurrence of Project Milestone-III, the Mine Operator shall have completed construction of Coal Depot and Coal Handling Plant and expended not less than 40% (forty per cent) of the Total Project Cost set forth in the Financial Package and conveyed to the Independent Engineer, the nature and extent of

⁵² The project milestones should be fixed keeping in the Efficiency Parameters in the Allotment Agreement as may be applicable.

⁵³ The dates for each milestone, number of milestones and the level of expenditure for each milestone may be determined as per project-specific requirements.

physical progress comprising such expenditure so as to enable the Independent Engineer to determine that the physical progress is reasonably commensurate with the expenditure incurred.]

5 Scheduled Completion Date

- 5.1 The Scheduled Completion Date shall occur on the [****]th ([****]) day from the Appointed Date.
- 5.2 On or before the Scheduled Completion Date, the Mine Operator shall have completed the [1st (first) phase of the] development of Mines for excavation and Delivery of Contracted Capacity of Coal in accordance with this Agreement.

6 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.

SCHEDULE - H

(See Clause 12.3)

DRAWINGS

1 Drawings

In compliance of the obligations set forth in Clause 12.3 of the Agreement, the Mine Operator shall furnish to the Independent Engineer, free of cost, all Drawings listed in Annex-I of this Schedule-H.

2 Additional drawings

If the Independent Engineer 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 Independent Engineer, as if such drawings formed part of Annex-I of this 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 12.3. An illustrative list is given below. It may be suitably modified as per project-specific requirements.]

I List of Drawings for the Mines⁵⁴

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

II [List of Drawings for the Rail Track⁵⁵]

1. Location plan of the Rail Track.
2. Topographical plan of the Rail Track.
3. Layout plan of the loading station.

⁵⁴ This list may be decided by the Authority as per need of the contract.

⁵⁵ This Part-II may be omitted if the Project does not include a dedicated Rail Track.

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 Independent Engineer 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 Independent Engineer and the Authority particulars of all works and equipment forming part of the Mines.
- 1.2 The Mine Operator shall notify the Independent Engineer 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 Independent Engineer shall, in consultation with the Mine Operator, determine the date and time for each Test and notify the same to the Authority who may designate its representative to witness the Tests. The Independent Engineer 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 Independent Engineer shall require the Mine Operator to carry out, or cause to be carried out, Tests on the Mines and the Rail Track as specified in Paragraphs 3 and 4 of this Schedule-I.

3. Mines

Tests for equipment

Independent Engineer 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. Rail Track

4.1 Trail run of Trains:

Independent Engineer shall conduct or cause to be conducted trail runs of trains to determine the compliance of the Rail Track with the specification and standards laid down for this purpose by the Ministry of Railways.

4.2 Tests for equipment

Independent Engineer shall conduct or cause to be conducted Tests, in accordance with Standard Industry Practice, for determining the compliance of equipment, signaling and telecommunication with the specification and standards laid down for this purpose by the Ministry of Railways.

5. Common Tests

5.1 Visual and physical Test

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

5.2 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 Independent Engineer shall determine conformity of the Mines with the provisions of this Agreement.

5.3 Environmental audit

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

6. Agency for conducting Tests

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

7. 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.

8. Completion Certificate

Upon successful completion of Tests, the Independent Engineer shall issue the

Completion Certificate in accordance with the provisions of Article 14.

9. Cost of Tests

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

9.2 In the event any Test is required to be repeated by the Independent Engineer for reasons not attributable to the Mine Operator, the cost of such Test shall be borne by the Authority.

10. 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 Independent Engineer), acting as Independent Engineer, under and in accordance with the agreement dated(the "**Agreement**"), for 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 the Mines/ phase.....of the Mines has a capacity of..... MT.
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
INDEPENDENT ENGINEER by:

(Signature)

(Name)

(Designation)

(Address)

SCHEDULE – K

(See Clause 16.1)

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 and any failure in this behalf shall constitute a breach of the Agreement. Upon occurrence of any breach hereunder, the Authority shall be entitled to recover Damages as set forth in Clause 16.8 of the Agreement, without prejudice to the rights of the Authority under the Agreement, including Termination thereof.

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 Independent Engineer; (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

No equipment 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 Independent Engineer.

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 Independent Engineer 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 Independent Engineer 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 Directorate General of Mine Safety 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 Development and Operation Period

- 3.1 The Mine Operator shall provide to the safety officer, in 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 the Rail Track] 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 33 of the Coal Mines Regulations, 1957, forward three copies of the Safety Drawings with its recommendations, if any, to the Independent Engineer who shall record its comments, if any, and forward 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 [and the dedicated Rail Track]. The safety audit shall be carried out by an independent expert appointed by the Authority and be completed in a period of three months and a report thereof (the "**Safety Report**") shall be submitted to the Authority, in five copies. One copy each of the Safety Report shall be forwarded by the Authority to the Mine Operator and the Independent Engineer 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 Mine 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 Independent Engineer 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 Mine, and notify the Authority and the Independent Engineer 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.

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 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 26.1)

APPOINTMENT OF INDEPENDENT ENGINEER

1 Appointment of Independent Engineer

- 1.1 The provisions of the model request for proposal for selection of technical consultants, issued by the Ministry of Finance vide O.M. No. 24(23)/PF-II/2008 dated May 21, 2009, or any substitute thereof shall apply for selection of an experienced firm to discharge the functions and duties of an Independent Engineer.
- 1.2 In the event of termination of the Independent Engineer appointed in accordance with the provisions of paragraph 1.1, the Authority shall appoint another firm of technical consultants forthwith or may engage a government-owned entity in accordance with the provisions of paragraph 4 of this Schedule-N.
- 1.3 The Mine Operator may, in its discretion, nominate a representative to participate in the process of selection to be undertaken by the Authority under this Schedule-N.

2 Fee and expenses

- 2.1 In determining the nature and quantum of duties and services to be performed by the Independent Engineer during the Development Period and the Construction Period, the Authority shall endeavour that payments to the Independent Engineer on account of fee and expenses do not exceed [0.1% (zero point one per cent)] of the Total Project Cost. Payments not exceeding such [0.1% (zero point one per cent)] shall be borne equally by the Authority and the Mine Operator in accordance with the provisions of this Agreement and any payments in excess thereof shall be borne entirely by the Authority.
- 2.2 The nature and quantum of duties and services to be performed by the Independent Engineer during the Operation Period shall be determined by the Authority in conformity with the provisions of this Agreement and with due regard for economy in expenditure. All payments made to the Independent Engineer on account of fees and expenses during the Operation Period, shall be borne equally by the Authority and the Mine Operator.

3 Substitution of Independent Engineer

No later than three years from the date of this Agreement, and every three years thereafter, the Authority shall engage a new firm as Independent Engineer, in accordance with the criteria set forth in this Schedule-N.

4 Appointment of government entity as Independent Engineer

Notwithstanding anything to the contrary contained in this Schedule-N, the Authority may in its discretion appoint a government-owned entity as the Independent Engineer; provided that such entity shall be a body corporate having

as one of its primary function the provision of consulting, advisory and supervisory services for engineering projects; provided further that a government-owned entity which is owned or controlled by the State Government shall not be eligible for appointment as Independent Engineer.

SCHEDULE - O

(See Clause 26.2.1)

TERMS OF REFERENCE FOR INDEPENDENT ENGINEER

1 Scope

- 1.1 These terms of reference for the Independent Engineer (the "**TOR**") are being specified pursuant to the agreement dated (the "**Agreement**"), which has been entered into between the Authority and(the "**Mine Operator**") for the procurement of Coal which, *inter alia*, includes development of the mines at ***** (the "**Mines**"), and a copy of which is annexed hereto and marked as Annex-A to form part of this TOR.
- 1.2 This TOR shall apply to construction, operation and maintenance of the Mines.

2 Definitions and interpretation

- 2.1 The words and expressions beginning with or in capital letters used in this TOR and not defined herein but defined in the Agreement shall have, unless repugnant to the context, the meaning respectively assigned to them in the Agreement.
- 2.2 References to Articles, Clauses and Schedules in this TOR shall, except where the context otherwise requires, be deemed to be references to the Articles, Clauses and Schedules of the Agreement, and references to Paragraphs shall be deemed to be references to Paragraphs of this TOR.
- 2.3 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Agreement shall apply, *mutatis mutandis*, to this TOR.

3 Role and functions of the Independent Engineer

- 3.1 The role and functions of the Independent Engineer shall include the following:
- (i) review of the Drawings and Documents as set forth in Paragraph 4;
 - (ii) review, inspection and monitoring of Construction Works as set forth in Paragraph 5;
 - (iii) review, inspection and testing of Mines as set forth in Paragraph 5;
 - (iv) conducting Tests on completion of construction and issuing Completion Certificate as set forth in Paragraph 5;
 - (v) review, inspection and monitoring of O&M as set forth in Paragraph 6;
 - (vi) review, inspection and monitoring of Divestment Requirements as set forth in Paragraph 7;
 - (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 Paragraph 9; and
- (x) undertaking all other duties and functions in accordance with the Agreement.

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

4 Development Period

4.1 During the Development Period, the Independent Engineer 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 Independent Engineer 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.

4.2 The Independent Engineer 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.

4.3 The Independent Engineer 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.

4.4 The Independent Engineer shall review the quality assurance procedures and the procurement, engineering, excavation and construction time schedule sent to it by the Mine Operator and furnish its comments within 15 (fifteen) days of receipt thereof.

4.5 Upon reference by the Authority, the Independent Engineer shall review and comment on the EPC Contract or any other contract for construction, excavation, operation and maintenance of the Mines, and furnish its comments within 7 (seven) days from receipt of such reference from the Authority.

5 Construction Period

- 5.1 In respect of the Drawings, Documents and safety report received by the Independent Engineer for its review and comments during the Construction Period, the provisions of Paragraph 4 shall apply *mutatis mutandis*.
- 5.2 The Independent Engineer 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.
- 5.3 The Independent Engineer shall inspect the Construction Works and Equipment once every quarter, and make out a report of such inspection (the "**Inspection Report**") 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 Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the construction of the Mines or in the Equipment. The Independent Engineer shall send a copy of its Inspection Report to the Authority and the Mine Operator within 7 (seven) days of the inspection.
- 5.4 The Independent Engineer may inspect the Mines more than once in a quarter if any lapses, defects or deficiencies require such inspections.
- 5.5 For determining that the Construction Works conform to Specifications and Standards, the Independent Engineer may require the Mine Operator to carry out, or cause to be carried out, tests on a sample basis, to be specified by the Independent Engineer in accordance with Standard Industry Practice for quality assurance.
- 5.6 The sample size of the tests, to be specified by the Independent Engineer under Paragraph 5.5, 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 Independent Engineer 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.
- 5.7 The timing of tests referred to in Paragraph 5.5, and the criteria for acceptance/rejection of their results shall be determined by the Independent Engineer 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, the tests that may be carried out by the Mine Operator for its own quality assurance in accordance with Standard Industry Practice.
- 5.8 In the event that the Mine Operator carries out any remedial works for removal or rectification of any defects or deficiencies, the Independent Engineer 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 5 shall apply to such tests.

- 5.9 In the event that the Mine Operator fails to achieve any of the Project Milestones, the Independent Engineer shall undertake a review of the progress of construction and identify potential delays, if any. If the Independent Engineer 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 Independent Engineer shall review the same and send its comments to the Authority and the Mine Operator forthwith.
- 5.10 The Independent Engineer 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 5.10 and all matters incidental thereto, the Independent Engineer shall act under and in accordance with the provisions of Article 14 and Schedule-I.

6 Operation Period

- 6.1 In respect of the Drawings, Documents and Safety Report received by the Independent Engineer for its review and comments during the Operation Period, the provisions of Paragraph 4 shall apply, *mutatis mutandis*.
- 6.2 The Independent Engineer 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.
- 6.3 The Independent Engineer 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.
- 6.4 The Independent Engineer shall inspect the Mines, once every quarter, 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 Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in O&M of the Mines. The Independent Engineer shall send a copy of its O&M Inspection Report to the Authority and the Mine Operator within 7 (seven) days of the inspection.
- 6.5 The Independent Engineer may inspect the Mines more than once in a quarter, if any lapses, defects or deficiencies require such inspections.
- 6.6 The Independent Engineer 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.

- 6.7 The Independent Engineer shall determine if any delay has occurred in completion of repair or remedial works in accordance with the Agreement, and shall also determine the Damages, if any, payable by the Mine Operator to the Authority for such delay.
- 6.8 The Independent Engineer 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 Independent Engineer shall monitor the re-opening of such section, and in case of delay, determine the Damages payable by the Mine Operator under Clause 16.8.
- 6.9 The Independent Engineer 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 Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it. The Independent Engineer shall send a copy of its report to the Authority and the Mine Operator within 7 (seven) days of the inspection.
- 6.10 The Independent Engineer 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.

7 Termination

- 7.1 At any time, not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to such Termination, the Independent Engineer 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 Independent Engineer 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.
- 7.2 The Independent Engineer 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 Independent Engineer, it shall make a report in reasonable detail and send it forthwith to the

Authority and the Mine Operator.

8 Determination of costs and time

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

9 Assistance in Dispute resolution

- 9.1 When called upon by either Party in the event of any Dispute, the Independent Engineer shall mediate and assist the Parties in arriving at an amicable settlement.
- 9.2 In the event of any disagreement between the Parties regarding the meaning, scope and nature of Standard Industry Practice, as set forth in any provision of the Agreement, the Independent Engineer shall specify such meaning, scope and nature by issuing a reasoned written statement relying on Standard Industry Practice and authentic literature.

10 Other duties and functions

The Independent Engineer shall perform all other duties and functions specified in the Agreement.

11 Miscellaneous

- 11.1 The Independent Engineer shall notify its programme of inspection to the Authority and to the Mine Operator, who may, in their discretion, depute their respective representatives to be present during the inspection.
- 11.2 A copy of all communications, comments, instructions, Drawings or Documents sent by the Independent Engineer to the Mine Operator pursuant to this TOR, and a copy of all the test results with comments of the Independent Engineer thereon shall be furnished by the Independent Engineer to the Authority forthwith.
- 11.3 The Independent Engineer shall obtain, and the Mine Operator shall furnish in two copies thereof, all communications and reports required to be submitted, under this Agreement, by the Mine Operator to the Independent Engineer, whereupon the Independent Engineer shall send one of the copies to the Authority along with its comments thereon.
- 11.4 The Independent Engineer shall retain at least one copy each of all Drawings and Documents received by it, including `as-built' Drawings, and keep them in its safe custody.
- 11.5 Upon completion of its assignment hereunder, the Independent Engineer shall duly classify and list all Drawings, Documents, results of tests and other relevant records, and hand them over to the Authority or such other person as the Authority

may specify, and obtain written receipt thereof. Two copies of the said document shall also be furnished in micro film form or in such other medium as may be acceptable to the Authority.

- 11.6 Wherever no period has been specified for delivery of services by the Independent Engineer, it shall act with the efficiency and urgency necessary for discharging its functions in accordance with Standard Industry Practice.

SCHEDULE - P

(See Clause 33.2.1)

PANEL OF CHARTERED ACCOUNTANTS

1 Panel of Chartered Accountants

Pursuant to the provisions of Clause 33.2.1 of the Agreement, the Authority and the Mine Operator shall prepare a mutually agreed panel of 5 (five) reputable firms of chartered accountants having their registered offices in India (the "**Panel of Chartered Accountants**"). The criteria for preparing such Panel of Chartered Accountants and the procedure to be adopted in this behalf shall be as set forth in this Schedule-P.

2 Invitation for empanelment

2.1 The Authority shall invite offers from all reputed firms of chartered accountants who fulfill the following eligibility criteria, namely:

- (a) the firm should have conducted statutory audit of the annual accounts of at least one hundred companies registered under the Companies Act, 1956, including any re-enactment or amendment thereof, of which at least ten should have been public sector undertakings;
- (b) the firm should have at least 5 (five) practicing chartered accountants on its rolls, each with a minimum experience of 10 (ten) years in the profession;
- (c) the firm or any of its partners should not have been disqualified or black-listed by the Comptroller and Auditor General of India or the Authority; and
- (d) the firm should have an office in the State or in an adjacent State with at least 2 (two) practicing chartered accountants on its rolls in such State.

2.2 Interested firms meeting the eligibility criteria shall be required to submit a statement of their capability including the bio-data of all the practicing chartered accountants on its rolls. In particular, each firm shall be required to furnish year-wise information relating to the names of all the companies with an annual turnover exceeding Rs. 25,00,00,000/- (Rupees Twenty Five crores only) whose annual accounts were audited by such firm in any of the preceding 5 (five) Accounting Years.

3 Evaluation and selection

3.1 The information furnished by each firm shall be scrutinized and evaluated by the Authority and 1 (one) point shall be awarded for each annual audit of the companies specified in Paragraph 2.2 above. For the avoidance of doubt and by way of illustration, a firm which has conducted audit of the annual accounts of any such company for five years shall be awarded five points.

3.2 The Authority shall prepare a list of all the eligible firms along with the points scored by each such firm and 5 (five) firms scoring the highest points shall be

identified and included in the draft Panel of Chartered Accountants.

4 Consultation with the Mine Operator

The Authority shall convey the aforesaid panel of firms to the Mine Operator for scrutiny and comments, if any. The Mine Operator shall be entitled to scrutinise the relevant records of the Authority to ascertain whether the selection of firms has been undertaken in accordance with the prescribed procedure and it shall send its comments, if any, to the Authority within 15 (fifteen) days of receiving the aforesaid panel.

5 Mutually agreed panel

- 5.1 The Authority shall, after considering all relevant factors including the comments, if any, of the Mine Operator, finalise and constitute a panel of 5 (five) firms which shall be deemed to be the mutually agreed Panel of Chartered Accountants.
- 5.2 After completion of every five years from the date of preparing the mutually agreed Panel of Chartered Accountants, or such earlier period as may be agreed between the Authority and the Mine Operator, a new panel shall be prepared in accordance with the provisions of this Schedule-P.

SCHEDULE - Q

(See Clause 38.4)

VESTING CERTIFICATE

- 1 [***⁵⁶ and having its offices at ***/] (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 ***** (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.

Signed thisday 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)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

In the presence of:

1.

2.

⁵⁶ All asterisks in this Model Agreement should be substituted by project-specific particulars in the draft Agreement forming part of Bid Documents.

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 [****]⁵⁷ and having its offices at [****] (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 [****] (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 Agreement 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 Agreement 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

⁵⁷ All asterisks in this Model Agreement should be substituted by project-specific particulars in the draft Agreement forming part of Bid Documents.

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, 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 Agreement 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 Agreement 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 2.1, 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 shall 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 Agreement 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 shortlisting 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 Agreement 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 Agreement 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 Agreement 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 Agreement 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 Agreement 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 Agreement 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 Alternate 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 [***] 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 [***] 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.