

**AGREEMENT BY AND BETWEEN THE PRESIDENT OF INDIA ANDM/s [To be  
inserted]IN RESPECT OF PROJECT MANAGEMENT UNIT FOR THE  
NOMINATED AUTHORITY AND MINISTRY OF COAL**

This Stamp-paper forms an integral part of this deed of Agreement.

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This Agreement (hereinafter called the “**Agreement**”) is made by and between following:

**PARTIES:**

- 1 **The President of India**, acting through the Central Government represented by the Nominated Authority appointed under Section 6 of the Coal Mines (Special Provisions) Act, 2015 (the “**Nominated Authority**”)

**AND**

- 2 [To be inserted], incorporated in India under the Companies Act 1956 with Corporate Identity Number (CIN)[To be inserted], whose registered office is at[To be inserted] and regional office at[to be inserted](the “**Project Management Unit**”).

**BACKGROUND:**

- A. The Nominated Authority vide its Request for Bids dated [To be inserted] (the “**RFB**”) invited bid from the eligible bidders for working as Project Management Unit for Coal Block Operationalization and related activities, details of which are provided in the RFB and the Agreement (the “**Services**”)
- B. The Project Management Unit submitted its proposal for the aforesaid work, whereby the Project Management Unit represented to the Nominated Authority that it had the required professional skills, and in the said proposal the Project Management Unit also agreed to provide the Services to the Nominated Authority on the terms and conditions as set forth in the RFB and this Agreement; and
- C. The Nominated Authority, on acceptance of the aforesaid proposal of the Project Management Unit, awarded the contract to the Project Management Unit vide its Letter of Award dated [To be inserted] (the “**LOA**”); and in pursuance to the LOA, the parties have agreed to enter into this Agreement.

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

**1. DEFINITIONS AND INTERPRETATION**

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

**1.1. Definitions**

- 1.1.1. “**Acceptable Bank**” shall mean a Scheduled Bank as listed in the Second Schedule of the

Reserve Bank of India Act, 1934 excluding those listed under the headings of Gramin Banks, Urban Co-operative Banks and State Co-operative Banks

- 1.1.2. “**Agreement**” means this Agreement, together with all the Schedules;
- 1.1.3. “**Applicable Law**” shall mean all applicable statutes, laws, by-laws, rules, regulations, orders, ordinances, protocols, codes, guidelines, policies, notices, directions, judgments, decrees or other requirements or official directive of any governmental authority or court or other law, rule or regulation approval from the relevant governmental authority, government resolution, directive, or other government restriction or any similar form of decision of, or determination by, or any interpretation or adjudication having the force of law in India.
- 1.1.4. “**Confidential Information**” shall have the meaning set forth in Clause 6.6.1;
- 1.1.5. “**Conflict of Interest**” shall have the meaning set forth in Clause 6.4 read with the provisions of RFB;
- 1.1.6. “**Central Government**” shall mean the Government of India, acting through the Ministry of Coal.
- 1.1.7. “**Dispute**” shall have the meaning set forth in Clause 12.2.1;
- 1.1.8. “**Effective Date**” means the date on which this Agreement comes into force and effect pursuant to Clause 5.1;
- 1.1.9. “**Fee**” means fee payable to Project Management Unit as set forth in Clause 9.
- 1.1.10. “**Good Industry Practice**” means, in relation to any undertaking and any circumstances, the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced Person engaged in the same type of undertaking under the same or similar circumstances.
- 1.1.11. “**₹, INR, Re. or Rs.**” means Indian Rupees;
- 1.1.12. “**Nominated Authority**” shall mean the Nominated Authority appointed under section 6(1) of the Coal Mines (Special Provisions) Act, 2015.
- 1.1.13. “**Parties**” means and refers to the Nominated Authority and [To be inserted] Advisory Services Private Limited (the Project Management Unit), collectively and “**Party**” refers to any one of them.
- 1.1.14. “**Personnel**” means persons hired by the Project Management Unit as employees or retainers and assigned to the performance of the Services or any part thereof and includes Key Personnel as required under the RFB;

- 1.1.15. “**Performance Security**” shall have the meaning given to such expression in Clause 10.
- 1.1.16. “**Person**” means any individual, sole proprietorship, unincorporated association, body corporate, corporation, company, partnership, limited liability company, joint venture, governmental authority or trust or any other entity or organization.
- 1.1.17. “**RFB**” means the Request for Bids document dated [To be inserted] issued by Nominated Authority in response to which the Project Management Unit’s proposal for providing Services was accepted;
- 1.1.18. “**Scope of Work**” shall have the meaning given to such expression in Clause 6.2.
- 1.1.19. “**Services**” means the work to be performed by the Project Management Unit selected pursuant to the RFB, as described in the Scope of Work contained in Clause 6.2 hereto.
- 1.1.20. “**Rules**” shall have the meaning ascribed to such expression in Clause 12.3.1.
- 1.1.21. “**State Government**” shall mean the Government of the state where the Coal Mine is located.
- 1.1.22. “**Third Party**” means any person or entity other than the Government, the Nominated Authority, or the Project Management Unit.

## 1.2. **Interpretation**

- 1.2.1. Unless the context otherwise requires, words in the singular shall include the plural and the plural shall include the singular.
- 1.2.2. References to the masculine, the feminine and the neuter shall include each other.
- 1.2.3. The recitals and schedules form part of this Agreement and shall have the same force and effect as if expressly set out in the body of this Agreement, and any reference to this Agreement shall include any recitals and schedules to it. Any references to clauses and schedules are to clauses and schedules to this Agreement. Any references to parts or paragraphs are, unless otherwise stated, references to parts or paragraphs of the schedule in which the reference appears.
- 1.2.4. A reference to **this Agreement** or **any other document** shall be construed as references to this Agreement or that other document as amended, varied, novated, supplemented or replaced from time to time.
- 1.2.5. A reference to **a Clause** shall, unless followed by reference to a specific provision, be deemed to refer to the whole Clause (not merely the sub-Clause, paragraph or other provision) in which the expression occurs.
- 1.2.6. Each of the representations and warranties provided in this Agreement is independent of

other representations and warranties and unless the contrary is expressly stated, no Clause in this Agreement limits the extent or application of another Clause.

- 1.2.7. Headings to Clauses, parts and paragraphs of schedules and schedules are for convenience only and do not affect the interpretation of this Agreement.
- 1.2.8. A reference to “**in writing**” includes any communication made through an e mail or a letter along with a copy in the form of an e-mail (unless otherwise expressly provided in this Agreement.).

## **2. RELATION BETWEEN THE PARTIES**

- 2.1. Nothing contained herein shall be construed as establishing a relation of master and servant or of agent and principal as between the Nominated Authority and the Project Management Unit. The Project Management Unit shall, subject to this Agreement, have complete charge of Personnel performing the Services and shall be fully responsible for the Services performed by them or on their behalf hereunder.

## **3. RIGHTS AND OBLIGATIONS**

- 3.1. The mutual rights and obligations of the Nominated Authority and the Project Management Unit shall be as set forth in the Agreement, in particular:

(a) the Project Management Unit shall carry out the Services in accordance with the provisions of the Agreement; and

(b) the Nominated Authority shall make payments to the Project Management Unit in accordance with the provisions of the Agreement.

### **3.2. Governing law and jurisdiction**

- 3.2.1. This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts of New Delhi shall have exclusive jurisdiction over matters arising out of or relating to this Agreement.

## **4. TABLE OF CONTENTS AND HEADINGS**

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.

- 4.1.1. The Services shall be performed at the offices of the Nominated Authority in accordance with the provisions of RFB and at such locations as are incidental thereto, including the offices of the Project Management Unit

## **5. COMMENCEMENT, COMPLETION AND TERMINATION OF AGREEMENT**

**5.1. Effectiveness of Agreement**

5.1.1. This Agreement shall come into force and effect on the date of this Agreement (the “**Effective Date**”).

**5.2. Commencement of Services**

5.2.1. The Project Management Unit shall commence the Services within a period of 15 (Fifteen) days from the Effective Date or such other date as may be specified by the Nominated Authority.

**5.3. Termination of Agreement for failure to commence Services**

5.3.1. If the Project Management Unit does not commence the Services within the period specified in Clause 5.2.1 above, the Nominated Authority may, by not less than 1 (one) weeks’ notice to the Project Management Unit, declare this Agreement to be null and void, and in the event of such a declaration, this Agreement shall stand terminated and the Project Management Unit shall be deemed to have accepted such termination.

**5.4. Expiry of Agreement**

5.4.1. Unless terminated earlier pursuant to Clauses 5.3 hereof, this Agreement shall expire upon the completion of two years from the Effective Date, which may be extended further by one (01) year, with mutual consent between the Nominated Authority and the Project Management Unit, on the same terms and conditions laid down herein.

**5.5. Entire Agreement**

5.5.1. This Agreement along with 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; provided, however, that the obligations of the Project Management Unit arising out of the provisions of the RFB shall continue to subsist and shall be deemed to form part of this Agreement.

5.5.2. Without prejudice to the generality of the provisions of Clause 5.5.1 above, on matters not covered by this Agreement, the provisions of RFB shall apply.

**5.6. Modification of Agreement**

5.6.1. The Modification of the terms and conditions of this Agreement, including any modification of the scope of the Services, may only be made by written agreement



between the Parties.

## **5.7. Force Majeure**

### **5.7.1. Definition of Force Majeure**

5.7.1.1. For the purposes of the Agreement, “Force Majeure” shall mean an event which is beyond the reasonable control of a Party, and which makes a Party’s performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances, and includes, but is not limited to, war, terrorist attack, riots, civil disorder, earthquake, collapse of buildings, fire, explosion, storm, flood or other adverse weather conditions, epidemic or pandemic, strikes, lockouts or other industrial action (except where such strikes, lockouts or other industrial action are within the power of the Party invoking Force Majeure to prevent), confiscation or any other action by government agencies.

5.7.1.2. Force Majeure shall not include (i) any event which is caused by the negligence or intentional action of a Party or agents or employees, nor (ii) any event which a diligent Party could reasonably have been expected to (A) take into account, during the term of this Agreement, and (B) avoid or overcome in the carrying out of its obligations hereunder.

5.7.1.3. Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.

## **5.8. No breach of Agreement**

5.8.1. The failure of a Party to fulfil any of its obligations hereunder shall not be considered to be a breach of, or default under, this Agreement insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this Agreement.

## **5.9. Measures to be taken**

5.9.1. A Party affected by an event of Force Majeure shall take all reasonable measures to remove such Party’s inability to fulfil its obligations hereunder with a minimum of delay.

5.9.2. A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any event not later than 14 (fourteen) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give notice of the restoration of normal conditions as soon as possible.

5.9.3. The Parties shall take all reasonable measures to minimise the consequences of any event of Force Majeure.

**5.10. Extension of time**

5.10.1. Period of this Agreement shall be extended for a period equal to the time during which a Party was unable to perform any action or task required to be completed by it under this Agreement as a result of Force Majeure.

**5.11. Consultation**

5.11.1. Not later than 30 (thirty) days after the Project Management Unit has, as the result of an event of Force Majeure, become unable to perform a material portion of the Services, the Parties shall consult with each other with a view to agreeing on appropriate measures to be taken in the circumstances.

**5.12. Suspension of Agreement**

5.12.1. The Nominated Authority may, by written notice of suspension to the Project Management Unit, suspend all payments to the Project Management Unit hereunder if the Project Management Unit shall be in breach of this Agreement or shall fail to perform any of its obligations under this Agreement, including the carrying out of the Services; provided that such notice of suspension (i) shall specify the nature of the breach or failure, and (ii) shall provide an opportunity to the Project Management Unit to remedy such breach or failure within a period not exceeding 15 (fifteen) days or such extended period as approved by Nominated Authority, after receipt by the Project Management Unit of such notice of suspension.

**5.13. Cessation of rights and obligations**

5.13.1. Upon termination of this Agreement pursuant to Clauses 5.3 or Clause 5.17 hereof, or upon expiration of this Agreement pursuant to Clause 5.4 hereof, all rights and obligations of the Parties hereunder shall cease, except (i) such rights and obligations as may have accrued on the date of termination or expiration, or which expressly survives such Termination; (ii) the obligation of confidentiality set forth in Clause 6.6 hereof; (iii) the Project Management Unit's obligation to permit inspection and copying of such of its accounts and records set forth in Clause 6.8, as relate to the Project Management Unit's Services provided under this Agreement, and (iv) any right or remedy which a Party may have under this Agreement or the Applicable Laws.

**5.14. Cessation of Services**

5.14.1. Upon termination of this Agreement by notice of either Party to the other pursuant to Clauses 5.17.1 or Clause 5.17.2 hereof, the Project Management Unit shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner. With respect to documents prepared by the Project Management Unit and materials furnished by the Nominated Authority, the Project

Management Unit shall proceed as provided respectively by Clause 6.10 or Clause 6.11 hereof.

**5.15. Payment upon Termination**

5.15.1. Upon termination of this Agreement pursuant to Clause 5.17.1 or Clause 5.17.2 hereof, the Nominated Authority shall make the payment of outstanding remuneration pursuant to Clause 9 hereof for Services satisfactorily performed prior to the date of termination to the Project Management Unit (after offsetting against these payments any amount that may be due from the Project Management Unit to the Nominated Authority):

**5.16. Disputes about Events of Termination**

5.16.1. If either Party disputes whether an event specified in Clause 5.17.1 or in Clause 5.17.2 hereof has occurred, such Party may, within 30 (thirty) days after receipt of notice of termination from the other Party, refer the matter to arbitration pursuant to Clause 12 hereof, and this Agreement shall not be terminated on account of such event except in accordance with the terms of any resulting arbitral award.

**5.17. Termination of Agreement**

5.17.1. By the Nominated Authority

The Nominated Authority may, by not less than 15 (fifteen) days' written notice of termination to the Project Management Unit, such notice to be given after the occurrence of any of the events specified in this Clause 5.17.1, terminate this Agreement if:

- a) the Project Management Unit fails to remedy any breach hereof or any failure in the performance of its obligations hereunder, as specified in a notice of suspension pursuant to Clause 5.12 hereinabove, within 15 (fifteen) days of receipt of such notice of suspension or within such further period as the Nominated Authority may have subsequently granted in writing;
- b) the Project Management Unit becomes insolvent or bankrupt or enters into any agreement with its creditors for relief of debt or take advantage of any law for the benefit of debtors or goes into liquidation or receivership whether compulsory or voluntary;
- c) the Project Management Unit fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause 12 hereof;
- d) the Project Management Unit submits to the Nominated Authority a statement which has a material effect on the rights, obligations or interests of the Nominated Authority and which the Project Management Unit knows to be false;
- e) any document, information, data or statement submitted by the Project Management Unit in its Proposals, based on which the Project Management Unit was considered eligible or successful, is found to be false, incorrect or misleading;
- f) as the result of Force Majeure, the Project Management Unit is unable to perform a material portion of the Services for a period of more than 60 (sixty) days; or

- g) the Nominated Authority, in its sole discretion and for any reason whatsoever, decides to terminate this Agreement.

#### 5.17.2. By the Project Management Unit

The Project Management Unit may, by not less than 30 (thirty) days' written notice to the Nominated Authority, such notice to be given after the occurrence of any of the events specified in this Clause 5.17.2, terminate this Agreement if:

- a) the Nominated Authority is in material breach of its obligations pursuant to this Agreement and has not remedied the same within 45 (forty-five) days (or such longer period as the Project Management Unit may have subsequently granted in writing) following the receipt by the Nominated Authority of the Project Management Unit's notice specifying such breach;
- b) as the result of Force Majeure, the Project Management Unit is unable to perform a material portion of the Services for a period of more than 60 (sixty) days; or
- c) the Nominated Authority fails to comply with any final decision reached as a result of arbitration pursuant to Clause 12 hereof.

## **6. OBLIGATIONS OF THE PROJECT MANAGEMENT UNIT**

### **6.1. General**

6.1.1. The Project Management Unit shall perform the Services and carry out its obligations hereunder with all due diligence, efficiency and economy, in accordance with generally accepted professional techniques and practices, and shall observe sound management practices, and employ appropriate advanced technology and safe and effective equipment, machinery, materials and methods. The Project Management Unit shall always act, in respect of any matter relating to this Agreement or to the Services, as a faithful adviser to the Nominated Authority, and shall at all times support and safeguard the Nominated Authority's legitimate interests in any dealings in respect of the Services under the Agreement.

### **6.2. Scope of Work**

6.2.1. The Scope of Work to be performed by the Project Management Unit is specified in the **SCHEDULE A** of this Agreement. The Project Management Unit shall provide the deliverables specified therein in conformity with the time schedule stated therein.

### **6.3. Applicable Laws**

6.3.1. The Project Management Unit shall perform the Services in accordance with the Applicable Laws and shall take all practicable steps to ensure that any Personnel and agents of the Project Management Unit comply with the Applicable Laws.

### **6.4. Conflict of Interest**

- 6.4.1. The Project Management Unit shall not have a conflict of interest for rendering the Services specified in SCHEDULE A of the Agreement and any breach hereof shall constitute a breach of the Agreement.
- 6.4.2. Project Management Unit shall provide professional, objective, and impartial advice and at all times hold the Nominated Authority's interests paramount, avoid conflicts with other assignments or its own interests, and act without any consideration for future work. The Project Management Unit, during the period of service, shall not accept or engage in any assignment, that would be in conflict with the work of Project Management Unit as defined in the RFB with Nominated Authority/ Central Government, or that may place it in a position of not being able to carry out the assignment in the best interests of the Nominated Authority.

6.5. **Prohibition of conflicting activities**

6.5.1. Project Management Unit not to benefit from commissions, discounts, etc.:

The remuneration of the Project Management Unit pursuant to Clause 9 hereof shall constitute the Project Management Unit's sole remuneration in connection with this Agreement or the Services and the Project Management Unit shall not accept for its own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Agreement or to the Services or in the discharge of its obligations hereunder, and the Project Management Unit shall use its best efforts to ensure that any Personnel and agents of either of them, similarly shall not receive any such additional remuneration.

- 6.5.2. The Project Management Unit and its Personnel shall observe the highest standards of ethics and not have engaged in and shall not hereafter engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice (collectively the "**Prohibited Practices**"). Notwithstanding anything to the contrary contained in this Agreement, the Nominated Authority shall be entitled to terminate this Agreement forthwith by a communication in writing to the Project Management Unit, without being liable in any manner whatsoever to the Project Management Unit, if it determines that the Project Management Unit has, directly or indirectly or through an agent, engaged in any Prohibited Practices in the selection process or before or after entering into of this Agreement. In such an event, the Nominated Authority shall forfeit and appropriate the Performance Security as mutually agreed genuine pre-estimated compensation and damages payable to the Nominated Authority towards, inter alia, time, cost and effort of the Nominated Authority, without prejudice to the Nominated Authority's any other rights or remedy hereunder or in law.

- 6.5.3. Without prejudice to the rights of the Nominated Authority under Clause 6.5.2 above and the other rights and remedies which the Nominated Authority may have under this

Agreement, if the Project Management Unit is found by the Nominated Authority to have directly or indirectly or through an agent, engaged or indulged in any Prohibited Practices, during the selection process or before or after the execution of this Agreement, the Project Management Unit shall not be eligible to participate in any tender or RFB issued during a period of 2 (two) years from the date the Project Management Unit is found by the Nominated Authority to have directly or indirectly or through an agent, engaged or indulged in any Prohibited Practices.

6.5.4. For the purposes of Clauses 6.5.2 and 6.5.3, the following terms shall have the meaning hereinafter respectively assigned to them:

(a) **“Corrupt Practice”** means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the selection process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Nominated Authority who is or has been associated in any manner, directly or indirectly, with the selection process or has dealt with matters concerning the Agreement or arising therefrom, before or after the execution thereof, at any time prior to the expiry of 1 (one) year from the date such official resigns or retires from or otherwise ceases to be in the service of the Nominated Authority, shall be deemed to constitute influencing the actions of a person connected with the selection process); or (ii) save and except as permitted under this Agreement, engaging in any manner whatsoever, whether during the selection process or after the execution of the Agreement, as the case may be, any person in respect of any matter relating to the Agreement;

(b) **“Fraudulent Practice”** means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the selection process;

(c) **“Coercive Practice”** means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the selection process;

(d) **“Undesirable Practice”** means (i) establishing contact with any person connected with or employed or engaged by the Nominated Authority with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the selection process; (ii) having a conflict of interest; or (iii) violating of any Applicable Law; and

(e) **“Restrictive Practice”** means forming a cartel or arriving at any understanding or arrangement among applicants/ bidders/ consultancy firms or successful bidders/ allottee of coal mine with the objective of restricting or

manipulating a full and fair competition in the selection process.

## 6.6. **Confidentiality**

- 6.6.1. The Project Management Unit or its Personnel shall not, either during the term or within three years after the expiration or termination of this Agreement disclose any proprietary information, including information relating to reports, data, drawings, design software or other material, whether written or oral, in electronic or magnetic format, and the contents thereof; and any reports, digests or summaries created or derived from any of the foregoing that is provided by the Nominated Authority to the Project Management Unit and its Personnel; any information provided by or relating to the Nominated Authority, its technology, technical processes, business affairs or finances or any information relating to the Nominated Authority's employees, officers or other professionals or suppliers, customers, or contractors of the Nominated Authority; and any other information which the Project Management Unit is under an obligation to keep confidential in relation to the Project, the Services or this Agreement ("**Confidential Information**"), without the prior written consent of the Nominated Authority.
- 6.6.2. Notwithstanding the aforesaid, the Project Management Unit and its Personnel may disclose Confidential Information to the extent that such Confidential Information:
- (a) was in the public domain prior to its delivery to the Project Management Unit and its Personnel becomes a part of the public knowledge from a source other than the Project Management Unit and its Personnel;
  - (b) was obtained from a third party with no known duty to maintain its confidentiality;
  - (c) is required to be disclosed by Applicable Laws or judicial or administrative or arbitral process or by any governmental instrumentalities, provided that for any such disclosure, the Project Management Unit and its Personnel shall give the Nominated Authority prompt written notice, if such notice is not barred by any legal provision; and
  - (d) is provided to the professional advisers, agents, auditors or representatives of the Project Management Unit and its Personnel as is reasonable under the circumstances; provided, however, that the Project Management Unit and its Personnel, as the case may be, shall require their professional advisers, agents, auditors or its representatives, to undertake in writing to keep such Confidential Information confidential and shall use its best efforts to ensure compliance with such undertaking.

## 6.7. **Liability of the Project Management Unit**

- 6.7.1. The Project Management Unit's liability under this Agreement shall be determined by the Applicable Laws and the provisions hereof.
- 6.7.2. The Project Management Unit shall, subject to the limitation specified in Clause 6.7.3, be liable to the Nominated Authority for any direct loss or damage accrued or likely to accrue due to deficiency in Services rendered by it.
- 6.7.3. The Parties hereto agree that in case of negligence or wilful misconduct on the part of the Project Management Unit or on the part of any person or firm acting on behalf of the Project Management Unit in carrying out the Services, the Project Management Unit, with respect to damage caused to the Nominated Authority's property, shall not be liable to the Nominated Authority:
- i. for any indirect or consequential loss or damage; and
  - ii. for any direct loss or damage that exceeds (a) an amount equal to 1.50 times of the fee actually paid to the selected Transaction Adviser for the relevant mine(s)/ block(s), or (b) the proceeds the Project Management Unit may be entitled to receive from any insurance maintained by the Project Management Unit to cover such a liability, whichever of (a) or (b) is higher.

**6.8. Accounting, inspection and auditing**

The Project Management Unit shall:

- (a) keep accurate and systematic accounts and records in respect of the Services provided under this Agreement, in accordance with internationally accepted accounting principles and standards such as Indian Accounting Standards, GAAP, etc and in such form and detail as will clearly identify all relevant time charges and cost, and the basis thereof (including the basis of the Project Management Unit's costs and charges);
- (b) permit the Nominated Authority or its designated representative periodically, and up to one year from the expiration or termination of this Agreement, to inspect the accounts and records in respect of the Services provided under this Agreement and make copies thereof.

**6.9. Reporting obligations**

- 6.9.1. The Project Management Unit shall submit to the Nominated Authority the necessary documents as part of the Services, in the form, in the numbers and within the time periods as specified by the Nominated Authority.



**6.10. Documents prepared by the Project Management Unit to be property of the Nominated Authority**

6.10.1. All reports and other documents (collectively referred to as “**Consultancy Documents**”) prepared by the Project Management Unit in performing the Services shall become and remain the property of the Nominated Authority, and all intellectual property rights in such Consultancy Documents shall vest with the Nominated Authority.

6.10.2. The Project Management Unit shall, not later than termination or expiration of this Agreement, deliver all Consultancy Documents to the Nominated Authority, together with a detailed inventory thereof. The Project Management Unit may retain a copy of such Consultancy Documents. The Project Management Unit shall not use these Consultancy Documents for purposes unrelated to this Agreement without the prior written approval of the Nominated Authority.

6.10.3. **Indemnity:** Subject to the provisions of Clause 6.7, the Project Management Unit shall, hold the Nominated Authority harmless and indemnified for any losses, claims, damages, expenses, awards, penalties or injuries (collectively referred to as “**Claims**”) which may arise due to any breach or failure on part of the Project Management Unit to perform any of its duties or obligations in relation to the Agreement.

**6.11. Materials furnished by the Nominated Authority**

6.11.1. Materials made available to the Project Management Unit by the Nominated Authority shall be the property of the Nominated Authority and shall be marked accordingly. Upon termination or expiration of this Agreement, the Project Management Unit shall furnish forthwith to the Nominated Authority, an inventory of such materials and shall dispose of such materials in accordance with the instructions of the Nominated Authority, save and except the documents and materials the Project Management Unit is required to retain as per law.

**6.12. Providing access to office of the Project Management Unit and Personnel**

6.12.1. The Project Management Unit shall ensure that the Nominated Authority, and officials of the Nominated Authority having authorisation from the Nominated Authority, are provided unrestricted access to the office of the Project Management Unit and to all Personnel during office hours. The Nominated Authority’s official, who has been authorised by the Nominated Authority in this behalf, shall have the right to inspect the Services in progress, interact with Personnel of the Project Management Unit and verify the records relating to the Services for his satisfaction.

**6.13. Accuracy of Documents**

6.13.1. The Project Management Unit shall be responsible for accuracy of the documents drafted

and/ or vetted by it as part of the Services. Subject to the provisions of Clause 6.7, the Project Management Unit shall indemnify the Nominated Authority against any inaccuracy in its work which might surface during implementation of the Project, if such inaccuracy is the result of any negligence or malfeasance on part of the Project Management Unit or arises out of its failure to conform to good industry practice. The Project Management Unit shall also be responsible for promptly correcting, at its own cost and risk, the documents, if such inaccuracy or mistake is brought to the notice of Project Management Unit or detected on its own.

## **7. PROJECT MANAGEMENT UNIT'S PERSONNEL**

### **7.1. General**

7.1.1. The Project Management Unit shall employ and provide such qualified and experienced Personnel as may be required to carry out the Services.

### **7.2. Deployment of Personnel**

7.2.1. The designations, names and other particulars of each of the Project Management Unit's Key Personnel required in carrying out the Services are described in SCHEDULE B of this Agreement.

7.2.2. The consultant will provide one additional personnel for each 10 coal mines for which clearances will be added in the scope of the work after the issuance of the RFB. The qualification & experience of personnel to be added later on will be decided mutually as per the requirement of Nominated Authority

### **7.3. Approval of Personnel**

7.3.1. The Key Personnel listed in SCHEDULE B of the Agreement are hereby approved by the Nominated Authority.

7.3.2. If the Project Management Unit hereafter proposes to engage any person other than Key Personnel, it shall give prior intimation of the same to the Nominated Authority at least 10 days before such engagement and submit CV of such person.

### **7.4. Substitution of Key Personnel**

7.4.1. The Nominated Authority expects all the Key Personnel specified in the Proposal to be available during implementation of the Agreement. The Nominated Authority will not consider substitution of the Key Personnel except for reasons of any incapacity or due to health or resignation. Such substitution shall ordinarily be limited to one Key Personnel subject to equally or better qualified and experienced personnel being provided to the satisfaction of the Nominated Authority.

7.4.2. The Team leader must commit the time required for and be available for delivering the Services in accordance with the terms specified herein.

**7.5. Working hours, overtime, leave, etc.**

7.5.1. The Personnel shall be entitled to sick leave or vacation leave or any other leave as per the policies of Project Management Unit and extant laws. The Project Management Unit shall ensure that any absence on account of leave will not delay the progress and quality of the Services. Any absence of Key Personnel (except Team Leader) for more than 2 days without written intimation to the Nominated Authority would be considered as failure in the performance of its obligation by the Project Management Unit and would attract provision of Clause 5.17.

**7.6. Location of work**

7.6.1. The location of the delivery of Services shall be New Delhi.

**8. OBLIGATIONS OF THE NOMINATED AUTHORITY**

8.1.1. Unless otherwise specified in the Agreement, the Nominated Authority shall make best efforts to ensure that the Government shall:

- (a) provide the Project Management Unit and its Personnel with work permits and such other documents as may be necessary to enable the Project Management Unit or its Personnel to perform the Services; and
- (b) issue to officials, agents and representatives of the Government all such instructions as may be necessary or appropriate for the prompt and effective implementation of the Services.

8.1.2. The Nominated Authority warrants that the Project Management Unit shall have, free of charge, unimpeded access to the site of the project in respect of which access is required for the performance of Services.

8.1.3. All applicable taxes, as may be applicable from time to time, on the payment of the professional fees to the Project Management Unit, shall be borne by the Nominated Authority.

8.1.4. In consideration of the Services performed by the Project Management Unit under this Agreement, the Nominated Authority shall make to the Project Management Unit such payments and in such manner as is provided in Clause 9 of this Agreement.

**9. PAYMENT TO THE PROJECT MANAGEMENT UNIT**

9.1.1. The Project Management Unit shall be entitled to the following fees for providing its services to the Nominated Authority/ Ministry of Coal:

(i) Fixed Monthly Payment for two year:

$$\text{Monthly Fee} = \frac{\text{The 30\% amount of the total financial bids submitted [amount to be inserted]}}{24 \text{ Months}}$$

(ii) Payment per clearance:

$$\text{Fee for each clearance} = \frac{\text{The remaining 70\% amount of the total financial bids submitted [amount to be inserted]}}{\text{Total Number of clearances mentioned in the RFB}}$$

9.1.2. The Goods and Services Tax as applicable from time to time shall be payable by the Nominated Authority/ Central Government on the total fee. Remaining all other taxes shall have to be borne by the Project Management Unit.

9.1.3. TDS as applicable from time to time shall be deducted on gross amount of the fee as per rules.

9.1.4. The payment in respect of the clearance of the coal mines which will be allocated after the issuance of this RFB will be made on the pre-determined rate as per the fee of each clearance obtained as specified in the clause 9.1.1 (ii) above.

9.1.5. The monthly payment in respect of additional personnel provided as per the clause 7.2.2 will be decided as per the average monthly payment made to the existing personnel as per clause 9.1.1 (i) above.

## 10. PERFORMANCE SECURITY

10.1.1. The Project Management Unit shall deposit with Nominated Authority a performance security in form of an irrevocable and unconditional bank guarantee from an Acceptable Bank payable at Delhi of RsINR [To be inserted].

10.1.2. Performance Security shall be forfeited and appropriated by the Nominated Authority, under the following conditions:

- (i) If the Project Management Unit engages in any of the Prohibited Practices specified in clause 6.5.2;

(ii) If the Project Management Unit is found to have a Conflict of Interest as specified in clause 6.4; and

(iii) If the selected Project Management Unit commits a breach of this Agreement.

10.1.3. Performance Bank Guarantee should remain valid for a period of sixty days beyond the date of completion of all contractual obligations of the successful bidder including warranty obligations.

10.1.4. Subject to Clause 10.1.2, upon termination of this Agreement pursuant to Clause 5.17.1 or Clause 5.17.2 hereof, the Performance Security shall be returned to the Project Management Unit within 80 days from the expiry or termination of the Agreement, as the case may be after adjustment of any amount due to Nominated Authority.

## **11. FAIRNESS AND GOOD FAITH**

### **11.1. Good Faith**

11.1.1. The Parties undertake to act in good faith with respect to each other's rights under this Agreement and to adopt all reasonable measures to ensure the realisation of the objectives of this Agreement.

### **11.2. Operation of the Agreement**

11.2.1. The Parties recognise that it is impractical in this Agreement to provide for every contingency which may arise during the life of the Agreement, and the Parties hereby agree that it is their intention that this Agreement shall operate fairly as between them, and without detriment to the interest of either of them, and that, if during the term of this Agreement either Party believes that this Agreement is operating unfairly, the Parties will use their best efforts to agree on such action as may be necessary to remove the cause or causes of such unfairness, but failure to agree on any action pursuant to this Clause 11.2 shall not give rise to a dispute subject to arbitration in accordance with Clause 12 hereof.

## **12. SETTLEMENT OF DISPUTES**

### **12.1. Amicable settlement**

12.1.1. The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Agreement or the interpretation thereof.

### **12.2. Dispute resolution**

12.2.1. 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.

12.2.2. 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.

### 12.3. **Arbitration**

12.3.1. Any Dispute which is not resolved amicably, shall be finally decided by reference to arbitration by an Arbitral Tribunal appointed in accordance with Clause 12.3.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the “**Rules**”), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act,1996. The place of such arbitration shall be New Delhi and the language of arbitration proceedings shall be English.

12.3.2. There shall be a sole arbitrator whose appointment shall be made in accordance with the Rules.

12.3.3. The arbitrator shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Clause 12 shall be final and binding on the Parties as from the date it is made, and the Project Management Unit and the Nominated Authority agree and undertake to carry out such Award without delay.

12.3.4. The Project Management Unit and the Nominated Authority agree that an Award may be enforced against the Project Management Unit and/or the Nominated Authority, as the case may be.

12.3.5. 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.

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

## **SCHEDULE A – SCOPE OF SERVICES**

1. Liaison with various Departments / officers of Central Government and coal bearing State Governments for streamlining of approvals for operationalisation of coal mines.
  - Maintain real-time status of clearances for all the mines.
  - Maintain a log of any pending requests of the Successful Bidder/ Allottee which are addressed to Union Ministries, Departments, State Governments, concerned wings of MoC and Coal Controllers Organization
  - Handholding of allocattees in getting clearances from different agencies.
  - Co-ordinate with the Successful Bidder/ Allottee and prepare discussion agendas for meetings with Central and State agencies.
  - Participate in meetings with various departments/ officers of Central Government and coal bearing State Governments for streamlining of approvals for operationalisation of coal mines and preparation of minutes of the said meetings and do follow up activities on the decisions taken in the meetings.
  - Visit and contact the concerned authorities where clearances are pending and facilitate early processing of the applications, if directed by the Authority.
  
2. Study the prevailing practice being exercised in grant of various statutory approvals and suggesting the modification(s) needed for consideration by the Government.
  - Study the existing practice of granting various statutory approvals (pertaining to development and operationalisation of coal mine) by Ministry of Coal
  - Identify key issues being faced by the allocattees in seeking approvals as per the existing practice
  - Identify key issues being faced by Ministry of Coal in granting approvals as per the existing practice
  - Recommend changes to the existing practice of granting statutory approvals
  - The report on the production and dispatch of coal from coal mines monitored by O/o Nominated Authority.
  
3. Daily Diary shall be maintained by each personnel of the Team and submitted to the Authority at the end of the month or whenever desired by the Authority. Fortnightly presentation on progress and status of the project shall be made before the Authority.
  
4. The Scope of Services is not exhaustive, and the selected bidder shall undertake such other tasks as may be assigned by the Authority related with the objective of the project.

## List of Clearances

CMSP Coal Blocks								
State	Name of Coal Mine	Successful Bidder / Allottee	EC	FC	FC	ML	LA	Remaining clearances
Chhattisgarh	Gare Palma Sector II	Maharashtra State Power Generation Co Ltd	Y	N	N	N	N	4
	Gidhmuri, Paturia	Chhattisgarh State Power Generation Co Ltd	N	N	N	N	N	5
	Madanpur South	APMDCL	N	N	N	N	N	5
	Durgapur II/ Taraimar and Sariya	Karnataka Power Corporation Ltd	N	N	N	N	N	5
	Bhaskarpara	Prakash Industries Ltd	N	N	N	N	N	5
	Jharkhand	Badam	Bihar State Power Generation Co Ltd	Y	Y	N	N	N
Banhardih		Jharkhand UrjaUtpadan Nigam Ltd	N	N	N	Y	Y	3
Dumri		HINDALCO	Y	Y	N	N	Y	2
Lohari		Aranya Mines Private Ltd.	Y	NA	NA	N	N	2
Meral		Trimula Industries Limited	N	NA	NA	N	N	3
Moitra		JSW STEEL LIMITED	Y	Y	Y	N	Y	1
Rajbar D & E		TenughatVidyut Nigam Ltd	N	N	N	N	N	5
Saharpur Jamarpani		UP RajyaVidyutUtpadanNigam Ltd	N	N	N	N	N	6
Tubed		DVC	Y	Y	N	Y	Y	1
Kotre Basantpur& Pachmo		CCL	N	N	N	Y	Y	3
Amarkonda MurgaDangal		ECL	N	N	N	N	N	5
Brahmini & Chichro Pastimal		ECL	N	N	N	N	N	5
Sugia closed Mine		Jharkhand state Mineral Development Corporation Ltd.	Y	N	N	N	N	4
Tokisud North		NMDC Ltd.	Y	Y	Y	N	N	2
Brahmdiha		Andhra Pradesh Mineral Development Corporation Ltd	N	NA	NA	N	N	3
Chakla		Hindalco Industries Ltd	N	N	N	N	N	5



	Rajhara North (Central & Eastern)	Fairmine Carbons Pvt Ltd	N	N	N	N	N	5
	Gondulpara	Adani Enterprises Ltd	N	N	N	N	N	5
	Urma Paharitola	Aurobindo Reality And Infrastructure Private Limited	N	N	N	N	N	5
	Rohne	NMDC	Y	Y	Y	N	N	2
	Jogheswar & Khas Jogheswar	South West Pinnacle Exploration Ltd	N	N	N	N	N	5
	Rauta Closed	Shreesatya Mine Pvt Ltd	N	N	N	N	N	5
	Bikram	Birla Corporation Ltd.	N	N	N	N	N	5
	Brahampuri	Birla Corporation Ltd.	N	N	N	N	N	5
	Urtan North	JMS Mining Private Limited	N	N	N	N	N	5
	Shahpur West	Sarda Energy And Minerals Limited	N	N	N	N	N	5
	Shahpur East	Chowgule And Company Private Limited	N	N	N	N	N	5
	Gotitoria (East) & (West)	Boulder Stone Mart Pvt Ltd	Y	Y	Y	N	N	2
Maharashtra	Nerad Malegaon	Indrajit Power Priavte Ltd.	Y	Y	Y	Y	N	1
	Mark Mangli II	Yazdani International Private Limited	N	N	N	N	N	5
	Takli-Jena-Bellora (North) & Takli-Jena-Bellora (South)	Aurobindo Reality And Infrastructure Private Limited	N	N	N	N	N	5
	Gondkhari	Adani Power Maharashtra Ltd	N	N	N	N	N	5
Odisha	Manoharpur Dip side	Odisha Coal & Power Limited	N	N	N	Y	Y	3
	Naini	The Singareni Collieries Co Ltd	Y	Y	N	Y	Y	1
	Utkal-E	NALCO	Y	Y	N	Y	N	2
	Baitarni west	Odisha Mining Corporation	N	N	N	N	N	5
	New Patrapara	SCCL	N	N	N	N	N	5
	Jamkhani	Vedanta Ltd.	N	Y	Y	N	N	3
	Mandakini	Karnataka Power Corporation Ltd	Y	Y	Y	N	N	2
	Radhikapur East	EMIL Mines And Mineral Resources Limited	N	N	N	N	N	5
	Radhikapur	Vedanta Ltd.	N	Y	N	N	N	4

	West							
	Utkal-A	MCL	N	N	N	N	N	6
W.B.	Penagaddppa	The Singareni Collieries Company Limited	N	N	N	N	N	6
	Khagra Joydev	Damodar Valley Corporation	Y	Y	Y	Y	N	1
	Gourangdih ABC	West Bengal Mineral Development Corporation Limited	N	N	N	Y	N	4
	East of Damogoria	BCCL	N	N	N	N	N	5
	JaganathpurB	Powerplus Traders Private Ltd.	N	N	N	N	N	5
	<b>Sub Total</b>							<b>204</b>
<b>MMDR coal blocks</b>								
<b>State</b>	<b>Name of Coal Mine</b>	<b>Successful Bidder / Allottee</b>	<b>EC</b>	<b>FC</b>	<b>FC</b>	<b>ML</b>	<b>LA</b>	<b>Remaining clearances</b>
Madhya Pradesh	Urtan	JMS Mining Private Limited	N	NA	NA	N	N	3
Madhya Pradesh	Dhirauli	Stratatech Mineral Resources Private Limited	N	N	N	N	N	5
Madhya Pradesh	Bandha	EMIL Mines And Mineral Resources Limited	N	N	N	N	N	5
Odisha	Kurloi North	Vedanta Ltd	N	N	N	N	N	5
Maharashtra	Bhivkund	Sunflag Iron and Steel Company Limited	N	NA	NA	N	N	3
Chhattisgarh	Jhigador	CG Natural Resources Pvt Ltd	N	N	N	N	N	5
Chhattisgarh	Khargaon	CG Natural Resources Pvt Ltd	N	N	N	N	N	5
	Sub Total							<b>31</b>
	<b>Total</b>							<b>235</b>

**SCHEDULE B - DETAILS OF KEY PERSONNEL**

## SCHEDULE C – ADDRESS FOR PROVIDING NOTICES

### A. Notice to the Nominated Authority

<b>Address</b>	Nominated Authority, Ministry of Coal, 120, F wing , ShastriBhawan, New Delhi - 110001
<b>Telephone</b>	011-23414136
<b>Fax</b>	011-23414136
<b>E-mail (only for information)</b>	<a href="mailto:nomauthority.moc@nic.in">nomauthority.moc@nic.in</a>

### B. With CC to the Central Government

<b>Address</b>	Ministry of Coal, ShastriBhawan, New Delhi - 110001
<b>Telephone</b>	011-23073933
<b>Fax</b>	011-23381678
<b>E-mail (only for information)</b>	<a href="mailto:soca3.moc@nic.in">soca3.moc@nic.in</a> <a href="mailto:ca1.moc@nic.in">ca1.moc@nic.in</a>

### C. Notice to the Project Management Unit

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

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

**Signatories**

The Nominated Authority

*[insert name]*

.....  
Name:  
Date:

.....  
Name:  
Designation:  
Date: