

MODEL

COAL MINE DEVELOPMENT AND PRODUCTION AGREEMENT

FOR DETAILED EXPLORED BLOCKS

TABLE OF CONTENTS

ARTICLE-1	7
DEFINITIONS.....	7
ARTICLE-2	13
TERM	13
ARTICLE-3	14
ARTICLE- 4	15
RELINQUISHMENT	15
ARTICLE- 5	16
WORK PROGRAMME.....	16
ARTICLE- 6	17
PERFORMANCE SECURITY	17
ARTICLE-7	19
GENERAL RIGHTS AND OBLIGATIONS.....	19
ARTICLE- 8	22
CHANGE IN CONTROL.....	22
ARTICLE-9	23
PERFORMANCE STANDARDS	23
ARTICLE- 10	24
MINE PLAN.....	24
ARTICLE- 11	25
SUBMISSION OF APPLICATION FOR COAL MINING LEASE.....	25
ARTICLE- 12	27
RESTRICTIONS ON SALE, DISPOSAL AND EXPORT OF COAL	27
ARTICLE-13	28
MINE CLOSURE.....	28
ARTICLE-14	29
UPFRONT PAYMENT	29
ARTICLE-15	30
TAXES AND DUTIES.....	30
ARTICLE-16	31

CHANGE IN LAW.....	31
ARTICLE-17	32
FORCE MAJEURE	32
ARTICLE-18	33
REPRESENTATIONS AND WARRANTIES.....	33
ARTICLE-19	36
INDEMNITIES.....	36
ARTICLE-20	39
ASSIGNMENT.....	39
ARTICLE-21	41
INSURANCE.....	41
ARTICLE-22	42
ACCOUNTS AND AUDIT	42
ARTICLE-23	43
GOVERNMENT INSPECTION	43
ARTICLE-24	44
RELATED PARTY TRANSACTIONS.....	44
ARTICLE-25	45
TERMINATION.....	45
ARTICLE-26	48
GOVERNING LAW AND DISPUTE RESOLUTION	48
ARTICLE 27.....	50
MISCELLANEOUS	50
SCHEDULE I	55
Description of Mining Area	55
SCHEDULE II	56
Map of Mining Area	56
SCHEDULE III.....	57
Substitution Agreement	57
Annexure I	64
PARTICULARS OF LENDERS	64
SCHEDULE IVA.....	65

Mine Development Milestone.....	65
SCHEDULE IVB	66
End Use Plant(s) Development Milestone.....	66
SCHEDULE V	67
End Use Plant(s)	67
SCHEDULE VI	69
Form of Performance Security	69
SCHEDULE VII	72
Form of Parent Company Guarantee	72

COAL MINE DEVELOPMENT AND PRODUCTION AGREEMENT

This **COAL MINE DEVELOPMENT AND PRODUCTION AGREEMENT** (this “**Agreement**”) is made this [] day of [], [2014] (“**Effective Date**”) at [insert location], India, by and between:

- (1) The President of India, acting through the [], Ministry of Coal, Government of India (hereinafter referred to as the “**Ministry of Coal**” or the “**Government**” which expression shall, unless repugnant to or inconsistent with the context, mean and include any successors and permitted assigns) of the **FIRST PART**; and
- (2) [], a company duly incorporated and existing under the laws of India with its registered office at [insert address], India (hereinafter referred to as the “**Mine Allocatee**”, which expression shall, unless repugnant to or inconsistent with the context, mean and include any successors or permitted assigns) of the **SECOND PART**.

In this Agreement, the Government and the Mine Allocatee are hereinafter collectively referred to as the “**Parties**” and individually to as a “**Party**”.

WHEREAS

- A The Mines and Minerals (Development and Regulation) Act, 1957 (No. 67 of 1957) (the “**Act**”) and The Mineral Concession Rules, 1960 made thereunder make provision, *inter alia*, for the regulation of coal operations and grant of licences and leases for the exploration, development and production of coal in India.
- B Section 11A of the Act authorizes the Government to select for the purposes of grant of mining rights in respect of an area containing Coal (i) through auction by competitive bidding, a company engaged in permitted end use activities; (ii) for allocation to a government company; and (iii) through competitive bids for tariff, a company that has been awarded a power project.
- C Section 13 (1) of the Act authorizes the Government to make rules for regulating the grant of Prospecting Licenses and Mining Leases in respect of Coal. Specifically, Section 13 (2) (d) of the Act authorizes the Government to make rules to provide for the terms and conditions of the auction by competitive bidding referred to in Recital B above.
- D Pursuant to the aforesaid, the Government has made The Auction by Competitive Bidding of Coal Mines Rules, 2012 (the “**Rules**”).
- E Pursuant to Rule 3 of the Rules, the Government had accordingly invited proposals by its notice number [] dated [] for selecting the Mine Allocatee for undertaking Mining Operations in the Mining Area. The Government has prescribed the technical and commercial terms and conditions and invited bids from the bidders in accordance with the aforesaid tender notice (the “**Tender Notice**”). After evaluation of the bids received,

the Government had accepted the bid of the Mine Allocatee and issued a letter of acceptance number [] dated [].

- F. Rule 7 of the Rules mandates that the Government enters into an agreement with the Mine Allocatee. This Agreement constitutes the abovementioned agreement envisaged by Rule 7 of the Rules.

NOW THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement and other consideration, the sufficiency and adequacy of which is hereby acknowledged, the Parties agree as follows:

ARTICLE-1

DEFINITIONS

1.1 In this Agreement unless the context otherwise requires, the following words and phrases shall have the meaning assigned to them hereunder:

“**Act**” shall have the meaning assigned thereto in Recital A hereof.

“**Affiliate**” with respect to any Party shall mean any Person which, directly or indirectly: (1) Controls such Party; or (2) is Controlled by such Party; or (3) is Controlled by the same Person who, directly or indirectly, Controls such Party.

“**Agreement**” means this Coal Mine Development and Production Agreement.

“**Applicable Law**” shall mean any law, legislation, statute, act, by-laws, rule, regulation, ordinance, order, decree, protocol, notification, policy, by-law, administrative guideline, ruling, instruction, directive, code, requirement, consent, license, approval, permit, judgement, court order, treaty or any interpretation thereof by any Governmental Authority or Person acting under the authority of any Governmental Authority and / or of any statutory authority in India, whether in effect on the Effective Date or thereafter.

“**Authorisations**” shall mean any and all regulations, clearances, licenses, no objection certificates, exemptions, consents, decrees, orders, permits, waivers, privileges and approvals from and filings and registrations with any and all Governmental Authorities.

“**Bank**” means a nationalized bank or a bank listed in the Second Schedule of the Reserve Bank of India Act, 1934, having a net worth of INR. 10,000,000,000/- (Indian Rupees One Thousand Crore).

“**Business Day**” means a day (excluding Sundays) on which banks generally are open in New Delhi, India for the transaction of normal banking business.

“**Change in Law**” shall mean the occurrence of any of the following after the Effective Date:

- a. Enactment of any new Applicable Law of India;
- b. Modification or repeal of any existing Applicable Law of India;

and without prejudice to the generality of the foregoing, shall also include any enactment, modification, repeal, interpretation or application of any Applicable Law of India affecting **Mine Allocatee’s Taxes**.

“**Coal**” includes anthracite, bituminous, lignite, peat and any other form of carbonaceous matter sold or marketed as coal and also coke.

“Controlling”, “Controlled by” or “Control” with respect to any Person, shall mean: (1) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person whether through the ownership of voting securities, by agreement or otherwise or the power to elect more than one-half of the directors, partners or other individuals exercising similar authority with respect to such Person. *Provided however* that in order to exercise “control” under this sub-paragraph (1), the controlling entity must have a voting interest of more than twenty six percent (26%) in the entity that is controlled; (2) the possession, directly or indirectly, of a voting interest of more than fifty percent (50%) and a contractual shareholder or director veto right in management matters. “Change in Control” shall be construed accordingly.

“Effective Date” shall have the meaning assigned thereto in the preamble of this Agreement.

“Encumbrance” means a mortgage, debenture, charge (legal or equitable, fixed or floating), pledge, lien, attachment, option, restriction, right of first refusal, right of pre-emption, third party right or interest, other encumbrance or security interest of any kind, or another type of preferential arrangement (including a title transfer and retention arrangement) having similar effect.

“End Use Plant (s)” shall have the meaning assigned thereto in Article 12 hereof.

“End Use Plant(s) Development Milestone” means the development milestones for the End Use Plant(s) as set forth in **Schedule IVB**.

“Environmental Clearance” shall have the meaning assigned thereto in Article 7.2 hereof.

“Event of Force Majeure” shall mean any of the following events or circumstances or combination of the following events or circumstances which are beyond the reasonable control of the affected Party, which could not have been prevented by Good Industry Practice or by the exercise of reasonable skill and care and which or any consequences of which, have a material and adverse effect upon the performance by the affected Party of its obligations or enjoyment of its rights, under this Agreement:

- a. Flood, lightning, storm, typhoon, tornado, earthquake, landslide, subsidence, washout or epidemic or other similar acts of God;
- b. War (whether declared or undeclared), riot, civil war, blockade, insurrection, acts of public enemies or civil disturbance, including disturbances caused by “extremists” and breach down of law and order, in each case, occurring in India; and
- c. Strikes or lockouts or other industrial action occurring in India other than those occurring in the Mining Area and other than those solely affecting the Party claiming the same as an Event of Force Majeure and attributable to such Party’s policies regarding labour, compensation or employment or labour related conditions.

It is expressly clarified that an Event of Force Majeure affecting [the/ 1 (one) or more] End Use Plant(s) shall constitute an Event of Force Majeure hereunder.

“Financing Agreements” means the agreements executed by the Mine Allocatee 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, security agreements and other documents relating to the financing (including refinancing) of the Mine development costs.

“Forest Clearance” shall have the meaning assigned thereto in Article 7.2 hereof.

“Governmental Authority” shall mean, in respect of a country, the government (central, state and local) or any ministry, directorate, department or political subdivision thereof and any Person exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government or law or any other governmental entity, instrumentality, agency, authority, corporation, committee or commission under the direct or indirect control of any such government.

“Good Industry Practice” means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected to be applied by a skilled and experienced person engaged in the international mining industry.

“Lenders Representative” means 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 his successors, assigns and substitutes.

“Material Adverse Effect” means a material and adverse effect on the business, properties, prospects, financial position or the ability of the Mine Allocatee or an event or circumstance that may result in such material and adverse effect.

“Mine” or **“Mining Area”** means, on the Effective Date, the area containing Coal as described in **Schedule I** and delineated on the map attached in **Schedule II** or any portion of the said area remaining after relinquishment or surrender from time to time pursuant to the terms hereof.

“Mine Development Milestone” means the Mine development milestones set forth in **Schedule IVA**.

“Mining Lease” means a lease granted under the Act for the purpose of undertaking mining operations and includes a sub-lease granted for such purpose. [*Provided however that where the context requires, the term “Mining Lease” shall mean a lease deemed to be granted under the Coal Bearing Areas (Acquisition and Development) Act, 1957 for the purpose of undertaking mining operations.*]

“Mine Plan” means a plan submitted by the Mine Allocatee for development of the Mining Area and which has been approved by the Government in accordance with the terms of Article 10 hereof.

“Mine Allocatee Taxes” shall mean the following, as now in force or as newly imposed, or as modified or increased from time to time:

- (1) All taxes, duties, cesses, imposts, fees, levies (including all Indian central and state government taxes, octroi, excise duties, customs duties, sales tax, value added tax, countervailing duties, works contract tax, service tax, building and construction workers cess and withholding taxes) imposed under Applicable Laws (whether within India or outside India) in connection with this Agreement; and
- (2) All taxes on Mine Allocatee’s income, profit, real and personal property; and
- (3) All applicable payroll, withholding, social security, workers’ compensation and employment taxes and contributions imposed under any law in connection with or measured by compensation (including wages and salaries) paid to or for the benefit of employees of Mine Allocatee (including taxes, health and welfare funds, minimum wages, provident fund, employee state insurance, gratuity, pensions and annuities, disability insurance and all other similar social payments under labour laws or otherwise under Applicable Laws generally).

“Mining Operations” means all work related to the various phases in the mineral development process, including exploration, mineral deposit evaluation, mine construction, mine development and all other activities necessary or convenient to carry out the Mine Allocatee’s rights and obligations under this Agreement, subject always to compliance with Applicable Law and this Agreement.

“Notice” shall have the meaning assigned thereto in Article 27.6 hereof.

“Payment to the Government” means, with respect to any financial year or part thereof, the annual payment to be made by the Mine Allocatee to the [insert name of relevant State Government] calculated on the following basis:

actual production of coal in such financial year in tonnes multiplied by [XXX¹], as such amount may escalate on the following basis:

[XXX²] multiplied by the Reference Index as on April 01 of any financial year divided by the [YYY³]

¹ Insert the price offer of the Preferred Bidder under the Tender Notice in the form of Rupees per tonne.

² Insert the price offer of the Preferred Bidder under the Tender Notice in the form of Rupees per tonne.

Where Reference Index means: [Wholesale Price Index]

“Performance Security” shall have the meaning assigned thereto in Article 6 hereof.

“Permitted End Use” shall have the meaning assigned thereto in Article 12 hereof.

“Person” means any individual, firm, partnership, trust, joint venture, company, corporation, body corporate, sole proprietorship, unincorporated body, association, organisation, Governmental Authority or any other entity or organisation (whether or not in each case having separate legal personality).

“Production Operations” means a set of activities and operations involved in producing Coal such as drilling, blasting, loading and transport of the broken rock / coal, crushing, storing and dispatch of coal and drainage, pumping, lighting, haul road construction and maintenance etc.

“Prospecting License” means a license granted under the Act for the purpose of undertaking prospecting operations. [*Provided however* that where the context requires, the term “Prospecting License” shall mean a license to prospect under the Coal Bearing Areas (Acquisition and Development) Act, 1957.]

“Prospecting Period” means the period during which **“Development Activities”** are undertaken and for the purposes hereof, **“Development Activities”** consist of preparation of the Mine Plan, submitting the Mine Plan to the Ministry of Coal and/or to the relevant Governmental Authority for approval, obtaining approval of the Mine Plan, applying for Environmental Clearance and Forest Clearance and a Mining Lease all other activities leading up to grant of a Mining Lease. **“Prospecting Period”** may also sometimes be referred to alternatively as **“Development Period”**.

The **“Development Period”** shall commence on the date hereof.

“Rules” shall have the meaning assigned thereto in Recital D hereof.

“Senior Lenders” means 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 Allocatee under any of the Financing Agreements for meeting all or any part of the Mine development cost.

“Tender Notice” shall have the meaning assigned thereto in Recital E hereof.

³ Insert the Reference Index as on April 01 of the financial year in which the Bid Due Date under the Tender Notice occurred.

“Upfront Payment” means a non-refundable, fixed sum of money determined by the Government based on 10% (ten percent) of the intrinsic value of the Mining Area. For the purposes hereof, it is fixed at INR [] (Indian Rupees []).

1.2 In this Agreement, unless the context requires otherwise:

- (1) References to a Person (or to a word importing a Person) shall be construed so as to include that Person’s successors in title and assigns or transferees permitted in accordance with the terms of this Agreement and references to a Person’s representatives shall be to its officers, employees, legal or other professional advisers, sub-contractors, agents, attorneys and other duly authorised representatives.
- (2) A reference to a law shall be construed as including all law consolidating, amending, modifying, supplementing or replacing the law referred to. Reference to any agreement, deed, document, instrument, rule, regulation, notification, statute or the like (including, this Agreement) shall mean a reference to the same as may have been duly amended, modified or replaced. For the avoidance of doubt, a document shall be construed as amended, modified or replaced only if such amendment, modification or replacement is executed in compliance with the provisions of such document.
- (3) The singular of any defined term includes the plural and vice versa and any word or expression defined in the singular has the corresponding meaning used in the plural and vice versa.
- (4) 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.
- (5) The terms include and including shall be deemed to be followed by the words ‘without limitation’, whether or not so followed.
- (6) Article headings in this Agreement are inserted for convenience only and shall not be used in its interpretation.

ARTICLE-2

TERM

- 2.1 This Agreement shall commence on the Effective Date and shall continue for the term of the Prospecting Period, unless agreed otherwise by the Parties and unless this Agreement is terminated earlier in accordance with its terms prior thereto.

ARTICLE-3

[NOT USED]

ARTICLE- 4

RELINQUISHMENT

- 4.1 Subject to approval of the Government, the Mine Allocatee may relinquish any portion of the Mining Area at the time of making an application for the Mine Plan. At the end of the Prospecting Period, the Mine Allocatee shall retain only the Mining Area as the same may have been reduced as a result of any relinquishment.
- 4.2 As and when this Agreement is terminated pursuant to the provisions hereof, the entire Mining Area remaining with the Mine Allocatee shall be deemed to have been relinquished by the Mine Allocatee on the date on which this Agreement is terminated, unless the Mine Allocatee has obtained a Mining Lease in respect of the Mining Area prior thereto.
- 4.3 Relinquishment of all or part of the Mining Area or termination of this Agreement shall not be construed as absolving the Mine Allocatee of any liability undertaken or incurred by the Mine Allocatee in respect of the Mining Area during the period between Effective Date and the date of such relinquishment or termination.
- 4.4 The liability of the Mine Allocatee shall be limited to any liability undertaken or incurred in respect of, relating to or connected with this Agreement and any claims arising out of or in relation to the act of negligence, misconduct, commission or omission in carrying out Mining Operations during the period between Effective Date and the date of relinquishment of the Mining Area or termination or expiry hereof, as the case may be.

ARTICLE- 5

WORK PROGRAMME

- 5.1 The Mine Allocatee shall commence Mining Operations immediately after Effective Date.
- 5.2 During the Prospecting Period, the Mine Allocatee shall complete the work programme associated therewith as described in **Schedule IV A** “Mine Development Milestone” within the time period set forth therein.
- 5.3 Mine Allocatee shall furnish to the Government, all data gathered, copies of all findings, studies and results of the work programme described above and undertaken at any time during the term hereof within 30 (thirty) days after the same becomes available to the Mine Allocatee.

ARTICLE- 6

PERFORMANCE SECURITY

6.1 Performance Security⁴

The Mine Allocatee shall, for the performance of its obligations hereunder during the period until grant of Mining Lease, provide to the Government, no later than 30 (thirty) days from Effective Date, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to INR [] (Indian Rupees []) (the “**Performance Security**”) in the form attached herewith as **Schedule VI**.

6.2 Appropriation of Performance Security

6.2.1 Unless this Agreement has been terminated prior to such milestone being reached, the Government shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to en-cash and appropriate the following amounts from the Performance Security as damages for delay in achieving the following milestones, unless such delay is a result of Government default or an Event of Force Majeure:

1. In the event the Mine Plan has not been submitted for approval of Government by or before 1 (one) year from the start of the Development Period, the Government shall appropriate one half the Performance Security;
2. In the event the Mine Allocatee has not submitted the application and other documents such as final environmental impact assessment report, environment management plan and outcome of public consultations including public hearing proceedings to the relevant Governmental Authority for grant of Environmental Clearance and Forest Clearance within 4 (four) years and 6 (six) months from the start of the Development Period, the Government shall appropriate the Performance Security;
3. In the event a Mining Lease in respect of the Mine has not been obtained by or before 5 (five) years and 6 (six) months from the start of the Development Period, the Government shall appropriate the Performance Security.

6.2.2 The timelines set forth in sub-clauses 2 and 3 above assume that the relevant Governmental Authority(ies) approves the Mine Plan and grants the Environmental Clearance and Forest Clearance within six (6) months of the application in respect thereof being made by the Mine Allocatee. In the event the relevant Governmental Authority takes longer than six (6) months to approve the Mine Plan, the time period set forth in sub-clause 2 shall extend by an equivalent period. In the event the relevant Governmental Authority(ies) take(s) longer than six (6) months to grant the Environmental Clearance

⁴The Performance Security during the Development Period may be made equal to five percent (5%) of the estimated development and construction expenditure for the block.

and/ or the Forest Clearance, the time period set forth in sub-clause 3 of Article 6.2.1 shall extend by an equivalent period plus the period of extension, if any, granted under the preceding sentence.

ARTICLE-7

GENERAL RIGHTS AND OBLIGATIONS

7.1 **Exclusivity**

The rights granted to the Mine Allocatee herein to conduct Mining Operations are exclusive within the Mining Area. The Government undertakes not to grant any rights to prospect for Coal in the Mining Area to any third party during the term of this Agreement.

7.2 **Authorisations**

- a. The Mine Allocatee shall obtain and maintain all Authorisations required to conduct Mining Operations. The Government undertakes, on a reasonable endeavour basis, to expeditiously provide all necessary approvals and assistance for conducting Mining Operations and as otherwise may be reasonably required by the Mine Allocatee in relation to the rights granted to it under this Agreement.
- b. Without prejudice to the generality of the foregoing, Government shall, on a reasonable endeavour basis, assist Mine Allocatee in obtaining approvals from the necessary Governmental Authorities under:
 - i. the Forest (Conservation) Act, 1980 (the “**Forest Clearance**”); and
 - ii. the Environment (Protection) Act, 1986 (the “**Environmental Clearance**”),subject always to compliance by the Mine Allocatee of all Applicable Law.

7.3 **Health & Safety**

- (a) The Mine Allocatee shall comply with all Applicable Laws and observe Good Industry Practice for the protection of the general health and safety of its employees and of all other persons contracted by the Mine Allocatee having legal access to the area covered by this Agreement. Without prejudice to the generality of the foregoing, the Mine Allocatee shall comply with the health, safety, security and environment requirements, if any, of the Directorate General of Mines Safety.
- (b) The Mine Allocatee shall install and utilize such recognized modern safety devices and observe such recognized modern safety precautions as are provided and observed under Good Industry Practice. The Mine Allocatee shall maintain in a safe and sound condition for the duration of this Agreement all infrastructure and equipment constructed or acquired in connection with Mining Operations and required for ongoing operations.

- (c) The Mine Allocatee shall train its employees in accordance with generally accepted health and safety procedures and practices.
- (d) The Mine Allocatee shall construct, maintain, and operate health programs and facilities to serve its employees which programs and facilities shall install, maintain and use modern health devices and equipment and shall practice modern health procedures and precautions in accordance with accepted international medical standards. Any Mine Allocatee-supplied housing shall be built to a standard that provides suitable living environments adequate for health and well being, and which meet applicable sanitation standards.

7.4 Prevention of Corruption

7.4.1 Obligations of the Mine Allocatee

The Mine Allocatee, its officers, directors and employees acknowledge and agree that they are subject to the anti bribery and anti-corruption provisions of Applicable Law and of the jurisdictions in which the Mine Allocatee is organized or conducts business (collectively, “**Anticorruption Laws**”), and shall conduct their activities in India in accordance with their obligations under the Anticorruption Laws.

7.4.2 Obligations of the Government

The Government acknowledges and agrees that officials of Governmental Authorities are subject to the Anticorruption Laws and shall conduct their activities in accordance with their obligations under the Anticorruption Laws.

7.4.3 Other Applicable Norms

The Parties acknowledge and agree that this Article and all payments made by the Mine Allocatee, or any of its contractors, subcontractors, officers or directors to any Governmental Authority at any level may be public information.

7.4.4 Understanding of the Parties

- (a) The Parties to this Agreement understand that:
 - (i) The offering, solicitation or acceptance of an offer, promise or gift of any pecuniary or other nature, including facilitation payments, whether directly or through intermediaries, to any private party or government official, in order that the private party or a third party act or refrain from acting in relation to the performance of official duties to achieve any favour or to otherwise obtain any business advantage; and
 - (ii) Any acts complicit in any act described in this Article, including incitement, aiding and abetting, conspiracy to commit or authorization of

such acts, are acts inconsistent with the Applicable Law, the Anticorruption Laws and this Agreement are acts subject to appropriate criminal and other enforcement and sanctions.

- (b) The Government may prosecute such activities in accordance with the Anticorruption Laws, may seek enforcement action by the government of any foreign government where appropriate, and shall fully cooperate with any such action by a foreign government.

7.5 **Geological and Archaeological Finds**

It is expressly agreed that other than rights to mine for Coal (as may be granted under any Mining Lease pursuant hereto), geological or archaeological rights do not form part of the rights granted to the Mine Allocatee under this Agreement and the Mine Allocatee hereby acknowledges that except in relation to Coal (as may be granted under any Mining Lease pursuant hereto), it shall not have any mining rights or interest in the underlying minerals, metals (including gold, silver etc.), gas, oil, fossils, antiquities, structures or other remnants or things either of particular geological or archeological interest and that such rights, interest and property on or under the Mining Area shall vest in and belong to the Government or the concerned Governmental Authority. The Mine Allocatee 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 Government forthwith of the discovery thereof and comply with such instruments as the concerned Governmental Authority may reasonably give for the removal of such property.

ARTICLE- 8

CHANGE IN CONTROL

- 8.1 The Mine Allocatee shall not undertake or permit any Change in Control, except as set forth below.
- 8.2 The Mine Allocatee may permit a Change in Control subject to the following condition:
- (i) prior approval of the Government has been obtained to such Change in Control.
- 8.3 If the Government does not object to the proposed Change in Control, within one hundred eighty (180) days after receipt of an application for approval with respect thereto from the Mine Allocatee, the Government shall be deemed to have approved the proposed Change in Control.
- 8.4 It is clarified that notwithstanding any transfer pursuant to Articles 8.1 or 8.2 above, the Permitted End Use as set forth in Article 12 shall remain unchanged and Coal to be mined from the Mining Area (under any Mining Lease pursuant hereto) may be used for the purposes of the End Use Plant(s) only and for no other purpose.

ARTICLE-9

PERFORMANCE STANDARDS

- 9.1 The following general obligations shall apply relating to performance standards:
- a. Mine Allocatee shall conduct all operations and activities in a prudent, diligent, and efficient manner in accordance with good and acceptable mineral exploration and mining engineering standards and practices and in accordance with modern and accepted scientific and technical principles applicable to the exploration and mining of Coal. All operations and activities under this Agreement shall be conducted so as to minimize waste or loss of natural resources, protect natural resources against unnecessary damage, and in a manner intended to minimize pollution and contamination of the environment.
 - b. Mine Allocatee shall prevent and control fires and identify and notify immediately the proper Governmental Authorities of any fire that occurs within the Mining Area.
 - c. Mine Allocatee shall not cause or allow damage to the properties of the Government and third parties located within the Mining Area.
 - d. Mine Allocatee shall install and utilize such recognized modern safety devices and observe such recognized modern safety precautions as are provided and observed under mining and exploration activities undertaken internationally comparable to those undertaken by the Mine Allocatee under this Agreement.
 - e. Mine Allocatee shall observe all Applicable Laws for the protection of the general health and safety of its employees and of all other persons contracted by Mine Allocatee having legal access to the area covered by this Agreement.

ARTICLE- 10

MINE PLAN

- 10.1 Within 1 (one) year of start of the Development Period, the Mine Allocatee shall submit to the Ministry of Coal or other relevant Governmental Authority a comprehensive Mine Plan.
- 10.2 The Mine Plan shall be prepared in compliance with the guidelines for preparation of mining plans as provided by the Ministry of Coal or other relevant Governmental Authority, as the same may change from time to time and shall comply with all requirements under Applicable Law.
- 10.3 **Approval of the Mine Plan**
- (a) The Ministry of Coal or other relevant Governmental Authority may provide comments thereon to the Mine Allocatee including on the basis of any failure to conform to Applicable Law or to the terms of this Agreement. The Mine Allocatee shall correct any failures to conform to Applicable Law or to the terms of this Agreement. In the event the Ministry of Coal or other relevant Governmental Authority does not provide comments on the Mine Plan, the same shall not relieve the Mine Allocatee of its obligation to comply with Applicable Law and the terms hereof.
- (b) The Ministry of Coal or other relevant Governmental Authority may provide Notice to the Mine Allocatee requesting such revisions to the Mine Plan as it deems fit. The Mine Allocatee shall meet the Ministry of Coal or other relevant Governmental Authority promptly to discuss revisions to the Mine Plan. In the event of any disagreement, the view of the Ministry of Coal or other relevant Governmental Authority shall prevail.
- 10.4 A Mine Plan approved by the Ministry of Coal or other relevant Governmental Authority shall commit the Mine Allocatee to its obligations and commitments as contained in the Mine Plan.

ARTICLE- 11

SUBMISSION OF APPLICATION FOR COAL MINING LEASE

- 11.1 The Mine Allocatee shall submit an application for a Mining Lease in respect of the Mining Area (as the same may have been reduced as a result of any relinquishment agreed by the Government) to the relevant State Government.
- 11.2 Mine Allocatee agrees that the following terms may be included in any Mining Lease granted in relation to the Mining Area by the relevant State Government:
- a. The Mine Allocatee may not permit a Change in Control except with the prior written consent of the Government/ State Government.
 - b. The Mine Allocatee shall commence Production Operations within 2 (two) years of date of grant of Mining Lease.
 - c. The Mine Allocatee shall allow the Government to access the Mine Allocatee's financial and other records and transactions (relatable to any period) at any time upon reasonable advance Notice, the right to copy therefrom, for the purpose of assessing the performance and compliance of the Mine Allocatee with the terms of this Agreement and all Applicable Laws, rules and regulations or to aid in the enforcement of the same.
 - d. The Mine Allocatee shall pay to the State Government, over and above the statutory mining lease payments, Payment to the Government. The Payment to the Government may be secured by a performance security in favour of the relevant State Government to be provided upon grant of a mining lease. Such security shall equal 5 (five) percent of the peak capacity of the Mine as per the approved Mine Plan multiplied by [XXX⁵], as such amount may escalate on the following basis:

[XXX⁶] multiplied by the Reference Index as on April 01 of any financial year divided by the [YYY⁷]

Where Reference Index means: [Wholesale Price Index]

- e. Any other terms and conditions that the Government/ State Government may desire.

⁵ Insert the price offer of the Preferred Bidder under the Tender Notice in the form of Rupees per tonne.

⁶ Insert the price offer of the Preferred Bidder under the Tender Notice in the form of Rupees per tonne.

⁷ Insert the Reference Index as on April 01 of the financial year in which the Bid Due Date under the Tender Notice occurred.

- 11.3 Parties hereby agree that the Mine Allocatee shall be deemed “selected” for the purposes of Section 11A of the Act only once it receives a Mining Lease from the relevant State Government.

ARTICLE- 12

RESTRICTIONS ON SALE, DISPOSAL AND EXPORT OF COAL

- 12.1 Mine Allocatee agrees that it shall be a provision of any Mining Lease granted in respect of the Mine that the Mine Allocatee may mine, remove, treat, produce and refine Coal found in the Mining Area solely for the purpose (“**Permitted End Use**”) of usage in the [] producing facility(ies) of the Mine Allocatee located at [] as more fully described in **Schedule V** (the “**End Use Plant(s)**”) and for no other purpose. In the event there is more than one (1) End use Plant, the coal produced in the Mine shall be allocated to each End Use Plant in the proportion set forth in Schedule V. It is expressly further clarified that the Mine Allocatee shall not have the right to market, sell or export Coal to any third parties.
- 12.2 Any surplus coal that cannot be utilized for the purposes of the Permitted End Use by the End Use Plant(s) shall be dealt with as per Applicable Law. It is clarified that “surplus coal” includes rejects and middlings.

ARTICLE-13

MINE CLOSURE

13.1 Mining Closure/Post-Closure Obligations

13.1.1 Closure Plan and Closure Obligations

- (a) The Mine Allocatee shall prepare a closure plan as per the guidelines for preparation of mine closure plan issued by the Ministry of Coal or other relevant Governmental Authority, as the same may change from time to time and submit the same to the Government/ relevant Governmental Authority (the “**Closure Plan**”). The Closure Plan shall address the anticipated environmental, social and economic impact of mining activities. The Closure Plan shall be updated through the same process by which it was prepared each time that there is a substantial change in mining activities or conditions or the guidelines for preparation of mine closure plan.

ARTICLE-14

UPFRONT PAYMENT

14.1 Upfront Payment⁸

The Upfront Payment shall be payable simultaneously with the execution hereof.

⁸It is ten percent (10%) of the intrinsic value of the block.

ARTICLE-15

TAXES AND DUTIES

- 15.1 The Mine Allocatee, its employees, agents, suppliers and sub-contractors shall be subject to all fiscal legislation in India.
- 15.2 Without prejudice to the generality of the foregoing, Mine Allocatee shall be liable for and pay all Mine Allocatee Taxes when due.

ARTICLE-16

CHANGE IN LAW

- 16.1 It is expressly agreed that neither Party may make a claim on the other Party on the basis of a Change in Law including an adverse Change in Law affecting the viability of the Mining Operations.

ARTICLE-17

FORCE MAJEURE

17.1 Each Party shall be exempt from compliance with its obligations under this Agreement, except the obligation to pay money, and any period in which it must perform an obligation or exercise a right shall be extended, to the extent that, and for so long as, such compliance is hindered or prevented by the occurrence of an Event of Force Majeure.

17.2 A Party asserting an Event of Force Majeure shall exercise commercially reasonable efforts to eliminate the Event of Force Majeure and shall give prompt Notice to the other Party within a 30 (thirty) day period after it becomes aware of the event that constitutes the Event of Force Majeure.

17.3 **Extension of Agreement**

The term of this Agreement shall be automatically extended for the period of the Event of Force Majeure.

17.4 **Negotiation in Event of Force Majeure**

If an obligation is suspended by reason of an Event of Force Majeure for more than 180 (one hundred and eighty) continuous days, the Parties shall enter into good faith negotiations to revise the terms of this Agreement to reflect the changed circumstances, provided that this Agreement shall remain in effect during the period during which the Parties are negotiating the terms of any such revision.

17.5 **Termination for Extended Force Majeure**

If an Event of Force Majeure subsists for a period of 365 (three hundred and sixty five) days or more within a continuous period of 455 (four hundred and fifty five) days, either Party may in its discretion terminate this Agreement by issuing a termination Notice to other Party without being liable in any manner whatsoever, and upon issue of such termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated. Upon such termination, the Performance Security shall be released by the Government. *Provided however* and it is clarified that the Upfront Payment already received by the Government on the date of such termination shall not be refunded upon termination.

ARTICLE-18

REPRESENTATIONS AND WARRANTIES

18.1 Representations and Warranties of the Mine Allocatee

The Mine Allocatee represents and warrants to the Government that:

- a) it is duly organised, validly existing and in good standing under the laws of India;
- b) [it is a special purpose company set up solely for the purpose of undertaking Mining Operations hereunder in accordance with the terms of this Agreement and that it will not during the subsistence of this Agreement undertake any other project or business activity;]
- c) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- d) it has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorise the execution, delivery and performance of this Agreement;
- e) it has the financial standing and capacity to undertake Mining Operations;
- f) this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- g) it is subject to civil and commercial laws of India with respect to this Agreement and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof;
- h) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Mine Allocatee's memorandum and articles of association or any Applicable Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets are bound or affected;
- i) there are no actions, suits, proceedings or investigations pending or to the Mine Allocatee's knowledge threatened against it at law or in equity before any court or before any other judicial, quasi judicial or other authority, the outcome of which may constitute a event of default hereunder;
- j) 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 Governmental Authority which may result in Material Adverse Effect;

- k) it has complied with all Applicable Laws 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 Material Adverse Effect;
- l) except as set forth in any Mining Lease, all rights and interests of the Mine Allocatee in and to the Mining Area shall pass to and vest in the relevant Governmental Authority on the date of termination or expiry hereof, free and clear of all Encumbrances without any further act or deed on the part of the Mine Allocatee or the Government;
- m) no representation or warranty by the Mine Allocatee contained herein or in any other document furnished by it to the Government or to any Governmental Authority in relation to Authorisations contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- n) no bribe or illegal gratification has been paid or will be paid in cash or kind by or on behalf of the Mine Allocatee to any Person to procure the rights granted hereunder; and
- o) Without prejudice to any express provision contained in this Agreement, the Mine Allocatee acknowledges that prior to the execution of this Agreement, the Mine Allocatee has after a complete and careful examination made an independent evaluation of the Mining Area and the information provided by the Government, and has determined to its satisfaction the nature and extent of risks and hazards as are likely to arise or may be faced by the Mine Allocatee in the course of performance of its obligations hereunder. The Mine Allocatee also acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth above and hereby confirms that the Government and any Governmental Authority shall not be liable for the same in any manner whatsoever to the Mine Allocatee.

18.2 Representations and Warranties of the Government

The Government represents and warrants to the Mine Allocatee that:

- a) the Government has full power and authority to enter into this Agreement;
- b) the Government has taken all necessary action to authorise the execution, delivery and performance of this Agreement;
- c) This Agreement constitutes the Government's legal, valid and binding obligation enforceable against it in accordance with the terms hereof; and

- d) There are no suits or other legal proceedings pending or threatened against the Government in respect of the Mining Area.

18.3 **Obligation to notify change**

In the event that any of the representations or warranties made/given by a Party ceases to be true or stands changed, the Party who had made such representation or given such warranty shall promptly notify the other of the same.

ARTICLE-19

INDEMNITIES

19.1 To avoid the time and expense of protracted litigation between the Parties and to allow each Party to arrange for insurance or self-insurance as deemed appropriate to address the relevant risks, the responsibility for certain Claims shall be allocated between the Parties in accordance with the further provisions of this Article.

19.2 Regardless of Cause, Mine Allocatee Shall Be Liable For And Indemnify Government from and against any and all Claims, arising out of personal injury, illness, death, or property loss or damage suffered by any member of Mine Allocatee Group.

19.3 Mine Allocatee Shall Be Liable For And Indemnify Government from and against any and all Claims arising out of personal injury, illness, death, or property loss or damage suffered by Third Parties or any Governmental Authority, to the extent attributable to the Negligence or Gross Negligence of any member of Mine Allocatee Group.

19.4 Government Shall Be Liable For And Indemnify Mine Allocatee Group from and against any and all Claims arising out of personal injury, illness, death, or property loss or damage suffered by Third Parties or any Governmental Authority, to the extent attributable to the Negligence or Gross Negligence of any member of Government.

19.5 **Consequential Damages**

Notwithstanding any other provisions of this Agreement, in no event shall either Party be liable to the other for, and each Party shall release, defend and indemnify the other Party from and against any indirect or consequential damages which may be suffered by such Party in connection with the performance of this Agreement, including, but not limited to, loss of profits.

19.6 **Defence of Claims, Costs and Attorneys' Fees in Connection with any Claims or Litigation:**

(a) Mine Allocatee shall, at its sole cost and expense, defend any and all Claims which may be brought against it or against Government for acts or omissions for which Mine Allocatee indemnifies Government, including Claims brought against Mine Allocatee and Government jointly and any and all suits and legal proceedings originating out of such Claims. Mine Allocatee shall accept and initiate such defense within thirty (30) days of written request by Government.

(b) Government shall, at its sole cost and expense, defend any and all Claims which may be brought against Mine Allocatee for acts or omissions for which Government indemnifies Mine Allocatee, and any and all suits and legal proceedings originating out of such Claims, excluding Claims brought against Mine Allocatee and Government jointly, which shall be governed by the provisions

of Article 19.4 above. Government shall accept and initiate such defense within thirty (30) days of written request by Mine Allocatee.

- (c) Mine Allocatee shall promptly pay: (a) to Government all costs and reasonable attorneys' fees incurred by Government resulting directly from any and all loss, injury, liability and Claims for which Mine Allocatee is obligated to indemnify Government.
- (d) Government shall promptly pay: (a) to Mine Allocatee all costs and reasonable attorneys' fees incurred by Mine Allocatee resulting directly from any and all loss, injury, liability and Claims for which Government is obligated to indemnify Mine Allocatee.
- (e) Any Party shall at all times have the right to participate, at its cost, in the defense of any such suits or legal proceedings if it is a party in interest, or is made a party defendant.

19.7 **Survival**

It is expressly stated herein that the provisions of this Article 19 and any other provision under this Agreement providing for an indemnity shall survive any termination of this Agreement.

For the purposes hereof,

- (a) "**Claim(s)**" shall, unless specifically provided otherwise, mean all claims, damages (excluding punitive or exemplary damages), liabilities, losses, demands, liens, encumbrances, causes of action of any kind (including, without limitation, actions in rem or in personam), obligations, costs, judgments, interest, and awards (including, without limitation, legal counsel fees and costs of litigation if awarded as part of the judgment in favor of the Person asserting the Claim), whether created by law, contract, tort, voluntary settlement, or otherwise, arising out of, related to, or in any way connected with this Agreement.
- (b) "**Mine Allocatee Group**" means Mine Allocatee, Mine Allocatee's subcontractors, Mine Allocatee's Affiliates, and the shareholders, officers, directors, employees, agents, consultants, servants and insurers of all of the foregoing.
- (c) "**Gross Negligence**" means such an entire lack of care as to indicate a conscious indifference and reckless disregard for the safety of people and property and includes willful misconduct.
- (d) "**Negligence**" means any sole or concurrent negligent act or omission, fault (including, without limitation, pre-existing conditions), strict liability, breach of duty or warranty (statutory or otherwise), product liability, defect (whether patent, latent,

or pre-existing) of any property, equipment, or materials, and shall include passive as well as active Negligence.

- (e) "**Regardless of Cause**" means without regard to Negligence, in whole or in part, of the Party or other Person seeking indemnity or of any other Person. Where expressly stated, Regardless of Cause also means without regard to Gross Negligence, in whole or in part, of the Party or other Person seeking indemnity or of any other Person.
- (f) "**Shall Be Liable For And Indemnify**" means the indemnifying Party shall be solely responsible for and assume all liability for and defend, release and indemnify and hold harmless the indemnified Party or other Person.
- (g) "**Third Party**" means any Person other than any member of Mine Allocatee Group or Government.

ARTICLE-20

ASSIGNMENT

20.1 **Restriction on assignment and charges**

- a. This Agreement shall not be assigned by the Mine Allocatee to any person, save and except with the prior consent in writing of the Government, which consent the Government shall be entitled to decline without assigning any reason.
- b. Subject to the provision of Article 20.5, the Mine Allocatee 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 without the prior consent in writing of the Government, which consent the Government shall be entitled to decline without assigning any reason.

20.2 The Performance Security issued by the Mine Allocatee shall be replaced and substituted by a fresh Performance Security by the assignee.

20.3 It is clarified that notwithstanding any assignment pursuant to Article 20.1 above, the Permitted End Use as set forth in Article 12 shall remain unchanged and Coal mined from the Mining Area may be used for the purposes of the End Use Plant(s) only and for no other purpose.

20.4 If the Government does not object to the proposed assignment, within one hundred eighty (180) days after receipt of an application for approval with respect thereto from the Mine Allocatee, the Government shall be deemed to have approved the proposed assignment.

20.5 **Permitted assignment and charges**

The restraints set forth in Article 20.1 shall not apply to:

- a) Liens arising out by operation of law in ordinary course of business.
- b) Assignment of rights, interest and obligations of the Mine Allocatee to or in the favour 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
- c) Liens and encumbrances required by any Applicable Law.

20.6 **Substitution Agreement**

- a. The Lender's Representative on behalf of the Senior Lenders may exercise their right to substitute the Mine Allocatee in accordance with the Agreement for substitution of the Mine Allocatee (the "**Substitution Agreement**") to be entered into amongst the Mine

Allocatee, the Government and the Lender's Representative, on behalf of the Senior Lenders, substantially in the form set forth in **Schedule III**.

- b. Upon the substitution of the Mine Allocatee under and in accordance with the Substitution Agreement, the nominated company substituting the Mine Allocatee under this Agreement shall enjoy all rights and be responsible for all obligations of the Mine Allocatee under this Agreement as if it were the Mine Allocatee; provided that where the Mine Allocatee is in breach of this Agreement on the date of such substitution, the Government shall by Notice grant a cure period of 120 (one hundred and twenty) days to the Mine Allocatee for curing such breach.

20.7 **Assignment by the Government**

Notwithstanding anything to the contrary contained in this Agreement, the Government may after giving 60 (sixty) day's Notice to the Mine Allocatee, assign any of its rights and benefits and/or obligations under this Agreement to an assignee who is, in the reasonable opinion of the Government, capable of fulfilling all of the Government's then outstanding obligations under this Agreement.

ARTICLE-21

INSURANCE

- 21.1 At all times during the term hereof, the Mine Allocatee will maintain, and cause its contractors and subcontractors to maintain, with financially sound and reputable insurers, insurance against such casualties and contingencies, of such types, on such terms and in such amounts (including deductibles, co-insurance and self-insurance, if adequate reserves are maintained with respect thereto) as is consistent with Good Industry Practice.
- 21.2 The Mine Allocatee shall provide the Government with copies of all such insurance policies and the Government shall have the right to review and approve the same, such approval not to be unreasonably withheld, provided that unless the Government gives Notice to the Mine Allocatee of disapproval of such insurance policies within thirty (30) days following receipt of all such insurance policies, the Government shall be deemed to have given its approval.
- 21.3 **No Duty to Verify or Review**

Any failure on the part of the Government to pursue or obtain the evidence of insurance required by this Agreement or failure of the Government to inform the Mine Allocatee of any non-compliance with a request to provide evidence of insurance shall not constitute a waiver of any of the insurance requirements in this Agreement.

ARTICLE-22

ACCOUNTS AND AUDIT

22.1 Audited Accounts

The Mine Allocatee shall maintain books of accounts recording all its receipts, income, expenditure, payment, assets and liabilities in accordance with Good Industry Practice and Applicable Laws. The Mine Allocatee shall provide 2 (two) copies of its balance sheets, cash flow statement and profit and loss account, along with a report thereon by its statutory auditors, within 180 (one hundred and eighty) days of the close of the accounting year to which they pertain.

22.2 Appointment of Auditors

The Government shall have the right, but not the obligation, to appoint at its cost from time to time and at anytime including the term of any Mining Lease granted in respect of the Mining Area, a firm (the “**Additional Auditors**”) to audit and verify all those matters, expenses, costs, realizations and things which the statutory auditors are required to do, undertake or certify pursuant to this Agreement.

22.3 Certification of claims by Statutory Auditors

Any claim or document provided by the Mine Allocatee to the Government 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.

ARTICLE-23

GOVERNMENT INSPECTION

- 23.1 The Government, through its authorized representatives shall have the right to free ingress and egress within any part of the Mining Area at any time to inspect works or activities being undertaken or implemented by the Mine Allocatee in order to monitor and verify compliance with the terms of this Agreement and all Applicable Laws.
- 23.2 The Government, through its authorized representatives, shall have access to the Mine Allocatee's financial and other records and transactions (relatable to any period) at any time upon reasonable advance Notice, the right to copy therefrom, for the purpose of assessing the performance and compliance of the Mine Allocatee with the terms of this Agreement and all Applicable Laws, rules and regulations or to aid in the enforcement of the same.
- 23.3 Authorized representatives of other Governmental Authorities may also have access to Mine Allocatee's financial and other records relatable to any period at any time upon reasonable advance Notice.
- 23.4 The Government shall have the right to conduct, either directly or indirectly through any third party, a performance audit to verify compliance by the Mine Allocatee, of its obligations hereunder.
- 23.5 The provision of this Article 23 shall survive termination or expiry hereof.

ARTICLE-24

RELATED PARTY TRANSACTIONS

- 24.1 The Mine Allocatee shall not directly or indirectly enter into any transaction or group of related transactions (including without limitation the purchase, lease, sale or exchange of properties of any kind or the rendering of any service) relating in any manner, directly or indirectly to the Mine, with any Affiliate, except in the ordinary course and pursuant to the reasonable requirements of its business and upon fair and reasonable terms no less favourable to it than would be obtainable in a comparable arm's-length transaction with a Person not an Affiliate.

ARTICLE-25

TERMINATION

25.1 Surrender

- (a) The Mine Allocatee may surrender its rights under this Agreement by Notice to the Government signed by an authorized Mine Allocatee representative on sixty (60) Days' Notice under this Agreement at any time before a Mining Lease is obtained in respect of the Mining Area. In the event of such termination, the Performance Security shall be forfeited.
- (b) Once an effective surrender is made, the Mine Allocatee shall have no obligations and liabilities under this Agreement except as specifically provided herein to the contrary.
- (c) The Mine Allocatee shall remain liable for all obligations accrued before the effective date of the surrender and also for the obligations that must be fulfilled after termination.

25.2 Termination by the Government

25.2.1 Termination on Certain Events

The Government may terminate this Agreement, without prejudice to any other rights that the Government may have, if any of the following events occur:

- (a) In the event of delay of more than 6 (six) months in achieving any Mine Development Milestone;
- (b) In the event of delay of more than 6 (six) months in achieving any End Use Plant Development Milestone;
- (c) In the event the End Use Plant ceases operations for a continuous period of longer than 1 (one) year. It is clarified that this Article is applicable in case the End use Plant is or becomes operational during the term hereof;
- (d) In the event the [manufacturing] capacity of the End use Plant is lower than 75 % (seventy five percent) of the proposed [manufacturing] capacity of the End use Plant as set forth in **Schedule V**;

In the event there is more than one End Use Plant, then the provisions hereof shall apply equally to all End Use Plants. Thus it will be a termination event in the event of delay of more than 6 (six) months in achieving any End Use Plant Development Milestone in respect of any one or more End Use Plants or in the event any one or more End Use Plants ceases operations for a continuous period of longer than 1 (one) year or in the event the [manufacturing] capacity of any one or more End use Plant is lower than 75 % (seventy five percent) of the proposed [manufacturing] capacity of such End use Plant(s);

- (e) The Mine Allocatee fails to make a payment when due and then fails to make the said payment within sixty (60) Days after the Government gives a Notice of the failure to make said payment; and
- (f) The Mine Allocatee dissolves, liquidates, becomes insolvent, commits an act of bankruptcy, makes an assignment for the benefit of creditors, petitions or applies to any tribunal for the appointment of a trustee or receiver for itself, or commences any proceedings concerning itself under a law concerning bankruptcy, or insolvency other than for the purposes of corporate reorganization.

Provided however that a terminating Party may extend the period for cure of the relevant breach subject to mutual agreement of the Parties.

25.2.2 Termination on Breach

The Government may provide Notice to the Mine Allocatee of a material breach of, or a failure to comply with or observe a fundamental provision of this Agreement. If the Mine Allocatee fails or neglects to remedy that breach or failure within [180] (one hundred and eighty) days (or a longer period as is reasonable in the circumstances) after the Government gives a Notice requiring that the breach be remedied or the provision be complied with or observed, or (ii) challenge the Government's assertion of breach under Article 26. of this Agreement, the Government may terminate this Agreement.

25.2.3 Upon any such termination under Article 25.2.1 or Article 25.2.2, the Performance Security, if outstanding, shall be forfeited. Furthermore, the Upfront Payment already received by the Government on the date of such termination shall not be refunded upon termination.

25.3 Termination by the Mine Allocatee

The Mine Allocatee shall have the right to terminate this Agreement in the event the Environmental Clearance and Forest Clearance is:

- (a) delayed inordinately and not obtained within 7 (seven) years from the start of the Development Period due to reasons attributable to any Governmental Authority; or
- (b) denied at any time by any Governmental Authority.

Upon such termination, the Mine Allocatee shall not be refunded the Upfront Payment received by the Government but the Performance Security shall be released.

25.4 Retention of Books and Records

No books and records of the Mine Allocatee may be removed on the expiration, surrender or termination of this Agreement for a period of 8 (eight) years without the prior consent of the Government, except that the Mine Allocatee may obtain copies of the books and records.

ARTICLE-26

GOVERNING LAW AND DISPUTE RESOLUTION

- 26.1 This Agreement shall be governed by and construed in accordance with the laws of India.
- 26.2 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 by mutual consultations between the Parties.
- 26.3 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.
- 26.4 **Arbitration**
- 26.4.1 Any Dispute which is not resolved amicably within 45 (forty five) days of notification thereof, shall be finally decided by reference to arbitration by a board of arbitrators appointed in accordance with Article 26.4.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the “**Rules of Arbitration**”), 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 venue of such arbitration shall be [Delhi], and the language of arbitration proceedings shall be English.
- 26.4.2 There shall be a board of 3 (three) arbitrators, of whom each Party shall select 1 (one), and the third arbitrator shall be appointed by the 2 (two) arbitrators so selected, and in the event of disagreement between the 2 (two) arbitrators, the appointment shall be made in accordance with the Rules of Arbitration.
- 26.4.3 The arbitrators shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Article 26.4.3 shall be final and binding on the Parties as from the date it is made, and the Mine Allocatee and the Government agree and undertake to carry out such Award without delay.
- 26.4.4 The Mine Allocatee and the Government agree that an Award may be enforced against the Mine Allocatee and /or the Government, as the case may be, and their respective assets wherever situated.
- 26.4.5 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.

[26.5 **Adjudication by Regulatory Authority or Commission**

In the event of constitution of a statutory regulatory authority or commission with powers to adjudicate upon disputes between the Mine Allocatee and the Government, all Disputes arising after such constitution shall, instead of reference to arbitration under Article 26.4, be adjudicated upon by such regulatory authority or commission in accordance with the Applicable Law and all references to dispute resolution procedure shall be construed accordingly. For the avoidance of doubt, the Parties hereto agree that the adjudication hereunder shall not be final and binding until an appeal against such adjudication has been decided by an appellate tribunal or High Court, as the case may be, or no such appeal has been preferred within the time specified in the Applicable Law.]

ARTICLE 27
MISCELLANEOUS

27.1 Interest and Right of Set Off

Any sum which becomes payable under any of the provisions of this Agreement by 1 (one) Party to the other Party shall, if the same be not paid within the time allowed for payment thereof, shall be deemed to be a debt owed by the Party responsible for payment thereof to the Party entitled to receive the same. Such sum shall until payment thereof carry interest at [State Bank of India base rate plus 3% (three percent)] from the due date for payment thereof until the same is paid to or otherwise realised by the Party entitled to the same. Without prejudice to any other right or remedy that may be available under this Agreement or otherwise under law, the Party entitled to receive such amount shall also have the right of set off. Provided the stipulation regarding interest for delayed payments contained in this Article 27.1 shall neither be deemed nor construed to authorise any delay in payment of any amount due by a Party nor be deemed or construed to be a waiver of the underlying breach of payment obligations.

27.2 Obligations of Contractors and Subcontractors

27.2.1 Applicability of Obligations to Contractors and their Sub- contractors

- (a) Any agreement between the Mine Allocatee and contractors or subcontractors shall contain appropriate terms by which the contractor or subcontractor shall acknowledge the terms of this Agreement to the extent applicable to the activities undertaken by the contractor and its subcontractors.
- (b) The Mine Allocatee shall ensure that its supervision and management of its contractors and their subcontractors is sufficient to inform it of whenever the practices of its contractors or their subcontractor may place them, or the Mine Allocatee, at risk of violating this Agreement.
- (c) Nothing in this Agreement shall exempt the Mine Allocatee from any and all obligations under this Agreement despite the delegation of such obligations to a contractor or its subcontractors.

27.3 Waiver

- (a) 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:
 - (i) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions or obligations under this Agreement;

- (ii) shall not be effective unless it is in writing and executed by a duly authorized representative of such Party; and
 - (iii) shall not affect the validity or enforceability of this Agreement in any manner.
- (b) 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 hereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver/breach of any terms, conditions or provisions of this Agreement.

27.4 **Survival**

Termination of this Agreement (a) shall not relieve the Mine Allocatee or the Government of any obligations already incurred hereunder which expressly or by implication survives 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.

27.5 **Amendments**

This Agreement and the Schedules together constitute a complete and exclusive understanding 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 agreed to by all the Parties hereto and evidenced in writing.

27.6 **Notices**

27.7.1 **General**

All notices to be made or given by a Party hereunder (each, a “**Notice**”) shall be in writing and delivered:

To [Government]:

To [Mine Allocatee]:

27.7.2 **Change of Address**

A Party may change its address by Notice to the other Party.

27.7.3 **Delivery Methods**

All Notices shall be given:

- (a) By personal delivery (including courier), which shall be deemed to have been delivered on the day on which it shall have been delivered to an apparently responsible person at the address listed in Article 27.7.1;
- (b) By registered mail, charges prepaid; or
- (c) By electronic transmission, signed by the sender and marked for the attention of the person identified above, with a hard copy mailed to the address above.

27.7.4 Effective Time of Delivery

All Notices shall be effective and shall be deemed received on the date of personal delivery or delivery by registered mail at the address of the addressee established pursuant to this Agreement, if delivered during normal business hours on any Business Day, and if not delivered during normal business hours, on the next Business Day following delivery. A Notice given by electronic transmission shall be deemed received on the next Business Day following the date of transmission.

27.8 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 shall negotiate in good faith with a view to agreeing upon one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable. Provided failure to agree upon any such provisions shall not be subject to dispute resolution under this Agreement or otherwise.

27.9 No Partnership

Nothing contained in this Agreement shall be construed or interpreted as constituting a partnership between the Parties. Neither Party shall have any authority to bind the other in any manner whatsoever.

27.10 Language

All notices required to be given under this Agreement and all communications, documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.

27.11 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 any Party not contained in a binding legal agreement executed by the Parties.

27.12 Counterparts

This Agreement may be executed in 2 (two) counterparts, each of which when executed and delivered shall constitute an original of this Agreement but shall together constitute 1 (one) and only the Agreement.

27.13 **Cost of Exploration-** the Mine Allocatee shall be responsible for reimbursing to the Central Mine Planning & Design Institute Limited (“**CMPDI**”), at actuals, the cost of detailed exploration of the Mining Area incurred by CMPDI as set-forth in the copy of the Geological Report in relation to the Mining Area made available as part of the Tender Notice or if not so set forth, as intimated by the Government. Upon such payment, the original Geological Report in respect of the Mining Area shall be handed over to the Mine Allocatee.

27.13 Parent Company Guarantee

[insert name of specific Promoter] shall furnish a parent company guarantee in favour of the Government in the format provided in Schedule VII

[This Article shall apply only in the event the Preferred Bidder or any entity constituting the Preferred Bidder in the event of a Consortium relied on the financial capacity of its Promoter to meet the Qualifying Requirements under the Tender Notice.

The terms “Preferred Bidder”, “Consortium”, “Promoter” and “Qualifying Requirements” shall have the meaning respectively assigned thereto in the Tender Notice].

IN WITNESS WHEREOF the Parties have executed and delivered these presents through their authorized representatives on the date first above written

Signed, Sealed and Delivered for and on behalf of

[]

(Signature)
(Name)
(Designation)

In the presence of:

1.

Signed, Sealed and Delivered for and on behalf of

[]

(Signature)

(Name)

(Designation)

In the presence of:

1.

SCHEDULE I

Description of Mining Area

SCHEDULE II

Map of Mining Area

SCHEDULE III

Substitution Agreement

THIS SUBSTITUTION AGREEMENT is entered into on this the [] day of [] 2014 at [insert location], India, by and between:

- (1) The President of India, acting through the [], Ministry of Coal, Government of India (hereinafter referred to as the “**Government**” which expression shall, unless repugnant to or inconsistent with the context, mean and include any successors and permitted assigns) of the **FIRST PART**;
- (2) [], a company duly incorporated and existing under the laws of India with its registered office at [insert address], India (hereinafter referred to as the “**Mine Allocatee**”, which expression shall, unless repugnant to or inconsistent with the context, mean and include any successors or permitted assigns) of the **SECOND PART**; and
- (3) [], (the Financial Institution/ Bank with its registered office at [insert address] (hereinafter referred to as the “**Lenders**”, which expression shall, unless repugnant to or inconsistent with the context, mean and include any successors or permitted assigns) of the **THIRD PART**.

or

- (3) [] (Financial Institution/Bank) having its Registered Office/Head Office at [] acting for and on behalf of the Lenders listed in **Annexure I** hereto (hereinafter referred as the “**Lender’s Representative**” , which expression shall, unless repugnant to or inconsistent with the context, mean and include any successors or permitted assigns) of the **THIRD PART**.

In this Agreement, the Government and the Mine Allocatee, Lender and Lender’s Representative are hereinafter collectively referred to as the “**Parties**” and individually to as a “**Party**”.

WHEREAS

- A. The Government wishes to develop minerals in a manner to promote overall industrial development and contribute to the sustainable development of India and its communities through a process in which the production and use of non-renewable natural resources takes place in an equitable framework;
- B. By the Coal Mine Development and Production Agreement dated [] entered into between Government and the Mine Allocatee (hereinafter referred to as the “**Coal Mine Development and Production Agreement**”) the Mine Allocatee has been granted the right to undertake Mining Operations in the Mining Area (the “**Project**”);

- C. With a view to facilitate financing of the Project by the Mine Allocatee, in pursuance of Article 20.6 of the Coal Mine Development and Production Agreement, Government and the Mine Allocatee have agreed to enter into Substitution Agreement being these presents with the Lender/s/Lenders' Representative; and
- D. As a condition to making any disbursement pursuant to the Financing Agreements, the Lender(s) has/ have required that the Substitution Agreement being these presents be entered into, and Government and the Mine Allocatee have agreed to the same.

NOW THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Substitution Agreement and other consideration, the sufficiency and adequacy of which is hereby acknowledged, the Parties agree as follows:

ARTICLE 1

DEFINITIONS

1.1 Definitions

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

“Agreement” means this Substitution Agreement and includes any amendment or modification made to this Agreement in accordance with the provisions hereof.

“Financial Assistance” means the financial assistance agreed to be provided by the Lender(s) to the Mine Allocatee for financing the the Project as set forth in the Financing Agreements.

“Lender(s)” means the financial institutions/banks whose name(s) and addresses are set out in **Annexure I** hereto.

“Mine Allocatee Event of Default” means an event of default by the Mine Allocatee under the Coal Mine Development and Production Agreement as provided under Article 25.2.1 and 25.2.2 thereof.

“RFP” means the Request for Proposal No.[] for development of [name of Coal block] issued by the Government.

“Selectee” means a Person proposed by the Lender/Lender's Representative pursuant to this Agreement and approved by Government for substituting the Mine Allocatee, in accordance with the provisions of this Agreement.

“Suspension Period” means the period during which all formalities connected with substitution of the Mine Allocatee by the Selectee including handing over of Mining Area

in accordance with this Agreement are completed and the substitution has become effective.

- 1.2** Capitalised terms used in this Agreement but not defined shall have the meaning assigned to them respectively in the Coal Mine Development and Production Agreement.

ARTICLE 2

SUBSTITUTION OF THE MINE ALLOCATEE BY THE SELECTEE

2.1 Lenders right to Substitute

Government and the Mine Allocatee hereby irrevocably agree that upon occurrence of a Mine Allocatee Event of Default, the Lender(s) shall, without prejudice to any other rights or remedies available to them under law/Financing Agreements and without being required to exercise or exhaust such rights or remedies, have the right to seek substitution of the Mine Allocatee by Selectee for the residual term of the Coal Mine Development and Production Agreement in accordance with the provisions of this Agreement. Provided upon substitution the Selectee shall be entitled to an extension of the remainder of the term of the Coal Mine Development and Production Agreement by the Suspension Period.

2.2 Preliminary Notice of Termination

Government shall as soon as possible but in any case not later than 15 (fifteen) days of its knowledge of the occurrence of a Mine Allocatee Event of Default issue a notice of termination to the Mine Allocatee in terms of Article 25 of the Coal Mine Development and Production Agreement, with a copy thereof simultaneously to the Lenders.

2.3 Suspension and Takeover of the Mining Area

The Mine Allocatee irrevocably agrees that:

- (i) in the event of a Mine Allocatee Event of Default other than the events covered under Article 25.2.1 and where such event of default is capable of remedy or cure, and said the relevant Mine Allocatee Event of Default is not cured within [180 (one hundred and eighty)] days of receipt of a notice of termination from the Government, then effective from the [181st (one hundred and eighty one)]; and
- (ii) immediately upon the occurrence of any event covered under 25.2.1,

the Coal Mine Development and Production Agreement shall stand suspended without any further notice or other act of Government being required, and that Government shall have the right to enter upon and takeover the Mining Area and to take all such steps as are necessary for the substitution of the Mine Allocatee by the Selectee in accordance

with this Agreement. The Mine Allocatee hereby irrevocably consents to the takeover of the Mining Area by Government forthwith upon suspension becoming effective.

2.4 Substitution Notice

Government and the Mine Allocatee hereby irrevocably agree that in the event of a suspension as described above, the Lender/Lender's Representative may, notify Government and the Mine Allocatee about the intention of the Lender(s) to seek substitution of the Mine Allocatee by the Selectee (the "**Substitution Notice**").

2.5 Criteria for selection of the Selectee.

The Lender/ Lenders' Representative shall in addition to any other criteria that it may deem fit and necessary, apply the following criteria in the selection of the Selectee:

- (i) the Selectee shall possess the qualifying requirements set forth in the RFP and the networth, experience, technical capability and managerial ability to perform and discharge all the residual duties, obligations and liabilities of the Mine Allocatee under the Coal Mine Development and Production Agreement;
- (ii) the Selectee shall have the capability and shall unconditionally consent to assume the liability for the payment and discharge of dues, if any, of the Mine Allocatee to Government under and in accordance with the Coal Mine Development and Production Agreement and also payment of debt due to the Lender(s) upon terms and conditions as agreed to between the Selectee and the Lenders.
- (iii) the Selectee shall agree to mine, remove, treat, produce and refine Coal found in the Mining Area solely for the Permitted End Use in the End Use Plant(s) and for no other purpose; and
- (iv) In the event the developer of the End Use Plant(s) is not the same Person as the Mine Allocatee, the Selectee shall be held by the developer of the End Use Plant(s) in the same manner as the Mine Allocatee was held by the developer of the End Use Plant(s). In other words the shareholding ownership pattern between the Mine Allocatee and the developer of the End Use Plant(s) shall be replicated in the shareholding ownership pattern between the Selectee and the developer of the End Use Plant(s).

ARTICLE 3

MODALITY FOR SUBSTITUTION

3.1 Modalities for Substitution.

The following modalities shall be followed for substitution of the Mine Allocatee by the Selectee pursuant to this Agreement:

- (i) The Lender(s)/Lenders' Representative shall be entitled, within a period of 120 (one hundred twenty) days from the date of delivery of the Substitution Notice pursuant to the Article 2.4 to invite or procure offers either through private negotiations or public auction or process of tender or otherwise from the eligible Persons, for the substitution of the Mine Allocatee by the Selectee and propose to Government for its approval the Selectee (the "**Proposal**"). The Proposal of the Lender/Lender's Representative shall contain the particulars and information in respect of the Selectee, the terms of substitution, particulars of the debt due and such data and information as would be necessary and relevant for Government to decide as to the acceptability of the Selectee. The Lender/Lender's Representative shall provide to Government such additional information and clarification in respect of any data, particulars or information contained in the Proposal, as Government may promptly and reasonably require.
- (ii) The Proposal shall be accompanied by an unconditional undertaking of the Selectee to the effect that it shall upon acceptance by Government of the Proposal observe, comply with, perform and fulfill the residual terms, conditions and covenants of the Coal Mine Development and Production Agreement as if the Selectee had been the Mine Allocatee under the Coal Mine Development and Production Agreement and to assume, discharge and pay the debt due on the terms and conditions agreed to by the Selectee with the Lenders. The Selectee shall also undertake to enter into such documents and writings with Government and the Lender(s) as may be necessary or required to give effect to the substitution of the Mine Allocatee by the Selectee.
- (iii) Government shall convey to the Lender/ Lenders' Representative its acceptance or otherwise of the Selectee within 30 (thirty) days of (a) the date of receipt of the Proposal by Government, or (b) the date of receipt of the additional information and clarifications in respect of any data, particulars or information comprised in the Proposal, provided by the Lender/Lender's Representative to the Government, *whichever is later*.
- (iv) At any time prior to the acceptance of the Selectee by Government pursuant to this Agreement, Government may require the Lender/Lenders' Representative to satisfy it as to the eligibility of the Selectee and the decision of Government as to acceptance or rejection of any Selectee (which shall be reasonable), shall be final, conclusive and binding on the Lender(s), the Selectee and the Mine Allocatee. In the event that Government fails to communicate its acceptance or otherwise or the objections if any it has to the acceptance of the Proposal/ the Selectee within a period of 30 (thirty) days prescribed in preceding sub-article (iii), Government shall be deemed to have accepted the Proposal/ the Selectee

- (v) The rejection of the Selectee if made by Government shall be reasoned and be made after hearing the Lender/Lenders' Representative. Following the rejection of the Proposal, the Lender/Lenders' Representative shall have the right to submit a fresh Proposal, proposing another Selectee, within 30 (thirty) days of receipt of communication regarding rejection of the Selectee previously proposed. The provisions of preceding sub-article (iii) and (iv) shall apply mutatis mutandis to such fresh Proposal.
- (vi) If Government accepts the Proposal/fresh Proposal, Government shall take all necessary steps to substitute the Mine Allocatee by the Selectee by amendment of the Coal Mine Development and Production Agreement or by execution of fresh agreement or such other writing as may be required or necessary to give effect to the substitution of the Mine Allocatee by the Selectee.
- (vii) The substitution of the Mine Allocatee by the Selectee shall be deemed to be complete upon the Selectee executing all necessary documents and writings with or in favour of Government and the Lender(s). Upon the substitution becoming effective pursuant to this sub-article all the rights of the Mine Allocatee under the Coal Mine Development and Production Agreement shall cease to exist. Provided nothing contained in this sub-article shall prejudice any pending/subsisting claims of the Mine Allocatee against Government or any claim of Government against the Mine Allocatee and the Selectee shall incur no liability or consequence on account of any previous breach/default and shall subject to the terms and conditions of the substitution, have a period of 90 (ninety) days to cure any breach/default subsisting on the date of substitution and required to be cured.
- (viii) The decision of the Lenders and Government in the selection of the Selectee shall be final and binding on the Mine Allocatee and shall be deemed to have been made with the concurrence of the Mine Allocatee. The Mine Allocatee hereby expressly waives all rights to object to or challenge such selection of the Selectee on any ground whatsoever.

ARTICLE 4

GENERAL

4.1 General

- (i) The Parties hereto expressly represent and warrant that they are duly empowered to sign and execute this Agreement and the Lenders Representative is duly and fully authorised by each of the Lenders to enter into this Agreement on their behalf.
- (ii) Notices under this Agreement shall be sent to the addresses first hereinabove mentioned. Any change in the address of any Party shall be duly notified by a registered post acknowledgement due and delivered to the other parties.

- (iii) This Agreement shall not be affected by the reorganisation of any Lender, the Mine Allocatee or Government and the successor in interest of the Lender or Government shall have the benefit of this Agreement.
- (iv) **Governing Law and Dispute Resolution**
 - a. This Agreement shall be governed by and construed in accordance with the laws of India.
 - b. [dispute resolution to mirror the Financing Agreements]
- (v) The consultation, recommendation or approval of the Lenders' Representative under this Agreement shall always be taken as consultation, recommendation or approval of every concerned Lender and each such Lender shall be bound by the same.
- (vi) This Agreement shall be in addition to and shall not be in derogation of the terms of the Financing Agreements.
- (vii) It shall not be necessary for the Lender(s) or the Lenders' Representative to enforce or exhaust any other remedy available to them before invoking the provisions of this Agreement.
- (viii) No amendment, variation or modification to this Agreement shall be valid and effectual unless made in writing and executed by the duly authorised representatives of all the Parties hereto.
- (ix) All stamp duties or other imposts and charges as are applicable on this Agreement or on amendment of the Coal Mine Development and Production Agreement or execution of fresh Coal Mine Development and Production Agreement for the purpose of substitution as aforesaid shall be borne by and be to the account of the Mine Allocatee. In the event of the Lenders making such payment for the time being, it shall be deemed to be a part of the debt due.
- (x) The Parties hereby expressly agree that for the purpose of giving full and proper effect to this Agreement, the Coal Mine Development and Production Agreement and this Agreement shall be read together and construed harmoniously.

IN WITNESS WHEREOF the Parties have executed and delivered these presents through their authorized representatives on the date first above written

Signed, Sealed and Delivered for and on behalf of

[Mine Allocatee]

(Signature)
(Name)
(Designation)

In the presence of:

Signed, Sealed and Delivered for and on behalf of

[Government]

(Signature)
(Name)
(Designation)

In the presence of:

Signed, Sealed and Delivered for and on behalf of

[Lender/ Lenders Representative]

(Signature)
(Name)
(Designation)

In the presence of:

Annexure I

PARTICULARS OF LENDERS

SCHEDULE IVA

Mine Development Milestone

- 1.1 During the Development Period, the Mine Allocatee shall complete the following work programme within the time period set forth below:
 - a. The Mine Allocatee shall prepare and submit a Mine Plan for approval to Ministry of Coal within 1 (one) year of the start of the Development Period.
 - b. The Mine Allocatee shall submit the application and other documents such as final environmental impact assessment report and environment management plan, outcome of public consultations including public hearing proceedings to the relevant Governmental Authority for grant of Environmental Clearance and Forest Clearance within 4 (four) years of the start of the Development Period.
- 1.2 The Mine Allocatee shall obtain a Mining Lease within 5 (five) years from the start of the Development Period.

SCHEDULE IVB

End Use Plant(s) Development Milestone

The End Use Plant(s) should achieve the following milestones

- 1.1 Financial Closure of the End Use Plant(s) should be done within 6 (six) months of Effective Date⁹.
- 1.2 Disbursal of funds from Senior Lenders should start within 6 (six) months of Effective Date¹⁰

⁹ This Article will be applicable only for surface gasification end use plant(s).

¹⁰ Applicable for explored blocks allocated to integrated steel, sponge iron and cement End Use Plants. 6 (six) months will change to 12 (twelve) months for surface gasification.

SCHEDULE V

End Use Plant(s)

[insert description of end use plant(s)]

In the event the Preferred Bidder (as defined in the Tender Notice) has been qualified on the basis of unmet capacity:

1. in an existing facility, then “End Use Plant” shall mean such existing facility. To the extent that the existing facility shall have already achieved milestones set forth in Schedule IV B, the milestones shall be deemed satisfied.
2. in a new facility, then “End Use Plant” shall mean such new facility. End Use Plant Development Milestones as set forth in Schedule IV B shall mean the milestones in respect of such new facility.
3. in an expansion project of an existing facility, then “End Use Plant” shall mean the additional new expansion project. End Use Plant Development Milestones as set forth in Schedule IV B shall mean such milestones in respect of the expansion project.
4. partially in an existing facility and partially in an expansion of such existing facility, then “End Use Plant” shall mean the expanded facility (existing plus expansion project taken together). Satisfaction of End Use Plant Development Milestones as set forth in Schedule IV B shall mean satisfaction of such milestones in respect of both the existing facility and the expansion project. Where the milestones in respect of the existing facility are already satisfied, then satisfaction of End Use Plant Development Milestones as set forth in Schedule IV B shall mean such milestones in respect of the expansion project.

SCHEDULE VI

Form of Performance Security

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

Bank Guarantee No. []

Date []

To:

Ministry of Coal
[]
India

WHEREAS

- A. [], a company incorporated and existing under the laws of India with its registered office at [] (“**Mine Allocatee**”) is required to submit a Performance Guarantee to the Ministry of Coal, in the form of an irrevocable bank guarantee for an amount of INR [] (Indian Rupees []) for the duration of [].
- B. [] having its registered office at [] (the “**Bank**”, which expression shall unless repugnant to the context or meaning thereof be deemed to mean and include its successors), has at the request of the Mine Allocatee, agreed to issue this irrevocable bank guarantee in favour of the Ministry of Coal.

NOW THEREFORE, the Bank hereby issues in favour of the Ministry of Coal this irrevocable and unconditional payment bank guarantee (the “**Guarantee**”) on behalf of the Mine Allocatee in the amount INR [] (Indian Rupees []).

1. The Bank for the purpose hereof unconditionally and irrevocably undertakes to pay to Ministry of Coal without any demur, reservation, caveat, protest or recourse, immediately on receipt of first written demand from Ministry of Coal, a sum or sums (by way of one or more claims) not exceeding in the aggregate the amount of INR [] (Indian Rupees []) without Ministry of Coal needing to prove or to show to the Bank grounds or reasons for such demand for the sum specified therein and notwithstanding any dispute or difference between Ministry of Coal and Mine Allocatee on any matter whatsoever.
2. The Bank acknowledges that any such demand by Ministry of Coal of the amounts payable by the Bank to Ministry of Coal shall be final, binding and conclusive evidence in respect of the amounts payable by Mine Allocatee to Ministry of Coal under the Coal Mine Development and Production Agreement.

3. The Bank hereby waives the necessity for Ministry of Coal from demanding the aforesaid amount or any part thereof from the Mine Allocatee and also waives any right that the Bank may have of first requiring Ministry of Coal to pursue its legal remedies against the Mine Allocatee, before presenting any written demand to the Bank for payment under this Guarantee.
4. The Bank further unconditionally agrees with Ministry of Coal that Ministry of Coal shall be at liberty, without the Bank's consent and without affecting in any manner the Bank's obligation under this Guarantee, from time to time to:
 - (i) vary and/or modify and of the terms and conditions of the Coal Mine Development and Production Agreement,
 - (ii) extend and / or postpone the time for performance of the obligations of the Mine Allocatee under the Coal Mine Development and Production Agreement, or
 - (iii) forbear or enforce any of the rights exercisable by the Ministry of Coal against the Mine Allocatee under the terms and conditions of the Coal Mine Development and Production Agreement.

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

5. Any payment made hereunder shall be made free and clear of and without deduction for, or on account, any present or future taxes, levies, imposts, duties, charges, fees, commissions, deductions or withholdings of any nature whatsoever and by whom ever imposed; and where any withholding on a payment is required by law, the Bank shall comply with such withholding obligations and shall pay such additional amount in respect of such payment such that Ministry of Coal receives the full amount due hereunder as if no such withholding had occurred.
6. The Bank agrees that Ministry of Coal at its option shall be entitled to enforce this Guarantee against the Bank, as a principal debtor in the first instance without proceeding at the first instance against Mine Allocatee.
7. Without prejudice to any continuing liability to perform obligations under this Guarantee which have arisen prior thereto, the Bank shall be released from any further obligations arising hereunder after [].
8. This Guarantee is subject to the laws of India. Any suit, action, or other proceedings arising out of this Guarantee or the subject matter hereof shall be subject to the exclusive jurisdiction of [Delhi High Court].
9. The Bank has the power to issue this Guarantee in favour of Ministry of Coal.
10. Capitalised terms not otherwise defined herein shall have their respective meanings given to such terms in the Coal Mine Development and Production Agreement.

In witness whereof the Bank, through its authorized officer, has set its hand and stamp on this
____ day of ____ 201[] at _____

(Signature)

(Name and Designation)

(Bank Stamp)

Attorney as per
Power of Attorney No . [] dated []

SCHEDULE VII

Form of Parent Company Guarantee

This PARENT COMPANY GUARANTEE (this “**Guarantee**”) is issued on this [] day of [], 2014 (“**Effective Date**”) by:

[Parent Company], a company duly organized and existing under the laws of India with its registered office at [] (hereinafter referred to as the “**Guarantor**” which expression shall unless repugnant to or inconsistent with the context, mean and include its successors and permitted assigns);

In favour of

The President of India, acting through the [], Ministry of Coal, Government of India (hereinafter referred to as “**Government**”, which expression shall, unless repugnant to or inconsistent with the context, mean and include any successors or permitted assigns).

Whereas

- A. Guarantor is the Promoter of [insert name of Bidder] (“**Bidder**”).
- B. Bidder participated in the Bidding Process for allocation of the Coal Block pursuant to the RFP issued by the Government.
- C. Bidder relied on the financial strength of the Guarantor for meeting the Qualifying Requirements under the RFP.
- D. It is a requirement of the RFP that in the event the Bidder has the quoted the financial capacity of its Promoter to meet the Qualifying Requirements under the RFP, the Promoter shall issue a Parent Company Guarantee in favour of the Government.
- E. This Guarantee constitutes the aforesaid Parent Company Guarantee.

NOW, THEREFORE this Guarantee hereby provides as follows:

1. Definitions

- 1.1 In this Agreement unless the context otherwise requires, the following words and phrases shall have the meaning assigned to them hereunder:

“**Coal Block**” means [insert details of the relevant coal bearing area]

“**Coal Mine Development and Production Agreement**” means the Coal Mine Development and Production Agreement dated [] entered into between [] as the Mine Allocatee and the Government.

“**Mine Allocatee**” means [Bidder/ insert name and details of Mine Allocatee, in case of a consortium].

“**Promoter**” shall have the meaning ascribed to it in the RFP.

“**Qualifying Requirements**” shall have the meaning ascribed to it in the RFP.

“**RFP**” means the Request for Proposal No. ___ for development of [name of Coal block] issued by the Government.

2. The Guarantor hereby unconditionally and irrevocably guarantees to the Government that all the equity investment obligations of Bidder [as/in] Mine Allocatee required to enable the Mine Allocatee to fulfil and perform its obligations under the Coal Mine Development and Production Agreement shall be deemed to be equity investment obligations of the Guarantor and in the event of any default, the same shall be met by the Guarantor.
3. This Guarantee shall take effect from the Effective Date and shall remain in full force and effect for the duration of the said Coal Mine Development and Production Agreement.
4. This Guarantee shall not be affected by any change in the articles of association and bye-laws of the Mine Allocatee, [Bidder] or the Guarantor or in any instrument establishing Mine Allocatee, [Bidder] or the Guarantor.
5. The liabilities of the Guarantor shall not be discharged or affected by (a) any time indulgence, waiver or consent given to the Mine Allocatee; or (b) any amendment to the Coal Mine Development and Production Agreement; or (c) the enforcement or waiver of any terms of the Coal Mine Development and Production Agreement or (d) the availability of any other security, guarantee or indemnity to the Government; or (e) the dissolution, amalgamation, reconstruction or reorganization of the Mine Allocatee [or the Bidder].
6. This Guarantee shall be governed by and construed in accordance with the laws of India.

IN WITNESS WHEREOF the Guarantor, through its duly authorized representatives, has caused its seal to be duly affixed hereto and this Guarantee to be duly executed the [] day of [] 2014.