

MODEL TENDER DOCUMENT

GOVERNMENT OF [STATE]

Issued to

[Name of the Bidder]

[Address]

This Tender Document is non-transferable. The Price of this Tender Document is INR [amount in figures] (Rupees [amount in words]).

[Note: The Price of this Tender Document not to exceed INR 5 lakh]

[Note: A copy of this Tender Document is available on the website <https://www.____> which cannot be used for the purpose of bidding and is only intended for the information of the public]

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1. Important information

- 1.1. This Tender Document has been issued pursuant to notification of an area with the intent to carry out e-auction for grant of a [mining lease/ prospecting licence-cum-mining lease] for mineral specified herein, pursuant to the Act and the rules made thereunder. All information provided in this Tender

Document should be read together with the Act and the rules made thereunder. In the event of a conflict between this Tender Document and the Act or the rules, the Act or the rules, as the case may be, shall prevail.

- 1.2. The information contained in this Tender Document or subsequently provided to Bidder(s), whether verbally or in documentary or any other form by or on behalf of the State Government or any of its employees or advisors, is provided to Bidder(s) on the terms and conditions set out in this Tender Document.
- 1.3. This Tender Document is neither an agreement nor an offer by the State Government to the prospective Bidders or any other person. The purpose of this Tender Document is to provide interested parties with information that may be useful to them in making their bids pursuant to this Tender Document. This Tender Document includes statements which reflect various assumptions and assessments arrived at by the State Government in relation to the mineral block. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require. This Tender Document may not be appropriate for all persons, and it is not possible for the State Government, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this Tender Document. The assumptions, assessments, statements and information contained in the Tender Document may not be complete, accurate, adequate or correct. Each Bidder should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this Tender Document and obtain independent advice from appropriate sources.
- 1.4. Information provided in this Tender Document to the Bidder(s) has been collated from several sources some of which may depend upon interpretation of Applicable Law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as complete. The State Government accepts no responsibility for the accuracy or otherwise for any statement contained in this Tender Document.
- 1.5. The State Government, its employees and advisors make no representation or warranty and shall have no liability to any person, including any Bidder under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this Tender Document or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the Tender Document and any assessment, assumption, statement or information contained therein or deemed to form part of this Tender Document or arising in any way from participation in this tender process.

- 1.6. The State Government also accepts no liability of any nature howsoever caused arising from reliance of any Bidder upon the statements contained in this Tender Document.
- 1.7. The State Government may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this Tender Document.
- 1.8. The issue of this Tender Document does not imply that the State Government is bound to select a Bidder or to appoint the Preferred Bidder as Successful Bidder for the mineral block and the State Government reserves the right to reject all or any of the Bidders or bids without assigning any reason whatsoever.
- 1.9. Each Bidder shall bear all its costs associated with or relating to the preparation and submission of its bid including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by the State Government or any other costs incurred in connection with or relating to its bid.
- 1.10. This Tender Document is not transferable. The price paid by the Bidder for the Tender Document shall not be refunded.

2. Definitions

The words and expressions used herein but not defined herein shall have the same meaning as assigned to them in the Act or the rules made thereunder . The following definitions apply to this Tender Document, unless the context otherwise requires:

- 2.1. “**Act**” means the Mines and Minerals (Development and Regulation) Act, 1957.
- 2.2. “**Applicable Law**” shall mean all applicable statutes, laws, by-laws, rules, regulations, orders, ordinances, protocols, codes, guidelines, policies, notices, directions, judgments, decrees or other requirements or official directive of any governmental authority or court or other law, rule or regulation approval from the relevant governmental authority, government resolution, directive, or other government restriction or any similar form of decision of, or determination by, or any interpretation or adjudication having the force of law in India.
- 2.3. “**Auction Rules**” means the Mineral (Auction) Rules, 2015.
- 2.4. “**Bidder**” means a person who has purchased this Tender Document, and the expression Bidders shall include all such persons.
- 2.5. “**Bid Due Date**” means the date on which the Technical Bid and the initial price offer is required to be submitted in accordance with Clause 8.1(A)(a).
- 2.6. “**Bid Security**” means bid security as referred to in Clause 16.
- 2.7. “**Concession Area**” means [*particulars of the area*] as more particularly described in the Information Memorandum.
- 2.8. “**Information Memorandum**” means the information memorandum provided separately containing amongst others, information specified in Clause 4.1.

- 2.9. “**MDPA**” means the Mine Development and Production Agreement in the format as specified in Schedule IV (*Format of MDPA*).
- 2.10. “**Performance Security**” means a bank guarantee in the format as provided in Schedule III of the Auction Rules or a non-interest bearing security deposit to be provided pursuant to the Auction Rules.
- 2.11. “**State Government**” means [*name of state government*].
- 2.12. “**Tender Document**” means this tender document together with the schedules and documents referred herein, including the Information Memorandum and any addenda to this Tender Document.
- 2.13. “**Upfront Payment**” means an amount equal to INR [*amount in figures*] (Rupees [*amount in words*]) payable pursuant to the Auction Rules.

3. Introduction

- 3.1. The Act stipulates grant of [mining lease / composite licence (as defined in clause (b) of sub-rule (1) of rule (2) of the Auction Rules)]¹ through e-auction in respect of minerals which vest in the government other than minerals specified in Part A or Part B of the First Schedule of the Act and minor minerals as defined in clause (e) of section 3 of the Act.
- 3.2. In exercise of powers conferred by the section 13 of the Act, the Central Government has notified the Mineral (Auction) Rules, 2015 and the Minerals (Evidence of Mineral Contents) Rules, 2015. The Bidders are encouraged to acquaint themselves with the Act and the rules made thereunder.
- 3.3. This Tender Document is being issued by the State Government, for e-auction for grant of a [mining lease/composite licence] over the Concession Area.
- 3.4. The e-auction would be conducted in accordance with the Act, the Auction Rules, the Minerals (Evidence of Mineral Content) Rules, 2015, any other order or notification issued by the Central Government pursuant to the Act and this Tender Document.

4. The Concession Area

- 4.1. The following information regarding the Concession Area is included in a separate “**Information Memorandum**” attached along with this Tender Document as Schedule V,-
- (i) precise map of the Concession Area identified including geographical co-ordinates, revenue survey particulars, demarcated using total station and differential global positioning system and divided into forest land, land owned by the State Government and land not owned by the State Government;
 - (ii) estimated mineral resources of minerals found in the identified Concession Area determined pursuant to the Minerals (Evidence of Mineral Content) Rules, 2015;

¹ Note: If the e-auction is for mining lease, delete composite licence and vice-versa, in this clause and elsewhere in this Tender Document.

- (iii) [an indicative list of clearances and permissions required to be obtained with respect to such area for commencing mining operations]; and
 - (iv) the geological report of the Concession Area.
- 4.2. Bidders are strongly encouraged to review the Information Memorandum.

5. Eligibility

Pursuant to Rule 6 of the Auction Rules, the eligibility for participating in the e-auction shall be as follows:

- (a) The Bidder must meet the Conditions specified in section 5 of the Act which is quoted² below:

“5. Restrictions on the grant of prospecting licences or mining leases

(1) A State Government shall not grant a reconnaissance permit, prospecting licence or mining lease to any person unless such person--

(a) is an Indian national, or company as defined in clause (20) of section 2 of the Companies Act, 2013 (18 of 2013); and

(b) satisfies such conditions as may be prescribed:

Provided that in respect of any mineral specified in Part A and Part B of the First Schedule, no reconnaissance permit, prospecting licence or mining lease shall be granted except with the previous approval of the Central Government.

Explanation.--For the purposes of this sub-section, a person shall be deemed to be an Indian national,--

(a) in the case of a firm or other association of individuals, only if all the members of the firm or members of the association are citizens of India; and

(b) in the case of an individual, only if he is a citizen of India.

(2) No mining lease shall be granted by the State Government unless it is satisfied that--

² Note: State Government to ascertain that the quoted text conforms to Section 5 of the Act as existing on the date of publication of the Tender Document.

(a) *there is evidence to show the existence of mineral contents in the area for which the application for a mining lease has been made in accordance with such parameters as may be prescribed for this purpose by the Central Government;*

(b) *there is mining plan duly approved by the Central Government, or by the State Government, in respect of such category of mines as may be specified by the Central Government, for the development of mineral deposits in the area concerned.*

Provided that a mining lease may be granted upon the filing of a mining plan in accordance with a system established by the State Government for preparation, certification, and monitoring of such plan, with the approval of the Central Government.”

(b) The Bidder must meet the terms and conditions regarding eligibility as stipulated in Schedule I of the Auction Rules for e-auction of Concession Area for grant of mining lease or composite licence as the case may be, as quoted³ below:

“1 The following net worth requirements shall be applicable for an auction of mining lease depending on the Value of Estimated Resources,-

(a) *If the Value of Estimated Resources is more than Rupees 25 Crores, the applicant, including an individual, shall have a net worth more than 4% of Value of Estimated Resources.*

(b) *If the Value of Estimated Resources is less than or equal to Rupees 25 Crores, the applicant, not being an individual, shall have a net worth more than 2% of Value of Estimated Resources.*

(c) *If the Value of Estimated Resources is less than or equal to Rupees 25 Crores, the applicant, being an individual, shall have a minimum net worth of 1% of the Value of Estimated Resources.*

³ Note: State Government to ascertain that the quoted text conforms to Schedule I of the Auction Rules as existing on the date of publication of the Tender Document.

- 2 *In case of auction of Composite Licence, the applicant must have a net worth of more than 1% of the Value of Estimated Resources.*

Explanation:

- (1) *In case an applicant is a subsidiary of another company incorporated in India, the net worth of such holding company may also be considered:*

Provided that, in such case, the applicant must continue to be a subsidiary of such holding company until such time the applicant meets the aforementioned net worth threshold.

- (2) *In case of a Company, the Net worth shall be the sum of paid up share capital and the free Reserves as per the audited Balance Sheet of the immediately preceding financial year.*

- (3) *In case of an individual, the Net worth shall be the closing cash balance on the last date for submission of application, and such amount may include amount in Savings Bank accounts in Scheduled Bank/ Post Office, free and un-encumbered Fixed Deposits in Scheduled Banks, Post Office, Listed Companies/Government Organisation/Public Sector Undertaking of State and Central Government, Kisan Vikas Patra, National Saving certificate, Bonds, Shares of Listed Companies, Listed Mutual Funds, Unit Linked Insurance Plan, Public Provident Fund, Surrender Value of Life Insurance policies in the name of Applicant.”*

- (c) [Any additional eligibility condition if prescribed by the State Government pursuant to sub-rule (2) of rule 6 of the Auction Rules to be specified here.]⁴
- (d) [The Concession Area has been reserved for [particulars of the end use]⁵ as the specified end use pursuant to the proviso to sub-section (6) of Section 10B of the Act read with sub-rule (3) of rule 6 of the Auction Rules.]⁶
- (e) The eligibility conditions shall be used only for the purposes of determination of eligibility for participating in the e-auction. The Successful Bidder shall be decided solely on the basis of Final Price Offer submitted by the eligible Bidders.

⁴ Note: To be deleted in case the State Government does not prescribe any additional eligibility condition pursuant to provisions of sub-rule (2) of rule 6 of the Auction Rules.

⁵ Note: Pursuant to sub-rule (3) of rule 6 of the Auction Rules the State Government may prescribe a specified end use including the end use as specified in Schedule II of the Auction Rules.

⁶ Note: To be deleted if the State Government, in terms of sub-rule (3) of rule 6 of the Auction Rules, has not reserved the Concession Area for a specified end use.

6. Review period and site visit

- 6.1. Pursuant to sub-rule (3) of Rule 9 of the Auction Rules, the Bidders shall be provided a fixed period of [days] to study the Tender Document and the bidding process shall commence only after such period of [days].
- 6.2. Such period of [days] would commence on [date of NIT] and would end on [date].
- 6.3. During such period the Bidders may undertake the site visit to Concession Area at their cost and risk to ascertain for themselves the site conditions, location, communication, climate, availability of power, and any other matter considered relevant by them.
- 6.4. This Tender Document does not however give the unconditional or unrestricted right to access the Concession Area or the right to the Bidders to prospect for minerals. The site visit must be in compliance with Applicable Law and rights of person(s) having surface rights over the Concession Area.
- 6.5. In the event a Bidder undertakes a site visit, then such Bidder shall be liable towards any loss or damage caused to the site and/or the person(s) having surface rights over the Concession Area, on account of any act or omission of such Bidder or its employees, authorised representatives, agents, advisors etc.
- 6.6. The site visit to the Concession Area shall be conducted with prior notice to the State Government through the following email address [designated email id of the State Government for the particular e-auction].

7. Pre-bid conference

- 7.1. Bidders may seek clarifications or request further information regarding this Tender Document.
- 7.2. Any queries or requests for additional information concerning this Tender Document may be sent by e-mail to the State Government to [designated email id of the State Government for the particular e-auction] in the format specified in Schedule II (*Format for seeking clarifications regarding the Tender Document*).
- 7.3. The email should clearly bear the following subject line: “Queries/Request for Additional Information: Tender Document for [name of the Concession Area]”.
- 7.4. Each query should contain complete details of facts, information and Applicable Law relevant to the query and also the particulars of the person posing the query. The State Government reserves the right to not answer any query, including any query which is incomplete or anonymous.
- 7.5. The queries should be emailed on or before the date specified in Clause 12 for receiving queries.
- 7.6. The State Government shall endeavour to respond to the queries within the period specified in Clause 12. However, the State Government reserves the right to not respond to any question or provide any clarification, in its sole discretion, and nothing in this Tender Document shall be taken or read as

compelling or requiring the State Government to respond to any question or to provide any clarification.

- 7.7. The State Government shall publish the queries for which response has been provided on a website, without identifying the source of queries.
- 7.8. Pre-bid conference(s) of the Bidders shall be convened at the designated date as mentioned in Clause 12 at a time and place specified by the State Government. Only those persons who have purchased the Tender Document shall be allowed to participate in the pre-bid conferences.
- 7.9. A maximum of three representatives of each Bidder shall be allowed to participate on production of duly issued authority letter from the Bidder and identity documents. During the course of pre-bid conference(s), the Bidders may seek additional clarifications and make suggestions for consideration of the State Government.
- 7.10. The State Government shall endeavour to provide clarifications and such further information, as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive tender process.
- 7.11. The State Government may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued by the State Government shall be deemed to be part of the Tender Document. Provided, however, that any non-written clarifications and information provided by the State Government, its employees or representatives in any manner whatsoever shall not in any way or manner be binding on the State Government.

8. Tender process

- 8.1. Pursuant to sub-rule (4) of Rule 9 of the Auction Rules, the e-auction shall be an ascending forward online electronic auction and shall comprise of the following two rounds:

A. First round of e-auction

- (a) In the first round, the Bidders shall be required to submit on or prior to [*exact date and time*] (“**Bid Due Date**”):
 - (i) the Technical Bid; and
 - (ii) initial price offer, which shall be a percentage of Value of Mineral Despatched and must be equal to or greater than the Reserve Price as specified in Clause 9.

The Technical Bid and the initial price offer must be submitted electronically as provided in Schedule III (*Technical details regarding electronic auction*).

- (b) The Technical Bid shall be evaluated to ascertain compliance of the Bidder with the eligibility conditions and requirements under this Tender Document. While examining the Technical Bids the State Government may consider such

parameters as it may deem relevant, including considerations that the Technical Bid:

- (i) is received as per the prescribed formats along with all required documents and information;
- (ii) is received by the Bid Due Date including any extension thereof;
- (iii) is submitted electronically in the manner prescribed in Schedule III (*Technical details regarding electronic auction*);
- (iv) contains all the information (complete in all respects) including the initial price offer as requested in this Tender Document;
- (v) does not contain any condition or qualification;
- (vi) only one Technical Bid has been made by the Bidder;
- (vii) the initial price offer is equal to or greater than the Reserve Price; and
- (viii) is generally considered to be in compliance in terms of any other parameters as may be considered relevant by the State Government.

- (c) Only those Bidders who are found to be eligible in accordance with the prescribed eligibility conditions and whose initial price offer is equal to or greater than the Reserve Price and whose bids meet the requirements under this Tender Document shall be declared as the “**Technically Qualified Bidders**”.
- (d) The highest initial price offer amongst the Technically Qualified Bidders shall be the floor price for the second round of online electronic auction (“**Floor Price**”).
- (e) The Technically Qualified Bidders shall be ranked on the basis of the descending initial price offer submitted by them. On the basis of such ranking the Technically Qualified Bidders, holding first fifty per cent of the ranks (with any fraction rounded off to higher integer) or the top five Technically Qualified Bidders, whichever is higher, shall be considered to be qualified for participating in the second round of online electronic auction (the “**Qualified Bidders**”). Intimation shall be restricted only to the Qualified Bidders.

Provided that where the total number of technically qualified bidders is less than three, then no technically qualified

bidder shall be considered to be qualified bidder and the e-auction process shall be annulled:

Provided further that the State Government may, in its discretion, decide not to annul the e-auction process if even in the third or subsequent attempt the total number of technically qualified bidders continues to be less than three and the State Government may, in such case, decide to consider the technically qualified bidders as qualified bidders so as to continue with the bidding process:

Provided also that if the number of technically qualified bidders is between three and five, then all the technically qualified bidders shall be considered as qualified bidders:

Provided also that in the event of identical initial price offers being submitted by two or more technically qualified bidders, all such technically qualified bidders shall be assigned the same rank for the purposes of determination of qualified bidders and in such case, the aforementioned fifty per cent. shall stand enhanced to fifty per cent. plus the number of technically qualified bidders, whose initial price offers are identical less the number of such identical initial price offers.

Illustration:

- (i) In the event there are a total of ten Technically Qualified Bidders, and each Technically Qualified Bidder submits different initial price offer, then the Technically Qualified Bidders holding the first fifty per cent. of ranks shall be considered to be Qualified Bidders.
- (ii) In the aforementioned case, if three Technically Qualified Bidders submit the same initial price offer and are ranked in first fifty per cent. of the total number of ranks, then all the three Technically Qualified Bidders shall be considered to be Qualified Bidders and the total number of Qualified Bidders shall stand increased by two.
 - a. The State Government is not obliged to provide any explanation or clarification on their disqualification to Bidders who fail to qualify as Technically Qualified Bidders.

- b. Technical Bids shall be deemed to be under consideration immediately after the submission and until such time the State Government makes official intimation of award / rejection to the Bidders. While the tender process is on-going, Bidders and/ or their representatives or other interested parties are advised to refrain, save and except as required/permitted under the Tender Document, from contacting by any means, the State Government and/ or their employees/ representatives on matters related to the bids under consideration.
- c. Save and except as provided in this Tender Document, the State Government shall not entertain any correspondence with any Bidder in relation to acceptance or rejection of any bid or the tender process.

B. Second round of e-auction

- (a) In the second round, the Qualified Bidders may submit their final price offers which shall be a percentage of Value of Mineral Despatched (the “**Final Price Offer**”) which must be greater than the Floor Price. The Final Price Offer may be revised till the conclusion of the e-auction in accordance with the technical specifications of the e-auction platform as specified in Schedule III (*Technical details regarding electronic auction*).
- (b) The e-auction process shall be annulled if none of the Qualified Bidders submits a Final Price Offer on the online electronic auction platform. In case the e-auction process is annulled due to non-submission of at least one Final Price Offer on the electronic auction platform, the Bid Security of the Qualified Bidder(s) who has submitted the highest Initial Price Offer i.e. the applicable Floor Price for the second round of e-auction, shall be forfeited in accordance with Clause 15.6.
- (c) The Qualified Bidder who submits the highest Final Price Offer shall be declared as the “**Preferred Bidder**” immediately on conclusion of the e-auction.

- 8.2. The mining lease shall be for minerals found in the area pursuant to exploration prior to the e-auction:
Provided that where, subsequent to the e-auction, any new mineral is discovered, then the holder of mining lease shall follow the provisions of the Mineral Concession Rules, 1960 for inclusion of such new mineral in the Mining Lease Deed.
Where, prior to the e-auction or subsequent to the e-auction, presence of minor mineral is established or discovered, such minor minerals shall be dealt in accordance with such rules made by the State Government under section 15 of the Act.
- 8.3. [As mentioned in the Information Memorandum, the Concession Area also contains the following minor minerals:
particulars of the minor minerals.]⁷
- 8.4. State Government to prescribe the manner in which the minor mineral would be extracted and payments related thereto in consonance with rules made by the State Government under section 15 of the Act.

9. Reserve Price

- 9.1. The Reserve Price is [percentage to be prescribed by the State Government] per cent. of Value of Mineral Despatched. The “**Value of Mineral Despatched**” shall be an amount equal to the product of,-
- (i) mineral despatched in a month; and
 - (ii) sale price of the mineral (grade-wise and State-wise) as published by Indian Bureau of Mines for such month of despatch.

10. Declaration of Successful Bidder and grant of mining lease⁸

Pursuant to Rule 10 of the Auction Rules, the mining lease shall be granted to the Successful Bidder in the following manner:

10.1. Issuance of letter of intent:

A letter of intent shall be issued by the State Government to the Preferred Bidder upon payment of the first instalment of the Upfront Payment which is INR [amount in figures] (Rupees [amount in words]).

10.2. Declaration as a Successful Bidder:

The Preferred Bidder shall be considered to be the “**Successful Bidder**” upon,-

- (a) continuing to be in compliance with all the terms and conditions of eligibility;
- (b) payment of the second instalment of the Upfront Payment which is INR [amount in figures] (Rupees [amount in words]);
- (c) furnishing the Performance Security pursuant to the Auction Rules, valid for the period specified in the MDPA, for an amount equal to

⁷ Note: To be deleted if the Concession Area does not have minor minerals.

⁸ Note: To be retained if e-auction is for mining lease. To be deleted if e-auction is for composite licence.

INR [amount in figures] (Rupees [amount in words]). Pursuant to sub-rule (1) of rule 12 of the Auction Rules, the Performance Security shall be adjusted every five years so that it continues to correspond to 0.50% of the reassessed value of estimated resources determined in accordance with the Auction Rules. In such case, bank guarantee constituting the Performance Security shall be substituted with another bank guarantee of the same value issued in accordance with this Clause 10.2, which is for the revised amount or if the Performance Security has been provided through a security deposit, additional amount towards security deposit shall be provided;

- (d) satisfying the conditions specified in clause (b) of sub-section (2) of section 5 of the Act with respect to a mining plan; and
- (e) [satisfying such other conditions as may be specified by the State Government with the prior approval of the Central Government.]⁹

10.3. Execution of Mine Development and Production Agreement:

The State Government and the Successful Bidder shall enter into the MDPA upon the Successful Bidder having obtained all consents, approvals, permits, no-objections and the like as may be required under Applicable Law for commencement of mining operations.

10.4. Grant of mining lease:

Subsequent to execution of the MDPA, the Successful Bidder shall pay the third instalment of the Upfront Payment which is INR [amount in figures] (Rupees [amount in words]). Upon such payment the State Government shall grant a mining lease to the Successful Bidder within a period of 30 days from the date of payment. The date of the commencement of the period for which a mining lease is granted shall be the date on which a duly executed mining lease is registered.

11. Declaration of Successful Bidder and grant of composite licence¹⁰

Pursuant to rule 18 of the Auction Rules, the composite licence shall be granted to the Successful Bidder in the following manner:

11.1. Issuance of letter of intent:

Upon completion of the e-auction process, the Preferred Bidder shall submit Performance Security in the manner specified in rule 19 of Auction Rules. Upon receipt of such Performance Security, the State Government may issue a letter of intent to the Preferred Bidder. Upon receipt of the letter of intent the Preferred Bidder shall be considered to be the “**Successful Bidder**”.

11.2. Grant of composite licence followed by mining lease:

⁹ Note: To be inserted in case the State Government has obtained the approval of Central Government prior to issue of this Tender Document.

¹⁰ Note: To be retained if e-auction is for composite licence. To be deleted if e-auction is for mining lease.

- (a) On receipt of the letter of intent the Preferred Bidder shall be considered to be the “**Successful Bidder**” upon fulfilment of the following conditions:
 - (i) compliance with all the eligibility conditions;
 - (ii) obtaining all consents, approvals, permits, no-objections and the like as may be required under Applicable Law for commencement of prospecting operations; and
 - (iii) submitting the Scheme of prospecting.
- (b) Upon fulfilment of the conditions listed in clause (a) the State Government shall grant a composite licence to the Successful Bidder.
- (c) The holder of composite licence shall be eligible to receive a mining lease pursuant to the provisions of the Act and the Auction Rules.

12. Timetable

The following timetable shall apply to the tender process. The timetable may be amended by the State Government through issuance of an addendum to the Tender Document.

S. No.	Event Description	Estimated Time (Days)	
Stage I – E-auction process for selection of Preferred Bidder			
1.	Publication of notice inviting tender in at least one English national newspaper and one local language newspaper and on the State Government website	T ₀ (For ML)	T ₀ (For Composite Licence)
2.	Commencement of sale of Tender Document.	T ₀	T ₀
3.	Last date for sale of Tender Document.	T ₀ +15	T ₀ +15
4.	Last date of receiving queries from Bidders	T ₀ +25	T ₀ +25
5.	Pre-bid conference.	T ₀ +30	T ₀ +30
6.	Last date for responses to queries by the State Government	T ₀ +40	T ₀ +40
7.	Bid Due Date (Technical + initial price offer) [State Government to specify exact time]	T ₀ +45	T ₀ +45
8.	Opening of the Technical Bids.	T ₀ +46	T ₀ +46
9.	Start date for examination of the Technical Bids	T ₀ +46	T ₀ +46
10.	Announcement of the Technically Qualified Bidders	T ₀ +60	T ₀ +60
11.	Training and mock-auctions for all the Technically Qualified Bidders on e-auction platform by the e-auction platform provider	T ₀ +62	T ₀ +62
12.	Opening of initial price offers of Technically Qualified Bidders and intimation of Qualified	T ₀ +65	T ₀ +65

S. No.	Event Description	Estimated Time (Days)	
	Bidders two days prior to the scheduled date of e-auction of the respective mineral block (to Qualified Bidders only)		
13.	Conduct of ascending forward electronic auction and submission of Final Price Offer on the electronic auction platform	T ₀ +67	T ₀ +67
14.	Announcement of Preferred Bidder	T ₀ +67	T ₀ +67
15.	Payment of first instalment (10%) of Upfront Payment by the Preferred Bidder for mining lease. Or payment of Performance Security in case of composite licence	T ₀ +97	T ₀ +97
16	Issuance of letter of intent by State Government	T ₀ +105	T ₀ +105
Stage II after Preferred Bidder obtains all necessary clearances/approvals from various government agencies/departments			
1.	Applicable for mining lease only – submission of Performance Security and mining plan along with second instalment (10%) of Upfront Payment by the Preferred Bidder to become Successful Bidder. [Applicable to composite licence – submission of Performance Security and prospecting scheme]	T ₁	T ₁
2.	Issuance of order by State Government acknowledging as the Successful Bidder	T ₁ +10	T ₁ +10
3.	Applicable for mining lease only – Mine Development Production Agreement (MDPA) to be executed between State Government & Successful Bidder after payment of third instalment (80%) of Upfront Payment; mining lease to be executed by State Government. Successful Bidder to become holder of mining lease. [Applicable for composite licence – signing of composite licence deed.]	T ₁ +20	T ₁ +10

13. Payments by the Successful Bidder ¹¹

13.1. Upfront Payment

¹¹ Note: Applicable in case of a Mining Lease

The Upfront Payment paid by the Successful Bidder shall be adjusted in full against the amount payable in accordance with the percentage of Value of Mineral Despatched quoted as the Final Price Offer within the first 5 years of commencement of production of mineral(s).

13.2. Periodic payments

A holder of mining lease shall make such payments as specified in rule 13 of the Auction Rules. It is clarified that, the holder of mining lease shall make monthly payments with respect to the Value of Mineral Despatched or the minimum production requirement as specified in the MDPA, whichever is higher.

14. General conditions regarding tender process

14.1. Submission of Technical Bid

14.1.1. The Technical Bid shall comprise of the following:

- (a) Bid letter in the format specified in Part B of Schedule I (*Format of bid letter*);
- (b) Bid Security in form of a bank guarantee for an amount equal to INR [amount in figures] (Rupees [amount in words]) in the format specified in Part C of Schedule I (*Format of Bid Security*), which shall be subject to Clause 15;
- (c) In case of Bidder being a company, a power of attorney in the format specified in Part D of Schedule I (*Format of power of attorney*) authorising the signatory of the bid to participate in the tender process and do all acts pursuant thereto on behalf of the Bidder, including usage of the digital signature on behalf of the Bidder. In case of Bidder being an individual, power of attorney would not be required but such individual must personally sign;
- (d) Affidavit in the format specified in Part E of Schedule I (*Format of affidavit*); and
- (e) In case of Bidder being a company, duly certified copy of the corporate authorisation, such as board resolution to participate in the tender process and submit a bid.

14.1.2. The Technical Bid shall be submitted on the electronic platform and the duly executed original physical copies must be sent to the following address so that they are received on or prior to the Bid Due Date, failing which the Technical Bid shall be deemed to be not received.

[Designated address of the State Government for the purpose of particular e-auction.]

14.2. Language

The Bid and all communications in relation to or concerning the Tender Document and the Bid are required to be in the English language.

14.3. Documents and information

The documents including this Tender Document and all attached documents, provided by the State Government are and shall remain or become the properties of the State Government and are transmitted to the Bidders solely for the purpose of preparation and the submission of a bid in accordance herewith. Bidders are required to treat all such information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their bid. The provisions of this Clause shall also apply to bids and all other documents submitted by the Bidders in relation to the bid, and the State Government will not return to the Bidders any bid, document or any information provided along therewith.

14.4. Overriding effect

If there is a conflict between the [mining lease which is inclusive of the MDPA / prospecting licence-cum-mining lease] and this Tender Document, the [mining lease which is inclusive of the MDPA /prospecting licence-cum-mining lease] would have overriding effect.

14.5. Cost of bidding

The Bidders shall be responsible for all of the costs associated with the preparation of their bids and their participation in the tender process. The State Government will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the tender process.

14.6. Verification of information by the Bidders

14.6.1. It shall be deemed that by submitting a bid, the Bidder has:

- (a) made a complete and careful examination of the Tender Document and unconditionally and irrevocably accepted the terms thereof;
- (b) reviewed all relevant information provided by the State Government, as may be relevant to the bid;
- (c) accepted the risk of inadequacy, error or mistake in the information provided in the Tender Document or furnished by or on behalf of the State Government relating to any of the matters related to the e-auction process.
- (d) satisfied itself about all matters regarding the e-auction process for submitting an informed bid, in accordance with this Tender Document and performance of all of its obligations;
- (e) acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Tender Document or ignorance of any of the matters related to the e-auction process hereinabove shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits etc. from the State Government, or a ground for termination of the MDPA by the Successful Bidder; and
- (f) agreed to be bound by the undertakings provided by it under and in terms hereof.

14.6.2. The State Government shall not be liable for any omission, mistake or error in respect of any of the information provided or on account of any matter or thing arising out of or concerning or relating to the Tender Document or the tender process, including any error or mistake therein or in any information or data given by the State Government.

14.7. Verification by the State Government and disqualification

14.7.1. The State Government reserves the right to verify all statements, information and documents submitted by the Bidder in response to the Tender Document and the Bidder shall, when so required by the State Government, make available all such information, evidence and documents as may be necessary for such verification. Any such verification or lack of such verification by the State Government shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the State Government thereunder.

14.7.2. The State Government reserves the right to reject any bid, and appropriate the entire Bid Security if:

- (a) at any time, a misrepresentation is made or uncovered,
- (b) the Bidder does not provide, within the time specified by the State Government, the supplemental information sought by the State Government for evaluation of the bid, or
- (c) any act or omission of the Bidder results in violation of or non-compliance with the Act, the rules thereunder, this Tender Document, or any other document referred therein or issued pursuant thereto or any Applicable Law relevant for the tender process.

14.7.3. Any rejection of a bid under Clause 14.7.2 may lead to the disqualification of the Bidder for bidding for any e-auction or allotment conducted by the State Government for a period of 5 years starting from the date of appropriation of the Bid Security or any other earlier date specified by the State Government.

14.7.4. In the aforementioned events, the State Government shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, without prejudice to any other right or remedy that may be available to the State Government under the Tender Document, or otherwise, without any liability whatsoever.

14.8. Amendment of Tender Document

14.8.1. At any time prior to the Bid Due Date, the State Government may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, amend the Tender Document.

14.8.2. Any amendment issued hereunder will be in writing and shall be made available to all the Bidders and shall be deemed to be part of the Tender Document.

14.8.3. In order to afford the Bidders a reasonable time for taking an amendment into account, or for any other reason, the State

Government may, in its sole discretion, extend the Bid Due Date in accordance with Clause 14.9.

14.9. Bid Due Date and extension

14.9.1. Technical Bids should be uploaded and the documents required to be submitted physically in original pursuant to Clause 14.1.2 must be received before the Bid Due Date. Technical Bids received by the State Government after the specified time on the Bid Due Date shall not be eligible for consideration and shall be summarily rejected.

14.9.2. The State Government may, in its sole discretion, extend the Bid Due Date by issuing an amendment that is made available to all Bidders.

14.10. Modifications/ substitution/ withdrawal of bids

14.10.1. The Bidder may modify, substitute or withdraw its Technical Bid after submission, prior to the Bid Due Date. No Technical Bid shall be modified, substituted or withdrawn by the Bidder on or after the Bid Due Date, unless the same has been expressly sought by the State Government.

14.11. Rejection of bids

14.11.1. Notwithstanding anything contained in this Tender Document, the State Government reserves the right to reject any bid and/or to annul the tender process and reject all bids at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons thereof.

14.11.2. In case such cancellation is pursuant to non-compliance by the relevant Bidders vis-à-vis submissions of bid then the State Government reserves the right to appropriate the relevant Bid Security submitted by such non-compliant Bidders.

14.11.3. The State Government reserves the right not to proceed with the tender process at any time, without notice or liability, and to reject any bid without assigning any reasons.

14.11.4. Without prejudice to the generality of the foregoing, the State Government reserves the right to reject any bid on any criteria specified in this Tender Document, including without limitation, the following:

- (a) bids have not been submitted with all the information and details listed in this Tender Document.
- (b) bid is not in conforming to the terms of Clause 8.1(A)(b) of this Tender Document.
- (c) bids have been submitted without Bid Security or period of validity.
- (d) bids have otherwise not been submitted in accordance with the Tender Document.

14.12. Validity of bids

14.12.1. The initial price offer shall be valid for a period of 180 days from the Bid Due Date. If the second round of e-auction is not conducted within

a period of 180 days from the Bid Due Date, then the e-auction process will be annulled and the State Government will refund the price of Tender Document to the Bidders.

14.13. Change affecting the Bidder

Upon submission of the Technical Bid, any change affecting the Bidder regarding compliance with the eligibility conditions shall result in disqualification of the Bidder. Any change in any information submitted by the Bidder must be immediately communicated to the State Government.

14.14. Minor deviations

The State Government may permit minor deviations from the requirements of this Tender Documents. It is clarified that such minor deviation would not be permitted in matters related to eligibility and shall be permitted only with respect to procedural requirements. The decision of the State Government regarding what constitutes minor deviation shall be final and binding.

15. Bid Security

- 15.1. The Bidder shall furnish as part of its Technical Bid, a security in the form of a bank guarantee payable at [capital of the state] by a Scheduled Bank as listed in the Second Schedule of the Reserve Bank of India Act, 1934, excluding those listed under the headings of Gramin Banks, Urban Co-operative Banks and State Co-operative Banks, in favour of the State Government in substantially the same format as prescribed at Part C of Schedule I (*Format of bid security*), and having a validity period of not less than 240 days from the Bid Due Date, inclusive of a claim period of 60 days, and may be substituted with another bank guarantee of the same value issued in accordance with this Clause, which is valid for an extended period as may be mutually agreed between the State Government and the Bidder from time to time.
- 15.2. The Bid Security shall be for INR [amount in figures] (Rupees [amount in words]).
- 15.3. Save and except as provided in this Tender Document, the Bid Security of unsuccessful Bidders will be returned by the State Government, without any interest, as promptly as possible.
- 15.4. The Successful Bidder's Bid Security will be returned, without any interest, upon furnishing of the Performance Security in accordance with the provisions thereof.
- 15.5. The State Government shall be entitled to forfeit and appropriate the Bid Security as damages, amongst others in any of the events specified in this Tender Document. The Bidder, by submitting its bid pursuant to this Tender Document, shall be deemed to have acknowledged and confirmed that the State Government will suffer loss and damage on account of withdrawal of its bid or for any other default by the Bidder during the period of bid validity as specified in this Tender Document. No relaxation of any kind on Bid Security shall be given to any Bidder.

- 15.6. The Bid Security shall be forfeited as damages without prejudice to any other right or remedy that may be available to the State Government under the Tender Document and/or otherwise, under, inter alia, the following conditions:
- (a) If a Bidder submits a Technical Bid which is not conforming to this Tender Document, the Act or the rules framed thereunder or submits an initial price offer which is less than the Reserve Price;
 - (b) If a Bidder engages in a Corrupt Practice, Fraudulent Practice, Coercive Practice, Undesirable Practice or Restrictive Practice as specified in Clause 16 of this Tender Document;
 - (c) If a Bidder withdraws its bid during the period of bid validity as specified in this Tender Document or as extended by mutual consent of the respective Bidder(s) and the State Government;
 - (d) In the case of Successful Bidder, if it fails within the specified time limit to furnish the Performance Security and make payment of Upfront Payment within the period prescribed in this Tender Document; or
 - (e) If the e-auction process is annulled due to non-submission of at least one Final Price Offer on the electronic e-auction platform, by the Qualified Bidder(s) who has submitted the highest Initial Price Offer i.e. the applicable Floor Price for the second round of e-auction.

16. Fraud and Corrupt Practices

- 16.1. The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the tender process and subsequent to the grant of the mining lease. Notwithstanding anything to the contrary contained herein, the State Government may reject a bid, withdraw the mining lease, or terminate the MDPA, as the case may be, without being liable in any manner whatsoever to the Bidder, Technically Qualified Bidder, Preferred Bidder, or the Successful Bidder, as the case may be, if the State Government determines that the Bidder, Technically Qualified Bidder, Preferred Bidder, or Successful Bidder, as the case may be, has, directly or indirectly or through an agent, engaged in Corrupt Practice, Fraudulent Practice, Coercive Practice, Undesirable Practice or Restrictive Practice in the tender process. In such an event, the State Government shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as damages, without prejudice to any other right or remedy that may be available to the State Government under the Tender Document and/ or otherwise.
- 16.2. Without prejudice to the rights of the State Government under Clause 16.1 hereinabove and the rights and remedies which the State Government may have under the mining lease or the MDPA, or otherwise if a Bidder, Preferred Bidder or Successful Bidder, as the case may be, is found by the State Government to have directly or indirectly or through an agent, engaged or indulged in any Corrupt Practice, Fraudulent Practice, Coercive Practice,

Undesirable Practice or Restrictive Practice during the tender process, or after the grant of the mining lease or the execution of the MDPA, such Bidder or Successful Bidder shall not be eligible to participate in any tender or Tender Document issued by the State Government during a period of 5 years from the date such Bidder or Successful Bidder, as the case may be, is found by the State Government to have directly or indirectly or through an agent, engaged or indulged in any Corrupt Practice, Fraudulent Practice, Coercive Practice, Undesirable Practice or Restrictive Practices, as the case may be.

16.3. For the purposes of this Tender Document, the following terms shall have the meaning hereinafter respectively assigned to them:

- (a) **“Corrupt Practice”** means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the tender process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the State Government who is or has been associated in any manner, directly or indirectly, with the tender process or arising therefrom, before or after the execution thereof, at any time prior to the expiry of 1 year from the date such official resigns or retires from or otherwise ceases to be in the service of the State Government, shall be deemed to constitute influencing the actions of a person connected with the tender process); or (ii) save and except as permitted under this Tender Document, engaging in any manner whatsoever, whether during the tender process or after the grant of the mining lease or after the execution of the MDPA, as the case may be;
- (b) **“Fraudulent Practice”** means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the tender process;
- (c) **“Coercive Practice”** means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the tender process;
- (d) **“Undesirable Practice”** means (i) establishing contact with any person connected with or employed or engaged by the State Government with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the tender process; (ii) having a conflict of interest; or (iii) violating of any Applicable Law; and
- (e) **“Restrictive Practice”** means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the tender process.

17. Other provisions

17.1. Governing law

The tender process shall be governed by, and construed in accordance with, the laws of India.

17.2. Right of State Government

17.2.1. The State Government, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;

- (a) suspend and/ or cancel the tender process and/or amend and/or supplement the tender process or modify the dates or other terms and conditions relating thereto;
- (b) consult with any Bidder in order to receive clarification or further information;
- (c) retain any information and/ or evidence submitted to the State Government by, on behalf of, and/ or in relation to any Bidder; and/ or
- (d) independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Bidder.

17.2.2. It shall be deemed that by submitting the bid, the Bidder agrees and releases the State Government, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder, pursuant hereto and/ or in connection with the tender process and waives, to the fullest extent permitted by Applicable Law, any and all rights and/or claims it may have in this respect, whether actual or contingent, whether present or in future.

Schedule I: Format of Technical Bid

A. General instructions:

The Technical Bid comprises of the following documents:

- (a) Bid letter in the format specified in Part B (*Format of bid letter*);
- (b) Bid Security in form of a bank guarantee for an amount equal to INR [amount in figures] (Rupees [amount in words]) in the format specified in Part C (*Format of bid security*);
- (c) In case of Bidder being a company, a power of attorney in the format specified in Part D (*Format of power of attorney*) authorising the signatory of the bid to participate in the tender process and do all acts pursuant thereto on behalf of the Bidder, including usage of the digital signature on behalf of the Bidder. In case of Bidder being an individual, power of attorney would not be required but such individual must personally sign; and
- (d) Affidavit in the format specified in Part E (*Format of affidavit*).

All the aforementioned documents are required to be uploaded on the electronic e-auction platform and the original physical copy must be dispatched in accordance with Clause 14.1.2 so that they are received on or prior to the Bid Due Date, failing which the Technical Bid shall be deemed to be not received.

Specific instructions for submission of each of the aforementioned documents are provide below in each part.

B. Bid letter

(1) Instructions for submission of the bid letter

- (a) The bid letter must be printed on the letterhead of the Bidder, if the Bidder is a company firm or other association of individuals. In case the Bidder is an individual, it may be printed on plain paper.
- (b) The bid letter must be signed by a duly authorized representative of the Bidder, in case the Bidder is a company. In case the Bidder is an individual, the Bidder must personally sign the bid letter.
- (c) The corporate authorisation of the authorised signatory of the Bidder (which is a company) must be enclosed with the bid letter. It is recommended that the Bidder may authorise one person to deal with all matters related to bid. However, if the Bidder has authorised more than one person, then the corporate authorisation of all such persons should be enclosed. Any change in such corporate authorisation must be immediately intimated to the State Government.
- (d) Documents to evidence compliance with the eligibility conditions must be enclosed with the bid letter, duly certified by one of the directors of the Bidder, in case the Bidder is a company, or self-attested in case the Bidder is an individual. Such documents must include:

- (i) Certificate of registration of the Bidder which is a company, or copy of passport or other nationality document in case Bidder is an individual.
- (ii) In case the Bidder is a firm or association of individuals, the constituents documents along with particulars of all the members of the firm or association. In such case each member of the firm or association would be required to comply with the requirements prescribed in the Tender Documents with respect to submission of documents.
- (iii) [Turnover and net worth certificate issued by: (a) statutory auditors of the Bidder (which is a company); or (b) a chartered accountant or a merchant banker registered with the Securities and Exchange Board of India – in case Bidder is an individual.] OR¹² [Certificate regarding the total amount as closing cash balance issued by a chartered accountant or a merchant banker registered with the Securities and Exchange Board of India.]
- (iv) [Documents to evidence the requirements of minerals for the specified end-use]¹³.
- (v) Particulars of mining lease, reconnaissance permit or prospecting licence held by the Bidder for the purpose of section 6 of the Act.

(2) Format of bid letter

[date]

To
[Name and address of State Government]

Sub: Bid letter for participation in e-auction for grant of mining lease for [name of the Concession Area.]

Dear Sir,

With reference to your Tender Document dated [date], I, having examined the Tender Document and understood their contents, hereby submit my Technical Bid. Capitalised expressions used in this letter have the same meaning as ascribed thereto in the Tender Document.

1. The Technical Bid is unconditional and unqualified.
2. We have reviewed the terms of the Tender Document and hereby unconditionally and irrevocably accept, agree and acknowledge the terms thereof.

¹² Note: Delete whichever is not applicable.

¹³ Note: To be deleted if the State Government has not specified any end use.

3. We acknowledge that the State Government will be relying on the information provided in the Technical Bid and the documents accompanying the Technical Bid for selection of the Preferred Bidder and subsequent selection of the Successful Bidder, and we certify that all information provided therein is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying the Technical Bid are true copies of their respective originals.
4. This statement is made for the express purpose of our participation in the tender process and possible selection as Successful Bidder.
5. We hereby confirm that we satisfy all the eligibility conditions prescribed in the Tender Document. Specific confirmations with respect to our compliance with the eligibility conditions are provided below:
 - (a) [Insert separate paragraphs for compliance with each of the eligibility conditions] of the Tender Documents, with specific reference to enclosed documents as mentioned in the instructions.]
6. We hereby acknowledge that if we submit or produce any document and it is discovered subsequently that such document was false or incorrect then we shall be liable under the Applicable Law for the time being in force.
7. [State Government to specify additional statements to confirm compliance with end-use requirements, if so specified by the State Government.]
8. We shall make available to the State Government any additional information it may find necessary or require to supplement or to authenticate the Technical Bid.
9. I acknowledge the right of the State Government to reject our Technical Bid and/or the Final Price Offer without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by Applicable Law, our right to challenge the same on any account whatsoever.
10. We declare that:
 - a) We have examined and understood the Act, all rules framed thereunder, the Tender Document and all documents referred therein including the Information Memorandum;
 - b) We have examined and have no reservations to the Tender Document, including any addendum issued by the State Government;
 - c) We have not directly or indirectly or through an agent engaged or indulged in any Corrupt Practice, Fraudulent Practice, Coercive Practice, Undesirable Practice or Restrictive Practice, as defined in the Tender Document, in respect of any tender or request for proposal issued by or any agreement entered into

with the State Government or any other public sector enterprise or any government, central or state; and

- d) We hereby certify that we have taken steps to ensure that in conformity with the provisions of Clause 16 of the Tender Document, no person acting for us or on our behalf has engaged or will engage in any Corrupt Practice, Fraudulent Practice, Coercive Practice, Undesirable Practice or Restrictive Practice.
11. We understand that you may cancel the tender process at any time and that you are neither bound to accept any bid that you may receive nor to invite the Bidders to bid, without incurring any liability to the Bidders, in accordance with the Tender Document.
 12. We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the State Government in connection with the selection of the Preferred Bidder, or in connection with the tender process itself, in respect of the Tender Document and the terms and implementation thereof.
 13. In the event of we being declared as the Successful Bidder, we agree to enter into MDPA and other documents in accordance with the Tender Document and pay such amounts and provide such security as required therein
 14. We have ensured compliance the Tender Document and to the best of our knowledge this bid is conforming to the terms thereof.
 15. We agree and understand that the Bid is subject to the provisions of the Tender Document. In no case, we shall have any claim or right of whatsoever nature if the mining lease is not awarded to us or our bid is not opened or rejected.
 16. The initial price offer has been quoted and the Final Price Offer shall be quoted by us after taking into consideration all the terms and conditions stated in the Tender Document, MDPA, our own estimates of costs and feasibility and after a careful assessment of the geological and other information, the Information Memorandum and the proposed mining lease and all the conditions that may affect the utilisation of minerals.
 17. We shall keep this offer valid for 180 days from the Bid Due Date specified in the Tender Document or such extended duration as may be agreed with State Government

In witness thereof, we submit this bid letter forming part of our Technical Bid under and in accordance with the terms of the Tender Document.

Yours faithfully,

(Signature, name and designation of the Authorised signatory)

Name and seal of Bidder

Date:

Place:

Enclosed:

(a) [list and description of documents enclosed]

C. Bid Security

(1) Instructions for submission of the Bid Security

- (a) The Bid Security must be in form of a bank guarantee for an amount equal to INR [amount in figures] (Rupees [amount in words]).
- (b) The Bid Security may be issued at any place in India by a Scheduled Bank as listed in the Second Schedule of the Reserve Bank of India Act, 1934, excluding those listed under the headings of Gramin Banks, Urban Co-operative Banks and State Co-operative Banks, but must be payable at [capital of the state].
- (c) The Bid Security must have a validity period of not less than 240 days from the Bid Due Date, inclusive of a claim period of 60 days.
- (d) The Bid Security must be stamped in accordance with Applicable Law.

(2) Format of Bid Security

[Bank Guarantee. No.]

[date]

1. In consideration of you, being the State Government of [Name of State] (“**State Government**”, which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns) having agreed to receive, pursuant to the provisions of the Tender Document dated [date], the bid of [name and address of the Bidder] (“**Bidder**”), for the e-auction pursuant to the Tender Document dated [date] (“**Tender Document**”), we [Name of the Bank] having our registered office at [address of the registered office] and one of its branches located at [name and address of the branch] (“**Bank**”), at the request of the Bidder, do hereby in terms of the Tender Document, irrevocably, unconditionally and without reservations guarantee the due and faithful fulfilment and compliance of the terms and conditions of the Tender Document by the Bidder and unconditionally and irrevocably undertake to pay forthwith to the State Government an amount of INR [amount in figures] (Rupees [amount in words]) (“**Guarantee**”) as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder, if the Bidder shall fail to fulfil or comply with all or any of the terms and conditions contained in the Tender Document.
2. Any such written demand made by the State Government stating that the Bidder is in default of the due and faithful fulfilment and compliance with the terms and conditions contained in the Tender

- Document shall be final, conclusive and binding on the Bank.
3. We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of the State Government is disputed by the Bidder or not, merely on the first demand from the State Government stating that the amount claimed is due to the State Government by reason of failure of the Bidder to fulfil and comply with the terms and conditions contained in the Tender Document. Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding INR [amount in figures] (Rupees [amount in words]).
 4. This Guarantee shall be irrevocable and remain in full force for a period of 240 days from the Bid Due Date i.e. [date] inclusive of a claim period of 60 days or for such extended period as may be mutually agreed between the State Government and the Bidder, and agreed to by the Bank, and shall continue to be enforceable till all amounts under this Guarantee have been paid.
 5. We, the Bank, further agree that the State Government shall be the sole judge to decide as to whether the Bidder is in default of due and faithful fulfilment and compliance with the terms and conditions contained in the Tender Document including, amongst others, the failure of the Bidder to keep its bid open during the bid validity period set forth in the Tender Document, and the decision of the State Government that the Bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between the State Government and the Bidder or any dispute pending before any court, tribunal, arbitrator or any other authority.
 6. The Guarantee shall not be affected by any change in the constitution or winding up of the Bidder or the Bank or any absorption, merger or amalgamation of the Bidder or the Bank with any other person.
 7. In order to give full effect to this Guarantee, the State Government shall be entitled to treat the Bank as the principal debtor. The State Government shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee from time to time to vary any of the terms and conditions contained in the Tender Document or to extend time for fulfilment and compliance with all or any of the terms and conditions contained in the Tender Document by the said Bidder or to postpone for any time and from time to time any of the powers exercisable by it against the said Bidder and either to enforce or forbear from enforcing any of the terms and conditions contained in the Tender Document or the securities available to the State

Government, and the Bank shall not be released from its liability under these presents by any exercise by the State Government of the liberty with reference to the matters aforesaid or by reason of time being given to the said Bidder or any other forbearance, act or omission on the part of the State Government or any indulgence by the State Government to the said Bidder or by any change in the constitution of the State Government or its absorption, merger or amalgamation with any other person or governmental department or instrumentality,, but for this provision, have the effect of releasing the Bank from its such liability.

8. Any notice by way of request, demand or otherwise hereunder shall be sufficiently given or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein.
9. We undertake to make the payment on receipt of your notice of claim on us addressed to [name of Bank along with branch address] and delivered at our above branch which shall be deemed to have been duly authorised to receive the said notice of claim.
10. It shall not be necessary for the State Government to proceed against the said Bidder before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which the State Government may have obtained from the said Bidder or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealised.
11. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of the State Government in writing.
12. The Bank declares that it has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorised and has full power to execute this Guarantee for and on behalf of the Bank.
13. Notwithstanding anything contained herein,
 - a. the liability of the Bank under this Guarantee shall not exceed the Guarantee amount i.e. INR [amount in figures] (Rupees [amount in words]).
 - b. This Guarantee shall be valid up to [date].

Signed and Delivered by Bank

D. Power of attorney

(1) Instructions for submission of the power of attorney

- (a) The power of attorney must be issued in India in accordance with Applicable Law and it must be in issued in accordance with the constitutional documents of the Bidder after obtaining all corporate approvals as may be required. The extract of constitutional documents

and certified copies of the corporate approvals must be enclosed with the power of attorney.

- (b) The power of attorney must be issued under the common seal, if any.
- (c) The power of attorney must be stamped in accordance with Applicable Law.
- (d) The power of attorney must be issued in the name of a person who is in full time employment of the Bidder.

(2) Format of power of attorney

Know all men by these presents, We, [name and address of the Bidder] do hereby irrevocably constitute, nominate, appoint and authorise [Name], son/daughter/wife of [name of father/husband] and presently residing at [address], who is presently employed with us and holding the position of [designation], as our true and lawful attorney (“**Attorney**”) to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our bid for the [Name of Block] mineral block (“**Mineral Block**”) in response to the Tender Document, dated [date] issued by State Government of [Name of State] (“**State Government**”) including but not limited to signing and submission of all applications, affidavits, bids and other documents and writings, participate in Bidders’ and other conferences and providing information / responses to the State Government, representing us in all matters before the State Government, and generally dealing with the State Government in all matters in connection with or relating to or arising out of our bid for the Mineral Block and/or upon award thereof to us and/or till the entering into Mine Development and Production Agreement with the State Government and grant of mining lease. AND we hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our Attorney pursuant to and in exercise of the powers conferred by this power of attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us. In witness whereof we, [name of Bidder], the above named principal have executed this power of attorney on this [date].

For.....

(Signature, name, designation and address)

Witnesses:

- 1.
- 2.

[particulars of notarisation]

E. Affidavit

(1) Instructions for submission of the affidavit

- (a) The affidavit must be executed in India in accordance with Applicable Law and it must be issued in accordance with the constitutional

documents of the Bidder after obtaining all corporate approvals as may be required. The extract of constitutional documents and certified copies of the corporate approvals must be enclosed with the power of attorney. In case of Bidder being an individual, the affidavit must be personally signed by the Bidder

- (b) The affidavit must be stamped in accordance with Applicable Law.
- (c) The affidavit must be signed by a person who is in full time employment of the Bidder and duly authorised to sign the same.

(2) Format of Affidavit

Affidavit

I, [name] aged [age] years, resident of [address] [working as [designation] an authorised signatory on behalf of [name of the Bidder]] (“**Bidder**”) hereby state as under:

1. I am the [designation of the deponent] of the Bidder. I am conversant with the facts and circumstances surrounding the subject of this affidavit [and have been authorized to depose to the same pursuant to the power of attorney dated [date] issued pursuant to [particulars of corporate approval]]. I am filing this affidavit to place on record verification of facts and documents in connection with the tender process concerning [name of the Mineral Block].
2. [Insert separate paragraphs for each document brought on record on the website of the e-auction platform or physically submitted with the State Government, in a chronological sequence].
3. That nothing has been concealed in the information submitted as mentioned above.

Solemnly affirmed and verified on this [day] day of [month] [year] at [place].

(Signature)

Name, Designation & Seal

VERIFICATION

I, [name], [the [designation of the deponent] of] the Bidder above named, having my office at [address], do hereby solemnly declare that what is stated above in paragraphs [1] to [number] are on the basis of the books and records of the Bidders, and verify that the contents of the above affidavit are true and correct, no part of it is false and nothing material has been concealed therefrom.

Verified at [day] day of [month] [year] at [place].

Deponent

(Signature)

Name, Designation & Seal

Schedule II: Format for seeking clarification regarding Tender Document

(Applicable only for the Pre-Bid conference before submission of the Technical Bid in response to the Tender Document)

S. No.	Document	Clause No. and Existing Provision	Clarification Required	Suggested Text for Amendment, if any	Rationale for Clarification or Amendment

Schedule III: Technical details regarding online electronic auction

[Technical details must comply Quality requirements of e-Procurement Systems issued by the Standardisation Testing and Quality Certification Directorate, Department of Information Technology, Ministry of Communications & Information Technology, Government of India]

1. Registration Methodology:

In order to submit Bids for the mineral block, a Bidder shall register itself with the e-auction website of e-auction platform provider. Bidder shall fill an online registration form and create its “user id” and “password” and keep note of the same. Bidder should ensure that the secrecy of its user id and password is maintained at all times and Bidder alone shall be responsible for any misuse of its user id and password. Bidder may also refer to the “Bidder’s Guide” available online on the website of the e-auction platform provider for any assistance.

[E-auction platform provider to provide detailed registration process.]

Bidder should carefully read all the **TERMS & CONDITIONS OF e-AUCTION** provided by the e-auction platform provider.

On successful submission of the online registration Form, Bidder shall receive a confirmation email at the registered email address advising the Bidder to submit the following documents:

(Note: all future correspondence with the bidder will be carried out only be through this registered email id)

1. Self-attested Income Tax PAN Card.
2. Two passport size photographs of the Authorized Signatory.
3. Letter of Authorization from Chairman/MD/Directors/CEO/Company Secretary of a Bidder in favour of the Authorized Signatory in the standard format available in the website. The Authorized Signatory shall be the person who shall be responsible for submission of Bid. For this purpose, the Authorized Signatory will need to be in possession of a Class III signing type digital signature issued by an Indian certifying authority, the details of which shall be provided in this authorization letter.
4. Proof of Identity of the Authorized Signatory in the form of Company ID Card/PAN Card/Voter ID Card/AADHAAR card.
5. Copy of the confirmation email.

Bidders may send scanned copies of the aforementioned documents to e-auction platform provider at the following email address for verification and activation of its account:

[email id of e-auction platform provider for this e-auction]

Once the complete set of aforementioned documents is electronically received from the Bidder, the e-auction platform provider shall activate such Bidder's login after verification / scrutiny of the documents. E-auction platform provider reserves the right to call for additional documents from the Bidder, if required, prior to registration and activation of the Bidder's secure login.

On completion of the above stated registration process, a Bidder shall be able to log in to e-auction platform provider's website.

After activation of login, a Bidder will be issued a "Photo Identity Card" by e-auction platform provider bearing the photograph and signature of the contact person. The Photo Identity Card will be duly authenticated by e-auction platform provider.

2. Downloading information of mineral block

There are two sets of documents available for downloading from the website of e-auction platform provider.

First set of documents will be available free of cost in public domain and can be downloaded without registration on e-auction platform provider's website. These documents may include the following:

- (a) Blank format of customized model tender document for this particular e-auction process; and
- (b) Mineral block summary

The above information is being made available to all potential Bidders in order to assist them in familiarizing about the tender process and the mineral block on e-auction.

Subsequent to Bidder registration process with e-auction platform, certain other detailed documents (Particular Tender Document of the mineral block including Information Memorandum containing geological report and other information) shall be made available for download to the Bidder only subsequent to payment of a tender fee of INR [State Government to specify the amount not exceeding 5 Lakh] per mineral block. Bidder shall be able to make payment of the tender document fee through NEFT/RTGS/net banking (through the payment gateway of e-auction platform). The Tender Document shall be sold online mode only through website of e-auction platform provider.

The bidder may note that the files containing information about the mineral blocks can be in various formats like doc, xls, ppt, pdf, jpg, jpeg, zip etc. and it shall be the responsibility of the Bidder to have suitable facilities at its end to download these documents from the website of the e-auction platform provider.

3. Preparation and Submission of Bid

The complete process of bid submission will be divided into 2 stages as follows:

a. Stage 1: Technical Bid

This stage will comprise (i) online submission of the Technical Bid and the Initial Price Offer; and (ii) offline submission of certain original documents as detailed below.

(i) *Online submission of Technical Bid and Initial Price Offer with supporting documents*

This stage shall be open to all Bidders who have purchased the Tender Document(s) for the specific mineral block(s).

[E-auction platform provider will provide complete description of online submission of Technical Bid and Initial Price Offer with supporting documents.]

The Bidder has an option to edit Technical Bid and Initial Price Offer as many times as it wishes till the final submission.

The final submission of Technical Bid and the Initial Price Offer shall be digitally signed by the Bidder using the digital signature and the use of which has been duly authorized on behalf of the Bidder and which was used at the time of registration. Any digital signature certificate other than the above shall not be acceptable for bid submission by the system.

The bidder should note that only file(s) submitted for specific mineral block shall be considered for evaluation of the Technical Bid.

Upon successful final submission, the Bidder shall receive a bid acknowledgement from the system automatically.

The Bidders may note that the Technical Bid and the Initial Price Offer submitted online as above will be encrypted by the e-auction platform provider's own software before storage in the database. This will be done to protect the sanctity and confidentiality of the Bids before the actual opening of the same.

Modification / Withdrawal of Bid

After final submission of Bid and before the scheduled closing time for Bid submission on the Bid Due Date, bidder may have an option to modify/withdraw/resubmit a new bid.

(ii) *Offline submission of certain original documents*

The bidders shall submit the following documents in original in sealed cover within the scheduled closing time for bid on the Bid Due Date. The sealed cover should clearly bear the following identification: *Original Documents (Technical Bid) for [insert name of the mineral block]* and shall indicate the name and address of the Bidder. In addition, the documents shall contain page numbers: *Page [●] of [●]*

- (a) Bid Security in substantially the same format as provided in Schedule I C;
- (b) Power of Attorney in substantially the same format as provided in Schedule I D, including the extract of the charter documents and documents such as a board or shareholders resolution authorizing the execution of this power of attorney; and
- (c) Affidavit in substantially the same format as provided in Schedule I E.

The aforementioned documents shall be submitted at the following address:

[Designated address of the State Government for the purpose of particular e-auction.]

Deadline for online submission of (i) Technical Bid and the Initial Price Offer with supporting documents; and (ii) offline submission of certain original documents

The bidders shall also note that online submission of ***Technical Bid and the Initial Price Offer*** with supporting documents and offline submission of certain original documents shall be allowed only up to the time and date as per Bid Due Date specified in Clause 12.

(iii) Evaluation of Technical Bid

a. Evaluation of Technical Bid

Technical Bids shall be evaluated in the manner provided in the Tender Document. Entire list of Technically Qualified Bidders will be published on the website of State Government and e-auction platform. The e-auction platform provider will conduct training and mock-auctions for all the Technically Qualified Bidders on e-auction platform.

b. Opening of Initial Price Offer

Initial Price Offers shall be opened two days before the scheduled date of e-auction of the respective mineral block.

For example, Initial Price Offers for mineral block(s) scheduled for e-auction on 03.01.20xx will be opened on 01.01.20xx. All Technically Qualified Bidders will be ranked in accordance with Clause 8.1A(e).

The list of Qualified Bidders as per top 50% ranking principle (subject to the criteria as specified in the Tender Document) will be sent out to all the Qualified Bidders of the mineral block by an email by the State Government [from the designated email id of the State Government for the particular e-auction] OR [the State Government may advise the e-auction platform provider to send this particular email from the email id of e-auction platform provider]. The Qualified Bidders will also get intimated about their qualification for the second round of electronic auction against specific mineral block(s) through notification in the e-auction platform provider website within their secured login.

b. Stage 2: electronic auction – Final Price Offer

a. Intimation to Qualified Bidders

Along with the above intimation, the Bidder shall also receive information regarding applicable Floor Price for second round of e-auction of the mineral block which is the highest Initial Price Offers received from the Technically Qualified Bidders.

It shall be the sole responsibility of the Bidder to regularly check the e-auction platform provider website and login to see whether it has qualified for a certain mineral block or not. State Government/e-auction platform provider will not be responsible for non-receipt of email by the Bidder and its consequences.

b. Conduct of e-auction

E-auction is the process of inviting binding Final Price Offer(s) from Qualified Bidders through internet for the purpose of determination of the Preferred Bidder. During this process, the Qualified Bidder will be able to submit its Final Price Offer as many times as it wishes against the same mineral block. The Qualified Bidder will remain anonymous to other Qualified Bidders participating in the electronic auction process as well as to e-auction platform provider / State Government. The Qualified Bidder will be able to see the prevailing highest Final Price Offer against the mineral block, but the name of the highest Qualified Bidder at any point of time will not be displayed. The Qualified Bidder shall have to put its Final Price Offer over and above the displayed highest bid by a minimum increment of [State Government to specify minimum increment of percentage e.g. 0.05%] to become the highest

Qualified -Bidder. The electronic auction process will have a scheduled start and close time which will be displayed on screen. A Qualified Bidder will be able to put its Final Price Offer after the start of bid time and till the close time of electronic auction. The current server time (IST) will also be displayed on the screen. In the event a Final Price Offer is received during the last [(figures) (words) e.g. 10 (Ten)] minutes before the scheduled close time of electronic auction, the close time of electronic auction will be automatically extended by [(figures) (words) e.g. 10 (Ten)] minutes from the last received bid time to give equal opportunity to all other Qualified Bidders. This process of auto extension will continue till no Final Price Offer is received during a period of [(figures) (words) e.g. 10 (Ten)] minutes.

For example, assuming that the initial scheduled close time for a particular electronic auction is 1:00 pm and a Final Price Offer is received at 12:55 pm, the scheduled close time shall be revised to 1:05 pm. Again if a Final Price Offer is received at 1:01 pm, the scheduled close time shall be revised to 1:11 pm and so on. In the event that no further Final Price Offer is received till 1:11 pm, the electronic auction will close at 1:11 pm. The revised close time will be displayed on screen and the Qualified Bidders are advised to keep refreshing its webpage to get the latest information.

The above example is only illustrative and meant for explaining the e-auction process only.

During the process of electronic auction, the Bidder shall be required to sign their bids with their respective digital signature certificate (DSC) and the use of which has been duly authorized on behalf of the Bidder and which was used at the time of registration. Any digital signature certificate other than the above shall not be acceptable for bid submission by the system

Bidders in their own interest are advised to get themselves acquainted with the electronic auction process of e-auction platform provider by getting their Authorized Representative trained beforehand through some demo electronic auctions as per Clause 12.

Digital Signature Certificate

A Bidder shall be required to possess a valid Digital Signature Certificate (DSC) of signing type to be able to submit its Bid and to participate in the electronic auction on e-auction platform provider's website. For this purpose, Bidders shall be required to authorize its Authorized Signatory to procure a class III DSC of signing type from any Certifying Authority or their authorized agencies in India.

The competent authority of the Bidder shall be required to issue a Letter of Authority in favour of the Authorized Representative in the standard format provided on the homepage of the website on e-auction platform provider mentioning therein the serial number of the DSC

of the Authorized Representative. The competent authority shall be one of the following:

- Chairman of the Company
- Managing Director of the Company
- Chief Executive Officer of the Company
- Company Secretary of the Company

The bidder may note that only one user id will be mapped with a given DSC for the Authorised Representative. DSC once mapped with a particular user id of a bidder will normally not be changed and therefore Bidders are advised to carefully select the DSC before forwarding the same to e-auction platform provider for mapping.

The Digital Signature Certificate will be used to digitally sign the Bids that the Bidder will submit online.

It will be the sole responsibility of the Bidder and its respective Authorised Representative to maintain the secrecy of the password for the Digital Signature Certificate. The Bidder and its contact person shall be solely responsible for any misuse of the DSC and no complaint / representation in this regard shall be entertained at any stage by e-auction platform provider/State Government.

[The above process description is only for illustration purpose and State Government to specify detailed technical details as applicable depending upon choice of electronic auction platform by the State Government.]

Schedule IV: Format of MDPA

[To be finalised separately and attached to the Tender Document]

Schedule V: Format of Information Memorandum

[Information as required under Clause 4.1 including a Geological Study Report conforming to Parts IV-A and IV-B of the Schedule to the Minerals (Evidence of Mineral Contents) Rules, 2015 to be enclosed]”

[Schedule IV of the Tender Document]

Mine Development and Production Agreement

[Model Format]

[This is a model format and the State Government may suitably modify this draft on the basis of requirement of each auction.]

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

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

PARTIES:

- 1 **The Governor of [State]**, acting through [Department of Mines and Geology of the State] (the “**State Government**”).
- 2 **[Name of the Successful Bidder]** [incorporated in India under the Companies Act, [1956/2013] with corporate identity number [CIN of the Successful Bidder], whose registered office is at [address of registered office], India and principal place of business is at [address of principal place of business, if different from registered office]]¹ **OR** [an individual who is citizen of India, having income tax permanent account number [number], residing at [address]]² **OR** [persons listed in SCHEDULE A organised as a [firm/association of persons], all of whom are Indian citizens and resident in India]³ (the “**Successful Bidder**”).

BACKGROUND:

- A. An electronic auction was conducted by the State Government pursuant to the Tender Document (*defined hereinafter*) for grant of a [Mining Lease/Composite Licence] (*defined hereinafter*) over the Lease Area (*defined hereinafter*) for mining of the Mineral (*defined hereinafter*).
- B. The Successful Bidder quoted [Final Price Offer] per cent as the bid parameter in the electronic auction and was declared as the Preferred Bidder (*as defined in the Tender Document*).
- C. As a Preferred Bidder, the Successful Bidder [made payment of the first instalment of the Upfront Payment (*defined hereafter*) which is] OR⁴ [provided Performance Security for an amount equal to] INR [amount in figures] (Indian Rupees [amount in words]) on [date] through [payment mechanism], upon which the State Government issued a letter of intent dated [date].
- D. [The Preferred Bidder completed the conditions specified in Clause [10.2 OR 11.2]⁵ of the Tender Document and submitted written confirmation of the same to the State Government through a letter dated [date], upon which the Preferred Bidder was

¹ To be retained only if the Successful Bidder is a company.

² To be retained only if the Successful Bidder is an individual.

³ To be retained only if the Successful Bidder is a firm or association of persons.

⁴ Reference to upfront payment to be retained in case of auction for mining lease. Reference to Performance Security to be retained in case of auction for Composite License.

⁵ 10.2 applicable to mining lease 11.2 applicable in case of composite licence.

considered to be the Successful Bidder.

- E. [Thereafter the Successful Bidder, as a holder of the Composite Licence completed prospecting explorations in accordance with section 11(9) of the Act resulting in determination of evidence of mineral contents conforming to the Mineral (Evidence of Mineral Contents) Rules, 2015. The Successful Bidder made an application to the State Government for grant of a mining lease pursuant to clause (b) of sub-rule (6) of rule 18 of the Mineral (Auction) Rules, 2015. A letter of intent dated [date] was issued by the State Government for grant of a mining lease to the Successful Bidder.]⁶
- F. Thereafter, the Successful Bidder obtained all the consents, approvals, permits, no-objections and the like as required under Applicable Law for commencement of mining operation, as listed in Schedule B.
- G. Accordingly, the State Government is now entering into this Agreement with the Successful Bidder with respect to matters pertaining to the Mining Lease and other matters incidental thereto, and this Agreement shall be read as an integral part of the mining lease.

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

1. DEFINITIONS AND INTERPRETATION

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

1.1. Definitions

- 1.1.1. “**Agreement**” means this Mine Development and Production Agreement and all attached annexure, schedules, exhibits and instruments supplemental to or amending, modifying or confirming this Agreement in accordance with the provisions of this Agreement.
- 1.1.2. “**Agreement Date**” shall mean the date on which execution of this Agreement by both the Successful Bidder and the State Government is completed.
- 1.1.3. “**Appropriation Event**” shall have the meaning given to such expression in Clause 4.2.1.
- 1.1.4. “**Claim**” shall have the meaning given to such expression in Clause 12.3.
- 1.1.5. “**Control**” shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or

⁶ To be deleted in the auction as for mining lease and not composite licence.

in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner.

- 1.1.6. “**Eligibility Conditions**” shall mean the eligibility conditions specified in the Act and the Rules including all the eligibility conditions listed in Clause [5] of the Tender Document.
- 1.1.7. “**Encumbrances**” means any mortgage, pledge, equitable interest, assignment by way of security, conditional sales contract, hypothecation, right of other Persons, claim, security interest, encumbrance, title defect, title retention agreement, voting trust agreement, interest, option, lien, charge, commitment, restriction or limitation of any nature whatsoever, including restriction on use, voting rights, transfer, receipt of income or exercise of any other attribute of ownership, right of set-off, any arrangement (for the purpose of, or which has the effect of, granting security), or any other security interest of any kind whatsoever, or any agreement, whether conditional or otherwise, to create any of the same.
- 1.1.8. “**Event of Force Majeure**” shall have the meaning given to such expression in Clause 17.1.
- 1.1.9. “**Final Price Offer**” shall mean [*per cent of Value of Mineral Despatched*], based on which the Successful Bidder was declared successful in the tender process for the Lease Area. The “Value of Mineral Despatched” being an amount equal to the product of,- (i) mineral despatched in a month; and (ii) sale price of the mineral (grade-wise and State-wise) as published by Indian Bureau of Mines for such month of despatch.
- 1.1.10. “**Good Industry Practice**” means, in relation to any undertaking and any circumstances, the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced Person engaged in the same type of undertaking under the same or similar circumstances.
- 1.1.11. “**Governmental Approval**” means any authorization, approval, consent, licence or permit required from any Governmental Authority.
- 1.1.12. “**Governmental Authority**” means any Central or State Government authority, statutory authority, government department, agency, commission, board, tribunal or court or other law, rule or regulation making entity having or purporting to have jurisdiction on behalf of the Republic of India or any state or other subdivision thereof or any municipality, district or other subdivision thereof.
- 1.1.13. “**Indemnified Party**” shall have the meaning given to such expression in Clause 12.1.
- 1.1.14. “**Lease Area**” shall mean the Lease Area as more particularly described in SCHEDULE C.
- 1.1.15. “**Mineral**” means [*name of the mineral*].

- 1.1.16. “**Mining Lease**” shall have the meaning given to such expression in the Act and the rules made thereunder.
- 1.1.17. “**Mining Plan**” means a mining plan drawn in accordance with clause (b) of sub-section (2) of section 5 of the Act.
- 1.1.18. “**Monthly Payment**” shall have the meaning given to such expression in Clause 7.1.1.
- 1.1.19. “**Parties**” means and refers to the State Government and the Successful Bidder collectively and “**Party**” refers to any one of them.
- 1.1.20. “**Production Requirement**” shall have the meaning given to such expression in Clause 8.1.
- 1.1.21. “**Selectee**” shall have the meaning given to such expression in Clause 13.3.3(c).
- 1.1.22. “**Substitution Notice**” shall have the meaning given to such expression in Clause 13.3.3(b).
- 1.1.23. “**Term**” shall have the meaning given to such expression in Clause 18.2.
- 1.1.24. “**Third Party**” means any Person that is not a signatory to this Agreement.
- 1.1.25. “**Warranties**” shall have the meaning given to such expression in Clause 11.1 read with Schedule F.

1.2. **Interpretation**

- 1.2.1. Any reference to any statute or statutory provision shall include:
- (i) all subordinate legislation made from time to time under that provision (whether or not amended, modified, re-enacted or consolidated); and
 - (ii) such provision as from time to time amended, modified, re-enacted or consolidated (whether before or after the date of this Agreement) to the extent such amendment, modification, re-enactment or consolidation applies or is capable of applying to any transactions entered into under this Agreement prior to the Agreement Date and (to the extent liability thereunder may exist or can arise) shall include any past statutory provision (as from time to time amended, modified, re-enacted or consolidated) which the provision referred to has directly or indirectly replaced.
- 1.2.2. Unless the context otherwise requires, words in the singular shall include the plural and the plural shall include the singular.
- 1.2.3. References to the masculine, the feminine and the neuter shall include each other.

- 1.2.4. References to a “**company**” shall include a company, corporation or other body corporate, wherever and however incorporated or established.
- 1.2.5. The recitals and schedules form part of this Agreement and shall have the same force and effect as if expressly set out in the body of this Agreement, and any reference to this Agreement shall include any recitals and schedules to it. Any references to clauses and schedules are to clauses and schedules to this Agreement. Any references to parts or paragraphs are, unless otherwise stated, references to parts or paragraphs of the schedule in which the reference appears.
- 1.2.6. A reference to **this Agreement** or **any other document** shall be construed as references to this Agreement or that other document as amended, varied, novated, supplemented or replaced from time to time.
- 1.2.7. A reference to **this Clause** shall, unless followed by reference to a specific provision, be deemed to refer to the whole Clause (not merely the sub-Clause, paragraph or other provision) in which the expression occurs.
- 1.2.8. A reference to a **party** shall include that party’s representatives, successors and permitted assigns.
- 1.2.9. Each of the representations and warranties provided in this Agreement is independent of other representations and warranties and unless the contrary is expressly stated, no Clause in this Agreement limits the extent or application of another Clause.
- 1.2.10. Headings to Clauses, parts and paragraphs of schedules and schedules are for convenience only and do not affect the interpretation of this Agreement.
- 1.2.11. A reference to “**in writing**” includes any communication made by letter or fax **but not e-mail** (unless otherwise expressly provided in this Agreement.).
- 1.2.12. Unless otherwise specified, any reference to a time of day is to Indian Standard Time.
- 1.2.13. Any words following the terms **including, include, in particular, for example or any similar expression** shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.2.14. Where the context permits, **other** and **otherwise** are illustrative and shall not limit the sense of the words preceding them.
- 1.2.15. References to a document in **agreed form** are to that document in the form agreed by the parties and initialled by them or on their behalf for identification.
- 1.2.16. Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

2. COMPLIANCE

- 2.1. The Successful Bidder hereby represents and warrants to the State Government that it has complied with all the terms and conditions of the Act, the Rules, the Tender Document and other Applicable Law, as were required to be complied with by the Successful Bidder, with respect to tender process for the Lease Area and the Successful Bidder is eligible in all respects to receive Mining Lease over the Lease Area. The Successful Bidder also represents and warrants to the State Government that it is in compliance with all the Eligibility Conditions and would continue to be in compliance with all the Eligibility Conditions during the Term.
- 2.2. Relying on the representations and warranties of the Successful Bidder and the information, documents and other undertaking provided by the Successful Bidder, including the Warranties provided under Clause 11, the State Government is pleased to enter into this Agreement with the Successful Bidder for grant of Mining Lease over the Lease Area to the Successful Bidder subject to terms and conditions specified in this Agreement.

3. CONDITION FOR GRANT OF MINING LEASE

- 3.1. Grant of Mining Lease over the Lease Area shall be conditional upon prior payment of the third instalment of the Upfront Payment which is INR [amount in figures] (Indian Rupees [amount in words]) within a period of [30] days from the Agreement Date.
- 3.2. Upon such payment the State Government shall grant a Mining Lease to the Successful Bidder within a period of 30 days from the date of receipt of the payment.
- 3.3. The date of the commencement of the period for which a Mining Lease is granted shall be the date on which a duly executed Mining Lease is registered.

4. PERFORMANCE SECURITY AND APPROPRIATION

4.1. Performance Security

- 4.1.1. The Successful Bidder has provided to the State Government [an irrevocable and unconditional bank guarantee, dated [date] from [name of bank] issued at [place] and payable at [capital of the State]/ security deposit] for an amount equal to INR [amount in figures] (Indian Rupees [amount in words]) (the “**Performance Security**”) in the format provided in Schedule III of the Auction Rules.
- 4.1.2. The amount of Performance Security shall be reassessed every five years commencing from the date of issuance of the Performance Security i.e. [date], so that the amount of Performance Security corresponds to 0.5% of the reassessed Value of Resources.
- 4.1.3. For the purposes of such reassessment, the Successful Bidder shall submit an application

in writing to the State Government at least [three] months prior to the expiry of the aforementioned period of five years. Such application must contain in sufficient details, documentary evidence confirming the reassessed Value of Resources on the date of such application.

4.1.4. The State Government shall dispose such application within [three] months from the date of receipt of duly completed application. If the State Government does not dispose such application within the aforementioned period of [three] months, then the application shall be deemed to be approved. In such case, [bank guarantee constituting the Performance Security shall be substituted with another bank guarantee] OR [additional amount shall be deposited towards the security deposit] of the reassessed value issued in accordance with this Clause 4, within a period of [15] days expiry of the aforementioned period of [three] months.

4.1.5. The Performance Security should remain valid for [period].

4.2. Events for appropriation of the Performance Security

4.2.1. The Performance Security may be appropriated by the State Government upon occurrence of any of the events specified in Table 4.3.1 (the “**Appropriation Event**”), to be determined by the State Government in its sole discretion. In case the Performance Security is in form of a bank guarantee, the State Government may invoke the same on an Appropriation Event. In case the Performance Security is in form of a security deposit, the State Government may deduct an amount from such security deposit on an Appropriation Event.

4.2.2. Provided however that in the event an Appropriation Event has occurred solely on account of an Event of Force Majeure which could not have been mitigated by the Successful Bidder through Good Industry Practice as provided in Clause 17, then the Performance Security shall not be appropriated for such specific Appropriation Event.

4.3. Manner of appropriation of the Performance Security

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

Table 4.3.1		
#	Appropriation Event	Amount of the Performance Security to be appropriated

1.	Failure of the Successful Bidder to make payment of the third instalment of the Upfront Amount within the time specified in Clause 3.1	An amount equal to the third instalment of the Upfront Amount together with interest computed in accordance with rule 14 of the Mineral (Auction) Rules, 2015.
2.	Failure of the Successful Bidder to comply with the Production Requirement as required under Clause 8.	Such per cent of the Performance Security for each failure to comply with the Production Requirement as specified in SCHEDULE E.
3.	Any change in Control or transfer of right, title or interest in the Lease Area which is not in conformity the Act and rules made thereunder.	Entire Performance Security.
4.	Failure of the Successful Bidder to make payment of the Monthly Payment	The amount of Monthly Payment due and payable, along with interest computed in accordance with rule 14 the Mineral (Auction) Rules, 2015.
5.	Any breach or non-compliance with any of the provisions of the Act and rules made thereunder, the mining lease inclusive of this Agreement, and the tender document.	Such proportion as may be determined by the State Government in its sole discretion.

4.3.2. In the event of a part or total appropriation of the Performance Security, the Successful Bidder shall be required to: (i) rectify the Appropriation Event; and (ii) [top-up the bank guarantee constituting the Performance Security] OR [deposit additional amount towards security deposit] within [seven] days of receipt of a notice under Clause 4.3.1.

4.3.3. Any one or more Appropriation Events resulting in appropriation of the entire Performance Security shall give the State Government a right to determine the mining lease without prejudice to any other proceeding to be taken against the mining lease holder.

5. INFORMATION

5.1. In addition to information that may be required to be provided in accordance with Applicable Law, the Successful Bidder shall provide periodic reports to the State

Government (or such other Governmental Authority as may be specified by the State Government) regarding mining operations at the Lease Area, including compliance with the Production Requirement, in accordance with the following provisions:

(a) *Pre-Commencement Report*

Prior to commencement of mining operations at the Lease Area, the Successful Bidder shall provide a written intimation (“**Pre-Commencement Report**”) to the State Government once every [thirty] calendar days regarding the following:

- (i) the actions taken by the Successful Bidder towards commencement of the mining operations at the Lease Area, including compliance with the Mining Plan and a tentative date for commencement of the mining operations;
- (ii) any deviations from the Mining Plan, the reasons for such deviations and the steps taken by the Successful Bidder to rectify such deviation; and
- (iii) whether in the opinion of the Successful Bidder, it shall be able to commence mining operations at the Lease Area within the time specified under sub-clause (a) above for commencement of the mining operations.

(b) *Commencement Report*

Within [three] days of the commencement of mining operations at the Lease Area, the Successful Bidder shall provide a written intimation to the State Government confirming commencement of mining operations at the Lease Area (the “**Commencement Report**”).

(c) *Periodic reporting*

The Successful Bidder shall also submit such reports and information as required under the Act and rules made thereunder.

5.2. The reports under Clause 5.1 shall be provided to the State Government as attachments to an email addressed to the following e-mail address: [email address]. Such attachments must be digitally signed by the Successful Bidder using a Class III digital signature certificate issued by a certifying authority in India.

5.3. The State Government shall have the right to seek such further information regarding the reports provided under Clause 5.1 and also seek independently verification of the same.

6. UTILISATION OF MINERAL

6.1. The Successful Bidder shall utilise the Mineral strictly in compliance with Applicable

Law, including the Act and the rules framed thereunder.

- 6.2. [The Successful Bidder acknowledges that the Lease Area has been reserved for [particulars of end-use] and the Successful Bidder has qualified for the electronic auction on the basis of its representation that all minerals extracted under the Mining Lease shall: (i) be utilised solely for the specified end use; and (ii) not be sold or transferred or otherwise disposed, either directly or indirectly]⁷
- 6.3. The Mining Lease shall be for all minerals (including minor minerals) found in the area pursuant to exploration prior to the auction. If prior to the auction or subsequent to the auction, presence of minor mineral(s) is established or discovered, such minor minerals may be dealt as per the provisions of the Minor Mineral Concession Rules, by whatever name called, framed by the concerned State Government under section 15 of the Act.

7. PAYMENTS

7.1. Payment of bid amount

- 7.1.1. The Successful Bidder shall make monthly payments on the basis of the Final Price Offer (the “**Monthly Payment**”). The Monthly Payment shall be computed on the basis of the Value of Mineral Despatched or the value of the minimum production requirement as specified in Clause 8, whichever is higher.
- 7.1.2. The Upfront Payment paid by the Successful Bidder shall be adjusted in full against the amount payable in accordance with the per cent of Value of Mineral Despatched quoted as the Final Price Offer within the first five years of commencement of production of mineral(s).
- 7.1.3. The Monthly Payment is required to be made within 20 calendar days of expiry of each month with respect to Mineral extracted from the Lease Area in such calendar month.
- 7.1.4. All payments required to be made by the Successful Bidder shall be made net of all applicable Taxes. In the event, Taxes are payable, the Successful Bidder shall gross-up the amount payable and make payment of the aggregate amount.

7.2. Other payments

The Successful Bidder shall also be required to make payments as required under Applicable Law, including the Act and the rules framed thereunder.

8. MINIMUM PRODUCTION REQUIREMENT

- 8.1. The conduct of mining operations at the Lease Area shall be subject to the milestones

⁷ To be deleted if no end-use has been prescribed by the State Government.

listed in SCHEDULE **E** with respect to production (the “**Production Requirement**”) and the minimum annual production to be achieved every year.

- 8.2. The Successful Bidder would provide periodic information to the State Government regarding compliance with the Production Requirement in the manner stipulated in Clause 5 (INFORMATION).
- 8.3. Any non compliance with the Production Requirement would result in appropriation of the Performance Security in the manner stipulated in Clause 4 (PERFORMANCE SECURITY) and in case where such non-compliance exceeds for more than [seven] instances, such non-compliance shall give the State Government a right to determine the mining lease without prejudice to any other proceeding to be taken against the mining lease holder.

9. GENERAL RIGHTS AND OBLIGATIONS

9.1. Limited mining rights

Pursuant to this Agreement the Successful Bidder shall be entitled to conduct mining operations only in the Lease Area and shall not be entitled to conduct the mining operations in any other area outside the lease area. The rights granted to the Successful Bidder herein to conduct mining operations are exclusive within the Lease Area.

9.2. Authorisations

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

9.3. Geological and archaeological finds

It is expressly agreed that other than rights to mine for the Mineral(s) (as may be granted under any Mining Lease pursuant hereto), geological or archaeological rights do not form part of the rights granted to the Successful Bidder under this Agreement and the Successful Bidder hereby acknowledges that except in relation to the Mineral(s) (as may be granted under any Mining Lease pursuant hereto), it shall not have any mining rights or interest in the underlying minerals, metals, gas, oil, fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest and that such rights, interest and property on or under the Lease Area shall vest in and belong to the Central/ State Government or the concerned Governmental Authority under Applicable Law. The Successful Bidder shall take all reasonable precautions to prevent

its workmen or any other person from removing or damaging such interest or property and shall inform the Central/ State Government forthwith of the discovery thereof and comply with such instructions as the concerned Governmental Authority may reasonably give for the removal of such property.

10. MINING PLAN AND COMPLIANCE WITH APPLICABLE LAW

The Mining Plan applicable pursuant to clause (b) of sub-section (2) of section 5 of the Act shall be complied with by the Successful Bidder at all times. The Successful Bidder shall also comply with Applicable Law in relation to conduct of mining operations.

11. REPRESENTATIONS AND WARRANTIES

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

12. INDEMNITIES

- 12.1. In this clause, a reference to the State Government shall include the State Government; any of the departments or ministries of the State Government; and of the officers, employees, staff, advisors, representatives or agents of the State Government (collectively the “**Indemnified Party**”) and the provisions of this Clause shall be for the benefit of the Indemnified Party, and shall be enforceable by each such Indemnified Party.
- 12.2. The Successful Bidder shall indemnify the Indemnified Party against all liabilities, costs, expenses, damages and losses (including but not limited to any interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Indemnified Party arising out of or in connection with:

- (a) any breach of the Warranties;
 - (b) Successful Bidder's breach or negligent performance or non-performance of this Agreement;
 - (c) the enforcement of this Agreement;
 - (d) any claim made against the Indemnified Party for actual or alleged infringement of a Third Party's rights arising out of or in connection with mining operations at the Lease Area or performance or non performance of any of the obligations under this Agreement to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this Agreement by the Successful Bidder, its employees, agents or contractors;
 - (e) any claim made against the Indemnified Party by a Third Party for death, personal injury or damage to property arising out of or in connection with mining operations at the Lease Area or performance or non performance of any of the obligations under this Agreement; or
 - (f) any loss or damages caused on account of breach of any Applicable Law by the Successful Bidder, including without limitation any costs incurred by the State Government in cleaning or rectifying of any environmental damages caused by the Successful Bidder on account of, lack of Good Industry Practice; breach, negligent performance or failure or delay in performance of this Agreement; or non-compliance with Applicable Law.
- 12.3. If any Third Party makes a claim, or notifies an intention to make a claim, against the Indemnified Party which may reasonably be considered likely to give rise to a liability under this indemnity (a “**Claim**”), the Indemnified Party shall as soon as reasonably practicable, give written notice of the Claim to the Successful Bidder, specifying the nature of the Claim in reasonable detail.
- 12.4. Subject to the Successful Bidder providing security to the Indemnified Party, to the Indemnified Party's sole and absolute satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, the Successful Bidder may take such action as it may reasonably deem fit to avoid, dispute, compromise or defend the Claim.
- 12.5. Payments of the amount of Claim shall become due and payable within [thirty] days of receipt of notice of Claim. If a payment due from the Successful Bidder under this clause is subject to Tax (whether by way of direct assessment or withholding at its source), the Indemnified Party shall be entitled to receive from the Successful Bidder such amounts as shall ensure that the net receipt, after Tax, to the Indemnified Party in respect of the payment is the same as it would have been were the payment not subject to Tax.

13. ASSIGNMENT, SECURITY FOR FINANCING

13.1. Prohibition on assignment

13.1.1. Except as provided in this Clause 13, the Successful Bidder shall not assign this Agreement, save and except with the prior consent in writing of the State Government, which consent the State Government shall be entitled to decline without specifying any reason.

13.1.2. Subject to compliance with provisions of Clause 13.2, this Agreement may be assigned by the Successful Bidder in the following events:

- (a) upon the transfer of the mining lease under the provisions of the Act and rules made thereunder; or
- (b) upon occurrence of an enforcement event, to a transferee as may be determined by a bank or financial institution in terms of Clause 13.3.

13.2. Assignment conditions

Assignment of this Agreement under Clause 13.3 shall be subject to the following conditions precedent:

- (a) the proposed assignee must meet the applicable Eligibility Conditions;
- (b) the proposed assignee must agree to unconditionally and irrevocably adhere to the provisions of the Act and rules made thereunder, and this Agreement and must enter into a deed of adherence in the manner as prescribed by the State Government;
- (c) the proposed assignee must have furnished the Performance Security, to substitute any subsisting Performance Security provided by the Successful Bidder; and
- (d) the proposed assignee must have paid any other amount due from the Successful Bidder and agree to indemnify and hold the State Government harmless in all respects against any claims from any Third Party or the Successful Bidder with respect to such assignment.

13.3. Security for financing enforcement event

13.3.1. Subject to Applicable Law, the Successful Bidder shall be entitled to create security over the Lease Area through mortgage for the purposes of availing financing from a bank or financial institutions for the purposes of financing of mining operations at the Lease Area and such security creation shall not require prior approval by the State Government or the Central Government. It is clarified that the Successful Bidder shall be permitted to enter

into any agreement with bank or financial institutions with respect to assignment of this Agreement in terms of this Clause 13.

13.3.2. The Successful Bidder shall inform the State Government within [ten] days of occurrence of (i) any default in its obligation under any arrangement with any bank or financial institution; (ii) any security interest created over the Lease Area; and (iii) any action initiated by the bank or financial institution regarding enforcement of security.

13.3.3. In the event of a default, the banks or financial institutions, as the case may be shall be entitled to enforce their security interest, provided that the conditions listed in Clause 13.2 are met, in the manner provided below:

- (a) the security interest shall be exercised in accordance with the provisions of Applicable Law and any inter-se agreement between the secured creditors, if any;
- (b) the lead secured creditor (in case of consortium lending) or the secured creditor with the highest exposure (in case of multiple banking), shall be entitled to seek a substitution of the Successful Bidder by providing a written notice (the “**Substitution Notice**”) to the State Government;
- (c) the Substitution Notice shall contain complete particulars of the proposed transferee (the “**Selectee**”), particulars of compliance of the Selectee with all the Eligibility Conditions, particulars of the debt due and such data and information as would be necessary and relevant for the State Government to decide as to the acceptability of the Selectee;
- (d) the State Government may require such other information as it may deem fit regarding the suitability of the Selectee to receive rights and obligations with respect to the Lease Area;
- (e) the Substitution Notice must be accompanied by an unconditional undertaking of the Selectee to the effect that it shall upon acceptance by the State Government observe, comply with, perform and fulfil the residual terms, conditions and covenants of this Agreement as if the Selectee had been the Successful Bidder under this Agreement and to assume, discharge and pay the debt due on the terms and conditions agreed to by the Selectee with the secured creditors. The Selectee shall also undertake to enter into such documents and agreements with State Government as may be necessary or required to give effect to the substitution of the Successful Bidder by the Selectee;
- (f) the State Government shall convey its acceptance or otherwise of the Selectee within [sixty] days of (a) the date of receipt of the Substitution Notice; or (b) the date of receipt of the additional information and clarifications requested in respect

of any data, particulars or information comprised in the Substitution Notice, whichever is later; and

- (g) In the event that the State Government fails to communicate its acceptance or otherwise or the objections if any it has to the acceptance of the Substitution Notice, within the time specified in sub-clause (f) above, the State Government shall be deemed to have accepted the Substitution Notice and the Selectee.

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

14. INSURANCE

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

15. ACCOUNTS AND AUDIT

15.1. Audited accounts

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

15.2. Appointment of auditors

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

15.3. Certification of claims by statutory auditors

Any claim or document provided by the Successful Bidder to the State 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.

16. GOVERNMENT INSPECTION

- 16.1. The Central Government or the State Government, through its authorized representatives shall have the right to free ingress and egress within any part of the Lease Area at any time to inspect works or activities being undertaken or implemented by the Successful Bidder in order to monitor and verify compliance with the terms of this Agreement and Applicable Law.
- 16.2. The Central Government or the State Government, through its authorized representatives, shall have access to the Successful Bidder's financial and other records and transactions (relatable to any period) at any time upon reasonable advance notice, the right to copy therefrom, for the purpose of assessing the performance and compliance of the Successful Bidder with the terms of this Agreement and Applicable Law, rules and regulations or to aid in the enforcement of the same.
- 16.3. The Central Government or the State Government shall have the right to conduct, either directly or indirectly through any Third Party, a performance audit to verify compliance by the Successful Bidder, of its obligations hereunder.

17. EVENT OF FORCE MAJEURE

- 17.1. Event of Force Majeure means any of the following events or circumstances or combination of the following events or circumstances which are beyond the reasonable control of the Successful Bidder, which could not have been prevented by Good Industry Practice or by the exercise of reasonable skill and care and which or any consequences of which, have a material and adverse effect upon the performance by the Successful Bidder of its obligations or enjoyment of its rights:
 - (i) acts of God, flood, drought, earthquake or other natural disaster;
 - (ii) epidemic or pandemic;
 - (iii) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
 - (iv) nuclear, chemical or biological contamination or sonic boom;
 - (v) collapse of buildings/mines, fire, explosion or accident; or
 - (vi) any labour or trade dispute, strikes, industrial action or lockouts (other than those solely affecting Successful Bidder claiming the same as an Event of Force Majeure and attributable to such Successful Bidder's policies regarding labour, compensation or employment or labour related conditions).

- 17.2. Provided it has complied with Clause 17.3, if the Successful Bidder is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by an Event of Force Majeure, the Successful Bidder shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations.
- 17.3. Upon occurrence of an Event of Force Majeure, the Successful Bidder shall:
- (i) as soon as reasonably practicable after the start of the Event of Force Majeure but no later than thirty days from its start, notify the State Government in writing of the Event of Force Majeure, the date on which it started, its likely or potential duration, and the effect of the Event of Force Majeure on its ability to perform any of its obligations under this Agreement; and
 - (ii) use all reasonable endeavours to mitigate the effect of the Event of Force Majeure on the performance of its obligations including following of Good Industry Practice.
- 17.4. If an obligation is suspended by reason of an Event of Force Majeure for more than [one] month continuously, the Parties shall enter into good faith negotiations to revise the terms of this Agreement to reflect the changed circumstances, provided that this Agreement shall remain in effect during the period during which the Parties are negotiating the terms of any such revision.

18. EFFECTIVE DATE AND TERM

18.1. Effective Date

This Agreement shall come into effect on the Agreement Date i.e. [date].

18.2. Term

This Agreement shall commence on the dates mentioned in Clause 18.1 and shall continue for the period of validity of the Mining Lease granted to the Successful Bidder (“**Term**”).

18.3. Retention of Books and Records

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

19. MISCELLANEOUS

19.1. Time of essence

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

19.2. Publicity

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

19.3. Severability

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

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

19.4. Costs and expenses

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

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

19.5. Further assurance

The Successful Bidder shall cooperate with the State Government and execute and deliver to the State Government such instruments and documents and take such other

actions as may be requested from time to time in order to carry out, evidence and confirm their rights and the intended purpose of this Agreement.

19.6. Legal and prior rights

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

19.7. Waiver

19.7.1. The waiver of any default or breach under this Agreement by the State Government shall not constitute a waiver of the right to determine the mining lease for any substantial default of a similar nature or under any other terms and conditions of this Agreement.

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

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

19.8. Amendments

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

of the Parties under or pursuant to this Agreement shall remain in full force and effect, except and only to the extent that they are so amended.

19.9. Counterparts

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

19.10. No agency or partnership

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

19.11. Notices

All notices, requests, demands or other communication (“**Notice**”) required or permitted to be given under this Agreement and the provisions contained herein shall be written in English and shall be deemed to be duly sent by registered post with acknowledgment due, or transmitted by facsimile transmission to the other Parties at the address indicated in SCHEDULE ^G hereof or at such other address as the Party to whom such notices, requests, demands or other communication is to be given shall have last notified to the Party giving the same in the manner provided in this Clause, but no such change of address shall be deemed to have been given until it is actually received by the Party sought to be charged with the knowledge of its contents. Any notice, request, demand or other communication delivered to the Party to whom it is addressed as provided in this Clause 19.11 shall be deemed to have been given and received on the day of its receipt at such address.

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

19.12. Entire Agreement

The Mining Lease inclusive of this Agreement (including all such deeds and documents issued or executed pursuant hereto or referred to herein) and the Tender Document, together with all documents referred herein and thereunder constitutes and represents the entire agreement between the Parties with regard to the rights and obligations of each of

the Parties and cancels and supersedes all prior arrangements, agreements or understandings, if any, whether oral or in writing, between the Parties on the subject matter hereof or in respect of matters dealt with herein. If there is a conflict between the Mining Lease inclusive of this Agreement and the Tender Document, the Mining Lease inclusive of this Agreement would have overriding effect.

19.13. **Specific performance of obligations**

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

SCHEDULE A – LIST OF PERSONS⁸

⁸ To be deleted if this agreement is signed by a company or a single individual.

SCHEDULE B – LIST OF CONSENTS AND APPROVALS

[to be provided prior to execution.]

SCHEDULE C - PARTICULARS OF THE LEASE AREA

[to be provided prior to execution]

SCHEDULE D - PARTICULARS OF THE END USE PLANT⁹

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

⁹ To be deleted in no end-use has been prescribed.

SCHEDULE E - PRODUCTION REQUIREMENT

[Details in this regard to be provided by the State Government]

SCHEDULE F - WARRANTIES

1. INFORMATION

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

2. AUTHORITY

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

Successful Bidder is party or by which it is bound or to which its assets are subject; and

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

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

3. **GENERAL**

The Successful Bidder

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

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

SCHEDULE G - ADDRESS FOR PROVIDING NOTICES

A. Notice to the State Government

Address	
Telephone	
Fax	
E-mail (only for information)	

With CC to the Central Government

Address	Ministry of Mines
Telephone	
Fax	
E-mail (only for information)	

B. Notice to the Successful Bidder

Address	
Telephone	
Fax	
E-mail (only for information)	

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

Signatories

The State Government

[Name of the Successful Bidder]

.....
Name:

Designation:

Date:

.....
Name:

Designation

Date:

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

[Department of Mines and Geology (by whatever name called)]

Government of [State]

Email: *[designated email id of the State Government for the particular auction]*

[Notice Inviting Tender to be published at least in one English national newspaper and one local language newspaper and on the State Government website]

Notice Inviting Tender

“Invitation of bids for grant of *[Mining Lease/ Composite Licence]*”

In exercise of the powers conferred by Section *[10B / 11]* of the Mines and Minerals (Development and Regulation) Act, 1957 and in accordance with the Mineral (Auction) Rules, 2015 notified thereunder, the Government of [State] has identified mineral block for the purpose of grant of *[Mining Lease/ Composite Licence]* for the *[name of the mineral]* in *[give brief details of Concessions Area]* through electronic auction and hereby invites bids in digital format only from eligible bidders.

Terms and conditions, deadlines etc. for participating in the electronic auction are provided in the Tender Document. The Tender Document for the mineral block and Mineral Block Summary are available free of cost in electronic form and can be downloaded from the website of *[e-auction platform provider (exact url of the e-auction platform provider for the particular auction)]* for the purpose of information only. Timelines, notifications, updates and other details for the e-auction process are available on the website of *[e-auction platform provider]*.

Those interested and eligible for bidding can participate in the bidding only after online purchase of the Tender Document on payment of the tender fee of Rs.*[State Government to specify the Tender Fee]* from the website of e-auction platform provider. After purchase of the Tender Document eligible bidders can register themselves on the above mentioned website. On successful registration, eligible bidders will obtain Login ID and password necessary for participation in the e-auction process.

Last date for online purchase of Tender Document is *[State Government to specify the last date for purchase of Tender Document]* and the last date for submission of the bid is *[State Government to specify the exact time and date for submission of the bid on e-auction platform]*.

Summary of the Mineral Block

[to be made available on the website of e-auction platform provider]

PART A – GENERAL INFORMATION ABOUT MINERAL BLOCK

	Features	Details
1.	Location	
	Mineral Block	
	Corner Points (Latitude, Longitude)	
	Villages	
	Tehsil/ Taluka	
	District	
	State	
2.	Area (hectares/square kilometres)	
	Mineralised Area	
	Non-mineralised Area	
3.	Exploration	
	Status (G2/G3/G4 etc.)	
	Exploration Agency	
	Total Number of Boreholes with meterage	
	Borehole Spacing (Density)	
4.	Quantity of Minerals (Grade-wise)	
	Mineral 1, Mineral 2, Mineral 3 Mineral <i>n</i>	
	Total Geological Resources (Reserves)	
5.	Mineralised Zones	
	Number of Mineral Zones	
	Trend (Dip and Strike)	
	Total Thickness	
6.	Accessibility	
	Nearest Rail Head	
	Road	
	Airport	
7.	Hydrography	
	Local Surface Drainage Pattern (Channels)	
	Rivers/Streams	
8.	Climate	
	Mean Annual Rainfall	
	Temperatures (December)	
	Temperatures (June)	
9.	Topography	
	Topo Sheet Number	
	Morphology of the Area	

**PART B – PARTICULARS OF STATUTORY LICENSES, PERMITS, PERMISSIONS,
CONCESSIONS, APPROVALS AND CONSENTS RELATED TO MINING
OPERATIONS**

	Particulars	Details/Status
1.	Forest clearance	To be obtained by the Successful Bidder/not applicable/if available, State to provide details
2.	Wild life clearance (sanctuary, reserve or special zone clearances)	-do-
3.	Environmental clearance	-do-
4.	Consent to establish	-do-
5.	Explosive licence	-do-
6.	Permission for mine opening	-do-
7.	Permission of installation/ trial operation of equipment	-do-
8.	Ground water clearance (Centre/State)	-do-
9.	Railway siding approval	-do-
10.	Approval for diesel storage	-do-
11.	Power line from State Discom	-do-
12.	Clearances relating to work under an existing transmission line or shifting of the transmission line	-do-
13.	<i>Grama Sabha</i> consent	-do-
...n.		-do-

PART C – PARTICULARS OF LAND

	Area	Details
1.	Total Concession Area	
2.	Forest Land with Status	
3.	Government Land with Status	
4.	Private Land with Status	
5.	Revenue survey details of the area	