GOVERNMENT OF ODISHA

Blank Tender Document

Mining Lease

Block _____

This Tender Document is non-transferable. The Price of this Tender Document is INR 5,00,000 (Rupees five lakh) for Khatkurdaha (North) Limestone Block.

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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 for Limestone, pursuant to the Act and the rules framed thereunder. All information provided in this Tender Document should be read together with the Act and the rules framed thereunder. In the event of a conflict between this Tender Document and the Act or the rules, the Act or the rules (as amended from time to time), as the case may be, shall prevail.

1.2. The information contained in this Tender Document or subsequently provided to Bidder(s), 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. **"Acceptable Bank"** shall mean a Scheduled Bank as listed in the Second Schedule of the Reserve Bank of India Act, 1934, excluding those listed under the headings of Gramin Banks, Urban Co-operative Banks and State Co-operative Banks.

2.2. "**Act**" means the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957) as amended from time to time.

2.3. "**Applicable Law**" shall mean all applicable statutes, laws, by-laws, rules, regulations, orders, ordinances, protocols, codes, guidelines, 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 at the relevant point in time.

2.4. "**Auction Rules**" mean the Mineral (Auction) Rules, 2015 as amended by Mineral (Auction) Amendment Rules, 2017 and from time to time.

2.5. "**Authorised Signatory**" shall mean the individual representing a Bidder who has been duly authorised on behalf of such Bidder to execute and submit the Bid in accordance with the terms hereof, as set forth in Clause 13.1.1(c).

2.6. "**Bidder**" means a person who has purchased this Tender Document, and the expression Bidders shall include all such persons.

2.7. "**Bid Due Date**" shall mean the date on which the Technical Bid and the initial price offer is required to be submitted in accordance with Clause 8.1A(a).

2.8. "**Bid Security**" shall have the meaning given to such expression in Clause 14.

2.9. "**Final Price Offer**" shall have the meaning given to such expression in Clause 8.1B(a).

2.10. "**Floor Price**" shall have the meaning given to such expression in Clause 8.1A(d).

2.11. "**Information Memorandum**" means the information memorandum provided separately containing amongst others, information specified in Clause 4.1.

2.12. **"MDPA"** means the Mine Development and Production Agreement in the format as specified in Schedule IV (*Format of MDPA*).

2.13. "**Mineral Block**" means *Block* _____.

2.14. "**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 in terms hereof;

2.15. "**Preferred Bidder**" shall have the meaning given to such expression in Clause 8.1B(c).

2.16. "**Qualified Bidders**" shall have the meaning given to such expression in Clause 8.1A(e).

2.17. "**Reserve Price**" shall be as provided under Clause 9.

2.18. "**Section**" means Section of the Act;

2.19. "**State Government**" means Government of Odisha.

2.20. "**Successful Bidder**" shall have the meaning given to such expression in Clause 10.2.

2.21. "**Technical Bid**" shall have the meaning given to such expression in Clause 8.1A(a)(i)

2.22. "**Technically Qualified Bidders**" shall have the meaning given to such expression in Clause 8.1A(c).

2.23. "**Tender Document"** means this tender document together with the schedules and documents referred to herein, including the Information Memorandum and any addenda to this Tender Document.

2.24. "**Upfront Payment**" means an amount equal to INR [amount in figures] (Rupees [amount in words]) payable pursuant to the Auction Rules.

2.25. "**Value of Estimated Resources**" means an amount equal to the product of, -

i. the estimated quantity of mineral resources for which the Mineral Block is being auctioned, expressed in metric tonne; and

ii. the average price per metric tonne of such mineral as published by Indian Bureau of Mines for the relevant State for a period of twelve months immediately preceding the month of computation of the Value of Estimated Resources.

Provided that if for any mineral or mineral grade, the average sale price in respect of the relevant State for any month is not published by Indian Bureau of Mines, the all India average sale price published by Indian Bureau of Mines for such mineral or mineral grade for that month shall be used.

2.26. "**Value of Mineral Despatched**" shall have the meaning given to such expression in Clause 9.1.

3. Introduction

3.1. The Act stipulates grant of mining lease through e-auction in respect of minerals which vest in the government other than

i. minerals notified as Minor Mineral(s) specified in clause (e) of section 3 of the Act;

ii. minerals specified in Part A of the First Schedule to the Act; and

iii. minerals specified in Part B of the First Schedule to the Act having grade equal to or more than the threshold value as specified and notified under the Atomic Minerals Concession Rules, 2016.

3.2. In exercise of powers conferred by Section 13 of the Act, the Central Government has notified the Auction Rules 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 over the Mineral Block.

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.

3.5. The Bidders are expected to conduct due diligence regarding the land to be comprised in the mining lease and also familiarise themselves with all Applicable Laws relating to acquisition of rights over such land to be comprised in the mining lease including without limitation, the Act, the Forest Conservation Act, 1980, the Panchayats (Extension to the Scheduled Areas) Act, 1996, the Orissa Scheduled Areas Transfer of Immovable Property (By Scheduled Tribes) Regulations, 1956, the Orissa Land Reforms Act 1960 and the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation & Resettlement Act 2013. At the request and cost of the Successful Bidder, the State Government may, in its sole discretion, provide assistance regarding acquisition of land comprised in the mining lease.

3.6. Where, at the time of auction of mining lease, the presence of a minor mineral(s) is established, the percentage of value of mineral despatched as quoted by the successful bidder under sub-rule (3) of rule (8) of Auction Rules shall inter-alia be applicable for the purpose of payment to the State Government in respect of each such mineral. The value of mineral despatched in case of minor mineral(s) shall be calculated based on the sale price of the relevant minor mineral as published by the State Government. Further, the mining lease in respect of such minor mineral(s) will be executed separately by the State Government and shall be governed by Odisha Minor Mineral Concession Rules, 2016 as amended from time to time.

The mining lease for the minor mineral whose presence is established at the time of auction, shall be co-terminus with the lease of the major mineral.

Moreover, for the purpose of calculation of the Value of Estimated Resources of the major mineral block being auctioned, the value of estimated resources of minor mineral is also considered.

4. The Mineral Block

4.1. The following information regarding the Mineral Block is included in a separate "**Information Memorandum**" attached along with this Tender Document as Schedule V:

(i) precise map of the Mineral Block identified including geographical co-ordinates, revenue survey details, 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) the geological report of the Mineral Block specifying particulars and estimated mineral resources of Limestone found in the identified Mineral Block determined pursuant to the Minerals (Evidence of Mineral Content) Rules, 2015; and

(iii) an indicative list of clearances and permissions required to be obtained with respect to such area for commencing mining operations;

4.2. Bidders are strongly encouraged to review the Information Memorandum.

5. Eligibility

Pursuant to the Act and 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 which is quoted 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; 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--

(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 Mineral Block for grant of mining lease as quoted below. Accordingly, the net worth of the Bidder must be more than INR [amount in figures] (Rupees [amount in words]), calculated in accordance with the following conditions, as applicable.

a. If the Value of Estimated Resources is equal or more than Rupees one thousand crore, the applicant, including an individual, shall have a net worth more than 2 percent of Value of Estimated Resources.

b. If the Value of Estimated Resources is less than one thousand crore rupees but more than one hundred crore rupees, the applicant, including an individual, shall have a net worth more than 1 percent of Value of Estimated Resources.

c. If the Value of Estimated Resources is less than or equal to one hundred crore rupees, the applicant, including an individual, shall have a net worth of more than 0.5 percent of 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 shall 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 financial year ended immediately preceding the date of issuance of notice inviting tender.

(3) In case the notice inviting tender is issued between 1st April to 30th September (both days inclusive) of a year, the audited balance sheet of the financial year before the immediately preceding financial year, from the date of issuance of notice inviting tender, may be submitted by the bidder, if the audited balance sheet of the immediately preceding financial year is not available

(4) *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 or Post Office, free and un-encumbered fixed deposits in Scheduled Banks or Post Office, Listed Companies/Government organisation or /Public Sector Undertaking of a State and the 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 and un-encumbered immovable property in the name of Applicant.*"

In case of an individual or sole proprietorship, the valuation of un-encumbered immovable property shall be based on the relevant circle rate

published by the relevant government authority, and such valuation must be certified by a chartered accountant. The individual or sole proprietorship shall also submit an undertaking, on a stamp paper (as a part of the affidavit) of adequate value, stating, *inter alia*, that the immovable property (accounted for calculation of net worth) is un-encumbered and free from all charges (including, but not limited to, lien, mortgage, and pledge), and that the said individual or sole proprietorship is the owner of such immovable property.

Further, for computation of the Bidder's net worth, if an individual includes the properties owned by their sole proprietorship, or if sole proprietorship of such individual includes the properties owned by the individual, then either of the following shall be submitted, as applicable:

A. A certificate from the bank in which such sole proprietorship has a current account certifying that the individual is the proprietor of the sole proprietorship; or

B. GST registration certificate clearly showing the details of the sole proprietorship.

(c) The bidder must comply with Section 6 of Mines and Minerals (Development and Regulation) Act, 1957;

Explanation: Disallow participation of persons who are holding or may, in the event of becoming highest bidders in the auction, hold the area in excess of the area limit under section 6 (1) of the MMDR Act. It may however be noted that the area limit would be governed as per the provisions under section 6 (1) of the MMDR Act.

(d) The eligibility conditions shall be used only for the purposes of determination of eligibility for participating in the e-auction set out in this Tender Document. The Preferred Bidder shall be decided solely on the basis of financial bids submitted by the eligible Bidders.

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 to study the Tender Document and the bidding process shall commence only after such date as mentioned in Clause 11.

6.2. Site Visit would commence on publication of notice inviting tender and would end on Bid Due Date.

6.3. The Bidders who have purchased the Tender Document shall be eligible to visit the Mineral Block. The site visit to the Mineral Block shall be conducted with prior notice to the State Government through the following e-mail address directormines1@orissaminerals.gov.in. The email should clearly bear the following subject line: "*Site Visit for Block [_____]*".

6.4. During such period the Bidders may undertake the site visit to Mineral Block 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.

6.5. This Tender Document does not however give an unconditional or unrestricted right to access the Mineral Block 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 Mineral Block.

6.6. 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 Mineral Block, on account of any act of commission or omission of such Bidder or its employees, authorised representatives, agents, advisors etc.

6.7. Bidders are advised to conduct the site visit in the manner specified in Clause 6.3 on or before 17:00 hours (IST) on Bid Due Date.

7. Pre-bid conference

7.1. Potential 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 in *.doc, .docx, .xls, .xlsx* format only to the State Government by email to directormines1@orissaminerals.gov.in 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 "*Block* _____".

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 11 for receiving queries.

7.6. The State Government shall endeavour to respond to the queries within the period specified in Clause 11. 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 potential bidders shall be convened at the designated date as mentioned in Clause 11 at a time and place specified by the State Government.

7.9. A maximum of 3 (three) representatives of each potential bidder shall be allowed to participate on production of duly issued authority letter from the potential bidder and identity documents. During the course of pre-bid conference(s), they 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 potential 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. Bidding 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 attempts of auction with each attempt of auction consisting of a first round of auction and a second round of auction as follows:

A. First round of e-auction

(a) In the first round, the Bidders shall be required to submit on or prior to 17:00 hours (IST) on [Insert Date] ("**Bid Due Date**"):

(i) The Technical Bid comprising amongst others, documentary evidence to confirm eligibility as per the provisions of Clause 5 hereof, and of the Act and the rules made thereunder to participate in the auction, bid security and such other documents and payments as may be specified in this Tender Document ("**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 online electronic auction*). The duly executed original physical copy of the Technical Bid must be sent to the address specified in Clause 13.1.2 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. In case of a conflict between documents submitted electronically and document submitted physically, the documents submitted physically shall prevail. It is clarified that only the Technical Bid is required to be submitted physically, and the Bidders must not submit the initial price offer physically. In case the Bidder submits the initial price offer physically, the Technical Bid and the initial price offer will be summarily rejected.

(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 online 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) 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 as per Clause 5 of this Tender Document and whose initial price offer is equal to or greater than the Reserve Price and whose Technical Bids meet the requirements under this Tender Document ("**Technically Qualified Bidders**") shall be considered for the second round of the auction.

(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 50% (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 qualify as qualified bidders for participating in the second round of online electronic auction (the "**Qualified Bidders**"). Intimation shall be restricted only to the Qualified Bidders.

Provided 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 further 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 50% (fifty per cent) shall stand enhanced to the extent of tie occurring within the first 50% (fifty per cent)

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 50% (fifty percent) of ranks shall be considered to be Qualified Bidders.

(ii) If three Technically Qualified Bidders submit the same initial price offer and are ranked in first 50% (fifty percent) of the total number of ranks, then all such 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.

(f) 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 first attempt of auction shall be annulled.

(g) On annulment of the first attempt of auction, the State Government may decide to:

i. commence the auction process de novo with a separate set of terms and conditions and reserve price as it may deem fit and necessary; or
ii. conduct the second attempt of auction

(h) In case the State Government decides to conduct the second attempt of auction as per clause (ii) of sub-clause (g) above, the terms and conditions of the second attempt of auction shall remain the same as in the first annulled attempt of auction subject to the conditions that:

i. the highest initial price offer of the technically qualified bidders if any in the first annulled attempt shall be the reserve price in first round of the second attempt; and
ii. the bidding shall continue to the second round even in case the number of technically qualified bidders is less than three.

B. Second round of e-auction

Where the total number of Technically Qualified Bidders is three or more, then the auction process shall proceed to second round of auction which shall be held in the following manner, namely:

(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**") and 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 online 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 all such Qualified Bidders who have 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 14.6.

(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 Act and the rules made thereunder' for inclusion of such new mineral in the Mining Lease Deed. It is clarified that:

i. Where, subsequent to grant of a mining lease, one or more new major minerals are discovered, the percentage of value of mineral despatched as quoted by the Successful Bidder under sub-rule (3) of rule (8) of Auction Rules read with the terms hereof shall be applicable for the purpose of payment to the State Government in respect of each such mineral.

ii. Where, subsequent to the grant of mining lease, the presence of a minor mineral(s) is established or discovered, treatment of such minor mineral(s) will be as per the provisions of the Odisha Minor Mineral Concession Rules, 2016 (as amended or replaced from time to time) prevailing at the when the minor mineral is discovered in the concession area.

8.3. Special provisions relating to minerals specified in Part B of the First Schedule to the Act and as per Rule 21 of the Rules:

'Rule 21 (1)

(a) if the holder of a composite licence or mining lease discovers any mineral specified in Part B of the First Schedule to the Act and not specified in such licence or lease, in the area granted under such licence or lease, the discovery of such mineral shall be reported to the Director, Atomic Minerals Directorate for Exploration and Research, Hyderabad within sixty days from the date of discovery of such mineral;

(b) *the licensee or lessee shall not, win or dispose of any mineral specified in Part B of the First Schedule to the Act unless such mineral is included in the license or lease or a separate licence or lease for the purpose has been obtained;*

(c) *the quantities of any mineral specified in Part B of the First Schedule to the Act recovered incidental to such mining operations to be undertaken pursuant to this Tender Document and related mining lease shall be collected and stacked separately and a report to that effect shall be sent to the Director, Atomic Minerals Directorate for Exploration and Research, Hyderabad every month for such further action by the lessee of the mining lease issued in terms hereof, as may be directed by the Atomic Minerals Directorate for Exploration and Research.*

(2) *the licensee or lessee referred to in sub-rule (1) shall, within sixty days from the date of discovery of any mineral specified in Part B of the First Schedule to the Act, apply to the Secretary, Department of Atomic Energy, Mumbai, through the State Government, for grant of a licence to handle such minerals under the provisions of the Atomic Energy Act, 1962 (33 of 1962) and the rules made thereunder and the Department of Atomic Energy shall intimate to the State Government regarding issue of the licence in this regard.*'

9. Reserve Price

9.1. The Reserve Price is 5% *(five percent)* 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.

9.2. It is clarified that payment in accordance with the Final Price Offer shall be required to be paid monthly in addition to the payment of royalty or dead rent, as applicable.

10. Declaration of Successful Bidder and Grant of Mining Lease

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

10.1. Issuance of letter of intent:

A letter of intent, as per the format provided in Schedule VI, 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 an irrevocable and unconditional Performance Security to the State Government from an Acceptable Bank and payable at Bhubaneswar, Odisha, pursuant to the Auction Rules. This Security should be valid for the period as specified in Clause 4 of the MDPA, for an amount equal to 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 0.5% of the reassessed Value of Estimated Resources (determined in accordance with the Auction Rules) including the value of any newly discovered mineral that may be included in the mining lease deed on its discovery.. In such case, bank guarantee constituting the Performance Security shall be substituted with another bank guarantee from an Acceptable Bank of the reassessed 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; and

(d) satisfying the conditions specified in clause (b) of sub-Section (2) of Section 5 with respect to a mining plan.

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 operation.

10.4. Grant of mining lease:

The Successful Bidder shall pay the third instalment being eighty per cent. of the upfront payment subsequent to execution of the Mine Development and Production

Agreement, and upon such payment the State Government shall grant a mining lease to the successful bidder. 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 deed is registered.

Provided that no mining lease deed shall be executed on expiry of a period of three years from the date of the issuance of the letter of intent for mining lease, and the letter of intent for mining lease shall be invalidated leading to annulment of the entire auction process:

Provided further that the State Government may allow a further period of two years for execution of the mining lease deed if the reasons for delay were beyond the control of the Preferred Bidder.

11. Timetable

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

S. No.	Event Description	Estimated Date
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	Wednesday, July 31, 2019
2.	Commencement of sale of Tender Document	Wednesday, July 31, 2019
3.	Last date of receiving queries from Bidders [on or before 17:00 hours (IST)]	Wednesday, August 21, 2019
4.	Pre-bid conference	Wednesday, August 28, 2019
5.	Last date for responses to queries by the State Government	Thursday, September 05, 2019
6.	Last date for sale of Tender Document [on or before 17:00 hours (IST)]	Wednesday, September 11, 2019
7.	Bid Due Date (Technical + initial price offer) [on or before 17:00 hours (IST)]	Friday, September 20, 2019
8.	Opening of the Technical Bids	Monday, September 23, 2019
9.	Start date for examination of the Technical Bids	Monday, September 23, 2019
10.	Training and mock-auctions for all the Bidders on e-auction platform by the e-auction platform provider	Monday, September 30, 2019 - Friday, October 04, 2019
11.	Announcement of Technically Qualified Bidders as per the tender document	Friday, October 18, 2019
12.	Opening of initial price offer, of only Technically Qualified Bidders and intimation to Qualified Bidders one day prior to the scheduled date of e-auction of the respective mineral block (to Qualified Bidders only)	Monday, October 21, 2019 - Thursday, October 31, 2019
13.	Conduct of ascending forward electronic auction and submission of Final Price Offer on the electronic auction platform	Tuesday, October 22, 2019 - Friday, November 01, 2019
14.	Announcement of Preferred Bidder	Tuesday, October 22, 2019 - Friday, November 01, 2019
15.	Payment of first installment (10%) of Upfront Payment by the Preferred Bidder for mining lease	Friday, November 08, 2019

S. No.	Event Description	Estimated Date
16.	Issuance of letter of intent by State Government (T_1)	Friday, November 15, 2019
Stage II – Process for Grant of Mining Lease*		
1.	Submission of Performance Security and mining plan along with second installment (10%) of Upfront Payment by the Preferred Bidder to become Successful Bidder	T_2 (last date of submission is T_1 + 2 years and 6 months)
2.	Issuance of order by State Government acknowledging Preferred Bidder as the Successful Bidder subject to compliance with all the terms and conditions of eligibility	T_2 + 3 months
3.	Mine Development Production Agreement (MDPA) to be executed between State Government & Successful Bidder upon obtaining all consents, approvals, permits, no-objections from various government agencies/departments required under applicable laws for commencement of mining operations.	T_2 + 4 months
4.	Payment of third installment (80%) of Upfront Payment	T_2 + 5 months
5.	Mining lease deed to be executed by State Government. Successful Bidder to become holder of mining lease	T_2 + 6 months (Last date for execution of mining lease deed is T_1+ 3 years)

Note:

- *The timeline shown above is based on calendar days*
- *Due dates will be updated if any holidays are announced by government in the intervening period*
- *The State Government reserves the right to update/ change or modify any of the above dates*

**In case the bidder gets an extension from the State Government, the date will be deemed to be extended for the duration of such extension.*

12. Payments by the Successful Bidder

12.1. Upfront Payment

The Upfront Payment paid by the Successful Bidder shall be adjusted in full at the earliest against the amount payable in accordance with the percentage of Value of Mineral Despatched quoted as the Final Price Offer on commencement of production of mineral(s) as specified in MDPA.

12.2. 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 pay the applicable payments quoted under Rule 8 of Auction Rules with respect to the Value of Mineral Despatched or the minimum production requirement, as specified in the MDPA.

12.3. Interest

The State Government shall charge simple interest at the rate of 24% (twenty four per cent) per annum on any payment due to State Government which is delayed beyond sixty days from the due date thereof, as per rule 14 of Auction Rules.

13. General conditions regarding tender process

13.1. Submission of Technical Bid

13.1.1. The Technical Bid shall comprise of the following:

(a) Bid letter in the format specified in Annexure 1 of Schedule I (*Format of bid letter*);

(b) Bid Security by an Acceptable Bank in the form of a bank guarantee for an amount equal to INR [amount in figures] (Rupees [amount in words]) in the format specified in Annexure II of Schedule I (*Format of Bid Security*), which shall be subject to Clause 14;

(c) In case of Bidder being a company or a partnership firm, a power of attorney in the format specified in Annexure III 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 or sole proprietorship, power of attorney would not be required if such individual /sole proprietor personally signs;

(d) Affidavit in the format specified in Annexure IV of Schedule I (*Format of affidavit*); and

(e) In case of Bidder being a company or partnership firm,

(i) duly certified copy of the corporate authorisation, such as board resolution in case of a company, or

(ii) authority letter (signed by all the partners) in case of a partnership firm

authorising such company or partnership firm to participate in the tender process and submit a bid, and authorising the person signing the power of attorney on behalf of such company or partnership firm, provided that such document should pre-date the power of attorney as stated in Clause 13.1.1(c).

13.1.2. The Technical Bid shall be submitted on the electronic platform and the duly executed original physical copies must be sent in an envelope with "Technical Bid for *Block* _____" clearly written on it 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.

Director of Mines,
Office of Directorate of Mines,
Heads of Department Building
Location - Unit - V,

Bhubaneswar, Odisha – 751001

13.2. 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.

13.3. 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.

13.4. Overriding effect

If there is a conflict between the mining lease which is inclusive of the MDPA and this Tender Document, the mining lease which is inclusive of the MDPA would have overriding effect.

13.5. 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.

13.6. Verification of information by the Bidders

13.6.1. 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.

13.6.2. 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.

13.7. Verification by the State Government and disqualification

13.7.1. 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.

13.7.2. The State Government reserves the right to reject any bid, and appropriate the entire Bid Security or Performance Security, as may be applicable, if:

(a) at any time, a misrepresentation is made or uncovered,

(b) if the Bidder/Preferred Bidder/Successful Bidder engages in a Corrupt Practice, Fraudulent Practice, Coercive Practice, Undesirable Practice or Restrictive Practice

(c) 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

(d) any act or omission of the Bidder/Preferred Bidder/Successful 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.

13.7.3. Any rejection of a bid under Clause 13.7.2 may lead to the disqualification of the Bidder from bidding for any 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.

13.7.4. 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.

13.8. Amendment of Tender Document

13.8.1. 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.

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

13.8.3. 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 0.

13.9. Bid Due Date and extension

13.9.1. Technical Bids should be uploaded and the documents required to be submitted physically in original pursuant to Clause 13.1.2 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.

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

13.10. Modifications/ substitution/ withdrawal of bids

13.10.1. 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 after the scheduled closing time for Bid submission on the Bid Due Date, unless the same has been expressly sought by the State Government.

13.11. Rejection of bids

13.11.1. 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.

13.11.2. 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.

13.11.3. 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.

13.11.4. 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 conforming to the terms of Clause 8.1A(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.

13.12. Validity of bids

The initial price offer must be valid for a period of not less than 180 (one hundred and eighty) 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.

13.13. 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.

13.14. 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.

14. Bid Security

14.1. The Bidder shall furnish as part of its Technical Bid, a security in the form of a bank guarantee by an Acceptable Bank and payable at Bhubaneswar, Odisha in favour of the State Government in substantially the same format as prescribed at Annexure II of Schedule I (*Format of bid security*), and having a validity period of not less than 240 (two hundred and forty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, and may be substituted with another bank guarantee of the same value issued in accordance with this Clause 14, which is valid for an extended period as may be mutually agreed between the State Government and the Bidder from time to time.

14.2. The Bid Security shall be for INR [amount in figures] (Rupees [amount in words]).

14.3. 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 on issuance of Letter of Intent to the Preferred Bidder

14.4. The Preferred Bidder's Bid Security will be returned, without any interest, upon furnishing of the Performance Security in accordance with the provisions thereof and consequently the Preferred Bidder's Bid Security shall remain valid until the time Performance Security is provided.

14.5. 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 Bidder 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.

14.6. 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 15 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) If the Bidder fails to furnish the Performance Security or extend the Bid Security or make Upfront Payment as prescribed in this Tender Document.

(e) In the case of all such Qualified Bidders who have submitted the highest initial price offer i.e. the Applicable Floor Price, if the auction process is annulled due to non-submission of at least one Final Price Offer on the electronic auction platform.

15. Fraud and Corrupt Practices

15.1. 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 maybe, 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 maybe, 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.

15.2. Without prejudice to the rights of the State Government under Clause 15.1 herein above and the rights and remedies which the State Government may have under the mining lease or the MDPA, otherwise if a Bidder, Preferred Bidder or Successful Bidder, as the case maybe, 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 maybe, 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 maybe.

15.3. 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 maybe;

(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.

16. Other Provisions

16.1. Exploration Obligation

The holder of a mining lease shall complete detailed exploration (G1 level exploration) and prepare a detailed feasibility study report conforming to Part IV and V of the Mineral (Evidence of Mineral Contents) Rules, 2015 over the entire area under the mining lease, within a period of five years from the date of commencement of such mining lease.

16.2. Governing law

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

16.3. Right of State Government

16.3.1. 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.

16.3.2. 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.

16.4. Proprietary data

All documents and other information supplied by a Bidder to the State Government shall remain with the State Government.

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 Annexure 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 Annexure II (*Format of bid security*);

(c) In case of Bidder being a company or a partnership firm, a power of attorney in the format specified in Annexure III (*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 or sole proprietorship, power of attorney would not be required if such individual / sole proprietor personally signs; and

(d) In case of Bidder being a company or partnership firm,

(i) duly certified copy of the corporate authorisation, such as board resolution in case of a company or

(ii) authority letter (signed by all the partners) in case of a partnership firm

authorising such company or partnership firm to participate in the tender process and submit a bid, and authorising the person signing the power of attorney on behalf of such company or partnership firm, provided that such document should pre-date the power of attorney stated above in (c);

(e) Affidavit in the format specified in Annexure IV (Format of affidavit).

(f) The power of attorney stated in (c) above should pre-date the Bid Letter and affidavit and other documents submitted as part of the Technical Bid;

All the aforementioned documents are required to be uploaded on the electronic auction platform and the original physical copy must be despatched in accordance with Clause 13.1.2 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. 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, partnership firm or other association of individuals. In case the Bidder is an individual/sole proprietorship, it may be printed on plain paper.

(b) The bid letter must be signed on each page for and on behalf of the Bidder by the Authorised Signatory of the Bidder on each page, in case the Bidder is a company/partnership firm. In case the Bidder is an individual/sole proprietorship, the Bidder must personally sign each page of the bid letter.

(c) 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. If the Bidder has authorised a person other than the Authorised Signatory for usage of the digital signature on behalf of the Bidder, then the duly certified copy of the corporate authorisation such as board resolution in case of a company or authority letter (signed by all the partners) in case of a partnership firm in respect of such other person 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 the Authorised Signatory Such documents must include:

(i) Certificate of registration/ incorporation of the Bidder which is a company, sole proprietorship, or partnership firm, and copy of passport(s) of the individual, sole proprietor or partners, as the case may be, in case Bidder is an individual, sole proprietor or partnership firm.

(ii) In case the Bidder is a partnership firm or association of individuals, the constituent documents along with particulars of all the members of the partnership firm or association of individuals. Each member of the partnership firm or association of individuals would be required to comply with the requirements prescribed in the Tender Documents with respect to submission of documents.

(iii) Net worth certificate issued by: (a) In case of a company. statutory auditors of the Bidder (certificate should clearly mention that it has been issued by the statutory auditor of the company, and the net worth stated therein is the sum of the paid up share capital and the free reserves, in terms of Explanation No 2 to the Schedule I of Auction Rules); (b) In case of a partnership firm, certificate should clearly mention that it has been issued by the chartered accountant, and the net worth stated therein is equivalent to the sum of the paid up share capital and the free reserves of a company, in terms of Explanation No 2 to the Schedule I of Auction Rules); (c) In case of an individual or sole proprietorship, certificate issued by a chartered accountant regarding the total amount as closing cash balance including un-encumbered immovable property, derived as per Clauses 5(b) and 5(c) of the Tender Document. The certificate shall have a list of all immovable property owned by the said individual/ sole proprietorship along with its valuation (which shall have to be certified by the chartered accountant), and an undertaking from the individual/ sole proprietorship on a stamp paper (as a part of affidavit) of adequate value stating, *inter alia*, that the immovable property is un-encumbered and free from all charges (including, not limited to, lien, mortgage, and pledge), and that the said individual/ sole proprietorship is the owner of the immovable property.

Further, for the computation of the Bidder's net worth if an individual includes the properties owned by their sole proprietorship, or a sole proprietorship of such individual includes the properties owned by the individual, then either of the following shall be submitted, as applicable:

A. A certificate from the bank in which such sole proprietorship has a current account certifying that the individual is the proprietor of the sole proprietorship; or

B. GST registration certificate clearly showing the details of the sole proprietorship.

(iv) Particulars of mining lease, reconnaissance permit or prospecting licence held by the Bidder or its affiliates for the purpose of Section 6, as applicable.

C. 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 an Acceptable Bank (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) and must be payable at Bhubaneswar, Odisha.

(c) The Bid Security must have a validity period of not less than 240 (two hundred and forty) days from the Bid Due Date, exclusive of the Bid Due Date and inclusive of a claim period of 60 (sixty) days.

(d) The Bid Security must be stamped in accordance with Applicable Law.

D. 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. In case of a company, the extract of constitutional documents and certified copies of the corporate authorisations, such as board resolution, 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 Laws and notarised.

(d) The power of attorney must be issued in the name of a person who is in full time employment of the Bidder.

E. Instructions for submission of the Affidavit

(a) The affidavit must be executed 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.

(b) The affidavit must be stamped in accordance with Applicable Law and notarised.

(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.

Annexure I: Format of Bid Letter

Bid Letter

(On the letter head of the Bidder. Each page of the letter to be signed by the Authorised Signatory)

[*date*]

To,

Director of Mines,
Office of Directorate of Mines,
Heads of Department Building
Location - Unit - V,
Bhubaneswar, Odisha – 751001

Sub: Bid letter for *Block* **_____ (Insert Name of Bidder and MSTC Registration number of Bidder)**

Ref: Tender Document dated July 31, 2019 ("**Tender Document**")

Dear Sir,

I/ We having examined the Tender Document and understood their contents, hereby submit my/ our 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. I/ We have reviewed the terms of the Tender Document and hereby unconditionally and irrevocably accept, agree and acknowledge the terms thereof.
3. I/ 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 I/ 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 my/ our participation in the tender process and possible selection as Successful Bidder.
5. I/ We/our members/ partners hereby confirm that I/ we/ our members/ partners satisfy all the eligibility conditions prescribed in the Tender Document. Specific confirmations with respect to my/ 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. [For the purposes of Section 6, I/ we/ our members/ partners do not hold any mineral concession (including a reconnaissance permit, prospecting licence, prospecting licence-cum-mining lease, and/or mining lease) in the State of Odisha] OR [For the purposes of Section 6 I/ we/ our members/ partners hold the following mineral concessions in the State of Odisha:

   Provide details of the mineral concessions (including a reconnaissance permit, prospecting licence, prospecting licence-cum-mining lease, and/or mining lease) held by the Bidder including any Letter of Intent issued.]

7. [I/ We/ our members/ partners are not simultaneously participating in any other auction of mineral concession which may result in grant of a mineral concession in the State of Odisha] OR [I/ We/ our members/ partners are simultaneously participating in following auction(s) of mineral concession which may result in grant of a mineral concession in the State of Odisha]:

   Provide details of the mineral concessions which may be granted if the Bidder/ members/ partners is successful in another auction.]

8. I/ We hereby acknowledge that if we submit or produce any document and it is discovered subsequently that such document was false or incorrect then I/ we shall be liable under the Applicable Law for the time being in force.

9. I/ 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

10. I/ We acknowledge the right of the State Government to reject my/ 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, my/ our right to challenge the same on any account whatsoever.

11. I/ We declare that:

    a. I/ We have examined and understood the Act, all rules framed thereunder, the Tender Document and all documents referred therein including the Information Memorandum;

    b. I/ We have examined and have no reservations to the Tender Document, including any addendum issued by the State Government;

    c. I/ 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. I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Clause 15 of the Tender Document, no person acting for me/ us or on my/ our behalf has engaged or will engage in any Corrupt Practice, Fraudulent Practice, Coercive Practice, Undesirable Practice or Restrictive Practice.

    e. I/We have not been convicted of illegal mining.

f. No mining dues or outstanding payments are pending with any State Government for a period more than 60 days after the due date.

g. There are no pending or threatened litigations or legal or quasi-legal proceedings against me/ us which may impact my/ our ability to perform my/ our obligations under the Tender Document, the letter of intent, the MDPA, the mining lease deed, the Act and/or the Auction Rules

12. I/ 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.

13. I/ We hereby irrevocably waive any right or remedy which I/ 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.

14. In the event of I/ we being declared as the Successful Bidder, I/ 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

15. I/ We have ensured compliance with the Tender Document and to the best of my/ our knowledge this bid is conforming to the terms thereof.

16. I/ We agree and understand that the Bid is subject to the provisions of the Tender Document. In no case, I/ we shall have any claim or right of whatsoever nature if the mining lease is not awarded to me/ us or my/ our bid is not opened or rejected.

17. The initial price offer has been and the Final Price Offer shall be quoted by me/ us after taking into consideration all the terms and conditions stated in the Tender Document, MDPA, my/ 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.

18. I/ We shall keep this offer valid for 180 days from the Bid Due Date specified in the Tender Document.

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

Yours faithfully,
For and on behalf of [*insert name of the Bidder*]

(Signature, name and designation of the Authorised signatory)
Date:
Place:

Enclosed:
(a) [list and description of documents enclosed]

Annexure II: Format of Bid Security

[Adequate stamp duty to be paid by the Bidder with respect to this document.]

Bank Guarantee

[Bank Guarantee.No.]

[date]

To,
Director of Mines,
Office of Directorate of Mines,
Heads of Department Building
Location - Unit - V,
Bhubaneswar, Odisha – 751001

1. In consideration of you, being the State Government of Odisha ("**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 July 31, 2019, the bid of [Name of the Bidder] (a company registered under the Companies Act, [1956/2013]) and having its registered office at [Address of the Bidder] OR [an individual/ sole proprietorship who is citizen of India, having income tax permanent account number [number], residing at [address]] OR [partnership firm/association of individuals], all of whom are Indian citizens and resident in India] ("**Bidder**"), for the e-auction pursuant to the Tender Document for the *Block* _____ ("**Mineral Block**") dated July 31, 2019 ("**Tender Document**"), we [Name of the Bank] having our registered office at [address of the registered office] and one of its branches located at Bhubaneswar, Odisha [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. [Insert 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 at Bhubaneswar, Odisha] 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 [insert date].
    c. This Guarantee shall be payable at [Bhubaneswar], [address of branch of the bank at Bhubaneswar, Odisha].

Signed and Delivered by ……. Bank

Annexure III: Format of Power of Attorney

[Adequate stamp duty to be paid by the Bidder with respect to this document.]

Power of Attorney for signing of Bid

Know all men by these presents, I/ 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 me/ us and holding the position of [designation], as my/ our true and lawful attorney ("**Attorney**") to do in my/ our name and on my/ 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 *Block* _____ ("**Mineral Block**") in response to the Tender Document, dated July 31, 2019 issued by State Government of Odisha ("**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 me/ 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 I/ 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 my/ 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 my/ our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by me/ us.

In witness whereof I/ we, [name of Bidder], the above named principal have executed this power of attorney on this [Date] day of [Month], 20[Year]
For……..

(Signature, name, designation and address)
[under the Common Seal (in case Bidder is a company)]

Witnesses:
1.
2.
[particulars of notarisation]

Accepted
[particulars of authorized person]

Annexure IV: Format of Affidavit

(To be duly executed and adequate stamp duty to be paid by the Bidder with respect to this document.)

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 authorised 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 *Block* _____.
2. [Insert separate paragraphs for each information/ document brought on record on the website of the e-auction platform or physically submitted with the State Government, in a chronological sequence].
3. [If applicable, also insert separate paragraphs for particulars of mineral concessions (including a reconnaissance permit, prospecting licence, prospecting licence-cum-mining lease, and/or mining lease) held by the Bidder or for which the Bidder would be participating in auction process being conducted simultaneously].
4. [In case of an individual, sole proprietorship, association of individuals, or a partnership firm, insert a separate paragraph to the effect that such individual/s or sole proprietor or each of the partners, as the case may be, is a citizen of India.]
5. [In case of an individual or a sole proprietorship, insert a separate paragraph to the effect that the immovable property included for calculation of net worth is un-encumbered and free from all charges (including, but not limited to, lien, mortgage, and pledge), and that the individual/ sole proprietorship is the owner of the said immovable property.]
6. 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 & Address

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 is 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].

[particulars of notarisation]

Deponent
(Signature)
Name, Designation & Address

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

The above data is to be provided in *.doc, .docx, .xls, .xlsx* format only.

Schedule III: Technical details regarding online electronic auction

1. Registration Methodology:

In order to submit online bids in the e-bidding process for Mining Lease, a bidder needs to register itself with the e-auction website of MSTC Limited, A Government of India Enterprise. For this the bidder should visit the website at https://www.mstcecommerce.com/auctionhome/mlcl/index.jsp and click on the button "Registration".Bidders already registered with the said website need not register again.

On the next page, there are two options – Register as Buyer and Register as Seller. The bidder shall have to click on the link "Register as Buyer" to proceed.

An online Registration Form will appear on screen and the bidder has to fill up the same with correct information. During this process, the bidder shall create his user id and password and keep note of the same. The bidder shall ensure that the secrecy of his user id and password is maintained at all time and he/she shall alone be responsible for any misuse of the user id and password.

After filling up the online form, the bidder should tick both the check boxes for accepting the General Terms 'n' Conditions of e-Auction and Buyer Specific Terms 'n' Conditions of e-Auction. The bidder may click on the respective links to read the General Terms 'n' Conditions of e-Auction and Buyer Specific Terms 'n' Conditions of e-Auction before submitting the form.

The bidder may check the details entered by it from the Preview page before final submission. On successful submission of the online registration Form, the bidder shall receive a confirmation mail in the registered email address advising the bidder to submit the following documents:

i. Self-attested Income Tax PAN Card. In case of a registered Company or Firm, the Firm's PAN card and in case of a proprietorship firm, proprietor's personal PAN card is required. In case of partnership firm, PAN of the firm and that of the authorized partner are to be submitted.
ii. Photocopy of Latest Income Tax Return.
iii. Photocopy of GST Registration Certificates
iv. Signature of the Authorized Signatory verified by Bank on Bank's Letter-head. If such verification is done on Bidder's Letter-head, then the full Address of the Branch of the Bank must be mentioned.
v. PAN Card of the Authorized Signatory.
vi. A letter addressed to MSTC stating the serial number of the DSC to be used by the bidder for login and bidding.
vii. Copy of the confirmation email Letter received from MSTC after successful completion of on-line registration and containing buyer registration details of the Bidder.
viii. A non refundable registration fee of INR 10,000/- plus applicable taxes (INR 11,800/- at present) to be paid online to the following bank account.

Beneficiary Name: MSTC Limited
Bank Details: Axis Bank, Shakespeare Sarani Branch, Kolkata
Account Details: Axis Bank A/c.No.005010200057840
IFSC Code No.: UTIB0000005.

Please provide details of payment made like UTR No, remitting bank name, date of payment and amount in the covering letter.

Note: In case the documents mentioned in above points ii and iii, are not applicable, the bidder may submit the declaration signed by the Authorized Signatory stating that document (s) is not applicable.

The bidder shall have to submit all the above documents to MSTC Limited for verification and activation of their login ids. The bidders may send scanned copies of the above documents to the designated email id only which is given below.

mlcl@mstcindia.co.in

The bidder should mention the DSC serial number in the body of the email while forwarding the above documents.

It may be noted that bidders need not visit any of the offices of MSTC Limited for submission of the documents. However, the bidders may contact any office of MSTC Limited for seeking assistance on the login process details of which are available on MSTC website www.mstcindia.co.in. or you may contact MSTC's help desk number "033-22901004" for assistance in any technical or system related issues.Once the complete set of documents and requisite registration fee are received from a bidder, MSTC shall activate the bidder's login after verification / scrutiny of the documents. MSTC Limited reserves the right to call for additional documents from the bidder if needed and the bidder shall be obliged to submit the same.

On completion of the above stated registration process, a bidder shall be able to login to MSTC's website.

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 MSTC, 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 [amount in figures] (Rupees [amount in words])per mineral block.

The Tender Document shall be sold in online mode only through website of MSTC.Bidders shall login with its user id and password. Bidder shall have the facility to make payment towards the cost of tender document through RTGS or net banking provided under the login of the Bidder. The Bidder after login shall click on the link for e-payment and then select the event number from the drop down menu for which it intends to make the payment. The bidder should enter the appropriate amount towards cost of the paid document and select eitherRTGS or net banking and click on submit. The bidder should fill an online RTGS application form and take a printout of the same before proceeding to transfer the fund to the beneficiary account. In case the Bidder has an online banking facility, it can make this payment online as well. After transferring the fund, the bidder shall be required to communicate the UTR No and other details to MSTC through email at the following email addresses.

S No	MSTC Office Name	MSTC Office Code	Email
1	Bhubaneswar	BBR	tsatyasai@mstcindia.co.in
2	Bhubaneswar	BBR	dkhalkho@mstcindia.co.in
3	Bhubaneswar	BBR	rmahesh@mstcindia.co.in

The bidder shall send the email regarding the payment details to the email address corresponding to the office of MSTC which is conducting the event.

Once MSTC receives the payment in the designated account and the required information from the bidder, it shall activate the link for downloading of the paid documents for the respective mineral Block(s).

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 MSTC.

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).

In this process, the Bidder, after logging in to the above stated website, will have to click on the link "click for Auction". In the next page, the Bidder shall have to go to the link "Stage 1 Technical cum IPO Submission". Thereafter, the bidder will have a bouquet under "My Menu" having 3 (three) sub-menus – "Bid Floor Manager", "Upload Documents" and "Attach Documents".

Bid Floor Manager

Once the Bidder clicks on this sub-menu and then clicks on the menu "Live Auctions" on the next page, it will display a list of mine(s) for which the bidder has paid the tender document fees. On clicking on any of these mine(s), the Bidder will be directed to a screen where it can fill up the technical bid template and save the data. The Bidder can edit such data as many times as it wishes.

After saving the Technical Bid, the link / button for Initial Price Offer shall get activated. The Bidder, on clicking this button, will be directed to a screen having a template where it can fill up its Initial Price Offer and click on the Final Submission button. The final submission shall be digitally signed by the Bidder using its registered digital signature. Any digital signature certificate other than the registered one shall not be acceptable for bid submission by the system.

The bidder may note that the "Initial Price Offer" button will be activated only after the Technical Bid has been saved.

Upload Documents

The Bidder shall also have to upload the supporting documents along with the Technical Bid, as required under the Tender Document. These supporting documents will need to be uploaded in pdf format only (the file size should be limited to 4 MB; in case of larger files, they may be split into multiple files with suitable nomenclature). Files in formats other than pdf shall not be accepted. For this, the bidder shall first click on the link "Upload documents" and upload the files in support of its Technical Bid.

Attach Documents

After uploading these documents, the bidder shall have to attach them with the specific tender for the concerned mine for which it is intending to submit the Technical Bid. It may be noted by the Bidder that in case it intends to use the same supporting document for more than one mine, it does not need to upload the same document every time. The supporting document, once uploaded, can be attached with Technical Bid for multiple mineral block(s), if desired.

The bidder should note that only a file which is "attached" with a specific mine(s)

shall be considered during evaluation of the Technical Bid. Files which are not attached to any mine(s) shall not be considered for evaluation.

The Bidder should also note that a Bid will be considered as submitted if and only if the Bidder has submitted the Initial Price Offer. Only such Bids will be opened for which Initial Price Offer has been submitted. It is further clarified that saving of Technical Bid without saving of the Initial Price Offer will be treated as non-submission of bid.

Upon successful submission of Initial Price Offer, 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 MSTC'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.

The Bidder has an option to edit Technical Bid and initial price offer as many times as it wishes till the final submission.

Modification / Withdrawal of Bid

If after submission of Initial Price Offer and before the scheduled closing time for Bid submission a Bidder wishes to make changes in its Bid, it can do so by clicking the "Delete Bid" option. By doing so, the entire Bid submitted by the Bidder will get deleted. A system generated email will be sent to the Bidder acknowledging the deletion. The Bidder will be able to save and submit its new Bid again. If a Bidder deletes its Bid and does not submit its new Bid in the same manner as stated above, its Bid will not come up for opening or further processing.

If after final submission of Bid and before the scheduled closing time for Bid submission a Bidder wishes to withdraw its bid, it can do so by clicking the "Withdraw Bid" option. By withdrawing a bid, a Bidder will lose the opportunity to re-submit its Bid against the same mine(s).

(ii) ***<u>Offline submission of certain original documents</u>***

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 Mineral Block* and shall indicate the name and address of the Bidder. In addition, the documents shall contain page numbers: *Page [●] of [●]*

(a) Bid Letter as provided in Annexure I of Schedule I

(b) Bid Security in substantially the same format as provided in Annexure II of Schedule I ;

(c) Power of Attorney in substantially the same format as provided in

Annexure III of Schedule I, 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

(d) Affidavit in substantially the same format as provided in Annexure IV of Schedule I.

The aforementioned documents shall be submitted at the following address:

Director of Mines,
Office of Directorate of Mines,
Heads of Department Building
Location - Unit - V,
Bhubaneswar, Odisha – 751001

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 time and date as per Bid Due Date specified in Clause 11. Bidders in their own interest are advised to complete the entire process well in advance to avoid any last minute hiccup / technical problems. No complaints shall be entertained in this regard at any stage.

(iii) Evaluation of Technical Bid

a. Evaluation of Technical Bid

Technical Bids shall be evaluated in the manner provided in the Tender Document. The e-auction platform provider will conduct mock-auctions/demo for all the Bidders on e-auction platform.

b. Opening of Initial Price Offer

Initial price offer shall be opened one day 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 02.01.20xx will be opened on 01.01.20xx. All Technically Qualified Bidders will be ranked in accordance with Clause 8.1A(e) The Qualified Bidders as per top 50% ranking principle (subject to minimum criteria as specified in the Tender Document) will be intimated by an email by the State Government from the designated email id of the State Government for the particular auction OR the State Government may advise the e-auction platform to intimate from the email id of MSTC for their qualification for the second round of electronic auction against specific mineral block(s) in the e-auction platform provider website within their secured login. The email will only state that the recipient of

the email has been qualified for the second round of auction and the Floor Price (highest Initial Price Offer) for the second round of auction.

b. <u>Stage 2: Electronic Auction – Final Price Offer</u>

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 offer received from the Technically Qualified Bidders.

It is expressly clarified that Bidders should not expect to receive the information on the second highest IPO received from the Technically Qualified Bidders as a matter of usual course.

It shall be the sole responsibility of the Bidder to regularly check the MSTC website and log in to see whether it has qualified for a certain mineral block or not. MSTC 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 MSTC / 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 *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 *8 (Eight)* minutes before the scheduled close time of electronic auction, the close time of electronic auction will be automatically extended by *8 (Eight)* 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 *8 (Eight)* 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 1:03 pm. Again if a Final Price Offer is received at 1:01 pm, the scheduled close time shall be revised to 1:09 pm and so on. In the event that no further Final Price Offer is received till 1:09 pm, the electronic auction will close at 1:09 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 authorised 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 may use 'Bidder's Guide' link available on login page for the detailed procedure.Bidders in their own interest are advised to get themselves acquainted with the electronic auction process of auction platform provider by getting their Authorised Representative trained beforehand through some demo electronic auctions as per Clause 11.

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 MSTC 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 bidder may note that only one user id will be mapped with a given DSC for the Authorized Signatory. 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.

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 Authorized Signatory to maintain the secrecy of the password for the Digital Signature Certificate. The Bidder and its Authorized Signatory shall be solely responsible for any misuse of the DSC and no complain / representation in this regard shall be entertained at any stage by MSTC/State Government.

The system requirements are as follows:

- Operating System- Windows XP Service Pack III and above
- Web Browser- Preferred IE 7 and above.
- Active-X Controls Should be enabled as follows:

Tools =>Internet Options =>Security =>Custom Level =>Enable all Active-X Controls

=>Disable "Use Pop-up Blocker"

- Java (JRE7 and above)

To disable "Protected Mode" for DSC to appear in the signer box following settings may be applied.

- Tools => Internet Options =>Security => Disable protected Mode If enabled- i.e,

Remove the tick from the tick box mentioning “Enable Protected Mode”.

- Other Settings:

  Tools => Internet Options => General => Click On Settings under “browsing history/ Delete Browsing History” => Temporary Internet Files => Activate “Every time I Visit the Webpage”.

Schedule IV: Format of MDPA

Mine Development and Production Agreement

Block _____

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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 Odisha**, acting through the **Director of Mines, Government of Odisha** (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]] **OR** [an individual / sole proprietorship [who/ whose sole proprietor] is citizen of India, having income tax permanent account number [number], residing at [address]] **OR** [persons listed in SCHEDULE A organised as a [partnership firm/ association of individuals], all of whom are Indian citizens and resident in India] (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 (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 which is *INR [amount in figures] (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 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 considered to be the Successful Bidder by an order of the State Government dated [date].

E. 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.

F. Accordingly, the State Government is now entering into this Agreement with the Successful Bidder with respect to matters pertaining to the Mining Lease over the Lease Area and other matters incidental thereto, and this Agreement shall be read together with 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. "**Applicable Law**" shall mean all applicable statutes, laws, by-laws, rules, regulations, orders, ordinances, protocols, codes, guidelines, , 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 at the relevant point in time.

1.1.4. "**Appropriation Event**" shall have the meaning given to such expression in Clause 4.2.1.

1.1.5. "**Auction Rules**" shall mean the Mineral (Auction) Rules, 2015 as amended by Mineral (Auction) Amendment Rules, 2017 and from time to time

1.1.6. "**Claim**" shall have the meaning given to such expression in Clause 12.3.

1.1.7. "**Commencement Report**" shall have the meaning given to such expression in Clause 5.1(b).

1.1.8. "**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 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.

1.1.9. "**Eligibility Conditions**" shall mean the eligibility conditions specified in the Act and the Auction Rules including all the eligibility conditions listed in Clause 5 of the Tender Document.

1.1.10. "**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.

1.1.11. "**Event of Force Majeure**" shall have the meaning given to such expression in Clause 17.1.

1.1.12. "**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 Mineral Block.

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.

1.1.13. "**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.

1.1.14. "**Governmental Approval**" means any authorization, approval, consent, licence or permit required from any Governmental Authority.

1.1.15. "**Governmental Authority**" means any 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.

1.1.16. "**Indemnified Party**" shall have the meaning given to such expression in Clause 12.1.

1.1.17. "**Lease Area**" shall mean the Lease Area as more particularly described in SCHEDULE C.

1.1.18. "**Mineral**" means Limestone.

1.1.19. "**Minimum Production Requirement**" shall have the meaning given to such expression in Clause 8.1.

1.1.20. "**Mining Lease**" shall have the meaning given to such expression in the Act and the rules made thereunder.

1.1.21. "**Mining Plan**" means a mining plan drawn in accordance with clause (b) of sub-section (2) of Section 5 of the Act.

1.1.22. "**Monthly Payment**" shall have the meaning given to such expression in Clause 7.1.1.

1.1.23. "**Notice**" shall have the meaning given to such expression in Clause 19.11.

1.1.24. "**Parties**" means and refers to the State Government and the Successful Bidder collectively and "**Party**" refers to any one of them.

1.1.25. "**Performance Security**" shall have the meaning given to such expression in Clause 4.1.

1.1.26. "**Pre-Commencement Report**" shall have the meaning given to such expression in Clause 5.1(a).

1.1.27. "**Term**" shall have the meaning given to such expression in Clause 18.2.

1.1.28. "**Third Party**" means any Person that is not a signatory to this Agreement.

1.1.29. "**Warranties**" shall have the meaning given to such expression in Clause 11.1 read with Schedule E.

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, permitted 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. 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 and, the Rules made thereunder, 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.

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] (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.

3.4. Notwithstanding anything contained in this Clause 3, no Mining Lease shall be executed on the expiry of the period of three years from the date of letter of intent and the letter of intent shall be invalidated leading to annulment of the entire auction process. The State Government may, however, allow a further period of two years for execution of the Mining Lease deed if the reasons for delay were beyond the control of the Successful Bidder.

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 Bhubaneswar/ security deposit] for an amount equal to INR [amount in figures] (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 Estimated Resources including the value of any newly discovered mineral that may be included in the mining lease deed on its discovery...

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 Estimated Resources including the value of any newly discovered mineral that may be included in the mining lease deed on its discovery 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 (fifteen) days expiry of the aforementioned period of [three] months. In case the Performance Security has been provided in the form of security deposit and the value of Performance Security reduces after reassessment, the State Government shall refund the excess value of security deposit.

4.1.5. The Performance Security should remain valid for an initial period of five years and thereafter, for subsequent periods of five years or remaining Lease term, whichever is lower.

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 in the following proportion by providing a written notice to the Successful Bidder:

Table 4.3.1

S.No.	Appropriation Event	Amount of the Performance Security to be appropriated
1.	Failure of the Successful Bidder to pay the third installment of the Upfront Payment within the time specified in Clause 3.1	An amount equal to the third installment of the Upfront Payment together with interest computed in accordance with rule 14 of the Auction Rules.
2.	Failure of the Successful Bidder to comply with the Minimum Production Requirement as required under Clause 8	Value of the Performance Security for each failure to comply with the Minimum Production Requirement as specified in SCHEDULE D.
3.	Any transfer of the mining lease which is not in conformity with the Act and rules made thereunder.	Entire Performance Security.
4.	Failure of the Successful Bidder to make the Monthly Payment and payments as per Clause 7.1.2	The amount of such Payment due and payable, along with interest computed in accordance with rule 14 the Auction Rules.
5.	In case of lapse of the mining lease, to carry out protective, reclamation and rehabilitation measures in the Lease Area	Such proportion as may be determined by the State Government as per sub rule (10) of Rule 20 of Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules, 2016.
6.	In case of surrender of the entire area of the mining lease by the lessee	Entire Performance Security as per sub rule (3) of Rule 21 of Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules, 2016.
7.	Any other breach or non-compliance with any of the provisions of this Agreement, including in case of the Warranties being untrue or misleading or incorrect in any manner whatsoever.	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) substitute the bank guarantee constituting the Performance Security OR deposit additional amount towards security deposit within fifteen 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 terminate the mining lease, without prejudice to any other proceeding to be taken against the mining lease holder.

It is clarified that for the purposes of this Clause the initial Performance Security provided under Clause 4.1.1 for INR [amount in figures] (Rupees [amount in words]) shall be reckoned, and not the reassessed Performance Security under Clause 4.1.2.

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 Minimum 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 3 (three) months 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 (i) above for commencement of the mining operations.

(b) Commencement Report

Within 7 (seven) 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 the 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: directormines1@orissaminerals.gov.in or at such other e-mail address as may be specified in writing by the State Government from time to time. 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 independent 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 Mining Lease shall be for all major mineral(s) found in the area subsequent to the auction. The percentage of value of mineral despatched as quoted by the successful bidder under sub-rule (3) of rule (8) of Auction Rules shall be applicable for the purpose of payment to the State Government in respect of each such mineral.

6.3. Where, subsequent to the grant of mining lease, presence of a minor mineral(s) is established or discovered, treatment of such minor mineral(s) shall be as per the provisions of the Odisha Minor Mineral Concession Rules, 2016 (as amended or replaced from time to time) prevailing at the time when the minor mineral is discovered in the concession area.

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.

7.1.2. In case the annual production is less than the Minimum Production Requirement specified in Clause 8, the Successful Bidder shall make payment on the basis of the Final Price Offer on the shortfall within 20 (twenty) days from the end of such year. For the purpose of compliance with the Minimum Production Requirement, the expression "year" shall mean the period of 12 months commencing from the effective date of Mining Lease, and each subsequent 12 month period thereafter. The Upfront Payment paid by the Successful Bidder shall be adjusted at the earliest in full against the amount payable in accordance with the per cent of Value of Mineral Despatched quoted as the Final Price Offer on 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 annual milestones listed in SCHEDULE D with respect to production (the "**Minimum Production Requirement**").

8.2. The Successful Bidder would provide periodic information to the State Government regarding compliance with the Minimum Production Requirement in the manner stipulated in Clause 5 (INFORMATION).

8.3. Any non-compliance with the Minimum Production Requirement would result in appropriation of the Performance Security in the manner stipulated in Clause 4 (PERFORMANCE SECURITY AND APPROPRIATION) and in case where non-compliance with the Minimum Production Requirement exceeds for more than five instances during the term of the lease or occurs consecutively for three years, such non-compliance shall give the State Government a right to terminate the mining lease without prejudice to any other proceedings 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.

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 the 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 E ("**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 waives all its 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.

13.1.2. In situations where the mining lease of the Successful Bidder has been transferred in accordance with the provisions of the Act and rules made thereunder, this Agreement shall be promptly assigned by the Successful Bidder to the transferee of such mining lease and the relevant assignee shall comply with the provisions of Clause 13.2.

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/ assignment agreement in such form as may be satisfactory to 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

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.

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 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 in case of a company or chartered accountant in case of a partnership firm, individual, association of individual or sole proprietorship.

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, 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 18.1and 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 this Agreement, 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 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 terminate this Agreement 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 F thereof 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 F 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 PERSONS

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 - MINIMUM PRODUCTION REQUIREMENT

The Successful Bidder shall meet the annual Minimum Production Requirement as stated in the table below:

Year (since commencement of mining lease)	**Minimum Production Requirement (% of yearly production as per approved Mining Plan)**	**Value of Performance Security to be appropriated**
Year 1	0%	24% of Average sale price of relevant mineral published by IBM as applicable during the year of shortfall (multiplied by) shortfall in production [minimum production requirement (minus) actual annual production]
Year 2	0%	
Year 3	40%	
Year 4	50%	
Year 5	55%	
Year 6 onwards	60%	

SCHEDULE E - 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/ partners/ members 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 Auction 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 F - 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 Bhubaneswar:

Signatories

Government of Odisha

[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*].

Schedule V: Format of Information Memorandum

[Attached separately to the Tender Document]

Schedule VI: Indicative Format of Letter of Intent

No.
Department of Steel & Mines,
Bhubaneswar, Odisha
Date:

To,
[Name of Preferred Bidder]
[Address of Preferred Bidder]

Sub: Letter of intent with reference to e-auction dated [Insert Date] for grant of a mining lease for [Name of Mineral Block] for [Name of the Mineral] in …… village, ……. Taluka, …… District on …… Hectare Area of Survey No. ……

1. **Background**:

1.1 The Directorate of Mines, Government of Odisha, pursuant to the Mines and Minerals (Development and Regulation) Act, 1957 (the "**Act**") and the Mineral (Auction) Rules, 2015 as amended from time to time (the "**Auction Rules**"), issued the notice inviting tender dated [Insert Date] to commence the auction process for grant of mining lease for [Name of Mineral Block] located in [Name of the District of Odisha]. The e-auction process was conducted in accordance with the tender document for the said mineral block and [Name of the Preferred Bidder] was declared as the 'Preferred Bidder' under Rule 9(9)(iii) of the Auction Rules, having quoted a Final Price Offer of [Insert Amount].

1.2 As required under Rule 10(1) of the Auction Rules and the tender document for the said mineral block, [Name of the Preferred Bidder] (a) made payment of the first instalment, being 10% (ten percent) of the upfront payment of Rs. [Insert Amount (both in number and words)] through [Mode of Payment] dated [date of making of payment], which was received on [Date of receipt of payment

2. Grant of Letter of Intent

2.1. Accordingly, pursuant to Rule 10(2) of the Auction Rules and the terms of the Tender Document, the Government of Odisha is issuing this letter of intent for grant of Mining Lease for [Name of Mineral Block] for [Name of the Mineral] in …… village, ……. Taluka, …… District on …… Hectare Area of Survey No. ……to [Name of Preferred Bidder] for a period of 50 years.

3. Conditions

3.1. This letter of intent and the subsequent grant of aforementioned mining lease shall be subject to the provisions of the Act and the rules made thereunder, as amended from time to time, and the [Name of the Preferred Bidder] shall be designated as the 'successful bidder' and subsequently granted the mining lease only upon satisfactory completion of all the requirements under the Act and the rules made thereunder.

3.2. This Letter of Intent shall be valid only if [Name of the Preferred Bidder] ensures that the Bid Security is valid until the Performance Security is furnished to the Government of Odisha, failing which this Letter of Intent shall become invalid from the date of expiry of the Bid Security.

3.2. For reference, the requirements under the Auction Rules for designation of [Name of the Preferred Bidder] as the 'successful bidder' and subsequent grant of the mining lease are reiterated below. It is clarified that the requirements mentioned below are only for reference and in the event of any change in the Act or the rules made thereunder, the requirements under the modified Act or the rules made thereunder, as the case may be, shall be applicable.

(a) Designation as the "Successful Bidder":

[Name of the Preferred Bidder] shall be considered to be the 'successful bidder' upon:

(i) continuing to be in compliance with all the terms and conditions of eligibility;
(ii) payment of the second instalment being 10% (ten per cent.) of the upfront payment;
(iii) furnishing performance security;
(iv) satisfying the conditions specified in clause (b) of sub-section (2) of section 5 of the Act with respect to a mining plan; and
(v) [Additional condition, if any, to be mentioned – prior approval of the Central Government must have been obtained with respect to such additional condition – as required under Rule 10(3)(e) of the Auction Rules.].

(b) Signing of the Mine Development and Production Agreement

[Name of the Successful Bidder] shall sign the Mine Development and Production Agreement with the Government of Odisha upon obtaining all consents, approvals, permits, no-objections and the like as may be required under applicable laws for commencement of mining operations.

(c) Grant of mining lease

Subsequent to signing of the Mine Development and Production Agreement, [Name of the Preferred Bidder/ Successful Bidder] shall make payment of the third instalment being 80% (eighty per cent) of the upfront payment and thereafter the Government of Odisha shall grant the aforementioned mining lease.

4. Validity

4.1. This letter of intent is valid for a period of [3 (three)] years from the date of its issuance, within which time all the above conditions must be fulfilled and the Mining Lease deed must be executed between the [Name of the Preferred Bidder] and the Government of Odisha. In case there is a delay in execution of Mining Lease Deed due to reasons beyond the control of the Preferred Bidder, then it may submit an application to Government of Odisha, requesting for further extension.

4.2. If the Government of Odisha is satisfied that there is a delay in execution of Mining Lease Deed due to reasons beyond the control of the Preferred Bidder and a longer period is required to enable the Preferred Bidder to satisfy all or any of the above conditions, it may extend the validity of this letter of intent for such period or periods as the Government of Odisha may specify. Provided that: (a) this letter of intent shall be extended for a maximum period of [2 years]; and (b) the total period for which this letter of intent would remain valid must not exceed [5 (five)] years from the date of issuance.

Kindly return the duplicate copy of this Letter of Intent duly signed by authorized signatory in token of having accepted the above terms and conditions. The accepted copy of Letter of Intent along with Board resolution should be submitted latest by [Insert Date].

[Designation]

Department of Steel & Mines

Copy to:

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