

NLC INDIA LIMITED

E-AUCTION NOTICE FOR
MID-TERM COAL SUPPLY ARRANGEMENT FOR SALE OF 2 MILLION TONS COAL
PER ANNUM FOR TWO YEARS (TOTAL 4 MILLION TONS)

2024

INSTRUCTIONS TO BIDDERS

DISCLAIMER

The information contained in this NOTICE or provided subsequently to the Bidder(s), whether verbally or in documentary or any other form, by or on behalf of the NLCIL or any of its employees or advisors, is provided to Bidder(s) on the terms and conditions set out in this NOTICE and such other terms and conditions subject to which such information is provided.

This NOTICE is not an agreement and is neither an offer nor invitation by the NLCIL to the prospective Bidders or any other person. The purpose of this NOTICE is to provide interested parties with information that may be useful to them in the formulation of their Bid pursuant to this NOTICE. This NOTICE includes statements, which reflect various assumptions and assessments arrived at by the NLCIL. Such assumptions, assessments, statements and information contained in this NOTICE 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 NOTICE and obtain independent advice from appropriate sources.

Information provided in this NOTICE to the Bidder(s) is on a wide range of matters, some of which may depend upon interpretation of law. The information given is not intended to be an exhaustive account of satisfactory requirements and should not be regarded as a complete or authoritative statement of law. The NLCIL accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.

The NLCIL, its employees and advisors make no representations 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 NOTICE or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the NOTICE and any assessment, assumption, statement or information contained therein or deemed to form part of this NOTICE.

The NLCIL also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Bidder upon the statements contained in this NOTICE.

The NLCIL may, in its absolute discretion but without being under an obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this NOTICE.

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BACKGROUND

NLC India Limited (NLCIL), a premier “NAVRATNA” Public Sector Enterprise with an Annual Turnover of INR. 12,999.03 Crores (FY 2023-24) is spreading its wings in the frontiers of Mining (Lignite & Coal), Thermal Power generation and Renewable energy.

Talabira II & III OCP Coal Block (20 MTPA) situated in Sambalpur & Jharsuguda districts of Odisha has been allocated to NLCIL for its proposed pit head power plant NTTTP (4 x 800 MW /5 x 800 MW) at Talabira and end user power plant at NTPL (2 x 500 MW) at Tuticorin, Tamil Nadu. Coal production commenced from April 2020 onwards.

E-AUCTION NOTICE

In FY 2023-24 Talabira II & III OCP has produced 12.64 MT of G-14 grade coal. Talabira II & III OCP is committed to augment the coal production for meeting the nation's coal demand and in larger interest of the nation. In the near future, Talabira II & III OCP is expected to achieve its production capacity of 20 MTPA.

Talabira II & III OCP is supplying coal to NTPL (End Use Plant) and NTPC on MoU basis. Construction of NTTTP (end use power plant) at Talabira is under progress. After meeting the annual Coal requirement of end use plants, the surplus Coal is being auctioned.

Through this NOTICE, NLCIL intends to sale Coal to Power sector and Non-Regulated Sector (NRS) including Traders on mid-term basis for a period of two years. To participate in the tender, the bidder/bidders are required to participate in the e-auction process to be conducted on website of mjunction viz. www.coaljunction.in.

MINE DESCRIPTION

The information in this section is provided for the general guidance of the Bidders.

Registered office	NLC India Limited, No-135, EVR Periyar High Road, Kilpauk, Chennai-600 010, Tamil Nadu, India.
Address of the Mine	Talabira II & III OCP Tehsil - Khinda Dist- Jharsuguda/Sambalpur Odisha.
Location of the Mine	Talabira II & III OCP, Khinda, Sambalpur
How to reach	Twenty Four Kilometers from Jharsuguda Railway Station.

A INSTRUCTION TO BIDDER

1. OBJECTIVE:

NLC India Limited (NLCIL), a premier “NAVRATNA” Public Sector Enterprise under the Ministry of Coal operating Talabira II & III OCP in Jharsuguda and Sambalpur districts of Odisha. NLCIL intends to sell its surplus **G-14 grade** of coal of **2 million Tons per annum (Total 4 Million Tons for two years)** in the open market through e-Auction mode commensurate with applicable guidelines of Govt. of India for captive coal blocks. With this tender, NLCIL aims to sell coal to both the power sector and the Non-Regulated Sector (NRS), including Traders, through Mid-Term coal supply arrangement under an agreement. The declared grade of coal for Talabira II & III OCP for FY 2024-25 is **G-14**. The grade for FY 2025-26 and FY 2026-27 shall be as per the declaration by Coal Controller Organization.

2. ELIGIBILITY REQUIREMENT:

- (a) All sectors namely Power sector and Non-Regulated Sector (NRS) including Traders are eligible to participate in the e-auction for procurement of coal on **as is where is and no complaint basis**.
- (b) The minimum quantity for bidding would be **0.025 million Tons per annum (0.05 million Tons for two years)** and for dispatches by road only.
- (c) NLC India Limited (NLCIL), the Owner/Seller, will be hereinafter referred to as NLCIL and M/s. m-junction services limited, the Selling Agent of the NLCIL, will be hereinafter referred to as mjunction. Unless a contrary intention appears from the context, wherever the word, buyer, purchaser, successful bidders are used, it will be construed as successful bidder. The Special Terms & Conditions (STC) and General Terms and Conditions (GTC) displayed on the e-Auction Website of M/s mjunction services limited shall be construed to be an integral part of the offer and the Bidder may like to download the same for their record. However, in case of any conflict between the STC and GTC, the STC shall prevail.

3. AUCTION SCHEDULE

Issue of NOTICE	20.07.2024
Pre-bid meeting	24.07.2024
Date of E-Auction	27.07.2024
Signing of Agreement	dd/mm/yyyy

4. REGISTRATION OF BIDDER FOR E-AUCTION:

- (a) Before participation in the e-Auction, a prospective Buyer shall be required to get itself/himself registered with mjunction Limited appointed by NLCIL for conducting e-Auctions. Registration is to be done online by visiting the Website of mjunction viz. www.coaljunction.in or at any of the front offices of mjunction services limited. Thereafter, bidders will be required to submit documents such as copy of Income Tax return (latest), PAN Number, GST Registration Certificate, SSI Registration, if applicable, Passport size photograph, registration fees etc.
- (b) During registration, all-prospective Buyers will generate their own Unique User ID and a password with which they can login.
- (c) mjunction shall issue Photo Identity Card to their registered bidders duly authenticating the identity signature, indicating a Unique Registration Number allotted to them.
- (d) Only one registration will be done against one PAN. However, based on more than one independent valid GST registration, more than one registration against a PAN can be considered. In such cases, the details of valid GST Registration will be indicated in each Photo Identity Card.

5. PRE BID EARNEST MONEY DEPOSIT (EMD):

- (a) **EMD PAYMENT:** All Buyers having been registered with mjunction shall have to submit non-interest bearing Earnest Money Deposit (EMD), at the rate of Rs. 150/- per ton, for their total

required quantity for one year (**Minimum 0.025 million Tons for one year**) before the e- Auction. The EMD submitted to mjunction shall be considered as a Global EMD, and it will not be specific for any particular source i.e., Talabira II & III OCP of NLC India Limited.

- (b) The EMD submitted to mjunction will be available for participation in all events conducted on mjunction e-Auction portal.
- (c) Prospective Bidders are entitled to Bid for the quantity to the extent of which EMD is available with the service provider in the bidder's account at the time of bidding.
- (d) Process for EMD submission: EMD can be submitted by bidders through RTGS, NEFT or Net banking mode only. EMD submitted through any other mode will not be considered.
- (e) RTGS/NEFT: For making EMD payment through RTGS/NEFT Mode the bidder has to login to mjunction portal and has to generate EMD Pay-In slip. The Pay- In slip will have the required details for remitting the EMD through RTGS/NEFT which will be submitted by the bidder to their banker. The EMD "Pay-In slip" can be generated through the following process.
Login to www.coaljunction.in > Click on EMD Management > Select "CMS / RTGS > Click on "Submit" after reading all Terms & Conditions > Fill in desired EMD amount & click on "Submit"> Print the Pay-in Slip.
- (f) Important Note for RTGS/NEFT transaction:
 - i. Bidders need to select IDBI/ INDUSIND RTGS mode only.
 - ii. EMD should be submitted at least 24 hours before the start of the e-auction.
- (g) NET BANKING (Online Mode): The bidders will also be able to submit their EMD to mjunction through Net-banking and the following process has to be followed:– Login to www.coaljunction.in > Click on EMD Management > Select "Online" > Fill in desired EMD amount > Select the preferred bank from the list > and click on "Submit" after reading all the guidelines > The page will be redirected to the Net Banking portal where bidder has to enter their User ID and Password to log in and there after complete the transaction. On successful transfer a Transaction ID is generated which has to be noted by bidder for future any reference.
- (h) After the transaction bidders can log into mjunction portal and can check the e-ledger balance. If the transaction is complete then the transferred amount would be reflected in the e- ledger.
- (i) Important Note for Net-banking transaction:
 - i. Any banking charges as applicable for the transaction shall be payable by the bidder for using this facility, and this would be directly deducted by the bank directly from bidder's bank account.
 - ii. Mjunction Services Limited shall not be held liable/responsible for any wrong transfer of funds, misuse of user id or password, any link failure / fault at the end or part of SBI/Indus Ind Aggregator.

6. BIDDING PROCESS:

- (a) The registered Bidders shall, after login and before participation in the actual bidding process, record their acceptance of the Terms and Conditions of the e-Auction.
- (b) Before participating in e-Auction, bidders are to satisfy themselves with the quality of coal being offered for sale. The specification of the coal offered for sale is as follows:

Sl. No.	Colliery/Source	Size	GCV
1	Talabira II & III OCP	-100mm	G-14(3101-3400)

- (c) The purchaser/bidder/buyer shall have to satisfy themselves on inspection of the materials to what they contain and make his/her offer accordingly. The principle of "Caveat Emptor" will apply.
- (d) Prospective Bidders are entitled to Bid for the quantity to the extent of EMD amount available with M/s. mjunction Services Limited in the bidder's account at the time of bidding.
- (e) The bidders while bidding shall quote their Bid Price per Ton in Indian Rupee as base coal price for

NLCIL Talabira II & III OCP, exclusive of other charges such as Royalty, Additional amount equivalent as per the MMDR ACT 1957/MCR 1960 Amendment, DMF, NMET, GST, GST Compensation Cess, IT and/ or any other charges, surface transportation charges, Evacuation Facility Charges, Sizing Charges, user fees as per CIL Notifications will be applicable at the time of delivery. At the time of lifting/delivery of the material, if there is any change in regard to Royalty, DMF, NMET, GST, GST Compensation Cess, Additional amount, IT and/ or any other charges GST, GST Compensation Cess, IT and/ or any other charges, Surface Transportation Charges, Evacuation Facility Charges, Sizing Charges, user fees the same will be charged extra to the buyers/bidders/purchaser's account. For Inter-State sale, GST as applicable from time to time shall be applicable.

- (f) The bidder has to bid for a price equal to or above the floor price to secure consideration in the concerned e-Auction. Floor price shall be at 25% discount over the latest available Representative Price (notified by MoC) as available at the time of notification of e-auction. The floor price shall be rounded up to the nearest integer.
- (g) Auction shall be conducted on the floor price.
- (h) The bidder shall offer their Bid Price (Per Ton) in the increment of Rs. 3/- (Rupees Three) or multiple thereof during the e-Auction. The minimum quantity of increment should be 0.01 Million Tons or multiples of 0.01 Million Tons.

For example, if the National Coal Index price available at the time of notification of e- auction is Rs. 1352 and the bidder has quoted Rs. 42 as incremental price, then the price per ton of coal will be Rs. 1056 (1014(75% of RP) + 42) per ton of coal. Taxes and other charges as per RFP shall be extra. Winning premium percentage will be $((1056-1014)/1014) \times 100 = 4.14 \%$.

- (i) The date, time and period of e-Auction as notified in advance including closing time on portal of M/s. mjunction shall be adhered to but for the event of force majeure. However, the closing time of e-Auction will be automatically extended up to last Bid time, plus 5 minutes, so that opportunity is given to other Bidders for making an improved Bid.
- (j) Final Bid price shall be expressed in terms of percentage premium over floor price. Winning premium percentage shall remain constant for the agreement period as mentioned in the terms of the Agreement. Winning percentage will be rounded up to two decimals.
- (k) While maintaining the secrecy of Bidder's identity, the website shall register and display on screen the highest successful Bid price at that point of time. The system will not allow a Bidder to Bid in excess of his entitled quantity as per his EMD. However, once a Bidder is out-bid by another (in part or full) the particular Bidder shall become eligible for making an improved Bid.
- (l) Following criteria would be adopted in deciding the successful bidders:
 - (i) Precedence will be accorded to the highest bid price in the descending order (H1, H2, H3 and so on) as long as the offered quantity is available for allocation.
 - (ii) If two or more buyers bid the same highest price, precedence for allotment will be accorded to the buyer who has placed the bid for the higher quantity.
 - (iii) In case, two or more buyers bid the same price and the same quantity, precedence will be given to the buyer who has accorded his bid first with reference to time.
- (m) NLCIL shall not be liable for any interruption or delay in accessing the mjunction portal irrespective of any cause. In such cases, decision of NLCIL shall be binding on the Bidders.
- (n) If the Bidder or any of its representatives are found to be involved in price manipulation/ cartel formation of any kind, directly or indirectly by communicating with other Bidders, NLCIL, at its sole discretion, shall debar the Bidder from the e-auction participation also.
- (o) The Bidders shall quote from their own offices/ place of their choice. Internet connectivity shall have

to be ensured by Bidders themselves.

- (p) NLCIL shall not be responsible for any direct / indirect / consequential losses / damages, on account of computer problems, inability to use the computer, loss of electronic information etc.
- (q) Apart from the participating Bidders, the e-auction shall be visible, while in progress, to authorized officials of NLCIL, who will be monitoring the process.
- (r) NLCIL reserves the rights to extend or reschedule or cancel or re-conduct the e- auction. No Bidder can claim any kind of compensation on account of the same.
- (s) NLCIL may, in its sole discretion, amend the terms and conditions of the bidding process at any stage of the process.
- (t) Same and except as provided in the NOTICE, the NLCIL will not entertain any correspondence with the Bidders with respect to annulment of the bidding process or amendment of the terms and conditions of the bidding process.

7. POST E-AUCTION PROCESS:

- (a) Each successful bidder will be intimated through e-mail by mjunction Limited on the same date after the closure of e-Auction. However, it will be the responsibility of the bidder to personally see and download the result displayed on website, on the same date after close of e-Auction.
- (b) The successful bidders after the e-Auction, will be required to sign an Agreement with NLCIL within a period of Fifteen (15) calendar days (Excluding the date of closing of e-auction) including holidays.
- (c) Equivalent amount of EMD of successful bidder corresponding to successful bid quantity for one year, shall be blocked and will be transferred to NLCIL by mjunction Limited.
- (d) **Refund of EMD for Unsuccessful bidders:** In case of unsuccessful bidders, EMD shall be refunded without interest by mjunction Limited after the auction is over, on the bidder's request.
- (e) The EMD transferred to NLCIL shall be converted to security deposit as mentioned in the clause B9.

8. FORFEITURE OF SECURITY DEPOSIT:

The Security Deposit of the successful Bidders will be liable for forfeiture in the following cases:

- (a) If after completion of e-Auction, a successful bidder fails to execute agreement with NLCIL within the stipulated time as per clause no. B, the Security Deposit shall be forfeited and/or
- (b) If the successful bidder fails to comply with any of the provisions of the terms and condition of Agreement at any stage, the Security Deposit shall be forfeited.

9. BLACKLISTING

- (a) If it is found that the bidder/buyer/purchaser is not following the terms and conditions of payment/delivery or other conditions of the auction and also indulging in any malpractices either himself or by his agents, deputies or observer, such Bidder/Buyer/Purchaser are liable to be blacklisted and appropriate action will be taken as deem fit by NLCIL/mjunction.

B TERMS AND CONDITION OF THE AGREEMENT

Authorized Representative of the successful bidder shall sign an agreement with NLCIL (after e-auction) and both parties shall comply with the terms and condition mentioned underneath. The agreement shall be signed within Fifteen (15) calendar days (Excluding the date of closing of e-auction) including holidays. Failure to sign the agreement within the specified timeline shall amount to forfeiture of entire security deposit and the entire quantity booked by the buyer shall be treated as lapsed.

All the points mentioned in the instruction to the bidders (A) shall be an integral part of this agreement.

1. PERIOD OF AGREEMENT:

(a) The agreement signed with the successful bidder shall, unless terminated in accordance with the terms hereof shall remain in full force from the date of signing of the agreement till all the reconciliation formalities for the booked quantity and refund of security deposit, if any is completed in all respect.

2. PERIOD OF COAL SUPPLY:

(a) The period of coal supply shall be for a period of two years from the date of issue of first Delivery Order plus the extended period of the last Delivery Order, if any.

(b) The successful bidder shall commence the lifting of coal immediately after the issuance of the Delivery Order and ensure the lifting of entire Quarterly Quantity (QQ).

3. QUANTITY:

(a) 2 (Two) Million Tons /Part of Two million Ton of coal shall be supplied each year. Year shall mean a period of twelve months commencing from the date of issue of first Delivery Order and ending on the previous date of the month in the subsequent year.

(b) The above quantity shall be divided into Quarterly Scheduled Quantity (QSQ). Schedule of QSQ as below:-

Quarter	% of Yearly Quantity
Quarter 1 (April to June)	25.00
Quarter 2 (July to September)	22.00
Quarter 3 (October to December)	25.00
Quarter 4 (January to March)	28.00

The quarterly quantity shall be on pro-rata basis. However, the above percentages are provisional and is subject to vary based on the requirements of the NLCIL. The decision of NLCIL in this regard shall be final and binding. The buyer shall specify the monthly scheduled quantity (MSQ) to NLCIL and shall process the advance payment as per clause B (10).

- (c) Seller shall issue delivery order of MSQ after receipt of payment of coal value for the month as per clause no. B 7.
- (d) Buyer is bound to lift the Quarterly Quantity (QQ) as per clause no. B 13 to avoid forfeiture of EMD submitted as per clause B 9.
- (e) Loading of coal in the buyer's trucks will be done by Talabira II & III OCP. Picking the coal at random is not allowed.
- (f) It is the responsibility of the Buyer to take delivery of the coal from the mine, strictly adhering to the safety pre-cautions and the provisions of Environment Protection Act. The transportation of coal from Talabira II

& III OCP to the Buyer premises shall be the responsibility of the Buyer only and they shall not give any room for complaint of pollution, whatsoever.

- (g) The buyer shall arrange their own logistics (Only i3MS registered and tagged trucks) for transportation of coal from the coal stockyard of Talabira II & III OCP (delivery point) adhering the conditions stipulated by MoEFCC in connection with transportation of coal.

4. TRANSFER OF TITLE OF COAL:

- (a) Once the Coal is loaded at the Delivery Point (Mine end) by the Seller, the title and risk of loss of Coal shall stand transferred to the Buyer. Thereafter, the Seller shall in no way be responsible or liable for the security or safeguard of the Coal so transferred. The Seller shall have no liability beyond the Delivery Point, including towards any freight or transportation costs, quantity or GCV losses and any diversion Trucks/road transport en-route, for whatever causes, by road transporter or any other agency.

5. END USE OF COAL:

- (a) The total quantity of Coal supplied is strictly meant for use within the country and not for export.

6. QUALITY OF COAL:

- (a) The quality of the Coal to be supplied from the Coal Mine of the Seller shall be as per grade declared by the Coal controller Organization (for FY 2024-25 the declared Grade is G-14). For FY 2025-26 and FY 2026-27 the grade of coal shall be as declared by Coal Controller Organization.
- (b) Seller shall endeavor to maintain the quality of Coal as declared by the Coal Controller Organization on equilibrated basis.

7. TERMS OF PAYMENT:

- (a) The successful bidder shall deposit advance payment of coal value against Monthly Scheduled Quantity (MSQ), as per the payment schedule mentioned in clause B(10). The monthly advance payment made by the Buyer shall be non-interest bearing.
- (b) The payment schedule pursuant to the above clause shall be within 10 Calendar (including holidays) days after agreement date for the first month. For the remaining months the payment shall be made before 7th day of the current month (including holidays).
- (c) All the payments for the monthly scheduled quantity i.e. coal value + applicable taxes and other charges shall be made in advance by the successful bidder to NLCIL in monthly intervals in the specified period of the prior month as mentioned in clause B (10). After receipt of payment for the monthly scheduled quantity as specified in clause B (10), NLCIL shall issue a Delivery Order for the MSQ. The Delivery Order shall be issued on the first working day after the completion of the payment timeline as specified in clause B (10). The validity period of the Delivery Order shall be till the end of the respective quarter plus 7 days or till the end of the agreement period whichever is earlier.
- (d) The seller at its sole discretion may revise the payment schedule.
- (e) All the payments to the Seller shall be made within Payment Due Date, through demand draft /electronic fund transfer payable to NLCIL at Chennai, Tamilnadu in the bank account as specified in clause B (8). Only after receipt of payment the seller shall issue Delivery Order (DO). In the event of non-payment of monthly advance amount as prescribed in this Agreement, the seller shall not issue DO and money will be forfeited from the Security Deposit as per clause no. B 9.
- (f) Reconciliation/Adjustments:**

(i) All payments made against Monthly Bills and other bills (credit/debit Note) shall be subject to quarterly reconciliation to take into account Coal supplied to Buyer, payment made to seller, or any other adjustment as provided under NOTICE/subsequent Agreement; and

(ii) Upon all data in respect of a quarter being finally verified and adjusted, Seller and Buyer shall agree and confirm through e-mail to such reconciliation statement. In this regard the decision of the seller shall be final.

(iii) Credit note/debit note shall be raised by seller as the case may be from time to time. The buyer shall ensure the payment within 10 calendar days (including holidays) from the date of intimation, failing which the same shall be recovered from the security deposit/bankguarantee/coal value. The credit notes shall be adjusted first with pending debit notes, if any, and thereafter with the coal value advance for the upcoming month.

8. BANK ACCOUNT AND EMAIL ID:

The Bank details of Talabira Project:

State Bank of India,
A/c Number : 33264880239
Branch : CAG, CHENNAI IFSC
: SBIN0009999

E-mail- ph.talabira@nclindia.in

9. SECURITY DEPOSIT/EMD:

(a) Earnest Money Deposit (EMD) deposited by the Buyer in e-auction shall be converted into non-interest bearing Security Deposit. The Buyer shall maintain this Security Deposit as below:-

(i) The EMD of the successful bidders transferred to NLCIL by mjunction Limited shall be treated as Security Deposit.

(ii) However, the successful bidders will have the option to choose any one of the following for maintaining the security deposit: -

Option 1

Either convert the entire EMD as a security deposit in cash.

OR

Option 2

Convert the entire EMD as a security deposit as below:-

- Rs. 15/- per Ton for the Annual Contracted Quantity (ACQ) in cash. The security deposit in cash shall not bear any interest.
- For the remaining Rs. 135/- per Ton for the ACQ, the successful bidder has to submit an irrevocable and unconditional bank guarantee.
- The bank guarantee shall be confirmed only after the receipt of Structured Financial Messaging System (SFMS) confirmation of the bank guarantee and NLCIL's acceptance.
- The validity period of the bank guarantee shall be from the date of issue of the first delivery order/ from the date of return of cash (Rs. 135/- per Ton for ACQ) to the customer.
- The bank guarantee shall be valid till the period of coal supply as specified in clause B(2). The bank guarantee shall also have a claim period of an additional six months.
- After confirmation of the bank guarantee as mentioned above, the balance cash of Rs. 135/- per Ton (for the ACQ) shall be refunded to the successful bidder.
- Bank Guarantee (BG) shall be encashable at Sambalpur.
- The guarantee should be furnished by a Scheduled Commercial Bank, authorised by Reserve Bank of India (RBI) in the format as given below.
- The bank guarantee should be furnished on stamp paper of value not less than Rs. 1000/-.

- The stamp paper should have been purchased in the name of the bank executing the Guarantee/Name of the bidder.
- Bank guarantee furnished in physical form shall be verifiable by SFMS mode. Any Bank Guarantee submitted in physical form which cannot be verifiable through SFMS will be rejected summarily.
- The bank guarantee may also be furnished by a foreign bank authorized by RBI.
- Bank Guarantee (BG) charges if any shall be borne by the successful bidders.

(b) The EMD deposited by the successful bidder will be liable for forfeiture in the following cases:

(i) If the Buyer makes advance payment for the coal value in a particular quarter of less than 80% of QQ (Quarterly Quantity) including all other charges within the stipulated time in accordance with the provision of this NOTICE/ subsequent agreement, amount of Rs.150/- per Ton for the failed quantity i.e. less than 80% of QQ shall be forfeited from the Security Deposit/adjusted from the coal value.

(ii) and/or if the Buyer lift the quantity less than 80% of QQ during a quarter, an amount of Rs.150/- per Ton for the failed quantity i.e. less than 80% of QQ would be forfeited from the Security Deposit/adjusted from the coal value.

Example: Case 1: For Lifting below 80% of QQ

Quarterly Quantity	: 100.00 Tons
Minimum Quantity to be lifted in a quarter to avoid forfeiture	: 80.00 Tons
Quantity for which Payment Received	: 85.00 Tons
Quantity Lifted	: 75.00 Tons
EMD Forfeiture Quantity	: (80.00-75.00) = 5 Tons

Example: Case 2: For Payment below 80% of QQ

Quarterly Quantity	: 100.00 Tons
Minimum Quantity to be lifted to avoid forfeiture	: 80.00 Tons
Quantity for which Payment Received	: 75.00 Tons
Quantity Lifted	: 75.00 Tons
EMD Forfeiture Quantity	: (80.00-75.00) = 5 Tons

(iii) Such forfeiture, however, would not take place if NLCIL, due to factor like actual production of coal, requirement of captive power plant, loading, strike by workers working in Talabira II & III OCP etc. could not offer full or part of the QQ.

(iv) The buyer shall not be allowed to carry forward the quarterly quantity for which the buyer was unable to make the payment/was unable to lift within the stipulated time.

(c) NLCIL shall from time to time raise debit/credit notes for any amount payable/recoverable by the buyer. The buyer shall pay the amount for debit notes within 10 calendar days (including holidays) from the date of intimation by NLCIL. In the event, the bidder fails to deposit the cash within the stipulated period, the same shall be recovered from the security deposit/bank guarantee/coal value of the buyer. The credit notes shall be adjusted first with pending debit notes, if any, and thereafter with the coal value advance for the upcoming month.

(d) The reconciliation shall be done quarterly after the provisional Representative Price of all the months of the respective quarter is made available by MoC. The reconciliation statement shall be sent to the buyer in its email. The reconciliation done based on the provisional Representative Price shall be final and binding to buyer.

(e) Upon intimation by NLCIL, the bidder shall clear all the dues for the respective quarter within

Ten (10) calendar days (including holidays) from the date of intimation by NLCIL. Failure to deposit the dues within the timeline, shall lead to recovery of the same from the security deposit/coal value.

- (f) On quarterly reconciliations, the forfeiture for any default on account of the failed quantity in pursuant to this agreement during reconciliation period shall be at the rate of Rs. 150/- per Ton.
- (g) NLCIL shall also deduct for any liabilities/loss caused to NLCIL during the lifting period. Decision of NLCIL in this regard shall be final and binding.
- (h) The bank guarantee of the successful bidders shall be returned to the bidders after the completion of all the commercial formalities pertaining to the Mid-Term e-auction.

10. PRICE OF COAL:

- (a) The price of coal per Tons to be paid by the Buyer with respect to the Coal to be supplied shall be computed on the basis of the following formula:

For the first month: As Delivered Price of Coal = [25 % discount over the National Coal Index price of the declared grade as available on the date of signing of Agreement x (1 + Winning Premium percentage/100)] + Other charges+ applicable taxes, statutory payments and levies.

For the Subsequent months: As Delivered Price of Coal = [25 % discount over the National Coal Index price of the declared grade as available on 20th day of the preceding month x (1 + Winning Premium percentage/100)] + Other charges+ applicable taxes, statutory payments and levies.

The payment schedule pursuant to the above clause shall be within 10 Calendar (including holidays) days after agreement date for the first month. For the remaining months, payments shall be made on or before 7th day of the current month (including holidays).

- (b) The Winning Premium shall remain constant during the tenure of the agreement. In case of revision of National Coal Index price by Ministry of Coal (Govt. of India), the Buyer shall be liable to pay the Winning Premium as per the revised National Coal Index Price. Buyer shall pay the "As Delivered Price" of Coal to the Seller in INR per Tons for the Coal delivered pursuant to the Agreement.

For example, if Winning Premium Percentage is 4.29% and recent available National Coal Index price of the grade at the time of payment is Rs. 1352, Delivered Price of Coal = [1014 x (1 + 4.29 /100)] + Other charges+ applicable taxes, statutory payments and levies = Rs. 1058.00 + Other charges+ applicable taxes, statutory payments and levies. If Winning Premium Percentage is 4.29% and recent available National Coal Index price of the grade at the time of payment is Rs. 1300, Delivered Price of Coal = [975 x (1 + 4.29 /100)] + Other charges+ applicable taxes, statutory payments and levies = Rs. 1017.00 + Other charges+ applicable taxes, statutory payments and levies.

- (c) Royalty, additional amount as per the MMDR ACT 1957/MCR 1960 Act Amendment, DMF, NMET, GST, GST Compensation Cess, User Fees, IT and/or any other charges/levies/taxes/cess/duties, surface transportation charges, Evacuation Facility Charges, sizing charges, user fees as per CIL Notification will be applicable at the time of delivery on the sale of materials covered under this e-Auction shall be borne by the successful bidders/purchaser/buyer. Present Royalty is 14% of the basic price, DMF @ 30 % on Royalty, NMET @ 2% on Royalty, CGST @2.5 % & SGST @2.5 % (on basic price, Royalty, DMF &NMET), and GST Compensation Cess @ Rs. 400/- Per Tons. Tax Collected at Source (TCS) : 1% on total Sale Value without Form 27- C and with Form 27-C is Nil.
- (d) At the time of lifting/delivery of the material, if there is any change in regard to Royalty, additional amount equivalent to royalty as per the MMDR ACT 1957/MCR 1960 Act Amendment, DMF, NMET, IGST, CGST and SGST, GST Compensation Cess, TCS or any other statutory levy, surface transportation charges, Evacuation Facility Charges, sizing charges, user fees as per CIL Notification then the same will be brought to the NOTICE of the buyer/bidder/purchaser and will be charged extra to the

buyers/bidder/purchaser account.

- (e) The Bidders should give their Bids exclusive of Royalty, additional amount as per the MMDR ACT 1957/MCR 1960 Act Amendment, all Statutory Charges, Duties, Taxes and surface transportation charges, Evacuation Facility Charges, sizing charges as per CIL Notification and any other Levies.
- (f) Royalty, additional amount as per the MMDR ACT 1957/MCR 1960 Act Amendment DMF, NMET, GST, GST Compensation Cess, IT and/or any other charges/levies/taxes/cess/duties, surface transportation charges, Evacuation Facility Charges, sizing charges, user fees as per CIL Notification Statutory Charges, Duties, Taxes and any other levies as applicable, will have to be paid over and above the quoted rate.
- (g) For Interstate Sale, GST as applicable from time to time shall be payable by the successful bidder.
- (h) As Government of India Notified collection of GST Compensation Cess for the sale of Coal at the rate of Rs.400 per M.T. All the successful buyers are required to remit this GST Compensation Cess along with the other taxes and duties.
- (i) Government of India have introduced collection of TCS as applicable from time to time (currently @ 1%) on the total sale value of coal w.e.f.01-07-2012 VALUE UNDER SECTION 206C OF INCOME TAX ACT 1961. The said tax will have to be borne by the Buyer / Bidder / purchaser of the material and have to be submitted along with the material value at the time of issuance of sale/ delivery orders.
- (j) Tax is required to be collected if the goods purchased are used for trading. If however, the goods purchased are to be utilized for the purpose of manufacturing, processing or producing article or things the provision of section 206-C of Income Tax Act, 1961 will not apply and tax need not to be collected. But for the benefit of exemption from collection of tax the successful Buyer/Purchaser/Bidder has to furnish in duplicate a certificate in FormNo.27-C prescribed under Rule 37-C of Income Tax Rules the same (FormNo.27-C) has to be produced at the time of making payment for delivery of the materials. The sale/ delivery order will be issued to the Buyer/Purchaser/Bidder only after receipt of the above tax with surcharge or after receipt of the exemption certificate in Form 27- C.

11. CHANGE OF DECLARED GRADE

- (a) The declared grade for FY 2024-25 is G-14. However, the grade is subject to change based on the declaration by the Coal Controller Organization. In case of change in declared grade NLCIL shall intimate to the buyer regarding the change.
- (b) In case there is change in declared grade (due to revision in grade by the CCO) during the agreement period, the buyer shall have the option of exiting the agreement without any forfeiture of the security deposit. The buyer may opt out from taking coal of the revised grade by submitting application to NLCIL within five calendar days (including holidays) from the date of intimation by NLCIL.
- (c) In case the buyer opts to continue after the revision of grade by CCO, the seller shall intimate to the buyer, the amount payable on account of grade revision. The buyer shall be liable to pay the differential amount within 10 calendar days (including holidays) after the date of intimation by the seller. Failure to deposit the amount within the stipulated time shall lead to the recovery of the same from the security deposit/bank guarantee.

12. BILLING:

- (a) The seller shall in general raise invoice two times in a month for the cumulative lifted quantity. For example, one part of the dispatch i.e., 1st to 25th of the month may be done in the relevant month, 26th to 31st/end of the month shall be done in the subsequent month.

13. LIFTING SCHEDULE :

- (a) All the payments for the monthly scheduled quantity i.e. coal value + applicable taxes and other charges shall be made in advance by the successful bidder to NLCIL in monthly intervals in the specified period. On receipt of payment for the monthly scheduled quantity, NLCIL shall issue monthly Delivery Order for MSQ on the first working day after 7th day of each month. The validity period of the Delivery Order shall be till the end of the respective quarter plus 7 days or till the end of the agreement period whichever is earlier. Extension of validity will be at the sole discretion of NLCIL based on merits. Coal sold, but not lifted within the above specified period will become the property of NLCIL and it has the right to sell the un-lifted quantity in any manner as NLCIL may deem fit without any notice.
- (b) After issuance of the Delivery Order, NLCIL shall obtain the transit permit from Government of Odisha. The buyer shall ensure to completely lift the Delivery Order quantity within the validity period of the

transit permit. The validity period of the transit permit shall be 30 days for the transportation of coal by road and 60 days for transportation of coal by Road Cum Rail (RCR). However, it is subject to change as per the norms of Govt. of Odisha.

- (c) If for any reason, the buyer is unable to lift the coal within the validity period of the transit permit, the buyer is liable to pay user fees as applicable from time to time as required for obtaining the extension of the transit permit within the validity period of the Delivery Order. In case the bidders fail to pay the user fees, NLCIL shall pay the user fees required for obtaining the extension. However, the same shall be recovered from the bank guarantee/security deposit/coal value of the successful bidder.
- (d) In any case the buyer shall lift the QQ within the respective quarter, failing which the security deposit for the un-lifted quantity shall be forfeited as per the clause B 9 and the un-lifted quantity shall be treated as lapsed and shall not be carried forward for subsequent quarters.
- (e) NLCIL shall from time to time raise debit/credit notes for any amount payable/recoverable by the buyer. The buyer shall pay the amount for debit notes within 10 calendar days (including holidays) from the date of intimation by NLCIL. In the event, the bidder fails to deposit the cash within the stipulated period, the same shall be recovered from the security deposit/bank guarantee/coal value of the buyer. The credit notes shall be adjusted first with pending debit notes, if any, and thereafter with the coal value advance for the upcoming month.

14. INTEREST:

- (a) With respect to default in making any payment due in terms of this NOTICE/subsequent Agreement by Buyer to the seller, the Buyer shall be liable to pay Interest at the Interest Rate on the total sum outstanding and for the period the payment has remained over due from the relevant due date.
- (b) Interest Rate" shall mean the repo rate of the Reserve Bank of India as applicable on the due date of payment/adjustment plus three percent (3%).

15. CHANGE OF LAW:

- (a) If any Change of Law occurs, the compliance of which affects or is likely to affect the costs and expenses incurred by the Seller in the performance of this Agreement, the Seller shall be entitled to seek an equitable adjustment to the "*As Delivered Price*" of Coal (including all charges and levies noted in Clause no. B (10) from the effective date of such change and/or the terms of this NOTICE/ subsequent Agreement to put the Seller back in the same financial position it would have been had the Change of Law not occurred. The Seller shall support its claim for adjustment to the "*As Delivered Price*" of Coal (including all charges and levies noted in Clause no. B (10)) and/or the terms of this NOTICE/ subsequent Agreement with documentary evidence of the impact of the Change of Law and the Parties shall endeavor to mutually agree on the required adjustments in the "*As Delivered Price*" of Coal (including all charges and levies noted in Clause no. B (10)) and/or the terms of this NOTICE/subsequent Agreement to account for such Change of Law within 30 days of submission of a claim (along with all necessary supporting documents) by the affected Party regarding such adjustment.
- (b) In case any revision/amendment as a result of any regulatory or statutory directive imposed on the Seller under Applicable Law or in case of any change arising out of Coal Mine operating conditions, which has direct bearing on Coal cost, which is not within the purview of this NOTICE/ subsequent Agreement, either Party may, by prior written NOTICE to the other Party, of a period not less than thirty (30) days, seek a review of the Agreement.
- (c) If the Parties are unable to mutually agree on the relief to be provided under this Clause within the stipulated time, the Parties may refer their differences or disputes to in accordance with Clause no. B 17.
- (d) Without prejudice to the above, the Seller shall have the right to suspend the performance of its obligations under this NOTICE/ subsequent Agreement pending agreement or adjudication of cost impact of a Change of Law, unless the Parties mutually agree to an interim solution in writing.

16. SUSPENSION OF COAL SUPPLIES:

- (a) The Seller shall have the right to suspend the delivery of Coal to the Buyer as per the advice of MoC / GoI / GoO or if required to comply with Applicable Laws.
- (b) Notwithstanding other provisions of this NOTICE/subsequent Agreement, the Seller shall have the right to also suspend its obligations hereunder for the following reasons:

- (i) Pursuant to a Change of Law event, in accordance with Clause no. B 15; and
- (ii) In the event of any prima facie breach, default or violation by the Buyer.
- (c) During the period of suspension of supplies in terms of Clause no. B 16, the Seller shall be relieved of his obligations to supply Coal. However, the obligations of the Buyer under this NOTICE/subsequent Agreement shall be deemed to remain in full force and effect.

17. RESOLUTION OF DISPUTE:

(a) Dispute Resolution and Arbitration:

In the event of any dispute and / or difference arising between the Bidder/Buyer and / or their Agent and NLCIL as to the construction, interpretation and / or execution of the contract and / or the respective rights and liabilities of the parties, such disputes and/or differences shall be referred to herein below mentioned Dispute Resolution Mechanism.

- (i) If the Bidder is a PSE/Government Entity :- In the event of such dispute or difference, the same shall be referred by either party to the Arbitration of one of the Sole Arbitrators in the Department of Public Enterprises to be nominated by the Secretary to the Government of India in charge of the Department of Public Enterprises. The Arbitration and Conciliation Act 1996 shall not be applicable to the Arbitration under this clause. The award of the Arbitrator shall be binding on the parties to the dispute, provided, however, any party aggrieved by such award may make a further reference for setting aside or revision of the award to the Law Secretary, Department of Legal Affairs, Ministry of Law and Justice, Govt. of India. Upon such reference the dispute shall be decided by the Law Secretary or the Special Secretary/Additional Secretary when so authorized by the Law Secretary whose decisions shall bind the parties finally and conclusively. The parties in the dispute will share equally the cost of Arbitration as intimated by the Arbitrator. The procedure to be adopted in the case of arbitration shall be in accordance with the Circulars/Guidelines as may be issued by the Gol from time to time.
- (ii) If the Bidder is Private Entity/ [Other domestic Entities]: - The parties agree to use reasonable efforts to resolve all disputes equitably and in good faith. If any dispute between the parties arises it shall in the first instance be referred in writing to the NLCIL who shall endeavor to resolve the dispute amicably and render a decision within 30 days. The period of 30 days shall be reckoned from the date of receipt of the intimation of the dispute by the Corporation. Save as hereinafter provided, in respect of a dispute so referred, the decision of the Corporation shall be final and binding upon the parties until completion of the transaction and shall forthwith be given effect to by both parties. If the Party is dissatisfied with the decision rendered by NLCIL, or if the NLCIL omits or declines to render a decision within the said period of 30 days, then within a further period of 30 days, the dissatisfied Party shall require by a notification that the dispute shall be referred to Conciliation in the manner as per the 'NLCIL Conciliation Rules', copy of which is available with the NLCIL offices and the Buyer shall abide by the 'NLCIL Conciliation Rules' as amended from time to time. Such a notification shall be in writing and it shall be duly served on the other party. The Conciliation shall be held at Chennai. Conciliation proceedings shall be conducted in English. Once the settlement agreement is signed with respect to a dispute, the same dispute is not subject to further appeal through Judicial Proceedings or Arbitration. The rights and obligations of the Parties shall remain in full force and effect during the Conciliation proceedings. The provisions of the 'Arbitration and Conciliation Act 1996-Part-III' as amended from time to time shall be applicable to above Conciliation proceedings. Only in case of failure to resolve the dispute through Conciliation, Arbitration can be resorted to. In case of failure to resolve the dispute through Conciliation, Arbitration can be resorted to by either Party by notification in writing which shall be duly served on other Party. The Arbitration shall be held in accordance with the Arbitration and Conciliation Act 1996. The Arbitration shall be held at Chennai, Tamil Nadu. The Arbitration proceedings shall be conducted and the award shall be rendered in English. The award

shall state the reason upon which it is based. There shall be the arbitrators of whom each party shall appoint one. The party requesting that the dispute be referred to arbitration shall, within thirty days of the notification in terms of provision as stated above, appoint an Arbitrator as also call upon the other party to appoint an Arbitrator within 30 days. The two Arbitrators so appointed shall within 30 days of the date on which the second of them is appointed agree on the third Arbitrator who shall act as the Presiding Arbitrator of the Tribunal. This agreement and the rights and obligations of the parties, shall remain in full force and effect and shall, if reasonably possible, continue till the passing of the Award. For the purpose of this clause, the terms Dispute shall include a demand or difference of any kind whatsoever, arising out of the contract and respecting the performance, of the contract, whether during the Contract Period including extensions if any, or after completion, and whether before or after Termination, Abandonment or Breach of the Contract [Except as to any matter, the decision of which is specifically otherwise provided for in Contract]

18. FORCE MAJEURE

- (a) As used in this NOTICE, the expression "Force Majeure" or "Force Majeure Act" means any act, circumstance or event or a combination of acts, circumstances and events which wholly or partially prevents or delays the performance of obligations of either party arising under this NOTICE/subsequent Agreement (Non-Performing Party) when such act, circumstance or event is not reasonably within the control of and not caused by the fault or negligence of the Non-Performing Party, and could not have been prevented, overcome or remedied by the Non-Performing Party by exercising a standard of care and diligence consistent with good industry practices and provided that such act, circumstance or event is in or similar to one or more of the following categories:
- (b) Act of God including flood, inundation of mine, drought, lightning, cyclone, storm, earthquake or geological disturbances, eruption of gases, other exceptionally adverse weather conditions and such like natural occurrences;
- (c) Any law, ordinance or order of the Central or State Government, or any direction of any Authority that restricts performance of the obligations hereunder, either independently or in response to an event listed hereunder;
- (d) Any Change of Law which cannot be dealt with solely by way of compensation/ adjustment to the Agreement as provided in Clause no. B 15;
- (e) Epidemic, plague or pandemic;
- (f) Any delay or direction or order on the part of the Government of India or relevant State Government on denial or refusal to grant or renew, or any revocation, or modification of any required permit or mining lease or governmental approvals provided that such delay, modification, denial, refusal or revocation was not due to a cause attributable to the non-performing Party;
- (g) Mine fires and inundation where either is caused due to natural causes despite normal precautions in accordance with extant mining practices in India, explosion, fire at the Coal Mine and other fire/contamination of atmosphere by radioactive or hazardous substances or any untoward incidents/ accident at plant/Coal Mine;
- (h) unexpected geological conditions at the Coal Mine such as faults, igneous intrusions (dykes & sills), sand channels and washouts, affecting the Seller; or
- (i) industry wide strikes and labour disturbances having a nationwide, state-wide or district-wide impact in India;

- (j) War (whether declared or undeclared), riot, civil war, blockade, insurrection, acts of foreign or public enemies or civil disturbance, invasion, armed conflict, blockade, embargo, revolution, military action, acts of terrorism, religious strife, communal violence, extremist action or politically motivated sabotage or sabotage or abductions; or
- (k) Nationalization or compulsory acquisition by any Authority of any material assets or rights of the Seller.
- (l) It is clarified that any Force Majeure affecting the performance of the Buyer's or Seller's contractors appointed for performance of the Agreement shall be deemed to be an event of Force Majeure affecting the Buyer or Seller. Provided that a Force Majeure act, circumstance or event shall not include:
 - (i) Economic hardship, equipment failure or breakdown other than as specifically set forth above;
 - (ii) the delay, default or failure to perform by any sub-contractor, unless caused by a Force Majeure Act;
 - (iii) strikes or labour disturbances involving only employees of the Non-Performing Party;
 - (iv) unavailability, shortages or price fluctuations with respect to materials, supplies or components of equipment or other services; late delivery of materials, supplies or components of equipment, unless caused by a Force Majeure Act.

(m) Burden of Proof:

- (i) In the event the Parties are unable to agree in good faith that a Force Majeure Act has occurred; the Parties shall resolve the dispute in accordance with the provisions of this NOTICE. The burden of proof as to whether a Force Majeure Act has occurred shall be upon the Party claiming the occurrence or existence of such Force Majeure Act.

(n) Effect of Force Majeure:

If either Party is wholly or partially unable to perform its obligations under this NOTICE/ subsequent Agreement because of a Force Majeure Act or its impact, then that the Non-Performing Party shall be excused from whatever performance is affected by the Force Majeure Act to the extent so affected, provided that:

- (i) Within 5 (five) days after the occurrence of the inability to perform due to a Force Majeure Act, the Non-Performing Party provides a written NOTICE to the other Party of the particulars of the occurrence, including an estimation of its expected duration and probable impact on the performance of its obligations hereunder, and continues to furnish periodic reports with respect thereto, every 7 (seven) days, during the period of Force Majeure.
- (ii) The Non-Performing Party shall use all reasonable efforts to continue to perform its obligations hereunder and to correct or cure as soon as possible the said Force Majeure Act.
- (iii) The suspension of performance shall be of no greater scope and no longer duration than is reasonably necessitated by the said Force Majeure Act.
- (iv) The Non-Performing Party shall provide the other Party with prompt NOTICE of the cessation of the said Force Majeure Act giving rise to the excuse from performance and shall thereupon resume normal performance of obligations under this Agreement with utmost promptitude.
- (v) The non-performance of any obligation of either Party that was required to be performed prior to the occurrence of a Force Majeure Act shall not be excused as a result of such subsequent Force Majeure Act.
- (vi) The occurrence of a Force Majeure Act shall not relieve either Party from its obligations to make any payment hereunder for performance rendered prior to the occurrence of the Force Majeure Act or for partial performance hereunder during periods of Force Majeure.

- (vii) The Force Majeure Act shall not relieve either Party from its obligation to comply with Applicable Laws. The Non-Performing Party shall exercise all reasonable efforts to mitigate or limit damages to the other Party.

19. TERMINATION OF AGREEMENT:

- (a) This Agreement may be terminated by the Seller as per the advice / directive by Ministry of Coal / Govt. of India or as may be required by Applicable Law, without any liability to either Party.
- (b) This Agreement may also be forthwith terminated for the following reasons, pursuant to written NOTICE by the relevant Party:
 - (i) If agreed between the Parties to be terminated prior to the Term;
 - (ii) By the Seller, by providing a prior written NOTICE of 30 days to the Buyer, if any part of the Allocated Quantity is required by NLCIL for its captive power plant, which is the specified end use plant for the Seller's Coal Mine under the Allotment Agreement;
 - (iii) By the Seller, in the event of non-payment of amounts due and payable under this Agreement by the Buyer beyond 30 days of the relevant due date;
 - (iv) By the Seller, upon termination of the Allotment Agreement for any reasons whatsoever;
 - (v) By the non-defaulting Party, upon any material breach by the defaulting Party which is not cured within 45 days of NOTICE of such breach by the non-defaulting Party, provided that termination for non-payment shall be as per sub-clauses (b) above.
 - (vi) By either party by providing prior written NOTICE for a period of 90 days, where any Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure Act, as described in Clause B 18 above; and such inability to perform lasts for not less than a continuous period of 3 months or an aggregate period of 6 months in any Year. In such event, the termination shall take effect on expiry of such NOTICE period of 90 days.
 - (vii) By a Party if the other Party becomes insolvent or bankrupt including if proceedings are admitted against a Party under the Insolvency and Bankruptcy Code, 2016 and a moratorium has come into effect in terms thereof, or is subject to winding up or liquidation.
- (c) Termination of this Agreement shall be without prejudice to the accrued rights and obligations of either Party as at immediately prior to the termination. Save as expressly provided under this Agreement, neither Party shall have any liability towards the other on and from the date of termination of this Agreement.
- (d) Notwithstanding the provisions of this agreement, in the event of any material change in the Coal Distribution System or policy due to a Government directive/ notification, at any time after the execution of this Agreement, the same shall be notified by the Seller to the Buyer in writing. In the event the Seller decides to terminate this Agreement, arising out of any such change, it shall notify the Buyer at least 5 days in advance of such termination coming into effect and the Seller shall stand relieved of any obligation under the Agreement. For the avoidance of any doubt, Seller shall bear no liability on account of such termination.

20. JURISDICTION:

- (a) The Civil Courts at Chennai, TamilNadu shall have exclusive jurisdiction in relation to any matter arising under or in connection with these Terms and Conditions.

21. MISCELLANEOUS:

- (a) **Recovery:** Any amounts due and payable hereunder which are not paid by the Buyer within the prescribed time limits may be recovered by the Seller from the Security Deposit/EMD and interest shall be charged as per Clause no. B 14.
- (b) **NOTICE:** Any NOTICE to be given under this Agreement shall be in writing and shall be deemed to have been duly and properly served upon the Parties hereto if delivered against acknowledgement, by registered mail with acknowledgement due, by facsimile, by e-mail or by Speed Post, addressed to the signatories or the authorized representatives of the signatories nominated in accordance with the provisions of this Agreement:

SELLER: 1. Designation 2. Postal Address:	Buyer: 1. Designation: 2. Postal Address:
3. Phone No: 4. FAX: 5. e-Mail:	3. Phone No: 4. FAX: 5. e-Mail:

Any NOTICE given by the Buyer under this Agreement, if delivered otherwise than by e-mail, shall always be backed by an e-mail to the above mentioned e-mail address of the Seller.

Any NOTICE delivered to the Party to whom it is addressed as provided in this Clause no. B 21 (b) shall be deemed (unless there is evidence that it has been received earlier) to have been given and received, if:

- (i) hand delivered or sent by registered mail, at the time of acknowledgment of receipt of the same;
- (ii) sent by Speed Post, the date of delivery as recorded in the system of postal service provider; and
- (iii) sent by facsimile or e-mail, when confirmation of its transmission has been recorded by the sender's facsimile machine or the sender's e-mail system, as the case may be.

(c) **Amendment:** This Agreement can be amended or modified with written consent of the Parties.

(d) **Severability and Renegotiation:** In the event any part or provision of this Agreement becomes, for any reason, unenforceable or is declared invalid by a competent court of law or tribunal, the rest of this Agreement shall remain in full force and effect as if the unenforceable or invalid portions had not been part of this Agreement, and in such eventuality the Parties agree to negotiate with a view to amend or modify this Agreement for achieving the original intent of the Parties.

(e) **Governing Law:** This Agreement, and the rights and obligations hereunder shall be interpreted, construed and governed by the laws, regulations and rules in force in India.

(f) **Entirety:** This Agreement and the Schedules, and such documents attached or referred hereto are intended by the Parties as the final expression of their Agreement and are intended also as a complete and exclusive statement of the terms of their Agreement. All prior written or oral understandings, offers or other communications of every kind pertaining to the matters contained in this Agreement are hereby abrogated and withdrawn.

(g) The Project Head of Talabira II & III OCP of the Seller or his representative/s nominated for the purpose shall be authorized to act for and on behalf of the Seller.

(h) It shall be the responsibility of the Parties to ensure that any change in the address for service or in the particulars of the designated representative is notified to the other Party and all other concerned, before effecting a change and in any case within two Business Days of such change.

(i) All NOTICES under this Agreement shall be made in writing and shall be in English.

(j) The Parties agree that except as otherwise expressly agreed in this Agreement, neither Party shall have any right or entitlement to any consequential losses, costs or damages, loss of profit or market, as a result of a breach by the other Party of this Agreement.

(k) **Representation, Warranties and Covenants**

- (i) Each Party hereby represents and warrants to the other Party that (i) it has the capacity to enter into this Agreement and perform its obligations, and all transactions and undertakings contemplated herein; (ii) this Agreement constitutes a legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms; and (iii) all corporate or other required action necessary for the authorization and execution of this Agreement have been duly obtained.

- (ii) The Parties shall take all action required under Applicable Laws in connection with its obligations under this Agreement, including without limitation compliance with any reporting or NOTICE requirements under Applicable Laws relating to environmental matters.
- (iii) The Buyer hereby further represents and warrants to the Seller that:
- the execution, delivery and performance by it of this Agreement and the compliance by it with the terms and provisions hereof do not and will not:
 - contravene any provision of any Applicable Law, statute or any order, writ, injunction or decree of any court or governmental instrumentality to which it is subject; or
 - conflict with or be inconsistent with or result in any breach of any of the terms, covenants, conditions or provisions of, or constitute a default under any other agreement, contract or instrument to which it is a party or by which it is bound or to which it may be subject;
 - there are no claims, investigations or proceedings before any court, tribunal or Authority in progress or pending against or relating to it, which could reasonably be expected to prevent it from fulfilling its obligations set out in this Agreement or arising from this Agreement;
 - this Agreement is enforceable against it in accordance with its terms;
 - it has read all Schedules to this Agreement and that by executing this Agreement, the Buyer acknowledges and accepts the terms and conditions of this Agreement.

(l) Indemnity:

- (i) The Buyer agrees to defend, indemnify and hold harmless the Seller and its officers, directors, employees and agents thereof, from and against any and all liabilities (including third party liabilities), lawsuits, claims of any kind, damages, losses, fines, penalties, interest, fee, and assessments by any public agency, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses), which are suffered, incurred, brought or paid by the Seller as a result of the Buyer's: (a) breach of its obligations under this Agreement; (b) acts or omissions resulting in injury to or death of persons or damage to or loss of property of such persons; (c) breach of Applicable Law or Approvals;
- (ii) breach or negligent performance or non-performance of this Agreement; and (e) representations and warranties contained in this Agreement being found to be untrue or misleading.

(m) Set-off:

- Either Party may set off or deduct any sums payable by one Party to the other Party under this Agreement against or from any payment due to such Party under this Agreement. Any exercise of their rights under this clause by the Parties shall be without prejudice to any other rights or remedies available to them under this Agreement or otherwise.

(n) **Assignment:** Neither Party shall assign or transfer to any third party this Agreement or any part thereof, or any right, benefit, obligation or interest therein or there under.

(o) **Limitation of Liability:** The Parties agree that except as otherwise expressly agreed in this Agreement, neither Party shall have any right or entitlement to any indirect, special or consequential losses, costs or damages; loss of profit; loss of production; loss of generation; loss of revenue; loss of use, as a result of a breach by the other Party of this Agreement.

(p) **Survival:** All representations, warranties, covenants and provisions contained herein that by their nature survive, shall survive the termination or expiration of this Agreement.

22. CONTACT PERSON DETAILS:

Person to be contacted for mines visit:

Shri. Abhay B Bhagat
General Manager/Mining/Talabira II & III OCP/NLCIL
Email- mm.talabira@nlcindia.in
Phone: 9650302081

Person to be contacted at mjunction:

Mr. Shri. Sridhar Rajaraman
Senior Manager- Account Management/Mjunction
Mobile- 8939895619
Email- sridhar.rajaraman@mjunction.in

Format of Bank Guarantee

(To be executed on Rs. 1000/- non-judicial stamp paper)

[Reference number of the bank]

[date]

To

[insert name and address of the relevant Subsidiary]

WHEREAS

1. [Name of the Successful Bidder], a company 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 [Name of the Individual], an individual residing at [address] and carrying on a sole proprietorship business under the name style of [Name of Successful Bidder] at [address of sole proprietorship], OR [Name of the Successful Bidder], a limited liability partnership incorporated under the Limited Liability Partnership Act, 2008, with its registered office at [address of registered office] OR [Name of the Individual], an individual residing at [address], [Name of the Individual], an individual residing at [address] and [Name of the Individual], an individual residing at [address] all carrying on a partnership business under the name style of [Name of the Successful Bidder] registered under [name of Act under which the firm is registered] and with its principal place of business at [address of principal place of business] OR [Name of the Successful Bidder], a [insert legal nature of the Successful Bidder (e.g. trust, society etc.)] incorporated under the [insert statute under which the Successful Bidder is incorporated] with its registered office/ principal place of business/ office at [address of registered office/ principal place of business/office] (hereinafter referred to as the “**Purchaser**”) is required to provide an unconditional and irrevocable bank guarantee for an amount equal to INR [figures] (Indian Rupees [words]) as a performance security valid until [date of expiry of performance bank guarantee] (“**Expiry Date**”) with claim period upto [date of claim period] (“**Claim Period**”).
2. The Performance Security is required to be provided to **NLC India Limited** (the “**Seller**”) for discharge of certain obligations of the Purchaser under the Scheme Document dated, [date] with respect to Mid-Term E-Auction conducted on (dd/mm/yyyy) and the agreement to be executed between the Seller and the Purchaser (hereinafter collectively referred to as the “**Agreement**”).

We, [name of the bank] (the “**Bank**”) at the request of the Purchaser do hereby undertake to pay to the Seller an amount not exceeding INR [figures] (Indian Rupees [words]) (“**Guarantee Amount**”) to secure the obligations of the Purchaser under the Agreement on demand from the Seller on the terms and conditions contained herein.

NOW THEREFORE, the Bank hereby issues in favour of the seller this irrevocable and unconditional payment bank guarantee (the “**Guarantee**”) on behalf of the Purchaser in the Guarantee Amount:

3. The Bank for the purpose hereof unconditionally and irrevocably undertakes to pay to the Seller without any demur, reservation, caveat, protest or recourse, immediately on receipt of first written demand from the Seller, a sum or sums (by way of one or more claims) not exceeding the Guarantee Amount in the aggregate without the Seller needing to prove or to show to the Bank grounds or reasons for such demand for the sum specified therein and notwithstanding any dispute or difference between the Seller and Purchaser on any matter whatsoever. The Bank undertakes to pay to the Seller any money so demanded notwithstanding any dispute or disputes raised by the Purchaser in any suit or proceeding pending before any court or tribunal relating thereto the Bank’s liability under this present being absolute and unequivocal.

4. The Bank acknowledges that any such demand by the Seller of the amounts payable by the Bank to the Seller shall be final, binding and conclusive evidence in respect of the amounts payable by Purchaser to the Seller under the Agreement.
5. The Bank hereby waives the necessity for the Seller from demanding the aforesaid amount or any part thereof from the Purchaser and also waives any right that the Bank may have of first requiring the Seller to pursue its legal remedies against the Purchaser, before presenting any written demand to the Bank for payment under this Guarantee.
6. The Bank further unconditionally agrees with the Seller that the Seller shall be at liberty, without the Bank's consent and without affecting in any manner the Bank's obligation under this Guarantee, from time to time to: (i) vary and/ or modify and of the terms and conditions of the Agreement; (ii) extend and/ or postpone the time for performance of the obligations of the Purchaser under the Agreement, or (iii) forbear or enforce any of the rights exercisable by the Seller against the Purchaser under the terms and conditions of the Agreement and the Bank shall not be relieved from its liability by reason of any such act or omission on the part of the Seller or any indulgence by the Seller to the Purchaser or other thing whatsoever which under the law relating to sureties would, but for this provision, have the effect of relieving the Bank of its obligations under this Guarantee.
7. Any payment made hereunder shall be made free and clear of and without deduction for, or on account of, any present or future taxes, levies, imposts, duties, charges, fees, commissions, deductions or withholdings of any nature whatsoever.
8. The Bank agrees that Seller at its option shall be entitled to enforce this Guarantee against the Bank, as a principal debtor in the first instance without proceeding at the first instance against the Purchaser.
9. The Bank further agrees that the Guarantee herein contained shall remain in full force and effect during the period that specified in the Agreement and that it shall continue to be enforceable till all the obligations of the Purchaser under or by virtue of the said Agreement with respect to the Performance Security have been fully paid and its claims satisfied or discharged or till the Seller certifies that the terms and conditions of the Agreement with respect to the Performance Security have been fully and properly carried out by the Purchaser and accordingly discharges this Guarantee. Notwithstanding anything contained herein, unless a demand or claim under this Guarantee is made on the Bank in writing on or before the (dd/mm/yyyy) Expiry Date the Bank shall be discharged from all liability under this Guarantee thereafter.
10. The payment so made by the Bank under this Guarantee shall be a valid discharge of Bank's liability for payment thereunder and the Seller shall have no claim against the Bank for making such payment.
11. This Guarantee is subject to the laws of India. Any suit, action, or other proceedings arising out of this Guarantee or the subject matter hereof shall be subject to the exclusive jurisdiction of courts at Sambalpur, Odisha, India.
12. The Bank has, under its constitution, the power to issue this Guarantee in favour of the Seller and Shri _____ who has signed this Guarantee on behalf of the Bank has the authority to do so. This Guarantee will not be discharged due to the change in the constitution of the Bank.
13. The Bank undertakes not to revoke this Guarantee during its currency except with the previous consent of the Seller in writing.
14. The Seller may, with prior intimation to the Bank, assign the right under this Guarantee to any other person or entity. Save as provided in this Clause 14, this Guarantee shall not be assignable or transferable.
15. Notwithstanding anything contained herein,
 - a) the liability of the Bank under this Guarantee shall not exceed the Guarantee Amount (Rs. -----) ; and
 - b) this Guarantee shall be valid up to the (dd/mm/yyyy) Expiry Date with claim period upto (dd/mm/yyyy).
16. The Bank is liable to pay the Guaranteed Amount or any part thereof under this Guarantee only and only if the Seller serves upon the Bank a written claim or demand on or before the Expiry Date.
17. The Guarantee shall be operative at Sambalpur branch, Odisha, India.

Dated the [day] day of [month] [year] for the Bank.

In witness whereof the Bank, through its authorized officer, has set its hand and stamp.

(Signature)

(Name and Designation)

(Bank Stamp)