

## Expression of Interest for selection of bank to open an ESCROW account

### EOI NO2/IGMDC/Escrow/2015-16

Gujarat Mineral Development GMDC Limited (GMDC), a Government of Gujarat Enterprise, is a pioneer institution in the field of mining for more than five decades, catering to the needs of the minerals and solid fuel for the industries based in and outside Gujarat. GMDC's mining activities are spread over in Kutch, Jamnagar, Bhavnagar, Bharuch, Baroda and Banaskantha districts of the State. It is currently dealing in minerals like Bauxite, Fluorspar, Ball Clay, Silica sand, Manganese and Lignite. The GMDC has also set up a 250 MW lignite based Thermal Power Station at Nani Chher in Kutch, Wind power of 150.9 MW at Maliya, Jodiya, Godsar, Bada, Varvala, Bhanvad and Solar Power plant of 5 MW at Panandhro Project. GMDC is operating Lignite mines, Panandhro, Umarsar and Mata-No-Madh in Kutch, Rajparda in Bharuch district, Tadkeshwar in Surat District and Bhavnagar in Bhavnagar District.

Now GMDC is required to open an ESCROW account for Mata no Madh mine in order to fulfill the obligation as mentioned in mine closure guidelines issued by the Ministry of Coal, Govt. of India vide notification no 55011-01-2009-CPAM dated 7<sup>th</sup> January 2013 and the same are available at [www.cmpdi.co.in/env/MCP%207\\_1\\_2013.pdf](http://www.cmpdi.co.in/env/MCP%207_1_2013.pdf). GMDC is required to deposit total amount of Rs.14282.765 approx as per approved mine closure plan by Ministry of Coal and details are as under:

Year	Approx Amount to be deposited in ESCROW account (Rs. in lakh)
1	2585.108
2	2713.995
3	2849.695
4	2992.179
5	3141.788
Total	14282.765

At present we are required to deposit an amount of Rs.2585.108 and 2713.995 for the FY 2013-14 and FY 2014-15 respectively. We are enclosing copy of draft agreement as per **Annexure A** which is self explanatory and amount can be withdrawn as per clause no 4 of draft escrow agreement. A tripartite agreement will be signed between GMDC (as mine owner), coal controller and the selected bank. Bankers are advised to go through notification as mentioned above and draft escrow agreement. The Escrow account will be opened on following terms and conditions:

1. ESCROW account will be opened with zero balance in the nature of current account for the period of 5 years (approx) and the same will be linked with fixed deposits.
2. Amount shown in the above mentioned table shall be deposited yearly (first year amount of FY 13-14 and 14-15 will be deposited after selection of bank). An amount of Rs.5299.103 lakh will be invested for the period of 3 years with auto renewal facility of one year thereafter. However amount to be deposited may vary as per directions of Coal controller. Amount in subsequent years will be deposited for a particular period

as specified by GMDC.

3. The amount so deposited in ESCROW account should be transferred to a fixed deposit account for the period specified by GMDC/Coal Controller and the same will renew automatically on maturity as per agreed terms and conditions.
4. GMDC can withdraw the amount as per the directions of coal controller and Fixed deposit will be encashed and interest will be paid as per applicable rate of bank for that period from the date of deposit .
5. Interest on FD will be compounded on quarterly basis.
6. Amount available in ESCROW account shall be transferred to FD account immediately.
7. All Nationalized banks including the public sector banks and following private sector banks are eligible for submission of proposal :
  - a. Axis Bank
  - b. HDFC Bank
  - c. ICICI Bank
  - d. Kotak Mahindra Bank
  - e. Yes Bank
  - f. Ratnakar Bank
  - g. Indusind Bank
  - h. Karur Vysya Bank
  - i. DCB Bank
  - j. South Indian Bank
  - k. Federal Bank

However abovementioned banks should fulfill the minimum requirements as mentioned in point no 8 for being technically qualified for inviting commercial offer. Offers submitted by other banks will be out rightly rejected

8. For technical qualification, the banks mentioned at Sr. No 7 should have following minimum requirements:

Sr. No	Particulars	Benchmarks
1	Net Worth	>Rs.5000 Crore as on March 31, 2015
2.	Capital Adequacy Ratio	>9% as per BASEL III as on March 31, 2015
3	Deposit base	>56000 Crores as March 31, 2015
4	Profitability	Net Profit since FY 2010-11 onwards. In case of net loss in any year on or after FY 2010-11 then, said bank will not be considered as technically qualified.

If any bank does not fulfill the above mentioned requirement then commercial offer will not be invited from that bank. Banks are requested to submit the abovementioned details in the prescribed format at **Annexure B** duly certified by official of the bank/ Chartered Accountant's firm.

9. Submission of Proposal:

The interested banks are requested to send their duly signed proposal in the prescribed format at **Annexure -B** in a sealed envelope superscribed with the above EOI No., due date, name and address of the bank. The EOI should be addressed to General Manager (Finance) & CFO and may be submitted to GMDC Office, Registry Section, at Khanij Bhavan, Ahmedabad by 07<sup>th</sup> August 2015 upto 11.30 a.m. GMDC reserves the right to

accept or reject any EOI in part or full without assigning any reason whatsoever.

10. Evaluation of the technical bid would be done by GMDC; thereafter commercial offer will be invited from technically qualified banks only. Technically qualified banks shall be informed the details about submission of commercial offers. Hence banks are required to give their complete contact details. In commercial offer banks are required to quote the rate for a particular day as per requirement of GMDC after obtaining approval of their competent authority. GMDC will transfer the funds immediately and bank will open an escrow account before signing the escrow agreement and FD will be made as mentioned in point no 2. The other documents and details regarding submission of commercial offer will be sent by e mail to the successful banks only.
11. GMDC has right to take any clarification from any bank before finalizing the bank.
12. Documents submitted by the banks will not be returned in any circumstances.
13. A copy of draft agreement is placed at **Annexure- A and** selected bank will be required to sign tripartite agreement as per requirement of Coal Controller of India at Kolkata and bank will depute an authorized officer for signing the escrow agreement and other documents as per requirement of Coal Controller, Govt of India. It may also be mentioned that as per policy of Coal Controller Organization, original agreement will be kept by them only and only copies of executed agreement will be provided.
14. The signing of the Memorandum of understanding as per **Annexure-C** would be a precondition before opening an ESCROW account with the bank.
15. GMDC Ltd may issue clarifications/amendments in the form of addendum/corrigendum. Banks shall take such addendum and corrigendum into consideration while submitting their proposal. Banks are requested to visit GMDC's website from time to time for any corrigendum/ addendum.
16. Any dispute between the Bank and GMDC shall be within the jurisdiction of the Civil Court Ahmedabad only.

If you require any further information, kindly get in touch with Smt Anupma Iyer, DGM (Finance), contact no 079-27912648/ 9727792521

**AMENDED AGREEMENT**

**ESCROW ACCOUNT AGREEMENT BETWEEN**

(Coal Mining Company) for its -----

(Name

of-----

Coal Block/Mine) with Coal Controller's Organization & Bank.

This Escrow Account Agreement is made at Kolkata on ----- day of -----

----- - 20 amongst

1) -----

--- . (a company registered under the Indian Companies Act, 1956

stered office at -----

and branch office at-----

- hereinafter called a mining company or lessee or mine owner which expression shall unless repugnant to the subject or context thereof includes, its successors and permitted assigns.

**AND**

2) Coal Controller's Organisation, Government of India, Ministry of Coal having its office at 1, Council House Street, Kolkata, and branch office at Dhanbad, Ranchi, Bilaspur, Nagpur, Kothagudam, Sambalpur & Asansol hereinafter called the Coal Controller's Organization which expression shall unless repugnant to the subject or context thereof include its, successors and permitted assigns.

**AND**

3) -----, a body corporate constituted under the Banking Companies (Acquisition

&

Transfer of Undertakings Act, 1970) having its H.O. at ----- & Branch Office at-----

-----, hereinafter called the "Escrow Agent" which expression shall, unless repugnant to the subject or context thereof include its, successors and assigns.

Each of the parties mentioned hereinabove, hereinafter collectively referred to as parties and individually as party.

**Whereas :**

1) As per the guidelines of the Ministry of Coal, Government of India all Coal Mine owners who are operating Coal Mines are required to obtain a Mine Closure Plan within a period of One year from the day

When the original guidelines came into effect (i.e. 27th August, 2009) and from the date of publishing of the amended guidelines i.e. 7th January, 2013 for those mine owners who have not yet complied to the same failing which the Government will take action as appropriate.

2) The Coal Mine Owners who have been accorded approval of mining Plan/Project Reports without the Mine Closure Plans as per the guidelines framed by the Ministry of Coal, Govt. of India, are required to prepare and obtain the approval of Mine Closure Plan as per guidelines of the said Ministry of Coal, Government of India, within a period of one year of the day when the original guidelines coming into effect (i.e. 27th August, 2009).

3) The money to be deposited every year by the said Mining Company **is the annual Mine closure**

**cost as approved by the Ministry of Coal and which is to be verified** by the Coal Controller's Organization as per the guidelines of the Ministry of Coal, Govt. of India, (at the price level of August, 2009 which will be reviewed on the basis of the wholesale price index) on a yearly basis in the Escrow A/c to be opened by the said Coal Mine owners with any Scheduled Bank with Coal Controller's Organization (on behalf of the Central Government) as exclusive beneficiary as per the guidelines of the Ministry of Coal.

4) Up to 80% of the total deposited amount including interest accrued in the Escrow Account may be released after every 5 years in the line with the periodic examination of the closure plan as per clause 3.1 of the annexure of the guidelines. The amount released should be equal to the expenditure incurred in the Progressive Mine Closure in the past 5 years or 80% whichever is less. The balance amount at the end of the Final Mine Closure shall be released to the Mine Owners/Leaseholder on compliance of all provisions of closure plan duly signed by the Lessee to the effect that said closure of mine complied all statutory rules, regulations, orders made by the Central or State Government, statutory organizations, court etc. and duly certified by the Coal Controller.

5) If the Coal Controller has reasonable grounds for believing that the protective, reclamation and rehabilitation measures as envisaged in the approved mine closure plan in respect of which financial assurance was given has not been or will not be carried out in accordance with mine closure plan, either fully or partially, the Coal controller shall give the mine owner a written notice of his intention to issue the orders for forfeiting the sum assured at least thirty days prior to the date of the order to be issued after giving an opportunity to be heard.

6) It is also stipulated in the guidelines of the Ministry of Coal, Govt. of India, that an agreement outlining the details of terms and conditions of opening and operating the Escrow Account/arrangements is to be executed amongst Mining Companies, Coal Controller's Organization & the concerned Bank for giving effect to the same.

7) Parties now have agreed to establish an Escrow Account/Arrangements and engage an Escrow Agent to act in connection with the said deposits and withdrawal in the said Escrow account on the terms and conditions contained herein.

Whereas ----- Company, (the Mining Company) has approached -----, a scheduled Bank under Schedule II of the RBI Act, 1934 for opening such Escrow Accounts and ----- has agreed for the same.

**NOW, IT IS HEREBY AGREED BY AND AMONGST THE PARTIES AS FOLLOWS:**

**Appointment of Escrow Agent:**

i) The parties (Other than the Escrow Agent) hereby appoint -----, as Escrow Agent to act subject to and in accordance with the terms and conditions set out in this agreement.

ii) The Escrow Agent shall not be personally liable in any manner whatsoever to any party for any acts it may do or omit to do hereunder as Escrow Agent or for any loss, harm, damage cost or expenses of any kinds suffered by any person, party or entity as a consequence of the action or inaction of the Escrow Agent other than for its gross negligence or willful disregards of the terms of the agreements.

iii) In its performance of its duties under this agreement, the Escrow Agent shall be entitled to rely upon any documents, instruments, or signature believed by it in good faith to be genuine &

signed by an authorized signatory of any parties hereto and shall not be required to investigate the truth or accuracy of any statement contained in such document or instrument. The Escrow Agent may assume that any person purporting to give any notice in accordance with the provision hereof has been duly authorized to do so.

iv) The party shall jointly and severally indemnify & hold harmless the Escrow Agent from and against all claims, actions, demands, liabilities, proceedings or judgments which the Escrow Agent may incur or suffer or may be brought against Escrow Agent and from and against all losses, costs, charges, liabilities, and expenses reasonably incurred in connection with the performance by the Escrow Agent of its duties under or in connection with this agreement save where there is gross negligence or willful misconduct or willful disregard of the terms of this agreement and the part of the Escrow Agent.

v) The Escrow Agent will act in terms of the agreement, only if sufficient funds are available in the escrow account for discharging its obligation as Escrow Agent.

### **Establishment of Escrow Account**

i) The Mining Company shall open an Escrow Account (Fixed Deposit) with -----  
-----  
----- (Bank name) under the title "Mine-Closure Escrow A/c No.-----", the Coal controller's Organization being the exclusive beneficiary. The Coal Controller will have the authority to write to the Bank to freeze operation in the said Escrow A/c without the concurrence of the mining company & the said decision of the Coal Controller will be binding on the mining company and mining company cannot have any objection on the same.

ii) The opening, operation of Escrow Account, deposit and withdrawal of money from the said account shall be in accordance with this agreement.

iii) The parties agree (other than the Escrow Agent) that all rights, title and interest in and to the Escrow Account shall be vested in the Escrow Agent and shall be in trust for the parties.

iv) The Escrow Account will be operated as per direction of Coal Controller by the authorized signatories of the Company.

v) For any avoidance of the doubts it is made clear that all money held by the Escrow Agent/Designated bank shall not be considered as part of the personal assets of the Escrow Agent/Designated Bank.

vi) In the event of any deviation in the withdrawals, the parties shall communicate the same in writing to the Escrow Agent.

vii) Tax will be deducted at source as per Income Tax Act. Up to 80% of the total deposited amount including interest accrued in the Escrow Account may be released after every 5 years in the line with the periodic examination of the closure plan as per clause 3.1 of the annexure of the guidelines. The amount released should be equal to the expenditure incurred in the Progressive Mine Closure in the past 5 years or 80% whichever is less. The balance amount at the end of the Final Mine Closure shall be released to the Mine Owners/Leaseholder on compliance of all provisions of closure plan duly signed by the Lessee to the effect that said closure of mine complied all statutory rules, regulations, orders made by the Central or State Government, statutory organizations, court etc. and duly certified by the Coal Controller.

viii) Funds: Interest will be paid at the offered rate at the time of opening the Escrow Account.

ix) Income Tax: Tax will be deducted at source as per Income Tax Act. The Mining Company shall not charge the funds kept in the term deposits in escrow accounts by way of assignment / lien / hypothecation to secure any loan/advance/credit facilities taken / to be taken by the mining Company. The deposits created out of funds of Escrow account automatically be renewed for a further period of one year on due date if the Escrow Agent do not receive any instruction from the Coal Controller to the contrary.

### **Operation of Escrow Account.**

#### **Deposit**

i) The Escrow Account shall continue as a debit freeze account subject to withdrawal of 80% of total deposited amount including interest accrued in the Escrow Account after 5 years of every deposit in line with the periodic examination of the closure plan. The balance amount shall be released to the mine owner/leaseholder at the end of the final Mine Closure on compliance of all provision of closure Plan.

ii) The ----- (Mining Company) shall cause deposit in such "Escrow Account" in the following manner on yearly basis as would be communicated by the Coal Controller from time to time

a) The payment shall be made by RTGS/NEFT/DEMAND DRAFT/PAY ORDER.

b) Around Six lakhs per hectare of the total project area in case of OC mines at current price level (August,2009) subject to modification based on the wholesale price Index (WPI) as notified by the Government of India from time to time.

c) One lakh per hectare for UG project area, at current price level of (August, 2009) subject to modification based on the wholesale price Index as notified by the Government of India from time to time.

d) Annual Closure Cost is to be computed on the total Project Area over and above the aforesaid rate per hectare and dividing the same by the entire life of the mine in years for new projects and balance life of mine in years for operating /existing mines is to be deposited each year by the said company (-----, the mining company) throughout the life of the mine compounded at the rate of 5% annually.

e) An amount equal to the annual cost is to be deposited each year throughout the life of the mine compounded at the rate of 5% annually.

f) Mine closure plan which have already been approved earlier on the basis of lease hold area, the project proponents are required to recalculate the closure cost on the basis of total project area and submit a certificate stating that amount in Escrow Account would be deposited as per re-calculated amount.

g) The Closure Cost may change subject to Government of India's Notification from time to time.

h) If the Mine owners fail to deposit the annual amount required to be deposited, the Government can withdraw the mining permission.

i) It is to be clearly understood that the fund so generated are towards the security to cover the cost of closure in case the mine owner fails to complete the relevant closure activities. The prime responsibility of mine closure shall always lie with the mine owner, and in case the funds so generated are found to be insufficient to cover the cost of final mine closure, the mine owner shall undertake to provide the additional fund equivalent to the gap in funding before five years of Mine Closure failing which it may be recovered by such other methods as the competent authority may deem fit in this regard.

## **Withdrawal.**

Withdrawal/transfer from Escrow Account shall be in accordance with the water fall mentioned herein below:

- (1) To allow the mine owners by way of reimbursement up to 80% of the total deposited amount including interest accrued in the Escrow Account after every 5 years of every deposit in line with the periodic examination of the closure plan as per clause 3.1 of the Annexure of the Guidelines.
- 2) The balance amount shall be released to mine owner/lease holder at the end of the final mine Closure on compliance of all provision of closure plan. The compliance report should be duly signed by the lessee and certify that the said closure of mine complied all statutory rules, regulations, orders made by the Central or State Government, statutory organizations, court etc. and certified by the Coal Controller. Provided that if all the above criteria is not completed within the period specified in mine closure plan the amount in the Escrow Account shall be forfeited.

## **Duties of Escrow Agent**

### **Escrow Agent shall:**

- i) Keep proper books of accounts relating to Escrow Account maintained by the agent.
- ii) Provide Statement of Accounts to the parties at such frequencies which will be evolved by consensus amongst the ----- (mining company), the Coal Controller's Organization and Escrow Agent.
- iii) Not to allow any payment out of the Escrow account in respect of money deposited without the approval of the Coal Controller's Organization except in the manner stated hereinabove.
- iv) Act in accordance with the agreement.
- v) Irrevocably and absolutely waive all present and future rights to make or exercise any claims or demands, any rights of counter-claim, lien/set-off and all other present or future rights against the balance amount standing to the credit of the Escrow account, to make any withholding or balancing of any accounts or to effect any transfers without the approval of the Coal Controller's Organization.
- vi) Irrevocably and absolutely waive all present and future rights to combine or consolidate any other non-Escrow Account of any offices anywhere with the Escrow Agent or the designated Bank.
- vii) As promptly, as is reasonably practical, after receipt of any reasonable written request from the parties provide such information to such parties regarding the amounts available in the Escrow Accounts and balances there under.

### **Termination/Resignation of Escrow Agent.**

- i) The obligation of the Escrow Agent under this agreement shall end on the final payment of the amount under the aforesaid scheme.
- ii) The Escrow Agent may resign from its appointment as an Escrow Agent subject to the Escrow Agent giving 30 Business days prior notice in writing to the other parties. The Escrow Agent shall deal with the Escrow Account in accordance with the provisions of the Escrow Agreement and continue to be bound by the terms and conditions hereof until the Coal Controller's Organization identify a successor.
- iii) The Escrow Agent may be removed by the Coal Controller' Organisation on giving 30 days notice to the Escrow Agent. In case the Coal Controller's Organization fails to identify a successor Escrow Agent within the above-mentioned 30 days', the Escrow Agent, -----.(Bank Name), shall by itself appoint a successor as Escrow Agent.
- iv) If the Escrow Agent resigns or removed in accordance with the agreement, then Coal Controller's organization shall appoint a successor as Escrow Agent in consultation with the Coal

Mining Company.

v) If the Escrow Agent resigns or is replaced pursuant to this agreement, such Escrow Agent shall do all necessary acts for the transfer of the Escrow account to the successor Escrow Agent.

vi) The fees for the service rendered if any by the Escrow Agent shall be in accordance with the letter to be exchanged between the Escrow Agent, the Coal Controller's Organisation and Coal Mining Company.

#### **Amendment of the Agreement**

i) This agreement may be altered, amended, modified or revoked by an instrument in writing signed in original by Coal Controller as and when required.

#### **Notices**

All notices or other communications to be given under this agreement shall be made in writing to:

i) ----- (Mining Company),

Address. -----

Tel:

Fax:

ii) Coal Controller Organization,

Address. -----

Tel:

Fax

iii) Escrow Agent,

Address. -----

Tel:

Fax

#### **Governing Law & Jurisdiction**

i) This agreement shall be governed by and interpreted in accordance with Indian Law and shall be subject to the exclusive jurisdiction of the courts at Kolkata.

#### **Whole Agreement & Variation**

i) This agreement together with the schedules hereto contains the whole agreement between the parties relating to the rights and obligations in relation to the subject matter of the agreement.

#### **Invalidity**

i) If any term or provision in this agreement is held to be illegal or unenforceable in whole or in part, under any enactment or rule of law, such term or provision or part to that extent will be deemed not to form part of this agreement, but the enforceability of the remainder of the agreement will not be affected.

#### **Counterparts**

i) This agreement may be entered into in any number of counterparts and the parties of it on separate counterpart each of which when so executed and delivered will be in original, but all the counterparts will together constitute one and the same instrument.

#### **No Waiver**

i) No failure to exercise or delay in exercising any right or remedy under this agreement by any party will operate as a waiver of any other right or remedy hereunder, nor will any single or

partial exercise of such right or remedy preclude any further exercise thereof or of any other right or remedy which such party may have in this agreement.

**Rights Cumulative**

i) The rights and remedies provided herein are cumulative and not exclusive of any rights and remedies provided by law in equity or otherwise.

**Rights of Third Parties**

i) For the avoidance of doubts, this agreement does not and shall not confer rights upon a person which is not a party to this agreement.

In witness of which the parties have executed the agreement on ----- day of ----- 20  
as mentioned above.

SIGNED AND DELIVERED BY WITNESSES

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(Coal Mine  
Company) By  
Name:  
Designation:

**Annexure B****Statement Showing the technical details**

Sr. No	Particulars	Benchmarks	Actual performance as per audited accounts
1	Net Worth	>Rs.5000 Crore as on March 31, 2015	
2.	Capital Adequacy Ratio	>9% as per BASEL III as on March 31, 2015	
3	Deposit base	>56000 Crore as March 31, 2015	
4	Profitability	Net Profit since FY 2010-11 onwards. In case of net loss in any year on or after FY 2010-11 then said bank will not be considered as technically qualified.	

Note: This should be duly signed by official of the bank/ Chartered Accountant's firm.

**Annexure -C**

MEMORANDUM OF UNDERSTANDING TO BE EXECUTED BETWEEN

GMDC LTD

AND

\_\_\_\_\_

Gujarat Mineral Development Corporation Limited, Ahmedabad (GMDC Ltd) has appointed \_\_\_\_\_ (herein referred to as "bank") as ESCROW agent for opening of escrow account in respect of Mata no madh Mine as per the proposal floated through this EoI No2/IGMDC/Escrow/2015-16. In order to establish proper understanding and to provide efficient and satisfactory services by the bank this Memorandum of Understanding (MOU) has been signed between \_\_\_\_\_ (name of the bank) and M/s GMDC Ltd, Ahmedabad the parties, hereby agree as follows :-

**Documentation**

1. The bank will open an ESCROW account as per requirement of Coal Controller of India. The amount will be deposited before execution of Escrow agreement; therefore amount so deposited should be transferred to FD account as per directions of GMDC at a special rate of interest.
2. The tripartite agreement will be signed between GMDC, Coal Controller and the banks per draft format provided by the Coal Controller of India. However in case of any changes made by the Coal Controller, then bank will accept the same unconditionally.
3. Bank will depute an authorized officer for signing tripartite agreement and other related documents as per requirement of the Coal controller office.
4. Bank will follow terms and conditions as mentioned in EoI no.2/IGMDC/Escrow/2015-16

For GMDC Ltd.

For (the bank)

Authorised Signatory  
Date  
Place

Authorised Signatory