

3RD SURANA & SURANA INTERNATIONAL ARBITRAL AWARD WRITING COMPETITION, 2022



PRESENTED BY: CADR-RGNUL

In collaboration with

SURANA & SURANA INTERNATIONAL ATTORNEYS, CHENNAI, INDIA



1. Agniprastha Pvt. Ltd (AgPI) is an Indian Multinational Public Sector Company based in Mumbai, Maharashtra. Owned wholly by the Government of India, it is involved in the business of production of Oil and Natural Resources and also undertakes oil and natural gas exploration projects across the sedimentary basins of India, along with certain other projects Internationally. AgPI is the largest government owned oil and gas exploration company in India and it is responsible for supplying a majority of the oil and natural gas resources to the country. It is ranked as one of the top most energy companies in the world and is widely respected for providing effortless service to the nation along with having a clean business record in its operations with international clients and business partners.
2. Oil and Natural Gas Industry in India has a history of about 150 years when the first oil deposits were discovered in the state of Assam in 1889. Numerous exploration expeditions since then have yielded disappointing results since no significant oil deposits could be found across the landmass of the sub-continent. Since the liberalisation of the economy in 1991, India has steadily become reliant on crude oil for meeting its energy demands as it is used in vehicles for transportation, factories and even for cooking at home. Thus, the country is heavily dependent on energy imports from other countries to meet its demand. As per statistics, the country currently imports 82 percent of its energy resources however it seeks to reduce the same to about 67 percent through off-shore exploration of crude oil reserves and natural gas reserves.
3. To meet this requirement, the government of India, through AgPI has been instrumental in driving forward this initiative of exploration in Natural Gas along with exploring new International Partners to conduct research and exploration along with a possibility of an energy supply agreement with them to secure a beneficial deal for itself and for the people of its country.
4. Mr. Zal Billimoria, is the head of operations at AgPI. Mr. Billimoria has had an extremely successful career in the energy industry. Having graduated from the Harvard Business School, Mr. Billimoria joined Xenonmobil, a prestigious oil and natural gas Corporation based in the United States, with its operations across the world. During his 10-year stint with the company, Mr. Billimoria made extensive business connections with energy suppliers across the world and was personally responsible for having executed numerous energy deals between Xenonmobil and various state-owned companies in emerging oil rich economies such as Russia, Nigeria, Venezuela. At a business conference at New Delhi in 2015, Mr. Billimoria was convinced by the Indian Minister for Oil and Natural Gas to head the business operations at AgPI. It was believed by the Minister, that owing to his extensive



experience, business connections, vision, he would be able to independently take forward the business interests of the company. Having agreed to the same, Mr. Billimoria, developed a business plan wherein the business operations at AgPI would be independently executed by the company without extensive interference from the ministry. As a result, since 2015, AgPI acted as an independent and private company in every manner albeit formally being under the control of the government.

5. Eager to implement the action plan of reducing energy dependency on traditional sellers and to explore indigenous oil, Mr. Billimoria actively met with business leaders across the world, looking for an energy company that would be interested in working along with AgPI in both providing AgPI with crude oil and to collaborate in providing conducting research necessary for exploring deep sea oil and natural gas reserves both in Indian waters and in high seas.
6. Traditionally, AgPI, bought its oil from the members of the Organization of Petroleum Exporting Countries (OPEC), including Saudi Arabia, Iran, United Arab Emirates and also from Nigeria. Since 2017, owing to the growing relations with Russia, AgPI considered possible business deals with Russian Oil Companies.
7. During his days at Xenon Mobil, Mr. Billimoria had been in touch with Mr. Vasiliky Nobov, an Executive with the Russian Oil and Natural Gas company, Uralo Ltd. Uralo Ltd. is a private company owned by a small group of Russian investors with business interests across the Russian sub-continent as well as in Eastern Europe. Since the early 2000s, Russia with its huge oil resources, found new markets to sell its crude oil produce and Uralo Ltd. has grown immensely with its business interests, having a significant supply of its crude oil to the United States of America, England, Spain, Germany and other European Nations. In 2014, the company secured a huge business contract worth 400 billion USD to supply natural gas to China. Uralo Ltd. also sought to enter the Indian market noticing the huge demand for natural gas and crude oil.
8. Noting these developments, Mr. Billimoria met with Mr. Nobov at a business conclave in Zurich where they warmly exchanged greetings. During their personal meeting, Mr. Billimoria proposed a possibility of entering into a business arrangement with Uralo. Mr. Nobov was highly impressed with the proposal and sought further meetings with Mr. Billimoria to explore this possibility of doing business. The meeting went extremely well and both parties parted on a high, having made headway into entering into a business agreement. The parties also agreed to discuss this further during a private meeting at London.

9. Simultaneously, the Indian Government in a delegation led by the Indian Prime Minister and including the Foreign Minister, the Minister for Oil and Natural Gas and the Defence Minister visited Moscow for a high-level meet with the Russian Government. During the meeting in Moscow, the Prime Minister of India and the Russian President met and discussed the need to strengthen the already strong ties between the two countries and proposed higher level of collaboration in defence and energy research and development along with business collaborations. The event got high media coverage where it was even estimated and highly speculated that both the leaders had a thorough discussion for India to purchase Russian energy resources. It was further speculated that the Oil and Natural Gas Ministry had proposed AgPI to play a greater role in the same where the government would be instrumental in securing for it, a business deal with Russia. The role played by AgPI was however downplayed in the local media through statements made by trade experts who stated that AgPI, under the leadership of Mr. Billimoria was a truly independent company and was free from the clutches of the government.
10. During the meet in London in January 2017, Mr. Billimoria and other executives of AgPI sat across Mr. Nobov and respective executives of Uralo to decide upon a business plan. During the meeting it was accordingly decided that both the companies would invest collectively to set up an independent entity based in Mumbai which would be a joint venture between AgPI and Uralo and would henceforth be known as **Synergy Ltd**, which would conduct all the research and development related activities between the parties and would be involved in the process of oil exploration. To achieve this, Uralo would first set up a subsidiary, Uralo India Pvt. Ltd. which would be specially setup for the purpose of this joint venture and also for ensuring the oil supply agreement between Uralo and AgPI. To this end Uralo India Pvt Ltd. would have an authorized capital of Rs. 1000 Crore and would have a management office in Mumbai, Maharashtra. The joint venture was envisioned to handle all the collective ventures of the two companies in their activities of offshore oil exploration. To this extent a joint venture agreement was signed by the parties on 10 April 2017.
11. The following table represents the details of the proposed joint venture between Agniprastha Limited (AgPI) and Uralo India Private Ltd:

S. No	Heading	Details
1.	<i>Parties</i>	<ul style="list-style-type: none"> • <i>Agniprastha Limited (AgPI), a company incorporated under the Companies Act, 1956, having its registered office at Kingsway Road, Mumbai, Maharashtra, India- 110XYZ and</i> • <i>Uralo India Private Limited, a company incorporated under the Companies Act, 2013, having its registered office at Floor 25, Cambridge Twin Towers, Lower Parel, Mumbai Maharashtra, India- 111XYZ</i>
2.	<i>Transaction</i>	<ul style="list-style-type: none"> • <i>Joint Venture Company- AgPI and Uralo India intend to set up a company under the Companies Act, 2013 (Synergy Ltd.) in which AgPI and Uralo India Pvt Ltd shall be 49-51% shareholders respectively with authorized capital of Rs. 500 Crores. The company would also be involved in undertaking excavation activity in Indian waters to explore the possibility of excavation of crude oil in Indian territory.</i>
3.	<i>Obligations</i>	<ul style="list-style-type: none"> • <i>Synergy Ltd shall have a 6-member executive team to make all the decisions of the company with three representatives each from AgPI and Uralo India</i> • <i>All project related decisions would be reviewed and approved by the executive team</i> • <i>The collection of revenue from sale of oil further to retailers in India will be put in the bank account operated by AgPI and AgPI would be required to observe full transparency.</i> • <i>The profits generated from the sale of oil by AgPI in India would be utilized towards funding this joint venture and its initiatives of research and development</i>
		<ul style="list-style-type: none"> • <i>Uralo India Private Limited would similarly invest an equal amount into the joint venture, the amount being equal to the profits invested by AgPI from its retail in India.</i>

4.	Compliance	• <i>Synergy Limited would undertake its activities and investments in compliance with all applicable laws of the Republic of India</i>
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12. Within 3 months of signing the joint venture agreement, the Executive Team, responsible for the decision making for Synergy Limited was formed with Uralo appointing its employees as members while AgPI appointed two of its executives as members of the executive team while upon the recommendation of the Petroleum Minister, Mr. Billimoria appointed a former Indian government bureaucrat as the third executive member, who also served as an MD at AgPI. It was widely speculated by the media that the third appointee was a close associate of the government.
13. Owing to its geographical location, most of Uralo's oil operations were located in the Eurasian Sub-continent with other business interests near the Caspian Sea. Since the recent push of the European Union to reduce emissions and reliance on fossil fuels, Uralo has lost out on huge amounts of business from Europe which was supplied oil from the very oil fields located in Eurasia. As a result, it was decided that the produce of oil from the area would be sent to India through ship tankers through the Suez Canal in Egypt. The route is critical for supply to India since it significantly reduces the distance of travel for ships leaving from Russia as they would otherwise have to pass through the African continent and also through the Cape of Good Hope, a passage way notorious for many shipwrecks in the past owing to its rough weather. It would also be more expensive as the freight charges would be significantly higher.
14. Based upon the joint venture between the parties, Mr. Billimoria and Mr. Nobov met in London in December 2017 to sign the first contract of supply of crude oil. The details of the contract are provided as follows:



OIL PURCHASE AGREEMENT

BETWEEN URALO INDIA PRIVATE LIMITED AND AGNIPRASTHA PRIVATE LIMITED

THIS AGREEMENT is made on the 26th of December of 2017 at London, United Kingdom

1. **BETWEEN:**

- 1.1 **URALO INDIA PRIVATE LIMITED**, a Private Limited Company, incorporated under the Companies Act, 2013 and registered with the Ministry of Corporate Affairs, India under registration number 12345, having its principal office at Floor 25, Cambridge Twin Towers, Lower Parel, Mumbai Maharashtra, India- 111XYZ
- 1.2 **AGNIPRASTHA PRIVATE LIMITED (AgPI)**, a Public Limited Company, incorporated under the Companies Act, 1956 and registered with the Ministry of Corporate Affairs, India under registration number 60583, having its principal office at AgPI Bhavan, Kingsway Road, Mumbai, Maharashtra, India- 110XYZ

2. **RECITALS:**

- 2.1 **AGNIPRASTHA PRIVATE LIMITED** is engaged in the business of oil and natural gas supply and exploration. AgPI has entered on the date of this Agreement into an Oil Purchase Agreement with URALO India Private Limited (hereinafter referred to as Uralo India), a Private Limited Company, incorporated under the Companies Act, 2013 and registered with the Ministry of Corporate Affairs, India under registration number 12345, having its principal office at AgPI Bhavan, Kingsway Road, Mumbai, Maharashtra, India- 110XYZ
- 2.2 **AGNIPRASTHA PRIVATE LIMITED** wishes to purchase and **URALO INDIA PRIVATE LIMITED** has agreed to sell to AgPI, crude oil to its facilities, subject to and in accordance with the terms and conditions of this agreement.

3. **THE PARTIES AGREE AS FOLLOWS:**

3.1 **Definitions Interpretation and Language**

3.1.1 Definitions and Interpretations: In this agreement (including the Recitals), unless the context otherwise requires:

- a. **'Agreement'** shall mean or refer to this Agreement and any agreement, deed or instrument supplemental or ancillary thereto, and expressions 'section', 'subsection', 'article', 'exhibit' and 'schedule' followed by a number shall mean and refer to the specified section, subsection or article of or exhibit or schedule to this Agreement;

- b. **'Applicable Laws'** shall mean all valid laws, orders, directives, rules and regulations of any governmental body, official or court, foreign, or domestic, having jurisdiction over the parties or any matter relevant to rights
- c. **'Commencement Date'** shall mean 1 April 2018;
- d. **'Daily Quantity'** shall mean the amount of oil scheduled to be delivered each day during the term of this agreement.
- e. **'Default'** shall have the meaning ascribed thereto in Art.11.1
- f. **'Parties'** shall mean any party to this agreement and any permitted successor or assignee of such parties, as the case may be;
- g. **'Tariff'** shall mean the sum of the cost of shipment.

3.1.2 Language

- a. The language of negotiation of this Agreement has been [English], this Agreement executed in [English] and the [English] text shall prevail for all purposes of determining the intention of the parties and in any construction of this Agreement.

4. Provision of Oil

- 4.1 Uralo India Private Limited shall provide Fuel to the Delivery Point at the facility in accordance with Article 6,7,8 and 9.

5. Investment in Joint Venture

- 5.1 The profits generated through the sale of oil by AgPI through its ventures in India shall be invested into the Joint Venture between the two parties for oil exploration in Indian waters. The same shall be facilitated by a sub-contract under this parent contract. Both the companies hereafter agree to take positive endeavours to facilitate the growth of this joint venture through this agreement and further seek to settle any possible disputes arising out of the joint venture by invoking the dispute resolution article within this parent agreement.

6. Delivery Facility

- 6.1 This provision shall deal with the method of delivery of fuel to this site as specified by the parties pursuant to their consultation with each other.

7. Oil Title, Warranty and Indemnity

- 7.1 Uralo India warrants that it shall have title to all fuel supplied under this Agreement immediately prior to passing title in fuel to AgPI at each Delivery Point and shall otherwise supply fuel to each delivery point free and clear of all liens,

encumbrances and claims whatsoever.

7.2 *Uralo India shall fully indemnify, defend and hold AgPI harmless against all third-party claims for damages, costs, losses and expenses arising from or out of a breach of the warranty clause, including claims by any third party or parties for any royalties, taxes, license fees or charges applicable to fuel shipped.*

8. Passing of Title and Risk in Oil

8.1 *Title, and subject to the passing of good title, risk in the fuel supplied by Uralo India shall pass from Uralo India to AgPI at the relevant delivery point.*

9. Nominations

9.1 In respect of yearly Estimates:

The current year within 95 days of the date of this Agreement and each subsequent year, no later than 2 months prior to the start of the first quarter of that year, AgPI shall advise Uralo India Private Limited by notice in writing of AgPI's good faith estimate of its requirement for Fuel for in respect of the current year, quarter in which this Agreement is signed and the remaining quarters in and each month of the current year and; in respect of each subsequent year, for the first quarter and in the next three quarters of that year and in each month of that year. AgPI shall identify the quantity and type of Fuel required in relation to each of the facilities individually.

9.1.1 In respect of monthly Nominations: AgPI shall provide Uralo India with 2 months prior written notice in the form set out of its requirements for fuel to be supplied in a particular month and in each week of that month; provided that AgPI may not provide notice to Uralo India pursuant to this clause in respect of the first two months of this current year. Nominations by AgPI of its requirements for fuel in any month shall identify the type of fuel and the quantity of fuel in metric tonnes required in that month and in each week of that month in relation to each of the facilities individually.

9.1.2 *In respect of interruption AgPI shall use its reasonable efforts to give Uralo India prompt notice of any interruption to its requirements for fuel under this agreement in relation to the facility.*

9.3. Obligations to take delivery on Monthly Nominations:

9.3.1 *AgPI shall be obliged to take delivery of the fuel made by Uralo India to*

take delivery of oil made by Uralo India in accordance with the aforementioned Clauses. If AgPI fails to take delivery of fuel nominated by it in respect of any week on the date determined pursuant to Clause 8.1 and 8.2, and does not take delivery of the fuel at a mutually agreed date within 10 days of the original date for delivery:

- a. Uralo India shall have no further obligation to supply the quantity of fuel not received by AgPI and;
- b. Except where AgPI's failure to take delivery arises as a result of an event of force majeure, AgPI shall pay liquidated damages to Uralo India equal to 10 percent of the cost of fuel not taken.

9.3.2 Uralo India's Rights to Interrupt Supplies of Fuel Uralo India shall be entitled to interrupt the supply of fuel in respect of any week or for the duration of the following circumstances:

- a. where undisputed payments are due and owing to Uralo India by AgPI under this agreement; or subject to Article 9 where and to the extent that there is an event of force majeure affecting the supply by Uralo India or receipt by AgPI of the fuel.

10. Force Majeure

10.1 Events of Force Majeure:

For the purpose of this agreement, an "Event of Force Majeure" means any circumstance not within the reasonable control of the Party affected, but only if and to the extent that (i) such circumstance, despite the exercise of reasonable diligence and observing good utility practice, cannot be, or be caused to be, prevented, avoided or removed by such party, and (ii) such circumstance materially and adversely affects the ability of the party to perform its obligations under this Agreement or makes the performance of the contract extremely burdensome, and such Party has taken all reasonable precautions, due care and reasonable alternative measures in order to avoid the effect of such event on the party's ability to perform its obligations under this Agreement and to mitigate the consequences thereof.

10.2 Instances of Force Majeure:

- 10.2.1 *Subject to the provisions of Clause 9.1, Events of force majeure shall include but not be limited to: Fire, chemical or radioactive contamination or ionising radiation, earthquakes, lightning, droughts or such other extreme weather or environmental conditions, unanticipated geological or ground conditions, epidemic, famine, plague or other acts of God.*
- 10.2.2 *Explosion, accident, structural collapse caused by one person not being the affected party or one of its contractors or subcontractors or any of their respective employees or agent*
- 10.2.3 *Any use of force which renders supply of oil completely impossible to be delivered;*
- 10.2.4 *Strikes, lockouts, work stoppages, labour disputes and each other industrial action by workers related to or in response to the terms and conditions of employment of those workers or others with whom they are affiliated save when such event is directly related to, or in direct response to any employment policy or practice (with respect to wages or otherwise) of the party whose workers resort to such action;*
- 10.2.5 *Expropriation or compulsory acquisition of a facility or site provided that breakdown of any plant, equipment or vehicles (unless due to an event of force majeure) or unavailability of funds shall not constitute an event of force majeure*

10.3 Consequences of Force Majeure:

Either Party shall be excused from performance and shall not be in default in respect of any obligation hereunder to the extent that the failure to perform such obligation is due to an event of force majeure

10.4 Notice of Force Majeure:

10.4.1 *If a party wishes to claim protection in respect of an event of force majeure, it shall as soon as possible following the occurrence or date of commencement of such event of force majeure, notify the other party of the nature and expected duration of such event of force majeure, notify the other party of the nature and expected duration of such event of force majeure and shall thereafter keep the other party informed until such time as it is able to perform its obligations. The parties shall use their reasonable endeavours to:*

- a. *Overcome the effects of the event of force majeure as soon as practicable;*

- b. *Mitigate the effect of any delay occasioned by any event of force majeure; including by recourse to acceptable alternative sources of fuel which acceptance shall not be unreasonably withheld by either party and*
- c. *To ensure resumption of normal performance of this agreement as soon as reasonably practicable and shall perform their obligations to the maximum extent practicable,*

10.4.2 Provided that neither party shall be obligated to settle any strike, lock out, work stoppage, labour dispute or such other industrial action by its employees.

11. Liabilities and Indemnities

11.1 Uralo India's Indemnity

- 11.1.1 Uralo India shall be responsible for any Third-Party claim for any injury to or loss or damage to property of any person (including reasonable legal fees) arising out of the transport, delivery and transfer of Fuel up to the Delivery Point (each referred to as a "Uralo India Third Party Claim").*
- 11.1.2 Subject to Clause 10.1.4, Uralo India shall fully indemnify and hold AgPI, its Affiliates, officers, employees, contractors and agents harmless in respect of Uralo India Third Party Claims provided that the indemnity shall not extend to, and AgPI hereby waives any claim against Uralo India in respect of Uralo India Third Party Claims to the extent caused by any negligent act or omission of AgPI, its Affiliates, officers, employees, contractors and agents.*
- 11.1.3 AgPI shall be responsible for any Third-Party claim for any injury to or loss or damage to property of any person (including reasonable legal fees) arising out of the transfer, storage or use of Fuel at and from the Delivery Point (each referred to as AgPI 'Third Party Claim')*
- 11.1.4 Limitation of Liability Clause: Uralo India Private Limited shall have no liability attributable to it in cases of spillage or damage to quality of oil on account of delay in communication caused by AgPI.*

12. Termination

12.1 Events of Default

12.1.1 AgPI Event of Default

Each of the events described below shall constitute a AgPI Event of Default:

- (a) a material breach by AgPI of any obligation under this Agreement, which (where capable of remedy) has not been remedied within 15 days following a notice from Uralo India stating that such a breach has occurred, identifying the breach and demanding it to be remedied, provided that if AgPI has diligently and as quickly as possible commenced the remedial action necessary but is unable to complete it within 15 days, it shall be allowed such further period as may be reasonable to complete the remedial action not exceeding 25 days.*
- b) AgPI has made any material misrepresentation in the representations and warranties set out in Article 6 or has not disclosed any material fact which renders any such representation or warranty materially misleading;*
- (c) The dissolution, merger, consolidation, amalgamation, reorganisation or reconstruction of AgPI, except to the extent that it does not affect the ability of the resulting entity to perform its obligations under this Agreement;*
- (d) Except for the purposes permitted under paragraph (c), the occurrence of any of the following events (other than as a direct result of a Uralo India Event of Default):*
 - (i) Passing of a resolution or initiation of any proceeding for the bankruptcy, insolvency, winding up, liquidation of or other similar proceedings relating to AgPI;*
 - (ii) The appointment of a trustee, liquidator, custodian or a similar person in a proceeding referred to in paragraph (d)(i), which appointment has not been set aside or stayed within 10 days of such appointment; or*
 - (iii) The making by a court having jurisdiction of an order winding up or otherwise confirming the bankruptcy or insolvency of AgPI, which order has not been set aside or stayed within 15 days; and*
- (e) AgPI ceasing to hold a licence, permit or consent, as a result of*

breach by AgPI of the terms and conditions of such licence, permit or consent, making it unlawful for AgPI to generate electricity from all of the Facilities

12.1.2 Uralo India Event of Default:

Each of the events described below shall constitute Uralo India's event of default:

- (a) A material breach by Uralo India of any obligation under this Agreement, which (where capable of remedy) has not been remedied within 15 days following notice from AgPI, identifying the breach and demanding it to be remedied, provided that, if Uralo India has diligently and as quickly as possible, commenced the necessary remedial action necessary but is unable to complete it within 25 days, it shall be allowed such further period of up to another 10 days as may be reasonable to complete the remedial action.;*
- (b) The dissolution, merger, consolidation, amalgamation, reorganization or reconstruction of Uralo India, except to the extent that it does not affect the ability of the resulting entity to perform its obligations under this Agreement;*
- (c) Except for the purposes permitted under paragraph (b), the occurrence of any of the following events (other than as a direct result of AgPI's event of default):*
 - i. Passing of a resolution or initiation of any proceeding for the bankruptcy insolvency, winding-up, liquidation of or other similar proceedings relating to Uralo India;*
 - ii. The appointment of a trustee, liquidator, custodian or a similar person in a proceeding referred to in paragraph (c)(i) which appointment has not been set aside or stayed within 15 days of such appointment; or*
 - iii. The making by a court having jurisdiction of an order winding up or otherwise confirming the bankruptcy or insolvency of Uralo India, which order has not been set aside or stayed within 10 days; and*

- iv. *Uralo India's ceasing to hold Uralo India's concession or a permit or consent because of breach by Uralo India of the terms and conditions of such license, permit or consent, making it unlawful for Uralo India to engage in the supply of fuel; and*
- v. *Any material misrepresentations by Uralo India in the representations or failure to disclose any such representations and warranty misleading.*

12.1.3 Consequences of Events of Default:

In the case of a default by Uralo India, AgPI may terminate this agreement and in the case of a default AgPI, Uralo India may terminate this Agreement, in either case by giving a notice of termination to the other whereupon this Agreement shall terminate upon the date specified in such termination notice or such later date as the parties may have agreed.

12.1.4 Termination for other events

The agreement shall terminate automatically in the event that the contract stands completed and all the obligations between the party stand settled. The word 'settled' to be strictly interpreted to mean settled within the terms of this agreement.

12.1.5 Sole Grounds for Termination

The provisions of this Article 12 shall be the sole and exclusive grounds on which the Parties may terminate this Agreement.

12.1.6. Consequences

On termination of this Agreement for whatever reason whether Party shall have any liability to the other for any damages or loss, whether under this agreement, at law or otherwise, save for claims relating to accrued rights under this Agreement prior to its termination.

13. Dispute Resolution

13.1 *If any dispute arises between the Parties in connection with or relating to this Agreement (a "Dispute") the Parties through their respective chief executive officers shall attempt to resolve the Dispute through discussion.*

13.2 *If a Dispute is not resolved within twenty (20) Business Days by discussion*

pursuant to Clause 12.1, and such Dispute is required by this Agreement to be referred to an Expert, either Party may by notice to the other require the Dispute to be referred to an Expert in accordance with the procedure specified in Clause 12.3.

13.3 The Parties shall jointly appoint an Expert within twenty (20) Business Days or such longer period as may be agreed by the Parties, after the date of receipt of the notice by the addressee of the notice. If the Parties fail to agree on an appointee, either Party may apply to the Singapore International Arbitration Centre (SIAC) for Expertise to appoint an Expert requesting that the appointment be made within twenty (20) Business Days of the date of receipt of the application. The following procedure shall apply to determination of a Dispute by an Expert and the Parties shall procure that it is reflected in the Expert's terms of reference:

13.3.1 The Expert shall:

- a. give each of the Parties the opportunity of making oral and/or written representations to him on the Dispute within fifteen (15) Business Days after the date of his appointment;*
- (b) give his decision within thirty (30) Business Days (or such longer period as may be decided by the Expert but not exceeding forty-five (45) Business Days after the date of his appointment;*
- (c) determine the amount of his fees and expenses and the responsibilities of the Parties for such fees and expenses; and*
- (d) give copies of his decision and the reasons therefore in writing to each of the Parties.*

13.3.2 The Parties shall promptly provide the Expert and each other with all such evidence and information within their respective possession or control as the Expert may consider necessary for determining the Dispute or which is relevant to and bears upon the Dispute.

13.3.3 If the Expert shall fail to give his decision pursuant to Clause 13.3 within the period specified in paragraph (b) of Clause 13.3.1, either Party may by notice in writing to the other require that the Dispute is decided by reference to arbitration, whereupon the Expert shall be instructed not to consider the matter further.

13.3.4 The Expert shall not act as arbitrator but shall decide the Dispute using his skill, experience and knowledge and with regard to such matters as are

expressly specified in this Agreement to be considered by him and as the Expert in his sole discretion considers appropriate. The decision of the Expert pursuant to this Clause 13.3.1 shall (subject to Clause 13.3.3) be final and binding on the Parties save in respect of fraud or manifest error.

13.3.5 Unless the Expert's decision is set aside for reason specified in Clause 13.3.3, the Parties hereby agree to be bound by, perform the Agreement in accordance with, and undertake to implement the determination of the Expert. Failure by one Party to so act shall constitute a breach of the Agreement. Any Dispute concerning the Expert's determination may be submitted to arbitration in accordance with Clause 13.3.4. The Tribunal shall be bound by the determination of the Expert and the only issue for the Tribunal to determine shall be whether the Parties have complied with the determination of the Expert.

13.3.6 In the event that the Expert becomes unwilling or unable to act in relation to the Dispute or (being a firm or partnership) is discontinued or (being a company) goes into liquidation other than for the purpose of a scheme of reconstruction or amalgamation, or commences carrying on its business under an administrator, receiver, manager or liquidator for the benefit of its creditors, then the Parties shall agree on a substitute Expert. The substitute shall be selected in accordance with the procedure specified in this Clause 13.5.

13.4 If a Dispute cannot be settled within twenty (20) Business Days by discussion pursuant to Clause 12, and is not required to be referred by this Agreement to an Expert, the Dispute shall be finally settled by an arbitral tribunal (the "Tribunal") under the Arbitration Rules of the Singapore International Arbitration Centre (the "SIAC Rules")

13.5 Each Party must appoint an arbitrator within twenty (20) Business Days after the date of a request to initiate arbitration, on the basis that their appointees will then jointly appoint a third arbitrator within twenty (20) Business Days after the date of appointment of the second arbitrator, to act as chairman of the Tribunal. If any arbitrator is not appointed within the time limits set forth in this Clause 12.3 either Party may apply to the Permanent Secretary to the Singapore International Arbitration Centre in accordance with rules established for this purpose to appoint an arbitrator requesting that the appointment be made within twenty (20)

Business Days after the date of receipt of the application. Subject only to SIAC Rules, both Parties undertake to implement the arbitration award. The seat of the arbitration shall be Singapore]. The language of the arbitration shall be English. The procedural law of Singapore International Arbitration Centre (SIAC Rules) shall apply.

13.6 The award rendered in any arbitration shall apportion the costs of the arbitration between the parties as the arbitrators see fit. The award rendered shall be in writing and shall set forth in reasonable detail the facts of the dispute and the reasons for the Tribunal's decision.

13.7. The award rendered in any arbitration commenced hereunder or any order passed by a competent court pursuant to applicable law in relation to an interlocutory matter concerning the dispute pending the conclusion of arbitration proceedings may be entered in any court having jurisdiction for its enforcement.

13.8 Neither Party shall have any right to commence or maintain any suit or legal proceeding concerning a Dispute hereunder, other than a proceeding permitted by applicable law in relation to any interlocutory matter referred to in Clause 13.7, in any court in the Republic of India, until the Dispute has been determined in accordance with the arbitration procedure provided for herein and then only to enforce or facilitate the execution of the award rendered in such arbitration or any interlocutory order pursuant to Clause 13.7.

13.9 During the course of any arbitration hereunder:

Uralo India Private Limited and AgPI shall continue to perform their respective obligations hereunder; and neither AgPI nor Uralo India Private Limited shall exercise any other remedies hereunder arising by virtue of the matters in Dispute.

13.10 The Party against whom an arbitration award for payment of an amount is made shall pay interest at the rate determined in accordance with SIAC Rules to the Party in receipt of such arbitration award.

13.11 Any award rendered pursuant to arbitration hereunder shall constitute a "foreign award" within the meaning of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and Part II of the Arbitration and Conciliation Act, 1996.

13.12 The enforcement of the award shall take place by filing an application under Part II of the Arbitration and Conciliation Act, 1996 before the Courts at India.

This Agreement shall be governed by, and construed under, the Principles of International



Commercial Contracts (PICC) and its interpretation of Good Faith. The Parties undertake to act in good faith in relation to the performance and implementation of this Agreement and to take such other reasonable measures as may be necessary for the realisation of its objectives.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the first date written above.

Agniprastha Pvt. Ltd (AgPI)

By:

Name: Mr. Zal Billimoria

Designation: Chief Executive Officer and Authorized Representative

For and on behalf of AgPI in the presence of:

Name: Mr. R.S. Sarkar

Designation: Managing Director, AgPI (Former IAS, Government of India)

Uralo India Pvt. Ltd.,

By:

Name: Mr. Vasiliky Nobov Designation:

Chief Executive Officer

For and on behalf of Uralo India Pvt. Ltd. in the presence of:

Name: Mr. Boris Vyet

Designation: Managing Director, Uralo India Pvt. Ltd.

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15. In accordance with the contract signed, AgPI successfully placed an order with Uralo for supply of 10,000 metric tonnes of oil supply for the month of April 2018. The supply was accordingly shipped on 15th March 2018 and it successfully reached the Bombay Port ahead of its schedule on 28th March 2018. In pursuance of the agreement, AgPI, placed similar orders time and again with Uralo, all of which were successfully supplied on time. Over the course of months, the purchase, delivery and supply of oil became standard practice between the two parties and it became a successful venture. The oil supplied was always of expected

quality and met the standards required by AgPI.

16. In the year of 2019 alone, AgPI and Uralo India Private Limited, raked a profit of 250 million dollars a portion of which was split between the two firms and the remaining 100 million dollars was committed to Synergy Ltd for conducting its research operations. The research began in 2019 itself with the company employing Indian engineers, Oceanographers and miners who in turn were assisted by Russian scientists employed by Uralo as part of their highly successful research and development department. The firm had reasonable success having narrowed down four possible areas of oil exploration in the Arabian Sea, about 25 nautical miles from the Indian mainland. It was highly speculated that the firm would soon file its valuation and file for IPO at the Bombay Stock Exchange.
17. As the prospects of finding oil reserves increased, Uralo's interests in the Indian oil industry deepened as they saw huge prospect of not only reaping huge profits in the country but also expanding into nearby markets such as Pakistan, Sri Lanka, Maldives etc.
18. This news also reached the shores of the Indian Government, which was closely monitoring the situation considering it is the caretaker of natural resources of the country. Mr. Sarkar, the MD at AgPI (who is also a former Indian Administrative Services Officer) regularly interacted with the petroleum minister and informed him of the possibilities of huge profits in discovering oil in India. The two further discussed the possibility of the Public Sector Enterprise and the government of India playing a closer role in the same.
19. Meanwhile, the profitable business of purchase and sale of oil continued throughout 2019 as well. Mr. Billimoria and Mr. Nobov continued with their successful business relationship, often looking at the prospect of greater collaboration in the future. The oil purchase agreement which was 2 years i.e. (2018 and 2019), the two agreed to extend the same till 2023.
20. In the meanwhile, there was a positive news from Synergy Limited as the oil reserve probe was successful as the company discovered a huge oil reserve. It was decided to set up oil rigs at the reserve to extract crude oil on an experimental basis and to determine its quality. It was decided by Mr. Nobov and Mr. Billimoria that the company would go for an IPO and raise the necessary money to fund the oil rig project. The news was taken sceptically by Mr. Sarkar who envisioned the Government to invest into the project and to increase its control over the same.
21. In 2020, unbeknownst to either party, there was an incident at the Suez Canal. A cargo ship, which temporarily lost control, got stuck in the middle of the canal, thereby preventing any passage of ships through it. This was devastating news for global trade in general as the canal is a crucial passage link for products being shipped from Europe to Asia. As a

consequence, it was estimated that the global trade would suffer a loss of 9 billion USD per day.

22. The news was equally shocking for AgPI and Mr. Billimoria as it meant that Uralo would not be able to supply oil. As per its letter dated 12.01.2020 (C-1), Mr. Nobov personally wrote to Mr. Billimoria explaining the situation and Uralo's inability to meet the supply target for January 2020 and instead offered a possible transfer of the shipment through South Africa albeit at a much higher cost. It was estimated that this would cause AgPI a loss of 10 million dollars for January. Mr. Nobov urged patience; however, patience was a luxury Mr. Billimoria could not afford. Mr. Billimoria wrote back to Mr. Nobov on 13.01.2020 (C-2), asking whether it would be possible to agree to the proposal at a lesser rate. Mr. Billimoria knew it would be difficult for him to accept the offer sent by Mr. Nobov as it would be really expensive for AgPI to fund this shipment. Mr. Nobov responded via a letter dated 15.01.2020 (C-3) outrightly objecting to the attitude shown by Mr. Billimoria and therefore rejecting the offer made by him.
23. The situation did not improve anytime in January as AgPI was left without oil. Over the years, AgPI had grown reliant on Russian oil and as such this was harmful for their image as they lost out on business. At the same time, this led to price rise of oil in the country and newspapers published articles maligning AgPI and its management. Synergy too was roped into the criticism with some headlines stating foreign interference with Indian assets. Looking at the scenario, the board meeting of Synergy Limited decided to push off the IPO indefinitely till this storm blew over.
24. The ship stuck at the canal was removed on 29.01.2020 however the accident had caused some damage to the canal rendering it unfit for use. Construction work began immediately however it would take another four possible weeks to get it ready for use. Mr. Billimoria wrote extensively to Mr. Nobov on 10.02.2020 (C-4) asking him the last opportunity to accept the offer made by Mr. Billimoria in his letter dated 13.01.2020 for an alternative otherwise AgPI would be constrained to engage the termination of contract clause while simultaneously suing Uralo India for Breach of Contract and invoking the dispute resolution clause in the agreement. Due to the worsening situation, AgPI finally terminated the contract by issuing a letter on 01.03.2020.
25. Mr. Nobov, was extremely critical of this decision by AgPI and was angered that his friend would decide not to trust him. Subsequently, Mr. Nobov became disengaged with Mr. Billimoria and attempted to influence the functioning of Synergy Limited to the frustration of Mr. Billimoria. In a closed meeting of AgPI with the board of directors, it was decided that the company would indeed go ahead with termination of the agreement and would invoke an

arbitration claiming damages of 20 million dollars. It was further agreed that Uralo would have to be removed out of Synergy Limited as the company was playing dirty tricks to frustrate AgPI and to somehow manoeuvre greater control over the company. Mr. Sarkar pitched a high-level meet with the Minister for Oil and Natural Gas, Minister of Trade and the Minister for Corporate Affairs.

26. In the meeting, AgPI and the ministers discussed extensively the possibility of taking over the assets at the oil reserve in national interest. Mr. Billimoria resisted the idea however it was finally decided with Mr. Sarkar in tow, that AgPI would play a vital role in completely expropriating the assets owned by Synergy Limited and to terminate the contract between the two parties for oil supply through its newly discovered oil reserves. This resulted in huge controversy as Uralo quit all its business operations in India as a retaliatory measure. It was decided by Uralo, that the company would contest the decision of expropriation before an Arbitral tribunal in an Investor-state arbitration claiming that AgPI was a state entity and was directly controlled by the Indian Government.
27. The same was contested by AgPI as it argued that although it was a Public Sector Enterprise, it was run wholly with private interest and with no interference by the Indian government and it would thus warrant an International Commercial Arbitration between the two and not an Investor-State Arbitration.
28. AgPI invoked the arbitration clause on 10 March 2020 under Article 13 of the Oil Purchase Agreement (in relation to damages and the issue of expropriation to be settled by the tribunal) by sending a notice of arbitration to the Registrar of SIAC and Uralo India Private Limited. Since, the relationship between the two CEO's went sour, there was no scope of any conciliation and as such both the parties did not appoint an expert for their dispute.
29. The notice of Arbitration was received by Mr. Nobov and Mr. Boris Vyet on 15.03.2020. In pursuance of the same, AgPI decided to nominate Mr. Jhingalia, a former judge of the Supreme Court of India as its arbitrator by sending a notice regarding appointment of arbitrator, thereby further requesting Uralo to appoint its arbitrator.
30. Mr. Nobov, hesitant to enter into an International Commercial Arbitration decided to post pone this issue only to appoint Mr. Miller, an English Arbitrator as its nominated arbitrator. Both the nominated arbitrators appointed Mr. Wang Lee, former Secretary SIAC, as presiding Arbitrator of the Arbitral Tribunal. In the preliminary hearing, it was decided that the hearings would be conducted on a weekly basis, with AgPI submitting its Statement of Claims followed by Uralo submitting its Statement of Defence. AgPI would have the opportunity of submitting its replication to the statement of defence.

31. The proceedings started on 20.04.2020, with AgPI submitting its Statement of Claims. The content of the same is as follows:

- i. The failure to supply the oil while there was an available alternative of supply amounts to a breach of contract by Uralo India Private Limited.
- ii. The non-supply of oil amounts to a fundamental breach of contract.
- iii. The contract in view of the same is liable to termination and Uralo is liable to pay damages to the tune of 20 million USD
- iv. The decision of expropriation is amenable before this arbitral tribunal as it was borne out of this contractual agreement and is a central issue between two private parties therefore making it an issue under an International Commercial Arbitration.

32. In its statement of defence, Uralo India Private Limited provided the following arguments:

- i. The blockade was indeed a force majeure and the same could not have amounted to a possible performance owing to the difficulty in supplying oil through an alternative route, coupled with the fact that it would have made the supply incredibly onerous
- ii. The contract defines instances of force majeure, and it is squarely covered within its definition in Article 10 of the agreement.
- iii. The termination of contract due to fundamental breach is impossible since both parties were willing to perform the same and the lack of purchasing capacity and interest shown by AgPI in seeking performance of contract through the alternative route at an increased price does not amount to unwillingness to perform the contract by Uralo or a breach of contract.

33. In addition to the same, Uralo further raised the point that the profits borne out of this contract were invested in Synergy Limited which was a result of the relationship between the two companies and this very contract. As a result, the issue pertaining to expropriation of the company by the Indian Government would deem it as an Investor-State dispute under the Russia-India Bilateral Investment Treaty (BIT), amenable to an investor-state arbitral tribunal and not to the jurisdiction of SIAC. It was further urged that since, AgPI has always had a strong influence of the government while dealing with Uralo, it is essentially a state entity and thus the takeover of Synergy Limited and its oil reserves amounts to expropriation by the state which is arbitrary in nature.

34. In response, AgPI in its replication dated 28.08.2020, denied that the aforementioned is an investor-state dispute considering AgPI has always taken official decisions in

conformity with its principles of independent functioning. Despite it being a Public Sector Company, it has never intended to express the interests of the government. In addition, it was urged that out of 5 board members, none of the members were currently affiliated with the government and had limited interests apart from financial. Therefore, the dispute was not an investor-state dispute covered under the Russia- India BIT but a mere commercial dispute subject to another international commercial arbitration before the SIAC.

35. The arbitration commenced on 20.04.2020 with weekly hearings. As per the schedule of the hearings, the arbitral tribunal first heard upon the issue of *force majeure* and fundamental breach of the contract and subsequently deliberated upon whether the whole Synergy Limited fiasco would amount to an investor-state BIT or another International Commercial Arbitration. The award is now to be pronounced.



ANNEXURES

URALO PRIVATE LIMITED

C-1

To,
Mr. Zal Billimoria, CEO,
AgPI,
AgPI Bhawan,
Kingsway Road,
Mumbai, India. Date:
12.01.2020
Dear Zal,

I hope you are keeping well. I write to you bringing some unfortunate news. As you may be aware, the recent hold up at the Suez Canal has greatly disrupted our business operations not just with you but also with the rest of Asia. We are looking at a grim business situation if the hold-up is not cleared within a week at maximum. We are already facing severing of relations with many companies in Singapore and Australia.

I am aware of the relationship that we have developed over the years and I wish to preserve the same with you because of our long-lasting relationship which goes back to your Xenonmobil days. Considering the situation however, I wish to inform to you that I am constrained to restrict the supply of oil, owing not to our fault. This blockade was not anticipated by anyone and is therefore completely out of our control. In my conversations with the freight companies, I am told that the only other alternative of supplying oil to you would be through the alternative route passing through South Africa. As per our discussions, the shipment through the alternative route is possible with the latest dispatch due in a week's time. The complete venture would cost an extra 10 million USD involving the execution of an additional bank guarantee of 7 million USD to cover the risks involved in supplying the shipment as the route is laden with many natural and piracy risks. I am aware that the price is extremely exorbitant however that is owing to the increased demand for freight carriers to supply through this route.

We remain committed to maintaining our business relationship with you and please understand that we are willing to help you in any way possible, however owing to the present situation, business is tough to execute. I remain hopeful of your positive response.

Thank you

Regards,

Mr. Vasiliky Nobov, Chairman,
Uralo Private Limited.



C-2

AGNIPRASTHA PRIVATE LIMITED

To,
Mr. Nobov,
President,
Uralo Private Limited, 10 St.
Petersburgh, Moscow,
Russia.

Date: 13.01.2020

Dear Vasiliky,

Thank you for your letter. I share sympathies with you as we both suffer from this unfortunate and unprecedented event. Newsletters tell me this blockade could stretch to a month. I thank you for your offer.

India is currently suffering from oil shortage as a result of this situation and my company stands to suffer the most. Several news reports have begun to malign my company and all the blame falls on me for having taken up the burden of supplying oil. As a result, we are desperately looking for support from you. I have known you for many years and as such I would expect a more generous offer for oil supply from you as the current rates of freight supply are too burdensome and onerous for us to perform the contractual duties. I understand that you are in a tough situation however, I am unable to offer any assistance in this regard as I am myself in a very difficult spot.

As such we are willing to accept oil from an alternative route at the very best if it is offered at 5 million USD for freight including the bank guarantee being provided by you instead of us (at a commensurate rate of course).

Kindly let me know your views on this. I expect more from you as a business partner and as a friend.

Thank you.

Regards,

Mr. Zal Billimoria, CEO,
AgniPrastha Private Limited (AgPI).



C-3

URALO PRIVATE LIMITED

To,
Mr. Zal Billimoria, CEO,
AgPI,
AgPI Bhavan, Kingsway Road,
Mumbai, India.

Date: 15.01.2020

Dear Zal,

I take the previous letter rather to be in an aggressive tone. The hardship has put everybody in a difficult situation and I hope you realise that. It is unfortunately not in my power to make things better. The rate of supply via the South Africa channel at the price is the best I can do for you. I unfortunately cannot help you with your public image in your country as it is a private matter and not my concern. I have been accommodative towards you and I hope to see a replication of that at your end.

I am going to place this as the only alternative available and my previous offer still stands beyond which it would not be my fault.

Regards,
Vasiliky Nobov,
President,
Uralo Private Limited, 10, St.
Petersburgh Street, Moscow,
Russia.



C-4

AGNIPRASTHA PRIVATE LIMITED

To,
Mr. Nobov,
President,
Uralo Private Limited.

Date: 10.02.2020

Respected Sir,

I am constrained to write this letter to you. I was hoping for a more helpful attitude from your end however seeing how things have panned out between our companies, it seems like we are left with no other option but to reject the offer made by you *en toto*. It is not that we haven't considered it but it would just put my company further in jeopardy hence we have chosen to not go ahead with the current offer. We still wish to put forth our offer mentioned in our letter dated 13.01.2020 (C-2) as our last offer beyond which we would be constrained to terminate the current contract and issue arbitration proceedings against your company for liquidated damages.

Consider this as our last offer prior to termination of our agreement.

Thank you.

Regards,

Zal Billimoria,
CEO, AgPI.

Important Note: This proposition has been drafted by Mr. Adwiteya Grover, practicing advocate, Delhi High Court and Punjab and Haryana High Court. The author would like to thank Mr. Arjun Gaur, advocate Delhi High Court for his valuable contributions and inputs.