**SCHEDULE- 1**

# MINING SERVICES AGREEMENT

BETWEEN

HINDUSTAN COPPER LIMITED

(A Government of India Enterprise)

AND

M/s. …… (the MDO)

for

RE-OPENING & EXPANSION OF RAKHA COPPER MINE, DEVELOPMENT OF UNDERGROUND MINE AT CHAPRI AND COMMISSIONING OF NEW MATCHING CAPACITY CONCENTRATOR PLANT AT RAKHA, JHARKHAND

Agreement No: _____ dated ___

**Total Pages - 230**

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# *PART I*

# *PRELIMINARY*

**MINING SERVICES AGREEMENT FOR RE-OPENING & EXPANSION OF RAKHA COPPER MINE, DEVELOPMENT OF UNDERGROUND MINE AT CHAPRI AND COMMISSIONING OF NEW CONCENTRATOR PLANT AT RAKHA, JHARKHAND**

THIS AGREEMENT is entered at _____ on the _____day of _____ 20__

**BETWEEN**

1. **HINDUSTAN COPPER LIMITED, a company incorporated under the Indian Companies Act 1956 (hereinafter referred to either as the "Employer or HCL" which expression shall include its successors and assigns) having its registered office at 1, Ashutosh Chowdhury Avenue, Kolkata – 700019 India of the FIRST PART;**

**AND**

2. M/s XYZ, a company [SPV/ JVC as the case may be] duly incorporated in India under the provisions of the Companies Act, 2013, having identification number [•], and having its registered office at [Address] (hereinafter referred to as the "**Mine Developer cum Operator**" or "**MDO**", which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns) of the SECOND PART.

**AND**

3. [Selected Bidder/ Consortium as the case may be] {The consortium of (i) M/s XXX, having its registered office at [Address] and (ii) M/s ABC having its registered office at [Address], with M/s XXX as the Lead Member (the "**Lead Member**"), in their capacity as the confirming parties to this Agreement (hereinafter collectively} OR (hereinafter referred to as the "**Selected Bidder**[1]" which expression shall, unless the context otherwise requires, include its/their successors and permitted assigns) of the THIRD PART.}

(Each of the parties of the FIRST, SECOND and the THIRD parts are hereinafter, as the context may admit or require, individually referred to as a "**Party**" and collectively as the "**Parties**").

**WHEREAS:**

(a) HCL had resolved to re-opening & expansion of Rakha copper mine, development of underground mine at Chapri and commissioning of new matching capacity concentrator plant at Rakha, Jharkhand (the "**Mines**") in accordance with the terms and conditions set forth in this Agreement (the "**Mining Services Agreement**" or "**MSA**" or "**Agreement**").

(b) HCL had prescribed certain technical and financial terms and conditions and invited proposals from the bidders by its Bid Document No. MSTC/ERO/HINDUSTAN COPPER LTD/1/KOLKATA/24-25/2797 dated 24th May 2024 ("RFP/Request for Proposal") and shortlisted certain bidders including the Selected Bidder on the basis of prescribed technical and financial qualification requirements as per the terms and conditions of the tender.

(c) After the completion of the Bidding Process, HCL had accepted the Proposal of the Selected Bidder and issued its Letter of Award No _____ dated _____ (hereinafter called the "**LOA**") to the Selected Bidder requiring, *inter alia*, the execution of this Agreement and Selected Bidder has acknowledged the receipt of LOA vide Letter No:……..dated……

[1] *In case the selected bidder itself is the MDO, then all obligations and warranties of the Selected Bidder shall be subsumed by the MDO*

(d) The Selected Bidder has incorporated the MDO *[SPV/ JVC as the case may be],* being M/s XYZ a company incorporated under the Companies Act, 2013 and has requested HCL to accept the MDO as the entity which shall undertake and perform the obligations and exercise the rights of the Selected Bidder under the LOA, including the obligation to enter into this Agreement pursuant to the LOA for undertaking the Project.

(e) Notwithstanding the formation of the MDO, the Selected Bidder/(s) shall continue to be bound by all the representations and commitments as made in the Bid and shall be responsible for ensuring the implementation of the Project by the MDO in the manner contemplated herein and in performance by the MDO of all its obligations contained herein and in the Bid. The Selected Bidder/(s) are therefore necessary party/parties to the Agreement.

(f) By its letter no. _____ dated _____, the MDO has also joined in the said request of the Selected Bidder to HCL to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the Selected Bidder including the obligation to enter into this Agreement pursuant to the LOA. The MDO has further represented to the effect that it has been incorporated by the Selected Bidder for the purposes hereof.

(g) HCL has agreed to the said request of the Selected Bidder and the MDO and has accordingly agreed to enter into this Agreement for development of the Mines and Concentrator Plant, and for mining and beneficiation of Copper Ore, subject to and on the terms and conditions set forth hereinafter.

**NOW, THEREFORE,** in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

# Article 1. *Definitions and Interpretation*

## 1.1. *Definitions*

The words and expressions beginning with capital letters and defined in this Agreement shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

1.1.1. **"Accounting Year"** shall mean the Financial Year commencing from the first day of April of any calendar year and ending on the thirty-first day of March of the next calendar year, provided that, the first Accounting Year shall commence from the Appointed Date and end on the thirty-first day of March of the next calendar year and the last Accounting Year shall commence on the first day of April immediately preceding the Transfer Date occurs and shall end on the Transfer Date. If there is any change in the definition of financial year in the Companies Act, 2013, the same shall be applicable in Accounting Year in this Agreement.

1.1.2. "**Actual Production**" shall mean the actual amount quantity of Copper Ore produced from Rakha Mining Lease and quantity of Metal in Concentrate (MIC) produced in an Accounting Year after COD.

1.1.3. **"Actual Quarterly Production"** shall mean the actual quantity of Copper Ore produced from Rakha Mining Lease and quantity of Metal in Concentrate (MIC) produced in any quarter of an Accounting Year after COD.

1.1.4. "**Additional Auditors**" shall have the meaning set forth in Clause 29.2.3.

1.1.5. "**Additional Capacity**" shall mean construction, installation and operation of any excavation capacity for copper ore or beneficiation capacity of concentrator plant which is in addition to and in excess of the Contracted Capacity."

1.1.6. **"Average Annual Revenue"** shall be defined as the product of average LME Copper Price for the last three months and quantity of MIC in copper concentrate (tonne) at Peak Rated Capacity of mines.

1.1.7. "**Affected Party**" shall be the Party whose performance is affected by Force Majeure as defined in Clause 30.1

1.1.8. "**Agent"** shall have the same meaning ascribed to such term in the Mines Act, 1952.

1.1.9. **"Aggregate Damages**" shall mean the aggregate of all Damages payable by the MDO for any month, in terms of the provisions of this Agreement.

1.1.10. **"Agreement"** shall mean this Mining Services Agreement along with the Schedules, Annexures forming part of this Agreement and shall have meaning set forth in Recital (a);

1.1.11. **"Annual Capacity"** shall mean the quantities specified in the Annual Production Programme i.e. quantity of Copper Ore to be produced from Rakha Mining Lease and quantity of Metal in Concentrate (MIC) to be produced from Concentrator Plant for each Accounting Year and have the meaning set forth in Clause 20.2.10;

1.1.12. "**Annual Production Programme**" shall mean the schedule of quantity of Copper Ore to be produced from Rakha Mining Lease and quantity of Metal in Concentrate (MIC) to be

produced from Concentrator Plant in accordance with the Approved Mining Plan for each Accounting Year;

1.1.13. **"Annual Safety Report**" shall have the meaning set forth in Clause 17.4.1.

1.1.14. **"Annual Sale Value**" shall mean the value estimated by multiplying the maximum MIC production in a year (as proposed) with the average LME Copper Price for the last three months.

1.1.15. **"Applicable Laws"** shall mean all laws, brought into force and effect by Government of India or the Government of any State, including rules, regulations, ordinances and notifications made thereunder, and judgments, decrees, injunctions, writs and orders of any court of record or government authority, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement;

1.1.16. **"Applicable Permits"** shall mean all clearances, licenses, permits, authorizations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the construction, operation and maintenance of the Mines and/or concentrator plants(s) during the subsistence of this Agreement;

1.1.17. **"Approved Annual Works Plan"** shall have meant set forth in Article 20

1.1.18. **"Approved Mining Plan"** shall mean the Mining Plan for Rakha & Chapri Mining Leases, duly approved by Indian Bureau of Mines (IBM), Ministry of Mines from time to time;

1.1.19. **"Appointed Date"** shall have the meaning set forth in Clause 4.1.6.

1.1.20. **"Associate"** shall have the meaning set forth in section 2(6) of the Companies Act, 2013;

1.1.21. "**Authority"** shall mean the Central Government, the concerned State or Local Government and includes any Department, Agency, Board, Bureau, Authority, Regulator etc. constituted or established under a Central, State or Local Legislation, ordinance including rules and regulations made there under or by the Central, State or Local Government and court to exercise sovereign functions in relation to Scope of Work as per the Agreement.

1.1.22. "**Average Daily Revenue Share Payable**" shall mean the Average Annual Sale Value divided by 365 (three hundred and sixty-five);

1.1.23. **"Bank"** shall mean a Scheduled Commercial bank (excluding Gramin and Co-operative Bank) incorporated in India;

1.1.24. "**Bank Rate"** shall mean the rate of interest specified by the Reserve Bank of India from time to time in pursuance of section 49 of the Reserve Bank of India Act, 1934 or any replacement of such Bank Rate for the time being in effect;

1.1.25. "**Bid"** shall mean the documents in their entirety comprised in the bid submitted by the Selected Bidder in response to the Bid Document in accordance with the provisions thereof and "Bids" shall mean the bids submitted by any and all pre-qualified bidders;

1.1.26. "**Bidder"** shall mean any Bidding Company and/ or Bidding Consortium or LLC/LLP or Partnership Firm participated in RFP issued by HCL;

1.1.27. "**Bidding Company"** shall mean the single registered corporate entity in India, or abroad that has submitted its Proposal in response to this Bid Document;

1.1.28. **"Bidding Consortium"** means a group of not more than 2 (two) registered corporate entities in India, or abroad that has jointly submitted their Proposal in response to this Tender Document;

1.1.29. "**Bidding Process**" shall mean procedural activities undertaken pursuant to the Bid Document for selection of MDO;

1.1.30. "**Bid Security**" shall mean the security provided by the {Selected Bidder/ Consortium Member} to HCL along with the Bid of a sum of Rs. 50,00,000 (Rupees Fifty Lakhs only), in accordance with the request for Bid, and which is to remain in force until substituted by the Performance Security;

1.1.31. "**Change in Law**" shall mean the occurrence of any of the following after the date of submission of the Final Price Offer, to the extent such occurrence was not reasonably foreseeable by the Parties prior to the date of submission of the Final Price Offer:

(a) enactment of any new Indian law;

(b) repeal, modification or re-enactment of any existing Indian law;

(c) change in the interpretation or application of any Indian law by a judgment of a court of record which has become final, conclusive and binding, vis-à-vis interpretation or application by a court of record prior to the date of submission of the Final Price Offer; or

(d) any change in the rate of any Tax or introduction of any new Tax, after the date of submission of Final Price Offer that has a direct impact on the Project;

Reference: - Tax here does not include any tax on income or tax applicable on input material and/or equipment.

1.1.32. **"Change in Ownership"** shall have the meaning set forth in Clause 5.3.2.

1.1.33. **"Change of Scope**" shall have the meaning set forth in Clause 15.1.1.

1.1.34. "**Change of Scope Notice**" shall have the meaning set forth in Clause 15.2.1.

1.1.35. "**Change of Scope Order**" shall have the meaning set forth in Clause 15.2.3.

1.1.36. **"Commencement Date (zero date)"** shall mean the date on which the Lease deed is executed

1.1.37. "**Completion**" shall have the meaning as set forth in Clause 14.3;

1.1.38. "**Completion Certificate**" means the certificate to be issued by the Engineer-in-Charge in accordance with provision of Clause 14.3 certifying Completion of the awarded Work.

1.1.39. **"Concentrator Plant"** The word Concentrator Plant shall mean facilities established for extraction of Metal in Concentrate (MIC) in form of copper concentrates and separation of impurities where improvement in quality is made by scientific treatment of copper ore (ROM) without changing the characteristics of copper for the desired end use. The capacity of the Concentrator plant shall be the matching capacity of the copper ore produced from the Rakha and Chapri blocks in the Rakha Mining Lease Area.

1.1.40. "**Conditions Precedent**" shall have the meaning set forth in Clause 4.1;

1.1.41. **"Consortium Member"** shall refer to each corporate entity of the Bidding Consortium;

1.1.42. "**Construction Period**" shall mean the period beginning from the Appointed Date till the Scheduled Completion Date or any extension provided thereof;

1.1.43. "**Construction Works**" shall mean all excavation, civil, electrical and mechanical works, Project Facilities and things necessary to develop the Mines and Concentrator Plant in accordance with this Agreement;

1.1.44. "**Contract Period**" shall mean a period beginning from the Partial Operation Date (POD) till **20 (Twenty) years** from Partial Operation Date (POD) or till such period extended by HCL (as per clause 3.1) whichever is later.

1.1.45. "**Contracted Capacity**" shall mean the annual rated capacity of copper ore production and capacity of copper concentrate production as mentioned in clause 20.1 of this MSA;

1.1.46. "**Contractor**" shall mean the person or persons, as the case may be, with whom the MDO has entered into any EPC Contract, O&M Contract, beneficiation Contract or any other material agreement or contract for construction, operation and/or maintenance of the Mines or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the MDO;

1.1.47. **"Contract Representative of MDO"** shall mean the person from time to time nominated by MDO to be its representative. i.e., prior to the commencement of any work, the MDO must appoint, a competent and experienced Contract Representative and inform in writing to the Contract Representative of HCL. The Contract Representative of MDO is responsible for all communication between MDO and HCL. The MDO must ensure that, as far as reasonably practicable, the Contract Representative of MDO is contactable at all times during the performance of the work. Such Contract Representative of MDO shall be appointed in consonance with terms of this Agreement within 60(sixty) days of the date of signing of MSA.

1.1.48. **"Contract Representative of HCL"** shall mean the person from time to time nominated by HCL to be its representative i.e. HCL shall appoint a Contract Representative for the purposes of facilitation of communications and responsiveness on behalf of HCL for any queries, discussion and any other relevant inquiries to be communicated to officials of HCL which shall be only for this project and in consonance with terms of this Agreement within 60 (sixty) days of the date of signing of MSA;

1.1.49. **"Copper ore"** shall mean blasted muck having copper content > 0.5Wt % Cu.

1.1.50. "**Covenant**" shall have the meaning set forth in Clause 5.2.5;

1.1.51. "**CP Satisfaction Notice**" shall have the meaning set forth in Clause 4.1.6;

1.1.52. "**Cure Period**" shall mean the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default and shall:

(a) commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;

(b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and

(c) not in any way be extended by any period of Suspension under this Agreement;

provided that if the cure of any breach by the MDO requires any reasonable action by the MDO that must be approved by, the applicable Cure Period shall be extended by the period taken by HCL to accord its approval;

1.1.53. "**Damages**" shall have the meaning set forth in sub-clause (aa) of Clause 1.2.1 (cc);

1.1.54. "**Debt Service**" shall mean the sum of all payments on account of principal, interest, financing fees and charges due and payable in an Accounting Year to the Senior Lenders under the Financing Agreements;

1.1.55. **"Declared Capacity"** shall have the meaning set forth in Clause 21.1.4;

1.1.56. "**Declared Grade"** shall mean the grade of Copper as declared by Hindustan Copper Limited;

1.1.57. **"Delivery of copper concentrate/ Delivery of copper ore"** shall mean the Delivery of copper concentrate and/or copper ore at the respective Delivery Point(s) and the terms "Deliver" and "Delivered" shall be construed accordingly

1.1.58. "**Delivery Points(s)**" shall be the designated points identified by HCL as follows;

- **"Delivery Point 0 (DP0)"**: shall be the place identified by HCL near the mines for the purpose of delivery of copper ore by MDO
- **"Delivery Point 1 (DP1)"**: shall be the place identified by HCL near the concentrator plant for the delivery of MIO. In case of Concentrator plant at Mosabani, the delivery point shall be the place identified by HCL inside the plant.
- **"Delivery Point 2 (DP2)"**: shall be the place identified by HCL near the concentrator plant for the delivery of MIC for selling it in market.

1.1.59. **"Development Period**" shall mean the period from the Commencement Date until the Appointed Date;

1.1.60. **"Dispatch Instructions"** shall have the meaning set forth in Clause 23.1;

1.1.61. **"Dispute"** shall have the meaning set forth in Article 39;

1.1.62. "**Dispute Resolution Procedure**" shall mean the procedure for resolution of Disputes set forth in Article 39;

1.1.63. "**Divestment Requirements**" shall mean the obligations of the MDO for and in respect of Termination set forth in Clause 33.1;

1.1.64. **"Document" or** "**Documentation**" shall mean documentation in printed or written form, or in tapes, discs, drawings, computer programs, writings, reports, photographs, films, cassettes, or expressed in any other written, electronic, audio or visual form;

1.1.65. "**Documentary Evidence**" shall mean and include authentic bills/ authenticated proofs/ challan/ audited and verified expense;

1.1.66. "**Drawings**" shall mean all of the approved drawings, calculations and documents pertaining to the Mines, Concentrator Plant, civil construction and other allied structures as set forth in, and shall include `as built' drawings of the Mines, Concentrator Plant, civil construction and other allied structures;

1.1.67. "**Emergency**" shall mean a condition or situation that is likely to endanger the security of the individuals on or about the Mines or which poses an immediate threat of material damage to any of the Project Assets;

1.1.68. "**Encumbrance**" shall mean, any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Mines, where applicable herein but excluding utilities referred to in Clause 11.1;

1.1.69. "**EPC Contract**" shall mean the engineering, procurement and construction contract or contracts entered into by the MDO with one or more EPC Contractors for, *inter alia,* engineering and construction of the Mines and Concentrator Plant in accordance with the provisions of this Agreement;

1.1.70. "**EPC Contractor**" shall mean the person with whom the MDO has entered into an EPC Contract;

1.1.71. "**Equipment**" shall mean the tools, machinery, vehicles and other equipment provided or installed at the Mines and Concentrator Plant;

1.1.72. **"Equity"** shall mean the sum expressed in Indian Rupees representing the issued and paid up equity share capital of the MDO for meeting the equity component of the Total Project Cost, and for the purposes of this Agreement, shall include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the MDO, and any interest-free funds advanced by any shareholder of the MDO for meeting such equity component;

1.1.73. **"Excavate Copper / Excavated Copper ore"** shall mean the ROM Copper Ore mined from Rakha & Chapri copper mines and as measured as per provisions of Section 22.4

1.1.74. **"Extended Contract Period"** shall have the meaning set forth in Clause 3.1.2;

1.1.75. "**Final Price Offer**" shall mean [XXXXXX] percentage share of revenue payable to the HCL per Tonne of MIC, based on which the Successful Bidder was declared successful in the tender process.

1.1.76. "**Financial Default**" shall have the meaning set forth in Schedule-P;

1.1.77. "**Financial Model**" shall mean the financial model adopted by Senior Lenders, setting forth the capital and operating costs of the Project and revenues there from on the basis of which financial viability of the Project has been determined by the Senior Lenders, and includes a description of the assumptions and parameters used for making calculations and projections therein;

1.1.78. "**Financial Package**" shall mean the financing package indicating the total capital cost of the Project and the means of financing thereof, as set forth in the Financial Model and approved by the Senior Lenders, and includes Equity, all financial assistance specified in the Financing Agreements and Subordinated Debt, if any;

1.1.79. "**Financial Year**" shall have the meaning ascribed to it in Companies Act, 2013 and its amendment(s).

1.1.80. "**Financing Agreements**" shall mean the agreements executed by the MDO in respect of financial assistance to be provided by the Senior Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security agreements, and other documents relating to the financing (including refinancing) of the Total Project Cost, and includes amendments or modifications made.

1.1.81. "**Force Majeure**" or "**Force Majeure Event**" shall have the meaning set forth in Clause 30.1;

1.1.82. "**Government**" shall mean the Government of India or the Government of the State having territorial jurisdiction over the Mines, as the case may be;

1.1.83. "**Government Instrumentality**" shall mean any department, division or sub-division of the Government of India or of any State and includes any commission, board, authority, agency

or municipal and other local authority or statutory body including Panchayat, under the control of the Government of India or of any State, as the case may be, and having jurisdiction over all or any part of the Mines or the performance of all or any of the services or obligations of the MDO under or pursuant to this Agreement;

1.1.84. "**Grade**" shall mean the Cu wt% (weight percentage) according to the detailed studies and procedures adopted by the HCL;

1.1.85. **"GST"** shall mean the goods and services tax levied and collected in India;

1.1.86. **"GST Laws"** shall mean the Applicable Laws in relation to GST;

1.1.87. "**HCL**" means Hindustan Copper Limited.

1.1.88. "**HCL's Requirements**" means the document or documents identified as such and included in the Contract and any modifications thereof or addition thereto as may from time to time be issued by (or on behalf of) the Engineer-in-Charge in accordance with the Contract.

1.1.89. "**HCL Default**" shall have the meaning set forth in Clause 33.2;

1.1.90. "**HCL Indemnified Persons**" shall have the meaning set forth in Clause 38.1;

1.1.91. "**Indemnified Party**" shall mean the Party entitled to the benefit of an indemnity pursuant to Clause 38.3;

1.1.92. **"Indemnifying Party"** shall mean the Party obligated to indemnify the other Party pursuant to Clause 38.3;

1.1.93. **"Independent Laboratory"** shall have the meaning set forth in Clause 21.2.1.

1.1.94. **"Inspection Report"** shall have the meaning set forth in Clause 13.2;

1.1.95. "**Insurance Cover**" shall mean the aggregate of the maximum sums insured under the insurances taken out by the MDO pursuant to Article 28, and includes all insurances required to be taken out by the MDO under Clause 28.2 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

1.1.96. "**Intellectual Property**" shall mean all patents, trademarks, service marks, logos, getup, trade names, internet domain names, rights in designs, blue prints, programs and manuals, drawings, copyright (including rights in computer software), database rights, semi-conductor, topography rights, utility models, rights in know-how and other intellectual property rights, in each case, whether registered or unregistered and including applications for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world;

1.1.97. "**Key Performance Indicators**" shall have the meaning set forth in Clause 24.1.

1.1.98. "**Lenders' Representative**" shall mean the person duly authorized by the Senior Lenders to act for, and on behalf of, the Senior Lenders with regard to matters arising out of, or in relation to, this Agreement, and includes its successors, assigns and substitutes;

1.1.99. **"Letter of Credit"** shall have the meaning set forth in Article 27;

1.1.100. "**LOA**" or "**Letter of Award**" shall mean the letter of award referred to in Recital (c);

1.1.101. **"LME Copper Prices"** shall mean the copper price in USD.

1.1.102. **"Maintenance Manual**" shall have the meaning set forth in Clause 16.3.1;

1.1.103. "**Maintenance Programme**" shall have the meaning set forth in Clause 16.4.1;

1.1.104. "**Maintenance Requirements**" shall have the meaning set forth in Clause 16.2;

1.1.105. "**Manager**" shall have the same meaning as ascribed to such term in the Mines Act, 1952 and rules and regulations thereunder;

1.1.106. "**Material Adverse Effect**" shall mean any act or event that materially and adversely affects the ability of either Party to perform any of its obligations under and in accordance with the provisions of this Agreement and which act or event causes a material financial burden or loss to either Party;

1.1.107. "**Mine Closure Plan**" shall mean the mine closure plan prepared in accordance with the 'Guidelines for Preparation of Mine Closure Plan' issued by the Indian bureau of Mines (IBM), Government of India, from time to time;

1.1.108. "**MDO Default**" shall have the meaning set forth in Clause 33.1;

1.1.109. **"MSA"** shall have the meaning ascribed to it in Recital (a);

1.1.110. **"Metal in Concentrate (MIC)"** shall mean the copper metal (considering dry metric ton (DMT) with Cu concentrate grade) obtained after beneficiation of ROM Copper Ore through concentrator plant.

1.1.111. **"Metal in Ore (MIO)"** shall mean the copper metal in ROM Copper Ore before beneficiation (considering dry metric ton (DMT) with Cu grade).

1.1.112. "**Mine/ Mines**" shall have the meaning set forth in Recital (a);

1.1.113. **"Mining Lease"** shall mean the Rakha mining lease agreement in relation to the Rakha and Chapri copper deposit located in Singhbhum Copper Belt executed between HCL and the Government of Jharkhand in accordance with the Mines and Minerals (Development and Regulation) Act, 1957 and shall include any lease renewals/ extensions thereof.

1.1.114. "**Mining Plan**" shall mean the mining plan approved under and in accordance with the provisions of the Mineral Concession Rules, 1960 or any substitute thereof by Ministry of Mines including Mine Closure Plan;

1.1.115. **"Mine Safety Management Plan"** means the mine safety management plan as approved in accordance with Metalliferous Mines Regulation, 1961

1.1.116. "**Miscellaneous Invoice**" shall have the meaning set forth in Clause 27.1.4;

1.1.117. "**Monthly Capacity**" shall have the meaning set forth in Clause 21.2.1;

1.1.118. "**Monthly Invoice**" shall have the meaning set forth in Clause 27.1.1;

1.1.119. **"MCLR of State Bank of India"** shall mean the marginal cost lending rates for 1(one) year as determined by State Bank of India from time to time, as the same may be announced through such media as the State Bank of India may deem fit and any such announcement through any media shall be sufficient notice to the Parties

1.1.120. "**Movable Equipment**" shall mean any equipment or vehicle which is moved around in the normal course of its usage and does not include any equipment which is installed on the ground in a stationery position;

1.1.121. "**MT**" shall mean a million tonnes;

1.1.122. **"MTPA"** shall mean million tonnes per annum

1.1.123. **"Nominated Company**" shall mean a company selected by the Lenders' Representative and proposed to HCL for substituting the MDO in accordance with the provisions of the Substitution Agreement;

1.1.124. **"Quality Slippage"** shall have the meaning set forth in Clause 20.6;

1.1.125. "**O&M**" shall mean the operation and maintenance of the Copper Mines and Concentrator Plant and includes all matters connected with, or incidental to, such operation and maintenance, and provision of services and facilities in accordance with the provisions of this Agreement;

1.1.126. "**O&M Contract**" shall mean the operation and maintenance contract that may be entered into between the MDO and the O&M Contractor for performance of all or any of the O&M obligations;

1.1.127. "**O&M Contractor**" shall mean the person, if any, with whom the MDO has entered into an O&M Contract for discharging the O&M obligations for and on behalf of the MDO;

1.1.128. "**O&M Expenses**" shall mean expenses incurred by or on behalf of the MDO or (by HCL in reference to clause 16.1), as the case may be, for all O&M including one or more of the following:

(a) cost of salaries and other compensation to employees,

(b) cost of materials, supplies, utilities and other services,

(c) premium for insurance,

(d) all Taxes, duties, cess and fees due and payable for O&M,

(e) all repair, replacement, reconstruction, reinstatement, improvement and maintenance costs, payments required to be made under the O&M Contract or any other contract in connection with, or incidental to, O&M, and

(f) all other expenditure required to be incurred under Applicable Laws, Applicable Permits and this Agreement;

1.1.129. "**O&M Inspection Report**" shall have the meaning set forth in Clause 19.3;

1.1.130. **"Operation Period**" shall mean the period commencing from COD and ending on the Transfer Date;

1.1.131. "**Owner**" shall have the meaning ascribed to such term in the Mines Act, 1952;

1.1.132. "**Panel of Chartered Accountants**" shall have the meaning set forth in Clause 29.2;

1.1.133. **"Partial Completion Date (PCD)"** shall mean the date on which production of MIO from the mines commences

1.1.134. **"Partial Operation Date (POD)"** shall mean the date on which production of MIC from the Mosabani concentration plant commences

1.1.135. "**Parties**" shall mean the parties to this Agreement collectively and "**Party**" shall mean any of the parties to this Agreement individually;

1.1.136. **"Peak Rated Capacity (PRC)"** shall mean the maximum mining capacity in MTPA as per the Approved Mining Plan of Rakha mining lease along with the matching capacity of Concentrator plant.

1.1.137. "**Repair and Rectification Guarantee**" shall have the meaning set forth in Article 35;

1.1.138. **"Revenue Share"** shall mean the percentage of revenue which will be shared to HCL as per Clause 5.23.

1.1.139. "**Performance Security**" shall have the meaning set forth in Clause 9.1;

1.1.140. "**Price Index**" shall be construed as per the relevant WPI series as published by Office of the Economic Advisor, Ministry of Commerce and Industry, Govt. of India; All India CPI series for Industrial Workers as published by Labour Bureau, Govt. of India; for the various commodities as specified in Clause 26.2

1.1.141. **"Project"** shall mean the Design & engineering, supply, erection/construction, mine development, production & maintenance and other allied works related to the Mines and matching capacity of concentrator plant and any other infrastructure facilities for the purpose of scope and obligations of the MDO in accordance with the provisions of this Agreement, and includes all works, services and equipment relating to or in respect of the Scope of the Project;

1.1.142. **"Project Affected Persons or PAPs**" shall have the same meaning as ascribed to such term in "The right to fair compensation and transparency in land acquisition, rehabilitation and resettlement act, 2013" and subsequent amendment thereof, "Jharkhand Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Rules, 2015 and applicable R&R scheme;

1.1.143. **"Project Affected Families or PAFs"** shall mean local people, who sacrifice their land, forest, water resources and other natural resources unlike migrants or investors from outside during the exploitation of the resources as defined in "The right to fair compensation and transparency in land acquisition, rehabilitation and resettlement act, 2013", "Jharkhand Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Rules 2015 subsequent amendment thereof and applicable R&R scheme;

1.1.144. "**Project Agreements**" shall mean this Agreement, the Financing Agreements, EPC Contract, O&M Contract, Beneficiation contract and any other material agreements or contracts that may be entered into by the MDO with any person in connection with matters relating to, arising out of, or incidental to the Project, but does not include Substitution Agreement or any agreement for procurement of goods and services;

1.1.145. **"Project Assets**" shall mean all physical and other assets relating to and forming part of the Project, including:

(a) rights over the Site;

(b) tangible assets such as civil works and equipment including foundations, embankments, pavements, electrical systems, communication systems, relief centers and administrative offices;

(c) all rights of the MDO under the Project Agreements;

(d) Financial assets, such as receivables, security deposits etc.

(e) insurance proceeds; and

(f) Applicable Permits and authorizations relating to, or in respect of, the Mines;

1.1.146. "**Project Completion Schedule**" shall mean the progressive Project Milestones set forth in Schedule-G for completion of the Mines on or before the Scheduled Completion Date;

1.1.147. "**Project Facilities**" shall mean all the amenities and facilities situated on the Site, as described in Schedule-C;

1.1.148. "**Project Milestones**" shall mean the project milestones set forth in Schedule-G;

1.1.149. "**Project Specific Assets**" shall mean the Project Facilities;

1.1.150. "**Proposal"** shall mean the submission of the following by the Selected Bidder, as per the terms and conditions of the RFP:

(a) Techno-Commercial proposal consisting of qualification proposal along with any additional information/clarification,

(b) Financial Proposal in the format provided in the Bid Document,

(c) Final Price Offer submitted by the Selected Bidder at the time of forward bidding,

1.1.151. **"Purchase Value**" shall mean the lower of, (a) audited book value of the Project Facilities; and (b) written down value of the Project Facilities, as assessed by an independent third-party valuer, if any who shall be selected and appointed by HCL, within 15 (fifteen) days of Termination for submitting his assessment within 30 (thirty) days of his appointment hereunder;

1.1.152. **"Quarterly Capacity"** for any quarter in an Accounting Year shall be the Annual Capacity for such Accounting Year pro rated for the quarter in such Accounting Year.

1.1.153. Void

1.1.154. "**R&R Plan**" shall mean the rehabilitation and resettlement plan prepared in accordance with "The right to fair compensation and transparency in land acquisition, rehabilitation and resettlement act, 2013" and subsequent amendment thereof, "Jharkhand Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Rules 2015 subsequent amendment thereof, applicable R&R Policy/ scheme and recommendation of R&R Committee duly approved by State Government Authorities.

1.1.155. "**R&R Policy**" shall mean the policy of the State Government on rehabilitation and resettlement of project affected persons, as applicable and notified from time to time and is in accordance with "The right to fair compensation and transparency in land acquisition, rehabilitation and resettlement act, 2013 and subsequent amendment thereof" and "Jharkhand Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Rules 2015 and subsequent amendment thereof;

1.1.156. **"Re.", "Rs.**" or "**Rupees**" or "**Indian Rupees**" or "**INR**" shall mean the lawful currency of the Republic of India;

1.1.157. **"Rehabilitation and Resettlement**" shall mean the rehabilitation and resettlement of Project Affected Persons in accordance with the R&R Policy;

1.1.158. **"Revenue Share of HCL"** shall have the meaning set forth in Clause 26.1;

1.1.159. "**RFP/Request for Proposal**" shall have the meaning ascribed to it in Recital (b);

1.1.160. **"ROM Copper Ore"** shall mean the Copper Ore from Rakha & Chapri Coper Mine;

1.1.161. "**Safety Requirements**" shall have the meaning set forth in Clause 17.1;

1.1.162. **"Sale Contract"** the term "Sale Contract" in "Schedule-S" refers to "Sales Agreement" between HCL and the purchaser of copper concentrate generated by MDO and sold by HCL;

1.1.163. "**Scheduled Completion Date (CoD)**" shall have the meaning set forth in Clause 12.5.1;

1.1.164. "**Scheduled Operation Date (OD)**" shall have the meaning set forth in Clause 12.5.1;

1.1.165. **"Scheduled Maintenance**" shall have the meaning set forth in Clause 16.4.4;

1.1.166. **"Selling of MIC"** shall have the meaning set forth in clause 5.23 of MSA

1.1.167. "**Senior Lenders**" shall mean the financial institutions, banks, multilateral lending agencies, trusts, funds and agents or trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide finance to the MDO under any of the Financing Agreements for meeting all or any part of the Total Project Cost and who hold *pari passu* charge on the assets, rights, title and interests of the MDO;

1.1.168. **"Selected Bidder"** shall mean the bidder selected through the tendering process also known as MDO will be responsible for re-opening & expansion of Rakha copper mine, development and operations of underground mine at Chapri and commissioning of new concentrator plant at Rakha, Jharkhand. The bidder shall be declared as selected bidder after signing of this Agreement or 30 days from the lease deed execution, whichever is earlier.

1.1.169. "**Site**" shall have the meaning as set forth in Clause 10.1;

1.1.170. "**Special Purpose Vehicle**" **or SPV** shall mean the 100 % owned subsidiary set up by the Successful Bidder or the **joint venture company** set up by the Successful Bidding Consortium (which has been awarded the Letter of Award by HCL) to act as MDO for re-opening & expansion of Rakha copper mine, development and operations of underground mine at Chapri and commissioning of concentrator plant at Rakha, Jharkhand.

1.1.171. "**Specifications and Standards**" shall mean the specifications and standards relating to the quality, quantity, capacity and other requirements for the Mines, as set forth in Schedule-D, and any modifications thereof, or additions thereto, as included in the design and engineering for the Mines submitted by the MDO to, and expressly approved by, HCL;

1.1.172. "**Standard Industry Practice**" shall mean the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the MDO in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner, and includes prudent mining practices generally accepted by mine owners and operators for ensuring safe, economic, reliable and efficient excavation, operation and maintenance of the Mines and for providing safe, economic, reliable and efficient excavation of Copper Ore; and Delivery thereof;

1.1.173. "**State**" shall mean the State or the Union Territory, as the case may be, in which the Project is situate and "**State Government**" means the government of that State or Union Territory;

1.1.174. "**Statutory Auditors**" shall mean a reputed firm of chartered accountants acting as the statutory auditors of the MDO under the provisions of the Companies Act, 2013, including any re-enactment or amendment thereof, for the time being in force, and appointed in accordance with Clause 29.2;

1.1.175. **"Stock yard"** shall have the meaning set forth in Clause 21.1;

1.1.176. **"Subordinated Debt**" shall mean the aggregate of the following sums expressed in Indian Rupees or in the currency of debt, as the case may be, outstanding as on the Transfer Date:

(a) the principal amount of debt provided by lenders or the MDO's shareholders for meeting the Total Project Cost and subordinated to the financial assistance provided by the Senior Lenders; and

(b) all accrued interest on the debt referred to in sub-clause (a);

provided that if all or any part of the Subordinated Debt is convertible into Equity at the option of the lenders and/or the MDO's shareholders, it shall for the purposes of this Agreement be deemed to be Subordinated Debt even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;

1.1.177. "**Substitution Agreement**" shall have the meaning set forth in Clause 36.3;

1.1.178. **"Supporting Partner"** shall mean the direct Subsidiary or direct Holding Company of the Bidding Company which provides technical/financial support to the Bidding Company to enable it to qualify for this Proposal and enters into a Joint Operating Agreement (as attached in RFP).

1.1.179. "**Suspension**" shall have the meaning set forth in Article 32;

1.1.180. "**Tailings**" shall mean the rejects generated after beneficiation of Copper Ore.

1.1.181. "**Tax**" or "**Taxes**" shall mean any taxes including Goods and Services Tax (GST), local taxes, levies, duties, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, materials, equipment and services incorporated in and forming part of the Mines, charged, levied or imposed by any Government Instrumentality, any tax, duty, levy or cess applicable on the Project by whatever name called but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever which shall be borne by the Party liable to bear the Tax. Provided however it is clarified that HCL shall not be responsible to reimburse any interest, penalty or other sums imposed on the applicable taxes payable;

1.1.182. **"Tender Document(s)"** The Bid Document comprises of definitions, rules of construction, description of the selection process, qualifying requirements and instruction to Bidders, etc. to enable the Bidders to prepare their Proposal for Appointment of Mine Developer cum Operator (MDO) for re-opening & expansion of Rakha copper mine, development and operations of underground mine at Chapri and commissioning of new concentrator plant at Rakha, Jharkhand , India, through international competitive bidding and shall include any modifications, amendments/corrigenda or alterations or clarification thereto. The documents are as follows:

a) Notice Inviting Tender (NIT)

b) Request for Proposal (RFP)

c) Mining Services Agreement (provided as Schedule 1 to RFP)

d) Any corrigendum (s) /clarification(s) / amendments to the Bid Document issued by HCL.

e) Any other technical document, report included with the RFP

1.1.183. "**Termination**" shall mean the expiry or termination of this Agreement;

1.1.184. **"Termination Notice"** shall mean the notice issued in accordance with this Agreement by one party to other party informing about its intention to issue Termination Letter after granting a period of 15 (fifteen) days to make any representation.

1.1.185. **"Termination Letter**" shall mean the communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement;

1.1.186. **"Termination Payment(s)**" shall mean the amount payable under, and in accordance with, this Agreement, by HCL to the MDO upon Termination. For the avoidance of doubt, it is expressly agreed that the amount payable shall be subject to the limitations specified in Clause 33.3;

1.1.187. **"Tests"** shall mean the tests set forth in Schedule-I to determine the completion of Mines in accordance with the provisions of this Agreement and shall, *mutatis mutandis,* include similar Tests to determine completion of Additional Capacity, if any;

1.1.188. **"Ton" or "Tonne" or "tonne**" shall mean a metric tonne of Copper Ore;

1.1.189. **"Total Project Cost"** shall mean the capital cost incurred on construction and financing of the Project and shall not exceed the actual estimated capital cost of the Project;

1.1.190. **"Transfer Date"** shall mean the date on which this Agreement expires pursuant to the provisions of this Agreement or is terminated by a Termination Letter;

1.1.191. **"Waste"** shall mean blasted muck having copper content < 0.5 Wt % Cu.

All other capitalized words not defined anywhere in the Tender Documents shall have the meaning as are assigned to them in Indian Contract Act, 1872, Companies Act, 2013 and the General Clauses Act, 1897.

## 1.2. *Interpretation*

1.2.1 In this Agreement, unless the context otherwise requires,

(a) References to Applicable Laws or any provision thereof shall include amendment or re-enactment or consolidation of such Applicable Laws or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder. Reference to a statute shall include reference to rules, regulations or any other form of delegated legislation made there under;

(b) references to laws of the State, laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;

(c) references to a "**person**" and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;

(d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;

(e) the words "**include**" and "**including**" are to be construed without limitation and shall be deemed to be followed by "without limitation" or "but not limited to" whether or not they are followed by such phrases;

(f) references to "**construction**" or "**building**" include, unless the context otherwise requires, investigation, design, developing, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and "**construct**" or "**build**" shall be construed accordingly;

(g) references to "**development**" include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, upgradation and other activities incidental thereto including, but not limited to, construction of Mines infrastructure such as stopes, haul road, Mines shafts, inclines/drifts, main/ trunk roadway, transport network for MIO, men and material supply, storage of MIO, MIC and tailings, ventilation network, backfilling or stowing arrangement, electric power supply network, water drainage and pumping network, water supply arrangement or any other infrastructure facilities, as required, along with the procurement, supply, erection/installation and commissioning of the equipment/items and all matters in connection therewith or incidental to facilitate operation and maintenance of the Mines for excavation/extraction, processing of ore in Concentrator Plant and Delivery of MIC, and "**develop**" shall be construed accordingly;

(h) references to **"re-opening of the Mines"** include re-opening of the Mines, closure or discontinuance, using existing mine infrastructure and facilities, additional infrastructure and facilities, additional exploration, preparatory works for recovery of the mine workings and all other matters and activities in connection therewith or

incidental to re-open the Mines for further Mines development and operation for excavation/ extraction of copper.

(i) references to "**excavation**" include, unless the context otherwise requires, cutting, scooping or digging out a part of solid mass comprising earth, rocks, copper ore, shale, overburden and other materials with the objective of segregating copper from earth, rocks, shale, overburden and other materials for lifting and transportation thereof to the Stockyard(s), and "excavate" shall be construed accordingly;

(j) references to "extraction" include, unless the context otherwise requires, cutting, drilling and blasting, strata monitoring and support, scooping or digging out a part of solid mass comprising earth, rocks, Copper Ore and other materials by underground working with the objective of segregating Copper Ore from earth, rocks and other materials for lifting and transportation thereof to Concentrator Plant and the Delivery Point, and "extract" shall be construed accordingly; any reference to any period of time shall mean a reference to that according to Indian Standard Time;

(k) any reference to "**hour**" shall mean a period of 60 (sixty) minutes;

(l) any reference to "**day**" shall mean a reference to a calendar day;

(m) any reference to **"week"** shall mean a reference to a calendar week or seven days;

(n) references to a "**business day**" shall be construed as a reference to a working day of HCL;

(o) any reference to "**month**" shall mean a reference to a calendar month as per the Gregorian calendar;

(p) any reference to "**quarter**" shall mean a reference to the period of three months commencing from April 1, July 1, October 1, and January 1, as the case may be;

(q) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;

(r) any reference to any period commencing "**from**" a specified day or date and "**till**" or "**until**" a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;

(s) the words importing singular shall include plural and vice versa;

(t) references to any gender shall include the other and the neutral gender;

(u) "**kWh**" shall mean kilowatt hour;

(v) "**lakh**" shall mean a hundred thousand (100,000) and "crore" means ten million (10,000,000);

(w) "**indebtedness**" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;

(x) references to the "**winding-up**", "**dissolution**", "**insolvency**", or "**re-organization**" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, re-organization, dissolution, arrangement, protection or relief of debtors;

(y) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this sub-clause (w) shall not operate so as to increase liabilities or obligations of HCL hereunder or pursuant hereto in any manner whatsoever;

(z) any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is writing either in physical form or in the electronic form (email) from authorized representative of such party in this behalf and not otherwise; It is preferred that the same correspondence is maintained in written forms as well;

(aa) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;

(bb) references to Recitals, Articles, Clauses, Sub-clauses or sub-clauses, Provisos or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses or sub-clauses, Provisos and Schedules of, or to, this Agreement, references to an Annex shall, subject to anything to the contrary specified therein, be construed as a reference to an Annex to the Schedule in which such reference occurs, and references to a Paragraph shall, subject to anything to the contrary specified therein, be construed as a reference to a Paragraph of the Schedule or Annex, as the case may be, in which such reference appears;

(cc) the damages payable by either Party to the other, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the "**Damages**");

(dd) time shall be of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence; and

(ee) all the obligations of the MDO as contained in this Agreement shall be the joint and several obligations of the Selected Bidder and MDO;

(ff) reference of the phrase “on behalf of HCL”, “as authorized representative of HCL” or word denoting the same shall mean that such activities shall be performed by the MDO as per directive of HCL, provided that wherever any permission/ approval/ directives is to be given/ accorded by HCL, the same shall not be unduly delayed”;

(gg) Any determination with respect to the materiality or reasonableness of any matter including of any event, occurrence, circumstance, change, fact, information, document, authorization, proceeding, act, omission, claims, breach, default or otherwise shall be made by HCL and the same shall be conclusive and binding on the MDO and/or the Successful Bidder

1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the MDO to HCL shall be provided free of cost and in three copies, and if HCL is required to return any such Documentation with its comments and/or approval, HCL shall be entitled to retain two copies thereof;

1.2.3 The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply;

1.2.4 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act, 1897 shall not apply;

## 1.3. *Measurements and arithmetic conventions*

All measurements and calculations shall be in the metric system and calculations done to 2 (two) decimal places, with the third digit of 5 (five) or above being rounded up and below 5 (five) being rounded down; provided that the drawings, engineering dimensions and tolerances may exceed 2 (two) decimal places, if required. As for the matter of convenience, Copper Ore production figures shall be quantified in tonnes while that of waste removal shall be stated in cubic meters or tonne (as per requirement) and any financial figure shall be mentioned in INR.

## 1.4. *Priority of agreements, clauses and schedules*

1.4.1 This Agreement, and all other agreements and documents forming part of, or referred to in this Agreement, are to be read collectively and harmoniously and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and other documents and agreements forming part hereof or referred to herein shall, in the event of any conflict between them, be in the following order:

(a) Amendment(s) to the Agreement

(b) Agreement; and

(c) All other agreements and documents forming part hereof or referred to herein.

1.4.2 Subject to the provisions of Clause 1.4.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:

(a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;

(b) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;

(c) between any two Schedules, the Schedule relevant to the issue shall prevail;

(d) between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;

(e) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail;

(f) between any value written in numerals and that in words, the latter shall prevail.

# *PART II*

# *SCOPE OF THE PROJECT*

## Article 2. *Scope of the Project*

Please refer the scope of work as per RFP clause no 7.2

# Article 3. *Appointment of MDO*

## 3.1. *Appointment of MDO*

3.1.1 Subject to and in accordance with the provisions of this Agreement, Applicable Laws and the Applicable Permits, HCL hereby authorizes the MDO, to re-open, develop and operate the Mines and to produced Copper Ore and processing the same in the matching capacity concentrator plant for Delivery and Selling of MIC for a period beginning from the Partial Operation Date (POD) till 20 (twenty) years with a provision of maximum one-time extension for a period of 10 (Ten) years, based on the mutually agreed terms and conditions.

3.1.2 Contract Period shall be commencing from the Partial Operation Date (POD. MDO hereby accepts such appointment and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein.

(a) Provided that, not later than 1 (one) year before the expiry of the Contract Period, the Parties may, with mutual agreement, extend the Contract Period for such further duration and on such terms and conditions as the Parties may mutually agree ("**Extended Contract Period**"). The Contract Period can be extended by a period of 10 years, maximum of one time. Provided that, unless otherwise agreed by the Parties, the terms of this Agreement shall continue to apply to any Extended Contract Period, subject to Clause 9.1.1.

(b) Provided further that, the Contract Period shall be deemed to have expired in the event the Parties mutually agree that the contractual obligations and period of contract is completed. Notwithstanding the expiry of contract aforesaid, MDO's obligations related to Mine closure, restoration and reclamation and handing over to HCL shall continue till such obligations are completed.

3.1.3 Subject to and in accordance with the provisions of this Agreement, the MDO shall be obliged or entitled (as the case may be) to:

(a) access to the Site for the purpose of, and to the extent, conferred by the provisions of this Agreement;

(b) prepare and procure approval of the Mining Plan including the plan for mine closure, R&R Plan if required for this project;

(c) finance and develop and operate the Mines, so as to produce Copper Ore and copper concentrate as per the terms and conditions of this MSA on a sustainable basis, during the Contract Period, in accordance with the Approved Mining Plan;

(d) obtain the Applicable Permits;

(e) manage, operate and maintain the Mines in accordance with this Agreement;

(f) safety of the Mines and Concentrator Plant

(g) excavation of Copper ore in accordance with the provisions of this Agreement, including waste removal and production of Copper concentrate;

(h) set-up, design and operate and maintain Concentrator Plant with state of art technology as described in Schedule C. Concentrator Plant shall be commissioned and commence operation within 1460 days from Commencement Date. MDO can produce MIC from the ore to the level of maximum 3 Lakh tonne per annum produced from the mines in the existing concentrator plant of HCL at Mosabani for a maximum

period of 4 years from the commencement date on chargeable basis as per the terms and conditions mentioned in the Schedule T. MDO shall insure that the completion of the new concentrator plant shall complete within the 4 years from the Commencement Date.

(i) operation and maintenance of the Concentrator plant.

(j) operation and maintenance of the stockyard for stocking and weighment of Copper Ore / MIO / MIC.

(k) transportation of the ROM copper ore to the Concentrator Plant.

(l) perform its obligations related to land acquisition and R&R including construction of R&R colony on behalf of HCL for carrying out Copper ore production and beneficiation of copper ore from the Project;

(m) save as otherwise expressly provided in this Agreement, bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the MDO under this Agreement; and neither assign, mortgage, transfer or sub-let or create any lien or Encumbrance on this Agreement, or on the whole or any part of the Mines, nor sell, transfer, exchange, lease, encumber or part possession thereof, save and except as expressly permitted by this Agreement. It is hereby clarified that any assignment, transfer or sub-let of, or creation of any lien or Encumbrance on, this Agreement or on the whole or any part of the Mines as may be expressly permitted under this Agreement, shall be subject to the prior written consent of the HCL, and in case, the permission sought for consent is withheld by the HCL for any reason, then the same cannot be deemed to be a consent by the HCL.

(n) perform and fulfill all of the MDO's obligations for facilitation of pending land acquisition, physical possession of land and obtaining pending statutory clearances and implement provisions thereof in accordance with the provisions of this Agreement on behalf of HCL.

## 3.2. *Substitution of HCL*

The Parties expressly agree that HCL may, in pursuance of any reorganization or restructuring, substitute itself by another entity, and upon such substitution, all the functions, rights and obligations of HCL under this Agreement shall be deemed to be transferred to the substituted entity in accordance with and subject to Applicable Laws. Provided however that, prior to any substitution hereunder, the Parties shall, on a best endeavor basis, make such arrangements and enter into such further agreements as may be necessary for performance of their respective obligations hereunder. Provided further that the creditworthiness of the substituted entity shall be substantially similar or greater as compared to the HCL and in the event of any shortfall therein, a credit enhancement shall be arranged by the substituted entity to bridge the gap of such shortfall.

# Article 4. *Conditions Precedent*

## 4.1. *Conditions Precedent*

4.1.1 Save and except as provided in Article 4, sub-clauses (b) and (c) of Clause 6.1.2 and Clause 5.14, the rights of the MDO and the obligations of HCL under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1 (the "**Conditions Precedent**").

4.1.2 The MDO as authorized representative of HCL and on its behalf shall satisfy the Conditions Precedent within a period not exceeding 1460 (One thousand four hundred ten)) days from Commencement Date.

4.1.3 The MDO shall satisfy the following Conditions Precedent within the time specified herein, which shall be reckoned from the Commencement Date:

(a) within 30 (thirty) days, provide Performance Security and Corporate Performance Guarantee from Supporting Partner (if applicable), to HCL in accordance with Article 9;

(b) within 45 (forty-five) days provide Project Completion Schedule in the form of Schedule G and appointment of Technical Consultant for preparation of Detailed Project Report (DPR);

(c) Within 60 (sixty) days, inform HCL regarding the use of Concentrator plant at Mosabani for producing MIC

(d) Within 180 (one hundred eighty) days, prepare and submit 3 (three) hard copies and Detailed Project Report in accordance with the Mining Scheme duly attested by the authorized signatory of the MDO along with a soft copy of the Detailed Project Report in Microsoft word version and drawings/3 models in editable format.

(e) within 210 (two hundred ten) days, execute and procure execution of the Financing Agreement, Substitution Agreement, if applicable;

(f) within 210 (two hundred ten) days procure all the Applicable Permits including execution of lease deed, included but not limited to as specified in Part-I of Schedule-E, such that all such Applicable Permits are in full force and effect, or if the effectiveness of such Applicable Permits is subject to fulfillment of any conditions, then the MDO shall procure that all such conditions required to be fulfilled by the date specified therein have been fulfilled in full such that all such Applicable Permits are in full force and effect;

(g) within 240 (two hundred forty) days open an escrow account for the purpose of selling of the MIC and deposit 3 (three) months statutory payment (royalty, DMF, NMET) considering the peak rated capacity and the LME price of the prevailing month of the account opening date.

(h) within 240 (two hundred forty) days, prepare and submit 3 (three) hard copies and Detailed Project Report of the Concentrator Plant it proposes to install including design, technology, layout, drawings, circuit diagram duly attested by the authorized signatory of the MDO along with a soft copy of the Detailed Project Report in Microsoft word version and drawings in editable format. (Note: After taking prior approval from HCL and in compliance to Applicable Laws, MDO may take the desired copper ore samples from the project site to do its analysis. All such cost whatsoever

in nature will be borne by MDO).

(i) within 240 (two hundred forty) days deliver to the HCL, 3 (three) true copies of the Financial Package and the Financial Model, duly attested by the authorized signatory of the MDO along with soft copies of the Financial Model in Microsoft excel version or any substitute thereof which is acceptable to the Senior Lenders, if applicable;

(j) Within 240 (two hundred forty) days, procure approval of the plan for Rehabilitation and Resettlement (if required), diversion of forest, and any other approval required in accordance with Applicable laws for acquisition of land for development of mines and concentrator plant.

(k) Within 330 (three hundred thirty) days finalize basic engineering and procurement activities and finalise the vendors for the new matching capacity concentrator plant.

(l) Within a period not exceeding 365 (three hundred sixty-five) days, procure approval of the plan for Rehabilitation and Resettlement in accordance with Applicable laws for acquisition of land for construction of R&R colony and complete acquisition of Land for construction of R&R colony as required for Rehabilitation & Resettlement of Project Affected Families (PAFs") who would be displaced on account of Acquisition of land (if required).

(m) Within 510 (five hundred ten) days complete the procurement activities of major equipment and initiate the detail engineering works of the new matching capacity concentrator plan

(n) within 700 (seven hundred) days the production of MIO from the mines shall commence and shall be termed as Partial Completion Date (PCD)

(o) within 730 (seven hundred thirty) days the production of MIC from the Mosabani Concentrator Plant shall commence and shall be termed as Partial Operation Date (POD)

(p) Within 1410 (One thousand four hundred ten) days completion of installation the new matching capacity concentrator plant shall be termed as Schedule Completion Date (CoD)

(q) Within 1460 (One thousand four hundred sixty) days start of the operation of the new matching capacity concentrator plant and shall be termed as Schedule Operation Date (OD)

Provided that upon request in writing either in physical form or in electronic form (email) by the MDO, HCL may, in its discretion, waive any of the Conditions Precedent set forth in this Clause 4.1.3 or grant any extension of time from the due date for fulfillment thereof, as the case may be. For the avoidance of doubt, HCL may, in its sole discretion, grant any waiver of the Conditions Precedent set forth in this Clause 4.1.3 with such conditions as it may deem fit.

4.1.4 MDO shall make all reasonable endeavors to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable co-operation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible.

4.1.5 The MDO shall notify HCL in writing either in physical form or in electronic form (email) at least once in a month on the progress made in satisfying the Conditions Precedent. The

MDO shall promptly inform HCL when any Condition Precedent for which it is responsible has been satisfied.

4.1.6 Immediately upon the fulfillment or waiver of all the Conditions Precedent required to be fulfilled by the MDO under Clauses 4.1.1,4.1.2 or 4.1.3, the MDO shall deliver to HCL, a notice in writing either in physical form or in electronic form (email) confirming that the Conditions Precedent set out in Clauses 4.1.1,4.1.2 or 4.1.3 as the case may be, have been satisfied and/or waived (in accordance with the terms hereof), together with all necessary supporting documentation to support the statements in such notice (each a **"CP Satisfaction Notice"**). Upon receipt of the CP Satisfaction Notice from the MDO, HCL may verify the same. Upon HCL being satisfied that the Conditions Precedents have been fully satisfied or waived in accordance with the Agreement, it shall certify and declare the satisfaction (or waiver) of all Conditions Precedent and the date of such certification and declaration shall be the "**Appointed Date**".

4.1.7 MDO shall enter into an agreement with the "beneficiation vendor" (if applicable) for the installation and setting up of Concentrator Plant within 60 (sixty) days of getting the approval for "Consent to Establish" and submit the non-commercial terms of such agreement to HCL.

4.1.8 The zero date for commencement of work shall be the date of execution of Rakha Mining Lease. Regarding responsibility of mining lease extension, the MDO shall assist HCL in execution of mining lease.

## 4.2. *Damages for delay by in Fulfilling Conditions Precedent by the MDO*

4.2.1. In the event that,

(a) the MDO does not procure fulfillment or waiver of any or all of the Conditions Precedent set forth in Clause 4.1.3 within the period specified in respect thereof (including any extension of time granted)

the MDO shall pay to HCL, Damages calculated at the rate of 0.5% (zero point five per cent) of the Performance Security for each week's delay until the fulfillment of such Conditions Precedent. Provided, however, that upon the Damages payable hereunder reaching to 30% of the value of Performance Security, HCL may, in its sole discretion, terminate the Agreement. Provided further that in the event,

(a) any or all of the Conditions Precedent set forth in Clause 4.1.3 are not satisfied within the period specified in respect thereof due to reasons solely attributable to HCL, and/or

(b) the delay has not occurred as a result of breach by the MDO and/or

(c) due to Force Majeure,

HCL may extend the time period for fulfillment of such Condition's Precedent based on mutual discussion and agreement with the MDO. HCL shall provide all reasonable assistance as may be required to ensure fulfillment of the Condition's Precedent specified in Clause 4.1.3 above expeditiously.

## 4.3. *Commencement of Contract period*

The Contract Period shall commence from the Partial Operation Date (POD).

## 4.4. *Termination upon delay*

Without prejudice to the provisions of Clauses 4.2 and Article 9, and unless otherwise agreed between the Parties, in the event the Appointed Date does not occur, for any reason whatsoever, after second anniversary from the Appointed Date or such extended period as maybe agreed between the Parties in accordance with this Agreement, HCL shall at its sole discretion be entitled to terminate this Agreement forthwith and all rights, privileges, claims and entitlements of the MDO under or arising out of this Agreement shall cease to have effect on and from the date of the notice issued by HCL for terminating the Agreement. Further, the Parties agree that in the event such delay in occurrence of the Appointed Date is due to reasons attributable to MDO, HCL shall, without affecting its rights under Clause 4.2.1. and 4.4, be entitled to appropriate the Performance Security as Damages thereof.

# Article 5. *MDO Obligations*

## *5.1. General Obligations*

5.1.1 Subject to, and on the terms and conditions of this Agreement, the MDO shall, at its own cost and expense, procure, finance for, and undertake the design, engineering, procurement, construction, re-opening, development, operation, and maintenance of the Mines and Concentrator Plant for excavation of copper ore and upgradation of ore in the Concentrator Plant, Delivery of MIO and MIC at delivery points and selling of MIC, and shall observe, fulfill, comply with and perform all its obligations set out in this Agreement or arising hereunder.

5.1.2 MDO shall carry out the exploration activities in the Rakha and Chapri blocks in order to increase the resource/reserve at its own cost.

5.1.3 The MDO shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.

a. Compliance with the terms and conditions of the Mining Lease and the Approvals relating to the Site and hold harmless HCL from and against any and all liabilities, damages, claims, fines, penalties and expenses of whatever nature arising or resulting from the violations of such Applicable Laws by the MDO or its officials or personnel including the subcontractors and their personnel;

b. Comply with all the relevant directions and guidelines issued by any Government Instrumentality and relevant Indian standards in respect of the Site or the performance of the mining services and its other obligations under this Agreement including any direction issues by HCL's Mine Manager; and

c. Promptly give the HCL's representative/HCL's Mine manager copies of all relevant documents issued by or presented to any Authority.

d. The MDO shall ensure compliance in all respects with all Applicable Laws in relation to its employees, independent contractors, sub-contractors, or other persons providing services or on behalf of the MDO, including all laws relating to wages, hours of work, employment standards, collective bargaining, discrimination, civil rights, safety and health, compensation etc.

5.1.4 The MDO shall discharge its obligations in accordance with Standard Industry Practice and as a reasonable and prudent person.

5.1.5 The MDO shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:

a. make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining Applicable Permits, and obtain and keep in force and effect such Applicable Permits in conformity with Applicable Laws;

b. procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes, know-how and systems used or incorporated into the re-opening, development and operation of the Mines and Concentrator Plant;

c. procure and maintain all Applicable Permits, including but not limited to the procurement of explosives, drilling and blasting and creation of an explosive storage facility considering all conditions specified in the explosive license for such facility. The

cost of explosives shall be borne by the MDO, though the explosives license shall be procured and issued in the name of HCL and a copy of such license shall be provided to the MDO by HCL. Statutory formality like RE form will be the responsibility of HCL on request of MDO. The control of the explosive magazine will be under HCL;

d. perform and fulfill its obligations under the Financing Agreements;
e. procure issuance of all Applicable Permits required for re-opening of the Mines from the DGMS;
f. procure issuance of the environmental clearance from the Ministry of Environment, Forests and Climate Change, Government of India, if not available;
g. procure issuance of the forest clearance from the Ministry of Environment, Forests and Climate Change, Government of India, if not available;
h. make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;
i. comply with, ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the MDO's obligations under this Agreement, including but not limited to compliance with Applicable Laws in relation to its employees, independent contractors, sub-contractors, or other persons providing services to or on behalf of the MDO;
j. always act in a manner consistent with the provisions of this Agreement and not cause or fail to do any act, deed or thing, whether intentionally or otherwise, which may in any manner violate any of the provisions of this Agreement;
k. ensure that all equipment and facilities at the Mines and Concentrator plant are operated and maintained in accordance with the Specifications and Standards, Maintenance Requirements, Safety & Statutory Requirements and Standard Industry Practice;
l. support, cooperate with and facilitate HCL in the implementation and operation of the Project in accordance with the provisions of this Agreement;
m. take all reasonable precautions for the prevention of accidents at the Mines and Concentrator plant and provide all reasonable assistance and emergency medical aid including 24 hours a day ambulance service to accident victims;
n. establish a fully-fledged office equipped with computers, fax, e-mail, telephone at the Site, including communication facilities for day to day communication and for data transfer from one point to another;
o. submit soft copies of all data relating to copper ore supply from the mine, documents of equipment, plant & machinery installed at mines and plant, concentrate and MIC production and recovery from the Concentrator plant and furnish various returns/ statements to HCL, as may be required by HCL from time to time;
p. shifting of all existing public and private infrastructure and diversion of road and its maintenance and repairs from within and outside the Site;
q. set-up and maintain a well-organized management having experienced and qualified personnel for efficient administration and supervision of various activities to be undertaken as per the Agreement and shall employ all personnel as may be required by the HCL or as per Applicable Law. However, HCL shall also deploy the requisite statutory manpower for administrative purpose and the payment of wages of the manpower deployed by the HCL shall be the responsibility of HCL;
r. affect and maintain such insurance as per the Article;
s. abide by all instructions and directions issued by HCL, any Government Instrumentality or statutory authorities in relation to the performance of its obligations under this Agreement;

t. support for obtaining statutory clearances and approvals;
u. support for acquisition of land and resettlement & rehabilitation works;
v. Obtaining the right of way for transportation of ore, concentrate and tailings, construction of electrical lines, water pipelines or any other infrastructure activity;
w. Necessary infrastructure to draw water either from surface/ underground such as construction of intake wells/ setting up of pumping stations/ digging borewells etc. Further, construction of rainwater harvesting system from roof top and recharge pits/ ponds;
x. Comply and fulfill in welfare and corporate social responsibility activities/ obligations'
y. Transfer the Project Assets to HCL upon Termination of this Agreement, in accordance with the provisions thereof;
z. take all necessary steps in relation to the Project Specific Assets and any other tangible assets, as required, pursuant to and in accordance with Article 33 of this Agreement upon Termination of this Agreement;
aa. Compliance for applicable labor law, minimum wages act, gratuity act;
bb. Construction and maintenance of approach roads, cross drainage works such as culverts, drains etc., connecting the main state highway with the mining premises to be utilized for transportation of copper ore, concentrate, tailings or any other miscellaneous works to fulfill and achieve the annual production target set forth in the scope and project schedule;
cc. All other planning, development, operation, and maintenance activities related to the Project as stated in the Scope of the Project;
dd. agree to be liable for all the residuary obligations relating to the Project if not specifically stated herein in the scope of any of the parties and undertake to fulfil such residuary obligations at its own risk and cost; and
ee. selling of MIC on behalf of HCL. However, MDO reserves the right to buy the MIC from HCL as per the Clause No. 26.7
ff. Any utilization of waste rock generated during mine development may be permitted for use in construction of mine facilities subject to approval of HCL with due compliance of applicable laws. In such cases, MDO shall borne the statutory payment, if required.

## *5.2. Obligations to Project Agreements*

5.2.1 It is expressly agreed that the MDO shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or agreement shall excuse the MDO from its obligations or liability hereunder.

5.2.2 The MDO shall submit to HCL, the drafts of all Project Agreements (for the purpose of this clause, Project Agreement does not include this Agreement) or any amendments or replacements thereto, for its review and comments, and HCL shall have the right but not the obligation to undertake such review and provide its comments, if any, to the MDO within 15 (fifteen) days of the receipt of such drafts. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the MDO shall submit to HCL a true copy thereof, duly attested by the managing director/ whole time director of the MDO, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that any failure or omission of HCL to review and/ or comment hereunder shall not be construed or deemed as acceptance of any such agreement or document by HCL. Any failure on part of HCL to review, comment and/or convey its observations on any document shall not relieve the MDO of its obligations and liabilities under this Agreement in any manner nor shall HCL be liable for the same in any manner whatsoever.

5.2.3 The MDO shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of the HCL. In the event that any such replacement or amendment is made to any of the Financing Agreements without such prior written consent of the HCL, the Mine Operator shall not enforce such replacement or amendment nor permit enforcement thereof against the HCL. For the avoidance of doubt, the HCL acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling the debt of the MDO.

5.2.4 Notwithstanding anything to the contrary contained in this Agreement, the MDO shall not sub-lease, sub-license, assign or in any manner create an Encumbrance on the Site or on the copper stockpile, as the case may be, without prior written approval of HCL, which HCL may, in its discretion, deny if such sub-license, assignment or Encumbrance has or may have a Material Adverse Effect on the rights and obligations of HCL under this Agreement or under Applicable Laws.

5.2.5 The MDO shall ensure that each of the Project Agreements contain provisions that entitle HCL to step into such agreement, in its sole discretion, in substitution of the MDO in the event of Termination or Suspension (the **"Covenant"**). For the avoidance of doubt, it is expressly agreed that in the event HCL does not exercise such rights of substitution within a period not exceeding 90 (ninety) days from the Transfer Date, the Project Agreements shall be deemed to cease to be in force and effect on the Transfer Date without any liability whatsoever on HCL and the Covenant shall expressly provide for such eventuality. The MDO expressly agrees to include the Covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to HCL an acknowledgment and undertaking, in a form acceptable to HCL, from the counterparty(s) of each of the Project Agreements, where under such counterparty(s) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from HCL in the event of Termination or Suspension.

5.2.6 Notwithstanding anything to the contrary contained in this Agreement, the MDO agrees and acknowledges that selection or replacement of an O&M contractor or Beneficiation contractor, if required, and execution of the O&M contract or Beneficiation contract shall be subject to the prior approval of HCL and the decision of HCL in this behalf being final, conclusive and binding on the MDO, and the MDO undertakes that it shall not give effect to any such selection or contract without prior approval of HCL. It is also agreed that HCL shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the MDO or its Contractors from any liability or obligation under this Agreement.

## *5.3. Obligations to Change in Ownership*

5.3.1 The MDO shall not undertake or permit any Change in Ownership in it except with the prior written approval of HCL. Provided, further, the Selected Bidder shall also not undertake any change in its/ their shareholding in the MDO till the achievement of Peak Rated Capacity of the Rakha Mining Lease.

5.3.2 Notwithstanding anything to the contrary contained in this Agreement and subject to Clause 5.3.1, the MDO agrees and acknowledges that the following events

(a) all acquisitions of Equity by an acquirer, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity, in aggregate of 25% (twenty-five per cent) or more of the total Equity of the MDO either in one tranche or in a series of acquisitions; or

(b) acquisition of any control directly or indirectly of the board of directors of the MDO by any person either by himself or together with any person or persons acting in concert with him,

shall constitute a **"Change in Ownership"** requiring prior approval of HCL. The decision of HCL in this behalf shall be final, conclusive and binding on the MDO, and MDO/ Selected Bidder undertakes that it shall not give effect to any such acquisition of Equity or change in control of the board of directors of the MDO without such prior approval of HCL. It is also agreed that HCL shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the MDO from any liability or obligation under this Agreement.

5.3.3 For the purposes of the Clause 5.3.2:

(a) the expression "acquirer", "control" and "person acting in concert" shall have the meaning ascribed thereto in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 2011 or any statutory re-enactment thereof as in force as on the date of acquisition of Equity, or the control of the board of directors, as the case may be, of the MDO;

(b) the indirect transfer of control or legal or beneficial ownership of Equity shall mean transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in the acquirer acquiring control over the shares or voting rights of shares of the MDO; and

(c) power to appoint, whether by contract or by virtue of control or acquisition of shares of any company, holding directly or through one or more companies (whether situate in India or abroad), the Equity of the MDO, not less than half of the directors on the board of directors of the MDO or of any company, directly or indirectly, whether situate in India or abroad, having ultimate control of 25% (twenty five per cent) or more of the Equity of the MDO shall constitute acquisition of control, directly or indirectly, of the board of directors of the MDO.

5.3.4 Notwithstanding anything contained above, in case the Agreement is signed by JV of winning Bidding Consortium, Lead Member of the Consortium must maintain minimum 51% equity at all times in the JVC and the Other Member shall have to maintain at least 10% of the equity in JVC at least till 10 years from the Appointed Date as mentioned in this MSA. Any change in the shareholding of the members of the Consortium shall require the prior written consent of HCL.

5.3.5 Notwithstanding anything to the contrary contained herein, it is hereby expressly agreed by the Mine Operator that no change shall be effected in its shareholding pattern or beneficial ownership or otherwise so as to make it ineligible in terms of the General Financial Rules, 2017 read with the OM no. F.No.6/18/2019-PPD dated 23 July 2020 issued by the Public Procurement Division, Department of Expenditure, Ministry of Finance, Government of India (as amended or supplemented) and the Foreign Exchange Management Act, 1999 read with all rules, regulations, circulars, guidelines and notifications issued thereunder (as amended or supplemented from time to time) to undertake and perform its obligations hereunder.

5.3.6 The MDO understands and agrees that the prior written approval of HCL in case of Change in Ownership as described in Clause 5.3.1 and 5.3.2 is mandatory condition and if the MDO is found to be in violation of the same then HCL may exercise its right to terminate this

Agreement and also forfeit the Performance Security to make good, any of its losses and damages caused due to such Change in Ownership.

## *5.4. Obligations to employment of foreign nationals*

The MDO acknowledges, agrees and undertakes that employment of foreign personnel by the MDO and/or its Contractors and their subcontractors shall be subject to grant of requisite Applicable Permits under Applicable Laws, including employment/ residential visas and work permits, if any required, and the obligation to apply for and obtain the same shall and will always be of the MDO and, notwithstanding anything to the contrary contained in this Agreement, refusal of, or inability to obtain any such Applicable Permits by the MDO or any of its Contractors or subcontractors shall not constitute a Force Majeure Event, and shall not in any manner excuse the MDO from the performance and discharge of its obligations and liabilities under this Agreement.

## *5.5. Obligations to employment of trained personnel*

5.5.1 The MDO shall ensure that the personnel engaged by it in the performance of its obligations under this Agreement are at all times properly trained for their respective functions in accordance with the requirements of Applicable Laws and Standard Industry Practice.

5.5.2 The MDO shall ensure that the scope of work and its obligations are performed by, and under the supervision of appropriately qualified, experienced and skilled personnel.

5.5.3 The representative of HCL may, by written notice require the MDO to remove from the Site, deny access/ entry to the Site or from any activity connected with this MSA, any person employed/ engaged by the MDO, including any sub-contractor, in connection with the provision of the MSA who, in the reasonable opinion of the HCL's representative, is guilty of misconduct or is incompetent or negligent or who works in an unsafe manner that is likely to prejudice the safe operation at Mines and Concentrator Plant.

## *5.6. Obligations to taxes and duties*

5.6.1 It shall be the joint obligation of the MDO and HCL to comply with all necessary Tax related statutory compliances, including but not limited to the payment of GST at the rates prescribed under the Applicable Laws, in relation to the Agreement. In this regard the MDO will cooperate with HCL for all statutory compliances.

5.6.2 HCL shall, upon receiving the GST invoice or debit note (as applicable under the GST Laws) and other supporting documents in relation to the revenue share of MDO (inclusive of GST), remit the revenue share of MDO to the MDO along with the amount of GST indicated in GST invoice. The MDO shall issue a GST credit note within the time limit as prescribed under the GST Laws. HCL shall, upon receiving the credit note adjust the basic amount and taxes thereon while making remittance towards the GST invoice raised/issued by the MDO.

5.6.3 Debit note shall be raised in the event the sale price of copper concentrate has been increased. Resultantly, the valuation of the services rendered by MDO shall also be increased. Therefore, in such a case a debit note shall be raised by the MDO on HCL.

5.6.4 Credit note shall be raised in the event the sale price of the copper concentrate has been decreased. Resultantly, the valuation of the services rendered by MDO shall also be decreased. Therefore, in such a case a credit note shall be raised by the MDO on HCL.

5.6.5 In case of any loss of input tax credit or any other benefit or incidence of interest or penalty suffered by HCL in relation to GST due to any non-compliance by the MDO of the

Applicable Laws (including but not limited to the MDO's failure to upload details of sale on the GSTN portal, failure to issue GST compliant document(s) within the prescribed time frame or furnishing incorrect or incomplete documents with the relevant Government Instrumentality), HCL shall have the right to: (a) be compensated by the MDO for such amount of loss or penalty suffered by HCL, or (b) set-off such loss or penalty against any next amounts payable by HCL to the MDO under the Agreement. For the avoidance of doubt, it is hereby clarified that any loss of input tax credit or any other benefit or incidence of interest or penalty shall be recovered/adjusted from next monthly invoice or against the Performance Security, as the case may be, at the discretion of HCL and in case award/loss amount is greater than value of monthly invoice or the Performance Security, as the case may be, the MDO shall pay such differential amount to HCL within 30 (thirty) days from the date of demand raised by HCL. In addition, any delay in uploading the details of sale on the GSTN portal by the MDO resulting in deferment of input tax credit in accordance with the GST Laws, shall entitle HCL to charge interest at the rate equivalent to the prevailing interest rate charged by the relevant Government Instrumentality for input tax credit reversal under GST Laws.

5.6.6 Where any damages or compensation becomes payable by either HCL or the MDO pursuant to any provision of this Agreement, appropriate GST wherever applicable as per the GST Laws in force shall also be payable by the concerned Party in addition to such damages or compensation, upon issuance of GST invoice under GST Laws by the concerned Party which is entitled to receive such payments.

5.6.7 The obligation of HCL shall include compliances regarding tax deduction at source in relation to income tax and GST on the revenue share of MDO or any other charges paid to the MDO, as applicable, in accordance with the respective Applicable Laws.

5.6.8 Any penalty, interest, fine etc. applicable by the Government upon HCL for non-compliance of GST or other taxes for default arising on part of the MDO shall be payable or reimbursed, as the case may be, by the MDO. It is clarified that the MDO will also be responsible to pay any professional fee or liability accruing out of legal disputes relating to GST or any other Applicable Laws for the Project.

5.6.9 All other duties, taxes and levies not mentioned in the Clause above, including but not limited to income tax of MDO, shall be borne by the MDO.

## *5.7. Obligations to Owner*

Subject to the provisions of this Agreement, the HCL shall be the Owner of the Mines for the purposes of the Mines Act, 1952. All the responsibilities and duties of the Owner of the Mines in conformity with the provisions of the Applicable Laws, shall be performed by the MDO. For the avoidance of doubt and without prejudice to MDO's obligation to comply with Applicable Laws, the Parties expressly acknowledge and agree that for discharging its obligations under the Mines Act, 1952, HCL may from time to time give directions to the MDO for compliance with the provisions of the Mines Act, 1952 and the MDO agrees and undertakes to abide by such directions at all times.

In case HCL makes any payment to the Government towards statutory obligations of the Owner as per the Act, then the MDO undertakes to indemnify and reimburse HCL of any such statutory payments, fines, penalty, losses, compensation, damages etc.

## *5.8. Rights and Obligations to the Manager and Statutory employees*

5.8.1 The MDO shall ensure that the Mines and the Concentrator plant are developed and operated in a manner consistent with Applicable Laws and the provisions of this Agreement.

The MDO shall provide all necessary resources in terms of men and material to the manager and other supervisors to undertake all required actions in conformity with Applicable Laws. All appointments made by the MDO in this regard shall be in conformation with Applicable Laws including in relation to the qualification requirements set out under the Mines Act, 1952, the Metalliferous Mine Regulation, 2019, Factories Act, 1948, and other Applicable acts, laws, and regulations.

The MDO as per Clause 5.7, shall appoint the manager having the prescribed qualifications pursuant to the requirements of the Mines Act, 1952 and rules and regulations thereunder. The Manager shall be responsible for the overall management, control, supervision and direction of the Mines in conformity with the provisions of the Applicable Laws. The MDO shall either by itself or through its officials also be responsible to procure appointments of all statutory manpower as per the applicable acts, rules and regulations for the safety, operation and proper discipline of the persons employed in the Mines and Concentrator Plant.

5.8.2 In case HCL makes any payment of salaries and wages to the manager and other statutory manpower deployed by the MDO, then the MDO undertakes to indemnify and reimburse HCL of any such payments. For avoidance of doubt, it is clarified that the HCL shall be responsible for the payment of statutory manpower deployed for this project by HCL till the entire duration of the project.

5.8.3 Notwithstanding the appointment of the manager and other officials by HCL, the MDO and its personnel shall continue to be responsible and liable for compliance with Applicable Laws and this Agreement and in any event, the liability and responsibilities of the MDO shall be no less than that of the manager.

5.8.4 All the employees and manpower engaged by MDO shall be competent as per the Mines Act 1952, the Metalliferous Mine Regulation, 2019, Factories Act, 1948, as may be directed by DGMS from time to time and other Applicable Laws for discharging their duties in safe and efficient manner. Any commercial, financial, legal or other implication arising out of such acts and appointments shall be the responsibility of MDO. MDO shall be responsible for payment of wages of manpower in accordance with Applicable Laws and in consonance with the High-Power Committee's recommendation.

5.8.5 MDO shall engage all the employees and manpower as per the Core Committee' recommendation for employment of local people as well as other directions of local administration.

5.8.6 The MDO shall ensure that the Mines and Concentrator plant are operated in a manner consistent with Applicable Laws and the provisions of this Agreement. The MDO shall provide all necessary resources in terms of men and material to the manager to undertake all required actions in conformity with Applicable Laws.

## *5.9. Obligations to reporting requirements*

All information provided by the MDO to any Government Instrumentality as a part of its operating and reporting obligations under Applicable Laws shall also be provided by the MDO to HCL simultaneously. The MDO shall provide all information as may be required by HCL in connection with the Project. The MDO shall assist HCL by providing all information as may be asked by HCL for internal use or submission of reports as required to be submitted by HCL for statutory compliances.

## *5.10. Sole purpose of the MDO[2]*

In case {Successful Bidder forms an SPV or Consortium forms a JV} and that {SPV/JV} acts as the MDO, then the MDO having been set up for the sole purpose of exercising the rights and observing and performing its obligations and liabilities under this Agreement, the MDO or any of its subsidiaries shall not, except with the previous written consent of HCL, be or become directly or indirectly engaged, concerned or interested in any business other than as envisaged herein.

## *5.11. Obligations to Mining Plan and Geological Report*

The MDO shall at all times conform to the provisions of the Mining Plan as specified in Schedule-D, or any modification thereof, as may be approved in accordance with Applicable Laws.

If any improvement in mining methodology is required to be adopted, the MDO shall revise the Mining Plan as may be necessary due to any improved methodology. In such a case, the MDO shall prepare and procure approval of the revised Mining Plan in accordance with this Clause 5.11 and the MDO shall follow such revised Mining Plan for the Project. The MDO shall submit 2 (two) copies of the Mining Plan to HCL. The Mining Plan shall be prepared in accordance with the Specifications and Standards and Standard Industry Practice. In addition, the MDO shall obtain Applicable Permits, as may be relevant. However, in no case the rated production should be less than the rated production given in the mining scheme/ approved Mining Plan. If the MDO feels that the available Geological Report and geological information is not sufficient, the MDO may undertake additional exploration as per its requirement at its own cost. For avoidance of doubt, it is clarified that HCL will not provide any additional time for this work.

## *5.12. Obligations after closure of Mining*

5.12.1. MDO is required to prepare the Mine Closure Plan and obtain its approval from the concerned authorities. The MDO shall, at its sole cost and expense, undertake all activities for any progressive or final mine closure of the Project and restoration of the Site in accordance with the requirements of this Agreement, the approved Mine Closure Plan, the Mining Plan, Applicable Laws and Standard Industry Practice.

5.12.2. In the event the MDO is required to undertake a final closure of the Mines during the Contract Period, the MDO shall, at its sole cost and expense, undertake all activities for final closure of the Mines and restoration of the Site in accordance with the requirements of this Agreement, the final Mine Closure Plan, the Mining Plan, Applicable Laws and Standard Industry Practice. The MDO shall maintain proper records of all costs and expenses incurred by it in relation to the final mine closure and restoration of the Site and upon request from HCL, the MDO shall furnish to HCL all details and supporting documents, as may be necessary or required by HCL to seek reimbursement of such costs and expenses from the concerned Government Instrumentalities.

5.12.3. Within the Contract Period any costs and expenses related to mine closure (progressive and final) including third party cost shall be borne by the MDO.

5.12.4. In addition, at the time of final closure of the Mines, within the Contract Period, the MDO shall remove and dispose of all the constructions at its own cost and expenses in terms of the final Mine Closure Plan. If such final closure of the Mines is not completed by the MDO as per the Mine Closure Plan within the stipulated time period, HCL shall have right to recover from the MDO, such amount as may be necessary to complete such mine closure including, but not limited to, through invocation and appropriation of the Performance Security.

[2] Applicable only if MDO has been incorporated as an SPV/JV. Otherwise to be deleted.

5.12.5. For avoidance of doubt, it is clarified that HCL shall be responsible for undertaking the final mine closure at its cost and expense in the event that such final mine closure occurs at any time after the expiry or termination of this Agreement.

5.12.6. In the event that final closure of the Mines occurs at any time after the expiry of this Agreement, an amount equal to the balance amount of the BG amount after settlement of all periodic claims in accordance with the Applicable Laws and after realizing all dues payable to the HCL shall be paid to the MDO by the HCL, provided that the MDO has undertaken and completed the progressive restoration of the Mines in accordance with the Mine Closure Plan, to the full satisfaction of the Authority.

## *5.13. Obligations to progressive restoration*

5.13.1 The MDO shall, in conformity with approved Mine Closure Plan, Applicable Laws and Standard Industry Practice, undertake progressive restoration of the Site wherever any part of the Site can be restored and closed upon completion of excavation in such part.

5.13.2 The MDO shall maintain proper records of all costs and expenses incurred by it in relation to the progressive restoration of the Site and upon request from HCL, the MDO shall furnish all details to HCL and supporting documents, as may be necessary for the project purpose.

5.13.3 The MDO shall submit the Bank Guarantee (BG) amount to HCL as per the guidelines of Mine Closure Plan from time to time, as applicable. Upon receipt of such BG amount from MDO towards progressive mine closure plan, HCL shall submit the same to IBM or any other statutory entities as applicable. For avoidance of any doubt, HCL shall not reimburse any cost towards any mine closure activities as required during the Contract Period.

## *5.14. Obligations in relation to land acquisition & R&R*

5.14.1 The MDO shall perform all activities on behalf of HCL related to the acquisition of the land required to perform activities within the Scope of the Project, including activities in relation to land acquisition proceedings, procuring physical possession of the acquired land, registration and mutation of land and other documentation in the name of HCL in relation to the land acquired, and other associated activities. All other incidental payments towards land acquisition which are payable by MDO. Cost for acquisition of any land required by the MDO shall be solely borne by the Mine Operator. In addition, MDO shall be solely liable to ensure compliance with Applicable Laws, at its own costs and expenses, in relation to the acquired land. However, the title of the land acquired (within or outside of the leasehold area) for the Project, shall vest with the HCL. The land already acquired by the Authority within the leasehold area may be utilised by the MDO for the purpose of the Project.

5.14.2 Around 90 Acres of land is available for setting up of new concentrator plant. If MDO requires additional land, then the need of the same should be explained in detail to HCL. Upon approval of HCL, the MDO shall perform all activities related to the acquisition of land and the cost of the same shall be borne by the MDO. Costs related to documentary payments only shall be borne by HCL.

5.14.3 The MDO shall be primarily responsible for undertaking all R&R Obligations, including but not limited to procuring approval of the plan for rehabilitation and resettlement of PAPs on behalf of HCL and construction of R&R colony. The MDO shall be required to undertake all activities in relation to R&R Obligations in accordance with any R&R scheme approved by Government of Jharkhand, R&R Policy and other Applicable Laws. The R&R Costs towards construction of R&R colony and any land required for the same shall be solely borne by the MDO.

5.14.4 The MDO shall develop and construct R&R colony for the displaced. The minimum size and specifications of the dwelling houses shall not be lower than as provided in second schedule of

the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 and subsequent amendments thereof, and Jharkhand Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Rules 2015 and subsequent amendments thereof. Amenities in the R&R colony shall be provided as per the provisions of Schedule 3 and the R&R Scheme approved by state government Authorities.

It shall be the responsibility of MDO to assist HCL to acquire the complete land required for this project within 01 (one) year from the date of signing of the agreement. Land may be acquired in Phases such that HCL meets the copper ore requirements.

MDO shall assist HCL in obtaining renewal/ extension of lease of the Rakha Mining Lease and retain mining rights for the mining lease required for mining of copper ore and fulfilling provisions of this MSA.

## *5.15. Obligations in relation to transportation and Loading*

5.15.1 MDO shall be responsible for transportation of copper ore from Mines to Concentrator plant and transportation of classified tailings for backfilling to Mines from the Concentrator plant in compliance with the conditions mentioned in the Environment Clearance, other applicable statutory conditions and standard industry practice.

5.15.2 MDO shall be responsible for transportation of copper ore from Mines to Mosabani Concentrator plant (if MDO wants to use the concentration plant of HCL at Mosabani) at his own cost to a mutually agreed point inside the plant premises.

5.15.3 The MDO shall undertake all necessary precautions in relation to ensuring the safety and quality of the copper ore and copper concentrate in transit.

5.15.4 During non-commencement of operations or non-operation of the Concentrator plant post 4 (four) years from commencement date, this shall be the rights (but no obligation) of HCL as per clause 6.2 to off-take ROM copper ore during non-operation or non-commencement of the Concentrator plant or due to insufficient capacity at plant. MDO shall comply with all the Applicable Laws with respect to transportation of copper ore and copper concentrate.

## *5.16. Obligations in relation to public infrastructure*

MDO shall be primarily responsible for removal/ diversion/ relocation of any public infrastructure, including but not limited to roads, factories, etc. required to perform the scope of the Project.

## *5.17. Obligations in relation to HCL's role*

HCL either directly or through its nominated agency shall monitor or supervise Mine development and operations during the Contract Period. The MDO hereby acknowledges and accept to obey and follow any instruction in writing either in physical form or in electronic form (email) given by HCL related to its obligations of this Agreement.

## *5.18. Obligations relating to non-solicitation*

The MDO shall not, without the prior written consent of HCL, as the case may be, either directly or indirectly, on the MDO's own behalf or in the service or on behalf of others, solicit or attempt to solicit, divert or hire away any person employed by HCL.

## *5.19. Role of the Selected Bidder*

The Selected Bidder undertakes and covenants that notwithstanding the formation of the MDO, it shall be jointly and severally responsible with the MDO for performance of all the obligations of the

MDO under this Agreement. The Selected Bidder shall provide all support both technical and financial as may be required to ensure performance by the MDO of its obligations under the Agreement. The Selected Bidder shall ensure that the MDO is adequately funded so as to be able to implement the Project and operate and maintain the same in accordance with the provisions hereof and shall contribute funds to the extent required for this purpose. In case the Selected Bidder is a consortium, its members shall make all contributions towards the Project cost in their respective shareholding ratio. In the event of any default of the MDO, HCL shall have full recourse against the Selected Bidder and shall be entitled to claim from the Selected Bidder, all the loss and damage suffered by HCL and/or payable by the MDO as a consequence of the default or breach of the MDO of the terms of the Agreement or pursuant to the terms of the Agreement.

## *5.20. Obligations in relation to Power supply, Illumination and Communication*

5.20.1 The MDO will have to arrange power for carrying out its development and operations of Mines, Concentrator plant, and other equipment & infrastructure. Illumination and communication systems shall also be arranged by the MDO. The MDO shall meet its requirement by augmenting the existing power supply, illumination and communication arrangement of the project at its own cost.

5.20.2 MDO shall ensure sufficient illumination in mines & surface as per relevant safety norms and industry practice, lightning protection system, CCTV monitoring system at every level platform & visual units installed at Winder operator cabin, Mine Manager room etc.

Sufficient illumination in plants and its premises as per relevant safety norms and industry practice, lightning protection system, CCTV monitoring system & visual units installed as required and access for the same shall be provided to HCL offices for continuous monitoring.

5.20.3 Secondary source of power supply for emergency purposes shall be arranged by the MDO at Mines and Concentrator plant as per statute.

5.20.4 MDO shall employ energy saving and conservation initiatives, improvement in energy efficiency initiatives including adoption of renewable energy.

5.20.5 Radio frequency/ telephonic communication systems shall be installed, operated and maintained in the Mines and Concentrator plant covering all working areas.

## *5.21. Obligation in relation to water supply*

5.21.1 The MDO shall make adequate arrangements for water drawl (ground & surface) and treatment of water. The tariff for water drawn shall be borne by the MDO. Maintenance and augmentation of all pumping installations, pipe network, distribution system, and electrical supply system shall be carried out by the MDO at his own cost.

5.21.2 The MDO shall make necessary arrangements for sufficient supply of cool and wholesome drinking water as per the provisions of Applicable Law. Water recycling has to be done by the MDO to conserve water by making best efforts.

## *5.22. Obligation towards corporate social responsibility (CSR)*

If the MDO is liable to undertake CSR activities and incur expenditure on account of such CSR activities in accordance with the Applicable Laws, then the MDO shall prepare a CSR policy and plan, in accordance with which the MDO shall discharge its obligations towards CSR. Such CSR policy and plan shall be duly approved by HCL. In addition, the MDO shall comply with the requirements in relation to the CSR as stipulated under the Applicable Laws, including Section 135 of the Companies Act, 2013 read with the rules made thereunder.

## *5.23. Selling of MIC*

5.23.1 The parties to this Agreement agree that the MIO extracted/ excavated from the Mines and the MIC produced from the Concentrator Plant belongs to HCL (having proprietary rights over the extracted/ excavated MIO)

5.23.2 MDO shall be accorded the first right of buying the MIC produced from HCL as per the terms and conditions defined in Clause No. 26.7.

5.23.3 In the event that the MDO does not exercise its right of buying the MIC from HCL, despite holding the first right of buying of MIC, the MDO shall provide assistance and support to HCL, whatsoever in nature, in the sale of the said MIC. The sale shall be conducted in accordance with the prevailing LME Copper Price, taking into account the TC/RC charges, on a portal determined by HCL, ensuring transparency and efficiency. The buyer offering the highest discount on the TC/RC charges shall receive preferential status as the MIC purchaser. The marketing and other applicable costs pertaining to selling of the MIC shall be borne by the MDO. The detailed Process Flow outlining the Concentrate Sale and Revenue Generation procedures is mentioned in Schedule S1 and Schedule S2.

5.23.4 MDO shall make a refundable security deposit equivalent to 3 (three) months statutory payment (royalty, DMF, NMET, Vanopaj, Management Fees) considering the Peak Rated Capacity and the LME price of the prevailing month of the account opening date and the same shall not be remitted or adjusted during the entire period of the contract.

5.23.5 Sales billing (including issuance of sale order, tax invoice, debit note/credit note and adjustment of short lifting) and related statutory compliance will be done by HCL. The procedure for selling of MIC is provided in Schedule S1 and S2. Money shall be remitted from the escrow account on each successful completion of sale consignment basis in the following manner subject to the terms and conditions of escrow agreement.

***First charge:*** Amount of money as Revenue Share of HCL (Notwithstanding anything contained in the Agreement, GST or any other tax shall not be deducted from the first charge).

***Second Charge:*** Amount of applicable statutory charges related to production and selling of MIC including royalty, DMF, NMET, Cess, GST and any other tax and after adjustment on account of debit/credit note, grade slippage or upgradation and quantity, if any on production of documentary evidence.

***Third charge:*** Remaining amount of money includes revenue share of MDO and liability of all applicable taxes including GST on revenue share of MDO. The revenue share of MDO includes payments made by the MDO for statutory wages, etc.

## *5.24. Obligation of extraction of other metals*

5.24.1. During analysis of Concentrate produced, in case Gold, Silver, Nickel, Selenium and Tellurium, etc., content of commercial value if found, the selling mechanism of the same will be followed as per the selling of MIC as per clause no. 5.23 MSA

5.24.2. All necessary arrangements (including exploration, extraction, transportation, storage, selection of consumer/buyer, requisite permissions etc.) shall be undertaken by the MDO at its own cost and risk.

## *5.25. Obligation related to other scientific studies*

5.25.1. MDO shall conduct all the scientific studies required for various activities for re-opening, development and production of copper ore as recommended by DGMS or any other regulatory authority. MDO shall obtain Applicable Permits from DGMS and other Government

Instrumentality for the mining method under the Mining Plan. MDO shall carry out subsidence prediction studies as and when required to carry out the reopening operation.

5.25.2. MDO shall conduct all the scientific studies for production of MIC from the Concentrator Plant.

5.25.3. The Mine Operator shall submit 2 (two) copies of any such scientific study report or subsidence prediction study report to HCL.

## *5.26. Obligation related to use of Concentrator plant of HCL at Mosabani*

5.26.1. The MDO shall construct, install, commission and test the new matching capacity concentrator plant as per the conditions mentioned in the clause no. 4.1

5.26.2. The MDO is granted the provision to utilize HCL's concentrator plant at Mosabani for a maximum duration of 4 (four) years, starting from the commencement date of this Agreement. During this period, the MDO may beneficiate MIO in HCL's concentrator plant on chargeable basis. The payment mechanism in this regard is provided in Article 27.

5.26.3. In case, for any reason, the MDO decides not to utilize HCL's concentrator plant within the stipulated time frame mentioned in Clause 5.26.2, it shall be the sole responsibility of the MDO to ensure proper storage and safety measures for the produced MIO during this period.

5.26.4. Refer to Schedule T for detailed obligations.

# Article 6. *Obligations and Rights of HCL*

## 6.1. *Obligations of HCL*

6.1.1 Except as otherwise provided in this Agreement, HCL shall, at its own cost and expense undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.

6.1.2 HCL agrees to provide support to the MDO and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and Applicable Laws, the following:

(a) permit access to the Site;

(b) permit access for the use of concentrator plant at Mosabani for a maximum period of 4 years if required by the MDO

(c) Produce MIC in per ton basis cost to be paid by the MDO of the MIO provided by the MDO for beneficiation in the concentrator plant at Mosabani for a maximum period of 4 years if required by the MDO

(d) Payment of wages of the statutory manpower deployed by the HCL for the project purposes

(e) if required, depute its representatives for participation in public hearings and attending the meetings with the officials and representatives of the Ministry of Environment, Forests and Climate Change, Government of India for the purposes of procuring environmental and forest clearance in accordance with Applicable Laws;

(f) facilitate issuance of notification for land acquisition for the Project in accordance with the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and subsequent amendments thereof, as applicable, in accordance with the provisions of this Agreement;

(g) the land already acquired by HCL within the leasehold area, if required by the MDO for the Project, shall be made available to the MDO for physical possession;

(h) upon written request from the MDO, may provide reasonable assistance to the MDO in obtaining access to necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favorable to the MDO than those generally available to commercial customers receiving substantially equivalent services;

(i) upon written request from the MDO, and subject to the MDO complying with Applicable Laws, provide all reasonable support and assistance to the MDO in procuring Applicable Permits required by the MDO for performance of its obligations under this Agreement;

(j) not do or omit to do any act, deed or thing which may in any manner violate any of the provisions of this Agreement;

(k) support and cooperate with and facilitate the MDO in the implementation and operation of the Project in accordance with and subject to the provisions of this Agreement.

(l) the obligation of the Authority for tax compliance including GST is enumerated in Clause 5.6 of this Agreement.

## 6.2. *HCL's Rights*

HCL either directly or through its nominated agency shall have the right to monitor or supervise development and operations of the Mines and Concentrator Plant during the Contract Period. The MDO hereby acknowledges and accepts to obey and follow any instruction given in written either in physical form or in electronic form (email), by HCL related to its obligations of this Agreement.

The MDO accepts and acknowledge the rights of HCL including but not limited to, detailed as follows and shall adhere to oblige to these:

(a) Assistance and guidance in CSR activities, if any.

(b) Assistance in deployment and engagement of security personnel for Mine safety.

(c) Supervision and monitoring of mining and concentration related activities.

(d) Supervision and monitoring of excavation of copper ore as per Approved Mining Plan.

(e) Supervision and monitoring of operations at stockyard, R&D lab, and weighbridge.

(f) Supervision and monitoring of dispatch of ROM copper ore, concentrate, and tailings, at the Delivery Point(s) and at Mines site.

(g) Supervision of adherence to the Mine and concentrator plant safety measures as per relevant acts and/or rules.

(h) Supervision and monitoring of preparation and implementation of Approved Mining Plan and Mine Closure Plan and persuasion of the approval to the respective authorities.

(i) Supervision and monitoring of dewatering of mine water as per requirement of the MDO.

(j) Provide administrative support in procurement of land by the MDO, if necessary.

(k) Certifying the monthly quantity of copper ore/ copper concentrate delivered, and tailings generated, MIO content being delivered to the Concentrator plant, MIC content in copper concentrate produced, and opening & closing stock of copper ore and concentrate, and tailings available in the Mines and in the Concentrator plant.

(l) Provide administrative support in R&R related activities to MDO.

(m) Any Damages shall not be applicable on HCL if the Concentrator Plant did not commence operation in its scheduled time, then, MDO shall have to pay the revenue share based on the planned production of MIC.

It is hereby clarified that any right not utilized by HCL shall not absolve MDO from any of its responsibilities and/or obligations which are to be fulfilled by MDO under this Agreement.

MDO being the occupier of the Mines under this Agreement, shall comply with the obligations of the owner under the Mines Act, 1952. However, except for the obligations of the owner under the Mines Act, 1952, the HCL shall remain as owner for all other purposes.

# Article 7. *Representation and Warranties*

## 7.1. *Representations and warranties of the MDO*

The MDO represents and warrants to HCL that:

7.1.1 it is duly organized and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;

7.1.2 it has taken all necessary corporate and other actions under Applicable Laws to authorize the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;

7.1.3 the ultimate beneficial owner(s) of the Mine Operator do not belong to any country which shares land border with India. For the purposes of this subclause determination of 'beneficial ownership' shall be made in accordance with the Foreign Exchange Management Act, 1999 read with all rules, regulations, circulars, guidelines and notifications issued thereunder (as amended from time to time);

7.1.4 it has the financial standing and capacity to comply with its obligations under this Agreement and to undertake the Project in accordance with the terms of this Agreement;

7.1.5 this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof;

7.1.6 it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder, including any obligation, liability or responsibility hereunder;

7.1.7 the information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;

7.1.8 the execution, delivery and performance of this Agreement will not conflict with, or, result in the breach of, or, constitute a default under, or accelerate performance required by any of the terms of its memorandum and articles of association {or those of any member of the Consortium} or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;

7.1.9 there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;

7.1.10 it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or Government Instrumentality which results in or may result in a Material Adverse Effect and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;

7.1.11 it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a Material Adverse Effect;

7.1.12 it has not been debarred by any State/ Central Government or Public Sector Undertakings from participating in tender for MDO or mining related services and such blacklisting is not enforced as on date of submission of Proposal;

7.1.13 there is no order of conviction by any court of law for offenses involving corrupt and fraudulent practices including moral turpitude in relation to the business dealing with the Government of India or any other Government and such conviction should not be in continuance as on the date of submission of Proposal;

7.1.14 it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3; provided, further, that the Selected Bidder (sole Bidder) shall not dilute its Equity to less than 51% (fifty one percent) in the MDO till entire life of the Project;

7.1.15 {the Selected Bidder/ each Consortium member} have the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement;

7.1.16 {the Selected Bidder/ each Consortium member} is duly organized and validly existing under the laws of the jurisdiction of its incorporation and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;

7.1.17 no representation or warranty by it contained herein or in any other document furnished by it to HCL or to any Government Instrumentality in relation to Applicable Permits contains or contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;

7.1.18 all information provided by the Selected Bidder in response to the Tender Document, is to the best of its knowledge and belief, true and accurate in all material respects;

7.1.19 all undertakings and obligations of the Selected Bidder and the MDO arising from the Request for Proposal and Tender Document or otherwise shall be binding on the MDO as if they form part of this Agreement, except as modified pursuant to the terms of this Agreement;

7.1.20 all its rights and interests in the Mines and Stockyard (s) shall pass to and vest in HCL on the Transfer Date free and clear of all liens, claims and encumbrances, without any further act or deed on its part or that of HCL , and that none of the Project Assets shall be acquired by it, subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person, save and except as expressly provided in this Agreement;

7.1.21 no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Agreement or entering into this Agreement or for influencing or attempting to influence any officer or employee of HCL in connection therewith.

7.1.22 that the finances used for the mine operation activities under this Agreement are not proceeds of crime as described under Section 2(u) of the Prevention of Money laundering Act, 2002;

7.1.23 All information provided by the {selected Bidder/ Consortium Members} in response to the Request for Bid or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects; and

7.1.24 all undertakings and obligations of the {selected Bidder/ Consortium Members} and the Mine Operator arising from the Request for Bid or otherwise shall be binding on the Mine

Operator as if they form part of this Agreement, except as modified pursuant to the terms of this Agreement

## 7.2. *Representations and warranties of HCL*

HCL represents and warrants to the MDO that:

7.2.1 it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement and exercise its rights and perform its obligations under this Agreement;

7.2.2 it has taken all necessary actions under Applicable Laws to authorize the execution, delivery and performance of this Agreement;

7.2.3 it has the financial standing and capacity to perform its obligations under this Agreement;

7.2.4 this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;

7.2.5 it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in a Material Adverse Effect; and

7.2.6 it has complied with Applicable Laws in all material respects.

## 7.3. *Disclosure*

In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of the same. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any right, remedy or obligation of either Party under this Agreement.

# Article 8. *Disclaimer*

## 8.1. *Disclaimer*

8.1.1 The MDO acknowledges that prior to the execution of this Agreement, the MDO has, after a complete and careful examination, made an independent evaluation of the Tender Document, Scope of the Project, Specifications and Standards, Site, existing structures, local conditions, physical qualities of ground, subsoil and geology and all information provided by HCL or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. HCL makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/ or completeness of any assessment, assumption, statement or information provided by it and the MDO confirms that it shall have no claim whatsoever against HCL in this regard.

8.1.2 The MDO acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above and hereby acknowledges and agrees that HCL shall not be liable for the same in any manner whatsoever to the MDO, the Selected Bidder and its Associate or any person claiming through or under any of them.

8.1.3 The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above shall not vitiate this Agreement or render it voidable.

8.1.4 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 8.1.1, that Party shall immediately notify the other Party, specifying the mistake or error; provided however, that a failure on part of HCL to give any notice pursuant to this Clause 8.1.4 shall not prejudice the disclaimer of HCL contained in Clause 8.1.1 and shall not in any manner shift to HCL any risks assumed by the MDO pursuant to this Agreement.

8.1.5 Except as otherwise provided in this Agreement, all risks relating to the Agreement shall be borne by the MDO and HCL shall not be liable in any manner for such risks or the consequences thereof.

# *PART III*

# *DEVELOPMENT AND OPERATIONS*

# Article 9. *Performance Security and Corporate Performance Guarantee*

## 9.1. *Performance Security*

9.1.1 The MDO shall, as a security for the performance of its obligations under this Agreement, provide to HCL, no later than 30 (thirty) days from the date of this Agreement, an irrevocable, unconditional, first demand bank guarantee from a Scheduled Commercial Bank (except Co-operative and Gramin bank.

9.1.2 Performance Security (PS) will be estimated based on the following parameters:

(a) LME Price will be considered as average of the last 90 (ninety) days from the date of signing of the contract = **($ Avg. of 90 days LME Price)**

(b) Peak rated Production of MIC as provided in Clause 20.1 = **(T Peak rated Production of MIC)**

(c) Revenue share in percentage of MDO finalized through the forward auction = **(MDO % of revenue share)**

The formula for calculation is as follows:

***PS = (T Peak rated production of MIC) x ($ Avg. of 90 days LME Price) x (MDO% of revenue share) x 5%***

Note: Conversion of USD to INR will be done as per exchange rate (Rs/US$) FBIL average month

Such Performance Security shall be in the form set forth in Schedule – F1 (the "**Performance Security**"); provided that, a second Performance Security shall be provided by the MDO to HCL in accordance with the following requirements and for the values set out below:

(a) Further, within 30 (thirty) days of the start of each Accounting Year, the amount of the Performance Security shall be revised based on the change in average LME price of the last 90 (ninety) days or change in production schedule.

Such a second demand bank guarantee for differential amounts from a Scheduled Commercial Bank (except Co-operative and Gramin bank) shall be provided to HCL no later than 30 (thirty) days from the start of each Accounting Year.

(b) For avoidance of any doubt, the value of Performance Security shall not be reduced anytime in the Contract Period and the difference amount shall be kept for the next Financial Year and thereof.

(c) The Performance Security consisting of first & second demand bank guarantees shall be maintained and kept valid and effective and in full force until the date that occurs 90 (ninety) days after the expiry of the Contract Period.

(d) The MDO shall revise second demand bank guarantee within 30 (thirty) days of the start of each Accounting Year on the basis of change in LME price or change in production schedule in each year till the end of the Contract Period.

In the event the initial Contract Period is extended pursuant to Clause 3.1.2 the MDO shall furnish a replacement of first demand bank guarantee from a Scheduled Commercial Bank (except Co-operative and Gramin bank) for Performance Security for an amount calculated on the basis of this Clause 9.4.1, no later than 90 (ninety) days prior to the commencement of the Extended Contract Period, and for each subsequent revision of the Revenue share a replacement Performance Security by second demand bank guarantee from a Scheduled

Commercial Bank (except Co-operative and Gramin bank) shall be provided by the MDO to HCL, calculated and maintained in accordance with the provisions of Clause 9.4.1.

## 9.2. *Appropriation of Performance Security*

9.2.1 HCL shall, without prejudice to its other rights and remedies hereunder, in law or equity, have the unqualified right to encash and appropriate the Performance Security in part or in full, in the event of a failure or default of the MDO/Selected Bidder to comply with its/their obligations hereunder, including a MDO Default, the MDO's failure to meet any Condition Precedent, or the MDO's failure to pay any sums (including Damages) due hereunder.

9.2.2 The MDO shall, within 15 (fifteen) days from such encashment and appropriation of the Performance Security by HCL,

(a) in case of a partial appropriation, restore the value of the Performance Security to the value as is required to be maintained pursuant to Clause 9.4.1, and,

(b) in case of a full appropriation, provide a fresh Performance Security in accordance with the requirements of Clause 9.1.1, failing which HCL shall be entitled to terminate this Agreement in accordance with Article 33.

## 9.3. *References to Performance Security*

9.3.1 References to Performance Security occurring in this Agreement for and in respect of any period prior to the delivery of the Performance Security by the MDO to HCL, or in respect of any period subsequent to the expiry or release thereof, as the case may be, shall be construed solely for the purposes of calculating the amount of Damages payable by the MDO.

9.3.2 Until such time the Performance Security is provided by the MDO pursuant to Clause 9.1.1 and the same comes into effect, the Bid Security Declaration shall remain in force and effect and HCL shall be entitled to appropriate the Bid Security Declaration for suspension of business relation with MDO under this Agreement; Notwithstanding anything to the contrary contained in this Agreement, in the event the Performance Security is not provided by the MDO within a period of 30 (thirty) days from the date of this Agreement, HCL may, at its option, appropriate the Bid Security Declaration for suspension of business relation with the MDO and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the MDO under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the MDO, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

## 9.4. *Corporate Performance Guarantee*

9.4.1 The Supporting Partner of Selected Bidder shall submit the first Corporate Performance Guarantee, which shall be in the form of a bank guarantee from Scheduled Commercial Bank (except Co-operative and Gramin bank), for an amount equivalent to the performance security as per Clause 9.1

9.4.2 The Corporate Performance Guarantee shall be submitted within 30 days from signing of MSA in the format provided in Schedule - F2.

9.4.3 Further, within 30 (thirty) days of the start of each Accounting Year, the amount of the Corporate Performance Guarantee shall be revised based on the change in average LME price of the last 90 (ninety) days or change in production schedule.

9.4.4 For avoidance of any doubt, the value of Corporate Performance Guarantee shall not be reduced anytime in the Contract Period.

9.4.5 The Corporate Performance Guarantee shall be valid, effective and in full force for such value as is required to be maintained in this clause, until the date that occurs 90 (ninety) days after the achievement of Annual Capacity of Mine as certified by HCL. For avoidance of any doubt, the value of Corporate Performance Guarantee shall not be reduced in its period of applicability.

9.4.6 HCL shall also be entitled to invoke the Corporate Performance Guarantee (as defined in Article 9) in part or in full, in the event of a failure or default of the MDO to comply with its obligations hereunder, including a MDO Default, the MDO's failure to meet any Condition Precedent, or the MDO's failure to pay any sums (including Damages) due hereunder.

9.4.7 Further, within 30 (thirty) days of the start of each Accounting Year, the amount of the Corporate Performance Guarantee shall be revised change in LME price or change in production schedule in each year till the end of the Contract Period.

Such second demand bank guarantee for differential amount from a Scheduled Commercial Bank (except Co-operative and Gramin bank) is to be provided to HCL no later than 30 (thirty) days from the start of each Accounting Year.

# Article 10. *Access to the Site*

## 10.1. *The Site*

10.1.1 The Site shall be developed in the manner as demarcated in Schedule- A in conformity with the respective phases specified therein. The fixed infrastructure shall comprise the land on which the Stockyard(s), Project Facilities are to be constructed and shall include a mining area sufficient for excavation of Copper Ore and dumping of waste in accordance with the Annual Production Programme and the terms of this Agreement, and in respect of which the access to Site shall be granted by the HCL to the MDO commencing from the Commencement Date.

## 10.2. *Access to the Site*

10.2.1 During the Development Period, HCL hereby grants to the MDO access to the Site for carrying out any surveys, investigations and soil tests that the MDO may deem necessary during the Contract Period, it being expressly agreed and understood that HCL shall have no liability whatsoever in respect of the surveys, investigations and tests carried out or work undertaken by the MDO on or about the Site pursuant thereof to in the event of Termination or otherwise.

10.2.2 MDO shall produce MIC from Mosabani Plant for a maximum period of 4 years from Commencement Date or till Schedule Operation Date (OD), whichever is earlier.

10.2.3 In consideration of re-opening and development and operations of Mines, this Agreement and the covenants and warranties on the part of the MDO herein contained, HCL, in accordance with the terms and conditions set forth herein, hereby grants to the MDO, commencing from the Commencement Date, access to and permission to work or to use in respect of all the land (along with any buildings, constructions or immovable assets, if any, thereon) comprising the real estate, which is more particularly described, delineated and shown in Schedule A hereto (the "**Site**"), on an "as is where is" basis to develop, operate and maintain the said Site, for the purposes permitted under this Agreement, and for no other purpose whatsoever. The MDO hereby acknowledges and accepts that the entire Site shall be and shall at all times remain the exclusive and absolute property of HCL and neither the MDO nor any persons claiming through or under the MDO shall have or shall at any time claim any property, right, title or interest in such Site.

10.2.4 The MDO shall perform its obligations in a manner that the existing roads, if any, along the boundary of the Mines, or an alternative thereof are open to traffic at all times during the Contract Period.

10.2.5 It is expressly agreed that all rights and permissions of the MDO granted hereunder in respect of the Site shall terminate automatically and forthwith, without the need for any action to be taken by HCL, upon the Termination of this Agreement for any reason whatsoever. For the avoidance of doubt, the Parties expressly agree that notwithstanding any temporary or permanent structures erected on the Site by the MDO, the rights and permissions of the MDO in respect of the Site shall automatically terminate, without any further act of the Parties, upon Termination of this Agreement.

10.2.6 The MDO hereby irrevocably appoints HCL (acting directly or through a nominee) to be its true and lawful attorney, to execute and sign in the name of the MDO, a surrender of the rights granted hereunder at any time upon the Termination of this Agreement, a sufficient

proof of which will be the declaration of any duly authorized officer of HCL, and the MDO consents to it being registered for this purpose.

## 10.3. *Procurement of the Site*

10.3.1 Following the Appointed Date, MDO shall be responsible for taking over physical possession of the Site and undertaking the associated activities in respect thereof at its own cost and expense, subject to the provisions of the Clause 5.14.

10.3.2 Until the Transfer Date, the MDO shall maintain around-the-clock vigil over the Site and shall ensure and procure that no encroachment there on takes place, and in the event of any encroachment or occupation on any part hereof, the MDO shall report such encroachment or occupation forthwith to HCL and undertake its removal at its own cost and expense.

10.3.3 The MDO shall, if so required, procure any additional land required for the development, operations and maintenance of the Mines and Concentrator plant in accordance with this Agreement and upon procurement, such land shall vest in HCL and form part of the Site; provided that MDO shall be responsible for acquiring such additional land in accordance with Applicable Laws, in such manner as provided in Clause 5.14 and other provisions of the Agreement and such additional land so acquired by the MDO on behalf of HCL hereunder shall be deemed form part of the Site.

## 10.4. *Protection of Site from Encumbrances*

During the Contract Period, the MDO shall protect the Site and the Mines from any and all occupations, encroachments or Encumbrances, and shall not place or create nor permit any Contractor or other person claiming through or under the MDO to place or create any Encumbrance or security interest over all or any part of the Site, the Mines and/or the Project Assets, or on any rights of the MDO therein or under this Agreement, save and except as otherwise expressly permitted in this Agreement.

## 10.5. *Special / temporary right of way*

The MDO shall bear all costs and charges for any special or temporary right of way required by it in connection with access to the Site. The MDO shall obtain at its cost such facilities on or outside the Site as may be required by it for the purposes of the Mines and the performance of its obligations under this Agreement.

## 10.6. *Geological and archaeological finds*

Save and except as provided in this Agreement, it is expressly agreed that mining, geological or archaeological rights do not form part of the permission granted to the MDO under this Agreement and the MDO hereby acknowledges that it shall not have any mining rights or interest in the underlying minerals, fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest and that such rights, interest and property on or under the Site shall vest in and belong to HCL or the concerned Government Instrumentality. The MDO shall take all reasonable precautions to prevent its workmen or any other person from removing or damaging such interest or property and shall inform HCL forthwith of the discovery thereof and comply with such instructions as HCL or the concerned Government Instrumentality may reasonably give for the removal of such property. For the avoidance of doubt, it is agreed that any reasonable expenses incurred by the MDO hereunder shall be not reimbursed by HCL.

## 10.7. *Rehabilitation and Resettlement of PAPs*

MDO shall be solely responsible for undertaking the Rehabilitation and Resettlement of the PAPs in accordance with the approved R&R Plan, Applicable Laws and this Agreement at its own cost and expense.

## 10.8. *Employment of PAPs*

No employment to the PAPs shall be given by the HCL.

## 10.9. *Existing infrastructural assets of the Site including the Mines*

The list of existing infrastructure at the Site (including the Mines) is set out in Schedule-A. The handed over assets may be utilized by the MDO, solely for the Project and without any additional payment to the Authority, subject to the condition that a prior written notice regarding such utilization is provided by the MDO to the HCL. In this regard, it is hereby clarified that:

a) the HCL shall continue to be the owner of such infrastructure or project facilities and any such utilization by the Mine Operator shall not create any right/interest in its favour;

b) and pursuant to such utilization, the Mine Operator shall be responsible for compliance with Applicable Laws and maintenance (including continuation of validity of any Applicable Permit (if any) of such infrastructure and/or project facilities.

# Article 11. *Utilities, Roads and Trees*

## 11.1. *Existing utilities and roads*

Notwithstanding anything to the contrary contained herein, the MDO shall ensure that the respective entities owning the existing roads, right of way or utilities on, under or above the Site are enabled by it to keep such utilities in continuous satisfactory use, if necessary, by providing suitable temporary or permanent diversions with the approval of the controlling body of that road or right of way, and HCL shall, upon written request from the MDO, initiate and undertake at the MDO's cost, legal proceedings for acquisition of any right of way necessary for such diversion.

## 11.2. *Shifting of obstructing utilities*

The MDO shall, subject to Applicable Laws and with assistance of HCL, undertake shifting of any utility including electric lines, water pipes and telephone cables, to an appropriate location or alignment within or outside the Site, if and only if, such utility causes or shall cause a Material Adverse Effect on the development, operation or maintenance of the Mines and Concentrator Plant. The cost of such shifting shall be borne by the MDO.

## 11.3. *New utilities*

If HCL requires the MDO shall provide access to, and use of the Site for laying telephone lines, water pipes, electric cables or other public utilities, but only if it does not affect the operations of the Mines and Concentrator Plant. For the avoidance of doubt, it is agreed that use of the Site under this Clause 11.3 shall not in any manner relieve the MDO of its obligation to develop, operate, and maintain the Mines and Concentrator Plant in accordance with this Agreement and any damage caused by such use shall be restored forthwith.

## 11.4. *Felling of Trees*

MDO should obtain permission from HCL before undertaking any tree cutting activities. During the execution of work, if the MDO requires any cutting or felling of trees to create a facility, MDO shall be responsible for enumeration and prior permission of state forest is to be obtained for the activity. HCL, shall, upon written request from the MDO, initiate and undertake at the MDO's cost, necessary proceedings for obtaining such permission at MDO's cost.

# Article 12. *Re-opening and Development of the Mines and Concentrator Plant*

## 12.1. *Reopening of the Mine*

12.1.1 The Rakha Underground Mine, which was earlier discontinued, are to be re-opened, salvaged, rehabilitated, explored, planned, developed and operated by the MDO for a guaranteed quantity of Copper Ore production (as per the Mining Plan) by exploitation of residual copper reserves available in the Mine, with due regard to applicable acts and rule and safety of Mines, personnel and the property, including surface structures.

12.1.2 MDO shall re-open the Mines in accordance with the Applicable Laws after duly obtaining Applicable Permits, as may be required, from the DGMS and any other relevant Government Instrumentality.

12.1.3 MDO, through the HCL, shall notify and communicate in writing about re-opening of the Mines to DGMS and other Government Instrumentality in accordance with the Applicable Laws.

## 12.2. *Development of Mines and Concentrator Plant*

12.2.1 The MDO shall design, finance, develop and operate the Mines and concentrator plant and Concentrator Plant having a capacity to excavate in accordance with the Annual Production Program.

12.2.2 On or after the Appointed Date, the MDO shall undertake development of the Mines and Concentrator plant, and installation of Equipment as specified in Schedule B and Schedule C, and in conformity with the Specifications and Standards set forth in Schedule D.

12.2.3 The Mines and Concentrator Plant shall have the following Equipment and such other facilities, conforming with Specifications and Standards, as may be necessary for operation of the Mines and Concentrator Plant in accordance with the provisions of this Agreement and consistent with the Mining Plan:

(a) Concentrate plant (as per TEFR);

(b) equipment such as dumpers, drills, dozers, loaders, graders, rock breaker, LPDT etc.;

(c) power distribution substation/ system;

(d) effluent treatment system with zero discharge principle;

(e) storage space for equipment and materials;

(f) machine shop for machining and maintenance of equipment and machinery;

(g) calibration laboratory to check all tools, instruments, jigs and fixtures to ensure product conformity with Specifications and Standards;

(h) necessary facilities for testing of copper ore and copper concentrate;

(i) standby power back-up facility suitable to its requirements;

(j) an administrative office, vocational training centers canteen, rest rooms/washroom/ rest shelter and staff facilities as required under Applicable Laws

(k) internal telecommunication infrastructure catering to basic telephony and other value-added telecom services;

(l) drainage system for storm water drainage including garland drain around the mine pit;

(m) sewage waste-water disposal system;

(n) development and maintenance of roads as required within the Mines, the Site and for access to the Site;

(o) The extraction of copper ore and its concentration shall be done in a systematic and scientific manner.

12.2.4 The development of Mines and Concentration Plant shall include construction and/ or upgradation of facilities for storage of sufficient quantity copper ore, copper concentrate, and tailings, as deemed necessary.

## 12.3. *Obligations prior to commencement of construction*

Prior to commencement of Construction Works, the MDO shall:

12.3.1 submit to HCL, its general arrangement, plans, drawings, excavation methodology, quality assurance procedures, excavation time schedule, and beneficiation plan for development of the Mines and Concentrator Plant in accordance with the Project Completion Schedule set forth in Schedule-G;

12.3.2 undertake and perform all such acts, deeds and things as may be necessary or required before commencement of development of the Mines and Concentrator Plant under and in accordance with the provisions of this Agreement, Applicable Laws and Applicable Permits; and

12.3.3 make its own arrangements for quarrying and procurement of materials needed for the Mines and Concentrator Plant under and in accordance with Applicable Laws and Applicable Permits;

## 12.4. *Drawings*

In respect of the MDO's obligations relating to the Drawings of the Mines and Concentrator Plant as set forth in Schedule - H, the following shall apply:

12.4.1 The MDO shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule, three copies each of all Drawings to the HCL for review.

12.4.2 By submitting the Drawings for review to HCL, the MDO shall be deemed to have represented that it has determined and verified the design and engineering, including field construction criteria related thereto, which are in conformity with the Scope of the Project, Specifications and Standards, Applicable Laws and Standard Industry Practice.

12.4.3 Within 15 (fifteen) days of the receipt of the Drawings, HCL or its vetting consultant shall review the same and convey their observations to the MDO, which shall be communicated through HCL, with particular reference to their conformity or otherwise with the Scope of the Project and the Specifications and Standards. The MDO shall not be obliged to await the observations of HCL on the Drawings submitted pursuant hereto beyond the said 15 (fifteen) days period and may begin or continue Construction Works and/ or upgradation at its own discretion and risk.

12.4.4 If the aforesaid observations of HCL indicate that the Drawings are not in conformity with the Scope of the Project or the Specifications and Standards, such Drawings shall be revised by the MDO and resubmitted to HCL for review. HCL shall give their observations, if any, within

7 (seven) days of receipt of the revised Drawings, and such observations shall be communicated to the MDO through HCL.

12.4.5 No review and/or observation of HCL, or their failure to review and/or convey their observations on any Drawings, shall neither relieve the MDO of its obligations and liabilities under this Agreement in any manner nor shall HCL be liable for the same in any manner.

12.4.6 Within 90 (ninety) days of COD, the MDO shall furnish to HCL a complete set of as-built Drawings, in 05 (five) hard copies and in Digital form or in such other medium as may be acceptable to HCL, reflecting the Mines and Concentration Plant as actually designed, engineered and constructed and/ or upgraded, including an as-built survey illustrating the layout of the Mines, Concentrator Plant and of the buildings and structures forming part of Project Facilities.

12.4.7 The MDO shall make available all the relevant drawings for the civil works containing top plan, longitudinal sections, typical cross sections, Elevations, elevations, sectional plan details for R.C.C. structures, its foundations and superstructures, etc. The drawing should be in conformity to the relevant IRC specifications, building by laws, BIS specifications, and shall be constructed by following BIS codes and latest CPWD specifications (Vol I & Vol II) for civil works.

The above drawings are required for all the infrastructure facilities required to be constructed by the MDO besides as mentioned in the Schedule-H of the MSA. The drawings should be prepared and submitted well in advance prior to commencement of the construction work for it to be approved by the HCL.

Tailing dam and Tailing disposal system should be in line with the CWC guidelines and all the schemes should be duly approved by the CWC or any other relevant governing body.

## 12.5. *Scheduled Completion & Operation Date*

12.5.1 The MDO agrees and undertakes that development of Mines for excavation of ROM copper ore shall be undertaken in a manner such that

(a) Scheduled Completion Date (CoD) shall mean the completion of installation of the new matching capacity concentrator plant which occurs on or prior to 1410 (Fourteen Hundred and ten) days from the Commencement Date.

(b) Scheduled Operation Date (OD) shall mean the commencement of operation of new matching capacity concentrator plant which occurs on or prior to 1460 (Fourteen Hundred and sixty) days from the Commencement Date.

(c) the Completion as envisaged in Clause 14.3 occurs on or prior to 1460 (Fourteen Hundred and sixty) days from the Commencement Date

12.5.2 In the event that the MDO fails to achieve Partial Completion Date (PCD) within the timeline set forth above in Clause 12.5.1, unless such failure has occurred due to Force Majeure or for reasons solely attributable to HCL, it shall pay Damages to HCL in a sum calculated at the rate of 0.5% (zero point five per cent) of the amount of Performance Security for delay of each week until Scheduled Operations Date (OD) is achieved. Provided, however, that upon the Damages payable hereunder reaching to 30% of the value of Performance Security, HCL may, in its sole discretion, terminate the Agreement;

12.5.3 In the event Completion does not occur on or prior to the Scheduled Operation Date (OD), unless the delay is on account of reasons solely attributable to HCL or due to Force Majeure, the MDO shall pay Damages to HCL in a sum calculated at the rate of 0.5% (zero

point five per cent) of the amount of Performance Security for delay of each week until Second Anniversary date is achieved. Provided, however, that upon the Damages payable hereunder reaching to 30% of the value of Performance Security, HCL may, in its sole discretion, terminate the Agreement.

12.5.4 In the event that the MDO fails to achieve any Project Milestone or targets within the timeline set forth for such Project Milestone in Schedule-G, unless such failure has occurred due to Force Majeure or for reasons solely attributable to HCL, it shall pay Damages to HCL in a sum calculated at the rate of 0.5% (zero point five per cent) of the amount of Performance Security for delay of each day until such Project Milestone is achieved; provided that if any or all Project Milestones, or the Scheduled COD, or the Scheduled Completion Date are extended in accordance with the provisions of this Agreement, the dates set forth in Schedule-G shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if Schedule-G has been amended as above. Provided, however, that upon the Damages payable hereunder reaching to 30% of the value of Performance Security, HCL may, in its sole discretion, terminate the Agreement

12.5.5 For the avoidance of doubt, it is agreed that recovery of Damages under this Clause 12.5.2, 12.5.3 and 12.5.4 shall be without prejudice to the rights of HCL under this Agreement, including the right of Termination thereof.

## 12.6. *Provision of infrastructure*

MDO shall, at its own cost and expense, endeavor to construct and maintain, in or near the Mines and Concentrator Plant, the following:

12.6.1 Electric substation connected with the grid including overhead lines/ high tension lines, for supplying electricity to the Site immediately upon completion of Conditions Precedent;

12.6.2 any significant road diversions to be made, in accordance to the requirements of the Mining Plan;

## 12.7. *Development of township*

12.7.1 MDO may construct and/ or upgrade, at its own cost and expense, a township comprising commercial and residential infrastructure and dwelling units for its employees. However, construction of such a township is optional and at the sole discretion of MDO. HCL shall not provide any land, assistance or reimbursement for construction of such township.

## 12.8. *Requirement of Land*

12.8.1 MDO shall survey land available at the Rakha Mining Lease site to assess the requirement of any additional land for the construction of project facilities and allied infrastructure. In case, additional land is required to construct Concentrator Plant, tailing ponds, or any other infrastructure related to the project, MDO shall assess the total requirement and survey the nearby area in Rakha. The MDO is required to get the additional land requirement along with the land management plan approved from HCL prior to the land acquisition and R&R, if required. The payment mechanism for land and other activities shall be as per Clause 6.2.

## 12.9. *Pumping and Drainage:*

12.9.1 The MDO shall ensure proper pumping and drainage of the mine for efficient conduct of the mining operations. The MDO shall possess its own arrangement for additional pumping requirements wherever required.

## 12.10. *Ventilation*

12.10.1 The MDO shall be responsible for carrying out ventilation network modeling and simulation studies for designing and organizing the ventilation system. MDO shall be responsible to provide the adequate ventilation at workplace in mines as per statutes in Rakha and Chapri Block.

# Article 13. *Monitoring of construction*

## 13.1. *Monthly progress reports*

During the Construction Period, the MDO shall, no later than 7 (seven) days after the close of each month, furnish to HCL, a monthly report on progress of the construction works and installation of equipment, and shall promptly give such other relevant information as may be required by the HCL.

## 13.2. *Inspection*

During the Construction Period, HCL shall inspect the Mines and/or Plant and other project infrastructures at least once a quarter, and a report of such inspection (the "**Inspection Report**") shall be prepared by HCL stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Scope of the Project and Specifications and Standards. The Inspection Report shall be communicated by HCL to the MDO within 7 (seven) days of such inspection, and, upon receipt thereof, the MDO shall rectify and remedy the defects or deficiencies, if any, stated in the Inspection Report. Such inspection or Inspection Report shall not relieve or absolve the MDO of its obligations and liabilities set out in this Agreement in any manner whatsoever.

## 13.3. *Tests*

13.3.1 For determining that the Construction Works and equipment conform to the Specifications and Standards, HCL may require the MDO to carry out, or cause to be carried out tests, at such time and frequency and in such manner as may be specified by HCL from time to time, in accordance with Standard Industry Practice for quality assurance. The size of sample for such tests shall, to the extent possible, not exceed 5% (five per cent) of the quantity and/or number of tests that the owner or builder of such works would normally undertake in accordance with Standard Industry Practice. The MDO shall, with due diligence and at its own cost, carry out or cause to be carried out all the tests in accordance with the instructions of HCL and furnish the results thereof to HCL. Notwithstanding anything stated above, HCL has the right to appoint an independent agency to carry out tests, and 50% of cost incurred by the independent agency in conducting tests, as specified by HCL, shall be reimbursed by MDO to HCL. For the avoidance of doubt, the MDO shall carry out all tests necessary for determining the rectification of any defect or deficiency in Construction Works and equipment, at its sole cost and expense.

13.3.2 In the event that results of any tests conducted under this Clause 13.3 establish any defects or deficiencies in the Construction Works and Equipment, the MDO shall carry out remedial measures and furnish a report to HCL on this behalf. The HCL shall require the MDO to carry out or cause to be carried out tests to determine that such remedial measures have brought the Construction Works and Equipment into compliance with the Specifications and Standards, and the procedure set forth in this Clause 13.3 shall be repeated until such Construction Works and Equipment conform to the Specifications and Standards. For the avoidance of doubt, it is agreed that tests pursuant to this Clause 13.3 shall be undertaken in addition to and independent of the tests that shall be carried out by the MDO for its own quality assurance in accordance with Standard Industry Practice. It is also agreed that a copy of the results of such tests shall be sent by the MDO to HCL forthwith.

13.3.3 MDO shall maintain a fully equipped and functional laboratory at the Site to conduct the tests for quality assurance for civil works as per MoRTH (5th edition), IRC specifications, latest CPWD specifications Vol -I & Vol -II, BIS specifications, etc. Besides deploying experienced graduate material engineers and adequate number of technical staff for

carrying out the routine tests in the required frequency. At any stage the latest available quality assurance guidelines shall be considered.

## 13.4. *Delays during construction*

Without prejudice to the provisions of Clause 12.2.4, if the MDO does not achieve any of the Project Milestones or HCL shall have reasonably determined that the rate of progress of Construction Works and installation of equipment is delayed, it shall notify the MDO to this effect, and the MDO shall, within 15 (fifteen) days of such notice, by a communication inform HCL in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve such Project Milestones or targets.

## 13.5. *Video recording*

During the Construction Period, the MDO shall provide to HCL for every calendar quarter, a video recording, which will be compiled into a 3 (three) hour digital video disc or any substitute thereof, covering the status and progress of Construction Works and installation of equipment in that quarter. The first such video recording shall be provided to HCL within 30 (thirty) days of the Appointed Date and thereafter, no later than 15 (fifteen) days after the close of each quarter, such video recordings shall be provided by MDO.

# Article 14. *Completion Certificate*

## 14.1. *Tests*

14.1.1 No later than 30 (thirty) days prior to the likely achievement of the Completion of mine development, the MDO shall notify HCL of its intent to subject the Construction Works and equipment to Tests. The date and time of each of the Tests shall be determined by HCL in consultation with the MDO, and HCL may designate its representative to witness the Tests. The MDO shall provide such assistance as HCL may reasonably require for conducting the Tests. In the event of the MDO and HCL fail to mutually agree on the dates for conducting the Tests, the MDO shall fix the dates by not less than 10 (ten) days' notice to HCL.

14.1.2 All Tests shall be conducted in accordance with Schedule-I at the cost and expense of the MDO. HCL shall observe, monitor and review the results of the Tests to determine compliance of the Mines with Specifications and Standards and Concentrator plant with Specifications and Standards and if it is reasonably anticipated or determined by HCL during the course of any Test that the performance of any Construction Works or Equipment does not meet the Specifications and Standards, it shall have the right to suspend or delay such Test and require the MDO to remedy and rectify the defects or deficiencies. Upon completion of each Test, the MDO shall provide to HCL copies of all Test data including detailed Test results. For the avoidance of doubt, it is expressly agreed that HCL may require the MDO to carry out or cause to be carried out additional Tests, in accordance with Standard Industry Practice, for determining the compliance of the Mines with Specifications and Standards.

## 14.2. *Partial Completion Date*

14.2.1 The day of the month in any Accounting Year on which the Copper ore production commences, in accordance to the Mining Plan schedule and continues for a period of at least 3 months, as certified by HCL, then such Commencement Date of copper ore production shall be the "**Partial Completion Date**" or **"PCD**".

## 14.3. *Completion*

Subsequent to completion of Construction Works and when the quantity of copper ore produced from the Mines in an Accounting Year equals the Annual Rated Capacity, Concentrator Plant of Rated Capacity are commissioned, and HCL determine the Tests to be successful in accordance with the provisions of this Agreement, HCL shall issue a Completion Certificate to MDO substantially in the form set forth in Schedule - J (the "**Completion Certificate**"), such an event shall be considered as "**Completion**".

## 14.4. *Withholding of Completion Certificate*

If HCL determines that the Mines, Concentrator Plant and equipment or any part thereof do not conform to the provisions of this Agreement, and HCL is of the opinion that the Mines, Concentrator Plant and equipment are not fit and safe for commercial service, it shall notify the MDO within 7 (seven) days, of the defects and deficiencies in the Mines and Equipment and withhold issuance of the Completion Certificate, as the case may be. Upon receipt of such notice, the MDO shall remedy and rectify such defects or deficiencies and thereupon Tests shall be undertaken in accordance with Article 14. Such procedures shall be repeated as necessary until the defects or deficiencies are rectified.

## 14.5. *Rescheduling of Tests*

If HCL finds that it is unable to issue the Completion Certificate because of events or circumstances on account of which the Tests could not be held or had to be suspended, the MDO shall be entitled to reschedule the Tests and hold the same as soon as reasonably practicable. Provided, however, that the MDO shall be excused for the delay in Tests arising hereunder if such delay is not solely attributable to the MDO.

# Article 15. *Change of Scope*

## 15.1. *Change of Scope*

15.1.1 HCL may, notwithstanding anything to the contrary contained in this Agreement, require the provision of additional works and services at the Mines and Concentration Plant, which are not included in the Scope of the Project as contemplated by this Agreement, or reduce the Scope of the Project (the "**Change of Scope**"). Any such Change of Scope shall be made in accordance with and subject to the provisions of this Article 15.

15.1.2 If the MDO determines at any time that a Change of Scope is necessary, it shall notify in writing either in physical form or in electronic form (email) to HCL to consider such Change of Scope with due justifications. HCL shall, within 90 (ninety) days of receipt of such notice, either accept such Change of Scope with modifications, if any, and initiate proceedings in accordance with this Article 15 or inform the MDO in writing either in physical form or in electronic form (email) of its reasons for not accepting such Change of Scope or for accepting such Change of Scope without any payment obligations hereunder, as the case maybe.

15.1.3 Any work or services which are provided under and in accordance with this Article 15 shall form part of the Scope of the Project and the provisions of this Agreement shall apply *mutatis mutandis* to such works or services.

## 15.2. *Procedure for Change of Scope*

15.2.1 In the event of HCL determining that a Change of Scope is necessary, it shall issue to the MDO, a notice specifying in reasonable detail, the change in works and services contemplated thereunder (the "**Change of Scope Notice**").

15.2.2 Upon receipt of a Change of Scope Notice, the MDO shall, with due diligence, provide to HCL such information as is necessary, together with preliminary documentation in support of:

(a) the impact, if any, which the Change of Scope is likely to have on the Project Completion Schedule if the change in works or services are required to be carried out during the Construction Period; and

(b) the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof, including a detailed break-up by work classification along with the cost implication for the same. However, for avoidance of any doubt, no separate payment/ reimbursement shall be made by HCL for such an event.

15.2.3 Upon receipt of information set forth in Clause 15.2.2, if HCL decides to proceed with the Change of Scope, it shall convey its preferred option to the MDO and the Parties shall, thereupon make good faith efforts to agree upon the time and costs for implementation thereof. Upon reaching an agreement, HCL shall issue an order (the "**Change of Scope Order**") requiring the MDO to proceed with the performance thereof. In the event that the Parties are unable to agree, HCL may, by issuing a Change of Scope Order, require the MDO to proceed with the performance thereof pending resolution of the Dispute;

15.2.4 The provisions of this Agreement, insofar as they relate to Construction Works and Tests, shall apply *mutatis mutandis* to the works undertaken by the MDO under this Article 15;

## 15.3. *Payment for Change of Scope*

15.3.1 The MDO shall, after commencement of work, present to HCL bills for record purpose in respect of the works and services in progress or completed works and services, as the case may be, supported by such documentation as is reasonably sufficient for HCL to determine the accuracy thereof. However, for avoidance of any doubt, no separate payment/ reimbursement shall be made by HCL for such an event.

## 15.4. *Restrictions on certain works*

15.4.1 HCL shall not require the MDO to undertake any works or services if such works or services are likely to delay completion of the development of Mines, Concentrator Plant, and related infrastructure by the Scheduled Completion Date; provided that in the event that HCL considers such works or services to be essential, it may issue a Change of Scope Order, subject to the condition that the works forming part of, or affected by such Change of Scope Order, shall not be reckoned for purposes of determining completion of the Project.

# Article 16. *Operation and Maintenance*

## 16.1. *O&M obligations of the MDO*

16.1.1 During the Operation Period, the MDO shall operate and maintain the Mines, Concentrator Plant and all equipment in accordance with this Agreement either by itself, or through the O&M contractor and if required, modify, repair or otherwise make improvements to the Mines, Concentrator Plant and equipment to comply with the provisions of this Agreement, Applicable Laws and Applicable Permits, and conform to the Specifications and Standards and Standard Industry Practice. The MDO or the O&M contractor can operate and maintain the Mines with leased equipment, provided that the Specifications and Standards are in conformity with Schedule – D and the equipment are maintained in conformity with the Maintenance Requirements as provided in clause 16.2. The obligations of the MDO hereunder shall include:

(a) ensuring safe, smooth and uninterrupted excavation and processing of Copper Ore thereof from the Mines/concentrator plant, storage of mill tailings at tailing ponds, transportation of classified mill tailings from concentrator plant to mines including prevention of loss or damage thereto, during normal operating conditions;

(b) undertaking operation and maintenance of the Mines and Concentrator Plant in an efficient, coordinated and economical manner, in compliance with Applicable Laws and Standard Industry Practice;

(c) effective and efficient beneficiation of copper ore with recycling and recirculation of wastewater back to the system along with the residual solids with a view to ensure zero discharge.

(d) Undertaking quality control and quality monitoring measures for MIO/MIC at Mines and Concentrator Plant input and output. Also, it shall be the responsibility of MDO to maintain the quantity and quality of copper ore and copper concentrate, any time during the Contract period.

(e) Undertaking measures to maintain the quality of ROM copper and to perform relevant measurements and testing before feeding it to the Concentrator Plant.

(f) Ensuring that the waste is removed and deposited in accordance with the provisions of this Agreement;

(g) minimizing disruption to operation of the Mines in the event of accidents or other incidents affecting the safety and operation of the Mines by providing a rapid and effective response and maintaining liaison with emergency services of the State;

(h) carrying out periodic preventive maintenance of the Mines and Concentrator Plant;

(i) undertaking routine maintenance including prompt repairs of all components of the Mines, Concentrator Plant and equipment so as to ensure compliance with the Maintenance Requirements and the Specifications and Standards;

(j) undertaking major maintenance of equipment and installations;

(k) preventing, with the assistance of the concerned law enforcement agencies, any encroachments on, or unauthorized entry to the Site;

(l) protection of the environment and provision of equipment and materials thereof in compliance with statutory norms or Applicable Laws.

(m) operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Mines and Equipment and for providing safe, smooth and uninterrupted excavation and processing of Copper Ore;

(n) maintaining a public relations unit to interface with and attend to suggestions from Project Affected Persons, government agencies, media and other agencies;

(o) complying with Safety Requirements in accordance with Article 17;

(p) operation and maintenance of all Project Assets diligently and efficiently and in accordance with Standard Industry Practice;

(q) maintaining reliability in operating the Mines and Plant and transportation of ore and concentrate, and tailings; and

(r) providing adequate security to prevent the pilferage and theft of copper ore and concentrate in the stockyards.

16.1.2 The MDO shall remove all waste excavated during the course of development and operations of the Mines in accordance with Applicable Laws, Standard Industry Practice and the provisions of this Agreement.

16.1.3 The MDO shall remove promptly from the Mines, all surplus construction machinery and materials, waste materials (including hazardous materials and wastewater), rubbish and other debris (including, without limitation, accident debris) and keep the Mines in a clean, tidy and orderly condition, and in conformity with Applicable Laws, Applicable Permits and Standard Industry Practice.

16.1.4 The MDO shall maintain, in conformity with Standard Industry Practice, all stretches of roads and other structures situated on the Site.

16.1.5 If the MDO fails to comply with any directions issued by a statutory authority and is liable to pay a penalty under the provisions of Applicable Laws, such penalty shall be borne solely by the MDO, and shall not be claimed from HCL. For the avoidance of doubt, payment of any penalty under the provisions of Applicable Laws shall be in addition to, and independent of, the Damages payable under this Agreement.

16.1.6 In case of failure of the MDO to comply with any directions issued by a statutory authority, which results in HCL being liable to pay a penalty under the provisions of Applicable Laws or any loss suffered by HCL, the MDO shall be liable to indemnify and make good such penalty of loss, as the case maybe, suffered by HCL. On failure of the MDO to make good such losses or penalties within a period of 30 (thirty) days of such claims being raised by HCL, HCL at its sole discretion may claim such amount as Damages payable under this Agreement.

## 16.2. *Maintenance Requirements*

The MDO shall procure that at all times during the Operation Period, the Mines and Equipment conform to the maintenance requirements set forth in Schedule – K (the "**Maintenance Requirements**").

## 16.3. *Maintenance Manual*

16.3.1 No later than 90 (ninety) days prior to the Scheduled Completion Date, the MDO shall, in consultation with HCL (evolve a repair, operation and maintenance manual (the

**"Maintenance Manual"**) for the regular and preventive maintenance of the Mines, Concentrator Plant and equipment in conformity with the Specifications and Standards, Maintenance Requirements, Safety Requirements and Standard Industry Practice, and shall provide 5 (five) copies thereof to HCL. The Maintenance Manual shall be revised and updated once every 3 (three) Accounting Years and the provisions of this Clause 16.3 shall apply, *mutatis mutandis*, to such revision. It includes manufacturers' O&M manuals of all the equipment installed (moving or non-moving, electrical or mechanical etc.)

16.3.2 Without prejudice to the provision of Clause 16.3.1, the Maintenance Manual shall, in particular, provide for life cycle maintenance, routine maintenance and restorative maintenance which may be reasonably necessary for maintenance and repair of the Project Assets, including replacement thereof, such that its overall condition conforms to Standard Industry Practice.

## 16.4. *Maintenance Programme*

16.4.1 On or before COD and no later than 45 (forty-five) days prior to the beginning of each Accounting Year during the Operation Period, as the case may be, the MDO shall provide to HCL, its proposed annual programme of preventive, urgent and other scheduled maintenance (the "**Maintenance Programme**") to comply with the Maintenance Requirements, Maintenance Manual and Safety Requirements. Such Maintenance Programme shall include:

(a) preventive maintenance schedule, including the proposed closure, if any, for maintenance;

(b) arrangements and procedures for carrying out urgent repairs;

(c) criteria to be adopted for deciding maintenance needs;

(d) intervals and procedures for carrying out inspection of all elements of the Mines, Concentrator Plant and Equipment;

(e) intervals at which the MDO shall carry out periodic maintenance;

(f) arrangements and procedures for carrying out safety related measures;

(g) intervals for major maintenance works and the scope thereof; and

(h) frequency of carrying out intermediate and periodic overhaul of the Equipment.

16.4.2 Within 15 (fifteen) days of receipt of the Maintenance Programme, HCL shall review the same and HCL shall convey its comments to the MDO with particular reference to its conformity with the Maintenance Requirements, Maintenance Manual and Safety Requirements.

16.4.3 The MDO may modify the Maintenance Programme as may be reasonable in the circumstances, and the procedure specified in Clauses 16.4.1 and 16.4.2 shall apply mutatis mutandis to such modifications.

16.4.4 Any maintenance carried out by the MDO as per the Maintenance Programme under this Clause 16.4 shall be deemed to be scheduled maintenance (the "**Scheduled Maintenance**"). For the avoidance of doubt, any Scheduled Maintenance shall not relieve the MDO from its obligation to excavate and process Copper Ore and tailings in accordance with the Annual Production Programme under Clause 21.2.1, and, the MDO shall be liable to pay the Damages under Clause 20.4 for any closure, suspension or reduction of Annual Capacity arising out of Scheduled Maintenance.

## 16.5. *Safety, breakdowns and accidents*

16.5.1 The MDO shall ensure safe conditions at the Mines and Concentrator Plant, and in the event of unsafe conditions, damage, breakdowns and accidents, it shall follow the relevant operating procedures and undertake removal of obstruction and debris without delay. Such procedures shall conform to the provisions of this Agreement, Applicable Laws, Applicable Permits and Standard Industry Practice.

16.5.2 The MDO's responsibility for rescue operations at the Site shall include safe evacuation of all persons from the affected area as an initial response to any particular incident and shall also include prompt removal of debris or any other obstruction, which may endanger or interrupt the smooth excavation and processing of Copper Ore.

## 16.6. *De-commissioning due to Emergency*

16.6.1 If, in the reasonable opinion of the MDO, there exists an emergency which warrants de-commissioning or shut-down of the whole or any part of the Mines, Concentrator Plant and equipment, the MDO shall be entitled to de-commission or shut down the whole or any part of the Mines and equipment for so long as such emergency exists and the consequences thereof warrant; provided that such de-commissioning or shut-down and particulars thereof shall be notified by the MDO to HCL without any delay, and the MDO shall diligently carry out and abide by any reasonable directions that HCL may give for dealing with such emergency. For the avoidance of doubt, the MDO acknowledges and agrees that any de-commissioning or shut-down hereunder shall conform to the provisions of the Mines Act, 1952.

16.6.2 The MDO shall re-commission the Mines, Concentrator Plant and equipment or any part thereof as quickly as practicable after the circumstances leading to its decommissioning or shut down have ceased to exist or have so abated as to enable the MDO to re-commission the Mines and equipment and shall notify HCL of the same forthwith. For avoidance of any doubt, all such commissioning and decommissions shall be done at risk and cost to MDO and no separate payment shall be made by HCL for such event.

## 16.7. *Section closure*

16.7.1 Save and except as provided in Clause 16.6, the MDO shall not shut down or de-commission any section of the Mines for undertaking maintenance or repair works, not forming part of the Maintenance Programme, except with the prior written approval of HCL. Such approval shall be sought by the MDO through a written request to be made to HCL, at least 7 (seven) days before the proposed closure of such section and shall be accompanied by particulars thereof. HCL shall grant permission, with such modifications as it may deem necessary, within 7 (seven) days of receipt of such a written request.

16.7.2 Upon receiving the permission pursuant to Clause 16.7.1, the MDO shall be entitled to shut down or de-commission the designated section for the period specified therein, and in the event of any delay in re-commissioning such section, the MDO shall pay Damages to HCL calculated at the rate of 0.5% (zero point five percent) of the Average Daily Revenue Share Payable for each day of delay until the section has been re-commissioned for excavation and processing of Copper Ore.

## 16.8. *Damages for breach of maintenance obligations*

16.8.1 In the event that the MDO fails to repair or rectify any defect or deficiency set forth in the Maintenance Requirements within the period specified therein, it shall be deemed to be in breach of this Agreement and HCL shall be entitled to recover Damages, to be calculated

and paid for each day of delay until the breach is cured, at the higher of (a) 1% (one per cent) of the Average Daily Revenue Share Payable, and (b) 0.1% (zero point one per cent) of the cost of such repair or rectification as estimated by HCL .

Recovery of such Damages shall be without prejudice to the rights of HCL under this Agreement, including the right of Termination thereof.

16.8.2 The Damages set forth in Clause 16.8.1 may be assessed and specified forthwith by HCL, and HCL may, in its discretion, demand a smaller sum as Damages, if in its opinion, the breach has been cured promptly and the MDO is otherwise in compliance with its obligations hereunder. The MDO shall pay such Damages forthwith and in the event that it contests such Damages, the Dispute Resolution Procedure shall apply.

## 16.9. *HCL's right to take remedial measures*

In the event the MDO does not maintain and/or repair the Mines, Concentrator Plant and equipment or any part thereof in conformity with the Maintenance Requirements, the Maintenance Manual or the Maintenance Programme, as the case may be, and fails to commence remedial works within 15 (fifteen) days of receipt of the O&M Inspection Report or a notice in this behalf from HCL, HCL shall, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the MDO, and to recover its cost from the MDO.

## 16.10. *Overriding powers of HCL*

16.10.1 If in the reasonable opinion of HCL, the MDO is in material breach of its obligations under this Agreement and, in particular, the ‘’Maintenance Requirements, and such breach is causing or likely to cause material danger to any person or property, HCL may, without prejudice to any of its rights under this Agreement including Termination thereof, by notice require the MDO to take reasonable measures immediately for rectifying or removing such hardship or danger, as the case may be.

16.10.2 In the event that the MDO, upon notice under Clause 16.10.1, fails to rectify or remove any hardship or danger within a reasonable period, HCL may exercise overriding powers under this Clause 16.10.2 and take over the performance of any or all the obligations of the MDO to the extent deemed necessary by it for rectifying or removing such hardship or danger; provided that the exercise of such overriding powers by HCL shall be of no greater scope and of no longer duration than is reasonably required hereunder; provided further that any costs and expenses incurred by HCL in discharge of its obligations hereunder shall be deemed to be O&M Expenses, and HCL shall be entitled to recover them from the MDO in accordance with the provisions of Clause 16.9 along with the Damages specified therein.

16.10.3 In the event of a national emergency, civil commotion or any other act specified in Article 32, the HCL/Governmental Instrumentality may take over the performance of any or all the obligations of the MDO to the extent deemed necessary by it, and exercise such control over the Mines, Concentrator Plant and Equipment or give such directions to the MDO as may be deemed necessary; provided that HCL shall make reasonable endeavors to ensure that the exercise of such overriding powers by HCL/Governmental Instrumentality (as the case may be) shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the HCL /Governmental Instrumentality (as the case may be). For the avoidance of doubt, it is agreed that the consequences of such action shall be dealt in accordance with the provisions of Article 32. It is also agreed that the MDO shall comply with such instructions as

the HCL/Governmental Instrumentality (as the case may be) may issue in pursuance of the provisions of this Clause 16.10.3 and shall provide assistance and cooperation to the HCL/Governmental Instrumentality (as the case may be), on a best effort basis, for performance of its obligations hereunder.

## 16.11. *Restoration of loss or damage to the Mines*

Save and except as otherwise expressly provided in this Agreement, in the event that the Mines and Equipment or any part thereof suffers any loss or damage during the Contract Period from any cause whatsoever, the MDO shall, at its cost and expense, rectify and remedy such loss or damage forthwith so that the Mines and Equipment conform to the provisions of this Agreement.

## 16.12. *Modifications to the Mines and Concentrator Plant*

The MDO shall not carry out any material modifications to the Mines, Concentrator Plant and equipment save and except where such modifications are necessary for the Mines and Equipment to operate in conformity with the Specifications and Standards, Maintenance Requirements, Standard Industry Practice and Applicable Laws; provided that the MDO shall notify HCL of the proposed modifications along with particulars thereof at least 15 (fifteen) days before commencing work on such modifications and shall reasonably consider any suggestions that HCL may make within 15 (fifteen) days of receiving the MDO's proposal. For the avoidance of doubt, all modifications made hereunder shall comply with the Safety Requirements, Specifications and Standards, Applicable Laws, Standard Industry Practice and the provisions of this Agreement.

## 16.13. *Excuse from performance of obligations*

16.13.1 The MDO shall not be considered in breach of its obligations under this Agreement if any part of the Mines, Concentrator Plant and equipment are not available for excavation and processing of copper thereof on account of any of the following for the duration thereof:

(a) an event of Force Majeure.

(b) measures taken to ensure the safety of the Mines except when unsafe conditions occurred because of failure of the MDO to perform its obligations under this Agreement; or

(c) compliance with a request from HCL or the directions of any Government Instrumentality, the effect of which is to close all or any part of the Mines except when such closure occurred because of failure of MDO to perform its obligations under this Agreement or Applicable Laws.

16.13.2 Provided that, any such non-availability and particulars thereof shall be notified by the MDO to HCL without any delay.

16.13.3 Provided further that, the MDO shall keep available all unaffected parts of the Mines, provided they can be operated safely.

# Article 17. *Safety Requirements*

## 17.1. *Safety Requirements*

17.1.1 The MDO shall comply with the provisions of this Agreement, Applicable Laws and Applicable Permits and conform to Standard Industry Practice for securing the safety of the Mines, Equipment and individuals on or about the Site. In particular, the MDO shall develop, implement and administer a surveillance and safety Programme for providing a safe environment on or about the Mines and Concentrator Plant, and shall comply with the safety requirements set forth in Schedule – L (the "**Safety Requirements**").

17.1.2 The MDO shall have the sole responsibility to verify and take necessary actions and measures to ensure that all safety measures at the Mines are fully implemented, maintained and kept in proper working order. In addition, the MDO shall ensure adherence to the safety code of practices in accordance with the provisions of this Agreement, Applicable Laws (including but not limited to the MMR) and Applicable Permits and the Safety Requirements by its employees, Contractors or any other persons working or performing, directly or indirectly, for the MDO in relation to the Mines and/ or on or about the Site.

17.1.3 The MDO shall, during re-opening, development and/or operation and maintenance of the Mines, undertake appropriate and adequate risk and safety assessment of the Mines for potential safety and health hazards, including possible dangers due to inflammable and noxious gases, respirable and inflammable dust, inrush water, spontaneous heating, fire, use of electricity, roof fall and strata control of surrounding rocks, moving equipment, machinery, etc. and prepare a risk mitigation and management plan. The MDO shall, at all times, be responsible for making appropriate arrangements and provisions for a safe and healthy working environment in the Mines.

17.1.4 The MDO shall provide and maintain adequate lighting, fencing, communication system, dust suppression and other facilities, wherever required, within the premises of the Mines, both surface and underground (in case of Underground Working), for proper execution of work and protection of such facilities for the safety of employees and public.

17.1.5 The MDO shall arrange and provide personal protective equipment including but not limited to helmets, footwear, lamps and other safety appliances and devices, as may be necessary, to carry out the work in the Mines, both surface and underground to its employees and all other person(s) deployed (directly or indirectly) by the MDO for working in the Mines. The MDO shall further ensure that its employees and other deployed person(s) use such personal protective equipment, at all times, during the course of their work in the Mines. The MDO shall, under any circumstances, not pay any cash amount in lieu of providing such personal protective equipment.

17.1.6 The MDO shall provide adequate and appropriate rest shelters, first aid station, ambulances, fire stations, fire hydrants, drinking water and other facilities/ amenities at conspicuous places as required under the Applicable Laws, Applicable Permits and Standard Industry Practice for ensuring safety, health and welfare of the employees other persons, as may be deployed directly or indirectly by the MDO, for working in the Mines in accordance with the provisions of this Agreement.

17.1.7 In case of underground working, the mining machinery, electrical equipment, personal protective equipment, safety devices and appliances and all other equipment and devices as provided by the MDO in the Mines and underground, shall strictly conform to the

standards and specifications approved by the relevant Government Instrumentality, as applicable, for use in the Mines.

17.1.8 The MDO shall periodically impart safety training to its employees and shall at all times be responsible for observance of safety procedures by its staff, employees, contract labourers, Contractors, consultants and agents. The MDO shall comply with all the obligations, as provided under the Act and Mines Vocational Training Rules, 1966, including but not limited to requesting HCL to provide statutory training to the person(s) employed or to be employed (directly or indirectly) at the Mines.

17.1.9 The MDO acknowledges and agrees that HCL shall be entitled to inspect the Mines to verify adherence to requirements under the Applicable Law, Applicable Permits and Safety Requirements and the MDO shall be obliged to facilitate such inspection and implement the corrective measures identified in such inspection.

17.1.10 Notwithstanding anything to the contrary contained in this Agreement, the Parties acknowledge and agree that the appropriate Government Instrumentalities shall be entitled to issue directions to HCL and the MDO for complying with the provisions of the Mines Act, 1952 and the rules and regulations made thereunder, and such directions shall be binding on them.

17.1.11 If the MDO fails to ensure safety measures regarding usage of machinery, equipment, safety devices and/ or appliances required to carry out the tasks/work as required under this Agreement, the Applicable Law, Applicable Permits and Safety Requirements or fails to ensure that its employees, Contractors, contract labourers, consultants, agents or any other person, as deployed by the MDO to work at the Mines, use the personal protective equipment, as needed, for safe working or other provisions, procedures and practices, HCL, upon the satisfaction that the MDO is not conforming to the safety and health requirements, may direct the MDO for stoppage of work and require the MDO to remedy the defects within a stipulated time period, as determined by HCL. The MDO shall not proceed with the work in the Mines until it has complied with each direction of HCL to the satisfaction of the statutory officials appointed by HCL for the Mines.

## 17.2. *Guiding principles*

17.2.1 Safety Requirements aim at reduction in injuries, loss of human life and damage to property resulting from accidents on the Mines and Equipment, irrespective of the person(s) at fault.

17.2.2 Safety Requirements shall apply to all phases of development, operation and maintenance of the Mines with emphasis on identification of factors associated with accidents, consideration of the same, and implementation of appropriate remedial measures.

17.2.3 The liability of any accident (major or minor) and fatalities within the Mines shall be on the MDO. The MDO shall immediately inform HCL in the event of the occurrence of any major accidents or fatality.

## 17.3. *Expenditure on Safety Requirements*

All costs and expenses arising out of or relating to Safety Requirements shall be borne by the MDO.

## 17.4. *Annual Safety Report*

17.4.1 The MDO shall submit to HCL before the 15th (fifteenth) day of January of each calendar year, an annual report (in ten copies) containing, without limitation, a detailed list and

analysis of all accidents of the preceding calendar year and the measures taken by the MDO for averting or minimizing such accidents in future ("**Annual Safety Report**").

17.4.2 Once in every calendar year, a safety audit shall be carried out by HCL. It shall review and analyze the Annual Safety Report and accident data of the preceding calendar year and undertake an inspection of the Mines. HCL shall provide a safety report recommending specific improvements, if any, required to be made in the Mines and Equipment. Such recommendations shall be implemented by the MDO in accordance with Safety Requirements, Specifications and Standards and Applicable Laws in a time bound manner as specified by HCL in the recommendations. For the avoidance of doubt, the Parties agree that not more than 15 (fifteen) months shall elapse between two safety audits to be conducted by HCL hereunder.

17.4.3 Such safety audit conducted by HCL, either by itself or by third parties shall not relieve or absolve the MDO of its obligations and liabilities under this Article 17 in any manner whatsoever.

## 17.5. *Safety management plan:*

MDO shall prepare a safety management plan as per the applicable circulars issued by DGMS and get it approved from HCL for implementation.

## 17.6. *Statutory Rules*

17.6.1. The MDO should follow all statutory rules, regulations applicable laws etc. and statutory requirements related to government licenses, workmen compensation, insurance etc., including Minimum Wage Act, for HCL's and for their personnel, rules, if any, imposed by Local/State/Central Authorities should also be complied with by the Successful Bidder. Machine operators and others, to whom the work would be allotted, should be provided adequate safety PPE in good condition by the MDO. The MDO is required to indemnify HCL from any liability falling on HCL due to an act of commission/omission by the MDO or by its representatives or by its employees or by any third party in execution of the contract.

17.6.2. During the course of execution of the work, if any accident occurs whether major or minor, the MDO or his supervisory staff should inform the same immediately without any delay to the Manager/Project Officer/Agent/General Manager concerned to take steps in accordance with the Mines Act and other relevant laws, else, it is envisaged to take necessary action against the MDO or his supervisory staff for violation of the Mines Act and other relevant laws.

17.6.3. The MDO should execute the work in such a way that the provisions of the Contract Labour (Regulation & Abolition) Act are not violated in any manner.

17.6.4. The MDO shall conform to all laws governing the workmen engaged, directly or through a sub-successful bidder and implement the provision of Mines Act, PF Act, Gratuity Act, Minimum wages Act, Workmen Compensation Act, Contract Labour (Regulation & Abolition) Act, the Indian Explosives Act, M.T.W. Act, and rules and regulation framed thereunder with latest amendments and also provisions of any other law as may be applicable for operation and for carrying out the contract.

17.6.5. If any amount becomes payable by HCL as a result of any claim or application under Applicable Laws, such amount shall be recovered from the MDO by HCL.

17.6.6. The MDO shall maintain the relevant records, in accordance with Applicable Laws and produce such documents/records on demand from statutory authorities or from the

authorised officials of HCL and any failure on the part of the MDO in this regard will be deemed as breach of the Contract. The MDO shall also file returns to concerned authorities periodically.

17.6.7. The MDO shall arrange to provide vocational training to the person employed by him (including his staff, officers, sub-contractors, etc.) as per the provisions of Mines Vocational Training Rules 1966, in consultation with officer-in-charge of HCL. The MDO has to intimate number of persons he intends to employ for the work.

17.6.8. Prior to employment, each worker likely to be engaged by the MDO should be medically examined and only medically fit persons will be allowed to work. Thereafter Periodic Medical Examination shall be done as per the statute. For the medical examination, the necessary facilities shall be provided by HCL at Hospital and the MDO shall bear all the expenditure. The MDO shall not allow any person who is declared medically unfit during any of the medical examinations to continue in employment.

17.6.9. The MDO shall be responsible for and shall pay compensation to his workmen who would be payable for injuries due to accidents and/or notified and compensable disease under the Workmen's Compensation Act 1923 read along with amendment/substitutions thereof. If such compensation is paid by HCL as principal employer under sub–section (1) of the section (12) of the said Act, such compensation shall be recovered by HCL from his security deposit or from any sum which may be due or may become due to the MDO on any account whatsoever, the MDO should adequately insure the workers, and HCL shall not permit the MDO to start the work unless such insurance certificate is produced.

17.6.10. First Aid facilities and provisions as required under Mines Rules, 1955 with latest amendments shall be kept at the work site by the MDO.

17.6.11. All portions of the work shall be maintained in neat, clean and sanitary conditions at all times, Toilets shall be provided by the MDO where needed for use of the employees on the work as per requirements of Mines Rules 1955 with latest amendments.

17.6.12. The MDO will not start the work and payment will not be released unless he obtained the license required under the Contract Labour (Regulations and Abolition) Act 1970 and Rules framed thereunder.

17.6.13. All Statutory compliance conditions implementation as per MoEF&CC, CPCB, JSPCB, CGWA and other Environmental governing bodies and amendments by governing Bodies time to time is in the scope of MDO.

17.6.14. If at any time MDO fails to comply the applicable laws related to environmental governing bodies, statutory obligations or any kind of compensations raised by the statutory bodies shall be paid by MDO.

17.6.15. MDO shall implement the recommendations of National Conference on Safety in Mines.

## 17.7. *Safety, Sanitary and Medical Requirements:*

17.7.1. The MDO shall promptly and full comply with relevant Applicable Laws and other statutory directions and provide sanitary and medical requirements, prescribed by law or by HCL for proper work, safety and health of the employees and of the local communities. The MDO and license fee which may be due with respect thereto. If any equipment, machinery, material composition shall at his own expenses provide to arrange for the provisions of footwear, safety helmet, goggles, safety belts, leg guard and other protective equipment as approved by DGMS to all persons engaged by him.

17.7.2. MDO shall impart training for rescue trained persons as per statute. MDO shall construct and maintain the pit head bath, urinal, latrine, crèche, etc. as per the statute.

17.7.3. All Mines and Plant should have Effluent Treatment Plants (ETP) & Sewage Treatment Plant (STP) With Zero discharge complying all pollution norms are under the scope of MDO.

## 17.8. ***Rescue Operation:***

If the MDO does not have the requisite resources for rescue operation, on request of MDO, HCL may assist in the rescue operation by providing rescue trained persons whenever required during re-opening of the mine only. The cost incurred by HCL to carry out the rescue operation shall be reimbursed by the MDO. It is hereby clarified that MDO shall carry out scientific studies etc. in accordance with Clause 5.25.

# Article 18. *Security of the Mines and Concentrator Plant*

## 18.1. *Security of the Mines and concentrator plant*

18.1.1 The MDO shall at all times ensure the safety and security of the Mines and concentrator plant, Equipment, Copper Ore/ copper concentrate and all persons in or about the Mines.

18.1.2 The MDO shall ensure at all times that the Copper Ore excavated by it and concentrate shall be transported only by duly authorized personnel and vehicles on the routes notified by HCL in consultation with the MDO. The loading and movement of such vehicles shall be supervised and monitored in accordance with Standard Industry Practice.

18.1.3 The Copper Ore excavated by the MDO shall be processed and stored only in the areas designated for this purpose in accordance with Schedule – A and Schedule – C, and any modification in the designated areas shall be undertaken only with the prior written consent of HCL which shall not be unreasonably withheld.

18.1.4 The MDO shall be responsible for the security of Mines, ROM Copper Ore, Concentrator Plant, MIC, and tailings.

18.1.5 At all times, during the validity of this MSA, MDO shall be responsible for security of ROM copper ore and copper concentrate stacked at any place in the mine and plant premises.

## 18.2. *Installation of Security Equipment*

The MDO shall install security and surveillance equipment in conformity with Applicable Laws and Standard Industry Practice to ensure and procure the safety and security of its personnel, Mines, Concentrator Plant, Equipment and copper ore/ copper concentrate.

## 18.3. *Real Time Monitoring of Operations*

18.3.1 The MDO shall, for real time monitoring of the movement of dumpers, trucks, excavators and other equipment, install and operate a suitable “Operator Independent Truck Dispatch System”.

18.3.2 The MDO shall further install and operate such system which shall monitor movement of Copper Ore/ copper concentrate through trucks or conveyor belts or any other medium, which shall include all the entry/ exit points Stockyard (s), Concentrator Plant, buildings, structures, passages used for transporting tailings / Copper Ore and other places as advised by HCL. Such places should also have provision of closed-circuit television cameras. The system should have the facility of monitoring the entire information through a central control room. CCTV monitoring system & visual units installed as required and access for the same shall be provided to HCL offices for continuous monitoring.

18.3.3 All recordings on such surveillance systems shall be classified and stored by the MDO for a period of at least 3 (three) months from the date of such recording.

## 18.4. *Prevention of pilferage of Copper Ore and Copper Concentrate*

18.4.1 The MDO shall install fencing and security equipment, engage security guards installing CCTV and take such other measures as may be necessary to prevent pilferage of Copper Ore/ copper concentrate and shall launch criminal proceedings in cases of theft or unauthorized removal of Copper Ore/ copper concentrate from the Mines.

18.4.2 The MDO shall take sufficient measures to avoid pilferage of copper ore/ copper concentrate during its transportation from within the mines to Stockyard(s), from

Concentrator Plant to the Stockyards and during any other transportation of copper ore/ copper concentrate that forms part of the Scope of the Project under this Agreement.

# Article 19. *Monitoring of Operation and Maintenance*

## 19.1. *Monthly status reports*

19.1.1 During the Operation Period, the MDO shall, no later than 7 (seven) days after the close of each month, furnish to HCL, a monthly report stating in reasonable detail the condition of the Mines, Concentrator Plant and equipment including their compliance or otherwise with the Mining Plan, Maintenance Requirements, Maintenance Manual, Maintenance Programme and Safety Requirements, and shall promptly give such other relevant information as may be required by HCL. In particular, such reports shall separately identify and state in reasonable detail the defects and deficiencies that require rectification.

19.1.2 During the Operation Period, the MDO shall, no later than 10 (ten) days after the close of each month, furnish to HCL, a monthly management report which shall be a summary of:

(a) key performance indicators achieved in the month, along with an analysis of reasons for failures, if any, and proposals to remedy the same;

(b) key operational hurdles and deliverables expected in the succeeding month along with strategies for addressing the same and for otherwise improving the Project's operational performance; and

(c) key financial parameters for the month, as benchmarked against the monthly budget, the reasons for shortfall, if any, and proposals to remedy the same.

(d) Key operational statistics including monthly copper ore input to Concentrator Plant, Concentrate/ MIC produced, tailings generated, opening and closing stock of tailings, ROM copper ore produced, and concentrate. This should also include the quality parameters like recovery% of MIO and MIC in ore and concentrate loaded into the transportation system.

19.1.3 The Engineer in Charge, Mines, shall lead the monitoring and assessment of developmental and operational activities in mines and Engineer in Charge, Concentration plant, shall monitor and assess the development and operations of the concentrator plant.

## 19.2. *Reports of unusual occurrence*

19.2.1 The MDO shall, prior to the close of each day, send to HCL, by facsimile or e-mail, a report stating accidents and unusual occurrences, if any, at the Mines or Concentrator Plant relating to the safety and security of the Mines, Concentrator Plant and persons affected by it. A weekly and monthly summary of such reports shall also be sent within 3 (three) days of the closing of each week and month, as the case may be. For the purposes of this Clause 19.2, accidents and unusual occurrences at the Mines shall include:

(a) death or injury to any person;

(b) any damage or obstruction at the Site;

(c) disablement of any element of the Mines during operation thereof;

(d) flooding of the Mines;

(e) smoke or fire; or

(f) such other relevant information as may be reasonably required by HCL.

19.2.2 Any occurrence as mentioned Metalliferous Mines Regulations, 1961 and Metalliferous Mines Regulations as amended upto 1961/ 2019 shall be reported immediately as required.

## 19.3. *Inspection*

HCL shall inspect the Mines, Concentrator Plant and equipment at least once a quarter. HCL shall thereafter make a report of such inspection (the "**O&M Inspection Report**") stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Maintenance Requirements, Maintenance Manual, the Maintenance Programme and Safety Requirements, and a copy thereof shall be sent by HCL to the MDO within 7 (seven) days of such inspection.

## 19.4. *Tests*

For determining that the Mines, Concentrator Plant conform to the Maintenance Requirements, HCL shall require the MDO to carry out, or cause to be carried out, tests specified by it in accordance with Standard Industry Practice. The MDO shall, with due diligence, carry out or cause to be carried out all such tests in accordance with the instructions of HCL and furnish the results of such tests forthwith to HCL. One half of the costs incurred on such tests, or to the extent certified by HCL as reasonable, shall be directly paid by HCL to the testing agency. Notwithstanding anything stated above, HCL has the right to appoint an independent agency to carry out tests, and 100% of cost incurred by the independent agency in conducting tests, as specified by HCL, shall be made by MDO. The detailed testing parameters are provided in Schedule S1 and Schedule S2.

## 19.5. *Remedial measures*

19.5.1 The MDO shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report or in the test results referred to in Clause 19.4 and furnish a report in respect thereof to HCL within 15 (fifteen) days of receiving the O&M Inspection Report or the test results, as the case may be; provided that where the remedying of such defects or deficiencies is likely to take more than 15 (fifteen) days, the MDO shall submit progress reports of the repair works once every week until such works are completed in conformity with this Agreement.

19.5.2 HCL shall require the MDO to carry out or cause to be carried out tests, at its own cost, to determine that such remedial measures have brought the Mines, Concentrate Plant and Equipment into compliance with the Maintenance Requirements and the procedure set forth in this Clause 19.5 shall be repeated until the Mines, Concentrator Plant and Equipment conform to the Maintenance Requirements. In the event that remedial measures are not completed by the MDO in conformity with the provisions of this Agreement, HCL shall be entitled to recover Damages from the MDO under and in accordance with the provisions of Clause 16.8.

## 19.6. *Production and Delivery Statements/ Reports*

During the Operation Period, the MDO shall furnish to HCL all the reports and statements required as per the requirements by HCL, at specified intervals, in discharge of its statutory functions. The MDO shall also furnish to HCL other information as the HCL may reasonably require, at specified intervals, in discharge of its statutory functions.

## 19.7. *Annual measurement of excavation*

19.7.1 On or before COD, HCL shall measure, or cause to be measured, the stockpile of Copper Ore/ MIO and waste at the Mines. The date and time for measurement shall be notified by HCL no less than 1 (one) week in advance to the MDO, and HCL may, in its discretion,

designate its representative to witness such measurement or may carry out its independent measurement also.

19.7.2 HCL shall once in a month, within the first ten days of such month, repeat the measurement in accordance with the provisions of Clause 19.7.1.

19.7.3 In the event that the quantity of ROM Copper Ore measured via weight meter as per clause 22.4 during any Accounting Year falls short of the quantity of excavation, as determined by volumetric measurement and feed to Concentrator Plant as measured by electronic weighbridge (online access shall be provided to HCL offices by MDO), for and in respect of that Accounting Year, the MDO shall pay to HCL, Damages for the shortfall in quantity as per the market price for equivalent grade of MIC as applicable. Such Damages shall be recovered from the monthly bill of the MDO. The Parties further agree that conversion of volumetric content to weight of Copper Ore/ MIC in different stacks shall be in accordance with the densities as specified in the Mining Plan. The Parties also agree that in the event of a Dispute relating to the procedure and outcome of any tests or measurements conducted hereunder, the Dispute shall be referred to an independent agency for conducting tests at such laboratory. The figures on production of Copper and MIC during the month should be reconciled with the measurement of stockpiles at the end of every month.

## 19.8. *Annual measurement of MIC and tailings delivered*

19.8.1 On or after commencement of operations at Concentrator Plant, HCL shall reconcile the quantity of ROM Copper /MIO input to the Concentrator Plant as measured via weightometer as per clause 22.4 with the quantity of MIC and tailings as determined via Receipt.

19.8.2 Such reconciliation as stated in clause 19.8.1 shall be done on monthly basis and damages as stated in clause 19.8.3 shall be charged on annual basis.

19.8.3 For any Accounting Year, if the sum of quantities of copper concentrate and tailings fall short of the quantity of ROM Copper Ore throughput to Concentrator Plant, the MDO shall pay to HCL, Damages for the shortfall in quantity as per the market price for MIC (of desired quality as stated in clause 20.5) as determined by London Metal Exchange (LME).

## 19.9. *Reconciliation of ROM Copper Ore excavated and stacked*

19.9.1 MDO shall measure the ROM Copper Ore excavated before the commencement of operations of Concentrator Plant at the weighbridge near Stockyard.

19.9.2 The stacked ROM Copper Ore shall be given priority to be fed into Concentrator Plant as soon as the Concentrator Plant commences operations instead of feeding fresh ROM Copper Ore.

19.9.3 MDO shall maintain separate record for the quantity of Copper Ore/MIO that is fed to the Concentrator Plant from the stacked ROM Copper Ore mentioned in clause 19.9.3.

19.9.4 Apart from daily stock update for copper ore, MDO will provide a monthly reconciliation report, specifying the balance quantity of ROM Copper Ore stacked at RCSP and quantity of such Copper Ore /MIO fed to Concentrator Plant, and MDO's plan for utilization of balance stacked Copper Ore /MIO in the upcoming month.

19.9.5 HCL shall carry out the reconciliation of the quantity of ROM Copper Ore stacked at RCSP and fed to as per monthly reconciliation reports provided by MDO as per clause 19.9.5 and with respect to the aggregate quantity of such Copper Ore measured before stacking as per clause 19.9.1.

19.9.6 In the event that the total quantity of stacked MIO fed to the Concentrator Plant as per clause 19.9.3 falls short of the quantity of ROM Copper Ore measured after excavation and before stacking of Copper Ore as per clause 19.9.1, the MDO shall pay to HCL, Damages for the shortfall in quantity as per the market price of London Metal Exchange (LME) for equivalent grade of copper ore as applicable.

# Article 20. *Production of Copper Ore and Copper Concentrate*

## 20.1. *Production of Copper Ore and Copper Concentrate*

20.1.1 The MDO shall excavate and process copper ore in accordance with the Annual Production Programme specified in this Article 20;

20.1.2 The MDO shall, on or before 1st January of each Financial Year, submit to HCL for its approval an annual work plan for the next Financial Year, which shall include details mentioned in Schedule Q. HCL shall, within 45 (forty-five) days of receiving the annual work plan from the MDO, accept the Annual Production Program or make necessary changes to the same. The Annual Production Program thus finalized after making necessary changes, if any, shall be called as “Approved Annual Works Plan”. All disputes in relation to the Approved Annual Works Plan shall be resolved in the manner set forth in this Agreement.

## 20.2. *Annual Production Program*

20.2.1. Subject to the provisions of Clause 20.2.1 (a), the MDO shall excavate and process Copper Ore in accordance with the Annual Production Programme/ schedule as per the Mining Plan for each Accounting Year (the "Annual Production Programme"). The tentative planned production is detailed below:

| Accounting Year | Rakha & Chapri block | |
|---|---|---|
| | Ore quantity (000’ tonne) | MIC (tonne) |
| 1 | 50 | 376.00 |
| 2 | 200 | 1645.00 |
| 3 | 600 | 5611.80 |
| 4 | 900 | 8366.00 |
| 5 | 1140 | 10538.34 |
| 6 | 1350 | 12445.60 |
| 7 | 1950 | 18005.70 |
| 8 | 2400 | 22240.40 |
| 9 | 3000 | 28059.00 |
| 10 | 3000 | 28059.00 |
| 11 | 3000 | 28059.00 |
| 12 | 3000 | 28059.00 |
| 13 | 3000 | 28059.00 |
| 14 | 3000 | 28059.00 |
| 15 | 3000 | 28059.00 |
| 16 | 3000 | 28059.00 |
| 17 | 3000 | 28059.00 |
| 18 | 3000 | 28059.00 |
| 19 | 3000 | 28059.00 |
| Total MIC Production | | 387877.84 |

MIC fig calculated on the basis of 94 recovery percentage and Peak Rated Capacity shall be 28059.00

(a) The quantities specified in the Annual Production Programme for each Accounting Year shall be the "**Annual Capacity**", the "**Monthly Capacity**" for any month in an Accounting Year shall be the Annual Capacity for such Accounting Year pro rated for the months in such Accounting Year and the **"Quarterly Capacity**" for any quarter in an Accounting Year shall be the Annual Capacity for such Accounting Year pro rated for the quarter in such Accounting Year. Where an Accounting Year is less than 12 (twelve) months, then the Annual Capacity for such Accounting Year shall be prorated accordingly.

20.2.2 HCL may, by a notice delivered at least 3 (three) months prior to commencement of an Accounting Year, modify the Annual Production Programme specified in Clause 20.2 by up to 10% (ten per cent) thereof with respect to such Accounting Year and thereupon the modified Annual Production Programme shall be deemed to be the Annual Production Programme for such Accounting Year for the purposes of this Agreement. For the avoidance of doubt, the Parties agree that the Annual Production Programme in the Accounting Year in which the COD or Transfer Date occurs shall be proportionate to the period of operation in that Accounting Year.

20.2.3 HCL agrees and undertakes that it shall ordinarily not reduce the Annual Production Programme by more than 10% (ten percent) of the quantity specified in Clause 20.2.1;

20.2.4 Unless otherwise agreed to by the Parties, it is expressly agreed by the MDO that it shall, in no month of an Accounting Year, deliver more than 100% (one hundred percent) of the quantity of copper ore/ concentrate specified in the Annual Production Programme for that Accounting Year under this Clause 20.2.

20.2.5 The MDO shall, no later than the 21st (twenty first) day of every month, furnish to HCL its weekly target of production for the forthcoming month, and shall make best efforts to fulfill such targets. In the event it expects any shortfall therein, it shall inform HCL as soon as may be, and furnish its revised targets of production.

20.2.6 Any modification to the Annual Production Programme pursuant to this Clause 20.2 shall not be deemed to be a Change of Scope and shall not entitle the MDO to a Change of Scope Order pursuant to Article 15;

20.2.7 The above Annual Production Program is tentatively and worked out as per the requirement of HCL. MDO shall be responsible to design the mine and plant and submit its Project Schedule along with Production Program to HCL for approval.

20.2.8 The compliance to Annual Production Plan and damages applicable for shortfall shall be assessed based on such quantities as measured pursuant to clause 22.4.5, 22.4.6 and 22.4.7.

## 20.3. *Extension of Annual Production Programme*

In the event the Contract Period is extended in accordance with the provisions of this Agreement, the Annual Production Programme shall be deemed to be extended by a corresponding period on the terms and conditions specified in this Agreement, other than in respect of any extension of the Contract Period pursuant to Clause 3.1.

## 20.4. *Damages for shortfall*

20.4.1. In the event of the monthly MIC production is less than the corresponding Actual Quarter Capacity for such Accounting Year, other than where such shortfall arises directly on

account of (a) Force Majeure; or (b) a default of the HCL; the MDO shall be liable to pay the following amounts as Damages for the shortfall in Actual Quarterly Production of MIC, as indicated below.

20.4.2. It is clarified that in respect of the Quarter during which the COD or prior to the Transfer Date (as applicable), the shortfall will be determined with respect to the Actual Quarterly Production during the number of days in such Quarter subsequent to the COD or prior to the Transfer Date (as applicable) and the Quarterly Capacity for such Quarter shall be pro-rated for the number of days in such Accounting Quarter.

20.4.3. It is clarified that in respect of the Accounting Year during which the COD or the Transfer Date occurs, the shortfall will be determined with respect to the Actual Production during the number of months in such Accounting Year subsequent to the COD or prior to the Transfer Date (as applicable) and the Annual Capacity for such Accounting Year shall be pro-rated for the number of months in such Accounting Year.

| **Actual Quarterly Production expressed as a percentage of Quarterly Capacity** | **Damages to be paid by the MDO** |
|---|---|
| 100 % to 90 % | Nil |
| 90 % to 80 % | 5% of the Performance Security |
| 80 % to 70 % | 10% of the Performance Security |
| 70% and below | In addition, in the event the Actual Quarterly Production is below 75%, occurrence of such shortfall in Actual Quarterly Production shall be deemed to be MDO Default for the purposes of Clause 33.1 and HCL shall be entitled to appropriate 50% (fifty percent) of the Performance Security and the MDO shall replenish the Performance Security to its original level before such appropriation in accordance with Clause 9.2.<br><br>The Agreement will be reviewed by HCL which may consider termination of the Agreement if the shortfall in Actual Quarterly Production is for reasons attributable to the MDO. |

HCL shall reconcile measurement of work done at the end of each completed year, and excess amount of penalty on account of non-achieving quarterly target earlier, deducted earlier from the bills of the successful bidder on quarterly basis during the completed period of the same accounting year, shall be refunded to the successful bidder on achievement of 100% of the annual target.

## 20.5. *Desired quality of copper ore and copper concentrate*

Desired quality for ROM Copper Ore:

Grade of mine shall be declared (the "**Declared Grade**") at the starting of each Accounting Year, as per the provisions of IBM. The MDO shall be entitled to participate in sampling and testing of samples for the purpose of declaration of Grade. Such Grade shall also be used for calculation of Annual Production Programme in clause 20.1 and replace the tentative grades as mentioned in the clause.

Desired quality for copper concentrate:

| S No | Characteristics | Desired quality of copper concentrate |
|---|---|---|
| 1 | Copper grade in concentrate (MIC) | ≥25 Wt % |
| 2 | Moisture | ≤ 8 Wt % |

## 20.6. *Quality Slippage*

If the results of the Sampling and Analysis indicate inferior quality of copper ore/ concentrate produced by MDO, on account of, ROM Copper Ore Grade %, Concentrate recovery %, and Moisture % compared to desired quality mentioned in Clause 20.5, then such event shall be considered as "**Quality Slippage"** and HCL shall be entitled to the following damages:

Damages on account of variation in Grade of MIC produced from Rakha mining lease:

If the results of the Sampling and Analysis as per provisions of Article 22 conducted for ROM copper produced from the mines and MIC produced from the concentrator plant and delivered by MDO at the delivery point indicate slippage in weighted average Grade of copper ore and MIC produced in any month compared to the Declared Grade, then, following damages shall be imposed on the produced quantity of copper:

| Decrease in Grade (Cu Wt % / tonne ore) | Damages |
|---|---|
| For Grade decrease 25% to 24.51% | NIL |
| For Grade decrease equal- to or less than 24.50% | Amount equivalent to the revenue loss of the HCL (on prevailing LME Price considering the TC/RC on account) for the 'decrease in grade from 24.50 Cu Wt %' (i.e., difference between 24.50 Wt % Cu grade rate and the actual Cu grade produced.) |

Damages on account of variation in moisture of MIC produced from Rakha mining lease:

If the results of the Sampling and Analysis as per provisions of Article 22 conducted for ROM copper produced from the mines and MIC produced from the concentrator plant and delivered by MDO at the delivery point indicate slippage in weighted average moisture percentage of copper ore produced and MIC in any month compared to the Declared Grade, then, following damages shall be imposed on the produced quantity of copper:

| Increase in Moisture (Wt % / tonne ore) | Damages |
|---|---|
| For moisture increase 8.00% to 8.49% | NIL |
| For moisture increase equal to or greater than 8.50% | Amount equivalent to the revenue loss of the HCL (on prevailing LME Price considering the TC/RC on account) for the 'increase in moisture content from 8.50 Wt %' (i.e., difference between 8.50 Wt % moisture in grade rate and the actual Cu grade produced with moisture content in Wt %. ) |

## 20.7. *Delivery Point*

It is expressly agreed by the MDO that unless otherwise authorised in writing by the HCL, all copper ore extracted produced from the mines and copper concentrate produced from the concentrator plant by the MDO shall be Delivered by the MDO only at the Delivery Points. The quantity and quality for the selling of MIC shall be considered in Delivery Points DP2.

# Article 21. *Stockyard(s)*

## 21.1. *Stockyard(s)*

21.1.1 For discharging its obligations under and in accordance with the provisions of this Agreement, the MDO shall build and operate Stockyard (s) for storage of copper ore, copper concentrate and tailings. (the “Stockyard(s)");

21.1.2 The land for the Stockyard (s) shall be earmarked in accordance with Schedule-A and Schedule-C, and shall form part of the Site, to be decided by HCL and MDO after mutual discussion in accordance with the provisions of Article 10;

21.1.3 The Stockyard (s) shall include spaces required for stocking of ROM copper ore, copper concentrate and tailings, its processing, loading and delivery in accordance with the provisions of this Agreement;

21.1.4 The Stockyard (s) shall have the capacity for storage of sufficient quantity of Copper Ore/ MIO, MIC and tailings. The Stockyard (s) shall be maintained by the MDO as per Standard Industry Practices and be kept free of spontaneous heating and fire by taking suitable measures. At the beginning of each Accounting Year, HCL and the MDO, shall declare the capacity of storage of the Stockyard (s) for that Accounting Year (**“Declared Capacity”**). Such Declared Capacity may be reviewed every quarter at the written request of either Party.

21.1.5 Supply of electricity and water at the Stockyard (s) shall be procured by the MDO at its own cost and expense.

21.1.6 The MDO shall provide adequate security at the Stockyard(s) to prevent the theft and pilferage of Copper Ore, concentrate and tailings.

## 21.2. *Facilities and equipment at Stockyard(s)*

21.2.1 The MDO shall install and operate the facilities and equipment necessary for performing its obligations at the Stockyard (s) under and in accordance with the provisions of this Agreement.

21.2.2 The Parties may, by mutual agreement, change the location of the Stockyards (s); provided, however, that any such change of location pursuant to this Clause 22.2.2 shall require HCL to provide access to the MDO with respect to the new location of the Stockyard(s) and provisions of Article 10 shall apply *mutatis mutandis* to the acquisition and takeover of physical possession of such new location.

# Article 22. *Storage, Testing and Weighment*

## 22.1. *Storage of Copper Ore, Copper Concentrate, Tailings*

The MDO may, upon excavation and sizing, in accordance with Standard Industry Practice and the provisions of this Agreement, store copper ore and concentrate at the Stockyard (s) and tailings at tailing dam in accordance with this Agreement.

Threshold limit for stocking of copper ore and concentrate and enforcement of statutory regulations:

i. MDO shall at all times comply with all the Applicable Laws related to stocking of copper ore and concentrate within and outside the mine premises.

ii. MDO shall obey the statutory norms and orders from Authority in relation to stocking of copper ore and concentrate in general and particular to Rakha and Chapri copper mines.

## 22.2. *Sampling and Testing of Cu and Moisture for Copper Ore and Concentrate*

22.2.1 MDO shall setup central R&D laboratory at Rakha with all necessary world class lab equipment setup, consumables, and manpower for regular samples preparation and analysis of copper ore, copper concentrate, channel sampling and other research activity for continuous development. The cost and expense incurred for the setup and tests shall be borne by the MDO.

22.2.2 MDO should appoint qualified experienced R&D professionals for QA/QC Plan, supervision of regular sampling, analysis, availability of manpower, chemicals, lab equipment annual maintenance contract (AMC) for smooth operations of R&D.

22.2.3 Under supervision of HCL, MDO shall carry out sampling and testing for quality analysis of copper ore and concentrate at R&D laboratory set up by MDO.

22.2.4 Sampling and analysis of copper concentrate (WMT-Wet Metric Ton) produced by MDO shall also be carried out by HCL either by itself or by appointing an Independent Agency.

22.2.5 In case of variation between the results obtained by HCL and MDO (More than +/ - 0.5% of copper) for copper ore/ concentrate, random sampling and analysis can be done jointly by MDO and HCL at ICC R&D, the joint analysis report will be considered as final.

22.2.6 In case of further dispute, joint samples may be sent for third party NABL (Metallurgical Laboratory) accredited laboratory for analysis. Cost incurred for the same shall be borne by the party raising dispute.

22.2.7 The final quality parameter shall be considered as the lower of the quality parameters determined by MDO and HCL.

22.2.8 The final weighment shall be considered based on the DMT (Dry Metric Ton) for both copper ore and copper concentrate as lower of the weighment reported by HCL and MDO.

22.2.9 The results of the MIO / MIC Tests shall be final and binding on the MDO and HCL.

## 22.3. *Reporting of Copper Ore and Copper Concentrate*

The MDO shall, no later than 07:00 hours on each day, provide a statement to HCL setting out:

(a) the opening stock of copper ore, concentrate, and tailings at 00:00 hrs. of the preceding day

(b) ROM copper ore given as input the Concentrator Plant(s) for the day

(c) the arrival of fresh stocks, if any during the preceding day,

(d) the delivery of copper ore and concentrate during the preceding day; and

(e) the closing stock on the preceding day at 24:00 hours.

(f) Copper ore and copper concentrate (along with MIO and MIC content) and tailings dispatched.

## 22.4. *Weighment of Copper Ore and Quantity of Produced Concentrate*

22.4.1 The weighment of copper ore and concentrate shall be done at the electronic weighbridge installed near mine end Stockyard, delivery points and at concentrator plant(s).

22.4.2 MDO shall install weighbridge at mine end stockyard, delivery points and at concentrator plant(s) end. MDO shall construct, operate & maintain such weighbridge of rated capacity with all equipment including instrumentation & control for weighment of ore and other materials in Mines. The stamping of weighbridge shall be on the name of Hindustan Copper limited.

22.4.3 HCL shall be responsible for verification of weighment of copper ore and concentrate. Access of the same shall be given to HCL offices for continuous monitoring.

22.4.4 For the purposes of payment of revenue share and calculation of damages as per the provisions of Clause 20.5 and 20.7, the lower of the weight measured in the weighbridge shall be considered for the same material.

22.4.5 The quantity of ROM copper ore excavated after commencement of operations of Concentrator Plant shall be the quantity as measured by the weighbridge at mine end near Stockyard.

22.4.6 The quantity of tailings to be considered shall be the quantity of tailings delivered back to mines.

22.4.7 All the weighments shall be in the presence of representatives of both HCL and the MDO representatives.

# Article 23. *Dispatch of Copper ore and Concentrate*

## 23.1. *Dispatch of Copper Ore and concentrate*

23.1.1 HCL shall, in accordance with the provisions of this Agreement, issue instructions to the MDO for dispatch of Copper Ore during such period and in such volumes as it may specify in its instructions (the "Dispatch Instructions") and the MDO shall plan and undertake the dispatch and Delivery of Copper Ore and concentrate thereof accordingly.

23.1.2 The MDO shall take all reasonable steps to ensure the quality of the copper ore and concentrate of Desired Quality as mentioned in Clause 20.5.

23.1.3 The MDO shall use all reasonable efforts to ensure *copper ore/ concentrate* loaded is of uniform quality.

23.1.4 Any charge on account of loading shall be borne by the MDO.

## 23.2. *Loading and Dispatch of Copper Ore and concentrate*

23.2.1 The MDO shall be responsible for loading, unloading and transportation of copper ore, concentrate and tailings within the mines, Stockyard, Concentrator Plant, delivery points and also outside.

23.2.2 The MDO shall ensure minimization of transit loss of copper ore through delivery points i.e. from mine face(s) to Stockyard, from Stockyard to Concentrator Plant and from Concentrator Plant to Concentrator Stockyard.

23.2.3 MDO shall cooperate with personnel of HCL and its representatives who would be posted at the Stockyard for overseeing dispatch of copper ore and concentrate.

23.2.4 MDO shall ensure that the weighbridge is maintained and regularly calibrated at least once in every 3 (three) months in accordance with the manufacturer's recommendations and as per Standard Industry Practice and in the presence of representatives of HCL.

## 23.3. *Title and Risk in Copper*

The MDO acknowledges and accepts that the entire Copper Ore mined from the Mines and produced copper concentrate shall be the property of HCL and the right, title and interest in the Copper including after it is mined shall, at all times, vest in HCL notwithstanding that the risk of handling the Copper Ore till the Stockyard and acceptance thereof shall be that of the MDO.

# Article 24. *Key Performance Indicators*

## 24.1. *Key Performance Indicators*

Without prejudice to the obligations specified in this Agreement, the MDO shall operate and maintain the Mines and equipment such that they achieve the performance indicators specified in this Article 24 and Clause 24.2 (the "Key Performance Indicators"). Additional Key Performance Indicators may be specified by HCL.

## 24.2. *Production Programme, Development Schedule, Project Milestones and desired MIO, MIC quality*

24.2.1 The MDO shall excavate Copper Ore, deliver to the Concentrator Plant and prepare MIC post and processing at the Concentrator Plant in accordance with the Annual Production Programme specified in Article 20. The MDO shall pay Damages for any shortfall in Delivery of MIO/MIC, and for Quality Slippages, in accordance with the provisions of Clause 20.5 and Clause 20.6.

24.2.2 The MDO shall complete the development Works as per development schedule in accordance with the Project Milestones specified in Schedule G.

24.2.3 MDO shall adhere to the desired quality of MIO and MIC as specified in Clause 20.5.

## 24.3. *Adjustments in Revenue Share*

24.3.1 Any recoveries and payments, required to be made in accordance with this Article 24, shall be made and adjusted in the revenue share of MDO payable to the HCL.

24.3.2 The aggregate of all incentives payable by HCL for any month, in terms of the provisions of this Agreement, shall be deemed as the aggregate Incentive (the "Aggregate Incentive").

24.3.3 The aggregate of all Damages payable by the MDO for any month, in terms of the provisions of this Agreement, shall be deemed as the aggregate Damages (the "Aggregate Damages").

24.3.4 The net of Aggregate Damages and Aggregate Incentives shall be deemed to be due and payable by the MDO, as the case may be, under this Article 24.

24.3.5 Any amount payable by the MDO in accordance with the provisions of Clause 24.3.4 shall be adjusted with monthly invoice of MDO and in case it exceeds 10% (ten per cent) of the total revenue share of MDO receivable during any month, the amount receivable in excess of such 10% (ten per cent) shall be carried forward to the subsequent month. For the avoidance of doubt, if the amount carried forward under this Clause 24.3.5 cannot be adjusted in the subsequent month, it shall continue to be carried forward to the following months until it is fully adjusted, but only within the ceiling of 10% (ten per cent) per month specified herein above.

## 24.4. *Monthly Report*

The MDO shall, no later than 7 (seven) days after the end of each month, furnish to HCL, a report stating the Key Performance Indicators of the Mines or any phase thereof, as measured on a daily basis. The MDO shall promptly give such other relevant information as may be required by HCL.

# Article 25. *PERSONNEL AND SUBCONTRACTING*

## 25.1. *Personnel*

(a) The MDO shall ensure that all Mining Services are performed by, and under the supervision of appropriately qualified, experienced and skilled personnel.

(b) The HCL Representative may by written notice require the MDO to remove from the Site, or from any activity connected with the Mining Services, any person employed/engaged by the MDO in connection with the provision of the Mining Services who, in the reasonable opinion of the HCL's Representative, is guilty of misconduct or is incompetent or negligent or who works in an unsafe manner that is likely to prejudice the safe operation at Rakha and Chapri copper mining project.

## 25.2. *Subcontracting*

(a) MDO shall not subcontract any of its obligations under this Agreement without prior written approval of HCL.

(b) In case MDO would like to outsource/sub-contract the work of the Project Agreement, then it shall submit details of experience of parties to whom it would like to sub-contract the work involved during development stage and operation stage for approval of HCL.

(c) MDO shall not sub-contract more than 75% of the annual mine development and operation work. The MDO shall submit, within 6 (six) months of issue of LOA, its detail plan of outsourcing/sub-contracting including the plan for hiring or leasing of HEMM & its O&M, plan for O&M along with experience details of likely parties to whom it may sub-contract the work, for approval of HCL. MDO may revise its plan for outsourcing/sub-contracting, as per its requirement with prior approval of HCL.

(d) MDO shall sub-contract the Concentrator Plant to a recognized vendor having proven experience of installation and operation of Beneficiation/Concentrator plant of Considered Mineral.

(e) At any given point of time maximum three sub-contractors with prior experience are allowed for each of the scope.

(f) MDO shall not outsource/sub-contract any part of the work to any other bidders or their consortium, who take part in this tendering process.

(g) The above sub-contracting provisions shall not apply to individual activities such as deployment of labour, provision of water/electricity/utilities, haul roads, sourcing and management of fuel/lubricants, security.

(h) The MDO shall at all times remain solely responsible and liable for all acts, omissions, and other failures of any of its employees, personnel, or other persons that it subcontracts any of its obligations hereunder and any actions on the part of such person shall be attributable to the MDO.

(i) The MDO shall at all times ensure that its subcontractors comply with all Applicable Laws including industrial relations, safety and environmental issues relevant to the Mining Services. For the avoidance of doubt, it is clarified that any and all subcontracting activities shall be in compliance with the Contract Labour (Regulation and Abolition) Act, 1970 along with any amendment/substitution thereof. It is expressly clarified that for the purposes of the Contract Labour (Regulation and Abolition) Act, 1970, the "principal employer" shall be deemed to be the MDO and not HCL. In this regard, the MDO agrees to indemnify and hold harmless HCL against any claims, costs, expenses, damages and charges levied or incurred by HCL in relation to any non-compliance

by the MDO or any of its subcontractors, of any provision of the Contract Labour (Regulation and Abolition) Act, 1970 read along with any amendment/substitutions thereof.

(j) In the event that the MDO appoints a subcontractor with the approval of the HCL, the MDO shall continue to be solely responsible for all its obligations. HCL shall interact only with the MDO for all matters related to the performance of this Agreement. HCL, if the situation so warrants, under emergency conditions, and in the event HCL, acting reasonably, believes that any act or omission is or potentially may result in (a) the commission of an illegal act; (b) safety or environmental issues relating to the Project; may interact, instruct and direct the sub-contractors and the MDO shall ensure that the sub-contractors are required to follow all such directions of the HCL. HCL shall at all times keep the MDO informed of any such direct interactions with the sub-contractors. It is clarified that such direct interactions will not absolve the MDO from its responsibilities and obligations specified in the Agreement. Further any direction, instruction given to the sub-contractor shall be complied by the MDO as if directly given to the MDO.

(k) The MDO shall, in the event of any industrial disputes, labour unrests etc. involving the MDO's workforce on the Site (but not the HCL's employees), ensure that the continuous performance of the Mining Services is not affected. Any disputes arising between the MDO and its subcontractors shall be resolved by MDO himself.

# *PART IV*

# *FINANCIAL COVENANTS*

# Article 26. *Revenue Sharing*

## 26.1. *Revenue Sharing*

26.1.1 The revenue share finalized after the Bid process is as follows:

| Particulars | Revenue Share (%) | Revenue Share % (in words) |
|---|---|---|
| **Revenue share** (The % of revenue share to be provided by MDO to HCL) | YY | YY |

26.1.2 Subject to and in accordance with the terms of this Agreement, the revenue generated by Selling the MIC shall be shared between HCL and the MDO in accordance with the provisions of this Agreement.

26.1.3 The Revenue shall be the amount received from the buyer(s) on selling of MIC after deducting the applicable statutory charges related to concentration and selling of MIC including royalty, cess, GST and any other tax and after adjustment on account of debit/credit note, grade slippage or upgradation and quantity, if any.

26.1.4 The portion of Revenue shared with HCL (the "Revenue Share of HCL") shall be calculated in the following manner:

a) The Revenue Share of HCL shall be equal to Revenue multiplied by the contracted percentage of Revenue Share of HCL.

b) The contracted percentage of Revenue Share of HCL shall be the same as mentioned in Clause 26.1 of this Agreement. Total sale proceeds received from the Buyer(s) shall be distributed in accordance with the Clause 5.23 of the Agreement.

26.1.5 The Revenue Share shall be revised for any such extension of the term/period of this Agreement, based on the mutually agreed terms and conditions following due process.

## 26.2. *Valuation of the services provided by MDO*

The valuation of services rendered by MDO shall be equivalent to the revenue share of the MDO which would be calculated as under:

| Particular | Description of service |
|---|---|
| A) | Total Consideration received by HCL from sale of copper concentrate in escrow bank account |
| Less | |
| B) | Revenue share of HCL |
| C) | Statutory duties, taxes and expenses |
| (A) – (B+C) | |
| Valuation of service | |

## 26.3. *Additional Capacity*

26.3.1 The MDO may, upon request from HCL and in accordance with Applicable Laws, Specifications and Standards and Maintenance Requirements, construct, install and operate any excavation/extraction capacity which is in addition to and in excess of the Contracted Capacity (the "Additional Capacity").

26.3.2 The additional MIC produced under the Additional Capacity installed hereunder shall have the same (percentage) Revenue Share of HCL as for the Contracted Capacity.

## 26.4. *Taxes and duties*

26.4.1. It shall be the joint obligation of the MDO and HCL to comply with all necessary Tax related statutory compliances, including but not limited to:

a) Generation of e-invoice in accordance with the provisions of *GST* Law.
b) Uploading of invoice details in *FORM GSTR-1* (it may be noted that in addition to other conditions prescribed under the MSA, the payment the payment shall be made only post invoice details have been uploaded in *FORM GSTR-1*)
c) The payment of taxes has been deposited to Government with respect to invoices raised on HCL in *FORM GSTR 3B.*
d) Any other compliances required by supplier under GST.

MDO has specifically agreed that in addition to other conditions of the MSA contract, adherence to all GST compliance is a pre-condition to claim payment from HCL.

26.4.2. HCL shall, upon receiving the GST invoice or debit note (as applicable under the GST Laws) and other supporting documents in relation to the revenue share of MDO (inclusive of GST), remit the revenue share of MDO to the MDO along with the amount of GST indicated in GST invoice. The MDO shall issue a GST credit note within the time limit as prescribed under the GST Laws. HCL shall, upon receiving the credit note adjust the basic amount and taxes thereon while making remittance towards the GST invoice raised/issued by the MDO.

26.4.3. In case of any loss of input tax credit or any other benefit or incidence of interest or penalty suffered by HCL in relation to GST due to any non-compliance by the MDO of the Applicable Laws (including but not limited to the MDO's failure to upload details of sale on the GSTN portal, failure to issue GST compliant document(s) within the prescribed time frame or furnishing incorrect or incomplete documents with the relevant Government Instrumentality), HCL shall have the right to: (a) be compensated by the MDO for such amount of loss or penalty suffered by HCL, or (b) set-off such loss or penalty against any next amounts payable by HCL to the MDO under the Agreement. For the avoidance of doubt, it is hereby clarified that any loss of input tax credit or any other benefit or incidence of interest or penalty shall be recovered/adjusted from next Monthly Invoice or against the Performance Security, as the case may be, at the discretion of HCL and in case award/loss amount is greater than value of Monthly Invoice or the Performance Security, as the case may be, the MDO shall pay such differential amount to HCL within 30 (thirty) days from the date of demand raised by HCL. In addition, any delay in uploading the details of sale on the GSTN portal by the MDO resulting in deferment of input tax credit in accordance with the GST Laws, shall entitle HCL to charge interest at the rate equivalent to the prevailing

interest rate charged by the relevant Government Instrumentality for input tax credit reversal under GST Laws.

26.4.4. Where any damages or compensation becomes payable by either HCL or the MDO pursuant to any provision of this Agreement, appropriate GST wherever applicable as per the GST Laws in force shall also be payable by the concerned Party in addition to such damages or compensation, upon issuance of GST invoice under GST Laws by the concerned Party which is entitled to receive such payments.

26.4.5. The obligation of HCL shall include compliances regarding tax deduction at source in relation to income tax and GST on the revenue share of MDO or any other charges paid to the MDO, as applicable, in accordance with the respective Applicable Laws

26.4.6. Any penalty, interest, fine etc. applicable by the Government upon HCL for non-compliance of GST or other taxes for default arising on part of the MDO shall be payable or reimbursed, as the case may be, by the MDO. It is clarified that the MDO will also be responsible to pay any professional fee or liability accruing out of legal disputes relating to GST or any other Applicable Laws for the Project.

## 26.5. *Stockpiling*

In the event there is an insufficient supply of dispatch system provided to the Buyer at the Delivery Point or for any other reason the HCL instructs the MDO to complete the dispatch system as per the requirement of Buyer. For the avoidance of any doubt, HCL shall not borne any cost of such instances.

## 26.6. *Charges for any other metals*

In case any metal is extracted/ produced from the mines and the concentrator plant, the generated revenue shall be subject to sharing with HCL at the identical rate stipulated for the revenue sharing pertaining to the sale of MIC.

## 26.7. *First right of buying*

26.7.1. The parties entering into this Agreement acknowledge and agree that the MIO extracted or excavated from the Mines and the MIC produced from the Concentrator Plant shall remain the property of HCL, which holds proprietary rights over the extracted or excavated MIO. The MDO shall be granted the primary right to procure the MIC produced by HCL, subject to the terms and conditions stipulated in this clause.

26.7.2. In the event that the MDO exercises its first right of buying option, the following contractual provisions shall apply:

a) The MDO shall remit the amount for the produced MIC as specified in Clause 26.1 to HCL
b) The TC/RC shall be in accordance with the standard document provided in Schedule S1 and Schedule S2 in this MSA document.
c) In the event that the MDO does not take the delivery of the produced MIC for a specific month, then the MDO shall be liable to remit a pre-determined percentage of the invoiced amount for that particular month. The pre-determined percentage payable by the MDO to HCL shall be mutually agreed between both the parties.

26.7.3. In the event that the MDO refuses its first right of buying option, the following contractual provisions shall apply:

a) The MDO shall inform and provide written notice to HCL not less than 6 (six) months prior to the intended period in which the MDO intends to exercise the right to decline the buying of the MIC.
b) MDO shall also notify HCL of the intended non-purchase of the MIC, specifying the exact duration for which non-purchase shall occur.
c) In the event that the MDO provides intimation to HCL of their intent to not to purchase the MIC for the specified duration, the MDO shall not be eligible in any tendering process during the stated non-purchase period.
d) The formula for selling the MIC by HCL shall remain consistent and uniform as it is intended for sale in the open market through a tendering process.

# Article 27. *Billing and Payment*

## 27.1. *Billing and payment*

27.1.1. The MDO shall, within 15th (fifteenth) day of each successful sale consignment (or, if such day is not a business day, the immediately following business day), submit in triplicate to HCL, a Tax invoice in the agreed form (the "MDO Invoice") signed by authorised signatory of the MDO setting out the computation of the revenue share of MDO in respect of the immediately preceding sale consignment (which shall be approved by HCL before issuance of invoice/debit note/credit note) in accordance with the provisions as per clause 5.23 and for other metals as per clause 5.24. MDO shall submit a draft invoice to HCL for taking approval on the valuation of services. After receiving of written approval from HCL on the draft invoice, MDO shall submit the invoice to HCL.

27.1.2. The MDO shall, with each MDO Invoice, submit (a) a certificate that the amounts claimed in the invoice are correct and in accordance with the provisions of the Agreement; (b) an estimate of the approximate weight of MIC stored at the stockyard at the close of the relevant sale consignment; (c) excavation/extraction of MIO and concentration of MIO during the relevant month; (d) weight of MIC sold in the relevant sale consignment (e) detailed calculations of the revenue share of MDO, and any other amounts payable by HCL in accordance with this Agreement; (f) details in respect of Taxes payable or reimbursable in accordance with the provisions of this Agreement; (g) details in respect of Aggregate Incentives and Aggregate Damages payable in accordance with the provisions of Article 24; (h) the net amount payable after all adjustment under the MDO Invoice as per Clause 5.23 & Article 26; and (i) proof of having complied with the provisions of all Applicable Laws required to be complied with regarding payment of wages and salaries.

27.1.3. HCL will intimate MDO the per tonne quantity of MIC generated from the Mosabani from the MIO generated by MDO for the previous month on the first week of month. Before selling of the MIC, MDO shall pay the conversion charges to HCL.

27.1.4. Due Dates

a) Subject to and limited to the balance remaining in the escrow account for that particular sale consignment as per adjustment of Clause 5.23, MDO Invoice delivered to HCL shall become due and payable by HCL within 30 (thirty) days after the receipt of such MDO Invoice. It is clarified that the liability of HCL for each particular sale consignment shall be limited to the balance amount remaining in the escrow account as per the adjustment of Clause 5.23, in case of any non-payment due to lack of funds in the escrow account the same shall be carry forwarded to the subsequent month. Further in case any amount remains to be paid towards any Miscellaneous Invoices at the time of termination or completion of this Agreement, then the same shall stand waived of in absence of any funds remaining in the escrow account. In other words, the liability of HCL is limited to the extent of money received in the escrow account upon Selling of MIC or otherwise as per this Agreement.

b) Subject to Clause 27.2, each Party shall pay on or before the relevant due date, the amount that become due and payable by such Party to the other Party pursuant to a MDO Invoice or any Miscellaneous Invoice. Such payments shall, unless otherwise stated, be made in Rupees and shall be made by wire transfer, to the bank account designated by the MDO or HCL, as applicable.

c) In the event the full amount under a MDO Invoice or any Miscellaneous Invoice payable by either Party is not paid when due, any unpaid amount thereof shall bear interest from the

due date until paid, at the MCLR of State Bank of India. Interest shall be paid on the date when payment of the amount due is made.

27.1.5. The HCL shall be entitled to deduct or set off against any amounts payable by the MDO under this Agreement, any amounts payable by the HCL to the MDO under this Agreement.

## 27.2. *Disputed Amounts*

In the event a Party disagrees with an invoice, such Party shall promptly and in no event later than 10 (ten) days of receipt of such invoice notify the other Party of the disagreement and reasons thereof. Within 7 (seven) days of receipt of such notice, the other Party shall present any information or evidence as may reasonably be required for determining that the disputed amounts under an invoice are payable. The disputing Party may, if necessary, meet a representative of the other Party for resolving the dispute and in the event that the dispute is not resolved amicably, the Dispute Resolution Procedure shall apply. Promptly and no later than 30 (thirty) days after resolution of any dispute as to an invoice, the amount of any overpayment or underpayment shall be paid by the MDO or HCL (as the case may be) to the other Party, together with interest thereon at the MCLR of State Bank of India from the date payment was due to the date of payment. For the avoidance of doubt, HCL shall be entitled to raise a Dispute regarding any amounts under an invoice, whether due or already paid under this Agreement, at any time.

# Article 28. *Insurance*

## 28.1. *Insurance during Contract Period*

The MDO shall affect and maintain at its own cost, during the Contract Period, such insurances for such maximum sums as may be required under the Financing Agreements and Applicable Laws, with financially sound and reputable insurers, and such insurances as may be necessary or prudent in accordance with Standard Industry Practice. The MDO shall also affect and maintain such insurances as may be necessary for mitigating the risks that may devolve on HCL as a consequence of any act or omission of the MDO during the Contract Period. The MDO shall procure that in each insurance policy, HCL shall be a co-insured.

## 28.2. *Insurance Cover*

28.2.1. Without prejudice to the provisions contained in Clause 28.1, the MDO shall procure and maintain Insurance Cover including, but not limited, to the following:

(a) loss, damage or destruction of the Project Assets, including assets handed over by HCL to the MDO, at replacement value;

(b) comprehensive third-party liability insurance including injury to or death of personnel of HCL or others caused by the Project;

(c) the MDO's general liability arising out of the Agreement;

(d) liability to third parties for goods or property damage;

(e) community risk including loss and damages to life and property of community or village around the mining area;

(f) workmen's compensation insurance; and

(g) any other insurance that may be necessary to protect the MDO, HCL, and their employees, including all Force Majeure Events that are insurable at commercially reasonable premiums and not otherwise covered in items (a) to (f) above.

## 28.3. *Notice to HCL*

No later than 45 (forty-five) days prior to commencement of the Construction Period or the Operation Period, as the case may be, the MDO shall by notice furnish to HCL, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 28. Within 30 (thirty) days of receipt of such notice, HCL may require the MDO to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

## 28.4. *Evidence of Insurance Cover*

All insurances obtained by the MDO in accordance with this Article 28 shall be maintained with insurers on terms consistent with Standard Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the MDO shall furnish to HCL, notarized true copies of the certificate(s) of insurance, copies of insurance policies and premium payment receipts in respect of such insurance, and no such insurance shall be canceled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the MDO to HCL.

## 28.5. *Remedy for failure to insure*

If the MDO shall fail to effect and keep in force all insurances for which it is responsible pursuant hereto, HCL shall have the option to either keep in force any such insurances and pay such premium and recover the costs thereof from the MDO.

## 28.6. *Waiver of subrogation*

All insurance policies in respect of the insurance obtained by the MDO pursuant to this Article 28 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, *inter alia*, HCL, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

## 28.7. *MDO's waiver*

The MDO hereby further releases, assigns and waives any and all rights of subrogation or recovery against, *inter alia*, HCL and its assigns, undertakings and their subsidiaries, affiliates, employees, successors, insurers and underwriters, which the MDO may otherwise have or acquire in or from or in any way connected with any loss, liability or obligation covered by policies of insurance maintained or required to be maintained by the MDO pursuant to this Agreement (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

## 28.8. *Application of insurance proceeds*

The proceeds from all insurance claims, except life and injury, shall be applied by the MDO firstly, for any necessary repair, reconstruction, reinstatement, replacement, improvement or development and operations of the Mines, Plant(s) & auxiliary and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

# Article 29. *Accounts and Audit*

## 29.1. *Audited accounts*

29.1.1. The MDO shall maintain books of accounts recording all its incomes from or on account of the Mines and Copper Ore/ MIO, MIC/Copper Concentrate, income, expenditure, payments, assets and liabilities, in accordance with this Agreement, Standard Industry Practice, Applicable Laws and Applicable Permits. The MDO shall provide 2 (two) copies of its audited balance sheet, cash flow statement and profit and loss account, along with a report thereon by its Statutory Auditors, within 90 (ninety) days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. HCL shall have the right to inspect the records of the MDO during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to HCL for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.

29.1.2. The MDO shall, within 30 (thirty) days of the close of each quarter of an Accounting Year, furnish to HCL its unaudited financial results in respect of the preceding quarter, in the manner and form prescribed by the Securities and Exchange Board of India for publication of quarterly results by companies listed on a stock exchange.

29.1.3. On or before the thirty-first day of May each Accounting Year, the MDO shall provide to HCL, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarized information on (a) receipts on account of sale of MIC, (b) all other revenues from, or account of the Mines, and (c) such other information as HCL may reasonably require.

## 29.2. *Appointment of auditors*

29.2.1. The MDO shall appoint, and have during the subsistence of this Agreement as its Statutory Auditors, a firm chosen by it from the mutually agreed list of 5 (five) reputable firms of chartered accountants (the "Panel of Chartered Accountants"), such list to be prepared substantially in accordance with the criteria set forth in Schedule – P. All fees and expenses of the Statutory Auditors shall be borne by the MDO.

29.2.2. The MDO may terminate the appointment of its Statutory Auditors after a notice of 45 (forty-five) days to HCL, subject to the replacement of Statutory Auditors being appointed from the Panel of Chartered Accountants within 15 (fifteen) days of termination of such Statutory Auditors.

29.2.3. Notwithstanding anything to the contrary contained in this Agreement, HCL shall have the right, but not the obligation, to appoint at its cost from time to time and at any time, another firm (the "Additional Auditors") from the Panel of Chartered Accountants to audit and verify all those matters, expenses, costs, realizations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.

## 29.3. *Certification of claims by Statutory Auditors*

Any claim or document provided by the MDO to HCL in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto, shall be

valid and effective only if certified by its Statutory Auditors. For the avoidance of doubt, such certification shall not be required for exchange of information in the normal course of business.

## 29.4. *Set-off*

In the event any amount is due and payable by HCL to the MDO, it may set-off any sums payable to it by the MDO and pay the balance remaining. Any exercise by HCL of its rights under this Clause 29.4 shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise.

## 29.5. *Dispute resolution*

In the event of there being any difference between the findings of the Additional Auditors and the certification provided by the Statutory Auditors, such Auditors shall meet to resolve the differences and if they are unable to resolve the same, such Dispute shall be resolved by HCL by recourse to the Dispute Resolution Procedure as per Article 40.

# *PART V:*

# *FORCE MAJEURE AND TERMINATION*

# Article 30. *Force Majeure*

## 30.1. *Force Majeure*

Refer to Schedule-R for details

30.1.1. As used in this Agreement, the expression "**Force Majeure**" or "**Force Majeure Event**" shall, save and except as expressly provided otherwise mean (with respect to either Party) an act of GOD including but not limited to lightning, drought, fire and explosion, (to the extent originating from a source external to the site), earthquake, volcanic eruption, landslide, flood, cyclone, typhoon, tornado, war embargo, pandemic or exceptionally adverse condition and any event or circumstances or combination of events or circumstances including the following:

(a) beyond the reasonable control of the Party claiming relief under this Clause 30.1,

(i) which materially and adversely affects, prevents, delays any Party in the performance of its obligations under this Agreement and

(ii) could not have been foreseen, prevented, overcome or remedied by the affected Party by exercising a standard of care and diligence consistent with Good Industry Practices.

(b) withdrawal of permission/Approvals by any Govt. Authorities for activities relevant to the Project not arising as a result of default of the MDO.

30.1.2. The Party whose performance is so affected by Force Majeure is called as the **"Affected Party"**.

## 30.2. *Procedure on occurrence of an event of Force Majeure*

30.2.1. Immediately upon any occurrence of an event of Force Majeure or, in any event, no later than 7 (seven) days following such occurrence, the Party affected by such event of Force Majeure event shall:

(a) notify the other Party and provide documentary proof of the existence of an event of Force Majeure, and such notice and proof to include

(i) the particulars of the event giving rise to such Force Majeure claim, in as much detail as is then reasonably available,

(ii) its current estimate of the extent to which, and the period during which, the performance of such Party will be affected by such event of Force Majeure, and

(iii) the particulars of the program to be implemented to ensure prompt and full resumption of such Party's normal performance under this Agreement.

(b) thereafter provide interim reports of the status of the event of Force Majeure, reasons for continued existence of the event of Force Majeure and an estimate of the anticipated duration of the event of Force Majeure; and

(c) upon request in writing either in physical form or in electronic form (email) by the other Party, give or procure access insofar as is reasonably practicable to do so for a reasonable number of representatives of that other Party at that other Party's sole risk and cost, to examine the scene of the relevant event or circumstances of Force Majeure.

## 30.3. *Excuse from performance of obligations*

30.3.1. If the Affected Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure Event, it shall be excused from performance of such of its obligations to the extent it is unable to perform on account of such Force Majeure Event; provided that:

(a) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;

(b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and

(c) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.

30.3.2. Delay or non-performance by either Party hereto caused by the occurrence of any event of Force Majeure shall not

(a) constitute an event of default or breach of its obligations under this Agreement;

(b) give rise to any claim for damages or additional cost or expenses or compensation occasioned thereby, if and to the extent that such delay or non-performance is caused by the occurrence of an event of Force Majeure.

30.3.3. The duration of Force Majeure event as accepted by both the parties in writing, shall not be considered as part of the contract period and subsequently, the contract period shall be increased by such period.

30.3.4. During Force Majeure period, the MDO shall upkeep the Mines & Plant in safe condition and also dewatering operations of mine & essential services of Mines & plant shall be done by MDO on its own cost. MDO shall maintain all equipment, machinery and ancillary activities such that mines, and plant can be brought to operations at any point in time during such Force Majeure period.

## 30.4. *Resumption of Normal Performance*

30.4.1. During the period of delay attributed to an event of Force Majeure (unless this Agreement has been terminated or cancelled in accordance with its terms):

(a) the Affected Party shall use best efforts to overcome and minimize the effects of any event of Force Majeure and resume performance of obligations as soon as practicable after the effect of the Force Majeure Event ceases to exist;

(b) in order to resume normal performance of this Agreement within the shortest practicable time, the Affected Party shall take all measures to this end which are commercially reasonable in the circumstances, taking into account the consequences resulting from such Force Majeure Event and shall, every week thereafter, give the other Party a written statement on its progress; and

(c) the Parties shall perform their obligations under this Agreement to the extent not prevented by the occurrence of an event of Force Majeure and take reasonable steps to mitigate the impact of such event.

## 30.5. *Notice when Force Majeure ends*

30.5.1. Upon resolution of the cause of delay, interruption or failure, the Party affected shall promptly within 3 (three) days of such resolution give notice to the other Party of such fact and the performance of such affected Party's obligations under this Agreement shall thereupon be resumed.

30.5.2. If the performance of the obligations is substantially prevented, affected or delayed for a single period of more than 3 (three) months or an aggregate period of more than 6 (six) months in any year, the Parties will attempt to develop a mutually satisfactory solution through good faith discussions, failing which the aggrieved party shall give termination notice in accordance with Article 33, as the case may be.

## 30.6. *Dispute resolution*

In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in accordance with the Dispute Resolution Procedure, provided that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse on account of such Force Majeure Event.

# Article 31. *Compensation for Breach of Agreement*

## 31.1. *Compensation for default by the MDO*

Subject to the provisions of Clause 31.5, in the event of the MDO being in material breach or default of this Agreement, it shall pay to HCL by way of compensation, all direct costs suffered or incurred by HCL as a consequence of such material breach or default, within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Clause 31.1 for any material breach or default in respect of which Damages have been expressly specified and payable under this Agreement or for any consequential losses incurred by HCL.

## 31.2. *Compensation for default by HCL*

Subject to the provisions of Clause 31.5, in the event of HCL being in material breach or default of this Agreement at any time after the Appointed Date, it shall pay to the MDO by way of compensation, all direct costs suffered or incurred by the MDO as a consequence of such material breach or default within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no such compensation shall be payable for any material breach or default in respect of which Damages have been expressly specified in this Agreement or for any consequential losses incurred by HCL.

## 31.3. *Extension of Contract Period*

In case the Contract Period extended as per Clause 3.1, all other terms and conditions of this Agreement shall continue to remain in force upon such extension. The Revenue Share shall be revised for any such extension of the term/period of this Agreement in accordance with Clause 26.1 of this Agreement.

## 31.4. *Compensation to be in addition*

Compensation payable under this Article 31 shall be in addition to, and not in substitution for, or derogation of, Termination Payment, if any.

## 31.5. *Mitigation of costs and damage*

The non-defaulting Party shall make all reasonable efforts to mitigate or limit the costs and damage arising out of, or as a result of, breach of this Agreement by the other Party.

# Article 32. *Suspension of MDO's rights*

## 32.1. *Suspension upon MDO Default*

Upon occurrence of a MDO Default, HCL shall be entitled, subject to Applicable Laws, and without prejudice to its other rights and remedies under this Agreement, including its rights of Termination hereunder, to (a) suspend all rights of the MDO under this Agreement and (b) exercise such rights itself and perform the obligations hereunder or authorize any other person to exercise or perform the same on its behalf during such suspension (the "**Suspension**"). Suspension hereunder shall be effective forthwith upon issue of notice by HCL to the MDO and may extend up to a period not exceeding 180 (one hundred and eighty) days from the date of issue of such notice; provided that upon written request from the MDO, HCL shall extend the aforesaid period of 180 (one hundred and eighty) days by a further period not exceeding 90 (ninety) days.

## 32.2. *HCL to act on behalf of MDO*

During the period of Suspension hereunder, all rights and liabilities vested in the MDO in accordance with the provisions of this Agreement shall continue to vest therein and all things done or actions taken, including expenditure incurred by HCL for discharging the obligations of the MDO under and in accordance with this Agreement and the Project Agreements, shall be deemed to have been done or taken for and on behalf of the MDO and the MDO undertakes to indemnify HCL for all costs incurred during such period. The MDO hereby licenses and sub-licenses respectively, HCL or any other person authorized by it under Clause 32.1 to use during Suspension, all intellectual property belonging to or licensed to the MDO with respect to the Mines and its design, engineering, construction, operation and maintenance and which is used or created by the MDO in performing its obligations under the Agreement.

## 32.3. *Revocation of Suspension*

32.3.1. In the event that HCL shall have rectified or removed the cause of Suspension within a period not exceeding 90 (ninety) days from the date of Suspension, it shall revoke the Suspension forthwith and restore all rights of the MDO under this Agreement. For the avoidance of doubt, the Parties expressly agree that HCL may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.

32.3.2. Upon the MDO having cured the MDO Default within a period not exceeding 90 (ninety) days from the date of Suspension, HCL shall revoke the Suspension forthwith and restore all rights of the MDO under this Agreement.

## 32.4. *Substitution of MDO*

If and only if approved by HCL, At any time during the period of Suspension, the Lenders' Representative, on behalf of Senior Lenders, shall be entitled to substitute the MDO under and in accordance with the Substitution Agreement, if any, and upon receipt of notice thereunder from the Lenders' Representative, HCL shall withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of Suspension, and any extension thereof under Clause 32.1, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Senior Lenders.

## 32.5. *Termination during Suspension*

32.5.1. At any time during the period of Suspension under this Article 32, the MDO may by notice require HCL to revoke the Suspension and issue a Termination Notice. Subject to the rights of the Lenders' Representative to undertake substitution in accordance with the provisions of this Agreement and within the period specified in Clause 32.4, HCL shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 33. It is clarified that all the provisions of this Agreement shall apply, *mutatis mutandis*, to a termination pursuant to this Clause 32.5 as if a Termination Notice had been issued by HCL upon occurrence of a MDO Default.

32.5.2. Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 180 (one hundred and eighty) days from the date of Suspension hereunder or within the extended period, if any, set forth in Clause 32.1, then unless otherwise agreed by the Parties, this Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, *mutatis mutandis*, to such Termination as if a Termination Notice had been issued by HCL upon occurrence of a MDO Default.

# Article 33. *Termination*

The provision for termination contained in this Article 33 are in addition to the rights of termination provided to HCL or the MDO elsewhere in the Agreement.

## 33.1. *Termination for MDO Default*

33.1.1. Subject to Applicable Laws and save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the MDO fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 60 (sixty) days, the MDO shall be deemed to be in default of this Agreement (the "**MDO Default**"), unless the default has occurred solely as a result of any breach of this Agreement by HCL or due to Force Majeure. The defaults referred to herein shall include:

(a) the Performance Security has been encashed and appropriated in accordance with Clause 9.2 and the MDO fails to replenish or provide fresh Performance Security within a Cure Period of 15 (fifteen) days;

(b) the Performance Security and/or the Corporate Performance Guarantee not being renewed, replenished or revised in accordance with Clause 9.1 and Clause 9.4 respectively;

(c) the MDO does not achieve the latest outstanding Project Milestone due in accordance with the provisions of Schedule – G and continues to be in default for 180 (one hundred and eighty) days;

(d) the MDO abandons or manifests intention to abandon the development or operation of the Mines without the prior written consent of HCL;

(e) if the Selected Bidder fail(s) to provide the necessary financial support required to meet the Total Project Cost and for implementation, operation and maintenance of the Project;

(f) if the Selected Bidder fail(s) to provide technical support required by the MDO to implement, operate and maintain the Project;

(g) scheduled COD or Scheduled Completion do not occur within the periods specified in Clause 12.5.

(h) any act or omission which results in a breach of the provisions of the Allotment Letter, Mining Plan, Environmental Clearance for Mine and Concentrate plant, Consent to establish, Consent to operate and other statutory or regulatory norms/ documents.

(i) the MDO is in breach of the Maintenance Requirements or the Safety Requirements, as the case may be;

(j) the MDO has failed to make any payment to HCL within the period specified in this Agreement;

(k) the MDO has failed to make the monthly payment as per Article 27.

(l) if applicable, upon occurrence of a Financial Default, the Lenders' Representative has by notice required HCL to undertake Suspension or Termination, as the case may be, in accordance with the Substitution Agreement and the MDO fails to cure the default within the Cure Period specified hereinabove;

(m) a breach of any Project Agreement by the MDO has caused a Material Adverse Effect;

(n) the MDO commits a material breach of the Mining Plan;

(o) the MDO creates any Encumbrance except as expressly permitted under this Agreement;

(p) the MDO repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;

(q) a Change in Ownership has occurred in breach of the provisions of Clause 5.3;

(r) the MDO fails to achieve a monthly Actual Production of 75% (seventy-five per cent) of the Monthly Capacity for a cumulative period of 6 (six) months within any continuous period of 18 (eighteen) months, save and except to the extent such failure is caused solely by (a) Force Majeure, or (b) a default of HCL, not occurring due to any act or omission of the MDO;

(s) the actual metal recovery of Concentrator Plant is less than 90% for a cumulative period of 3 (three) months within any continuous period of 12 (twelve) months, save and except to the extent such failure is caused solely by (a) Force Majeure, or (b) a default of HCL, not occurring due to any act or omission of the MDO

(t) there is a transfer, pursuant to law either of (a) the rights and/ or obligations of the MDO under any of the Project Agreements, or of (b) all or part of the assets or undertaking of the MDO, and such transfer causes a Material Adverse Effect;

(u) an execution levied on any of the assets of the MDO has caused a Material Adverse Effect;

(v) the MDO is adjudged bankrupt or insolvent, or if a trustee or receiver or resolution professional is appointed for the MDO or for the whole or material part of its assets that has a material bearing on the Project;

(w) the MDO has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of HCL, a Material Adverse Effect;

(x) a resolution for winding up of the MDO is passed;

(y) any petition/application for insolvency/winding up of the MDO is admitted by a court of competent jurisdiction and a provisional liquidator/resolution professional or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the MDO is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the MDO are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the MDO under this Agreement and the Project Agreements; and provided that:

(i) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;

(ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the MDO as at the Appointed Date; and

(iii) each of the Project Agreements remains in full force and effect.

(z) any representation or warranty of the MDO herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the MDO is at any time hereafter found to be in breach thereof;

(aa) the MDO submits to HCL any statement, notice or other document, in written form either in physical form or electronic form (email), which has a material effect on HCL's rights, obligations or interests and which is false in material particulars;

(bb) the MDO has failed to fulfill any obligation, for which failure Termination has been specified in this Agreement;

(cc) the MDO issues a Termination Notice in violation of the provisions of this Agreement;

(dd) the MDO commits a default in complying with any other provision of this Agreement if such default causes or may cause a Material Adverse Effect;

(ee) any other event or occurrence identified as a 'MDO Default' under this Agreement has occurred, or

(ff) If the MDO is otherwise in breach of any terms of this Agreement.

33.1.2. Without prejudice to any other rights or remedies which HCL may have under this Agreement, against the MDO and Selected Bidders upon occurrence of a MDO Default, HCL shall be entitled to terminate this Agreement by issuing a Termination Letter to the MDO and the Termination shall be effective from the date of such Termination Letter; provided that before issuing the Termination Letter, HCL shall by a Termination Notice inform the MDO of its intention to issue such Termination Letter and grant 15 (fifteen) days to the MDO to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Letter, subject to the provisions of Clause 33.1.

33.1.3. HCL shall, if there be Senior Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Clause 33.1 to inform the Lenders' Representative and grant 15 (fifteen) days to the Lenders' Representative, for making a representation on behalf of the Senior Lenders stating the intention to substitute the MDO in accordance with the Substitution Agreement. In the event HCL receives such representation on behalf of Senior Lenders, it shall, in its discretion, either withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of such representation or exercise its right of Suspension, as the case may be, for enabling the Lenders' Representative to exercise the Senior Lenders' right of substitution in accordance with the Substitution Agreement;

33.1.4. Provided that the Lenders' Representative may, instead of exercising the Senior Lenders' right of substitution, procure that the default specified in the Termination Notice is cured within the aforesaid period of 180 (one hundred and eighty) days, and upon such curing thereof, HCL shall withdraw its notice referred to above and restore all the rights of the MDO.

33.1.5. Provided further that upon written request from the Lenders' Representative and the MDO, HCL shall extend the aforesaid period of 180 (one hundred and eighty) days by such further period not exceeding 90 (ninety) days, as HCL may deem appropriate.

## 33.2. *Termination for HCL Default*

33.2.1. In the event that any of the defaults specified below shall have occurred, and HCL fails to cure such default within a Cure Period of 90 (ninety) days or such longer period as has been expressly provided in this Agreement, HCL shall be deemed to be in default of this

Agreement (the "**HCL Default**") unless the default has occurred as a result of any breach of this Agreement by the MDO or due to Force Majeure. The defaults referred to herein shall include:

(a) HCL commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the MDO;

(b) the HCL has failed to make any payment (to the extent undisputed) which is due and payable to the MDO under this Agreement within the period specified in this Agreement; or

(c) HCL repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement.

33.2.2. Without prejudice to any other right or remedy which the MDO may have under this Agreement, upon occurrence of a HCL Default, the MDO shall, subject to the provisions of the Substitution Agreement, be entitled to terminate this Agreement by issuing a Termination Letter to HCL; provided that before issuing the Termination Letter, the MDO shall by a Termination Notice inform HCL of its intention to issue the Termination Letter and grant 30 (thirty) days to HCL to make a representation, and may after the expiry of such 30 (thirty) days, whether or not it is in receipt of such representation, issue the Termination Letter.

## 33.3. *Termination Payment*

33.3.1. Upon Termination on account of an HCL Default during the Operation Period, HCL shall pay to the MDO by way of Termination Payment for an amount equal:

(a) the value of the depreciated plant and machines installed by MDO determined by an independent valuer to be appointed by HCL, shall be payable by HCL as on date of Termination after adjustment on account of Damages and other sums payable by the MDO to HCL under the Agreement;

(b) The MDO shall remove from the mine all the MDO's employees, sub-contractors, goods and materials within one month from the date of termination of this Agreement.

(c) In case of termination of Agreement due to Force Majeure, the Performance Bank Guarantee shall be returned to the MDO

33.3.2. Upon Termination on account of an MDO Default during the Operation Period, no Termination Payment shall be payable by the HCL to the MDO.

33.3.3. Upon Termination on account of expiry of the Agreement, above, no Termination Payment shall be payable by the HCL to the MDO.

33.3.4. Notwithstanding anything to the contrary in this Article 33, the MDO acknowledges, agrees and undertakes that:

(a) upon termination or expiry of this Agreement, HCL shall have the first right of refusal to purchase the Project Facilities of the MDO, at the lower of the Written Down Value (WDV) under provisions of the Companies Acts and the value to be determined by an independent valuer to be appointed by HCL. The MDO shall provide assistance to HCL in this regard.

(b) in the event the MDO enters into any financing agreements or arrangements (including hire purchase) with respect to, or which affect, any of the equipment, the MDO shall ensure that the financier or lender under such financing agreement or

arrangement expressly recognizes and accepts the preferential right of HCL to purchase the Equipment (as the case may be); and

(c) no Termination Payment shall be due and payable prior to Partial Completion Date (PCD).

(d) In the event, HCL does not purchase the Project Facilities within a period of 90 (ninety) days from the date of termination or expiry of the Agreement, the MDO may sell the Project Facilities to any third parties.

33.3.5. Termination Payment shall be due and payable to the MDO within 30 (thirty) days of acceptance of demand being made by the MDO to HCL with the necessary particulars, HCL shall not be required to make any Termination Payment until the MDO has complied with the Divestment Requirements and has delivered to HCL possession of the Project Facilities in good condition or working order and free and clear of all Encumbrances, to the satisfaction of HCL, provided HCL decides to purchase the Project Facilities. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by HCL of its obligations hereunder. Further HCL shall be entitled to adjust all Damages payable by the MDO pursuant to the terms of the Agreement against the Termination Payment.

33.3.6. The MDO expressly agrees that Termination Payment under this Article 33 shall constitute a full and final settlement of all claims of the MDO on account of Termination of this Agreement for any reason whatsoever and that the MDO or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

## 33.4. *Other rights and obligations of HCL*

Upon Termination for any reason whatsoever, HCL shall:

33.4.1. have the first right of refusal to purchase the Project Assets from the MDO.

33.4.2. take possession and control of the Mines forthwith;

33.4.3. subject to the provisions of Clause 33.3, take possession and control of all materials, stores, implements, construction plants and equipment on or about the Site;

33.4.4. be entitled to invoke the Performance Security and the Corporate Performance Guarantee if any for the full amount guaranteed.

33.4.5. be entitled to restrain the MDO and any person claiming through or under the MDO from entering upon the Site or any part of the Project;

33.4.6. require the MDO to comply with the Divestment Requirements set forth in Clause 34.1; and

33.4.7. succeed upon election by HCL, without the necessity of any further action by the MDO, to the interests of the MDO under such of the Project Agreements as HCL may in its discretion deem appropriate and shall upon such election be liable to the Contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date HCL elects to succeed to the interests of the MDO. For the avoidance of doubt, the MDO acknowledges and agrees that all sums claimed by such Contractors as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the MDO and such Contractors, and HCL shall not in any manner be liable for such sums. It is further agreed that in the event HCL elects to cure any

outstanding defaults under such Project Agreements, the amount expended by HCL for this purpose shall be deducted from the Termination Payment.

33.4.8. Any default by the MDO shall be regarded as a default by the Selected Bidder and HCL shall be entitled to exercise all rights and remedies available to it against the MDO, against the Selected Bidders.

## 33.5. *Survival of rights*

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 33.3, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money, damages, insurance, proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments and Divestment Requirements, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

# Article 34. *Divestment of Rights and Interest*

## 34.1. *Divestment Requirements*

34.1.1. Upon Termination, the MDO shall comply with and conform to the following divestment requirements ("**Divestment Requirements**"):

(a) notify to HCL forthwith the location and particulars of all Project Assets;

(b) deliver forthwith the actual or constructive possession of the Mines and Copper Ore/ MIO/MIC Stockyard(s) and Concentrator Plant, free and clear of all Encumbrances;

(c) cure all Project Assets of all defects and deficiencies so that the Mines is compliant with the Maintenance Requirements; provided that in the event of Termination during the Construction Period, all Project Assets shall be handed over on 'as is where is' basis after bringing them to a safe condition;

(d) cure all deficiencies so that it is compliant with Specifications and Standards and can be Delivered to HCL;

(e) deliver and transfer relevant records, reports, Intellectual Property and other licenses pertaining to the Mines and its design, engineering, construction, operation and maintenance, including all programs and manuals pertaining thereto, and complete 'as built' Drawings as on the Transfer Date. For the avoidance of doubt, the MDO represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for the design, engineering, construction, operation and maintenance of the Mines and shall be assigned to HCL free of any Encumbrance;

(f) transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;

(g) execute such deeds of conveyance, documents and other writings as HCL may reasonably require for conveying, divesting and assigning all the rights, title and interest of the MDO in the Project Assets, including manufacturers' warranties in respect of any plant or equipment and the right to receive outstanding insurance claims, to the extent due and payable to HCL, absolutely unto HCL or its nominee; and

(h) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the MDO in the Mines, free from all Encumbrances, absolutely unto HCL or to its nominee.

34.1.2. Subject to the exercise by HCL of its rights under this Agreement or under any of the Project Agreements to perform or procure the performance by a third party of any of the obligations of the MDO, the Parties shall continue to perform their obligations under this Agreement, notwithstanding the issuance of any Termination Notice, until the Termination of this Agreement becomes effective in accordance with its terms.

## 34.2. *Inspection and cure*

Not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to the effective date of such Termination, the HCL shall verify, after giving due notice to the MDO specifying the time, date and place of such verification and/or inspection, compliance by the MDO with the Maintenance Requirements, and if required, cause appropriate tests to be carried out at the

MDO's cost for this purpose. Defaults, if any, in the Maintenance Requirements shall be cured by the MDO at its cost and the provisions of Article 35 shall apply, *mutatis mutandis*, in relation to curing of defects or deficiencies under this Article 34.

## 34.3. *Cooperation and assistance on transfer of Project*

34.3.1. The Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth transfer of the Project in accordance with the provisions of this Agreement.

34.3.2. The Parties shall provide to each other, immediately in the event of either Party conveying to the other Party its intent (via Termination Notice) to issue a Termination Letter, as the case may be, as much information and advice as is reasonably practicable regarding the proposed arrangements for operation of the Project following the Transfer Date. The MDO shall further provide such reasonable advice and assistance as HCL or its agent may reasonably require for operation of the Project until the expiry of 6 (six) months after the Transfer Date.

## 34.4. *Vesting Certificate*

The divestment of all rights, title and interest in the Mines shall be deemed to be complete on the date when all of the Divestment Requirements have been fulfilled, and HCL shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth in Schedule – O (the "**Vesting Certificate**"), which will have the effect of constituting evidence of divestment by the MDO of all of its rights, title and interest in the Mines, and their vesting in HCL pursuant hereto. It is expressly agreed that any defect or deficiency in the Divestment Requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by HCL or its nominee on, or in respect of, the Mines on the footing that all Divestment Requirements have been complied with by the MDO.

## 34.5. *Divestment costs etc.*

34.5.1. The MDO shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the MDO in the Project Assets in favor of HCL upon Termination, save and except that all stamp duties payable on any deeds or Documents executed by the MDO in connection with such divestment shall be borne by HCL.

34.5.2. In the event of any dispute relating to matters covered by and under this Article 34 the Dispute Resolution Procedure shall apply.

# Article 35. *Defects Liability after Termination*

## 35.1. *Liability for defects after Termination*

The MDO shall be responsible for all defects and deficiencies in the Mines for a period of 120 (one hundred and twenty) days after Termination, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by HCL in the Mines during the aforesaid period. In the event that the MDO fails to repair or rectify such defect or deficiency within a period of 30 (thirty) days from the date of notice issued by HCL in this behalf, HCL shall be entitled to get the same repaired or rectified at the MDO's risk and cost so as to make the Mines conform to the Maintenance Requirements. All costs incurred by HCL hereunder shall be reimbursed by the MDO to HCL within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, HCL shall be entitled to recover the same from the funds withheld by HCL under the provisions of Clause 35.2 or from the Repair and Rectification Guarantee provided there under. For the avoidance of doubt, the provisions of this Article 35 shall not apply if Termination occurs prior to COD.

## 35.2. *Retention*

35.2.1. Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 35.2, a sum equal to the revenue share of MDO due and payable for the month immediately preceding the Transfer Date shall be withheld by the HCL for a period of 120 (one hundred and twenty) days after Termination for meeting the liabilities, if any, arising out of or in connection with the provisions of Clause 35.1

35.2.2. Without prejudice to the provisions of Clause 35.2, HCL shall carry out an inspection of the Mines at any time between 210 (two hundred and ten) and 180 (one hundred and eighty) days prior to the Termination and if it recommends that the status of the Mines is such that a sum larger than the amount stipulated in Clause 35.2 should be withheld and/or for a period longer than the aforesaid 120 (one hundred and twenty) days, the amount shall be withheld by the HCL for the period specified by it.

35.2.3. MDO, for the performance of its obligations under this Article 35, provide to the HCL a guarantee from a Bank for a sum equivalent to the amount determined under Clause 35.2, as the case may be, and for the period specified therein, substantially in the form set forth in Schedule-F (the "Performance Guarantee"), to be modified, mutatis mutandis, for this purpose, and the HCL shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the required amounts from the Performance Guarantee for undertaking the repairs or rectification at the MDO's risk and cost in accordance with the provisions of this Article 35. Upon furnishing of a Performance Guarantee under this Clause 35.2, the amounts withheld by the Authority in terms of Clause 35.2, as the case may be, shall be released to the MDO to the extent such amounts are due and payable to the MDO in accordance with the terms of this Agreement.

# *PART VI*

# *OTHER PROVISIONS*

# Article 36. *Assignment and Charges*

## 36.1. *Restrictions on assignment and charges*

*36.1.1.* Subject to Clauses 36.2 and 36.3, this Agreement shall not be assigned by the MDO to any person, save and except with the prior consent in writing either in physical form or in electronic form (email) of HCL, which consent of HCL shall be at its sole discretion and HCL shall be entitled to decline the same without assigning any reason to the MDO.

*36.1.2.* Subject to the provisions of Clause 36.2, the MDO shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the MDO is a party except with the prior consent in writing of HCL, which consent of HCL shall be at its sole discretion and HCL shall be entitled to decline the same without assigning any reason. The MDO shall not create any Encumbrance over the Copper Ore excavated from the Mine MIO and MIC.

## 36.2. *Permitted assignment and charges*

*36.2.1.* The restraints set forth in Clause 36.1 shall not apply to:

(a) liens arising by operation of law in the ordinary course of business of the Mines;

(b) mortgages/ pledges/ hypothecation of goods/ assets other than the Copper Ore /MIO and MIC, Project Assets and their related documents of title, arising or created in the ordinary course of business of the Mines, and as security only for indebtedness to the Senior Lenders under the Financing Agreements and/or for working capital arrangements for the Mines.

(c) assignment of rights, interest and obligations of the MDO to or in favor of the Lenders' Representative as nominee and for the benefit of the Senior Lenders, to the extent covered by and in accordance with the Substitution Agreement as security for financing provided by Senior Lenders under the Financing Agreements; and

(d) liens or Encumbrances required by any Applicable Law.

*36.2.2.* Notwithstanding anything to the contrary contained in this Agreement, the MDO may mortgage the Movable Equipment to its lenders by way of security for any loan extended by them for acquisition of such Movable Equipment.

## 36.3. *Substitution Agreement*

36.3.1. Upon the occurrence of a MDO Default or a Financial Default (as defined in the Substitution Agreement), The Lenders' Representative, on behalf of Senior Lenders, may exercise the right to substitute the MDO pursuant to the agreement for substitution of the MDO (the "Substitution Agreement") to be entered into amongst the MDO, HCL and the Lenders' Representative, on behalf of Senior Lenders, substantially in the form set forth in Schedule – P.

*36.3.2.* Upon substitution of the MDO under and in accordance with the Substitution Agreement, the Nominated Company shall be deemed to be the MDO under this Agreement and shall enjoy all rights and be responsible for all obligations of the MDO under this Agreement as if it were the original MDO; provided that where the MDO is in breach of this Agreement on the date of such substitution, HCL shall by notice grant a Cure Period of 90 (ninety) days to the Nominated Company for curing such breach.

## 36.4. *Assignment by HCL*

Notwithstanding anything to the contrary contained in this Agreement, and in addition to the rights of substitution contained in Clause 3.2, HCL may, after giving 60 (sixty) days' notice to the MDO, assign and/ or transfer any of its rights and benefits and/or obligations under this Agreement to an assignee who is, in the reasonable opinion of HCL, capable of fulfilling all of HCL's then outstanding obligations under this Agreement and has the financial standing necessary for this purpose.

## 36.5. *Approvals for assignment*

Any assignment under this Article 36 shall be subject to the approvals and consents required therefor under Applicable Laws. Provided, however, that the grant of any consent or approval under Applicable Laws shall not oblige HCL to grant its approval to such assignment, save and except as provided herein.

# Article 37. *Liability and Indemnity*

## 37.1. *General indemnity*

37.1.1. The MDO will indemnify, defend, save and hold harmless HCL and its officers, servants, agents, Government Instrumentalities and HCL owned and/or controlled entities/enterprises, (the " **HCL Indemnified Persons**") against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach or default by the MDO of any of its obligations under this Agreement or any related agreement or on account of any defect or deficiency in the provision of services to HCL or from any negligence of the MDO under any contract or tort or on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen solely due to any negligent act or omission, or breach or default of this Agreement on the part of the HCL Indemnified Persons.

37.1.2. HCL will indemnify, defend, save and hold harmless the MDO against any and all suits, proceedings, actions, demands and claims from third parties for any direct loss, damage, cost and expense of whatever kind and nature arising out of (a) defect in title and/or the rights of the HCL in the land comprised in the Site, and/or (b) breach by the HCL of any of its obligations under this Agreement or any related agreement, which materially and adversely affect the performance by the MDO of its obligations under this Agreement, save and except that where any such claim, suit, proceeding, action, and/or demand has arisen due to a negligent act or omission, or breach of any of its obligations under any provision of this Agreement or any related agreement and/or breach of its statutory duty on the part of the MDO, its subsidiaries, affiliates, contractors, servants or agents, the same shall be the liability of the MDO.

## 37.2. *Indemnity by the MDO*

37.2.1. Without limiting the generality of Clause 38.1, the MDO shall fully indemnify, hold harmless and defend HCL and HCL Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

(a) failure of the MDO to comply with Applicable Laws and Applicable Permits;

(b) payment of Taxes required to be made by the MDO in respect of the income or other Taxes of the MDO's Contractors, suppliers and representatives;

(c) non-payment of amounts due as a result of materials or services furnished to the MDO or any of its Contractors which are payable by the MDO or any of its Contractors;

(d) Any act or omission which results in the breach of the Allotment Letter, Mining Plan, Environmental Clearance for Mine and Concentrator Plant, Consent to establish, Consent to operate and other statutory or regulatory norms/ documents.

37.2.2. Without limiting the generality of the provisions of this Article 37 the MDO shall fully indemnify, hold harmless and defend HCL Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which HCL Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other Intellectual Property, proprietary or confidentiality rights with respect to

any materials, information, design or process used by the MDO or by the MDO's Contractors in performing the MDO's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the MDO shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Mines, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the MDO shall promptly make every reasonable effort to secure for HCL a license, at no cost to HCL, authorizing continued use of the infringing work. If the MDO is unable to secure such license within a reasonable time, the MDO shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process or modify the same so that it becomes non-infringing.

## 37.3. *Notice and contest of claims*

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 37 (the "**Indemnified Party**") it shall notify the other Party (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

## 37.4. *Defense of claims*

37.4.1. The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing either in physical form or in electronic form (email) its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 37 the Indemnifying Party shall be entitled, at its option, to assume and control the defense of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defense. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.

37.4.2. If the Indemnifying Party has exercised its rights under Clause 37.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

37.4.3. If the Indemnifying Party exercises its rights under Clause 37.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in

such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

(a) the employment of counsel by such party has been authorized in writing by the Indemnifying Party;

(b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defense of such action;

(c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defense of such action and shall have been so notified by the Indemnified Party; or

(d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:

(i) that there may be specific defenses available to it which are different from or additional to those available to the Indemnifying Party; or

(ii) that such claim, action, suit or proceeding involves or could have a Material Adverse Effect upon it beyond the scope of this Agreement;

Provided that if sub-Clauses (b), (c) or (d) of this Clause 37.4 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defense of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

## 37.5. *No consequential claims*

Notwithstanding anything to the contrary contained in this Article 37 the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement. However, this clause shall not be applicable in respect of damages arising as a result of the provisions of Clause 39.4 (d).

## 37.6. *Survival on Termination*

The provisions of this Article 38 shall survive Termination.

# Article 38. *Rights to Work at the Site*

## 38.1. *Rights to Work at the Site*

For the purpose of this Agreement, the MDO shall have rights to the use of the Site in accordance with this Agreement, and to this end, it may regulate the entry and use of the Mines by third parties in accordance with and subject to the provisions of this Agreement.

## 38.2. *Access rights of HCL and others*

38.2.1. The MDO shall allow free access to the Site at all times for the authorized representatives of HCL and for the persons duly authorized by any Government Instrumentality to inspect the Mines and to investigate any matter within their authority, and upon reasonable notice, the MDO shall provide to such person's reasonable assistance necessary to carry out their respective duties and functions.

38.2.2. The MDO shall, for the purpose of operation and maintenance of any utility or road specified in Article 11 allow free access to the Site at all times for the authorized persons and vehicles of the controlling body of such utility or road.

## 38.3. *Property Taxes*

Applicable property Taxes on the Site shall be payable by HCL as owner of the Site; provided, however, that any such Taxes payable by the MDO under Applicable Laws for use of the Site shall not be reimbursed or payable by HCL.

## 38.4. *Restriction on sub-letting*

The MDO shall not lease, sub-license or sub-let the whole or any part of the Site, save and except as may be expressly set forth in this Agreement; provided that nothing contained herein shall be construed or interpreted as restricting the right of the MDO to appoint contractors with prior experience for the performance of its obligations hereunder including for operation and maintenance of all or any part of the Mines and plants. Also, sub-contracting of work by MDO shall not discharge the MDO from any of its obligations and liability under this agreement and MDO shall remain bound to perform all its scope of work, duties and obligations under this agreement.

# Article 39. *Dispute Resolution*

## 39.1. *Resolution Protocol*

Any dispute, difference or disagreement between the Parties hereto arising out of or in connection with this Agreement or the performance of any of the obligations of the Parties hereunder or referred to herein, including an issue or dispute as to breach or termination of this Agreement or as to any claim in tort, in equity or pursuant to any statute **("Dispute")** which cannot be resolved amicably by the Parties themselves within 14 (fourteen) calendar days of written notice by one Party to the other Party of the existence of such dispute, difference or disagreement, shall be resolved as follows:

(i) Such Dispute shall be referred first to the Contract Representative of both Parties who shall attempt to reach a consensus on the matter;

(ii) If the Contract Representatives fail to resolve the Dispute within 60 (sixty) calendar days of referral to them then the fact of such failure shall be recorded by the Contract Representatives with the date thereof and communicated to the Parties. In such event the Dispute shall be adjudicated by conciliation through Outside Expert Committee, failing which through Arbitration.

## 39.2. *Conciliation*

(i) Conciliation shall be resorted to prior to invoking Arbitration. The Arbitration Clause is to be invoked by the parties to the Contract only upon failure of conciliation.

(ii) Where the disputed amount is upto 2 Crores, Conciliation shall be held by appointment of Sole Conciliator which shall be mutually decided by both the parties. If the said Conciliator cannot be appointed by mutual agreement, the same shall be appointed by the Arbitral Institution designated by the Supreme Court or a High Court as per Section 11(4) of the Arbitration and Conciliation Act, 1996 as amended by the Amendment Act 2019 or as amended from time to time. The Fee payable to the Sole Conciliator shall be as per the IV$^{th}$ Scheduled as per the Arbitration and Conciliation Act 1996 as amended from time to time.

(iii) Where the disputed amount is between 2 Crores to 250 crores, the Conciliation shall be held through HCL's Scheme for Settlement of Contractual/Commercial Disputes through Mechanism of Outside Expert Committee (OEC).

(iv) The Venue of the Conciliation shall be the respective Plant/Unit to which the Contract pertains, and the language of the Conciliation shall be the English. For convenience, if hearing(s) in Conciliation is/are fixed in any other location, the same shall not be construed as change in the venue/seat and the same shall be strictly in accordance with the Arbitration clause hereinafter provided.

## 39.3. *Arbitration*

Refer to Schedule-R

## 39.4. *Liability of Government of India*

It is expressly understood and agreed between the MDO and HCL, that HCL is entering into this Agreement solely on its own behalf and not on behalf of any other person or entity. In particular, it is expressly understood and agreed that the Government of India is not a party to this Agreement and has no liabilities, obligations or rights hereunder. It is expressly understood and agreed that HCL is an independent legal entity with power and authority to enter into contracts solely on its own behalf under the applicable laws of India and general principles of contract law. The MDO expressly

agrees, acknowledges and understands that HCL is not an agent, representative or delegate of the Government of India. It is further understood and agreed that the Government of India is not and shall not be liable for any acts, omissions, commissions, breaches or other wrongs arising out of the contract. Accordingly, the MDO hereby, expressly waives, releases and foregoes any and all actions or claims, including cross claims, impleader claims or counter claims against the Government of India arising out of this contract and covenants not to sue the Government of India as to any manner, claim, cause of action or thing whatsoever arising of or under this agreement.

# Article 40. *Disclosure*

## 40.1. *Disclosure of Specified Documents*

The MDO shall make available for inspection by any person (designated by HCL to do so), copies of this Agreement, the Maintenance Manual, the Maintenance Programme, the Maintenance Requirements and the Safety Requirements (hereinafter collectively referred to as the "**Specified Documents**"), free of charge, during normal business hours on all working days at the MDO's registered office and the Mines and shall provide copies of the same to any person upon payment of copying charges on a 'no profit no loss' basis.

## 40.2. *Disclosure of Documents relating to safety*

The MDO shall make available for inspection by any person (designated by HCL to do so) copies of all Documents and data relating to safety of the Mines, free of charge, during normal business hours on all working days, at the MDO's registered office and the Mines. The MDO shall make copies of the same available to any person upon payment of copying charges on a 'no profit no loss' basis.

## 40.3. *Withholding disclosure of Protected Documents*

Notwithstanding the provisions of Clauses 40.1 and 40.2, but subject to Applicable Laws, HCL shall be entitled to direct the MDO, from time to time, to withhold the disclosure of Protected Documents (as defined herein below) to any person in pursuance of the aforesaid Clauses.

Explanation:

The expression "**Protected Documents**" shall mean such of the Specified Documents, or portions thereof, the disclosure of which HCL is entitled to withhold under the provisions of the Right to Information Act, 2005.

## Article 41. *Not Applicable*

# Article 42. *Miscellaneous*

## 42.1. *Governing law and jurisdiction*

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts at Kolkata, West Bengal shall have exclusive jurisdiction over all matters arising out of or relating to this Agreement.

## 42.2. *Waiver of immunity*

Each Party unconditionally and irrevocably:

42.2.1. agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;

42.2.2. agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Party with respect to its assets;

42.2.3. waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and

42.2.4. consents generally, in respect of the enforcement of any judgment or award against it in any such proceedings and to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgment that may be made or given in connection therewith).

## 42.3. *Depreciation*

For the purposes of depreciation under Applicable Laws, the property representing the capital investment made by the MDO in the Project Assets shall be deemed to be acquired and owned by the MDO. For the avoidance of doubt, HCL shall not in any manner be liable in respect of any claims for depreciation to be made by the MDO under Applicable Laws.

## 42.4. *Delayed Payment*

42.4.1. The MDO hereto agree that payments due from MDO to HCL (wherever applicable) under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 60 (sixty) days of receiving a demand along with the necessary particulars. Unless otherwise specified in this Agreement, in the event of delay beyond such period, the MDO shall pay interest for the period of delay calculated at the Bank Rate and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

42.4.2. Unless otherwise specified, any interest payable under this Agreement shall accrue on daily outstanding basis and shall be compounded on the basis of quarterly rests.

## 42.5. *Waiver*

42.5.1. Waiver, including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:

(a) shall not operate or be construed as a waiver of any other or subsequent default hereof, or of other provisions of, or obligations, under this Agreement;

(b) shall not be effective unless it is in writing either in physical form or in electronic form (email) and executed by a duly authorized representative of the Party; and

(c) shall not affect the validity or enforceability of this Agreement in any manner.

42.5.2. Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

## 42.6. *Liability for review of Documents and Drawings*

42.6.1. Except to the extent expressly provided in this Agreement:

(a) no review, comment or approval by HCL of any Project Agreement, Document or Drawing submitted by the MDO nor any observation or inspection of the construction, operation or maintenance of the Mines nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the MDO from its obligations, duties and liabilities under this Agreement, Applicable Laws and Applicable Permits; and

(b) HCL shall not be liable to the MDO by reason of any review, comment, approval, observation or inspection referred to in sub-Clause (a) above.

## 42.7. *Exclusion of implied warranties etc.*

This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties or any representation by either Party not contained in a binding legal agreement executed by both Parties.

## 42.8. *Survival*

42.8.1. Termination shall:

(a) not relieve the MDO or HCL, as the case may be, of any obligations hereunder which expressly or by implication survive Termination hereof; and

(b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

All obligations surviving Termination shall only survive for a period of 3 (three) years following the date of such Termination.

## 42.9. *Entire Agreement*

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing either in physical form or on electronic form (email) by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written form either in physical form or electronic form(email) or oral understandings, offers or other communications of

every kind pertaining to this Agreement, save and except any obligations of the Parties arising out of the Bid Documents, shall stand superseded.

## 42.10. *Severability*

If for any reason whatever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure set forth under this Agreement or otherwise.

## 42.11. *No partnership*

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, or to impose any partnership obligation or liability upon either Party, and neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

## 42.12. *Third parties*

This Agreement is intended solely for the benefit of the Parties, and their respective successors and permitted assigns, and nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, any person not a Party to this Agreement except such successor of the MDO under the Substitution Agreement pursuant to Clause 36.3.

## 42.13. *Successors and assigns*

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

## 42.14. *Notices*

42.14.1. Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing either in physical form or in electronic form (email) and shall:

(a) in the case of the MDO, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for the attention of the person set out below or to such other person as the MDO may from time to time designate by notice to HCL; provided that notices or other communications to be given to an address outside the city specified in sub-clause (b) below may, if they are subsequently confirmed by sending a copy thereof by registered post with acknowledgement due, or by courier, be sent by facsimile or e-mail to the number as the MDO may from time to time designate by notice to HCL:

Attention:
Designation:
Address:
Fax No:
Email:

***[NOTE: Details to be filled in]***

(b) in the case of HCL, be given by facsimile or e-mail and by letter delivered by hand at the address given and marked to the attention of the person set out below with a copy delivered to Contract Representative of HCL or such other person as HCL may from time to time designate by notice to the MDO; provided that if the MDO does not have an office in the same city as HCL, it may send such notice by facsimile or e-mail and by registered post with acknowledgement due, or by courier:

Attention:

Designation:

Address:

Fax No:

Email:

***[NOTE: Details to be filled in]***

and

(c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date of delivery; provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working day following the date of its delivery.

## 42.15. *Language*

All notices required to be given by one Party to the other Party and all other communications, Documentation and proceedings which are in any way relevant to this Agreement shall be in writing either in physical form or in electronic form (email) in English language.

## 42.16. *Counterparts*

This Agreement may be executed in three counterparts, each of which, when executed and delivered, shall constitute an original of this Agreement. The MDO shall within 15 days of signing of MSA, submit 15 hard copies of the entire agreement to HCL along with 1 signed scanned copy in Digital form (DVD/ CD/ Flash Drive).

## 42.17. *Clause(s) violating/contradicting the conditions of 'Terms of Allocation'*

In case, any clause of the Agreement is violating or contradicting the conditions mentioned in Allotment letter, Approved Mining Plan, Environmental Clearance of Rakha & Chapri Copper and Concentrator Plant(s), Consent to Operate and Consent to Establish, that particular clause shall be null and void, and hence not to be operated.

## 42.18. *Applicable Laws:*

(a) The MDO shall be governed by the Indian laws being in force from time to time.
(b) The MDO shall be governed by and shall require sub-contractors to be governed by any applicable National, Municipal, Local or other law and any requirement or regulations of any Indian Governmental Authority or Agency in connection with the performance of the work.
(c) The MDO would also be required to observe any condition or regulation imposed by the DGMS.

(d) The MDO shall observe all the safety rules and regulations as required under the statutory Acts of the Government of India including specially Mine Safety Regulations of India. The MDO is expected to observe stipulations contained in all such laws applicable in India in connection with the performance of the contract and diligently observe and comply with all such laws.

(e) HCL shall have the right to object to an unsafe practice followed by the MDO and direct that the work be carried out in a safe manner.

**IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN.**

SIGNED, SEALED AND DELIVERED

For and on behalf of

HCL by:

same in token thereof:

(Signature) (Name)

(Designation)

(Address) (Fax No.) (e-mail address)

The MDO (Signature) (Name)

(Designation)

(Address) (Fax No.) (e-mail address)

The Selected Bidder (Signature) (Name)

(Designation)

(Address) (Fax No.) (e-mail address)

**In the presence of:**

1. Signature

(Name)

(Designation)

(Address) (Fax No.) (e-mail address)

2. Signature

(Name)

(Designation)

(Address) (Fax No.) (e-mail address)

Pursuant to the resolution passed by the Board of Directors of the MDO **at its meeting held on the _____ day of _____20XX _____,** the Authorized Representative who has countersigned the Bid Document.

# *SCHEDULES:-*

# *SCHEDULE – A*

***(See Clause 10.1)***

## Site of the Project

1. **The Site**

(a) The Site of the Project shall include: (a) the land, buildings, roads, Stockyard(s), power distribution sub-stations, workshops and any other associated structures as described; (b) the land, buildings and bunkers/ silos as described in this Schedule A; and (c) the land, buildings, electrical lines and electrical plants as described in this Schedule A.

(b) Any additional land required for waste dumps, tailing ponds, ancillary buildings, extension/ addition of Mines or for construction of works specified in Change of Scope Order shall be acquired in accordance with the provisions of this Agreement. Upon acquisition, such land shall form part of the Site and vest in HCL.

(c) existing utilization of concentrator plant of HCL at Mosabani for treatment of ore to the level of maximum 3 Lakh tonne per annum for a maximum period of 4 (four) years (1460 days), if required by the MDO

2. **Site of the Mines**

*[Description of Site of Mine is to be provided by MDO before Appointed date]*

**Note:** The Site may be divided into blocks and demarcated as such in pursuance of the provisions of Clause 10.1 and in accordance to the Mining Plan.

3. **Delivery Point(s)** shall be the designated points identified by HCL like stockyard and concentrator plant.

# *SCHEDULE – B*

***(See Sub-Clause (a) of Clause Article 2)***

## Development of the Mines

1. **Mines**

(a) Development of the Mines shall include construction of the shafts, decline, mine development, underground definition drilling, Stockyard(s), power distribution sub-stations, workshops, road works and any other associated structures and installation of equipment, as described in this Schedule-B and in Schedule-C.

(b) Mines shall be developed by the MDO in conformity with the Mining Plan and the Specifications and Standards set forth.

2. **Removal of Waste**

(a) Development of the Mines shall include Hoisting of waste and dumping as per Approved mining plan.

(b) Removal of waste shall be undertaken by the MDO in conformity with the Mining Plan.

## Description of Mines

1. **Capacity of the Mines**

The Mine shall have a capacity to excavate and deliver Copper Ore equivalent to the Contracted Capacity.

2. **Project Facilities**

The Project Facilities shall be constructed in conformity with Annex-I of Schedule-C.

3. **Specifications and Standards**

The development of Mines and installation of Equipment shall be in conformity with the Specifications and Standards specified below.

4. **Description of the Mines**

The Mines shall be developed as briefly described below:

(a) **Mines**

(i) Type: Underground

(ii) Number of Levels to be mined: As per Approved Mining Plan and Production & Development Schedule

(iii) Targeted mine capacity in MT per annum: 3 MTPA

(iv) Geo-mining characteristics: (Basis copy of Geological Report provided at the time of bidding to the Bidders)

(v) Mine parameters: (Basis copy of Geological Report provided at the time of bidding to the Bidders)

(b) **Crushing arrangement** :( to be in line with the desired Copper Ore size to be delivered at Delivery Point(s)), if required

(i) Capacity of the Stockyard:

(ii) Receiving arrangement for run-off mine Copper Ore:

(iii) Crushing arrangement:

(iv) Storage arrangement:

(v) Conveying system:

(vi) Loading arrangement:

5. **Electricity Distribution Sub-station/ Distribution System**

To be in line with the Site requirements

6. **Installation of Equipment**

To be in line with the Site requirements.

7. **Pumping and Drainage**

To be in line with the Site requirements.

# *SCHEDULE – C*

***(See Clause Article 2)***

## Project facilities

The MDO shall construct the Project Facilities in accordance with the provisions of this Agreement and in accordance with the acts, rules, policies as applicable.

**1. Project Facilities for Mines**

The MDO shall construct the Project Facilities described below to form part of the Mines. The Project Facilities shall include inter Alia:

(a) Mine entries like adit, shafts, decline etc. and mine development;

(b) Stockyards(s);

(c) Laboratory and testing facilities;

(d) Workshops;

(e) Fire hydrant system;

(f) Firefighting arrangement in Mine, Stockyard and Concentrator Plant (s)

(g) Weighbridge at the Stockyard (s) and near Delivery Point(s);

(h) Roads;

(i) Security equipment including closed-circuit television (CCTV);

(j) RFID system for tracking of truck movement;

(k) Concentrator Plant (s)

(l) Development and Implementation of MIS;

(m) Pit Top Office;

(n) Canteen;

(o) Dispensary and first AID Station;

(p) Vocational Training Center with provisions of Gas testing chamber and simulator training;

(q) Rest Room(s)/ Rest shelter/ washroom;

(r) Job & service related to drawing Surface water Line from River to Mines & Plant for operation

(s) Drinking water arrangement.

(t) ETP & STP with a planning of zero discharge

(u) Rescue Room with apparatus

(v) Roof top rainwater harvesting system in all civil buildings as per applicable law.

(w) Production & Planning department with Geomodeling- Mine Planning Software.

(x) Survey Room

## *2.* Description of Project Facilities

The Project Facilities are briefly described below:

(a) **Stockyard(s)**

The MDO shall construct and operate a Stockyard (s) for storage of Copper Ore and Copper Concentrate in accordance with the provisions of Article 21 of this Agreement.

(b) **Laboratory and testing facilities**

The MDO shall procure and ensure provision of a laboratory with the requisite instruments and calibration facilities to check all tools, instruments, jigs and fixtures and for testing of copper ore/ copper concentrate

(c) **Workshops**

The MDO shall construct the workshops with the requisite equipment, tools and other facilities to cater to the needs of daily maintenance, scheduled maintenance, lubrication, routine inspection, minor/medium repair and replacement of parts/sub-assemblies of Equipment.

(d) **Fire hydrant system**

A fire hydrant system shall be installed in conformity with Applicable Laws, Applicable Permits and Standard Industry Practice and shall include adequate water storage, pumping capacity and distribution network. Smoke detectors, fire alarms and water sprinklers shall also be provided in critical areas of the Mines.

(e) **Weighbridge at the Stockyard(s)**

The MDO shall commission, operate and maintain weighbridge for weighment of truck/vehicle loaded with ROM Copper Ore excavated from mine and copper concentrate generated from copper concentrator plant. Suitable weighing instrumentation shall be installed at the Stockyard(s). The weighbridge shall be calibrated in accordance with the Specifications and Standards. The sampling of weighbridge shall be on the name of Hindustan Copper Limited.

(f) **Roads**

The MDO shall construct and maintain haul roads and approach roads required for excavation and transportation of tailings, copper ore, and copper concentrate equivalent to the Contracted Capacity. (other than state highways). The road shall be constructed as per the standards of the state highways laid down by the IRC and the specification for road works as per MoRTH (5th edition), Govt. of India. The construction of allied cross drainage works of the road such as minor bridges, culverts, retaining walls, toe walls, toe drains etc. is also in the scope of the work of the MDO and all these shall have to be constructed as per the relevant IRC specifications.

The concrete mix should be prepared in batching and mixing plant or in transit mixer.

Paving of the bituminous /concrete mix for road construction should be carried out by the sensor paver followed by the rolling with vibratory, tandem rollers.

(g) **Security equipment including Closed-circuit television (CCTV)**

All entry and exit points, Stockyard(s), buildings, structures and passages used for transporting waste or ROM copper ore and concentrate within the Mines and Plants shall be equipped with a CCTV system capable of retaining recorded footage for a period of one month. The MDO shall install and operate such other equipment as may be required in accordance with Applicable

Laws, Applicable Permits and Standard Industry Practice for assurance of the security of personnel and copper at the Mines and Plants.

(h) **RFID system for tracking of truck movement**

The MDO shall adopt and implement suitable RFID system for tracking of truck movement.

(i) **Concentrator Plant**

The MDO shall set up, design and operate a two product (MIO and MIC) having state of art technology with full wash configuration such that the MIC meets the desired quality requirement as stated in clause 20.5. The maximum feed size to Concentrator Plant(s) will be 200 mm. Full wash configuration means:

- The feed quality for processing the MIO – 0.7% to 1% copper ore
- processing of MIO (150 mm) using heavy media separation technique like froth floatation, etc.
- Tail loss should not be more than 0.060% of copper.
- MDO during the supply of Ore at Mosabani plant should take care that copper ore are not get oxidized, in case of Oxidized Ore found then Copper content considered for payment will be = (Total Copper - Oxidized Copper)

Concentrator should have adequate arrangement for dewatering of various products. It should necessarily include and should consist of filter press. The maximum feed size to Concentrator Plant(s) will be 150 mm. The recovery shall be in the range of 94% to 95% in the concentrator plant(s).

(j) **Development of MIS**

The MDO shall develop & implement a MIS system for collecting, storing and reporting mine production and related information with all viewing rights being provided to HCL.

(k) **Pit Top Office**

The MDO shall construct and maintain a pit top office for administrative work, meetings and management.

(l) **Canteen**

The MDO shall construct and maintain a canteen where food and drinks will be served to the employees.

(m) **Dispensary**

The MDO shall construct and maintain a dispensary where primary treatment and first aid can be provided to any injured or sick person.

(n) **Vocational Training Center**

The MDO shall construct and maintain a vocational training center as per the Mines Vocational Training Rules, 1966.

(o) **Rest Room**

The MDO shall provide and maintain a rest room for the employees.

# *SCHEDULE – D*

***(See Clause Article 2)***

## SPECIFICATIONS AND STANDARDS

**1) Development of Mines**

The MDO shall comply with the Specifications and Standards set forth in Annex-I of this Schedule-D for development of the Mines.

**2) Equipment**

The MDO shall comply with the Specifications and Standards set forth in Annex-II of this Schedule-D for installation of Equipment.

**3) Mining Plan**

The MDO shall comply with the Mining Plan set forth in Annex-III, as may be modified from time to time in conformity with Applicable Laws.

**4) Mine Closure Plan**

e) The MDO shall prepare the Mine Closure Plan and submit the same to the competent authority for approval.

f) The Mine Closure Plan is to be prepared in line with the Mineral Concession Rules, 2016 and Mineral Conservation and Development Rules, 2017 and their amendments.

g) The MDO shall comply with the provisions of the prepared and approved Mine Closure Plan

h) Beyond the term of the agreement MDO shall be provided additional 12 months' time to carry out all related activities pertaining to mine closure as per Mine Closure Plan.

**5) Explosive Magazine**

The MDO shall comply with all specifications and standards for taking approval for construction of explosive magazine duly approved from Chief inspector of Explosives and obtain a magazine license on behalf of HCL accordingly. Statutory formality like RE form will be the responsibility of HCL on request of MDO. All other activities, expenditure will be borne by the MDO during entire contractual period.

## Annex I

### Specifications and Standards for Development of the Mines

Subject to the provisions of Paragraph 1 of this Schedule D, the development of Mines shall conform to the provisions of the Mining Plan which shall be deemed to be the Specifications and Standards. An authenticated copy of the same has been provided to the MDO as part of the bidding documents.

## Annex II

### Specifications and Standards for Equipment

Subject to the provisions of Paragraph 2 of Schedule D, the installation of Equipment at the Mines shall conform to the provisions of the Mining Plan which shall be deemed to be the Specifications and Standards. An authenticated copy of the same has been provided to the MDO as part of the bidding documents. MDO may deploy appropriate capacity of Equipment during the mine development period till Designed Annual Capacity is attained.

## Annex III

### Mining Plan

The mandatory provisions of the Mining Plan for procuring compliance with Applicable Laws are as per the copy of Mining Plan provided at the time of bidding to the Bidders.

# *SCHEDULE – E*

***(See Clause 4.1)***

## APPLICABLE PERMITS

**PART I**

**Applicable Permits prior to Appointed Date**

The MDO shall obtain, as required under Applicable Laws, Applicable Permits as mentioned in Clause 4.1 on or before the Appointed Date, save and except to the extent of a waiver granted by HCL in accordance with Clause 4.1 of the Agreement.

**PART II**

**Applicable Permits during Contract Period**

The MDO shall obtain, as required under Applicable Laws, the Applicable Permits prior to commencement of the relevant activity including but not limited to Clearance of the Pollution Control Board of the State Government for installation of diesel generator sets; and permission of the state government for cutting of trees.

| Sl No | Clearance/Approval | Present Status | Further Action Required |
|---|---|---|---|
| 1 | Land acquisition for Mine and Concentrator Plant | 90.30 acres of land acquired through JIADA for planned Concentrator Plant with a rated capacity of 1.5 MTPA. | MDO shall be responsible for installation of a matching capacity beneficiation plant. The land details available with HCL is provided in the paid document. If additional land will be required in this regard MDO shall procure the same as per the clauses of the tender document. |
| 2 | Forest Clearance - For Rakha Mines and Area proposed for new matching capacity Concentrator Plant. | Rakha Lease has been accorded Stage-II Forest Clearance for diversion of 184.80 Ha of Forest land by the MoEF&CC (Forest Conservation Division) vide letter noF. No. 8-65/1993-FC dated 15th September 2016, subsequently State Govt. has release forest land for commencement of mining operation.<br><br>Total Forest Land within ML area:283.732 Ha out of which FC had been already acquired over an area of 184.80 (including 36.90Ha forest land | As per MoEF&CC notification for existing mining leases having forest land in part or in full where approval under section 2 (ii) of the FC Act for a part of the forest land has only been obtained, the Central Government accorded General Approval on 1st April 2015 under section 2(iii) of the FC Act for the remaining area of the forest land falling within such mining leases subject to the realization of NPV for execution of Mining Lease<br>NPV for remaining forest area of 98.932 ha deposited and its FC |

| Sl No | Clearance/Approval | Present Status | Further Action Required |
|---|---|---|---|
| | | for surface right)<br>Forest Clearance under Sec 2 of FC Act 1980 for remaining 98.932 ha within Lease area of 785.091 ha is under process. | under Sect 2 of FC Act 1980 is under process. |
| 3 | Environment Clearance for Rakha Mines and new matching capacity concentrator Plant. | Rakha Mining Lease:<br>The Rakha mining lease has been accorded Environmental Clearance for production of 3.00 MTPA copper ore by the MoEF&CC vide letter no. J-11015/269/2011-IA II (M) dated 01.08.2014.<br>Concentrator Plant 1.5MTPA:<br>Consultant Appointed on 16.11.2020 –MECON.<br>FORM-1 & ToR application uploaded on Parivesh Portal. To SEIAA as per MOEFCC directives<br>Proposal No. SIA/JH/IND/82232/2022<br>EDS raised by SEIAA on dated 13.09.2022 | - Under process |
| 4 | R&R | Not required for Mines & 1.5 MTPA Concentrator Plant. | |
| 5 | Mining Plan approved by IBM | Last Mining Plan of Rakha lease for a period of 01.04.2020 to 28.08.2021 over an area of 785.091 Ha. has been approved by IBM vide letter no. RAN/ESB/Cu/MP-39/2019-20 dated 25.11.2020.<br>Modified Mining Plan for the period 29.08.2021-2022 to 2025-2026 submitted on dtd:18.08.2021. Site inspection carried out by IBM on dtd: | Presently, fresh Mining Plan proposal is under process at HCL & will be resubmitted after the grant of lease extension. |

| Sl No | Clearance/Approval | Present Status | Further Action Required |
|---|---|---|---|
| | | 10.09.202. Scrutiny comments received. As per the scrutiny comments mining plan will not processed in the absence of lease extension letter | |
| 6 | Mining Lease Deed | Date of grant: 29.8.1971<br>Date of expiry: 28.08.2021<br>Application for extension of the tenure of the lease for a further period of 20 years has already been submitted by HCL to Govt. of Jharkhand on 30.04.2020. Govt. of Jharkhand on 31.05.2023 intimated that the aforesaid extension application is in under process/consideration. | Extension order from Govt. of Jharkhand is to be obtained. |
| 7 | Government land transfer/lease | - | - |
| 8 | Mine Closure Plan | Mining plan along with PMCP to be submitted<br>after obtaining extension of Mining Lease order | Presently, fresh Mining Plan proposal is under process at HCL & will be resubmitted after the grant of lease extension. |
| 9 | Ground water Clearance | For mine dewatering of 330 Cum/d valid up to 29.01.2023 | Application for renewal submitted on 21.11.2022.<br>In process at CGWA, New Delhi |
| 10 | No Objection Certificate (CTE/CTO) | CTE was valid upto 22.04.2015. | CTE & CTO to be obtained from SPCB, Jharkhand after Mining Lease Extension. |

# *SCHEDULE – F1*

(To be executed on the Non-Judicial Stamp Paper of minimum amount of INR 300/- with an affixed revenue stamp of INR 1/-)

***(See Clause 9.1)***

**PERFORMANCE BANK GUARANTEE**

**(*To be executed on Non-Judicial Stamp Paper of appropriate value*)**

..... (***Name of the Bank***)

Address .....

Guarantee No. .....

A/c Messrs ..... (***Name of MDO***)

Date of Expiry .....

Limit to liability (**INR *& amount***) .....

Contract No. .....

For ..... (***Name of Project***)

**Subject: Performance Bank Guarantee**

Date ..... 20..

**To**

Hindustan Copper Ltd,

……..

……

Dear Sir,

Ref: Contract Agreement (hereinafter called the "Contract") Reference No. ..... Dated ..... between you and M/s…….. (***Name of the MDO***) (hereinafter called the "MDO") for the ……..(name of Project)…….

In consideration of HCL, having its office at _____, (hereinafter referred to as "HCL", which expression shall, unless it be repugnant to the subject or context thereof, include its, successors and assigns) having awarded the Letter of Award No. _____ dated _____to …… (hereinafter referred to as the "**Selected Bidder**" which expression shall, unless it

be repugnant to the subject or context thereof include its successors and assigns), for the work as defined in the noticing inviting tender no./request for proposal (RFP) No…… dated …… issued and other related documents including without limitation the Mining Service Agreement entered/to be entered into by the MDO with HCL (hereinafter collectively referred to as "Bidding Documents"), we _____(indicate the name of the bank) having our office at _____(herein after referred to as the "Bank") at the request of the MDO do hereby in terms of [] of the Mining Service Agreement and other applicable provisions of the Mining Service Agreement and the Tender Documents, irrevocably, unconditionally and without reservation, guarantee the due and faithful fulfilment and compliance of the terms and conditions of the Mining Service Agreement (including the Tender Documents) by the said MDO and undertake to pay HCL an amount not exceeding INR [•] (INR [•]Only) against any loss or damage caused to or suffered or would be caused or suffered by HCL by reasons of any breach by the said MDO of any of the terms or conditions contained in the said Mining Service Agreement/Tender Documents.

We _____ (indicate the name of the bank) do hereby undertake to pay the amounts due and payable under this guarantee within 48 (forty eight) hours of demand without any demur and without assigning any reason or reference to the MDO or any other person and irrespective of whether the claim of HCL is disputed by the MDO or not, merely on demand from HCL stating that the amount claimed is due by way of loss or damage caused to or would be caused to or suffered by HCL by reasons of breach by the said MDO of any of the terms or conditions contained in the Mining Service Agreement/Tender Documents. Any such demand made on the Bank shall be conclusive as regards the amount due and payable by the Bank under this guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding INR. [•] (INR [•] Only).

HCL shall be the sole judge to decide as to whether the MDO is in default of due and faithful fulfilment and performance of its obligations contained in the Tender Documents and the decision of HCL that the MDO is in default as aforesaid shall be final and binding on us, notwithstanding any differences between HCL and the MDO or any dispute pending before any Court, Tribunal, Arbitrator or any other authority.

We undertake to pay HCL any amount so demanded immediately/forthwith notwithstanding any dispute or disputes raised by the MDO in any suit or proceeding pending before any court or tribunal relating thereto, our liability under this present being absolute and unequivocal. The payment so made by us under this guarantee shall be a valid discharge of our liability for payment there under and the Bidder shall have no claim against us for making such payment.

The Guarantee is absolute, unconditional and irrevocable, irrespective of the value, genuineness, validity, regularity or enforceability of the Mining Service Agreement/Tender Documents and shall not be affected by any change in the constitution, insolvency or winding up of HCL, the MDO or the Bank or any absorption, merger or amalgamation of HCL, the MDO or the Bank with any other person or any change in the ownership of HCL/the MDO or any purported assignment by HCL/the MDO/the Bank.

In order to give full effect to this guarantee, HCL shall be entitled to treat the Bank as the principal debtor. HCL shall have the fullest liberty without affecting in any way the liability of the Bank under this guarantee from time to time to vary any of the terms and conditions contained in the Mining Service Agreement/Tender Documents or the period for fulfilment and compliance with all or any of the terms and conditions contained in the Mining Service Agreement by the MDO or to postpone for any time and from time to time any of the powers exercisable by it against the MDO and either to enforce or forbear from enforcing any of the terms and conditions contained in the Mining Service Agreement or

the securities available to HCL, and the Bank shall not be released from its liability under these presents by any exercise by HCL of the liberty with reference to the matters aforesaid or by reason of time being given to the MDO or any other forbearance, act or omission on the part of HCL or any indulgence by HCL to the MDO or by any change in the constitution of HCL or its absorption, merger or amalgamation with any other person or by release or variation of any guarantee or security or by any failure by HCL to pay or perform any of their obligations, or any waiver of any of such obligations or any other matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of releasing the Bank from its such liability.

Any notice by way of request, demand or otherwise hereunder shall be sufficiently given or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein.

All payments under this guarantee shall be paid free and clear of and without any deduction on account of any present, future taxes, levies, imposts, duties, charges, commissions, deductions or withholdings of any nature whatsoever.

The courts in [•] shall have exclusive jurisdiction to decide any dispute arising under this guarantee. Any notice by way of request, demand or otherwise hereunder shall be sufficiently given or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein.

We undertake to make the payment on receipt of your notice of claim on us addressed to [name of Bank along with branch address] and delivered at our above branch who shall be deemed to have been duly authorised to receive the said notice of claim.

It shall not be necessary for HCL to proceed against the MDO before proceeding against the Bank and the Guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which HCL may have obtained from the said Bidder or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealised.

We undertake to renew this guarantee promptly and before the expiry of the term of the guarantee on the same terms and conditions as contained herein.

The Bank declares that it has power to issue this guarantee and discharge the obligations contemplated herein, the undersigned is duly authorised and has full power to execute this guarantee for and on behalf of the Bank.

We _____ (indicate the name of the bank) lastly undertake not to revoke this guarantee during its currency except with the prior consent of the HCL in writing.

This Bank Guarantee is payable at par in [•].

Notwithstanding anything contained herein,

1. Our liability under this Bank guarantee shall not exceed INR [•] (INR [•] Only).
2. This Performance Bank Guarantee shall be valid for a period of _[•] years_____.
3. We shall be liable to pay any amount under this Bank guarantee or part thereof only if we receive (if you serve upon us) a written claim or demand under this guarantee on or before ___ at _____.

Signatures

Authorized Signatories of Bank

Witnesses:-

1) Signed

2) for Bank

Note:

1. While issuing the Bank Guarantee, the issuing Bank must furnish following details:

Name & Address of the Bank \:
Contact Person:
Telephone No.:
Fax No.:
E-mail address:

The MDO while getting the Bank Guarantee issued by the Banker must take care of the above details.

NOTES:

I. The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.

II. The address, telephone number and other details of the head office of the Bank as well as of issuing branch should be mentioned on the covering letter of issuing Branch.

III. This bank guarantee shall be submitted for an amount as per Article 9, within 30 days of signing of MSA.

# *SCHEDULE – F2*

(To be executed on the Non-Judicial Stamp Paper of minimum amount of INR 300/- with an affixed revenue stamp of INR 1/-)

***(See Clause 9.4)***

## CORPORATE PERFORMANCE GUARANTEE

..... (***Name of the Bank***)

Address .....

Guarantee No. .....

A/c Messrs ..... (***Name of the Supporting Partner***)

Date of Expiry .....

Limit to liability (**INR *& amount***) .....

Contract No. .....

For ..... (***Name of Project***)

**Subject: Corporate Performance Bank Guarantee**

Date ..... 20..

**To**

Hindustan Copper Ltd,

……..

……

**WHEREAS:**

(a) [●] (the "**Supporting Partner**") having its office at _____ and [●] (the **"MDO"**) having its principal offices at ***** have entered into an Joint Operating Agreement dated _____ (the "**JoA**") and subsequently, Hindustan Copper Limited (**"HCL"**) has entered into this Ming Services Agreement **(**the **"Agreement"**) with MDO and Successful Bidder (Name of Successful Bidder) <*strikeout whichever is not applicable*> whereby HCL has agreed to the Supporting Partner providing technical/ financial <*strikeout whichever is not applicable*> support to the <**Name of the MDO**> for undertaking the development of Rakha and Chapri Copper mine in East Singhbhum, Jharkhand, and for mining of Copper (ROM) and Delivery of MIO / MIC, and tailings thereof, subject to and in accordance with the provisions of the Agreement.

(b) The Agreement requires the Supporting Partner to furnish a performance bank guarantee to HCL of a sum of [Rs. * * * * * cr. (Rupees * * * * * Crore)] (the "**Guarantee Amount**") as security for

due and faithful performance of the <**MDO's**> obligations, under and in accordance with the Agreement, within 30 days of issuance of the LOA, which shall remain valid for 90 (ninety) days after the achievement of Rated Capacity of Mine as certified by HCL (the "**Guarantee Period**").

Now therefore the Bank hereby unconditionally and irrevocably guarantees and affirms as follows:

1. We ..... (***Name of the Bank***) do hereby expressly irrevocably and unreservedly undertake to unconditionally pay to you merely on your written demand, without referring it to the SUPPORTING PARTNER/ MDO and without protest and demur an amount not exceeding Rs..... (***amount***). Any such demand made on us shall be conclusive as regards the amount due and payable by us under this guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding Rs.....

2. This Guarantee shall be operable / encashable at ……. (Name of Bank), …….. (Branch), (***Location***).

3. Notwithstanding anything to the contrary, we agree that your decision as to whether the SUPPORTING PARTNER/ MDO has committed a breach of any terms and conditions of the contract shall be final and binding on us and we shall not be entitled to ask you to establish your claim or claims under this Guarantee but shall pay the same forthwith without any objection or excuse.
4. We undertake to pay to you any money so demanded notwithstanding any dispute or disputes raised by the SUPPORTING PARTNER/ MDO in any suit or proceeding pending before any court or Tribunal or arbitration relating thereto, our liability under these presents being absolute and unequivocal.
   The payment so made by us under this Guarantee shall be a valid discharge of our liability for payment there under.
5. This guarantee shall come into force from the date of issue of this guarantee and shall remain irrevocably valid and in force initially up to_____ and the same shall be extended further till the expiry of the Contract Period.
6. This guarantee shall not in any way be affected by you taking any securities from the SUPPORTING PARTNER / MDO or by the winding up, dissolution, insolvency as the case may be of the SUPPORTING PARTNER/ MDO. We shall not be entitled to proceed against the assets of the SUPPORTING PARTNER/ MDO at your site.
7. In order to give full effect to the Guarantee herein contained, you shall be entitled to act as if we were your principal debtors in respect of all your claims against the SUPPORTING PARTNER / MDO, hereby guaranteed by us as aforesaid and we hereby expressly waive all our surety ship and other rights, if any, which are in any way inconsistent with the above or any other provisions of this Guarantee.
8. The Bank undertakes to renew this Bank Guarantee from time to time and in case Bank fails to extend the validity of the Bank Guarantee prior to its expiry, the same shall be deemed to be invoked by HCL.
9. This guarantee is in addition to any other guarantee or guarantees given to you by us.
10. This guarantee shall not be discharged by any change in the constitution of the SUPPORTING PARTNER/ MDO or us, nor shall it be affected by any change in your constitution or by any amalgamation or absorption thereof or therewith but will ensure for and be available to and effaceable by the absorbing or amalgamated company or concern.
11. Notwithstanding anything contained herein before our liability under this guarantee is restricted up to a sum Rs..... (***amount***) and shall expire on ..... unless a claim or demand is made on us in writing within one year of the expiry date all your rights shall be forfeited, and we shall stand relieved and discharged from our liabilities hereunder.

12. In order to give full effect of the Guarantee herein contained, you shall be entitled to act as if we were your principal debtors in respect of all your claims against the SUPPORTING PARTNER/ MDO, hereby guaranteed by us as aforesaid and we hereby expressly waive all our surety ship and other rights, if any, which are in any way inconsistent with the above or any other provisions of this Guarantee.
13. This Guarantee and the powers and provisions herein contained are in addition to and not by way of limitation of or substitution for any other guarantee or guarantees heretofore given to you by us (whether jointly with other or along) and now existing un-cancelled and that this Guarantee is not intended to and shall not revoke or limit such guarantee or guarantees.
14. This Guarantee shall not be discharged by any change in the constitution of the SUPPORTING PARTNER/ MDO or us, nor shall it be affected by any change in your constitution or by any amalgamation or absorption thereof or therewith but will ensure for and be available to and effaceable by the absorbing or amalgamated company or concern.

We, the said Bank confirm that the Signatory(ies) of this Guarantee is/are authorized to issue this Guarantee on behalf of the Bank and the Bank undertakes the full responsibility to this effect.

Your faithfully
For .....
(***Name of the Bank***)
Dated ..... day of ..... 20..

Note:

1. While issuing the Bank Guarantee, the issuing Bank must furnish following details:

Name & Address of the Bank:
Contact Person:
Telephone No.:
Fax No.:
E-mail address:

The SUPPORTING PARTNER/ MDO while getting the Bank Guarantee issued by the Banker must take care of the above details.

NOTES:

I. The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.

II. The address, telephone number and other details of the head office of the Bank as well as of issuing branch should be mentioned on the covering letter of issuing Branch.

# *SCHEDULE – G*

## PROJECT COMPLETION SCHEDULE

### Project Completion Schedule [to be provided by MDO]

**1. Project Completion Schedule**

During Development & Construction Period, the MDO shall comply with the requirements set forth in this Schedule-G for each of the Project Milestones and the Scheduled Completion Date (the "**Project Completion Schedule**"). Within 30 (thirty) days of the date of each Project Milestone, the MDO shall notify the Mine Owner of such compliance along with necessary particulars thereof.

The Project Completion Schedule shall be in line with the Mining Plan, Environmental Clearance for Mine and Concentrator Plant(s), Consent to Establish, Consent to operate and other applicable statutory documents. The Project Completion Schedule is as under:

*[ To be provided by MDO before signing of MSA and within timeframe mentioned in Conditions Precedent]*

***A. For Development and re-opening of Rakha Chapri Mines***

| | **Project Milestones** | **Scheduled Completion Date** |
|---|---|---|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

***B. For Construction and Installation of New Concentrator Plant***

| | **Milestones** | **Scheduled Completion Date** |
|---|---|---|
| | | |
| | | |
| | | |
| | | |
| | | |

1. Development and re-opening of Rakha & Chapri mines
2. Commencement and completion programme for Concentrator plant and tailing dam.
3. Schedule of completion of the infrastructure facilities mentioned in the Article 2 of MSA.
4. Schedule for supply, installation and commissioning of surface and underground machineries/equipment's, electrical supply & distribution system etc.

**Note:** The project shall be completed within 1460 days from the commencement date. The schedule shall consider all the important dates such as commencement date, partial completion date, partial operation date, schedule completion date and schedule operation date.

## 2. Extension of period

Upon extension of any or all of the aforesaid Project Milestones or the Scheduled Completion Date, as the case may be, under and in accordance with the provisions of this Agreement, the Project Completion Schedule shall be deemed to have been amended accordingly.

# *SCHEDULE – H*

## DRAWINGS

**(*Refer Clause 12.4*)**

**Drawings**

In compliance with the obligations set forth in Clause 12.4 of the Agreement, the MDO shall furnish to HCL, free of cost, all Drawings listed in Annex-I of this Schedule-H.

**Additional drawings**

If HCL determines that for discharging HCL's duties and functions under this Agreement, HCL requires any drawings other than those listed in Annex-I, HCL may by notice require the MDO to prepare and furnish such drawings forthwith. Upon receiving a requisition to this effect, the MDO shall promptly prepare and furnish such drawings to HCL, as if such drawings formed part of Annex-I of this Schedule-H.

## Annex-I

### List of Drawings

(a) Location plan of the Mines

(b) Surface plan, Scale; 1:2000

(c) Geological Plan (SCALE-1:4000)

(d) (Geological cross-section)

(e) (LV section showing distribution of each ore lode; Lode Plan, scale- 1:1000)

(f) Digitalized Surface plan

(g) Mine Closure Plan

(h) Leasehold plan with DGPS coordinate

(i) Yearly Stage plan at the intervals of mining operations

(j) Final stage (tailing and waste) dump plan

(k) Mine cross sections at representative alignments throughout the Mines

(l) Key plan and flow diagram of Stockyard.

(m) Plan showing incoming power supply arrangement and for power distribution

(n) General layout of workshop, site offices, buildings

(o) Explosive Magazine (Location Plan, Layout Plan, Specification Plan)

(p) Detail SLD of power substation, distribution network as per CEAR & DGMS guidelines, Drawings showing the cable network, earth pits, overhead and other electrical installations.

(q) Process flow diagram of Concentrator Plant(s).

(r) Monthly Development and Production Plan & Cut Plan of each stopes.

(s) Assay plan/Lode Plan of each level, each stopes.

(t) Ventilation Plan

(u) Manpower Distribution plan

(v) Underground Plan (Scale- 1:1000), Longitudinal vertical section, Transverse section

(w) Water Danger Plan (Scale-1:1000)

(x) Reserve/Resource Plan (level Wise, Stopes Wise)

(y) Emergency Plan, rescue tracing plan.

# *SCHEDULE – I*

***(See Clause 14.1)***

## TESTS

**1. Schedule for Tests**

(a) The MDO shall, no later than 30 (thirty) days prior to the likely completion of the Construction Works and installation of Equipment at the Mines and Plants, notify HCL of its intent to subject the Mines and Plants to Tests, and no later than 10 (ten) days prior to the actual date of Tests, furnish to HCL particulars of all works and Equipment forming part of the Mines and Plants.

(b) The MDO shall notify HCL of its readiness to subject the Mines and Plants to Tests at any time after 10 (ten) days from the date of such notice, and upon receipt thereof, HCL shall, in consultation with the MDO, determine the date and time for each Test and notify the same to HCL who may designate its representative to witness the Tests. HCL shall thereupon conduct the Tests itself or cause any of the Tests to be conducted in accordance with Article 14 and this Schedule-I.

**2. Tests**

In pursuance of the provisions of Clause 14.1 of this Agreement, HCL shall require the MDO to carry out, or cause to be carried out, or HCL may appoint an independent agency for conducting Tests on the Mines and Plants as specified in Paragraph 3 and 4 given below of this Schedule-I.

**3. Mines Tests for equipment**

HCL shall conduct or cause to be conducted Tests, in accordance with Standard Industry Practice, for determining the compliance of Equipment with the Specification and Standards and Safety Requirements.

**4. Common Tests**

(a) Visual and physical Test

HCL shall conduct a visual and physical check of the Mines and Plants to determine that all works and equipment forming part thereof conform to the provisions of this Agreement.

(b) Safety review

Safety audit of the Mines and Plants shall have been undertaken by the safety officer as set forth in Schedule-L, and on the basis of such audit, HCL shall determine conformity of the Mines with the provisions of this Agreement.

(c) Environmental audit

HCL shall carry out a check to determine conformity of the Mines and Plants with the environmental requirements set forth in Applicable Laws and Applicable Permits.

**5. Agency for conducting Tests**

All Tests set forth in this Schedule-I shall be conducted by HCL, or such other agency or person as may be specified by HCL.

**6. Tests for Safety Certification**

Tests for determining the conformity of the Mines and Plants with the Safety Requirements shall be conducted in accordance with Standard Industry Practice and in conformity with Applicable Laws.

**7. Completion Certificate**

Upon successful completion of the Tests, report shall be submitted by MDO to HCL.

**8. Cost of Tests**

(a) The costs of conducting Tests shall be borne by the MDO.

(b) In the event any Test is required to be repeated by HCL for reasons not attributable to the MDO, the cost of such Test shall be borne by HCL.

**9. Tests during construction**

Without prejudice to the provisions of this Schedule-I, tests during construction shall be conducted in accordance with the provisions of Clause 13.3.

**10.** Latest DSR shall be followed for estimation and analysis of cost for civil works, if any required.

# *SCHEDULE – J*

***(See Clause 14.3)***

## COMPLETION CERTIFICATE

(a) I/We, _____ (Name of representative), acting on the behalf of M/s Hindustan Copper Limited, under and in accordance with the agreement dated [●] (the "**Agreement**"), for development of the Mines with a Peak rated capacity of 3 MT and concentrator plant of 3.5 MTPA, through [Name of the MDO](“**MDO**”), hereby certify that the Tests specified in Article 14 and Schedule-I of the Agreement have been successfully undertaken to determine compliance of the Mines/ phase …….. of the Mines with the provisions of the Agreement.

(b) It is certified that the Mines/ phase of the Mines has a capacity of 3 MT.

(c) It is also certified that, in terms of the aforesaid Agreement, all works forming part of the Mines/ phase of the Mines have been completed and Completion has been achieved.

SIGNED, SEALED AND DELIVERED

For and on behalf of M/s Hindustan Copper Limited

By:

(Signature)
(Name)
(Designation)
(Address)

# *SCHEDULE – K*

***(See Clause 16.1)***

## MAINTENANCE REQUIREMENTS

1. **Maintenance Requirements**

   (a) The MDO shall, at all times, operate and maintain the Mines and Equipment in accordance with the provisions of the Agreement, Applicable Laws and Applicable Permits. In particular, the MDO shall, at all times during the Operation Period, conform to the maintenance requirements set forth in this Schedule-K (the "Maintenance Requirements").

   (b) The MDO shall repair or rectify any defect or deficiency set forth in Paragraph 2 of this Schedule-K and any failure in this behalf shall constitute a breach of the Agreement. Upon occurrence of any breach hereunder, HCL shall be entitled to recover Damages as set forth in Clause 16.8 of the Agreement, without prejudice to the rights of HCL under the Agreement, including Termination thereof.

2. **Repair/rectification of defects and deficiencies**

   The obligations of the MDO in respect of Maintenance Requirements shall include repair and rectification of the defects and deficiencies, arising out of any breakdown in Equipment and machinery, or, intimated in writing either in physical form or on electronic form (email) during inspection, by

   (a) the Manager;
   (b) any representative of HCL; or
   (c) any other inspecting official belonging to any statutory or regulatory body,

   in accordance with Standard Industry Practice.

3. **Rectification**

   No equipment or installation shall run or operate unless the defects and deficiencies specified in Paragraph 2 of this Schedule-K are rectified and such rectification is certified by HCL.

4. **Emergency repairs/restoration**

   Notwithstanding anything to the contrary contained in this Schedule-K, if any defect, deficiency or deterioration in the Mines and Equipment poses a hazard to safety or risk of damage to property, the MDO shall promptly take all reasonable measures for eliminating or minimizing such danger.

5. **Periodic inspection by the MDO**

   The MDO shall, through its engineer, undertake a periodic visual inspection of the Mines and Equipment in accordance with the Maintenance Manual and maintain a record thereof in a register to be kept in such form and manner as HCL may specify. Such record shall be kept in safe custody of the MDO and shall be open to inspection by HCL at any time during office hours.

6. **Divestment Requirements**

   All defects and deficiencies specified in this Schedule-K shall be repaired and rectified by the MDO so that the Mines and Equipment conforms to the Maintenance Requirements on the Transfer Date.

7. **Display of Maintenance Manual, Standard Operating Practices (SOP) and Standard Maintenance Practices (SMP)**

   The MDO shall display a copy of the Maintenance Manual, specified in Clause 16.3, and updated list of defects and deficiencies to be rectified, as specified in Paragraph 2 of Schedule- K, at the workshop and

other buildings/ structures in the Mines as per Applicable Laws. The MDO shall follow and display SOP and SMP at appropriate places in the project premises.

## *SCHEDULE – L*

***(See Clause 17.1)***

### SAFETY REQUIREMENTS

| | | |
|---|---|---|
| | | |
| | | |

**ENCLOSURE – A**

**PERMIT TO WORK ON EQUIPMENT**

I, _____, do hereby authorize Shri _____ and his workers of M/s _____ to work on (name & location of equipment/machine) from _____ AM/PM on _____ (date) to_ AM/PM on (date) .

I have taken all necessary precautions for the shutdown.

Signature Signature of Engineer_____ (Contractor/his representative)

Name _____

Designation_____

Date _____

Contact/ Mobile No. _____

Copy to:

| | |
|---|---|
| | Contractor |
| | Engineer |
| | Office copy – for record. |

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**ENCLOSURE - B**

**SAFETY INDUCTION FORM**

Name of Mine/Unit

Safety Induction to the Contractor for starting a job

| | | |
|---|---|---|
| | Name, address & Contact No. of the Contractor | |
| | Contract/Award Letter/Work Order No. | |
| | Name of Department awarding Contract | |
| | a) Probable date of starting job<br>b) Duration | |
| | Place & Nature of work | |
| | Name & Designation of supervisors | |
| | Departmental (1) (2)<br>Contractual (1) (2) | |
| | Necessary safety precautions explained | |
| | Safety appliances advised for usage to the Workers | |
| | | Officers |

I have gone through the Safety Rules Book for Contractors and received a copy of the same. I shall follow all safety precautions/instructions given to me and shall be responsible for safety of my staff/employees/workmen.

Signature of the Contractor

Certified that requisite Safety Appliances are available with workers and Contractor is permitted to start the work.

Signature of Engineer

Certified that the requisite Safety Appliances are being used and safety precautions/measures are being adopted.

Safety Officer of Employer

Copy to:

1. Safety Department
2. Operation/Works Department
3. Contractor with one spare copy.

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**ENCLOSURE – C**

Name of the Mine/ Unit

**WORK CLEARANCE FORM FOR CONTRACTORS**

1. Name of Contractor's firm with address & Contact No.:
2. Engaged by which Department:
3. Name of the Representative/Supervisor of the Contractor supervising the job
4. Precise nature of work to be carried out/ work order reference
5. Precise location of work:
6. Proposed date & time of commencement of work:
7. Expected number of days required for the work:
8. Whether Contractor's workers are to be engaged in G/A/B/C shifts and No. of people engaged:

A. I accept responsibility for ensuring that all men under my control shall observe the statutory safety requirements and follow the safety instructions of the mine.

Signed

Date Contractor

B. Certified that the Contractor has been engaged by us for the work described above.

[Certificate to be given by the Engineer]

Signed

Date Contractor

C. You are authorized to carry out the work described below:

[Certificate to be given by the Deptt/Section where work is to be carried out]

Signed

Date Contractor

**NOTE:** The form shall be filled-in in TRIPLICATE by the Contractor for the record of (i) Safety Officer (ii) Deptt/ Section granting clearance (iii) Contractor

These certificates are not a substitute for the Electrical Permits and do not give permission to use masked lights or work in gas hazardous areas or enter closed vessels or for explosives, which shall be taken separately wherever required.

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# *SCHEDULE – M*

***(See Clause 21.2.1)***

MDO and HCL are obliged to follow the procedure for sampling and testing as mentioned in this Schedule. At least one random sample of ore/ concentrate shall be sampled and tested in each shift as per the requirements listed below to determine the conformity thereof with the Specifications and Standards. The frequency of sampling and testing can be increased and decreased as per the discretion of HCL.

<To include IS standards for sampling and analysis>

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# *SCHEDULE – N*

***(See Clause 29.2)***

## PANEL OF CHARTERED ACCOUNTANTS

**1. Panel of Chartered Accountants**

Pursuant to the provisions of Clause 29.2 of the Agreement, HCL and the MDO shall prepare a mutually agreed panel of 5 (five) reputable firms of chartered accountants having their registered offices in India (the "**Panel of Chartered Accountants**"). The criteria for preparing such Panel of Chartered Accountants and the procedure to be adopted in this behalf shall be as set forth in this Schedule-N.

**2. Invitation for empanelment**

HCL shall invite offers from all reputed firms of chartered accountants who fulfill the following eligibility criteria, namely:

(a) the firm should have conducted statutory audit of the annual accounts of at least one hundred companies registered under the Companies Act, 2013, including any re-enactment or amendment thereof, of which at least ten should have been public sector undertakings;

(b) the firm should have at least 5 (five) practicing chartered accountants on its rolls, each with a minimum experience of 10 (ten) years in the profession;

(c) the firm or any of its partners should not have been disqualified or blacklisted by the Comptroller and Auditor General of India or HCL; and

(d) the firm should have an office in the State or in an adjacent State with at least 2 (two) practicing chartered accountants on its rolls in such State;

Interested firms meeting the eligibility criteria shall be required to submit a statement of their capability including the bio-data of all the practicing chartered accountants on its rolls. In particular, each firm shall be required to furnish year-wise information relating to the names of all the companies with an annual turnover exceeding Rs. 25,00,00,000/- (Rupees Twenty Five Crore only) whose annual accounts were audited by such firm in any of the preceding 5 (five) Accounting Years.

**3. Evaluation and selection**

(a) The information furnished by each firm shall be scrutinized and evaluated by HCL and 1 (one) point shall be awarded for each annual audit of the companies specified in Paragraph 2 above. For the avoidance of doubt and by way of illustration, a firm which has conducted audit of the annual accounts of any such company for five years shall be awarded five points.

(b) HCL shall prepare a list of all the eligible firms along with the points scored by each such firm and 5 (five) firms scoring the highest points shall be identified and included in the draft Panel of Chartered Accountants.

**4. Consultation with the MDO**

HCL shall convey the aforesaid panel of firms to the MDO for scrutiny and comments, if any. The MDO shall be entitled to scrutinize the relevant records of HCL to ascertain whether the selection of firms has been undertaken in accordance with the prescribed procedure and it shall send its comments, if any, to HCL within 15 (fifteen) days of receiving the aforesaid panel.

**5. Mutually agreed panel**

(a) HCL shall, after considering all relevant factors including the comments, if any, of the MDO, finalize and constitute a panel of 5 (five) firms which shall be deemed to be the mutually agreed Panel of Chartered Accountants.

(b) After completion of every five years from the date of preparing the mutually agreed Panel of Chartered Accountants, or such earlier period as may be agreed between HCL and the MDO, a new panel shall be prepared in accordance with the provisions of this Schedule-N.

# *SCHEDULE – O*

***(See Clause 34.4)***

## VESTING CERTIFICATE

[**] and having its offices at ***/] ("**HCL**") refers to the agreement dated [●] (the "**Agreement**") entered into between HCL and (the "**MDO**") for the procurement of Copper Ore which, *inter alia*, includes development of the "**Mines**".

HCL hereby acknowledges compliance and fulfillment by the MDO of the Divestment Requirements set forth in Clause 34.5 of the Agreement. Pursuant to the same, all the MDO's rights, title and interest in the Mine stands disinvested and be vested upon HCL free and clear of all encumbrances. HCL from the date of issue of this certificate shall be deemed to have acquired all rights, title and interest of the MDO in the Mines.

Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the MDO to rectify and remedy any defect or deficiency in any of the Divestment Requirements and for relieving the MDO in any manner of the same.

Signed on _____day of _____,20__ at _____

| **AGREED, ACCEPTED AND SIGNED** | **SIGNED, SEALED AND DELIVERED** |
|---|---|
| For and on behalf of MDO by:<br>(Signature)<br>(Name)<br>(Designation)<br>(Address) | For and on behalf of HCL by:<br>(Signature)<br>(Name)<br>(Designation)<br>(Address) |

In the presence of:

(Signature)

(Name)

(Designation)

# *SCHEDULE – P*

***(See Clause 36.3)***

## SUBSTITUTION AGREEMENT

THIS SUBSTITUTION AGREEMENT is entered at _____into on this day of 20.... (hereinafter referred to as the "Agreement")

AMONGST

1. [** **] and having its offices at [* ***] (hereinafter referred to as the "**HCL**" which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns);

2. [****] Limited, a company incorporated under the provisions of the Companies Act, 2013 or any statutory re-enactment thereof and having its registered office at [****] (hereinafter referred to as the "**MDO**", which expression shall unless repugnant to the context or meaning thereof, include its successors and permitted assigns); and

3. [Insert name of Lenders' Representative] and having its registered office at [* ***], acting for and on behalf of the Senior Lenders as their duly authorized agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the "**Lenders' Representative**", which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns).

**WHEREAS:**

(a) HCL has entered into an agreement dated [****] with the MDO (the "**MSA**") for the procurement of MIO and MIC which, *inter alia,* include development of the Rakha and Chapri Copper mines in East Singbhum district of Jharkhand (the "**Mines**"), and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.

(b) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.

(c) Senior Lenders have requested HCL to enter into this Agreement for securing their interests through assignment, transfer and substitution of the MSA to a Nominated Company in accordance with the provisions of this Agreement and the MSA.

(d) In order to enable implementation of the Project including its financing, construction, operation and maintenance, HCL has agreed and undertaken to transfer and assign the MSA to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the MSA.

**NOW, THEREFORE,** in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

## 1. DEFINITIONS AND INTERPRETATION

### 1.1. Definitions

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

"**Financial Default**" shall mean occurrence of a material breach of the terms and conditions of the Financing Agreements or a continuous default in Debt Service by the MDO for a minimum period of 3 (three) months;

"**Nominated Company**" shall mean a company incorporated under the provisions of the Companies Act, 2013, including any re-enactment or amendment thereof, selected by the Lenders' Representative, on behalf of Senior Lenders, and proposed to HCL for assignment/ transfer of the MSA as provided in this Agreement;

"**Notice of Financial Default**" shall have the meaning ascribed thereto in Clause 34.1.1.(k) of Substitution Agreement; and

"**Parties**" shall mean the parties to this Agreement collectively and "**Party**" shall mean any of the Parties to this Agreement individually.

### 1.2. Interpretation

1.2.1. References to Lenders' Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders' Representative, acting for and on behalf of Senior Lenders.

1.2.2. References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.

1.2.3. The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the MSA shall, unless repugnant to the context or meaning thereof, have the meaning ascribed to them in the MSA.

1.2.4. The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the MSA shall apply, *mutatis mutandis*, to this Agreement.

## 2. ASSIGNMENT

The MDO hereby agrees to assign the rights, title and interest in the MSA to, and in favor of, the Lenders' Representative pursuant to and in accordance with the provisions of this Agreement and the MSA by way of security in respect of financing by the Senior Lenders under the Financing Agreements.

## SUBSTITUTION OF THE MDO

### 2.1. Rights of substitution

2.1.1. Pursuant to the rights, title and interest assigned under Clause above., the Lenders' Representative shall be entitled to substitute the MDO by a Nominated Company under and in accordance with the provisions of this Agreement and the MSA.

2.1.2. HCL hereby agrees to substitute the MDO by endorsement on the MSA in favor of the Nominated Company selected by the Lenders' Representative in accordance with this Agreement. For the avoidance of doubt, the Senior Lenders or the Lenders' Representative shall not be entitled to operate and maintain the Mines as MDO either individually or collectively.

### 2.2. Substitution upon occurrence of Financial Default

2.2.1. Upon occurrence of a Financial Default, the Lenders' Representative may issue a notice to the MDO (the "**Notice of Financial Default**") along with particulars thereof

and send a copy to HCL for its information and record. A Notice of Financial Default under this Clause 3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the MDO for the purposes of this Agreement.

2.2.2. Upon issue of a Notice of Financial Default hereunder, the Lenders' Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing Agreements, substitute the MDO by a Nominated Company in accordance with the provisions of this Agreement.

2.2.3. At any time after the Lenders' Representative has issued a Notice of Financial Default, it may by notice require HCL to suspend all the rights of the MDO and undertake the operation and maintenance of the Mines in accordance with the provisions of Article 32 of the MSA, and upon receipt of such notice, HCL shall undertake Suspension under and in accordance with the provisions of the MSA. The aforesaid Suspension shall be revoked upon substitution of the MDO by a Nominated Company, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such Suspension, HCL may terminate the MSA forthwith by issuing a Termination Letter in accordance with the provisions of the MSA; provided that upon written request from the Lenders' Representative and the MDO, HCL may extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days.

**2.3. Substitution upon occurrence of MDO Default**

2.3.1. Upon occurrence of a MDO Default, HCL shall by a Termination Notice inform the Lenders' Representative of its intention to issue a Termination Letter and grant 15 (fifteen) days' time to the Lenders' Representative to make a representation, stating the intention to substitute the MDO by a Nominated Company.

2.3.2. In the event that the Lenders' Representative makes a representation to HCL within the period of 15 (fifteen) days specified in Clause 3.3.1, above, stating that it intends to substitute the MDO by a Nominated Company, the Lenders' Representative shall be entitled to undertake and complete the substitution of the MDO by a Nominated Company in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) days from the date of such representation, and HCL shall either withhold Termination or undertake Suspension for the aforesaid period of 180 (one hundred and eighty) days; provided that upon written request from the Lenders' Representative and the MDO, HCL shall extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days; provided further that the Lenders' Representative may at any time withdraw its representation hereunder and upon such withdrawal, HCL may terminate the MSA forthwith by issuing a Termination Letter in accordance with the provisions of the MSA.

**2.4. Procedure for substitution**

2.4.1. HCL and the MDO hereby agree that on or after the date of Notice of Financial Default or the date of representation to HCL under Clause 3.3.2, as the case may be, the Lenders' Representative may, without prejudice to any other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations, with the consent of HCL, or public auction or tenders for the transfer of the MSA to the Nominated Company upon such Nominated Company's assumption of the liabilities

and obligations of the MDO towards HCL under the MSA and towards the Senior Lenders under the Financing Agreements.

2.4.2. To be eligible for substitution in place of the MDO, the Nominated Company shall be required to fulfill the eligibility criteria that were laid down by HCL for short-listing the bidders for award of the Contract.

Provided that the Lenders' Representative may represent to HCL that all or any of such criteria may be waived in the interest of the Project, and if HCL determines that such waiver shall not have any Material Adverse Effect on the Project, it may waive all or any of such eligibility criteria.

2.4.3. Upon selection of a Nominated Company, the Lenders' Representative shall, request HCL to:

(a) accede to transfer to the Nominated Company the right to construct, operate and maintain the Mines in accordance with the provisions of the MSA;

(b) endorse and transfer the MSA to the Nominated Company, on the same terms and conditions, for the residual Contract Period; and

(c) enter into a substitution agreement with the Lenders' Representative and the Nominated Company on the same terms as are contained in this Agreement.

2.4.4. If HCL has any objection to the transfer of MSA in favor of the Nominated Company in accordance with this Agreement, it shall within 30 (thirty) days from the date of proposal made by the Lenders' Representative, give a reasoned order after hearing the Lenders' Representative. HCL shall thereupon transfer and endorse the MSA within 30 (thirty) days of its acceptance of the Nominated Company; provided that in the event of such objection by HCL, the Lenders' Representative shall propose another Nominated Company whereupon the procedure set forth in this Clause 2.4 shall be followed for substitution of such Nominated Company in place of the MDO.

2.4.5. The transfer of MSA hereunder to a Nominated Company may, notwithstanding anything to the contrary in this Agreement and the MSA, be undertaken by transfer of no less than 75% (seventy five per cent) of the equity of the MDO to the Nominated Company, and upon such transfer hereunder, the MDO shall be deemed to be the Nominated Company under and in accordance with the provisions of this Agreement and the MSA. However, the procedure as stated herein above relating to selection of Nominated Company and substitution shall apply.

### 2.5. Selection to be binding

The decision of the Lenders' Representative and HCL in selection of the Nominated Company shall be final and binding on the MDO. The MDO irrevocably agrees and waives any right to challenge the actions of the Lenders' Representative or the Senior Lenders or HCL taken pursuant to this Agreement including the transfer/ assignment of the MSA in favor of the Nominated Company. The MDO agrees and confirms that it shall not have any right to seek revaluation of assets of the Project or its shares. It is hereby acknowledged by the Parties that the rights of the Lenders' Representative are irrevocable and shall not be contested in any proceedings before any court or authority and the MDO shall have no right or remedy to prevent, obstruct or restrain HCL or the Lenders' Representative from effecting or causing the transfer by substitution and endorsement of the MSA as requested by the Lenders' Representative.

## 3. PROJECT AGREEMENTS

The MDO shall ensure and procure that each Project Agreement contains provisions that entitle the Nominated Company to step into such Project Agreement, in its discretion, in place and substitution of the MDO in the event of such Nominated Company's assumption of the liabilities and obligations of the MDO under the MSA.

## 4. TERMINATION OF MSA

### 4.1. Termination upon occurrence of Financial Default

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing either in physical form or in electronic form (email) require HCL to terminate the MSA forthwith, and upon receipt of such notice, HCL shall undertake Termination under and in accordance with the provisions of Article 33 of the MSA.

### 4.2. Termination when no Nominated Company is selected

In the event that no Nominated Company acceptable to HCL is selected and recommended by the Lenders' Representative within the period of 180 (one hundred and eighty) days or any extension thereof as set forth in Clause 3.3.2, HCL may terminate the MSA forthwith in accordance with the provisions thereof.

## 5. DURATION OF THE AGREEMENT

### 5.1. Duration of the Agreement

This Agreement shall come into force from the date hereof and shall expire at the earliest to occur of the following events:

(a) termination of this Agreement; or

(b) no sum remains to be advanced, or is outstanding to the Senior Lenders, under the Financing Agreements.

## 6. INDEMNITY

### 6.1. General indemnity

6.1.1. The MDO will indemnify, defend and hold HCL and the Lenders' Representative harmless against any and all proceedings, actions and third-party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the MDO of any of its obligations under this Agreement or on account of failure of the MDO to comply with Applicable Laws and Applicable Permits.

6.1.2. The Lenders' Representative will indemnify, defend and hold the MDO harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Lenders' Representative to fulfill its obligations under this Agreement, materially and adversely affecting the performance of the MDO’s obligations under the MSA, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Lenders' Representative, its officers, servants and agents.

### 6.2. Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 7.1 above or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other Party responsible

for indemnifying such claim hereunder (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

## 7. DISPUTE RESOLUTION

7.1. Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to arbitration to a panel of arbitrators comprising of one nominee of each of HCL, the MDO and the Lenders' Representative. Such arbitration shall be held in accordance with the provisions of the Arbitration and Conciliation Act, 1996.

7.2. The panel of arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be Kolkata, West Bengal and the language of arbitration shall be English. Subject to arbitration, courts at Kolkata, West Bengal shall have exclusive jurisdiction.

## 8. MISCELLANEOUS PROVISIONS

### 8.1. Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and, subject to the provisions of Clause 8 above, the courts at Kolkata, West Bengal shall have jurisdiction over all matters arising out of or relating to this Agreement.

### 8.2. Waiver of sovereign immunity

HCL unconditionally and irrevocably:

(a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purposes;
(b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of HCL with respect to its assets;
(c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
(d) consents generally in respect of the enforcement of any judgment or award against it in any such proceedings and to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgment that may be made or given in connection therewith).

### 8.3. Priority of agreements

In the event of any conflict between the MSA and this Agreement, the provisions contained in the MSA shall prevail over this Agreement.

8.4. **Alteration of terms**

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if it is in writing either in physical form or in electronic form (email) and signed by the duly authorized representatives of the Parties.

8.5. **Waiver**

8.5.1. Waiver by any Party of a default by another Party in the observance and performance of any provision of, or obligations, under this Agreement:

(a) shall not operate or be construed as a waiver of any other or subsequent default hereof, or of, other provisions of, or obligations under this Agreement;

(b) shall not be effective unless, it is in writing either in physical form or in electronic form (email) and executed by a duly authorized representative of the Party; and

(c) shall not affect the validity or enforceability of this Agreement in any manner.

8.5.2. Neither the failure by a Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

8.6. **No third-party beneficiaries**

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

8.7. **Survival**

8.7.1 Termination of this Agreement:

(a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and

(b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

8.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

8.8. **Severability**

If for any reason whatsoever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provision shall not be subject to dispute resolution under Clause 8 of this Agreement or otherwise.

8.9. **Successors and assigns**

This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

8.10. **Notices**

All notices or other communications to be given or made under this Agreement shall be in writing either in physical form or electronic form (email) and if required, also in writing and shall either be delivered personally or sent by courier or registered post. The address for service to each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be sent. Such change shall be effective when all the Parties have notice of it.

8.11. **Language**

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

8.12. **Authorized representatives**

Each of the Parties shall by notice in writing either in physical form or in electronic form (email) designate their respective authorized representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorized representative by similar notice.

8.13. **Original Document**

This Agreement may be executed in three counterparts, each of which when executed and delivered shall constitute an original of this Agreement.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

| | |
|---|---|
| SIGNED, SEALED AND DELIEVERED by the Authorized Representative of the MDO pursuant to the resolution passed by the Board of Directors of the MDO at its meeting held on the ____day of 20..... .<br><br>Signature<br><br>Name<br><br>Designation<br><br>Address | SIGNED, SEALED AND DELIVERED For and on behalf of HCL by: _____, Contract Representative of HCL.<br><br>Signature<br><br>Name<br><br>Designation<br><br>Address<br><br>Fax No. |

.

| | |
|---|---|
| Fax No.<br>Email Address | Email Address |
| | |

SIGNED, SEALED AND DELIVERED

For and on behalf of

SENIOR LENDERS by the Lenders' Representative:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(e-mail address)

In the presence of:

1. 2.

# *SCHEDULE – Q*

**Refer Clause 20.1.2**

**(Annual Work Plan)**

MDO shall submit an Annual Work Plan to HCL within 2 months of signing of Agreement applicable for the running Accounting Year. Thereafter, Annual Work Plan shall be submitted by MDO at the beginning of each Accounting Year till the end of Contract Period with the following details:

1. Construction work proposed to be done in the Accounting Year with details of such work (location, layout, design, drawing etc.)

2. Development work proposed to be done during the financial year including Land acquisition activities, R&R activities.

3. Statutory approvals, permissions and clearances expected to be taken throughout the year

4. Mining plan and layout as on the date of submission of work plan and expected mining plan and layout at the end of financial year

5. Summary of mine reclamation activities and mine closure activities done by MDO

6. Details of training imparted by MDO to its employee and workers at Mine.

7. Other activities which MDO considers to be important for smooth operations at Rakha & Chapri Copper Mines.

8. Annual contracted quantity, Level wise monthly scheduled quantity and ore grade, sequence of mining, coordinates of the area to be mined during the following Financial Year and the shape of the mine at the beginning and end of the Financial Year in relation to which the annual work plan is prepared.

# *SCHEDULE – R*

**Refer Article 30 and 39**

**Force Majeure and Arbitration standard legal clause**

Hindustan Copper Limited ANNEXURE-1

## Arbitration and Conciliation (Amendment) Act 2015

The Arbitration and Conciliation (Amendment) Amendment Act came into force with effect from 23 October 2015 and introduced several significant changes to the Arbitration & Conciliation Act 1996. The object of these changes is to expedite the arbitration process and minimize court intervention in arbitration.

**The 2015 Amendment Act: Highlights**

- **Non-signatories to an arbitration agreement can be parties in an arbitration proceeding**- An Amendment to Section 8 allows even non-signatories to an arbitration agreement to be joined as parties in a domestic arbitration. The amendment effectively negates the decision of the Supreme Court in Sukanya Holdings v Jayesh H Panda 2003 (5) SCC 531, where it had ruled that joinder of non-signatories to an arbitration agreement was not permissible.
- **Applicability of the Act on International Commercial Arbitration**- Amendment to Section 2 (2) extends the applicability of Sections 9, 27 and (37) (1) (a) & (3) contained in Part 1 of the Act to international commercial arbitrations. Section 9 deals with interim relief granted by the courts and Section 27 deals with court assistance to a tribunal for taking evidence. The Amendment Act by clarifying what provisions in Part 1 of the A&C Act, apply to international commercial arbitrations, in effect makes it clear that other provisions of Part 1 of the Act are not applicable to international commercial arbitration, thereby codifying the Supreme Court decision in Balco v Kaiser Aluminium (2012) 9 SCC 552.
- **Time period fixed both for the arbitration and for judicial decisions in arbitration**-The Amendment Act includes Section 29A which sets a 12 month time period for completion of the arbitration proceedings failing which parties can agree to a 6 month extension. Should the arbitration not conclude within 12 months or 18 months accordingly, the arbitration proceedings stand terminated unless the Court extends the period for "sufficient cause" upon the filing of an application by one of the parties. When the Court grants such an extension it has the powers to substitute arbitrators and to order a fee cut of up to 5 per cent of the total fees for each month's

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delay. Further, should the arbitrators complete the arbitration within 6 months, the arbitral tribunal would be entitled to additional fees subject to agreement between the parties.

The Amendment Act requires the appointment of an arbitrator by the courts to be completed expeditiously, preferably within a period of sixty (60) days. Section 34 of the A&C Act has been further amended to ensure that a challenge to the award is disposed of by the courts within a period of one (1) year.

- **Restriction of pre-arbitration review by courts-** Judicial intervention has also been reduced by restricting the scope of pre-arbitration review by courts to a "prima facie" review of the existence of an arbitration agreement. The scope of the Courts power under Section 11 has been restricted to examining the validity of the arbitration clause alone and no further. Further amendment to Section 8 requires that the judicial authority compulsorily refer parties to arbitration irrespective of any decision by the Supreme Court or any other court, if the judicial authority finds that a valid arbitration clause exists.
- **Scope of challenge of an arbitral award narrowed** - The Amendment Act in Section 34 has narrowed down the scope of challenge to an arbitral award. To ensure court restraint in setting aside domestic awards, the Amendment Act restricts the meaning of public policy under Act. The scope of public policy is to be limited to instances where:

  1. Making of an award was induced by fraud or corruption or;
  2. Where an award is in conflict with the fundamental policy of Indian Law or;
  3. An award is in conflict with the most basic notions of morality or justice.

  The amendment will neutralize judgments such as ONGC v Saw Pipes (2003) 5 SCC 705 and DDA v R.S. Sharma (2008) 3 SCC 80, which had expanded the scope of Indian public policy under the Act. Similar amendments have also been introduced in Section 48 and 57 making the test of public policy a uniform one for domestic and international awards.

- **Challenging the arbitral award will not tantamount to its automatic suspension-** Merely on being challenged in the Court of law, there will not be an

Page 2 of 4

automatic suspension of the arbitral award till such time as the review is complete. In National Aluminium Co. Ltd v Pressteel & Fabrications, (2004) 1 SCC 540 the Supreme Court had ruled that pending a Section 34 challenge, there is an automatic stay on the operation of an arbitration award. The Amendment Act amends Section 36 to permit operation of an award pending challenge. The court under Section 36(3) is empowered to stay the operation of the award on such terms and conditions as it deems fit. This could include taking a money deposit from the losing party.

- **Interim Relief by an Arbitrator to be enforceable as a Court order-** Section 17 of Act has been amended to ensure that interim relief including that of injunction granted by an arbitrator will be effective and enforceable as an order of the court.
- **No Application for interim relief to be accepted by courts, pending arbitration-** Section 9 of the Act is amended to restrain the courts from entertaining an Application for interim relief once arbitration has commenced. The Court is empowered to entertain such an application only if it is convinced that the arbitration tribunal will be unable to provide effective relief.
- **Fee structure introduced for arbitrators** -A model cost table is provided as a Schedule which sets a slab wise model fee structure which makes the arbitrators fees dependant on the stakes involved in the dispute. While such a fee structure has not been made binding, High Courts have been empowered to frame Rules to determine the arbitrator's fees. Fees range from Rs 45,000 to Rs 19, 87,500 depending upon the quantum of the dispute. This does not apply to international commercial arbitrations and institutional arbitrations.
- **Conflict of Interest to be disclosed-**The Amendment Act amends Section 12 to include an obligation requiring a potential arbitrator to make an express disclosure on conflicts. The courts at the time of appointing an arbitrator are also empowered to demand a full disclosure on conflicts. Schedule 5 & 7 to the Amendment Act contains an exhaustive list of grounds which will assist in determining all issues of conflict. Parties however are empowered to waive any objections of conflict by consent. Earlier Public Sector Undertakings were permitted to appoint their own employees as arbitrators. The 2015 Amendment Act does away with the model by incorporating the International Bar Association guidelines on conflict of interest as a

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schedule to the Act. The schedule specifically prohibits, employees, ex-employees or any other person associated with the parties to become the arbitrator.

- **Liberal cost regime**- The Amendment Act through Section 31 A also introduces an expansive cost regime. Costs are not compulsory and are at the discretion of the tribunal. The new provision lays down various factors to be considered by the tribunal at the time of determining the quantum of costs which include the result of the case and the conduct of parties. It can also make the losing party bear the entire cost of the litigation.

Report No 246 of the Law Commission of India on Amendments to the Arbitration and Conciliation Act 1996 contained a transitory provision in the form of Section 85A. As per Section 85A, the provisions of the amended Act shall be prospective in operation and shall apply to fresh arbitrations and fresh applications. The Amendment Act addresses the issue of applicability of the new law to pending arbitration proceedings by adopting the following language:

" *Nothing contained in this Act shall apply to the arbitral proceedings commenced, in accordance with the provisions of section 21 of the principal Act, before the commencement of this Act unless the parties otherwise agree but this Act shall apply in relation to arbitral proceedings commenced on or after the date of commencement of this Act.*"

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# Hindustan Copper Limited

## Standard Legal Clauses in a Contract

### 1. Force Majeure Events

If at any time during the continuance of this contract, the performance in whole or in part by either party of any obligation under this contract shall be prevented or delayed by reason ofwar, act of hostility of public enemy, civil disruption or sabotage, fires, floods, explosions, epidemics' quarantine restrictions, strikes, lock-outs or acts of God (here-in-after referred as to events)' provided notice of the happening of any such eventuality is given by the either party to the other within 21 days from the date of occurrence thereof, neither party shall, by reasons of such event be entitled to terminate this contract nor shall either party have any claim for damages against the other in respect of such non - performance or delay in performance/execution under the contract. Provided also that such performance/execution under the contract should commence as soon as practicable, after such event has come to an end or ceased to exist, and the decision of HCL as to whether the performance has been so resumed or not shall be final and conclusive. Provided further that if the performance in whole or in part or any execution under this contract is prevented or delayed by reasons of any such event for a period exceeding 60 days, either party may opt to terminate the contract. If the contract is terminated under this clause, HCL shall have liberty to take over ' from the contractor at a reasonable price, all unused, undamaged and acceptable materials, machinery, equipments, etc at the site, being used for the performance in of the contract and the possession of the contractor at the time of such termination of such portion thereof as HCL may deem it fit, except such materials, equipments, etc that the contractor may with the concurrence of HCL elect to retain. It is also understood in addition that this force Majeure clause will cover parties' inability to perform on account of change in law or imposition of rules or restrictions by the Government.

### 2.Termination due to Events of Default

a) If HCL decides to terminate this contract, it shall in the first instance issue Preliminary Notice to the Contractor. Within 15 days of receipt of the Preliminary Notice, the Contractor shall submit to HCL in sufficient detail, the manner in which it proposes to cure the underlying Event of Default (the " Contractor's Proposal to Rectify"). In case of non-submission of the Contractor's Proposal to Rectify within the said period of fifteen (15) days, HCL shall be entitled to terminate this Contract by issuing Termination Notice, and to appropriate the Performance Security, if subsisting.

b) If the Contractor's Proposal to Rectify is submitted within the period stipulated thereof, the Contractor shall have to its disposal a further period of fifteen (15) days to remedy / cure the underlying Event of Default. If, however the Contractor fails to remedy/cure the underlying Event of Default within the stated period, HCL shall be entitled to terminate this Contract, and to appropriate the Performance Security, if subsisting.

**3.Foreclosure of Contract Full or in Part**

If at any time after acceptance of the TENDER, HCL shall decide to foreclose or reduce the scope of the Works and hence not require the whole or any part of the Work to be carried out, the Person in Charge shall give 10 days' notice in writing to that effect to the Contractor, provided that, in the event, any such action is taken by HCL, the Contractor shall be paid full amount for the up to date quantum of Work executed at Work Site as per billing schedule under the relevant items of Work under the Contract and in addition, a reasonable amount as certified by the Person in Charge or any other agency appointed by HCL for those supplied items which could not be utilized for execution of the Work to the full extent because of the foreclosure.

**4.Amicable Resolution**

a) Save where expressly stated to the contrary in this Contract, any dispute, difference or controversy of whatever nature between the Parties, howsoever arising under, out of or in relation to this Contract including disputes, if any, with regard to any acts, decision or opinion of the Engineer-in-Charge and so notified in writing by either Party to the other (the "Dispute") shall in the first instance be attempted to be resolved amicably in accordance with the procedure set forth in Article 4.(b) below.
b) Either Party may require such Dispute to be referred to the work in charge of HCL and the Contractor for amicable settlement. Upon such reference, the two shall meet at the earliest as per their mutual convenience and in any event within fifteen (15) days of such reference to discuss and attempt to amicably resolve the Dispute. If the Dispute is not amicably settled within fifteen (15) days of such meeting, either party may refer the Dispute in accordance with the provisions of Article 4.(c)below.
c) In the event that any Dispute has not been resolved as per the provisions of Article 4. (b) above, the same shall be referred to the director or a person of equivalent designation, of HCL and the Contractor for amicable settlement. upon such reference, the two shall meet at the earliest as per their mutual convenience and in any event within fifteen (15) days of such reference to discuss and attempt to amicably resolve the Dispute. If the Dispute is not amicably settled within fifteen (15) days of such meeting between the two, either Party may refer the Dispute to arbitration in accordance with the provisions of Article 5. below

**5.Arbitration**

Any dispute(s) of difference(s) of any kind whatsoever arising between the parties out of, or relating to the construction, meaning, scope, operation or effect of the contract or its validity or its breach thereof, if not settled mutually, shall be referred by the parties to this contract for Arbitration under the Arbitration and conciliation Act, 1996 and any amendments thereof, and the provisions there under, and the award made in pursuance thereof shall be binding on the parties.

- The Arbitrator will be appointed within 30 days of reference to the arbitration. A sole Arbitrator will be appointed by the mutual consent of the parties to the contract, who

according to Arbitration and conciliation Act, 1996 and any amendments thereof, will not stand in conflict of interest with any of the organizations. A declaration to the effect shall be submitted by the Arbitrator, to guarantee impartiality in the proceedings. In case of a dispute of very high value, the dispute may be referred to an arbitral tribunal, consisting of an Arbitrator nominated by both parties each and one arbitrator appointed by both the above arbitrators.

- In the event of such an arbitrator to whom the matter is originally referred, being transferred or has vacated his office because of retirement, or resignation or otherwise or refuses to act or is incapable of acting for any reason whatsoever, the appointment of arbitrator in his place will be done by mutual consent of the Parties to the Contract, who again would not stand in any conflict of interest with both the parties such person(s) shall be entitled to proceed from the stage at which his predecessor left it.
- The duration of proceedings and the fee structure will be governed by the 1996 Act, and any amendments thereof. The venue of the arbitration shall be ICC/KCC/MCP/TCP/GCP/CO. The award of the arbitrator shall be final and binding on the parties. Any dispute, which arises at any point of time out of arbitration, shall have the jurisdiction of the court of Balaghat/ Jhunjhunu/ Singhbhum/ Raigad/ Bharuch/ Kolkata.
- Subject to the above, the provision of Arbitration and conciliation Act, 1996 and the rules there under and the statutory modifications thereof shall govern such arbitration proceedings and shall be deemed to apply and be incorporated in this contract.
- In the event of any dispute or difference relating to the interpretation and application of the provisions of commercial Contract(S) between Central Public Sector (CPSEs)/Port Trust inter se and also between CPSEs and Government Departments/Organizations (excluding disputes concerning Railways, Income –Tax, Customs & Excise Department), such dispute or difference shall be taken up by either party for resolution through AMRCD as mentioned in DPE OM No.4(1)/2013-DPE (GM)/FTS-1835 DATED 22-05-2018.

# *SCHEDULE – S1*

**Refer Clause 5.23**

**Process Flow for Sale of Concentrate and Revenue Generation applicable for sale to MDO only:**

| Sl No. | Activity | Terms |
|---|---|---|
| i) | **Pricing** | |
| 1 | Physical & Chemical Specification | As per analysis of material produced in three months prior to processing of Sale Contract, done by MDO in presence of HCL representative, for Invoicing & Provisional Pricing |
| 2 | Quotational Period (QP) | M+1, where M is the month of dispatch of the last Invoice of the Rake. |
| 3 | Metal Prices | Copper (Cu) - Average LME Cash Settlement Price wherever applicable as per the QP stated for 1st Provisional Payment, 2nd Provisional Payment and the Final payment. The source of price would be Fast Market MB/LME website/Reuters, or any other sources which shall be agreed by HCL.<br><br>Gold (Au) – Average of London Bullion Market Association Daily prices for Gold (AM & PM Price Avg.) during the QP as applicable for 1st Provisional Payment, 2nd Provisional Payment and the Final payment. The source of price would be Fast Market MB/LBMA website, or any other sources which shall be agreed by HCL.<br><br>Silver (Ag) - Average of London Bullion Market Association Daily prices for Silver during the QP as applicable for 1st Provisional Payment, 2nd Provisional Payment and the Final payment. The source of price would be Fast Market MB/LBMA website, or any other sources which shall be agreed by HCL. |
| 4 | Exchange Rate | Avg. FBIL Ref Rate for Foreign Currency remittance as applicable for the QP |
| 5 | Unit Deductions & Payable Metal Content | **Copper:**<br>• Pay 96.5% of the final copper content subject to minimum deduction of 1 unit to be paid at the US$ LME Average Cash Settlement Price for LME Grade-A Copper as Published in Fast Market MB averaged over the QP.<br><br>**Silver:**<br>• If silver content is less than 30 grams/DMT - No payment<br><br>and<br><br>• If silver content is equal to or greater than 30 grams/DMT - 90% of full silver content on the basis Avg. of London Bullion Price during the QP month as per Fast Market MB.<br><br>**Gold:** |

| Sl No. | Activity | Terms |
|---|---|---|
| | | • If gold content is Less than 1 gram/DMT - No payment<br><br>and<br>• If gold content is equal to or greater than 1 gram/DMT - 100% payable subject to minimum deduction of 1 gram/DMT on the basis of Avg. of London Bullion Daily prices for gold (AM & PM Price Avg.) during the QP month as per Fast Market MB. |
| 6 | Treatment Charges (TC) | ***As per prevailing TC for Sale of MCP Concentrate for the respective period***<br><br>Effective TC = Spot TC for the Month (A) – Discount(B)<br><br>A) SPOT TC in USD per DMT (Inco Term Asia-Pacific) as per Fast Market MB for the month of shipment<br><br>B) Discount: USD 17 per DMT, on SPOT TC (of respective month) in USD per DMT (Inco Term Asia-Pacific) as per Fast Market MB (As per present HCL Sale contract for MCP Concentrate)<br><br>C) Overhead Cost Component: INR 3,275/- per WMT, shall be deducted from the Price calculated, to arrive the Final Basic Price of Concentrate. (As per present HCL Sale contract for MCP Concentrate) |
| 7 | Refining Charges (RC) | Copper: Effective TC (point 6 above) divided by ten (10) in US Cents per Pound of payable copper.<br><br>Silver: US Cents 35 per Troy Oz of payable Silver.<br>Gold: US$ 4.50 per Troy Oz of payable Gold. |
| 8 | Pricing Formula | Standard Pricing Formula Attached. HCL price as per Invoice raised by HCL on MDO. |
| ii) | **Payment Instrument** | |
| | Letter of Credit | Letter of Credit (LC) to be opened by MDO for Proforma Invoice value considering 110% of Sale Contract Terms as stated above at LME/LBMA/ Exchange Rate for last 10 working days for monthly available Concentrate stock (each Month), in the Escrow Bank Account. LC to have provision for drawing 1st Provisional, 2nd Provisional & Final Payment as detailed in Annexure. Validity of the LC may be extended by the MDO for settlement of the payments through LC, if need be. |
| iii) | **Despatch** | |
| 1 | Surveyor Appointment | Mutually accepted Surveyor by HCL & MDO to be appointed by HCL, from approved panel of LME listed Surveyors/Assayers (List attached), at ICC on rotation basis. Surveyor charges to be paid by HCL, and 50% of the same shall be recovered from the MDO. |
| 2 | WSMD | Weighment, Sampling, Sample Preparation, Moisture Determination by supervision of an internationally reputed independent agency mutually acceptable to HCL & MDO at ICC, which will be final and binding for all purpose for HCL as well as MDO. |

| Sl No. | Activity | Terms |
|---|---|---|
| 3 | Sampling | Samples shall be prepared in **8 parts (maximum) for each lot**. A sampling lot is defined as 500 WMT ±10%. From the samples so prepared, sealed samples shall be provided as per the details given below:<br>(a) 4 sets for HCL<br>(b) 2 sets each for MDO<br>(c) 2 sets to kept for independent agency for umpiring purpose |
| 4 | Despatch Invoicing | HCL will raise GST Invoice on MDO at the time of despatch, along with necessary documents for movement of material. |
| iv) | **Assay** | |
| 1 | Sample Analysis | With the samples given to HCL and MDO, both shall carry out assays independently, and results of such assays for Assays of Copper, Gold & Silver shall be exchanged simultaneously at CPP portal or by cross mailing or any other mutually acceptable method, within 60 days from the last date of dispatch of the respective lot/rake as evidenced by dispatch documents. Extra samples, if required by MDO will be at MDO's cost. |
| 2 | Splitting Limit | The splitting limits shall be as follows:<br>Copper : 0.5%<br>Gold : 0.5 gms /DMT or 0.5 ppm.<br>Silver : 20 gms /DMT or 20 ppm. |
| 3 | Umpire Appointment | If the MDO's and HCL's assay results are within the Splitting Limits, the average of the two assays shall be used for the final settlement. If the results are beyond the splitting limits, umpire assays shall be carried out by an independent agency mutually accepted by HCL, MDO from approved panel of LME listed Surveyors/Assayers (List attached) on rotational basis. The umpire shall be the agency other than agency appointed as surveyor. |
| 4 | Final Assay | In case the umpire assay falls between the results of the two parties or coincide with either, the arithmetical mean of the umpire assay and the assay which is nearer to the umpire assay shall be taken as the agreed. Otherwise, the middle assay of the three assays shall be accepted as final. Should the umpire assay fall within the assays of the two parties and be the exact mean of the two, then the umpire assay shall be accepted as the final assay. |
| 5 | Umpire Payment | Cost of the umpire assay will be borne by the HCL or MDO, whose assays are farther from the umpire assay. The cost will be shared equally by the HCL and MDO when the umpire assay is exact mean of the assay of the two parties. |
| v) | **Payment** | |
| 1 | 1st Provisional Payment | HCL shall raise First (1st) Provisional Invoice on completion of Rake, which will be based on the provisional value of the payable metals, namely, Copper, Gold, Silver, etc., in Concentrate offered, will be determined on the basis of LME average Cash Settlement Prices (CSP) for LME Grade A Copper, average London Bullion Daily price for |

| Sl No. | Activity | Terms |
|---|---|---|
| | | Gold (Mean of the morning and evening prices), and average Daily London Bullion Spot Prices for Silver, during 10 LME Working days preceding the Delivery order date of HCL up to two places of decimal. For other payable metals, the prices would be taken from standard sources.<br><br>Provisional payable metal content for the computation of the metal value will be arrived at by taking average of chemical specification of Copper, Gold & Silver as stated at Chemical Specification of mentioned above under i) Pricing pt 1.<br><br>Source for these prices will be the relevant publication/Fast market MG/Reuters. Copy of First (1st) Provisional Invoice shall be shared by HCL.<br><br>On receipt of Invoice, MDO to make payment against payment instrument in escrow account. |
| 2 | 2nd Provisional Payment | HCL shall raise Second (2nd) Provisional Invoice of material value, after the QP month, based on latest known facts (known metal prices as per QP & Final Assay, if completed).<br><br>On receipt of Invoice, MDO to make payment against payment instrument in escrow account. If HCL is to make payment, then HCL shall refund payment to MDO as applicable. |
| 3 | Final payment | Balance payment, if any, i.e., the full and final value of the delivered concentrate as per the Final Invoice drawn based on the final weight and assays (determined as per Assay Exchange/Umpire) less the Provisional payments drawn as stated above, will also be settled by owing party immediately from the date when Invoice is raised by HCL when all facts become known. |

## GUIDELINE FOR EXECUTION OF SALE AND REVENUE

### 1.0 WEIGHMENT, SAMPLING, SAMPLE PREPARATION, MOISTURE DETERMINATION AND ASSAYING:

1.1 The weighment of Copper Concentrate at works at ICC, which will be final and binding for all purpose for HCL and MDO. Checking and calibration of the weighbridge to be conducted prior to commencement of weighment.

1.2 Checking and Calibration of the weighbridge, weighment, sampling, sample Preparation and moisture determination shall be performed at ICC, in accordance with internationally accepted procedure under the supervision of an internationally reputed independent agency, selected from the panel of surveyors/assayers given in Clause No. 2.0 below, mutually acceptable to HCL & MDO. The surveyor of the MDO may also witness the Weighment, Sampling, Sample Preparation and Moisture Determination at ICC (moisture determination), at their own cost.

1.3 Mutually acceptable surveyor shall be appointed on rotational basis, from the panel of surveyors/assayers given at Clause No. 2.0 below at ICC (moisture determination). However, HCL and MDO shall share the cost of engaging the Surveyor equally for all the jobs including courier charges for sending the samples to umpire, if necessary.

1.4 The dry weight arrived at from the wet weight and moisture determined at ICC, shall be final and binding on the MDO and HCL.

1.5 The samples shall be prepared in **8 parts (maximum) for each lot**. A sampling lot is defined as 500 WMT ±10% for ICC concentrate. The assay figures shall be compiled for every 500 WMT ±10% lot and the weighted average worked out to arrive at a single copper, gold and silver figure for the rake/lot/vessel, respectively, for the total dispatch in a rake/lot/vessel. From the samples so prepared sealed samples shall be provided as per the details given below.

(a) 4 sets for HCL
(b) 2 sets for MDO
(c) 2 sets to kept for independent agency for umpiring purpose

1.6 The samples will be sent to the MDO by the mutually appointed surveyor within 5 (five) days of the last Invoice date. With the samples given to HCL and MDO, they shall carry out assays independently. Results of such assays shall be exchanged simultaneously at CPP portal or by cross mailing or any other mutually acceptable method, within 60 days from the last date of dispatch of the respective lot/rake as evidenced by dispatch documents date of Last invoice date of Rake.

1.7 The assays of copper concentrate for copper, gold and silver will be determined upto following decimal places: -

Copper: Three (03) decimal places
Gold: Three (03) decimal places
Silver: Three (03) decimal places

1.8 If the MDO's and HCL assay results are within the Splitting Limits, the average of the two assays shall be used for the final settlement. If the results are beyond the splitting limits, umpire assays shall be carried out by an independent agency agreed between MDO and HCL. The umpire shall be the agency other than agency appointed as surveyor, mutually accepted by HCL, MDO from approved panel of LME listed Surveyors/Assayers (List attached 2.0 below) on rotational basis. The umpire shall be the agency other than agency appointed as surveyor.

1.9 SPLITTING LIMITS: The splitting limits shall be as follows:

Copper : 0.5%

| | | |
|---|---|---|
| Gold | : | 0.5 gms /DMT or 0.5 ppm. |
| Silver | : | 20 gms /DMT or 20 ppm. |

1.10 In case the umpire assay falls between the results of the two parties or coincide with either, the arithmetical mean of the umpire assay and the assay which is nearer to the umpire assay shall be taken as the agreed. Otherwise, the middle assay of the three assays shall be accepted as final. Should the umpire assay fall within the assays of the two parties and be the exact mean of the two, then the umpire assay shall be accepted as the final assay.

1.11 The entire process of confirmation of assays beyond the splitting limits to receipt of Umpire Assay report will be completed within a period of 45 days from the date of exchange of assays.

1.12 Cost of the umpire assay will be borne by the HCL or MDO, whose assays are farther from the umpire assay. The cost will be shared equally by the HCL and MDO when the umpire assay is exact mean of the assay of the two parties.

1.13 The final assay thus arrived shall be binding on HCL as well as MDO.

**2.0 PANEL OF SURVEYORS/ASSAYERS**:
The Indian agents of the following surveyors/assayers can also be appointed.

i) M/s Alfred H Knight International Limited,
Pegasus House Kings Business Park
Prescot Knowsley L34 1P, UK

ii) M/s ALS Inspection UK Limited
Earlier M/s Stewart Inspection and Analysis Limited
Caddick Road, Knowsley Industrial Estate,
Knowsley, Merseyside, U.K.

iii) M/s Inspectorate International Ltd.,
2, Perry Road, Witham Essex CM 83 TU, UK

iv) M/s SGS Nederland BV,
Malledijk 18, 3200 AE Spijkenisse,
Netherlands

v) M/s. Mitra S.K. Private Limited
Shrachi Centre (5th Floor), 74B Acharya Jagadish Chandra
Bose Road, Kolkata, India

vi) M/s Alex Stewart International Corporation Ltd Unit 2b,
Sefton Business Park, Liverpool, L30 1RD, U.K.

vii) M/s Geo-Chem Laboratories Private Limited
Geo Chem House, 294, Shahid Bhagat Singh Road,
Fort, Mumbai, 400001 India

**5.0 PROVISIONAL PAYMENTS**:

3.1 The MDO shall have to open Letters of Credit in HCL-MDO's Escrow Account, through scheduled commercial bank within 10 days of receipt of proforma invoice from HCL and shall be valid for 8 months for each consignment.

3.2 The LC is to be advised through HCL's designated Bank.

3.3 The LC shall enable HCL to draw the Provisional Payments, and the Final Payment, if any, for the respective lot/rake/vessel.

I) a Proforma Invoice will be provided by HCL to facilitate opening of LC. The LC value will be computed at 110% of the Provisional Net value of the payable metals (Copper, Gold and Silver), which will be arrived at as explained in Clause (III) and (IV) below, based on the Average Metal Values will be in US Dollars & Cents applicable for ten (10) LME Working days prior to the date of issue of Proforma Invoice up to two places of decimal.

II) The LC opened by MDO shall allow negotiations of the following documents for realizing the 1st Provisional Invoice Value:

(i) 1st Provisional Invoice of HCL/ Tax Invoice
(ii) Provisional Price Certificate of HCL
(iii) Provisional Weight Certificate of HCL
(iv) Provisional Assay Certificate of HCL

III) The First (1st) Provisional Invoice will be based on the provisional value of the payable metals, namely, Copper, Gold and Silver in Concentrate offered, will be determined on the basis of LME average Cash Settlement Prices (CSP) for LME Grade A Copper, average London Bullion Daily price for Gold (Mean of the morning and evening prices), and average Daily London Bullion Spot Prices for Silver and Avg. FBIL Ref Rate for during 10 LME Working days preceding the issue of Delivery Order for up to two places of decimal. Source for these prices will be the relevant Fastmarket MB/Reuters/LME/LBMA.

Also, SPOT TC in USD per DMT (Inco Term Asia-Pacific) as per Fast Market MB, for the month prior to month of shipment, shall be considered in calculation of provisional TC for shipment in a particular month along with Discount & Overhead Cost Component as per Clause 4

IV) The provisional payable metal content for the computation of the metal value will be arrived at by taking middle values of the ranges given for Copper, Gold and Silver under the Chemical specification of Sales Contract.

The payable metal content (provisionally) for the computation of the metal value will be arrived at by taking average of chemical specification of Copper, Gold & Silver as stated at Chemical Specification mentioned above e.g., refer table **(taking average of range of Copper, Gold & Silver as defined in pt. no. 1 under Physical & Chemical specification)**

| Elements | ICC Origin |
|---|---|
| Copper | 25% |
| Gold | 2.21 Grams/DMT |
| Silver | 55 Grams/DMT |
| Moisture | 8% |

V) Provisional Net Value of payable metals will be the aggregate of the provisional values of the payable metals determined as explained in Clause (III & IV above) and allowing for the unit deductions (as specified in the Clause 4.0 below) less the Treatment and Refining Charges.

(VI) HCL shall raise commercial invoice for Provisional payment for Provisional Invoice value of the material lifted by the within four (04) working days of the last date of dispatch of the lot/rake as evidenced by HCL's dispatch documents, respectively for negotiating the LC. Option of payment of Provisional payment by RTGS to Escrow Account will be with the MDO. For receipt of the Provisional payment by RTGS within four (04) working days of raising the commercial invoice by HCL, HCL will mail the unsigned copy of the Delivery Challan Cum Invoice along with

the other documents mentioned above. On the receipt of the payments by RTGS, the above documents will be couriered to the MDO's address.

In case, the Provisional payment is not received, immediately after issue of documents in MDO-HCL Escrow account, the above documents will be negotiated for realizing the payment against the LC submitted by the MDO.

All invoices shall be on metal basis i.e., CMT (Copper Metric Ton). All payments are to be made to MDO-HCL Escrow account.

**There shall be a 2nd provisional payment** of material value, after the QP month, based on latest known facts.

If assays are not exchanged, then assay as per mid values of payable metals like copper, silver and gold stated in **pt. no. 1 under Physical & Chemical specification** and final QP shall be taken for making the 2nd provisional payment.

If assays are exchanged and not finalized, then assays, considered for 1st provisional payment and final QP shall be taken for the 2nd provisional payment.

If the payment is not made within the scheduled date, then HCL shall negotiate the LC.

## 5.0 PRICING BASIS:

**QP (QP):**
QP for all payable metal i.e., Copper, Silver and Gold, mentioned in 3 (IV) will be the first Calendar Month following the Month of Delivery of Concentrate as evidenced by the last Tax Invoice for the Rake. In other words, QP = M+1, where M is the month of dispatch of the last consignment of the Rake.

**For QP purpose**:

For Domestic Sale:
1 Rake containing approx. 90 Containers

Say, 1 Rake =27.5 WMT x 90 =2475 WMT+/-10%

However, even less than 90 Container can also be loaded in one rake. In such case, the number of Containers loaded in 1 Rake shall be considered as one lot.

**Treatment Charges (TC)**: **As per prevailing TC for Sale of MCP Concentrate for the respective period**

**Refining Charges**:
Copper: The refining charge for copper of respective origins of copper concentrate shall be derived as per the following formula:

"The numerical value of respective Treatment charges shall be divided by ten (10) to arrive at the Refining charges figure in US Cents per Pound of payable copper".
Silver: US Cents 35 per Troy Oz of payable Silver.
Gold: US$ 4.50 per Troy Oz of payable Gold.

**PAYABLE METALS AND UNIT DEDUCTION**: (FOR HCL PRICING CALCULATION)
**Recovery of Metals**:

Copper:

- Pay 96.5% of the final copper content subject to minimum deduction of 1 unit to be paid at the US$ LME Average Cash Settlement Price for LME Grade-A Copper as Published in Metal Bulletin averaged over the QP.

Silver:

- If silver content is less than 30 grams/DMT - No payment

  and

- If silver content is equal to or greater than 30 grams/DMT - 90% of full silver content on the basis Avg. of London Bullion Price during the QP month as per Metal Bulletin.

Gold:

- If gold content is Less than 1 gram/DMT - No payment

  and

- If gold content is equal to or greater than 1 gram/DMT - 100% payable subject to minimum deduction of 1 gram/DMT on the basis of Avg. of London Bullion Daily prices for gold (AM & PM Price Avg.) during the QP month as per Metal Bulletin.

**5.0 FINAL PAYMENT**:

Balance payment, if any, i.e., the full and final value of the delivered concentrate as per the Final Invoice drawn based on the final weight and assays (determined as per Clause 1.0) and computed on the basis similar to Clause 3.0, for the QP as per Clause 4.0 less the Provisional payments drawn by HCL as per clause 3.0 will also be settled by owing party immediately from the date when all facts become known. In case, the final LC value falls short of final invoice value, the MDO will suitably incorporate a clause in the LC for drawl of final amount due to HCL.

The final payment if payable to HCL will be against the following documents:

i) HCL's Final Invoice in triplicate drawn for sale of ICC origin of Concentrate towards the difference of final value and provisional values plus surveyor's charge and umpire's charges, if any.
ii) HCL's Final Price Certificate
iii) HCL's Final Assay Certificate
iv) HCL's Final Certificate of weight & moisture duly certified by surveyor.
v) Debit Note of HCL, if any.

MDO will have the option of making the final payment by RTGS. In case the payment is made by RTGS, then the documents will be sent to the MDO designated address by courier after receipt of the payment or else the above documents will be negotiated against the LC. HCL shall remit the differential amount, if refundable to the MDO (if needed).

**All invoices shall be on metal basis i.e., CMT (Copper Metric Ton).** All payments are to be made to MDO-HCL Escrow Account as detailed in Clause 3.

**6.0 Payment for additional elements in Copper Concentrate:**

During analysis of Concentrate produced, in case Nickel, Selenium and Tellurium content of commercial value is found, the value of the same shall be recovered from MDO as per market prices during the course of the MDO operation.

**STANDARD ICC CONCENTRATE PRICING FORMULA**

The table is attached below for reference.

HINDUSTAN COPPER LIMITED

| SAMPLE CALCULATION | | | |
|---|---|---|---|
| - | | | **ICC** |
| 1 | Copper (%) | | 25.000 |
| 2 | Gold (ppm) | | 2.100 |
| 3 | Silver(ppm) | | 30.00 |
| 3a | MOISTURE (%) | | 8.00 |
| 4 | Effective TC | 4a-4b | 62.18 |
| 4a | Treatment charges ($/DMT) Monthly Average (Fast Market - Metal Bulletin) | **Apr'23** | 79.18 |
| 4b | Discount (USD/DMT) - As per HCL's Prevailing MCP Concentrate Sales Contract | | 17.00 |
| 5 | Refining charges for Cu (Cents/lb) | | 6.22 |
| 6 | Refining charges for Gold ($ per Troy Oz.) | | 4.50 |
| 7 | Refining charges for Silver (Cents per Troy Oz.) | | 35.00 |
| | **UNIT DEDUCTIONS** | | |
| | Minm dedn. | | |
| 8 | For Copper | | 1.00 |
| 9 | For Gold(ppm) | | 1.00 |
| 10 | For Silver(ppm) | | 0.00 |
| 8b | % Payable | | |
| 11 | For Gold (%) | | 1.00 |
| 12 | For Silver (%) | | 0.90 |
| | **PAYABLE METAL CONTENT** | | |
| 13 | For Copper (MT) | Item(1-8)/100 | 0.24 |
| 14 | For Gold (Tr Oz) | (2-9)*11/31.1035 | 0.04 |
| 15 | For Silver (Troy Oz) | 3*12/31.1035 | 0.87 |
| | | | |
| | **METAL PRICES (Monthly Average for Month)** | | Apr'23 |
| 16 | Copper (US$/MT) | | 8814.00 |
| 17 | Gold (US$ /Troy Oz.) | | 1999.63 |
| 18 | Silver (US$ /Troy Oz.) | | 25.00 |
| | **PAYABLE METAL VALUE PMT OF CONCENTRATE (US$)** | | |
| 19 | For Copper | 13x16 | 2115.36 |
| 20 | For Gold | 14x17 | 70.72 |
| 21 | For Silver | 15x18 | 21.70 |
| **A)** | **TOTAL (US$)** | 19+20+21 | 2207.78 |
| | | | |
| | **DEDUCTIONS (US $)** | | |
| 22 | TC for Copper | 4 | 62.18 |
| 23 | RC for Copper | ((5X2204.62)/100)x13 | 32.90 |
| 24 | RC for Gold | 6x14 | 0.16 |
| 25 | RC for Silver | 7x15/100 | 0.30 |
| | | | |
| **B)** | **TOTAL TC & RC (US $)** | 22+23+24+25 | 95.54 |
| **C)** | **NET RECEIVABLE PER TONNE OF CONCENTRATE (US $)** | A-B-C | 2112.23 |
| 26 | **EXCHANGE RATE (Rs/US$) FBIL Average Month** | | 82.03 |
| 27 | Amount receivable by sale of 1MT of conc in INR | (D)*26 | 173266.54 |
| **28** | **Amount receivable by sale of 1MT of MIC** | INR | **693066.00** |
| **29** | **Net amount receivable (in) by sale of 1MT of MIC** | INR | **693066.00** |
| 30 | Overhead Cost Component (in INR /WMT) - As per HCL's Prevailing MCP Concentrate Sales Contract | | 3275 |
| 31 | Less Overhead Cost Component (in INR/CMT) | | 14239 |
| **32** | **Realisation (in INR/CMT)** | | **678827** |
| 33 | Total Quantity (in WMT) | | 2800 |
| 34 | Total Quantity (in CMT) | | 644 |
| 35 | **Total Realisation (in INR)** | | 43,71,64,588 |

# *SCHEDULE – S2*

**Refer Clause 5.23**

**Process Flow for Sale of Concentrate and Revenue Generation applicable for sale to buyer other than MDO:**

| Sl No. | Activity | Terms |
|---|---|---|
| i) | **Pricing** | |
| 1 | Physical & Chemical Specification | As per analysis of material produced in three months prior to processing of Sale Contract, done by MDO in presence of HCL representative, for Invoicing & Provisional Pricing |
| 2 | Quotational Period (QP) | M+1, where M is the month of dispatch of the last consignment/Invoice of the Rake (for Domestic Sale) and on-Board Bill of Lading date (for Export) |
| 3 | Metal Prices | Copper (Cu) - Average LME Cash Settlement Price wherever applicable as per the QP stated for 1st Provisional Payment, 2nd Provisional Payment and the Final payment. The source of price would be Fast Market MB/LME website/Reuters, or any other sources which shall be agreed by HCL.<br><br>Gold (Au) – Average of London Bullion Market Association Daily prices for Gold (AM & PM Price Avg.) during the QP as applicable for 1st Provisional Payment, 2nd Provisional Payment and the Final payment. The source of price would be Fast Market MB/LBMA website, or any other sources which shall be agreed by HCL.<br><br>Silver (Ag) - Average of London Bullion Market Association Daily prices for Silver during the QP as applicable for 1st Provisional Payment, 2nd Provisional Payment and the Final payment. The source of price would be Fast Market MB/LBMA website, or any other sources which shall be agreed by HCL. |
| 4 | Exchange Rate | Avg. FBIL Ref Rate for Domestic Sale & Foreign Currency remittance at actuals for Exports as applicable for the QP |
| 5 | Unit Deductions & Payable Metal Content | Copper:<br>• Pay 96.5% of the final copper content subject to minimum deduction of 1 unit to be paid at the US$ LME Average Cash Settlement Price for LME Grade-A Copper as Published in Fast Market MB averaged over the QP.<br><br>Silver:<br>• If silver content is less than 30 grams/DMT - No payment<br>and<br>• If silver content is equal to or greater than 30 grams/DMT - 90% of full silver content on the basis Avg. of London Bullion Price during the QP month as per Fast Market MB.<br><br>Gold: |

| Sl No. | Activity | Terms |
|---|---|---|
| | | • If gold content is Less than 1 gram/DMT - No payment<br>and<br>• If gold content is equal to or greater than 1 gram/DMT - 100% payable subject to minimum deduction of 1 gram/DMT on the basis of Avg. of London Bullion Daily prices for gold (AM & PM Price Avg.) during the QP month as per Fast Market MB. |
| 6 | Effective Treatment Charges (TC) | As per bids received against the Tender floated by HCL from time to time, for Sale of ICC Concentrate incase the bidder does not exercise the 1st right of buying the concentrate. |
| 7 | Refining Charges (RC) | Copper: Effective TC (point 6 above) divided by ten (10) in US Cents per Pound of payable copper.<br><br>Silver: US Cents 35 per Troy Oz of payable Silver.<br>Gold: US$ 4.50 per Troy Oz of payable Gold. |
| 8 | Pricing Formula | Standard Pricing Formula Attached. HCL price as per Invoice raised by HCL on Buyer as applicable against respective Sales Contract. |
| ii) | **Payment Instrument** | |
| | Letter of Credit | Letter of Credit (LC) to be opened by Buyer for Proforma Invoice value considering 110% of Sale Contract Terms as stated above at LME/LBMA/ Exchange Rate for last 10 working days for each Rake (2800WMT – 1 Rakes 90 containers) or Shipload (say 10000WMT) or monthly available Concentrate stock, in the Escrow Bank Account. LC to have provision for drawing 1st Provisional, 2nd Provisional & Final Payment as detailed in Annexure. Validity of the LC may be extended by the Buyer for settlement of the payments through LC, if need be. |
| iii) | **Despatch** | |
| 1 | Surveyor Appointment | Mutually accepted Surveyor by HCL & buyer to be appointed by HCL, from approved panel of LME listed Surveyors/Assayers (List attached), at ICC (Domestic/Containerised Export) or at Port (Bulk Export) on rotation basis. Independent Surveyor may also be appointed at ICC for Bulk Export. Surveyor charges to be paid by HCL, and 50% of the same shall be recovered from the buyer. MDO will be informed about the above mutually appointed surveyor of HCL and the buyer of concentrate. |
| 2 | WSMD | Weighment, Sampling, Sample Preparation, Moisture Determination by Surveyor at ICC (Domestic/ Containerised Export) or at Port (Bulk Export), which will be final and binding for all purpose for HCL and the Buyer. |

| Sl No. | Activity | Terms |
|---|---|---|
| 3 | Sampling | Samples shall be prepared in **8 parts (maximum) for each lot**. A sampling lot is defined as 500 WMT ±10%. From the samples so prepared, sealed samples shall be provided as per the details given below:<br>(a) 4 sets for HCL<br>(b) 2 sets each for MDO<br>(c) 2 sets each for Buyer,<br>(d) 2 sets to kept for independent agency for umpiring purpose |
| 4 | Despatch Invoicing | HCL will raise GST Invoice on Buyer at the time of despatch, along with necessary documents for movement of material. |
| iv) | **Assay** | |
| 1 | Sample Analysis | Buyer & HCL shall carry out assays independently from samples given to them.<br><br>Higher of the results of HCL and the MDO will be considered as HCL's assay and shall be exchanged by HCL simultaneously with the Buyer for Assays of Copper, Gold & Silver in respective lots upto three decimal places, within 60 days from Rake completion date/BL date. HCL shall share the assay report with the MDO incase they do not exercise their first right of buying. |
| 2 | Splitting Limit | The splitting limits shall be as follows:<br>Copper : 0.5%<br>Gold : 0.5 gms /DMT or 0.5 ppm.<br>Silver : 20 gms /DMT or 20 ppm. |
| 3 | Umpire Appointment | If the Buyer's and HCL's assay results are within the Splitting Limits, the average of the two assays shall be used for the final settlement. If the results are beyond the splitting limits, umpire assays shall be carried out by an independent agency mutually accepted by HCL & Buyer, from approved panel of LME listed Surveyors/Assayers (List attached) on rotational basis. The umpire shall be the agency other than agency appointed as surveyor. |
| 4 | Final Assay | In case the umpire assay falls between the results of the two parties or coincide with either, the arithmetical mean of the umpire assay and the assay which is nearer to the umpire assay shall be taken as the agreed. Otherwise, the middle assay of the three assays shall be accepted as final. Should the umpire assay fall within the assays of the two parties and be the exact mean of the two, then the umpire assay shall be accepted as the final assay. |
| 5 | Umpire Payment | Cost of the umpire assay will be borne by the HCL or Buyer, whose assays are farther from the umpire assay. The cost will be shared equally by the HCL and buyer when the umpire assay is exact mean of the assay of the two parties. |
| v) | **Payment** | |
| 1 | 1st Provisional Payment | HCL shall raise First (1st) Provisional Invoice on completion of Rake, which will be based on the provisional value of the payable metals, namely, Copper, Gold, Silver, etc., in Concentrate offered, will be determined on the basis of |

| Sl No. | Activity | Terms |
|---|---|---|
| | | LME average Cash Settlement Prices (CSP) for LME Grade A Copper, average London Bullion Daily price for Gold (Mean of the morning and evening prices), and average Daily London Bullion Spot Prices for Silver, during 10 LME Working days preceding the Delivery order date of HCL up to two places of decimal. For other payable metals, the prices would be taken from standard sources.<br><br>Provisional payable metal content for the computation of the metal value will be arrived at by taking average of chemical specification of Copper, Gold & Silver as stated at Chemical Specification of mentioned above under i) Pricing pt 1.<br><br>Source for these prices will be the relevant publication/Fast market MG/Reuters. Copy of First (1st) Provisional Invoice shall be shared by HCL.<br><br>On receipt of Invoice, buyer to make payment against payment instrument in escrow account. |
| 2 | 2nd Provisional Payment | HCL shall raise Second (2nd) Provisional Invoice of material value, after the QP month, based on latest known facts (known metal prices as per QP & Final Assay, if completed).<br><br>On receipt of Invoice, buyer to make payment against payment instrument in escrow account. If HCL is to make payment, then HCL shall refund payment to buyer as applicable. |
| 3 | Final payment | Balance payment, if any, i.e., the full and final value of the delivered concentrate as per the Final Invoice drawn based on the final weight and assays (determined as per Assay Exchange/Umpire) less the Provisional payments drawn as stated above, will also be settled by owing party immediately from the date when Invoice is raised by HCL when all facts become known. |

## GUIDELINE FOR EXECUTION OF SALE AND REVENUE

### 1.0 WEIGHMENT, SAMPLING, SAMPLE PREPARATION, MOISTURE DETERMINATION AND ASSAYING:

1.1 The weighment of Copper Concentrate at works at ICC for Domestic Sale & FOB Containerised Export or at Port for FOB Bulk Export, which will be final and binding for all purpose for HCL, MDO and the Buyer. Checking and calibration of the weighbridge to be conducted prior to commencement of weighment.

1.2 Checking and Calibration of the weighbridge, weighment, sampling, sample Preparation and moisture determination shall be performed at ICC for Domestic Sale & Containerized (EXIM) Sale / at Port (moisture determination) for Break-bulk Sale, in accordance with internationally accepted procedure under the supervision of an internationally reputed independent agency, selected from the panel of surveyors/assayers given in Clause No. 2.0 below, mutually acceptable to HCL & Buyer. The surveyor of the buyer and MDO may also witness the Weighment, Sampling, Sample Preparation and Moisture Determination at ICC for Domestic Sale & Containerized (EXIM) Sale / at Port (moisture determination) for Break-bulk Sale, at their own cost.

1.3 Mutually acceptable surveyor shall be appointed on rotational basis, from the panel of surveyors/assayers given at Clause No. 2.0 below at ICC for Domestic Sale & Containerized (EXIM) Sale / at Port (moisture determination) for Break-bulk Sale. However, HCL and buyer shall share the cost of engaging the Surveyor equally for all the jobs including courier charges for sending the samples to umpire, if necessary.

1.4 The dry weight arrived at from the wet weight and moisture determined at ICC for Domestic Sale & Containerized (EXIM) Sale / at Port (moisture determination) for Break-bulk Sale, shall be final and binding on the buyer and HCL and the MDO.

1.5 The samples shall be prepared in **8 parts (maximum) for each lot**. A sampling lot is defined as 500 WMT ±10% for ICC concentrate. The assay figures shall be compiled for every 500 WMT ±10% lot and the weighted average worked out to arrive at a single copper, gold and silver figure for the rake/lot/vessel, respectively, for the total dispatch in a rake/lot/vessel. From the samples, so prepared sealed samples shall be provided as per the details given below.

(d) 4 sets for HCL
(e) 2 sets for MDO
(f) 2 sets for Buyer
(g) 2 sets to kept for independent agency for umpiring purpose

1.6 The samples will be sent to the Buyer by the mutually appointed surveyor within 5 (five) days of the last Invoice date. With the samples given to HCL, MDO and the buyer, Higher of the results of HCL and the MDO will be considered as HCL's assay and HCL and the buyer shall carry out assays independently. Results of such assays shall be exchanged simultaneously at CPP portal or by cross mailing or any other mutually acceptable method, within 60 days from the last date of dispatch of the respective lot/rake as evidenced by dispatch documents date of Bill of Lading/Last invoice date of Rake.

1.7 The assays of copper concentrate for copper, gold and silver will be determined upto following decimal places: -

Copper: Three (03) decimal places
Gold: Three (03) decimal places
Silver: Three (03) decimal places

1.8 If the Buyer's and HCL assay results are within the Splitting Limits, the average of the two assays shall be used for the final settlement. If the results are beyond the splitting limits, umpire assays shall be carried out by an independent agency agreed between buyer and seller. The umpire shall be the agency other than agency appointed as surveyor, mutually accepted by HCL, Buyer from approved panel of LME listed Surveyors/Assayers (List attached 2.0 below) on rotational basis. The umpire shall be the agency other than agency appointed as surveyor.

1.9 SPLITTING LIMITS: The splitting limits shall be as follows:

| | | |
|---|---|---|
| Copper | : | 0.5% |
| Gold | : | 0.5 gms /DMT or 0.5 ppm. |
| Silver | : | 20 gms /DMT or 20 ppm. |

1.10 In case the umpire assay falls between the results of the two parties or coincide with either, the arithmetical mean of the umpire assay and the assay which is nearer to the umpire assay shall be taken as the agreed. Otherwise, the middle assay of the three assays shall be accepted as final. Should the umpire assay fall within the assays of the two parties and be the exact mean of the two, then the umpire assay shall be accepted as the final assay.

1.11 The entire process of confirmation of assays beyond the splitting limits to receipt of Umpire Assay report will be completed within a period of 45 days from the date of exchange of assays.

1.12 Cost of the umpire assay will be borne by the party whose assays are farther from the umpire assay. The cost will be shared equally by both parties when the umpire assay is exact mean of the assay of the two parties.

1.14 The final assay thus arrived shall be binding on HCL, MDO as well as buyer.

**2.0 PANEL OF SURVEYORS/ASSAYERS**:

The Indian agents of the following surveyors/assayers can also be appointed.

i) M/s Alfred H Knight International Limited,
Pegasus House Kings Business Park
Prescot Knowsley L34 1P, UK

ii) M/s ALS Inspection UK Limited
Earlier M/s Stewart Inspection and Analysis Limited
Caddick Road, Knowsley Industrial Estate,
Knowsley, Merseyside, U.K.

iii) M/s Inspectorate International Ltd.,
2, Perry Road, Witham Essex CM 83 TU, UK

iv) M/s SGS Nederland BV,
Malledijk 18, 3200 AE Spijkenisse,
Netherlands

v) M/s. Mitra S.K. Private Limited
Shrachi Centre (5th Floor), 74B Acharya Jagadish Chandra
Bose Road, Kolkata, India

vi) M/s Alex Stewart International Corporation Ltd Unit 2b,
Sefton Business Park, Liverpool, L30 1RD, U.K.

vii) M/s Geo-Chem Laboratories Private Limited

**5.0 PROVISIONAL PAYMENTS**:

3.1 The Buyer shall have to open Letters of Credit in HCL-MDO's Escrow Account, through scheduled commercial bank within 10 days of receipt of proforma invoice from HCL and shall be valid for 8 months for each consignment.

3.2 The LC is to be advised through HCL's designated Bank.

3.3 The LC shall enable HCL to draw the Provisional Payments, and the Final Payment, if any for the respective lot/rake/vessel.

I) a Proforma Invoice will be provided by HCL to facilitate opening of LC. The LC value will be computed at 110% of the Provisional Net value of the payable metals (Copper, Gold and Silver), which will be arrived at as explained in Clause (III) and (IV) below, based on the Average Metal Values will be in US Dollars & Cents applicable for ten (10) LME Working days prior to the date of issue of Proforma Invoice up to two places of decimal.

II) The LC opened by the buyer shall allow negotiations of the following documents for realizing the 1st Provisional Invoice Value:

For export

(i) 3/3 sets of Clean On-Board Ocean Bill(s) of Lading marked "Freight payable as per charter-party", issued "to order", Blank endorsed showing HCL as shipper, Notify party as per L/C evidencing dispatch of Copper Concentrate of ICC on FOB Port basis for shipment
(ii) Provisional Invoice of HCL, in triplicate drawn on provisional net values
(iii) HCL's Provisional certificate of weight in respect of copper concentrate shipped
(iv) HCL's Provisional Assay Certificate.
(v) HCL's Certificate of origin of copper concentrate
(vi) HCL's Provisional Price Certificate

For domestic sale

(i) 1st Provisional Invoice of HCL/ Tax Invoice
(ii) Provisional Price Certificate of HCL
(iii) Provisional Weight Certificate of HCL
(iv) Provisional Assay Certificate of HCL

III) The First (1st) Provisional Invoice will be based on the provisional value of the payable metals, namely, Copper, Gold and Silver in Concentrate offered, will be determined on the basis of LME average Cash Settlement Prices (CSP) for LME Grade A Copper, average London Bullion Daily price for Gold (Mean of the morning and evening prices), and average Daily London Bullion Spot Prices for Silver and FBIL Ref Rate (for domestic sale) during 10 LME Working days preceding the BL date for Export/ issue of Delivery Order for domestic sale up to two places of decimal. Source for these prices will be the relevant Fastmarket MB/Reuters/LME.

IV) The provisional payable metal content for the computation of the metal value will be arrived at by taking middle values of the ranges given for Copper, Gold and Silver under the Chemical specification of Sales Contract.

The payable metal content (provisionally) for the computation of the metal value will be arrived at by taking average of chemical specification of Copper, Gold & Silver as stated at Chemical

Specification mentioned above e.g., refer table **(taking average of range of Copper, Gold & Silver as defined in pt. no. 1 under Physical & Chemical specification)**

| Elements | ICC Origin |
|---|---|
| Copper | 25% |
| Gold | 2.21 Grams/DMT |
| Silver | 55 Grams/DMT |
| Moisture | 8% |

V) Provisional Net Value of payable metals will be the aggregate of the provisional values of the payable metals determined as explained in Clause (III & IV above) and allowing for the unit deductions (as specified in the Sale Contract) less the Treatment and Refining Charges.

(VI) HCL shall raise commercial invoice for Provisional payment for Provisional Invoice value of the material lifted by the buyer immediately after Bill of Lading date/Rake completion date, for negotiating the LC. Option of payment of Provisional payment by RTGS in case of domestic sale or in foreign currency remittance will be with the buyer. For receipt of the Provisional payment by foreign currency immediately after raising the commercial invoice by HCL, HCL will mail the copies of export documents. On the receipt of the payments by RTGS/foreign currency remittance, the above documents will be couriered to the buyer's address.

In case, the Provisional payment is not received, immediately after issue of documents in MDO-HCL Escrow account, the above documents will be negotiated for realizing the payment against the LC submitted by the Buyer.

All invoices shall be on metal basis i.e., CMT (Copper Metric Ton). All payments are to be made to MDO-HCL Escrow account.

**There shall be a 2nd provisional payment** of material value, after the QP month, based on latest known facts.

If assays are not exchanged, then assay as per Sales Contract and final QP shall be taken for making the 2nd provisional payment.

If assays are exchanged and not finalized, then assays, considered for 1st provisional payment and final QP shall be taken for the 2nd provisional payment.

If the payment is not made within the scheduled date, then HCL shall negotiate the LC.

## 5.0 PRICING BASIS:

**QP (QP):**
QP for all payable metal i.e., Copper, Silver and Gold, mentioned in 3 (IV) will be the first Calendar Month following the Month of Delivery of Concentrate as evidenced by the last Tax Invoice for the Rake, incase of Domestic Sale and Board Bill of Lading date for Export Shipment. In other words, QP = M+1, where M is the month of dispatch of the last consignment of the Rake (for Domestic Sale) and consignment under reference as evidenced by Shipped on Board Bill of Lading date.

**For QP purpose**:

For Export Sale:
lot size will be shipped quantity as per BL weight. (shore weight)

For Domestic Sale:
1 Rake containing approx. 90 Containers

Say, 1 Rake =27.5 WMT x 90 =2475 WMT+/-10%

However, even less than 90 Container can also be loaded in one rake. In such case, the number of Containers loaded in 1 Rake shall be considered as one lot.

**Treatment Charges (TC)**:

**As per bids received against the Tender for Sale of ICC Concentrate floated by HCL.**

**Refining Charges**:
Copper: The refining charge for copper of respective origins of copper concentrate shall be derived as per the following formula:

"The numerical value of respective Treatment charges quoted by the bidder shall be divided by ten (10) to arrive at the Refining charges figure in US Cents per Pound of payable copper".

Silver: US Cents 35 per Troy Oz of payable Silver.
Gold: US$ 4.50 per Troy Oz of payable Gold.

**PAYABLE METALS AND UNIT DEDUCTION**: (FOR HCL PRICING CALCULATION)
**Recovery of Metals**:

Copper:
- Pay 96.5% of the final copper content subject to minimum deduction of 1 unit to be paid at the US$ LME Average Cash Settlement Price for LME Grade-A Copper as Published in Metal Bulletin averaged over the QP.

Silver:
- If silver content is less than 30 grams/DMT - No payment
  and
- If silver content is equal to or greater than 30 grams/DMT - 90% of full silver content on the basis Avg. of London Bullion Price during the QP month as per Metal Bulletin.

Gold:
- If gold content is Less than 1 gram/DMT - No payment
  and
- If gold content is equal to or greater than 1 gram/DMT - 100% payable subject to minimum deduction of 1 gram/DMT on the basis of Avg. of London Bullion Daily prices for gold (AM & PM Price Avg.) during the QP month as per Metal Bulletin.

**5.0 FINAL PAYMENT**:

Balance payment, if any, i.e. the full and final value of the delivered concentrate as per the Final Invoice drawn based on the final weight and assays (determined as per Clause 1.0) and computed on the basis similar to Clause 3.0, for the QP as per Clause 4.0 less the Provisional payments drawn by HCL as per clause 3.0 will also be settled by owing party immediately from the date when all facts become known. In case, the final LC value falls short of final invoice value, the buyer will suitably incorporate a clause in the LC for drawl of final amount due to HCL.

The final payment if payable to HCL will be against the following documents:

Exports

i) HCL's Final Invoice in triplicate drawn for sale of ICC origin of Concentrate towards the difference of final value and provisional values plus surveyor's charge and umpire's charges, if any.
ii) HCL's Final Price Certificate
iii) HCL's Final Assay Certificate
iv) HCL's Final Certificate of weight & moisture duly certified by surveyor.
v) HCL's certificate of Lay time Calculation, for claim/payment of dispatch/demurrage amount, if any.
vi) Debit Note of HCL, if any.

Domestic Sale

i) HCL's Final Invoice in triplicate drawn for sale of ICC origin of Concentrate towards the difference of final value and provisional values plus surveyor's charge and umpire's charges, if any.
ii) HCL's Final Price Certificate
iii) HCL's Final Assay Certificate
iv) HCL's Final Certificate of weight & moisture duly certified by surveyor.
v) Debit Note of HCL, if any.

Buyer will have the option of making the final payment by Foreign Currency Remittance incase of export and by RTGS incase of domestic sale. In case the payment is made by Foreign Currency Remittance incase of export and by RTGS incase of domestic sale, then the documents will be sent to the buyer's designated address by courier after receipt of the payment or else the above documents will be negotiated against the LC. HCL shall remit the differential amount, if refundable to the buyer, by Foreign Currency Remittance incase of export and by RTGS incase of domestic sale (if needed).

**All invoices shall be on metal basis i.e., CMT (Copper Metric Ton).** All payments are to be made to MDO-HCL Escrow Account as detailed in Clause 3.

**6.0 Payment for additional elements in Copper Concentrate:**

During analysis of Concentrate produced, in case Nickel, Selenium and Tellurium content of commercial value is found, the value of the same shall be recovered from buyer as per market prices during the course of the MDO operation.

**STANDARD ICC CONCENTRATE PRICING FORMULA**

The table is attached below for reference.

| SAMPLE CALCULATION | | | |
|---|---|---|---|
| - | | | **ICC** |
| 1 | Copper (%) | | 25.000 |
| 2 | Gold (ppm) | | 2.100 |
| 3 | Silver(ppm) | | 30.00 |
| 3a | MOISTURE (%) | | 8.00 |
| 4 | Effective TC | **As per Sales tender** | 62.18 |
| | | | |
| | | | |
| 5 | Refining charges for Cu (Cents/lb) | | 6.22 |
| 6 | Refining charges for Gold ($ per Troy Oz.) | | 4.50 |
| 7 | Refining charges for Silver (Cents per Troy Oz.) | | 35.00 |
| | **UNIT DEDUCTIONS** | | |
| | Minm dedn. | | |
| 8 | For Copper | | 1.00 |
| 9 | For Gold(ppm) | | 1.00 |
| 10 | For Silver(ppm) | | 0.00 |
| 8b | % Payable | | |
| 11 | For Gold (%) | | 1.00 |
| 12 | For Silver (%) | | 0.90 |
| | **PAYABLE METAL CONTENT** | | |
| 13 | For Copper (MT) | Item (1-8)/100 | 0.24 |
| 14 | For Gold (Tr Oz) | (2-9)*11/31.1035 | 0.04 |
| 15 | For Silver (Troy Oz) | 3*12/31.1035 | 0.87 |
| | | | |
| | **METAL PRICES (Monthly Average for Month)** | | Apr'23 |
| 16 | Copper (US$/MT) | | 8814.00 |
| 17 | Gold (US$ /Troy Oz.) | | 1999.63 |
| 18 | Silver (US$ /Troy Oz.) | | 25.00 |
| | **PAYABLE METAL VALUE PMT OF CONCENTRATE (US$)** | | |
| 19 | For Copper | 13x16 | 2115.36 |
| 20 | For Gold | 14x17 | 70.72 |
| 21 | For Silver | 15x18 | 21.70 |
| **A)** | **TOTAL (US$)** | 19+20+21 | 2207.78 |
| | | | |
| | **DEDUCTIONS (US $)** | | |
| 22 | TC for Copper | 4 | 62.18 |
| 23 | RC for Copper | ((5X2204.62)/100)x13 | 32.90 |
| 24 | RC for Gold | 6x14 | 0.16 |
| 25 | RC for Silver | 7x15/100 | 0.30 |
| | | | |
| **B)** | **TOTAL TC & RC (US $)** | 22+23+24+25 | 95.54 |
| **C)** | **NET RECEIVABLE PER TONNE OF CONCENTRATE (US $)** | A-B-C | 2112.23 |
| 26 | **EXCHANGE RATE (Rs/US$) FBIL Average Month** | | 82.03 |
| 27 | Amount receivable by sale of 1MT of conc in INR | (D)*26 | 173266.54 |
| **28** | **Amount receivable by sale of 1MT of MIC** | INR | **693066.00** |
| **29** | **Net amount receivable (in ) by sale of 1MT of MIC** | INR | **693066.00** |
| **32** | **Realisation (in INR/CMT)** | | **693066** |
| 33 | Total Quantity (in WMT) | | 2800 |
| 34 | Total Quantity (in CMT) | | 644 |
| 35 | **Total Realisation (in INR)** | | 44,63,34,504 |

# *SCHEDULE – T*

**SOP for ROM received from Rakha and Chapri Mines for processing at Mosabani Concentrator Plant**

## 1. Ore Receiving:

The copper ore shall be received at Mosabani Concentrator Plant from Rakha/Chapri mines, in dumpers by road and the receipt quantity is initially recorded. The process of receiving ore and system of weighing and recording of receipt quantity is given below:

### 1.1 Transportation of Ore from mines:

The MDO shall transport the ore from mines to Mosaboni plant at its own cost. The party must provide proper valid challan in line with the prevailing rules for transportation. The transportation must be initiated only after due permission from HCL and as per availability of space at Mosabani Concentrator Plant stockpile.

### 1.2 Basis Of Weighment Of Ore:

Ore received from Rakha mines shall be weighed at 60 Ton Weighbridge located at Mosabani Concentrator Plant and the weight is recorded for each truck basis (Unit of measurement Wet Metric Ton, WMT).

**The weight recorded at Mosaboni weighbridge shall be final & binding to the party.**

## 2. Storage Of Ore:

Ore received from mines (normally during general shift) shall be stored at specified place in ore stockpile located inside the Plant.

## 3. Cut Off Grade of Copper in Ore:

Ore below cut-off grade, as assessed by HCL/ICC (Mining, Geology & R&D) shall not be accepted. Weight of Waste materials (boulders, concrete slabs & other similar items) which can't be processed for crushing/milling if received at Mosaboni Plant shall be removed by the party at their own cost and the weight of the same shall be deducted from the recorded weight during monthly reconciliation of production.

## 4. Charging of Ore for process:

As the Ore will be received from other mines also, Ore from each mine will be processed for one mine at a time. The ore from Rakha/ Chapri mine, which will be taken for processing, will be at the sole discretion of Plant managers, depending upon the availability of ore stock. The stock required for processing at one time will be tentative 15000 tons.

## 5. Sample collection for determination of Moisture and Grade of MIO and MIC:

Representative Sample for determination of various parameters required for material balancing and assessment of quality shall be collected, analysed & calculated as per prevailing SOP of HCL/ICC. Representative sample shall be kept reserved for one month only.

**6. Recording of MIO/MIC details:**

MIO/MIC obtained by analysis at Mosabani Concentrator Plant Lab shall be checked & certified by Geologist and R&D personnel periodically (at least once in a week or as and when required by the Concentrator Department). The same shall be recorded accordingly.

**7. Reconciliation of Grade in Ore**

In case of any dispute, the ore grade shall be finalised by a team consisting of representatives of Mines, Geology, R&D and Mosabani Concentrator Plant in presence of MDO. However, decision of HCL/ICC shall be final and binding on the Parties.

**8. Special Notes:**

The ore from Rakha/Chapri shall be processed for initial 4 years of the contract as per the production details given in the table. The processing will be restricted to 0.3 MTPA (Tentatively).

The cost of processing Ore at Mosaboni plant or Beneficiation **rate is Rs 890/- (Rupees Eight Hundred ninety only) per ton of Ore.**

The above beneficiation rate along with escalation (calculated on quarterly basis) as per formula given below shall be payable by MDO:

***Escalation in % = (A2-A1)/A1***

Where A1 = WPI (All Commodities) of RBI bulletin before start of the quarter.
A2 = WPI (All Commodities) of RBI bulletin in the last month of the quarter.

The achievable grade is subject to minimum feed grade of 0.85% Cu and the cost of production in terms of Per MT of MIC shall directly vary with the cost of GM Ball, reagents, manpower, electricity etc.