

Corrigendum II

Tender No.: HCL/CO/ Rakha-Chapri/MDO/1 dated 16.01.2023: Appointment of MDO for Re-Opening & Expansion of Rakha Copper Mine, Development and operations of Underground Mine at Chapri and Commissioning of new Matching capacity Concentrator Plant at Rakha, Jharkhand

[The following "Existing Provisions" of bid documents shall be considered to be revised/ modified as per the "Revised Provisions" mentioned in the table below:

S No	Document/Clause/Page	Existing Provisions	Revised Provisions
1.	RFP/5.1.55/Pg 18	Supporting Partner: shall mean the direct Subsidiary company or direct Holding company of the Bidder	Supporting Partner: shall mean the direct Subsidiary company or direct Holding company or Subsidiary company of the Holding company of the Bidder
2.	MSA/5.15/Pg 51	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. It is hereby clarified that 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;	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 HCL and the same will be reimbursed by MDO on actual basis, 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. The control of the explosive magazine will be under HCL;
3.	RFP/7.2/Pg 26	Secondary source of power supply for emergency purposes of mines and plant as per statute shall be arranged by the MDO;	Secondary source of power supply for emergency purposes of mines and plant may be diesel generator set or any renewable source of energy as per statute shall be arranged by the MDO;



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S No	Document/Clause/Page	Existing Provisions	Revised Provisions
4.	RPF/7.2 (2.1.2)/ Pg 29	MDO shall construct and commission the matching capacity Concentrator Plant to meet the beneficiation of copper ore as per production schedule of the mines.	MDO shall construct and commission the matching capacity Concentrator Plant to meet the beneficiation of copper ore as per production schedule of the mines. The same may be constructed in phase-wise manner.
5.	RFP/7.2 2.1.6/Pg 31-32	It is proposed to develop decline from the Adit no. 1 of Chapri block upto 6th L initially and then develop upto 9th L for phase – I production. For phase–II production, decline will be developed upto 19th L. Decline dimension is proposed 5.5m (W) X 4.5 m (H) in order to keep a provision of 50-65 tonne dumper if required for production purpose.	It is proposed to develop decline from the Adit no. 1 of Chapri block upto 6th L initially and then develop upto 9th L for phase – I production. For phase–II production, decline will be developed upto 19th L. Decline dimension is proposed 5.5m (W) X 4.5 m (H) in order to keep a provision of suitable size of dumper required for production purpose.
6.	MSA/1.1 .29/ Pg 15	"Bid Security" shall mean the security provided by the {Selected Bidder/ Consortium Member} to the Authority along with the Bid of a sum of Rs. XXXXX (Rupees XXXX only), in accordance with the Request for Bid, and which is to remain in force until substituted by the Performance Security;	"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;
7.	MSA/16. 7.2/ Pg 91	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% (one percent) of the Average Daily Revenue Share Payable for each day of delay	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.

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S No	Document/Clause/Page	Existing Provisions	Revised Provisions
		until the section has been re-commissioned for excavation and processing of Copper Ore.	
8.	MSA/5.1.5/53	Additional New Clause	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.





# Corrigendum I

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The following "Existing Provisions" of Bid Documents have been amended to read as stated in the "Revised Provisions" mentioned in the table below

S. No.	Document/ Page/ Clause	Existing Provisions	Revised Provisions
1.	MSA/5.23	<p>Selling of MIC</p> <p>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), however, the MDO shall assist HCL for Selling of MIC at per the LME Copper Price considering the TC/RC in account of that. The selling of the MIC will be conducted by the MDO in an open and efficiently transparent manner on a portal decided by HCL and any charges related to selling shall be borne by the MDO refer Schedule S</p> <p>The procedure for selling of MIC is provided in appendix.</p>	<p>Selling of MIC</p> <p>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), however, the MDO shall assist HCL for Selling of MIC, as per the LME Copper Price considering the TC/RC in account of that, in an open and efficiently transparent manner on a portal decided by HCL and any charges related to selling shall be borne by the MDO. Refer Schedule S for Process Flow for Sale of Concentrate and Revenue Generation. The first right of MIC will be with HCL always.</p> <p>The procedure for selling of MIC is provided in Schedule S.</p>
2.	MSA/1.1.163	<p>Selling of MIC</p> <p>"Selling of MIC" in reference to this Agreement shall mean and include marketing and sale (on a portal decided by the HCL) of the MIC at LME Copper Prices taking into consideration of TC/RC by the Mine Operator on behalf of the Authority.</p>	<p>Selling of MIC</p> <p>This clause stands deleted</p> <p>Please ref clause no 5.23 MSA in this regard.</p>
3.	RFP/7.2 2.1.5 Selling of MIC Pg 30	<p>Selling of MIC</p> <p>MDO shall act as an agency responsible for Selling of MIC at per the LME Copper Price considering the TC/RC in account of that. The selling of the MIC will be conducted by the MDO in an open and efficiently transparent manner on a portal decided by HCL and</p>	



*[Signature]*

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S. No.	Document/ Page/ Clause	Existing Provisions	Revised Provisions
		any charges related to selling shall be borne by the MDO. The total sale proceeds received from the Buyer(s) shall be deposited into an escrow account opened by HCL and MDO for the purpose of this Agreement.	
4.	RFP/ 5.24.1	During analysis of Concentrate produced, in case Gold, Silver, Nickel, Selenium and Tellurium content of commercial value is found, the value of the same may be recovered from MDO as per the LME price or market prices whichever will be higher during the course of the MDO operation.	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.	RFP/ 8.5.1	<p>Bidder should have successfully developed and operated a mine allotted to a Central/State Government Company in India having reserves of 100 million tonnes and excavated any of the 'considered mineral' from such single mechanised opencast mine on an annual average volume not less than 6.00 million tonnes per annum during 03 (three) consecutive Financial Year in last in last 07 (seven) consecutive Financial Years</p> <p>OR</p> <p>Bidder should have successfully developed and operated a mine allotted to a Central/State Government Company in India and extracted any of the 'considered mineral' from such single mechanised underground mine not less than 2.40 million tonnes per annum during 03 (three) consecutive Financial Year in last in last 07 (seven) Financial Years</p>	<p>Bidder should have successfully developed and operated a mine having reserves of 100 million tonnes and excavated any of the 'considered mineral' from such single mechanized opencast mine on an annual average volume not less than 6.00 million tonnes per annum during 03 (three) consecutive Financial Year in last 07 (seven) consecutive Financial Years</p> <p>OR</p> <p>Bidder should have successfully developed and operated a mine and extracted any of the 'considered mineral' from such single mechanized underground mine not less than 2.40 million tonnes per annum during 03 (three) consecutive Financial Year in last 07 (seven) Financial Years</p>





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S. No.	Document/ Page/ Clause	Existing Provisions	Revised Provisions
		Definition: Bidder or Bidding entity, which shall include any domestic or foreign company or legal entities (LLC/ LLP/ Partnership) incorporated in India as per Applicable Laws	Definition: Bidder or Bidding entity, which shall include any domestic or foreign company or legal entities (LLC/LLP/Partnership) incorporated in India as per Applicable Laws
6.	RFP/5.1.32	Lead Member or Lead Member of the Bidding Consortium: shall mean the member of the Bidding Consortium who is so designated by the members of the Bidding Consortium and meets the Financial Criteria as set forth in Section 8.5 of this Tender Document and shall hold minimum 51% (fifty one percent) equity in the Biding Consortium/JV Company at all times. Also, the lead member must have credential and satisfactory completion of the similar nature of works (i.e., as mentioned in the eligibility criteria of this RFP) of completion not less than 50% value of qualifying quantity.	Lead Member or Lead Member of the Bidding Consortium: shall mean the member of the Bidding Consortium who is so designated by the members of the Bidding Consortium and meets the Financial Criteria as set forth in Section 8.5 of this Tender Document and shall hold minimum 51% (fifty one percent) equity in the Biding Consortium/JV Company at all times.
7.	Schedule E Pg 171/ MSA	Total Beneficiation capacity of 3.5 MTPA is required. The Land for Concentrator Plant with a rated capacity of 2 MTPA to-be.....	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.
8.		Definition of Buyer	(1) The term "Buyer" is replaced by "prospective MDO" in the RFP Document. and (2) The term "Buyer" is replaced by the term, "Purchaser of concentrate" in the MSA Document. However, the term "buyer" means MDO in Clause No. 5.24.2 and 26.5 of the MSA Document.  The definition of "Seller" means HCL in RFP and MSA Document.



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S. No.	Document/ Page/ Clause	Existing Provisions	Revised Provisions
9.	New Clause added under Article 1 and Section 1.1 of MSA Document	Definition of Sale Contract	The terms "Sale Contract" in "Schedule-S" refers to "Sales Agreement" between HCL and the purchaser of copper concentrate generated by MDO and sold by HCL.
10.	Schedule S of MSA Document	Updated clause is highlighted	<p>Copper content in the Table in Page 223 to read as 25% instead of 23.25% stated therein.</p> <p>Metal Prices to be read as</p> <p>Copper (Cu) – Average LME Cash Settlement Price wherever applicable as per the Quotational Period stated for 1<sup>st</sup> Provisional Payment, 2<sup>nd</sup> Provisional Payment and the Final Payment. The source of price would be Metal Bulletin/ LME website/Reuters, or any other source which shall be agreed by HCL.</p> <p>Gold (Au) – Average of London Bullion Market Association Daily prices for Gold (AM &amp; PM Price Avg.) during the QP as applicable for 1<sup>st</sup> Provisional Payment, 2<sup>nd</sup> Provisional Payment and the Final Payment. The source of price would be Metal Bulletin/LBMA website, or any other source which shall be agreed by HCL.</p> <p>Silver (Ag) - Average of London Bullion Market Association Daily price for Silver during the QP as applicable for 1<sup>st</sup> Provisional Payment, 2<sup>nd</sup> Provisional Payment and the Final Payment. The source of price would be Metal Bulletin/LBMA website, or any other source which shall be agreed by HCL.</p> <p>Clause 5 in page 228 – Umpire payment is to be read as, "Cost of the umpire assay will be borne by the MDO or Purchaser of concentrate, whose assays are farther from the umpire assay. The cost will be shared equally by the MDO and the Purchaser of concentrate when the umpire assay is exact mean of the assay of the two parties".</p>



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S. No.	Document/ Page/ Clause	Existing Provisions	Revised Provisions
			<p>1<sup>st</sup> Provisional Payment in Clause (v) in page 228 is to be read as "HCL shall raise First (1st) Provisional Invoice on completion of Rake/BL date, 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 Gold (Mean of the morning and evening prices), and average Daily London Bullion Spot Prices for Silver, during 10 LME Working days preceding the BL date for export sale up to two places of decimal and 10 LME Working days preceding the Delivery Order date of HCL for domestic sale up to two places of decimal". For other payable metals, the prices would be taken from standard sources.</p> <p>Clause 3.3(vi) in page 232 (Provisional Payment) is to be read as, HCL will negotiate the LC submitted by the purchaser of concentrate for realising the Provisional as well as Final payments.</p> <p>Further, Clause 3.3(vi) in page 232 (2<sup>nd</sup> provisional payment), "If assays are exchanged and not finalized, then average assay of HCL and bidder and final QP shall be taken for the 2<sup>nd</sup> provisional payment" is to be read as</p> <p>"If assays are exchanged and not finalized, then assays considered for 1<sup>st</sup> provisional payment and final QP shall be taken for the 2<sup>nd</sup> provisional payment".</p> <p>Calculations in Page 235 of MSA Document amended in the separate Annexure-A.</p>

All other terms of the Bid Document shall remain unchanged.



*Parasha*  
23.3.23

(Sunil Parashar)  
General Manager (Commercial)



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Annexure-A: SAMPLE ICC CONCENTRATE PRICING FORMULA				
		Formula	Unit	Value
1	Copper Content		(%)	25.00
2	Gold Content		(ppm)	2.10
3	Silver Content		(ppm)	30.00
3a	MOISTURE		(%)	8.00
4	Treatment charges (As per prevailing HCL's Sales Contract for MCP Concentrate, linked to Fastmarket- MB monthly TC/RC Index)		(\$/DMT)	66.95
5	Refining charge for Copper		(Cents/lb)	6.695
6	Refining charge for Gold		(\$ per Troy Oz.)	4.500
7	Refining charge for Silver		(Cents per Troy Oz.)	35.00
	<b>UNIT DEDUCTIONS</b>			
	Min <sup>m</sup> dedn			
8	For Copper		%	1.000
9	For Gold		(ppm)	1.000
10	For Silver		(ppm)	0.000
8b	% Payable			
11	For Gold(%)			100%
12	For Silver(%)			90%
	<b>PAYABLE METAL CONTENT</b>			
13	For Copper (MT)	Item (1-8)/100		0.24000
14	For Gold (Tr Oz)	Item ((2- 9)*11)/31.1035		0.03537
15	For Silver (Troy Oz)	Item ((3- 10)*12)/31.1035		0.86807
	<b>METAL PRICES</b>			
16	Copper( US\$/MT)			7884.050
17	Gold (US\$ /Troy Oz.)			1677.870
18	Silver(US\$ /Troy Oz.)			20.310
	<b>PAYABLE METAL VALUE PMT OF CONCENTRATE (US\$)</b>			
19	For Copper	Item (13x16)		1892.17
20	For Gold	Item (14x17)		59.339
21	For Silver	Item (15x18)		17.630



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Annexure-A: SAMPLE ICC CONCENTRATE PRICING FORMULA				
		Formula	Unit	Value
A)	TOTAL (US\$)	Item (19+20+21)		1969.1417
	<b>DEDUCTIONS (US\$)</b>			
22	TC for Copper	Item 4		66.950
23	RC for Copper	((Item 5 X 2204.62)/100) x Item 13		35.424
24	RC for Gold	Item (6x14)		0.159
25	RC for Silver	Item (7x15)/100		0.304
B)	TOTAL TC & RC (US \$)	Item (22+23+24+25)		102.8368
C)	NET RECEIVABLE PER TONNE OF CONCENTRATE (US\$)	Item (A-B)		1866.3049
26	EXCHANGE RATE (Rs/US\$) FBIL Average			82.15
27	Amount receivable by sale of 1 MT of concentrate in INR	Item (C * 26)		153316.95
28	Amount receivable from sale of 1 MT of MIC	Item (27/1)/100		613267.80
29	Qty. of concentratre in WMT		WMT	2800.000
30	Qty. of concentratre in DMT	Item 29*(1 - Item 3a)	DMT	2576.000
31	Qty. of concentratre in CMT	Item (30*1)	CMT	644.000
32	Amount receivable from sale of MIC	Item (31*28)	Rs.	394944463
33	Transportation for domestic sale (assumed)		Rs.	7560000
34	Net Realisation from the sale of MIC	Item(32-33)	Rs.	387384463



*(Signature)*  
23.2.23  
(Sunil Parashar)  
General Manager(Commercial)





HINDUSTAN COPPER LIMITED  
(A Government of India Enterprise)

**“APPOINTMENT OF MINE DEVELOPER CUM OPERATOR”**

FOR

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

THROUGH

REVENUE SHARING MODEL

**Tender No: HCL/CO/ Rakha-Chapri/MDO/1**

**Dated: 16<sup>th</sup> January 2023**

The document contains total 135 pages.

Bid Due Date: Last date of Bid submission: 17<sup>th</sup> March 2023 15:00 Hours IST

### **Press Notification**

Ref. no.: NIL

Date: NIL

Online and sealed proposals are invited for the “Appointment of Mine Developer-Cum-Operator (MDO) for Re-opening & Expansion of Rakha Copper Mine, Development & Operations of Underground Mine at Chapri and Commissioning of new Matching capacity Concentrator Plant at Rakha, Jharkhand” through Revenue Sharing Model.

The Tender Documents can be viewed and downloaded are available free of cost in electronic form and can be downloaded from the websites of MSTC Ltd (<https://www.mstcecommerce.com>) and Hindustan Copper Limited website (<https://www.hindustancopper.com/Page/TenderList>).

The complete Tender Document including draft Mine Service Agreement and other relevant documents shall be made available for download to the bidder after payment of a tender fee of INR 5,00,000 (Indian Rupees Five Lakhs only) excluding Goods and Service Tax (GST). GST shall be payable at 18% of tender fee.

Last Date for submission of tender is up to **15:00 Hours on 17th March 2023** and the same shall be opened at **16:00 Hours on 17<sup>th</sup> March 2023**. For any further information bidders may please contact Mr. Binod Kumar Gupta (E-mail ID : [gupta\\_bk@hindustancopper.com](mailto:gupta_bk@hindustancopper.com))

Sunil Parashar

General Manager (Commercial)  
Hindustan Copper Limited



Hindustan Copper Limited  
(A Government of India Enterprise)  
'Tamra Bhawan'  
1, Ashutosh Chowdhury Avenue,  
Kolkata – 700019

### **NOTICE INVITING TENDER**

Tender Notice no.: HCL/CO/ Rakha-Chapri/MDO/1

Date: 16th January 2023

Hindustan Copper Limited (HCL), a Public Sector Undertaking under the administrative control of the Ministry of Mines, was incorporated on 9<sup>th</sup> November 1967. It is the only vertically integrated copper producing company in India with presence in mining, beneficiation, and smelting, refining and downstream saleable products. HCL holds all the operating mining leases of copper in India.

HCL invites e-Tenders under two-round system with two-part bid in first round from reputed and experienced contractors for 'Appointment of Mine Developer-Cum-Operator (MDO) for Re-opening & Expansion of Rakha Copper Mine, Development & Operations of a New Underground Mine at Chapri and Commissioning of new Matching capacity Concentrator Plant at Rakha, Jharkhand" over an initial contract period of Twenty (20) years with provision of maximum one contract extension for a period of 05 (five) years, solely under discretion of HCL.

The annual production capacity of run-of-mine (ROM) copper ore from Rakha-Chapri Underground Mine will be **3 million tonnes per annum** along with a matching capacity Concentrator Plant.

The interested contractors are requested to note the following:

1. Under the two-round bidding process, the first round will have a two-part bid comprising of the first part (the "Techno Commercial Bid"), which involves Earnest Money Deposit, qualification of interested parties in accordance with the provisions of the pre-qualification criteria (PQC) stipulated in the tender and the second part is the "Financial Proposal" with the "Initial Price Offer (or, IPO)" which shall be higher than the floor price. It is hereby clarified that the Financial Bid will comprise of two rounds. In the first round the Initial Offer of the Technically Qualified Bidders would be opened and ranked based on descending order for determination of the Qualified Bidders. The Qualified Bidders shall be eligible to participate in the electronic auction and submit their Final Offer. The offers are to be submitted online at MSTC Website, who are our service provider for e-procurement. The price bid at above e-procurement portal will be opened only of those bidders who qualify techno-commercially.

In second round of the bidding process, the techno-commercially qualified bidders will be invited to submit their Final Offer on the electronic auction platform, which should be higher than the Applicable Floor Price. The "Applicable Floor Price" for electronic auction shall be the highest Initial Offer received from the Qualified Bidders.

The Tender Documents can be viewed and **downloaded** are available free of cost in electronic form and can be downloaded from the websites of MSTC Ltd and Hindustan Copper Limited website (<https://www.hindustancopper.com/Page/TenderList>).

The complete Tender Document including draft Mine Service Agreement and other relevant documents shall be made available for download to the bidder after payment of a tender fee of

INR 5,00,000 (Indian Rupees Five Lakhs only) excluding Goods and Service Tax (GST). GST shall be payable at 18% of tender fee.

HCL also reserves the right to issue any corrigendum(s) to this tender, if felt necessary, before the due date of opening of the tender. Also, HCL reserves the right to extend bid opening date due to administrative reasons.

Bidder has to check Corrigenda/ Amendments/ Clarifications/ other notices uploaded against the tender from time to time on HCL website: <http://www.hindustancopper.com> under the heading "Tenders" / MSTC Details and resubmit their bids in case of any change in their offer due to the notices, before the final bid submission date/ time.

2. The Bid shall initially remain valid and binding for at least 180 (one hundred and eighty) days from the Bid Submission Date. Any Bid with a shorter validity period shall be rejected by HCL. Under exceptional circumstances, HCL may in writing request the Bidders to extend the Bid Validity Period of their Bids.
3. The Bids have to be submitted only in the e-tendering portal of MSTC. No physical submission of Proposal is required/acceptable. The Tenders shall be opened as per bidding schedule mentioned in the tender document. However, in the eventuality of the day of opening of the tenders becomes a non-working day due to a force majeure event or public holiday, the date of opening of the tenders will shift to the next working day at the same time.
4. Interested parties require any clarification regarding any of the terms & conditions stipulated in this tender document, the same can be clarified through e-mail communications before the due date of submission of bids at the following e-mail id: [gupta\\_bk@hindustancopper.com](mailto:gupta_bk@hindustancopper.com). Address for Communication:

Sunil Parashar  
GM Commercial  
Hindustan Copper Limited,  
"Tamra Bhawan", 1 Ashutosh Chowdhury Avenue,  
Kolkata – 700 019  
Email: [sunil\\_p@hindustancopper.com](mailto:sunil_p@hindustancopper.com)



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## 1. Disclaimer

- 1.1. This Tender Document along with its Annexure and Schedule is not transferrable to any third party.
- 1.2. This document is not an agreement or an offer by Hindustan Copper Limited (HCL) to Bidders or any third party. The purpose of this document is to provide information to interested parties to facilitate the formulation of their Proposal for qualification and price bid. This document does not constitute and will not be deemed to constitute, any commitment on the part of HCL. Furthermore, this document confers neither any right nor expectation on any party to participate in the tender contemplated herein.
- 1.3. This document does not purport to contain all the information required by the Bidder. The Tender Document may not be appropriate for all persons, and it is not possible for HCL to consider the needs of each party who uses or reads this document. The concerned parties should conduct their own investigations and analysis and should verify the accuracy, reliability and completeness of the information in this document and obtain independent advice from appropriate sources. Neither HCL nor its employees or its consultants make any representation or warranty as to the accuracy, reliability or completeness of the information in this document.
- 1.4. Neither HCL nor its employees or consultants shall have any liability to any Bidder or any other person under the law of contract, tort, the principles of restitution or unjust enrichment or otherwise for any loss, expense or damage which may arise from or be incurred or suffered in connection with this document, or any matter deemed to form part of this document, the award of the work, or the information and any other information supplied by or on behalf of HCL or its employees, any consultants or otherwise arising in any way from the selection process.
- 1.5. The bidder should confirm that the Tender Document issued by HCL is complete in all respects. In the event that the Tender Document or any part thereof is missing, the Bidder must notify HCL immediately at the address mentioned in the Bid Data Sheet. If no intimation is received from the Bidder within 10 (ten) days from the date of issuance of this document, it shall be considered that the Tender Document issued, is complete in all respects.
- 1.6. HCL reserves the right to change, modify, add, alter the Tender Document or cancel the Bidding Process without assigning any reasons thereof, at any stage during the Bidding Process. Such changes will be updated in the form of Corrigendum/ Amendments/ Clarifications/ other notices uploaded against the tender from time to time on the tendering website. The Bidders or any third party shall not object to such changes/ modifications/ additions/ alterations explicitly or implicitly. Any such objection by the Bidder shall make the Bidder's Proposal liable for rejection by HCL. Further objection by any third party shall be construed as infringement on confidentiality and privileged rights of HCL with respect to this document. It is clarified that HCL would not entertain any request for change in the Tender Documents where such change relates to a stage of the Bidding Process where the process has already been concluded.
- 1.7. The Tender Document and the information contained herein are strictly confidential and privileged and are for the exclusive use of the party to whom it is issued. This document must not be copied or distributed by the recipient to third parties (other than, to the extent required by the applicable law or in confidence to the recipient's professional advisors, provided that such advisors are bound by confidentiality restrictions at least as strict as those contained in

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this document). If after the issue of the document, the recipient does not continue with its involvement in the Bidding Process for any reason whatsoever, this document and the information contained herein must always be kept confidential by such party and its professional advisors.

- 1.8. It is clarified that provisions of Section 1.6 and 1.7 above shall not apply to information already available in the public domain prior to the issue of this Tender Document.
- 1.9. Submission of bid shall amount to undertaking for not challenging the provisions of the bid document.
- 1.10. The Bidder shall bear all costs associated with the preparation and submission of the Techno-Commercial Proposal and Financial Proposal. HCL and their consultants shall not, under any circumstances, be responsible or liable for any such costs. Nothing contained in this Tender Document shall be binding on the Nominated Authority or confer any rights on the prospective Bidders. The examples set out in this Tender Document are for illustrative purposes only.

## 2. Bid Data Sheet

Sl. No.	Particulars	Information
1.	<b>Contact Person and Address of HCL for Communication, purchase of Tender Document, submission and opening of Proposal</b>	<p><b>Contact person:</b> Sunil Parashar, General Manager (Commercial)</p> <p><b>E-mail address for communication:</b> sunil_p@hindustancopper.com</p> <p><b>Address of communication:</b> Hindustan Copper Limited 'Tamra Bhawan' 1, Ashutosh Chowdhury Avenue Kolkata – 700 019</p>
2.	<b>Project Proponent</b>	Hindustan Copper Limited (HCL)
3.	<b>Name of the Project</b>	Re-Opening & Expansion of Rakha Copper Mine, Development and Operations of Underground Mine at Chapri and Commissioning of new Matching capacity Concentrator Plant at Rakha, Jharkhand
4.	<b>Tender Documents (Documents to be issued to the Bidder)</b>	<p><b>Free of cost:</b> The Tender Documents can be viewed and downloaded are available free of cost in electronic form and can be downloaded from the websites of MSTC Ltd (and Hindustan Copper Limited website (<a href="https://www.hindustancopper.com/Page/TenderList">https://www.hindustancopper.com/Page/TenderList</a>)).</p> <p><b>After payment of Tender Fee:</b> The complete Tender Document including draft Mining Service Agreement and other relevant documents shall be made available for download to the bidder after payment of a tender fee of INR 5,00,000 (Indian Rupees Five Lakhs only) excluding Goods and Service Tax (GST). GST shall be payable at 18% of tender fee.</p>
5.	<b>Earnest Money Deposit</b>	Indian Rupees 50,00,000 (Rupees Fifty Lakh only)
6.	<b>Validity of Proposal</b>	Proposal submitted by the Bidder should be valid for a period of at least 180 (One Hundred and Eighty) days from the Bid Due Date.
7.	<b>Earnest Money Deposit (EMD) Bank Guarantee Declaration</b>	The bidder shall submit Earnest Money Deposit (EMD) bank guarantee declaration form as per the format provided in clause 12.11
8.	<b>Manner of Proposal</b>	Proposal shall be submitted in 2-round and 2-part format.



Sl. No.	Particulars	Information
	<b>submission</b>	<p>Round / Stage 1: Submission of 2-part Proposal</p> <p>Round / Stage 2: Online Forward Bidding</p> <p><b>In round 1</b>, Part I: Online submission of Techno-commercial Proposal, Part II: Financial Proposal (incorporating Initial Price Offer for revenue share), these shall be submitted as per the formats provided and, in the manner, prescribed in this Tender document/ RFP.</p> <p><b>In round 2</b>, the qualified bidders will be invited to submit their Final Offer on the electronic auction platform. The Qualified Bidder that submits the highest Final Offer during the electronic auction process shall be declared as the "Successful Bidder".</p>
9.	<b>Technical Qualification to be met</b>	As stipulated in Technical Criteria at Section 8.5.1
10.	<b>Financial Qualification to be met</b>	As stipulated in Financial Criteria at Section 8.5.4
11.	<b>Pre-Bid Meeting Venue</b>	<p><b>Hindustan Copper Limited (HCL),</b></p> <p>Tamra Bhavan 1, Ashutosh Chowdhury Avenue, Kolkata 700019</p> <p><b>Project Coordinator:</b></p> <p>Shri. Binod Kumar Gupta, Email: gupta_bk@hindustancopper.com</p> <p>Mobile: +91 9560011628</p> <p>Bidders interested to join the Pre-Bid Conference through CISCO Webex, should send their email id to gupta_bk@hindustancopper.com. Meeting id and password will be mailed to the interested bidder(s) on the day prior to the date of scheduled Pre-Bid Meeting</p>
12.	<b>Forward Bidding</b>	<p>Techno-commercially acceptable bidders who are Shortlisted after Round-I shall be intimated for participation in Round-II: Online Forward Bidding.</p> <p>Forward Bidding will be conducted through MSTC portal.</p> <p>The general rules and regulations governing conduct of Online forward Bidding are enclosed in <b>Schedule 4: Business rules of Forward Bidding/ Forward Auction</b></p>

### 3. Bidding Schedule

HCL shall endeavour to adhere to the schedule provided for under this clause. However, in case HCL in its sole discretion undertakes any modification in the schedule specified below, the same shall be

notified from time to time on the tendering/HCL website. Hence, bidders are requested to periodically visit tendering/HCL website for any notification.

<b>S No.</b>	<b>Event</b>	<b>Tentative Schedule</b>
1.	Publication of NIT on tender website of HCL (www.hindustancopper.com)	To (Monday, January 16, 2023)
2.	Site visit duration	To + 28 (Monday, February 13, 2023)
3.	Last date for receipt of pre-bid queries (queries to be submitted by bidder to HCL through emails sent to gupta_bk@hindustancopper.com)	To + 30 (Wednesday, February 15, 2023)
4.	Pre-bid meeting	To + 30 (Wednesday, February 15, 2023)
5.	Responses to pre-bid queries, Addendum/ Corrigendum to be issued by HCL	To + 45 (Thursday, March 2, 2023)
6.	Last date for purchase of Tender Documents	To + 59 (Thursday, March 16, 2023)
7.	Last date and time for submission of Proposal online and hard copies (Bid Due Date)	To + 60 at 03:00 PM (Friday, March 17, 2023)
8.	Opening of EMD security and Techno-Commercial Proposals submitted by bidders (in presence of bidders who choose to attend)	To + 60 at 04:00 PM (Friday, March 17, 2023)
9.	Evaluation of Techno-commercial Proposal	To be declared later
10.	Opening of Financial Proposal / Forward Bidding	
11.	Issue of Letter of Award (LOA)	
12.	Incorporation of JVC/SPV (Project Company), if required	
13.	Signing of Mining Services Agreement	

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#### 4. List of Abbreviations

<b>CEO</b>	Chief Executive Officer
<b>BIS</b>	Bureau of Indian standard codes
<b>CAAQMS</b>	Continues Ambient Air Monitoring System
<b>CEO</b>	Chief Executive Officer
<b>CGWA</b>	Central Ground Water Authority
<b>CGWB</b>	Central Ground Water Board
<b>COD</b>	Commercial Operation Date
<b>CPCB</b>	Central Pollution Control Board
<b>CPWD</b>	Central Public Works Department
<b>Crore</b>	Ten Million OR 10,000,000
<b>CTE</b>	Consent to Establish
<b>CTO</b>	Consent to Operate
<b>Cu</b>	Copper
<b>CVO</b>	Chief Vigilance Officer
<b>CWC</b>	Central Water Commission Govt. of India
<b>DMF</b>	District Mineral Foundation
<b>DSC</b>	Digital Signature Certificates
<b>DSR</b>	Delhi Schedule of Rates
<b>EC</b>	Environmental Clearance
<b>ED</b>	Executive Director
<b>EIA</b>	Environment Impact Assessment
<b>EMP</b>	Environment Management Plan
<b>ETP</b>	Effluent Treatment Plant
<b>FC</b>	Forest Clearance
<b>FPO</b>	Final Price Offer
<b>FY</b>	Financial Year
<b>GCC</b>	General Conditions of Contract
<b>GST</b>	Goods and Services Tax
<b>HCL</b>	Hindustan Copper Limited
<b>HWM</b>	Hazardous Waste Management
<b>ICC</b>	Indian Copper Complex
<b>IEM</b>	Independent External Monitor
<b>INR</b>	Indian National Rupees / Legal tender currency of India
<b>IRC</b>	Indian Road congress
<b>JBVNL</b>	Jharkhand Bijli Vitran Nigam Limited
<b>JIADA</b>	Jharkhand Industrial Area Development Authority
<b>JOA</b>	Joint Operating Agreement
<b>JSPCB</b>	Jharkhand State Pollution Control Board
<b>JV</b>	Joint Venture
<b>L</b>	Level
<b>Lakh</b>	Hundred Thousand or 100,000
<b>LBS</b>	Pound
<b>LLC</b>	Limited Liability Company

<b>LLP</b>	Limited Liability Partnership
<b>LME</b>	London Metal Exchange
<b>LOA</b>	Letter of Award
<b>LTE</b>	Limited Tender Enquiry(ies)
<b>M or m</b>	Meter
<b>MDO</b>	Mine Developer cum Operator
<b>MIC</b>	Metal-In-Concentrate
<b>MIO</b>	Metal-In-Ore
<b>MoEF&amp;CC</b>	Ministry of Environment Forest and Climate Change
<b>MoRTH</b>	Ministry of Road Transport and Highways
<b>MoU</b>	Memorandum of Understanding
<b>MSA</b>	Mining Service Agreement
<b>mSE</b>	mean square error
<b>MT</b>	Million tonnes
<b>MTPA</b>	Million tonnes per Annum
<b>MSTC</b>	Metal Scrap Trade Corporation Limited
<b>NGT</b>	National Green Tribunal
<b>NIC</b>	National Informatics Centre
<b>NIT</b>	Notice Inviting Tender
<b>NMET</b>	National Mineral Exploration Trust
<b>No.</b>	Number
<b>OID</b>	Other Important Documents
<b>PAN</b>	Permanent Account Number
<b>PD</b>	Pen-drive
<b>POA</b>	Power of Attorney
<b>R&amp;D</b>	Research and Development
<b>R&amp;R</b>	Rehabilitation and Resettlement
<b>RFP</b>	Request For Proposal
<b>ROM</b>	Run of Mine
<b>SGWD</b>	State Ground Water Directorate
<b>SPV</b>	Special Purpose Vehicle
<b>STP</b>	Sewage Treatment Plant
<b>SWM</b>	Solid Waste Management
<b>TEFR</b>	Techno-Economic Feasibility Report
<b>Tel.</b>	Telephone
<b>TIA</b>	Tender Inviting Authority
<b>TPD</b>	Tonnes Per Day
<b>TPH</b>	Tonnes Per Hour
<b>URL</b>	Uniform Resource Locator
<b>WRD</b>	Water Resource Department



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## 5. Definitions and rules of construction

### 5.1. Definitions

- 5.1.1. **Affiliate:** means and includes with respect to any person, any other person directly or indirectly controlling, controlled by or under common Control with such person and shall include Holding and Subsidiary Companies.
- 5.1.2. **Applicable Floor Price:** shall mean the highest Initial Price Offer received from the Qualified Bidders for electronic auction.
- 5.1.3. **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 or such other government restriction or any similar form of decision of, or determination by or any interpretation or adjudication having the force of law in India.
- 5.1.4. **Approved Mining Plan:** shall mean the available mining plan for the Rakha Mining Lease, approved by Indian Bureau of Mines (IBM), as defined in the Draft Mining Services Agreement, provided in Schedule 1 of this document.
- 5.1.5. **Associate:** shall have the meaning ascribed to it in Section 2(6) of the Companies Act, 2013.
- 5.1.6. **Authorized Representative / Authorized Signatory:** Each Bidder shall designate maximum of three person(s) authorized to represent the Bidder in all matters pertaining to its Proposal. In case of Bidding Consortium, Lead Member will designate/ appoint all the Authorized Representatives who shall be an employee/officer of the Lender Member. Such person(s) shall constitute the Authorized Representative/ Authorized Signatory of the Bidder. The Authorized Representative/ Authorized Signatory should hold the power of attorney (in the format provided in Section 12.12 and/or Section 12.13) duly authorizing him/ her to perform all tasks including but not limited to sign and submit the proposal; to participate in all stages of the Bidding Process; to correspond for and on behalf of the Bidder, and to execute the Mining Service Agreement and any other documents required to give effect to the outcome of the Bidding Process. The original power of attorney, duly notarized, in favour of the Authorized Representative/ Signatory shall be enclosed by the Bidder along with the covering letter. Further, it is clarified that any one Authorized Signatory can also bind the Bidder on all matters i.e., even if one Authorized Representative signs/agrees on any matter with HCL, same shall be binding on the Bidder. No change in the Authorized Representative would be made by the Bidder without the prior written consent of the HCL.
- 5.1.7. **Beneficiation Plant:** The word "Beneficiation plant" refers to the facility established for processing the mined ore and improving its economic value by removing by-products and gangue materials from the Considered Minerals; hereby, resulting in a higher-grade product.
- 5.1.8. **Bid or Proposal:** Bid or Proposal shall mean the submission of the following by a Bidder pursuant to this Tender Document:
- a) Earnest Money Deposit (EMD) bank guarantee declaration form and Tender fee proof submitted by Bidder as per appropriate formats prescribed.
  - b) Techno-Commercial Proposal consisting of qualification Proposal along with any additional information/clarification; and
  - c) Financial Proposal in the format provided in the Tender Document.

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- 5.1.9. **Bidder or Bidding Entity:** Bidder or Bidding Entity shall refer to any legal entities (Company/ LLP/ LLC/ Partnership), registered in India as per relevant Applicable laws, that has submitted its Proposal in response to this Tender Document under sole bidding route or as part of Consortium as defined in Section 8.
- 5.1.10. **Bidding Company:** Bidding Company shall mean the single registered corporate entity in India that has submitted its Proposal in response to this Tender Document.
- 5.1.11. **Bidding Consortium:** If the Bid for the proposed project has been made by more than one legal entity (Company/LLP/ LLC/ Partnership incorporated in India as per Applicable laws), then this group of entities shall be referred to as the Bidding Consortium. The Bidding Consortium can be of a maximum two Bidding Entities who undertake to form a Joint Venture (JV) Company incorporated under the Applicable Laws prior to the execution of the Mining Service Agreement, which has submitted a Proposal in response to this Tender Document.
- 5.1.12. **Bidding Process:** The procedural activities formed under this Tender Document for Appointment of the MDO shall be referred to as the Bidding Process.
- 5.1.13. **Earnest Money Deposit (EMD)** shall have the meaning ascribed to it in Section 10.7.
- 5.1.14. **Bid Due Date:** The last date for submission of Bid as specified in Section 3, Bidding Schedule.
- 5.1.15. **Bidding Schedule:** Tentative schedule or timelines for events/ activities forming part of the Bidding Process as specified in Section 3.
- 5.1.16. **Bid Validity Period:** shall have the meaning as defined in Section 11.7.1.
- 5.1.17. **Cash Accrual:** means net cash flow from operations i.e., Profit After Tax (PAT) + Depreciation + Other non-cash expenses. The Bidder shall submit a certificate from statutory auditor certifying the calculations for Cash Accrual.
- 5.1.18. **Corporate Performance Guarantee:** shall mean the Bank Guarantee to be submitted by the Supporting Partner for an amount as referred in Clause 9.4 of Mining Services Agreement, within 30 days of issuance of LOA as per the format provided in the Draft Mining Services Agreement.
- 5.1.19. **Concentrator Plant:** The word Concentrator Plant or Concentration 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.
- 5.1.20. **Contract Period:** Contract Period shall mean the term of the Mining Services Agreement as stipulated in the Agreement provided in Schedule 1 of this Tender document.
- 5.1.21. **Control:** shall have the meaning ascribed to it in Section 2(27) of the Companies Act, 2013 and the word controlling shall be construed accordingly.
- 5.1.22. **Considered Mineral:** The term "Considered Mineral" means any mineral out of Copper, Zinc, Lead, Gold ore, Manganese ore, Uranium, Chrome ore, Iron ore, Coal, and Bauxite.
- 5.1.23. **Consortium Agreement:** shall mean the consortium agreement to be entered by the Lead Member and the Other Member pursuant to the format provided in Section 12.10.
- 5.1.24. **Financial Proposal with Initial Price Offer:** The Financial Proposal in Round-I of the Bid shall comprise of the Initial Price Offer (IPO) which shall be higher than the floor price as described in Section 10.10.2, which is quoted by bidders for selection of applicable floor price for electronic forward auction, it shall have the meaning as described in Section 10.10 of this tender.

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- 5.1.25. **Final Price Offer:** In second round of the bidding process, the techno-commercially qualified bidders will be invited to submit their final offer on the electronic auction platform, which shall be higher than the Applicable Floor Price and shall have the meaning as described in Section 10.13 of this Tender Document.
- 5.1.26. **Financial Year:** Financial Year shall have the meaning ascribed to it in Companies Act, 2013. However, in case of the companies incorporated in countries other than India and only for the purpose of meeting the financial qualifications as per financial criteria as desired in Section 8.5.4, the Financial Year shall mean a 12 (twelve) month period corresponding to the audited financial statements as applicable in their respective country.
- 5.1.27. **Fixed Amount:** shall mean the amount incurred by HCL towards land, mine infrastructure, exploration, statutory approvals etc., as described in section 10.18.
- 5.1.28. **Floor Price:** shall mean the percentage share of revenue prescribed under this Tender Document in Section 10.10.2
- 5.1.29. **Forward Auction:** shall mean the auction process where the bidder have to bid above the applicable floor price as described in Section 10.12
- 5.1.30. **Holding Company:** shall have the meaning ascribed to it in Section 2(46) of the Companies Act, 2013
- 5.1.31. **Initial Price Offer:** shall mean the price quoted by the bidder above the floor price described in Section 10.10.2
- 5.1.32. **Lead Member or Lead Member of the Bidding Consortium:** shall mean the member of the Bidding Consortium who is so designated by the members of the Bidding Consortium and meets the Financial Criteria as set forth in Section 8.5 of this Tender Document, and shall hold minimum 51% (fifty one percent) equity in the Bidding Consortium/JV Company at all times. Also, the lead member must have credential and satisfactory completion of the similar nature of works (i.e., as mentioned in the eligibility criteria of this RFP) of completion not less than 50% value of qualifying quantity.
- 5.1.33. **Letter of Award or LOA** shall mean the letter issued by HCL to the Selected Bidder as defined in Section 10.15.
- 5.1.34. **Material Misrepresentation:** is the act of intentional hiding or fabrication of a material fact which, if known to the other party, could have terminated, or significantly altered the basis of, a contract, deal, issuance of LoA to Successful Bidder or transaction.
- 5.1.35. **Member in Bidding Consortium:** Each individual member entity in the Bidding Consortium are referred to as a Member in the Bidding Consortium.
- 5.1.36. **Metal in Concentrate (MIC):** shall mean the amount or proportion of copper metal present in concentrate product (considering dry metric ton (DMT) with Cu grade) obtained after beneficiation of ROM copper ore through Concentrator Plant.
- 5.1.37. **Mines:** Mines shall mean the Rakha and Chapri Underground Copper Mines as defined in the MSA and Approved Mining Plan.
- 5.1.38. **Mine Developer Cum Operator (MDO):** The Mine Developer cum Operator would be the Successful Bidder selected through the Bidding Process, as ascribed to in this Tender Document, who would sign and execute the Mining Services Agreement and/or legal agreements as prescribed by the laws applicable, with HCL. The MDO shall include its legal representatives, successors and permitted assigns.

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- 5.1.39. **Mine Owner:** The Mine Owner shall mean the entity who has been allotted/ awarded the mine and/or who is the mining lease holder.
- 5.1.40. **Mining Services Agreement or MSA:** The agreement as may be entered into between HCL and the Successful Bidder selected through the Bidding Process, for development and operation of Rakha and Chapri Underground Copper Mines and the Concentration Plant MDO project,
- 5.1.41. **Net worth** shall have the meaning ascribed to it in Section 2(57) of the Companies Act, 2013. Net worth will be calculated in compliance with Indian Accounting Standard.
- 5.1.42. **Nominated Authority: The team member of HCL or nominated by HCL for the purpose of this tender document.**
- 5.1.43. **Online Price** shall mean the price quoted by the Shortlisted Bidders at any point of time during the Online Forward Bidding.
- 5.1.44. **Other Member:** “Other Member” or the “Other Member of the Bidding Consortium” shall be the other member/ corporate entity (non-Lead Member) who meets the Technical Criteria as set forth in Section 8.3 of this Tender Document.
- 5.1.45. **Performance Security:** Performance Security shall mean the bank guarantee to be furnished by the Successful Bidder (or the MDO) for an amount as referred in Schedule 1 of the draft Mining Services Agreement.
- 5.1.46. **Profit After Tax or PAT** shall have the meaning ascribed to “Profit (Loss) for the period” in the Part II of Schedule III in the Companies Act, 2013 and shall be calculated in compliance with Indian Accounting Standard.
- 5.1.47. **Promoter** shall have the meaning ascribed to it in Section 2(69) of the Companies Act, 2013.
- 5.1.48. **Peak Rated Capacity (PRC) or Annual Rated Capacity** shall be the maximum annual mining or beneficiation capacity; in case of Rakha and Chapri copper mining project, it shall mean the maximum annual mining/ beneficiation capacity as per the MSA and Approved Mining Plan.
- 5.1.49. **Qualified Bidder:** Qualified Bidder shall have the meaning as defined in the Section 10.8 (x).
- 5.1.50. **Section:** means a Section in the RFP/ Tender document.
- 5.1.51. **Shortlisted Bidder** shall mean techno-commercially qualified bidders who are eligible or shortlisted for Online forward Bidding in Round-II of the Bidding Process.
- 5.1.52. **Successful Bidder or Selected Bidder** shall mean the Bidder selected through the Bidding Process as per Section 10.13.
- 5.1.53. **Site:** Site shall mean the site at which the Rakha and Chapri copper mine and Concentration Plant are located.
- 5.1.54. **Subsidiary Company/Subsidiary:** shall have the meaning ascribed to it in Section 2 (87) of the Companies Act, 2013.
- 5.1.55. **Supporting Partner:** shall mean the direct Subsidiary company or direct Holding company of the Bidder which provides technical / financial support to the Bidder to enable it to qualify for this Proposal and enters into a Joint Operating Agreement as per the format provided in Section 12.10



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5.1.56. **Tender Document(s):** The Tender 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 and Operator (MDO) for the development and operation of the Rakha and Chapri copper mine and Concentration plant project, East Singhbhum district in the State of 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) Draft Mining Services Agreement (provided in Schedule 1)
- d) Any corrigenda /clarification(s) / amendments to the Tender Document issued by HCL.
- e) Geological Report (Extracted Part only)
- f) Mining Plan and Progressive Mine Closure Plan
- g) Any other relevant technical reports available with HCL
- h) The corrigendum (corrigenda)/clarification(s)/ amendments as mentioned in (d) of this sub-section hereinabove shall prevail over the documents mentioned in (a), (b) and (c) mentioned above.

5.1.57. **Techno-commercial Proposal:** shall comprise of the documents as prescribed in the Section 9 including all the forms and formats provided in Section 12.

5.1.58. **Turnover:** shall have the meaning ascribed to it in Section 2(91) of the Companies Act, 2013.

5.1.59. All other capitalized words not defined herein shall have the meaning ascribed to them in the Draft Mining Services Agreement. Terms and expressions 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 and where such terms are not defined then the same shall bear its ordinary English meaning.

## **5.2. Rules of Construction or Interpretation**

5.2.1. Unless otherwise specified, a reference to this Tender Document includes all Sections, Clauses, Annexure, Schedules, Attachment or paragraph of this Tender Document.

5.2.2. Words imparting singular shall also include plural and vice-versa and any word defined in the singular shall have the corresponding meaning when used in the plural and vice versa.

5.2.3. The titles or headings in this Tender Document are for convenience and easy reference only and shall not be considered for construction or interpretation of this Tender Document.

5.2.4. Any reference to "person" shall include companies, firms, corporations and associations or bodies of individuals, whether incorporated or not and shall include their respective successors in business and permitted assigns.

5.2.5. A reference to any gender includes the other gender.

5.2.6. A reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinated legislation issued under, that legislation or legislative provision.

5.2.7. The metric system of measurement shall be used for the purpose of submitting this offer.

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- 5.2.8. A reference to any person includes that person's executors, administrators, substitutes, successors and permitted assigns.
- 5.2.9. A reference to an agreement, deed, instrument or other document include the same as amended, novated, supplemented, varied or replaced from time to time.
- 5.2.10. A reference to the terms 'MSA' or 'Draft Mining Services Agreement' shall be read as MSA or Mining Services Agreement once the Selected Bidder has executed the same with HCL.
- 5.2.11. The terms "include" and "including" shall be deemed to be suffixed with the words "without limitations", whether or not so followed.
- 5.2.12. The expression "writing" or "written" shall include communications by electronic mail and/or letter.
- 5.2.13. The expression "day" shall refer to a calendar day.
- 5.2.14. The requirement of consent of HCL wherever appearing in the Tender Document shall always mean the prior written consent of HCL.

### **5.3. Governing Law and Jurisdiction of Courts**

This Tender Document and Bidding Process shall be governed by and construed in accordance with Applicable Laws in force in India. The courts in Kolkata, India shall have exclusive jurisdiction over all disputes arising under, pursuant to and/or in connection with the Tender Document and Bidding Process.

## **6. Introduction and Background**

Hindustan Copper Limited (HCL) is a Government of India Enterprise under the administrative control of Ministry of Mines. It was incorporated on 9<sup>th</sup> November 1967 under Companies Act 1956.

HCL is the country's only vertically integrated producer of refined copper from indigenous sources. Major activities of HCL are mining, ore concentration, smelting, refining and casting of refined copper metal into downstream products. HCL has underground mines and beneficiation plant at Khetri Nagar, Rajasthan; open cast and underground mine and beneficiation plant mine at Malanjkhand, Madhya Pradesh; underground mine, beneficiation plant, and smelter refinery plant at Ghatsila, Jharkhand; continuous cast copper rod plant at Taloja, Maharashtra and a secondary copper producing plant at Jhagadia, Gujarat.

The Company produces and markets copper concentrates, copper cathodes, continuous cast copper wire rods and by-products such as copper sulphate, slime, revert and sulphuric acid.

In the Eastern part of India, HCL has its unit namely, Indian Copper Complex (ICC) located at Ghatsila, Jharkhand, where Rakha and Chapri copper deposit exists.

The brief description of the project is mentioned below:

<b>S.N.</b>	<b>Particulars</b>	<b>Description</b>
1	Name of the mines	Mine at Rakha and Chapri block of Rakha Mining Lease
2	Name of the Lease holder	Hindustan Copper Limited
3	Rated Capacity of the	3.00 MTPA (Annual Rated Capacity of Rakha and Chapri

S.N.	Particulars	Description
	Mines	copper mining project)
4	Current status of operations	<p>Operation of Rakha mine was discontinued w.e.f. 07.07.2001 due to low copper prices. The mine is currently waterlogged and non-operating.</p> <p>Chapri deposit adjacent to the Rakha mine is a virgin block and needs to be developed and operated.</p>
5	Total Lease area	~785.091 Ha
6	Location	District: East Singhbhum; State: Jharkhand
7	Coordinates	Rakha mining lease is located in SOI Toposheet No. 73 J/6 between latitudes 22°36'52.652"N and 22°39'19.497" N and longitudes 86°21'10.752" E and 86°24'07.556" E.
8	Accessibility	<p>Rail: The Mine is situated 16 kms away from Ghatsila Railway Station and 5 kms away from Rakha Railway Station</p> <p>Road: Via road, the copper mines can be approached from Ghatshila Railway station by 16 kms and Rakha Railway Station by 5 kms motorable road. The mine can also be approached from Tatanagar Railway Station by 30 kms all weather road</p> <p>Air Strip: The nearest airstrip is at Ranchi, which is at a distance of ~170 kms.</p>
9	Lease Details	<p>Date of grant: 29.8.1971</p> <p>Date of expiry: 28.08.2021</p> <p>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 and it is in process.</p>
10	Status of Clearances	<p>Environment Clearance: The Rakha mines has been accorded Environmental Clearance for production of 3.00 MTPA copper ore by the MoEFCC vide letter no. J-11015/269/2011-IA II (M) dated 01.08.2014.</p> <p>Forest Clearance: Rakha Lease has been accorded Stage-II Forestry Clearance for diversion of 184.80 Ha of Forest land by the MoEFCC (Forest Conservation Division) vide letter no F. No. 8-65/1993-FC dated 15th September 2016, subsequently State Govt. has released forest land for commencement of mining operation. Forest Clearance under Sec 2 of FC Act 1980 for balance 98.932 ha within Lease area of 785.091 ha is required.</p> <p>Current status of all the statutory clearances is provided in the Schedule E, Draft Mine Service Agreement (MSA)</p>
11	Mining Plan	The last Mining Plan of Rakha lease for a period of 2020-21 to 2021 till 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.

S.N.	Particulars	Description
12	Beneficiation	Concentration Plant, with a matching rated capacity required to be planned to beneficiate the ore from Rakha and Chapri mines project.

\*Details of the project and operations are mentioned in Schedule 1: Draft Mining Service Agreement attached with this tender document

## 7. Objective & Scope of Work

### 7.1.Objective of HCL

HCL is desirous to appoint a Mine Developer cum Operator (MDO) for re-opening and expansion of Rakha underground copper mine, development and operations of underground mine at Chapri and commissioning of new Concentrator Plant at Rakha, Jharkhand. The combined designed annual production capacity of the mine is of 3.00 MTPA with matching capacity of concentrator plant. The initial period of the MDO will be for 20 (twenty) years with provision for further extensions by 5 (five) years, maximum one time.

HCL desires to select a technically competent and financially sound MDO to make the majority of the investments in the mining and concentrator project and undertake all the activities necessary for planning, development, operation, and maintenance of the copper mine and concentrator plant and to match the annual production as stipulated in the Draft Mining Services Agreement.

#### Summary of Ore Production and Beneficiation:

MDO shall be required to develop the mine and concentrator plant at his own cost and to mine at its designed capacity and concentrate the ore as per established standards. The MDO shall produce combinedly 3.00 MTPA ore from Rakha Mining Lease (Rakha and Chapri Block) at its designed capacity (Production Table given below). The ROM Copper Ore from the mine will be processed at the new concentrator plant of matching capacity. The whole operation shall be carried out on mutually acceptable terms and conditions on long term basis. The copper concentrate should be of minimum 25% copper grade with maximum 8% moisture content. The recovery of the concentrator plant should operate at minimum 94% recovery.

**Table: Mine / Block wise ore production and beneficiation**

No	Mining Lease	Block	Annual Ore Production	Annual Beneficiation
1	Rakha Mining Lease	Rakha	3.00 MTPA	3.00 MTPA
		Chapri		
Total, MTPA:			3.00 MTPA	3.00 MTPA
Note: The copper ore production from Rakha & Chapri block of Rakha Mining Lease shall be 3.0 MTPA from 10 <sup>th</sup> year onwards. In case MDO intends to increase the production of the mine and the Beneficiation plant, necessary statutory steps to be arranged at its own cost.				

### 7.2. Scope of the Work

The scope of the Project (the "**Scope of the Project**") for the MDO shall mean and include, after Appointed Date and during the Contract Period:



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- a) all incidental works prior to commencement of copper production including those required during re-opening and development, creation of Mines entry through decline portal.
  - b) acquiring required land, obtaining physical possession of land, Rehabilitation and Resettlement ('R&R') of Project Affected Persons ('PAPs') in accordance with the R&R Plan;
  - c) procurement of the Applicable Permits, including those set out at Schedule E of the Mining Service Agreement, required for re-opening, development, production of copper, processing of copper ore and Selling of MIC on behalf of the HCL;
  - d) undertaking/conducting scientific studies as recommended by the Directorate General of Mines Safety ("DGMS") or any other regulatory authority during re-opening, development and production of copper, processing of copper ore, in accordance with Clause 5.25 of the Mining Service Agreement;
  - e) re-opening and development of the Mines on the Site specified in Schedule- A, Schedule-C of the Mining Service Agreement and conforming to the Specifications and Standards of the Mining Plan;
  - f) strata monitoring and support during re-opening, development and production of copper from Underground Working;
  - g) Production of copper ore from the mines, processing of same in the concentrator plant for production of MIC and delivery of MIC with due regard to safety in accordance with the provisions of this Agreement;
  - h) operation and maintenance of the Mines and Concentrator Plant in accordance with the provisions of the Mining Service Agreement and the Applicable Laws;
  - i) storage, handling and use of explosives;
  - j) performance of all activities related to progressive mine closure, final mine closure, reclamation (including backfilling of tailings in the mines) as per the Mining Plan;
  - k) safety of Mine;
  - l) recruitment and payment of wages and other benefits to workmen and manpower as per the statutes/Applicable Laws. MDO shall also make the payment of the statutory manpower deployed by HCL for this project;
  - m) statutory responsibilities and obligations of the Owner under the Mines Act, 1952; and
  - n) MDO shall bear all unforeseen and residual expense applicable upon the Project.

The brief overview of scope of work for the MDO will cover the following areas:

- Mining of ore which includes the reopening of Rakha mine, development of underground Chapri mine, exploration and exploitation of copper ore from Rakha and Chapri block in scientifically and environment friendly manner for production of copper ore, excavation of the rock as per the specification, loading, transportation, and disposal of the rock at the specified place.
- Commissioning and operations of a matching capacity Concentrator Plant at Rakha to beneficiate the ore produced from Rakha & Chapri block.
- 100% financing of the project.
- The successful MDO will operate and maintain the equipment at Rakha and Chapri block and Concentrator Plant. The requirement of manpower shall be met by the successful bidder. The MDO shall engage manpower for supervision etc. at its own terms and conditions while adhering to the Applicable laws, provided that this manpower will have no legal right to the employment in HCL at the expiry of the term of the MSA. Provision of salary & wages shall be responsibility of HCL for HCL's manpower deployed at Rakha and Chapri Blocks and Concentrator Plant including that of the Project site.
- The successful MDO shall be primarily responsible for integrating technology into this project and implementing technologies in order to improve productivity, safety, and sustainability while at the same time minimizing environmental impact. This shall include but not limited to improving underground communication, automating processes, and utilizing more advanced methods of transportation.

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- The following initiatives shall be considered & implemented by the successful MDO at its own cost for the entire duration of the project. Although the identified solution shall be implemented, sufficient attention shall be made to ensure that each solution component is a part of the integrated smart mine architecture so that data and communications are seamlessly exchanged between the systems for providing online access (24 hours) to all HCL authorized representatives throughout the contract period.
    1. GPS based tracking and Geo fencing:
      - Real-time location tracking and monitoring, especially of moveable assets.
      - All mine boundaries, unloading points like sidings, stockpiles, crusher and bunker, ore transportation routes, delivery points shall be geo-fenced.
      - Periphery surveillance using virtual fencing shall be done for detecting intrusion of vehicles with the intention of illegal transportation of mineral through unauthorized routes.
      - System shall be capable & generate alerts in case of misroute, overspeed, delay, overloading, wrong dump, incorrect material information, etc.
    2. Automation of Weighbridge system with RFID based Access Control at delivery points:
      - Weighbridge automation is to be carried out by the successful MDO considering all the delivery points as per the definition mentioned in 1.1.61.
      - RFID based access, CCTV surveillance cameras, Weighbridge controller, Traffic lights, Vehicle number plate recognition, Position sensors, other components, Integration with available ERP software etc. required for automating weighbridge system at the delivery points to be installed which shall identify vehicles and drivers to prevent unauthorized use and shall capture digital records of every vehicle at the weighing site.
      - RFID based automatic boom barriers shall be installed at all the entry and exit points of Mines and delivery points so that only authorized vehicles/tippers can enter/exit into the mine premises which eliminate the possibility of any ore pilferage and helps to regulate vehicle traffic.
      - Load cell, if required, shall be installed below static weighbridges for accurate weight measurements.
      - Number plate recognition software, or vehicle having a barcode placed in the front windscreen shall be automatically scanned to match the vehicle and recorded weight.
      - The information recorded for each vehicle shall be stored in the linked software and access/data shall be made available to HCL representatives as and when required.
      - Cross checking of net weight entered into govt portal (for Royalty payment) through QR code.
    3. User Interface/Reports/Dashboards through Web Based Application and Mobile Applications:
      - Reports & dashboards shall be accessible through web-based application, and available on desktop and mobile phones both on Android / IOS and the same shall be accessible from Project Head's Office, HoD's office of Project and Head Office of HCL.
      - MDO shall provide full support to extract and /or share data as specified by HCL and using standard mechanisms like exposing APIs, create users to access data from the database and share data dump in specified format.

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- The reports shall mention & capture data including but not limited to truck number, cycle time details/duration of trip, distance traveled, payload/weight of material, weighbridge details, generated challan no, etc
  - Consolidated reports shall be made available on hourly, shift wise, daily, weekly, monthly & yearly basis.
  - As pollution control measures, auto sprinkling system shall be installed along all the approach road of the delivery points.
4. Training of employees of HCL:
- MDO shall periodically impart safety training including management development program to the employees of HCL without any additional cost whatsoever, in nature.
  - MDO shall develop a state-of-the-art modern Training Center including simulator, etc at the project site

### **Brief Description of the Work**

The broad scope of the MDO shall include all the activities required for re-opening, expansion and operation of Rakha Copper Mine, development and operation of Underground Mine at Chapri and supply, erection, commissioning, operation & maintenance of new Concentrator Plant of matching capacity at Rakha, Jharkhand as further detailed below:

- a) Design & engineering, supply, erection/ construction, commissioning, mine development, production & maintenance, instrumentation & control, and other allied works related to mining operation and backfilling arrangement including all other associated works;
- b) Design & engineering, supply, erection/ construction, commissioning, operation & maintenance, instrumentation & control, and other allied works related to new concentrator plant of matching capacity including tailing storage pond and transportation of tailings to mine for backfilling including all other associated works;
- c) Development of the mines and commissioning of concentrator plant on the site specified in accordance with the provisions of the Mining Service Agreement, and conforming to the specifications, capacity, standards and the approved Mining Plan and Mining Service Agreement;
- d) Other mine development and maintenance activities including but not limited to, assist for land procurement and resettlement & rehabilitation, diversion of road, electric lines etc., setting of site infrastructure including but not limited to explosive magazine houses, explosive vans, site office, diesel depot/ storage, electrical, mechanical and civil installation, access and haulage roads, drainage, dewatering, water treatment facilities, training institute, and establishment of welfare activities as per relevant mine rule, occupational health services as per statute, etc.;
- e) Supply, operation and maintenance of mines, concentrator plant and allied infrastructures in accordance with the provisions of the Mining Service Agreement and Applicable laws;
- f) All statutory safety requirements required manpower including Manager, Safety Officer, Assistant Manager, Ventilation Officer, Surveyor, Training Officer, Mine Foreman, Mining Mate, Blaster, Winding Engine driver, Banksman, Signaller, Magazine Clerk, Mechanical Engineers, Mechanical Foreman, Electrical Engineers, Electrical Supervisors, Electrician, Welfare Officer etc. shall be in the scope of the MDO.

MDO shall construct, operate and maintain first aid stations at underground, first aid room at surface, rescue room, and vocational training center. MDO shall impart training for initial and refresher rescue trained persons as per statute.

Apart from statutory supervisory manpower deployed by HCL, the MDO has to also, specifically deploy statutory manpower (i.e. persons holding requisite statutory competency certificates issued by the concerned statutory authorities) for conducting different mining activities/ operations safely abiding by the relevant laws and statute.

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MDO shall also establish a dedicated training department with a fulltime staff which shall provide training to the persons deployed including employees of HCL for the entire range of mine-site activities.

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

- a) Design engineering, supply, erection & commissioning, including overhead lines, operation & maintenance of electrical substations, electrical infrastructure including transformers, breakers, electrical mining equipment & machineries, spares & consumables etc.;
- b) Design, supply & installation of sub-stations & distribution network for townships, offices, and relevant supporting infrastructure shall also be the responsibility of the MDO;
- c) Secondary source of power supply for emergency purposes of mines and plant as per statute shall be arranged by the MDO;
- d) Design engineering, supply, erection & commissioning including operation & maintenance of mechanical machinery and equipment, spares & consumables etc. to achieve the mine production target as per plan etc. shall be under the scope of the MDO;
- e) Supplied mining mechanical equipment need to conform to relevant Indian standards. In case there is no Indian standards, relevant standards of the country of origin (ISO/EN/DIN, etc.) shall be accepted by DGMS on its merit;
- f) Use of approved various equipment in Mines is to primarily fulfill the statutory obligations enshrined under provision of Metalliferous Mines Regulations, 1961 and subsequent amendments thereof including various Circulars issued by Statutory Authorities from time to time;
- g) Sufficient illumination in mines & surface, lightening protection system, CCTV monitoring system at every level platform & visual units installed at winder operator cabin, mine manager room etc.;
- h) Sufficient illumination in plant & its premises, lightening protection system, CCTV monitoring system & visual units installed as required;
- i) Designing, constructing and facilitating in getting necessary approval for relevant explosive magazine matching the annual production capacity;
- j) Energy saving/ conservation initiatives, improvement in energy efficiency initiative including adoption of renewable energy;
- k) Power supply for operations of Mines & Plant shall be under the scope of the MDO;
- l) MDO shall ensure adherence to quality standards with requirement of relevant ISO certifications;
- m) All Statutory compliance conditions implementation as per guidelines, rules and regulations issued by MoEF&CC, CPCB, JSPCB, CGWA and other environmental governing bodies and their amendments by relevant governing bodies from time to time shall be in the scope of the MDO;
- n) If at any time MDO fails to comply with the applicable laws related to environmental governing bodies, statutory obligations or any kind of compensations raised by the statutory bodies shall be payable by the MDO;
- o) MDO shall setup R&D building with all the necessary world class laboratory equipment, setup & consumables for regular samples preparation and analysis; Environmental lab and equipment for assessment of ambient air, water, noise, and land shall also be the responsibility of the MDO;
- p) Water: The contractor shall make its own arrangement for water drawl (ground & surface) and treatment of water. The tariff for water drawl 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. Water recycling shall be used by the MDO to conserve water on best efforts basis;
- q) MDO shall setup well equipped survey office with all qualified and statutory persons;
- r) MDO shall provide, operate and maintain ambulances, fire tenders, explosive vans, fire extinguishers, utility vehicles etc. at its own cost;
- s) MDO shall construct, operate & maintain the weigh bridge of rated capacity with all equipment including instrumentation & control for weighment of ore and other materials in the mines and concentrator plant as per the provisions of the MSA. The stamping of weighbridge shall be on the name of Hindustan Copper Limited. The weighment should be online basis and to be linked automatically with the administrative offices of HCL for real time monitoring;

- t) All mines, concentrator plant and related infrastructure should have Effluent Treatment Plants (ETP) & Sewage Treatment Plant (STP) With zero discharge complying all pollution norms shall be under the scope of MDO;

Performance and fulfilment of all other obligations of the MDO and matters incidental thereto or necessary for the performance of any or all of the obligations of the MDO are under the Mining Service Agreement.

Note: In addition to the scope and responsibilities of the MDO stated above in clause 7.2, the detailed jobs for scope of work for Rakha and Chapri mines and the Concentrator Plant are mentioned further below in individual part thereof.

### 2.1.1 Rakha Mine

1. The mine is waterlogged, and dewatering is to be done up to 7<sup>th</sup> L initially. Further, dewatering has to be carried out from 7<sup>th</sup> L up to 9<sup>th</sup> L. All the surface installations including, compressors, headgears, ore bins, winders, ventilation fans, workshop etc. had been removed except some important infrastructures like administrative building, compressor house etc. remained, but these needs to be re-furbished completely.
2. The Rakha block has been mined by the present Rakha mine with Incline shaft No.5 and No.4. Two major ore bodies of prominence are lode no. 5 and lode no.6. The other lodes 3 & 4 are in the footwall and mostly exploited at the upper levels. Mine development is proposed in no.5 & no.6 lodes at all levels up to 9<sup>th</sup> L in phase - I and mining has extended in phase - II from below 9<sup>th</sup> L up to 14<sup>th</sup> L. Further, development of Rakha mining block 15<sup>th</sup>, 16<sup>th</sup>, and 17<sup>th</sup> L shall be developed when phase- II stoping gets commenced.
3. Design and engineering, supply, erection and commissioning, operation and maintenance etc. of winding system, headgears, loading & unloading arrangements, PLC system, signalling and communication setup etc.
4. The total Geological ore reserve computed up to 14<sup>th</sup> level and as per borehole data is 20.97 MT @ 1.17% Cu (approximately).
5. The total mineable tonnage is approximately 14.68 MT @ 1.05% Cu and currently the mine is non-operational.
6. Electrical Installation: Setting up of substations, required electrical infrastructure including required rated transformers, operation & maintenance of equipment, laying of double feeder transmission lines from Rakha switching yard to Rakha substation, laying of double feeder transmission lines (Overhead / underground) from Jadugora JBVNL substation to Rakha switchyard as per JBVNL norms CEAR-2010 & DGMS guidelines and applicable electrical standards including obtaining RoW. HCL switchyard at Rakha shall be used for both the Mines and Plant. In case, HCL will get the 33KV overhead/underground cable through JBVNL, the amount of expenditure will be recovered from the successful MDO.
7. All the surface installations including but not limited to, compressors, air receiver tanks, headgears, ore bins, winders, ventilation fans, DG sets, utility equipment, workshop, underground machineries for development and mining operation, (at shaft no. 4 & 5) dewatering arrangement, backfilling arrangement, safety and statutory equipment and any other ancillary infrastructure, equipment, machineries, etc. for development and operation of mine is under the scope of the MDO.
8. Design engineering, supply, erection & commissioning including operation & maintenance of mechanical machinery and equipment, spares & consumables, lubricants, manpower, etc. to achieve the production target as per mine production schedule.
9. Tentative production of copper ore as per proposed scheme of mining is given below:

**Table: Rakha Block Tentative Production Schedule**

Particular		Yr 1	Yr 2	Yr 3	Yr 4	Yr 5	Yr 6	Yr 7	Yr 8	Yr 9	Yr 10 (Onward)
Rakha Block	Ore ('000 T)	0	0	50	300	400	450	500	750	1000	1500
	% Cu	-	-	0.8	1.05	1.05	1.05	1.05	1.05	1.05	1.05



**Note:** The combined copper ore production from Rakha & Chapri block shall be 3.0 MTPA from 10<sup>th</sup> year onwards.

### Chapri Block

1. Chapri block is a virgin block which falls under the Rakha mining lease of HCL is located 15 kms away from Ghatsila railway station on Howrah - Mumbai main line and about 11 kms from Moubhandar works and township of HCL.
2. The brief scope of work shall include not limited to dewatering of existing waterlogged (~7000 cum), development of decline 1 in 7 gradient, underground mine development, stripping, sinking and equipping of eastern shaft, excavation of ventilation raises, production of ore from stopes, and underground definition drilling etc. Arrangements for sufficient illumination and dust suppression in compliance with relevant safety norms and regulations shall be arranged and made available throughout the entire length of the decline. At turnings, a suitable size convex mirror shall be installed for visibility. A bypass for vehicle crossing shall be developed at intervals of not more than 200m. During decline excavation, wherever bad roof conditions exists there shall be provided suitable support.
3. In phase – I, mining activity shall be performed up to 9<sup>th</sup> L and in phase - II mining activity shall be performed from below 9<sup>th</sup> L up to 14<sup>th</sup> L. Further development of Chapri mining block in 15<sup>th</sup>, 16<sup>th</sup>, and 17<sup>th</sup> L shall be developed when phase - II stoping gets commenced.
4. Design and engineering, supply, erection and commissioning, operation and maintenance etc. of mining equipment
5. Design and engineering, supply, erection and commissioning, operation and maintenance etc. of winding system, headgears, crushing system, loading & unloading arrangements, PLC system, signalling and communication setup etc.
6. Design and engineering, supply, erection and commissioning, operation and maintenance etc. of sinking of production & service shaft by use of state-of-the-art technology.
7. Electrical Installation: Setting up of substations, required electrical infrastructure including required rated transformers, operation & maintenance of equipment, laying of double feeder transmission lines from Kendadih overhead line to new Chapri substation as per JBVNL norms CEAR-2010 & DGMS guidelines and applicable electrical standards.
8. All the surface installations not limited to compressors, ventilation arrangements, DG set, utility equipment, workshop, underground machineries for development and mining operation, dewatering arrangement, backfilling arrangement, safety and statutory equipment and any other ancillary infrastructure, equipment, machineries, etc. for development and operation & maintenance of mine is under the scope of the MDO.
9. For decline development and production all machineries and equipment, ventilation system, dewatering arrangement, loading & unloading of ore and transportation to concentrator plant is under scope of the MDO.
10. Design engineering, supply, erection & commissioning including operation & maintenance of all mechanical machinery and equipment, spares & consumables, lubricants, diesel, manpower etc. to achieve the production target as per mine production schedule etc. is under scope of the MDO.
11. The block will start developing from 1st year onwards.
12. The total Geological ore reserve computed up to 14<sup>th</sup> level and as per bore hole data is 76.95 MT @ 0.88% Cu. The total geological reserve estimated upto 18<sup>th</sup> level is about 81.11 MT @0.88%Cu (from RRA Grid 29700 N to 28300 N).
13. The total minable tonnage upto 14<sup>th</sup> Level is 53.865 MT @ 0.79% Cu considering about 70% recovery. However, the mineable tonnage may vary according to the applicable mining method. (Below table showing the proposed production plan). Further exploration has been done up to 18<sup>th</sup> level and mineable reserve are estimated about 56.77 MT @ 0.79% Cu up-to 18<sup>th</sup> level. The orebody is open and continues further downwards.
14. Tentative production as per proposed scheme of mining is given below:

**Table:** Chapri Block Tentative Production Schedule

Particular		Yr 1	Yr 2	Yr 3	Yr 4	Yr 5	Yr 6	Yr 7	Yr 8	Yr 9	Yr 10 Onwards
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Particular		Yr 1	Yr 2	Yr 3	Yr 4	Yr 5	Yr 6	Yr 7	Yr 8	Yr 9	Yr 10 Onwards
Chapri Block	Ore ('000 T)	0	50	150	300	500	690	850	1200	1400	1500
	% Cu		0.80	0.90	0.94	0.94	0.94	0.94	0.94	0.94	0.94

**Note:** The combined copper ore production from Rakha & Chapri block of Rakha mining lease shall be 3.0 MTPA from 10th year onwards.

### 2.1.2 New Concentrator Plant

1. The treatment of the Copper ore production from Rakha and Chapri block of Rakha mining lease will require a matching capacity of concentrator plant.
2. 90.30 acres land for the installation of new Concentrator Plant is available with HCL for which execution of lease deed agreement is under process. If additional land will be required for installation and disposal of tailings for the matching capacity of the concentrator plant, MDO shall arrange at its own cost.
3. MDO shall do the design, engineering, supply, installation, erection, commissioning, operation, and maintenance of the matching capacity of the Concentrator Plant.
4. Design, engineering, supply, installation, erection, commissioning, operation, and maintenance of tailing pond, water recovery and disposal arrangement with state of art technology.
5. Supply of all consumables and reagents shall be under the scope of MDO.
6. MDO shall obtain and supply all the necessary approvals, permissions including RoW (if required) and requirements (like water, power, safety appliances and consumables) to operate the concentrator plant.
7. MDO shall undertake the transportation of ore from mines to the concentrator plant and classified mill tailings from the tailing pond to the backfilling site.
8. MDO shall construct and commission the matching capacity Concentrator Plant to meet the beneficiation of copper ore as per production schedule of the mines.
9. Electrical Installation: Setting up of substations, required electrical infrastructure including required rated transformers and other electrical plant equipment, operation & maintenance of equipment, spares, consumables, laying of double feeder transmission lines (overhead / underground) from proposed new JBVNL substation at Rakha to plant as per applicable statutory norms and electrical standards.
10. Design engineering, supply, erection & commissioning including operation & maintenance of all mechanical machinery and equipment, spares & consumables, lubricants, utility & maintenance machineries, workshop, manpower, etc. to achieve the plant production target as per mine production schedule shall be in the scope of the MDO.
11. MDO shall develop all infrastructure facilities not limited to office building, plant, pond, canteen, workshop, time office, first aid, garages, laboratory, security room etc.
12. MDO shall produce the concentrate having minimum 25% Cu with recovery in the range of 94-95% and moisture content less than 8%.
13. Plant is required to be set up with the state of art technology / SMART-HART.
14. MDO shall construct the ore stockyard and concentrate go-down with a shed inside the plant.
15. Establishment of Laboratory (R&D and Environment).

### 2.1.3 R&D activity / Chemical analysis:

1. MDO shall setup central R&D laboratory building 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.
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.
3. Sampling and analysis of copper concentrate (WMT-Wet Metric Ton) will be carried out by HCL. The sampling procedure and test results of the moisture content and copper content will be considered as stipulated in the Draft Mining Service Agreement

#### 2.1.4 Environmental activity

1. MDO shall set up & operate a full-fledged Environmental Laboratory with modern equipment for necessary environmental parameters monitoring.
2. MDO shall appoint qualified environmental professionals for smooth running of the laboratory.
3. All statutory compliance conditions required for implementation of mines & concentrator plants as per MoEF&CC, CPCB, JSPCB, CGWA and other environmental/ regulatory governing bodies and amendments by governing bodies from time to time are in the scope of the MDO.
4. MDO shall assist HCL and follow up for obtaining necessary statutory permissions Like EC, CTO, CTE, HW Authorization, Dewatering permission from CGWA, surface water withdrawal permission from Water Resource Department and other environmental governing bodies.
5. Note: Design, engineering, supply, consumables, instrumentation, civil, electrical, mechanical, water, power, recovery of water and manpower etc. and any other requirement for plant commissioning, operation and maintenance shall be undertaken by MDO.

#### 2.1.5 Selling of MIC

MDO shall act as an agency responsible for Selling of MIC at per the LME Copper Price considering the TC/RC in account of that. The selling of the MIC will be conducted by the MDO in an open and efficiently transparent manner on a portal decided by HCL and any charges related to selling shall be borne by the MDO. The total sale proceeds received from the Buyer(s) shall be deposited into an escrow account opened by HCL and MDO for the purpose of this Agreement.

#### 2.1.6 Technical Note

##### a) Position of Rakha and Chapri blocks are given below:

S.No	Name of Block	RRA Grid / Local Grid		Strike length (m)
		Start	End	
1	Rakha	30800 N / 400 mSE (from No. 5 Shaft)	29700 N / 1560 mSE	1100
2	Chapri	29700 N / 1560 mSE	28300 N / 2950 mSE	1400

##### b) Reserves:

Estimated Mineable reserves for Rakha and Chapri blocks have been calculated with 30% reduction from Geological reserves/ resource (due to pillars etc.) with 10% reduction in Grade (due to dilution).

The status of block reserves of Rakha and Chapri vis-à-vis mineable reserves is tabulated below:

(Tonnage in million tone)

Level	Block	Geological Ore Reserve		Mineable Reserve	
		Ore	% Cu	Ore	% Cu
Upto 9 L	Rakha	10	1.17	7	1.05
	Chapri	57.67	0.89	40.369	0.80
<b>Sub Total</b>		67.67	0.93	47.369	0.84

Level	Block	Geological Ore Reserve		Mineable Reserve	
		Ore	% Cu	Ore	% Cu
Upto 14 L	Rakha	20.97	1.17	14.679	1.05
	Chapri	76.95	0.88	53.865	0.79
<b>Grand Total</b>		97.92	0.94	68.544	0.85

Level	Block	Geological Ore Reserve		Mineable Reserve	
		Ore	% Cu	Ore	% Cu
Upto 18 L	Chapri	81.11	0.88	56.777	0.79

The mineable reserve estimate may vary on the method of mining. The present available mineable reserve is sufficient to meet 28 years production requirement from these blocks up to 14/13 L. However, exploration works being carried out by HCL and the expenditure for the same will be reimbursed by MDO.

c) Proposed Entries:

i. **Production shaft:**

Considering above, it is proposed to sink the Production shaft upto 21<sup>st</sup> L. Considering high production volume, it is proposed to install two numbers Ground mounted Koepe Winders with 1.5 million tonne per annum capacity each. Inset will be 2<sup>nd</sup> L onwards. By commissioning two numbers of winders, it is also envisaged that production will not come to a standstill in case of breakdown of one winder.

Proposed shaft location: L 9670.00 / (1800 mSE), D: 10090.00  
Top RL of shaft: 135.15 m  
Proposed finished diameter of shaft: 7.0 m  
Proposed sinking depth (upto 21<sup>st</sup> L): 700 m

It is also proposed that each winder will have capacity of 500 tph (tonne per hour) from an ultimate depth of 700 m. Skip will also have canopy arrangement for maintenance.

A spillage shaft from 19<sup>th</sup> L to 21<sup>st</sup> L shall be excavated and equipped with single drum winder suitable for men and material hoisting.

ii. **Service shaft:**

It is proposed to sink the service shaft initially up to 10 m below 18<sup>th</sup> L. It is proposed to install one ground mounted double drum conventional winder with double deck cage for carrying 70 persons at a time with a counterweight and a capstan winder with counterweight for emergency evacuation to a maximum depth of 1000 m.

Proposed shaft location: L 9963.00 / 1293mSE, D: 9675.00  
Top RL of shaft: 125.00 m  
Proposed finished diameter of shaft: 6.5 m  
Proposed sinking depth (approximately): 600 m

iii. **Decline:**

It is proposed to develop decline from the Adit no. 1 of Chapri block upto 6<sup>th</sup> L initially and then develop upto 9<sup>th</sup> L for phase – I production. For phase–II production, decline will be developed upto 19<sup>th</sup> L. Decline dimension is proposed 5.5m (W) X 4.5 m (H) in order

to keep a provision of 50-65 tonne dumper if required for production purpose.

Proposed Decline location: From Adit no. 1  
 Top RL of Adit no. 1: 136.89 m.  
 Length of Decline upto 19<sup>th</sup> L (approx.): 5300 m.  
 Dimension of Decline: 5.5m(W) x 4.5m(H) [Arch Shaped]

iv. **Eastern shaft:**

Striping/ widening of the existing shaft from existing dimension of approximately 1.5m x 3m to 5m x 5m finished size (from surface to full depth of the shaft i.e. 52m). Then the shaft deepened upto 14<sup>th</sup> L. This shaft will be utilized as ventilation return shaft. The evasee and supply and installation of suitable mechanical ventilator needs to be made.

Proposed shaft location: L 9015.00/ 2710 mSE, D: 10728.00  
 Top RL of shaft: 178 m  
 Proposed finished size of shaft: 5 m x 5m  
 Proposed sinking depth (approx.): 510 m

v. **Ventilation shaft:**

A return ventilation shaft for ventilating the crusher chamber and upper levels will be sunk by drop raising technique from 19<sup>th</sup> L up to 6<sup>th</sup> L in stages. From 6<sup>th</sup> L it will come to 3<sup>rd</sup> L and to be connected via the existing crosscut to the present existing vertical shaft. The crosscut and the vertical shaft need to strip and widened. The ventilation raises, so formed, are to be connected from each level for return ventilation. The evasee and supply and installation of suitable mechanical ventilator needs to be made.

However, the above location is tentative in nature and MDO will be free to select new location for Production, Service Shaft and Ventilation Shaft. MDO can enhance the capacity as indicated above keeping the proposed depth / length same.

d) **Summary of shafts/openings**

SI	Description	From	To	Depth		
				Existing	Required	Total
1	Production shaft	S/f	21L		700 m	700m
2	Service shaft	S/f	18L		600m	600m
3	Eastern shaft	S/f	14L	52 m	510m	562m
4	Ventilation shaft	S/f	19L			600 m
5	Western shaft*	S/f	1L	23m	-	23m
6	No.5 shaft*	S/f	7L	200m	70m	270m
7	No.4 shaft*	S/f	7L	207m		207m
8	Decline 1 in 7 gradient	S/f	19L	-	5300m	5300 m

\*Note: For the existing shafts/opening i.e. Western shaft, No.5 & 4 shaft detail description to be included.

e) **Mine Production:**

**Phase-I:** Phase-I consisting of two stages, in stage-I the mining from both Rakha and Chapri block will be done upto 6<sup>th</sup> level and in stage-II the mining operations will be extended upto 9<sup>th</sup> level.

**Phase-II:** The mining operations will be extended in Chapri & Rakha block upto 14<sup>th</sup> level.

**f) Ventilation Shafts:**

Intake shaft	Return shaft
<b>Initial Stage for Rakha</b>	<b>Initial Stage for Rakha</b>
No. 5 shaft – 400 mSE	Western shaft
No. 4 shaft - 1200 mSE	
<b>Final Stage</b>	<b>Final Stage</b>
Production shaft Chapri – 1800 mSE	Eastern shaft – 2710 mSE
Service shaft Chapri – 1293 mSE	Ventilation shaft – 1625 mSE
Shaft at 3000 mSE for hangwall lode	Decline 1 in 7 gradient
	No. 5 shaft

- In phase-I, stage-I, No.4 and No.5 inclined shaft of Rakha block will be equipped with Winders with a hoisting capacity of 1500 tpd from both the shaft. Man-winding provisions will be made through No.5 shaft.
- In phase-I, stage-II, Production Shaft will cater to hoist the ore production will be generated from Rakha & Chapri Block above 9<sup>th</sup> Level. The centralized ore handling facilities will be developed along with Main production shaft.
- In phase-II, Production shaft will cater to hoist the ore production generated from Rakha & Chapri Block below 9<sup>th</sup> L to 14<sup>th</sup> L. Crusher will be installed at 18<sup>th</sup> L. Fine ore bin will be between 18<sup>th</sup> to 19<sup>th</sup> L. Belt Conveyor for loading ore into the measuring hopper will be installed at 19<sup>th</sup> L to feed the skip below 19<sup>th</sup> L. The centralized ore handling facilities will be developed along with Main production shaft.
- 15<sup>th</sup>, 16<sup>th</sup> & 17<sup>th</sup> level will be developed after commencement of production in phase II dumping in the same ore transfer via finger raises.
- Summary of Ore Production and Beneficiation:

S No	Mining Lease	Annual ore production	Annual beneficiation
1	Rakha Mining Lease	3 MTPA	3 MTPA

- The tentative total ore production of 3.00 MTPA will be generated from Rakha and Chapri mines. The matching capacity new concentrator plants have to be installed by the MDO.
- EC application for concentrator plant over the newly acquired land has to be made after finalization of TEFR by the MDO.
- The feasibility studies and detailed design for accommodating the plant and tailings needs to be carried out. Thereafter, statutory permissions like Environmental Clearance for Integrated Concentrator Plant and Mines and Forestry clearance, if any, will be obtained.



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- j) MDO shall be responsible for provision of civil amenities such as water, drainage, electrification, roads, health check-ups/ clinics, and other welfare activities in the project area.
- k) MDO shall, at all times, comply with all the Applicable laws including but not limited to the following Acts and Rules and any subsequent amendments therein:
- (i) The Mines Act, 1952
  - (ii) Mines Vocational Training Rules, 1966
  - (iii) The Employees Compensation Act, 1923.
  - (iv) CMPF and miscellaneous provisions Act, 1948
  - (v) Electricity Act, 2003 & CEAR 2010
  - (vi) Petroleum Act, 1934
  - (vii) Explosive Act, 1884
  - (viii) The Apprentices Act, 1961 and Rules made thereunder.
  - (ix) The Contract Labor (Regulation and Abolition) Act, 1970.
  - (x) The Workmen's Compensation Act, 1923
  - (xi) The Code of Wages 2019 and rules there under.
  - (xii) The Maternity Benefit Act, 1961.
  - (xiii) The Employers' Liability Act, 1938.
  - (xiv) Workmen's compensation Act, 1923
  - (xv) The Employment of Children Act, 1923
  - (xvi) Mines Rules, 1955
  - (xvii) The Forest (Conservation) Act, 1980
  - (xviii) Mines (Rescue) Rules, 1985
  - (xix) The Maternity Benefit (Mines) Rules, 1963
  - (xx) Factories Act, 1948
  - (xxi) Child Labor (Prohibition and Regulation) Act, 1986
  - (xxii) Mineral Conservation and Development Rule 2017
  - (xxiii) Water (Prevention and Control of Pollution) Act 1974
  - (xxiv) Air (Prevention and Control of Pollution) Act 1981
  - (xxv) Environment Protection Act 1986
  - (xxvi) Wildlife Protection Act 1972
  - (xxvii) Forest Act 1927
  - (xxviii) Hazardous Waste Management (HWM) Rule 2016
  - (xxix) Occupational Safety, Health and Working Conditions (Central) Rules, 2020
  - (xxx) Occupational Safety, Health and Working Conditions Code, 2020
  - (xxxi) Metalliferous Mines regulations 1961/2019
  - (xxxii) Explosive Rules 2008
  - (xxxiii) Battery Waste Management Rule 2020
  - (xxxiv) Solid Waste & E-Waste Management Rule 2016
  - (xxxv) Any/ all other relevant Acts and Rules guiding the development, operations, and maintenance of copper ore mines and beneficiation/ concentration plants.

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Any other work, as may be assigned by HCL from time to time during the contract period, incidental to development, operations, and maintenance of Mines and Concentrator Plant

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## 8. Qualification Requirements

### 8.1. Qualification Routes:

8.1.1. The Proposal is to be submitted by:

- A. Route A:** Bidder or Bidding entity, which shall include any domestic or foreign company or legal entities (LLC/ LLP/ Partnership) incorporated in India as per Applicable Laws; or
- B. Route B:** Bidding Consortium, members of which shall be any domestic or foreign company or legal entities (LLC/ LLP/ Partnership) incorporated in India as per Applicable Laws.

### 8.2. Route A: Sole Bidding

- 8.2.1. Under Route A, the Bidder should either be a Company/ LLC/ LLP/ Partnership meeting the Technical and Financial Criteria on its own on standalone basis or with the help of a Supporting partner in the form of a direct Holding company or Subsidiary company of the Bidder or subsidiary of holding company.
- 8.2.2. If Bidder does not meet either, the Technical and / or Financial Criteria on its own, it can take strength from the experience of any Supporting Partner. The Supporting Partner of the Bidder shall meet (either the entire Financial Criteria or the entire Technical Criteria), as applicable, for which the Bidder is taking its strength and thus meeting both Technical and Financial Criteria. In case the Bidder draws the financial strength from the Supporting Partner then for this purpose, audited standalone financial statements of such direct Subsidiary company or Holding company shall alone be considered for evaluation.
- 8.2.3. Bidder and its Supporting Partner should have positive Net Worth as on last date of each of the last 03 (three) Financial Years i.e. FY 2019-20, FY 2020-21 and FY 2021-22.
- 8.2.4. If a Bidder takes strength of the Holding company or Subsidiary company or Subsidiary company of holding company for technical or financial qualification as specified in Section 8.2.2 above, it shall submit legally binding undertaking supported by a board resolution in accordance with the formats provided in the Section 12.7 and 12.8, at the Proposal stage from its direct Subsidiary company or Holding company providing strength for technical or financial qualification that all the technical and financial obligations of the Bidder shall be deemed to be technical and financial obligations of its direct Subsidiary company or Holding company Subsidiary company of holding company, and in the event of any default or failure to perform on the part of the Bidder the same shall be met by its Supporting partner i.e. direct Subsidiary company or Holding company or Subsidiary company of holding company
- 8.2.5. In case the Bidder takes strength from any one of its direct Subsidiary company or Holding company Subsidiary company of holding company, the Bidder shall have to submit a duly executed Joint Operating Agreement (JOA) in the format provided for in 12.11 along with its Techno-Commercial Proposal and the Company which is providing strength to the Bidder, i.e. Supporting Partner shall need to submit an additional Corporate Performance Guarantee in the form of bank guarantee for an amount

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equivalent to the performance security within 30 days of date of issuance of LOA as defined in Section 10.15 and as per the format provided in the Draft MSA in Schedule-1, in lieu of security for compliance of performance in case the Bidder fails to fulfil its obligations.

- 8.2.6. Bidder shall have to provide a certificate from its statutory auditor confirming the relationship with the Supporting Partner including exact details about the equity shareholding and voting rights as on fifteen (15) days prior to the Bid Due Date failing which the Proposal shall be treated as non-responsive.
- 8.2.7. In case, the Supporting Partner is the Holding company, the Holding company shall hold at least 51% equity in the Bidding entity at least till achievement of Annual Peak Rated Capacity. In case the Supporting Partner is a Subsidiary, the Bidding entity shall hold at least 51% equity in the Subsidiary at least till achievement of Annual Rated Capacity.
- 8.2.8. If the Bidder forms a Special Purpose Vehicle (SPV) to act as the MDO, it shall hold 100% of the equity in the MDO SPV till the achievement of Annual Rated Capacity and thereafter at least 51% of equity in the SPV during the Contract Period. Any change in the shareholding of the SPV, can be made only after obtaining the prior written consent of HCL. Notwithstanding the formation of the SPV, the Selected Bidder shall be jointly and severally responsible with the SPV for performance of the obligations contemplated under the Tender Document.
- 8.2.9. The Bidder or any of its Affiliates or Associates can purchase the Tender Documents for their own Bid or on behalf of their Affiliates or Associates. No other entity shall be eligible to purchase the Tender Documents on behalf of the Bidder.

### **8.3. Route B: Bidding Consortium**

- 8.3.1. **A Bidding Consortium shall comprise of maximum two members.** The members can be a Company/ LLP/ LLC/ Partnership registered in India under relevant Applicable Laws.
- 8.3.2. The Bidding Consortium shall comprise of a Lead Member and Other Member. The Lead member shall hold a minimum of 51% of the equity; while, Other member shall hold a minimum of 26% equity interest in the Bidding Consortium.
- 8.3.3. All Consortium members shall select one of the members of the consortium as the "Lead member" who should meet Financial criteria mentioned at Section 8.5.4 on its own and shall hold minimum 51% (fifty one percent) equity in the Biding Consortium/JV Company at all times. Also, the lead member must have credential and satisfactory completion of the similar nature of works (i.e.as mentioned in the eligibility criteria of this RFP) of completion not less than 50% value of qualifying quantity.
- 8.3.4. Bidder may be a Consortium of up to a maximum of two corporate entities. Lead member should meet the entire Financial Criteria mentioned at section 8.5.4 and the Other Members should meet the entire Technical Criteria mentioned at Section 8.5.1.
- 8.3.5. Lead member shall have to provide a certificate from its statutory auditor confirming the relationship with other consortium member including exact details about the equity share holding and voting rights as on fifteen days prior to the bid due date failing which the proposal shall be treated as non-responsive.

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- 8.3.6. In case the Bidder is a Bidding Consortium, the Proposal must be submitted in the name of the Bidding Consortium signed by the Authorised Representative of the Consortium who shall be an employee/ officer of the Lead Member.
- 8.3.7. In case the Bidder is a Bidding Consortium, the members are not allowed to take strength from their Subsidiary company or Holding company.
- 8.3.8. Any Bidding Entity whether by itself or through its Promoters, Affiliates, Associate and/ or its Subsidiary(ies) and/ or its Holding company(ies) cannot be a member of more than one Bidding Consortium.
- 8.3.9. In case the Bidder is a Bidding Consortium, each member of the Consortium should have positive Net worth during each of the last 3 financial years i.e., FY 2019-20, 2020-21 and 2021-22.
- 8.3.10. In case the Bidder is a Bidding Consortium, Members will be required to furnish legally enforceable Consortium Agreement in the format as specified in Section 12.10 along with its Techno-commercial Proposal holding themselves jointly & severally responsible and liable to HCL to perform all contractual obligations as per the terms and conditions of the Draft Mining Services Agreement (provided in Schedule 1), valid for the entire Contract Period. No change in the composition of the Consortium shall be permitted without the prior written consent of the HCL. The Lead Member of the Consortium shall be responsible for coordination of all the activities of the MDO as specified in the MSA.
- 8.3.11. In case the Bidder is a Bidding Consortium and it takes strength of the Other Member for technical qualification, in accordance with the provisions of the Section 8.5.1, it shall submit legally binding undertaking supported by a board resolution at the Proposal stage from its Other Member providing technical qualification that all the obligations of the Bidder or the Lead Member of the consortium shall be deemed to be obligations of its Other Member, and in the event of any default or failure of the Bidding Consortium to perform the same shall be met by the Other Member. The draft format for such board resolution is provided in Section 12.8.
- 8.3.12. All Members in the consortium shall be severally and jointly responsible for all liabilities including operational, financial, legal, environmental and technical liabilities on behalf of the Bidding Consortium.
- 8.3.13. Change in the Other Member of the Bidding Consortium shall not be permitted, except with the prior written permission from HCL, such prior written approval of HCL shall be issued at its sole discretion.
- 8.3.14. If the Selected Bidder is a Consortium, then the Lead Member shall hold at least 51% of the equity in the JV Company/MDO throughout the Contract Period. The Other Member shall hold at least 26% of the equity in the JV Company/MDO till 10 years from the Appointed Date as mentioned in the MSA. The JV Company/Project Company shall not undertake any other business during the Contract Period except for the execution of the project or in connection therewith.
- 8.3.15. In case of Bidding Consortium, Earnest Money Deposit (EMD) shall be submitted/ issued by Lead Member of the Consortium and shall be deemed enforceable on all the Other Member.

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#### **8.4. Other conditions for Bidders**

- 8.4.1. The Bidding Entity/ the Lead Member of Bidding Consortium should designate maximum three persons to represent the Bidder or Bidding Consortium in its dealings with the HCL. The person(s) so designated shall be authorized to perform all tasks including, but not limited to providing information, responding to enquiries, entering into an agreement on behalf of the Bidder.
- 8.4.2. The Bidder should submit the power of attorney(s), authorizing the signatory of their Proposal to bind the Bidder, along with submission of Proposal as per the format provided in Section 12.12 or 12.13 of this Tender Document.
- 8.4.3. A Bidder shall submit only one Proposal either as a single Bidding Company or as part of a Bidding Consortium.
- 8.4.4. Conditional bids will not be considered for opening of financial proposal or forward bidding.
- 8.4.5. HCL reserves its right to waive non-substantial deviations without being bound to do so.
- 8.4.6. The Bidder declares it has not been backlisted by its Government or its undertaking. It further declares that none of their directors or partners or the consortium members, jointly or severally and/or individually has been blacklisted by their respective Government or its undertakings.
- 8.4.7. The Bidder, the Lead Member of the Bidder and Other Member of the Bidder declares that it has never been declared insolvent, nor has any proceedings for insolvency or bankruptcy ever been commenced against it/them. Further, neither the Bidder nor any of their directors/partners/consortium member are subject to any order of punishment/sentence by any court of law or any judicial/quasi-judicial body.
- 8.4.8. The Restrictions under Rule 144 (xi) of the General Financial Rules (GFRS), 2017 shall be prevailed for the Bidders. The certificate regarding compliance as per Schedule 10 have to be submitted by Bidder.

#### **8.5. Qualification Criteria**

The Bidders shall furnish all the details as per Technical and Financial Criteria mentioned below. Bids that are not in compliance with the Technical and Financial criteria shall be rejected.

##### **8.5.1. Technical Criteria**

The Bidder shall fulfil the Technical Criteria as mentioned below. In case of a Bidding Consortium, the Lead member should meet the entire Financial Criteria mentioned at section 8.5.4 and the Other Member should meet the entire Technical Criteria mentioned at Section 8.5.1. The bidder shall submit the details required for Technical Criteria as per Section 12.4.



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### Technical Criteria (Mining):

Bidder should have successfully developed and operated a mine allotted to a Central/State Government Company in India having reserves of 100 million tonnes and excavated any of the 'considered mineral' from such single mechanised opencast mine on an annual average volume not less than 6.00 million tonnes per annum during 03 (three) consecutive Financial Year in last in last 07 (seven) consecutive Financial Years i.e. 2015-16, 2016-17, 2017-18, 2018-19, 2019-20, 2020-21 and 2021-22.

*\*Mechanized opencast mine means excavating & transporting the 'considered mineral' through mechanized means.*

OR

Bidder should have successfully developed and operated a mine allotted to a Central/State Government Company in India and extracted any of the 'considered mineral' from such single mechanised underground mine not less than 2.40 million tonnes per annum during 03 (three) consecutive Financial Year in last in last 07 (seven) Financial Years i.e., 2015-16, 2016-17, 2017-18, 2018-19, 2019-20, 2020-21 and 2021-22.

#### Note:

1. The successful MDO shall bring a reliable contractor who shall facilitate/provide assistance for the installation and operation of the matching capacity Beneficiation plant. A Self Certification in this regard shall be submitted by Bidder as per the format provided in Section 12.4.B.
2. The bidder shall also have prior experience in the obtaining statutory clearance and shall submit a self-attested certificate in this regard.

#### 8.5.2. Note for Technical Criteria

- I. In order to be qualified for participation in this process, Bidder needs to fulfil the Technical Criteria as mentioned in Section 8.5.1.
- II. The term “**Considered Mineral**” means any mineral out of Copper, Zinc, Lead, Gold, Manganese, Uranium, Chromium, Iron, Bauxite and Coal.
- III. The word “**developed**” means that the Bidder should have:
  - a. Facilitated or assisted in obtaining physical possession of acquired land or in land acquisition, R&R and assisted in obtaining statutory clearances/approval for the mine; and
  - b. carried out mine development (development of underground drive/drift, incline/shaft in case of underground mine, Infrastructure development for the mine, involving construction of ore Beneficiation plant / coal handling plant / ore handling plant, workshop and buildings)

of any Considered Mineral either on its own or as a contractor through sub-contracting.

- IV. The word ‘**operated**’ or ‘**operation**’ in the context of technical criteria as mentioned in clause 8.5.1 means that the Bidder should have performed the necessary activities of

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drilling, excavation, hauling, mineral handling, and loading etc. on its own or as a contractor through sub-contracting.

- V. The word '**extracted**' in the context of technical criteria as mentioned in clause 8.5.1 means that the bidders should have performed the necessary activities towards extraction of the considered minerals.
- VI. In case a Bidder (whether as a single Bidding Entity or as a member of the Consortium) is claiming mining experience where it is operating as part of a consortium or a joint venture, it shall also submit a notarised copy of the consortium agreement or Joint Venture agreement (as the case may be), which clearly spells out the extent of its ownership/share in such Joint Venture, as reasonable claim for its qualification, as the case may be.

In case both the contractor and subcontractor claim the experience related to the same mine for fulfilling the technical criteria, only the experience of the party that has actually executed the work shall be considered. In case the Bidder was a sub-contractor in the claimed work experience, the technical capacity will be considered on the basis of actual volume of work executed by the sub-contractor. However, in absence of above scenario, the Bidder holding atleast 51% in such consortium/JV/project can claim entire operational experience of its consortium/JV/project.

If such consortium or Joint Venture has carried out development of a mine, then the Bidder can claim entire experience of development of the mine irrespective of its extent of ownership in such consortium or Joint Venture.

- VII. The Bidder (whether as a single Bidding Entity or as a member of the Consortium) shall also furnish the contact details (including name, designation, email id and mobile phone number) of the mine manager employed by the owner of the mine. In case the mine manager is not employed by the owner of the mine, the Bidder shall share similar contact details of the authorized representative of the mine, who is involved in monitoring the mine operations from the owner's side.

#### 8.5.3. **Supporting documentary evidence required to meet the Technical Criteria**

Bidder is required to submit the following documents notarized from Public Notary:

- a) a statutory auditor's certificate OR the certificate from the owner/lessee certifying
  - i. the Annual Rated Capacity of the mine;
  - ii. the details of the Considered Mineral production achieved in the time period under consideration;
  - iii. scope of activities performed;
  - iv. the development activities undertaken by the Bidder;
  - v. certificate of incorporation
- b) Contact Details (Name of Authorised person, Address, email address) of the owner of mine from where Bidder has taken the experience to meet the Technical Criteria.
- c) In case a Bidder (whether as a single Bidding Company or as a member of the Consortium) is claiming mining experience where it is operating as part of a consortium or a joint venture, it shall also submit a notarized copy of the consortium agreement or joint venture agreement (as the case may be), clearly explaining the

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extent of its ownership in such consortium or joint venture, as reasonable claim for its qualification.

- d) Certificate and/or LOA work orders from the mine allottee and/or contractor for the same, in case the bidder is participating through subcontractor.

#### **8.5.4. Financial Criteria**

The Bidder shall fulfil the Financial Criteria as mentioned below. In case of a Bidding Consortium, Lead Member must fulfil the entire Financial Criteria on its own. The bidder shall submit the details required for financial criteria as per Section 12.5.

- A. In any 03 (three) audited consecutive Financial Years out of five financial years i.e. FY 2017-18, FY 2018-19, FY 2019-20, FY 2020-21, and FY 2021-22:
- i. the average annual turnover of the Bidder should not be less than INR 500 Crore (Indian Rupees Five Hundred crore) or in equivalent foreign currency;
  - ii. Net worth of the Bidder, as on the last date of the last financial year out of the three audited consecutive Financial Years, should not be less than INR 300 crore (Indian Rupees Three Hundred crore), or in equivalent foreign currency; and Net worth should be equal to or more than 100% of its paid-up share capital. Further, Bidder shall have positive Net worth as on last date of each of the last three Financial Years i.e. FY 2019-20, FY 2020-21 and FY 2021-22.
  - iii. the average annual Cash Accrual of the Bidder should not be less than INR 100 Crore (Indian Rupees One hundred crore), or in equivalent foreign currency.

Further, no Corporate Insolvency Resolution/liquidation process should have commenced in respect of the Bidder and in case of Consortium bidding, its Lead Member and/or Other Member under the Insolvency and Bankruptcy Code, 2016 and any other laws applicable to the Bidding Entity. (A self-declaration in the prescribed format (Section 12.19) by the Bidder to this effect shall be submitted)

#### **8.5.5. Note for Financial Criteria**

- I. In order to be qualified for participation in the process for Appointment of Mine Developer and Operator for Re-Opening & Expansion of Rakha Copper Mine, Development and operations of Underground Mine at Chapri and Commissioning of new Matching capacity Concentrator Plant at Rakha, Jharkhand of HCL at East Singhbhum district in Jharkhand, Bidder needs to fulfil all the Financial Criteria(s) A(i), A(ii), and A(iii) as mentioned in Section 8.5.4. For the purpose of this, only standalone financial statement shall be considered.
- II. Cash Accrual shall mean net cash flow from operations i.e. Profit after Tax (PAT) + Depreciation + Other non-cash expenses.
- III. In preparing the Proposal, Bidders are expected to examine the documents comprising this Tender Document in detail. Material deficiencies in providing the information requested may result in rejection of a Proposal of the Bidder.
- IV. In support of Financial Criteria, Bidder shall submit audited financial statements.
- V. The financial figures should be provided in INR or equivalent foreign currency. In case of foreign currency, the equivalent INR value be estimated based on the exchange rates as

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on the date of issuance of NIT, published by the Reserve Bank of India by itself or via Financial Benchmarks India Pvt. Ltd. Or via any other agency authorised by RBI to publish the exchange rates.

- VI. In case of the companies incorporated in countries other than India then, only for the purpose of meeting the financial qualifications as per Financial Criteria, the Financial Year shall mean a 12-month period corresponding to the audited financial statements as applicable in their respective country.

**8.5.6. Supporting documentary evidence required to meet the financial criteria:**

Bidder is required to submit the following document after getting notarized from Public Notary:

- a) its audited financial statements as a standalone entity.
- b) In case the Bidder submits qualification in any currency other than INR, it shall convert it to INR based on the conversion rate as published by RBI as on date of issuance of the Tender/ RFP.
- c) In case of foreign currency figures other than the currency published by RBI, the Bidder shall also submit the USD or INR conversion rate published by the respective country's Central Bank for the corresponding date and the same shall be certified by Statutory Auditor.
- d) Statutory Auditor certificate clearly certifying Turnover, Net worth and Cash Accrual as per definition and requirements in this Tender Documents.

**9. Instructions to Bidders**

Bidder can download the NIT free of cost from the tender website of HCL ([www.hindustancopper.com](http://www.hindustancopper.com)) and from MSTC. Whereas, set of complete Bid documents can be downloaded from MSTC Website only after paying a Tender fee amount of INR 5,00,000 (Indian Rupees Five Lakhs only) excluding Goods and Service Tax (GST).

Name of beneficiary: Hindustan Copper Limited  
Account number: 00000030503862540  
Bank and branch: State Bank of India, CAG Branch Kolkata  
IFSC Code: SBIN0009998

The first round of proposal requires submission of:

Part 1: Techno-Commercial Proposal, and

Part 2: Financial Proposal, as per following instructions

**9.1. Part 1: Techno-commercial Proposal**

9.1.1. The Techno-commercial Proposal shall comprise of the following:

- a) Covering letter for techno-commercial proposal as per Section 12.1.
- b) Affidavit for Bid submission as per Section 12.2.
- c) Proof of payment of MSA and other documents
- d) EMD as per Section 10.7
- e) Techno-commercial proposal as per the format provided in Section 12.3.

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- f) Details to meet technical criteria for qualifying requirements as per Section 12.4 and required supporting documents.
  - g) Details to meet financial criteria for qualifying requirements as per Section 12.5 and required supporting documents.
  - h) Board resolution of the Bidder as per format provided in Section 12.6.
  - i) In case the Lead Member/Supporting Partner providing financial strength to the Bidder, board resolution as per format provided in Section 12.7.
  - j) In case the Other Members/Supporting Partners providing technical strength to the Bidder, board resolution as per format provided in Section 12.8.
  - k) If applicable, certificate from its statutory auditor confirming the relationship of the Bidder with the Supporting Partner including exact details about the equity shareholding and voting rights as on fifteen (15) days prior to the Bid Due Date as per Section 8.2.6.
  - l) Signed copy of unpriced Financial Proposal marking the space for price input as "XXX" as per format given in Section 12.9.
  - m) In case of Bidding Consortium, Consortium Agreement as per format provided in Proforma for Consortium Agreement as per Section 12.10.
  - n) In case of Sole Bidding (Route A), the Bidding Company taking strength from its Supporting Partner, Joint Operating Agreement as per format provided in Proforma for Joint Operating Agreement as per Section 12.10A
  - o) Applicable Power of Attorneys as per the format specified in Section 12.12 and 12.13.
  - p) Format for certificate of total compliance as per Section 12.14.
  - q) Letter of support for Matching capacity Concentrator Plant as per format provided in Section 12.15
  - r) Integrity Pact as per the format specified in Section 12.16
  - s) Certificate of Site Visit as per Schedule 9: Certificate of Site Visit.
  - t) Self-certificate by the Bidder as per format specified in Section 12.17 stating that it has full knowledge and understanding of the Site conditions.
  - u) Declaration from Bidder in compliance of Company Law as per Section 11.11.
  - v) Signed copy of the Tender Documents comprising of RFP document, Draft MSA and all corrigendum, amendment and clarifications issued from time to time.
  - w) Bidder profile comprising of proof on being a legal business entity, copy PAN card, copy of GST certificate and banker details of the Bidder(s).
  - x) Bidder profile comprising of proof on being a legal business entity:
    - a. In case the bidder is a Company, certificate of incorporation, Memorandum and Article of Association of the Bidder or any of the constitutional document has to be furnished by the Bidder, along with the copy of PAN, TAN card, GSTIN registration certificate and bankers details of the Bidders.
    - b. In case the Bidder is a partnership firm, a certified true copy of the deed of partnership, registration number of the firm, if any, along with particulars of all the members of the firm has to be furnished by the Bidder. In such case each

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member of the firm would be required to comply with the requirements prescribed in the Tender Documents with respect to submission of documents. Also, a copy of PAN card and GSTIN registration certificate have to be submitted;

- c. In case the Bidder is an LLP, the constituent documents, a certified true copy of limited liability partnership agreement along with particulars of all the members of the firm has to be furnished by the Bidder. In such case, the designated partners of the LLP will be responsible to ensure compliance by the LLP of the requirements prescribed in the Tender Documents with respect to submission of documents. Also, a copy of PAN card and GSTIN registration certificate have to be submitted;
- d. In case the Bidder is a Consortium, the Consortium Agreement along with constitutional documents of Consortium members have to be submitted

## **9.2. Part 2: Financial Proposal**

- 9.2.1. The Financial Bid comprising of: (i) the Initial Offer; and (ii) the Final Offer. The Initial Offer is required to be submitted along with the Technical Bid through online in the MSTC tendering portal in accordance with the provisions and format provided in Section 12.9. It is hereby clarified that the Financial Bid will comprise of two rounds. In the first round the Initial Offer of the Technically Qualified Bidders would be opened and ranked based on descending order for determination of the Qualified Bidders. The highest initial offer of the technically qualified bidders will become the Applicable Floor Price/H1 for conducting the Forward Auction.
- 9.2.2. The Qualified Bidders shall be eligible to participate in the electronic auction and submit their Final Offer through Forward Auction in the MSTC e-tendering portal in accordance with the provisions and format provided in Section 12.9.

## **9.3. Manner of Submission**

- 9.3.1. Techno-commercial Proposal in the prescribed formats as specified in Section 12 duly filled up with the information, along with supporting documents (wherever applicable) and Financial Proposal shall be submitted by Bidders in the manner as described in the following paragraphs.
- 9.3.2. All the documents which are to be submitted online shall be prepared in indelible ink and should be easily readable. It shall contain no inter-lineation or overwriting, except as necessary to correct errors made by the Bidder itself. Any such corrections must be signed by the Authorized Signatory of the Bidder on each page.
- 9.3.3. Authorized Representative/ Authorized Signatory initials on all pages of the Proposals is required. The authorization must be confirmed by a written Power of Attorney (POA) accompanying the Proposals as provided in Section 12.12 and Section 12.13.
- 9.3.4. The Bidder should attach clearly marked and referenced continuation sheets in the event that the space provided in the prescribed forms is insufficient. Alternatively, Bidders may format the prescribed forms making due-provisions for incorporation of the requested information.



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- 9.3.5. Techno-commercial Proposal and Financial Proposal shall be submitted in the prescribed method in the online portal as per the bidding process provided in Section 10.
- 9.3.6. The Techno-commercial proposal shall be opened as per bidding schedule provided in Section 3 of the Tender and in front of the bidders who choose to be present.
- 9.3.7. Unless extended by the HCL, the last date and time for the submission of the Proposal shall be as per the Bid Schedule mentioned in Section 3.
- 9.3.8. No submissions shall be allowed after the above timeline specified for submission of Proposals. HCL shall not be responsible for any delay in the online uploads of the Proposals.
- 9.3.9. Bidders shall mention their contact details including communication office address, official email address, phone number and mobile number of the Authorized Signatory of the Bidder, etc. in their Proposals.
- 9.3.10. The following may please be noted by the bidders:
- i. Bidders already having DSC or already registered in MSTC portal for tendering in any other organization, can use the same for HCL.
  - ii. All the documents need to be submitted online through the MSTC portal along with the hard copies (one original and two copies) of the Two part Bids shall be submitted to HCL Corporate (on or before the time mentioned in the bidding sheet).
  - iii. Bidder has to check Corrigendum uploaded against the tender from time to time on MSTC portal as well as HCL's website and resubmit their Bids in case of any change in their offer due to the corrigendum, before the final bid submission date / time.
  - iv. For bidders registration or Bid submission Procedure is also available in the MSTC website and the detailed process of registration and bid proposal submission is at Schedule 4.

#### **9.4. Proposal Preparation Cost**

- 9.4.1. The Bidder shall be solely responsible and shall pay for all of the costs associated with the preparation of its proposal and its participation in the Bidding Process.
- 9.4.2. HCL shall not be responsible in any way for such costs, regardless of the conduct or outcome of the Bidding Process.

#### **9.5. Examination of Tender Document by the Bidder**

- 9.5.1. The Bidder shall carefully examine the Tender Document including all amendments/ addendum and corrigendum, if issued, and other details relating to the work and acquaint himself fully with all the conditions and matters therein, which may, in any manner, affect the work and the cost thereof.
- 9.5.2. The Bidder shall be deemed to have obtained all information regarding risks, contingencies, responsibilities and other circumstances which might influence or affect his Proposal, the progress and to have taken into account all conditions and matters that may affect his works under this Bidding Process and cost thereof.

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- 9.5.3. The Bidder shall be deemed to have visited the mining site and its surroundings, carefully examined and satisfied himself about the existing site conditions, availability of local facilities, land requirement etc. and to have quoted rates, taking into consideration all such conditions and matters, which may, in any manner, affect the work and the cost thereof.
  - 9.5.4. The Bidder shall be deemed to have acquainted himself with all Government, and Labor laws, statutes, regulations, rules or notifications relating to taxes, levies and other charges relating to the work at the site or otherwise as applicable from time to time.
  - 9.5.5. Any neglect or omission or failure on the part of the Bidder in obtaining necessary and reliable information upon the foregoing or any other matter affecting this Bidding Process, shall not absolve him of any risk or liabilities or responsibilities for completion of the entire work in accordance with the terms and conditions of the Draft Mining Services Agreement or MSA, provided in Schedule 1.
  - 9.5.6. Any conditional bid will be rejected outright and no claim whatsoever in respect thereof shall be entertained. The management of HCL reserves the right to reject / cancel any or all bids without assigning reasons.
  - 9.5.7. Every document forming part of the Proposal shall be signed by the Authorized Representative of the Bidder. All signatures should be dated, and Company's seal shall be affixed below it.
  - 9.5.8. The Bidder must submit the documentary evidence/ authorization provided by HCL/ acknowledgement receipt generated online against purchase of this Tender Document along with the techno-commercial proposal. The Bidder must also keep/ provide such documentary evidence to attend the pre-bid meeting and Site visit.

## **10. Description of Bidding Process**

### **10.1. Publication of the Tender Document**

The Press Information notice and Notice Inviting Tenders (NIT) shall be freely available on the tender website of HCL ([www.hindustancopper.com](http://www.hindustancopper.com)) and e-tendering portal MSTC. The Tender Document along with other documents shall be made available upon payment of the Tender Document Fee.

### **10.2. Site Visit**

- 10.2.1. To obtain first hand information on the proposed assignment and on the local conditions, Bidders are encouraged to pay a visit to the mine site before submitting a Proposal as per the dates specified in the Bidding Schedule specified in Section 3;
- 10.2.2. The Bidders are encouraged to familiarize themselves with site conditions, location, surroundings, climate, availability of power, water and other utilities for construction, access to site, handling and storage of materials, weather data, applicable laws and regulations, and any other matter considered relevant by them before submission of bid. Bidders are encouraged to take site conditions into account in preparing their Proposals;
- 10.2.3. It shall be noted that only those Bidders who have purchased this Tender Document through HCL shall be allowed to make a Site visit and the Bidder must carry documentary

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evidence/ authorization provided by HCL against purchase of this Tender Document on the day of Site visit, failing which the Bidder shall not be allowed to perform Site visit;

- 10.2.4. For this purpose, Bidders shall communicate to HCL via letter/ e-mail indicating their intention to visit the site along with the intended date of visit and the details of their visiting representatives at least 7 (seven) days before their intended visit.

HCL shall communicate its response to the interested bidders who are planning to visit the work site at the earliest approving the date of visit or may specify another date as it may consider suitable.

- 10.2.5. It shall be further noted that a maximum of 5 members from each Bidder shall be allowed for the Site visit;

- 10.2.6. Considering Site being a restricted area, HCL have right but not obligation to accompany the Bidder for such Site visit by the Bidders;

### **10.3. Pre-Bid Meeting**

- 10.3.1. A pre-bid meeting would be held to clarify and discuss issues with respect to the Bidding Process and the Tender Documents. The pre-bid meeting shall be held as per the details given in the Bid Data Sheet and Bidding Schedule mentioned in Section 2 and Section 3 hereof.

- 10.3.2. A Bidder may raise their queries and suggestions during pre-bid meeting. HCL in its sole discretion but under no obligation, may amend the RFP or respond to any such queries submitted by any Bidder.

- 10.3.3. Attendance of the Bidders at the pre-bid meeting is not mandatory.

- 10.3.4. Bidders who have paid the Tender Fee may, subject to production of documentary proof of deposit of such cost, may attend the pre-bid meeting. The representatives shall keep the confirmation of the payment of Tender Fee by the Bidder for verification.

- 10.3.5. Bidders who are interested to attend the pre-bid meeting shall inform the Contact Person of HCL at least 3 (three) calendar days before the date of the pre-bid meeting, along with the number of representatives who would be attending the pre-bid meeting. This is required to ensure that HCL can make adequate arrangement for hosting the pre-bid meeting, depending upon the total number of attendees.

- 10.3.6. A maximum of 03 (three) members shall be allowed from each of the Bidder for attending the Pre-Bid meeting who shall carry their authorization letter issued by the Bidder. Bidders interested to join the Pre-Bid Conference through CISCO Webex, should send their email id to [gupta\\_bk@hindustancopper.com](mailto:gupta_bk@hindustancopper.com). Meeting id and password will be mailed to the interested bidder(s) on the day prior to the date of scheduled Pre-Bid Meeting.

### **10.4. Issuance of Clarifications, Corrigendum and Amendment**

- 10.4.1. Bidders may send their queries on the Tender Documents or the Bidding Process through email to the Contact person strictly in excel (.xls) format as per the proforma attached in Schedule 2 under Section 14.

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- 10.4.2. The last date for receipt of queries by HCL is indicated in the Bidding Schedule mentioned in Section 3. Queries received after this date will not be entertained.
- 10.4.3. At any time prior to the Bid Due Date, HCL may at its own initiative or in response to a clarification requested by a Bidder, amend the provisions of RFP Documents and Draft MSA by issuing Corrigendum (s) / Amendment(s) to the RFP.
- 10.4.4. Any clarifications/ corrigendum/ addendum shall be issued to all the interested Bidders who have purchased the Tender Documents. The source of the query or suggestion shall not be revealed. Further, HCL may further seek clarification from Bidders through email.
- 10.4.5. Bidders are also advised to regularly check the tender website of HCL ([www.hindustancopper.com](http://www.hindustancopper.com)) and MSTC e-tendering portal regarding posting of Amendment(s)/ Corrigendum(s)/ Clarification(s), if any.
- 10.4.6. The Clarification(s)/ Corrigendum(s)/ Amendment(s) issued by HCL will be binding on the bidders and it will be assumed that the information contained therein have been considered by the bidder in their bid.
- 10.4.7. Any Clarification(s)/ Corrigendum(s)/ Amendment(s) issued by HCL after the date of issuance of the Tender Documents will also be considered an integral part of the Tender/Document and any reference to the Tender Document in the draft MSA shall include such Clarification(s)/ Corrigendum(s)/ Amendment(s) also.
- 10.4.8. No verbal clarifications and information provided by HCL or its employee(s) or its representative(s) or its consultant(s) shall in any way be binding on HCL unless subsequently confirmed through the issuance of Clarification(s)/ Corrigendum(s)/ Amendment(s).
- 10.4.9. To afford prospective Bidders reasonable time in which to take the Clarification(s)/ Corrigendum(s)/ Amendment(s) into account, HCL may, at its discretion, extend the last date for Bid submission i.e. the Bid Due Date.

#### **10.5. Selection Process: Two Stage, Two Part Bidding**

- 10.5.1. The objective of HCL is to select an MDO through competitive bidding who has the appropriate experience in Mining and beneficiation operations and financial strength to ensure timely development and continuous operations of the Rakha and Chapri copper mining and beneficiation project in accordance with the requirements of HCL, stipulated in Draft MSA.
- 10.5.2. The domestic or international Bidders are invited to submit their Proposals against this RFP.
- 10.5.3. Notwithstanding anything contained in this Tender Document, HCL reserves the right to accept or reject any Proposal / Bid and reject all Proposals / Bids, at any time without any liability or any obligation for such acceptance, rejection and without assigning any reasons thereof.
- 10.5.4. The costs of preparing the Proposal and other requirement related to Proposal submission including visit to Rakha and Chapri copper mining and beneficiation project

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site and HCL office are to be borne by the Bidder itself and shall not be reimbursed in any condition.

10.5.5. The Bidders shall be required to submit a two-part proposal in Round/ Stage-1 which includes, Part 1: Techno-commercial Proposal and Part 2: Financial Proposal (with Initial Price Offer or, IPO for revenue share) as specified in this RFP/ Tender document. The Bidding Process for the Appointment of MDO shall comprise of the following two stages or rounds (called "**Bidding Process**"):

- i. First Round (Techno-commercial Proposal and Financial Proposal with IPO), and
- ii. Second Round (Online forward Bidding to identify the Successful Bidder).

#### **10.6. First round of Bidding Process**

10.6.1. In the first round, the Bidder shall be required to submit following documents

- i. Techno-commercial Proposal as per the formats provided in the RFP and requirements stated in Section 9.1; and
- ii. Financial Proposal as per the format specified in Section 12.9.

10.6.2. Techno-commercial Proposal as well as Financial Proposal in First Round of Bidding Process shall be submitted in online mode at the e-tendering portal.

10.6.3. All the queries related to document submission need to be resolved well in advance of the Bid Due Date. Any issues of the Bidders, after submission deadline as mentioned in data sheet in Section 3, on submission of documents shall not be entertained;

#### **10.7. Earnest Money Deposit (EMD)**

10.7.1. Bid must be accompanied by the Earnest Money Deposit (EMD) in any of the following forms:

- a) a bank demand draft/ banker's cheque/ pay order from Scheduled Commercial Bank (except Co-operative/ Gramin Bank), or
- b) a Bank Guarantee issued from a Scheduled Commercial Bank (except Co-operative/ Gramin Bank) as per the format given in Section 12.11, or
- c) Proof of transaction through TT remittance/ online transfer – NEFT, RTGS, SWIFT (i.e., electronic mode of payment is allowed)

10.7.2. In case of Bidding Consortium, EMD shall be submitted by Lead member of the Bidding Consortium.

10.7.3. The EMD of the Bidders who are not declared as the Successful Bidder shall be returned within 30 (thirty) days from the date of declaration.

10.7.4. The EMD of the Successful Bidder may be adjusted with the requirement of Performance Security, if the Successful Bidder so desires.

10.7.5. Bidders may be required to extend the validity of EMD till such time as HCL may reasonably require. In the event the validity period of the Bid is extended, the Bidder shall ensure that the bank guarantee if any issued towards EMD is renewed for such extended timelines, failing which HCL shall have the right to forfeit the EMD.

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10.7.6. EMD of the Successful Bidder shall be returned upon HCL receiving the Performance Security and Fixed Amount which shall be required to be provided within 30(thirty) days from the date of signing the Service Agreement or date of issuance of the LOA, whichever is earlier. If HCL has not received the Performance Security within the said period, it shall be entitled to forfeit the EMD.

10.7.7. The EMD may be forfeited if the Bidder fails to comply with the requirements under the Tender Documents or the Successful Bidder fails to furnish the Performance Security and Fixed Amount within 30(thirty) days from Commencement Date.

## **10.8. Evaluation of Techno-commercial Proposal**

10.8.1. The Techno-commercial Proposal shall be evaluated to ascertain compliance of the Bidder with the eligibility conditions and requirements under this RFP/ Tender document. While examining the Techno-commercial Proposal, HCL will consider that the Techno-commercial Proposal:

- i. is uploaded as per the prescribed formats as given in Section 9 and 12 of this tender document along with all required documents and information, meeting all general conditions and timelines stipulated in this tender document;
- ii. is uploaded by the Bid Due Date including any extension thereof;
- iii. contains all the information (complete in all respects) including the Financial Proposal and EMD declaration as requested in this Tender Document;
- iv. does not contain any conditions or qualification deviation;
- v. only one Techno-commercial Proposal has been submitted by the Bidder (in case of Bidding Consortium, no Consortium member/ its Associate/ its subsidiary /holding company or Promoter shall submit another Proposal individually or with any other Consortium). Similarly, in case of a Bidding Company, the Supporting Partner or the Promoter, Associate or Affiliate of the Bidding Company shall not submit another Proposal individually or jointly with any other Person;
- vi. is generally considered to comply in terms of any other parameters as may be considered relevant by the HCL;
- vii. The Bidder meets the Qualification requirements mentioned in Section 8 of this Tender Document;  
  
If the Bidder does not satisfy the Qualification requirements, HCL has the right to reject such Proposals;
- viii. At the time of opening of Part 1: Techno-commercial Proposal of the bid, Part 2: Financial Proposal shall not be opened by HCL;
- ix. HCL shall open the Techno Commercial Bid (Part – I) only on e-tendering portal as per Schedule mentioned in Section 3 in the presence of the Bidders who choose to attend. However, in the eventuality that the day of opening of the bids becomes a non-working day due to a force majeure event or public holiday, the date of opening of the bids will shift to the next working day at the same time.

Part II: Financial Proposal of the bid (with “IPO for Revenue Share”) shall be opened in the e-tendering portal for those Bidders who qualify techno-commercially as per the



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qualifying criteria of the tender. The date and time of opening of the Financial Proposal (Part – II) shall be communicated in due course of time;

- x. Only those Bidders who are found to be eligible in accordance with the prescribed eligibility conditions in Section 8 have submitted all documents as listed in this Tender Document to be provided as part of Proposal and additionally, whose Proposals meet the qualification requirements under this Tender Document and are eligible for opening of Financial Proposal shall be declared as the “Qualified Bidders”.

#### **10.9. Clarifications sought by HCL on Proposals submitted by the Bidders**

- 10.9.1. During Techno-commercial evaluation of proposals, HCL may, at its discretion, ask the Bidder for a clarification on any information provided in the Bid, to be responded to within a stipulated number of days to be specified by the HCL.
- 10.9.2. The request for clarification and the response shall be in writing, to be communicated either through e-mail or through a paper-based communication, and no change in the price or substance of the Proposal shall be sought, offered or permitted except to confirm the correction of arithmetical errors discovered by HCL in the evaluation of the Proposals, in accordance with the Tender Document.
- 10.9.3. In case Bidder, from which such clarification is sought, does not respond within time provided by HCL, its proposal shall be liable for disqualification or be evaluated based on information available with HCL.
- 10.9.4. HCL may hold clarification meetings with any or all the bidders on Tender document/ Techno-commercial proposal submitted by Bidder.
- 10.9.5. HCL at its own discretion may ask the bidder to submit additional information/documents for the evaluation of their technical proposal.

#### **10.10. Financial Proposal and Qualified Bidders**

- 10.10.1. After evaluation of the Techno-commercial Bids, only the Qualified Bidders shall be considered for the opening of Financial Proposal (Part-2).
- 10.10.2. HCL may at its discretion decide to open the Financial Proposal (with IPO) of Qualified Bidders. The Initial Price Offer should be higher than the Floor Price in multiples of 0.25% of revenue share. The Floor Price for this tender document is 35% (thirty-five percent) of revenue share.

#### **10.11. Shortlisting through the Initial Price Offer**

- 10.11.1. Only IPO submitted by Techno-commercially Qualified Bidders in Part-2 Financial Proposal of Round-I of the Bidding Process shall be opened.
- 10.11.2. In case number of Qualified Bidders is more than five (5), then the Qualified Bidder(s) submitting lowest Initial Price Offer shall be eliminated from the second round i.e. Online Auctioning and rest of the Qualified Bidders shall be considered as qualified for second round of Bidding (Forward Bidding) as “Shortlisted Bidders”.

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Provided that on eliminating Qualified Bidder(s) submitting lowest IPO, if the Shortlisted Bidders are less than five, then all Qualified Bidders (including the Qualified Bidder(s) submitting lowest IPO) shall be qualified as Shortlisted Bidders.

The highest IPO which is quoted by any technical qualified bidder shall be considered as the Applicable Floor Price for second round of electronic Forward Auction.

**10.12. Second round of Bidding Process (Forward Bidding):**

- 10.12.1. The forward e-Bidding Process for submission of Final Price Offer shall be conducted at HCL's service provider MSTC online e-tendering portal.
- 10.12.2. All the Shortlisted Bidders shall be provided with the information regarding process of registration and other requirement of Forward Bidding separately. A demo shall also be provided, if required. All the queries related to forward Bidding need to be resolved well in advance of the date of forward Bidding and no queries shall be entertained while forward Bidding is in progress.
- 10.12.3. In the second round of e-Bidding, the Shortlisted Bidders shall submit their Final Price Offers which shall be on the basis of revenue share percentage accordance to the terms and conditions of the Draft MSA. The Forward Auction shall take place as per the method prescribed in the Schedule 4 and in accordance to the terms and conditions of the Draft MSA (provided in Schedule 1).
- 10.12.4. Further details for the process of registration and participation in the second round or Forward Bidding is attached as Schedule 4.

**10.13. Evaluation of Final Price Offer**

- 10.13.1. The Shortlisted Bidder who submit the highest Final Price Offer, at the conclusion of the second round (Forward Bidding) shall be declared as the **Successful Bidder**.
- 10.13.2. HCL at its sole discretion may negotiate the Final Price Offer prior to declaring it as the "Successful Bidder" or the "Selected Bidder". The price offer accepted by HCL after negotiation with the Bidder (if held) shall be termed as "Final Price Offer".

**10.14. Due Diligence**

- 10.14.1. Before issue of the Letter of Award, HCL reserves the right to conduct due diligence on the Bidder including right to visit the mines or Beneficiation plant being owned/ operated by the Bidder and whose experience it had showcased for meeting the qualification requirements.
- 10.14.2. HCL reserves the right to conduct due diligence on the Bidder on the following:
  - i. Extractable reserves and Annual Rated Capacity of the mines and Beneficiation plant.
  - ii. Total production statistics of Considered Mineral(s) in the mines and plant.
  - iii. Development activities undertaken by the Bidder in the mines.
  - iv. Development activities undertaken by the Bidder/Vendor for Beneficiation plant.
  - v. Operations and maintenance of the mines and plant.

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vi. Any other relevant information.

10.14.3. HCL may also involve its consultants and advisors in conducting the due diligence and the Selected Bidder is required to cooperate with HCL in the above exercise.

10.14.4. It is to be clarified that HCL reserves the right to verify any certificate submitted by the Mine Owner or Bidder and in case any of the certificate is found falsified/ forged, HCL reserves the right to disqualify such Bidder and/or blacklist from any future tender.

#### **10.15. Issuance of Letter of Award (LOA)**

10.15.1. HCL shall determine the Selected Bidder through the Bidding Process outlined above. HCL shall issue LOA to the Selected Bidder confirming that its Proposal has been accepted by HCL.

10.15.2. The Selected Bidder shall be required to carry out the following duties:

- i. In case of a Bidding Company becomes the Selected Bidder: -
  - a. such Selected Bidder shall be issued Letter of Award ("LOA") by HCL for executing the scope against the Draft MSA (provided in Schedule 1), written acknowledgment of which shall be provided within 30 (thirty) days of issuance of such LOA.
  - b. In case the Selected Bidder intends to form a special purpose vehicle to act as the MDO, such SPV shall be formed within 30 (thirty) days from the date of issue of the LOA by HCL. The Selected Bidder and the SPV as MDO shall enter into the Mining Services Agreement with HCL.
  - c. The Selected Bidder along with the SPV (where an SPV has been constituted to act as MDO) shall be jointly and severally be responsible for performance of the obligations required to be performed by the MDO in the Mining Services Agreement.
- ii. In case a Bidding Consortium becomes the Selected Bidder,
  - a. the Selected Bidder shall be issued the Letter of Award ("LOA") by HCL for executing the scope provided in the Mining Services Agreement, written acknowledgment of which shall be provided within 30 (thirty) days of issuance of such LOA by both the Members/ Authorized representatives of each members of the Bidding Consortium.
  - b. The Selected Bidder shall form a joint venture company ("**Joint Venture Company**" or "**JV Company**") as per the Companies Act 2013 within 30(thirty) days from the date of issuance of LOA, which will act as MDO and the agreement shall be signed between HCL and JV Company with the Consortium members also being parties thereof.
  - c. Notwithstanding the formation of Joint Venture Company, the Consortium members shall be jointly and severally responsible for fulfilment of the obligations contemplated in the draft MSA to be performed by the MDO. In case the joint venture fails to fulfil its obligations, the responsibility for fulfilment of the obligations contemplated in the MSA shall lie with the Lead Member of the consortium.

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**10.16. Execution of MSA**

10.16.1. Execution of the MSA shall be subject, inter alia, to the following conditions precedent having been fulfilled by the Selected Bidder:

1. In case the Selected Bidder, is a Bidding Consortium, the Selected Bidder shall form a Joint Venture Company registered in India, which shall act as the MDO.
2. In case the Selected Bidder, is a Bidding Company, the Selected Bidder may act as the MDO itself, or it may form a SPV to act as the MDO.
3. If the Selected Bidder is a company registered abroad, it is required to incorporate a 100% SPV company in India, under Companies Act 2013, to act as the MDO.
4. The Selected Bidder/ members of the Bidding Consortium have submitted to HCL, the written acceptance and acknowledgment of the LOA in the manner provided in Section 10.15.2 above.
5. Mining Service Agreement shall be signed and executed between HCL and MDO within 30 (thirty) days of issuance of LOA by HCL.

Note: The Successful Bidder (whether a single entity or a Consortium) shall be required to promote and incorporate a company limited by shares under the provisions of the (Indian) Companies Act, 2013 as a special purpose vehicle (the SPV") to execute the Contract Agreement with the Authority for development and operation of the Project. The subscribed and paid-up equity share capital of the SPV shall be at least 15% (fifteen per cent) of the Assessed Project Cost. The Board of Directors of the SPV so incorporated shall have at least 1 (one) Director representing: (a) the Bidder (where the Bidder is a single entity); or (b) Other Member of the Consortium (where the Bidder is a Consortium).

In the event the Bidder is a single entity (and not a Consortium), subject to the provision of the Contract Agreement, the Bidder shall hold not less than 100% (one hundred percent) of the subscribed and paid-up equity share capital of the SPV at all times during the tenure of the Project.

10.16.2. MDO shall submit the Performance Security along with the Fixed Amount within 30 (thirty) days of issuance of LOA as detailed in the Agreement (Schedule 1).

10.16.3. The Corporate Performance Guarantee along with the Fixed Amount if applicable shall be provided by the Supporting Partner to HCL within 30 (thirty) days from the date of issuance of LOA.

**10.17. Suspension**

10.17.1. HCL without prejudice to any other right or remedy that may be available to HCL hereunder, or otherwise, may suspend any Bidder for a period of 2 (two) years for submission of Bids for any tender from HCL Limited, under the following conditions:

- (a) if the Bidder withdraws or alters or modifies or revokes its Bid, partially or fully, during the Bid Validity Period or any extension granted thereof as per terms of this RFP document, except in accordance with Section 11.6 hereof;

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- (b) if any of the claims, confirmations, statements or declarations of the Bidder is found to be incorrect or inconsistent or in case of any material misrepresentation of facts;
  - (c) if a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice, restrictive practice, collusive bidding or bid rigging as specified in this RFP document;
  - (d) if the Successful Bidder fails to sign the MSA within 30 (thirty) days from the date of issue of the Letter of Award (LOA) unless such delay is on account of HCL;
  - (e) if the Successful Bidder/ MDO fails to furnish the Fixed Amount within 30 (thirty) days from the of issuance of LOA unless approved by HCL in writing;
  - (f) if the Successful Bidder/ MDO fails to furnish the Performance Security within 30 (thirty) days from the of issuance of LOA unless approved by HCL in writing;
  - (g) In case the Supporting Partner fails to submit the Corporate Performance Guarantee if applicable to HCL within 30 (thirty) days from the date of issuance of LOA unless approved by HCL in writing;
  - (h) if the Bidder is otherwise in breach of the terms of this document;
  - (i) if any company/ Bidder submits more than one Bid, either as a single Bidder or as part of a Consortium, all such Bidder and/or Bidding Consortium shall be disqualified.

**10.18. Fixed Amount**

- 10.18.1. The Successful bidder has to furnish the fixed amount for the compensation for land and mine infrastructure; cost borne by HCL for the preparation of geological report; cost borne by HCL for obtaining all statutory licenses, permits, permissions, approvals, clearances or consents relevant to the mining operations along with applicable taxes; (collectively the "Fixed Amount") as specified in Schedule T of MSA.
- 10.18.2. The Fixed Amount is required to be deposited by the Successful Bidder through account transfer to HCL within 30 (thirty) days from the date of issuance of LOA.

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## **11. General terms and Condition of the Bid**

### **11.1. Acknowledgement by the Bidder**

11.1.1. It shall be deemed that by submitting the Bid, the Bidder has:

- i. made a complete and careful examination of the RFP/ Tender Documents;
- ii. received all relevant information requested from HCL;
- iii. accepted the risk of inadequacy, error or mistake in the information provided in the RFP or furnished by or on behalf of HCL relating to any of the matters referred to in the Tender Documents including statutory and legal obligations;
- iv. satisfied itself about all matters, things and information necessary and required for submitting an informed bid, execution of the Project in accordance with the Tender Documents and performance of all its obligations thereunder;
- v. acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Tender Documents or ignorance of any of the matters shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits etc. from the HCL; and
- vi. agreed to be bound by the undertakings provided by it under and in terms hereof.

11.1.2. HCL shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to the RFP or the Bidding Process, including any error or mistake therein or in any information or data given by HCL.

### **11.2. Fraud and corrupt practices:**

11.2.1. The Bidders and their respective officers, employees, agents, consultants and advisers shall observe the highest standard of ethics during the Bidding Process. HCL may reject a Bid, without being liable in any manner whatsoever to the Bidder, if it determines that the Bidder has, directly or indirectly or through an agent, engaged in corrupt, fraudulent, coercive, undesirable or restrictive practices in the Bidding Process.

11.2.2. Without prejudice to the rights of HCL under Section 11.8 and Section 11.9 herein, if a Bidder is found by HCL to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice restrictive practice or collusive bidding or bid rigging during the Bidding Process, such a Bidder shall not be eligible to participate in any tender or RFP issued by HCL during a period of 2 (two) years from the date such Bidder is found by HCL to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice or restrictive practice, as the case may be. HCL may also take remedial measures against such Bidder available to it under the provisions of the Competition Act, 2002 in case of collusive bidding or bid rigging.

11.2.3. For this Section i.e. 11.2, the terms set forth are defined as follows:

- i. “collusive bidding” or “bid rigging” means any agreement, between enterprises or persons engaged in identical or similar production or trading of goods or provision of services, which has the effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding.

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- ii. “corrupt practice” means (a) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to, or employing, or engaging in any manner whatsoever, directly or indirectly, any official of HCL who is or has been associated in any manner, directly or indirectly, with the Bidding Process or the Letter of Award or has dealt with matters concerning the Mining Services Agreement or arising therefrom, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of HCL, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (b) engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the Letter of Award or after the signing of the Mining Services Agreement, as the case may be, any person in respect of any matter relating to the Project or the Letter of Award or the Mining Services Agreement, who at any time has been or is a legal, financial or technical adviser of HCL in relation to any matter concerning the Project;
  - iii. “fraudulent practice” means a material misrepresentation or omission of facts in order to influence the Bidding Process;
  - iv. “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their involvement in the Bidding Process;
  - v. “undesirable practice” means establishing contact with any person connected with or employed by HCL/ HCL with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; and
  - vi. “restrictive practice” means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

### **11.3. Conflict of Interest**

11.3.1. A Bidder shall not have a conflict of interest (the “Conflict of Interest”) that affects the Bidding Process. A Bidder(s) found to have a Conflict of Interest shall be disqualified. Without prejudice to the generality of the aforesaid, a Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:

- i. the Bidder, its Subsidiary/ Subsidiaries and/or Holding Company and any other Bidder, Subsidiary/ Subsidiaries and/or Holding Company directly or indirectly have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in Section 4A of the Companies Act, 2013. For the purposes of this Section indirect shareholding held through one or more intermediate persons shall be computed as follows: (aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the “Subject Person”) shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (bb) subject always to sub-Section (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-Section (bb) if

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- the shareholding of such person in the intermediary is less than 26% of the subscribed and paid up equity shareholding of such intermediary; or
- ii. a constituent of such Bidder is also a constituent of another Bidder; or
  - iii. such Bidder, or its Subsidiary/ Subsidiaries and/or Holding Company receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder, or any Subsidiary/ Subsidiaries and/or Holding Company or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Bidder, its Subsidiary/ Subsidiaries and/or Holding Company; or
  - iv. such Bidder has the same legal representative for purposes of this Bidding Process as any other Bidder; or
  - v. such Bidder, or any Subsidiary/ Subsidiaries and/or Holding Company has a relationship with another Bidder, or any Subsidiary/ Subsidiaries and/or Holding Company, directly or through common third party/ parties, that puts either or both of them in a position to have access to each other's information about, or to influence the Bid of either or each other; or such Bidder, or any Subsidiary/ Subsidiaries and/or Holding Company has participated as a consultant to HCL in the preparation of any documents, design or technical specifications of the Project.
  - vi. A Bidder shall be liable for disqualification, if any of the key managerial personnel of HCL is/are related to the Promoters or key managerial personnel of the Bidder/members of the Bidding Consortium, its Subsidiary/Holding Company/Affiliate. Key managerial personnel shall have the meaning provided to it in Section 2(51) of the Companies Act, 2013. For the purpose of this clause, Bidder shall submit a declaration of any relationship as per this clause in the format provided in section 12.18

11.3.2. The above instances are illustrative and not exhaustive. "Conflict of interest" shall include all instances/ situations/relationships which may impact or may be perceived as likely to impact the Bidder's capacity to serve the best interest of HCL. The Bidder shall have an obligation to disclose any situation of actual or potential conflict. Any such disclosure shall be made at the time of submission of the Proposal. If the Bidder fails to disclose the Conflict of Interest and if HCL comes to know about any such situation at any time, it may lead to the disqualification of the said Bidder during Bidding Process or the termination of its contract during contract execution.

#### **11.4. Disqualifications**

11.4.1. Notwithstanding anything to the contrary contained herein and without prejudice to any of the rights or remedies of HCL and in addition to the grounds for disqualification mentioned elsewhere in the Tender Document, a Bidder shall be disqualified, and its Proposal shall be rejected from further consideration and evaluation for any of the reasons listed below:

- (a) Material Misrepresentation by any Bidder (Bidding Company/ LLC/ LLP/ Partnership or Member of the Bidding Consortium) in the Proposal.
- (b) Failure of the Bidder (Bidding Company/ LLC/ LLP/ Partnership and/ or Member of the Bidding Consortium) to provide the information required to be submitted / asked for in the Tender Document.
- (c) A winding up, insolvency or other similar proceedings is pending against the Bidder (Bidding Company/ LLC/ LLP/ Partnership or Member of the Bidding Consortium).



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- (d) The Bidding Company or any member of the Bidding Consortium is shown as a member of another participating Bidding Consortium.
  - (e) The Bidding Company or the Bidding Consortium ceases to fulfil the prescribed Financial and/or Technical Criteria mentioned in the Tender Document during the Bidding Process and as per the terms of RFP.
  - (f) In the last 3 (three) years, reckoned from the last date of submission of Proposal as declared in the Section 2 Bidding Schedule, with respect to any tender related to mining issued by, or mining contract entered with, any State / Central Government or Public Sector Undertakings, the Bidder itself, or its direct or indirect Subsidiary or Holding Company or Subsidiary of Holding Company, Promoter or Affiliate:
    - i. has suffered forfeiture of the earnest money deposit;
    - ii. has suffered forfeiture of the performance security for that contract, or
    - iii. has suffered termination/ cancellation/ foreclosure of any contracts due to its/their default.
- Note:
- i. The reasons specified in the termination /cancellation/ foreclosure order shall form the basis to decide whether mining contract has been terminated/ cancelled/ foreclosed due to bidder's default.
  - ii. If forfeiture of earnest money deposit/ performance security or termination/ cancellation/ foreclosure of mining contract has been revoked or set aside/ stayed by a Court of Law, this disqualification shall not apply.
- (g) The Bidder (its holding company or direct subsidiary) or its Promoter has 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 enforced as on date of submission of Proposal by the Bidder.
  - (h) Any of the Bidder's director(s) /Promoter(s)/ Partners have been convicted by any court of law for offences involving corrupt and fraudulent practices including moral turpitude in relation to the business dealing with Government of India or any other government and such conviction is enforcing as on the date of submission of the Proposal by the Bidder.
  - (i) Where Bidder or any of its director(s)/ Promotor(s)/ Partners has been convicted in any criminal proceedings and such conviction is still subsisting on the date of submission of Proposal by the Bidder.
  - (j) Any entity (consortium or individual members of consortium in case of consortium) which has been barred by HCL and the bar subsists as on the date of the tender by HCL, would not be eligible to submit an offer.
  - (k) A bidder (consortium or individual members of consortium in case of consortium), in the last 3 (three) years, should have neither failed to perform on any contract related to HCL, as evidenced by a judicial pronouncement or arbitration award against the bidder by an arbitral or judicial authority, or forfeiture of Security Deposit / EMD of the bidder by HCL.

11.4.2. In case any specific adverse report is received against a Bidder, as an information or upon enquiry made by HCL, in respect of capabilities and performance of the Bidder, after receipt of tender but before the opening of the Financial proposal i.e. price bids, the quotation / tender submitted by such Bidder shall be rejected based on recorded

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reasons and with the approval of the Competent Authority of HCL. If such report is received after opening of the price bids, then also the quotation / tender of that Bidder shall be rejected after recording the reasons and with the approval of the Competent Authority of HCL.

11.4.3. If at any time during the evaluation process, HCL requires any clarification, HCL shall have the right to request such information from any Bidder or its direct or indirect subsidiary or holding company or member of bidding consortium which shall be obliged to provide the same within a reasonable time frame. In case Bidder does not respond within time provided by HCL, HCL may at its discretion disqualify such bidder or may evaluate based on information available with HCL.

11.4.4. If any of the disqualifications are attracted at any stage post the submission of the Bid by a Bidder, HCL shall reserve the right to reject such Bid and disqualify such a Bidder, notwithstanding the fact that such Bidder is the Selected Bidder and notwithstanding the execution of the draft MSA by such Bidder.

The grounds for disqualification in Section 11.4 are in addition to the grounds for disqualification contained elsewhere in the Tender Document.

#### **11.5. Language of the Bid**

11.5.1. The proposal and the entire supporting document shall be in English Language. Non-adherence to this Section may be treated as "Non-Responsive Bid".

11.5.2. The Bid and all related correspondence and documents in relation to the Bidding Process shall be in English language.

11.5.3. Supporting documents and printed literature furnished by the Bidder with the Bid may be submitted in any other language provided that they are accompanied by translations of all the pertinent passages in the English language, duly authenticated and certified by the Bidder. Supporting materials, which are not translated into English, may not be considered. For the purpose of interpretation and evaluation of the Bid, the English language translation shall prevail.

11.5.4. The Bidders shall submit a true certified copy of those documents translated in English for all the documents originally prepared in language other than English.

11.5.5. The English translation of the documents shall be carried out by professional translators and the translator shall certify that he/she is proficient in both languages in order to translate the document and that the translation is complete and accurate.

#### **11.6. Modification and Withdrawal of Bids**

11.6.1. Except where expressly permitted by these instructions, the Bidder shall not make or cause to be made any alteration, erasure or obliteration to the text of the documents prepared by HCL and submitted by the Bidder with or as part of his Bid.

11.6.2. No bid shall be modified, substituted or withdrawn by the Bidder on its submission on the Bid due date as provided in the Bidding Schedule attached as Section 3.

11.6.3. No modification or withdrawal shall be allowed after the last date of Bid Submission i.e. Bid Due Date.

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## **11.7. Bid Validity Period**

- 11.7.1. The Bid shall initially remain valid and binding on the Bidder for at least 180 (one hundred and eighty) days from the Bid Due Date ("**Bid Validity Period**"). Any Bid with a shorter validity period shall be rejected by HCL.
- 11.7.2. Under exceptional circumstances, HCL may in writing request the Bidders to extend the Bid Validity Period of their Bids. Along with the extension of the Bid Validity Period, the Bidder shall also extend the EMD security declaration by an equivalent period of time, failing which, the agreement to extend the Bid Validity Period shall be invalid.
- 11.7.3. A Bidder may refuse the request to extend the Bid Validity and EMD security declaration. However, such Bids will not be evaluated further.

## **11.8. Right to Accept or Reject Any/All Bids**

- 11.8.1. Notwithstanding anything contained in this RFP, HCL reserves the right to accept or reject any Bid and to annul the Bidding Process and reject all Bids, at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons there for. If HCL rejects or annuls all the Bids, it may, in its discretion, invite all Qualified Bidders to submit fresh Bids hereunder.
- 11.8.2. HCL reserves the right to reject any Bid if:
- i. at any time, a material misrepresentation is made or uncovered, or
  - ii. the Bidder does not provide, within the time specified by HCL, the supplemental information sought by HCL for evaluation of the Application, or
  - iii. the Bid is conditional, or
  - iv. the Bidder withdraws or alters or modifies or revokes its Bid, partially or fully, during the Bid Validity Period or any extension granted thereof as per terms of the Tender Documents, except in accordance with Section 11.6 hereof, or
  - v. the Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice, restrictive practice, collusive bidding or bid rigging as specified in the Tender Documents, or
  - vi. the Bidder is otherwise in breach of the terms of this document, or
  - vii. any company/Bidder submits more than one Bid, either as a single Bidder or as part of a Consortium. In this case, all such Bids submitted by that Bidder shall be rejected;
- 11.8.3. If the Bidder is a Bidding Consortium, then the entire Bidding Consortium may be disqualified/ rejected in case of any of the event mentioned in Section 11.8.2 is applicable for any member of Consortium.
- 11.8.4. If such disqualification/ rejection occurs after the Bids have been opened and the H1 Bidder gets disqualified/ rejected, then HCL reserves the right to take any such measure as may be deemed fit in the sole discretion of HCL, including annulment of the Bidding Process.
- 11.8.5. In case it is found during the evaluation or at any time before signing of the Mining Services Agreement or after its execution and during the period of subsistence thereof, that one or more of the qualification requirements have not been met by the Bidder, or that the Bidder has made Material Misrepresentation or has given any materially incorrect

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or false information the Bidder shall be disqualified forthwith if not yet appointed as the MDO either by issue of the LOA or entering into of the Mining Services Agreement, and if the MDO has already been issued the LOA or has entered into the Mining Services Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by HCL to the Bidder, without HCL being liable in any manner whatsoever to the Bidder and without prejudice to any other right or remedy which HCL may have under this RFP document, the Tender Documents, the Mining Services Agreement or under Applicable Laws.

- 11.8.6. HCL reserves the right to verify all statements, information and documents submitted by the Bidder as part of its Proposals. Any such verification or lack of such verification by HCL shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of HCL thereunder.

#### **11.9. Right to Annul Bidding Process**

- 11.9.1. HCL reserves the right to annul the Bidding Process at any point in time and not provide any explanation to the Bidders.
- 11.9.2. In case the Bid is annulled by HCL without any default on account of Bidder, no non-refundable cost shall be reimbursed to the Bidder.

#### **11.10. Intellectual Property Rights**

The Bidder should consider the Tender Documents shared by HCL including the documents mentioned and provided as per Schedule 3 as confidential in nature and must not share such documents with any third party without prior consent from HCL.

Further, information relating to the examination, clarification, recommendation and evaluation of the Bidders shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional advisor advising HCL in relation to or matters arising out of, or concerning the bidding process. HCL will treat all information, submitted as part of the bid, in confidence and will require all those who have access to such material to treat the same in confidence. HCL may not divulge any such information unless it is directed to do so by any statutory entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory entity and/or HCL or as may be required by law or in connection with any legal process.

#### **11.11. Compliance of Company Law**

The Bidder must declare whether the Directors/Partners of the Bidding Entity has any relation with any employee working in HCL or Directors of HCL including its subsidiaries and if so, the details and the relationship thereof must be furnished.

Declaration of any relationship of the Bidder with key managerial personnel of HCL shall be mentioned as per format provided in Section 12.18.

#### **11.12. Backing out by H1 Bidder**

In the event of H-1 Bidder after Forward Auction stage backing out prior to placement of order, the Bidder shall be suspended for a period of 2 (two) years from the date of issue of suspension order. The suspension will apply prospectively and during suspension

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period, enquiry shall not be issued to the firm and bid submitted in open tender shall be rejected along with the forfeit of EMD amount.

In the event of backing out of H-1 Bidder, HCL at its sole discretion may annul the Bidding Process.

#### **11.13. Integrity Pact**

11.13.1. The Bidder shall sign an integrity pact and attach the same with his Bid. The format for the integrity pact is provided in Section 12.16. of this Tender Document. The Integrity Pact has to be signed by the Director or by their duly Authorized signatory and in case of Consortium all the members. In case of failure to return the Integrity Pact along with Part 1 of the bid, duly signed by the authority as mentioned above, will disqualify the bid.

11.13.2. The Bidder (s)/Contractor (s), if feel aggrieved, may raise complaint/pass on, information, if any, to the Competent Authority/Operating Authority of the Bid/ Contract or to the ..... or to the Independent External Monitors (IEMs) of Integrity Pact through .....

11.13.3. The current Independent External Monitor of Integrity Pact in HCL are:

- ☐ Shri Debal Kumar Gayen (gayen.dk@gmail.com)
- ☐ Shri Debashis Bandyopadhyay (debashis9999@gmail.com)

#### **11.14. Banning of Business Dealings**

In case of default, bad performance, fraud, deception and misconduct etc. by the Bidder, action may be taken as per the instruction issued by HCL from time to time with respect to "Guidelines on banning of suppliers/contractor" as available in Schedule 6.

#### **11.15. Miscellaneous**

11.15.1. HCL, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;

- i. suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
- ii. consult with any Bidder to receive clarification or further information;
- iii. pre-qualify or not to pre-qualify any Bidder and/ or to consult with any Bidder to receive clarification or further information;
- iv. retain any information and/ or evidence submitted to HCL by, on behalf of, and/ or in relation to any Bidder; and/ or
- v. Independently verify, disqualify, reject and/ or accept all submissions or other information and/ or evidence submitted by or on behalf of any Bidder.

It shall be deemed that by submitting its Bid, the Bidder agrees and releases HCL, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder and the Tender Documents, pursuant hereto, and/ or in connection with the Bidding Process, to the fullest extent permitted by applicable law, and waives any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future.

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## 12. Bid Forms & Annexures

### 12.1. Format for Cover Letter

(On letter head of the Bidding Company/Lead Member of Bidding Consortium)

Proposal Ref. No. and Date:

From:

Bidder's Name and Address:

Route for Qualification: Route A/ Route B (*please mention whichever is applicable*)

Authorized Representative

Name:

Designation:

Tel. Nos:

Mobile No.:

Fax No.:

Email Address:

To,

.....

.....

.....

**Sub: Techno-Commercial Proposal for Re-Opening & Expansion of Rakha Copper Mine, Development and Operations of new Underground Mine at Chapri and Commissioning of new Matching capacity Concentrator Plant at Rakha, Jharkhand**

Dear Sir,

We, the undersigned Bidder having read and examined in detail the Proposal requirements provided in the Tender Documents for Appointment of Mine Developer and Operator for Re-Opening & Expansion of Rakha Copper Mine, Development and operations Underground Mine at Chapri and Commissioning of new Matching capacity Concentrator Plant at Rakha, Jharkhand of HCL at East Singhbhum district in Jharkhand hereby offer to submit our Proposal for the same.

Our Techno-Commercial Proposal for Re-Opening & Expansion of Rakha Copper Mine, Development and operations of Underground Mine at Chapri and Commissioning of new Matching capacity Concentrator Plant at Rakha, Jharkhand, in response to the Tender Document issued by HCL vide Tender no. \_\_\_\_\_ dated \_\_\_\_\_ (Bidder to specify date of issue of Tender Document by HCL) and its subsequent corrigendum no(s) \_\_\_\_\_ (Bidder to insert corrigendum number issued, if any by HCL subsequent to issue of Document) is enclosed.

We are herewith enclosing the information with duly signed formats, containing all the information submitted, as desired by you, for your consideration. Further, we hereby are submitting the Earnest Money Deposit for the sum of Rs. .... in the form ..... as instructed by you.

We believe that we/ our proposed Company / Consortium satisfies all the Qualification Requirements as specified in the Tender Documents and is qualified to submit a Bid. Shall this Bid be accepted, we

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hereby agree to abide by and fulfil all terms and conditions of Tender Document. We agree that if I/We are found to be in default of the terms and conditions provided in the Tender Documents, HCL shall have the absolute right to forfeit the EMD and such other sums, if any deposited with HCL and/or pay to HCL or HCL's successors, assigns or authorised nominees such sums of money as are stipulated in terms and conditions contained in Tender Documents.

We declare that we are not banned/suspended to do business dealing in HCL or any PSU/Govt organization.

We understand and accept that HCL reserves the right to cancel the process of tendering, accept or reject any or all the tenders/Bid without assigning any reasons thereof. We also understand and accept that that HCL reserves the right for supersession of any of the conditions of Tender Documents

Our offer is valid for 180 days from the Bid Due Date or any extension thereof as maybe requested by HCL.

Yours sincerely,

Name of Authorized Representative / Authorized Signatory:

Designation:

Signature & Company's Round Seal

Email address:

Mobile No:

Dated the ----- day of ----- of 20---

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## 12.2. Format of Affidavit

*(To be executed on non-Judicial stamp paper of appropriate value and duly notarized)  
(To be provided by the Bidding Entity or, Lead Member of Bidding Consortium)*

I, \_\_\_\_\_ son/ daughter of \_\_\_\_\_ resident of \_\_\_\_\_ do solemnly declare and affirm as follows.

1. That I am employed at the designation of \_\_\_\_\_ in the company/LLP/LLC/Partnership operating in the name and form as M/s \_\_\_\_\_ having its Headquarters at \_\_\_\_\_.
2. That I am competent to sign this affidavit on behalf of the company/LLP/LLC/Partnership mentioned at serial one above.
3. We \_\_\_\_\_ (Name of the Bidding Entity / LLC/ LLP/ Partnership/ Lead Member of Consortium), [a company duly incorporated under the Companies Act, 2013, having its registered office at \_\_\_\_\_/a partnership registered under the Indian Partnership Act, 1932, having its registered office at \_\_\_\_\_/a LLP registered under the Limited Liability Partnership Act, 2008, having its registered office at \_\_\_\_\_] having examined in detail and understood the terms and conditions stipulated in Tender Documents and subsequent corrigendum / corrigenda, if any, issued by HCL confirm that our Techno-Commercial Proposal is in full conformity with the Tender Document.
4. This statement is made for the express purpose of qualifying as a Selected Bidder for the implementation of the Project provided for in the Tender Documents.
5. We acknowledge that HCL will be relying on the information provided in the Techno-Commercial Proposal and the documents accompanying the Techno-Commercial Proposal for qualification of the Bidders, and we certify that all information provided in the Techno-Commercial Proposal are true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying the Techno-Commercial Proposal are true copies of their respective originals.
6. We shall make available to HCL any additional information it may find necessary or require supplementing or authenticate our Techno-Commercial Proposal.
7. We have examined and have no reservations to the Bidding Documents, including any addendum issued by HCL.
8. We acknowledge the right of HCL to reject our Techno-Commercial Proposal/ Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
9. With respect to any tender related to mining issued by, or mining contract entered with, any State / Central Government or Public Sector Undertakings by us or any of our, direct or indirect, Subsidiary or Holding Company or Subsidiary of Holding Company, Promoter or Affiliate, we hereby certify that in the last 7 (seven years) reckoned from the Bid Due Date:
  - ☐ we have not suffered any forfeiture of earnest money deposit
  - ☐ our performance security has not been forfeited due to our default;
  - ☐ none of the contracts have been cancelled, terminated or foreclosed due to our default;
10. We certify that we are not debarred or blacklisted by any State / Central Government or Public Sector Undertakings from participation in tender for MDO or Mining and Mineral beneficiation related services.



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11. We certify that in regard to matters other than security and integrity of the country, have not been convicted or indicted by a court of law and no adverse orders have been passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.
  12. We further certify that in regard to matters relating to security and integrity of the country, we have not been charge-sheeted by any agency of the government or convicted by a court of law for any offence committed by us or by any of our Associates.
  13. We further certify that no investigation by a regulatory authority is pending either against us or against our Associates or against our CEO or any of our Directors/ Managers/ Employees/Partners.
  14. We undertake that in case due to any change in facts or circumstances during the Bidding Process the provisions of disqualification provided in the Tender Document are attracted, we shall intimate HCL of the same immediately.
  15. We further agree and acknowledge that the aforesaid obligations shall be in addition to the obligations contained in the Tender Document including the Mining Service Agreement.
  16. We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by HCL in connection with the selection of the Bidder, or in connection with the Bidding Process itself, in respect of the Project and the terms and implementation thereof.
  17. In the event of my/our being declared as the Selected Bidder, I/We agree to enter into a Mining Service Agreement prior to the Bid Due Date. We agree not to seek any changes in the Mining Service Agreement and agree to abide by the same.
  18. We have studied all the Tender Documents carefully and have also surveyed the Site. We understand that except to the extent as expressly set forth in the Tender Document and/or Mining Service Agreement we shall have no claim, right or title arising out of any documents or information provided to us by HCL or in respect of any matter arising out of or concerning or relating to the Bidding Process including the award of the contract.
  19. The Financial Proposal has been quoted by me/us after taking into consideration all the terms and conditions stated in the Tender Documents, Mining Service Agreement, our own estimates of costs and after a careful assessment of the Site and all the conditions that may affect the work cost and implementation of the Project.
  20. We certify that, our Director(s)/Partners are not convicted by any court of law for offences involving corrupt and fraudulent practices including moral turpitude in relation to the business dealing with Government of India or any other government during last 3(three) years.
  21. We affirm that:
    - a. We have examined and have no reservations to the Tender Document, including any Corrigendum/ Addendum issued by HCL;
    - b. We do not have any conflict of interest in accordance with Section 11.3 of the Tender Document;
    - c. We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined Section 11.2 of the Tender Document, in respect of any tender or request for proposal issued by or any agreement entered into with HCL or any other public sector enterprise or any government, Central or State; and
    - d. We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 11.2 of the Tender Documents, no person acting for us or on our behalf has engaged

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or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.

- e. We are not affected by any of the disqualifications stated in Section 11.4
22. We understand that HCL may cancel the Bidding Process at any time and that HCL is neither bound to accept any Techno-Commercial Proposal/ Bid or any Highest Bid that HCL may receive nor to invite the Bidders to participate for the Project, without incurring any liability to the Bidders, in accordance with Section 11.8 of the Tender Document.
23. We believe that we/our proposed consortium satisfy(ies) all the qualification requirements as specified in the Tender Document and are/is qualified to submit this Proposal.
24. We declare that we/ any member of the Consortium, are not another Bidder/ or a member of a/any other Consortium submitting a Techno-Commercial Proposal/ Bid for Appointment of Mine Developer and Operator for Development and Operation Re-Opening & Expansion of Rakha Copper Mine, Development and operations of Underground Mine at Chapri and Commissioning of new Matching capacity Concentrator Plant at Rakha, Jharkhand.
25. We certify that in regard to matters other than security and integrity of the country, we/ any member of the Consortium or any of our Holding Company, Subsidiaries, Affiliates, Associates or Promoter have not been convicted by a court of law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.
26. We further certify that regarding matters relating to security and integrity of the country, we/ any member of the Consortium or any of our Holding Company, Subsidiaries, Associates, Affiliates or Promoter have not been charge-sheeted by any agency of the Government or convicted by a Court of Law.
27. We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the provisions of this Tender Document, we shall intimate HCL of the same immediately.
28. We hereby certify that no corporate insolvency resolution/ liquidation process has been initiated against us herein as on date of submission of our Proposal pertaining to above referred RFP of HCL. We undertake to inform HCL as soon as any corporate insolvency resolution/ liquidation process is initiated against us at any time during the Bidding Process or After signing of MSA (if selected as successful Bidder).
29. The Proposal submitted by us shall be valid for a minimum period of 180 (one hundred and eighty) days from the Bid Due Date or any extension thereof as requested by HCL.
30. We declare that by submitting this Proposal, we agree to be bound and comply with the Applicable Law.
31. We further declare that by submitting this Proposal, we agree to be bound by the terms and conditions of the Tender Document.

We understand HCL reserves the right in its sole discretion, without any obligation or liability whatsoever, to accept or reject any or all the Proposals at any stage of the Bidding Process without assigning any reasons to us.

The undersigned declare that the statements made, and the information provided in the duly completed Proposal are complete, true and correct in every detail.

**[Deponent]**

Witness:

- 
1. ....
  2. ....

**VERIFICATION**

Verified this \_\_\_\_\_ day of \_\_\_\_\_ year 20\_\_ that the contents of my above affidavit are true to the best of my knowledge and belief and nothing untrue has been stated not any facts has been concealed.

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**12.3. Format for Summary of Techno-commercial Proposal**

(On letter head of the Bidder i.e. Bidding Company/LLC/LLP/Partnership or, Lead Member of Bidding Consortium)

<b>Sr. No.</b>	<b>Particulars</b>	<b>Brief Details /Documentary Evidence in Support of the Particulars, If Any  (To be Attached in The Form of Annexure)</b>
<b>(a)</b>	<b>(b)</b>	<b>(c)</b>
1.	Brief Profile of the Bidding Entity (Company/ LLP/ LLC/ Partnership/ Bidding Consortium):  <i>(comprising of proof on being a legal business entity, copy PAN card, copy of GST certificate and banker details of Bidder) and other documents as described in Section 9.1.1(x).</i>	Annexure ____
2.	(strike out whichever is not applicable)  1. Name of the Bidder (Bidding Company/ LLP/ LLC/ Partnership/ Bidding Consortium)  2. Name of Supporting Partner, if any (in case of Route A)  3. Name of the Lead Member in the Bidding Consortium (in case of Route B)  4. Name of the Other Member in the Bidding Consortium (in case of Route B)  5. Contact Details: (of Bidder, Supporting Partner or Lead Member along with consortium members) a. Name of the Contact Persons b. Address for communication c. Phone/ Fax/ Email:  6. Signature of Authorized Signatory  Round Rubber Seal of the Bidder	Annexure ____
3.	Complete set of Tender Document along with clarifications / corrigenda, if any, duly signed/ Stamped by the Bidder as token of acceptance and acknowledgement	Annexure ____
4.	Declaration by the Bidder in the form of Affidavit on stamp paper as per format specified in Section 12.2	Annexure ____
5.	Submission of technical criteria and financial criteria as per	Annexure ____

	format prescribed in Section 12.4 and 12.5	
6.	Board Resolutions for submission of Bid as per format prescribed in Section 12.6, 12.7 and 12.8	Annexure ____
7.	In case of Bidding Consortium, Consortium Agreement as per Format attached in Section 12.10	Annexure ____
8.	In case of the Bidding Company taking strength from its Supporting Partner, Joint Operating Agreement as per format prescribed in Section 12.10A	Annexure ____
9.	Earnest Money Deposit (EMD) bank guarantee declaration as per the format prescribed in Section 12.11	Annexure ____
10.	Authority letter (POA) from the Bidder in favour of the person who has been authorized to submit this Tender Document as per the format specified in Section 12.12	Annexure ____
11.	In case of Bidding Consortium, Power of Attorney (POA) by Other Members authorizing signing of the Bid by the Lead Member, in the format specified in Section 12.13.	Annexure ____
12.	Certificate of total compliance as per the Proforma provided in Section 12.14	Annexure ____
13.	Letter of support from Beneficiation vendor as provided in Section 12.15	Annexure ____
14.	Integrity Pact as per format provided in Section 12.16	Annexure ____
15.	Self-certificate about understanding of the site conditions in Section 12.17	Annexure ____
16.	Declaration by Bidder for relationship with key managerial personnel of HCL in Section 12.18	Annexure ____
17.	Compliance of Company Law as per section 11.11	Annexure ____
18.	Signed copy of unpriced financial proposal as per format provided in section 12.9 marking "xxx" in the place of price.	Annexure ____

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#### 12.4. Format for submission of details as per Technical Criteria

##### (A) Details as per requirement of Technical Criteria (Mining)

(On letter head of the Bidder i.e. Bidding Company/LLC/LLP/Partnership or, Lead Member of Bidding Consortium)

To,

.....  
.....  
.....

Dear Sir,

##### **Sub: Eligibility towards Technical Qualification requirements (Mining)**

1. For the companies qualifying as per Section A of 8.5.1 (Strike out whichever is not applicable)

We \_\_\_\_\_ (The legal name of the Bidding Entity)

OR,

We, the Bidding Consortium (if applicable), consisting of one Other Member, being \_\_\_\_\_,

confirm that \_\_\_\_\_ qualify the technical criteria as per Section A of 8.5.1 as per following details: -

##### 1.1. Details of the mines:

S. No.	Particulars of Mine	Relevant Details
1	Name of mine with location and other details	
2	Owner / Lease holder of the mine	
3	Name of the Considered mineral	
4	Award date of mining lease/ contract	
5	Commercial Operation Date (COD)	
6	Extractable/ mineable reserves	
7	Annual Rated Capacity of production in MTPA	
8	Total year-wise Considered Mineral production in 03 consecutive Financial Years in last 07 Financial Year (from FY 2015-16 to FY 2021-22)	
9	Duration of lease/ contract (in years)	
10	Scope of service/ Nature of work done (with respect to development, operation and excavation)	

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Note: The above format shall be reused in case experience is being drawn from multiple projects/mines

1.2. Annual production (name of Considered Mineral) from mines

S No.	Name of Mine	Ownership in the project (%)	Name of the considered mineral	Quantity of Considered Mineral production	Financial Year	Quantity of Considered Mineral production as per ownership (in MTPA)
1						
2						
Total Quantity of Considered Mineral production as per ownership (in MTPA)						

**Note:** Companies qualifying as per Section A of 8.5.1 shall submit Supporting evidence for qualification of technical Criteria (annual production of Considered Mineral as mentioned in section 8.5.3 in the form of attachments as follow: -

- I. Copy of Mining Lease OR the contract agreement(s) or work order(s) clearly detailing scope of services and certificate(s) from owner placed at Annexure \_\_\_\_\_
- II. Mandatory certificate(s) from Statutory Auditor detailing the Annual Rated Capacity, the details of the Considered Mineral production as per ownership achieved in the time period under consideration and also scope of activities performed, and the development activities undertaken by the Bidder placed at Annexure \_\_\_\_\_
- III. Contact details of relevant official
- IV. Notarized copy of the consortium agreement or joint venture agreement (as the case maybe), clearly explaining the extent of its ownership in such consortium or joint venture (If applicable) at Annexure \_\_\_\_\_

*(\*strike out whichever is not applicable / not submitted)*

(The above list is only representative; Bidders can add any number of supporting documents which they think help in substantiating their qualifications as per the requirements in the tender)

Thanking you,

Yours faithfully,

Name:

Designation:

Signature & Company's Round Seal

**NOTE:**

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In case the Financial Year as per the audited financial statement and respective Applicable Law is different from 1<sup>st</sup> April to 31<sup>st</sup> March as specified here, the Bidder/ Bidding Consortium may mention the Financial Year as per the audited financial statements and furnish the production details of Considered Mineral accordingly.



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**(B) Format for Letter of support from “Concentrator plant vendor” to Bidder**

(On letter head of the Bidder)

**Letter of support to \_\_\_\_\_ (Name of the Bidder/ Bidding consortium)**

To,

Office of The General Manager (Commercial)  
Hindustan Copper Limited  
(A Government of India Enterprise)  
'Tamra Bhawan'  
1, Ashutosh Chowdhury Avenue,  
Kolkata – 700019

**Sub: Letter of support to \_\_\_\_\_ (name of Bidder/ Bidding consortium) in order to undertake installation of a matching capacity concentrator plant as a part of Rakha & Chapri Underground Mine Project of HCL.**

Sir,

I, \_\_\_\_\_ (Name and designation of Authorized person) of \_\_\_\_\_ (name of Bidder/ Bidding consortium) do hereby agree to on board a technology provider for the installation of the matching capacity concentrator plant, if \_\_\_\_\_ (Name of the Bidder/ Biding Consortium) gets selected as the successful bidder and signs agreement with HCL to act as an MDO for Rakha & Chapri Underground Mine Project. The technology provider shall be assisting the MDO to fulfil its scope of work related to installation and commissioning of matching capacity concentrator plant for Rakha & Chapri Underground Mine Project. The technology/ type of concentrator plant shall be as desired by MDO and HCL in collaboration.

Further, I undertake that,

1. We will provide services including design, technology, installation, and commissioning of the matching capacity concentrator plant for the Rakha & Chapri Underground Mine Project with state-of-the-art technology.
2. We will enter into an agreement with the technology provider/ vendor for this purpose and will remain bounded with such agreement till the successful commissioning of matching capacity concentrator plant for the Rakha & Chapri Underground Mine Project and till it commences production.
3. If for any reason, we violate the agreement or fails to fulfil the contractual obligation undertaken by us in the agreement signed with \_\_\_\_\_ (name of Bidder), we will indemnify \_\_\_\_\_ (name of Bidder) against any and all the losses or damages which may be caused or suffered by \_\_\_\_\_ (name of Bidder) due to us.

Name of Authorized Representative / Authorized Signatory:

For and on behalf of .....

Designation:

Signature & Company's Round Seal

Email address:

Mobile No:

Dated the ----- day of ----- of 20---

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## 12.5. Format for Submission of details as per Financial Criteria

(On letter head of the Bidder i.e. Bidding Company/LLC/LLP/Partnership or, Lead Member of Bidding Consortium)

To,

.....  
.....  
.....

Dear Sir,

### **Sub: Eligibility towards Financial Qualification requirements**

For the companies qualifying as per Section 8.5.4

(Strike out whichever is not applicable)

We ----- (The legal name of the Bidding Entity) / ----- (Supporting Partner of the Bidding Entity)

OR

We, the Bidding Consortium (if applicable), consisting of one Other Member, being -----, confirm that ----- (Lead Member) qualify the financial criteria as per Section 8.5.4 as per following details: -

Sl. No.	Financial Years	Net Worth (In INR Crore)	Turnover (In INR Crore)	Cash Accrual (In INR Crore)
(a)	(b)	(c)	(d)	(e)
1				
2				
3				
	Average (in numbers)			
	Average (in words)			

Also, the Cash Accrual as on last date of the Financial year 2021-22 of the Bidder/ Lead consortium was \_\_\_\_\_.

As on (Last date of Financial year)	Paid-up share capital (INR Crore)	Net Worth (INR Crore)	Net Worth as percentage of Paid-up share capital

Additionally,

---

Details of Net Worth of M/s \_\_\_\_\_ acting as Supporting Partner to the Bidder/ Other Member of the Consortium in compliance with conditions mentioned in Section 8.2. and 8.3. are as follows:

As on (Last date of Financial year)	Net Worth (INR Crore)

**Note:**

Bidder shall submit the following documents as evidence for qualification of Financial Criteria:

- a) Audited financial statements as a standalone entity.
- b) In case the Bidder submits qualification in any currency other than INR, it shall convert it to INR based on the conversion rate as published by RBI as on date of issuance of NIT.
- c) In case of foreign currency figures other than the currency published by RBI, the Bidder shall also submit the USD or INR conversion rate published by the respective country's Central Bank for the corresponding date and the same shall be certified by Statutory Auditor.
- d) Statutory Auditor certificate clearly certifying Turnover, Net worth and Cash Accrual as per definition in this Tender Document

In case of the companies incorporated in countries other than India and only for the purpose of meeting the Financial qualifications as per Financial Criteria as desired in Section 8.5.4, the Financial Year shall mean a 12 month period corresponding to the audited financial statements as applicable in their respective country

Name:

Designation:

Signature & Company's Round Seal

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## 12.6. Format for Board Resolution by the Bidder

(On letter head of the Bidding Entity/Lead Member and Other Member of Bidding Consortium)

The Board, after discussion, at the duly convened Meeting on \_\_\_\_\_ [insert date], with the consent of all the Directors/Partners present and in compliance of the provisions of the Companies Act, 2013/Partnership Act, 1932/Limited Liability Partnership Act, 2008, passed the following Resolution:

RESOLVED THAT pursuant to the provisions of the Companies Act, 2013//Partnership Act, 1932/Limited Liability Partnership Act, 2008 and compliance thereof and as permitted under the Constitutional Documents of the Company/Partnership/LLP, approval of the Board be and is hereby accorded for [forming a consortium with \_\_\_\_\_ and participating as the Lead Member/Other member in the consortium with \_\_\_\_\_ and] placing the Bid [through \_\_\_\_\_ Lead Member] against the tender no \_\_\_\_\_ dated \_\_\_\_\_, as amended from time to time, issued by Hindustan Copper Limited ("HCL") for the Re-Opening & Expansion of Rakha Copper Mine, Development and operations of Underground Mine at Chapri and Commissioning of new Matching capacity Concentrator Plant at Rakha, Jharkhand ("the **Project**").

\*[RESOLVED THAT the Board hereby acknowledges the Board Resolution dated \_\_\_\_\_ passed by the \_\_\_\_\_ (Name of the Other Member/Supporting Affiliate) for providing the Technical / Financial (Strike out whichever is not applicable) support to the \_\_\_\_\_ (Name of the Bidder) to meet the Qualification Requirements as per the provisions of the tender and undertaking to provide technical/ financial support to \_\_\_\_\_ (Name of the Bidder) in case it is unable to meet its obligations.]

#[FURTHER RESOLVED THAT the Board hereby acknowledges that the \_\_\_\_\_ (Name of the Other Member(s)) is required to provide the technical support for the Project so that the consortium is able to meet the qualification requirements as per the provisions of the tender.

FURTHER RESOLVED THAT the \_\_\_\_\_ (Name of the Other Member(s)) do provide necessary support to execute the scope of work in the tender and in the event of any default by the Consortium/Lead Member such obligation shall be fulfilled by the Entity.]

FURTHER RESOLVED THAT \_\_\_\_\_ shall act as the Lead Member of the Consortium and perform all acts and deeds as may be required to be performed on behalf of the consortium and the Other Member(s) in relation to submission of the bid for the Project.]

FURTHER RESOLVED THAT \_\_\_\_\_, (Name of the Person) [the Lead Member and such person as may be authorized by the Lead Member in this behalf] be and is hereby authorized to take all the steps required to be taken by the Bidding Entity/[Consortium] in this regard, including in particular, signing of the Bid, making changes thereto and submitting amended Bid, all the related documents, certified copy of this Board Resolution or letter, undertakings etc., required to be submitted to HCL or such other documents as may be necessary in this regard.

\$(Further Resolved that \_\_\_\_\_ be and is hereby authorized to sign on behalf of the \_\_\_\_\_ (Name of the Other Member(s)), the Consortium Agreement and such other document as may be required to be signed individually by the \_\_\_\_\_ (Name of the Other Member(s)).]

Certified True Copy

### Notes:

1. This certified true copy should be submitted on the letterhead of the Bidding Entity, signed by authorized Directors/Partner of the Bidding Entity and the rubber stamp for the Bidding Entity shall be affixed.

- 
2. This format may be modified only to the limited extent required to comply with the local regulations and laws applicable to a foreign entity submitting this resolution. For example, reference to Company, Companies Act 2013 may suitably be modified to refer to the law applicable to the entity submitting the resolution.
  3. \*Applicable in case of Bidding Entity participating through Route B: Bidding Consortium or Lead Member of the Bidding Consortium.
  4. # paragraphs in square brackets are applicable only if the Bidding Entity is a consortium and the Other Members is providing technical support.
  5. \$Applicable in case of Other Members in the Bidding Consortium.

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## 12.7. Format of the Board Resolution for providing financial support

### (If Applicable, to be submitted with the Proposal)

(To be executed by the Company providing Financial Strength to the Bidder)

The Board, after discussion, at the duly convened Meeting on \_\_\_\_\_ [insert date], with the consent of all the Directors/Partners present and in compliance of the provisions of the Companies Act, 2013/Indian Partnership At, 1932, Limited Liability Partnership Act, 2008, passed the following Resolution:

RESOLVED THAT the Board hereby acknowledges that \_\_\_\_\_ (Name of the Bidder) is desirous of submitting a Bid against the tender no..... dated \_\_\_\_\_, as amended from time to time, issued by Hindustan Copper Limited ("HCL") for the Re-Opening & Expansion of Rakha Copper Mine, Development and operations of Underground Mine at Chapri and Commissioning of new Matching capacity Concentrator Plant at Rakha, Jharkhand ("the **Project**").

FURTHER RESOLVED THAT the Board hereby acknowledges that \_\_\_\_\_ (Name of the Bidder) has requested the Company/LLP/ Partnership to provide the financial support to the \_\_\_\_\_ (Name of the Bidder) to meet the Qualification Requirements as per the provisions of the tender.

FURTHER RESOLVED THAT the Board hereby acknowledges that all the investment/ financial obligations of the \_\_\_\_\_ (Name of the Bidder) shall be deemed to be investment/financial obligations of the Company and/or shall be met by the Company in the event of any default of \_\_\_\_\_ (Name of the Bidder).

FURTHER RESOLVED THAT \_\_\_\_\_, be and is hereby authorized to enter into and take all the steps required to be taken by the Company/LLP/Partnership in this regard, including in particular, signing the said Undertaking, issuing the same to the HCL of all the related documents, certified copy of this Board resolution or letter, undertakings, certificate confirming relationship with \_\_\_\_\_ (Name of Bidder), etc., required by HCL or such other documents as may be necessary in this regard.

# [FURTHER RESOLVED THAT \_\_\_\_\_, be and is hereby authorised to provide a Corporate Performance Security Guarantee in the form of a bank guarantee, in the format as required under the Draft MSA].

# Applicable only in case of Bidder taking financial support from Supporting Partner. The Supporting Partner shall provide Corporate Performance Guarantee.

Certified True Copy

Notes:

1. In case of Bidding Company/ LLC/ LLP/ Partnership firm, this Board Resolution to be provided by the Supporting Partner providing financial strength as per Section 8.2.2, if applicable
2. In case of Bidding Consortium, this Board Resolution to be provided by the Lead Member of the Bidding Consortium.
3. This certified true copy should be submitted on the letterhead of the Company, signed by the Company Secretary or any of the authorized Directors of the Company and the rubber stamp for the Company shall be affixed.
4. This format may be modified only to the limited extent required to comply with the local regulations and laws applicable to a foreign entity submitting this resolution. For example, reference to Companies Act 2013 may suitably be modified to refer to the law applicable to the entity submitting the resolution.

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## 12.8. Format of the Board Resolution for providing technical support

### (If Applicable, to be submitted with the Proposal)

(To be executed by the Company providing technical strength to the Bidder)

The Board, after discussion, at the duly convened Meeting on \_\_\_\_\_ [insert date], with the consent of all the Directors/Partners present and in compliance of the provisions of the Companies Act, 2013/Indian Partnership , passed the following Resolution:

RESOLVED THAT the Board hereby acknowledges that the \_\_\_\_\_ (Name of the Bidder) is desirous of submitting the Bid against the tender no... .. dated \_\_\_\_\_, as amended from time to time, issued by Hindustan Copper Limited ("HCL") for the Re-Opening & Expansion of Rakha Copper Mine, Development and operations of Underground Mine at Chapri and Commissioning of new Matching capacity Concentrator Plant at Rakha, Jharkhand ("the **Project**").

RESOLVED THAT pursuant to the provisions of the Companies Act, 2013 and compliance thereof and as permitted under the Constitutional Documents , approval of the Board be and is hereby accorded for *[forming a Consortium with \_\_\_\_\_ and participating as the Other Member in the Consortium with \_\_\_\_\_and]* placing the Bid *[through \_\_\_\_\_the Lead Member]* for the Project.

FURTHER RESOLVED THAT the Board hereby acknowledges that \_\_\_\_\_ (Name of the Bidder) has requested the Company to provide the technical support to the \_\_\_\_\_ (Name of the Bidder) to meet the Qualification Requirements as per the provisions of the tender.

FURTHER RESOLVED THAT the Board hereby acknowledges that the Company shall be required to provide necessary support to execute the scope of work of \_\_\_\_\_(Name of the Bidder) in the tender and in the event of any default by the (Name of the Bidder) such obligation shall be fulfilled by the Company.

FURTHER RESOLVED THAT \_\_\_\_\_, be and is hereby authorized to enter into and take all the steps required to be taken by the Company in this regard, including in particular, signing the said Undertaking, issuing the same to the HCL of all the related documents, certified copy of this Board resolution or letter, undertakings, certificate confirming relationship with \_\_\_\_\_ (Name of Bidder), etc., required by HCL or such other documents as may be necessary in this regard.

# [FURTHER RESOLVED THAT \_\_\_\_\_, be and is hereby authorised to provide a Corporate Performance Guarantee in the form of a bank guarantee, in the format as required under the Draft MSA].

# Applicable only in case of Bidder taking technical support from Supporting Partner. The Supporting Partner shall provide Corporate Performance Guarantee.

Certified True Copy

Notes:

1. In case of Bidding Company/ LLC/ LLP/ Partnership firm, this Board Resolution to be provided by the Supporting Partner providing technical strength as per Section 8.2.2, if applicable
2. In case of Bidding Consortium, this Board Resolution to be provided by the Other Member of the Bidding Consortium.
3. This certified true copy should be submitted on the letterhead of the Company, signed by any of the authorized Directors/Partners of the Company/LLP/Partnership and the rubber stamp for the Company/LLP/Partnership shall be affixed.
4. This format may be modified only to the limited extent required to comply with the local regulations and laws applicable to a foreign entity submitting this resolution. For example, reference to Companies Act 2013 may suitably be modified to refer to the law applicable to the entity submitting the resolution.

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## 12.9. Financial Proposal

(On letter head of the Bidding Company/ LLC/ LLP/ Partnership or, Lead Member of Bidding Consortium)

Proposal Ref. No. and Date:

From:

Bidder's Name and Address:

Authorized Representative

Name:

Designation:

Tel. Nos:

Mobile No.:

Fax No.:

Email Address:

To,

.....  
.....  
.....

Dear Sir,

**Sub: Financial Proposal for Re-Opening & Expansion of Rakha Copper Mine, Development and operations of Underground Mine at Chapri and Commissioning of new Matching capacity Concentrator Plant at Rakha, Jharkhand**

We \_\_\_\_\_ (Name of the Bidder/ Lead Member of Consortium) having its registered office at \_\_\_\_\_ having examined in detail and understood the terms and conditions stipulated in the aforesaid Documents and subsequent corrigendum, if any, issued by HCL and confirm that our Financial Proposal is in full conformity the Tender Documents.

Our Financial Proposal for Re-Opening & Expansion of Rakha Copper Mine, Development and operations of Underground Mine at Chapri and Commissioning of new Matching capacity Concentrator Plant at Rakha, Jharkhand ("the **Project**") and performing the scope of work as stipulated in the Draft Mining Services Agreement, in response to the Tender Documents issued by HCL vide Tender no. \_\_\_\_\_ dated \_\_\_\_\_ (Bidder to specify date of issue of Documents by HCL) and its subsequent corrigendum No(s) \_\_\_\_\_ (Bidder to insert corrigendum number issued, if any by HCL subsequent to issue of Document).

Our Financial Proposal is presented below:

Particulars	Revenue Share (%)	Revenue Share (%) (in words)
Revenue Share (The % of revenue share to be provided by MDO to HCL)	(To be quoted by bidder)	(To be quoted by bidder)



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Yours sincerely,

Name of Authorized Representative / Authorized Signatory:

Designation:

Signature & Company's Round Seal

Email address:

Mobile No:

Dated the ----- day of ----- of 20---

**Note: -**

1. All the duties, taxes and levies above including that of income tax of MDO, duties etc. shall be borne by the MDO and shall be assumed to be included. No amount shall be reimbursed/paid by HCL

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## 12.10. Proforma for Consortium Agreement

(To be executed on the Non-Judicial Stamp Paper of Appropriate Value)

(To be executed between Members of the Bidding Consortium)

This Consortium Agreement made and entered into on \_\_\_\_\_ day of 20\_\_.

BY AND BETWEEN

\_\_\_\_\_ (Name of the Lead Member), a Company registered under the laws of \_\_\_\_\_ (Name of the Country) with its Head/ Registered Office at \_\_\_\_\_ (Address of the Head/ Registered Office) and a place of business in \_\_\_\_\_ (Address of place of business) (hereinafter referred to as "The Lead Member") and represented by Mr/ Mrs/ Ms. \_\_\_\_\_ (Name of Authorized Signatory) of the FIRST PART.

AND

\_\_\_\_\_ (Name of the Other Member), a Company registered under the laws of \_\_\_\_\_ (Name of the Country) with its Head/ Registered Office at \_\_\_\_\_ (Address of the Head/ Registered Office) and a place of business in \_\_\_\_\_ (Address of place of business) (hereinafter referred to as "The Other Member") and represented by Mr/ Mrs/ Ms. \_\_\_\_\_ (Name of Authorized Signatory) of the SECOND PART;

The Party of the FIRST PART, the Party of the SECOND PART, and the Party of the THIRD PART are collectively known as "**Parties**". The Party of the First Part is hereinafter referred to as "The Lead Member" and the Party of the Second Part and Third Part as the "Other Member(s)".

### WHEREAS,

- A. **Hindustan Copper Limited (HCL)**, a public sector undertaking under the administrative control of the Ministry of Mines and having its registered office 1, Ashutosh Chowdhury Avenue, Kolkata – 700019 (herein after referred to as the "HCL" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited Bids (the "**Bids**") by its RFP No. [●] dated [●] (the "**RFP**") for appointment of Mine Developer and Operator for Re-Opening & Expansion of Rakha Copper Mine, Development and operations of Underground Mine at Chapri and Commissioning of new Matching capacity Concentrator Plant at Rakha, Jharkhand (the "**Project**").
- B. The Parties are interested in jointly bidding for the Project as members of a Consortium and in accordance with the terms and conditions of the RFP and other Tender Documents in respect of the Project, and
- C. It is a necessary condition under the tender conditions that the members of the Consortium shall enter into a Consortium Agreement and furnish a copy thereof with the Bid.

### NOW IT IS HEREBY AGREED as follows:

#### 1. Definitions and Interpretations

In this Agreement, the capitalised terms shall, unless the context otherwise requires, have the meaning given thereto under the tender/ RFP.

#### 2. Consortium

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2.1 The Parties do hereby irrevocably constitute a consortium (this “**Consortium**”) for the purposes of jointly participating in the Bidding Process for the Project.

2.2 The Parties hereby undertake to participate in the Bidding Process only through this Consortium and not individually and/ or through any other consortium constituted for this Project, either directly or indirectly or through any of their Associates.

### **3. Covenants**

The Parties hereby undertake that in the event the Consortium is declared the selected Bidder and awarded the Project, it shall incorporate a Joint Venture Company (the “**JV**”) as a Limited Liability Company under the Indian Companies Act, 2013 for entering into the Mining Services Agreement (MSA) with HCL and for performing all its obligations as the MDO in terms of the Mining Services Agreement for the Project.

### **4. Role of the Parties**

The Parties hereby undertake to perform the roles and responsibilities as described below:

- (a) Party of the First Part shall be the Lead Member of the Consortium and shall have Board Resolution in its favour from the Other Member for conducting all business for and on behalf of the Consortium during the Bidding Process and until the signing date of the Mining Services Agreement when all the obligations of the JV Company/ MDO shall become effective;
- (b) In addition to the above,
  - i. the role of the Party of the First Part shall be to comply with all the responsibilities and obligations of the Lead Member as mentioned in this Agreement and Draft MSA;
  - ii. the role of the Party of the Second Part shall be to comply with all the responsibilities and obligations of Other Member as mentioned in this Agreement and Draft MSA;

### **5. Joint and Several Liability**

The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project and in accordance with the terms of the Tender Documents, RFP and the Mining Services Agreement.

### **6. Shareholding in the JV**

6.1 The Parties agree that the proportion of shareholding among the Parties in the JV Company shall be as follows:

First Party (Minimum 51 %): [●] %

Second Party (Minimum .....%): [●] %

6.2 The Parties undertake that no change in the above ownership of the subscribed and paid up equity share capital of the JV shall be permitted throughout the Contract Period, without the prior written approval of HCL.

6.3 The Parties undertake that a minimum of 51% (fifty-one per cent) of the subscribed and paid up equity share capital of the JV shall, at all times till expiry or termination of Mining Services Agreement, be held by the Party of the First Part.

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6.4 The Parties undertake that a minimum of 10% (ten per cent) of the subscribed and paid up equity share capital of the JV shall, be held by the Party of the Second, till at least 10 years from the Appointed Date as mentioned in Draft MSA.

6.5 The Parties undertake that they shall comply with all equity lock-in requirements set forth in the Tender Documents and the MSA.

## **7. Representation of the Parties**

Each Party represents to the other Parties as of the date of this Agreement that:

- (a) Such Party is duly organized, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;
- (b) The execution, delivery and performance by such Party of this Agreement has been authorised by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/ power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member is annexed to this Agreement, and will not, to the best of its knowledge:
  - i. require any consent or approval not already obtained;
  - ii. violate any Applicable Law presently in effect and having applicability to it;
  - iii. violate the memorandum and articles of association, by-laws or other applicable organisational documents thereof;
  - iv. violate any clearance, permit, concession, grant, license or other governmental authorisation, approval, judgement, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or
  - v. create or impose any liens, mortgages, pledges, claims, security interests, charges or Encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;
- (c) this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and

## **8. Termination**

This Agreement shall be effective from the date hereof and shall continue in full force and effect until the expiry or termination of Mining Services Agreement in case the Project is awarded to the Consortium. However, in case the Consortium is either not pre-qualified for the Project or does not get selected for award of the Project, the Agreement will stand terminated in case the Bidder is not pre-qualified.

## **9. Miscellaneous**

9.1 This Consortium Agreement shall be governed by laws of India.

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9.2 The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of HCL.

IN WITNESS WHEREOF THE PARTIES ABOVE NAMED HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

SIGNED, SEALED AND DELIVERED      SIGNED, SEALED AND DELIVERED      SIGNED, SEALED AND DELIVERED

For and on behalf of

For and on behalf of

For and on behalf of

First part i.e. LEAD MEMBER  
by

Second Part i.e. other Member  
by

Third Part i.e. other Member by

(Signature)

(Signature)

(Signature)

(Name)

(Name)

(Name)

(Designation)

(Designation)

(Designation)

(Address)

(Address)

(Address)

In the presence of:

1.

2.

Notes:

1. The mode of the execution of the Consortium Agreement should be in accordance with the procedure, if any, laid down by the Applicable Law and the charter documents of the executant(s) and when it is so required, the same should be under company's round seal affixed in accordance with the required procedure.
2. Each Consortium Member should attach a copy of the extract of the charter documents and documents such as Board resolution and power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Members.
3. For a Consortium Agreement executed and issued overseas, the document shall be legalised by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney/ resolution has been executed.

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### 12.10A: Proforma for Joint Operating Agreement

(On Non-Judicial Stamp Paper of Appropriate Value)

(In case the Bidder takes strength from its direct Subsidiary or Holding company, it will need to execute Joint Operating Agreement with its Supporting Partner)

This Joint Operating Agreement (“**JOA**”) is executed on this [ ] day of [ ] Two thousand [ ] between M/s [ ], a company incorporated under the laws of [ ] and having its registered office or principal place of business at [ ] (hereinafter called the “**Bidder**” which expression shall include its successors and permitted assigns)

**AND**

[ ] a company incorporated under the laws of [ ] and having its registered office or principal place of business at [ ] (hereinafter called the “**Supporting Partner**”, which expression shall include its successors and permitted assigns);

The Bidder and the Supporting Partner are hereinafter referred to individually as Party and collectively as Parties.

### **WHEREAS**

- A. **Hindustan Copper Limited (HCL)**, a public sector undertaking under the administrative control of the Ministry of Mines and having its registered office at 1, Ashutosh Chowdhury Avenue, Kolkata – 700019 (“**HCL**”) intends Re-Opening & Expansion of Rakha Copper Mine, Development and Operations of Underground Mine at Chapri and Commissioning of new Matching capacity Concentrator Plant at Rakha, Jharkhand, by appointing Mine Developer and Operator (MDO).
- B. In order to meet the Technical/Financial Criteria of Qualifying Requirements stipulated in Section 8.5, the Bidder has relied on the strength of its direct Subsidiary(ies) and/or Holding Company and is therefore required to enter into this JOA to bind the Supporting Partner to the provisions of the Mining Services Agreement (“**MSA**”).
- C. The Supporting Partner is the \*Subsidiary /\*Holding Company/of the Bidder.
- D. The Parties now wish to enter into this JOA in order to create binding obligations in favour of HCL to the extent set forth as follows.

### **NOW THEREFORE THIS AGREEMENT WITNESSETH AS UNDER:**

- 1. All capitalized terms used herein if not otherwise defined shall have the same meaning as those ascribed to them in the Tender documents, the RFP and MSA.
- 2. In consideration of HCL awarding the MSA, to and in favour of the Bidder inter alia relying on the strength and support of the Supporting Partner to the Bidder pursuant to the terms of the Tender Documents, the Supporting Partner hereby irrevocably and unconditionally agrees and undertakes to be jointly and severally be bound and liable for any and all acts and omissions of the Bidder, in the same manner and to the same extent as set forth in the MSA. For the avoidance of doubt, it is clarified that:

- 
- 2.1. any service by HCL of a notice pursuant to terms of the MSA shall be deemed to be service of notice to the Supporting Partner, on a several basis;
- 2.2. the Parties hereby assume full responsibility and liability for the performance by the Bidder/ MDO (where the Bidder has incorporated a separate company as the MDO) of its obligations in accordance with and subject to the terms of the MSA read with this JOA;
- 2.3. the Supporting Partner confirms that in the event the Bidder is successful in its Bid and is issued LOA, it shall promptly and in no event later than (30) thirty days following the issuance of LOA, furnish Performance Guarantee in the form of a bank guarantee in favour of HCL for an amount equivalent to 3% of the average contract value for annual production as on the date of issuance of LOA in the format provided in the draft MSA, in addition to the Performance Security to be submitted by the Bidder in the format provided in the draft MSA.
- 2.4. Subject to Clause 3 of this JOA, upon any default, whatsoever by the Bidder/ MDO in performing, meeting or otherwise complying with any of its obligations in accordance with the terms of the MSA, HCL may at any time as it deems fit and/or appropriate in its sole discretion, without giving any opportunity of recourse to the Bidder/ MDO, require the Supporting Partner to hold HCL harmless from and against any and all damages, losses, liabilities, obligations, claims of any kind, interest, cost, fee, or expenses (including, without limitation, reasonable attorneys' fees and expenses) suffered, incurred or paid by HCL, as a result of, in connection with or arising out of such default; and
- 2.5. the obligations of the Supporting Partner or the rights of HCL hereunder, shall not stand revoked, or otherwise be impaired or mitigated in any manner whatsoever, if there exists, at anytime, any dispute before any court (whether in India or abroad), arbitration, claims, settlements, obligations, expert determination or similar proceedings under the Project Agreement between the Bidder/ MDO and HCL;
3. Notwithstanding anything to the contrary contained in this JOA or the MSA, the aggregate liability and obligation of the Supporting Partner under or in connection with this JOA shall not exceed the aggregate liability and obligation of the Bidder/ MDO under the MSA and it shall continue for at least 5 (five) years or upto the time that the mine achieves its Annual Rated Capacity;
4. The Supporting Partner hereby irrevocably and unconditionally undertakes, agrees and acknowledges that its obligations hereunder:
- 4.1. is irrevocable, absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of the MSA, or the insolvency, bankruptcy, reorganization, dissolution, winding-up or liquidation of the Bidder/ MDO or any change in the ownership of the Bidder/ MDO, or any purported assignment by the Bidder/ MDO or any other circumstances whatsoever which might otherwise constitute a defense or discharge of a guarantor or surety;
- 4.2. shall not be affected by the existence of or release or variation of any guarantee of or security for any of the obligations of the Bidder under the MSA;
- 4.3. shall not be affected by any failure by HCL to pay or perform any of their obligations under the MSA, or any waiver of any of such obligations;
- 4.4. shall not be affected by any exercise or non-exercise of any right, remedy, power or privilege of any person under or in respect of any payment obligations of the Bidder under the MSA;

- 
- 4.5. shall not be affected by any failure, omission or delay on HCL's part to enforce, assert or to exercise any right, power or remedy conferred on HCL in this JOA or any such failure, omission or delay on HCL's part in connection with any obligation of the Bidder/ MDO under the MSA or any extension of time granted by HCL to the Bidder/ MDO for performance of its obligations under the MSA.
5. Each Party hereby represents and warrants that:
- 5.1. it is duly organized and validly existing under the laws of the jurisdiction of their organization, with full power, authority and capability to enter into this JOA and to perform all acts and obligations contemplated herein;
- 5.2. the signature and delivery of this JOA on its behalf and the exercise of its rights and performance of its obligations under this JOA have been duly authorized;
- 5.3. this JOA has been duly signed and delivered by it and its obligations described in this JOA are legal, valid and binding obligations of such Party; and
- 5.4. the execution and/or performance of this JOA:
- 5.4.1. will not conflict with or violate any provision of any of its constitutional documents / charters or other organizational document;
  - 5.4.2. will not require any notice to or filing with, or any approval of, any authority or the consent of any third party;
  - 5.4.3. will not conflict with, result in a breach of, constitute (with or without due notice or lapse of time or both) a default under, result in the acceleration of obligations under, create in any person the right to terminate, modify or cancel, or require any notice, consent or waiver under, any contract or instrument to which such Party is a party or by which such Party is bound or to which any of such party's assets are subject;
  - 5.4.4. will not result in the creation or enforcement of any security interest upon any assets of the Bidder;
  - 5.4.5. will not violate any Applicable Law or any order, writ, injunction, or decree applicable to it;
6. This JOA shall be construed and interpreted in accordance with the laws of India. In the event of any dispute or claim of any kind whatsoever that may arise between the Parties or HCL because of construction, interpretation or application of any of the terms and conditions of this JOA, such dispute shall be settled in accordance with terms of the MSA.
7. The courts in Kolkata, West Bengal, India shall have exclusive jurisdiction in all matters under this agreement.
8. Subject to Clause 3, the Parties hereby acknowledge and agree that this JOA has been executed for the sole benefit of HCL and for the specific purpose of ensuring that HCL receives the benefits of the Bidder's services under and in accordance with the MSA. Accordingly, HCL shall, notwithstanding anything contained herein, always have the right to enforce the performance by the Supporting Partner of its obligations pursuant to this JOA read with the MSA and the Supporting Partner hereby irrevocably and unconditionally waive any defense, rights or protection that they may have in law, contract or otherwise in this regard.
9. The Supporting Partner shall not assign or delegate its rights, duties or obligations under this JOA and the MSA in any manner whatsoever, except with prior written consent of HCL.



- 
10. The Supporting Partner agrees that this Agreement shall be irrevocable and shall form an integral part of the Tender Document and MSA. This Agreement shall continue to be enforceable for at least 5 years, which will have to be extended till such time the mine achieves the Annual Rated Capacity.
11. Terms not defined in the JOA shall have the same meaning as ascribed to them in the MSA. The word Bidder wherever appearing in the JOA shall also include the MDO.
12. The terms and conditions of this JOA shall not be amended or modified, except with prior written consent of HCL.

IN WITNESS WHEREOF, the Parties have, through their authorized representatives, executed these presents and affixed the round seals of their respective companies on the day, month and year first mentioned above at \_\_\_\_\_

**On behalf of the Bidder**

Name:

Designation:

Company's round Seal of the Bidder

Witness-1:

Witness-2:

**On behalf of the Supporting Partner**

Name:

Designation:

Company's round Seal of the Supporting Partner

Witness-1:

Witness-2:

*Note:*

- a) The Bidders should provide details of their Subsidiary (ies) and/or Holding Company whose experience had been offered for evaluation in the Covering Letter of Techno-commercial Proposal.
- b) Notarized Power of Attorney of the Persons signing the Joint Operating Agreement along with Board Resolution in support of Power of Attorney shall necessarily be furnished and to be attached with the signed Joint Operating Agreement.

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**12.11. Annexure-I Proforma for Earnest Money Deposit submitted through Bank Guarantee**

**PROFORMA FOR EARNEST MONEY DEPOSIT BANK GUARANTEE**  
**(On Non-Judicial Stamp Paper of appropriate value)**

..... (**Name of the Bank**)

Address.....

Guarantee No. ....

A/c Messrs..... (**Name of Bidder**)

Date of Expiry.....

Limit to liability (**currency & amount**) .....

Invitation for Bid No. .... dated .....

For..... (**Name of Facilities**)

**Subject: Earnest Money Deposit Bank Guarantee.**

Date .....  
20....

To

.....  
Hindustan Copper Limited

.....  
[**Name and Address of Employer**]

Dear Sir,

Whereas M/s..... (insert the name of the Bidder)  
(hereinafter called the "Bidder") has submitted its technical and financial proposal for  
..... (insert the name of work for which proposal is submitted)  
(hereinafter called the "Proposal") dated ..... against the Notice Inviting  
Tenders (NIT) Notice Inviting Proposal/Invitation for Bid (IFB) No. ....  
(Insert NIT/RFP number as per publication in newspaper or website) issued by Hindustan Copper  
Limited ("HCL").

The Tender Documents contemplate that earnest money deposit of Indian INR.....  
(Rupees ..... Only) which may be provided in the form of a Bank Guarantee issued from  
Scheduled Commercial Bank (except Co-operative/Gramin Bank).

We ..... (indicate the name of the bank) having its office at ..... (Herein  
after referred to as the "**Bank**") at the request of ..... Bidder do hereby in  
terms of Tender Documents, irrevocably, unconditionally and without reservation, guarantee the due  
and faithful fulfilment and compliance of the terms and conditions of the Tender Documents by the  
said Bidder and undertake to pay HCL an amount not exceeding INR ..... (Rupee  
..... 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 Bidder of any of the terms or conditions contained in the  
said Tender Documents including the following:

- a. The Bidder has withdrawn its Proposal after the submission of the Bid; or
- b. The Bidder having been notified of the acceptance of its Proposal by HCL during the Bid  
Validity Period, (i) fails or refuses to execute the Service Agreement; or (ii) fails or refuses to  
furnish the Performance Security, in accordance with the Tender Documents.

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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 Bidder or any other person and irrespective of whether the claim of HCL is disputed by the Bidder 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 Bidder of any of the terms or conditions contained in the 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 ..... (Rupees .....Only).

We shall be the sole judge to decide as to whether the Bidder 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 Bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between HCL and the Bidder 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 Bidder 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 Tender Documents/Bid and shall not be affected by any change in the constitution, insolvency or winding up of HCL, the Bidder or the Bank or any absorption, merger or amalgamation of HCL, the Bidder or the Bank with any other person or any change in the ownership of HCL/the Bidder, or any purported assignment by HCL/the Bidder/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 said Tender Documents or the period for fulfilment and compliance with all or any of the terms and conditions contained in the said Tender Documents by the said Bidder or to postpone for any time and from time to time any of the powers exercisable by it against the said Bidder and either to enforce or forbear from enforcing any of the terms and conditions contained in the said Tender Documents 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 said Bidder or any other forbearance, act or omission on the part of HCL or any indulgence by HCL to the said Bidder 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.

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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 said Bidder 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 the 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 ..... (Rupees ..... Only).
2. This Bank Guarantee towards Earnest Money Deposit shall be valid up to a period of 60(sixty) days from the Bid Validity Period (i.e., 180 days from the Bid Due Date).
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 \_\_\_\_\_

*Note: The non-judicial stamp (NJS) paper should be purchased in the name of the Bank issuing the BG; date of purchase of NJS paper should not be prior to the date of issue of the tender / contract as the case may be.*

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**12.12. Format for Power of Attorney for signing of Bid for Bidding Entity/ the Lead Member of the Consortium**

[To be notarised and to be executed on non-judicial stamp paper of appropriate value]

Know to all men by these presents, we, ..... (name of the Bidder/ Lead Member and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorise Mr. / Ms (Name), son/daughter/wife of ..... and presently residing at ....., who is presently employed with us and holding the position of ....., as our true and lawful attorney (hereinafter referred to as the "Attorney") to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our Bid for the "Appointment of Mine Developer and Operator for Re-Opening & Expansion of Rakha Copper Mine, Development and operations of Underground Mine at Chapri and Commissioning of new Matching capacity Concentrator Plant at Rakha, Jharkhand," (the "Project"), by Hindustan Copper Limited ("HCL") including but not limited to signing and submission of all applications, bids and other documents and writings, participate in bidders' and other conferences and providing information / responses to HCL, representing us in all matters before HCL, signing and execution of all contracts including the Mining Services Agreement and undertakings consequent to acceptance of our bid, and generally deal with HCL in all matters in connection with or relating to or arising out of our Bid for the said Project and/or upon award thereof to us and/or till the entering into of the Mining Services Agreement with HCL.

AND we hereby agree to ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

AND we hereby confirm that this Power of Attorney is being executed by us at our own volition with full knowledge of the facts and the contents thereof and with our free consent. We also confirm that no undue influence or coercion has been exercised on us any other person for execution of this Power of Attorney nor has there been any abuse of power by any person for execution of this Power of Attorney.

IN WITNESS WHEREOF WE, \_\_\_\_\_ THE ABOVE-NAMED PRINCIPAL  
HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS ..... DAY OF ....., 20.....

For .....

(Signature)

(Name, Title and Address)

Witnesses:

1.

2.

Accepted

---

.....  
(Signature)

(Name, Title and Address of the Attorney)

Notes:

1. The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the Applicable Law and the charter documents of the executant(s) and when it is so required.
2. Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.
3. Power of Attorney should be executed upon payment of stamp duty of appropriate value, as applicable in the State, where such Power of Attorney has been executed.

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**12.13. Format for Power of Attorney by Other Member of consortium authorising signing of the Bid by the Lead Member**

[To be notarised and to be executed on non-judicial stamp paper of appropriate value]

Whereas Hindustan Copper Limited has invited bids for Selection of Mine Developer cum Operator for Re-Opening & Expansion of Rakha Copper Mine, Development and Operations of Underground Mine at Chapri and Commissioning of new Matching capacity Concentrator Plant at Rakha, Jharkhand, at East Singhbhum district, Jharkhand ("**Project**").

Whereas, \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_ (collectively the "Consortium") being members of the Consortium are interested in bidding for the Project in accordance with the terms and conditions of the Request for Proposal and other connected documents in respect of the Project, and

Whereas, it is necessary for the members of the Consortium to designate one of them as the Lead Member with all necessary power and authority to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium's Bid for the Project and its execution.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS

We, \_\_\_\_\_ having our registered office at \_\_\_\_\_, and \_\_\_\_\_, having our registered office at \_\_\_\_\_, and \_\_\_\_\_, having our registered office at \_\_\_\_\_, (hereinafter referred to as "**Principal**") do hereby irrevocably designate, nominate, constitute, appoint and authorise \_\_\_\_\_, having its registered office at \_\_\_\_\_, being one of the members of the Consortium, as the "Lead Member" and true and lawful attorney of the Consortium (hereinafter referred to as the "Attorney") and hereby irrevocably authorise the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Consortium and any one of us during the Bidding Process and, in the event the Consortium is awarded the contract, during the execution of the Project, and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the submission of its Bid for the Project, including but not limited to signing and submission of all applications, bids and other documents and writings, accepting the Letter of Award, participating in bidders' and other conferences, responding to queries, submitting information/ documents, signing and executing contracts and undertakings consequent to acceptance of the Bid of the Consortium and generally to represent the Consortium in all its dealings with HCL, and/ or any other person, in all matters in connection with or relating to or arising out of the Consortium's Bid for the Project and/ or upon award thereof till the Mining Services Agreement is entered into with HCL.

AND hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us/ Consortium.

AND we hereby confirm that this Power of Attorney is being executed by us at our own volition with full knowledge of the facts and the contents thereof and with our free consent. We also confirm that no undue influence or coercion has been exercised on us any other person for execution of this

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Power of Attorney nor has there been any abuse of power by any person for execution of this Power of Attorney.

Capitalised words not defined herein shall have the meaning ascribed to them in the Tender Documents.

IN WITNESS WHEREOF WE THE PRINCIPAL ABOVE NAMED HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS ..... DAY OF ....., 20....

For .....

(Signature, Name & Title)

(Executant)

(To be executed by the Other Member(s) of the Consortium)

Witnesses:

- 1.
- 2.

Notes:

1. The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the Applicable Law and the charter documents of the executant(s) and when it is so required.
2. Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.
3. Power of Attorney should be executed upon payment of stamp duty of appropriate value, as applicable in the State, where such Power of Attorney has been executed.



(On letter head of the Bidding Company/ LLC/ LLP/ Partnership or, Lead Member of Bidding Consortium)

To,

.....

.....

.....

.....

Sir,

- Name:

Designation: \_\_\_\_\_ Signature & Company's Round Seal

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**12.15. Format for Letter of support from “Matching capacity Concentrator Plant vendor” to Bidder**

(On letter head of the Concentrator vendor)

To,

.....

**Sub: Letter of support to \_\_\_\_\_ (name of Bidder/ Bidding consortium) in order to undertake installation of Matching capacity Concentrator Plant having capacity matching capacity of combined copper ore production Rakha and Chapri Mines as a part of Re-Opening & Expansion of Rakha Copper Mine, Development and Operations of Underground Mine at Chapri and Commissioning of new Matching capacity Concentrator Plant at Rakha, Jharkhand, of HCL.**

Sir,

I, \_\_\_\_\_ (Name and designation of Authorized person) of \_\_\_\_\_ (Name of Matching capacity Concentrator Plant vendor) do hereby agree to extend support to \_\_\_\_\_ (Name of the Bidder/ Biding Consortium) on behalf of my company/ firm \_\_\_\_\_ (Name of the Matching capacity Concentrator Plant vendor) that if \_\_\_\_\_ (Name of the Bidder/ Biding Consortium) gets selected as the successful bidder and signs agreement with HCL to act as an MDO for Re-Opening & Expansion of Rakha Copper Mine, Development and Operations of a new Underground Mine at Chapri and Commissioning of new Matching capacity Concentrator Plant at Rakha, Jharkhand, then we, \_\_\_\_\_ (Name of the Matching capacity Concentrator Plant vendor) shall be assisting the MDO to fulfil its scope of work related to installation and commissioning of Matching capacity Concentrator Plant with throughput capacity of ..... MTPA for copper ore produced from Rakha and Chapri copper mining project. The technology/ type of Matching capacity Concentrator Plant shall be as desired by the MDO and HCL in collaboration.

Further, I undertake that,

4. We will provide services including design, technology, installation, and commissioning of Concentrator Plans for the Rakha and Chapri copper mining project with state-of-the-art technology.
5. We will enter into an agreement with the \_\_\_\_\_ (name of Bidder) for this purpose and will remain bounded with such agreement till the successful commissioning of Matching capacity Concentrator Plant and till it commences production.
6. If for any reason, we violate the agreement or fails to fulfil the contractual obligation undertaken by us in the agreement signed with \_\_\_\_\_ (name of Bidder), we will indemnify \_\_\_\_\_ (name of Bidder) against any and all the losses or damages which may be caused or suffered by \_\_\_\_\_ (name of Bidder) due to us.

Name of Authorized Representative / Authorized Signatory:

For and on behalf of .....

Designation:

Signature & Company's Round Seal

Email address:

Mobile No:

Dated the ----- day of ----- of 20---

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**Format for Power of Attorney for signing the Letter of Support from Matching capacity Concentrator Plant Vendor**

[To be notarised and to be executed on non-judicial stamp paper of Appropriate Value]

Know all men by these presents, we, ..... (name of the Matching capacity Concentrator Plant vendor and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorise Mr. / Ms (Name), son/ daughter/ wife of ..... and presently residing at ....., who is presently employed with us and holding the position of ....., as our true and lawful attorney (hereinafter referred to as the "Attorney") to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our Letter of Support to ..... (Name of Bidder), who in-turn are submitting their bid for the "Appointment of Mine Developer and Operator for Re-Opening & Expansion of Rakha Copper Mine, Development and operations of Underground Mine at Chapri and Commissioning of new Matching capacity Concentrator Plant at Rakha, Jharkhand," (the "Project") by Hindustan Copper Limited ("HCL") including but not limited to signing and submission of all applications, documents and writings, participate in bidders' and other conferences and providing information / responses to HCL and ..... (Name of Bidder), representing us in all matters before HCL and ..... (Name of Bidder), signing and execution of all contracts and undertakings consequent to acceptance of the bid of ..... (Name of Bidder), and generally deal with HCL and ..... (Name of Bidder) in all matters in connection with or relating to or arising out of the Bid for the said Project and/or upon award thereof to us and/or till the signing of the Mining Services Agreement.

AND we hereby agree, to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

AND we hereby confirm that this Power of Attorney is being executed by us at our own volition with full knowledge of the facts and the contents thereof and with our free consent. We also confirm that no undue influence or coercion has been exercised on us any other person for execution of this Power of Attorney nor has there been any abuse of power by any person for execution of this Power of Attorney.

IN WITNESS WHEREOF WE, \_\_\_\_\_ THE ABOVE-NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS ..... DAY OF ....., 20.....

For .....

(Signature)

(Name, Title and Address)

Witnesses:

1.

2.

Accepted

---

.....  
(Signature)

(Name, Title and Address of the Attorney)

Notes:

1. The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required.
2. Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.
3. Power of Attorney should be executed upon payment of stamp duty of appropriate value, as applicable in the State, where such Power of Attorney has been executed.

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## 12.16. Format for Integrity Pact

### (To be placed in Part I of the Bid)

The Integrity Pact ("**Pact**") essentially envisages an agreement between the Bidder and the owner ("**HCL**"), committing the persons/ officials of both the parties, not to exercise any corrupt influence on any aspect of the Tender Documents. Only those Bidders who have entered into such a Pact with the HCL would be qualified to submit their Bids. In other words, entering into this Pact would be a preliminary qualification. The Pact shall be effective from the stage of invitation of Bids till the execution of the Mining Service Agreement. Thereafter, the Selected Bidder shall be required to execute a separate Integrity Pact, which shall form part of, and be appended to the Contract.

The Pact envisages a panel of Independent External Monitors ("**IEM**") approved for HCL. The IEM is to review independently and objectively, whether and to what extent the parties have complied with their obligations under the Pact. It has right of access to all work documentation. The IEM may examine any complaint received by it and submit a report to the CMD of HCL, at the earliest. He may also submit a report directly to the Chief Vigilance Officer and the Central Vigilance Commission, in case of suspicion of serious irregularities attracting the provisions of the Prevention of Corruption Act. However, even though the Contract may be covered by the Pact, the Central Vigilance Commission may, at its discretion, have any complaint received by it relating to such a Contract, investigated.

The IEM on the advice of CVC has been appointed by HCL, who has been assigned by HCL to oversee implementation of the Pact relating to the Contract, in line with the terms and conditions of the Integrity Pact Agreement, to be signed between the Bidder and HCL.

### **INTEGRITY PACT AGREEMENT**

BETWEEN

Hindustan Copper Limited (HCL) hereinafter referred to as "the Principal"

AND

.....hereinafter referred to as "The Bidder"

### **Preamble**

The Principal intends to award, under laid down organizational procedures, Contract/s of "[insert name of the work]". The Principal values full compliance with all relevant laws of the land, rules, regulations, economic use of resources and of fairness/transparency in its relations with its Bidder(s).

In order to achieve these goals, the Principal has appointed Shri Debal Kumar Gayen (gayen.dk@gmail.com) and Shri Debashis Bandyopadhyay (debashis9999@gmail.com) as Independent External Monitors (IEMs), who will monitor the tender Process and the execution of the Contract for compliance with the principles mentioned above.

### **Section I – Commitments of the Principal**

- (1) The Principal commits itself to take all measures necessary to prevent corruption and to observe the following principles: -
  - a. No employee of the Principal, personally or through family members, will in connection with the bidding, or the execution of a contract, demand, take a promise for or accept, for self or third person, any material or immaterial benefit which the person is not legally entitled to.
  - b. The Principal will, during the Bidding Process treat all Bidder(s) with equity and reason. The Principal will in particular, before and during the Bidding Process, provide to all Bidder(s)

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the same information and will not provide to any Bidder(s) confidential/ additional information through which the Bidder(s) could obtain an advantage in relation to the Bidding Process or the Contract execution.

- c. The Principal will exclude from the process all known prejudiced persons.
- (2) If the Principal obtains information on the conduct of any of its employees which is a criminal offence under the Indian Penal Code/ Prevention of Corruption Act, or if there be a substantive suspicion in this regard, the Principal will inform the Chief Vigilance Officer and in addition can initiate disciplinary actions.

## **Section 2 – Commitments of the Bidder(s)**

- (1) The Bidder(s) commits himself to take all measures necessary to prevent corruption. He commits himself to observe the following principles during his participation in the Bidding Process and during the contract execution.

The Bidder(s) will not, directly or through any other person or company, offer, promise or give to any of the Principal's employees involved in the Bidding Process or the execution of the contract

- a. or to any third person any material or other benefit which he/she is not legally entitled to, in order to obtain in exchange any advantage of any kind whatsoever during the Bidding Process or during the execution of the contract.
- b. The Bidder(s) will not enter with other Bidders into any undisclosed agreement or understanding, whether formal or informal. This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of Bids or any other actions to restrict competitiveness or to introduce cartelization in the Bidding Process.
- c. The Bidder(s) will not commit any offence under the Indian Penal Code / Prevention of Corruption Act; further the Bidder(s) will not use improperly, for purposes of competition or personal gain, or pass on to others, any information or document provided by the Principal as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.
- d. The Bidder(s) will, when presenting his Bid, disclose any and all payments he has made, is committed to or intends to make to agents, brokers or any other intermediaries in connection with the award of the Contract.
- (2) The Bidder(s) will not instigate third persons to commit offences outlined above or be an accessory to such offences.

## **Section 3 – Disqualification from Bidding Process and exclusion from future contracts**

If the Bidder(s), before award or during execution has committed a transgression through a violation of Section 2 above or in any other form such as to put his reliability or credibility in question, the Principal is entitled to disqualify the Bidder(s) from the Bidding Process or take action as per the procedure mentioned in the "Guidelines on Banning of Business Dealings".

## **Section 4 – Compensation for damages**

- a. If the Principal has disqualified the Bidder(s) from the Bidding Process prior to the award according to Section 3, the Principal is entitled to demand and recover the damages equivalent to EMD.
- b. If the Principal has terminated the contract according to Section 3, or if the Principal is entitled to terminate the contract according to Section 3, the Principal shall be entitled to demand and recover from the Bidder, liquidated damages/ penalties of the contract value or the amount equivalent to Performance Security.

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## **Section 5 – Previous transgression**

- a. The Bidder declares that no previous transgressions occurred in the last 3 (three) years with any other company in any country conforming to the anti-corruption approach or with any other public sector enterprise in India that could justify its exclusion from the Bidding Process.
- b. If the Bidder makes incorrect statement on this subject, he can be disqualified from the Bidding Process or action can be taken against them as per the procedure mentioned in “Guidelines on Banning of Business Dealings”.

## **Section 6 - Equal treatment of all Bidders**

- a. The Bidder(s) undertake(s) to demand from all subcontractors a commitment in conformity with this Integrity Pact Agreement, and to submit it to the Principal before execution of the Contract.
- b. The Principal will enter into agreements with identical conditions as this one with all Bidders.
- c. The Principal will disqualify from the Bidding Process all Bidders who do not sign this Integrity Pact Agreement or violate its provisions.

## **Section 7 – Criminal charges against violating Bidder(s)**

If the Principal obtains knowledge of conduct of a Bidder or of an employee or a representative or an Associate of a Bidder which constitutes corruption, or if the Principal has substantive suspicion in this regard, the Principal will inform the Chief Vigilance Officer of the same.

## **Section 8 - Independent External Monitor/Monitors**

- a. The Principal has appointed competent and credible Independent External Monitor (“IEM”) for this Integrity Pact Agreement. The task of the IEM is to review independently and objectively, whether and to what extent the parties comply with the obligations under this agreement.
- b. The IEM is not subject to instructions by the parties/ their representatives and performs its functions neutrally and independently. It reports to the Chairman- cum-Managing Director of HCL.
- c. The Bidder(s) accepts that the IEM has the right of access without restriction to all work documentation of the Principal. The Bidder will also grant the IEM, upon its request and demonstration of a valid interest, unrestricted and unconditional access to his Work documentation. The same is applicable to subcontractors. The IEM is under a contractual obligation to treat the information and documents of the Bidder(s) with confidentiality.
- d. The Principal will provide to the IEM sufficient information about all meetings among the parties related to the work provided that such meetings could have an impact on the contractual relations between the Principal and the Bidders. The parties offer to the IEM the option to participate in such meetings.
- e. As soon as the IEM notices, or believes, that there is a violation of this Integrity Pact Agreement, it will so inform the management of the Principal and request the management to discontinue or take corrective action, or to take other relevant action. The IEM can, in this regard, submit non-binding recommendations. Beyond this, the IEM has no right to demand from the parties that they act in a specific manner, refrain from action or tolerate action.

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- f. The IEM will submit a written report to the Chairman-cum-Managing Director of HCL within 8 to 10 weeks from the date of reference or intimation to him by the Principal and, should the occasion arise, submit proposals for correcting problematic situations.
  - g. The IEM shall be entitled to compensation on the same terms as being extended to/ provided to Independent Directors of HCL.
  - h. If the IEM has reported to the Chairman-cum-Managing Director of HCL, a substantiated suspicion of an offence under relevant Indian Penal Code/PC Act, and the Chairman-cum-Managing Director of HCL has not, within reasonable time taken visible action to proceed against such offence or reported it to the Chief Vigilance Officer, the IEM may also transmit this information directly to the Central Vigilance Commissioner.

#### **Section 9 - Pact Duration**

This Integrity Pact Agreement begins when both parties have legally signed it. It expires for the Selected Bidder 12 (twelve) months after the last payment under the Contract, and for all other Bidders 6 (six) months after the Contract has been awarded.

If any claim is made/lodged during this time, the same shall be binding and continue to be valid despite the lapse of this Integrity Pact Agreement as specified above, unless it is discharged/determined by Chairman-cum-Managing Director of HCL.

#### **Section 10 - Other provisions**

- a. This agreement is subject to Indian laws. Place of performance and jurisdiction is the registered office of the Principal, i.e. Kolkata.
- b. Changes and supplements as well as termination notices need to be made in writing. Side agreements have not been made.
- c. Should one or several provisions of this agreement turn out to be invalid, the remainder of this agreement remains valid. In this case, the parties will strive to come to an agreement as to their original intentions.

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(For & On behalf of the Principal)

(Office Seal)

---

(For & On behalf of the Bidder)

(Office Seal)

Witness 1:

(Name & Address)

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Witness 2:

(Name & Address)

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**12.17. Format for self-certificate about understanding of the Site conditions**

To,

.....  
.....  
.....

Sub: Self-certificate about understanding of the Site conditions as a part of Techno-commercial Proposal for Re-Opening & Expansion of Rakha Copper Mine, Development and operations of Underground Mine at Chapri and Commissioning of new Matching capacity Concentrator Plant at Rakha, Jharkhand ("the **Project**")

Dear sir,

I, \_\_\_\_\_ (Name of the Authorized signatory/Authorized Representative of Bidder) hereby certify on behalf of \_\_\_\_\_ (Name of the Bidder/ Bidding Consortium) that we have visited the Site location and have sufficient knowledge about the Site conditions of Re-Opening & Expansion of Rakha Copper Mine, Development and operations of Underground Mine at Chapri and Commissioning of new Matching capacity Concentrator Plant at Rakha and nearby area required in order to participate in the Bidding Process and we are submitting our Techno-commercial and Financial Proposal keeping in mind all the risk and benefits associated with the Projects.

Also, we certify that we have read all the documents provided as a part of Tender Documents for understanding of the Project and preparation of our Techno-commercial and Financial Proposal.

Yours sincerely,

Name of Authorized Representative / Authorized Signatory:

For and on behalf of .....

Designation:

Signature & Company's Round Seal

Email address:

Mobile No:

Dated the ----- day of ----- of 20---

---

**12.18. Format for Declaration by Bidder for relationship with key managerial personnel of HCL**

To,

.....  
.....  
.....

**Sub: Declaration for relationship with key managerial personnel of HCL as a part of Techno-commercial Proposal for Re-Opening & Expansion of Rakha Copper Mine, Development and Operations of Underground Mine at Chapri and Commissioning of new Matching capacity Concentrator Plant at Rakha, Jharkhand ("the Project")**

Dear sir,

\*I, \_\_\_\_\_(Name of Authorized signatory) on behalf of \_\_\_\_\_ (Name of Bidder/ Bidding consortium) hereby declare that Promoters or key managerial personnel of the Bidder/members of the Bidding Consortium \_\_\_\_\_, its Subsidiary/Holding Company/Affiliate have no close business/ family relationship with key managerial personnel of HCL.

Or

\*I, \_\_\_\_\_(Name of Authorized signatory) on behalf of \_\_\_\_\_ (Name of Bidder/ Bidding consortium) hereby declare that Promoters or key managerial personnel of the Bidder/members of the Bidding Consortium \_\_\_\_\_, its Subsidiary/Holding Company/Affiliate have business/ family relationship with key managerial personnel of HCL in following manner.

Or

\*I, \_\_\_\_\_(Name of Authorized signatory) on behalf of \_\_\_\_\_ (Name of Bidder/ Bidding consortium) hereby declare that Promoters or key managerial personnel of the Bidder/members of the Bidding Consortium \_\_\_\_\_, its Subsidiary/Holding Company/Affiliate have business/ family relationship with key managerial personnel of HCL in following manner.

S No	Name and designation of personnel of the Bidder/ Bidding Consortium	Name and designation of key managerial personnel of HCL	Relationship
1			
2			
3			
4			

*\*(strike out whichever is not applicable)*

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Name of Authorized Representative / Authorized Signatory:

For and on behalf of .....

Designation:

Signature & Company's Round Seal

Email address:

Mobile No:

Dated the ----- day of ----- of 20---

---

**12.19. Format for Self-certification and undertaking by Bidder (by Lead Member and Other Member if bid is by a consortium) regarding insolvency/ liquidation process under NCLT**

**Self-Certification and Undertaking by Bidder (by each member if bid is by a Consortium) regarding Insolvency/Liquidation Process under NCLT**

(on non-judicial stamp paper of appropriate value)

To,

-----

Hindustan Coppers Ltd

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-----

(Name & Address of the Employer)

Sub: Tender for..... - Submission of Undertaking by.....

Ref: Tender No.....Dt.....

Dear Sir,

The undersigned hereby certifies that no corporate insolvency resolution/liquidation process has commenced in respect of the Bidder herein as on the date of submission of tender documents pertaining to the above referred Invitation for Bid.

We undertake to inform Hindustan Coppers Limited as soon as any corporate insolvency resolution/liquidation process, is initiated against us.

Thanking you,

Yours  
sincerely,

---

**13. Schedule 1: Draft Mining Services Agreement**

(Enclosed)

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#### 14. Schedule 2: Clarifications regarding Tender Document

S. No.	Section ref no. and Page no.	Existing Provision	Clarification Required	Suggested Text for Amendment, if any	Rationale for Clarification or Amendment
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					

---

**15. Schedule 3: List of documents to be handed over to Bidder**

<b>S No.</b>	<b>Particulars</b>
1.	Geological Report (GR)
2.	Resource Assessment Report (UNFC and JORC etc)
3.	Approved Mining Plan
4.	Mine General Layout
5.	Forest Clearance
6.	EIA/EMP Report with EC
7.	Feasibility / DPR on Mine Development and Production
8.	Lease Dead
9.	Beneficiation Testwork, Process Flow Diagram

Note: These documents are an exclusive property of HCL, and Bidder shall not share the mentioned documents with any third party.

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## 16. Schedule 4: Business rules of Forward Bidding/ Forward Auction<sup>1</sup>

The detailed guide of business rules for forward bidding/Forward Auction can be found on the MSTC website. The website can be accessed through the following link <https://www.mstcecommerce.com/>

### **SCHEDULE OF TENDER (SOT):**

a.	E-Tender No. (System Generated)	<b>MSTC/ERO/HINDUSTAN COPPER LTD/1/KOLKATA/22-23/36262</b>
b.	MODE OF TENDER (Two Stage Bidding System)	e-tender System by Online Part I - Techno-Commercial Bid and Online Part II - Price Bid through <a href="https://www.mstcecommerce.com/">www.mstcecommerce.com</a> of MSTC Ltd. The intending bidders are required to submit their offers electronically as per following schedules through e-tendering portal.  E-auction: Details Shall be communicated later
c.	NIT available for parties to view	From 17.01.2023 to 17.03.2023
d.	Last date for submission of query by e-mail and request for site inspection	Till 3 P.M. on 15.02.2023
e.	Pre-bid meeting	15.02.2023
f.	Last date and time of remittance of Tender Fee & Earnest Money Deposit by e-payment mode	Till 12 noon of 16.03.2023 Buyer is requested to positively inform the details of the payments made through email so that there is no delay or confusion in the process of issuance Paid Tender Documents
g.	Last date and time of submission of online Techno-Commercial Bid and price Bid at <a href="https://www.mstcecommerce.com/auctionhome">www.mstcecommerce.com/auctionhome</a> <a href="https://www.mstcecommerce.com">www.mstcecommerce.com</a>	Till 3 P.M. on 17.03.2023
h.	<b>Bank Account Details of MSTC:</b>	RTGS/NEFT Payment Link for payment of Paid Tender Document fee in MSTC account is available in Bidder's Login - <b>The bidders opting for this mode may please note that the transactions made through this mode will be reflected in MSTC's account in T+1 days (Transaction + 1). Hence, they should make the payment well in advance so that it gets reflected in MSTC's account in time.</b> Only those registered bidders shall be activated / allowed to bid whose said Paid Tender Document Fee amount has been credited within the scheduled date. Hence the Bidder should ensure that the

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<sup>1</sup> For the purpose of this Schedule 4, Forward Bidding and Forward Auction are used interchangeably



		amount towards Paid Tender Document Fee is credited to MSTC's account on or before the scheduled date. Paid Tender Document Fee details clearly mentioning Bidder name, Bidder Number, E-auction no., lot no. and transaction details (UTR No., Transaction Date, Amount, Bank Name, Account title, IFSC Code and Account Number) should be sent to above mentioned e-mail. The Paid Tender Document Fee to be deposited with M/s MSTC Limited on or before the dates mentioned above only through e-Payment gateway available at the Bidders login page. (For MSTC E-auction Number as mentioned above.) <b>The bidder has to select region as ERO and payment type as "OTHERS" from drop down after clicking "e-payment" link in their login page.</b>
	<b>MSTC Contact Details</b>	<p>Helpdesk for Technical Queries- 07969066600</p> <p>For payment confirmation and other queries:</p> <ol style="list-style-type: none"> <li>1) Sabyasachi Mukherjee Email:- <a href="mailto:smukherjee@mstcindia.co.in">smukherjee@mstcindia.co.in</a> Mobile- 7278030407</li> <li>2) Kranthi Kumar Email:- <a href="mailto:kkumar@mstcindia.co.in">kkumar@mstcindia.co.in</a> Mobile:- 9174009882</li> <li>3) Saurabh Satyarthi Email:- <a href="mailto:ssatyarthi@mstcindia.co.in">ssatyarthi@mstcindia.co.in</a> Mobile: 9903207001</li> </ol>

## ANNEXURE –II (A)

### Part – I: Techno-Commercial Bid

#### IMPORTANT INSTRUCTIONS TO E-TENDER

This is an e-tender event of HCL, Kolkata. The e-tender service provider is MSTC Ltd., Plot No. CF-18/2, Street No.175, Action Area- 1C, New Town, Kolkata -700156.

**Tenderers willing to participate in this tender are required to go through the entire tender document.**

	<p><b>Process of E-tender:</b></p> <p><b>A) Registration:</b></p> <p>(i) The process involves registration of bidders with MSTC e-tender portal which is free of cost. For this purpose, any willing bidder is required to apply online through the MSTC website <a href="http://www.mstcecommerce.com">www.mstcecommerce.com</a> as a buyer.</p>
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	<p>(ii) Only after registration, the bidder(s) can submit his/their bids electronically. Electronic bidding for submission of Techno-Commercial Bid as well as Price Bid over the internet will be done. The bidder should possess at least Class III signing type digital certificate (Bids will not be recorded without Digital Signature).</p> <p>(iii) Any willing bidder not yet in possession of at least Class III signing type digital certificate, would be required to obtain the same at their own cost and arrangement prior to participation in the instant tender.</p> <p>(iv) Bidders are to make their own arrangement for bidding from a P.C. connected with Internet. Neither HCL, Kolkata nor MSTC shall be responsible for making such arrangement.</p> <p>SPECIAL NOTE: BOTH PRICE BID AND TECHNO-COMMERCIAL BID ARE TO BE SUBMITTED ON-LINE AT <a href="http://www.mstcecommerce.com">www.mstcecommerce.com</a></p> <p>1) Bidders are required to register themselves online with <a href="http://www.mstcecommerce.com">www.mstcecommerce.com</a>→ Scrap and Custom Goods→ All General Auctions →Registration →Register as Buyers Filling in details and creating own user-id and password→ Submit.</p> <p><b>Bidders who are already registered with MSTC for e-tender of HCL, Kolkata for less than one year need not to register afresh.</b></p> <p>2) Bidders will receive a system generated mail confirming their registration in their e-mail ID which will be provided during filling in the registration form. Bidders are requested to submit bid keeping sufficient time in hand. They should not wait for last minute to avoid any problem. In case of any clarification, bidders are advised to contact HCL, Kolkata/MSTC (before the scheduled time of the e-tender).</p>
	<p><b>B) System Requirement:</b></p> <p>i) Windows 7 &amp; above Operating System ii) IE-7 and above Internet browser. iii) Signing type digital signature iv) JRE software to be downloaded and installed in the system. To enable ALL active X controls (<b>Except Active-X filtering which should be disabled</b>) and disable “use pop up blocker” under Tools →Internet Options→ custom level.</p>

	<p>The system requirements are as follows:</p> <ul style="list-style-type: none"> <li>• Operating System- Windows 7 and above</li> <li>• Web Browser- Preferred IE 7 and above.</li> <li>• Active-X Controls Should be enabled as follows:  Tools =&gt;Internet Options =&gt;Security =&gt;Custom Level =&gt; Enable all Active-X Controls (Except Active-X filtering which should be disabled)  =&gt;Disable “Use Pop-up Blocker”</li> <li>• Java (Latest is JRE 8 Update 201 – File name Windows X-86Offline)  To disable “Protected Mode” for DSC to appear in the signer box following settings may be applied.</li> <li>• Tools =&gt; Internet Options =&gt;Security =&gt; Disable protected Mode If enabled- i.e, Remove the tick from the tick box mentioning “Enable Protected Mode”.</li> <li>• Other Settings:  Tools =&gt; Internet Options =&gt; General =&gt; Click On Settings under “browsing history/ Delete Browsing History” =&gt; Temporary Internet Files =&gt; Activate “Every time I Visit the Webpage”.</li> </ul> <p><b><u>For details, refer to the “Bidder Guide” and a video guide available under “View Video” Link.</u></b></p>
	<p><b>(i) Format of Bid:</b></p> <p>(A) Part I Techno-Commercial Bid will be opened electronically on specified date and time as given in the Tender Notice. Bidder(s) cannot witness electronic opening of bid since the same is not a public event.</p> <p>(B) Part II Price Bid: Price Bids of only techno-commercially qualified bidders shall be opened electronically <b>AFTER</b> the e-auction is complete. Bidder(s) cannot witness electronic opening of bid since the same is not a public event.</p> <p><b>(ii) E-Auction :</b></p> <p>Notice containing auction schedule (Date &amp;time of e-auction)will be informed vide email.</p> <p><b>(iii) H1 bidder/Successful Bidder:</b></p> <p>Selection of successful bidder will be communicated to the bidder concerned by HCL,</p>

	<p>Kolkata only after completion of Tender Process and approval of competent authority.</p> <p><b>Note :</b></p> <p>Any necessary notice/ addendum/ extension notice/ corrigendum to the tender would also be hoisted in the e-tendering portal of M.S.T.C</p> <p>E-tender cannot be accessed after the due date and time mentioned in this Tender Notice, unless extended further with due notice in the website.</p> <p>Unit of Measure (UOM) is indicated in the e-tender Floor. Rate to be quoted should be in Indian Rupee as per UOM indicated in the e-tender floor/tender document.</p>
	<p><b>Submission of on-line bid:</b></p>
	<p>The bidder(s), who has /have submitted the above fees, can only submit their Techno Commercial</p> <p>Bid and Price Bid through internet in MSTC website <a href="http://www.mstcecommerce.com">www.mstcecommerce.com</a></p> <p>For Stage II** forward Auctions Click on Forward Auction→ Live Auctions →Selection of the live event→ Placing of Bids</p> <p>**Only after the evaluation of Stage I bidding the forward auction shall take place among techno- commercially qualified bidders.</p>
	<p>The bidder should allow to run Java Encryption Applet by clicking on allow whenever the Pop-UP asks to do so. This exercise has to be done immediately after clicking on the Techno-Commercial bid. If this application is not allowed to run as and when prompted, the bidder will not be able to</p> <p>Save/submit their bid and will get the error messages.</p>
	<p>After submission of all mandatory information and uploading of all mandatory documents as mentioned in the Tender, the bidder should click “save” for recording their Techno-Commercial bid. Once the same is done, the Price Bid link becomes active and the same has to filled in and then the bidder should click on “save” to record their price bid. Once both the Techno-Commercial bid &amp;</p> <p>Price bid are saved, the bidder can click on the “Submit” button to register their bid.</p>
	<p><b>Bidder’s alertness / duty:</b></p> <p>All correspondence to the bidder(s) after participation in the tender shall be sent by e-mail <u>only</u> during the process till finalization of tender by HCL, Kolkata. Hence, the bidders are required to ensure that their e-mail ID provided is valid at the stage of their registration with MSTC (i.e. Service Provider). Bidders are also requested to ensure validity of their DSC (Digital Signature Certificate). In case of successful bidder the communication of</p>

	<i>'Allotment Letter'</i> will be through hard copy.
	<p><b>Uploading of documents:</b></p> <p>Bidders are advised to use "Attach Docs" link in the bidding floor to upload documents in document library. Multiple documents can be uploaded. For further assistance, instructions of Vendor Guide are to be followed.</p>
	<p>No deviation of the terms and conditions of the tender document is acceptable. Submission of bid in the e-tender floor by any bidder confirms his/her automatic acceptance of all the terms &amp; conditions for the tender including those contained in the extension or any other notice/ corrigendum/ addendum/ clarifications, if any. Altered/amended format of document, if uploaded, will not be given any cognizance.</p>
	<p><b>Price Bid submission: Price shall only be quoted online.</b> A bid without submission of valid online price bid shall not be considered. No off line price bid shall be accepted. Also any document related to Price bid shall not be uploaded / submitted as hard copy during submission of Techno-Commercial bid and uploading/ submission of such document will lead to cancellation of offer..</p>
	<p><b>E-auction:</b></p> <p>At the stage of e-auction amongst the techno-commercially qualified bidders, the bidders shall only quote the total bid value at an increment or multiple thereof as will be allowed in the auction floor.</p>
NOTE:	
<p>(a) A bid can be edited and documents can be uploaded any number of times before the final submission of bid (i.e. before clicking on Sign &amp; Encrypt). Once the bid is submitted by clicking on Final Submission, further editing is not allowed.</p> <p>However, deletion of the bid, followed by resubmission of the bid, with no additional amount of EMD and tender fee, is allowed upto the closing time of the tender.</p> <p>Since replacement of any particular document already uploaded is not allowed by the System, the bidders are <b>strictly</b> advised to delete the entire bid and resubmit a fresh bid containing the revised document and refrain from uploading more than one document for a particular purpose otherwise the consequence of this deviation will be borne by the bidder only.</p>	
<p>(b) After the closing time of event has passed, no bid will be accepted by the system. Hence, bidders are advised to make final submission of their bids well within time.</p>	
<p>(c) In all cases, bidders should use their own ID and Password along with Digital Signature at the time of Submission of their bid.</p>	

(d) During the entire e-tender-cum-e-auction process, the bidders will remain completely anonymous to one another and also to everybody else with a view to discourage formation of Cartel. Any such formation will be strictly viewed and the entire Tender may be liable to be cancelled and EMD of the concerned Bidders liable to be forfeited including debarring such bidders from participating in future Tenders of HCL, Kolkata.
(e) The e-tender floor shall remain open from the date, time & duration as mentioned in the tender document, subject to extension of this duration as defined in this tender document.
(f) HCL, Kolkata may defer date of auction for any reason. The changed date will be accordingly intimated to the techno commercially qualified bidders by e-mail from HCL, Kolkata and MSTC and hoisting of the same in STC website. No request from the bidders for change of such date will be entertained by HCL, Kolkata.
(g) All electronic bids submitted during the e-tender process shall be legally binding on the bidder.
(h) HCL, Kolkata reserves the right to cancel or reject or accept or withdraw or extend the tender in full or part, as the case may be, without assigning any reason thereof.

#### 17. Schedule 5: Summary of Technical Details of Project

S.N.	Particulars	Description
1	Name of the mines	Mine at Rakha and Chapri block of Rakha Mining Lease
2	Name of the Lease holder	Hindustan Copper Limited
3	Rated Capacity of the Mines	3.00 MTPA (Annual Rated Capacity of Rakha and Chapri copper mining project)
4	Current status of operations	Operation of Rakha mine was discontinued w.e.f. 07.07.2001 due to low copper prices. The mine is currently waterlogged and non-operating.  Chapri deposit adjacent to the Rakha mine is a virgin block and needs to be developed and operated.
5	Total Lease area	~785.091 Ha
6	Location	District: East Singhbhum; State: Jharkhand
7	Coordinates	Rakha Mining lease is located in SOI Toposheet No. 73 J/6 between latitudes 22°36'52.652"N and 22°39'19.497" N and longitudes 86°21'10.752" E and 86°24'07.556" E.
8	Accessibility	Rail: The Lease is situated 16 kms away from Ghatsila Railway Station and 5 kms away from Rakha Railway Station  Road: Via road, the copper mines can be approached from Ghatshila Railway station by 16 kms and Rakha Railway Station by 5 kms motorable road. The mine can also be

S.N.	Particulars	Description
		<p>approached from Tatanagar Railway Station by 30 kms all weather road</p> <p>Air Strip: The nearest airstrip is at Ranchi, which is at a distance of ~170 kms.</p>
9	Lease Details	<p>Date of grant: 29.8.1971</p> <p>Date of expiry: 28.08.2021</p> <p>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 and it is in process</p>
10	Status of Clearances	<p>Environment Clearance: The Rakha mines has been accorded Environmental Clearance for production of 3.00 MTPA copper ore by the MoEFCC vide letter no. J-11015/269/2011-IA II (M) dated 01.08.2014</p> <p>Forest Clearance: Rakha Lease has been accorded Stage-II Forestry Clearance for diversion of 184.80 Ha of Forest land by the MoEFCC (Forest Conservation Division) vide letter no F. No. 8-65/1993-FC dated 15th September 2016, subsequently State Govt. has released forest land for commencement of mining operation. Forest Clearance under Sec 2 of FC Act 1980 for balance 98.932 ha within Lease area of 785.091 ha is required.</p> <p>Current status of all the statutory clearances is provided in the Schedule E, Draft Mine Service Agreement (MSA)</p>
11	Mining Plan	The last Mining Plan of Rakha lease for a period of 2020-21 to 2021 till 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.
12	Beneficiation	Concentration Plant, with a matching rated capacity required to be planned to beneficiate the ore from Rakha and Chapri mines project.

#### 18. Schedule 6: Guidelines on Banning of Business Dealings

S.N o.	Description
1.	Introduction
2.	Scope
3.	Definitions

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4.	Initiation of Banning / Suspension
5.	Suspension of Business Dealings
6.	Ground on which Banning of Business Dealing can be initiated
7.	Banning of Business Dealings
8.	Removal from List of Approved Agencies-Suppliers/ Contractors etc.
9.	Show-cause Notice
10.	Appeal against the Decision of the Competent Authority
11.	Review of the Decision by the Competent Authority
12.	Circulation of the names of Agencies with whom Business Dealings have been banned



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## 18.1. Introduction

- 18.1.1. Hindustan Copper Limited (HCL), being a Public Sector Enterprise and 'State', within the meaning of Article 12 of Constitution of India, has to ensure preservation of rights enshrined in Chapter III of the Constitution. HCL has also to safeguard its commercial interests. HCL deals with Agencies, who have a very high degree of integrity, commitments and sincerity towards the work undertaken. It is not in the interest of HCL to deal with Agencies who commit deception, fraud or other misconduct in the execution of contracts awarded / orders issued to them. In order to ensure compliance with the constitutional mandate, it is incumbent on HCL to observe principles of natural justice before banning the business dealings with any Agency.
- 18.1.2. Since banning of business dealings involves civil consequences for an Agency concerned, it is incumbent that adequate opportunity of hearing is provided and the explanation, if tendered, is considered before passing any order in this regard keeping in view the facts and circumstances of the case.

## 18.2. Scope

- 18.2.1. The General Conditions of Contract (GCC) of HCL generally provide that HCL reserves its rights to remove from list of approved suppliers / contractors or to ban business dealings if any Agency has been found to have committed misconduct and also to suspend business dealings pending investigation. If such provision does not exist in any GCC, the same may be incorporated.
- 18.2.2. Similarly, in case of sale of material there is a clause to deal with the Agencies / customers / buyers, who indulge in lifting of material in unauthorized manner. If such a stipulation does not exist in any Sale Order, the same may be incorporated.
- 18.2.3. However, absence of such a clause does not in any way restrict the right of Company (HCL) to take action / decision under these guidelines in appropriate cases.
- 18.2.4. The procedure of (i) Removal of Agency from the List of approved suppliers / contractors; (ii) Suspension and (iii) Banning of Business Dealing with Agencies, has been laid down in these guidelines.
- 18.2.5. These guidelines apply to all the Plants / Units and subsidiaries of HCL.
- 18.2.6. It is clarified that these guidelines do not deal with the decision of the Management not to entertain any particular Agency due to its poor / inadequate performance or for any other reason.
- 18.2.7. The banning shall be with prospective effect, i.e., future business dealings.

## 18.3. Definitions

In these Guidelines, unless the context otherwise requires:

*'Party / Contractor / Supplier / Purchaser / Customer/Bidder/Tenderer'* shall mean and include a

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public limited company or a private limited company, a firm whether registered or not, an individual, a cooperative society or an association or a group of persons engaged in any commerce, trade, industry, etc. '*Party / Contractor / Supplier / Purchaser /Customer/ Bidder / Tenderer*' in the context of these guidelines is indicated as '*Agency*'.

*'Inter-connected Agency'* shall mean two or more companies having any of the following features: If one is a subsidiary of the other.

If the Director(s), Partner(s), Manager(s) or Representative(s) are common; If management is common;

If one owns or controls the other in any manner;

*'Competent Authority'* and *'Appellate Authority'* shall mean the following: For Company (entire HCL) Wide Banning

The Director (Technical) shall be the "Competent Authority" for the purpose of these guidelines. Chairman, HCL shall be the "Appellate Authority" in respect of such cases except banning of business dealings with Foreign Suppliers of imported coal/coke.

For banning of business dealings with Foreign Suppliers of imported coal/coke, HCL Directors" Committee (SDC) shall be the "Competent Authority". The Appeal against the Order passed by SDC, shall lie with Chairman, as First Appellate Authority.

In case the foreign supplier is not satisfied by the decision of the First Appellate Authority, it may approach HCL Board as Second Appellate Authority.

For Plants / Units only	Any officer not below the rank of General Manager / Addl Director appointed or nominated by the Unit Head of concerned Plant / Unit shall be the ' <i>Competent Authority</i> ' for the purpose of these guidelines. The Unit Heads of the concerned Plants / Unit shall be the ' <i>Appellate Authority</i> ' in all such cases.
For Corporate Office only	For procurement of items / award of contracts, to meet the requirement of Corporate Office only, Head of M&C shall be the "Competent Authority" and Director (Technical) shall be the "Appellate Authority".

Chairman, HCL shall have overall power to take suo-moto action on any information available or received by him and pass such order(s) as he may think appropriate, including modifying the order(s) passed by any authority under these guidelines.

- 0 '*Investigating Department*' shall mean any Department or Unit investigating into the conduct of the Agency and shall include the Vigilance Department, Central Bureau of Investigation, the State Police or any other department set up by the Central or State Government having powers to investigate.

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- 1     *'List of approved Agencies - Parties / Contractors / Suppliers / Purchasers / Customers/ Bidders / Tenderers shall mean and include list of approved / registered Agencies - Parties/ Contractors / Suppliers /Purchasers / Customers / **Bidders** / **Tenderers**, etc.*

#### **18.4. Initiation of Banning /Suspension**

Action for banning / suspension business dealings with any Agency should be initiated by the department having business dealings with them after noticing the irregularities or misconduct on their part. Besides the concerned department, Vigilance Department of each Plant / Unit /Corporate Vigilance may also be competent to initiate such action.

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## **18.5. Suspension of Business Dealings**

- 18.5.1. If the conduct of any Agency dealing with HCL is under investigation by any department (except Foreign Suppliers of imported coal/coke), the Competent Authority may consider whether the allegations under investigation are of a serious nature and whether pending investigation, it would be advisable to continue business dealing with the Agency. If the Competent Authority, after consideration of the matter including the recommendation of the Investigating Department, if any, decides that it would not be in the interest to continue business dealings pending investigation, it may suspend business dealings with the Agency. The order to this effect may indicate a brief of the charges under investigation. If it is decided that inter-connected Agencies would also come within the ambit of the order of suspension, the same should be specifically stated in the order. The order of suspension would operate for a period not more than six months and may be communicated to the Agency as also to the Investigating Department. The Investigating Department may ensure that their investigation is completed and whole process of final order is over within such period.
- 18.5.2. The order of suspension shall be communicated to all Departmental Heads within the Plants / Units. During the period of suspension, no business dealing may be held with the Agency.
- 18.5.3. As far as possible, the existing contract(s) with the Agency may continue unless the Competent Authority, having regard to the circumstances of the case, decides otherwise.
- 18.5.4. If the gravity of the misconduct under investigation is very serious and it would not be in the interest of HCL, as a whole, to deal with such an Agency pending investigation, the Competent Authority may send his recommendation to Chief Vigilance Officer (CVO), HCL Corporate Office alongwith the material available. If Corporate Office considers that depending upon the gravity of the misconduct, it would not be desirable for all the Plants / Units and Subsidiaries of HCL to have any dealings with the Agency concerned, an order suspending business dealings may be issued to all the Plants / Units by the Competent Authority of the Corporate Office, copy of which may be endorsed to the Agency concerned. Such an order would operate for a period of six months from the date of issue.
- 18.5.5. If the Agency concerned asks for detailed reasons of suspension, the Agency may be informed that its conduct is under investigation. It is not necessary to enter into correspondence or argument with the Agency at this stage.
- 18.5.6. It is not necessary to give any show-cause notice or personal hearing to the Agency before issuing the order of suspension. However, if investigations are not complete in six months time, the Competent Authority may extend the period of suspension by another three months, during which period the investigations must be completed.

## **18.6. Ground on which Banning of Business Dealings can be initiated**

- 18.6.1. If the security consideration, including questions of loyalty of the Agency to the State, so warrants;
- 18.6.2. If the Director / Owner of the Agency, proprietor or partner of the firm, is convicted by a Court of Law for offences involving moral turpitude in relation to its business dealings with the Government or any other public sector enterprises or HCL, during the last five years;

- 
- 18.6.3. If there is strong justification for believing that the Directors, Proprietors, Partners, owner of the Agency have been guilty of malpractices such as bribery, corruption, fraud, substitution of tenders, interpolations, etc;
  - 18.6.4. If the Agency continuously refuses to return / refund the dues of HCL without showing adequate reason and this is not due to any reasonable dispute which would attract proceedings in arbitration or Court of Law;
  - 18.6.5. If the Agency employs a public servant dismissed / removed or employs a person convicted for an offence involving corruption or abetment of such offence;
  - 18.6.6. If business dealings with the Agency have been banned by the Govt. or any other public sector enterprise;
  - 18.6.7. If the Agency has resorted to Corrupt, fraudulent practices including misrepresentation of facts and / or fudging /forging /tampering of documents;
  - 18.6.8. If the Agency uses intimidation / threatening or brings undue outside pressure on the Company (HCL) or its official in acceptance / performances of the job under the contract;
  - 18.6.9. If the Agency indulges in repeated and / or deliberate use of delay tactics in complying with contractual stipulations;
  - 18.6.10. Willful indulgence by the Agency in supplying sub-standard material irrespective of whether pre-despatch inspection was carried out by Company (HCL) or not;
  - 18.6.11. Based on the findings of the investigation report of CBI / Police against the Agency for malafide / unlawful acts or improper conduct on his part in matters relating to the Company (HCL) or even otherwise;
  - 18.6.12. Established litigant nature of the Agency to derive un due benefit;
  - 18.6.13. Continued poor performance of the Agency in several contracts;
  - 18.6.14. If the Agency misuses the premises or facilities of the Company (HCL), forcefully occupies, tampers or damages the Company's properties including land, water resources, forests / trees, etc.

(Note: The examples given above are only illustrative and not exhaustive. The Competent Authority may decide to ban business dealing for any good and sufficient reason).

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## 18.7. Banning of Business Dealings

- 18.7.1. Normally, a decision to ban business dealings with any Agency should apply throughout the Company including Subsidiaries. However, the Competent Authority of the Plant / Unit except Corporate Office can impose such ban unit-wise only if in the particular case banning of business dealings by respective Plant / Unit will serve the purpose and achieve its objective and banning throughout the Company is not required in view of the local conditions and impact of the misconduct / default to beyond the Plant / Unit. Any ban imposed by Corporate Office shall be applicable across all Plants / Units of the Company including Subsidiaries.
- 18.7.2. For Company-wide banning, the proposal should be sent by the Plant / Unit to the CVO through the Head of the Plant / Unit setting out the facts of the case and the justification of the action proposed along with all the relevant papers and documents except for banning of business dealings with Foreign Suppliers of imported coal/coke.
- 18.7.3. The Corporate Vigilance shall process the proposal of the Plant / Unit for a prima- facie view in the matter by the Competent Authority nominated for Company-wide banning.
- 18.7.4. The CVO shall get feedback about that agency from all other Plants / Units. Based on this feedback, a prima-facie decision for banning / or otherwise shall be taken by the Competent Authority.
- 18.7.5. If the prima-facie decision for Company-wide banning has been taken, the Corporate Vigilance shall issue a show-cause notice to the agency conveying why it should not be banned throughout HCL.
- 18.7.6. After considering the reply of the Agency and other circumstances and facts of the case, a final decision for Company-wide banning shall be taken by the Competent Authority.
- 18.7.7. There will be a Standing Committee in each Plant / Unit to be appointed by Unit Head for processing the cases of "Banning of Business Dealings" except for banning of business dealings with foreign suppliers of coal/coke. However, for procurement of items / award of contracts, to meet the requirement of Corporate Office only, the committee shall be consisting of General Manager / Dy. General Manager each from Operations, Finance, Law & M&C. Member from M&C shall be the convener of the committee. The functions of the committee shall, inter-alia include:
- a. To study the report of the Investigating Agency and decide if a prima-facie case for Company-wide / Local unit wise banning exists, if not, send back the case to the Competent Authority.
  - b. To recommend for issue of show-cause notice to the Agency by the concerned department.
  - c. To examine the reply to show-cause notice and call the Agency for personal hearing, if required.
  - d. To submit final recommendation to the Competent Authority for banning or otherwise.

- 
- 18.7.8. If the Competent Authority is prima-facie of view that action for banning business dealings with the Agency is called for, a show-cause notice may be issued to the Agency as per paragraph 9.1 and an enquiry held accordingly.

**18.8. Removal from List of Approved Agencies - Suppliers / Contractors, etc.**

- 18.8.1. If the Competent Authority decides that the charge against the Agency is of a minor nature, it may issue a show-cause notice as to why the name of the Agency should not be removed from the list of approved Agencies / Suppliers / Contractors, etc.
- 18.8.2. The effect of such an order would be that the Agency would not be disqualified from competing in Open Tender Enquiries but LTE may not be given to the Agency concerned.
- 18.8.3. Past performance of the Agency may be taken into account while processing for approval of the Competent Authority for awarding the contract.

**18.9. Show-cause Notice**

- 18.9.1. In case where the Competent Authority decides that action against an Agency is called for, a show-cause notice has to be issued to the Agency. Statement containing the imputation of misconduct or mis-behaviour may be appended to the show-cause notice and the Agency should be asked to submit within 15 days a written statement in its defence.
- 18.9.2. If the Agency requests for inspection of any relevant document in possession of HCL, necessary facility for inspection of documents may be provided.
- 18.9.3. The Competent Authority may consider and pass an appropriate speaking order:
1. For exonerating the Agency if the charges are not established;
  2. For removing the Agency from the list of approved Suppliers /Contractors, etc.
  3. For banning the business dealing with the Agency.

- 
- 18.9.4. If it decides to ban business dealings, the period for which the ban would be operative may be mentioned. The order may also mention that the ban would extend to the interconnected Agencies of the Agency.

**18.10. Appeal against the Decision of the Competent Authority**

- 18.10.1. The Agency may file an appeal against the order of the Competent Authority banning business dealing, etc. The appeal shall lie to Appellate Authority. Such an appeal shall be preferred within one month from the date of receipt of the order banning business dealing, etc.
- 18.10.2. Appellate Authority would consider the appeal and pass appropriate order which shall be communicated to the Agency as well as the Competent Authority.

**18.11. Review of the Decision by the Competent Authority**

Any petition / application filed by the Agency concerning the review of the banning order passed originally by Unit Head / Competent Authority under the existing guidelines either before or after filing of appeal before the Appellate Authority or after disposal of appeal by the Appellate Authority, the review petition can be decided by the Unit Head / Competent Authority upon disclosure of new facts / circumstances or subsequent development necessitating such review. The Competent Authority may refer the same petition to the Standing Committee for examination and recommendation.

**18.12. Circulation of the names of Agencies with whom Business Dealings have been banned**

- 18.12.1. Depending upon the gravity of misconduct established, the Competent Authority of the Corporate Office may circulate the names of Agency with whom business dealings have been banned, to the Government Departments, other Public Sector Enterprises, etc. for such action as they deem appropriate.
- 18.12.2. If Government Departments or a Public Sector Enterprise request for more information about the Agency with whom business dealings have been banned, a copy of the report of Inquiring Authority together with a copy of the order of the Competent Authority / Appellate Authority may be supplied.
- 18.12.3. If business dealings with any Agency have been banned by the Central or State Government or any other Public Sector Enterprise, HCL may, without any further enquiry or investigation, issue an order banning business dealing with the Agency and its interconnected Agencies.
- 18.12.4. Based on the above, Plants / Units may formulate their own procedure for implementation of the Guidelines and same be made a part of the tender documents



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**19. Schedule 7: Statement of Legal Capacity**

**(To be placed in Part I of the Bid)**

STATEMENT OF LEGAL CAPACITY

[To be printed on the authorized Letterhead of the Bidder including full postal address, telephone no., fax no. and e-mail address]

Date:

To

[Insert the name and address]

Dear Sir,

We hereby confirm that we satisfy the terms and conditions laid out in the Tender document.

We have agreed that \_\_\_\_\_ (insert individual's name) will act as our representative and has been duly authorized to submit the Tender. Further, the authorized signatory is vested with requisites power to furnish such letter and authenticate the same.

Thanking you,

Yours faithfully,

(Signatory, name and designation of the authorized signatory)

For and on behalf of \_\_\_\_\_

---

**20. Schedule 8: Proposed Site Organisation**

**HINDUSTAN COPPER LIMITED**

**CORPORATE OFFICE**

**KOLKATA**

**Name of work:** Bid for Appointment of Mine Developer cum Operator for Re-Opening & Expansion of Rakha Copper Mine, Development and Operations of Underground Mine at Chapri and Commissioning of new matching capacity Concentrator Plant at Rakha, Jharkhand ("the Project")

Name of tenderer: \_\_\_\_\_

**PROPOSED SITE ORGANISATION**

The tenderer is to indicate herewith proposed site organization to be set up for execution of the work which should include qualified engineers & mine foremen for supervision of the work as per statute. It is understood that this will be augmented from time to time depending on the requirements for timely completion of work as indicated by engineer in charge.

Biodata of Site-in-Charge and key personnel including the statutory Foremen/ Mate/ Blaster etc.

**NAME, ADDRESS & SIGNATURE OF THE TENDERER**

---

**21. Schedule 9: Certificate of Site Visit**

**HINDUSTAN COPPER LIMITED**

**CORPORATE OFFICE**

**KOLKATA**

**CERTIFICATE OF SITE VISIT**

**Name of work:**            **Bid for Appointment of Mine Developer cum Operator for Re-Opening & Expansion of Rakha Copper Mine, Development and Operations of Underground Mine at Chapri and Commissioning of new Matching capacity Concentrator Plant at Rakha, Jharkhand ("the Project")**

Name of tenderer: \_\_\_\_\_

This is to certify that I, Shri ..... as the authorised representatives of M/s..... have visited the site on ..... and understood the total scope of work for the purpose of participating the above tendering process and as per information laid out in the Tender Documents and the draft MSA.

(Signature of the Authorized signatory)

(Name and designation of the of the Authorized signatory)

Name and seal of Bidder

This is to certify that the authorised representatives of M/s ..... have visited the site on / from ..... to understand the work for the purpose of participating the above tendering process.

Date:

(Signature of the Authorized signatory)

(Name and designation of the of the Authorized signatory)

Hindustan Copper Limited

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## 22. Schedule 10: Certificate regarding compliance

### CERTIFICATE REGARDING COMPLIANCE

I/we have read the Order (Public Procurement No.1) dated 23.07.2020 issued by Department of Expenditure, Public Procurement Division and subsequent orders issued by the Nodal Ministry. In terms of the requirement of the aforesaid order, we hereby certify that:

- a. I/we have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I/we hereby certify that this bidder is not from such a country **OR**, if from such a country, has been registered with the Competent Authority. I/we hereby certify that this bidder fulfils all requirements in this regard and is eligible to be considered. [Copy of valid registration by the Competent Authority shall be attached.]
- b. I/we have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India and on subcontracting to contractors from such countries; I/we hereby certify that this bidder is not from such a country **OR**, if from such a country, has been registered with the Competent Authority and will not sub-contract any work to a contractor from such countries unless such contractor is registered with the Competent Authority. I/we hereby certify that this bidder fulfils all the requirements in this regard and is eligible to be considered. [Copy of valid registration by the Competent Authority shall be attached.]

Yours truly,

Date .....

Signature: .....

Place .....

Name.....

Designation: .....

Name of Bidder: .....

Seal.....

#### Note:

1. The above certificate given by a bidder whose bid is accepted, if found to be false, this would be a ground for immediate termination and further legal action in accordance with law.
2. *Please strike out whichever is not applicable.*

# **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 \_\_\_\_

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HINDUSTAN COPPER LIMITED

***PART I***

***PRELIMINARY***



HINDUSTAN COPPER LIMITED

**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**"<sup>1</sup> 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. HCL/CO/ Rakha-Chapri/MDO/1, dated 16th January 2023 ("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.....

<sup>1</sup> In case the selected bidder itself is the MDO, then all obligations and warranties of the Selected Bidder shall be subsumed by the MDO



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- (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 20.2.1(a);
- 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



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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 meaning set forth in Clause 20.1.2;
- 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.
- "Associate"** shall have the meaning set forth in section 2(6) of the Companies Act, 2013;
- 1.1.20. **"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.
- 1.1.21. **"Average Daily Revenue Share Payable"** shall mean the Average Annual Sale Value divided by 365 (three hundred and sixty-five);
- 1.1.22. **"Bank"** shall mean a Scheduled Commercial bank (excluding Gramin and Co-operative Bank) incorporated in India;
- 1.1.23. **"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;
- 1.1.24. **"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;
- 1.1.25. **"Bidder"** shall mean any Bidding Company and/ or Bidding Consortium or LLC/LLP or Partnership Firm participated in RFP issued by HCL;
- 1.1.26. **"Bidding Company"** shall mean the single registered corporate entity in India, or abroad that has submitted its Proposal in response to this Bid Document;



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- 1.1.27. **"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;
- 1.1.28. **"Bidding Process"** shall mean procedural activities undertaken pursuant to the Bid Document for selection of MDO;
- 1.1.29. **"Bid Security"** shall mean the security provided by the {Selected Bidder/ Consortium Member} to the Authority along with the Bid of a sum of Rs. XXXXX (Rupees XXXX only), in accordance with the Request for Bid, and which is to remain in force until substituted by the Performance Security;
- 1.1.30. **"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.
- 1.1.31. **"Change in Ownership"** shall have the meaning set forth in Clause 5.3.2.
- 1.1.32. **"Change of Scope"** shall have the meaning set forth in Clause 15.1.1.
- 1.1.33. **"Change of Scope Notice"** shall have the meaning set forth in Clause 15.2.1.
- 1.1.34. **"Change of Scope Order"** shall have the meaning set forth in Clause 15.2.3.
- 1.1.35. **"COD"** or **"Commercial Operation Date"** shall have the meaning set forth in Clause 14.2.1.
- 1.1.36. **"Commencement Date"** shall mean the date of signing of this Agreement or 90 days from the date of issuance of LoA, whichever is earlier;
- 1.1.37. **"Completion"** shall have the meaning as set forth in Clause 14.3;
- 1.1.38. **"Completion"** means the completion of the entire scope of Work herein specified to the required standards accordance with this Contract to the satisfaction of the Engineer-in-Charge, and the terms "Complete" "Completed" "Completion" and "Completing" shall be construed accordingly.
- 1.1.39. **"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.
- 1.1.40. **"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.



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- 1.1.41. "**Conditions Precedent**" shall have the meaning set forth in Clause 4.1;
- 1.1.42. "**Consortium Member**" shall refer to each corporate entity of the Bidding Consortium;
- 1.1.43. "**Construction Period**" shall mean the period beginning from the Appointed Date till the Scheduled Completion Date or any extension provided thereof;
- 1.1.44. "**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;
- 1.1.45. "**Contract Period**" shall mean a period beginning from the Commencement Date till **20 (Twenty) years** from Appointed Date or till such period extended by HCL (as per clause 3.1) whichever is later.
- 1.1.46. "**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;
- 1.1.47. "**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;
- 1.1.48. "**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.
- 1.1.49. "**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;
- 1.1.50. "**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;



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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 copper ore.
  - **"Delivery Point 2 (DP2)"**: shall be the place identified by HCL near the concentrator plant for the delivery of copper ore concentrate for sell 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;



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- 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.





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- 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 % 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;



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- 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 27.1.3;
- 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





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- 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. **"Parties"** shall mean the parties to this Agreement collectively and **"Party"** shall mean any of the parties to this Agreement individually;
- 1.1.134. **"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.



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- 1.1.135. **"Repair and Rectification Guarantee"** shall have the meaning set forth in Article 35;
- 1.1.136. **"Revenue Share"** shall mean the percentage of revenue which will be shared to HCL as per Clause 5.23.
- 1.1.137. **"Performance Security"** shall have the meaning set forth in Clause 9.1;
- 1.1.138. **"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
- 1.1.139. **"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;
- 1.1.140. **"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;
- 1.1.141. **"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;
- 1.1.142. **"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;
- 1.1.143. **"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;
- 1.1.144. **"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;



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- 1.1.145. **"Project Facilities"** shall mean all the amenities and facilities situated on the Site, as described in Schedule-C;
- 1.1.146. **"Project Milestones"** shall mean the project milestones set forth in Schedule-G;
- 1.1.147. **"Project Specific Assets"** shall mean the Project Facilities;
- 1.1.148. **"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,
- 1.1.149. **"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;
- 1.1.150. **"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.
- 1.1.151. **"Quality Slippage"** shall have the meaning set forth in Clause 20.6 and thereof;
- 1.1.152. **"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.
- 1.1.153. **"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;
- 1.1.154. **"Re.", "Rs." or "Rupees" or "Indian Rupees" or "INR"** shall mean the lawful currency of the Republic of India;
- 1.1.155. **"Rehabilitation and Resettlement"** shall mean the rehabilitation and resettlement of Project Affected Persons in accordance with the R&R Policy;
- 1.1.156. **"Revenue Share of HCL"** shall have the meaning set forth in Clause 26.1;
- 1.1.157. **"RFP/Request for Proposal"** shall have the meaning ascribed to it in Recital (b);
- 1.1.158. **"ROM Copper Ore"** shall mean the Copper Ore from Rakha & Chapri Coper Mine;
- 1.1.159. **"Safety Requirements"** shall have the meaning set forth in Clause 17.1;
- 1.1.160. **"Scheduled COD"** shall have the meaning set forth in Clause 12.5.1;
- 1.1.161. **"Scheduled Completion Date"** shall have the meaning set forth in Clause 12.5.1;
- 1.1.162. **"Scheduled Maintenance"** shall have the meaning set forth in Clause 16.4.4;



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- 1.1.163. **"Selling of MIC"** in reference to this Agreement shall mean and include marketing and sale (on a portal decided by the HCL) of the MIC at LME Copper Prices taking into consideration of TC/RC by the Mine Operator on behalf of the Authority.
- 1.1.164. **"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;
- 1.1.165. **"Selected Bidder"** shall mean the Bidder selected as 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 through this tendering process;
- 1.1.166. **"Site"** shall have the meaning as set forth in Clause 10.1;
- 1.1.167. **"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.
- 1.1.168. **"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;
- 1.1.169. **"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;
- 1.1.170. **"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;
- 1.1.171. **"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;
- 1.1.172. **"Stock yard"** shall have the meaning set forth in Clause 21.1;
- 1.1.173. **"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



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(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;

- 1.1.174. **"Substitution Agreement"** shall have the meaning set forth in Clause 36.3;
- 1.1.175. **"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).
- 1.1.176. **"Suspension"** shall have the meaning set forth in Article 32;
- 1.1.177. **"Tailings"** shall mean the rejects generated after beneficiation of Copper Ore.
- 1.1.178. **"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;
- 1.1.179. **"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
- 1.1.180. **"Termination"** shall mean the expiry or termination of this Agreement;
- 1.1.181. **"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.
- 1.1.182. **"Termination Letter"** shall mean the communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement;
- 1.1.183. **"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



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expressly agreed that the amount payable shall be subject to the limitations specified in Clause 33.3;

- 1.1.184. **"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;
- 1.1.185. **"Ton" or "Tonne" or "tonne"** shall mean a metric tonne of Copper Ore;
- 1.1.186. **"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;
- 1.1.187. **"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;

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.



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### 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





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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;





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- (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;



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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.



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### **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.



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## ***PART II***

# ***SCOPE OF THE PROJECT***



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### Article 2. Scope of the Project

#### 2.1. Scope of the Work

The scope of the Project (the "Scope of the Project") for the Mine Operator shall mean and include, after Appointed Date and during the Contract Period:

- a) all incidental works prior to commencement of copper production including those required during re-opening and development, creation of Mines entry through decline portal.
- b) acquiring required land, obtaining physical possession of land, Rehabilitation and Resettlement ('R&R') of Project Affected Persons ('PAPs') in accordance with the R&R Plan.
- c) procurement of the Applicable Permits, including those set out at Schedule E of this Agreement, required for re-opening, development, production of copper, processing of copper ore and Selling of MIC on behalf of the HCL.
- d) undertaking/conducting scientific studies as recommended by the Directorate General of Mines Safety ("DGMS") or any other regulatory authority during re-opening, development and production of copper, processing of copper ore, in accordance with Clause 5.25 of this Agreement.
- e) re-opening and development of the Mines on the Site specified in Schedule- A, Schedule-C and conforming to the Specifications and Standards of the Mining Plan.
- f) strata monitoring and support during re-opening, development and production of copper from underground working.
- g) Production of copper ore from the mines, processing of same in the concentrator plant for production of MIC and Delivery of MIC with due regard to safety in accordance with the provisions of this Agreement.
- h) operation and maintenance of the Mines and Concentrator Plant in accordance with the provisions of this Agreement and the Applicable Laws.
- i) storage, handling and use of explosives.
- j) performance of all activities related to progressive mine closure, final mine closure, reclamation {including backfilling of tailings in the mines} as per the Mining Plan.
- k) safety of Mine.
- l) recruitment and payment of wages and other benefits to workmen and manpower as per the statues/Applicable Laws. MDO shall also make the payment of the Statutory manpower deployed by HCL for this project.
- m) statutory responsibilities and obligations of the Owner under the Mines Act, 1952.
- n) MDO shall bear all unforeseen and residual expense applicable upon the Project.

The brief overview of scope of work for the MDO will cover the following areas:

- Mining of ore which includes the reopening of Rakha mine, development of underground Chapri mine, exploration and exploitation of copper ore from Rakha and Chapri block in scientifically and environment friendly manner for production of copper ore, excavation of the rock as per the specification, loading, transportation, and disposal of the rock at the specified place.
- Commissioning and operations of a matching capacity Concentrator Plant at Rakha to beneficiate the ore produced from Rakha & Chapri block;.
- 100% financing of the project.
- The successful MDO will operate and maintain the equipment at Rakha and Chapri block and Concentrator Plant. The requirement of manpower shall be met by the Successful Bidder. The MDO shall engage manpower for supervision etc. at its own terms and conditions while adhering to the Applicable Laws, provided that this manpower will have no legal right to the employment in HCL at the expiry of the term of the agreement. Provision of salary & wages shall be responsibility of HCL for HCL's manpower deployed at Rakha and Chapri Blocks and Concentrator Plant including that of the Project site.
- The successful MDO shall be primarily responsible for integrating technology into this project and implementing technologies in order to improve productivity, safety, and sustainability while



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at the same time minimizing environmental impact. This shall include but not limited to improving underground communication, automating processes, and utilizing more advanced methods of transportation.

- The following initiatives shall be considered & implemented by the successful MDO at its own cost for the entire duration of the project. Although the identified solution shall be implemented, sufficient attention shall be made to ensure that each solution component is a part of the integrated smart mine architecture so that data and communications are seamlessly exchanged between the systems for providing online access (24 hours) to all HCL authorized representatives throughout the contract period.
  1. GPS based tracking and Geo fencing:
    - Real-time location tracking and monitoring, especially of moveable assets.
    - All mine boundaries, unloading points like sidings, stockpiles, crusher and bunker, ore transportation routes, delivery points shall be geo-fenced.
    - Periphery surveillance using virtual fencing shall be done for detecting intrusion of vehicles with the intention of illegal transportation of mineral through unauthorized routes.
    - System shall be capable & generate alerts in case of misroute, overspeed, delay, overloading, wrong dump, incorrect material information, etc.
  2. Automation of Weighbridge system with RFID based Access Control at delivery points:
    - Weighbridge automation is to be carried out by the successful MDO considering all the delivery points as per the definition mentioned in 1.1.58.
    - RFID based access, CCTV surveillance cameras, weighbridge controller, traffic lights, vehicle number plate recognition, position sensors, other components, integration with available ERP software etc. required for automating weighbridge system at the delivery points to be installed which shall identify vehicles and drivers to prevent unauthorized use and shall capture digital records of every vehicle at the weighing site.
    - RFID based automatic boom barriers shall be installed at all the entry and exit points of Mines and delivery points so that only authorized vehicles/tippers can enter/exit into the mine premises which eliminate the possibility of any ore pilferage and helps to regulate vehicle traffic.
    - Load cell, if required, shall be installed below static weighbridges for accurate weight measurements.
    - Number plate recognition software, or vehicle having a barcode placed in the front windscreen shall be automatically scanned to match the vehicle and recorded weight.
    - The information recorded for each vehicle shall be stored in the linked software and access/data shall be made available to HCL representatives as and when required.
    - Cross checking of net weight entered into govt portal (for royalty payment) through QR code.
  3. User Interface/Reports/Dashboards through web-based application and mobile applications:
    - Reports & dashboards shall be accessible through web-based application, and available on desktop and mobile phones both on Android / IOS and the same shall be accessible from Project head's office, HoD's office of Project and Head Office of HCL.
    - MDO shall provide full support to extract and /or share data as specified by HCL and using standard mechanisms like exposing APIs, create users to access data from the database and share data dump in specified format.



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- The reports shall mention & capture data including but not limited to truck number, cycle time details/duration of trip, distance traveled, payload/weight of material, weighbridge details, generated challan no, etc
- Consolidated reports shall be made available on hourly, shift wise, daily, weekly, monthly & yearly basis.
- As pollution control measures, auto sprinkling system shall be installed along all the approach road of the delivery points.

### 4. Training of employees of HCL:

- MDO shall periodically impart safety training including management development program to the employees of HCL without any additional cost whatsoever, in nature.
- MDO shall develop a state-of-the-art modern Training Center including simulator, etc at the project site.

### 2.1.1 Objective of HCL

HCL is desirous to appoint a Mine Developer cum Operator (MDO) for re-opening and expansion of Rakha underground copper mine, development and operations of underground mine at Chapri and commissioning of new Concentrator Plant at Rakha, Jharkhand. The combined designed annual production capacity of the mine is of 3.00 MTPA with matching capacity of concentrator plant. The initial period of the MDO will be for 20 (twenty) years with provision for further extensions by 5 (five) years, maximum one time.

HCL desires to select a technically competent and financially sound MDO to make the majority of the investments in the mining and concentrator project and undertake all the activities necessary for planning, development, operation, and maintenance of the copper mine and concentrator plant and to match the annual production as stipulated in the Draft Mining Services Agreement.

#### Summary of Ore Production and Beneficiation:

MDO shall be required to develop the mine and concentrator plant at his own cost and to mine at its designed capacity and concentrate the ore as per established standards. The MDO shall produce combinedly 3.00 MTPA ore from Rakha Mining Lease (Rakha and Chapri Block) at its designed capacity (Production Table given below). The ROM Copper ore from the mine will be processed at the new concentrator plant of matching capacity. The whole operation shall be carried out on mutually acceptable terms and conditions on long term basis. The copper concentrate should be of minimum 25% copper grade with maximum 8% moisture content. The recovery of the concentrator plant should operate at minimum 94% recovery.

**Table: Mine / Block wise ore production and beneficiation**

No	Mining Lease	Block	Annual Ore Production	Annual Beneficiation
1	Rakha Mining Lease	Rakha	3.00 MTPA	3.00 MTPA
		Chapri		
Total, MTPA:			3.00 MTPA	3.00 MTPA



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**Note: 1. Combined copper ore production from Rakha & Chapri block of Rakha Mining Lease shall be 3.0 MTPA from 10<sup>th</sup> year onwards. In case MDO intends to increase the production of the mine and the beneficiation plant, necessary statutory steps to be arranged at its own cost.**

### 2.1.2 Brief Description of the Work

The broad scope of the MDO shall include all the activities required for re-opening, expansion and operation of Rakha Copper Mine, development and operation of a Underground Mine at Chapri and supply, erection, commissioning, operation & maintenance of new Concentrator Plant of matching capacity at Rakha, Jharkhand as further detailed below:

- a) Design & engineering, supply, erection/ construction, commissioning, mine development, production & maintenance, instrumentation & control, and other allied works related to mining operation and backfilling arrangement including all other associated works;
- b) Design & engineering, supply, erection/ construction, commissioning, operation & maintenance, instrumentation & control, and other allied works related to new concentrator plant of matching capacity including tailing storage pond and transportation of tailings to mine for backfilling including all other associated works;
- c) Development of the mines and commissioning of concentrator plant on the site specified in accordance with the provisions of the Mining Service Agreement, and conforming to the specifications, capacity, standards and the approved Mining Plan and Mining Service Agreement;
- d) Other mine development and maintenance activities including but not limited to, assist for land procurement and resettlement & rehabilitation, diversion of road, electric lines etc., setting of site infrastructure including but not limited to explosive magazine houses, explosive vans, site office, diesel depot/ storage, electrical, mechanical and civil installation, access and haulage roads, drainage, dewatering, water treatment facilities, training institute, and establishment of welfare activities as per relevant mine rule, occupational health services as per statute, etc.;
- e) Supply, operation and maintenance of mines, concentrator plant and allied infrastructures in accordance with the provisions of the Mining Service Agreement and Applicable laws;
- f) All statutory safety requirements required manpower including Manager, Safety Officer, Assistant Manager, Ventilation Officer, Surveyor, Training Officer, Mine Foreman, Mining Mate, Blaster, Winding Engine driver, Banksman, Signaller, Magazine Clerk, Mechanical Engineers, Mechanical Foreman, Electrical Engineers, Electrical Supervisors, Electrician, Welfare Officer etc. shall be in the scope of the MDO.

MDO shall construct, operate and maintain first aid stations at underground, first aid room at surface, rescue room, and vocational training center. MDO shall impart training for initial and refresher rescue trained persons as per statute.

Apart from statutory supervisory manpower deployed by HCL, the MDO has to also, specifically deploy statutory manpower (i.e., persons holding requisite statutory competency certificates issued by the concerned statutory authorities) for conducting different mining activities/ operations safely abiding by the relevant laws and statute

MDO shall also establish a dedicated training department with a fulltime staff which shall provide training to the persons deployed including employees of HCL for the entire range of mine-site activities.

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

- a) Design engineering, supply, erection & commissioning, including overhead lines, operation & maintenance of electrical substations, electrical infrastructure including transformers, breakers, electrical mining equipment & machineries, spares & consumables etc.
- b) Design, supply & installation of sub-stations & distribution network for townships, offices, and relevant supporting infrastructure shall also be the responsibility of the MDO;





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- c) Secondary source of power supply for emergency purposes of mines and plant as per statute shall be arranged by the MDO;
- d) Design engineering, supply, erection & commissioning including operation & maintenance of mechanical machinery and equipment, spares & consumables etc. to achieve the mine production target as per plan etc. shall be under the scope of the MDO;
- e) Supplied mining mechanical equipment need to conform to relevant Indian standards. In case there is no Indian standards, relevant standards of the country of origin (ISO/EN/DIN, etc.) shall be accepted by DGMS on its merit;
- f) Use of approved various equipment in Mines is to primarily fulfill the statutory obligations enshrined under provision of Metalliferous Mines Regulations, 1961 and subsequent amendments thereof including various Circulars issued by Statutory Authorities from time to time;
- g) Sufficient illumination in mines & surface, lightening protection system, CCTV monitoring system at every level platform & visual units installed at winder operator cabin, mine manager room etc.;
- h) Sufficient illumination in plant & its premises, lightening protection system, CCTV monitoring system & visual units installed as required;
- i) Designing, constructing and facilitating in getting necessary approval for relevant explosive magazine matching the annual production capacity;
- j) Energy saving/ conservation initiatives, improvement in energy efficiency initiative including adoption of renewable energy;
- k) Power supply for operations of Mines & Plant shall be under the scope of the MDO;
- l) MDO shall ensure adherence to quality standards with requirement of relevant ISO certifications.
- m) All Statutory compliance conditions implementation as per guidelines, rules and regulations issued by MoEF&CC, CPCB, JSPCB, CGWA and other environmental governing bodies and their amendments by relevant governing bodies from time to time shall be in the scope of the MDO;
- n) 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 payable by the MDO;
- o) MDO shall setup R&D building with all the necessary world class laboratory equipment, setup & consumables for regular samples preparation and analysis; Environmental lab and equipment for assessment of ambient air, water, noise, and land shall also be the responsibility of the MDO;
- p) Water: The contractor shall make its own arrangement for water drawl (ground & surface) and treatment of water. The tariff for water drawl 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. Water recycling shall be used by the MDO to conserve water on best efforts basis;
- q) MDO shall setup well equipped survey office with all qualified and statutory persons;
- r) MDO shall provide, operate and maintain ambulances, fire tenders, explosive vans, fire extinguishers, utility vehicles etc. at its own cost;
- s) MDO shall construct, operate & maintain the weigh bridge of rated capacity with all equipment including instrumentation & control for weighment of ore and other materials in the mines and concentrator plant as per the provisions of the MSA. The stamping of weighbridge shall be on the name of Hindustan Copper Limited. The weighment should be online basis and to be linked automatically with the administrative offices of HCL for real time monitoring;
- t) All mines, concentrator plant and related infrastructure should have Effluent Treatment Plants (ETP) & Sewage Treatment Plant (STP) With zero discharge complying all pollution norms shall be under the scope of MDO;

Performance and fulfillment of all other obligations of the MDO and matters incidental thereto or necessary for the performance of any or all of the obligations of the MDO are under the Mining Service Agreement.



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Note: In addition to the scope and responsibilities of the MDO stated above in clause 7.1, the detailed jobs for scope of work for Rakha and Chapri mines and the Concentrator Plant are mentioned further below in individual part thereof.

### 2.1.3 Rakha Mine

1. The mine is waterlogged, and dewatering is to be done up to 7<sup>th</sup> L initially. Further, dewatering has to be carried out from 7<sup>th</sup> L up to 9<sup>th</sup> L. All the surface installations including, compressors, headgears, ore bins, winders, ventilation fans, workshop etc. had been removed except some important infrastructures like administrative building, compressor house etc. remained, but these needs to be re-furbished completely.
2. The Rakha block has been mined by the present Rakha mine with Incline shaft No.5 and No.4. Two major ore bodies of prominence are lode no. 5 and lode no.6. The other lodes 3 & 4 are in the footwall and mostly exploited at the upper levels. Mine development is proposed in no.5 & no.6 lodes at all levels up to 9<sup>th</sup> L in phase - I and mining has extended in phase - II from below 9<sup>th</sup> L up to 14<sup>th</sup> L. Further, development of Rakha mining block 15<sup>th</sup>, 16<sup>th</sup>, and 17<sup>th</sup> L shall be developed when phase- II stoping gets commenced.
3. Design and engineering, supply, erection and commissioning, operation and maintenance etc. of winding system, headgears, loading & unloading arrangements, PLC system, signaling and communication setup etc.
4. The total Geological ore reserve computed up to 14<sup>th</sup> level and as per borehole data is 20.97 MT @ 1.17% Cu (approximately).
5. The total mineable tonnage is approximately 14.68 MT @ 1.05% Cu and currently the mine is non-operational.
6. Electrical Installation: Setting up of substations, required electrical infrastructure including required rated transformers, operation & maintenance of equipment, laying of double feeder transmission lines from Rakha switching yard to Rakha substation, laying of double feeder transmission lines (Overhead / underground) from Jadugora JBVNL substation to Rakha switchyard as per JBVNL norms CEAR-2010 & DGMS guidelines and applicable electrical standards including obtaining RoW. HCL switchyard at Rakha shall be used for both the Mines and Plant. In case, HCL will get the 33KV overhead/underground cable through JBVNL, the amount of expenditure will be recovered from the successful MDO.
7. All the surface installations including but not limited to, compressors, air receiver tanks, headgears, ore bins, winders, ventilation fans, DG sets, utility equipment, workshop, underground machineries for development and mining operation, (at shaft no. 4 & 5) dewatering arrangement, backfilling arrangement, safety and statutory equipment and any other ancillary infrastructure, equipment, machineries, etc. for development and operation of mine is under the scope of the MDO.
8. Design engineering, supply, erection & commissioning including operation & maintenance of mechanical machinery and equipment, spares & consumables, lubricants, manpower, etc. to achieve the production target as per mine production schedule.
9. Tentative production of copper ore as per proposed scheme of mining is given below:

**Table: Rakha Block Tentative Production Schedule**

Particular		Yr 1	Yr 2	Yr 3	Yr 4	Yr 5	Yr 6	Yr 7	Yr 8	Yr 9	Yr 10 Onward
Rakha Block	Ore ('000 T)	0	0	50	300	400	450	500	750	1000	1500
	% Cu			0.8	1.05	1.05	1.05	1.05	1.05	1.05	1.05

Note: the combined copper ore production from Rakha & Chapri block shall be 3.0 MTPA from 10<sup>th</sup> year onwards.

### Chapri Block



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1. Chapri block is a virgin block which falls under the Rakha Mining lease of HCL is located 15 kms away from Ghatsila railway station on Howrah - Mumbai main line and about 11 kms from Moubhandar works and township of HCL.
2. The brief scope of work shall include not limited to dewatering of existing waterlogged (~7000 cum), development of decline 1 in 7 gradient, underground mine development, stripping, sinking and equipping of eastern shaft, excavation of ventilation raises, production of ore from stopes, and underground definition drilling etc. Arrangements for sufficient illumination and dust suppression in compliance with relevant safety norms and regulations shall be arranged and made available throughout the entire length of the decline. At turnings, a suitable size convex mirror shall be installed for visibility. A bypass for vehicle crossing shall be developed at intervals of not more than 200m. During decline excavation, wherever bad roof conditions exist there shall be provided suitable support.
3. In phase – I, mining activity shall be performed up to 9<sup>th</sup> L and in phase - II mining activity shall be performed from below 9<sup>th</sup> L up to 14<sup>th</sup> L. Further development of Chapri mining block in 15<sup>th</sup>, 16<sup>th</sup>, and 17<sup>th</sup> L shall be developed when phase - II stoping gets commenced.
4. Design and engineering, supply, erection and commissioning, operation and maintenance etc. of mining equipment
5. Design and engineering, supply, erection and commissioning, operation and maintenance etc. of winding system, headgears, crushing system, loading & unloading arrangements, PLC system, signaling and communication setup etc.
6. Design and engineering, supply, erection and commissioning, operation and maintenance etc. of sinking of production & service shaft by use of state-of-the-art technology.
7. Electrical Installation: Setting up of substations, required electrical infrastructure including required rated transformers, operation & maintenance of equipment, laying of double feeder transmission lines from Kendadih overhead line to new Chapri substation as per JBVNL norms CEAR-2010 & DGMS guidelines and applicable electrical standards.
8. All the surface installations not limited to compressors, ventilation arrangements, DG set, utility equipment, workshop, underground machineries for development and mining operation, dewatering arrangement, backfilling arrangement, safety and statutory equipment and any other ancillary infrastructure, equipment, machineries, etc. for development and operation & maintenance of mine is under the scope of the MDO.
9. For decline development and production all machineries and equipment, ventilation system, dewatering arrangement, loading & unloading of ore and transportation to concentrator plant is under scope of the MDO.
10. Design engineering, supply, erection & commissioning including operation & maintenance of all mechanical machinery and equipment, spares & consumables, lubricants, diesel, manpower etc. to achieve the production target as per mine production schedule etc. is under scope of the MDO.
11. The block will start developing from 1st year onwards.
12. The total Geological ore reserve computed up to 14<sup>th</sup> level and as per bore hole data is 76.95 MT @ 0.88% Cu. The total geological reserve estimated upto 18<sup>th</sup> level is about 81.11 MT @0.88%Cu (from RRA Grid 29700 N to 28300 N).
13. The total minable tonnage upto 14<sup>th</sup> Level is 53.865 MT @ 0.79% Cu considering about 70% recovery. However, the mineable tonnage may vary according to the applicable mining method. (Below table showing the proposed production plan). Further exploration has been done up to 18<sup>th</sup> level and mineable reserve are estimated about 56.77 MT @ 0.79% Cu up-to 18<sup>th</sup> level. The orebody is open and continues further downwards.
14. Tentative production as per proposed scheme of mining is given below:

**Table:** Chapri Block Tentative Production Schedule

Particular		Yr 1	Yr 2	Yr 3	Yr 4	Yr 5	Yr 6	Yr 7	Yr 8	Yr 9	Yr 10 Onward
Chapri Block	Ore ('000 T)	0	50	150	300	500	690	850	1200	1400	1500



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Particular		Yr 1	Yr 2	Yr 3	Yr 4	Yr 5	Yr 6	Yr 7	Yr 8	Yr 9	Yr 10 Onward
	% Cu		0.80	0.90	0.94	0.94	0.94	0.94	0.94	0.94	0.94

Note: the combined copper ore production from Rakha & Chapri block of Rakha Mining Lease shall be 3.0 MTPA from 10th year onwards.

### 2.1.4 New Concentrator Plant

1. The treatment of the Copper ore production from Rakha and Chapri block of Rakha mining lease will require a matching capacity of concentrator plant.
2. 90.30 acres land for the installation of new Concentrator Plant is available with HCL for which execution of lease deed agreement is under process between HCL and the State Government. If additional land will be required for installation and disposal of tailings for the matching capacity of the concentrator plant, MDO shall arrange at its own cost.
3. MDO shall do the design, engineering, supply, installation, erection, commissioning, operation, and maintenance of the matching capacity of the Concentrator Plant.
4. Design, engineering, supply, installation, erection, commissioning, operation, and maintenance of tailing pond, water recovery and disposal arrangement with state of art technology.
5. Supply of all consumables and reagents shall be under the scope of MDO.
6. MDO shall obtain and supply all the necessary approvals, permissions including RoW (if required) and requirements (like water, power, safety appliances and consumables) to operate the concentrator plant.
7. MDO shall undertake the transportation of ore from mines to the concentrator plant and classified mill tailings from the tailing pond to the backfilling site.
8. MDO shall construct and commission the matching capacity Concentrator Plant to meet the beneficiation of copper ore as per production schedule of the mines.
9. Electrical Installation: Setting up of substations, required electrical infrastructure including required rated transformers and other electrical plant equipment, operation & maintenance of equipment, spares, consumables, laying of double feeder transmission lines (overhead / underground) from proposed new JBVNL substation at Rakha to plant as per applicable statutory norms and electrical standards.
10. Design engineering, supply, erection & commissioning including operation & maintenance of all mechanical machinery and equipment, spares & consumables, lubricants, utility & maintenance machineries, workshop, manpower, etc. to achieve the plant production target as per mine production schedule shall be in the scope of the MDO.
11. MDO shall develop all infrastructure facilities not limited to office building, plant, pond, canteen, workshop, time office, first aid, garages, laboratory, security room etc.
12. MDO shall produce the concentrate having minimum 25% Cu with recovery in the range of 94- 95% and moisture content less than 8%.
13. Plant is required to be set up with the state of art technology / SMART-HART.
14. MDO shall construct the ore stockyard and concentrate go-down with a shed inside the plant.
15. Establishment of Laboratory (R&D and Environment)

### 2.1.5 R&D activity / Chemical analysis:

1. MDO shall setup central R&D laboratory building 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.
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.



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3. Sampling and analysis of copper concentrate (WMT-Wet Metric Ton) will be carried out by HCL. The sampling procedure and test results of the moisture content and copper content will be considered

### 2.1.6 Environmental activity

1. MDO shall set up & operate a full-fledged environmental laboratory with modern equipment for necessary environmental parameters monitoring.
2. MDO shall appoint qualified environmental professionals for smooth running of the laboratory.
3. All statutory compliance conditions required for implementation of mines & concentrator plants as per MoEF&CC, CPCB, JSPCB, CGWA and other environmental/ regulatory governing bodies and amendments by governing bodies from time to time are in the scope of the MDO.
4. MDO shall assist HCL and follow up for obtaining necessary statutory permissions Like EC, CTO, CTE, HW Authorization, Dewatering permission from CGWA, surface water withdrawal permission from Water Resource Department and other environmental governing bodies.
5. Note: Design, engineering, supply, consumables, instrumentation, civil, electrical, mechanical, water, power, recovery of water and manpower etc. and any other requirement for plant commissioning, operation and maintenance shall be undertaken by MDO

### 2.1.7 Selling of MIC

MDO shall act as an agency responsible for Selling of MIC at per the LME Copper Price considering the TC/RC in account of that. The selling of the MIC will be conducted by the MDO in an open and efficiently transparent manner on a portal decided by HCL and any charges related to selling shall be borne by the MDO. The total sale proceeds received from the Buyer(s) shall be deposited into an escrow account opened by HCL and MDO for the purpose of this Agreement.

### 2.1.8 Technical Note

#### a) Position of Rakha and Chapri blocks are given below:

S.No	Name of Block	RRA Grid / Local Grid		Strike length (m)
		Start	End	
1	Rakha	30800 N / 400 mSE (from No. 5 Shaft)	29700 N / 1560 mSE	1100
2	Chapri	29700 N / 1560 mSE	28300 N / 2950 mSE	1400

#### b) Reserves:

Estimated Mineable reserves for Rakha and Chapri blocks have been calculated with 30% reduction from Geological reserves/ resource (due to pillars etc.) with 10% reduction in Grade (due to dilution).

The status of block reserves of Rakha and Chapri vis-à-vis mineable reserves is tabulated below:

(Tonnage in million tone)

Level	Block	Geological Ore Reserve		Mineable Reserve	
		Ore	% Cu	Ore	% Cu
Upto 9 L	Rakha	10	1.17	7	1.05
	Chapri	57.67	0.89	40.369	0.80
<b>Sub Total</b>		67.67	0.93	47.369	0.84



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Level	Block	Geological Ore Reserve		Mineable Reserve	
		Ore	% Cu	Ore	% Cu
Upto 14 L	Rakha	20.97	1.17	14.679	1.05
	Chapri	76.95	0.88	53.865	0.79
<b>Grand Total</b>		97.92	0.94	68.544	0.85

Level	Block	Geological Ore Reserve		Mineable Reserve	
		Ore	% Cu	Ore	% Cu
Upto 18 L	Chapri	81.11	0.88	56.777	0.79

The mineable reserve estimate may vary on the method of mining. The present available mineable reserve is sufficient to meet 28 years production requirement from these blocks up to 14/13 L. However, exploration works being carried out by HCL and the expenditure for the same will be reimbursed by MDO.

c) **Proposed Entries:**

i. **Production shaft:**

Considering above, it is proposed to sink the Production shaft upto 21<sup>st</sup> L. Considering high production volume, it is proposed to install two numbers Ground mounted Koepe Winders with 1.5 million tonne per annum capacity each. Inset will be 2<sup>nd</sup> L onwards. By commissioning two numbers of winders, it is also envisaged that production will not come to a standstill in case of breakdown of one winder.

Proposed shaft location: L 9670.00 / (1800 mSE), D: 10090.00  
Top RL of shaft: 135.15 m  
Proposed finished diameter of shaft: 7.0 m  
Proposed sinking depth (upto 21<sup>st</sup> L): 700 m

It is also proposed that each winder will have capacity of 500 tph (tonne per hour) from an ultimate depth of 700 m. Skip will also have canopy arrangement for maintenance.

A spillage shaft from 19<sup>th</sup> L to 21<sup>st</sup> L shall be excavated and equipped with single drum winder suitable for men and material hoisting.

ii. **Service shaft:**

It is proposed to sink the service shaft initially up to 10 m below 18<sup>th</sup> L. It is proposed to install one ground mounted double drum conventional winder with double deck cage for carrying 70 persons at a time with a counterweight and a capstan winder with counterweight for emergency evacuation to a maximum depth of 1000 m.

Proposed shaft location: L 9963.00 / 1293mSE, D: 9675.00  
Top RL of shaft: 125.00 m  
Proposed finished diameter of shaft: 6.5 m  
Proposed sinking depth (approximately): 600 m





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### iii. Decline:

It is proposed to develop decline from the Adit no. 1 of Chapri block upto 6<sup>th</sup> L initially and then develop upto 9<sup>th</sup> L for phase – I production. For phase–II production, decline will be developed upto 19<sup>th</sup> L. Decline dimension is proposed 5.5m (W) X 4.5 m (H) in order to keep a provision of 50-65 tonne dumper if required for production purpose.

Proposed Decline location: From Adit no. 1  
 Top RL of Adit no. 1: 136.89 m.  
 Length of Decline upto 19<sup>th</sup> L (approx.): 5300 m.  
 Dimension of Decline: 5.5m(W) x 4.5m(H) [Arch Shaped]

### iv. Eastern shaft:

Striping/ widening of the existing shaft from existing dimension of approximately 1.5m x 3m to 5m x 5m finished size (from surface to full depth of the shaft i.e., 52m). Then the shaft deepened upto 14<sup>th</sup> L. This shaft will be utilized as ventilation return shaft. The evasee and supply and installation of suitable mechanical ventilator needs to be made.

Proposed shaft location: L 9015.00/ 2710 mSE, D: 10728.00  
 Top RL of shaft: 178 m  
 Proposed finished size of shaft: 5 m x 5m  
 Proposed sinking depth (approx.): 510 m

### v. Ventilation shaft:

A return ventilation shaft for ventilating the crusher chamber and upper levels will be sunk by drop raising technique from 19<sup>th</sup> L up to 6<sup>th</sup> L in stages. From 6<sup>th</sup> L it will come to 3<sup>rd</sup> L and to be connected via the existing crosscut to the present existing vertical shaft. The crosscut and the vertical shaft need to strip and widened. The ventilation raises, so formed, are to be connected from each level for return ventilation. The evasee and supply and installation of suitable mechanical ventilator needs to be made.

However, the above location is tentative in nature and MDO will be free to select new location for Production, Service Shaft and Ventilation Shaft. MDO can enhance the capacity as indicated above keeping the proposed depth / length same.

### d) Summary of shafts/openings

SI	Description	From	To	Depth		
				Existing	Required	Total
1	Production shaft	S/f	21L		700 m	700m
2	Service shaft	S/f	18L		600m	600m
3	Eastern shaft	S/f	14L	52 m	510m	562m
4	Ventilation shaft	S/f	19L			600 m
5	Western shaft*	S/f	1L	23m	-	23m
6	No.5 shaft*	S/f	7L	200m	70m	270m
7	No.4 shaft*	S/f	7L	207m		207m
8	Decline 1 in 7 gradient	S/f	19L	-	5300m	5300 m

\*Note: For the existing shafts/opening i.e., Western shaft, No.5 & 4 shaft detail description to be included.



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### e) Mine Production:

**Phase-I:** Phase-I consisting of two stages, in stage-I the mining from both Rakha and Chapri block will be done upto 6<sup>th</sup> level and in stage-II the mining operations will be extended upto 9<sup>th</sup> level.

**Phase-II:** The mining operations will be extended in Chapri & Rakha block upto 14<sup>th</sup> level.

### f) Ventilation Shafts:

Intake shaft	Return shaft
<b>Initial Stage for Rakha</b>	<b>Initial Stage for Rakha</b>
No. 5 shaft – 400 mSE	Western shaft
No. 4 shaft - 1200 mSE	
<b>Final Stage</b>	<b>Final Stage</b>
Production shaft Chapri – 1800 mSE	Eastern shaft – 2710 mSE
Service shaft Chapri – 1293 mSE	Ventilation shaft – 1625 mSE
Shaft at 3000 mSE for hangwall lode	Decline 1 in 7 gradient
	No. 5 shaft

- In phase-I, stage-I, No.4 and No.5 inclined shaft of Rakha block will be equipped with Winders with a hoisting capacity of 1500 tpd from both the shaft. Man-winding provisions will be made through No.5 shaft.
- In phase-I, stage-II, Production Shaft will cater to hoist the ore production will be generated from Rakha & Chapri Block above 9<sup>th</sup> Level. The centralized ore handling facilities will be developed along with Main production shaft.
- In phase-II, Production shaft will cater to hoist the ore production generated from Rakha & Chapri Block below 9<sup>th</sup> L to 14<sup>th</sup> L. Crusher will be installed at 18<sup>th</sup> L. Fine ore bin will be between 18<sup>th</sup> to 19<sup>th</sup> L. Belt Conveyor for loading ore into the measuring hopper will be installed at 19<sup>th</sup> L to feed the skip below 19<sup>th</sup> L. The centralized ore handling facilities will be developed along with Main production shaft.
- 15<sup>th</sup>, 16<sup>th</sup> & 17<sup>th</sup> level will be developed after commencement of production in phase II dumping in the same ore transfer via finger raises.
- Summary of Ore Production and Beneficiation:

S No	Mining Lease	Annual ore production	Annual beneficiation
1	Rakha Mining Lease	3 MTPA	3 MTPA

- The tentative total ore production of 3.00 MTPA will be generated from Rakha and Chapri mines. The new concentrator plants have to be installed by the MDO as per mine production schedule.
- EC application for the newly acquired land has to be made after finalization of TEFR by the MDO.
- The feasibility studies and detailed design for accommodating the plant and tailings needs to be carried out. Thereafter, statutory permissions like Environmental Clearance for Integrated Concentrator Plant and Mines and Forestry clearance, if any, will be obtained.





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- j) MDO shall be responsible for provision of civil amenities such as water, drainage, electrification, roads, health check-ups/ clinics, and other welfare activities in the project area.
- k) MDO shall, at all times, comply with all the Applicable Laws including but not limited to the following Acts and rules and any subsequent amendments therein:
  - (i) The Mines Act, 1952
  - (ii) Mines Vocational Training Rules, 1966
  - (iii) The Employees Compensation Act, 1923.
  - (iv) CMPF and miscellaneous provisions Act, 1948
  - (v) Electricity Act, 2003 & CEAR 2010
  - (vi) Petroleum Act, 1934
  - (vii) Explosive Act, 1884
  - (viii) The Apprentices Act, 1961 and Rules made thereunder.
  - (ix) The Contract Labor (Regulation and Abolition) Act, 1970.
  - (x) The Workmen's Compensation Act, 1923
  - (xi) The Code of Wages 2019 and rules there under.
  - (xii) The Maternity Benefit Act, 1961.
  - (xiii) The Employers' Liability Act, 1938.
  - (xiv) Workmen's compensation Act, 1923
  - (xv) The Employment of Children Act, 1923
  - (xvi) Mines Rules, 1955
  - (xvii) The Forest (Conservation) Act, 1980
  - (xviii) Mines (Rescue) Rules, 1985
  - (xix) The Maternity Benefit (Mines) Rules, 1963
  - (xx) Factories Act, 1948
  - (xxi) Child Labor (Prohibition and Regulation) Act, 1986
  - (xxii) Mineral Conservation and Development Rule 2017
  - (xxiii) Water (Prevention and Control of Pollution) Act 1974
  - (xxiv) Air (Prevention and Control of Pollution) Act 1981
  - (xxv) Environment Protection Act 1986
  - (xxvi) Wildlife Protection Act 1972
  - (xxvii) Forest Act 1927
  - (xxviii) Hazardous Waste Management (HWM) Rule 2016
  - (xxix) Occupational Safety, Health and Working Conditions (Central) Rules, 2020
  - (xxx) Occupational Safety, Health and Working Conditions Code, 2020
  - (xxxi) Metalliferous Mines regulations 1961/2019
  - (xxxii) Explosive Rules 2008
  - (xxxiii) Battery Waste Management Rule 2020
  - (xxxiv) Solid Waste & E-Waste Management Rule 2016
  - (xxxv) Any/ all other relevant Acts and Rules guiding the development, operations, and maintenance of copper ore mines and beneficiation/ concentration plants.



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Any other work, as may be assigned by HCL from time to time during the Contract Period, incidental to development, operations, and maintenance of Mines and Concentrator Plant



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### 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 Appointed Date till 20 (twenty) years from the Appointed Date or till such period HCL approves the extension of contract period whichever is later.
- 3.1.2 Contract Period shall be commencing from the Appointed Date. 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 5 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 24 (twenty-four) months from Appointed Date. Moreover, allied infrastructure facilities which are required for evacuation of copper



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concentrate and tailings from the project shall be constructed/ arranged by MDO within 1 (one) year from the Appointed 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.



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### 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 on or before Appointed Date unless any such condition has been waived as provided in Clause 4.1 by HCL at any time in its sole discretion.
- 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, Fixed Amount and Corporate Performance Guarantee from Supporting Partner (if applicable), to HCL in accordance with Article 9;
  - (b) within 60 (thirty) days provide Project Completion Schedule in the form of Schedule G;
  - (c) within 60 (thirty) 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.
  - (d) within 90 (ninety) 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 90 (ninety) 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).
  - (f) within 90 (ninety) days deliver to the Authority, 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;
  - (g) within 120 (one hundred twenty) days procure approval of the Mining Plan including its preparation in accordance with the Applicable Laws, terms and conditions of the Tender Document and this Agreement as agreed by the Authority.
  - (h) within 120 (one hundred twenty) days, execute and procure execution of the Financing Agreement, Substitution Agreement, if applicable;
  - (i) within 120 (one hundred twenty) days procure all the Applicable Permits, included but not limited to as specified in Part-I of Schedule-E, such that all such Applicable



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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;

- (j) Within 180 (one hundred eighty) 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 a period not exceeding 180 (one hundred eighty) 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 for first 5 (five) years of mining activity as envisaged in the Approved Mining Plan and (if required).

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.



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### **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 Appointed Date.

### **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, at the end of the third anniversary from the Commencement 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.



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### **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 Rakah 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. It is





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hereby clarified that 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;

- 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;
- 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;



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- 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.

### 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,



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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,



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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.



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### 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



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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 Void
- 5.6.10 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





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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.

- 5.8.2 The MDO as the Owner of the Mines as declared in the 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:
- (a) procure appointments of safety officers, assistant managers, ventilation officers, engineers, welfare officers and other statutory employees; and
  - (b) make provisions for the safety and proper discipline of the persons employed in the Mines.
- 5.8.3 In case HCL makes any payment of salaries and wages to the manager and other statutory manpower, then the MDO undertakes to indemnify and reimburse HCL of any such payments. For avoidance of doubt, it is clarified that the MDO shall be responsible for the payment of statutory manpower deployed for this project by HCL till the entire duration of the project.
- 5.8.4 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.
- 5.8.5 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.
- 5.8.6 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.
- 5.8.7 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.



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### 5.10. ***Sole purpose of the MDO<sup>2</sup>***

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.

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<sup>2</sup> Applicable only if MDO has been incorporated as an SPV/JV. Otherwise to be deleted.





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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 escrow account opened, 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 HCL shall open a fixed deposit escrow account as per the guidelines of Mine Closure Plan. Pursuant to the opening of such an escrow account, HCL shall deposit the requisite yearly amount in the escrow account. HCL shall recover from the MDO, the yearly amount so deposited from the monthly invoices raised by the MDO in 12 (twelve) equal installments within 1 (one) year and such recovery shall occur from the month following the deposit of the amount in the escrow account.

### **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 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 for any land required by the Mine Operator shall be solely borne by the MDO

5.14.3 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



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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 03 (three) years from the date of signing of the agreement. Land may be acquired in Phases such that HCL meets the copper ore requirements as per the Approved Mining Plan and as per the Annual Production Program given in this MSA.

- 5.14.4 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 The MDO shall undertake all necessary precautions in relation to ensuring the safety and quality of the copper ore and copper concentrate in transit.
- 5.15.3 During non-commencement of operations or non-operation of the Concentrator plant post 2(two) years from Appointed 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



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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 drawl 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**

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), however, the MDO shall assist HCL for Selling of MIC at per the LME Copper Price considering the TC/RC in account of that. The selling of the MIC will be conducted by the MDO in an open and efficiently transparent manner on a portal decided by HCL and any charges related to selling shall be borne by the MDO refer Schedule S. The total



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sale proceeds received from the buyer(s) shall be deposited into an escrow account opened by HCL and MDO for the purpose of this Agreement.

MDO shall make a refundable security deposit equivalent to 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 and the same shall not be remitted or adjusted during the entire period of the contract.

Sales billing (including issuance of sale order, 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 appendix

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 content of commercial value is found, the value of the same may be recovered from MDO as per the LME price or market prices whichever will be higher during the course of the MDO operation.
- 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.



## **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) 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;
  - (c) 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;
  - (d) 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;
  - (e) 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;
  - (f) 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;
  - (g) not do or omit to do any act, deed or thing which may in any manner violate any of the provisions of this Agreement;
  - (h) 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.
  - (i) 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.



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- (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;



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- 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





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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.



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### **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.



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## ***PART III***

# ***DEVELOPMENT AND OPERATIONS***



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## 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) Total Production of MIC as provided in Clause 20.1 = **(T Total Production of MIC)**
- (c) Revenue share in percentage of HCL finalized through the forward auction = **(HCL % of revenue share)**

The formula for calculation is as follows:

$$PS = (T \text{ Total Production of MIC}) \times (\$ \text{ Avg. of 90 days LME Price}) \times (HCL \% \text{ of revenue share}) \times 5\%$$

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 9.1.1, 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 9.1.1.



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### 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 9.1.1, 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
- 9.4.1 The Corporate Performance Guarantee shall be submitted within 30 days from signing of MSA in the format provided in Schedule - F2.
- 9.4.2 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.
- 9.4.3 For avoidance of any doubt, the value of Corporate Performance Guarantee shall not be reduced anytime in the Contract Period.



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- 9.4.4 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.
- 9.4.5 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.
- 9.4.6 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.



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### **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 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.
- 10.2.3 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.
- 10.2.4 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.
- 10.2.5 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.



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### **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.



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### **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.



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### **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.



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## **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 were 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;



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- (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



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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 clause 12.1.3 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 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) the Commercial Operations Date occurs on or prior to 765 (Seven hundred and sixty-five) days from the Appointed Date ("Scheduled COD"); and
  - (b) the Completion as envisaged in Clause 14.3 occurs on or prior to 910 (Nine Hundred and Ten) days from the Appointed Date ("Scheduled Completion Date").
- 12.5.2 In the event that the MDO fails to achieve Commercial Operations Date (COD) 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 Commercial Operations Date (COD) is achieved;
- 12.5.3 In the event Completion does not occur on or prior to the Scheduled Completion Date, 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 Completion is achieved.
- 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





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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.

- 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.





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### **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



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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.



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### 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. *Commercial Operation 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 "**Commercial Operation Date**" or "**COD**".

#### 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(s) 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.



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#### **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.



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## 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;



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### **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.



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- (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 waste water), 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





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"**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.



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### **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% (one 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



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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



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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.



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### 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



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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





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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



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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.





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- 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.



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## **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



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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.



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## **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.



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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 S.

### 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,



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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 20.5.1) 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.



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- 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.



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### 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 1<sup>st</sup> 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)	Grade (Cu%)	MIC (tonne)
1	50	0.70 %	376.00
2	200	0.73 %	1645.00
3	600	0.93 %	5611.80
4	900	0.91 %	8366.00
5	1140	0.90 %	10538.34
6	1350	0.89 %	12445.60
7	1950	0.90 %	18005.70
8	2400	0.90 %	22240.40
9	3000	0.93 %	28059.00
10	3000	0.93 %	28059.00
11	3000	0.93 %	28059.00
12	3000	0.93 %	28059.00
13	3000	0.93 %	28059.00
14	3000	0.93 %	28059.00
15	3000	0.93 %	28059.00
16	3000	0.93 %	28059.00
17	3000	0.93 %	28059.00
18	3000	0.93 %	28059.00
19	3000	0.93 %	28059.00
Total MIC Production			3,87,877.84





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- (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 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.



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### 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 95 %	Nil
95 % to 85 %	5% of the Performance Security and 5% of the loss of the revenue share to HCL
85 % to 75 %	10% of the Performance Security and 10% of the loss of the revenue share to HCL
75% and below	<p>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 25% of the loss of the revenue share to HCL and the MDO shall replenish the Performance Security to its original level before such appropriation in accordance with Clause 9.2.</p> <p>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.</p>

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



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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**

#### 20.5.1. 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%
2	Moisture	≤ 8%

Copper Concentrate produced must be free of any kind of radioactive material, Antimony, Cadmium, Arsenic, Mercury & Lead which should be suitable for Export and Sell. A test certificate (from a NABL Lab) for same is to be submit by MDO to HCL once in each month.

### 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% / tonne ore)	Damages
For Grade slippage 25% to 24.51	NIL



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Decrease in Grade (Cu% / tonne ore)	Damages
For Grade slippage 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%' (i.e., difference between 24.50% 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 (% / tonne ore)	Damages
For moisture slippage 8.00% to 8.49%	NIL
For moisture slippage 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 %' (i.e., difference between 8.50% moisture in grade rate and the actual Cu grade produced with moisture content. )

### 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.



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### 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 21.2.2 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.



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## **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 Copper concentrate produced must be free of any kind of radioactive material, Antimony, Cadmium, Arsenic, Mercury & Lead which should be suitable for export and sales. A test certificate (from a NABL Lab) for the same is to be submitted by MDO to HCL once in a year. Cost for such tests shall be borne by the MDO.
- 22.2.10 The results of the MIO / MIC Tests shall be final and binding on the MDO and HCL.



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**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.





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### **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 20.6.
- 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.



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## **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 20.6.

### **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.



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## **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 25% 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 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



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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.



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# ***PART IV***

# ***FINANCIAL COVENANTS***



## HINDUSTAN COPPER LIMITED

### 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)
<b>Revenue share</b> (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:

- The Revenue Share of HCL shall be equal to Revenue multiplied by the contracted percentage of Revenue Share of HCL.
- 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.

#### 26.2. 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	



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### 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 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.
- 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.



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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 produced from the mines and the concentrator plant, the revenue generated is to be shared with the HCL at the same rate at which revenue is contracted to be shared with respect to the selling of MIC.





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### 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, an 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. 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.

27.1.4. 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.



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## **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.



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### **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.



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### **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.



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### **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



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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.



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## ***PART V:***

# ***FORCE MAJEURE AND TERMINATION***





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## 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 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.



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**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.



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### **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.



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## **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.



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### **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.



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### 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.



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### 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;



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- (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





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- (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



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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 a 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



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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 COD.
- (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.



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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.



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## **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



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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.



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### **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.



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# ***PART VI***

# ***OTHER PROVISIONS***





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## **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.



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### **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.



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## **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



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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



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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.



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### **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 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.



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### **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<sup>th</sup> 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



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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.





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### 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.



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**Article 41. *Not Applicable***



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### **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:



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- (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



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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:



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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.



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- (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)



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### 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.





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# ***SCHEDULES:-***



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### **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.

##### **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.



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### **SCHEDULE – B**

*(See Sub-Clause (a) of Clause 2.1)*

#### **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:



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- (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.



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### **SCHEDULE – C**

**(See Clause 2.1)**

#### **Project facilities**

The MDO shall construct the Project Facilities in accordance with the provisions of this Agreement.

##### **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.

##### **2. Description of Project Facilities**

The Project Facilities are briefly described below:



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(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.



## HINDUSTAN COPPER LIMITED

(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 20.5.1. 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.



## HINDUSTAN COPPER LIMITED

### **SCHEDULE – D**

*(See Clause 2.1)*

#### **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**

- a) The MDO shall prepare the Mine Closure Plan and submit the same to the competent authority for approval.
- b) The Mine Closure Plan is to be prepared in line with the Mineral Concession Rules, 1960 and Mineral Conservation and Development Rules, 1988.
- c) The MDO shall comply with the provisions of the prepared and approved Mine Closure Plan
- d) 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.





HINDUSTAN COPPER LIMITED

## **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.



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## **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.



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## **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.



## HINDUSTAN COPPER LIMITED

### 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.

SI 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.	Total Beneficiation capacity of 3.5 MTPA is required. The Land for Concentrator Plant with a rated capacity of 2 MTPA to-be
2	Forest Clearance - For Rakha Mines and Area proposed for new matching capacity Concentrator Plant.	<p>Rakha Lease has been accorded Stage-II Forestry Clearance for diversion of 184.80 Ha of Forest land by the MoEFCC (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 vide letter no 3/van bhumi-09/2010-1614 Ranchi dated 19.04.2018</p> <p>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 for surface right )</p>	As per MoEFCC 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 payment of NPV for remaining forest area is under process.



# HINDUSTAN COPPER LIMITED

SI No	Clearance/Approval	Present Status	Further Action Required
3	Environment Clearance for Rakha Mines and new matching capacity concentrator Plant.	<p>Rakha Mining Lease:</p> <p>The Rakha mining lease has been accorded Environmental Clearance for production of 3.00 MTPA copper ore by the MoEFCC vide letter no. J-11015/269/2011-IA II (M) dated 01.08.2014</p> <p>Concentrator Plant 1.5MTPA:</p> <p>Consultant Appointed on 16.11.2020 –MECON</p> <p>FORM-1 &amp; ToR application uploaded on Parivesh Portal. To SEIAA as per MOEFCC directives</p> <p>EDS raised by SEIAA on dated 13.09.2022</p>	- Under process
4	R&R	Not required for Mines & 1.5 MTPA Concentrator Plant.	
5	Mining Plan approved by IBM	<p>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</p> <p>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: 10.09.202. Scrutiny comments received. As per the scrutiny comments mining plan will not processed in the absence of lease extension letter</p>	we have to submit fresh mining plan after obtaining extension of lease order
6	Mining Lease Deed	<p>Date of grant: 29.8.1971</p> <p>Date of expiry: 28.08.2021</p> <p>As per Rule 3(2) of Mineral</p>	



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Sl No	Clearance/Approval	Present Status	Further Action Required
		<p>(Mining by Government Company) Rule, 2015 and its subsequent amendment M/s Hindustan Copper Limited being a Govt. company (a CPSU, under administrative control of the Ministry of Mines , Govt. of India ) submitted application for extension of Raka mining lease duration for further period of twenty years i.e. up to 28.08.2041</p> <p>Dy. Commissioner, Jamshedpur has recommended for extension of Rakha Mining Lease for next 20 year i.e., up to 08.08.2041 vide letter no. 923 / Khanan dated 21.10.2020</p>	Extension application for the lease is in process
7	Government land transfer/lease		
8	Mine Closure Plan	Mining plan along with PMCP to be submitted after obtaining extension of Mining Lease order	
9	Ground water Clearance	valid up to 29.01.2023	Application for renewal submitted on 21.11.2022
10	No Objection Certificate (CTE/CTO)	CTO was valid upto 28.08.2021, further application will be applied after Mining lease extension	



HINDUSTAN COPPER LIMITED

**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



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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 **I** 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





## HINDUSTAN COPPER LIMITED

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



## HINDUSTAN COPPER LIMITED

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.



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## 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 Mining 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



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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.



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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.



## HINDUSTAN COPPER LIMITED

### **SCHEDULE – G**

#### **PROJECT COMPLETION SCHEDULE**

##### **Project Completion Schedule [to be provided by MDO]**

##### **1. Project Completion Schedule**

During 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]*

	<b>Project Milestones</b>	<b>Scheduled Completion Date</b>

##### **Development Schedule**

	<b>Milestones</b>	<b>Scheduled Completion Date</b>



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1. Commencement and completion schedule of Road and cross drainage work
2. Commencement and completion programme for Concentrator plant and tailing dam.
3. Schedule of completion of the infrastructure facilities mentioned in the clause 12.1.3 of MSA.
4. Schedule for supply, installation and commissioning of surface and underground machineries/equipment's, electrical supply & distribution system etc.

### **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.



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## **SCHEDULE – H**

### **DRAWINGS**

**(Refer Clause 12.3)**

#### **Drawings**

In compliance with the obligations set forth in Clause 12.3 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.





## HINDUSTAN COPPER LIMITED

### **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 ore; 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.



## HINDUSTAN COPPER LIMITED

### **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.



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### **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.



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## **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)



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### **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



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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.



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**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





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	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 b) Duration	
	Place & Nature of work	
	Name & Designation of supervisors	
	Departmental (1) (2) Contractual (1) (2)	
	Necessary safety precautions explained	
	Safety appliances advised for usage to the Workers	
		y 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.



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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.

Date

Signed  
Contractor

- B. Certified that the Contractor has been engaged by us for the work described above.  
[Certificate to be given by the Engineer]

Date

Signed  
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]

Date

Signed  
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



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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.



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### 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.





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### 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:  (Signature) (Name) (Designation) (Address)	For and on behalf of HCL by:  (Signature) (Name) (Designation) (Address)

In the presence of:

(Signature)

(Name)

(Designation)



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### 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 Singhbhum 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:



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**"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



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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



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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.



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### 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



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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 Dhanbad, Jharkhand and the language of arbitration shall be English. Subject to arbitration, courts at Dhanbad, Jharkhand 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:





## HINDUSTAN COPPER LIMITED

- (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**

#### **9.7.1 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.

9.7.2 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



## HINDUSTAN COPPER LIMITED

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.

<p>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..... .</p> <p>Signature Name Designation Address Fax No. Email Address</p>	<p>SIGNED, SEALED AND DELIVERED For and on behalf of HCL by: _____, Contract Representative of HCL.</p> <p>Signature Name Designation Address Fax No. Email Address</p>
<p>SIGNED, SEALED AND DELIVERED For and on behalf of</p>	

SENIOR LENDERS by the Lenders' Representative:



## HINDUSTAN COPPER LIMITED

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(e-mail address)

In the presence of:

1.

2.



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## HINDUSTAN COPPER LIMITED

### **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, 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.



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## SCHEDULE – R

Refer Article 30 and 39

Force Majeure and Arbitration standard legal clause

ANNEXURE-4

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**Arbitration and Conciliation (Amendment) Act 2015**

The Arbitration and Conciliation (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

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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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### 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 of war, 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.



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### 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





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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.



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### **SCHEDULE – S**

Refer Clause 5.23

#### **Process Flow for Sale of Concentrate and Revenue Generation:**

Sl No.	Activity	Terms
i)	<b>Pricing</b>	
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	M+1, where M is the month of dispatch of the last consignment of the Rake (for Domestic Sale) and on-Board Bill of Lading date (for Export)
3	Metal Prices	Copper Prices from LME, Gold, Silver and any other metal Prices from LBMA
4	Exchange Rate	RBI Ref Rate for Domestic Sale & Foreign Currency remittance at actuals for Exports
5	Unit Deductions	As Per Sale Contract of HCL with Buyer
6	Payable Metal Content	As Per Sale Contract of HCL with Buyer
7	Treatment Charges (TC)	As Per Sale Contract of HCL with Buyer
8	Refining Charges (RC)	Copper: TC divided by ten (10) 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.
9	Transportation Charges	As Per Contract with Transporter/Buyer
10	Pricing Formula	Standard Pricing Formula Attached. HCL price as per Invoice raised by HCL on Buyer against Sales Contract..
ii)	<b>Payment Instrument</b>	
	Letter of Credit	Letter of Credit (LC) to be opened by Buyer for Proforma Invoice value considering 110% Sale Contract Terms as stated above at LME/LBMA/Exchange Rate for last 10 working days for each Rake (2700WMT - 90 containers) or Shipload (say 10000WMT) in the Escrow Bank Account. LC to have provision for drawing 1st Provisional, 2nd Provisional & Final Payment as detailed in Annexure.
iii)	<b>Despatch</b>	



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Sl No.	Activity	Terms
1	Surveyor Appointment	Mutually accepted Surveyor to be jointly appointed by HCL, MDO & buyer 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 MDO, and 50% of the same shall be recovered from the buyer.
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, Buyer & MDO
3	Sampling	Samples shall be prepared in <b>10 parts (maximum) for each lot</b> . A sampling lot is defined as 500 WMT $\pm 10\%$ . 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 Buyer (c) 2 sets for MDO (d) 2 sets to kept for independent agency for umpiring purpose
5	Despatch Invoicing	HCL will raise GST Invoice on Buyer at the time of despatch, along with necessary documents for movement of material.
iv)	<b>Assay</b>	
1	Sample Analysis	MDO, Buyer & HCL shall carry out assays independently from samples given to them. Results of MDO & HCL, whichever is higher, shall be exchanged 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.
2	Splitting Limit	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.
3	Umpire Appointment	Buyer's and MDO/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 & 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



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Sl No.	Activity	Terms
		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 MDO or Buyer, 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.
v)	<b>Payment</b>	
1	1st Provisional Payment	<p>HCL shall raise First (1st) Provisional Invoice on completion of Rake/ BL date , which 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 during 10 LME Working days preceding the BL date/last invoice date for domestic sale up to two places of decimal.</p> <p>Provisional payable metal content for the computation of the metal value will be arrived at by taking average of chemical specification of Copper , Gold &amp; Silver as stated at Chemical Specification of Sale Contract mentioned above.</p> <p>Source for these prices will be the relevant Metal Bulletin publication/Fast market/Reuters. Copy of First (1st) Provisional Invoice shall be shared to HCL.</p> <p>On receipt of Invoice, buyer to make payment against payment instrument in escrow account.</p>
2	2nd Provisional Payment	<p>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 &amp; Final Assay, if completed).</p> <p>On receipt of Invoice, buyer to make payment against payment instrument in escrow account. If MDO is to make payment, then MDO shall release payment to buyer.</p>
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.





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### **SCHEDULE – S**

#### **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 Rakha/Chapri, 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, Buyer & 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 Rakha/Chapri, 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 MDO, HCL & Buyer. The surveyor of the buyer 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 Rakha, ICC for Domestic Sale & Containerized (EXIM) Sale / at Port (moisture determination) for Break-bulk Sale. However, MDO and the 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, HCL and MDO.

1.5 The samples shall be prepared in **10 parts (maximum) for each lot**. A sampling lot is defined as 500 WMT  $\pm 10\%$  for ICC concentrate. The assay figures shall be compiled for every 500 WMT  $\pm 10\%$  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 Buyer
- (c) 2 sets for MDO
- (d) 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 MDO, HCL and the buyer, they shall carry out assays independently. Results of MDO & HCL, whichever is higher, shall be exchanged simultaneously with the Buyer, backed by Lab reports, within 60 days from the date of Bill of Lading/Last invoice date of Rake.



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- 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 MDO/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, MDO & 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.
- 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.
- 1.13 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,



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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) Any other mutually agreed LME listed Surveyor

### **3.0 PROVISIONAL PAYMENTS:**

- 3.1 The Buyer shall have to open Letters of Credit in HCL-MDO's Escrow Account, through 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 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 Letter of Intent up to two places of decimal.
- (II) The LC opened by the buyer shall allow negotiations of the following documents for realizing the 1<sup>st</sup> Provisional Invoice Value:
- (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
- III) The First (1<sup>st</sup>) 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 during 10 LME Working days preceding the BL date for Export/last invoice date for domestic sale up to two places of decimal. Source for these prices will be the relevant Metal Bulletin publication/Fastmarket/Reuters.



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(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 of Sale Contract mentioned above. For Example, refer table

<u>Elements</u>	<u>ICC Origin</u>
Copper	23.25%
Gold	2.21 Gram/DMT
Silver	55 Gram/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 will be with the buyer. For receipt of the Provisional payment immediately after raising the commercial invoice by HCL, on the receipt of the payments, 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 2<sup>nd</sup> 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 2<sup>nd</sup> provisional payment.

If assays are exchanged and not finalized, then average assay of HCL and bidder and final QP shall be taken for the 2<sup>nd</sup> provisional payment.

If the payment is not made within the scheduled date, then MDO shall negotiate the LC.

### **4.0 PRICING BASIS:** **QUOTATIONAL PERIOD (QP):**



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Quotational Period 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 =  $27.5 \text{ WMT} \times 90 = 2475 \text{ WMT} \pm 10\%$

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.

Unit Deductions, Payable Metal Content & Treatment Charges (TC) shall be as per HCL's Sales Contract with their buyer.

### **Treatment Charges:** (FOR HCL PRICING CALCULATION)

As per prevailing HCL's Sales Contract for MCP Concentrate, linked to Fast market-MB monthly TC/RC index.

### **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.

### **Transportation Charges:** (FOR HCL PRICING CALCULATION)

Transportation Cost in Rs. per WMT (As per prevailing HCL's Sales Contract for MCP Concentrate) shall be deducted from price calculated with treatment charges, to arrive at final price.

### **PAYABLE METALS AND UNIT DEDUCTION:** (FOR HCL PRICING CALCULATION)

#### **Recovery of Metals:**

- Co • 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 Quotational Period.



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- Silv
- 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.
- Gol
- 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 MDO.

The final payment if payable to HCL will be against the following documents:

- 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.
- HCL's Final Price Certificate
- HCL's Final Assay Certificate
- HCL's Final Certificate of weight & moisture duly certified by surveyor.
- HCL's certificate of Lay time Calculation, for claim/payment of dispatch/demurrage amount, if any.
- Debit Note of HCL, if any.

Buyer will have the option of making the final payment by Foreign Currency Remittance. In case the payment is made by Foreign Currency Remittance, 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. MDO shall remit the differential amount, if refundable to the buyer, by Foreign Currency Remittance.

**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.



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## STANDARD ICC CONCENTRATE PRICING FORMULA

	PROV. VALUE OF ICC CONCENTRATE		
1	Copper (%)		23.25
2	Gold (ppm)		2.1
3	Silver(ppm)		30
3a	MOISTURE(%)		8.00
4	Treatment charges (\$/DMT) (As per prevailing HCL's Sales Contract for MCP Concentrate, linked to Fastmarket-MB monthly TC/RC index)		66.95
5	Refining charges for Cu (Cents/lb)		6.695
6	Refining charges for Gold (\$ per Troy Oz.)		4.500
7	Refining charges for Silver (Cents per Troy Oz.)		35.000
	<u>UNIT DEDUCTIONS</u>		
	Minm dedn.		
8	For Copper		1.000
9	For Gold(ppm)		1.000
10	For Silver(ppm)		0.000
8b	% Payable		
11	For Gold(%)		100%
12	For Silver(%)		90%
	<u>PAYABLE METAL CONTENT</u>		
13	For Copper (MT)	Item(1-8)/100	0.223
14	For Gold (Tr Oz)	(2-9)*11/31.1035	0.03537
15	For Silver (Troy Oz)	3*12/31.1035	0.86807
	<u>METAL PRICE</u>		
16	Copper( US\$/MT)		7884.05
17	Gold (US\$ /Troy Oz.)		1677.87
18	Silver(US\$ /Troy Oz.)		20.31
	<u>PAYABLE METAL VALUE PMT OF CONCENTRATE (US\$)</u>		
19	For Copper	13x16	1754.20
20	For Gold	14x17	59.339
21	For Silver	15x18	17.630
A)	TOTAL (US\$)	19+20+21	1831.171
	<u>DEDUCTIONS (US \$)</u>		
22	TC for Copper	4	66.950
23	RC for Copper	((5X2204.62)/100)x13	32.841
24	RC for Gold	6x14	0.159
25	RC for Silver	7x15/100	0.304
B)	TOTAL TC & RC (US \$)	22+23+24+25	100.254



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C)	NET RECEIVABLE PER TONNE OF CONCENTRATE (US \$)	A-B-C	1730.917
26	EXCHANGE RATE (Rs/US\$) FBIL Average		82.15
27	Amount receivable by sale of 1MT of conc in INR	(D)*26	142194.83
28	Amount receivable by sale of 1MT of MIC	Rs.	611590.68
29	Sale of Concentrate per month WMT	Rs	2800.00
30	Sale of Concentrate per month DMT	Rs	2576.00
31	Sale of Concentrate per month CMT	Rs	598.92
32	Transportation Rs. WMT	Rs	7560000.00
33	amount receivable by sale of MIC per month	Rs	366293890
32	Net amount receivable by sale of MIC per month	Rs	358733890





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### **SCHEDULE – T**

#### **LIST OF FIXED AMOUNTS**

The fixed amount mentioned in the below table includes the amount for compensation for land and mine infrastructure; cost borne by HCL for the preparation of geological report; cost borne by HCL for obtaining all statutory licenses, permits, permissions, approvals, clearances or consents relevant to the mining operations along with applicable taxes. The total fixed amount payable by the successful MDO is INR 41.77 crores.

Sl. No	Expenditure on	Amount (Rs.)
1	NPV For Rakha	69,392,100.00
2	Dead Rent-1	1,180,863.00
3	Dead Rent-2	2,823,401.00
4	Dead Rent-3	4,710,546.00
5	Dead Rent-4	4,710,546.00
6	Dead Rent-5	4,710,546.00
7	Dead Rent-6	4,710,546.00
8	Dead Rent-7	4,710,546.00
9	Dead Rent-8	4,710,546.00
10	Dead Rent-9	4,710,546.00
11	Land Acquisition-1	295,108.00
12	Land Acquisition-2	37,498,201.00
13	Land Rent-1	1,038,240.70
14	Land Rent-2	856,321.00
15	Land Rent-3	559,393.16
16	Maint. Fees-1	783,158.92
17	Land Rent-4	593,005.60
18	Maint. Fees-2	830,178.76
19	Maint. Fees-3	1,453,513.38
20	Maint. Fees-4	1,195,028.00
21	Stamp Duty-1	3,167,010.00
22	Stamp Duty-2	297,500.00
23	Stamp Duty-3	1,934,000.00
24	Registration fee	144,860.00
25	Mine Depth Exploration Job-1	125,848,649.00
26	Mine Depth Exploration Job-2	75,260,266.00
27	Mine Depth Exploration Job-3	59,609,421.00
	<b>Total</b>	<b>417,734,040.52</b>



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