

**KONKOLA COPPER MINES PLC****GENERAL CONDITIONS OF CONTRACT (GCC) FOR THE PURCHASE OF GOODS DATED  
1<sup>st</sup> OCTOBER 2014****INDEX**

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## 1. DEFFINITIONS AND INTERPRETATION

In this document, the following words, terms or expressions shall bear the meanings assigned to them hereunder and cognate expressions shall bear corresponding meanings:

- 1.1. "Amendment Order" shall mean a document issued by KCM and consented to by the Supplier in writing which alters, changes or varies any term or conditions of the Contract
- 1.2. "Associated Company" means any company which is a Subsidiary of Konkola Copper Mines plc(KCM)or any entity which is part of the Vedanta Group
- 1.3. "Contract" means and includes the agreement between the KCM and the Supplier or the Purchase Order issued by KCM, for the supply of Services, these General Conditions of Contract, and any other relevant documents which are specified to form a part of the Contract;
- 1.4. "Supplier" means the person, firm or entity with whom KCM has negotiated the Contract and which person, firm or entity has agreed to supply the Services to KCM subject to and in accordance with the Contract. The term "Supplier" shall include its successors, permitted assigns, employees, agents, representatives and subSuppliers.
- 1.5. "Contract Price" means the amount payable by KCM to the Supplier in consideration of the supply of Services in accordance with and subject to the Contract. The Contract Price is inclusive of all taxes and duties except VAT
- 1.6. "Drawings" means the drawings referred to the Scope of Work and any modification of such drawings approved in writing by KCM and such other drawings as may from time to time be furnished or approved in writing by KCM.
- 1.7. "EFT" means electronic funds transfer;
- 1.8. "General Conditions of Contract " means this document;
- 1.9. "KCM" means the purchaser, Konkola Copper Mines PLC (KCM) or any Associated Company
- 1.10. "Lead Time" means the period of time expressed in calendar days (which shall include Saturdays, Sundays and Public Holidays), within which delivery must be effected by the Supplier as per the Contract.
- 1.11. "Month" means a Gregorian calendar month;
- 1.12. "Party" means either KCM or the Supplier as the context may be and Parties shall mean KCM and the Supplier
- 1.13. "Authorised Representative(s) " means the person(s) named as such on behalf of a Party in the Contract and who shall act as such Party's representative(s)in respect of the Contract
- 1.14. "Services" means the activities to be undertaken by and on behalf of the Supplier in accordance with and subject to the Contract
- 1.15. "Site" means the place(s) at which the Services shall be carried out by the Supplier as specified in the Contract
- 1.16. "Subsidiary" shall have the meaning ascribed to it in the Companies Act Chapter 388 of the Laws of Zambia
- 1.17. "VAT" means Value Added Tax as provided under the Value Added Tax Act Chapter 331 of the Laws of Zambia
- 1.18. "Vedanta" means Vedanta Resources Plc, a London listed diversified FTSE 100 metals and mining group and its subsidiaries and associated companies
- 1.19. "Writing" means any typewritten, printed or hand-written document, and shall include telegrams, facsimiles, electronic mail;
- 1.20. The interpretation and construction of the Contract shall be subject to the following provisions:
  - 1.20.1. A reference to any statute, enactment, order, regulation or other similar instrument will be construed as a reference to the statute, enactment, order, regulation or instrument as subsequently amended or re- enacted.
  - 1.20.2. Any gender includes the other genders;
  - 1.20.3. A natural person includes an artificial person and vice versa;




- 1.20.4. The singular includes the plural and vice versa.
- 1.20.5. Where appropriate, meanings ascribed to defined words in this document shall impose substantive obligations on the Supplier and KCM.
- 1.20.6. The headings to the clauses herein are for convenience of reference only and shall in no way govern or affect the interpretation or construction of the Clauses

## 2. EFFECTIVE DATE

The Contract shall come into effect on the date agreed to by the Parties or if no such date is agreed, the Contract shall come into effect upon execution of the Contract by KCM or upon issue of the Purchase Order, whichever is applicable.

## 3. PERFORMANCE

- 3.1. The Supplier shall perform the Services in accordance with and subject to the Contract and time shall be of the essence with regard to the performance of the Services.
- 3.2. KCM shall have a right to inspect and test the Services directly or through any appointed third party and shall have the full power to reject all or any portion of the Services that are defective or inferior in standard, quality, material, workmanship or design to that required in the Contract, should the Supplier not rectify the defect or fault within the time instructed by KCM. In the event of rejection the provisions of clause 13.1 shall apply
- 3.3. Should any dispute arise as to whether or not Services rejected by KCM comply with the Contract, the Supplier may within seven (7) days of such rejection arrange for tests or analyses to be undertaken by a suitably qualified expert to be nominated by KCM and the results of such tests analyses shall be final and binding. The costs of such tests or analyses shall initially be borne by the Supplier but in the event that the tests analyses prove that the Services do comply with the Contract, KCM shall refund the Supplier all costs reasonably incurred by the Supplier in respect of such tests or analyses. In case the Services are of such a nature that the technical acceptance cannot be based on any test, KCM's decision regarding their compliance with the Contract shall be final and binding
- 3.4. Should the Supplier fail to arrange for such tests or analyses to be undertaken within the said period of seven (7) days from the date of rejection, the Supplier shall be deemed to have accepted that the Services do not comply with the Contract.
- 3.5. KCM may utilize a Score Card and Key Performance Indicator (KPI) Sheet to be provided by KCM, or any other tool, in assessing the Supplier's performance. The Supplier shall compile performance data against the said Score Card and KPI sheet diligently, and shall submit the same to KCM along with Invoices at such frequency as may be required by KCM. In the event that the Supplier's performance falls below minimum acceptable standards in the Score Card and KPI sheet, the Supplier shall take all steps necessary to rectify such performance at its own cost. KCM shall be entitled to Liquidated Damages at the rate specified in the Score Card, in the event Performance falls below the standards set in the Score Card
- 3.6. The Supplier shall provide progress logs to KCM ("Reports") at such frequency as may be required by KCM.
- 3.7. The Services shall not be considered as completed until a Certificate of Final Completion and Acceptance is signed by KCM's Authorised Representative(s). The Certificate of Final Completion and Acceptance shall state that the Services have been successfully completed and that the Supplier has fulfilled all its obligations in accordance with the Contract. KCM shall not be liable to make the final payment in respect of the Services in the absence of a Certificate of Final Completion and Acceptance.
- 3.8. The Supplier must have in place an appropriate quality assurance system that ensures compliance with contract specifications and must utilize that quality system in carrying out




- the work under the contract.
- 3.9. Any quality system will be used only as an aid to achieving compliance with the contract and to document such compliance. Such system will not relieve the Supplier of the responsibility to comply with the contract
  - 3.10. Unless otherwise provided in the contract, testing of equipment, materials of work including all acceptance testing shall be performed by the Supplier at its expense and in accordance with Supplier requirements.
  - 3.11. In order to assess Suppliers work quality, conformance with KCM's specifications and compliance with the order, upon reasonable notice by KCM, all goods, materials and services related in any way to the goods and services purchased hereunder ( including without limitation raw materials, components, intermediate assemblies, work in process, tools and end products) shall be subject to inspection and test by KCM at all times and places including sites where the goods and services are created or performed, whether they be at the premises of Supplier, Supplier's suppliers or elsewhere.
  - 3.12. KCM's failure to inspect, accept, reject or detect defects by inspection shall neither relieve Supplier from responsibility for such goods or services that are not in accordance with the order requirements nor impose liabilities on KCM.
  - 3.13. If any goods/services covered by this order is defective or otherwise not conforming with the requirements of this order, KCM may, at its option:
    - 3.13.1 Cancel this order as to such non-conforming goods and/or services
    - 3.13.2 Accept such goods and/or services at an equitable reduction in price
    - 3.13.3 Reject such non conforming goods and/or services and require the delivery of suitable replacements.
  - 3.14. Material certification- written certification shall state that the material used conforms to the specification requirements and test reports are on file. Supplier may present the material Manufacturer's certificate of test for each raw material used in the manufacture of inspection lot of the product. The certificate shall show that the test results are in accordance with the specifications and shall be entered into the inspection record. whenever a Certificate of Quality Compliance is required, the material certification:
    - 3.14.1 Shall be signed by an authorized KCM officer or Supplier representative responsible for Quality Assurance
    - 3.14.2 Shall include actual test/inspection results
    - 3.14.3 Shall include documentation for all required processes.
  - 3.15. Cost of Inspection- if upon inspection after a direction by KCM representative to dismantle or open up any part of a material, the material so inspected is in accordance with the contract, the whole of the expense incurred as a result of the dismantling or opening up and reassembly will be borne by KCM. If the material is found to be in accordance with the contract the whole of the expense so incurred, including without limitation, any costs associated with putting that material into a condition which is in accordance with the contract, will be borne by the Supplier. If KCM representative gives reasonable notice that its representative wants to inspect any portion of an Associated good before it is assembled, and the service Provider assembles that associated good without first giving KCM Representative a reasonable opportunity to inspect, any expense incurred as a result of dismantling or opening up and reassembling that associated good will be borne by the Supplier.

#### 4. WARRANTIES AND REPRESENTATIONS

- 4.1. The Supplier hereby expressly warrants and represents that:
  - 4.1.1. The Services shall be performed in accordance with the Contract, by suitably qualified and reasonable number of personnel and in accordance with Good Industry Practice. Good Industry Practice means the exercise of that degree of skill, care, diligence, prudence and foresight that would reasonably and ordinarily be expected from a skilled and experienced person engaged in the same or similar type of undertaking




- under the same or similar circumstances
- 4.1.2. in rendering the Services the Supplier shall only use vehicles, components, parts, items, plant, materials, equipment and other things used to carry out or incorporated in the Services which are of merchantable quality, fit for their purpose, free from defects and not of an age which would impair their operation. All vehicles, plant and equipment used on Site shall be subject to the approval of KCM and KCM's decision in this regard shall be final and binding.
  - 4.1.3. The drivers, operators and other manpower to be deployed for executing the Services shall hold the requisite licences, which KCM shall have the right to request for at anytime during the Contract.
  - 4.1.4. it possesses the legal authority to enter into the Contract and has taken all actions required by its procedures and all applicable laws and regulations to exercise such authority
  - 4.1.5. it shall act in good faith and in the best interest of KCM at all times
  - 4.1.6. it shall specify full details and specifications of the Services supplied in accordance with this Contract regarding the extent of immediate and long-term potential hazards or dangers, including but not limited to, toxicity, flammability or direct contact associated with the direct or indirect use thereof;
  - 4.1.7. it shall furnish full details and specifications regarding the most appropriate safety precautions to be taken in respect of the Services or the use thereof
- 4.2. Notwithstanding anything contained in this Contract, and without derogating from any of KCM's rights at common law, the Supplier specifically undertakes that to the extent that it fails to disclose or to the extent that it makes incorrect disclosure of any of the facts, specifications or details as set out and required by KCM in terms of this clause, the Supplier indemnifies the KCM and holds it harmless against all loss or damage sustained by KCM including all claims, demands, proceedings, legal costs and charges and expenses which the KCM may sustain arising out of or in connection with the Contract.

## 5. WARRANTY AND DEFECTS LIABILITY PERIOD

- 5.1. The Warranty Period in respect of the Services and all materials, components, parts, items, consumables and other things used to carry out or incorporated in the Services shall be a period of twelve (12) months from the date of completion of the Contract.
- 5.2. During the Warranty Period the Supplier shall be obligated, at its own cost (including but not limited to freight and transport costs), to promptly repair or replace any defect and/or fault in the Services and/or the materials, components, parts, items, consumables and other things used to carry out or incorporated in the Services.
- 5.3. The Warranty Period in respect of any replacements or repaired Services, materials, components, parts items, consumables and other things used to carry out or incorporated in the Services shall be twelve (12) months from the date of such repair or replacement, without any limit on the number or replacements or repairs.
- 5.4. KCM shall inform the Supplier as soon as is reasonably practicable, of any such defects or faults and should the Supplier fail to effect repairs or replacements within fourteen (14) days of notice by KCM, KCM shall be entitled to carry out such repair or replacement at the Supplier's risk and cost.
- 5.5. The Supplier's obligations under this Warranty shall extend to any defect and/or fault that could not have been discovered through a reasonable examination by KCM prior to the expiry of the Warranty Period ("Latent Defects"). The Warranty Period in respect of Latent Defects shall be four (4) years from the date of expiry of the Warranty Period.

## 6. CONTRACT PRICE

- 6.1. In consideration of Supplier's execution of the Services in accordance with the Contract and to KCM's satisfaction, KCM shall pay to Supplier, the Contract Price subject to terms and conditions of the Contract.
- 6.2. The Contract Price shall remain fixed until completion of entire scope of Contract. No Contract




Price adjustment shall be effective until it is agreed upon in writing by both Parties.

- 6.3. In the event that any statutory changes, applicable to the final Services to be delivered by the Supplier under this contract, are enacted after the Effective date by way of imposition of new or withdrawal of any existing tax or duty, or variation in existing taxes or duties through enactment of new law or amendment of the existing law, any extra cost implication or savings shall be to KCM's account against documentary evidence.
- 6.4. The Supplier shall be under obligation to notify KCM, of any statutory changes that might result in additional financial impact on KCM under clause 6.3 above, within fourteen (14) days of such statutory changes becoming effective, failing which KCM will not be under any obligation to entertain claim in respect of the same.

## 7. BASIS OF CONTRACT PRICE

- 7.1. The Supplier shall be deemed to have inspected the Site and its surroundings and to have satisfied itself as to all technical, commercial, social and general conditions of, and all circumstances affecting, the Site and the Services including the nature of the ground and sub-soil, the weather conditions, the form and nature of the Site, the extent and nature of the Services and materials necessary for the carrying out and completion of the Services, the means of communication with, and transportation and access to, the Site, the accommodation it may require and in general all risks and contingencies influencing or affecting the Services.
- 7.2. The Supplier shall not, except as expressly provided in this Contract, be entitled to any extension of time or to any adjustment of the Contract Price on grounds of misinterpretation or misunderstanding of any of the matters stated in clause 7.1 above.

## 8. SCOPE OF WORK

- 8.1. The scope of work is complete in all respects, including scope for labour (of every description), material (including all sort of consumables), tools, tackles, fixtures, transportation, workmanship, supervision and anything which although not specifically mentioned, is necessary and expedient for the proper and successful execution of the Services to the satisfaction of KCM and the safe and trouble free beneficial use of the Services by KCM. Anything so necessary and expedient is deemed to have been taken account of in the Contract Price and shall be provided by the Supplier at no additional cost to KCM. The Supplier shall make its own arrangement for all resources of any description required for execution of the Services.
- 8.2. The scope of Work is inclusive of the following, where applicable to the nature of Services:
- 8.2.1. Setting out of the Services in respect of positions, levels, dimensions, alignments, including establishment of benchmarks, reference points and other relevant markings.
- 8.2.2. Clearance of the Site, housekeeping during construction and final cleaning of the Site at the time of handing over after completion or upon termination.
- 8.2.3. Leveling or terracing of the Site within the limits as shown in the Drawings and / or as directed by KCM
- 8.2.4. Disposal of debris excavated material or left over, as per instructions of KCM.
- 8.2.5. Pumping or bailing out of rainwater or underground water from foundations, and excavation pits including slush removal and drainage of surface water from the Site.
- 8.2.6. All scaffoldings, shoring, centering, shuttering, ladders, platforms, jigs, fixtures, temporary supports and material handling facilities.
- 8.2.7. All temporary or enabling works such as temporary sheds, access roads, water supply including drainage and sewage, power supply, construction offices, stores, yards, utility buildings including canteen, toilets, labour camps, fencing.
- 8.2.8. Storage of surplus Material or wastage to a designated place as notified by KCM.
- 8.2.9. Arranging for unloading of materials and its subsequent handling as required by KCM, while moving it from point of unloading to the Site or Supplier's yard.
- 8.2.10. All kind of erecting tools, lifting tackles and mobile cranes with skilled operators.






- 8.2.11. Final adjustment or touch up in foundation levels including necessary chipping and dressing.
- 8.2.12. Final checking of location, elevation, of anchor bolts, base plates and inserts.
- 8.2.13. Necessary handing over protocols as and when required.
- 8.2.14. Testing and quality control.
- 8.2.15. Adequate Supervision of site activities, Progress planning, monitoring and submission of proper reports or logs to KCM
- 8.2.16. Co-ordination with other persons working at the Site.
- 8.2.17. Watch and ward to ensure security and safety of material in the Supplier's custody.
- 8.2.18. Necessary staff and labour (skilled and unskilled) with approved licenses as per the applicable laws
- 8.2.19. Site office, covered storage or fabrication area and other amenities.
- 8.2.20. Postage, telephone, telegraph and internet facilities.
- 8.2.21. Any other activity, facility or input required in connection with the execution of the Services.
- 8.2.22. All arrangements regarding travel boarding, lodging, medical facilities, insurance of the Supplier or sub Suppliers

## 9. AMBIGUITY, TECHNICAL INCONSISTENCY IN DESCRIPTION AND DELAY

- 9.1. The Supplier shall carefully study all the Scope of Work, drawings, schedule of items, instructions, and every part of the Contract and promptly notify KCM through the Authorized Representative(s) of any omissions, ambiguities inconsistencies or discrepancies therein and obtain clarifications, in writing, before undertaking the Services
- 9.2. In the event of such omission, ambiguity, inconsistency or discrepancy, the clarification given by KCM's Authorised Representative(s) shall be final and binding on the Supplier.
- 9.3. Should the Supplier fail or neglect to obtain KCM's clarification on any such omission, ambiguity, inconsistency or discrepancy, before executing the Services, KCM shall not be liable to make any payment in respect of such Services or any loss suffered as a result thereof neither shall it be obligated to grant the Supplier any extension of time.
- 9.4. Anything in the scope of work which requires the Supplier to do anything which is inconsistent with Good Industry Practice, shall be treated as technical inconsistency

## 10. VARIATIONS IN THE SCOPE OF WORK

- 10.1. Subject to clause 11, KCM may during the subsistence of the Contract, allocate any other services of similar nature to the Supplier at the same rates, or at discounted rates to be mutually agreed.
- 10.2. Should KCM seek any change or variation in the scope of the Services and where such variation is due to any default in the design, drawing or document supplied by the Supplier, any misrepresentation made by the Supplier, or any default on the part of Supplier, the Supplier shall not be entitled to any addition in the Contract price nor to any extension of time.
- 10.3. The Supplier shall not vary or alter any aspect of the scope of Services, except in accordance with an Amendment Order from KCM. No payment shall be made by KCM for any Services executed by Supplier without a valid amendment.

## 11. ADDITIONAL ITEMS

- 11.1. In the event that some additional, altered or substituted services, materials, components, parts, items, consumables and other things used to carry out or incorporated in the Services which are not within the scope of the Contract as envisaged under Clause 8 above, are required ("Additional Items") for successful completion of the Contract, KCM may instruct the Supplier to provide such Additional Items and the Supplier shall be obligated to comply with such instruction.




- 11.2. Where there is no rate specified in the Contract for such Additional Items, the following provisions shall apply :
- 11.2.1. Where the Additional Item(s) is of similar character or nature as anything in the Contract, the rate for such Additional Items shall be derived from Contract
- 11.2.2. Where the nature of the Additional Item (s) is such that the rate for the same cannot be derived as above, the rate shall be established based on offers requested for and taken by KCM from the market for such Additional item

## 12. INTELLECTUAL PROPERTY RIGHTS

- 12.1. This Contract shall not affect any Intellectual Property Rights (IPRs) vested in either Party and all such IPRs shall remain vested in such Party.
- 12.2. The Supplier hereby agrees to indemnify KCM and to keep KCM indemnified against all and any claims, costs (including legal costs as between attorney and client) and all other expenses whatsoever that may be incurred by KCM as a result of any action, proceeding or claim made against KCM arising from any infringement or unauthorised use of patent rights, trade marks, copyright, design or any other IPRs related to the Services or any process associated therewith or of any documents appertaining to the Services.
- 12.3. All royalties, license fees and expenses arising from the use of such patent rights, trade marks, copyright, design or other IPRs shall be payable by the Supplier.
- 12.4. This indemnity shall extend also to all losses, costs and expenses as aforesaid incurred by KCM in the event that the Services, or any part thereof, or any process, or any design, trademark, copyright, or documents appertaining to or in any way whatsoever associated with the Services or any part thereof, become the subject of an interdict or other process of law depriving KCM of the rights of possession, use, reproduction, or adaptation, or of any right to benefit therefrom.
- 12.5. KCM shall promptly give the Supplier notice of any action, proceeding, claim or threat instituted or made against it in this respect. Immediately after the giving of such notice KCM and the Supplier shall consult each other concerning the subject of the notice and KCM may:
- 12.5.1. Permit the Supplier at the latter's own expense to conduct any litigation that may ensue and/or any negotiations for a settlement of such litigation or claim, provided the Supplier shall keep KCM informed of all steps that are taken and of the outcome; or
- 12.5.2. Conduct any litigation that may ensue and all negotiations for a settlement in consultation with the Supplier, in which event the Supplier shall be liable for any awards made and all reasonable costs associated therewith and shall be liable for the amount settled on.
- 12.6. Should KCM have to purchase the Services or any component related thereto as result of any infringement of any IPRs, the Supplier shall be responsible for the cost of such purchase and shall reimburse KCM the cost of such Purchase
- 12.7. In connection with and for the purposes of the Contract, the Supplier is deemed to have authorized KCM to reproduce, directly or indirectly, in any manner or form or make adaptations of all Drawings or three-dimensional or other reproductions thereof (which shall be furnished on demand) specifications, manuals and instruction books or sheets, and all other works in which copyright subsists, which are furnished by the Supplier to KCM, and to authorize others so to do.
- 12.8. The Supplier shall immediately inform KCM of any claims or threats made against the Supplier in respect of the infringement of patents or other rights arising from the supply or performance of the Services by the Supplier.

## 13. REMEDIES IN EVENT OF DEFAULT

- 13.1. Should the Supplier fail or neglect to perform its obligations under, or should the performance not comply with, the Contract ("Default"), KCM shall have the following rights without giving any notice to the Supplier:
- 13.1.1. To reject the Services subject of such Default and to demand reimbursement of all



- amounts paid by KCM in respect of all such Services and/or
- 13.1.2. Terminate the Contract forthwith and/or
  - 13.1.3. Purchase the Services which are not compliant with the Contract and/ or are unexecuted by Supplier from other sources and in such an event KCM shall be entitled to recover from the Supplier the excess cost incurred by KCM towards same.
  - 13.1.4. Demand payment of liquidated damages. In the event of a Default related to time, the liquidated damages shall accrue at the rate of one percent (1%) of the Contract Price, for each week of delay or part thereof, beyond the time specified in the Contract. In the event of a Default related to performance of the Services (other than Default related to time), the liquidated damages shall accrue at the rate instructed by KCM.
- 13.2. If any of the goods and/or services furnished pursuant to this order are found within a reasonable time after delivery, to be defective or otherwise not in conformity with the requirements of this order, including any applicable drawings and specifications, whether such defect or non-conformity relates to scope provided by Supplier or a direct or indirect supplier to Supplier, then KCM, in addition to any other rights, remedies and choices it may have by law, Supplier or equity, and in addition to seeking recovery of any and all damages and costs emanating there from, at its option and sole discretion and at Suppliers expense may:
- 13.2.1 Require Supplier to immediately re-perform any defective portion of the services and/or require Supplier to immediately repair or replace non-conforming goods with goods that conform to all requirements of this order
  - 13.2.2 take such actions as may be required to cure all defects and/or bring the goods and/or services into conformity with the requirements of this order, in which event, all related costs and expenses (including but not limited to, material, labour and handling and any required re-performance of value added machining or other service) and other reasonable charges shall be on Suppliers account.
  - 13.2.3 Withhold total or partial payment
  - 13.2.4 Reject and return all or any portion of such goods and/or service and/or
  - 13.2.5 Rescind this order without liability for any repairs or replacements, Supplier at its sole cost and expense, shall perform any test requested by KCM to verify conformance to this order.

#### 14. FORCE MAJEURE

- 14.1. Notwithstanding any other provisions under the Contract, neither Party shall be held liable for a failure or delay to perform its obligations under the Contract if such a failure or delay occurs as a result of or on account of Force Majeure. Force Majeure shall mean an event or circumstance which is beyond the reasonable control of, and which occurs without the fault or negligence of, the Party whose performance is affected ("Affected Party"), and which by the exercise of reasonable diligence the Affected Party was unable to prevent. Force Majeure shall include:
- 14.1.1. riot, war, invasion, acts of foreign enemies, hostilities (whether war be declared or not) acts of terrorism, civil war, rebellion, revolution, insurrection of military or usurped power, requisition or compulsory acquisition by any governmental or competent authority;
  - 14.1.2. earthquakes, flood, fire or other physical natural disaster, but excluding weather conditions regardless of severity; and
  - 14.1.3. labour strikes at national level or industrial disputes at province level,
- 14.2. In the event of Force Majeure, the Affected Party must immediately and no later than seven (7) days of becoming aware of its existence, notify the other party giving full particulars of the event of Force Majeure and the extent to which it is prevented from, or delayed in, performing its obligations under the Contract.
- 14.3. The Affected Party shall upon having given the aforesaid notice to the other Party be excused from compliance with its Contractual obligations to the extent of such prevention or restriction and shall promptly and diligently use its reasonable efforts to mitigate the effect of the Force Majeure upon its performance of the Contract




- 14.4. Where Force Majeure prevents the Supplier from supplying the Services to KCM, KCM shall during the period for which such Force Majeure exists be entitled to purchase such Services from other sources. In such event neither party shall have any claim of any nature against the other and whereupon the total quantity to be supplied under the Contract shall be reduced accordingly.
- 14.5. Should the event of Force Majeure endure for a continuous period of longer than three (3) months, the Party not relying thereon shall be entitled to terminate the Contract upon notice to the Affected Party without payment to the Affected Party of any compensation whatsoever including, without limitation, consequential damages, loss of business and/or profits resulting from such termination.
- 14.6. Upon cessation of Force Majeure the Affected Party must as soon as reasonably practicable recommence the performance of its obligations under the Contract. Where the Affected Party is the Supplier, the Supplier must provide a revised programme rescheduling the Services to minimise the effects of the prevention or delay caused by the event of Force Majeure.
- 14.7. Force Majeure shall not relieve a Party from liability in relation to an obligation which arose before its occurrence.
- 14.8. The Supplier shall have no entitlement and KCM shall have no liability for:
- 14.8.1. any costs, losses, expenses, damages or the payment of any part of the Contract price during an event of Force Majeure; and
  - 14.8.2. any delay or costs in any way incurred by the Supplier due to an event of Force Majeure

## 15. TERMINATION AND SUSPENSION

- 15.1. In the event of the Supplier:
- 15.1.1. Committing a breach of the Contract
  - 15.1.2. Being liquidated, wound up or ceasing to carry on business
  - 15.1.3. Being involved in unethical, illegal actions or committing any crime whatsoever on or at KCM's premises or in connection with the performance or the execution of the Contract; or
  - 15.1.4. Contravening any Laws, or Regulations or KCM policy regarding security, safety and health, which are applicable to KCM's premises and/or the Services; or
  - 15.1.5. Being in breach of the provisions of clause 17
  - 15.1.6. Being in breach of clause 33 and/or, or clause 34;

KCM shall, without prejudice to any of KCM's other rights under the Contract or in law, be entitled

a. in the event of 15.1.3, 15.1.4 and 15.1.6., to direct the Supplier forthwith to remove from KCM's premises any or all of its employees, agents, distributors and their employees or representatives who, in the sole and exclusive discretion of KCM, were involved in any such actions and such person(s) shall not be permitted to re-enter KCM's premises without the prior written consent of KCM ; and/or to forthwith terminate the Contract and to call on any related Bank Guarantee,

b. In the event of 15.1.1, 15.1.2 and 15.1.5 to terminate the Contract forthwith

15.2. KCM may terminate the whole, or any portion of the, Contract at any time without assigning any reason by giving seven (7) days written notice to the Supplier. It is agreed between the Parties that the notice of seven (7) days is adequate and reasonable.

15.3. KCM shall be entitled to instruct the Supplier to suspend the Services at any time and for whatever reason. The Supplier shall not be entitled to any payment in respect of such period of suspension unless agreed otherwise by the Parties. No standing time or compensation for idle labour or idle machinery, will be payable to the Supplier under any circumstances.

15.4. In event of suspension, KCM may in its discretion grant an extension of time to the Supplier




## 16. CONSEQUENCES OF TERMINATION

- 16.1. Upon termination of the Contract for any reason:
- 16.1.1. such termination shall not affect any rights or obligations accrued as at the date of termination.
  - 16.1.2. KCM shall not be liable to pay the Supplier anything by way of compensation or otherwise, except such amounts as shall have accrued under the Contract as at the date of termination, subject to KCM's rights under other provisions of the Contract
  - 16.1.3. any clause which expressly or by implication is intended to have effect after termination will continue in full force and effect

## 17. PRICE WARRANTY

- 17.1. The Supplier warrants that the Contract Price is more favourable to KCM than to other customers of the Supplier who purchase lesser annual or similar annual quantities than KCM.
- 17.2. If during the currency of the Contract the Supplier (or any agent or distributor appointed by the Supplier) should supply, or offer to supply, Services to any other purchaser/consumer at prices lower than the Contract Price, KCM shall be entitled to a corresponding reduction in the Contract price.
- 17.3. Any reduction in the Contract prices made in terms of this clause shall apply to all Services delivered on and after the date on which the Services are supplied, or offered for supply to a Third Party, at prices lower than the Contract price.
- 17.4. It is understood and agreed that, irrespective of whether the Contract prices are stated to be firm or subject to adjustment, the provisions of this clause shall apply.

## 18. INVOICING

- 18.1. Value Added Tax (VAT) invoices, bearing the Contract or Purchase Order number, whichever shall be applicable, shall be forwarded to reach KCM by not later than the 25th of the month ("Due Date") in order to qualify for payment by the end of the following month. Payment of invoices received after the 25th of a month may be made at the end of the month following the next month.
- 18.2. Local Suppliers shall submit the original VAT invoice along with the supporting documents listed below to KCM's Plant Manager or his representative who shall indicate the service entry sheet Number on the top of invoice and handover the invoice back to the Supplier for submission to the Data Management System (DMS) Invoice Collection Centre (DICC), where the Supplier shall be provided with a reference number. Only then shall KCM proceed to process the invoice
- 18.3. Foreign Suppliers shall submit the original VAT invoice along with the supporting documents listed below through post/Courier to DMS Accounts Payable Manager at the following mailing address:

DMS AP Manager  
 Konkola Copper Mines Plc, Private Bag(C) 2000,  
 Fern Avenue, Chingola,  
 Zambia.

A Scanned copy of the original invoice and supporting documents should also be sent by the Supplier to the Authorised Representative by email and copy of this email should be marked to : [Bhanwar.jain@kcm.co.zm](mailto:Bhanwar.jain@kcm.co.zm)

Foreign Suppliers shall appoint a Local Tax Agent who shall issue invoices on behalf of the Supplier for the purposes of the Contract. KCM has a designated Tax Agent and shall render its assistance to the Supplier and incur any costs or charges associated with the appointment of the designated Tax Agent.




- 18.4. The DMS invoice collection centres shall be at the following locations:
- 18.4.1. Nchanga IBU, at Mine Security Gate
  - 18.4.2. Nkana IBU, at Mine Security Gate
  - 18.4.3. Kokola IBU, at Konkola Administration Building
- 18.5. The following shall be supporting documents which must accompany every tax invoice ;
- 18.5.1. Proof of delivery of Services or material
  - 18.5.2. Measurement of Services done as certified by KCM authorized representative
  - 18.5.3. Copy of the relevant insurance obtained under the provisions of this Contract.
  - 18.5.4. Copy of Certificate of Final Completion and Acceptance issued by KCM.
  - 18.5.5. No due certificate issued by Supplier.
  - 18.5.6. Proof of remissions in respect of its employees, to the National Pension Scheme Authority
  - 18.5.7. Proof of adherence to the Minimum Wages and Conditions of Employment Act Chapter 276 of the Laws of Zambia
  - 18.5.8. Insurance Policy(ies) taken out pursuant to clause 27 below
  - 18.5.9. Any other documents as may be required by any applicable law
- 18.6. KCM shall be entitled to request the Supplier and the Supplier shall be obliged, to provide any additional details or document which shall be necessary for KCM to satisfy itself as to the quality and quantity of Services and materials and workmanship used.

## 19. PAYMENT

- 19.1. Provided that VAT invoices and all supporting documents are submitted in accordance with clause 18 above and are received on or before the due date, payment for Services accepted by KCM shall, be made to the payee in the currency of the Contract within thirty (30) days from date of receipt of a duly submitted invoice.
- 19.2. The VAT invoice shall be subject to acceptance by KCM. KCM shall have no obligation to settle a disputed invoice.
- 19.3. KCM will make payment by EFT or by such other means as may have been agreed by the Parties and the Supplier agrees that:
- 19.3.1. It will provide KCM with written details of the Supplier's bank, branch and account number;
  - 19.3.2. It will also provide KCM with a photocopy of a cancelled cheque from the Suppliers bank account to be checked by KCM finance
  - 19.3.3. KCM on giving or causing to be given an instruction to its bankers to effect the transfer of the amount due to the Supplier, will have fully and effectively discharged its obligation to make such payment to the Supplier.
- 19.4. KCM shall be entitled to withhold or deduct from any payment due to the Supplier, any amount as shall have accrued in favour of KCM under this Contract including and not limited to such amounts accruing under clause 28 (Indemnity), by way of liquidated damages and by way of any payments made in excess to the Supplier.
- 19.5. The Supplier indemnifies KCM, its employees and agents against any claims of any nature which may be brought against any of them by any person or entity alleging non-payment of any amounts due to the Supplier, the delivery, posting or transfer of which has been effected in terms of this clause.
- 19.6. Irrespective of any certification or acceptance of an invoice by KCM's Authorized Representative (s), KCM shall not pay for any Services, materials or anything falling outside the scope of the Contract
- 19.7. In the event that the total amount paid to the Supplier exceeds the total amount which would have been payable to the Supplier in respect of the Services in accordance with the Contract, KCM shall have a right to deduct to the extent of such excess, from any payment due to the Supplier and/ or to demand payment of any such excess amount by the Supplier. Any such excess shall be deemed a debt due by the Supplier to KCM and shall be recoverable by KCM by any means available to it at law.




## 20. LIEN

- 20.1. KCM shall have the right to exercise a lien over any equipment, material or assets of the Supplier in relation to any amounts that may have accrued to KCM under the Contract until such amounts shall have been recovered in full by KCM.
- 20.2. The Supplier agrees that in the event of sub contracting the whole or any portion of the Contract, it shall procure the Sub – Supplier(s) to agree that KCM shall have the right to exercise a lien over any of the Sub Supplier's equipment, material or assets, in relation to any amounts that may have accrued to KCM under the Contract until such amounts shall have been recovered in full by KCM

## 21. DISPUTES

21.1. In this clause the following expressions shall have the meanings set out against them:

- 21.1.1. "Dispute" means any difference, disagreement or controversy between the Parties of any kind whatever in connection with or arising out of this Contract;
- 21.1.2. "Dispute Date" means the date of written notice from either party to the other declaring a dispute in terms of this clause and detailing briefly therein the nature of the dispute.
- 21.2. All disputes between the parties shall be determined in accordance with the provisions of this clause.
- 21.3. Within a period of five (5) days from the Dispute Date the Parties' Authorised Representatives shall meet to discuss the Dispute and shall endeavour to resolve it amicably by way of good faith negotiations.
- 21.4. Should the Authorised Representatives fail to resolve the Dispute in terms of clause 21.3 within seven (7) days of commencing negotiations, the Authorised Representatives shall escalate the Dispute to the Chief Executive Officers (CEOs) of both Parties or to such persons as may be nominated by the CEOs, who shall use their best endeavours to resolve the dispute.
- 21.5. Should the CEOs or nominated persons fail to resolve the dispute within seven (7) days from the date it is referred to them; the Dispute may be referred to Arbitration in accordance with Arbitration Act No 19 of 2000. The matter shall be presided over by one Arbitrator to be appointed by the Chartered Institute of Arbitrators in Zambia. The Arbitral proceedings shall be conducted in English and the seat shall be Chingola.
- 21.6. The Parties shall continue to perform their obligations under the Contract pending the resolution of the Dispute by way of Arbitration, provided such performance does not in any way compromise or prejudice the Arbitral proceedings.
- 21.7. This clause is separable from the rest of the Contract and, therefore, will remain effective between the parties even in the event that the Contract is terminated.

## 22. APPLICABLE LAW

The Contract shall be governed by, interpreted and construed in accordance with Zambian law.

## 23. COMPLIANCE WITH LAWS, REGULATIONS, STANDARDS AND INSTRUCTIONS AND KCM POLICIES

- 23.1. The Supplier shall in the performance of its obligations and exercise of its rights under the Contract, comply with all laws and regulations promulgated and in force from time to time and all KCM policies, procedures and instructions, in so far as the same shall apply to the Services and/or to the Site.




- 23.2. In particular and without prejudice to the generality of the foregoing, the Supplier shall:
- 23.2.1. comply with the provisions of the Environmental Management Act No 12 of 2011 and all other environmental laws and regulations prevailing in Zambia wherever applicable, and KCM's policies, procedures in relation to the protection of the environment
  - 23.2.2. comply with the requirements of the Mines and Minerals Development Act No 7 of 2008
  - 23.2.3. comply with the requirements of the Workers Compensation Act No 10 of 1999 and shall before commencing the Services, submit to KCM a valid Workers Compensation Fund Control Board Employer's Compliance Certificate
  - 23.2.4. maintain and uphold policies that respect and protect basic Human Rights and Dignity without distinction on any basis, including the rights to life, liberty, and security of person, freedom from slavery and cruelty, and equal protection under relevant laws and
  - 23.2.5. not engage child labour or forced labour
  - 23.2.6. comply with the requirements of the National Pension Scheme Act Chapter 256 of the Laws of Zambia,
  - 23.2.7. comply with the requirements of the Engineering Institution of Zambia Act no 17 of 2010
  - 23.2.8. comply with the requirements of the Income Tax Act Chapter 323 of the Laws of Zambia
  - 23.2.9. comply with the requirements of the National Council for Construction Act No 13 of 2003
  - 23.2.10. KCM's sustainability framework details of which are available electronically on the Supplier Relationship Management Portal

## 24. SECURITY

- 24.1. The Supplier, shall at all times comply with all KCM 's security rules , policies, procedures, and instructions whilst on KCM 's premises, including, but not limited to the submission to a personal examination and a strip search by persons authorised by KCM
- 24.2. The Supplier shall arrange for its own employees and representatives and those of its agents or distributors undertaking work on KCM's premises to be screened by KCM's security department prior to them entering such premises. All costs in this regard will be for the account of the Supplier.
- 24.3. The Supplier shall be responsible for security of the Site, its machinery, material. and shall provide adequate lighting at the Site.

## 25. SAFETY, HEALTH AND ENVIRONMENT

- 25.1. Notwithstanding anything else contained in the Contract, the prevention of accidents, safety performance and adherence to sound, healthy and safe work standards and practices are essential requirements of this Contract and the Supplier shall co-operate with KCM in all respects in KCM's quest to prevent accidents and improve its safety performance.
- 25.2. The Supplier, shall while on the premises of KCM or in the execution of the Contract, provide a safe and healthy work environment to its employees, strictly adhere to all applicable safety and health requirements under all applicable legislation, ordinances, by-Laws and regulations as well as under KCM's Codes of Practice, Policies, Procedures or Instructions relating to safety and health.
- 25.3. Prior to commencement of the Services the Supplier shall undergo training and induction on Safety, Health and Environment to be conducted by KCM.
  - 25.3.1 Awareness: Before commencement of any services, Supplier shall at its own expense ensure that Suppliers personnel have been given necessary HSE training including training in Hazard identification, risk analysis, safe working behaviour etc. The HSE shall include a






- briefing explaining the nature of the part of the services they will be performing, a job safety analysis and description of the hazards, which may be encountered during the performance of the particular tasks which they are required to perform. During such training, Supplier shall emphasize the fact that each person has an obligation to stop an act or task if it is unsafe.
- 25.3.2 Supplier shall ensure that Suppliers personnel attend refresher courses to maintain familiarity with current procedures. Supplier shall provide evidence of completion of all training and competency assessments upon request by company. All Suppliers personnel arriving on site shall attend the Suppliers or KCM's HSE inductions including a review of the site's safety procedures including Permit to work and evacuation.
- 25.3.3 Supplier shall ensure safety meeting schedule, including but not limited to pre-shift safety meetings safety toolbox meeting, safety committee meetings and management review meetings
- 25.3.4 Competency: The Supplier shall ensure that all of its supervisory personnel performing possess any specific competencies or qualifications, experience, responsibility and authorities required by applicable occupational health and safety laws and shall provide proof of same satisfactory to company upon request.
- 25.3.5 Behaviour: the Supplier should provide adequate guidance so that Suppliers personnel work to reduce workplace incidents and improve safe performance at all times. The Supplier shall ensure that his staff's conduct is in a fit and proper manner whilst on site. Failure to do this may result in the removal or exclusion of such persons from the site.
- 25.4. Designation of site supervisor: The Supplier shall specify one of its employee as the site HSE supervisor who shall be responsible for attending HSE matters at all levels at the site of work, including emergency response
- 25.5. Attendance of Supplier: The Supplier shall ensure that the site HSE supervisor is present at the place of work and performs supervisory functions at all times whenever four or more workers of the Supplier are present at the place of work.
- 25.6. Statutory Compliance: Suppliers shall identify, document and comply with all pertinent Health Safety and Environment (HSE) laws and regulations, approvals, licenses and permits which are applicable to the services and conduct of activities. Supplier shall conduct internal inspections and records to ensure full implementation of requirements and compliance with the system at site. Supplier shall provide documentary evidence that it has complied with the system on company's demand.
- 25.7. Supplier site management Plan: the Supplier should comply with his submitted plan in his bid document on how to manage and improve the work site.
- 25.8. Change Management: If there is a change in site supervisor and Supplier management personnel, it shall be notified to designated Supplier manager as a part of Management of Change (MOC) process. This also includes reassess hazards and risk where the changes occur to the work scope, plant and equipment and the working environments.
- 25.9. Incident Reporting: Any accident, injury, near misses, fire , explosion, spill of chemicals, environment degradation etc involving Company or Supplier's personnel, property or any third party property shall be reported immediately to Company, irrespective of whether injury to a person or damage to property or equipment resulted.
- 25.9.1 Access to site: If Company exercises its right to conduct its own investigation; Supplier shall provide Company with all reasonable assistance to allow & to complete its investigation.
- 25.9.2 Learning: Supplier shall implement the learning from incident to prevent a recurrence. Supplier must share lessons learned with Supplier's Personnel.
- 25.10. Safety Interaction: The Supplier must conduct regular safety interactions of its Personnel in accordance with the Company's safety interaction process. The number and frequency of safety interactions to be performed will be at the discretion of KCM Representative. Quality assessments of the safety interactions will be undertaken by KCM's HSE Personnel. The Service Provider must conduct investigations into incidents, accidents and injuries by its Personnel or involving its equipment and property in accordance with KCM's incident investigation process. Action items must be created to prevent recurrence and be closed out before due dates.




- 25.11. Emergency drills: Supplier shall participate in emergency response drills to test the effectiveness of its emergency procedures and equipments and the knowledge and proficiency of Supplier's Personnel. Supplier will provide with their emergency response plan (ERP) which must be adoptable to suit the site.
- 25.12. Cardinal Rule: Supplier shall ensure that all Suppliers' Personnel follow the five safety cardinal rules. The rules are:
- 25.12.1 Do not override or interfere with any Safety Provision nor let anyone else override or interfere regardless of seniority.
  - 25.12.2 Personal Protective Equipments (PPEs) applicable to the given task must be adhered to.
  - 25.12.3 Always follow isolation and lock out procedure
  - 25.12.4 No person will be allowed to work if under the influence of alcohol or drugs
  - 25.12.5 Report all injuries and illness
- 25.13. On violation of cardinal rules, yellow card will be issued to the concerned personnel and disciplinary action will be taken which may result in suspension of personnel also.
- 25.14. Personal Protective Equipment: Supplier shall, at its own expense, supply Supplier's Personnel, where required, in connection with the safe performance of the Services, with adequate protective clothing and other protective equipment including first aid which shall be maintained in good condition or replaced, and shall be worn at all times where required to manage potential injury hazards associated with a work activity under this Contract. Supplier shall ensure that his personnel have been trained in the correct use and application of PPE. All such training shall be documented and available to KCM on request.
- 25.15. Equipment, tools, Tackles and Resource:
- 25.15.1 Supplier shall ensure that all plant, tools and equipment used by Supplier's Personnel in the performance of the Services are suitable for use for the particular task or tasks for which they are to be used, are maintained in safe and operable condition and that users of the plant, tools and equipment are trained, experienced and where necessary, licensed and certified to operate them.
  - 25.15.2 Supplier shall maintain a register of all lifting equipment and tackle. Supplier shall, upon request, provide certification of inspection within the previous twelve months for all cranes and lifting slings and tackle before the equipment is used for the Work, and/or shall carry out such tests and inspections as are requested by applicable regulatory authorities. Safe Working Load (SWL) and radius charts shall be available for all lifting equipment and shall be marked on the equipment. Supplier shall ensure pre-inspection of lifting tools tackles including wire rope slings, clamps, shackles, hooks etc before taking up the job. KCM reserves the right to require, Supplier to inspect any lifting gear that does not meet the requirements stated above. All equipment shall be stored and operated in accordance with the manufacturer's specification and guidelines.
  - 25.15.3 Supplier shall maintain up to date copies of all tests and maintenance certificates relating to cranes, lifting beams pulley blocks and lifting gear, and shall make them available to KCM upon demand.
  - 25.15.4 All tools & tackles required for the execution of the job shall be arranged by Supplier. Also a periodic audit would be undertaken to assess the condition of such tools and tackles.
  - 25.15.5 While using their equipment and carrying out any job, if any equipment / installation belonging KCM or any other agency at site is damaged by Supplier, it will be made good at the risk and cost of Supplier.
  - 25.15.6 Detailed risk assessments shall be conducted for all equipment to identify all foreseeable hazards and determine the most appropriate controls to mitigate the risks associated in using in accordance with HSE laws and regulation.
  - 25.15.7 Vehicles operating in KCM premises shall observe all parking and speed restrictions,



road signs and traffic rules as per KCM policy.

- 25.16. Material Safety Data Sheets: The Supplier shall maintain, at the job site, Material Safety Data Sheets for all hazardous materials and products taken onto the job site. Products are stored in appropriate containers clearly labelled prior to sending to site, all hazard substances are risk assessed to determine their safety requirements and suitability for use.
- 25.17. Work Permits: Supplier shall follow the site Permit to Work (PTW) system for carrying out hazardous activities that includes following (but not limited to) activities. The Supplier shall not perform any of such activities without first obtaining and displaying the applicable work permit at the project site.
- (1) Hot work
  - (2) Confined space entry
  - (3) Working at height
  - (4) Breaking into piping
  - (5) Lockout / Tagout / isolation etc.
  - (6) Excavation or drilling into the ground or a concrete building slab using powered equipment
  - (7) Hazardous substance handling, etc.
  - (8) Excavation / trenching
  - (9) Chemical management MSDS's
  - (10) Any government related permit
- 25.18. Health and Fitness:
- 25.18.1 Each contract employee shall undergo a pre-employment medical check and periodical medical examination (PME) as per the KCM guidelines by a KCM approved doctor/ medical personnel and cleared for the type of work he/ she will undertake, prior to the commencement of work.
- 25.18.2 Supplier shall ensure that all Suppliers' Personnel are able to perform the essential functions of their respective assignments and shall certify the same to KCM if so requested by KCM or if required by law. Supplier's medical assessment process shall equal or exceed the requirements of KCM's medical assessment procedure.
- 25.18.3 Supplier shall ensure health assessment, monitoring and management of contract personnel exposure to noise, dust and other physical hazards that have the potential to be harmful to health.
- 25.19. Disease: Supplier shall ensure that any of Supplier's Personnel who exhibit any symptoms of any severe infectious disease that is communicable by air or surface contact immediately make appropriate arrangements to be medically assessed and removed from the Site until they have received medical clearance and can provide proof of such clearance.
- 25.20. Hygiene and Housekeeping: Supplier shall ensure that Supplier's Personnel maintain high standards of hygiene and housekeeping on the Site. Supplier shall conduct routine hygiene and housekeeping inspections on the site to ensure that standards are maintained. Supplier shall collect and segregate scraps generated by their activities or services by creating separate bins and finally deposit or utilize as per the directions of KCM
- 25.21. Environment Protection:
- 25.21.1 Supplier shall ensure proper collection and storage of used oil and waste oil generated at site. The used oil and waste oil collected so shall be disposed off in compliance to law. Any oil/grease soaked cotton waste would be collected from site of work and suitably disposed as per the guidelines.
- 25.21.2 Supplier shall use appropriate Personnel protective equipments and follow requisite procedure for handling, transportation and storage of Hazardous wastes inside the plant including disposal sites owned by KCM.
- 25.21.3 Supplier shall be solely responsible for damage caused to the surrounding/ environment during transit.




- 25.21.4 Supplier shall ensure optimum use of water, energy and other resources while providing services and also work for loss prevention in the form of leakages, spills, overflows, wastages etc
- 25.21.5 Supplier shall be solely responsible for the legal actions that may be initiated consequent to environmental hazards as aforesaid.
- 25.21.6 Supplier would ensure that spillages, leakages and overflows etc are attended immediately on notice or on intimation.
- 25.22. Smoking: Supplier's Personnel shall not smoke at the work site except within designated smoking areas.
- 25.23. Supplier Accommodation: Where the Supplier's Personnel provides accommodation for contract workers, the accommodation shall be appropriate for its location and be clean, safe and, at a minimum, meet the basic needs of workers. In particular, the provision of accommodation shall meet national legislation and shall have the minimum following:
- 25.23.1 Provision of sanitary, laundry and cooking facilities and potable water
- 25.23.2 Safe location w.r.t health, hygiene and fire risks.
- 25.23.3 Provision of first aid, medical facilities and proper ventilation.
- 25.23.4 Building material shall be suitably inflammable, have smoke and fire alarms fitted and include other safety checks to prevent fire.
- 25.24. Clearance of Site: On a continuous basis consistent with Good Industry Practice during the progress of the Works the Supplier shall clear away and remove pursuant to the directions of KCM from the Site all scrap, debris, other waste materials. The Supplier shall, leave on the Site for KCM such temporary works as instructed by KCM, free of charge. The Supplier shall at all times and particularly after completion of the Works, keep the Site and the Facility in a clean, safe and workman like condition and shall dispose of all rubbish (other than hazardous materials or other materials which may contaminate ground-water, for which other arrangements shall be made by the Supplier) in accordance with Good Industry Practice.
- 25.25. Removal of Unsafe workers: The Supplier shall document any identified instances of noncompliance with safety requirements by its workers and subSuppliers. Where any worker or subSupplier breaches safety requirements and thereby presents a threat of serious injury or death to any person, the Supplier shall remove that worker or subSupplier from the project site for the duration of the project.
- 25.26. Subcontracting: The Supplier shall be able to demonstrate that he has applied selection procedures that ensure that his sub-Suppliers are demonstrably competent to perform the works safely. The Supplier shall provide to the Location Manager the names of sub-Suppliers he intends to appoint in advance of entering into a contract with any such sub-Supplier. The requirements of this booklet, the contract specification, the contract health and safety plan, the risk assessments and method statements shall be imposed upon sub-Suppliers by the Supplier.
- 25.27. Monitoring
- 25.27.1 Compliance check by Supplier: The Supplier shall monitor his safety performance and that of his sub-Suppliers to ensure compliance with standards set in the contract. The frequency of monitoring will be dependent upon the risk profile and number of persons employed.
- 25.27.2 Root Cause of incidents: All accidents shall be investigated to establish the basic causes and to recommend appropriate improvements in control. Details of all accidents, together with the associated investigation and recommendations, shall be passed to the company as soon as deemed reasonable.
- 25.27.3 Audit by KCM: KCM reserves the right to audit all aspects of the management of health and safety on site at any time. Deficiency identified during any inspection / audit shall be entered into an appropriate action register that summarize the deficiency, the required actions, the person to whom that action have been assigned and date by which the action




shall be completed. The Supplier shall be responsible to ensure all actions are completed, verified and closed within stipulated timeframes.

25.27.4 Monitoring by KCM: KCM reserves the right to allocate weight age and set safety KPIs in the Supplier's scorecard. The scorecard performance shall be reviewed periodically.

25.28. Supplier Queries: The queries should be normally directed to KCM's designate as specified in contract. The site specific "Supplier safety management manual" can also be referred for any clarifications when in doubt. The details on specific processes, plants and machineries and related hazards are detailed in this manual.

## 26. HAZARDOUS SUBSTANCES

26.1.1. In the event that there are any hazardous substances to be applied, used or transported in relation to the Services :

26.1.2. The Supplier warrants that, as far as reasonably practicable, the hazardous substance(s) is safe and without risk to health and safety when used, handled, processed, stored or transported in accordance with the information that will be provided by the Supplier in terms of Part VI of the Mines and Minerals (Environmental) Regulations of 1997.

26.1.3. The Contract is subject to the information referred to in 26.1 being supplied and agreed upon between the Parties and such information shall be contained in a separate document, which shall be incorporated in the Contract. The Supplier shall provide adequate information about the following:

26.1.3.1. The use of the substance;

26.1.3.2. The risks to health and safety associated with the substance;

26.1.3.3. Any restriction or control on the use, transport and storage of the substance, including but not limited to exposure limits;

26.1.3.4. The safety precautions to ensure that the substance is without risk to health or safety;

26.1.3.5. The procedure to be followed in the case of an accident involving excessive exposure to the Hazardous Substance, or any other emergency involving the substance and the disposal of used containers in which the substance has been stored and any waste involving the substance; and

26.1.3.6. The disposal of used containers in which the substance has been stored and any waste involving the substance; and

26.1.3.7. The Supplier is responsible and accountable for ensuring effective procedures and assessment, such as a job safety analysis or job risk analysis including control and mitigation process. The risk assessment should cover the following aspects of workplace:

(1) General safety and Environmental Management Procedures

(2) Waste Disposal

(3) Equipment Decommissioning

(4) Water Discharges

(5) Material Storage/Spills

(6) Storm Water Management

(7) Use of Asbestos, Lead, CFCs and other objectable chemicals

(8) Hot working, gas welding

(9) All electrical works

(10) Working at heights including scaffolding

(11) Demolition

(12) Construction work of any kind

(13) Transport management

(14) Tank Cleaning or testing

(15) Confined spaces



## 27. INSURANCE

- 27.1. For the duration of the Contract, the Supplier shall procure and maintain a comprehensive insurance policy from a reputed insurance company acceptable to KCM, against loss or damage arising from or occasioned in the course of any operations carried out by the Supplier. The insurance shall include but shall not be limited to cover the following :
- 27.1.1. Injuries or death to any persons (including employees of the Supplier, sub Supplier and/ or third parties) resulting from any act or neglect done or committed by the Supplier for and/or in respect of, any claims demands proceedings damages costs charges and expenses in respect thereof or in relation thereto
  - 27.1.2. Damage to equipment, property, plant or any other resources belonging to KCM or Third parties, resulting from any act or omission, or neglect done or committed by the Supplier or for or in respect of any claims demands proceedings damages costs charges and expenses in respect thereof or in relation thereto
  - 27.1.3. Any other Third Party risks in respect of or in relation to the Services
  - 27.1.4. Any other insurance as required by the applicable law
- 27.2. The Supplier shall avail to KCM proof of such valid policy failing which KCM may withhold any payments due to the Supplier. Such insurance shall be effected with an insurer acceptable to KCM and shall name KCM as beneficiary.
- 27.3. Further it is desired that the Supplier at its own takes out and maintains a policy of insurance to the full replacement value of any equipment, item or plant owned, borrowed, hired and/or used by the Supplier, his agents or distributors, for the purposes of executing the Contract, which, without limiting the generality of the foregoing, includes any temporary site accommodation and the contents thereof

## 28. INDEMNITY

- 28.1. Supplier agrees to indemnify and hold KCM harmless and immune from any and all claims, loss, damage, action, or expenses (including legal expenses) suffered by KCM as a result of:
- 28.1.1. The injury or death of any person including KCM employees, Suppliers, agents or a Third Party; and/or
  - 28.1.2. All damage to any property of KCM or Third Party whatsoever,
  - 28.1.3. Any penalty imposed on KCM pursuant to any Law or regulation which injury, death, damage or penalty results from or is due to breach of the Contract or any act or omission of negligence by the Supplier.
- 28.1. In the event that a penalty is levied on KCM or KCM suffers any loss as a result of the Supplier's non compliance with any Law, the Supplier shall be liable to KCM for such penalty or loss and KCM shall treat such amount as a debt and shall have a right to deduct an amount equal to such penalty or loss from the Supplier's payments, and/or to call on any bank guarantees given pursuant to the Contract

## 29. DAMAGE TO PROPERTY

The Supplier shall be responsible for and shall make good, all loss of or damage to any property, whether such property shall be the property of KCM or third parties, caused by the Supplier, its sub-Suppliers and employees or representatives of both and/or vehicles, plant or equipment, engaged in rendering the Services, whether such damage is caused within the boundaries of the areas owned, leased or occupied by KCM or outside such boundaries. The Supplier shall not be granted any extension of time in the event of such damage.

## 30. CONFIDENTIALITY






- 30.1. The Parties agree to keep this Contract, all documents related hereto and all information and data furnished hereunder confidential and each Party undertakes that the terms of the Contract and all such documents, information and data will not be disclosed to any Third Parties nor be used for any purpose other than the performance of its obligations under this Contract without the previous written consent of the other party, PROVIDED that nothing in this Clause shall prevent the publication or disclosure of any information that has come within the public domain otherwise than by breach of this Clause.
- 30.2. Either party shall be entitled to disclose the terms and conditions of this Contract and any data or information acquired by it under or pursuant to this Contract without the prior written consent of the other party in the following cases:
- 30.2.1. to any outside consultants or advisers engaged by or on behalf of such party in connection with the Services .
- 30.2.2. to any persons from whom the Supplier intends to invite tenders in respect of the sub-contracting any aspect of the Services
- 30.2.3. to any security trustee, any bank or other financial institutions and its advisers from which such party is seeking or obtaining finance.
- 30.2.4. to the extent required by the law or statutory authority or pursuant to an order of any court of competent jurisdiction, provided that the disclosing party is given notice and adequate time to seek a protective order applicable to the information before it is disclosed.
- 30.2.5. to any insurer under a policy of insurance required to be taken out by either party under the Contract
- 30.2.6. To any Affiliate of such party or in case of KCM, to any competent authority having jurisdiction over the implementation of the Services
- 30.2.7. to Directors, employees and officers of such Party  
Provided that the disclosing Party determines in good faith that the recipient has a legitimate need to see such data or information and the recipient has been made aware of and has agreed to be bound by the requirements of this Clause.
- 30.3. The Supplier acknowledges that all documents (whether retained in hard or soft copy) and papers including site plans and maps, relating to the business or work of KCM and prepared by the Supplier or received by the Supplier in connection with, or by virtue of, the Supplier's performance of the Services, and all copies and summaries of such documents and papers, shall be the sole property of KCM.
- 30.4. The Supplier shall return or at the request of KCM destroy all the original Information and any copies and reproductions (both written and electronic) in its possession or under its control and in the possession of any third party to whom he has disclosed such Information as contemplated in 30.2 above:
- 30.4.1. at any time upon KCM giving written notice to the Supplier to do so; and/  
30.4.2. within 5 (five) days of the termination of this Contract for any reason whatsoever
- 30.5. The provisions of this Clause shall survive the termination or cancellation of this Contract for any reason whatsoever

### 31. RETURNS

- 31.1. The Supplier shall furnish KCM on such frequency as shall be requested by KCM following information relating to the Services:
- 31.1.1. A breakdown of the quantities sold of and/ or nature of the Services provided to KCM for the period specified by KCM
- 31.1.2. The total value (in the currency of the contract) of sales.
- 31.1.3. Where no or Services have been supplied a nil return shall nevertheless be submitted.
- 31.2. KCM shall provide the Supplier with a pro forma of the required summary.

### 32. NOTICES

- 32.1. Any notice or communication made pursuant to the Contract shall be in writing and sent by post, telefax, email, or hand delivery during normal business hours at the Parties' addresses set out in the Contract.




32.2. Any notice which:

32.2.1. Is delivered by hand at the addressee's domicile shall be deemed to have been received by the addressee at the time of delivery; or

32.2.2. Is posted by post from an address within the Republic of Zambia to the addressee at his domicile shall be presumed, until the contrary is proved by the addressee, to have been received by the addressee on the 5 business day after the date of posting; or

32.2.3. Is sent by telefax to the addressee's telefax number stated in the Contract shall be deemed to have been received on the business day following the date it was sent off.

32.2.4. If sent by email to the addressee's email address stated in the Contract shall be deemed to have been received on the business day it was sent

32.3. KCM shall act and communicate through its Authorised Representatives for the purposes of this Contract. Any communications made by or through any other person shall not be valid nor binding on KCM

### 33. ANTI BRIBERY

33.1. The Supplier hereby warrants that, until Completion of all of the Services, it will comply (and will procure that all its employees, directors, officers or agents comply) with all applicable laws, regulations or policies relating to the prevention and combating of bribery, corruption and money laundering, including the UK Bribery Act 2010 ("Anti-Corruption measures"). The UK Bribery Act and all other details relating thereto are available electronically on the KCM Supplier Relationship Management portal.

33.2. The Supplier undertakes that it has not, will not and will procure that all its employees, directors, officers or agents, do not:

33.2.1. pay, promise to pay or offer to pay, or authorise the payment of any commission, success fee, bribe, pay off or kickback related to the Services that violates any Anti-Corruption measures or enter into any agreement pursuant to which any such commission, success fee, bribe, pay off or kickback may, or will at any time be paid or;

33.2.2. offer, promise or give any undue pecuniary or other advantage, whether directly or indirectly to any public official, with the intent of influencing the actions or decisions of such official in the performance of its official duties, with the purpose of obtaining or retaining business or other improper benefit or advantage.

### 34. CODE OF ETHICS AND CONFLICT OF INTEREST

34.1. In order to uphold ethical business practices in the interests of all of KCM's stakeholders, the Supplier undertakes to abide by the provisions of the "KCM Code of Ethics for Employees and Code of Conduct for Suppliers" (the "**Code of Ethics**") and to procure that all its employees, directors, officers or agents, are not in breach of the same. The Code of Ethics is available on the Supplier Relationship Management portal.

34.2. Any perceived breach of provisions of the Code of Ethics by the Supplier, or its employees, directors, officers or agents will entitle KCM to terminate the contract forthwith

34.3. The Supplier hereby warrants that:

34.3.1. there is no Conflict of Interest as at the date of the Contract,

34.3.2. it has declared any existing Conflict of Interest,

34.3.3. it shall ensure during the Contract term that there is no conflict of Interest,

as to be likely to prejudice its independence and objectivity in performing the Contract and undertakes that upon the occurrence of any such conflict of interest during the Contract (whether the conflict existed before the award of the Contract or arises during its performance) it shall immediately notify KCM in writing of the same, giving particulars of its nature and the circumstances in which it exists or arises and shall furnish such further information as KCM may reasonably require.

34.4. Vedanta expects all its Suppliers to comply with the conditions of the Supplier code in letter and spirit. It is the Supplier's responsibility to read and understand the contents of Vedanta's supplier code and code of conduct and Business ethics policy and agree to uphold its values

during business association with Vedanta. The provisions shall include but not limited to:

34.4.1 Compliance with Laws: The Supplier shall ensure compliance to all governmental norms-local and international such as Environmental Protection, Minimum wages, and Child labour, US Foreign Corrupt Practices, UK Bribery Act, Anti Bribery, Corruption, and Health & Safety etc.

34.4.2 Compliance with KCM Policies: Shall follow all Environment, Health & Safety and other operational policies of KCM while executing the work under this agreement/contract at company site

34.4.3 Conduct with KCM Employees: Supplier is forbidden from using inappropriate language in the workplace, including profanity, swearing, vulgarity or verbal abuse.

34.4.4 Child labour: the Supplier shall oppose and will not permit the use of forced or child labour

34.4.5 Unethical Behavior: the Supplier shall not take any recourse to any unethical behavior (implicit or explicit) with any employee of Vedanta for the purpose of obtaining an order or any information that may result in a favorable financial impact more specifically.

34.4.6 Bribery and Corruption: The Supplier shall not offer or accept bribe or use other means of obtaining undue or improper advantage. No Supplier or its representatives or employees, shall offer to any employee of Vedanta a kickback, favor, gratuity, or anything of value to obtain favorable treatment or for the advancement of business. Shall not take any advantage of any family/social/political connection in obtaining favor with regard to any order merit shall be the sole attribute for association with Vedanta.

34.4.7 Undue favor: the Supplier shall not offer any gift or entertainment for the purpose of obtaining an order or any undue favor (also refer the Gift policy of Vedanta which is uploaded on KCM website)

34.4.8 Reporting Violations of Code: the Supplier shall forthwith report any unethical activity or discrimination if practiced by any Vedanta employee/other suppliers as per Vedanta whistleblower policy (uploaded on the KCM website)

34.4.9 Competition and Fair Dealing: the Supplier shall desist from unfair trade practices with its competitors who are also associated with Vedanta.

Confidential Information: the Supplier shall protect and not in-fringe with any Vedanta intellectual property/information/technology which comes to its knowledge during the course of its business relationship/dealings with Vedanta.

(a) The financial and sales results of KCM, or any member of KCM, before they are in the public domain

(b) Trade secrets, including any business or technical information, such as formulae, recipes, process, research programs or information that is valuable because it is not generally known.

(c) Any invention or process developed by an employee using KCM's facilities or trade secret information resulting from any work for KCM, or relating to KCM's business.

(d) Proprietary information such as customer sales lists and customer's confidential information

(e) Any transaction that KCM or any member of KCM is or may be considering which has not been publicly disclosed.

### 35. ASSIGNMENT AND SUB CONTRACTING

35.1. The Supplier shall not cede, assign or make over any of the Supplier's rights and obligations under the Contract without the prior written consent of KCM.

35.2. The Supplier shall not subcontract performance of the whole or any portion of the Contract to any other person without the prior written consent of KCM. KCM shall not be obliged to give such consent and may withhold it without assigning any reason or may grant such consent subject to such terms and conditions as KCM in its absolute discretion may impose.

35.3. The approval of KCM to subcontract shall not relieve the Supplier of any of its obligations under the Contract, and the terms of any subcontract shall be subject to and in conformity with the provisions of the Contract.

35.4. The Supplier may only sub-contract its obligations under this Contract to a person and to the extent approved by KCM and upon such terms and conditions as KCM shall require.

35.5. The Supplier hereby warrants and undertakes that its sub-Suppliers shall comply with and

shall not breach the Contract and that all the provisions of the Contract relating to any sub-Suppliers shall be expressly reflected in its sub-contracts.

### 36. CORPORATE SOCIAL RESPONSIBILITY (CSR) AND PUBLIC RELATIONS (PR)

36.1. The Supplier acknowledges that by virtue of this Contract, it is an integral business partner of Vedanta and KCM and agrees to work in co-ordinated manner in the interest of the overall Contract. The Supplier undertakes to carry out CSR initiatives which shall include, amongst others, the following:

- 36.1.1. Maintaining cordial relationships with opinion makers at local, state and central level.
- 36.1.2. Taking proactive efforts in ensuring on time clearances, approvals and/or consents from relevant authorities applicable or relevant to the Services.
- 36.1.3. Undertaking visible CSR initiatives in form of improving existing public amenities such as roads, school buildings, drinking water system, religious places, in the nearby area for the well being of the local community at large.

### 37. CONSEQUENTIAL DAMAGES

In no event shall KCM be liable to the Supplier by way of indemnity or by reason of any breach of the Contract or otherwise for any loss of profit, loss of use, loss of contracts, idle resources, blockage of funds, or for any indirect, incidental or consequential damages whatsoever that may be suffered by the Supplier .

### 38. SUSTANBILITY REQUIREMENTS

- 38.1. The Supplier shall adhere to KCM sustainability policies and procedures including Mission, Code of Conduct, Policies, Management Standards and Technical Standards. These are available on the KCM Supplier Relationship Management Portal
- 38.2. The Supplier shall meet the requirements of the *IFC (International Finance Corporation) Performance Standards*. The Supplier shall provide a safe and healthy work environment to its employees and shall meet the occupational health and safety requirements of KCM, both to satisfy the requirements of IFC Performance Standard 2 and to minimize risk and liability to KCM. The Supplier shall not engage in child labour or forced labour or allow such engagement in its supply chain, directly or indirectly. The Supplier shall ensure that employees engaged directly or indirectly by it have access to appropriate grievance mechanisms.
- 38.3. The Supplier shall ensure that its work does not impact, the health and safety of its employees or others, the environment and local communities especially where migrant labour is used.
- 38.4. The Supplier shall avail to KCM, copies of relevant supporting documentation which set out the activities to be undertaken, how the activities will be undertaken, the risks associated with the activities, and what controls and precautionary measures will be put in place to mitigate those risks. Key documents to be submitted by the Supplier shall include (but not be limited to) the following:
  - 38.4.1. method statements;
  - 38.4.2. risk assessments;
  - 38.4.3. Supplier qualifications and experience;
  - 38.4.4. Supplier employee qualifications and experience; and
  - 38.4.5. valid insurance certificates.
- 38.5. The Supplier shall ensure that any materials, tools or equipment brought onto KCM premises by the Supplier are appropriate for the activities being undertaken and that they do not introduce additional hazards and risks to KCM employees, third parties, property, equipment or the environment
- 38.6. The Supplier shall provide KCM with all relevant information regarding any such material, tools or equipment to KCM, which relevant information should include material safety data sheets (MSDSs), requirements for additional PPE or control measures and any other manufacturer information as may be appropriate.




- 38.7. The Supplier shall ensure that appropriate controls shall be in place to ensure that wastes, surplus materials and redundant equipment associated with Supplier activities are stored, transported and disposed of in an appropriate manner which meets regulatory requirements
- 38.8. The Supplier shall strictly adhere to KCM'S permit to work system for Suppliers undertaking hazardous/high-risk activities or where they are working in hazardous areas of a KCM.
- 38.9. In accordance with IFC Performance Standard 2, where a Supplier provides accommodation for its employees, the accommodation shall be appropriate for its location, clean, safe and, at a minimum, meet the basic needs of its employees. In particular, the provision of accommodation shall meet requirements of the Applicable Law and Good Industry Practice, including but limited to the following:
- 38.9.1. the practice for charging for accommodation;
  - 38.9.2. the provision of minimum amounts of space for each employee;
  - 38.9.3. provision of sanitary, laundry and cooking facilities and portable water;
  - 38.9.4. the location of accommodation in relation to the workplace;
  - 38.9.5. any health, fire safety or other hazards or disturbances and local facilities;
  - 38.9.6. and the provision of first aid and medical facilities; and heating and ventilation
  - 38.9.7. Employees' freedom of movement to and from the provided accommodation shall not be unduly restricted.
- 38.10. The Supplier's activities and performance shall be regularly inspected by KCM, subject to audits and checks and monitored to ensure the Supplier is working in accordance with the agreed contract and scope of work and performance expectations.
- 38.11. Issues identified from check, audits and inspections shall be recorded, action(s) to address the issues agreed with the Supplier and closure of actions assured at the appropriate time by the KCM.
- 38.12. Review meetings shall be held on a regular basis with the Supplier to feedback the results of performance reviews, including areas of good performance and highlighting areas requiring improvement.
- 38.13. Should the Supplier reviews indicate that performance is unacceptable by KCM standards, the Supplier should be given the opportunity to demonstrate improved competency by putting key actions in place failing which the Contract shall be terminated.

### 39. GENERAL

- 39.1. The Contract contains the entire agreement between the Supplier and KCM in relation to the subject matter thereof and KCM shall not be bound by any undertakings, representations communications or warranties not recorded in the Contract notwithstanding any signature thereto.
- 39.2. Each Party acknowledges that in entering into the Contract, it does not do so on the basis of, and does not rely on, any representation or warranty or other provision except as expressly provided herein.
- 39.3. Except as otherwise provided herein, no modification, variation or amendment of any provision of the Contract, or consent to any departure therefrom, shall in any way be of any force or effect unless made in writing and signed by the signatory(s) to the original Contract (or their replacement) of both Parties.
- 39.4. KCM shall, have the right to construe the Contract either as one comprehensive Contract entered into on behalf of all Purchaser's covered by the Contract jointly, or alternatively, as being divisible as if entered into on behalf of each of Purchaser covered by the Contract separately and apart from the others.
- 39.5. In the event of inconsistency between the General Conditions of Contract and the remainder of the Contract, the provisions of the remainder of the Contract shall prevail. In the event that a Purchase Order is also issued through KCM's SAP system and a Contract is signed between the Parties, the SAP Purchase Order shall only be a processing tool and should any conflict exist between the Contract and SAP Purchase Order, the provisions of the Contract shall prevail






- 39.6. Should any provision of the Contract become or be held to be invalid or void or unenforceable by a Court of Competent jurisdiction, such provisions shall be severable from the remainder of the Contract Provisions which shall continue to apply.
- 39.7. Nothing in the Contract should be construed as creating an employment, agency or partnership relationship between the Supplier and KCM. The Supplier is an independent Supplier. Neither Party shall have any right, power or authority to create any obligations, express or implied on behalf of the other.
- 39.8. Each Party warrants to the other that it has full power and authority to enter into the Contract
- 39.9. The rights and remedies set out in the Contract are cumulative and not exhaustive of all rights and remedies available at Law or in equity.
- 39.10. KCM's failure to exercise or delay in exercising a right or remedy provided by the Contract or by Law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. A waiver shall only be effective if made in writing and by a Party's Authorised Representative.
- 39.11. A waiver of a breach of any terms of the Contract or a default under the Contract does not constitute a waiver of any other breach or default and a waiver of a breach of any of the terms of the Contract or of a default under the Contract will not prevent a Party from subsequently requiring compliance with the waived obligation.
- 39.12. Each Party shall bear its own costs of and incidental to the negotiation, preparation and drafting of the Contract.
- 39.13. The Supplier covenants that it shall not during the subsistence of the Contract and for a period of three (3) years after completion, employ, or offer to employ, any employee of KCM without written prior consent from KCM.
- 39.14. Delivery of any material and/or performance of any of the Services shall be deemed to have been made only if there is a corresponding KCM gate seal in case of material and/or biometrics entry at KCM's gate for the Supplier's employees, representatives or agents.

OCTOBER, 2014

