

**ENQUIRY DOCUMENT**  
**FOR A DISTRIBUTION AGREEMENT FOR REAGENTS**  
**AT KAMOA COPPER SA**  
**ENQUIRY NUMBER: RFQ 10837 - REGAGENT**

## SECTION 1

### INSTRUCTIONS TO TENDERERS

These instructions will not form part of the Agreement with the successful Tenderer.

#### 1. GENERAL

This enquiry covers the supply defined in Section 2 Specifications.

#### 2. TENDERER

The Tenderer is the organisation or company which submits a tender. The Tenderer has been provided with specific Enquiry Documentation to do so.

#### 3. COVER LETTER TO TENDER

The Tenderer's letter accompanying the tender shall state: name of organisation or company, the contact person/s and contact telephone, cellular phone and e-mail address.

#### 4. CONSORTIUM OR JOINT VENTURE

Should an invited Tenderer wish to form a consortium or a joint venture or some other form of collaboration, the Tenderer shall formally notify the Employer within 7 days from the Enquiry Document issue date whichever occurs first, advising him of the details and seek Employer's agreement to tender in such a manner.

The Employer's agreement is not assured and should the Tenderer continue without the Employer's written approval the resultant tender may be rejected.

#### 5. INSTRUCTIONS

Tenderers are advised to familiarise themselves with all aspects of this Enquiry before inserting any prices or rates. It is hereby understood and agreed that the successful Tenderer shall not be entitled to any increase in the Price quoted caused by contract provisions not considered by the Tenderer. The Tenderer shall investigate the whole of this Enquiry to establish and comply with any requirement to provide any information via attachments and shall briefly describe and include the following with their tender:

- 5.1 A Power of Attorney authorising the signatories of the Tender to irrevocably bind the Tenderer to their tender.



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- 5.2 Information regarding any pending, imminent and current arbitration, mediation and litigation in which the Tenderer is involved including details of the parties concerned, the subject of such arbitration, mediation and litigation and the disputed amount.
- 5.3 The Tenderers safety statistics and related performance data of similar comparison as the scope of this Enquiry.
- 5.4 The name and contact details of 3 (three) previous but recent Employer / Client Representatives who may vouch for the Tenderers previous performance and cooperation, should the need arise.
- 5.4 Provide a list of clients to which the Tenderer has successfully delivered similar services and nature / magnitude and include a short description of the project, value of the project and your specific role delivered at each client. Please provide references and contact details for a selection of these clients.
- 5.5 Certification that the Tenderer is in good standing with the appropriate government and quasi government organisations such as The Revenue Service and The Department of Labour of the Democratic Republic of the Congo.
- 5.6 Where and when was the organisation or company founded?
- 5.7 Who are the major shareholders in the organisation or company?
- 5.8 In which country is the organisation or company registered? Provide registered organisation or company name and registration details in the Democratic Republic of the Congo.
- 5.9 In which countries is your organisation or company represented?
- 5.10 Specify the location of your organisation or company head office.
- 5.11 Specify the location of all your organisation or company offices, locally and internationally.
- 5.12 Has your organisation or company or entity or any former business ever failed in the past five financial years to complete a contract, had the contract partially or fully been taken over or had a contract been varied to delete substantial work to overcome poor performance under the contract? If yes, provide details.
- 5.13 Has any partner, principal or director in your organisation or company ever been associated with any other organisation that has failed in the past five financial years to complete a contract? If yes, provide details.
- 5.14 What benefits will your organisation or company gain through providing this service to the Employer?
- 5.14 What is your organisation or company structure and ownership?
- 5.16 What is the total number of staff employed? Provide an organisation chart. Identifying senior partners/directors and other staff.
- 5.17 Has any partner, principal or director in your Company ever been convicted of an offence?
- 5.18 Describe the skill sets and competencies of the resources your organisation or company has, as well as the number of resources your organisation or company has in the skill sets that would likely be called for by the Employer.



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- 5.19 Provide a summary of your “order book” commitments for the next 3 years.
- 5.20 Provide information that approximately defines where the focus of your business lies and indicate which are the prime services your organisation or company provides and those that it typically sub-contracts.
- 5.21 The Tenderer shall submit with the Tenderer’s tender, as a separate document, “Corporate Social Investment”. Such document shall show any measurements taken to fulfil corporate social investment initiatives in areas where the Tenderer is present/the willingness to contribute to existing initiatives i.e. Development, Training, Local employment and Corporate spend.

#### **SUBMISSION OF TENDER**

The “Original Tender” with all related tender data, annexures, addenda, and enclosures shall be submitted via email to [tenders@kamoacopper.com](mailto:tenders@kamoacopper.com), before the closing time, as follows:

Marked: Confidential

Enquiry Number: RFQ – 10837 – REAGENTS

Employer: Kamoacopper SA.

**Tender’s Close: Thursday 20<sup>th</sup> May 2021, 13h00 Kolwezi time.**

The email subject line for submissions must only reference the RFQ number of this tender as submissions are electronically allocated. Submissions that do not contain the RFQ number as subject line will be rejected by the Employer’s electronic system.

#### **PLEASE NOTE:**

You are reminded to keep a copy of the tender for your records.

**DO NOT DELIVER YOUR TENDER TO INDIVIDUALS. TENDERS SHOULD BE IN NORMAL LETTERS I.E. NOT BOLD OR CAPITALIZED.**

It is the responsibility of the Tenderer to ensure that its tender has been received by the Employer.

The tender shall remain valid and open for acceptance by the Employer for a period of 90 (Ninety) days from the closing date of the tender.



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Before the closing date, the Employer may modify, change or amend the tender documents by formally issuing written addenda.

The Tenderer shall acknowledge receipt of each modification, change or addendum by the Tenderer's letter headed written notice to the Employer.

In order to take an addendum into account in preparing the tender, the Tenderer may apply to the Employer for an extension to the closing date, such application is to be received at least seven days prior to the Enquiry closing date and time.

Should the Employer grant such extension, the Employer will notify all Tenderers in writing thereof.

Tenderers shall note that despite the foregoing there is no assurance that a requested extension of time will be granted by the Employer.

The Tenderer shall check the number of pages and attachments within this entire Enquiry document and should any be found to be missing or in duplicate or the written text or details are indistinct or there is any obvious errors herein or if any doubt exists as to the full intent or meaning of any wording or text or dimensions or sketch or drawing or any ambiguity is found as to the scope of this Enquiry, the Tenderer shall promptly notify the Employer in writing and have the same rectified.

No liability whatsoever will be admitted in respect of errors in tenders due to the foregoing if they have not previously been notified in writing to the Employer and it shall be taken that the Enquiry and documentation is fully understood and no variations to the Price shall be accepted.

All queries technical, commercial, financial, contractual, and/or errors and other clarifications shall be formally communicated in writing to the Employer who will redirect such matters to the appropriate person, and ensure the suitable written response is distributed to all tenderers. Non-adherence may lead to rejection.

Unless queries relate to method of operation and a specific request is received from Tenderers to treat a particular query / answer as confidential, then all Tenderers will receive a copy of all queries received together with the answers and / or corrections. These queries / answers shall constitute the rulings and shall be incorporated into the contract documents.

The closing time for clarification of queries and / or request for correction of errors and ambiguities are 48 hours prior to the Enquiry closing date and time.

The tendered Price is inclusive of all work required to be provided to complete the supply and dispensing. Activities not listed or priced, and items for which no rate or price is provided by the Tenderer, will not be paid for by the Employer. Such activities and items are deemed to be covered by and included in the other prices and or rates and/or fees contained within the Enquiry and or the tender.



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All duties and taxes, levies, tolls, registrations, enrolments and other amounts payable by the Tenderer under the contract, or for any other cause, as of the date of tender submission are included in the rates, prices, and the tendered Price (excluding Value Added Tax (VAT)).

Value Added Tax (VAT) payable by the Employer shall be shown separately as an addition to the tendered Price.

The Tenderer shall not be permitted to make any alterations and/or adjustments to his tender documents after the date and time for submission elapsed.

In the event of any discrepancies occurring between the Prices detailed by the Tenderer in the forms provided with the Enquiry and those contained in any additional letter or document submitted by the Tenderer, the former shall prevail.

Errors shall be corrected by the Employer as follows:

- Where there is a discrepancy between the amounts in figures and in words, the amount in words shall take precedence.
- Where there is discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity, the unit rate shall take precedence, unless in the opinion of the Employer there is an obviously gross misplacement of the decimal point in the unit rate, in which case the line item total as quoted shall take precedence, and the unit rate is corrected. Where an individual rate is considered unrealistic, such rate is adjusted as agreed following consultation with the Tenderer.
- Where there is an error in the Price, either as a result of the other corrections required by this checking process or in the Tenderer's addition of Prices, the Price shall be corrected.

The Tenderer shall submit the main offer in accordance with the commercial and technical requirements as set out in this Enquiry.

The Tenderer may in addition to the main offer submit an alternative proposal clearly indicating but not limited to the technical, financial, contractual, health, safety and environmental advantages to the Employer.

Should the Tenderer desire to make any departures from, or modifications to, the Enquiry provisions, scope, or to qualify the tender in any way, the Tenderer shall set out the proposals clearly. The alterations detailed will be the only alterations considered by the Employer.

A schedule of alterations needs to accompany the tender.

The acceptance and/or rejection of such alternative proposals shall be at the sole discretion of the Employer, but such alternative proposal will not be considered where the Tenderer has not submitted a main offer in compliance with this Enquiry.



## **CONDITIONS OF AGREEMENT**

The conditions of contract shall be the Employer's Standard Commercial Terms and Conditions for a distribution agreement, attached hereto in Section 3.

## **PRICE ADJUSTMENT**

Tender documents shall contain a clear statement on whether prices quoted by bidders may be fixed or subject to adjustment (upwards or downwards) on the occurrence of specified events over which the Tenderer has no control and which are likely to affect the prices of major cost constituents of the contract, such as labour, imported materials, equipment and fuel. Prices may be adjusted by the use of a prescribed formula (or formulae) which breaks down the total price into components that are adjusted by price indices specified for each component or, alternatively, on the basis of documentary evidence (including actual invoices) provided by the Tenderer. The use of the formula method of price adjustment is preferable to that of documentary evidence. The method to be used, the formula (if applicable) and the base date for application shall be clearly defined in the tender documents. If the payment currency is different from the source of the input and corresponding index, a correction factor shall be applied in the formula, to avoid incorrect adjustment. Price adjustment shall be computed separately for each currency of payment.

## **CURRENCY**

The United States Dollar (USD) or equivalent amount in Congolese Franc (FC) should be used to quote the Price. The Employer shall make payments in the currency of the Agreement.

## **ACCEPTANCE OF TENDER**

The Employer reserves the right to reject or accept the whole or part of any tender, or reject all tenders without being obliged to give reasons.

## **REJECTION OF TENDER**

A tender may be rejected if:

- It is received after the closing date and time stipulated in the Enquiry or subsequent official written amendment thereto;
- It contains any unauthorized erasure, alteration, text addition or irregularity;
- There is no adherence to communication protocol for communication during the enquiry process;
- It is considered unbalanced, or does not include the required information necessary for proper comparison and evaluation;



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- It is not submitted on the forms provided or is not in accordance with the commercial and technical requirements of the Enquiry;
- The Tenderer fails to attend Employer convened meetings to which he is invited;
- The tender is delivered to individuals;
- It contains conditions of sale;
- The Tenderer or some person's apparently acting on behalf of the Tenderer, approaches a member of the Employer's team in an inappropriate manner concerning this Enquiry;
- A single invited Tenderer, tendered as a consortium or a joint venture or some other form of collaboration without the Employer's written authorisation.
- Any other reason which the Employer views as valid.

#### **CONFIDENTIALITY OF ENQUIRY / TENDER DOCUMENTATION**

The Enquiry issued by the Employer and the tender submitted by the Tenderer shall be treated as confidential and no aspects thereof shall be disclosed to any third parties, except as necessary for the purpose of the Enquiry.

Tenders submitted by the Tenderer along with all other responses will become the property of the Employer.

#### **EXPENSES IN THE PREPARATION OF TENDERS**

The Tenderer shall investigate, calculate, compile and issue his tender and incur such costs at the sole expense of the Tenderer.

The Employer shall not be responsible for any direct or indirect expenses and / or losses that the Tenderer may incur in the preparation and submission of this tender.

#### **EMPLOYER'S LIABILITY**

Tenderer's are hereby advised that the Employer will not accept any financial liability whatsoever should the Tenderer's or prospective Tenderer's wish to place orders on their suppliers and / or subService Providers prior to receiving the Employer's official written Acceptance / Order.

#### **ATTENDANCE AT MEETINGS**

The Employer may during the adjudication process convene several types of meetings. These may include site inspection meetings, tender clarification meetings and pre-award meetings. When invited to attend, the Tenderer shall ensure that he is properly represented at such meeting by experienced employees familiar with the tender.



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## SECTION 2 : SPECIFICATIONS

### BACKGROUND OF PROJECT.

Kamoa Copper SA ("KCSA"), a joint venture between Ivanhoe Mine and Zijin Mining, is currently developing a Greenfields underground copper mine, concentrator, tailings storage facility and supporting infrastructure called the Kakula Mine (the "Site"). The Site is accessed from Kolwezi by means of a gravel road.

The Kamoa Kakula Project is located approximately 45 km west of Kolwezi, the provisional capital of the Lualaba Province in the DRC.

### 1. SPECIFICATIONS FOR THE REAGENTS CONSIGNMENT STOCK .

- 1.1. An agreement for a Consignment Stock will be entered for a period of years (03) year – the prices must be valid for the duration of the agreement.
- 1.2. The tenderer shall include consignment stock prices for each item, cost for Tenderer personnel in charge of managing the said stock (2 employees – rotation 9 weeks on site, 3 weeks off – to be discussed).
- 1.3. Kamoa will be in charge of travels, accommodation & catering as well as working visa.
- 1.4. Kamoa will be in charge of providing a warehouse facility and the equipment related (Cranes/ Forklift...).
- 1.5. The Service Providers shall provide an offer **DAP – Delivered at Place** for the supply of Reagents to KCSA– Kamoa's warehouse - Kolwezi DRC.
  - 1.5.1. The Tenderer is requested to use KCSA forwarder which can be contacted on below address:  
**Heinz LANGE: heinzl@nucleusml.co.za**
  - 1.5.2. In the case, the tenderer prefers to use its own freight forwarder, the offer for the transport of the goods shall be sent separately
- 1.6. KCSA does not give any guarantee regarding quantities. The quantities shown are estimated quantities only. These are provided to give Tenderers an indication of the expected volume of business. Actual quantities to be purchased during the period of the Agreement may be affected by changes in technology, activity or protocols. Service Providers should only deliver against official Purchase Orders by KCSA for specific quantities set out therein. Purchase Orders are subject to variation by KCSA at any time.



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- 1.7. The Service Provider will send two submissions separately as requested above.
- 1.7.1. Commercial submission
  - 1.7.1.1. Company's profile (Presentation, legal documentation, ARSP...)
  - 1.7.1.2. Rates/ Pricing/ BOQ
  - 1.7.1.3. Any other relevant information related to commercial purpose
- 1.7.2. Technical submission
  - 1.7.2.1. Company's Technical profile (Presentation, references, certificates...)
  - 1.7.2.2. Technical presentation on current project (Items specification, official distributor letter...)
  - 1.7.2.3. Any other relevant information on technical purpose
- 1.8. It is a condition of this Tender that the tenderer is registered to the ARSP (Autorite de Regulation de la Sous-traitance dans le secteur Prive) as a local or foreign entity.
- 1.9. The list of reagents and their specification can be found on Annex 1 as well as the monthly consumption for 2022.

## **2. CONSIGNEMENT STOCK**

- 2.1. Level of Consignment Inventory
  - 2.1.1. The level of consignment inventory is to be maintained as per the formal pre-determined quantities. Any changes to quantities must be agreed between KCSA and Service Provider in writing. A stock take of the consignments inventory is to be carried out monthly by the Service Provider. KCSA and the Service Provider must sign off the resulting count and records kept for year-end reporting and audit purposes.
  - 2.1.2. A minimum of two months stock must be in Kamo a warehouse.
  - 2.1.3. Outside the scheduled stock take, KCSA may request to audit the consignment inventory on a regular basis.
- 2.2. Storage
  - 2.2.1. The consignment inventory must be stored in a secure and clean environment and within the guidelines as set out on the product packaging.
- 2.3. Consumption
  - 2.3.1. KCSA must notify the Service Provider of consignment inventory usage within 48 hours, or within a period as determined between KCSA and the Service Provider, and provide the Service Provider an official Purchase Order to facilitate replacement of used consignment inventory. KCSA must pay accounts in accordance with the terms and conditions of the Agreement.



- 2.4. Ownership: The consignment inventory remains the property of the Service Provider and shall be insured by the Service Provider.
- 2.5. Insurance and Indemnity
  - 2.5.1. The Service Provider agrees to indemnify KCSA against liability, loss, damage, cost, expense or tax incurred, in connection with or suffered by the Service Provider as a result of damage to consignment inventories. This indemnity shall be a continuing indemnity and shall survive the termination of the Agreement.
  - 2.5.2. The above indemnity may not be applicable if the following conditions are established:
    - 2.5.2.1. Breakages to consignment inventory resulting from storage in environmental conditions outside those noted in the packaging and/or as per the recommended storage conditions stipulated by the manufacturer
    - 2.5.2.2. Breakages to consignment inventory resulting from deliberate misuse or mishandling by KCSA employees.
- 2.6. Withdrawal from the agreement
  - 2.6.1. KCSA may terminate the consignment Agreement with no penalty incurred, thirty (30) days after a written notice is provided and officially received by the Service Provider's Authorised representative.
- 2.7. Deliveries of Consignment Inventory must be in accordance with KCSA policies and procedures.

### **3. SCHEDULE, DELIVERY AND PICK UP OF GOODS**

- 3.1. The tendered rates shall be one rate, which includes the cost of delivery Free-Into-Store throughout KCSA's Site.
- 3.2. The Service provider shall deliver all Goods/Service/Works ordered to specified destination(s) at the time of placing the order. No liability to pay for deliveries shall arise until the Goods/Service/Works are received and accepted by KCSA in good order and condition.
- 3.3. The Service provider will replace Goods at no cost (including freight and handling charges) where Goods are delivered with unacceptable "use by/expiry dates". An unacceptable use by date is one where in the normal course of events the Goods could not be used before the use-by date within KCSA's usual stock holding period. This period will not be less than six (6) months.
- 3.4. The prices tendered are to provide for Goods to be suitably packed to ensure safe transport to their destination. The Service Provider is to replace damaged Goods at no cost to KCSA.
- 3.5. Delivery time for all Goods under the Agreement shall be as tendered and stated in the Letter of Award or as otherwise agreed between the Service Provider and KCSA at the time of placement of a Purchase Order.
- 3.6. KCSA shall not be liable for any loss of or damage to any Goods held on its Site on behalf of the Service provider.
- 3.7. Unless expressly provided the Service provider shall not be entitled to any extra charge for packing or containers



of any kind. The Service Provider may at their own expense remove from the Site any packing or container. The Service provider shall not be entitled to compensation for any loss or damage to packing or containers.

- 3.8. Goods or materials rejected or delivered in error are to be removed by and at the expense of the Service Provider within seven [7] days of notice. KCSA may arrange the removal of such materials should the Service Provider fail to do so and charge the Service Provider with all expenses incurred in such removal.
- 3.9. The packaging for the goods shall be as follow:

Reagent specifications			
Product	Brand Name	packaging	type/Qty
COLLECTOR	SIBX	Bulk Bag	500
PROMOTER	AERO 3477	IBC	1000
FROTHER	SF522	IBC	900
FLOCCULANT	SNF910SH	Bulk Bag	750
COAGULANT	SNF45VHM	Bulk Bag	750

#### 4. TAXES/FEES.

- 4.1. Exoneration on import duties should be taken into account in cases where items are sent from abroad.
- 4.2. The Service Provider shall provide KCSA with all relevant documents to help KCSA in recovering duties, which includes proof of product deliveries to KCSA, invoice, proof of payment on duties, etc.

#### 5. PAYMENT.

- 5.1. KCSA will request a BIVAC and Quality Assurance/ Quantity Control (QA/QC).
- 5.2. Payment will be proceed at the end of the month after consolidating all supplies and reconciliation is done. Payment will be processed within thirty (30) days after statement.
- 5.3. KCSA will appoint an independent company to proceed to a QA/QC and provide the related certificates.
- 5.4. The Service Provider shall inform KCSA in writing of any charges that may affect the Price, and enclose copies of support documents.
- 5.5. The Service Provider shall provide KCSA all relevant documents to help KCSA in recovering duties, which includes proof of product deliveries to KCSA, invoice, proof of payment on duties...
- 5.6. As a minimum, each invoice submitted shall:
- 5.6.1. include the delivery slip, duly signed by KCSA;
- 5.6.2. quote the agreement reference number and purchase order number on each document;



- 5.6.3. state the names of KCSA's and the Service Provider's representatives;
- 5.6.4. Failure to include the agreement and purchase order numbers on any Service Provider invoice will result in returning such invoice to the Service Provider.
- 5.7. The Parties acknowledge that the Services will be executed in more than one country, and that the currencies used by those countries may vary, and may fluctuate in value during the term of this Agreement. For purposes hereof the Parties agree that the Base Exchange Rate reference point shall be Bloomberg at <http://www.bloomberg.com/markets/currencies>, as at the Effective Date. The Base Exchange Rate shall apply for twelve months from the Effective Date, and shall thereafter be adjusted every twelve months for the duration of the Agreement, using Bloomberg as reference point at the date of adjustment.
- 5.8. The prices given by the Service Provider are firm and final for a period of twelve months, a possible revision of the ROE (rate of exchange) upward or downward, will be possible in the event that the rate of these vary beyond 5%. The request for price revision, due to the variation of the ROE, must be duly justified by Bloomberg, as mentioned above.

#### **6. KEY PERFORMANCE INDICATOR.**

- 6.1. Product delivery on time (excluding delivery time from Kolwezi to Site) as per agreed dates in weekly delivery schedule. Number of orders delivered by requested date / total number of orders delivered \*100 (based on summary of weekly delivery schedule) 100% - 91 acceptable.
- 6.2. Product conformity indicator calculates the value of non-conforming products during a demand period of time (quarter) (invoice, delivery slip) total value of damaged products / value of shipped products \* 100 100% - 95% - acceptable.
- 6.3. In the event that the Goods/Services/Works or any part thereof fails to meet the specified performance Specification in terms of quantity, quality or safety, then the Service Provider shall at their own expense rectify, rebuild or replace any or all of the respective Goods/Services/Works until the Goods/Services/Works does fulfil the performance or quality Specification.

#### **7. PRODUCT SPECIFICATIONS & QUALITY CONTROL.**

- 7.1. Goods/Service/Works to be supplied under this Agreement shall be of the quality specified in the Specification, consistent with the appropriate KCSA Standards and in every respect responsive to any patterns or samples sent with the Tender approved by KCSA. Any in-progress inspection by KCSA will not affect this requirement. The Service Provider must be able to demonstrate that appropriate mechanisms are in place for maintaining the quality of Goods/Service/Works.



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- 7.2. The Service Provider shall supply items under specific Standards. The goods shall respect the Standards established by the SABS (South African Bureau of standards) or ISO (International Organisation for Standardization) or CIS (China Industry Standards) or China GB (China Guobiao).
- 7.3. Before any shipment, the tenderer will have to process to a BIVAC inspection (Bureau inspection valuation assessment and control), without this certificate the goods won't be allowed to be loaded and shipped.
- 7.4. Kamoa will also request a certificate for QA/QC, it will be proceed by an independent company appointed by KCSA, without this certificate the goods won't be allowed to be loaded and shipped.
- 7.5. In the event of problems relating to the manufacturer's warranty, under the terms and conditions defined by the manufacturer, the Service Provider shall process and manage such instances at its expense.
- 7.6. If at any time the Service Provider discovers the presence of any suspicious material it shall immediately contact KCSA for appropriate action.
- 7.7. Similarly, if the Service Provider suspects the presence of any suspicious material it shall immediately contact KCSA for appropriate action.

## **8. HEALTH AND SAFETY.**

- 8.1. Without limiting safety requirements of the Agreement, the Service Provider shall take cognizance of the following safety-related procedures and specifications:
- 8.2. The Service Provider shall provide the necessary safety, health and environmental (SHE) management system in accordance with the Regulations, as applicable;
- 8.3. The Service Provider shall provide or ensure that all sub-contracted issue all personal with protective equipment (PPE) and personal protective clothing (PPC) pertaining to the Services, and ensure that all sub-Service Providers comply with the Regulations.
- 8.4. The Service Provider shall comply with the Regulations throughout performance of the Services.

## **9. SAFETY VIOLATIONS AND REPORTING**

- 9.1. KCSA will have the right to stop any and all of the Services if in KCSA's reasonable opinion it considers that safety of persons or property is at risk. The cost and risk of any such stoppage of Services shall be for the account of the Service Provider.
- 9.2. KCSA will have the right to remove from the Services any of the Service Providers personnel, or any personnel of the Service Provider's sub-Service Providers who in KCSA's reasonable opinion it considers is a risk to the safety of persons or property. The cost and risk of any such removal shall be the sole responsibility of the Service Provider.
- 9.3. The Service Provider shall maintain, and require its sub-Service Providers to maintain, accurate accident and injury



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reports. The Service Provider shall provide to KCSA a copy of all reports that will lead to lost time or injury when onsite.

- 9.4. The Service Provider shall be required to comply with accident reporting in accordance with the requirements set forth in KCSA's Policies.

**10. INDUSTRIAL RELATIONS.**

- 10.1. The Service Provider must pursue a policy of training to ensure that it follows the most efficient work practices.
- 10.2. The Service Provider must advise KCSA immediately of any work stoppages, bans, and limitations on work or other industrial relations difficulties affecting; or which may affect the Service Provider or performance of the Services, and must keep KCSA fully informed of any dispute with the Service Provider's employees.
- 10.3. If industrial relations difficulties of any kind develop that are the result of the existence of any subcontract of the Service Provider which KCSA considers to be detrimental to either the progress of the Services as a whole or the Service Provider's operations, the Service Provider must at the direction of KCSA immediately terminate that subcontract and make other arrangements to perform the obligations under the Agreement which are the subject matter of that subcontract, without in either case KCSA being liable for, nor Service Provider being entitled to, any compensation or payment by reason of doing so.

**11. DESIGNS, SPECIFICATIONS AND INTELLECTUAL PROPERTY**

- 11.1. Any Goods produced or work done according to KCSA's requirement or developed for KCSA at its direction, any Intellectual Property, designs or specifications supplied by KCSA or copies thereof, shall be held by the Service Provider on KCSA's behalf and at KCSA's disposal and shall not be disclosed to any other person[s] without KCSA's prior written consent and all reasonable precautions shall be taken by the Service Provider to protect such confidentiality
- 11.2. The Service Provider agrees to indemnify, defend, protect and hold harmless KCSA, its successors, assignees, customers and users of the Goods/Service/Works from and against any action, claim, suit or demand, cost or expenses arising from or incurred by reason of the use of the Goods/Service/Works.
- 11.3. In the event of any claim being made against KCSA in respect of any of the above points, the Service Provider shall be immediately notified, and the Service Provider shall, with the assistance of KCSA if desired, but at the Service Provider's expense, conduct all negotiations for the settlement of the same or any litigation that may arise. Therefore, in the event of his failure to do so, KCSA shall have the power to suspend payment of any money due to the Service Provider in respect of the Agreement until such claim has been liquidated or withdrawn. Should the money due, or which may thereafter become due, to the Service Provider, or that may have been deposited by the





Service Provider as security in respect of the Agreement, be not sufficient for the purpose of settling any such claim and such claim has not been liquidated or withdrawn at the date when the Agreement would otherwise have been completed, the balance outstanding in respect of the claim shall be a debt due by the Service Provider to KCSA and may be recovered from the Service Provider in any Court of competent jurisdiction.

## **12. ENVIRONMENTAL IMPACT**

- 12.1. The Service Provider shall, ensure that Goods/Service/Works supplied in no way impact on the surrounding environment. This may include environmental barriers or containment measures. The Service Provider shall have in place policies and procedures that address spills or contamination as well as supply material safety data sheets for all chemicals. These items shall be kept on Site at all times and shall be made available for review by KCSA or Service Provider Authorised Officer upon request.
- 12.2. This list of potential environment impacts and issues which may apply to the Goods/Services/Work and/or Site associated with this Agreement is supplied for information and appropriate action. KCSA does not claim that this is an exhaustive list and some hazards may be created at any time particularly in respect to new Goods and processes.
- 12.3. Land Management: erosion, soil degradation, contamination, deforestation, bushfire, disruption of flora and fauna communities, need for rehabilitation due to earthworks, heavy machinery etc.
- 12.4. Water Management: contamination of surface water (fresh), contamination of ground water, pollution of marine environment, pollution of estuarine water, air quality: odours, emission of greenhouse gases, emission of ozone depleting substances, emission of toxic substances, emission of particulate matter.
- 12.5. Noise pollution and vibration: equipment that generates noise at excessive levels, processes that generate excessive vibration.
- 12.6. Aesthetics: visually intrusive temporary structures, scarring of landscape, floating debris in water, litter.
- 12.7. Waste Generation: hazardous waste, recyclable waste, domestic refuse, industrial waste, wastewater.
- 12.8. Dangerous Goods: storage, use, transport, manufacture, disposal.
- 12.9. Energy Use: use of non-renewable energy, consumption of energy.
- 12.10. Resources: numbers of adequately trained/skilled employees, quantity and type of materials input into process, suppliers of inputs, costs.
- 12.11. Product: characteristics e.g., low recyclability, poor quality and durability.
- 12.12. Processes: procedures, operating conditions, alternative Goods/Services/Works practices

## **13. MINIMISATION OF WASTE RESIDUALS**

- 13.1. The Service Provider agrees to assist in waste minimization through better product design and specifically



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through the use of packaging made of recyclable, returnable and recycled material. This is particularly important with respect to consumables. Tenderers are to provide details of:

13.1.2. packaging and pallet disposal capability; and

13.1.3. the composition of waste and the impact of disposal on cost, both environmental and financial.

#### **14. SAMPLES**

14.1. When so requested, Tenderers shall submit a sample indicative of the quality of the item/s offered. The sample must be clearly identified by means of a securely attached label showing the Tenderers name, Tender number, Tenderer's product code, item number and description, and should be delivered within the day/date requested by KCSA; or

14.2. Additional samples may be required during the evaluation process. Tenderer shall make samples available within seven (7) days of request. Failure to submit samples within the specified time may result in non-consideration of the Tender. Note: Tenders should not be included with samples.

14.3. All costs incurred in preparation, delivery and subsequent collection of samples shall be borne by the Tenderer.

#### **15. QUALITY ASSURANCE**

15.1. Tenderers must provide documented details of their quality management systems with their Tender response and agree to routine checking of their processes by appropriate employees from KCSA and independent testing of Goods supplied under the Agreement.

15.2. Unsatisfactory results arising from such inspections and testing of Goods supplied will result in rejection of affected Goods until such time as necessary quality improvements are proven and will lead to cancellation of all or part of the Agreement should necessary quality improvements not be effected within thirty [30] days of being notified of the Specification by KCSA.



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## Annex 1: List of Reagents and schedule

### a) One year Consumption

Designation	Units	From JAN. 22 to APR 22 - Per month	From MAY 22 to DEC 22 - per month	TOTAL
SIBX	t	98.2	196.3	1963.3
AERO 3477	t	17.7	35.5	354.7
FROTHER SF522	t	64.3	128.6	1285.7
SNF 910	t	19.6	39.3	392.7
SNF 45VHM	t	9.5	19.0	190.0

### b) List of Reagents

Item	DESCRIPTOR/OBJECT	TYPE	OTHER CHARACTERISTICS	UNIT OF MEASURE*	EXPECTED YEARLY USAGE	PACKAGING
1	Collector / SIBX	reagent	Sodium Iso Butyl Xanthate / SIBX, Powder, Purity $\geq 90\%$ , Free Alkali $\leq 0.2\%$ , Moisture and Volatiles $\leq 4\%$ .	TONS	1970	Bulk bag - 500
2	Promotor / AERO 3477	reagent	Promotor / AERO 3477, Liquid, Purity (Thiophosphate) $\geq 50\%$ , NaOH content $\leq 1\%$ .	TONS	360	IBC - 1000
3	frother / SF522	reagent	Frother / SF522, Liquid, Purity $\geq 97\%$ ,	TONS	1300	IBC - 900
4	Flocculant / SNF 910SH	reagent	Flocculant / SNF 910SH, Anionic, solid content $\geq 88\%$ , hydrolysis 10%, molecular weight 12 million to 14 million, insoluble content $\leq 3.5\%$ , residual content $\leq 0.1\%$ .	TONS	400	Bulk bag - 750
5	Coagulant / SNF 45VHM	reagent	Coagulant / SNF 45VHM, Cationic, solid content $\geq 88\%$ , hydrolysis 20%, molecular weight 14 million to 16 million, insoluble content $\leq 3.5\%$ , residual content $\leq 0.1\%$ .	TONS	200	Bulk bag - 750
(One Ton = 1000Kg)						



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**SECTION 3**

**STANDARD COMMERCIAL TERMS AND CONDITIONS FOR A DISTRIBUTION AGREEMENT**

**DISTRIBUTION AGREEMENT**

Entered into between

**KAMOA COPPER SA**

1148-6, Avenue De la Libération  
Quartier Golf les Battants Commune de Lubumbashi  
Ville de Lubumbashi  
Province du Haut-Katanga  
République Démocratique du Congo  
Registration Number: 6-118-N37233J  
(hereafter “**KCSA**”)

and

**THE DISTRIBUTOR**



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## 1. DEFINITIONS AND INTERPRETATION

### 1.1 DEFINITIONS

The expressions defined below shall have the meanings assigned to them unless inconsistent with the context of this Agreement:

**Agreement** means the documents comprising the RFQ, the Response to RFQ, the Purchase Order, the Terms and Conditions set out in this document, the Annexures referenced in this document, and documents incorporated by reference by KCSA, as amended from time to time.

**Anti-Corruption Legislation** includes, but is not limited to, the United Kingdom Bribery Act 2010, the U.S. Foreign Corrupt Practices Act, the US OFAC Regulations, the US Export Administration Regulations, the Canadian Corruption of Foreign Public Officials Act 1998, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions 1997, the United Nations Convention against Corruption 2003 and the South African Prevention of Organised Crime Act of 1998, as amended from time to time and any applicable law, rule, regulation and other legally binding measure relating to the prevention of bribery, corruption, fraud or similar or related activities in Canada, South Africa, the DRC or any other relevant jurisdiction.



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Applicable Laws

means all Democratic Republic of Congo laws, regulations, codes, rules, judgments, notices, approvals, orders, decrees, permits, directives, protocols, consents, authorisations, guidelines, orders, policies, generally applied standards and similar requirements by any Authority applicable to the Agreement and/or to the performance and/or subject matter of this Agreement.

Authority

is any government department, local government council, government, provincial, municipal or statutory authority or any other party under a law which has a right to impose a requirement or whose consent is required either in respect of the Agreement or for the Consignor's performance of its obligations under this Agreement.

Confidential Information

means all and any information or data in whatever form (including in oral, written, electronic and visual form and including this Agreement and its terms) relating to the Disclosing Party which by its nature or content is identifiable as, or could reasonably be expected to be, confidential and/or proprietary to the Disclosing Party, including, without limitation, any information relating to the Disclosing Party's existing and future strategic objectives and existing and future business plans and corporate opportunities, trade secrets, technical or scientific information, techniques,



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know-how, operating methods and procedures, details of costs, sources of materials and customer lists (whether actual or potential) and other information relating to the existing and prospective customers of the Disclosing Party; pricing, price lists and purchasing policies; any and all methodologies, formulae and related information in development of the goods by the Disclosing Party; goods, drawings, designs, plans, functional and technical requirements and specifications; intellectual property that is proprietary to the Disclosing Party or that is proprietary to a third party, and in respect of which Disclosing Party has rights of use or possession, information relating to any contracts to which Disclosing Party is a party, any information which is not readily available to a competitor of the Disclosing Party or in the normal course of business; the intellectual property in respect of inventions, market opportunities, or the business or affairs of the Disclosing Party. For purposes hereof the Party disclosing information shall be referred to as the Disclosing Party and the other party shall be referred to as the Receiving Party.

Default

any failure by either Party to comply with its obligations in terms of this Agreement.

DRC

Democratic Republic of Congo.



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Effective Date	the date when KCSA issues a Purchase Order to the Distributor, with a copy of the Agreement, signed by a duly authorised agent of KCSA.
Expiry Date	means the date upon which the Initial Period or any Renewal Period expires in accordance with the provisions of clause 28.
KCSA	Kamoa Copper SA, Registration Number: 6-118-N37233J, a company duly registered and incorporated in accordance with the laws of the DRC, with its principal place of business at 1148-6 Avenue de la Libération, Quartier Golf les Battants, Commune de Lubumbashi, Lubumbashi, Haut-Katanga Province, DRC.
KCSA's Policies	means those policies and procedures of KCSA applicable to staff and suppliers, service providers, contractors and other third parties as amended from time to time.
Labour Code	means law No. 015-2002 of 16 <sup>th</sup> October 2002 establishing the labour code, as modified and supplemented by law No. 16-010 of 15 July 2016.
Mining Code	means Decree No. 038/2003 of 26 March 2003 establishing the Mining Regulation, as modified and supplemented by Decree No. 18/024 of 8 June 2018.





Mining Regulation	means Decree No. 038/2003 of 26 March 2003 establishing the Mining Regulation, as modified and supplemented by Decree No. 18/024 of 8 June 2018.
Party or Parties	the party or parties to this Agreement.
Personnel	means directors, employees, agents, contractors or subcontractors but a reference to KCSA's personnel excludes the Distributor and its personnel.
Purchase Order	a printed, official purchase order form with a unique order number issued to the Distributor by KCSA.
Response to RFQ	The response to the RFQ by the Distributor, which is attached as Annexure A.
RFQ	a request for quotation which may be issued by KCSA, from time to time, which is attached as Annexure B.
Schedule of Rates	is a list setting out the staff, goods and labour rates and any other rates which may be necessary for the execution of the Agreement that will be used to calculate the consideration due to the Distributor. It does not contain any quantities for specific work units.



Site(s)

the area of the Project located approximately 40km west of the town Kolwezi in the Katanga province of the DRC where the Distributor is engaged in executing the Agreement or any ancillary task necessary for the completion of the Agreement and/or where KCSA instructs the Distributor to execute the Agreement.

Subsidiary

a company is a Subsidiary of another company if that other company – holds a majority of the voting rights in it, or is a member of it and has the right to appoint or remove a majority of its board of directors, or is a member of it and controls alone, pursuant to an agreement with other members, a majority of the voting rights in it, or if it is a Subsidiary of a company that is itself a Subsidiary of that other company and a company is to be treated as a member of a Subsidiary even if its shares are registered in the name of (i) a nominee, or (ii) any party holding security over those shares, or that secured party's nominee.

Subcontracting Law

means DRC law No. 17/001 of 8 February 2017 setting out the rules governing subcontracting in the private sector.

Taxes

means any and all taxes, fees, levies, duties and charges (including any related fine, penalty, surcharge or interest) imposed or assessed in



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respect of this Agreement by any government authorities, state or municipality, or any local, state, federal or other fiscal, revenue, customs, or excise Authority, body or official anywhere in the world including income tax, payroll tax, statutory superannuation contributions and workers compensation payments and contributions, withholding tax, sales tax, customs and import duty, excise tax, stamp duty and VAT.

Termination Date	the date when this Agreement is terminated in accordance with its Terms and Conditions.
Terms and Conditions	the Terms and Conditions as set out in this Agreement.
Distributor	the counter party specified in the Purchase Order, with particulars reflected in its Vendor Application Form submitted to KCSA.
VAT	means any value-added tax, goods and services tax or any tax analogous thereto imposed by the DRC.
Working Day	Monday through Friday between the hours 07:30 to 16:30 excluding Saturdays, Sundays and Public Holidays.

## 1.2 Interpretation



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- 1.3 Any reference in this Agreement to a clause is, subject to any contrary indication, a reference to a clause of this Agreement, and a person means any natural or juristic person, firm, company, corporation, government, state, agency or organ of a state, association, trust or partnership (whether or not having separate legal personality).
- 1.4 Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- 1.5 The headings do not govern or affect the interpretation of this Agreement.
- 1.6 If any provision in a definition confers rights, or imposes obligations on any Party, effect is given to it as a substantive provision of this Agreement.
- 1.7 Unless the context indicates otherwise an expression which denotes any gender includes both the others; reference to a natural person includes a juristic person; the singular includes the plural, and the plural includes the singular.
- 1.8 Unless the context indicates otherwise if the day for payment of any amount or performance of any obligation falls on a day which is not a Working Day, that day will be the next Working Day.
- 1.9 The words “including” and “in particular” are without limitation.
- 1.10 Any reference to a document or instrument includes the document or instrument as ceded, delegated, novated, altered, supplemented or replaced from time to time.
- 1.11 A reference to a Party includes that Party’s successors-in-title and permitted assigns.
- 1.12 A time of day is a reference to Kolwezi, DRC time.
- 1.13 The rule of interpretation that, in the event of ambiguity, a contract must be interpreted against the Party responsible for the drafting of the contract does not apply to this Agreement.
- 1.14 Should any provision in a definition be a substantive provision conferring rights or imposing obligations on any Party, then effect shall be given to such provision as if it were a substantive provision in the body of this Agreement.
- 1.15 The Consignor’s standard terms and conditions and/or those contained in the Consignor’s credit application, notwithstanding their reference to or inclusion in any quotation, offer, order, invoice, or otherwise, shall have no application to this Agreement and shall not be binding on KCSA.



- 1.16 The expiration or termination of this Agreement shall not affect such provisions of this Agreement that expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding the fact that the clauses themselves do not expressly provide this.
- 1.17 The Distributor shall be deemed to have based its Response to RFQ and entered into this Agreement of its own interpretation, deduction, inspection and examinations of the RFQ and the Site, and shall be deemed to have satisfied itself before pricing as to the correctness and sufficiency of the rates and/or prices stated in its Response to RFQ, which rates and/or prices shall cover all its obligations under the Agreement, and all matters and things necessary and ancillary for the proper execution of the Agreement.

## **2. WHOLE AGREEMENT**

- 2.1 The Agreement between the Parties comprises the documents listed below, in the following order of precedence:
- 2.1.1 these Terms and Conditions; and
  - 2.1.2 the provisions of any Purchase Order; and
  - 2.1.3 the RFQ;
  - 2.1.4 the Response to the RFQ;
  - 2.1.5 the annexures referenced in this document;
  - 2.1.6 the Vendor Application Form ("Vendor Application Form") completed by the Distributor in connection with its supply of Distribution Stock to KCSA.
- 2.2 This Agreement is the sole record of the Agreement between the Parties and may only be varied or waived in a written, signed document between KCSA and the Distributor.
- 2.3 The Parties agree that the Distributor is an independent contracting Party and that the Agreement does not constitute a contract of agency, representation, employment or partnership with the Distributor. The Distributor shall not incur any liability whatsoever for or on behalf of KCSA.
- 2.4 This Agreement does not govern, *inter alia*, the following:



- 2.4.1 If applicable, private placement services that may be provided to KCSA by the Distributor, in accordance with Article 2 b of the Order, under the terms of which, at KCSA's request, the Distributor would recruit workers in order to make them temporarily available to KCSA, it being specified that the Distributor would be and remain, for the entire duration of their placement with KCSA, the sole employer of the workers concerned; and
- 2.4.2 such potential services would be covered by a separate contract between the Parties, under the terms of which no remuneration would be due to the Distributor by KCSA for activities related to the search, selection and recruitment of the workers concerned.
- 2.5 The Distributor, who is deemed to be a subcontractor within the meaning of Article 1.48 of the Mining Code and Article 2 of the Mining Regulation, shall act, pursuant to the Agreement, as "principal enterprise" or "principal contractor" within the meaning of Article 3.5 of the Subcontracting Law, on behalf of KCSA.

### **3. DISTRIBUTION STOCKS INVENTORY LEVEL**

- 3.1 The goods forming part of the Distribution Stock to be made available by the Distributor to KCSA is set out in Annexure "B" to this Agreement. The Parties may amend Annexure "B" annually, and at least four (4) months before the anniversary of the Effective Date and thereafter four (4) months prior to every subsequent twelve (12) month anniversary of the Effective Date. The Consignor's Monthly Management Fee and other operational costs, in relation to the Distribution Stock, are set out in Annexure "B" to this Agreement.
- 3.2 The inventory level of Distribution Stock shall not at any time be less than the equivalent of two (2) to a maximum of six (6) months demand. KCSA may communicate adjustments to such demand level to the Distributor from time to time, allowing a reasonable lead time for replenishment in the event that demand levels are increased.



- 3.3 The Distributor shall be free to ship for placement in Distribution Stock any replenishment quantity (hereafter “Replenished Distribution Stock”), as shall be determined by the Distributor, provided that KCSA may from time to time with a minimum of one (1) weeks’ notice restrict availability of storage space and provided further that in any event, any quantity delivered in excess of six (6) months demand shall be stored at the Consignor’s risk and cost. For the purposes of this clause, excess stock shall be defined by date of arrival at the final destination.
- 3.4 Unless otherwise agreed in writing, all Goods shall be sold FCA, KCSA’s Johannesburg Warehouse or such other location (as specified in the relevant Purchase Order), in accordance with Incoterms 2010 or its successor, as amended by these Terms and Conditions, and shall be unloaded at the final destination indicated by KCSA to the Distributor (“delivery” and all variations thereof shall have similar meanings). If no place for delivery is specified, delivery can be made only at the place where KCSA usually takes delivery of such goods. The Distribution Stock will be delivered on Working Days between 09:00 and 15:00.
- 3.5 After customs clearance by KCSA, the Distributor shall provide transportation of the Distribution Stock to the final destination, being the Site. The Distributor shall bear the cost of delivery to the final destination.

#### 4. **STORAGE**

- 4.1 KCSA shall provide at no cost to the Distributor suitable facilities for the storage of Distribution Stock either internally or at a leased premises.
- 4.2 The Distributor shall manage the Distribution Stock according to first-in first-out principles, and shall record all movements in accordance with good business practice.

#### 5. **INVENTORY MANAGEMENT**



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- 5.1 On or before the 25<sup>th</sup> day of each month, the Distributor will carry out a stock take of all Distribution Stock. A representative of KCSA shall be entitled to attend any such stock take. The Distributor shall submit a list evidencing its stock take in terms hereof to KCSA on a monthly basis.
- 5.2 KCSA shall insure the Distribution Stock against damage, loss and third party liability claims associated while in the storage facility with the interest of the Distributor being noted on the policy.
- 5.3 KCSA will notify the Distributor by electronic mail of any defects detected in goods withdrawn by KCSA when they are detected in the normal course of business.
- 5.4 In accordance with the foregoing paragraph, any inspection and/or attendance of KCSA at any stock take, shall be too limited to quantity verification, visual inspection of the packaging for visible damage such as damage in transit and an identity check by means of comparison of shipping documents with order documents and more detailed tests, need not be performed.

**6. PRICE AND REMOVAL OF PRODUCTS FROM THE DISTRIBUTION STOCK**

- 6.1 KCSA shall withdraw goods from the Distribution Stock based on its requirements without the need for prior notification. KCSA shall notify the Distributor, in writing, from time to time, confirming which of its employees are authorised to make withdrawals from the Distribution Stock.
- 6.2 The price of withdrawn goods and labour rates shall be as agreed in Annexure "A", as amended from time to time. For the avoidance of doubt and notwithstanding any provisions contained in this Agreement to the contrary, the price of any new goods added to Annexure "A" and/or ordered through a Purchase Order, will only be subject to adjustment during the subsequent twelve (12) month anniversary Annual Pricing Review, after it's addition to Annexure "A" or supply in terms of a Purchase Order.
- 6.3 After the twelve (12) month anniversary of the Effective Date, the Parties shall undertake an annual pricing review based on material and component costs ("Pricing Review Criteria") beginning on the first business day that is no more than thirty (30) days before the end of each subsequent twelve (12) month anniversary of the Effective Date ("Annual Pricing Review"). Any





price adjustments agreed to by the Parties in an Annual Pricing Review shall become effective when agreed to in writing in an amendment to Annexure "A". The Distributor shall make available to KCSA all supporting documentation necessary to calculate any pricing adjustments including material and component costs and will cooperate with KCSA in negotiating any pricing adjustments. For clarity sake, any future pricing adjustments resulting in an increase to KCSA will be limited to situations where the underlying documented costs to the Distributor increased.

- 6.4 In the event that the wage payable to any of the Consignor's Personnel is increased at any time, or the Distributor requires an increase to its Monthly Management Fee or operational costs, the Distributor shall give KCSA written notice of any such increase at least ninety (90) days before the Distributor is obliged to pay the relevant increase. If there is any dispute between the Parties concerning the reasonableness of such increase, such dispute shall be determined by KCSA's auditors acting as experts and not as arbitrators and whose decision shall be final and binding on the Parties provided such auditors shall be obliged, in making such determination, to have regard to whether the price or rate in respect of which the increased cost are paid have been supplied at a fair market cost and to call evidence from such persons as the auditors may regard as being suitably qualified to assist them in making their determination.
- 6.5 Notwithstanding the provisions of this clause 6, should KCSA at any time during the term of this Agreement receive an offer for the supply of the Distribution Stock of a similar quality by a responsible, unrelated supplier at a price and on terms that offer a total lower cost to KCSA, than that offered by the Distributor, KCSA shall notify the Distributor of such offer, and the Distributor shall be afforded the opportunity, for a period of thirty (30) days from the date of this notification to either match the competitive offer or decline to do so. Should the Distributor decline to meet the competitive offer made to KCSA, KCSA may exercise its right to terminate this Agreement on thirty (30) days prior written notice to the Distributor.
- 6.6 Subject to KCSA obtaining the prior written approval from the relevant governmental authorities, the Distributor may recall from the Distribution Stock, any goods for which it has an urgent requirement. Any goods so recalled by the Distributor shall be replaced in the KCSA's Distribution Stock, as soon as possible.



## 7. REPORTING AND INVOICES

- 7.1 For deliveries the Distributor shall advise KCSA by means of an electronic mailed *pro forma* invoice of the goods to be dispatched from time to time. This *pro forma* invoice shall be used for customs clearance and receiving purposes only and will not be subject to payment.
- 7.2 The Distributor will provide a report setting out the withdrawal of goods on a daily basis. The report shall include a reference number, a list all transactions and the actual stock level information for each item.
- 7.3 The Distributor will provide a monthly report setting out the replenishment of Replenished Distribution Stock. The report shall include the goods part number and the actual stock level information for each goods.
- 7.4 The Distributor shall charge the goods drawn by KCSA on the basis of the transactions reported and the relative invoice to be received by KCSA before the end of month following that in which the last reported transaction was reported. All such charges and/or transactions must be accompanied by picking slips and delivery notes (as applicable), signed by KCSA's duly authorised representative. These documents are a requirement for any payment to become due to the Distributor.
- 7.5 After the expiry of a period of twelve (12) month's after the anniversary of the Effective Date, and within thirty (30) days after the end of each subsequent twelve (12) month anniversary of the Effective Date, KCSA and Distributor shall perform a stock take on obsolete goods forming part of the Distribution Stock ("Annual Remaining Stock"). For the avoidance of doubt it is recorded that excluded from Annual Remaining Stock will be Replenished Distribution Stock, which were replenished during the relevant preceding twelve (12) month period. The Distributor shall charge KCSA for the Annual Remaining Stock, on the basis of a written statement and the relative invoice shall be received by KCSA before the end of the month following the provision of the written statement and invoice.



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- 7.6 Should KCSA dispute any item on the Consignor's invoice, it shall notify the Distributor in writing of such dispute within seven (7) days of date of receipt of the invoice. The Distributor shall convene a meeting between its operational staff and the operational staff of KCSA within 7 (seven) days of the date of the aforementioned notice. If the Parties are unable to resolve the dispute at this meeting, KCSA shall be obliged to effect payment of the undisputed items in the invoice, within 30 (thirty) days of date of receipt thereof. The issue of the disputed items shall then be dealt with in accordance with the dispute resolution mechanisms provided for in this Agreement.
- 7.7 Subject to compliance with this clause 7, payment shall be made by EFT into the account nominated in the Vendor Application Form. The consideration payable to the Service Provider shall be payable within 30 days of date of monthly statement.

## 8. **OWNERSHIP OF THE DISTRIBUTION STOCK**

- 8.1 Without prejudice to any rights set out in this Agreement, title in the Distribution Stock passes to KCSA, for customs clearance purposes, when the Distribution Stock is delivered as provided for in terms of clause 3.4 and/or as set out in a Purchase Order.

## 9. **PURCHASE ORDERS**

- 9.1 KCSA may from time to time order additional goods from the Distributor, which for the avoidance of doubt are goods not listed in Annexure "A". All such orders shall be subject to the provisions set out in this clause 9.
- 9.2 Purchase Orders will be system generated and placed by KCSA electronically by electronic mailing of a copy thereof to the Distributor, and may contain details of the goods ordered (including the specification).
- 9.3 Should there appear to be any discrepancy or ambiguity in description of quantities in a Purchase Order, the Distributor shall immediately submit the matter to KCSA's Procurement Manager for decision before proceeding to execute the Purchase Order.
- 9.4 Amendment to the Purchase Order shall be subject to KCSA's prior written approval and the Consignor's acceptance. No amendment to a Purchase Order will be valid unless agreed to in writing by both Parties and incorporated in a revised and duly issued Purchase Order.



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- 9.5 Purchase Orders may be cancelled by KCSA at any time provided that KCSA shall pay the Distributor for costs reasonably incurred up to the date of cancellation. The Distributor will use all reasonable and practical endeavours to mitigate its losses in this regard.
- 9.6 The price for the Distribution Stock shall be the price specified in the Purchase Order. Unless expressly stated to the contrary in the Purchase Order:
- 9.6.1 the Price shall be exclusive of VAT and shall include standard packaging, delivery and installation;
- 9.6.2 no additional charges of whatever nature shall be recoverable from KCSA unless the Distributor has, prior to the execution of the Purchase Order, obtained KCSA's agreement in writing on such additional charges.
- 9.6.3 Price amendment shall be subject to agreement and acceptance by KCSA in writing. Should the Purchase Order be issued on a basis of "price to be advised or agreed" or "estimate price", "subject to change" or any other similar description, the Purchase Order shall stipulate the agreed terms applicable in this respect. KCSA may demand, before payment is made, that the price computation be substantiated by the Distributor.
- 9.7 Subject to clause 7, no invoice shall be binding on KCSA unless supported by a valid Purchase Order issued by KCSA.

## **10. WARRANTIES AND UNDERTAKINGS BY DISTRIBUTOR**

- 10.1 The Distributor warrants that the Distribution Stock shall (unless otherwise stated in the Purchase Order) be new, merchantable, of agreed quality and description, in working order, fit for their intended purpose and free from contaminants, defects in materials, workmanship and design and shall be usable and durable for a reasonable period of time.
- 10.2 The Distributor warrants that the Distribution Stock are not subject to any lien, hypothec, pledge, mortgage, notarial bond, judicial attachment or other encumbrance and that the Distributor is entitled to transfer ownership thereof to KCSA.



- 10.3 The Distributor warrants that there are no circumstances, facts or reasons which are known, or ought to be known by the Distributor, which should have been disclosed to KCSA and which would have influenced the Consignor's decision in appointing the Distributor to supply the Distribution Stock.
- 10.4 The Distributor is a Congolese law legal entity with Congolese financing, in the meaning of Article 1.48 of Law No. 007/2002 establishing the Mining Code, as modified and supplemented by Law No. 18/001 of 09 March 2018 (hereafter referred to as the "Mining Code"), is in good standing with all Democratic Republic of Congo administrations and commits to remain so for the full term of the Agreement.
- 10.5 The Distributor holds all permits and authorisations, of any nature whatsoever, required to perform in full compliance with Applicable Laws and regulations, and commits to maintain, as needed, the validity of said permits and authorisations for the full term of the Agreement, and its performance is not in breach of any Applicable Laws or regulation as of the Effective Date.
- 10.6 The Distributor, who is a contractor in the meaning of the Mining Code, shall act, as part of the Agreement, as a "main contractor", in the meaning of Law No. 17/001 of 8 February 2017 establishing the rules governing subcontracting in the private sector (hereafter referred to as the "Subcontracting Law"), on behalf of KCSA, who will, for its part, act as the "the client" in the meaning of the Subcontracting Law.
- 10.7 The Distributor agrees to strictly comply, for the full term of the Agreement, with all applicable provisions of the Subcontracting Law, as specified, *inter alia*, in Decree No. 18/019 of 24 May 2018 establishing implementation measures for the Subcontracting Law. The Parties agree that this is an essential obligation of the Distributor.
- 10.8 The Distributor agrees, for the full term of the Agreement, to communicate to KCSA, at the latest on 31 December of every year, the complete list of all its subcontractors, in the meaning of the Subcontracting Law, involved in the performance of the Consignor's obligations towards KCSA.



10.9 In order for Congolese nationals to acquire the technical expertise and qualifications necessary to perform certain activities, the Parties agree to cooperate in good faith, for the duration of the Agreement, within the specialised training structure put in place by KCSA, to the activities thereof in the Consignor's field of expertise, with particular attention to activities for which local expertise is lacking. KCSA may, at any time, verify, directly or indirectly, through any contractor designated by KCSA that the Distributor complies with these obligations.

10.10 Without prejudice to the other possible causes and modalities for termination of the Agreement arising out of Applicable Laws and regulations at the time, KCSA will be entitled, in the event of the non-performance by the Distributor of all or part of its essential obligations, after a formal demand remains unheeded for more than thirty (30) business days following the receipt thereof by the Distributor, to unilaterally terminate the Agreement, as of right, by means of simple notification to the Distributor of its decision to unilaterally terminate the Agreement, without any further formality and without the exercise of this right entitling the Distributor to claim damages or any other payment, with the exception of the payment of invoices not disputed by KCSA relating to supplies actually delivered or services actually provided by the Distributor in accordance with the Agreement, until the date on which termination takes effect.

## 11. **CONSIGNOR' S GENERAL OBLIGATIONS**

11.1 The Distributor shall:

11.1.1 maintain regular contact with the representatives of KCSA at the sites at which it is required to provide the Distribution Stock for the duration of this Agreement; and

11.1.2 take all necessary steps to ensure that its staff do not engage in any demonstrations, or other disorderly or riotous conduct on or near the perimeter of the premises of KCSA; and

11.1.3 refrain from any conduct which may be detrimental to the image, good name and reputation of KCSA; and

11.1.4 supply KCSA with any information or documentation relating to the Distribution Stock which it requires within a reasonable time, including any reports which may be requested from time to time in the manner, format and frequency required; and



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- 11.1.5 take all reasonable steps to ensure that the Distribution Stock are delivered timeously without any undue delay acknowledging that time is of the essence in the performance of its obligations under this Agreement.

## 12. LIQUIDATED DAMAGES

- 12.1 If at any time an event of Default has occurred and is continuing, due to the actions or bad faith of the Distributor, KCSA may claim liquidated damages, as follows:

Days late	Amount
Day 1 – 4	0.02% of total Purchase Order value/day;
Day 5 – 8	0.06% of total Purchase Order value/day;
Day 9 – 12	0.10% of total Purchase Order value/day;

- 12.2 Thereafter 0.20% of total Purchase Order per day, up to 15% of the total value of the Purchase Order. The aforementioned will not affect the effectiveness and performance of this Agreement.

## 13. SECURITY INTERESTS



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- 13.1 The Distributor is entitled following notice of not less than one hundred and twenty (120) Working Days to freely dispose of the Distribution Stock at any time, and may direct KCSA to cease withdrawals and/or removal of Distribution Stock by written notice with immediate effect provided that this shall be without prejudice to any rights enjoyed by KCSA in terms of this Agreement. Disposal of the Distribution Stock shall however be subject to the Parties conducting a stock take, reimbursement of all customs duties by the Distributor to KCSA, and authorisation from the relevant Authority to the disposal of the Distribution Stock. Subject to these conditions being met, KCSA shall tolerate the measures necessary for the Distribution Stock to be transported back to the Distributor, and will grant free access for the transportation of the Distribution Stock, on presentation of written instructions for this purpose by any agent or contractor of the Distributor for this purpose.
- 13.2 Notwithstanding the foregoing the Distributor shall not be entitled to exercise any of the rights unless KCSA is in material breach of its obligations under this Agreement and has not remedied such breaches that are capable of remedy within thirty (30) working days of being called upon to remedy.
- 13.3 If an event of Default occurs, KCSA may, without limitation of its rights, set off amounts which the Distributor owes to it against any amounts which it owes to the Distributor (whether hereunder, under any other agreement or contract or otherwise and whether or not then due). Any net amount due hereunder shall be payable within thirty (30) business days of the Termination Date.

#### **14. OCCUPATIONAL HEALTH AND SAFETY**

- 14.1 KCSA and the Distributor agree, that the following arrangements and procedures apply between them to ensure that the Distributor complies with KCSA's safety requirements. The Distributor warrants that it is familiar with all legislation relevant to KCSA and the Agreement, which includes but shall not be limited to:
- 14.1.1 DRC laws and legislation; and
  - 14.1.2 The Mining Regulations; and
  - 14.1.3 The Mining Code; and
  - 14.1.4 The Subcontracting Law; and





- 14.1.5 Republic of South Africa Explosives Act 26 of 1956; and
- 14.1.5 Republic of South Africa Mine Health and Safety Act No. 29 of 1996 (MHSA) wherever the DRC Mining Regulations and mining codes do not provide guidance; and
- 14.1.5 South African national standards (SANS); and
- 14.1.6 International standards (IEC, DIN, FEM, CEA, ISO); and
- 14.1.7 KCSA specifications and standards, where available; and
- 14.1.8 Mining industry specifications and standards where KCSA specifications and standards are not available.  
  
(hereafter individually and collectively referred to as the “Regulations”)
- 14.2 The Distributor undertakes to acquaint its employees, agents, consultants and subcontractors with all relevant provisions of the Regulations.
- 14.3 The Distributor undertakes that all relevant duties, obligations and prohibitions imposed in terms of the Regulations will at all times be fully complied with.
- 14.4 The Distributor accepts sole liability for such due compliance with the relevant duties, obligations and prohibitions imposed by the Regulations, and expressly absolve KCSA from itself being obliged to ensure compliance with any of the aforesaid duties, obligations and prohibitions.
- 14.5 The Distributor agrees that any duly authorized employee of KCSA is entitled, although not obliged, to take such steps as may be necessary to ensure that the Distributor has complied with the undertakings mentioned in clause 14.1, 14.2 and 14.3 above, which steps may include without limitation, the right to inspect any records held by the Distributor.
- 14.6 The Distributor is obliged to report forthwith to KCSA any investigation, complaint or criminal charge that may arise as a result of non-compliance with the Regulations, pursuant to work performed in terms of this Agreement, and must, upon written demand, provide full details in writing to KCSA of such investigation, complaint or criminal charge.
- 14.7 The Distributor must, on demand by KCSA appoint a safety coordinator to liaise with KCSA on safety matters and inform KCSA in writing of the identity of the safety coordinator.



- 14.8 In addition and without prejudice to its other rights in terms of this Agreement or in law, KCSA may at any time require the Distributor to remove from Site any person against whom KCSA has reasonable objection and/or to immediately stop work if, in the reasonable opinion of KCSA, the Distributor has breached any provision of this clause 14 and KCSA may recover from Distributor any loss suffered as a result of the cessation of work, including costs of having the work performed by a third party.
- 14.9 In addition to the remedies set out above, KCSA may elect to impose penalties upon the Distributor as set out below:

Item	Deficiency	Per offence
1	Poor Housekeeping report by KCSA's Safety Officer or designate.	USD2 000.00 (Two thousand United States Dollars).
2	Non-compliance with any other obligations imposed on the Service Provider in terms of the Agreement, but which does not resort under 1.	USD5 000.00 (Five thousand United States Dollars) or termination of the Agreement.
3	Medical Treatment Injury	2% of the monthly contract value (minimum of USD5 000.00 (Five thousand United States Dollars)). Whichever is the least.
4	Lost Time Injury	15% of monthly contract value (minimum of USD10 000.00 (Seven thousand five hundred United States Dollars)). Whichever is the least.

Before a penalty is imposed in terms of the Schedule of Deficiencies and Penalties, KCSA will notify the Distributor, in writing, stating reasons and / or details of the Consignor's conduct which will be penalized. Within 1 (one) week of receipt of these reasons the Distributor shall present reasons to KCSA, in writing, indicating either the Consignor's acceptance of the penalty or reasons why the Distributor believes the penalty should not be imposed by KCSA. KCSA notifies its decision with regards to the imposition of the penalty to the Distributor within 1 week of receipt of the aforementioned reasons. If the Distributor does not deliver a notice of acceptance and / or rejection with reasons within the 1 (one) week stipulated in this clause, the penalty will be deemed accepted by the Distributor.

## 15. INDEMNITY



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15.1 The Distributor indemnifies and absolves KCSA from any claims, damages, losses and any other liability (whether jointly or individually) arising from any cause whatsoever or based on any ground of liability (including liability without fault) to the extent that such liability is attributable, whether wholly or in part, to any defect or deficiency in any of the Distribution Stock supplied by the Distributor or is due to the Consignor's failure to comply strictly with the provisions of this Agreement and/or Applicable Laws. This indemnity shall specifically apply in respect of any claims arising from unsafe, defective, contaminated, hazardous or deficient goods supplied in terms of this Agreement.

## 16. ETHICAL BUSINESS PRACTICES

16.1 KCSA is committed to conducting its business ethically and to achieving and maintaining the highest standards of corporate governance. KCSA requires all of its business partners, consignors, vendors, contractors and service providers, who play an important and valued role in its continuing business success, to behave ethically and to avoid engaging in corrupt business activities. KCSA's requirements are contained in the documents listed below, which are available on request.

16.1.1 Ivanhoe Mines "Companion Booklet to the Code of Business Conduct and Ethics Providing a Guide and General Summary of the Foreign Corrupt Practices Act (USA), Corruption of Foreign Public Officials Act (Canada), Bribery Act (UK), Prevention and Combating of Corrupt Activities Act (South Africa), and Organization on Combating Bribery of Foreign Public Officials and International Business Transactions" (2014-02 IVN Companion Booklet); and

16.1.2 Ivanhoe Mines "Code of Business Conduct and Ethics" (2014-02 IVN Business Conduct); and

16.1.3 Ivanhoe Mines "Corporate Disclosure, Confidentiality and Securities Training Policy" (2014-02 IVN Corp Discl); and

16.1.4 Ivanhoe Mines "Our Corporate Citizenship Statement of Values and Responsibilities" (2014-02 IVN Corp Citizenship).

16.2 The Distributor undertakes to comply with the above and all Applicable Laws and specifically all applicable Anti-Corruption Legislation.



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- 16.3 The Distributor shall not give or offer to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or any other thing of value for obtaining favourable treatment or taking any action for the purpose of influencing any act or decision of such official or of the government to obtain or retain business, or to direct business to any person.

**17. GIFTS AND ENTERTAINMENT**

- 17.1 Save for gifts of minimal value, KCSA discourages the exchange of gifts between the Parties. The prior written approval of KCSA is required for the exchange of significant gifts between KCSA, its employees, representatives or agents and the Distributor.

**18. PRIVACY AND DATA PROTECTION**

- 18.1 The Distributor shall at all times during the performance of its obligations in terms of this Agreement ensure that:
- 18.1.1 no data collected during the supply of the Distribution Stock is sold, disclosed, commercially exploited, or used in any way other than as expressly authorised by KCSA; and
- 18.1.2 ensure that it processes data for only the express purpose for which it was obtained.

**19. INTELLECTUAL PROPERTY RIGHTS**

- 19.1 The Distributor warrants that its supply of Distribution Stock to KCSA does not infringe any intellectual property rights and hereby indemnifies and holds harmless KCSA against any loss, damages or expense sustained by KCSA as a consequence of any breach of this warranty.
- 19.2 Any and all intellectual property owned, developed or acquired by a Party prior to this Agreement coming into effect shall remain the sole and exclusive property of the Party who is the lawful proprietor thereof and any and all rights of the Parties in terms of this Agreement shall be subject to the other Party's intellectual property rights.
- 19.3 Any intellectual property made, created or discovered by the Distributor in the course and scope of this Agreement in connection with or relating to the business of KCSA, shall be disclosed to KCSA and shall belong to and be the absolute property of KCSA.



## 20. CONFIDENTIALITY AND PUBLICITY

- 20.1 Notwithstanding the expiry or termination of this Agreement, neither Party ("the receiving Party") shall at any time after the Effective Date disclose to any person or use in any manner whatever the other Party's Confidential Information, provided that the receiving Party may disclose the other Party's Confidential Information in the following circumstances:
- 20.1.1 to the extent required by law (other than in terms of a contractual obligation of the receiving Party) or as directed by any Authority. The Party required to make such disclosure must inform the other in writing prior to any such disclosure; or
- 20.1.2 to, and permit the use thereof by, its employees, agents, consultants, representatives, professional advisors and sub-contractors to the extent strictly necessary for the purpose of implementing or enforcing this Agreement or obtaining professional advice or conducting its business, it being specifically agreed that any disclosure or use by any such persons of such confidential or other information for any other purpose shall constitute a breach of this clause by the receiving Party.
- 20.2 In the performance of this Agreement, the Parties may disclose to each other certain materials, information, data, techniques and procedures which relate to each other's' business which the Parties agree to keep confidential and will confine such materials, information, data, techniques and procedures only to those persons, if any, on a "need to know" basis.
- 20.3 Neither Party will use the name of the other, nor of any Party to this Agreement in publicity releases or advertising, nor for other promotional purposes, without securing the prior written approval of the Parties concerned.
- 20.4 The provisions of this clause shall cease to apply to any Confidential Information of a Party which:
- 20.4.1 is or becomes generally available to the public other than as a result of a breach by the receiving Party of its obligations in terms of this Agreement; or
- 20.4.2 is also received by the receiving Party from a third party who did not acquire such Confidential Information subject to any duty of confidentiality in favour of the other Party; or
- 20.4.3 was known to the receiving Party (having not breached any confidentiality obligations) prior to receiving it from the other Party.



- 20.5 Each of the Parties shall procure that those of their authorised representatives and/or advisors which have access to Confidential Information furnish the other Party, if so required by the other Party, an undertaking in respect of confidentiality of such Confidential Information on the same terms as set out in this clause.
- 20.6 Save as provided in this Agreement or otherwise agreed between the Parties, neither Party shall release any information to the public or media in respect of any issue affecting KCSA or the Agreement.
- 20.7 Both Parties' obligations in terms of this clause will survive the expiry or termination of the Agreement, for a period of five years.
- 20.8 The Distributor shall:
- 20.8.1 comply with all Applicable Laws and directives or instructions of Authorities when performing its obligations under this Agreement and the conditions of all authorisations;
- 20.8.2 comply with all the relevant guidelines issued by Authorities and relevant KCSA Policies in respect of the Site or the performance of the Agreement and its other obligations under this Agreement;
- 20.8.3 promptly give KCSA copies of all relevant documents issued by Authorities.

## **21. AUDIT**

- 21.1 KCSA may inspect and audit the facilities and premises of the Distributor for any purposes associated with the Agreement, at any time during normal business hours on reasonable notice to the Distributor to measure its compliance with Applicable Laws and/or the Agreement.

## **22. BREACH**

- 22.1 In the event of either Party breaching any of its obligations under the Agreement, and such Party failing to remedy such breach within a period of thirty (30) days of receipt of written notice from the aggrieved Party calling upon it to do so, the aggrieved Party shall be entitled without further notice to:
- 22.1.1 cancel the Agreement and/or cancel the Purchase Order; and



- 22.1.2 claim specific performance, in either event without prejudice to the aggrieved Party's rights to claim damages or to enforce any other remedy to which it may be entitled whether in terms of the Agreement or in law.
- 22.2 In addition KCSA shall be entitled to cancel the Agreement and/or any Purchase Order forthwith if:
  - 22.2.1 the Distributor commits a breach of the Agreement which cannot be rectified; or
  - 22.2.2 the Distributor is guilty of any act of fraud, bribery, corruption, intentional misrepresentation or contravention of the documents listed in clause 16; or
  - 22.2.3 during the course of supplying the Distribution Stock, the Distributor contravenes the provisions of any Applicable Law; or
  - 22.2.4 The Distributor admits its inability to pay its debts generally as they become due, or otherwise acknowledges its insolvency, makes an assignment for the benefit of its creditors, or petitions or applies to any tribunal for the appointment of a receiver or agent for it or for any substantial part of its property, or commences any proceedings relating to it under any insolvency reorganization, insolvency arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction whether now or hereafter in effect, or by any act indicates its consent to, approval of, or acquiescence in, any such proceeding for it or for any substantial part of its property or an effective resolution for the winding up of the person is passed; or



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- 22.2.5 a court or other government Authority having jurisdiction issues a decree for the winding up, liquidation or dissolution of the Distributor or adjudges the Distributor to be insolvent, or any court or other government Authority having jurisdiction issues a decree or order granting any relief or remedy sought in any petition or other legal proceeding for the reorganization, readjustment of debt, arrangement, composition or similar relief in respect of the Distributor under any applicable law whether now or hereafter in effect, or any receiver, receiver and manager, custodian, liquidator, agent in bankruptcy (or any other person with similar powers) is appointed for all or any material part of the property of the Distributor, unless the Distributor is actively and diligently contesting such proceedings and such proceedings are lifted or stayed within 30 (thirty) days of their commencement; or
- 22.2.6 proceedings are commenced for the dissolution, liquidation or winding up of the Distributor unless such proceedings are being actively and diligently contested in good faith by the Distributor and are stayed within 30 days of being commenced; or
- 22.2.7 an analogous event to any of the foregoing in any applicable jurisdiction;
- 22.3 However, in respect of an insolvency event of the kind contemplated by the paragraphs above, an insolvency event will not arise where the purpose of the event is for a solvent reconstruction, amalgamation, merger or consolidation approved by KCSA.
- 22.4 In the event of any legal proceedings against the Distributor, KCSA shall be entitled to recover its legal costs on an attorney-and-client scale.

## **23. FORCE MAJEURE**

- 23.1 "Force Majeure Event" means an event that prevents or delays a Party from being able to perform an obligation other than the payment of money under this Agreement, where such event would constitute force majeure, such as wars, insurrections, acts of God, governmental actions or controls, water restrictions or other causes beyond the control of a Party.
- 23.2 Should any Party be prevented by reason of Force Majeure from performing its obligations in terms hereof, then such failure shall not be regarded as a breach of its obligations in terms hereof provided that:



- 23.3 the Party hereto subject to Force Majeure shall give prompt notice to the other Party hereto of the nature and estimated duration of the Force Majeure concerned; and
- 23.4 the Parties hereto shall co-operate and collaborate together and use all reasonable efforts to overcome the Force Majeure concerned and/or nullify its effect; and
- 23.5 any suspension of performance within the provisions of the above shall be limited to the period during which such inability shall exist and the period of this Agreement shall be interrupted by the period of such suspension.
- 23.6 If the aforementioned inability substantially or permanently prevents the continued performance by either Party of its obligations in terms of this Agreement for a period exceeding ninety (90) consecutive days, then either Party shall be entitled, by giving notice in writing, to terminate this Agreement in respect of any of its obligations still to be performed hereunder.
- 23.7 Should the Distributor exercise its right to terminate the Agreement as provided for in terms of this clause 23, the Parties shall meet with their respective clearing agents to agree on a way to return the Distribution Stock held by KCSA to the Distributor.

**24. DOMICILIUM CITANDI ET EXECUTANDI**

- 24.1 Any notice or communication in terms of this Agreement:
- 24.1.1 Shall be given in English and in writing. For the purposes of the Agreement, "writing" means electronic mail that have been acknowledged by the recipient. Oral Agreements, notices or instructions are not binding on either Party; and
- 24.1.2 Must be marked for the attention of the Parties respective representatives and sent by electronic mail to the address below, which addresses the Parties select as their respective *domicilium citandi et executandi*:



Distributor:  
Attention:  
Telephone no.:  
Electronic mail address:

KCSA:  
Attention:  
Tel number:  
E-mail address:

- 24.2 Either Party may change its address to any other valid electronic mail address. Such change will only take effect upon receipt or deemed receipt of such notice by the other Party.
- 24.3 Any notice or communication shall if sent by e-mail to the selected e-mail address of the addressee, be deemed to have been received on the first business day following the date on which it has been transmitted from the information system under the control of the sender.
- 24.4 Any written notice or communication which has actually been received by a Party shall be regarded as sufficient notice even if it has not been sent in the manner or to the address provided for above.

## **25. CESSION AND SUB-CONTRACTING**

- 25.1 The Distributor shall not, without the prior written consent of KCSA:
- 25.1.1 sub-contract any of its obligations; or
- 25.1.2 cede or assign any of its rights or obligations in terms of this Agreement (including but not limited to, the right to receive payment from KCSA).
- 25.2 Notwithstanding any such consent, the Distributor shall at all times be liable for the acts or omissions of its employees, agents, sub-contractors, cessionary, assigns or any other associated party utilised by it, as if they had been acts or omissions of the Distributor.
- 25.3 Any practice designed to interpose a third party or to introduce a third party in a transaction between KCSA and the Distributor, in the absence of express consent from KCSA, shall be deemed to be a deliberate misrepresentation on the part of the Distributor and shall constitute a material breach of the Agreement.



**26. TERMINATION FOR CONVENIENCE**

26.1 The Agreement and/or any Purchase Order may be terminated by KCSA at any time, upon notice in writing, provided that KCSA shall pay the Distributor for costs reasonably incurred up to the date of cancellation. The Distributor will use all reasonable and practical endeavours to mitigate its losses in this regard.

**27. GENERAL**

27.1 The law of the Democratic Republic of Congo shall govern this Agreement. The United Nations Convention on the International Sale of Goods shall not apply to this Agreement.

27.2 No alteration or variation or agreed cancellation of this Agreement shall be of any effect unless it is recorded in writing and signed by both the Parties.

27.3 This Agreement constitutes the whole Agreement between the Parties in regard to the subject matter thereof and no warranties or representations of any nature whatever other than as set out in this Agreement read with its appendices have been made or given by any of the Parties.

27.4 No relaxation or indulgence which any Party may show to any other Party to this Agreement shall in any way prejudice or be deemed to be a waiver of any Parties' rights hereunder.

27.5 In the event that any provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be deemed to be deleted from this Agreement, while the remaining provisions of this Agreement will be unaffected and continue in full force and effect.

27.6 Unless otherwise agreed in writing by KCSA, the Distributor and its Personnel shall have no interest in nor receive remuneration in connection with any of the Agreement except provided for in the Agreement.

27.7 This Agreement supersedes any previous oral or written agreements or arrangements between the Parties relating to the matters contained in this Agreement and shall be the entire contract between the Parties.

27.8 The Parties shall carry out their respective obligations, whether express or implied, in a spirit of mutual trust, co-operation and good faith including, ensuring that each Party will not wilfully or negligently prejudice the interests and/or rights of the other Party under the Agreement or at law.



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- 27.9 The Distributor undertakes to conduct its affairs in connection with the carrying out of the Agreement, and its relationship with KCSA, in good faith and in the best interests of KCSA.
- 27.10 The Distributor hereby undertakes to not directly or indirectly, through any act or omission, allow itself to be put in a position where a conflict of interest could arise between its position *vis-a-vis* KCSA under this Agreement and its other (existing or potential) business interests and/or activities and/or the existing or potential business interests and/or activities of it. Without derogating from the foregoing, to the extent that any such conflict exists or arises at any time prior to the expiration of the term or earlier termination of this Agreement, the Distributor shall immediately declare such conflict to KCSA in writing.
- 27.11 A Party shall immediately notify the other Party upon becoming aware of any governmental or regulatory review, audit or inspection of items related to the other Party or any other activities in connection with this Agreement.
- 27.12 The Parties undertake to cooperate in good faith to execute and fully implement the Agreement and, generally, to take all measures that may be necessary or useful to give full effect to each of the stipulations of the Agreement and the consequences thereof in order to ensure full execution of the Agreement.
- 27.13 The Parties further undertake to adapt this Agreement as strictly required, in the event that, during the term of this Agreement, a change in Applicable Laws or a new administrative interpretation, of which the Parties are made aware, prevents the full execution of this Agreement. In such a case, the Parties shall meet as soon as possible following the receipt of the notification addressed by the most diligent Party to the other Party, to examine together how to take into account the new circumstances preventing the full execution of the Agreement.

## 28. **TERM OF AGREEMENT AND TERMINATION**

- 28.1 This Agreement shall be deemed to have entered into force on the Effective Date and shall remain in force and effect for a period of 1 (one) year from the Effective Date ("the Initial Period") or the Termination Date, whichever date is earlier.
- 28.2 Upon the expiry of the Initial Period, KCSA shall have the option to renew this Agreement for a further period of 1 (one) year from the Expiry Date ("the Renewal Period").



## 29. DISPUTE RESOLUTION

29.1 Save as may be otherwise provided for in this Agreement, any dispute of whatsoever nature which arises out of or in connection with this Agreement, including any disputes as to the validity, existence, enforceability, interpretation, application, implementation, breach, termination or cancellation of this Agreement or as to the Parties' rights and/or obligations in terms of this Agreement or in connection with any documents furnished by the Parties pursuant to this Agreement, shall be resolved in accordance with this clause.

29.2 Amicable resolution:

29.2.1 If a dispute (of any kind whatsoever) arises between the Parties in connection with, or arising out of, the Agreement or the execution of the Agreement, a Party shall give notice to the other Party to resolve such dispute. The notice shall identify the issue(s) in dispute and the relief sought and shall state that it is a notice given in terms of this sub-clause.

29.2.2 Within five Working Days after the date of the notice, the Parties shall, through its senior representatives, attempt to settle the dispute in good faith before the commencement of arbitration.

29.2.3 Any resolution of a dispute in terms of this clause shall (unless expressly otherwise stated therein) be final and binding on the Parties when reduced to writing and signed by the senior representatives of each Party. To this end, the Parties respectively agree and warrant to each other that the senior representatives have full authority to so bind them.

29.2.4 Where the dispute is not resolved within 20 days of the notice given in terms of this sub-clause, arbitration may be commenced.

29.3 Arbitration:

29.3.1 Unless settled amicably, a dispute (of any kind whatsoever) arising between the Parties in connection with, or arising out of, the Agreement or the execution of the Agreement, including any dispute as to any certificate, determination, instruction, opinion or valuation of KCSA, or a dispute as to whether or not the Agreement was induced by a fraudulent misrepresentation, shall be finally settled by arbitration.

29.4 Unless otherwise agreed by the Parties:



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- 29.4.1 the dispute shall be finally settled by private arbitration under the latest edition of the OHADA Uniform Act on Arbitration and revised Rules on Arbitration of the Common Court of Justice and Arbitration (the “Rules”);
- 29.4.2 the dispute shall be settled by a single arbitrator to be appointed by the Parties by agreement, failing such agreement, by the President of the Common Court of Justice and Arbitration, or his nominee;
- 29.4.3 the arbitration shall be held at Kolwezi, DRC, and
- 29.4.4 the arbitration shall be conducted in English.
- 29.4.5 The arbitrator shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of (or on behalf of) KCSA.
- 29.5 Nothing in this sub-clause shall preclude either Party from seeking urgent interim relief, not otherwise provided for herein, from a Court of competent jurisdiction.
- 29.6 Subject to the time limits set out in clause 29.2, arbitration may be commenced prior to or after completion of the Agreement. The obligations of the Parties shall not be altered by reason of any arbitration being conducted during the progress of the Agreement.
- 29.7 For the avoidance of doubt, this arbitration clause shall be severable from this Agreement and shall survive the termination of this Agreement.
- 29.8 Notwithstanding that a formal dispute may have been declared, the Distributor must:
  - 29.8.1 continue without delay to provide the Agreement and perform its other obligations under this Agreement; and
  - 29.8.2 comply with all directions of KCSA in connection with this Agreement which do not otherwise affect the ultimate resolution or determination of the Dispute.
- 29.9 The arbitrator shall have discretionary powers to make orders as to any matters which he may consider proper in the circumstances of the case with regard to submissions, pleadings, discovery, inspection of documents, examination of witnesses and any other matter relating to the conduct of the arbitration.
- 29.10 The arbitrator shall fully motivate any of his findings and his final determination and shall make an appropriate costs order.





- 29.11 The award of the arbitrator shall be final and binding upon the Parties (who hereby agree to carry out the award).
- 29.12 The arbitrator's award may be made an order of any Court of competent jurisdiction.
- 29.13 The Parties agree to keep the arbitration proceedings including the subject matter thereof and the evidence heard during such proceedings confidential and not to disclose same to anyone except for the purposes of the arbitration proceedings in terms of this clause.
- 29.14 The Parties agree to waive the exercise of any recourse challenging the validity of the arbitral award rendered. This award, having the force of res judicata, will be binding on the Parties and will be immediately enforceable.
- 29.15 The Parties expressly, irrevocably and unconditionally waive, each in so far as it is concerned, within the framework of the resolution of a dispute, the right to avail themselves of any protection based on any immunity, in particular, any immunity from jurisdiction, immunity from execution and diplomatic immunity from which they may benefit.
- 29.16 Each Party, as far as it is concerned, confirms that it can validly be a party to arbitration and therefore renounces to invoke any provision of Applicable Law to contest the arbitrability of a dispute, its capacity to compromise or the validity of clause 29.4.
- 29.17 The language of this Agreement shall be English. All communications, technical and commercial documents as well as any other information related to this Agreement shall be provided by each Party to the other in the English language.
- 29.18 This constitutes an irrevocable consent by the Parties to any proceedings in terms hereof, and is severable from the other provisions of this Agreement and shall remain in effect notwithstanding the termination or invalidity for any reason of this Agreement.



**SIGNED** on behalf of the Distributor at \_\_\_\_\_ on this the \_\_\_\_\_ day of \_\_\_\_\_  
2020 in the presence of the undersigned witnesses:

\_\_\_\_\_

**SIGNED** on behalf of KCSA at \_\_\_\_\_ on this the \_\_\_\_\_ day of \_\_\_\_\_ 2020 in  
the presence of the undersigned witnesses:



**IVANHOE MINES**  
NEW HORIZONS



ANNEXURE "A"



**IVANHOE MINES**  
NEW HORIZONS



ANNEXURE “B”



**IVANHOE MINES**  
NEW HORIZONS

