 <b>SCAW LIMITED</b>	<b>Doc No.: QM03</b>	<b>Revision No.: 00</b>	<b>Effective date: 01-03-2020</b>
	<b>Document Title: Contract General Terms and Conditions</b>		
	<b>Authored by:</b>	<b>Reviewed by:</b>	<b>Approved by:</b>

These General Terms and Conditions shall be read in conjunction with the Service Order or Agreement, and such other documents which together shall constitute a binding contract between SCAW Limited, a company registered under the companies Act and having its registered office at stand No. 1316 Dr. Aggrey Avenue, light industrial area, P.O. Box 20418, Kitwe, Zambia and the Contractor, whose particulars are specified in the Service Order or Agreement duly executed by the Parties.

## 1.0 Definitions

“**Company**” means SCAW Limited;

“**Completion Date**” means the date on which the Services under this Contract shall be accepted by the Company as having been dully executed in accordance with the terms and conditions of this Contract;

“**Contract**” means the Service Order or Agreement, these General Terms and Conditions of Contract and such other Conditions, Scope of Work, Drawings, Bill of Quantities, Specifications and other documentation specifically incorporated into the Contract;

“**Contractor**” means the Contractor whose details appear in the Service Order or Agreement of which these General Terms and Conditions of Contract form part;

“**Contract Price**” means the consideration payable by the Company to the Contractor for services rendered or goods supplied under this Contract, including any adjustments arising from variations agreed by the Parties in accordance with this Contract;

“**Effective Date**” means the date agreed by the Parties or if no such date is agreed, the date of execution of the Contract by the Company or date of issue of the Service Order (whichever is applicable), on which the performance of the services shall commence;


“**High Risk Environment**” means the Site or any part thereof, where the Company may undertake any melting, processing, casting or construction works or any part of the Site the Company may designate as a High-Risk Environment from time to time.

“**Party**” means the Company or the Contractor as the context may require and the word “Parties” shall be construed accordingly.

“**Representative of the Company**” means the Head - Procurement or any other person the Company may appoint to represent it from time to time;

“**Representative of the Contractor**” means a person the Contractor may appoint to represent it from time to time;

“**SADC**” means the Southern African Development Community;

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“**Services**” means the supply of time, effort and expertise to provide a service to the Company by the Contractor and, for purposes of this Contract, includes the supply of goods;

**Site**’ means any area or place including buildings, any part of the plant, including any fixed plant, where the Services, or any part thereof, are required to be performed by the Company;

‘**Variation**’ means a change or alteration to the obligations under this Contract that is agreed in writing and signed by the authorised representatives of both Parties; and “**VAT**” means Value Added Tax.

Words importing the singular shall also include the plural, and *vice versa*, unless the context requires otherwise.

Words of masculine gender shall include the feminine gender and *vice versa*, unless the context requires otherwise.

The headings in this Contract are for convenience only and shall not affect its interpretation. Any reference in this Contract to “writing” or cognate expression includes a reference to any communication effected by electronic mail, facsimile transmission or any other comparable means.

## 2.0 Corrupt Practices


**2.1** The Company requires that contractors, suppliers and business partners be engaged through a fair, transparent and formal process that includes written anti-corruption requirements. The Company further requires that all suppliers, contractors, subcontractors and consultants under any contract, observe the highest standards of ethics during the procurement process and execution of such contracts.

**2.2** In pursuit of this policy, the Company, for the purposes of this Contract, defines the terms set forth below as follows:

**2.2.1 “Bribery”** means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the action of a person in the procurement process or in contract execution;

**2.2.2 “collusive practices”** means a scheme or arrangement between two or more bidders, with or without the knowledge of the Company, designed to establish bid prices at artificial, non-competitive levels;

**2.2.3 “Corrupt practices”** means bribery, extortion, collusive practices, fraudulent practice or obstructive practices.

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**2.2.4 “Extortion”** means harming or threatening to harm, directly or indirectly, a person or that person’s property to influence the person’s participation in the procurement process or affect the execution of a contract;

**2.2.5 “Fraudulent practices”** means an act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead the Company in order to obtain a financial or other benefit or to avoid an obligation.

**2.2.6 “Obstructive practices”** means deliberately destroying, falsifying, altering or concealing evidence material to an investigation or making false statements in order to materially impede an investigation into allegations of a corrupt practice or threatening, harassing or intimidating a person to prevent that person from disclosing that person’s knowledge of matters relevant to the investigation or from pursuing the investigation, or acts intended to materially impede the exercise of the Company’s inspection and audit rights provided for under Clause 36.2.

**2.3** The Company shall sanction the Contractor or individual, including declaring them ineligible, either indefinitely or for a stated period of time, to be awarded a contract if the Company determines, at any time, that the Contractor or individual has, directly or through an agent, engaged, in corrupt practices in competing for, or in executing this Contract or any other contract with the Company.

**3.0 Performance of Services**

**3.1** The Contractor shall maintain sufficient equipment and qualified personnel to discharge its obligations under this Contract. The said personnel shall be readily available to meet with the Representative of the Company as and when required.


**3.2** The Contractor shall be responsible for the Company’s goods and equipment placed in its custody and shall protect them from theft, damage, contamination or deterioration.

**3.3** Performance of the Services shall be in accordance with this Contract.

**3.4** The Company shall advise the Contractor of the rules and regulations in force for the conduct of all personnel at the Site and the Contractor shall ensure that its personnel comply with all such rules and regulations.

**3.5** The Contractor shall account for all free issue material from the Company and return any free issue material that is not required for the services under this Contract no later than the completion Date. The Contractor shall be liable for the full cost of the free issue material not returned, together with a handling charge to be determined by the Company from time to time.

**4.0 Representatives**

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The Company and the Contractor shall each nominate a representative who shall be responsible for the administration of this Contract. Either Party shall notify the other Party, in writing, of any changes to the nominated representative.

## **5.0 Warranties**

### **Relating to the supply of Goods/Services-**

The Contractor warrants and represents to the Company that the Goods/Services -

**5.1** Are of satisfactory quality and fit for the purpose which the Company has made known to the Contractor or, where the Company has not made any purpose known to the Contractor, for the purpose for which the Goods/Services are normally used;

**5.1.1** Are of satisfactory quality and fit for the purpose which the Company has made known to the Contractor or, where the Company has not made any purpose known to the Contractor, for the purpose for which the Goods/Services are normally used;

**5.1.2** Are merchantable and of good material and workmanship, free from all defects and suitable for the use intended;

**5.1.3** Shall be returned to the Contractor for full credit or replacement at the Contractor's risk and expense, including transportation charges to and from the site if the Goods/Services are found to be defective;

**5.1.4** Comply in every respect with any relevant specifications, drawings, samples or descriptions; and


**5.1.5** Comply with any law or any voluntary codes of conduct relating to the Goods/Services and their sale in force at the time of delivery.

**5.2** The Contractor warrants that it has free and unencumbered title and the right to sell the Goods/Services to the Company and that the use of the Goods/Services for any purpose whatsoever by the Company shall not infringe any distribution agreement, patent, copyright, trade name, trade mark, design right or any other intellectual property right whatsoever of any third party.

### **Relating to the Performance of Services -**

**5.3** The Contractor warrants and represents that it shall perform the services with the degree of skill, efficiency and knowledge that is possessed by those of the highest skill, competency and standing in the particular field or profession in which the Contractor is employed or conducts business.

### **Relating to Corrupt Practices -**

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The Contractor further warrants and represents to the Company that –

**5.4.** it shall not participate and has not participated in any corrupt practices in relation to this Contract;

**5.5.** it has ensured and shall continue to ensure that its personnel, subsidiaries and related companies, do not participate in any corrupt practices in relation to this Contract; and

**5.6.** it shall take reasonable steps to ensure that its agents, joint venture and consortium partners, subcontractors, suppliers or consultants do not participate in any corrupt practices in the execution of this Contract.

#### **6.0 Entire Agreement and other Order of Priority of Documents**

**6.1** The Service Order or Agreement and the SCAW Limited General Terms and Conditions of Contract embodies and sets forth the entire agreement and understanding of the parties and supersedes all prior oral or written agreement, understanding or arrangement relating to the subject matter of this Contract.

**6.2** In the event and to the extent of any inconsistency, conflict or ambiguity between the Service Order or Agreement and the SCAW Limited General Terms and Conditions of Contract, the documents shall be interpreted in the following order of priority:

**6.2.1** the Service Order or Agreement; and

**6.2.2** the SCAW Limited General Terms and Conditions of Contract.

**6.3** Each party acknowledges that, in entering into this Contract, it does not do so on the basis of or rely on any representation or warranty except as expressly provided in this Contract and all conditions, warranties or other terms implied by law are hereby excluded to the fullest extent permitted by law.


**6.4** The Parties are precluded from relying on any agreement, understanding, arrangement, and quotation or tender that is not expressly incorporated into this Contract.

#### **7.0 Amendment**

No amendment, variation or modification of this Contract shall be effective or enforceable unless it is in writing and signed by the duly authorised representatives of the Parties.

#### **8.0 Severance**

If any provision of this Contract is held by a court or other competent authority to be void or unenforceable in whole or in part, the other provisions of this Contract and the remainder of the affected clause shall continue in force, unless that would contradict the clear intention of the Parties, in which case the relevant clause will be deemed to be deleted in its entirety.

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## 9.0 Non-Waiver


- 9.1 A failure or delay in enforcing an obligation or exercising a right or remedy by either Party shall not amount to a waiver of that obligation, right or remedy.
- 9.2 A waiver by either Party of a breach of a term shall not amount to a waiver of a breach of any other term in the Contract.
- 9.3 A waiver by either Party of a particular obligation of the other party in one circumstance shall not prevent a party from subsequently requiring compliance with the obligation on other occasions.
- 9.4 The rights and remedies of the Parties under this Contract shall be cumulative and not exclusive of any rights or remedies which either Party may otherwise have under the law. In exercising their respective rights and remedies, the Parties may be selective and no failure or delay by a Party in exercising any right shall operate as a waiver of it, nor shall any single or partial exercise of any remedy or right preclude its exercise of any other remedy or right.

## 10.0 Passing of Title in Goods

- 10.1 Title in the goods, materials or equipment supplied by the Contractor under this Contract shall pass to the Company upon payment being made to the Contractor by the Company, or upon the Company taking delivery thereof, whichever shall occur the earliest.
- 10.2 Where progress payments or payments on account are provided for in this Contract, title in the goods, materials or equipment supplied by the Contractor shall pass to the Company upon the Company making the first progress payment.
- 10.3 Where title in the goods is passed to the Company but the Contractor remains in possession of the goods, the Contractor shall clearly mark all such goods or parts thereof as belonging to the Company and shall insure the goods against loss or damage.
- 10.4 The Contractor shall not enter into a Retention of Title Agreement with any manufacturer or subcontractor in relation to this Contract and shall, at the request of the Company, provide proof that it has not entered into such an agreement.

## 11.0 Assignment

- 11.1 Either Party shall not assign its rights or obligations in whole or in part, under this Contract, without the written approval of the other Party, which approval shall not be unreasonably withheld or delayed.

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11.2 This Contract shall be binding upon and shall inure to the benefit of the Parties and their successors and assigns.

### **12.0 Independent Contractor and Subcontracting**

12.1 The Parties are independent contractor and nothing in this Contract shall be deemed to create a partnership, agency or a joint venture between the Parties.

12.2 In the execution of this Contract, any subcontractor, supplier, employee, agent or representative of the Contractor shall not be deemed to be a subcontractor, supplier, employee, agent or representatives of the Company.

12.3 The Contractor may perform its obligations and exercise any rights under this Contract through a company which, at the time, shall be its holding company or subsidiary or the subsidiary of any such holding company and any act or omission of such company shall, for purposes of this Contract, be deemed to be an act or omission of the Contractor.

12.4 The Contractor may perform its obligations under the Contract through an agent or subcontractor, subject to the Company's written approval. The Contractor shall be liable for the actions and omissions of its agent or subcontractor as if they were the actions and omissions of the Contractor.

12.5 The approval of the Company referred to in clause 12.4 shall be subject to but not limited to, the Company's conditions for access to and conduct on the Site.

### **13.0 Co-operation with Third Parties**


13.1 The Contractor shall not, during the term of this Contract, impede or interfere with the work of other contractors or personnel engaged by the Company.

13.2 The Contractor shall not be entitled to any increase in the Contract Price, damages, costs or any financial or other compensation as a result of any interference from other contractors or personnel engaged by the Company.

13.3 Where the Contractor suffers delays as a result of interference by other contractors or personnel on Site, the Contractor may request for an extension of the time for completion and such request shall be dealt with by the Representative of the Company.

### **14.0 Contractor to Obtain Information**

14.1 The Contractor acknowledges that it has obtained all information necessary for it to perform the Services under this Contract, including information relating to local conditions and facilities, Labour standards, safety requirements, environmental and industrial matters, permits, licenses, approvals from local authorities, accreditation where necessary and other relevant requirements. The Contractor further

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acknowledges that it is familiar with the legislation to be taken into account for the performance of the Services and understands the import thereof.

14.2 The Contractor acknowledges that it has inspected the Site and its surroundings and has satisfied itself as to all technical, commercial, social and general conditions of, and all circumstances affecting, the Site and the Services including the nature of the ground and sub-soil, the weather conditions, the form and nature of the Site, the extent and nature of the Services and materials necessary for the carrying out and completion of the Services, the means of communication with, and transportation and access to, the Site and in general, all risks and contingencies influencing or affecting the Services.

14.3 The Contractor shall not, except as expressly provided in this Contract, be entitled to any extension of time or to any adjustment of the Contract Price on grounds of misinterpretation or misunderstanding of any of the matters stated in Clauses 14.1 and 14.2.

#### **15.0 Compliance with Laws, Regulations, Standards and Instructions**

15.1 The Contractor shall in the performance of its obligations and exercise of its rights under the Contract, comply with all laws and regulations and all Company policies and procedures in so far as the same shall apply to the Services or to the Site.

15.2 Without limiting the generality of Clause 15.1, the Contractor shall comply with -

15.2.1 the Environmental Management Act and the Company's policies and procedures in relation to the protection of the environment;

15.2.2 the Mines and Minerals Development Act;

15.2.3 the Workers Compensation Act;

15.2.4 the National Pension Scheme Act;

15.2.5 the Engineering Institution of Zambia Act;

15.2.6 the Income Tax Act;


15.2.7 the National Council for Construction Act;

15.2.8 all employment related legislation, including the law relating to minimum wages and leave entitlements;

15.2.9 any industrial awards or workplace agreements and labour standards relating to its obligations under this Contract and shall ensure that its personnel, suppliers and subcontractors do the same;

15.2.10 the International Labour Organisation minimum standards and the United



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15.2.11 Nations Universal Declaration of Human Rights; and

15.2.12 all lawful requirements and directions of the Representative of the Company in relation to any actions taken pertaining to the Contract, and shall ensure that its personnel do the same.

15.3 The Company reserves the right, at its discretion, to levy penalties or impose sanctions for contravention of the Company's internal operating policies or procedures.

15.4 The Contractor shall, at its own expense -

15.4.1 obtain all necessary permits, licences, consents and approvals;

15.4.2 give all necessary notices;

15.4.3 pay all necessary fees, deposits and taxes; and

15.4.4 prepare and supply any additional drawings where this is required.

15.5 The Contractor shall, if required by the Representative of the Company, provide proof of the matters referred to in Clauses 15.2 and 15.4.

## **16.0 Applicable Law**

The Contract shall be governed and construed in accordance with the laws of Zambia.

## **17.0 Labour Law**

The Contractor shall be conversant with the applicable Labour Laws in force in Zambia and undertakes to abide by such laws in the execution of this Contract.

## **18.0 Safety and Health**


18.1 The Contractor shall take all necessary precautions to ensure the safety and health of the personnel of the Company, the Contractor, subcontractors, suppliers and other third parties involved in the execution of this Contract.

18.2 The Contractor shall comply with the Company's policies, international and national law, legislation and policies in respect of safety and health.

18.3 The Contractor shall ensure that its subcontractors and suppliers comply with Clause 18.2 when on Site, for purposes of this Contract.

18.4 The Company reserves the right to undertake review of a Contractor's environmental capability with respect to the nature and scope of contract, whenever the Company considers it necessary, including physical verification procedures if deemed necessary.

## **19.0 Accident and Incident Reporting**

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19.1 The Contractor shall fully and promptly report to the Representative of the Company in writing and in such form as the Representative of the Company may require, details of all accidents and incidents that involve a threat to the personnel, plant and equipment whether of the Contractor, the Company or a third party, irrespective of whether loss, damage, injury or death occurred or not.

19.2 Any liability incurred by the Company as a consequence of the Contractor's failure to comply with Clause 18.1 shall be borne by the Contractor.

## **20.0 Access to the Site and Permits**

20.1 The Company shall grant the Contractor such access to the Site from the date of execution of this Contract. Unless otherwise agreed by the Parties, the Contractor shall give the Representative of the Company at least seven days' notice of the date of commencement of the Services.

20.2 Prior to commencement of the Services, the Contractor shall notify the Representative of the Company of its normal times and periods of work and shall give at least twenty-four hours' notice of any alteration in its working hours or periods of work.

20.3 The Contractor shall obtain written approval from the Representative of the Company for any action required to be taken that might interfere with the operations of the Company at least fourteen days before the action is taken.

20.4 Nothing in this Contract confers exclusive possession of the Site on the Contractor.

20.5 The Contractor shall ensure that its personnel do not, in relation to the Site -

20.5.1 enter the Site;

20.5.2 work other than during normal working hours;

20.5.3 use or store explosives;


20.5.4 undertake any excavation work;

20.5.5 undertake any electrical installation; or

20.5.6 use the Site nor permit or suffer the Site to be used for camping or any residential purposes; without the prior written approval of the Representative of the Company.

## **21.0 SITE SECURITY BADGES**

21.1 The Contractor's personnel shall only be admitted on Site on production of a valid security badge, which shall be provided by the Company at no cost to the Contractor. The Contractor shall ensure that security badges are obtained before the Effective Date.

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21.2 Loss or failure to return a security badge on termination or expiration of the Contract shall render the Contractor liable to pay ZMW 50.00 or such other amount as may be determined by the Company from time to time, for each lost or unreturned security badge.

## **22.0 QUALITY OF WORK AND GOODS**

Without prejudice to any provisions of the Contract, all workmanship shall be of a good standard, shall conform to the Contract and shall be suitable in all respects, having regard to the nature, scope and purpose of this Contract.

## **23.0 DEFECTS LIABILITY**

23.1 In performing the Services, the Contractor shall only use vehicles, components, parts, items, plant, materials, equipment and other things used to carry out or incorporated in the Services which are of merchantable quality, fit for their purpose, free from defects and not of an age which would impair their operation. All vehicles, plant and equipment used on Site shall be subject to the approval of the Company and its decision in this regard shall be final and binding.


23.2 The Warranty Period in respect of the Services and all materials, components, parts, items, consumables and other things used to carry out or incorporated in the Services shall be a period of twelve (12) months from the Completion Date.

23.3 During the Warranty Period, the Contractor shall be obligated, at its own cost (including but not limited to freight and transport costs), to promptly repair or replace any defect in the Services or the materials, components, parts, items, consumables and other things used to carry out or incorporated in the Services.

23.4 The Company shall, within thirty (30) days of completion of any part of the Services, notify the Contractor, in writing, of any defect which is apparent on reasonable inspection (“patent defects”) in the Services performed.

23.5 The Warranty Period in respect of any replacements or repaired Services, materials, components, parts items, consumables and other things used to carry out or incorporated in the Services shall be twelve (12) months from the date of such repair or replacement, without limitation on the number of replacements or repairs.

23.6 Where the Contractor fails to remedy any default within fourteen (14) days of notice being given to the Contractor by the Company, the Company shall be entitled to remedy the defect at the Contractor’s risk and cost but without prejudice to any other rights which the Company may have against the Contractor in respect of the defect, in order to ensure continuity or early resumption of its operations.

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23.7 The Contractor’s obligations under this Warranty shall extend to any defect that is not discoverable on reasonable inspection (“latent defects”). The Warranty Period in respect of latent defects shall be four (4) years from the date of expiration of the Warranty Period.

23.8 The Contractor shall be responsible for any direct or indirect damage to the property of the Company which may be caused by the defect or by the remedying thereof.

23.9 Without prejudice to the Contractor's obligations under this part, all guarantees and warranties obtained by the Contractor from manufacturers and vendors of goods or materials used in the performance of the Services shall be extended to the Company to the full extent of their terms. If required by the Company, the Contractor shall formally assign the guarantees or warranties to the Company.

23.10 The obligations of this part shall apply to subcontractors engaged by the Contractor for the performance of the Services.

#### **24.0 VARIATIONS**

24.1 The Contractor shall not vary or alter any aspect of the Services, except in accordance with Clause 7 (Amendment). No payment shall be made by the Company for any Services executed by Contractor without a valid amendment to the terms of this Contract.


24.2 Subject to Clause 24.1, the Company may, by notice, direct or permit the Contractor to alter, amend, omit, add to or otherwise vary the performance of the Services.

24.3 The difference in cost, if any, occasioned by variations shall be added to or deducted from the Contract Price, as the case may require. Such difference in cost and any associated extension of time will, whenever practicable, be agreed between the Parties before notice for variation is given.

24.4 Where the Company seeks any change or variation in the scope of the Services and where such variation is due to any default in the design, drawing or document supplied by the Contractor, any misrepresentation made by the Contractor, or any default on the part of Contractor, the Contractor shall not be entitled to any addition in the Contract Price or to an extension of time.

#### **25.0 PENALTY FOR DELAYS**

The Contractor shall ensure that the services are performed in accordance with the specifications and within the stipulated time frame. Performance of duties and obligations under the Contract not completed within the stipulated period for completion will attract a penalty of one percent (1%) of the Contract Price being deducted per day, for each day of

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delayed performance and six percent (6%) of the Contract Price being deducted per day, for each day of delayed performance in cases of Scrap sale/delivery agreements.

## **26.0 PAYMENTS**

26.1 In consideration of Contractor's execution of the Services in accordance with this Contract, the Company shall pay the Contractor, the Contract Price subject to the terms and conditions of the Contract.

26.2 Subject to other provisions of this Contract, the Contract Price shall remain fixed until completion of the entire scope of Contract and no Contract Price adjustment shall be effective until it is agreed upon in writing by both Parties.

26.3 Subject to receipt by the Company of a tax invoice and supporting documents that conforms in all respects to the requirements of the Company no later than the 5th day of the month following the period to which the invoice relates, payment will be made to the Contractor within 30 days of receipt of the invoice and supporting documents for services performed.

26.4 The payment for scrap supplies will be made as agreed under the agreement on submission of tax invoice, police report, weighbridge ticket and quality report.

26.5 The Company reserves the right to reject invoices that are inaccurate or not sufficiently substantiated or at its discretion, pay any portion of the invoice value that is accurate and substantiated. In such cases, the Company shall notify the Contractor of the amount approved for payment, and of the nature of the defects in the documentation presented for payment to the Company by the Contractor.


26.6 All Payment of the Contract Price, less any discount or set-off, shall be made by Electronic Funds Transfer (EFT). The Contractor will provide their bank details.

## **27.0 CURRENCY**

The Company shall pay the Contractor in the agreed currency and no exchange rate fluctuations shall be considered in the calculation of the Contract Price unless agreed otherwise.

## **28.0 TAXES AND DUTIES**

28.1 The Contractor shall pay all taxes, duties, assessments and other charges of any kind levied by any government or other authority in connection with this Contract and if required by the Company, shall provide proof of payment. The Company shall not be liable for any income tax liability associated with the Contractor's performance under this Contract.

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28.2 The Contractor shall co-operate with the Company to obtain all applicable tax and duty exemptions and rebates. Any reduction of tax below the amount allowed for in the Contract Price shall be credited to the Company.

### **29.0 APPOINTMENT OF A TAX AGENT BY CONTRACTOR**

29.1 Where a Contractor does not have a business establishment in Zambia or is an individual or partner in a partnership and does not have a usual place of residence in Zambia, the Contractor shall appoint a person resident in Zambia (“tax agent”) to act on behalf of the Contractor in matters relating to tax.

29.2 The Contractor shall ensure that the tax agent acts exclusively for and on behalf of the Contractor in submitting any invoice for payment in terms of this Contract.

29.3 Where the Contractor fails to appoint a tax agent in accordance with Clause 29.1, any additional costs or penalties that may be levied against the Company shall be borne by the Contractor. Such additional costs shall be recovered from the Contractor by way of setoff against pending payments due to the Contractor.

### **30.0 Value added Tax in the Republic of Zambia**

30.1 Where the Contractor is registered under Value Added Tax (VAT) with Zambia Revenue Authority (ZRA) and provisions of service is taxable, the vendor will charge VAT at the applicable standard rate in the tax invoice and to be shown separately in the tax invoice.


30.2 Invoices issued in foreign currency shall include a statement of the exchange rate used for the purposes of paying and claiming VAT. The exchange rate stated on the invoice is a requirement of the Zambia Revenue Authority and shall have no bearing on the Contract Price.

### **31.0 Withholding Tax in the Republic of Zambia**

31.1 Where the Contractor is a non-resident contractor, the Company shall deduct withholding tax from all payments to a Contractor engaged in construction or haulage services and pay the same to the Zambia Revenue Authority.

31.2 The amount to be deducted in terms of Clause 31.1 shall be calculated at the rate of twenty percent (20%) of the gross amount invoiced before any other deductions or applicable rate under the law.

31.3 Where the contractor is resident in Zambia, the company shall deduct withholding tax of fifteen percent (15%) of the gross invoice amount from all payments to a contractor engaged in services including consultancy and technical services.

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31.4 The Company shall furnish the Contractor with a formal certificate of receipt indicating the amount of withholding tax paid to Zambia Revenue Authority on behalf of the Contractor.

31.5 Where the Contractor is entitled to benefit from a Double Taxation Agreement between the Republic of Zambia and another country and withholding tax is deducted in the manner set out in Clause 31.1, the Contractor may claim relief from that other Country in respect of any tax payable from that income. The Contractor is considered to have obtained all necessary information relating to any relevant double taxation agreement.

### **32.0 Value added Tax in the Respective Countries**

32.1 Materials and plant exported and delivered to the Company shall be zero rated in terms of the Value Added Tax Act. The Contractor shall keep and maintain adequate records in respect of all zero-rated exports for audit by the respective Country's Revenue Services.

32.2 Any additional costs resulting from the Contractor's failure to take cognizance of the requirement in Clause 32.1 shall be borne by the Contractor.

### **33.0 Taxation**

The contractor's price is inclusive of all taxes unless stated otherwise.

### **34.0 Customs and Excise Duties**


The Contractor, if resident in a member state of SADC shall be in possession of the appropriate SADC certification to limit import duties. Duties arising out of the failure to comply with this requirement shall be borne by the Contractor.

### **35.0 Company's Right of Set-off**

The Company shall enjoy all of its legal rights of set-off. These rights shall include, but shall not be limited to the Company's option to withhold, for the purposes of set-off, any monies due to the Contractor, whether arising out of this Contract or another Contract with the Company, including tax or monetary penalties related to the Contract. The Company shall exercise its right of set-off in accordance with normal Company practices.

### **36.0 Record Keeping and Company's Right to Audit**

36.1 The Contractor shall keep and maintain all documentation related to this Contract for a minimum period of seven years from the completion Date, inclusive of any defect's liability period.

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36.2 The Company shall have the right, exercisable at any time, to audit the Contractor in all matters pertaining to this Contract, including but not limited to payments claimed, bid submission, contract performance and for purposes of establishing a breach of Clause 5.4. The Company shall give the Contractor reasonable notice of its intention to audit the records pertaining to this Contract.

36.3 The Contractor shall provide the Company with the assistance, cooperation and facilities necessary for the Company to effectively exercise the right to audit provided for under Clause 36.2, including but not limited to, access to all relevant documentation, records, and drawings in the format required by the Company.

### **37.0 Limitation of Liability**

The liability of the Company to the Contractor arising out of or in connection with the Contract shall be limited -

37.1.1 where there is a specific remedy provided for in the Contract, to that remedy;

37.1.2 in all other cases to the Contract Price;

37.1.3 to exclude all liability arising out of lost time claims or standing time claims unless such eventuality is specifically provided for in the Contract and then to the extent provided for only.

37.2 The provisions of Clause 37.1 shall prevail over any conflicting or inconsistent provisions set forth in this Contract.

### **38.0 Currency Risks**


38.1 The Contractor understands and assumes the risk of foreign exchange losses and enters into this Contract at its sole risk based on its judgment and not on reliance of any statements or representations of the Company relating to the foreign exchange market.

38.2 For avoidance of doubt, the Parties agree that the Company shall not be liable for any losses suffered by the Contractor as a consequence of foreign exchange movement.

### **39.0 Indemnity**

39.1 Without limiting the Contractor's liability, the Contractor shall indemnify and keep the Company indemnified in respect of all loss or damage suffered by, or to any property of the Company and against all actions, claims, suits and demands at any time made or brought against the Company by any person in relation to any loss, damage or injury caused to or suffered by such person or to goods of such person arising out of any act or omission which may occur due to the Contractor's negligence, lack of due diligence or incompetence during the performance of this Contract.



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39.2 The Contractor shall indemnify and keep the Company indemnified and hold the Company harmless against all claims and liens with regard to wages at any time due and payable to the Contractor's employees and the employees of any subcontractors and all claims and liens of subcontractors, suppliers and manufacturers for goods or services provided in connection with the performance of this Contract.

39.3 Without limiting the generality of Clause 39.2, the Contractor shall indemnify and keep the Company indemnified against any costs or loss incurred or suffered as a consequence of garnishee proceedings being instituted against the Contractor by a supplier, employee, subcontractor or employee of any subcontractor of the Contractor or other third party.

39.4 Where garnishee proceedings are instituted against the Contractor and the Contractor refuses, neglects or otherwise fails to contest the proceedings, the Contractor shall be deemed to have breached its contractual obligations to the party instituting the proceedings thereby exposing the Company to risk and loss. In such case, the Company shall sanction the Contractor by declaring the Contractor ineligible, either indefinitely or for a stated period of time; and recover the cost of attending to garnishee proceedings from the Contractor in accordance with Clause 35 (Company's Right of Setoff).


39.5 The Company will save harmless and indemnify the Contractor against loss or damage of or to any property of the Contractor and against all actions, claims, suits and demands made or brought against the Contractor by a person in relation to any loss, damage or injury caused to or suffered by such person or to goods of such person arising out of any negligent accident or happening which may occur due to the Company's negligence during the performance of this Contract.

#### **40.0 Insurance**

40.1 The Contractor shall, before commencement of the performance of this Contract and at its own expense, take out and maintain the following insurance covers throughout the duration of this Contract:

**40.1.1** All statutory insurance covers required under the laws of Zambia (and specifically be a paying member of the Workers Compensation Fund) in respect of the Contractor's liability to its employees arising out of the death or injury to the Contractor's employees and which insurance cover shall be extended to indemnify the Company for its liabilities arising out of the death or injury to persons employed by the Contractor;

**40.1.2** An insurance policy covering the Contractor's liability for loss of or damage (but excluding consequential loss) to the Company's property arising from the fault,

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negligence, omission or lack of due diligence on the part of the Contractor including its subcontractors and suppliers and of the employees, agents or representatives of the Contractor its subcontractors and suppliers.

**40.1.3** An insurance policy covering the Contractor’s liability for death or injury to the Company’s employees, servants, agents and any other third party (but excluding consequential loss) arising from the fault, negligence, omission or lack of due diligence on the part of the Contractor including its subcontractors and suppliers and of the employees, agents and or representatives of the Contractor its subcontractors and suppliers.

**40.2** All insurance covers required under this Contract shall comply with the Insurance Act and shall be underwritten by an insurer of sound financial standing;

**40.3** The Contractor shall provide documentary evidence to the Company of all required insurance cover prior to commencement of the Services. Where the Company is not satisfied that the insurance cover is adequate or otherwise in conformity with this Contract, the Company may terminate this Contract or suspend the commencement of Services. Where the performance of the Services has commenced, the Company may suspend the Services or take out appropriate insurance cover, the cost of which shall be borne by the Contractor.

**40.4** The insurance cover required under this Contract shall not in any way limit the liability or obligations of the Contractor under any other provisions of this Contract.

**41.0 Termination for Convenience**

The Company may terminate this contract by giving the Contractor thirty (30) days’ written notice of its intention to terminate the Contract. Where the contract is terminated in accordance with this clause, the Contractor shall -


41.1.1 cease performance of the Services;

41.1.2 immediately take all possible action to mitigate any liability incurred by it as a result of such termination; and

41.1.3 take any other action reasonably required by the Company in relation to the termination.

**41.2** On the date of termination specified in the notice, the Contractor shall -

41.2.1 provide the Company with a detailed report, in such form as the Company may require, relating to the Services performed under the Contract up to the date of termination;

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41.2.2 return any unutilized items issued to the Contractor by the Company during the term of this Contract;

41.2.3 offer the Company first right of refusal to purchase any of the Contractor's equipment used for purposes of the Contract, at its depreciated value or such other value, as may be agreed by the Parties; and

41.2.4 take any other measures relating to the termination of the Contract as the Company may reasonably require.

**41.3** The Company shall pay the Contractor for Services executed in accordance with this Contract, less any amounts previously paid and subject to any rights which the Company may have to suspend, withhold or set-off payments. The Company shall not be liable for any direct or indirect loss or damage arising from the loss of profit directly attributable to the early termination of the Contract.

## **42.0 Force Majeure**

**4.2.1 "Force Majeure Event"** means the occurrence of -

42.1.1 an act of war (whether declared or not), hostilities, invasion, act of foreign enemies, terrorism or civil disorder;


42.1.2 ionizing radiations, or contamination by radioactivity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof; pressure waves from devices travelling at supersonic speeds or damage caused by any aircraft or similar device;

42.1.4 a strike or other industrial action or blockade or embargo or any other form of civil disturbance (whether lawful or not), in each case affecting on a general basis, the industry related to the Services and which is not attributable to any unreasonable action or inaction on the part of the Parties or any of its subcontractors or suppliers and the settlement of which is beyond the reasonable control of all such persons;

42.1.5 specific incidents of exceptional adverse weather conditions in excess of those required to be designed for in this Contract which are materially worse than those encountered in the relevant places at the relevant time of year during the twenty (20) years prior to the Effective Date;

42.1.6 tempest, earthquake or any other natural disaster of overwhelming proportions; or

42.1.7 other unforeseeable circumstances beyond the control of the Parties against which it would have been unreasonable for the affected party to take precautions; which in

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each case directly renders either Party unable to perform all or a material part of its obligations under this Contract.

**42.2** Neither Party shall be in breach of its obligations under this Contract (other than payment obligations that would have accrued up to the date of occurrence of the Force Majeure Event) or incur any liability to the other Party for any loss or damage suffered by the other Party, if it is prevented from carrying out those obligations or such loss or damage is caused by a Force Majeure Event, unless the breach of its obligations or the loss or damage, would have occurred even if the Force Majeure Event had not occurred.

**42.3** As soon as reasonably practicable following the date of commencement of a Force Majeure Event, and within a reasonable time following the date of termination of a Force Majeure Event, any Party invoking it shall submit to the other Party reasonable proof of the nature of the Force Majeure Event and of its effect upon the performance of the Party's obligations under this Contract.

**42.4** Either Party shall and shall procure its subcontractors, at all times, to take all reasonable steps within its powers to mitigate the effect of any Force Majeure Event.


**42.5** The Parties shall hold consultations in relation to the Contract following the occurrence of a Force Majeure Event.

**42.6** The parties shall endeavour to agree on any modifications to this Contract which are equitable, having regard to the nature of the Force Majeure Event, including the determination of new prices, where appropriate.

### **43.0 Breach by Contractor and Termination**

**43.1** Where the Contractor fails wholly or substantially to perform or observe any obligation, term, condition or stipulation contained in this Contract or where the Contractor commits any continuing or material breach of any provision of the Contract, the Company shall give fourteen (14) days written Notice of such breach to the Contractor detailing the full particulars of the breach and requiring it to be remedied. In such case, the Company may suspend payments from being made to the Contractor until the breach is remedied.

**43.2** If the breach is not capable of remedy, or if the Contractor fails to remedy the breach within fourteen (14) days of notice from the Company, the Company may immediately terminate the Contract, either by way of written notice for a breach not capable of being remedied, or without a further written notice in the event of a prior notice of breach; and in both instances without further liability to the Company other than to pay for Services performed in accordance with this Contract.

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**43.3** A breach shall be considered capable of remedying if the Contractor can comply with the provision in question in all respects. It shall be the discretion of two officials of the Company, one of whom shall be the Chief Financial Officer, to decide whether a breach is capable of being remedied or not.

**43.4** A breach of Clause 5.4 is a material breach not capable of being remedied.

**43.5** The right to terminate the Contract given by this part shall be without prejudice to any other rights or remedies the Company may have in respect of the breach concerned or any other breach.

#### **44.0 Liability for Contractor's Property**

Unless expressly agreed by the Parties, the Company shall not be liable for any loss or damage to the Contractor's facilities, equipment, materials or other property on the Site unless the loss or damage is occasioned by the negligence of the Company

#### **45.0 Right of Company to Reject the Contractor's Personnel**

The Company shall have the right, at its discretion, to refuse (including to remove from the Site with or without notice) any of the Contractor's personnel from being engaged in the performance of this Contract. The Representative of the Company shall provide written notice of the refusal and the reasons therefor. The decision of the Representative of the Company shall be final.


#### **46.0 Contractor's Liability for Dishonesty of Personnel**

**46.1** Where the Company establishes that the Contractor or its personnel have acted dishonestly with regard to the property of the Company, that of its employees or any third parties, the Company shall have the right to terminate this Contract by giving thirty (30) days' written notice, whether such acts constitute criminal offences or not. The termination of the Contract shall be in addition to any criminal prosecution against the Contractor or its personnel and any other action the Company may take to recover the property or obtain legal redress.

**46.2** Notwithstanding Clause 46.1, the Company shall pay the Contractor for Services performed prior to termination of the Contract.

#### **47.0 Bankruptcy or Insolvency of Contractor**

In the event that the Contractor becomes insolvent or bankrupt, or has a receiving order made against it, or compounds with its creditors, or commences proceedings to be wound up (not being a members' voluntary winding up for the purposes of amalgamation or reconstruction), or is placed under official management or carries on its business under a receiver, receiver and manager, trustee, liquidator or provisional liquidator for the benefit of its creditors or any

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of them, the Contractor shall notify the Company and the Company may terminate the Contract by notice to the Contractor, receiver, receiver and manager, trustee, liquidator, provisional liquidator, official manager or to any other person in whom the Contract may have become vested.

## **48.0 Dispute Resolution**

### **Notice of Dispute**

**48.1** In the event of a dispute, either Party shall deliver a written notice (“Notice of Dispute”) to the other Party which shall state the dispute. A Party delivering a Notice of Dispute shall also provide sufficient details of the dispute including –

48.1.1 the alleged facts on which the dispute is based;

48.1.2 the legal basis on which the claim is made; and

48.1.3 the relief that is claimed.

**48.2** Within ten (10) business days of a Notice of Dispute being delivered to the receiving Party, the receiving Party shall deliver a written response to the other Party stating –

48.2.1 its position in relation to the dispute; and

48.2.2 the basis for its position.

### **Meeting in good Faith**


Senior representatives of the Parties shall meet within ten (10) days of the receiving Party delivering its response to the Party alleging that a dispute exists. The purpose of the meeting shall be to discuss and resolve the dispute in good faith. The Parties shall be at liberty to consider whether a process other than that already provided for under this Agreement can be employed to resolve the dispute.

**IF THE ABOVE AVENUES FAIL, PARTIES SHALL BE AT LIBERTY TO COMMENCE LEGAL ACTIONS.**

## **49.0 Domicilia and Notices**

**49.1** The Parties choose as their *domicilia citandi et executandi*, their respective addresses set out in this part for all purposes arising out of or in connection with this Contract, at which addresses, all court processes, notices, other documents or communications may be served upon or delivered to the Parties.

**49.2** All notices and other documents made pursuant to this Contract shall be in writing and signed by a duly authorised representative of either Party.

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**49.3** Any notice given and any communication made by either party to the other ("the addressee") which –

49.3.1 is delivered by hand or emailed during the normal business hours of the addressee at the addressee's *domicilium* for the time being, shall be presumed to have been received by the addressee at the time of delivery or on the first business day after the date of email transmission;

49.3.2 is posted by prepaid registered post from an address within Zambia to the addressee at the addressee's *domicilium* for the time being, shall be presumed to have been received by the addressee on the seventh day after the date of posting; and

49.3.3 is posted by prepaid registered post from an address outside Zambia to the addressee at the addressee's *domicilium* for the time being, shall be presumed to have been received by the addressee on the fourteenth day after the date of posting.

**49.4** Service of any legal proceedings concerning or arising out of the Contract shall be effected by causing the same to be delivered to a party at its registered office, or to such other address as may be notified by the party concerned in writing from time to time.

## **50.0 Conflict of Interest**


The Contractor warrants and represents that it has not carried and will not carry on business, enter into any financial arrangements or undertake any obligation, which would in any way interfere, or conflict with the performance of the Services under this Contract or the interests or objectives of the Company, without the written consent of the Company.

## **51.0 Goodwill and Reputation**

**51.1** The Parties shall refrain from taking actions or making statements, written or oral, which disparage or defame the goodwill or reputation of the other Party.

**51.2** Neither Party shall, without prior consultation with the other Party, commit any act nor make any statement or representation that may be construed to compromise or adversely impact on the other party's ongoing presence in the Republic of Zambia. Such acts, statements or representations include, but are not be limited to, acts, statements or representations regarding the Party, the Party's policies or the expected impact of such policies, salary and benefits scales, employment and business prospects, production potential, settlement of disputes and like situations.

## **52.0 Confidentiality**

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**52.1** The Parties shall keep confidential and shall not, without the written consent of the other Party, divulge to any third Party any documents, data, or other information furnished directly or indirectly by the other Party in connection with the Contract, whether such information has been furnished prior to, during or following completion or termination of this Contract.

**52.2** Notwithstanding Clause 52.1, the Contractor may furnish to its subcontractor such documents, data, and other information it receives from the Company to the extent required for the subcontractor to perform its work under the Contract, in which event the Contractor shall obtain from such subcontractor an undertaking of confidentiality similar to that imposed on the Contractor under this part.

**52.3** The Parties shall not use such documents, data and other information received from the other Party for any purposes unrelated to the Contract.

**52.4** The obligation of a Party under Clause 52.1 shall not apply to information that -

52.4.1 the Parties are required to share with other institutions participating in the financing of this Contract;

52.4.2 now or hereafter enters the public domain through no fault of either Party;

52.4.3 can be proved to have been possessed by that Party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other Party; or

52.4.4 otherwise lawfully becomes available to that Party from a third party that has no obligation of confidentiality.

**52.5** The above provisions shall not in any way modify any undertaking of confidentiality given by either Party hereto prior to the date of contract in respect of the Services or any part thereof.

**52.6** The provisions of clauses 52.1, 52.2, 52.3, 52.4 and 52.5 shall survive expiration or termination of this Contract.


### **53.0 Limitation on Age of Employees of Contractor in High Risk Environment**

Where the performance of the Services or any part thereof shall require an employee of the Contractor to work in a High Risk Environment, the Contractor shall not employ, hire, engage recruit or secure the services of a person who is fifty-five years old or above to perform the work. The Contractor shall ensure that its subcontractors comply with this clause.

### **54.0 Employment of Personnel of Company and other Contractors**

**54.1** The Contractor shall not, while it is associated in any capacity with the Company from the date of this Contract, either for its own account or as representative or agent for a



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third party, persuade, induce, encourage, procure or solicit any employee or independent contractor engaged by the Company;

54.1.1 to become employed by, contracted by, or have an interest directly or indirectly in any manner whatsoever, in any business which is in competition with the business carried on by the Company;

54.1.2 to terminate that employee or contractor's employment or association with the Company; or

54.1.3 to furnish any information or advice acquired by that employee or contractor as a result of their association with the Company, to any unauthorized person.

**54.2** The Contractor shall not employ an employee or casual worker who was or is engaged or employed by another Contractor of the Company within a period of three (3) months after the employee or casual worker has left the services of the other Contractor without the prior written approval of the Company.

**54.3** Where the Contractor engages an employee or casual worker of another Contractor of company in contravention of Clause 53.2, the Company may exercise its rights under Clause 45.


#### **54.4 Criminal Records**

54.4.1 The Contractor undertakes that it shall not hire or employ any person with a criminal record in the execution of the works under the contract and shall conduct a due diligence on all of its personnel to this effect.

54.4.2 A breach of sub-clause (1) of this clause shall entitle the Company to terminate the contract with immediate effect, without any liability to the Company. This shall not prejudice any other rights the Company may have at law for breach of contract.

#### **55.0 Official Language**

The Company's language of preference is English and the Contractors' employees shall be proficient in both written and spoken English to allow effective communication between the Company and the Contractor. Where a Contractor fails to comply with this clause, the Company may exercise its rights under Clause 45.

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