

REQUEST FOR QUOTATION
FOR THE SUPPLY OF REFRIGIRATOR SERVICES MAINTENANCE TO KAMOA COPPER SA
ENQUIRY NUMBER: RFQ – 10665

SECTION 1: INSTRUCTIONS TO TENDERERS

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

1. GENERAL

This Request for Quotation ("RFQ") covers the supply of the Goods defined in Section 2 Supply 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 company, contact person's contact 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 KCSA within 7 days from the RFQ issue date, advising him of the details and seek KCSA's agreement to tender in such a manner.

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

5. INSTRUCTIONS

Tenderers are advised to familiarise themselves with all aspects of this RFQ 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 taken into account by the Tenderer. The Tenderer's Price will be considered to be strictly nett, inclusive of all overheads and ancillary costs to supply to the Employer, as set out herein, no claims for items and activities excluded from the tender will be allowed.

The Tenderer shall investigate the whole of this RFQ 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.
- 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 RFQ.
- 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.
- 5.5 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.
- 5.6 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.
- 5.7 Where and when was the organisation or company founded?
- 5.8 Who are the major shareholders in the organisation or company?
- 5.9 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.
- 5.10 In which countries is your organisation or company represented?
- 5.11 Specify the location of your organisation or company head office.
- 5.12 Specify the location of all your organisation or company offices, locally and internationally.

- 5.13 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.
- 5.14 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.
- 5.15 What benefits will your organisation or company gain through providing this service to the Employer?
- 5.16 What is your organisation or company structure and ownership?
- 5.17 What is the total number of staff employed? Provide an organisation chart. Identifying senior partners/directors and other staff.
- 5.18 Has any partner, principal or director in your Company ever been convicted of an offence?
- 5.19 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.
- 5.20 Provide a summary of your “order book” commitments for the next 3 years.
- 5.21 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.
- 5.22 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.

- 5.23 Preamble to Bill of Quantities or Basis of Pricing.
- 5.24 Bill of Quantities or Schedule of Rates.
- 5.25 Alterations by Tenderer.
- 5.26 Rates for personnel (labour).
- 5.27 Schedule of equipment to supply, including rental rates and purchase values of these items.
- 5.28 Procurement mark-up.
- 5.29 Cash flow Prediction.
- 5.30 Goods Supply Programme.
- 5.31 Method Statements.
- 5.32 Schedule of Subcontractors and/or Service Providers proposed by Tenderer.
- 5.33 Project Team Structure.
- 5.34 CV's of proposes Site Management Team.
- 5.35 Quality Assurance Programme.
- 5.36 Insurance Details.
- 5.37 Additional Facilities Required.
- 5.38 Tender Correspondence.

6. SUBMISSION OF TENDER

The "Original Tender" with all related tender data, annexures, addenda, and enclosures shall be submitted

via email to tenders@kamoacopper.com, before the closing time, as follows:

Marked: Confidential
RFQ Number: **RFQ – 10665– Refrigerator Service maintenance**
Description: Catering Commodities
Employer: Kamo Copper SA.

Tender's Close: **Monday 25th January 2021, 13h00 Kolwezi time.**

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 KCSA.

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

Before the closing date, KCSA 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 KCSA.

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

Should KCSA grant such extension, KCSA 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 KCSA.

The Tenderer shall check the number of pages and attachments within this entire RFQ 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 RFQ, the Tenderer shall promptly notify KCSA 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 KCSA and it shall be taken that the RFQ 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 KCSA 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 and / or 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 RFQ closing date and time.

The tendered price is inclusive of all work required to be provided to complete the supply. Activities not listed or priced, and items for which no rate or price is provided by the Tenderer, will not be paid for by KCSA. 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 RFQ and or the tender.

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 must be included in the rates, prices, and the tendered price (excluding Value Added Tax (VAT)).

Value Added Tax (VAT) payable by KCSA 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 RFQ and those contained in any additional letter or document submitted by the Tenderer, the former shall prevail.

Errors shall be corrected by KCSA 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 KCSA there is an obvious 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 RFQ.

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

Should the Tenderer desire to make any departures from, or modifications to the RFQ 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 KCSA. 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 KCSA, but such alternative proposal will not be considered where the Tenderer has not submitted a main offer in compliance with this RFQ.

7. CONDITIONS OF AGREEMENT

The conditions of contract shall be the KCSA's "Supply Service Agreement", attached hereto in Section 3.

8. 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 and equipment. 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.

9. 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.

10. TERMS OF DELIVERY

The scope of matters relating to the rights and obligations of the parties in relation to delivery of the Goods shall be specified using Incoterms 2010 terminology. The Tenderer shall motivate the advantages of its choice of Incoterm to KCSA.

11. ACCEPTANCE OF TENDER

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

12. REJECTION OF TENDER

A tender may be rejected if:

- It is received after the closing date and time stipulated in the RFQ 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;
- It is not submitted on the forms provided or is not in accordance with the commercial and technical requirements of the RFQ;
- The Tenderer fails to attend meetings convened by KCSA 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 KCSA's team in an inappropriate manner concerning this RFQ;
- A single invited Tenderer, tendered as a consortium or a joint venture or some other form of collaboration without KCSA's written authorisation.
- Any other reason which KCSA views as valid.

13. CONFIDENTIALITY OF ENQUIRY DOCUMENTATION

The RFQ issued by KCSA 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 RFQ.

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

14. 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.

15. EMPLOYER'S LIABILITY

Tenderer's are hereby advised that KCSA will not accept any financial liability whatsoever should the Tenderer's or prospective Tenderer's wish to place orders on their Service Providers and / or subcontractors prior to receiving KCSA's official written acceptance and / or order.

16. 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.

SECTION 2: SCOPE OF WORK

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 SUPPLY OF CATERING & ACCOMODATION COMMODITIES.

- 1.1. An agreement will be entered for a period of one year between KCSA and the Service Provider.
- 1.2. The Service Provider shall furnish labor, transportation and tools to accomplish the maintenance and the repair on KCSA equipment and installations.
- 1.3. The Service provider shall provide full Maintenance services: clean up, welding pipes, adding of gas and follow up (Performance Checking)
- 1.4. The Service provider shall provide repair if needed: Replace damaged spare parts, installation of new units and wiring etc....
- 1.5. The service Provider will also have to provide spare parts according to KCSA requirement. KCSA do not have any obligation to buy the spare parts through the Service provider. A proposal will be submitted to KCSA (price offer, including taxes, delivery....), KCSA must agree through a purchase order.
- 1.6. The service must be executed every first week of the month and be finished within three (03) - 4 rotations a year (12 months contract).
- 1.7. Please find below, the list of the equipment and installations to be maintained, repair.

Designation	Qty
Freezer Container 20 & 40ft	13
Cold Room Container 20& 40ft	7
Ice Cream Machine	5
Ice Machines	6
Juice Machines	10
Cars Air Con LDV fill gas only	155
Cars Air Con LHD fill gas only each	35
Air Conditioner Housing & Offices each	443
Bar Fridge Housing & Offices each	400
Fridge Double Door UPRIHGT each	7
Fix & Repair Cost and installations each	1
Spare Parts Cost according to KCSA need	

- 1.8. The Service Provider shall perform the best quality services following the highest standards required.
- 1.9. Accommodation and catering will be provided by KCSA.
- 1.10. The Service Provider will send two submissions separately
 - 1.10.1. Commercial submission
 - 1.10.1.1. Company's profile (Presentation, legal documentation...)
 - 1.10.1.2. Rates/ Pricing/ BOQ
 - 1.10.1.3. Any other relevant information related to commercial purpose
 - 1.10.2. Technical submission
 - 1.10.2.1. Company's Technical profile (Presentation, references, certificates...)
 - 1.10.2.2. Technical presentation on current project (specification, certificates, warranties...)
 - 1.10.2.3. Any other relevant information on technical purpose (OEM letter...)
- 1.11. KCSA requires the Bidders to follow the same template and numbering as the one provided in the annex.

2. SERVICE LEVELS.

- 2.1. The Service Provider must demonstrate in its Tender that it has the capacity to supply the service as well as supply the spare parts, has a suitable storage and distribution network to achieve this. The Service Provider must guarantee delivery within two (02) working days of a request from KCSA.
- 2.2. If the Service Provider is unable to deliver within 48 hours after a purchase order is sent by KCSA, it shall inform KCSA as soon as possible. KCSA shall be entitled to apply the penalty for late completion, as provided for in its Purchase Agreement described in Section 3 hereof.

3. PAYMENT.

- 3.1. Payment will be proceeded thirty (30) days after statement.
- 3.2. The Service Provider shall inform KCSA in writing of any charges that may affect the Price and enclose copies of support documents.
- 3.3. 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...
- 3.4. Exoneration on import duties should be taken into account in cases where items are sent from abroad.

3.5. As a minimum, each invoice submitted shall:

- 3.5.1. include the delivery slip, duly signed by KCSA;
- 3.5.2. quote the agreement reference number and purchase order number on each document;
- 3.5.3. state the names of KCSA's and the Service Provider's representatives;
- 3.5.4. Failure to include the agreement and purchase order numbers on any Service Provider invoice will result in returning such invoice to the Service Provider.

4. GENERAL.

- 4.1. The ownership and risk shall remain with the Service Provider while the spare parts are under its responsibility.
- 4.2. Spare parts shall be delivered to the KCSA site; an inspection of the Goods will be performed by KCSA upon reception, with a partial or full acceptance of the Goods.
 - 4.2.1. If some Goods are damaged, they will be returned to the Service Provider, at the latter's expense, and shall be replaced within 48 hours.
 - 4.2.2. If some Goods are defective, under the manufacturer's or seller's warranty, the Service Provider shall be responsible for repatriation and replacement of the defective Goods, and shall supply new Goods, at its expense, within 48 hours.

5. DELIVERY.

- 5.1. The KCSA Site is located 45 km west of Kolwezi in the Province of Lualaba, Democratic Republic of Congo.
- 5.2. KCSA shall be entitled to source Goods elsewhere and recover any additional costs and/or expenses from the Service Provider.
- 5.3. The scope of supply includes the following:
 - 5.3.1. The supply and delivery of the spare parts KCSA may need to fix its equipment/ installations.
 - 5.3.2. The Service Provider shall be responsible for the unloading of the parts at the KCSA Site.
 - 5.3.3. The Service Provider shall supply, issue and record all receiving transactions of goods.
 - 5.3.4. The Service Provider shall supply the Goods in dedicated, quality packaging. Reservations may be expressed regarding the quality of transport, should packaging be damaged.
 - 5.3.5. The Service Provider shall supply the Goods, the packing slip and the delivery slip for every delivery.
- 5.4. Lead times:
 - 5.4.1. KCSA will issue Purchase Orders to the Service Provider, indicating the quantity required; following receipt of the purchase order, the Service Provider will have 48 hours to supply the

KCSA site.

- 5.4.2. The Service Provider shall make its deliveries as per prescribed schedules for access to the Kamoa site. Delivery times to the various sites are as follows:

Monday to Friday 08:00 to 15:00, Saturday from 08:00 to 11:00; no deliveries on Sundays.

- 5.4.3. The Service Provider shall provide details regarding lead time in the dry season (in working days) and lead time in the wet season (in working days).

6. KEY PERFORMANCE INDICATORS.

- 6.1. Compliance Rate: minimum reaction time in case of any issue on maintenance, the delivery time (48h after PO), and special discount offers compare to local market.
- 6.2. High diversified technical support: be able to overcome any servicing on standard cool appliances (Units) with no defect.
- 6.3. Servicing Cycle Time: for urgent order, be able to handle it quickly within time.
- 6.4. Quality: provide high rate quality standard services/materials. During maintenance, when damages find, seek replacement goods in a short time frame.
- 6.5. Availability to respond to urgent demands. Availability of stock and greater level of efficiency.

7. QUALITY CONTROL.

- 7.1. In the event of problems relating to the manufacturer's or seller's warranty, under the terms and conditions defined by the manufacturer or seller, the Service Provider shall process and manage such instances at its expense.

8. SECURITY OF EQUIPMENT, GOODS AND MATERIALS.

- 8.1. The Service Provider shall provide adequate security (subject to KCSA's approval) during the transportation of Goods to the Site.
- 8.2. The Service Provider will have sufficient environmental insurance cover including spillage support services, in case of unforeseen spillages of chemicals on route.

9. TRAVEL.

- 9.1. The Service Provider shall at its sole expense be responsible for travel and transportation of its personnel, where required, to perform the Services.

9.2. The Service Provider shall comply with KCSA's transportation policies while on the Site.

10. HEALTH AND SAFETY.

10.1. Without limiting safety requirements of the Agreement, the Service Provider shall take cognizance of the following safety-related procedures and specifications:

10.2. The Service Provider shall provide the necessary safety, health and environmental (SHE) management system in accordance with the Regulations, as applicable;

10.3. 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-contractors comply with the Regulations.

10.4. The Service Provider shall comply with the Regulations throughout performance of the Services.

10.5. The Service Provider shall comply with KCSA Covid19 protocol while performing the service.

11. SAFETY VIOLATIONS.

11.1. 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.

11.2. 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-contractors 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.

12. SAFETY REPORTING.

12.1. The Service Provider shall maintain, and require its sub-contractors to maintain, accurate accident and injury reports. The Service Provider shall provide to KCSA a copy of all reports that will lead to lost time or injury when onsite.

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

13. INDUSTRIAL RELATIONS.

13.1. The Service Provider must pursue a policy of training to ensure that it follows the most efficient

work practices.

- 13.2. 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.
- 13.3. 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.

Annex 1: Bill of Quantities

- To be provided by the Service provider
 - Transport from Kolwezi to Kamoa sites
 - Transport on Kamoa's sites (Kamoa camp, Kansoko, Kakula)
 - Tools to execute the service
 - PPE (personal protective equipment)
- Kamoa will provided accommodation and catering.

<u>Item</u>	<u>Description</u>	<u>Quantities</u>	<u>Unit Price</u>	<u>Price per month</u>	<u>Price per year</u>
1	Maintenance Full Service Cold Container	7	\$ -	\$ -	\$ -
2	Maintenance Full Service Freezers Containers	13	\$ -	\$ -	\$ -
3	Maintenance Full Service Ice Machines	6	\$ -	\$ -	\$ -
4	Maintenance Full Service Ice Cream Machines	5	\$ -	\$ -	\$ -
5	Maintenance Full Service Juice Machines	10	\$ -	\$ -	\$ -
6	Maintenance Air cond LDV fill gas only	155	\$ -	\$ -	\$ -
7	Cars air cond LHD fill gas only	35	\$ -	\$ -	\$ -
8	Maintenance Air conditioner housing & offices	443	\$ -	\$ -	\$ -
9	Maintenance Bar fridge housing & offices	400	\$ -	\$ -	\$ -
10	Maintenance Fridge double door UPRIGHT	7	\$ -	\$ -	\$ -
11	Labour Cost Reparation for Each Damaged	1	\$ -	\$ -	\$ -
12	Labor cost Installation of new unit	1	\$ -	\$ -	\$ -
13	Transport Kolwezi/Kamoa	1	\$ -	\$ -	\$ -
14	Transport on Kakula/ kansoko/kamoa	1	\$ -	\$ -	\$ -
15	Costs PPE	1	\$ -	\$ -	\$ -
16	Spare parts	Depending on the parts needed			

SECTION 3: SERVICE SUPPLY AGREEMENT

KAMOA COPPER_{SA}
Société anonyme avec conseil d'administration

SUPPLY OF SERVICE AGREEMENT

Entered into between

KAMOA COPPER SA

1148-6 Avenue de la Libération

Quartier Golfes Battants Commune de Lubumbashi

Lubumbashi

Haut-Katanga Province

Democratic Republic of Congo

Registration Number: 6-118-N37233J

(Hereafter called "KCSA")

And

SERVICE PROVIDER

(Hereafter called "Service Provider")

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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:

Additional Services shall have the meaning ascribed in 3.3 hereof.

Affiliate means in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.

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

Applicable Laws

jurisdiction, as well as any relevant policies listed in KCSA' Policies attached as Annexure A.

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 Services and/or to the performance and/or subject matter of this Agreement (as applicable).

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 Services or for the Service Provider's performance of its other obligations under this Agreement.

Bill of Quantities

comprises a list of units of work which are briefly described. It provides a measure of the extent of work and the consideration due for each unit. The work included in each unit is defined in detail. The unit descriptions are shorthand. The measure may be a single item or number, dimension (linear metre, square metre, cubic metre), time (hrs., weeks) or weight, a template of which is attached as Annexure B.

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, 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 Products by the Disclosing Party; products, 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 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.
Effective Date	the date when KCSA issues the Purchase Order to the Service Provider, 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 2.3.
Holding Company	means in relation to a person, any other person in respect of which it is a Subsidiary.
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 as listed in Annexure A, and those policies and procedures of KCSA applicable to staff and suppliers, service providers, contractors and other third parties which policies and procedures may be amended from time to time.
Labour Code	means law No. 015-2002 of 16th October 2002 establishing the labour code, as modified and

	supplemented by law No. 16-010 of 15th 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 08 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 08 June 2018.
Order	means Ministerial Order No. 047/CAB.VPM/METPS/2015 of 08 October 2015 modifying and supplementing Ministerial Order No. 12/CAB.MIN/TPS/062/08 of 18 September 2008 setting out conditions for the opening, accreditation and functioning of private placement agencies.
Other Contractors	means any third party (other than the Service Provider) engaged by KCSA in carrying out any works or services of whatever nature at or in the vicinity of the Site, but specifically excluding all KCSA's Personnel and subcontractors of the Service Provider.
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 Service Provider and its Personnel.

Project	Kamoa Copper SA, a joint venture between Ivanhoe Mines and Zijin Mining, which entails amongst others the developing of a underground copper mine.
Purchase Order	a printed, official purchase order form with a unique order number issued to the Service Provider by KCSA, a template of which is attached as Annexure C.
Response to RFQ	The response to the RFQ by the Service Provider, which is attached as Annexure D.
RFQ	a request for quotation which may be issued by KCSA, from time to time, which is attached as Annexure E.
Schedule of Rates	is a list setting out the staff, labour, plant hire rates and any other rates which may be necessary for the execution of the Services that will be used to calculate the consideration due to the Service Provider for the Services, a template of which is attached as Annexure F. It does not contain any quantities for specific work units.
Service Level(s)	means all or any (as the context requires) of those performance indicators listed in clause 4.1 below and/or as further detailed in Annexure G.
Scope of Services	the document attached as Annexure H alternatively if no such Services are specified in Annexure "H", then the Scope of Services shall be as set out in KCSA's RFQ.

Services

the services described in the Scope of Services and/or Additional Services as may be applicable to be provided in terms of this Agreement.

Site(s)

the area of the Project located approximately 40km west of the town Kolwezi in the Katanga province of the DRC where the Service Provider is providing the Services, and/or where the Service Provider is engaged in executing the Services or any ancillary task necessary for the completion of the Services and/or where KCSA instructs the Service Provider to provide the Services.

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 8th 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 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.
The Service Provider	the provider of the Services stated 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

- 1.2.1 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).

- 1.2.2 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.
- 1.2.3 The headings do not govern or affect the interpretation of this Agreement.
- 1.2.4 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.
- 1.2.5 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.
- 1.2.6 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.
- 1.2.7 The words "including" and "in particular" are without limitation.
- 1.2.8 Any reference to a document or instrument includes the document or instrument as ceded, delegated, novated, altered, supplemented or replaced from time to time.
- 1.2.9 A reference to a Party includes that Party's successors-in-title and permitted assigns.
- 1.2.10 A time of day is a reference to Kolwezi, DRC time.
- 1.2.11 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.
- 1.2.12 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.
- 1.2.13 The Service Provider's standard terms and conditions and/or those contained in the Service Provider'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.
- 1.2.14 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.

- 1.2.15 The Service Provider 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 Services.

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;
 - 2.1.2 the Purchase Order;
 - 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 completed by the Service Provider in connection with its supply of Services to KCSA.
- 2.2 These Terms and Conditions and the other documents listed in clause 2 above shall be taken to be mutually explanatory of one another but if any ambiguity, discrepancy, divergence or inconsistency in or between them, the order of priority shall be as listed in clause 2 above.
- 2.3 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.
- 2.4 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").

3. SCOPE OF SERVICES

- 3.1 The Service Provider is hereby appointed on a non-exclusive basis to provide the Services.
- 3.2 KCSA shall issue Purchase Orders for specific Services as may be required.
- 3.3 KCSA may, from time to time, request the Service Provider to provide Additional Services falling outside the Scope of Services. All Additional Services shall be governed by this Agreement and the Additional Services shall form part of the Scope of Services.
- 3.4 KCSA will issue Purchase Orders to the Service Provider, for any Additional Services.

- 3.5 These Purchase Order's will be system generated and placed by KCSA by electronic mailing of a copy thereof to the Service Provider, and may contain details of the Services or Additional Services ordered.
- 3.6 If there is any discrepancy or ambiguity in description and/or quantities in a Purchase Order, the Service Provider shall immediately submit the matter to KCSA's Procurement Manager for decision. Should the Service Provider proceed before such decision and without the issuing of an amended Purchase Order, KCSA shall be absolved of all liability from any claim (for payment or otherwise) made by the Service Provider.
- 3.7 Purchase Orders may be cancelled by KCSA at any time provided that KCSA shall pay the Service Provider for costs reasonably incurred up to the date of cancellation. The Service Provider will use all reasonable and practical endeavours to mitigate its losses in this regard.
- 3.8 The consideration payable for the Services and/or Additional Services shall be specified in the Purchase Order and shall be paid to the Service Provider in the amount as indicated therein, and determined as provided for in terms of this Agreement. Unless expressly stated to the contrary in the Purchase Order, the consideration shall be exclusive of VAT, (whether VAT or any other value added taxes charged by any non-DRC government), and no additional charges of whatever nature shall be recoverable from KCSA unless the Service Provider has, prior to the execution of the Purchase Order, obtained KCSA's agreement in writing for such additional charges. The difference in cost, if any, occasioned by any Additional Services, will be added to or deducted, as the case may require.
- 3.9 Additional Services will be priced as follows:
- 3.10 Subject to and without limiting the terms of this Agreement, using the following order of precedence (in descending order):
- 3.10.1 this Agreement;
- 3.10.2 using applicable rates or prices in this Agreement;
- 3.10.3 reasonable market related rates or prices, consistent with sound practices.
- 3.10.4 If the Service Provider fails to submit pricing in relation to Additional Services within a period of 21 (twenty one) days from the date of the request to provide Additional Services, then the Service Provider shall be deemed to have waived and/or abandoned its claim for additional cost and/or time and KCSA shall be absolved from all liability in relation to any such claim.
- 3.11 No invoice shall be considered by KCSA unless supported by a valid Purchase Order issued by KCSA.
- 3.12 This Agreement does not govern, inter alia, the following:

- 3.12.1 If applicable, private placement services that may be provided to KCSA by the Service Provider, in accordance with Article 2 b of the Order, under the terms of which, at KCSA's request, the Service Provider would recruit workers in order to make them temporarily available to KCSA, it being specified that the Service Provider would be and remain, for the entire duration of their placement with KCSA, the sole employer of the workers concerned; and
- 3.12.2 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 Service Provider by KCSA for activities related to the search, selection and recruitment of the workers concerned.
- 3.13 The Service Provider, 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.

4. PERFORMANCE MANAGEMENT

- 4.1 Notwithstanding the specific performance requirements as contemplated in this Agreement, the Service Provider's performance of the Services will be managed as follows:
 - 4.1.1 The Services shall be measured in accordance with the provisions of this Agreement on a continuous basis and Service Levels, as provide for in Annexure G.
 - 4.1.2 In order for KCSA to measure the Service Provider's performance of the Services, the Service Provider shall provide KCSA with a monthly report in respect of the work performed for the previous month. This report shall be in the form of a summary of compliance with the Scope of Services and any Service Levels as contained in this Agreement.
 - 4.1.3 If the Service Provider fails to furnish KCSA with the monthly report twice within any six month period, KCSA shall, at its sole discretion, be entitled to levy penalties or issue a termination notice to the Service Provider.

5. OBLIGATIONS OF KCSA

- 5.1 KCSA shall provide to the Service Provider free of cost, all information that may be reasonably required for the provision of the Services. Should the Service Provider require any further documentation or information it shall forthwith request same in writing from KCSA, which documentation or information shall not be withheld unreasonably.

- 5.2 KCSA shall upon a request as set out above, respond within a reasonable time period, so as not to delay the Services provided that such time period is no shorter than five Working Days, according to the procedures agreed to by the Parties, prior to the commencement of each Purchase Order.
- 5.3 KCSA shall cooperate with the Service Provider and shall subject to clauses 7 and 28 below, not interfere with or obstruct the proper performance of the Services.
- 5.4 On becoming aware of any matter that may result in a material change or may impact on the Services, or on becoming aware of any defect or deficiencies in the execution of the Services, KCSA shall give notice of such change, defect or deficiency to the Service Provider.
- 5.5 KCSA may, either itself or by appointing others, carry out an obligation under the Agreement which the Service Provider was obliged to carry out, but which it failed to carry out within the time required in accordance with the Agreement.
- 5.6 The costs incurred by KCSA in so carrying out such obligation will be a debt due and payable from the Service Provider to KCSA.

6. OBLIGATIONS OF THE SERVICE PROVIDER

- 6.1 The Service Provider shall exercise reasonable skill, care and diligence in the performance of the Services.
- 6.2 The Service Provider shall, in the provision of the Services, have due regard to the operational requirements of KCSA and shall not do, or permit to be done, anything which may negatively impact such operational requirements.
- 6.3 Where the Services include the exercise of powers to certify, decide or exercise discretion in terms of a contract between KCSA and any third party, then the Service Provider shall act in accordance with that contract and this Agreement.
- 6.4 The Service Provider shall designate a full-time employee of the Service Provider during each stage of a Project, who shall be the representative and shall have complete authority to receive information and give information to KCSA. The name and other details shall be contained in the Response to RFQ.
- 6.5 The Service Provider will be required to attend regular meetings with KCSA and any other party as directed by KCSA.
- 6.6 Where the Service Provider shall be required to perform the Services in conjunction with any Other Contractor, the Service Provider will cooperate in good faith and in a professional manner with such other consultants / specialists in order to ensure effective cooperation and integration of the Services provided by Other Contractors.

- 6.7 The Service Provider shall notify KCSA immediately on becoming aware of any matter that may result in a material change, or may impact on the Project requirements or on becoming aware of any defects or deficiencies in the Services.
- 6.8 The Service Provider will have no contractual relationship with any Other Contractors undertaking the work, but will be responsible as project manager for ensuring the Other Contractor's compliance with that contract.
- 6.9 The Service Provider shall be adequately staffed with competent and suitably qualified personnel to comply with its obligations under this Agreement. The Service Provider shall furthermore maintain such offices, systems, employ such technologies, operate such equipment and do any other thing as is or may be required to effectively comply with its obligations under this Agreement.

7. WARRANTIES AND UNDERTAKINGS

- 7.1 The Service Provider warrants, acknowledges and undertakes, for the duration of this Agreement, to KCSA that:
- 7.1.1 it has exercised and will continue to exercise all skill, care and diligence to be expected of a properly qualified and competent Service Provider experienced in carrying out Services of a similar size, scope and complexity to the Services, to the professional standards which may reasonably be expected in the circumstances of a competent provider of similar Services;
- 7.1.2 the entry into and performance by the it of its obligations in terms of this Agreement do not conflict with its constitutional documents;
- 7.1.3 it has the power to enter into and perform in terms of this Agreement and has taken all necessary action to authorise the entry into and performance of this Agreement in accordance with its terms;
- 7.1.4 this Agreement constitutes legal, valid, enforceable and binding obligations on it in accordance with its terms.
- 7.2 The Service Provider warrants that there are no circumstances, facts or reasons which are known, or ought to be known by the Service Provider, which should have been disclosed to KCSA and which would have influenced KCSA's decision in appointing the Service Provider to supply the Services.

- 7.3 The Service Provider confirms that it is a duly incorporated and registered Congolese law legal entity with Congolese financing, in the meaning of (i) Article 1.48 of the Mining Code and (ii) Article 2 of the Mining Regulations is in good standing with all DRC administrations and commits to remain so for the full term of the Agreement. The Service Provider shall comply with all DRC laws relating to subcontracting and shall indemnify KCSA for any claims arising from its non-compliance.
- 7.4 The Service Provider 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 law or regulation as of the Effective Date or as may be enacted after the Effective Date.
- 7.5 The Service Provider must, throughout the term of this Agreement, comply (and ensure, as appropriate, that its Personnel, direct and indirect service supplier and other representative comply throughout the term of this Agreement) with all laws and regulations applicable to them at any moment, including those set out in the Mining Code, the Mining Regulations, the Subcontracting Law, the Order and any tax and customs law, Anti-Corruption Legislation and labour and social security laws (including the Labour Code) and regulations applicable in the DRC (and which for the avoidance of doubt shall include the obligation to communicate to the Congolese administration a copy of all subcontracting agreements within 15 days of their signature in accordance with Article 94 of Ordinance Law No. 13/003). The Parties agree that the provisions in this clause 7.5 are an essential obligation of the Service Provider.
- 7.6 The Service Provider 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 Service Provider's obligations towards KCSA.
- 7.7 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 Service Provider's field of expertise, with particular attention to activities for which local expertise is lacking.

- 7.8 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 Service Provider of all or part of its obligations, to unilaterally terminate the Agreement if a formal demand remains unheeded for more than 30 (thirty) Working Days following the receipt thereof by the Service Provider, as of right, by means of simple notification to the Service Provider of its decision to unilaterally terminate the Agreement, without any further formality and without the exercise of this right entitling the Service Provider to claim damages or any other payment, with the exception of the payment of invoices not disputed by KCSA relating to Services actually rendered or works actually carried out by the Service Provider in accordance with the Agreement, until the date on which termination takes effect.
- 7.9 The Service Provider shall be liable for, and shall indemnify and hold harmless KCSA, KCSA's Personnel and KCSA's Affiliates, against any loss, costs (including legal costs), expenses, liabilities and damage (including direct and indirect loss and damage) incurred by KCSA, KCSA's Personnel and KCSA's Affiliates due to, or caused by, the Service Provider's non-compliance with clause 7.3. This clause 7.9 shall survive termination of this Agreement.
- 8. RIGHT OF AUDIT**
- 8.1 KCSA shall be entitled, at its own expense, to access any Site for purposes of inspecting and auditing at any time, with or without notice to the Service Provider, any of the Services.
- 8.2 KCSA shall be entitled, at its own expense, but giving the Service Provider 2 (two) Working Days' notice thereof, to access the Service Provider's office for the purpose of inspection and audit of those records of the Service Provider pertaining to the Services provided by the Service Provider to KCSA. The Service Provider shall make available to KCSA in respect of such inspection and audit such records as KCSA may reasonably require. Any such inspection or audit shall be undertaken by KCSA in attendance with duly authorised representatives of the Service Provider.
- 8.3 The Service Provider shall at its own expense provide reasonable support to KCSA during such inspections or audits.
- 8.4 Should the audit find that the Service Provider has not been providing the Services in accordance with the provisions of this Agreement or the applicable Service Level Annexure, the provision of clauses 20 and/or 21 shall apply.

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8.5 The findings of the audit shall be prima facie evidence of its contents and shall entitle KCSA to exercise its remedies stipulated in this Agreement.

9. REMUNERATION

9.1 KCSA will pay the Service Provider for performing the Services in accordance with this Agreement.

9.2 The Service Provider shall submit its invoice to KCSA supported by supporting vouchers indicating VAT on all relevant amounts. The invoice and supporting vouchers must reflect all expenses properly and necessarily incurred by the Service Provider in providing the Services, in particular but not limited to, the following:

9.2.1 a detailed account of the Services rendered;

9.2.2 the total number of hours worked in providing the Services;

9.2.3 the names of the personnel providing the Services;

9.2.4 the Service Provider's income tax and VAT registration numbers;

9.2.5 the Service Provider's statement of account;

9.2.6 supporting vouchers of any materials and/or goods purchased for the Services;

9.2.7 the names of any and/or all sub-Service Providers used in executing the Services;

9.2.8 supporting vouchers of any and/or all sub-Service Providers accounts relating to the Services.

9.3 The consideration payable to the Service Provider shall be payable within 30 days of date of statement.

9.4 If any item or part item is disputed in an invoice submitted by the Service Provider, KCSA will give due notice before the date of payment, and shall not be obliged to effect payment until the cause of dispute has been resolved. The cause of dispute will be resolved by the Parties before the date of next payment or will be referred to the dispute resolution procedures outlined under clause 22.

9.5 Subject to clauses 9.2 and 9.3, KCSA shall be invoiced within 3 (three) months for all valid expenses incurred as part of the Services. KCSA shall be entitled to demand any supporting documentation that it deems fit. Such expenses will be incorporated as a sub-section of the relevant invoice. Should any expenses be issued/invoiced to KCSA after this date, they are deemed to be rejected and KCSA shall be absolved of all liability in relation to these expenses and payment thereof.

- 9.6 Should the Service Provider undertake the Services on a reimbursable basis, the Service Provider shall maintain records which clearly identify individual time and expenses and shall retain such records for a period of 120 (hundred and twenty) months following completion or termination of the said Services. All such records should be available to KCSA or appointed auditors within 5 (five) Working Days following written request.
- 9.7 Should the Service Provider undertake the Services using a Bill of Quantities or a Schedule of Rates, the total consideration payable to the Service Provider shall be based on the work as set out in the Bill of Quantities or Schedule of Rates.
- 9.8 Unless otherwise expressly provided in this Agreement, the Service Provider shall pay all taxes including sales tax, payroll tax, fringe benefits tax, levies, duties and assessments due in connection with its provision of the Services and the Service Provider's performance of its other obligations under this Agreement.
- 9.9 If any Party is required to reimburse or indemnify the other Party for a cost, expense or liability (Cost) incurred by the other Party, the amount of that Cost for the purpose of this Agreement is the amount of the Cost incurred less the amount of any credit or refund of VAT to which the Party incurring the Cost is entitled to claim in respect of the Cost
- 9.10 Notwithstanding any other provision of this Agreement, KCSA may set-off or deduct from any amounts due to the Service Provider under this Agreement any moneys due from the Service Provider to KCSA on any account under this Agreement, including but not limited to:
- 9.10.1 all debts and moneys due from the Service Provider or its personnel to KCSA under or by virtue of this Agreement;
- 9.10.2 all costs, charges, damages and expenses which KCSA may have paid or incurred and which or for which the Service Provider is liable to bear, pay or make reimbursement to KCSA;
- 9.10.3 any amount which KCSA is required by law, or which KCSA may reasonably consider it is required by law, to deduct for charges, assessments or levies of any government or applicable Authority.
- 9.11 This clause survives the termination or expiry of this Agreement. If the amount which the Service Provider owes KCSA is not liquidated, set-off will operate to the extent of the amount which, in the written opinion of KCSA's auditors, is the value of KCSA's claim against the Service Provider, without prejudice to the rights of either Party subsequently to have the amount determined by arbitration.
- 9.12 If, after set-off in terms of clause 9.10, the amount which the Service Provider owes KCSA is determined in an amount different from that assessed by KCSA's auditors, the Party to whom money is owed may immediately recover it from the other Party.

10. INDEMNITIES, LIMITATION OF LIABILITY AND INSURANCE

- 10.1 The Service Provider agrees to indemnify, hold harmless and defend KCSA and its Personnel from and against the following damages, losses and liabilities (hereinafter collectively referred to as "Liability") arising as a result of the negligent or wilful acts or omissions of the Service Provider:
- 10.1.1 with regard to claims by Authorities or others for non-compliance by the Service Provider with the provisions of all laws (federal, state, provincial or municipal) in any way affecting or applicable to the execution of the Services.
- 10.1.2 arising out of any wilful or negligent acts or omissions to act, of the Service Provider.
- 10.1.3 arising from claims with regard to the death of/or injury to the Personnel of the Service Provider or the death of/or injuries to third parties due to the Service Provider's negligence or misconduct.
- 10.1.4 arising from any loss of/or damage to property which is the property of KCSA or any third party.
- 10.2 Without limiting the Service Provider's liabilities or responsibilities in terms of this Agreement, the Service Provider will provide adequate insurance, to cover its liability and responsibilities in terms of this Agreement, which insurance is to be taken out from a reputable insurance company.
- 10.3 In addition to the insurance aforementioned and without prejudice to its obligations under this Agreement or otherwise at law the Service Provider shall effect and use its best endeavours to maintain for the duration of this Agreement and for a period of 1 (one) year from the expiry or termination date with a well-established insurance office or underwriter of repute, adequate professional indemnity insurance with a limit of indemnity commensurate to the risk at hand (adequacy to be determined by KCSA), for any one occurrence or a series of occurrences arising out of any one event (which for the avoidance of doubt shall include any negligent act, error omission or default) on the part of the Service Provider in the performance of its duties under this Agreement and shall produce to KCSA on demand from time to time reasonable evidence that the terms of this clause have been complied with.
- 10.4 The Service Provider warrants that the provisions of this Agreement have been disclosed to the Service Provider's insurers and such insurers have expressly accepted that any breach of such provisions by the Service Provider is covered by the Service Provider's insurance.

10.5 KCSA will have the right to examine the policies maintained by the Service Provider at any time during the existence of this Agreement and to demand from the Service Provider to appoint another underwriter if it is not satisfied with the underwriter that underwrites the insurance policy.

10.6 This Clause 10 shall survive the termination of this Agreement.

11. LIQUIDATED DAMAGES

11.1 If at any time an event of Default with respect to the Services has occurred and is continuing, due to the actions or bad faith of the Service Provider, 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;

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.

12. ASSIGNMENT AND SUBCONTRACTING

12.1 The Service Provider shall not without the prior written consent of KCSA have the right to cede or assign the rights, benefits or obligations under this Agreement or any part thereof.

12.2 If the Service Provider wishes to subcontract the Services to be rendered in terms of this Agreement or any part thereof or the Additional Services it shall obtain KCSA's written approval, which approval shall not unreasonably be withheld.

- 12.3 Irrespective of the foregoing any subcontracting of Services with or without KCSA's consent shall not relieve the Service Provider of any of its obligations to KCSA under this Agreement.
- 12.4 Irrespective of the foregoing the Service Provider undertakes that its procurement process when selecting subcontractors shall be transparent, open, auditable and impartial and in line with Applicable Law.
- 12.5 The Service Provider may, with the prior written approval of KCSA, enter into subcontracts for the vicarious performance of any part (but not exceeding forty percent) of the Services. It shall provide KCSA with the proposed subcontract as well as scope of work and any other information required by KCSA to enable KCSA to provide its approval.
- 12.6 The Service Provider must manage the performance of each subcontractor to ensure the quality and timeliness of its performance to meet the requirements of this Agreement for the Services.
- 12.7 The Service Provider's responsibilities or obligations under this Agreement are not lessened or otherwise affected by subcontracting the performance of those obligations or KCSA giving, or failing to give, its approval under this clause.
- 12.8 The Service Provider must ensure that all subcontracts for the Services adequately address all industrial relations, safety, environmental and programming issues relevant to the Services (including compliance with Applicable Law and KCSA's Policies).
- 12.9 The Service Provider will be liable to KCSA for all acts, omissions and defaults of the subcontractors (and those of the officers, Personnel and agents of the subcontractors), as if they were the acts, omissions and defaults of the Service Provider itself.

13. CONFIDENTIALITY AND PUBLICITY

- 13.1 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:
- 13.1.1 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

- 13.1.2 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.
- 13.2 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.
- 13.3 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.
- 13.4 The provisions of this clause shall cease to apply to any confidential information of a Party which:
- 13.4.1 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
- 13.4.2 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
- 13.4.3 was known to the receiving Party (having not breached any confidentiality obligations) prior to receiving it from the other Party.
- 13.5 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.
- 13.6 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 this Agreement, KCSA or the Services.
- 13.7 Both Parties' obligations in terms of this clause will survive the expiry or termination of the Agreement, for a period of five years.
- 13.8 The Service Provider shall:
- 13.8.1 comply with all Applicable Laws and directives or instructions of Authorities when performing its obligations under this Agreement and the conditions of all authorisations;

- 13.8.2 comply with all the relevant guidelines issued by Authorities and relevant KCSA Policies in respect of the Site or the performance of the Services and its other obligations under this Agreement;
- 13.8.3 promptly give KCSA copies of all relevant documents issued by Authorities.

14. ETHICAL BUSINESS PRACTICES

- 14.1 The Parties undertake that so long as this Agreement remains in force and effect it will, and it will procure that its Personnel, Affiliates, or related parties will, comply with all applicable Anti-Corruption Legislation, all applicable competition, state aid, anti-trust, anti-restrictive or anti-abusive trade practice or merger control laws in any jurisdiction; and it will implement and maintain appropriate policies and procedures designed to ensure, and which are reasonably expected to ensure, compliance by each of their directors, officers, employees and subsidiaries or authorised representatives with all Anti-Corruption Legislation in relation to its business and the business of any of its holding company, subsidiary companies or related parties.
- 14.2 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 Annexure A to this Agreement.
- 14.3 The Service Provider undertakes to comply with the above and all Applicable Laws and specifically all Anti-Corruption Legislation.
- 14.4 The Service Provider shall not give nor 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.
- 14.5 The Service Provider undertakes to comply with and implement policies in furtherance of the Voluntary Principles on Security and Human Rights and the United Nations Guiding Principles on Business and Human Rights.
- 14.6 The Service Provider shall ensure fair labour practice by complying with the industrial relations and Personnel policies and/or directives of KCSA.

15. GIFTS AND ENTERTAINMENT

15.1 Save for gifts of minimal value, KCSA discourages the exchange of gifts between the Parties or the Service Provider and Other Contractors. The prior written approval of KCSA is required for the exchange of significant gifts between KCSA, KCSA Personnel and the Service Provider.

16. GOOD FAITH

16.1 KCSA and the Service Provider shall at all times undertake to conduct themselves in good faith towards each other and shall not bring the other into disrepute.

17. DOCUMENTS

17.1 The Service Provider shall provide to KCSA such information and documents relating to the Services as may reasonably be requested by KCSA or required by law subject to KCSA paying the Service Provider all reasonable costs properly incurred by the Service Provider in providing the same.

18. NO RESTRICTION OF RIGHTS

18.1 This Agreement shall in no way prejudice or affect any other rights and remedies of KCSA against the Service Provider whether at common law or otherwise in respect of the Services or other matters referred to herein.

19. CONFLICT OF INTEREST

19.1 The Parties undertake:

19.1.1 Not to offer any employee of the other Party an interest in its business; and/or

19.1.2 Not to employ the staff of the other Party on a full- or part time basis. This includes directorships on boards etc.

20. FRAUD

20.1 If, at any time during the period of this Agreement, KCSA in its reasonable discretion determines that anyone employed by the Service Provider, in respect of this Agreement acted dishonestly and/or in bad faith or made any wilful or material negligent misrepresentation to KCSA, whether in any negotiations preceding the conclusion or, or in the execution of, this Agreement then KCSA shall have the option either to:

- 20.1.1 By written notice to the Service Provider, to terminate this Agreement or any part thereof. Upon such termination KCSA shall be entitled, in addition to all other remedies available to it, to recover from the Service Provider all damages it has suffered by virtue of such conduct by the Service Provider. If, at the time of such termination, KCSA be indebted to the Service Provider for any amounts whatsoever, KCSA shall be entitled to withhold payment in respect thereof for a period of 90 (ninety) days from the date of termination in order to investigate the Service Provider's conduct and any damages suffered by KCSA. No payment by KCSA to the Service Provider after the lapse of such period shall preclude KCSA thereafter, from recovering from the Service Provider any such damages as it may have suffered; or
- 20.1.2 be entitled to request in writing that the Service Provider cause such person to cease to be employed by the Service Provider for purposes of the provision of any of the Services under this Agreement, and upon receipt of such written request the Service Provider shall be obliged forthwith at its own expense to cause such person to cease from provision or being involved in any manner whatsoever with the provision of the Services to KCSA under this Agreement.

21. FAILURE OR DELAY IN PROVIDING SERVICE

- 21.1 The dates and times specified in this Agreement are critical. Time is therefore of the essence. Non-compliance with said dates and times will constitute a material breach of the Agreement unless the Service Provider can show to KCSA's satisfaction that the failure or delay was caused by factors outside the control of the Service Provider. KCSA shall have the election to decide whether to place the Service Provider in breach in terms of the breach provisions of this Agreement or to apply the liquidated damages provided for in this Agreement and/or the alternative relief described hereunder.
- 21.2 KCSA may, without terminating the Agreement, be entitled forthwith to obtain similar Services from a third party as KCSA may require, to duly perform the Services without derogating from any other rights KCSA may have such as but not limited to termination of the Agreement and to claim damages.
- 21.3 KCSA will recover from the Service Provider any adverse difference in price it may incur as well as any other damages, which may be suffered by KCSA due to the Service Provider's non- or late performance of the Services.

22. DISPUTE RESOLUTION

- 22.1 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.
- 22.2 Amicable resolution:
- 22.2.1 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 Services, the Parties 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.
- 22.2.2 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.
- 22.2.3 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.
- 22.2.4 Where the dispute is not resolved within 20 days of the notice given in terms of this sub-clause, arbitration may be commenced.
- 22.3 Arbitration:
- 22.3.1 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 Services, 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.
- 22.4 Unless otherwise agreed by the Parties:
- 22.4.1 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");
- 22.4.2 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;
- 22.4.3 the arbitration shall be held at Kolwezi, DRC, and

- 22.4.4 the arbitration shall be conducted in English.
- 22.5 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.
- 22.6 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.
- 22.7 Subject to the time limits set out in clause 9.5, arbitration may be commenced prior to or after completion of the Services. The obligations of the Parties shall not be altered by reason of any arbitration being conducted during the progress of the Services.
- 22.8 For the avoidance of doubt, this arbitration clause shall be severable from this Agreement and shall survive the termination of this Agreement.
- 22.9 Notwithstanding that a formal dispute may have been declared, the Service Provider must:
 - 22.9.1 continue without delay to provide the Services and perform its other obligations under this Agreement; and
 - 22.9.2 comply with all directions of KCSA in connection with this Agreement which do not otherwise affect the ultimate resolution or determination of the Dispute.
- 22.10 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.
- 22.11 The arbitrator shall fully motivate any of his findings and his final determination and shall make an appropriate costs order.
- 22.12 The award of the arbitrator shall be final and binding upon the Parties (who hereby agree to carry out the award).
- 22.13 The arbitrator's award may be made an order of any Court of competent jurisdiction.
- 22.14 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.
- 22.15 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.
- 22.16 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.

- 22.17 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 22.
- 22.18 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.
- 22.19 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.

23. BREACH

- 23.1 If any Party breaches any material provision or term of this Agreement (other than those which contain their own remedies or limit the remedies in the event thereof without derogating the provisions of this clause) and fails to remedy such breach within 14 (fourteen) days of receipt of written notice requiring it to do so (or if it is not reasonably possible to remedy the breach within 14 (fourteen) days, within such further period as may be reasonable in the circumstances, provided that the Party in breach furnishes evidence within the period of 14 (fourteen) days, reasonably satisfactory to the other Party, that it has taken whatever steps are available to it, to commence remedying the breach) then the aggrieved Party shall be entitled without notice, in addition to any other remedy available to it at law or under this Agreement (except as provided for in clause 20), including obtaining an interdict, to cancel this Agreement or to claim specific performance of any obligation whether or not the due date for performance has arrived, in either event without prejudice to the aggrieved Party's right to claim damages.

24. ANNUAL REVIEW

- 24.1 The agreed rates contemplated in this Agreement may, in KCSA's sole discretion, be subject to an annual review. Any adjustments in the agreed rates shall become effective on the anniversary date of each year of this Agreement.

25. HOLDING COMPANY GUARANTEE

25.1 Where the majority of the shares of the Service Provider are being held by a company then such holding company may be required to bind itself as a guarantor for the due and proper performance of the Service Provider, in the form set out in Annexure "I", if so required by KCSA. Failure by such holding company to bind itself as a guarantor for the due and proper performance of the Service Provider, shall amount to an event of Default by the Service Provider, entitling KCSA to exercise its remedies provided for in terms of the Agreement.

26. CHANGE OF OWNERSHIP

26.1 It is recorded that in the event that the holding company of the Service Provider disposes of its interest (shareholding and/or loan account, as the case may be), this Agreement shall immediately terminate and be of no further force or effect unless KCSA's written approval has been obtained prior to such transaction.

27. LAWS, RULES AND REGULATIONS

27.1 The Service Provider agrees to comply with KCSA's security, safety, health, environmental and quality procedures.

27.2 KCSA may allow the Service Provider access to KCSA's premises in terms of its security procedures, as amended from time to time.

27.3 KCSA will be entitled to request the Service Provider to remove anyone employed or contracted by the Service Provider from its team if KCSA is of the opinion that such a person is a security or safety risk. Such a person will be removed by the Service Provider within the time stipulated by KCSA. The Service Provider indemnifies KCSA against any claims that might arise due to such removal.

27.4 The Service Provider shall comply strictly with all obligations and duties imposed upon it and upon KCSA in terms of all laws (federal, state, provincial or municipal) and any other laws, regulations, directions, permissions and other requirements which are applicable to the Service Provider's operations in the performance of the Services under this Agreement, together with all amendments and regulations to such legislation. The Service Provider shall accept all appointments made by KCSA in terms of all laws, regulations, directions, permissions and other requirements applicable to the Service Provider.

27.5 The Service Provider shall pay any fines, which may be imposed as a result of the activities of the Service Provider in the performance of the Services.

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27.6 The Service Provider shall, at the request of KCSA, furnish KCSA with proof that all and any payments required by any laws, regulations, directions, permissions and other requirements, have been effected by the Service Provider.

28. LIENS AND CLAIMS BY THIRD PARTIES

28.1 The Service Provider waives all liens and rights of possession pertaining to KCSA and relating to the Services.

28.2 If a third party makes a claim on KCSA to anything connected with the Services provided by the Service Provider in terms of this Agreement, the Service Provider will:

28.2.1 After notification to KCSA, deal with such a claim in such a manner as to avoid all prejudice to KCSA and keep KCSA fully informed; or

28.2.2 Alternatively, KCSA may deal with such a claim at its discretion, in which event the Service Provider will render to KCSA all necessary assistance.

28.3 If KCSA incurs any fair and reasonable expenses or makes any disbursements in terms of this clause, then such disbursements may be set-off against moneys owed to the Service Provider and in the event that no monies are due by KCSA to the Service Provider the Service Provider shall reimburse KCSA within 14 (fourteen) days after written proof of such expenses has been forwarded to the Service Provider.

29. INDEPENDENT STATUS, COST AND EXPENSES

29.1 Nothing in this Agreement constitutes a joint venture, agency, partnership or other fiduciary relationship between KCSA and the Service Provider.

29.2 The Service Provider acknowledges that it has no authority to bind KCSA.

29.3 At all times during the provision of the Services and the performance of the Service Provider's other obligations under this Agreement the Service Provider is an independent contractor and not an employee or agent of KCSA.

29.4 The Service Provider shall at all relevant times disclose its status as independent Service Provider to all third parties.

29.5 Other Contractors:

29.5.1 The Service Provider acknowledges that Other Contractors may be present on the Site during the provision of the Services.

29.5.2 The Service Provider shall in carrying out the Services:

- 29.5.2.1. permit Other Contractors and KCSA Personnel to carry out their work;
- 29.5.2.2. fully co-operate with Other Contractors and KCSA Personnel;
- 29.5.2.3. if applicable, carefully co-ordinate and interface the Services with the work carried out or to be carried out by Other Contractors and KCSA Personnel;
- 29.5.2.4. avoid interfering with, disrupting or delaying the work of Other Contractors and KCSA Personnel.
- 29.5.3 The Service Provider must comply with all written directions from KCSA regarding Other Contractors and their work, and allow any Other Contractors engaged by KCSA to use the amenities, facilities and services which are available for use on the Site.
- 29.5.4 The Service Provider shall be deemed to have made contingencies for the carrying out of works or services by third parties contracted by KCSA and shall not be entitled to additional payment and/or an extension of time for its compliance with the obligations in this clause.
- 29.5.5 Each Party shall bear all costs and expenses incurred by it towards the conclusion and execution of this Agreement.

30. INTELLECTUAL PROPERTY RIGHTS

- 30.1 Intellectual property rights resulting from this Agreement will be owned by KCSA and will be used for KCSA's purposes only. All documents including information, data, plans, investigation schedules, working papers, diagnostic models, methodology, reports or the like developed or used by the Service Provider for this Agreement and supplied or delivered to KCSA pursuant to this Agreement shall be the property of KCSA.
- 30.2 Ownership of data, drawings, designs and documents will reside with KCSA following payment to the Service Provider by KCSA. The Service Provider shall ensure that upon completion of a specific task, job or service within the ambit of the Services, all data, drawings, designs and documents relating to the aforementioned will be immediately transferred to KCSA in both hard copy and electronic format.
- 30.3 If KCSA purchases products from the Service Provider, and the Service Provider is the owner of the intellectual property rights, the Service Provider will grant KCSA the right to access at no cost to KCSA, all source code and object code, relating to the product, should the following events occur:
 - 30.3.1 if the Service Provider is liquidated (provisionally or final) or enters into an agreement / arrangement with its creditors or commits an act of insolvency; or
 - 30.3.2 if the Service Provider transfers or attempts to transfer any intellectual property rights of the product; or

- 30.3.3 if the Service Provider is in material default of its obligations to provide any maintenance;
or
- 30.3.4 if the Service Provider is in breach of any terms of this Agreement and fails to remedy such breach within 14 (fourteen) days after having received a written notice from KCSA calling on it to do so; or
- 30.3.5 if the Service Provider ceases to trade.
- 30.4 Irrespective of the events in clause 30.3 materialising or not, the Service Provider grants KCSA access, at no cost to KCSA, to the object code, source code, all configuration files, script files and templates, including but not limited to interference configuration files and event handling configuration templates for purposes of Maintenance, Enhancements, Integration, Compatibility and the like, by KCSA, or a third party acting on behalf of KCSA, if in KCSA's sole discretion said Maintenance, Enhancements or Integration, Compatibility are to be done by KCSA or a third party acting on behalf of KCSA. KCSA will ensure that, if such information is made available to third parties, the necessary confidentiality agreements are entered into.
- 30.5 If the Service Provider is not the owner of the intellectual property rights, the Service Provider will endeavour its best efforts to secure, on behalf of KCSA, the rights to enforce clause 30.2 and 30.3.
- 30.6 Both Parties' obligations in terms of this clause will survive the completion or termination of this Agreement.

31. FORCE MAJEURE

- 31.1 If circumstances which were not foreseeable with reasonable foresight or avoidable with reasonable care ("circumstances"), arise or be reasonably anticipated and delayed or have potential to delay the performance, whether in whole or in part, the Party whose performance is affected, or whose performance may be affected ("affected Party"), will forthwith, in good faith and by the most expeditious means, notify the other Party in writing of:
- 31.1.1 the cause, nature and extent of the circumstances;
- 31.1.2 the expected duration of the circumstances; and
- 31.1.3 the extent to which the performance will be affected.
- 31.2 If the circumstances change after the affected Party has notified the other Party in accordance with clauses stated above, the affected Party shall, forthwith, in good faith and by the most expeditious means, inform the other Party of such changes and keep the other Party updated on such changes.

- 31.3 Subject to the clauses stated above, the circumstances will not terminate this Agreement between the Parties, or absolve the affected Party from performance.
- 31.4 If the circumstances make the agreed performance impossible, the affected Party will, having regard for all relevant factors, as soon as possible and in good faith, put proposals for alternatives to the other Party. Such proposals will be in sufficient detail to enable the other Party to technically and informationally assess the alternatives and to decide whether any alternative is acceptable.
- 31.5 If the Force Majeure subsists for longer than 90 days, then either Party has the right to terminate this Agreement by notice to the other party with immediate effect and without prejudice to any other rights it may have.
- 31.6 If the circumstances delay the agreed performance:
- 31.6.1 The affected Party will, forthwith and in good faith, take all reasonable steps to mitigate delay and recover lost time.
- 31.6.2 Having regard for all relevant factors and in good faith, notify the other Party as soon as possible of the steps to be taken to mitigate the delay and recover lost time and keep the other Party updated on changes and progress thereof.
- 31.6.3 The other Party may, if the extent to which the delay may be mitigated and time lost be recovered is unacceptable to it, elect to terminate this Agreement.
- 31.6.4 Neither of the Parties will have any claim, arising from the circumstances, on the other.
- 31.7 Without limiting the generality and intention of the clauses above in any way, the circumstances may include, without being limited thereto:
- 31.7.1 War, riots, civil or military insurrection and like political happenings.
- 31.7.2 Natural disasters such as earthquakes, fire, storms and floods.
- 31.7.3 Governmental acts and omissions.
- 31.7.4 Terrorism and sabotage.

32. TERMINATION FOR CONVENIENCE

- 32.1 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 Service Provider for costs reasonably incurred up to the date of cancellation. The Service Provider will use all reasonable and practical endeavours to mitigate its losses in this regard.

33. COMMUNICATIONS, NOTICES AND DOMICILIUM

- 33.1 For the purpose of the Agreement the Parties' respective addresses will be:
- 33.1.1 KCSA:
Physical address:

1148-6 Avenue de la Libération
Quartier Golf les Battants Commune de Lubumbashi
Lubumbashi
Haut-Katanga Province
Democratic Republic of Congo
Email: kcpprocurement@ivanplats.com

- 33.2 The Service Provider:
As per the Response to the RFQ
- 33.3 Communications:
- 33.3.1 Where this Agreement requires or makes provision for any Party to:
- 33.3.2 receive or send any communication; or
- 33.3.3 consent; or
- 33.3.4 confirm; or
- 33.3.5 approve; or
- 33.3.6 agree; or
- 33.3.7 waive; or
- 33.3.8 nominate; or
- 33.3.9 accept;
- 33.3.10 such communication, consent, confirmation, approval, waiver, agreement, nomination or acceptance (hereafter referred to as a "communication") must be in writing and delivered by hand (against receipt), sent by couriers, or transmitted using email to be effective.
- 33.4 Communications sent by email transmission shall only be valid if sent in PDF format.
- 33.5 However:
- 33.5.1 if the recipient gives notice of another address, communications shall thereafter be delivered accordingly; and
- 33.5.2 if the recipient has not stated otherwise when requesting an approval or consent, it may be sent to the address from which the request was issued.
- 33.6 The Communications shall clearly state on the face of the document that it is an approval, certificate, consent, determination, notice or request, as the case may be, made in accordance with this Agreement and where applicable, it must note the number of the clause under which the Communication is made.
- 33.7 Where either Party is to provide information to the other and no time period is specified, the Party requiring the information shall provide a minimum five Working Day's notice period.
- 33.8 Both Parties shall respond to communications within a reasonable time period and in any event within five Working Days where the communication is operational in nature.

33.9 Approvals, certificates, consents and determinations shall not be unreasonably withheld or delayed. When a certificate is issued to a Party, the certifier shall send a copy to the other Party.

34. OCCUPATIONAL HEALTH AND SAFETY

34.1 KCSA and the Service Provider agree, that the following arrangements and procedures apply between them to ensure that the Service Provider complies with KCSA's safety requirements. The Service Provider warrants that it is familiar with all legislation relevant to KCSA and the Services, which includes but shall not be limited to:

34.1.1 DRC laws and legislation; and

34.1.2 The Mining Regulations; and

34.1.3 The Mining Code; and

34.1.4 The Subcontracting Law; and

34.1.5 Republic of South Africa Explosives Act 26 of 1956; and

34.1.6 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

34.1.7 South African national standards (SANS); and

34.1.8 International standards (IEC, DIN, FEM, CEA, ISO); and

34.1.9 KCSA specifications and standards, where available; and

34.1.10 Mining industry specifications and standards where KCSA specifications and standards are not available.

(hereafter individually and collectively referred to as the "Regulations")

34.2 The Service Provider undertakes to acquaint its employees, agents, consultants and subcontractors with all relevant provisions of the Regulations.

34.3 The Service Provider undertakes that all relevant duties, obligations and prohibitions imposed in terms of the regulations will at all times be fully complied with.

34.4 The Service Provider 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.

34.5 The Service Provider 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 Service Provider has complied with the undertakings mentioned in clause 34.1.8, 34.2 and 34.3 above, which steps may include without limitation, the right to inspect any records held by the Service Provider.

- 34.6 The Service Provider 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.
- 34.7 The Service Provider 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.
- 34.8 In addition and without prejudice to its other rights in terms of this Agreement or in law, KCSA may at any time require the Service Provider to remove from KCSA's Site any person against whom KCSA has reasonable objection and/or to immediately stop work if, in the reasonable opinion of KCSA, the Service Provider has breached any provision of this clause 34 and KCSA may recover from Service Provider any loss suffered as a result of the cessation of work, including the cost of having the work performed by a third party.
- 34.9 In addition to the remedies set out above, KCSA may elect to impose penalties upon the Service Provider 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 Service Provider, in writing, stating reasons and / or details of the Service Provider's conduct which will be penalized. Within one week of receipt of these reasons the Service Provider shall present reasons to KCSA, in writing, indicating either the Service Provider's acceptance of the penalty or reasons why the Service Provider believes the penalty should not be imposed by KCSA. KCSA notifies its decision with regards to the imposition of the penalty to the Service Provider within one week of receipt of the aforementioned reasons. If the Service Provider does not deliver a notice of acceptance and / or rejection with reasons within the one week stipulated in this clause, the penalty will be deemed accepted by the Service Provider.

35. GENERAL

- 35.1 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;
- 35.2 No alteration or variation or agreed cancellation of this Agreement shall be of any effect unless it is recorded in writing and signed by all the Parties.

- 35.3 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.
- 35.4 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.
- 35.5 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.
- 35.6 Unless otherwise agreed in writing by KCSA, the Service Provider and its personnel shall have no interest in nor receive remuneration in connection with any of the Services except provided for in the Agreement.
- 35.7 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.
- 35.8 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.
- 35.9 The Service Provider undertakes to conduct its affairs in connection with the carrying out of the Services, and its relationship with KCSA, in good faith and in the best interests of KCSA.
- 35.10 The Service Provider 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 Service Provider shall immediately declare such conflict to KCSA in writing.
- 35.11 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.

- 35.12 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.
- 35.13 The Parties further undertake to adapt this Agreement as strictly required, in the event that, during the term of this Agreement, a change in Law 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.

SIGNED on behalf of the Service Provider at _____ on this the ____ day of _____ 20__.

GERARD ROCHELLE DE VILLIERS

Mandataire dûment habilité

SIGNED on behalf of KCSA at _____ on this the ____ day of _____ 20__.

ANNEXURE "A"

The responsibility to ensure compliance with KCSA's Ethics, rest with the Service Provider. KCSA's Ethics Compliance Framework is detailed in the below.

DOCUMENT NO.	TITLE
2014-02	IVN Companion Booklet to the Code of Business Conduct and Ethics
2014-02	IVN Code of Business Conduct and Ethics
2014-02	IVN Corporate Disclosure, Confidentiality and Securities Trading policy
2014-02	IVN Corporate Citizenship

ANNEXURE "B"

Bill of Quantities - Template

BILL NO: 01 - GENERAL ITEMS FOR WORKS					
Item No	Description	Unit	Qty.	Rate	Amount
	<u>Allow for all costs and expenses for complying with the Agreement and Scope of Work.</u>				
	<u>Note : Any Services not specially provided for will be deemed to be included in the rates of items in the Bill of Quantities.</u>				
	CLASS A : GENERAL ITEMS				
0.01	Provision for insurances under the contract.	provisional sum			
0.02	Provision for establishment, maintenance and removal at completion of Engineer's Office and equipment, as specified in the conditions of contract.	sum			
0.03	Provision for transport and vehicle facilities for Engineer's staff as specified in the conditions of contract.	sum			
0.04	Provision for testing and disinfection of works as specified.	sum			
0.05	Provide and display contract sign board where directed (xxxxxxmm) including lettering as per the instructions given by Engineer.	sum			
	Total of Page No. / carried to Summary in Page No. /				
0.06	Safety of contractor's employees, Engineer's staff (Helmets, Gumboots, dust filters etc.) and site safety barricades including open trench round up with barricades and luminous tape, danger sign boards etc.	sum			
0.07	Provision for electricity, water and security services for Engineer's office	sum			
0.08	Provision for keeping the site clean during the construction period and removal debris at the completion to the satisfaction of Engineer.	sum			
	Dayworks				
0.09	Labour	provisional sum			
0.10	Materials	provisional sum			
0.11	Plant	provisional sum			
0.12	Provision for providing two sets of hard copy and a soft copy of the as built drawings on the completion of contract.	sum			
0.13	Provision for Construction Management Services as specified in the Contract. (Only for specialized services during contract period)	provisional sum			
0.14	Provision for price escalation	provisional sum			
0.15	Provision for cleaning and applying all exposed pipes and specials with two coats of black colour enamel paint after completion of work.	sum			
	Total of Page No. / carried to Summary in Page No. /				

ANNEXURE "D"

Response to RFQ

ANNEXURE "E"

Request for Quotation

ANNEXURE "F"

Schedule of Rates - Template

SCHEDULE No. 1 - GENERAL ITEMS				
Item	Description	Unit	Qty.	Rate
CONDITIONS OF CONTRACT				
STANDARD COMMERCIAL TERMS AND CONDITIONS FOR SUPPLY OF SERVICE				
1.00	Insurances in accordance with the General Conditions of Contract	Item	1	
2.00	Contractor's superintendence during the execution of the Works	Item	1	
3.00	All charges, costs and obligations relating to the General Conditions of Contract not provided for elsewhere	Item	1	
GENERAL REQUIREMENTS				
DESCRIPTION OF WORKS				
101.00	Provision of access for others to undertake works	Item	1	
101.01	Contractors programs	Item	1	
101.02	Project works sign	No.		
102 SURVEY INFORMATION				
102.01	Survey information, control and setting out of the works	Item	1	
103 SITE FACILITIES				
Contractor's Site Facilities				
103.01	Provision of Contractor's site facilities	Item	1	
103.02	Maintenance of Contractor's site facilities	Item	1	
103.03	Removal of Contractor's site facilities	Item	1	
Superintendent's Site Facilities				
103.04	Provision of the Superintendent site facilities	Item	1	
103.05	Maintenance of the Superintendent site facilities	Item	1	
103.06	Removal of the Superintendent site facilities	Item	1	
Superintendent's Living Facilities				
103.07	Provision of the Superintendent living facilities	Item	1	
103.08	Maintenance of the Superintendent living facilities	Item	1	
103.09	Removal of the Superintendent living facilities	Item	1	
103.10	Superintendent's meals	Midday		
104 ENTRY TO LAND				
104.01	Entry to land	Item	1	
105 WATER SUPPLIES				
105.01	Water supplies	Item	1	
106 UTILITIES AND SERVICES				
106.01	Liaison, programming, location and protection of utilities and services	Item	1	
106.02	Relocation of utilities and services	Item	1	
MANAGEMENT REQUIREMENTS				
202 - TRAFFIC				
202.01	Traffic management	Item	1	
202.02	Traffic control devices	Item	1	
202.03	Traffic controllers	Item	1	
202.04	Construction, maintenance and removal of sidetracks, temporary driving surfaces and temporary pedestrian access	Item	1	
202.05	Maintenance of existing roads	Item	1	
203 - OCCUPATIONAL SAFETY AND HEALTH				
203.01	Occupational safety and health including safety and health plans and safety and health audits	Item	1	
204 - ENVIRONMENT				
204.01	Environmental Management Plans	Item	1	
204.02	Protection, preservation and monitoring of Aboriginal sites	Item	1	
204.03	Protection of flora and fauna	Item	1	
204.04	Fire prevention	Item	1	
204.05	Waste disposal	Item	1	
204.06	Dieback control	Item	1	
204.07	Protection of public and property	Item	1	
204.08	Pre-construction property inspections	No.		
204.09	Dust control	Item	1	
To Summary				

ANNEXURE "G"

Service Levels – Template

No.	Performance Metric	Performance Target	Definition	Calculation	Frequency of Review
KPI	Deliverables Submitted On Time	All deliverable(s) completed by the agreed upon due date.	This KPI measure the Service Provider's adherence to the agreed upon schedule.	Deliverable completed by date	Quarterly (the KPI should be evaluated for each deliverable submitted in the quarter)

ANNEXURE "H"

Scope of Services

ANNEXURE "I"

Form of Holding Company Guarantee

(To be completed on letterhead of Service Provider's Ultimate Holding Company)

TO: KAMOA COPPER SA
1148-6 Avenue de la Libération
Quartier Golf les Battants Commune de Lubumbashi
Lubumbashi
Haut-Katanga Province
Democratic Republic of Congo
Registration Number: 6-118-N37233J

ATTN: TO WHOM IT MAY CONCERN

Dear Sirs,

SUBJECT: REQUEST FOR QUOTATION NO. RFQ-KCSA-[INSERT]

We refer to the accompanying Request for Quotation for **[INSERT]** ("Service Provider") of which we are the ultimate holding company, and hereby request Kamoa Copper SA ("KCSA") to enter into an Agreement with the Service Provider for the same. In the event of KCSA doing so and in consideration of KCSA entering into such Agreement:

1. We guarantee that the Service Provider shall duly perform all its obligations contained in the Agreement.
2. If the Service Provider shall in any respect fail to perform its obligations under the Agreement or shall commit any breach thereof, we undertake, on simple demand by KCSA, to perform or to take whatever steps may be necessary to achieve performance of said obligations under the Agreement and shall indemnify and keep indemnified KCSA against any loss, damages, claims, costs and expenses which may be incurred by KCSA by reason of any such failure or breach on the part of the Supplier.

3. Our guarantee and undertaking hereunder shall be unconditional and irrevocable and, without prejudice to the generality of the foregoing, we shall not be released or discharged from our liability hereunder by: -
- 3.1 Any waiver of forbearance by KCSA of or in respect of any of the Service Provider's obligations under the Agreement whether as to payment, time, performance or otherwise howsoever or by any failure by KCSA to enforce the Agreement or this instrument, or
- 3.2 Any alteration to, addition to or deletion from the Agreement to be performed under the Agreement, or
- 3.3 Any change in the shareholding relationship between ourselves and the Service Provider and our guarantee and undertakings hereunder shall continue in force until all the Service Provider's obligations under the Agreement and all our obligations hereunder have been duly performed.
4. This document shall be construed and take effect in accordance with the laws of the Democratic Republic of Congo.

Yours faithfully,

Signed:

Name:

Date:

For and on behalf of

.....

(Supplier's ultimate holding company)

