



**MOPANI COPPER MINES PLC
GENERAL TERMS AND CONDITIONS OF CONTRACT
FM-SU-019**

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These General Terms and Conditions of Contract shall be read in conjunction with the Purchase Order, and such other documents which together shall constitute a binding Contract between Mopani Copper Mines PLC, a company registered under the Companies Act and having its registered office at Stand No. 96 of Farm 839, Central Offices, Nkana West, P. O. Box 22000 Kitwe, Zambia and the Contractor, whose particulars are specified in the Contract duly executed by the Parties.

1.0 Definitions

“**Affiliate**”, in relation to the Company means each subsidiary of the Company, each holding company of the Company and each other subsidiary of such holding company and the terms "subsidiary" and "holding company" shall have the meanings ascribed to them in Law.

“**Authority**” is any:

- (a) government department;
- (b) local government council;
- (c) government or statutory authority; or
- (d) any other party under a Law,

which has a right to impose a requirement or whose consent is required by Law with respect to, or in connection with, this Contract.

“**Business Day**” is a day other than a Saturday, Sunday or public holiday in [Zambia]

“**Business Conduct Law**” means all Laws relating to sanctions, anti-bribery, anti-corruption, anti-money laundering and tax;

“**COMESA**” means Common Market for East and Southern Africa

“**Company**” means Mopani Copper Mines PLC;

“**Completion**” is that stage in the execution of the Services when the Company’s Representative is satisfied in his or her absolute discretion that the Services are complete.

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

“**Company’s Equipment**” means the apparatus, machinery and vehicles (if any) made available by the Company for the use of the Contractor in the execution of the Services;

“**Confidential Information**” is the documentation, technical information and or business information, either oral or written that the Company furnishes to the Contractor marked as proprietary confidential or simply treated or implied as such by the Company. The confidential information includes research, development or business activities, including any unannounced products and services, as well as any information relating to services, developments, processes, plans, financial information, forecasts and projections. The Contractor’s confidential information will be deemed as confidential under this Agreement, unless the information;

- (a) is in the public domain through no act of the Company;
- (b) is lawfully known by the Company from a source other than the Contractor, with no restriction of confidentiality;
- (c) or must be disclosed by requirement of Law;

“**Contract**” means the Purchase Order, these General Terms and Conditions of Contract and

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such other Conditions, Policies, Scope of Work, Drawings, Bill of Quantities, Specifications and other documentation specifically incorporated into the Contract;

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

“**Contractor’s Documents**” means the calculations, computer programs and other software, drawings, manuals, models and other documents of a technical nature (if any) supplied by the Contractor under the Contract;

“**Contractor’s Equipment**” means all apparatus, machinery, vehicles and other things required for the execution and completion of the Services and the remedying of any defects. However, Contractor’s Equipment excludes Temporary Works, Company’s Equipment (if any), Plant, Materials and any other things intended to form or forming part of the Permanent Works;

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

“**Day**” means a calendar day and **year** means 365 days.

“**Defect**” means any defective, incomplete or omitted works which:

- (a) prevent the Services from being used for its intended purposes; or
- (b) adversely affect the efficient, safe and convenient use or operation of the Services,

including any defect arising from faulty design, materials or workmanship, other than any defect caused by fair wear and tear

“**Delivery Point**” if the Services comprise the delivery of goods, means the place for delivery of the Services stated in accordance with this Contract;

“**Effective Date**” means the date as stipulated in the Contract;

“**Force Majeure**” is defined in Clause 42; “**Goods**” means the Materials, Plant and Temporary Works, or any of them as appropriate, forming part of the Services;

“**Good standing**” means the Contractor has performed all of its obligations not limited to, but including; obtaining relevant statutory compliance required to be performed by it and, is not precluded from performing its mandate or carrying out its business by any judgment or court order or directive of any Court of law or sanctioning authority , government or international agency and is entitled to all of the benefits under any Contract relating to the business to which the Contractor is a party or by which it is bound.

“**Incoterms®**” means the International Chamber of Commerce Publication No. 715E titles Incoterms® 2020, as specified in the Contract, if relevant;

“**Incoterms® Rule**” means a defined trading term rule contained in Incoterms®;

“**Insurance Act**” means the Insurance Act of Zambia, Act No. 38 of 2021 and any other amends brought into force from time to time;

“**Law**” is, to the extent applicable for the purposes of this Contract:

- (a) any legislation including regulations, by laws, and other subordinate legislation;
- (b) common law and equity;

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- (c) Authorities' requirements;
- (d) any guidelines of government and Authorities with which the Contractor is legally required to comply;
- (e) any applicable international laws, treaties, statutes, ordinances, judgments, decrees, injunctions, writs, certificates, notices, by-laws, rules or regulations, or other requirements, policies or instruments of any international Authority having the force of law; and
- (f) any other law applicable to this Contract.

“Material” means things of all kind (other than Plant) intended to form part or forming part of the Services, including the Services-only materials (if any) to be executed by the Contractor under the Contract;

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

“Permanent Works” means the permanent works to be executed by a Contractor under the Contract;

“Plant” means the apparatus, machinery and vehicles intended to form or forming part of the Permanent Works;

“Purchase Order” means the Purchase Order for goods and/or services and any annexures thereto, which are generated by the Company, reflecting the scope of work, delivery/completion period and contract value, to be read in conjunction with these General Terms and Conditions.

“Related Services” means the services incidental to the supply of the goods, such as insurance, installation, training and initial maintenance and other such obligations of the Contractor under the Contract.

“Representative of the Company” means the Company Supply Chain Manager or any other person the Company may appoint to represent it from time to time;

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

“Retention of Title Agreement” means any agreement entered into in terms of which title, or ownership, remains vested in the seller until the buyer fulfils certain obligations;

“SADC” means the Southern African Development Community;

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

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

“Statement Date” means the last Day of the month in which the invoice was issued in accordance with 25.4;

“Subcontractor” means any natural person, private or Government entity, or a combination of the above, to whom any part of the Goods to be supplied or execution of any part of the Related Services is subcontracted by the Contractor;

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Supplier” means the natural person, private or Government entity, or a combination of the above, whose bid to perform the Contract has been accepted by the Company and is named as such in the Contract.

Temporary Works” means all temporary works of every kind (other than Contractor’s Equipment) required on Site for the execution and completion of the Permanent Works and Services and the remedying of defects;

Variation” means a change or alteration to the obligations under any Contract, within the meaning of this document, that is agreed in writing and signed by the authorised representatives of both Parties;

VAT Law” has the meaning given to that term in any law or legislation imposing or relating to the imposition or administration of a value added tax on goods and services tax in the jurisdiction where the Company is located;

VAT” means Value Added Tax; and

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

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

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

The headings in this Contract are for convenience only and shall not affect its interpretation.

Any reference in this Contract to “writing” or cognate expression includes a reference to any communication effected by electronic mail, facsimile transmission or any other comparable means.

2.0 Corrupt Practices

2.1 The Company requires that contractors and business partners be engaged through a fair, transparent and formal process that includes written anti-corruption requirements where possible. The Company further requires that all contractors, subcontractors and consultants under any contract, observe the highest standards of ethical practices during the procurement process, execution of contracts and in the provision of the goods and services.

2.2 The Company, for the purposes of this Contract, defines the terms set forth below as follows:

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

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

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

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

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

2.2.6 “**fronting**” means the deliberate misrepresentation of information in order to gain an advantage over another individual or entity, or any practice, arrangement, transaction or conduct that directly or indirectly undermines or frustrates the achievement of the objectives or implementation of any part of this Contract;

2.2.7 “**Obstructive practices**” means deliberately destroying, falsifying, altering or concealing evidence material to an investigation or making false statements in order to materially impede an investigation into allegations of a corrupt practice or threatening, harassing or intimidating a person to prevent that person from disclosing that person’s knowledge of matters relevant to the investigation or from pursuing the investigation, or acts intended to materially impede the exercise of the Company’s inspection and audit rights provided for under Clause 37.2.

2.3 With respect to any matters related to this contract, the Contractor undertakes that for the duration of the Contract and until completion of the Services, any person acting on its behalf including directors, officers, agents, contractors, sub-contractors and employees shall:

2.3.1 comply with the Mopani Code of Conduct for employees and contractors and all the relevant Company’s policies and procedures, laws and regulations relating to the prevention and combating of bribery, corruption, money laundering and other economic crime to which it or its shareholders is or are (as the case may be) subject, including those of any jurisdiction where it conducts business; and any updates thereof,

2.3.2 observe the Company’s anti-corruption and anti-economic crime compliance policies and procedures to enable compliance with all anti-bribery, anti-corruption, anti- money laundering and anti-economic crime laws, regulations and/or policies to which it is subject (collectively the "anti-corruption and anti-economic crime legislation");

2.3.3 implement and/or enforce any code of ethical business practice that may be adopted from time to time by the Company and/or its shareholders;

2.3.4 not engage in any corrupt activities; and

2.3.5 not directly or indirectly pay, give or offer to pay or give any money, gift or anything else of value to attempt to influence any act or decision (including a decision not to act) of any person, so as to assist the Contractor and/or the Company in obtaining or retaining business or directing business to any person/ entity or to secure any improper advantage

2.3.6 not participate and has not participated in any corrupt practices in relation to this Contract;

2.3.7 ensure and shall continue to ensure that its personnel, subsidiaries and related companies, do not participate in any corrupt practices in relation to this Contract; and

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

2.4 The Contractor represents, warrants and agrees that it will keep and maintain accurate and reasonably detailed books and financial records of expenses and receipts in connection with its performance under, and payments made or received pursuant to the Contract and shall, upon request, as soon as reasonably practicable but within seven (7) working days, provide any information and reasonable assistance to the Company to audit any books and financial

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records to verify compliance with the Contractors representations, warranties and undertakings in terms of the Contract, and otherwise to reasonably co-operate with the Company's investigation of any related matters.

- 2.5 The Company shall sanction the Contractor or individual, including declaring them ineligible, either indefinitely or for a stated period of time, to be awarded a contract if the Company determines, at any time, that the Contractor or individual has, directly or through an agent, engaged, in corrupt practices in competing for, or in executing this Contract or any other contract with the Company.
- 2.6 The Contractor shall ensure that they disclose in writing any litigation proceedings before any Court of law or tribunal of competent jurisdiction, which they may be directly or indirectly actively involved in or immediately they are aware of the same.
- 2.7 The Contractor's material violation of any of the obligations contained in this Clause may be Considered by the Company to be a material breach of this Contract and shall entitle the Company to terminate this Contract with immediate effect and without prejudice to any further right or remedies on the part of the Company under this Contract or applicable law. The Contractor shall indemnify the Company for all liabilities, damages, costs or expenses incurred as a result of any such violation of the above-mentioned obligations and termination of this Contract.

3.0 Good Standing

The Contractor confirms that they have complied with and will at all times during the duration of this Contract, comply with all legal, statutory and regulatory requirements necessary for business continuity and is up-to-date on all necessary payments required by various regulatory bodies as required by the Republic of Zambia or/and their country of origin and is not precluded from carrying on its business or mandate by any judgment, court order or directive of any Court of law or sanctioning authority or international agency and adheres to the established standards of behaviour and performance as set out by the Company.

3.1 The Contractor shall only engage Sub contractors and employees who possess and will maintain good standing during the performance of the Services, have valid and applicable licenses and certifications as required by the Republic of Zambia where that Service is required to be performed by a licensed person or entity.

3.2 The Contractor's material violation of any of the obligations contained in this Clause may be considered by the Company to be a material breach of this Contract and shall entitle the Company to terminate this Contract with immediate effect and without prejudice to any further right or remedies on the part of the Company under this Contract or applicable law.

3.3 The Contractor shall indemnify the Company for all liabilities, damages, costs or expenses incurred as a result of any such violation of the above-mentioned obligations and termination of this Contract.

4.0 Performance of Services

4.1 Performance of the Services shall be in accordance with this Contract and any annexures thereto.

4.1.1 In executing the performance of Services, the Contractor shall ensure that performance is completed within the time agreed upon by the Parties, as recorded in the Contract.

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- 4.2 The Contractor shall maintain sufficient equipment and qualified personnel to discharge its obligations under this Contract. The said personnel shall be readily available to meet with the Representative of the Company as and when required.
- 4.3 The Contractor shall be responsible for the adequacy, stability and safety of all Site operations and of all methods of executing the Services. Except to the extent specified in the Contract, the Contractor (i) shall be responsible for all Contractor's Documents, Temporary Works, and such design of each item of Plant and Materials as is required for the item to be in accordance with the Contract, and (ii) shall not otherwise be responsible for the design or specification of the Permanent Works.
- 4.4 The Contractor shall be responsible for the Company's goods and equipment placed in its custody and shall protect them from theft, damage, contamination or deterioration. The Contractor shall replace (at its cost), all of the goods and equipment placed in its' custody that will be stolen, damaged, contaminated or deteriorated while in the Contractors' custody.
- 4.5 The Contractor shall deliver the Goods at the Delivery Point, according to the Incoterms®.
- 4.6 The Contractor shall account for all free issue material from the Company and return any free issue material that is not required for the Services under this Contract no later than the Completion Date. The Contractor shall be liable for the full cost of the free issue material not returned, together with a handling charge to be determined by the Company from time to time.

5.0 Representatives

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

6.0 Warranties

- 6.1 The Contractor warrants and represents to the Company that the Services or Goods -
- 6.1.1 are of satisfactory quality and fit for the purpose which the Company has made known to the Contractor or, where the Company has not made any purpose known to the Contractor, for the purpose for which the Services/Goods are normally used;
 - 6.1.2 are merchantable and of good material and workmanship, free from all defects and suitable for the use intended;
 - 6.1.3 shall be returned to the Contractor for full credit or replacement at the Contractor's risk and expense, including transportation charges to and from the Site if the Services are found to be defective;
 - 6.1.4 comply in every respect with any relevant specifications, drawings, samples or descriptions; and
 - 6.1.5 comply with any Law or any voluntary codes of conduct relating to the Services and their sale in force at the time of delivery.
- 6.2 The Contractor warrants that it has free and unencumbered title and the right to sell the Goods to the Company and that the use of the Goods for any purpose whatsoever by the Company shall not infringe any distribution agreement, patent, copyright, trade name, trade mark, design right or any other intellectual property right whatsoever of any third party.
- 6.3 The Contractor warrants and represents that it shall perform the Services with the degree of skill, efficiency and knowledge that is possessed by those of the highest skill, competency and

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standing in the particular field or profession in which the Contractor is employed or conducts business.

7.0 Entire Agreement and Contract Documents

7.1 The Purchase Order and these General Terms and Conditions embodies and sets forth the entire agreement and understanding of the parties and supersedes all prior oral or written agreement, understanding or arrangement relating to the subject matter of this Contract.

7.2 The Purchase Order and these General Terms and Conditions shall be read in conjunction with documents attached and listed as below:

7.2.1 Contractor Health, Safety, Environmental Management Policy (MPL-006);

7.2.2 Contractor Penalty System (MPL-007);

7.2.3 POL090-Mineral Supply Chain Due Diligence

7.2.4 POL092-OECD Guidance and

7.2.4 POL027B-Code of conduct for Suppliers.

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

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

7.5 This Contract is valid for the period stipulated, subject to any amendments as outlined in Clause 8.

8.0 Amendment

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

9.0 Severability

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

10.0 Non-Waiver

10.1 A failure or delay in enforcing an obligation or exercising a right or remedy by either Party shall not amount to a waiver of that obligation, right or remedy.

10.2 A waiver by either Party of a breach of a term shall not amount to a waiver of a breach of any other term in the Contract.

10.3 A waiver by either Party of a particular obligation of the other party in one circumstance shall not prevent a party from subsequently requiring compliance with the obligation on other occasions.

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10.4 The rights and remedies of the Parties under this Contract shall be cumulative and not exclusive of any rights or remedies which either Party may otherwise have under the law. In exercising their respective rights and remedies, the Parties may be selective and no failure or delay by a Party in exercising any right shall operate as a waiver of it, nor shall any single or partial exercise of any remedy or right preclude its exercise of any other remedy or right.

11.0 Passing of Title in the Goods

11.1 Title in the Goods supplied by the Contractor under this Contract shall pass to the Company upon payment being made to the Contractor by the Company.

11.2 Where payments on account are provided for in this Contract, title in the Goods supplied by the Contractor shall pass to the Company upon the Company making the relevant or required payment in respect thereof.

11.3 Where title in the Goods is passed to the Company but the Contractor remains in possession of the Goods, the Contractor shall clearly mark all such Goods as belonging to the Company and shall insure the goods against loss or damage until the Company gains possession of the goods.

11.4 The Contractor shall not enter into a Retention of Title Agreement with any manufacturer or subcontractor in relation to this Contract and where such Agreement exists, the Company shall immediately terminate this Contract and the Contractor shall indemnify the Company the Contract Price and/or any related expenses in the performance of this Contract and, shall be liable to pay damages for inconvenience to the Company.

11.5 Notwithstanding clause 11.1 above, risk in the goods supplied by the Contractor shall only pass to the Company upon delivery of the goods to the Company's designated premises or as per the agreed Incoterms. Below is further clarity of how risk will be transferred in different delivery scenarios:

- **For Ex Works (EXW) delivery basis:** This is where the Contractor's responsibility is to make the goods available for pickup at the warehouse or factory, from that point forward, the Company assumes responsibility for all costs and risks i.e all risks from the warehouse or factory.
- **For Cost, Insurance and Freight (CIF) delivery basis:** The Contractor is responsible for loading of the goods on board of the shipping vessel and is obliged to take out insurance cover for the goods. This incoterm transfers the risk from the Contractor to the Company once the goods are loaded on the shipping vessel.
- **For Delivered Duty Paid (DDP) delivery basis:** The Contractor is responsible for the entire shipment, including customs clearance fees and delivering the goods to the Company's premises. This incoterm places the maximum responsibility on the Contractor and risk is only transferred to the Company once the services are delivered at the Company's premises.

12.0 Assignment

12.1 The Contractor shall not assign, mortgage, cede or otherwise dispose of all or any of its rights or obligations in whole or in part, under this Contract, without the written approval of the Company, which approval shall not be unreasonably withheld or delayed.

12.2 The Company shall be entitled on written notice to the Contractor at any time prior to the Completion Date to cede and assign its rights and delegate its obligations under this Contract to any Affiliate.

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

13.0 Independent Contractor and Subcontracting

13.1 The Contractor is an independent contractor and nothing in this Contract shall be deemed as creating a master-servant relationship, partnership, agency or a joint venture between the Parties.

13.1.1 The Contractor represents that it has the full power of and authority to execute, deliver and perform its obligations under this Agreement and carry out the transactions contemplated hereby and is not a front to any Party.

13.1.2 The Contractor represents that it has financial standing and capacity to undertake the Project in accordance with the terms and conditions of the Contract.

13.1.3 This Contract constitutes it's legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Contract will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof

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

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

13.4 The Contractor may perform its obligations under the Contract through an agent or subcontractor provided that the Contractor informs the Company of such intentions during tender stage and subject to the Company's written approval. The Contractor shall be liable for the actions and omissions of its agent or subcontractor as if they were the actions and omissions of the Contractor.

13.5 The approval of the Company referred to in clause 13.4 shall be subject to but not limited to, the Company's conditions for access to and conduct on the Site.

14.0 Co-operation with Third Parties

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

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

14.3 Where the Contractor suffers delays as a result of interference by other contractors or personnel on Site, the Contractor may request for an extension of the time to the Completion Date and such request shall be dealt with by the Representative of the Company. The request for extension of time should be provided to the Companies representative immediately the delay occurs and shall be in writing.

14.4 Where completion of the works is delayed by the Company, the Contractor shall be entitled to apply for extension of time and where such an application is made, the Company shall determine whether any extension of time is applicable and shall notify the Contractor accordingly. The extension of time shall be consistent to the period for which the delay occurred and the extension of time shall be applied accordingly and within/before the completion period elapses.

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15.0 Contractor to Obtain Information

- 15.1 The Contractor acknowledges that it has obtained all information necessary for it to perform the Services under this Contract, including information relating to local conditions and facilities, labour standards, safety requirements, environmental and industrial matters, permits, licenses, approvals from local authorities, accreditation where necessary and other relevant requirements. The Contractor further acknowledges that it is familiar with the legislation to be taken into account for the performance of the Services and understands the import thereof.
- 15.2 The Contractor acknowledges that it has inspected the Site and its surroundings and has satisfied itself as to all technical, commercial, social and general conditions of, and all circumstances affecting, the Site and the Services including the nature of the ground and sub-soil, the weather conditions, the form and nature of the Site, the extent and nature of the Services and materials necessary for the carrying out and completion of the Services, the means of communication with, and transportation and access to, the Site and in general, all risks and contingencies influencing or affecting the Services.
- 15.3 The Contractor shall not, except as expressly provided in any Contract, be entitled to any extension of time or to any adjustment of the Contract Price on grounds of misinterpretation or misunderstanding of any of the matters stated in Clauses 15.1 and 15.2.

16.0 Compliance with Laws, Regulations, Policies, Standards and Instructions

- 16.1 The Contractor shall in the performance of its obligations and exercise of its rights under the Contract, comply with all Laws and regulations as amended from time to time, as well as all Company policies and procedures in so far as the same shall apply to the Services or to the Site.
- 16.2 Without limiting the generality of Clause 16.1, the Contractor shall comply with the Company's Contractor Standards (relevant to the Goods or Services provided by the Contractor, as attached to this Contract) and with any and all instructions given by the Company and/or the Company's Representative, including current rules and procedures of the Company in effect at the Company's Site, which include, but are not limited to, the Company's safety, health and environmental policies and procedures, as amended from time to time.
- 16.2.1 The Contractor expressly acknowledges that it bears the duty of familiarizing itself with, and aligning to, the Company Contractor Standards, as well as the Company policies and procedures, in carrying out its Services.
- 16.3 The Company reserves the right, at its discretion, to impose sanctions against a defaulting Contractor for contravention of the Company's operating policies and procedures.
- 16.4 The Contractor shall, at its own expense -
- 16.4.1 obtain all necessary permits, licences, consents and approvals;
- 16.4.2 give all necessary notices;
- 16.4.3 pay all necessary fees, deposits and taxes; and
- 16.4.4 prepare and supply any additional drawings where this is required.
- 16.5 The Contractor shall, if required by the Representative of the Company, provide proof of the matters referred to in Clauses 16.2 and 16.4.

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- 16.6 Breach of the Company policies and procedures will result in penalties being imposed on the Contractor, and/or breach of the Law will result in termination of the contract.
- 16.7 Notwithstanding clause 41, the Company shall terminate the Contract with the Contractor in accordance with clause 16.6 by giving fourteen (14) days written notice to the Contractor.

17.0 Applicable Law

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

18.0 Mines Safety Legislation

The Contractor shall comply with the applicable mine safety legislation in force in Zambia and undertakes to abide by such legislation in the execution of this Contract.

19.0 Safety, Health and Environment

- 19.1 The Contractor shall take all necessary precautions to ensure the safety and health of the personnel of the Company, the Contractor, subcontractors and other third parties involved in the execution of this Contract.
- 19.2 The Contractor shall comply with the Company’s policies, international and national law, legislation and policies in respect of safety, health and environment.
- 19.3 The Contractor shall ensure that its subcontractors comply with Clause 19.2 when on Site, for purposes of this Contract.
- 19.4 The Company reserves the right to undertake review of a Contractor’s safety, health and environmental capability with respect to the nature and scope of contract, whenever the Company considers it necessary, including physical verification procedures if deemed necessary.

20.0 Accident and Incident Reporting

- 20.1 The Contractor shall fully and promptly report to the Representative of the Company in writing and in such form as the Representative of the Company may require, details of all accidents and incidents that involve a threat to the personnel, plant and equipment whether of the Contractor, the Company or a third party, irrespective of whether loss, damage, injury or death occurred or not.
- 20.2 Any liability incurred by the Company as a consequence of the Contractor’s failure to comply with Clause 20.1 shall be borne by the Contractor.

21.0 Access to the Site and Permits

- 21.1 The Company shall grant the Contractor such access to the Site from the date of execution of this Contract. Unless otherwise agreed by the Parties, the Contractor shall give the Representative of the Company at least seven days’ notice of the date of commencement of the Services.
- 21.2 Prior to commencement of the Services, the Contractor shall notify the Representative of the Company of its normal times and periods of work and shall give at least twenty-four hours’ notice of any alteration in its working hours or periods of work.
- 21.3 The Contractor shall obtain written approval from the Representative of the Company for any action required to be taken that might interfere with the operations of the Company at least fourteen days before the action is taken.

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- 21.4 Nothing in this Contract confers exclusive possession of the Site on the Contractor.
- 21.5 The Contractor shall ensure that its personnel do not, in relation to the Site -
- 21.5.1 enter the Site;
 - 21.5.2 work other than during normal working hours;
 - 21.5.3 use or store explosives;
 - 21.5.4 undertake any excavation work;
 - 21.5.5 drive a vehicle in a mining area;
 - 21.5.6 undertake any electrical installation; or
 - 21.5.7 use the Site nor permit or suffer the Site to be used for camping or any residential purposes;
- without the prior written approval of the Representative of the Company.

21.6 The Contractor is liable for the theft, loss or damage of the Company's property by any of the Contractor's employees or personnel.

22.0 Site Security Badges

- 22.1 The Contractor's personnel shall only be admitted on Site on production of a valid security card, which shall be provided by the Company at no cost to the Contractor. The Contractor shall ensure that security badges are obtained before the Effective Date.
- 22.2 Loss or failure to return a security card on termination or expiration of the Contract shall render the Contractor liable to pay K500 (Five hundred kwacha) or USD equivalent or such other amount as may be determined by the Company from time to time, for each lost or unreturned security card.

23.0 Quality of Work and Goods

- 23.1 Without prejudice to any provisions of the Contract, all workmanship and Goods delivered shall be of a good quality standard, shall conform to the Contract and shall be suitable in all respects, having regard to the nature, scope and purpose of this Contract.
- 23.2 The Contractor shall keep accurate records to demonstrate compliance with the requirements of the Contract and Services. These records shall be in accordance with the details stated in the Contract. The Company's Representative shall be entitled to audit any aspect of the records and may call upon the Contractor to provide these records in to ensure that there is compliance with the Contract.

24.0 Defects Liability

- 24.1 In performing the Services, the Contractor shall only use vehicles, components, parts, items, plant, materials, equipment and other things used to carry out or incorporated in the Services which are of merchantable quality, fit for their purpose, free from Defects and not of an age which would impair their operation. All vehicles, plant and equipment used on Site shall be subject to the approval of the Company and its decision in this regard shall be final and binding.
- 24.2 During the Warranty Period, the Contractor shall be obligated, at its own cost (including but not limited to freight and transport costs), to promptly repair or replace any Defect or non

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compliance in the delivery of goods, Services or the materials, goods, components, parts, items, consumables and other things used to carry out or incorporated in the Services.

- 24.3 The Company shall, notify the Contractor, in writing, of any Defect which is apparent on reasonable inspection (“patent defects”) in the goods or Services performed.
- 24.4 The Warranty Period in respect of any replacements or repaired Services, materials, components, parts items, consumables and other things used to carry out or incorporated in the Services shall be twelve (12) months or as agreed with the Company from the date of such repair or replacement, without limitation on the number of replacements or repairs.
- 24.5 Where the Contractor fails to remedy any default within fourteen (14) days of notice being given to the Contractor by the Company, the Company shall be entitled to remedy the Defect at the Contractor’s risk and cost but without prejudice to any other rights which the Company may have against the Contractor in respect of the defect, in order to ensure continuity or early resumption of its operations.
- 24.6 The Contractor’s obligations under the Warranty Period shall extend to any Defect that is not discoverable on reasonable inspection (“latent defects”). The Warranty Period in respect of latent defects shall be four (4) years from the date of expiration of the Warranty Period.
- 24.7 The Contractor shall be responsible for any direct or indirect damage to the property of the Company which may be caused by the Defect or by the remedying thereof.
- 24.8 Without prejudice to the Contractor's obligations under this part, all guarantees and warranties obtained by the Contractor from manufacturers and vendors of goods or materials used in the performance of the Services shall be extended to the Company to the full extent of their terms. If required by the Company, the Contractor shall formally assign the guarantees or warranties to the Company.
- 24.9 The obligations of this part shall apply to subcontractors engaged by the Contractor for the performance of the Services.

25.0 Variations

- 25.1 The Contractor shall not vary or alter any aspect of the Services, except in accordance with Clause 8. No payment shall be made by the Company for any Services executed by Contractor without a valid amendment to the terms of this Contract.
- 25.2 Subject to Clause 25.1, the Company may, by notice, direct or permit the Contractor to alter, amend, omit, add to or otherwise vary the performance of the Services.
- 25.3 The difference in cost, if any, occasioned by variations shall be added to or deducted from the Contract Price, as the case may require. Such difference in cost and any associated extension of time will, whenever practicable, be agreed between the Parties before notice for variation is given.
- 25.4 Where the Company seeks any change or variation in the scope of the Services and where such variation is due to any default in the design, drawing or document supplied by the Contractor, any misrepresentation made by the Contractor, or any default on the part of Contractor, the Contractor shall not be entitled to any addition in the Contract Price or to an extension of time.

26.0 Payments

Payments shall be released upon proper execution of Services in accordance with this Contract. The Company shall pay the Contractor the Contract Price, subject to the General Terms and Conditions as below:

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26.1 Payment for Services

26.1.1 The Company will only pay Contractors for Services provided, within the ambit of the Contract. The Contractor may not claim for the full Contract Price reflected in the Contract if services provided amount to less than the amount stipulated in the Contract.

26.1.2 The Contract Price shall remain fixed until Completion of the Services and no Contract Price adjustment shall be effective unless it is agreed upon in writing by both Parties and Contract amended.

26.1.3 The Contractor shall invoice the Company within seven (7) Business Days upon receipt of a fully signed Completion Certificate/ Contractors report. Payment will be made to the Contractor after thirty (30) Days after receipt of the invoice and supporting documents for the services performed.

26.2 Payment for Goods

26.2.1 The Company will only pay Contractors for goods delivered within the ambit of the Contract. The Contractor may not claim for the full Contract Price reflected in the Contract if the goods delivered amount to less than the amount stipulated in the Contract. Payment will be made to the Contractor after thirty (30) Days after receipt of the invoice and supporting documents for the services performed.

26.2.2 The Contract Price shall remain fixed until Completion of the supply of goods and no Contract Price adjustment shall be effective unless it is agreed upon in writing by both Parties and Contract amended.

26.2.3 Upon delivery of goods, there must be the issuance of a good receipts note (“**GRN**”) by the Company. The GRN must accompany the valid tax invoice submitted by the Contractor in order to proceed with the payment process.

26.3 The Company reserves the right to request all relevant records and/or documentation to calculate amounts set out in any Tax Invoice received from the Contractor.

26.4 Invoices and statements shall be addressed to the Company’s accounts payable department, with address at Corporate Offices P.O.BOX 22000, Central Offices, Nkana West, Kitwe, Zambia or sent via e-mail to accpayable@mopani.com.zm.

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

26.6 All payments to the Contractor shall be made free of bank charges. Payment of the Contract Price, less any discount or set-off, shall be made by Electronic Funds Transfer (EFT) or in such manner as may be specified by the Contractor in writing, from time to time.

26.7 The currencies in which payments shall be made to the Contractor under this Contract shall be those in which the bid price is expressed.

26.8 A payment made pursuant to this Contract will not be taken or construed as proof or admission that the Services performed or any part of the Services performed were to the satisfaction of the Company but will only be taken to be payment on account.

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- 26.9 Should the Company order items on behalf of the Contractor, the Company reserves the right to recover the costs using the last purchase cost.
- 26.10 The Contractor expressly acknowledges that it is not entitled to receive payment for Services provided outside the Contract, or for Services provided beyond the date of the automatic termination of the Contract. The Company will not be held liable to the Contractor and its employees for any Services provided beyond those recorded, in writing, between the Parties.

27.0 Currency and Risk

- 27.1 Subject to the terms and conditions of this Contract, the Company shall pay the Contractor as stipulated in the Contract, and in the currency as stipulated in the Contract.
- 27.2 No exchange rate fluctuations shall be considered in the calculation and payment of the Contract Price.
- 27.3 The Contractor understands and assumes the risk of foreign exchange losses and enters into this Contract at its sole risk based on its judgment and not in reliance of any statements or representations of the Company relating to the foreign exchange market.
- 27.4 No interest shall be charged on any invoices, unless agreed (in writing) with the Contractor at tender stage.
- 27.5 For avoidance of doubt, the Parties agree that the Company shall not be liable for any losses suffered by the Contractor as a consequence of foreign exchange movement.

28.0 Taxes and Duties

- 28.1 The Contractor shall pay all taxes, duties, assessments and other charges of any kind levied by any government or other authority in connection with this Contract and if required by the Company, shall provide proof of payment. The Company shall not be liable for any income tax liability associated with the Contractor's performance under this Contract.
- 28.2 The Contractor shall co-operate with the Company to obtain all applicable tax and duty exemptions and rebates. Any reduction of tax below the amount allowed for in the Contract Price shall be credited to the Company.
- 28.3 A brief analysis of Zambian Taxes that have a cost impact on the Company in respect of services provided by non-resident/foreign Contractors is attached as an annexure to these General Terms and Conditions for ease reference.

29.0 Appointment of a Tax Agent by Contractor

- 29.1 Where a Contractor does not have a business establishment in Zambia or is an individual or partner in a partnership and does not have a usual place of residence in Zambia, the Contractor shall appoint a person resident in Zambia ("tax agent") to act on behalf of the Contractor in matters relating to tax. The Company is currently using Spectrum/Enfin Solutions Limited as its' Tax Agent, with these all Contractors are urged to use this Tax Agent.
- 29.2 The Contractor shall ensure that the tax agent acts exclusively for and on behalf of the Contractor in submitting any invoice for payment in terms of this Contract.
- 29.3 Where the Contractor fails to appoint a tax agent in accordance with Clause 29.1, any additional cost or penalties that may be levied against the Company shall be borne by the Contractor. Such additional costs shall be recovered from the Contractor by way of setoff against pending payments due to the Contractor.

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30.0 Value Added Tax in the Republic of Zambia

- 30.1 Where both the Company and the Contractor are registered VAT vendors in terms of the Value Added Tax Act, VAT at the standard rate shall be applicable.
- 30.2 Invoices shall include a statement of the exchange rate used for the purposes of paying and claiming VAT. The exchange rate stated on the invoice is a requirement of the Zambia Revenue Authority and shall have no bearing on the Contract Price.

31.0 Withholding Tax on Non-Resident Contractors

- 31.1 Where the Contractor is a non-resident contractor, the Company shall deduct withholding tax from all payments to a Contractor engaged in construction or transport services and forward the same to the Zambia Revenue Authority.
- 31.2 The amount to be deducted in terms of Clause 31.1 shall be calculated at the rate of twenty percent (20%) of the gross amount invoiced before any other deductions.
- 31.3 The Company shall furnish the Contractor with a formal certificate of receipt indicating the amount of withholding tax paid to Zambia Revenue Authority on behalf of the Contractor.
- 31.4 Where the Contractor is entitled to benefit from a Double Taxation Agreement between the Republic of Zambia and another country and withholding tax is deducted in the manner set out in Clauses 31.1 and 31.2, the Contractor may claim relief from that other Country in respect of any tax payable from that income. The Contractor is considered to have obtained all necessary information relating to any relevant double taxation agreement.
- 31.5 Should there be any withholding tax applicable, based on the nature of the work, this amount shall be deducted from the Contract Price.

32.0 Withholding Tax on Foreign Payments for Management and Consultancy Fees, Interest and Royalties

32.1 Where a Contractor is a non-resident contractor, the Company shall deduct withholding tax from all payments for management and consultancy fees, interest and royalties to the consultant at the rate of 20% and forward the same to the Zambia Revenue Authority.

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

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

32.1.3 Should there be any withholding tax applicable, based on the nature of the work, this amount shall be deducted from the Contract Price.

32.2 Withholding Tax on Local Suppliers of Management and Consultancy Services

32.2.1 Withholding tax is deducted from Contractors at the rate of 15%. Withholding tax can be avoided by applying for a withholding tax exemption certificate from the Commissioner-General of the Zambia Revenue Authority. This certificate is valid for one renewal year.

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

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33.0 Value Added Tax in the Republic of South Africa

- 33.1 Materials and Plant exported and delivered to the Company shall be zero-rated in terms of the Value Added Tax Act. The Contractor shall keep and maintain adequate records in respect of all zero-rated exports for audit by the relevant revenue services.
- 33.2 Any additional costs resulting from the Contractor's failure to take cognisance of the requirement in Clause 33.1 shall be borne by the Contractor.

34.0 Taxation

The Contract Price must include all relevant Taxes and Duties, and is exclusive of VAT. The Company is not responsible for the payment of tax liabilities such as corporate tax, withholding tax or personal tax.

35.0 Customs and Excise Duties

- 35.1 The Contractor, if resident in a member state of SADC or COMESA shall be in possession of the appropriate SADC or COMESA certification, Commercial invoice, packing list and harmonizing system (HS) code which should accompany the goods and presented at the border during clearance of the goods to limit import duties. Duties arising out of the failure to comply with this requirement shall be borne by the Contractor.
- 35.2 Where capital equipment is being imported for and on behalf of the Company, the Contractor shall acquaint itself with the Mopani Copper Mines Import Exemption and use the exemption to avoid unnecessary duty. Duty arising from the failure to comply with this requirement shall be borne by the Contractor.
- 35.3 Plant and Temporary Works that shall be imported by the Contractor into the Republic of Zambia permanently shall not qualify for exemption from customs and excise duties.

36.0 Company's Right of Set-off

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

37.0 Record Keeping and Company's Right to Audit

- 37.1 The Contractor shall keep and maintain all documentation related to this Contract for a minimum period of seven (7) years from the Completion Date, inclusive of any Defects liability period.
- 37.2 The Company shall have the right, exercisable at any time, to audit the Contractor in all matters pertaining to this Contract, including but not limited to payments claimed, bid submission and contract performance. The Company shall give the Contractor reasonable notice of its intention to audit the records pertaining to this Contract.
- 37.3 The Contractor shall provide the Company with the assistance, cooperation and facilities necessary for the Company to effectively exercise the right to audit provided for under Clause 37.2, including but not limited to, access to all relevant documentation, records, and drawings in the format required by the Company.

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38.0 Limitation of Liability

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

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

38.1.2 in all other cases to the Contract Price;

38.1.3 to exclude all liability arising out of lost time claims, consequential loss, standing time claims or proceeds from any insurance policies specifically provided for in this Contract unless such eventuality is specifically provided for in the Contract and then to the extent provided for only.

38.2 The provisions of Clause 38.1 shall prevail over any conflicting or inconsistent provisions set forth in this Contract.

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

39.0 Indemnity

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

39.2 The Contractor shall indemnify and keep the Company indemnified and hold the Company harmless against all claims and liens with regard to wages at any time due and payable to the Contractor's employees and the employees of any subcontractors and all claims and liens of subcontractors and manufacturers for goods or services provided in connection with the performance of this Contract. The Contractor acknowledges that it is solely responsible for its contractual, and any other, obligations to its employees. The Contractor specifically indemnifies the Company from any claims from the Contractor's employees due to failure of the Contractor to adhere to applicable labour legislation.

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

39.4 Where garnishee proceedings are instituted against the Contractor and the Contractor refuses, neglects or otherwise fails to contest the proceedings, the Contractor shall be deemed to have breached its contractual obligations to the party instituting the proceedings thereby exposing the Company to risk and loss. In such case, the Company shall –

39.4.1 sanction the Contractor by declaring the Contractor ineligible, either indefinitely or for a stated period of time, to be awarded a subsequent contract by the Company; and

39.4.2 recover the cost of attending to garnishee proceedings from the Contractor in accordance with Clause 36 (Company's Right of Set-off).

39.5 The Company will save harmless and indemnify the Contractor against loss or damage of or to any property of the Contractor and against all actions, claims, suits and demands made or

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brought against the Contractor by a person in relation to any loss, damage or injury caused to or suffered by such person or to goods of such person arising out of any negligent accident or happening which may occur due to the Company's negligence during the performance of this Contract.

40.0 Insurance

40.1 The Contractor shall have the relevant following insurance covers in place as from the Effective Date, and at its own expense, throughout the duration of this Contract to the minimum liability value of the Contract Price:

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

40.1.2 An employer's liability insurance policy with a minimum limit of the Contract Price for any one event and which policy shall be extended to indemnify the Company for its liabilities arising out of the death or injury to persons employed by the Contractor;

40.1.3 A third party motor vehicle liability insurance policy in respect of all motor vehicles used by the Contractor at any time in connection with the performance of this Contract and which insurance provides cover in respect of third party property damage, third party death or bodily injury and passenger liability;

40.1.4 A comprehensive "all risks" insurance policy in respect of all mobile plant belonging to or in the custody and control of the Contractor and its subcontractors and suppliers which is brought onto Site or any other location where the Contract is to be performed and which policy shall have a minimum third party liability limit;

40.1.5 A comprehensive "all risks" insurance policy in respect of all other plant, equipment and materials belonging to or in the custody and control of the Contractor and its subcontractors and suppliers which is brought onto Site or any other location where the Contract is to be performed and which policy shall have a minimum third party liability;

40.1.6 An insurance policy covering the Contractor's liability for loss of or damage (but excluding consequential loss) to the Company's property arising from the fault, negligence, omission or lack of due diligence on the part of the Contractor including its subcontractors and suppliers and of the employees, agents or representatives of the Contractor its subcontractors and suppliers;

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

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

40.3 The Contractor shall provide documentary evidence to the Company of all required insurance cover prior to commencement of the Services. Where the Company is not satisfied that the insurance cover is adequate or otherwise in conformity with this Contract, the Company may terminate this Contract or suspend the commencement of Services. Where the performance

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of the Services has commenced, the Company may suspend the Services or take out appropriate insurance cover, the cost of which shall be borne by the Contractor.

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

41.0 Termination and Termination for Convenience

41.1 This Contract shall terminate automatically upon the Completion of the Services or the Completion Date, unless the Contractor notifies the Company in writing in accordance with clause 14.4). The Contractor acknowledges that the Company is not obliged to give notice of the automatic termination of this Contract.

41.2 The Contractor expressly acknowledges that the Company, in its sole discretion, shall provide it with a new Contract upon the automatic termination of the Contract. This Contract must reflect the Contract Price and Services applicable for the new contract period. The Contractor is not entitled to claim for any Services that are provided beyond the Completion Date and/or beyond the automatic termination of this Contract.

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

41.3.1 cease performance of the Services;

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

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

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

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

41.4.2 return any unutilised items issued to the Contractor by the Company during the term of this Contract;

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

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

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

42.0 Force Majeure

42.1 "Force Majeure Event" means the occurrence of -

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

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- 42.1.2 ionising radiations, or contamination by radioactivity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
- 42.1.3 pressure waves from devices travelling at supersonic speeds or damage caused by any aircraft or similar device;
- 42.1.4 an industry related nation-wide strike which affects the Services and which is not attributable to any unreasonable action or inaction on the part of the Parties or any of its subcontractors or suppliers and the settlement of which is beyond the reasonable control of all such persons;
- 42.1.5 specific incidents of exceptional adverse weather conditions in excess of those required to be designed for in this Contract which are materially worse than those encountered in the relevant places at the relevant time of year during the twenty (20) years prior to the Effective Date;
- 42.1.6 tempest, earthquake or any other natural disaster of overwhelming proportions; or
- 42.1.7 other unforeseeable circumstances beyond the control of the Parties against which it would have been unreasonable for the affected party to take precautions;

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

- 42.2 Neither Party shall be in breach of its obligations under this Contract (other than payment obligations that would have accrued up to the date of occurrence of the Force Majeure Event) or incur any liability to the other Party for any loss or damage suffered by the other Party, if it is prevented from carrying out those obligations or such loss or damage is caused by a Force Majeure Event, unless the breach of its obligations or the loss or damage, would have occurred even if the Force Majeure Event had not occurred.
- 42.3 If a Party is or will be prevented from performing any of its obligations under the Contract by Force Majeure, then it shall give notice to the other Party of the event or the circumstances constituting the Force Majeure and shall specify the obligations, the performance of which is or will be prevented. The notice shall be given within seven (7) days after the Party became aware, or should have become aware, of the relevant event or circumstance constituting Force Majeure.
- 42.4 As soon as reasonably practicable following the date of commencement of a Force Majeure Event, and within a reasonable time following the date of termination of a Force Majeure Event, any Party invoking it shall submit to the other Party reasonable proof of the nature of the Force Majeure Event and of its effect upon the performance of the Party's obligations under this Contract.
- 42.5 Either Party shall, and shall procure its subcontractors, at all times, to take all reasonable steps within its powers to mitigate the effect of any Force Majeure Event.
- 42.6 The Parties shall hold consultations in relation to the Contract following the occurrence of a Force Majeure Event.
- 42.7 The parties shall endeavour to agree on any modifications to this Contract which are equitable, having regard to the nature of the Force Majeure Event, where appropriate.

43.0 Breach by Contractor and Termination

- 43.1 Where the Contractor fails wholly or substantially to perform or observe any obligation, term, condition or stipulation contained in this Contract or where the Contractor commits any continuing or material breach of any provision of the Contract, the Company shall give five (5)

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days written Notice of such breach to the Contractor detailing the full particulars of the breach and requiring it to be remedied. In such case, the Company may suspend payments from being made to the Contractor until the breach is remedied.

- 43.2 If the breach is not capable of remedy, or if the Contractor fails to remedy the breach within five (5) days of notice from the Company, the Company may immediately terminate the Contract, either by way of written notice for a breach not capable of being remedied, or without a further written notice in the event of a prior notice of breach; and in both instances without further liability to the Company other than to pay for Services performed in accordance with this Contract.
- 43.3 A breach shall be considered capable of remedying if the Contractor can comply with the provision in question in all respects. It shall be the discretion of two officials of the Company, one of whom shall be the Chief Executive Officer, to decide whether a breach is capable of being remedied or not.
- 43.4 The right to terminate the Contract given by this part shall be without prejudice to any other rights or remedies the Company may have in respect of the breach concerned or any other breach.

44.0 Right of Company to Reject the Contractor’s Personnel

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

45.0 Contractor’s Liability for Dishonesty of Personnel

- 45.1 Where the Company establishes that the Contractor or its personnel have acted dishonestly with regard to the property of the Company, that of its employees or any third parties, the Company shall have the right to terminate this Contract by giving 5 (five) days’ written notice, whether such acts constitute criminal offences or not. The termination of the Contract shall be in addition to any criminal prosecution against the Contractor or its personnel and any other action the Company may take to recover the property or obtain legal redress.
- 45.2 Notwithstanding Clause 45.1, the Company shall pay the Contractor for Services performed prior to termination of the Contract. Payment due to the Contractor shall be made in accordance with the provisions of Clause 26 (Payments).

46.0 Bankruptcy or Insolvency of Contractor

In the event that the Contractor becomes insolvent or bankrupt, or has a receiving order made against it, or compounds with its creditors, or commences proceedings to be wound up (not being a members' voluntary winding up for the purposes of amalgamation or reconstruction), or is placed under official management or carries on its business under a receiver, receiver and manager, trustee, liquidator or provisional liquidator for the benefit of its creditors or any of them, the Contractor shall notify the Company and the Company may terminate the Contract by notice to the Contractor, receiver, receiver and manager, trustee, liquidator, provisional liquidator, official manager or to any other person in whom the Contract may have become vested.

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47.0 Dispute Resolution

Notice of Dispute

- 47.1 Both Parties acknowledge that the expeditious resolution of disputes is in the best interests of both Parties.
- 47.2 In the event of a dispute, either Party shall deliver a written notice (“Notice of Dispute”) within ten (10) days to the other Party which shall state the dispute. A Party delivering a Notice of Dispute shall also provide sufficient details of the dispute and requiring its resolution under this clause including –
- 47.2.1 the alleged facts on which the dispute is based;
 - 47.2.2 the legal basis on which the claim is made; and
 - 47.2.3 the relief that is claimed.
- 47.3 The receiving Party shall deliver a written response to the other Party stating its position and basis of its position within seven (7) Days from the date of receipt of the Notice of Dispute.

Meeting in Good Faith

- 47.4 If the Dispute remains unresolved seven (7) days after receipt of the Notice of Dispute, the Relevant representatives from either Party shall meet, within thirty (30) days after receipt of the Notice of Dispute, in good faith to discuss and with the purpose of resolving the dispute.

Arbitration

- 47.5 If the dispute remains unresolved following the meeting of the representatives or the meeting of the representatives does not take place within the aforementioned thirty (30) days, either party may refer the dispute to arbitration and the dispute shall be finally resolved by arbitration under the Arbitration Act No. 19 of 2000 of the Laws of Zambia.
- 47.6 The number of arbitrators will be three.
- 47.7 Each Party shall nominate one member of the arbitral tribunal and the third member, who shall act as Chairman, shall be nominated by the two Party-nominated arbitrators, or if not nominated within 30 (thirty) days of the nomination of the second party-nominated arbitrator, such third arbitrator shall be appointed by the Chartered Institute of Arbitrators Zambia Branch.
- 47.8 The seat, or legal place, of arbitration will be Lusaka, Zambia.
- 47.9 The language to be used in the arbitral proceedings will be English.
- 47.10 The governing law of this arbitration clause will be the substantive law of Zambia.
- 47.11 Clause 47.5 does not preclude a Party from seeking urgent relief in a court of competent jurisdiction within Zambia where grounds for urgency exist.
- 47.12 The clauses relating to dispute resolution shall survive the termination of this Contract.

48.0 Domicilia and Notices

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

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- 48.2 All notices and other documents made pursuant to this Contract shall be in writing and signed by a duly authorised representative of either Party.
- 48.3 Any notice given and any communication made by either party to the other ("the addressee") which –
- 48.3.1 is delivered by hand, or sent by way of email correspondence, during the normal business hours of the addressee at the addressee's *domicilium* for the time being, shall be presumed to have been received by the addressee at the time of delivery or on the first business day after the date of facsimile transmission or email transmission.
- 48.4 Service of any legal proceedings concerning or arising out of the Contract shall be effected by causing the same to be delivered to a party at its registered office, or to such other address as may be notified by the party concerned in writing from time to time.

49.0 Conflict of Interest

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

50.0 Goodwill and Reputation

- 50.1 The Parties shall refrain from taking actions or making statements, written or oral, which disparage or defame the goodwill or reputation of the other Party.
- 50.2 Neither Party shall, without prior consultation with the other Party, commit any act nor make any statement or representation that may be construed to compromise or adversely impact on the other party's ongoing presence in the Republic of Zambia. Such acts, statements or representations include, but are not be limited to, acts, statements or representations regarding the Party, the Party's policies or the expected impact of such policies, salary and benefits scales, employment and business prospects, production potential, settlement of disputes and like situations.

51.0 Confidentiality

- 51.1 The Parties shall keep confidential and shall not, without the written consent of the other Party, divulge to any third Party any documents, data, or other information furnished directly or indirectly by the other Party in connection with the Contract, whether such information has been furnished prior to, during or following completion or termination of this Contract.
- 51.2 Notwithstanding Clause 51.1, the Contractor may furnish to its subcontractor such documents, data, and other information it receives from the Company to the extent required for the subcontractor to perform its work under the Contract, in which event the Contractor shall obtain from such subcontractor an undertaking of confidentiality similar to that imposed on the Contractor under this part.
- 51.3 The Parties shall not use such documents, data and other information received from the other Party for any purposes unrelated to the Contract.
- 51.4 The obligation of a Party under Clause 51.1 shall not apply to information that -
- 51.4.1 the Parties are required to share with other institutions participating in the financing of this Contract;
- 51.4.2 now or hereafter enters the public domain through no fault of either Party;

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

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

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

51.6 The provisions of clauses 51.1, 51.2, 51.3, 51.4 and 51.5 shall survive expiration or termination of this Contract.

52.0 Employment of Personnel of the Company and Other Contractors

52.1 The Contractor shall not, while it is associated in any capacity with the Company from the Effective Date of this Contract, either for its own account or as representative or agent for a third party, persuade, induce, encourage, procure or solicit any employee or independent contractor engaged by the Company;

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

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

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

53.0 Claim Settlement

53.1 Any official correspondence on claims to be sent to Contracts Manager with a copy to Mine/Plant Manager in charge, area General Manager, Supply Chain Manager and Chief Executive Officer. Any form of Claims with all required details to be notified to the Company and submitted to Contract Manager within 14 days from the date of occurrence with a copy as above. Unresolved or disputed claims shall be discussed between the Parties and resolved within a period of 45 days from the date of notification.

53.2 In case of non-settlement of the claim within 45 days from the date of notification, the provisions relating to dispute resolution under Clause 47 shall be followed.

53.3 If Contractor shall fail, omit or opt not to notify the Company in writing of its claim within 14 days after occurrence as referred to above, the Contractor will be deemed to have waived its right to make the claim and it will be taken to have no legal claim relating to the occurrence against the Company. The Company will therefore not accept nor process any claims made 14 days after occurrence by the Contractor.

54.0 Official Language

54.1 The Contract as well as all correspondence and documents relating to the Contract exchanged by the Contractor and the Company, shall be written in English. Supporting documents and printed literature that are part of the Contract may be in any another language provided they are accompanied by an accurate translation of the relevant passages in English, in which case, for purposes of interpretation of the Contract, this translation shall govern.

54.2 The Contractor shall bear all costs of translation to the governing language and all risks of the accuracy of such translation, for documents provided by the Contractor.

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54.3 As the Company's language of preference is English, the Contractors' employees shall be proficient in both written and spoken English to allow effective communication between the Company and the Contractor. Where a Contractor fails to comply with this clause, the Company may exercise its rights under Clause 44.

55.0 Joint Venture, Consortium or Association

If the Contractor is a joint venture, consortium, or association, all of the parties shall be jointly and severally liable to the Procuring Entity for the fulfilment of the provisions of the Contract and shall designate one party to act as a leader with authority to bind the joint venture, consortium, or association. The composition or the constitution of the joint venture, consortium, or association shall not be altered without the prior consent of the Company.

56.0 Copyright

The copyright in all drawings, documents, and other materials containing data and information furnished to the Company by the Contractor herein shall remain vested in the Contractor, or, if they are furnished to the Company directly or through the Contractor by any third party, including contractors of materials, the copyright in such materials shall remain vested in such third party.

57.0 Packing and Documents

57.1 The Contractor shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract. During transit, the packing shall be sufficient to withstand, without limitation, rough handling and exposure to extreme temperatures, salt and precipitation, and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.

57.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract, including additional requirements, if any, in any other instructions ordered by the Company

58.0 Inspections and Tests

58.1 The Contractor shall at its own expense and at no cost to the Company carry out all such tests and/or inspections of the Goods and Related Services as may be required under the Contract.

58.2 The Company or its designated representative shall be entitled to attend the tests and/or inspections required to be conducted by the Contractor under the Contract, provided that the Company shall bear all of its own costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and board and lodging expenses.

58.3 Whenever the Contractor is ready to carry out any such test and inspection, it shall give a reasonable advance notice, including the place and time, to the Company. The Contractor shall obtain from any relevant third party or manufacturer any necessary permission or consent to enable the Company or its designated representative to attend the test and/or inspection.

58.4 The Company may require the Contractor to carry out any test and/or inspection not required by the Contract but deemed necessary to verify that the characteristics and performance of the Goods under the Contract. Provided that the Contractor's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impedes the progress of manufacturing and/or the Contractor's performance of its other obligations under the Contract, due allowance will be made in respect of the Delivery Dates and Completion Dates and the other obligations so affected.

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- 58.5 The Contractor shall provide the Company with a report of the results of any such test and/or inspection.
- 58.6 The Company may reject any Goods or any part thereof that fail to pass any test and/or inspection or do not conform to the specifications. The Contractor shall either rectify or replace such rejected Goods or parts thereof or make alterations necessary to meet the specifications at no cost to the Company, and shall repeat the test and/or inspection, at no cost to the Company, upon giving a notice pursuant to Clause 58.3 above.
- 58.7 The Contractor agrees that neither the execution of a test and/or inspection of the Goods or any part thereof, nor the attendance by the Company or its representative, nor the issue of any report pursuant to Sub-Clause 5 above, shall release the Contractor from any warranties or other obligations under the Contract.

59.0 Export Restriction

Notwithstanding any obligation under the Contract to complete all export formalities, any export restrictions attributable to the Company, to the Republic of Zambia, or to the use of the products/goods, systems or services to be supplied, which arise from trade regulations from a country supplying those products/goods, systems or services, and which substantially impede the Contractor from meeting its obligations under the Contract, shall release the Contractor from the obligation to provide deliveries or services. Provided, however, that the Contractor can demonstrate to the satisfaction of the Company that it has completed all formalities in a timely manner, including applying for permits, authorizations and licenses necessary for the export of the products/goods, systems or services under the terms of the Contract. Termination of the Contract on this basis shall be for the Company's convenience.

60.0 Mopani Policies

In carrying out the Services, the Contractor shall comply with the policies and procedures issued by Company, that is, Safety, Health and Environmental etc. The Company is free to audit the Contractor to ensure that the Contractor is adhering to the Company's Policies.

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61.0 ANNEXURE FOR ZAMBIAN TAXES

61.1 Introduction

The purpose of this document is to provide a brief analysis of Zambian Taxes that have a cost impact on Mopani Copper Mines Plc (MCM) in respect of services provided by non-resident/foreign suppliers. Accordingly, it is important that such non-resident customers comply with and fully understand Zambian tax regulations.

There are two (2) tax incidences that arise when a non-resident/foreign person or company conducts business with a Zambian company; these tax incidences relate to Reverse VAT and WHT. A detailed explanation of these two taxes and respective compliance requirements are now provided below.

61.2 Reverse VAT

61.2.1 The Law

With effect from 1 April 2003, the Government of Zambia enacted a law to amend the VAT Act under section 8 of the principal VAT Act as follows:

“A recipient of an imported service shall pay tax (VAT) on the importation of a service, where such service is performed, undertaken or utilised in Zambia or the benefit of the supply is for a recipient in Zambia:

Provided that the provisions of this subsection shall apply where the supplier who is resident outside Zambia has not appointed a tax agent as required under subsections (7).

The corresponding input tax (VAT) shall be excluded from any claim, deduction or credit under subsection 18.

A supplier who does not have a business establishment in Zambia or being an individual or partner in a partnership, does not have a usual place of residence in Zambia shall appoint a person resident in Zambia (in this provision referred to as a “tax agent”) to act on behalf of the supplier in matters relating to tax (VAT).

Where the Commissioner-General accepts the appointment of a tax agent, any liability of the supplier under the Act including liability to:

- a) Keep and preserve, or produce any records or accounts;
- b) Furnish a tax return;
- c) Pay tax or interest under the Act;
- d) Comply with any requirement of the Commissioner-General in respect of the business;

Shall on and from the appointment, and without affecting such liability of the supplier, subsist to the like extent and severally against the tax agent until such a time as the Commissioner accepts the appointment of another tax agent.”

61.2.2 Services subject to Reverse VAT

Typical services covered include (this list is not exhaustive):

- Management and other consulting services;
- Technical advisory services;
- Marketing information and sales promotions;
- Building construction and contracting;
- Transportation services;

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- Installation services for items such as computers and software;
- Research and training;
- Advertising;
- Repairs and maintenance fees; and
- Royalties, etc.

61.2.3 Interpretation

The requirements and consequences of the amended VAT Act provisions are therefore as follows:

- Every non-resident/foreign person or company providing services to a Zambian company (whether in Zambia or outside Zambia) **must appoint a local tax agent who is resident in Zambia**;
- Failure to appoint a local tax agent would result in the recipient (in this case, MCM) of such services incurring an additional non claimable tax (VAT) of 16% of the value of services rendered. Accordingly, MCM may then be forced to deduct this additional cost from the service provider;
- In consequence, all invoices issued by the non-resident service provider must be addressed to the local tax agent who would then re-invoice MCM after adding VAT at 16%. This process would enable MCM claim back the input VAT thereby eliminating the potential cost if there was no local tax agent involved; and
- Further, the Zambia Revenue Authority (ZRA) has allowed for payments (net of tax) to be paid directly to the service provider so as to avoid additional transaction charges if these funds were paid to the local tax agent for onward remittance to the non-resident service provider.

The process of appointing a local tax agent requires that the non-resident service to formally inform the ZRA Commissioner of the appointment of such an agent. MCM have engaged the services of a local financial advisory firm trading as Enfin Solutions Limited as the preferred local tax agent; however, the non-resident supplier is at liberty to engage any firm of their choice.

A pre-designed registration form for Enfin Solutions Limited is attached in the appendices to this document.

61.3 Withholding Tax (WHT)

61.3.1 The Law

Withholding tax is not a tax but a means of collecting that tax. Withholding tax is deductible from a payment by the person who is liable to make the payment (the payer) at the point in time the person to whom it is due to be made (the payee) becomes legally entitled to it (date of accrual). The payer is required to pay the tax deductible to the Zambia Revenue Authority by reference to the date of accrual no matter how, when or where payment is made.

Payer – This refers to the person who is liable to make a payment and who is responsible for deducting and paying tax to the Zambia Revenue Authority. The tax is recoverable from the payer whether he makes the payment directly or through an agent.

Payee – This refers to the person legally entitled to receive a payment.

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Date of Accrual – The date on which the payee is legally entitled to claim payment whether paid or not. This is the date on which tax is deductible and determines the date by which the tax is payable to the Zambia Revenue Authority.

Withholding tax is deductible under the Income Tax Act from the following payments:

- (a) Interest;
- (b) Royalties;
- (c) Management and Consultancy fees;
- (d) Rents;
- (e) Commission and service charges or fees (other than that paid by the employer to his employees); and
- (f) Public entertainment fees (payments made to non- resident entertainers and sportsmen).

Withholding tax is also deductible from dividends and payments to non-resident contractors. The Income Tax Act requires all persons or partnerships making payments to non-resident contractors who are engaged in construction or haulage operations, to deduct withholding tax at the rate of 15%. The deductions are to be made from the gross payments before any other deductions whatsoever. Tax (currently at a rate of 20%) is deductible on the date of accrual of any amount due to a payee.

61.3.2 Interpretation

WHT is therefore a tax borne by the person earning income in Zambia (in this case, the non-resident service provider) and is deductible at source. For the sake of clarity, this tax (WHT) is merely collected by the payer (MCM) but is on account of the payee (in this case, the recipient of the income/foreign service supplier). Thus, the payer (MCM) can never absorb this tax as doing so will merely increase the cost of services.

The Zambian Income Tax Act does however provide for relief aimed at avoiding the recipient being tax twice in respect of the same income under the double taxation relief as detailed below.

61.3.3 Tax Treaties

Zambia has treaties with several countries. The treaties, or agreements, eliminate double taxation for people/companies who would otherwise have to pay tax in two countries on the same income.

61.4 Summary

As illustrated above, it is imperative that all MCM foreign customers are aware of tax incidences in Zambia. Accordingly, MCM wishes to advise all its Foreign Service suppliers to immediately take account of the following:

- To appoint a local tax agent in order to avoid MCM incurring an additional cost increase of 16% on the value of imported services. It is important to note that this will not affect the amounts due to the foreign customer; and
- The incidence of WHT at 15% which is deductible at source but, depending on the tax domicile of the foreign customer, relief can be obtained under existing double taxation treaties with Zambia. This tax (WHT) does have an impact on amounts due to foreign customers in that only 85% of the invoice value will be paid with the 15% remitted to ZRA and a WHT certificate issued to the foreign service provider.

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