

Contractor:	Contract Number	L CAZ 2015 – 00X
	Contract Modification Number	00
	Effective Date of Contract	01/04/2015
	Expiry Date of Contract	31/12/2015
Service:	CUSTOMS CLEARANCE	

XXX Zambia Ltd

Contractual Agreement



Konkola Copper Mines plc

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MEMORANDUM OF AGREEMENT

ENTERED INTO BETWEEN:-

KONKOLA COPPER MINES PLC
PRIVATE BAG (C) 2000
FERN AVENUE
CHINGOLA, ZAMBIA
(Hereinafter referred to as “KCM”)

AND

XXXX ZAMBIA LIMITED,
.....
(Hereinafter referred to as “the Contractor or Agent”)

THIS AGREEMENT dated the 1st day of April two thousand and fourteen made between **Konkola Copper Mines plc** of Fern Avenue, Stand No. M/1408, Chingola (hereinafter referred to as “KCM” of the one part and **XXXX Zambia Limited,**(hereinafter referred to as “Agent”) of the other part.

WHEREAS:

- a. KCM requires the services of an Agent for the purpose of clearing and forwarding its imports.
- b. The Agent is engaged in the business of clearing and forwarding goods at various ports of entry into Zambia
- c. The Agent is desirous of being appointed a customs clearing and forwarding Agent of KCM in Zambia to attend to all the necessary customs requirements on the following terms and conditions hereinafter contained in this agreement.

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NOW THEREFORE IT IS AGREED AS FOLLOWS:

1. DEFINITIONS

1.1 In this agreement headings embodied in the clauses are for convenience and shall not be used in its interpretation unless the context clearly indicates a contrary intention:

1.1.1 The singular shall include the plural and vice versa;

1.1.2 A reference to any one gender shall be capable of being construed as a reference to any of the others; and

1.1.3 A reference to a natural person shall be capable of being construed as a reference to an artificial person and vice versa.

1.2 Unless the context clearly indicates a contrary intention, words or phrases defined in Clause 1 shall have the following meanings assigned to them:

“Effective Date”- shall mean 01st April 2014

“KCM”- shall mean Konkola Copper Mines Plc, a company incorporated in accordance with the laws of Zambia.

“Parties”- shall mean the Agent and KCM.

“Agent”- shall mean **XXXX Zambia Limited** defined in the services general conditions of contract.

“Writing” - shall include any manuscript typewritten, printed or electronic statement under hand or seal.

“Carriers” - Road hauliers

2. APPOINTMENT

2.1 KCM hereby appoints **XXXX Zambia Limited** as its Agent for the clearance of KCM imports/Cargo/Exports.

KCM may also request **XXXX Zambia Limited** to provide daily airfreight delivery services from airports to respective KCM Mine Stores as may be required from time to time.

3. DUTIES OF THE AGENT - ZAMBIAN BORDER/AIRPORT

The Agent shall employ sufficient personnel and adopt adequate and best practiced procedures to enable it to provide superior quality services to KCM.

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The Agent will undertake the following responsibilities during the period of appointment.

- 3.1 Obtain all necessary shipping documents from carrier for clearance.
- 3.2 Send pre-alert to KCM Logistics Department preferably by e-mail (or fax if e-mail fails) upon arrival of truck at port.
- 3.3 Calculate Value for Duty Purpose (“VDP”) and Value Added Tax (“VAT”), Duty and any other fees payable to customs, frame bill of entry and lodge clearance documents into customs by applying the correct HS codes.
- 3.4 Attendance at Customs and arrangement of customs examination where need arises.
- 3.5 Arrange transport (if required) in accordance with the instructions of KCM.
- 3.6 Send original documents to KCM with batched agent’s tax invoice.
- 3.7 Obtain special delivery upon assessment of entry by ZRA and allow truck to depart the borders with minimum delays.
- 3.8 Process amendments of wrong customs declarations (Voucher for official correction) and lodge in refund documents where duty was wrongly paid
- 3.9 Provide warehousing facilities when need arise.
- 3.10 In exceptional cases pay Zambia Revenue Authority (ZRA) on behalf of KCM or any other agent on request from KCM under reimbursable arrangement.
- 3.11 Administer electronic daily/weekly/monthly cargo tracking reports and update KCM
- 3.12 The Agent shall monitor daily transactions and submit weekly cumulative schedule of Zambia Revenue Authority (ZRA) receipted entries and corresponding documentation (to be used for VAT returns) within 30 working days of receipting.
- 3.13 The Agent shall hold monthly (as may be appropriate) reconciliation meeting with KCM and submit statement of accounts.
- 3.14 Consolidate invoices for each KCM IBU as advised by KCMs’ Logistics Department
- 3.15 Reprint clearing documents upon request by KCM at own cost refundable when proof of payment is provided with a disbursement of 3%.

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- 3.16 Upon clearance of shipment at the airport the items must be transported to destination as long as the incoterms permit
- 3.17 Advise KCM on entries which could can trigger closure.
- 3.18 In an event of border closure the agent must liase with ZRA to identify the entry or entries which have triggered closure of the borders
- 3.19 The Agent must surrender documents for repair and return to agent who cleared the goods when exported and should be mindful of the consignor/consignee (consignor at the time of export should be the consignee at importation)
- 3.20 Any other duties incidental to or otherwise required under normal practice, to give effect to clauses 3.1 to 3.20

4. DUTIES OF KCM

- 4.1 Facilitate provision from source of invoices and any other documents for shipping and clearing purposes.
- 4.2 Provide the Agent with any information required to facilitate seamless clearance of KCM’s consignments.
- 4.3 Contract carriers and pay freight bills directly to carriers.
- 4.4 Instruct suppliers to pack goods suitably for export.
- 4.5 Provide off-loading and loading equipment at its units.
- 4.6 Hold monthly reconciliation of invoices/payments and other documents.
- 4.7 KCM Plc shall remit funds to Zambia Revenue Authority through the Bank of Zambia and obtain proof of transmission of the funds from the remitting commercial bank.
 - 4.7.1 KCM shall transmit the soft copy of the proof of transmission to Zambia Revenue Authority to facilitate receipting of out-standing declarations at the borders.
 - 4.7.2 KCM shall transmit to the clearing agent, a soft copy of the schedule of entries to be receipted.
 - 4.7.3 KCM Plc shall monitor Zambia Revenue Authority weekly statements of out-standing declarations and funds in the Mining Revenue Holding Account
- 4.8 KCM Plc shall effect post payment verification of documents for any post amendments.

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5. RATES

- 5.1 The rates shall be revised quarterly. The details if the rates are as in Appendix 1A, Appendix 1B, and Appendix 1C.
- 5.2 All shipments shall be final cleared at the border. However, in the event that need arises for Removal in Bond, the Agent shall seek authority from KCM Logistics Department prior to clearance.
- 5.3 The rates as outlined in Clause No. 5.1 and 5.2 shall remain firm for each quarter with the exception of Statutory Charges and the transportation rates (see Clause 6), which shall be adjusted accordingly.

6. TRANSPORTATION

- 6.1 The basis for transportation rate adjustment shall be the increment or reduction in diesel price and will be based on the assumption that fuel is 30% of the transporters cost of operations. The adjustment will be based on the Energy Regulation Board (ERB) diesel price movement. For example if there is a 10% increment in fuel price, the rate adjustment will be 3.0%.
- 6.2 This will only be applicable to transportation from the airports to KCM or otherwise specified by KCM

7. TERMS OF PAYMENT

- 7.1 The Agent shall provide a monthly statement of account for all business conducted with KCM in the calendar by 12th of the month following the month of payment. The Agent shall also reconcile the statement with KCM Agent’s payment records and current invoices.
- 7.2 The Agent shall invoice KCM for services rendered. The Purchaser’s normal monthly payment terms will apply, payment being made to the Agent in accordance with the monthly payment policy to creditors by KCM.
- 7.3 To pay the Clearing for services correctly rendered **30 days** from the date of invoicing
- 7.4 For urgent and emergency requirements KCM shall make prompt funding arrangements. It is hereby agreed that KCM will not be required to pay the Agent any commission on disbursement unless with prior arrangement.
- 7.5 Payments will be effected to CLEARING AGENT to the following account:

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BANK : XXXXX BANK PLC

BRANCH CODE : 0XXXX

ACCOUNT NO. : 00XXXX

8. TRADING CONDITIONS

- 8.1 All services rendered to KCM by the Agent are rendered in terms of and subject to the Standard Trading Conditions of the Agent, a copy whereof is attached as Appendix “2” and the KCM Services General Conditions Of Contract, a copy whereof is attached as “Appendix 3” and both of which shall be deemed to form part of this Agreement. In cases where the Agent Standard Trading Conditions, the KCM Services General Conditions of Contract are in conflict the KCM Services General Conditions of Contract shall prevail.
- 8.2 The Agent shall not be required to procure insurance of any nature in respect of the goods on behalf of KCM unless specifically requested in writing to ensure goods specified in such a request and provided that such request is given timeously to the agent.

9. FORCE MAJEURE

- 9.1 Delay or failure to comply with or breach of any of the terms and conditions of the Agreement if occasioned by or resulting from an act of God or public enemy, fire, explosion, earthquake, perils of the sea, flood, storm or other adverse weather conditions, war declared or undeclared, civil war, revolution, riot, strikes, lockouts, or other labour disputes, sabotage, accident, blockade, embargo, epidemic, act of any Government or other authority, compliance with Government orders, demands to regulations, or any circumstances of like or difference nature beyond the reasonable controls of the party so failing, shall not be deemed to be a breach of this Agreement nor shall it subject either Party to any liability to the other.
- 9.2 Should either Party be prevented from carrying out its contractual obligations by any of the events referred in Paragraph 8.1 for a continuous period of 30 (thirty) days, the Parties shall consult each other regarding the future implementation of the Agreement, and if no mutually acceptable agreement is arrived at within a period of 14 (fourteen) days thereafter, either Party shall be entitled to terminate the Agreement forthwith on written notice.

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10. BREACH AND CANCELLATION OF CONTRACT

10.1 The following actions or omissions if committed by the Agent(including any director/employee of the Agent and, where applicable, including the Contractor’s agent’s and any director/employee of such agents) shall constitute a breach of the Contract-

- 10.1.1 Failing to execute the contract in accordance with it’s terms and conditions, provided that such failure is not attributable to any of the circumstances set out in Clause No. 9 - "FORCE MAJEURE”;
- 10.1.2 Giving false details in any waybills and/or invoices rendered in terms of the contract;
- 10.1.3 Paying or offering to pay, or giving any money or other present of inducement nature whether by way of commission, credit or otherwise or lending or offering to lend, any money or giving, or offering to give, any other valuable consideration to any person or persons in the employ of KCM;
- 10.1.4 Failing to advise KCM of any occurrence or incidents within their control that result in KCM being financially compromised.
- 10.1.5 Committing any breach of any of the other terms and conditions of the contract.

10.2 In the event that the Agent commits any of the breaches described in Paragraph 9.1 above, KCM shall, without prejudice to any of KCM’s other rights under the contract and irrespective of any other remedy which might be available to KCM under any of the provisions of the contract or in law, be entitled to-

- a) Immediately cancel and terminate this contract and any other contracts and/or undertaking(s) in force between the Parties without payment of any compensation to the Agent for any damages whatsoever including loss of business and/or profits resulting from such cancellation; or
- b) At KCM’s absolute discretion, give written notice to the Agent that KCM requires such breach to be remedied. In the event of the Contractor, within seven days of the date of receipt of notice, failing to remedy such breach and failing to furnish assurances acceptable to KCM that such breach will not occur again, KCM shall, at the expiry date of such period of seven days, have the right to cancel and determine the contract and any other contract and/or undertaking(s)

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in force between the Agent and KCM without payment of any compensation to the Agent for any damages whatsoever including loss of business and/or profits resulting from such cancellation.

- 10.3 KCM shall have the right to cancel and determine the contract forthwith without payment of any compensation to the Agent for any damages whatsoever including loss of business and/or profits resulting from such cancellation in the event that the Agent being placed under liquidation, either provisionally or finally, whether voluntarily or compulsorily; the Agent being placed under judicial management, either provisionally or finally; a judgement in any competent court being given against the Agent which judgement is not satisfied within a period of fourteen days; the major portion of the assets of the Agent being disposed off. This agreement shall terminate in the event that the Agent’s licence is withdrawn or it fails to renew its licence.
- 10.4 The cancellation or termination of the Contract in terms of Clause No. 9 shall be without prejudice to any claims for damages or other rights, which KCM might have against the Contractor.
- 10.5 The implementation by KCM of any of the provisions of Clause No. 9 shall be in writing, signed by KCM and shall give the effective date of the Cancellation or Termination.

11. PENALTY

- 11.1 The Agent shall pay all additional charges and/or costs incurred by KCM in proven cases of the Agent’s misinterpretation of tax codes or miscalculation of amounts payable and any other additional costs arising from proven cases of Agent’s delay in effecting customs clearance.
- 11.2 The Penalty charges shall be recovered from the Agent’s payment in the month following the date of payment of additional charges in clause 11.1

12. OPEN DIALOGUE MEETINGS

- 12.1 During the tenure of this contract either party may call for a meeting between the parties in the following circumstances:
 - 12.1.1 If it is aware of circumstances that will result in either itself or the other party being in breach of the obligations of the contract.
 - 12.1.2 If it is of the considered opinion, based on performance of the other party that such other party is likely to be in breach of its obligations under the contract.

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12.1.3 Such meeting shall be called by giving not less than 14 days written notice to the other party.

13. ASSIGNMENT

13.1 The Agent shall not cede, assign, transfer or sublet the contract or any portion thereof without the express consent in writing of KCM first being obtained. KCM shall not be bound to give such consent and may withhold same without assigning any reason therefore or grant such consent subject to such terms and stipulations as KCM may, in KCM’s absolute discretion, deem fit.

14. FAIR CLAUSE

14.1 If the performance of any part of this contract by either party is substantially hindered by an extraordinary event that:

14.1.1 was not foreseeable at the formation of this agreement,

14.1.2 was subsequent to the formation of this agreement,

14.1.3 is beyond the reasonable control of the parties and

14.1.4 So profoundly alters the injured party’s performance of the contract that the injured party most assuredly would not have entered into the agreement had he foreseen the event, then the injured party may request re-negotiation of the contract to alleviate the harm created by the extraordinary event.

15. SUB-CONTRACTS

15.1 Notwithstanding the provisions of clause 13, the Agent may with the prior written approval of KCM, enter into sub-contracts with other persons for the rendering of part of the Services.

15.2 Should KCM consent to the Agent entering into a sub-contract in terms of Clause 13.1, the provisions of the Contract shall be applicable mutatis mutandis to the contract between the Agent and such sub-contractor. The Agent hereby warrants and undertakes that sub-contractors to the Agent shall not breach and shall comply with all obligations of the Agent in terms of the Contract and that all the provisions of the Contract relating to any sub-contractors shall be expressly reflected in his sub-contracts.

15.3 The consent of KCM to the engagement of any sub-Agent shall not relieve the Agent of his obligations under the Contract or in any way affect the Contractor's direct responsibility to KCM, nor shall it render KCM in any way responsible or liable to such sub-contractor.

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16. INDEMNITY

16.1 The Agent warrants that all its’ personnel engaged in and upon the execution of the contract on KCM premises, are adequately covered by the necessary insurance and the Agent hereby indemnifies KCM against any claim or claims which may be made against KCM as a result of the death of, or injury to, any of the agent’s personnel.

16.2 The Agent shall indemnify KCM from and against any demands, claims, suits and causes of action and any liability, legal costs, expenses, settlements arising from or incurred by reason of any infringement or alleged infringement arising from its failure to undertake any part of the service as required by the relevant law.

17. LAW AND JURISDICTION

17.1 This Agreement and any dispute between the Parties arising from or connected therewith shall be regulated in terms of the laws of the Republic of Zambia.

18. NOTICES AND DOMICILIUM

18.1 The Parties choose as their respective domicilium citandi et executandi for the purpose of legal proceedings and for the purposes of giving or sending any notice provided for or necessary in terms of this Agreement, the following addresses:

	Manica Zambia Limited	Konkola Copper Mines
Physical Address :	Plot No. 840, Nyerere Road, Light Industrial Area, Kitwe. Republic of Zambia	Stand M/1408 Fern Avenue, Chingola, Republic of Zambia
Postal Address :	P. O. Box 21311, Kitwe Zambia	Private Bag KCM(C)2000 Chingola, Zambia
Telephone :	+260212217817	+260212350202
Mobile :	+260977513534	+260974928256

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Attn : Mr. Marlon Nkhata Mr. Mbewe Boniface
marlon.nkhata@manica.com boniface.mbewe@kcm.co.zm

provided that a party may change its domicilium to any other physical address, postal address or telefax number by written notice to the other party to that effect. Such change of address will be effective seven days after receipt of notice of the change of domicilium.

18.2 All notices to be given in terms of this Agreement will:

18.2.1 be given in writing;

18.2.2 be delivered or sent by prepaid registered post or by telefax;

18.2.3 if delivered be presumed to have been received on the date of delivery;

18.2.4 if sent by prepaid registered post to be presumed to have been received within 7 (seven) business days of posting unless the contrary is proved;

18.2.5 if sent by telefax be presumed to have been received on the first business day following the date of sending of the telefax unless the contrary is proved.

19. TENURE OF AGREEMENT:

This agreement is effective from 01st April 2014 and shall continue until 31st March 2015, but may be renewed by mutual agreement between KCM and the Agent. Notwithstanding the above, this agreement is subject to termination by giving two months written notice, and no reasons for such notice need be provided by either party.

In the event of a material breach of this Agreement, the party so affected must give written notice of the breach to the defaulting party. If the defaulting party has not remedied the breach within 7 working days after receipt of such notice, the non-defaulting party is entitled to terminate the Agreement with immediate effect.

20. CONFIDENTIALITY

During the period of this Agreement and any time thereafter, either Party shall not communicate to any third party the terms of this Agreement or disclose any information received or learned in connection with this Agreement.

21. ARBITRATION

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- 21.1 Prior to either party serving a Notice of Dispute, it shall be mandatory for an open dialogue meeting to take place in terms of clause 11 to meet and discuss the prospective dispute. If the meeting is unable to resolve the matter it is to prepare a written and signed minute of such meeting committing both parties to proceeding to steps outlined in Clause 20.2
- 21.2 Any dispute or difference whatsoever arising out of or in connection with this Contract shall be and is hereby submitted to arbitration in accordance with, and subject to, the Arbitration Act No. 19 of 2000. The appointing authority shall be the Zambia Center for Dispute Resolution. There shall be one arbitrator, the language of the arbitration shall be English and the place of the arbitration shall be such place as shall be agreed by the parties.
- 21.3 To the extent permitted by Law, the decision of the arbitrator shall be final and binding on the Parties.

22. GENERAL

- 22.1 This document constitutes the sole record of this Agreement between the Parties.
- 22.2 Neither party shall be bound by an express or implied term, representation, warranty, promise, or the like not recorded herein.
- 22.3 No addition to or variation of this Agreement shall be of any force or effect unless recorded in writing and signed by or on behalf of the Parties.
- 22.4 No indulgence which either Party (“the Grantor”) may grant to the other Party (“the Grantee”) shall constitute a waiver or any of the rights of the Grantor, who shall not thereby be precluded from exercising any rights against the guarantee which may have arisen.
- 22.5 The Parties shall keep accurate and separate records and accounts for the shipments transacted under this Agreement, and, if required to do so by the other Party, then each Party shall provide a copy of such records and accounts to the other Party.

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APPENDIX 1 A

Item No.	DESCRIPTION	KCMS' OFFER	
		ZMW	
1	Bank Charges		
2	Export Clearing		
3	Import Clearing		Minimum
4	Airline Handling Fee	Per KG,	
5	Handling	Per KG,	
6	Terminal Fee	Per KG,	
7	Delivery-LIA to KCM	Per KG,	
8	Delivery-NDO to KCM	Per KG,	
9	Asycuda at Airport	Per Shipment	
10	Dangerous Goods Handling	Per Shipment	
11	Disbursement		
12	RIB		
13	RIT		
14	TIP		
25	28 TONS	CHINGOLA \ KONKOLA	

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TRANSPORTATION			
Item No.	VEHICLE TONAGE	DESTINATION	KCMS' OFFER
			ZMW
LUSAKA AIRPORT			
1	0 Kg- 999Kg	KITWE/CHNGOLA/CHILILABOMBWE	
2	1 TON	KITWE	
3	1 TON	CHINGOLA \ KONKOLA	
4	2 TONS	KITWE	
5	2 TONS	CHINGOLA \ KONKOLA	
6	3 TONS*	KITWE	
7	3 TONS*	CHINGOLA \ KONKOLA	
8	4 TONS \ 5 TONS*	KITWE	
9	4 TONS \ 5 TONS*	CHINGOLA \ KONKOLA	
10	5 TONS \ 7 TONS	KITWE	
11	5 TONS \ 7 TONS	CHINGOLA \ KONKOLA	
12	28 TONS	KITWE	
13	28 TONS	CHINGOLA \ KONKOLA	
NDOLA AIRPORT			
14	0 Kg- 999Kg	KITWE/CHNGOLA/CHILILABOMBWE	
15	1 TON	KITWE	
16	1 TON	CHINGOLA \ KONKOLA	
17	2 TONS	KITWE	
18	2 TONS	CHINGOLA \ KONKOLA	
19	3 TONS*	KITWE	
20	3 TONS*	CHINGOLA \ KONKOLA	
21	4 TONS \ 5 TONS*	KITWE	
22	4 TONS \ 5 TONS*	CHINGOLA \ KONKOLA	
23	5 TONS \ 7 TONS	CHINGOLA	
24	5 TONS \ 7 TONS	CHINGOLA \ KONKOLA	
25	28 TONS	CHINGOLA \ KONKOLA	

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In witness thereof, the Parties hereto have entered into this Agreement on the date and the year written hereunder.

**FOR AND ON BEHALF OF
KONKOLA COPPER MINES plc:**

Name :

Signature :

Designation :

Date :

WITNESS

Name :

Signature :

Designation :

Date :

FOR AND ON BEHALF OF THE AGENT – MANICA ZAMBIA LIMITED

Name:

Signature:

Designation:

Date:

WITNESS

Name:

Signature:

Designation:

Date: