



Century Mining Pty Ltd

Supply of Services - Standard Terms & Conditions



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1. General and Definitions

1.1 General

- (a) The Parties have agreed to enter into an agreement for the Supply of Services in accordance with the Purchase Order and these terms and conditions (**Terms and Conditions**), which together constitute the contract (**Contract**).
- (b) The Supplier has represented and warranted to the Company that it is sufficiently experienced, capable and qualified to provide the Services in accordance with the Contract.
- (c) In the event of any inconsistency, conflict, ambiguity or discrepancy between any special terms set out in the Purchase Order and these Terms and Conditions, any special terms set out in the Purchase Order will take precedence.
- (d) The Supplier acknowledges that these Terms and Conditions may be updated between orders without notice to the Supplier, and any new terms or alterations to existing terms will apply to a new Purchase Order.
- (e) The execution of a Purchase Order or the commencement of the performance of Services under a Purchase Order will constitute acceptance by the Supplier of these Terms and Conditions.

1.2 Definitions

In this Agreement the following terms shall bear the following meanings:

Agreement means this agreement including the Schedules, Purchase Orders and all other documents annexed to this Agreement or specifically incorporated by reference.

Affected Party means any Party which is prevented by an event of Force Majeure in carrying out its obligation under this Agreement.

Business Day means a day on which trading banks are open for business in Brisbane Queensland, but excludes weekends and public holidays.

Claim means any claim, action, suit, demand, proceeding, notice, litigation, investigation or judgment and any actual or alleged entitlement or right howsoever arising, whether present, unascertained, immediate, future or contingent and whether based in contract, arising at common law, in equity or under any Law.

Company means Century Mining Pty Ltd ABN 59 006 670 300.

Confidential Information means all information and materials disclosed, provided or otherwise made accessible to the Supplier or its Related Bodies Corporate, directly or indirectly, in connection with this Agreement, the supply of Goods under this Agreement or the Project, whether before or after execution of this Agreement (including in connection with any tender process) and including this Agreement (and the existence of this Agreement), policies, services, processes, procedures, methods, formulations, facilities, products, plans, affairs, transactions, organisations and business connections of the Company and its Related Bodies Corporate, but excludes information that the Supplier can prove:

- (a) was in the public domain at the date the Company made it available to the Supplier;
- (b) subsequent to the date the Company made it available to the Supplier, became part of the public domain otherwise than as a result of disclosure by the Supplier or the Supplier's Personnel or other person directly or indirectly in breach of this Agreement or any other obligation of confidentiality; or
- (c) was in its possession of the Supplier at the time of disclosure by the Company to this Agreement or and was not otherwise acquired from the Company directly or indirectly.

Consequential Loss means:

- (a) any indirect, consequential or special damages or losses;
- (b) loss of profit, loss of contract, loss of revenue, loss of goodwill, loss of business opportunities, cost of capital and damage to reputation; or
- (c) cost, expenses, loss or damage that are not a direct consequence of the breach,

howsoever arising and whether or not a party knew or should have known of, or foreseen, the possibility of such loss or damage at the date of this Agreement.

Corporations Act means the *Corporations Act 2001* (Cth).

Description of Services means the description of services set out in the Purchase Order.

Force Majeure Event has the meaning given in clause 14.1.

Good Operating Practices means the practices, methods and acts used by a supplier who is in the performance of service exercises that degree of diligence, prudence and foresight reasonably and ordinarily exercised by skilled and experienced suppliers engaged in the same type of services in similar conditions as contemplated under this Agreement.

Goods means any goods, materials, equipment, supplies or other items supplied by the Supplier under this Agreement or any Purchase Order (whether in connection with the Services or otherwise).

Government Agency includes any federal, state, territory or local government, or any ministry, department, court, commission, board, agency, instrumentality, political subdivision or similar entity.

Government Authorisations means all approvals, consents, authorisations, permits, clearances, licences or other requirements that are required by or from any Government Agency for the Supplier to perform its obligations under this Agreement or any Purchase Order.

GST means the tax payable on Taxable Supplies under the GST Law.

GST Law has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any related act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax, and includes any subordinated legislation in

respect of those acts and terms used in this Agreement will, where the context requires, have the meaning ascribed to such terms in the GST Law.

Insolvency Event means, in relation to any Party, that any of the following events or circumstances has occurred:

- (a) the affected Party is, or states that it is, insolvent (as defined in the Corporations Act) or commits an act of bankruptcy or is declared insolvent;
- (b) proceedings are commenced to appoint a liquidator or provisional liquidator to the affected Party and such proceedings are not dismissed within 60 days;
- (c) the Party is dissolved;
- (d) any of the events mentioned in section 459C(2) of the Corporations Act occurs in respect of the Party;
- (e) any Controller (as defined in the Corporations Act) is appointed in respect any material part of the affected Party's assets; or
- (f) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

Law means common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instrument under them, and consolidations, amendments, re-enactments or replacement of any of them).

Liability means liability, loss, damage (of any nature including aggravated and punitive), cost, Claim, suit, charge, diminution in value action, statutory or equitable compensation, demand, expense or proceeding or loss of any nature and of any kind whatsoever whether present or future, actual, contingent or prospective and whether known or unknown, and howsoever arising including under any Law or Government Authorisation.

National Police Clearance means a form completed and reviewed by the Federal Police.

Parties means the Company and the Supplier.

Personnel means the directors, officers, employees, suppliers, contractors and agents of the Supplier or Company or of their respective Related Bodies Corporate (as the context requires).

PPSA means the *Personal Property Securities Act 2009* (Cth).

PPSA Register means the Personal Properties Securities Register established under section 147 of the PPSA.

Project means the Company's zinc project located in North Queensland.

Purchase Order means a document issued by the Company for the supply of a specific Service in accordance with this Agreement.

Purchase Order Number means the number assigned to the Purchase Order by the Company.

Purchase Price has the meaning ascribed to in the Purchase Order.

Related Body Corporate has the meaning given in the *Corporations Act 2001* (Cth).

Remuneration means Purchase Price and the Services Payment.

Security Interest has the meaning given in the PPSA.

Site means any of the sites identified in the Purchase Order.

Site Induction means questionnaires and teachings given to a visitor or contractor in order to bring knowledge of Company's safety procedures to a level compliant with legislative and Company requirements, as required by the Company.

Site Safety Requirements means the safety requirements at or associated with any Site as are imposed or required by the Company or any person that is related to health and safety.

Taxable Supply means Taxable Supply as defined in the GST Law.

Taxes includes all taxes, fees, levies, duties and charges imposed or assessed in respect of the Services under this Agreement by all local, state or national government authorities including income tax (including withholding for prescribed payments or group tax), payroll tax, statutory superannuation contributions and workers' compensation payments and contributions, sales tax, customs duty, excise tax, and stamp duty but does not include GST.

Tax Invoice has the meaning given to that term in the GST Law.

Term has the meaning given in Clause 3.

Third Party Claim means any Claim in respect of:

- (a) loss or destruction of, or injury or damage to, or loss or use of any real or personal property; or
- (b) any personal injury or death of a person arising out of or caused by the supply or non-supply of the Service by the Supplier.

1.3 Interpretation

In this Agreement unless the context otherwise requires:

- (a) headings are for convenience only and do not affect the interpretation of this Agreement;
- (b) the singular includes the plural and vice versa;
- (c) words importing a gender include all genders;
- (d) other part of speech or grammatical forms of a word or phrase defined in this Agreement have a corresponding meaning;
- (e) reference to a Party included its successors and permitted assigns;
- (f) an agreement, representation, obligation or warranty by two or more persons binds them jointly and severally;
- (g) a reference to anything (including but not limited to any right) includes a part of that thing;

- (h) a reference to a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law judgement, rule of law or equity or a rule of an applicable stock exchange and is a reference to that law as amended, consolidated or replaced;
- (i) a reference to a clause, Party, annexure, exhibit, schedule or attachment is a reference to a clause, Party, annexure, exhibit, schedule and attachment of this Agreement and a reference to this Agreement includes any annexure, exhibit, schedule and attachment to it,
- (j) a reference to an obligation includes a liability and a duty and a reference to a performance includes observance;
- (k) a reference to a day, month or year is a reference to a calendar day, calendar month or calendar year;
- (l) a reference to 'includes' or 'including' is to be read as including but not limited to;
- (m) a reference to an agreement, deed, instrument or other document includes the same as amended, novated, supplemented, varied or replaced from time to time;
- (n) a reference to \$, AUD or dollar is to Australian currency; and
- (o) a reference to time is to local time in Melbourne, Victoria.

1.4 Priority

If there is any inconsistency between the documents comprising this Agreement, then the Special Conditions, the General Conditions, any Purchase Orders, the Specifications of Goods and the other schedules and appendices shall prevail to the extent of any such inconsistency in that order.

2. Supply arrangements

2.1 Provision of Services

The Company appoints the Supplier and the Supplier accepts the appointment to provide the Services to the Company on a non-exclusive basis from the Services Commencement Date until the end of the Term, in accordance with the terms and conditions of this Agreement.

2.2 Ordering Procedure

- (a) Unless otherwise set out in this Agreement, a request for Services must be made by issue from the Company to the Supplier of a Purchase Order. Upon receipt of a Purchase Order, the Supplier must perform the Services required under the Purchase Order (and as more particularly described in the Purchase Order or Description of Services) on the terms and conditions of this Agreement.
- (b) A variation of a Purchase Order by the Supplier will only be binding on the Company if confirmed in writing by the Company Representative.

3. Term

Subject to any earlier termination provided for under this Agreement, the Term commences on the date of execution of this Agreement and ends on the End Date (Term).

4. Co-operative Approach

- (a) The fundamental objectives of the Parties under this Agreement are to sell, deliver and provide the Services safely, efficiently and at the lowest possible cost to the Company (subject to the agree Remuneration).
- (b) In order to achieve this objective, the Parties commit to act with mutual co-operation based on trust, integrity and open book dealings.

5. Continuous Improvement

- (a) Supplier agrees to participate in continuous improvement initiatives for the purpose of identifying improvements in Service to better manage risk, create business options and reduce costs to the Company.
- (b) The Parties' Representatives must, if requested by the Company, meet to discuss the performance of the Services, the progress of the Supplier's participation in any continuous improvement initiatives and to exchange information that will assist the Parties to identify performance efficiencies, provided that the Supplier shall not be obligated to incur additional costs in delivering the Services.
- (c) All information exchanged between the Parties under the Agreement and the Continuous Improvement Program shall be treated as confidential. The Parties must not to disclose any such information to any third party other than as contemplated in this Agreement.

6. Pricing and Payment

6.1 Price

Subject to the performance by the Supplier of this obligations under this Agreement, Company shall pay Supplier for the supply of the Services in accordance with Schedule 3 (Remuneration). Unless expressly stated otherwise in Schedule 3, the Remuneration shall be fixed for the Term and shall not be subject to rise and fall.

6.2 No minimum purchase

- (a) Nothing in this Agreement obliges the Company to request or acquire any minimum level of Services from the Supplier.
- (b) Any estimated quantities or forecast requirements for Services contained in this Agreement is purely a non-binding estimate provided for informational purposes only and the Company makes no representation or warranty as to any minimum level of Services that it will acquire from the Supplier.

6.3 Invoice and Payment

- (a) The Supplier must, within 5 days from the end of a month during which Services were provided, provide the Company with an invoice to support the payment of the Remuneration in a form acceptable to Company and must contain the following information:
 - (i) this Agreement number and the Purchase Order number;
 - (ii) a brief description of the Services supplied, including the location of the Site on which services were provided;
 - (iii) the quantity of the Services supplied (including days and times that Services were provided);
 - (iv) any further information stipulated in any applicable GST legislation, or by the Company, so that the Company will receive the benefit of any input tax credits in relation to the supply of the Services; and
 - (v) such other information as may be reasonably required by Company.
- (b) Subject to clauses 6.3(c) and 6.4, payment will be made by the Company within 30 Days from the end of month of receipt of a validly issued Tax Invoice.
- (c) Any amounts due by the Company to the Supplier under this Agreement may be set off against any amounts due to the Company from the Supplier.
- (d) Unless otherwise agreed, all payments to be made pursuant to this Agreement shall be made by deposit to a bank account in Australia nominated in writing by the intended recipient of the payment.

6.4 Dispute

If the Company disputes any amount shown on an invoice, it must notify the Supplier within 21 days of receipt of the invoice and must pay any amounts not in dispute in accordance with clause 6.3, provided that the payment by the Company of any amount the subject of a disputed invoice is not to be considered as an acceptance of the amount in dispute or of the Company's liability to make that payment.

7. Performance

- (a) In consideration of the payment of the Remuneration by the Company, the Supplier must, and must ensure that its Personnel:
 - (i) perform the Services with due expedition in accordance with the terms of this Agreement;
 - (ii) at its, or their cost, obtain all Government Authorisations required to perform the Services and comply with this Agreement (other than any Government Authorisations related to the overall Project or the Site in general);
 - (iii) strictly comply with all Laws and Government Authorisations;
 - (iv) comply with the Company's National Police Clearance Process;

- (v) strictly comply with the Company's policies, including, without limitation, any such relating policies relating to Site access, drugs, alcohol, health, safety and the environment; and
 - (vi) except for any facilities agreed in writing to be provided by the Company, provide all facilities, equipment, goods and material necessary for the proper performance of the Services.
- (b) The Supplier must not, and must ensure that its Personnel do not, without the prior approval of the Company:
- (i) start fires on or in the vicinity or any work area or Site;
 - (ii) drive vehicles off roads or designated access routes;
 - (iii) dispose of solid or liquid waste other than in areas prescribed for that purpose by the Company; or
 - (iv) bring firearms onto the Site.
- (c) The Supplier must, where practicable, immediately report to the Company any incident or accident which causes or has the potential to cause:
- (i) damage to the environment or pollution; and
 - (ii) injury to persons, plant or equipment at the Site,
- and must without limiting the above, immediately notify the Company of any health, environmental or safety incident and must make available to the Company all relevant records, documents and personnel as the Company may request to allow the Company to carry out a full investigation of any such incident.
- (d) The Supplier must to the satisfaction of the Company clean up any damage to the Site or pollution caused by or emitted from any facilities or equipment used by the Supplier in the performance of the Services.
- (e) A reference in this clause 7 to an obligation on the Supplier includes an obligation on the Supplier to ensure compliance with those obligations by its Personnel (and their employees, agents or contractors) that enter or are at the Site.

8. Warranty

- (a) Without limiting any other warranty or obligation under the Agreement, Supplier represents and warrants to the Company (as at the date of this Agreement and on each day during the Term) that:
- (i) it will perform the Services in an efficient manner in accordance with all applicable Laws and Government Authorisations;
 - (ii) that it has read and understood the Company's policies, including in respect of the health, safety and environment policies applicable to the Site;
 - (iii) it will furnish all Personnel, supervision and expertise necessary for the satisfactory performance of the Services;

- (iv) the Services will be provided to the highest standards of diligence, skill and care normally exercised by a similarly qualified and competent person in the performance of comparable work and in accordance with the Description of Services or, in the absence of such Description of Services, in accordance with Good Operating Practices;
 - (v) in relation to the provision of Goods as part of the Services:
 - (A) the Goods will be of merchantable quality and fit for purpose;
 - (B) any Goods, including equipment, used on Site by the Supplier will be in safe working condition, will comply with all applicable Laws and will be operated by suitably qualified and competent Personnel, to the satisfaction of the Company;
 - (C) the Goods will be free from defects in design, materials and workmanship;
 - (D) it has good and marketable title to such Goods and the Company will receive title to the Goods free of any charge or encumbrance;
 - (E) it will obtain, at its cost, all usual trade warranties, and any warranties specifically requested by the Company and that at completion of the Services the Supplier will assign the benefit of these warranties to the Company and provide copies of the warranties to the Company;
 - (F) risk in any Goods supplied under this Agreement will pass to the Company on the earlier of the date that the Goods have been delivered to the Company or when the Goods have been incorporated into the Company's facilities or infrastructure; and
 - (G) title in the Goods will pass to the Company upon payment for the Goods; and
 - (vi) all information and materials forming part of the tender (if any) are true and correct in every respect and are not misleading or deceptive and the Supplier has not withheld from the Company any information concerning the Supplier, its experience or expertise which might reasonably be supposed to be material to the Company in determining whether or not to engage the Supplier to perform the Services or the price at which or the terms on which the Company would be prepared to engage the Supplier to perform the Services.
- (b) Time is of the essence with respect to the performance of the Supplier's obligations under this Agreement.

9. Supplier's Personnel and Site requirements

- (a) The Supplier must ensure that its Personnel who visit Site are aware of and comply with:

- (i) a requirement of zero BAC (blood alcohol concentration) limit and minimum drug level concentrations at the Site; and
 - (ii) Company's random and "for cause" drug and alcohol testing program.
- (b) The Company may inspect the contents of any vehicle entering, leaving or within the Site at any time.
- (c) It is a condition of entry to Site that the Supplier's Personnel comply with the Company's procedures, including the Company's Site Induction, Site Safety Requirements and any other reasonable training as the Company may require from time to time. The Company may deny access to the Site to any person who fails to complete the Site Induction to the satisfaction of the Company in its sole discretion.
- (d) The Supplier must ensure that all Personnel sign all of the Company's documentation in relation to the Company's Site Entry Clearance protocols prior to entering the Site.
- (e) The Supplier must ensure that Personnel that refuse to comply with the National Police Clearance Process or that fail the National Police Clearance process, as determined by the Company, are immediately removed from the Site and are not permitted to re-enter the Site.
- (f) The Supplier must ensure that its Personnel regularly consult or liaise with and report (either orally or in writing) to the Company Representative with respect to the scope and nature of the Services
- (g) The Supplier shall be responsible for and must from time to time as required by law pay all compulsory superannuation, payroll tax, income tax and any other government levies and charges incurred in connection with providing the Services, and indemnifies and will keep indemnified the Company from and against all losses, liabilities, damages, claims, proceedings, demands, costs and expenses however arising that the Company or its servants, agents or Suppliers suffer, sustain or incur by reason of the Supplier's breach of any part of this clause 9.
- (h) The Company may from time to time impose restrictions on access to any Site and limitations on possession of parts of the Site in its sole discretion.
- (i) The Company reserves the right to at any time to request a detailed list of the Personnel the Supplier intends to provide for the performance of the Services. The Company reserves the right at its sole discretion to request that the Supplier replace any Personnel, including the Supplier's Representative, who in the opinion of the Company, is not performing in a manner that ensures the due performance and completion of the Services. The Supplier shall bear all costs associated with the change or replacement of its Personnel.

10. Assumed risks by the Supplier

Notwithstanding:

- (a) any information provided to the Supplier by or obtained by the Supplier from the Company or others or which is withheld (except where information is unreasonably withheld by the Company);

- (b) any difficulties the Company might have in satisfying the requirements of this Agreement;
- (c) any changes in law whether or not foreseeable at the date of execution of this Agreement;
- (d) compliance with the Company's directions and any consequences in connection with such compliance;
- (e) any increases in cost; or
- (f) any other difficulties the Supplier might have in providing the Services in accordance with this Agreement,

the Supplier acknowledges that these matters are regarded as within the Supplier's liability and risk and the Supplier remains fully responsible for providing the Services in accordance with the Agreement at its own expense and the Remuneration in this Agreement will be regarded as providing adequate allowance for these matters.

11. Goods and Services Tax

11.1 Goods Price GST exclusive

Unless otherwise expressly stated in this Agreement, the Remuneration is shown exclusive of GST.

11.2 GST on supply of Goods

If GST is imposed in relation to any Supply under this Agreement by one Party to another, the Party receiving the Supply (**Recipient**) must pay the amount imposed to the Party providing the Supply (**Provider**) at the same time as the Party is required to pay the Provider for the Supply in question, provided that the Provider issues a valid tax invoice to the Recipient:

- (a) within 7 days after the occurrence of the event that causes the GST liability of the Provider on any taxable Supply to the Recipient to be attributed to a particular tax period (and the Recipient is not required to make any payment for GST until the Recipient has received a valid tax invoice from the Supplier); or
- (b) in the case of the provision of Goods by the Supplier, in accordance with the invoice requirements in clause 6.3.

11.3 Adjustment event

If there is an Adjustment Event in relation to a supply that results in the amount of GST on a supply being different from the amount in respect of GST recovered by the Supplier, the Supplier:

- (a) may recover from the recipient the amount by which the amount of GST on the supply exceeds the amount recovered; and
- (b) must refund to the recipient the amount by which the amount recovered exceeds the amount of GST on the supply.

11.4 General

Words used in this clause 11 which have a defined meaning in the GST Law have the same meaning as in the GST Law unless the context otherwise indicates.

12. Suspension

12.1 Suspension by the Company

The Company may suspend performance of all or any portion of the Services at any time by providing written notice to the Supplier (**Suspension Notice**). Upon receipt of a Suspension Notice, the Supplier must:

- (a) cease performance of the Services to the extent specified in the notice and on the date and time specified in the Suspension Notice; and
- (b) take such other action as is specified in the Suspension Notice or as may be necessary to minimise costs associated with the suspension.

12.2 Suspension by the Company

Provided that:

- (a) the Supplier complies with the requirements of this clause 12; and
- (b) the suspension is not caused by an act or omission or breach of contract by the Supplier,

then the Supplier may, as full compensation for the suspension, be paid:

- (c) agreed standby charge for actual costs incurred by the Supplier to keep its organisation, Personnel, and equipment committed to the Services on a standby basis; or
- (d) an agreed demobilisation and remobilisation charge for the actual costs incurred by the Supplier for demobilising and remobilising its Personnel and equipment,

as determined by the Company, acting reasonably.

12.3 Resumption of Services

Upon receipt of a written notice from the Company to resume the Services, the Supplier must resume performance of the Services as specified in such notice as soon as is reasonably practicable.

13. Termination

13.1 Termination by either party

- (a) Either Party may terminate this Agreement by written notice if the other Party is in material breach of a material term of this Agreement and has not remedied the breach within 30 days after the non-defaulting Party gives written notice of the details of the breach and the non-defaulting Party's requirement to remedy the breach.

- (b) Either Party may terminate this Agreement by immediate written notice where an Insolvency Event has occurred in respect of the other Party.

13.2 Termination by the Company

- (a) In addition to the rights of the Company as provided for elsewhere in this Agreement, the Company may, at any time and at its sole and absolute discretion, terminate this Agreement in whole or in part by giving the Supplier not less than 30 days' written notice.
- (b) In the event of termination by the Company under clause 13.2(a), the Company will pay to the Supplier:
 - (i) all amounts due and payable by the Company to the Supplier for Services performed prior to the termination date;
 - (ii) any reasonable, direct costs and expenses incurred as a result of the termination (as determined by the Company, acting reasonably) in order for the Supplier to demobilise from Site,

which shall be accepted by the Supplier in full and final settlement of all and any rights and remedies of the Supplier in respect of termination of this Agreement by the Company.

- (c) Upon payment by the Company to the Supplier in accordance with clause 13.2(b), the Supplier shall waive any Claims for damages, loss, expenses and costs (including loss of any anticipated profits) which the Supplier may otherwise have had on account of the termination of this Agreement by the Company, and acknowledges that the Company be released from all further obligations to the Supplier pursuant to the provisions of this Agreement from the date on which termination is effective (other than as contemplated in this clause 13.2).

13.3 Effect of Termination

Upon termination or expiry of this Agreement:

- (a) the Supplier must cease to perform any further Services and must demobilise any plant and equipment and Personnel from Site as soon as is reasonably practicable (at its cost unless otherwise expressly stated in this Agreement);
- (b) the Parties will be released from their requirement to perform any further obligations under this Agreement, except those expressed to survive termination; and
- (c) each Party retains the rights it has against the other Parties in respect of any breaches of this Agreement that occurred prior to termination.

14. Force Majeure Event

14.1 Meaning of Force Majeure Event

- (a) A Force Majeure Event means any event or circumstance, or combination of events and circumstances that:
 - (i) are not within the reasonable control of the Affected Party;

- (ii) could not reasonably have been prevented, mitigated or avoided by the exercise of due diligence or Good Engineering and Operating Practice; and
 - (iii) cause or result in failure or delay in the performance by the Affected Party of any of its obligations under this agreement.
- (b) Subject to meeting the qualifications in clause 14.1(a), a Force Majeure Event includes the following:
- (i) acts of God, lightning strikes, earthquakes, floods, droughts, storms, tempests, mud slides, washaways, explosions, cyclones, tidal waves, landslides, adverse weather conditions, fires and any natural disaster;
 - (ii) acts of war (declared or undeclared), acts of public enemies, riots, malicious damage, sabotage, blockade, revolution, riot, insurrection, civil commotion and epidemic;
 - (iii) acts or omissions (whether legislative, executive or administrative) of any Government Agency;
 - (iv) inability to obtain or delay in obtaining any necessary Authorisation after making due application; and
 - (v) strikes, lockouts or other labour difficulties other than a strike, lockout or labour difficulty which is specific to the party claiming Force Majeure.

14.2 No liability for inability to perform resulting from Force Majeure Event

If, due to a Force Majeure Event, a Party is unable to perform an obligation under this Agreement on time and as required, then that obligation is suspended for so long as the Affected Party's ability to perform it is affected by that Force Majeure Event provided that a suspension for a Force Majeure Event will not extend the Term.

14.3 Notification of Force Majeure Event

- (a) An Affected Party must as soon as reasonably practicable notify the other party of:
- (i) the occurrence and details of any Force Majeure Event;
 - (ii) the estimated delay in performance resulting from the Force Majeure Event; and
 - (iii) where possible, the proposed method of remedying or abating the Force Majeure Event.
- (b) An Affected Party must promptly notify the other party of any changes in or cessation of the occurrence or effects of Force Majeure.

14.4 Reasonable diligence to overcome

An Affected Party must use all reasonable diligence to overcome the effect of the event of Force Majeure as quickly as possible.

14.5 Termination due to an event of Force Majeure

- (a) If an event of Force Majeure continues for a period of 30 days, the Company may give the Supplier a notice of termination with immediate effect.
- (b) After termination under clause 14.5(a) the Company will pay to the Supplier all amounts due and payable by the Company to the Supplier for the Services performed under this Agreement prior to the date of termination.

15. Indemnity and limitation of liability

- (a) Supplier is liable for and must indemnify and hold harmless the Company, its Related Bodies Corporate and its and their Personnel (**Indemnified Parties**) from and against any Liability, whether arising under any statute or at common law, in respect of:
 - (i) the performance, non-performance or breach by the Supplier or its Personnel of any of the Supplier's obligations (including any warranty) under this Agreement;
 - (ii) any negligent act or omission of the Supplier or its Personnel arising out of or in any way connected or related to the performance of the Services or the performance or non-performance of this Agreement;
 - (iii) any Third Party Claim;
 - (iv) the entry onto and the activities undertaken on, the Site, by the Supplier and its Personnel;
 - (v) the illness, injury or death of any of the Supplier's Personnel arising out of or in any way related to this Agreement; and
 - (vi) any breach of third party intellectual property rights,provided that the Supplier is not liable under this indemnity to the extent (and in the proportion) that such Liability arises from:
 - (vii) any negligent act or omission of the Indemnified Parties;
 - (viii) any breach of this agreement by the Company; or
 - (ix) a failure by the Indemnified Parties to take reasonable steps to mitigate their Liability.
- (b) To the maximum extent permitted by Law, neither Party will be liable to the other Party for any Consequential Loss.

16. Insurance

- (a) Prior to commencing the provision of Services, the Supplier shall provide to the Company certificates of currency for:
 - (i) public liability insurance, such insurance:

- (A) covering liability relating to death, bodily injury, loss of property and damage to property for the amount not less than \$20,000,000; and
 - (B) must contain a waiver of the insurer's rights of subrogation to the Company rights;
 - (ii) if the Supplier is using its own vehicles on Site in relation the delivery of the Services:
 - (A) compulsory motor vehicle third Party liability insurance for all Supplier's vehicles; and
 - (B) insurance for third Party property damage by Supplier's vehicles for an amount of not less than \$20,000,000; and
 - (iii) workers' compensation insurances that complies with any applicable Laws for any Personnel of the Supplier that perform any services on Site.
- (b) The insurances referred to in this clause 16 must be maintained by the Supplier for the Term.

17. Dispute Resolution

17.1 Notice of Dispute

- (a) Subject to clause 17.4, if a dispute between the Supplier and the Company arises out of or in connection with this Agreement (**Dispute**) then, subject to clause 17.2, a Party may give the other Party a notice (**Notice of Dispute**) specifying the Dispute and requiring its resolution under this clause 17.
- (b) During the existence of any Dispute, the parties must continue to perform all of their obligations under this Agreement without prejudice to their position in respect of such Dispute.

17.2 Time of Notice

The Supplier must not submit a Notice of Dispute in respect of a Claim for any extra costs, loss or damage unless the claim has previously been submitted to and determined in writing by the Company's Representative. Where a Claim has been submitted to the Company and has not been determined by the Company's Representative within 28 days then the Claim will be deemed to have been rejected by the Company at the end of that time and a Notice of Dispute may be given.

17.3 Escalation

- (a) If the Dispute is not resolved within 21 days of the date of the Notice of Dispute, then either Party may request a meeting between their respective executive management to attempt to resolve the Dispute and the executive management must meet and attempt to resolve the Dispute by good faith negotiations.
- (b) If the Dispute is not resolved within 45 days of the date of the Notice of Dispute (or such longer period as the Parties may agree), either Party may refer the Dispute to a court of competent jurisdiction for resolution.

17.4 Urgent interlocutory relief

Nothing in this clause prevents a party from seeking urgent interlocutory relief.

17.5 Continued performance

Notwithstanding the existence of any Dispute or that a Dispute resolution process is ongoing, the Parties must continue to perform their obligations under this Agreement.

18. Records

The Supplier must:

- (a) maintain a true, correct and complete set of records, books and accounts, relating to the costs and expenses for which the Supplier seeks compensation or reimbursement prepared in accordance with generally accepted accounting principles and accounting standards in Australia; and
- (b) make them available at no cost to the Company for audit, inspection, and copying by the Company or its designated representative during the term of this Agreement and for a period of two (2) years or as required by Law, whichever is the greater following any termination or completion of this Agreement.

19. Assignment

- (a) Subject to clauses 19(b) and 19(c), neither Party shall, without the prior written consent of the other Party, assign, mortgage, transfer or charge any or all of its rights or obligations under or pursuant to this Agreement.
- (b) The Company may assign or transfer its rights or obligation under this Agreement to any Related Body Corporate without the prior written consent of Supplier provided that it gives the Supplier notice of such assignment. Supplier shall enter into any documentation reasonably required by the Company to give effect to such assignment or transfer.
- (c) Notwithstanding any clause to the contrary in this Agreement, the Company is entitled to create a permit to exist a Security Interest over this Agreement in favour of any financier or other party in order to secure the financing of the Project.

20. Confidentiality

20.1 Supplier to maintain confidentiality

The Supplier must not, and must ensure that its Personnel do not, unless the Company has first agreed in writing:

- (a) disclose to anyone else, or
- (b) use for a purpose other than the provision of Services,

any of the Confidential Information or the details of this Agreement, except to the extent permitted by clause 20.2 or required by Law or the rules of a recognised stock exchange.

20.2 Permitted copies

The Supplier may make copies of written or computer stored materials incorporating Confidential Information only if those copies are necessary for the purpose of providing the Services and must:

- (a) return to the Company all Confidential Information (including any copies made by it); and
- (b) permanently delete any Confidential Information stored by it in a computer or electronic retrieval system so that it is incapable of retrieval,

within 7 days after the earlier of:

- (c) a receipt of a request from the Company to do so; or
- (d) the termination or expiry of this Agreement;

and must, if requested by the Company, provide a certificate to the Company that these obligations have been complied with.

20.3 Supplier obligations

The Supplier must notify the Company immediately if it becomes aware of, or suspects, any disclosure, use or copying of Confidential Information that is not authorised by this Agreement and must take all steps reasonably required by the Company to stop that unauthorised disclosure, use or copying.

20.4 Disclosure to Personnel

The Supplier must restrict disclosure of the Confidential Information to its Personnel who need to know it in order to provide the Services and will, on reasonable request by the Company, ensure those Personnel execute confidentiality agreements containing terms similar in effect to this clause 20.

20.5 Media

- (a) The Supplier may not advertise or issue any information, publication, document or article for publication or media releases or other publicity relating to the Services or the Project, the Site or this Agreement without the prior written approval of the Company, except that the Supplier may disclose such information and other matters:
 - (i) to its shareholders, directors, officers, employees, contractors or consultants, and to any Government Agency, who have a specific need to have access to such information and other matters; or
 - (ii) as required by Law or any listing rules applying to it (or any of its Related Bodies Corporate).
- (b) The Supplier must not, and must ensure that its employees and its subcontractors and their respective employees do not, take any photographs or video recording of any part of the Site or the Project, without the prior written approval of the Company's Representative.

21. Notices

21.1 Form of Notice

- (a) Unless expressly stated otherwise in this Agreement, any notice, certificate, consent, approval, waiver or other communication in connection with this document (**Notice**) must be in writing or given by electronic transmission, signed by the sender (if an individual) or an authorised officer of the sender and addressed as set out in the Purchase Order.
- (b) Each Party may change its address details from time to time by giving notice to the other Party in accordance with clause 21.1(a).

21.2 When Notices are taken to have been given and received

- (a) A Notice is regarded as given and received:
 - (i) if delivered by hand, when delivered to the Supplier's address stated in the Purchase Order;
 - (ii) if sent by pre-paid post, on the 3rd day following the date of postage; and
 - (iii) if sent by e-mail, when a delivery confirmation report or receipt is received by the sender which records the time that the e-mail was delivered to the addressee's e-mail address (unless the sender receives a delivery failure notification indicating that the e-mail has not been delivered to the addressee).
- (b) A Notice delivered or received other than on a Business Day or after 5.00pm (recipient's time) is regarded as received at 9.00am on the following Business Day. A Notice delivered or received before 9.00am (recipient's time) is regarded as received at 9.00am.

22. Personal Property Security Registration and Enforcement

- (a) If either party provides a Security Interest to the another party pursuant to this agreement, that party consents to the other parties effecting a registration of the relevant Security Interest on the PPSA Register (in any manner it considers appropriate) and agrees to provide all assistance reasonably required to facilitate this.
- (b) The parties agree that each of the provisions of the PPSA which section 115 of the PPSA permits parties to contract out of, other than sections 117 and 118 (relationship with land laws) and 134(1) and 135 (retention of collateral), do not apply to the enforcement of any Security Interest provided pursuant to this agreement.
- (c) To the extent permitted by section 275 of the PPSA, the parties agree to keep all information of the kind mentioned in section 275(1) of the PPSA confidential and to not disclose that information to any other person, except where disclosure is otherwise permitted or authorised under this agreement.
- (d) Notwithstanding anything in this agreement, notices or documents required or permitted to be given pursuant to this agreement for the purposes of the PPSA must be given in accordance with the PPSA.

- (e) The party providing a Security Interest waives the right to receive any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.
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23. General

23.1 Governing Law

This Agreement shall be governed by the laws of Queensland. Each Party submits to the non-exclusive jurisdiction of courts of Queensland and any courts entitled to hear appeals from those courts.

23.2 Entire Agreement

This Agreement constitutes the entire agreement between the two Parties in relation to the subject matter and supersedes all prior negotiations, conditions, representations, proposals, understandings and agreements whether written oral which are excluded and negated save and except for such conditions or representations that cannot be excluded by virtue of the *Competition and Consumer Act 2010* (Cth) or any applicable Law.

23.3 Variations

No modification or alteration of the terms of this Agreement shall be binding unless made in writing dated subsequent to the date of this Agreement and duly executed by the Parties.

23.4 Survival

- (a) Any indemnity or any obligation of confidence under this Agreement is independent and survives termination or expiry of this Agreement.
- (b) Clauses 13, 15, 16, 17, 18, 19, 20, 21 and 23 survive termination or expiry of this Agreement.
- (c) Any other term by its nature intended to survive termination or expiry of this Agreement, or expressed to survive termination or expiry of this Agreement, survives termination or expiry of this Agreement.

23.5 Severability

Any provision of this Agreement that is invalid or unenforceable in any relevant jurisdiction will be deemed to be severed from this Agreement, without affecting the validity or enforceability of the remaining provisions of this Agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

23.6 Waiver

A Party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the Party giving the waiver.

23.7 Relationship of the Parties

- (a) The Parties acknowledge and agree that the relationship between Company and Supplier is that of principal and independent contractor.

- (b) Nothing in this Agreement will be deemed to constitute Supplier nor any of its Personnel as an employee, partner, agent or representative of Company and Supplier nor any of its Personnel will have no authority to incur and will not incur any obligation on the part of Company, except with, and to the extent of, the prior written authority of Company.

23.8 Costs and expenses

- (a) Subject to clause 23.8(b), each Party must pay its own costs and expenses in respect of the negotiation, preparation, execution and delivery of this Agreement.
- (b) The Supplier shall be responsible for and must from time to time as required by law pay all compulsory superannuation, payroll tax, income tax and any other government levies and charges incurred in connection with providing the Services, and indemnifies and will keep indemnified the Company from and against all losses, liabilities, damages, Claims, proceedings, demands, costs and expenses however arising that the Company or its servants, agents or Suppliers suffer, sustain or incur by reason of the Supplier's breach of any part of this clause 23.7.

23.9 Contra proferentem

In the interpretation of this Agreement, no rule of construction applies to the disadvantage of one party on the basis that it put forward this Agreement or any part of it.

23.10 Parties' rights and remedies not affected

The rights, powers and remedies provided in this agreement are cumulative with and not exclusive of the rights, powers or remedies provided by Law independently of this agreement.

23.11 Counterparts

This agreement may be executed in any number of counterparts (and exchanged by way of electronic copy) each of which shall be deemed for all purposes to be an original and all such counterparts taken together shall be deemed to constitute one and the same instrument.

24. Anti- Corruption / Modern Slavery

- 24.1 The Supplier represents, warrants and agrees that, in connection with this Agreement:
 - (a) neither the Supplier nor their Personnel, directly or indirectly, has engaged (upon entering into this agreement) or will engage in the bribery of an official, agent or representative of a Government Agency or any person;
 - (b) the Supplier (including their Personnel) will otherwise comply with any applicable Anti-corruption Laws;
 - (c) it will notify the Company promptly upon becoming aware that any officer, director, employee or shareholder becomes, or expects to

become, an official, agent or representative of a Government Agency in a position to influence action for or against the Company;

- (d) if the Supplier engages a sub-supplier or other third party to interact with others on behalf of the Company, it will perform appropriate risk based anti-corruption due diligence on that sub-supplier or third party, will keep records of the same, and take reasonable measures to ensure they comply with clauses 24.1(a), 24.1(b), and 24.1(c);
- (e) it will notify the Principal promptly upon becoming aware of any actual or potential breach of clause 24.1(a), 24.1(b) and 24.1(c) by the Supplier or their Personnel.

24.2 Without limiting any other rights of the Company at law or under this Contract, if the Company reasonably suspects that the Supplier is in breach of or has breached clauses 24.1(a), 24.1(b) and 24.1(c), or the Company knows or reasonably suspects that such a breach is imminent, then:

- (a) the Company may immediately terminate this Agreement by notice to the Supplier; and
- (b) any claims for payment by the Supplier in relation to this Agreement will be automatically terminated and cancelled.

24.3 In performing its obligations under this Agreement, the Supplier shall and shall ensure that each of its sub-suppliers shall:

- (a) comply with all applicable laws, statutes, regulations in force from time to time including but not limited to the Modern Slavery Act 2018 (Cth); and
- (b) take reasonable steps to ensure that there is no modern slavery or human trafficking in the Supplier's or sub-suppliers supply chains or in any part of their business.