



CONSTRUCTION CONTRACT

BETWEEN

**NEWMONT MINING SERVICES PTY LTD
ABN: 22 008 087 778**

AND

ABN:

FOR THE PROVISION OF

CONTRACT NO.

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Part 1 – Formal Instrument of Agreement

DATE

PARTIES

Newmont Mining Services Pty Ltd ABN 22 008 087 778 of Level 2, 388 Hay Street, Subiaco, Western Australia, 6008 (**Principal**)

and

■■■■■■■■■■ ABN ■■■■■■■■■■ of ■■■■■■■■■■ (**Contractor**)

RECITALS

- A. The Principal requires the Works to be provided in accordance with the requirements of the Contract.
- B. The Contractor has represented to the Principal that it has the skill, expertise, experience and necessary resources required to perform the work under the Contract in accordance with the Contract.
- C. In reliance on the Contractor's representation, the Principal engages the Contractor and the Contractor accepts the engagement to provide the work under the Contract on the terms and conditions of the Contract.

AGREEMENT

IT IS AGREED as follows:

1. Performance

- (a) The Contractor must carry out and complete the construction of the Works and perform all other work under the Contract in accordance with the Contract.
- (b) Each party will perform the obligations imposed on it by the Contract.

2. Contract Documents

The Contract is comprised of this Formal Instrument of Agreement (Part 1) and the annexed documents being:

Part 2 - Special Conditions

Part 3 - General Conditions

Part 4 - Scope of Work (including the initial Program)

Part 5 - Schedules

Part 6 - Exhibits

Part 7 - Annexures

If there is any inconsistency between the documents comprising the Contract, then the Formal Instrument of Agreement, Special Conditions, General Conditions, Schedule A, Scope of Work, Schedules other than Schedule A (in the order they appear), Exhibits (in the order they appear) and Annexures (in the order they appear) will prevail in that order.

3. Acting as Agent

Where the Owner (as defined in the General Conditions) is different to the Principal then the following will apply:

- (a) For all purposes related to the formation and performance of the Contract and irrespective of whether individual communications, correspondence and documentation specify or otherwise reflect such capacity, the Principal will be acting as agent for and on behalf of the Owner.
- (b) The Owner will be entitled to the rights and subject to the obligations and liabilities created by the Contract.
- (c) Where there is more than one entity comprising the Owner then the rights, obligations and liabilities of each entity are:
 - (i) joint and several, where there is no stated share of ownership in Part 5, Schedule A 'Contract Variables'; or
 - (ii) several (and not joint, nor collective, nor joint and several) in proportion to the percentages set out Part 5, Schedule A 'Contract Variables', where there is a stated share of ownership in Part 5, Schedule A 'Contract Variables'.
- (d) The failure of any entity that comprises the Owner to carry out its obligations under the Contract will not release that entity or any other party from its respective obligations to any other party under the Contract.
- (e) The Principal will exercise all rights and perform all other acts, matters and things in and under the Contract for the Owner which the Contract requires or permits the Principal to perform.
- (f) The Principal will have no liability in connection with the Contract except in its capacity as delegate and agent for and on behalf of the Owner.
- (g) The Owner is and will remain liable to the Contractor for any acts or omissions of the Principal in connection with the Contract, as if those acts or omissions were those of the Owner.

4. Entire agreement

The Contract contains the entire agreement between the Principal and Contractor with respect to its subject matter and supersedes all prior agreements, undertakings, communications and negotiations between the Principal and Contractor in this regard (whether written or oral).

EXECUTED by:

Executed by NEWMONT MINING SERVICES PTY LTD ABN 22 008 087 778 in accordance with section 127 of the *Corporations Act 2001* (Cth):

Signature of Director

Signature of Director/Secretary

Name (please print)

Name (please print)

OR ALTERNATIVE IF SIGNING UNDER POWER OF ATTORNEY

EXECUTED by [REDACTED] **ABN** [REDACTED] by its duly appointed and lawful attorney under Power of Attorney dated [REDACTED] who states that they have not received notice of the revocation of that Power of Attorney:

Signature of Attorney

Name (please print)

[REDACTED] **ABN** [REDACTED] in accordance with Section 127 of the *Corporations Act 2001* (Cth):

Signature of Sole Director/Director

Signature of Director/Secretary

Name (please print)

Name (please print)

OR ALTERNATIVE IF SIGNING UNDER POWER OF ATTORNEY

EXECUTED by [REDACTED] ABN [REDACTED] by its duly appointed and lawful attorney under Power of Attorney dated [REDACTED] who states that they have not received notice of the revocation of that Power of Attorney:

Signature of Attorney

Name (please print)

Part 2 – Special Conditions

1. Definitions and Interpretation

- 1.1 The defined terms when used in these Special Conditions will have the same meaning as those ascribed to them in Document 3 - General Conditions, unless expressly stated otherwise.
- 1.2 All rules of interpretation applicable to Document 3 - General Conditions and amendments will apply in equal form to these Special Conditions.

2. Key Performance Indicators

- (a) The Contractor will meet the Key Performance Indicators (**KPIs**) set out in Part 5, Schedule G 'Key Performance Indicators'.
- (b) Where Part 5, Schedule D 'Contract Sum' provides that the Contract Sum may be adjusted by reason of any failure by the Contractor to meet a KPI, then any failure to meet that KPI will not amount to a breach of the Contract but the Contract Sum will be adjusted in the manner prescribed by reason of that failure.
- (c) Where Part 5, Schedule D 'Contract Sum' does not provide that the Contract Sum is adjusted by reason of any failure by the Contractor to meet a KPI, then the obligation in clause 2(a) in respect of that KPI is an essential term of the Contract and any failure to meet that KPI will amount to a breach of the Contract to which clause 43 of the General Conditions will apply.

3. Entitlement in relation to acceleration or changes

- (a) Without prejudice to clause 19.3 of the General Conditions the Principal's Contract Administrator may at any time direct the Contractor in writing to provide the Principal's Contract Administrator with a proposal to accelerate or change the sequence of the work under the Contract (**Contractor's Acceleration Proposal**) which will contain the following information:
- (i) details of the additional labour and construction plant which the Contractor considers will be required to comply with the proposed acceleration;
 - (ii) an estimate of the hours of work which will be required to be performed by the Contractor outside the working hours or the working days defined in the Contract and the Program to enable the Contractor to achieve the proposed acceleration;
 - (iii) details of additional supervision which the Contractor will be required to provide to achieve the proposed acceleration;
 - (iv) the Contractor's extra costs and expenses which it may reasonably incur in achieving the proposed acceleration; and
 - (v) a draft revised Program showing the proposed revised Date for Practical Completion which will be implemented to achieve the proposed acceleration.
- (b) The Contractor will within 3 Business Days of receipt of the direction given under clause 3(a) of these Special Conditions provide the Principal's Contract Administrator with an outline of the Contractor's Acceleration Proposal containing as much information as it is reasonable for the Contractor to provide in that period and will provide a complete Contractor's Acceleration Proposal within 7 days of receipt of the direction given under clause 3(a) of these Special Conditions (or such longer period as the Principal's Contract Administrator may agree, such agreement not to be unreasonably withheld).

- (c) On receipt of the Contractor's Acceleration Proposal, the Principal's Contract Administrator may do any one of the following:
- (i) advise the Contractor by notice in writing which expressly refers to the Contractor's Acceleration Proposal that the Principal accepts the Contractor's Acceleration Proposal in which case the Date for Practical Completion will be revised to the date contained in the Contractor's Acceleration Proposal and the Contract Sum will be adjusted by the amount accepted by the Principal as set out in the Contractor's Acceleration Proposal; or
 - (ii) reject the Contractor's Acceleration Proposal; or
 - (iii) direct the Contractor to consider adjustments to the Contractor's Acceleration Proposal, in which case the Contractor will do so and will engage with the Principal's Contract Administrator as reasonably required in order to attempt to reach agreement on the Contractor's Acceleration Proposal.

4. Supply of Diesel Fuel

4.1 Principal supply of diesel fuel

- (a) The Principal shall supply diesel fuel for the Contractor's equipment at the price of AUD [REDACTED] per litre (including excise but excluding GST) for the sole purpose of carrying out the Works on the Site. Fuel shall be drawn down by the Contractor using a key tag or transponder system from the Principal's fuel farms at Site.
- (b) The Principal shall issue one transponder to the Contractor for each Fuel Truck or Fuel or Service Truck. Diesel fuel shall be charged back to the Contractor by the Principal with separate monthly invoices.
- (c) The Contractor shall be responsible for obtaining the fuel from the Principal fuel service supply fill up from site and dispensing of the fuel to its equipment.
- (d) The Contractor shall be bound by all of the Principal's rules and all regulations pertaining to transport and storage of fuels and hydrocarbons during performance of the Works.
- (e) The Contractor must ensure strict compliance with the Principal's procedures to comply with State and Federal substantiation requirements for fuel subsidies and rebates.

4.2 Fuel Usage Records

- (a) The Contractor must keep and maintain accurate daily records of its fuel usage in a level of detail approved by the Principal's Technical Representative. The Contractor's fuel usage records must be submitted to the Principal's Technical Representative for inspection daily, or such other period required by the Principal's Technical Representative.
- (b) Management of the fuel usage system and claiming for excise rebate shall be the responsibility of the Contractor, and the value of rebate recovered shall be recovered by the Contractor.

4.3 Fuel Quality

The Principal does not warrant the quality of fuel supplied to the Contractor. If the loss of production or machine down time is directly attributable to dirty, contaminated or otherwise deficient fuel supplied from Principal's bulk storage tanks, such event shall be treated as a qualifying cause of delay under clause 20.3 of the General Conditions.

4.4 Monthly Fuel Account

- (a) The Contractor's rates are based on distillate price of AUD [REDACTED] per litre drawn from the fuel farms at Site (including excise, but excluding GST).
- (b) At the completion of each month, the Principal shall invoice the Contractor at the rate of [REDACTED] per litre that the Principal is charged for all fuel drawn by Supplier.

4.5 Fuel Rebates

- (a) All diesel fuel provided by the Principal to the Contractor free of charge will be provided for in the course of the Principal's business operations only and will be used in accordance with the directions of the Principal, to enable the Principal to claim a fuel tax credit under the *Fuel Tax Act 2006 (FTA)* with the Australian Taxation Office (ATO).
- (b) For the purposes of this Special Condition, the term 'use' in relation to diesel fuel, by either the Principal or the Contractor, will not include the sale of the diesel fuel by the Principal or the Contractor to another person or the loss of the diesel fuel by the person.
- (c) For the purpose of this Contract:
 - (i) The Principal will only supply free issue diesel fuel to the Contractor for:
 - (A) use with its mobile plant, including any light vehicles, and other equipment to perform the work under the Contract at the Site; and
 - (B) to refuel the Principal's remote powered plant and equipment such as generator sets, lighting towers etc.
 - (ii) The Contractor must maintain detailed records (in accordance with ATO requirements) of any fuel taken (including fuel taken from the Principal's tanks or service trucks, other Principal's contractor tanks or service trucks or if the Principal buys directly from a contractor) where the supplied fuel has been used. This obligation exists regardless of whether such use is for the Contractor's own plant and equipment, or for use in the Principal's remote powered plant and equipment. Should the Principal require any additional information to support a fuel tax credit claim with the ATO in relation to fuel taken or used by the Contractor, the Contractor will assist the Principal in a timely manner and to the best of its ability.
 - (iii) The Contractor must record the asset number and location for all mobile and fixed plant and equipment for which the fuel is specifically used. Where fuel is delivered to a service truck or other fuel tank, the Contractor is responsible for all documentation to record where the fuel is subsequently taken and used. The detailed records must be submitted to the Principal on a monthly basis by no later than the close of business on the second working day after month end. In the event any issues arise in respect of determining the amount of fuel taken or used by the Contractor, the Contractor must notify the Principal as soon as possible and take the relevant steps to assist and rectify this issue.
 - (iv) The obligations specified in clauses 4.5(c)(ii) and 4.5(c)(iii) of these Special Conditions are a requirement on the Contractor regardless of the provision of electronic fuel distribution system facility by the Principal to record opening and closing balances for fuel dispatches.
 - (v) The Contractor acknowledges that the Principal is the only party entitled to claim fuel tax credits under the FTA for free issue diesel fuel at the Site and the Contractor must disclose on its monthly invoice to the Principal that all diesel fuel that has been provided by the Principal has not been charged (either by way of a reduced fee from the Contractor to the Principal or via separate invoice from Principal directly to the Contractor).
- (d) Notwithstanding the other provisions of this clause 4.5 of these Special Conditions, the Principal may also back charge the Contractor and the following procedure will apply:

- (i) Where the Principal's Contract Administrator determines that a back charge will be paid from the Contractor to the Principal, it will notify the Contractor.
- (ii) When the Principal back charges the Contractor, the Principal will not claim the diesel fuel rebate from the ATO.
- (iii) The Principal makes no representation and gives no warranty as to the Contractor's entitlement to claim a diesel fuel rebate from the ATO in respect of any fuel supplied by the Principal and back charged to the Contractor in accordance with this clause 4.5(d) of these Special Conditions.

4.6 Carbon Pricing Scheme

- (a) In this clause 4.6 of these Special Conditions:
 - (i) Carbon Emissions Costs means any cost or reduction in benefit whether direct or indirect arising from or because of any written law having as one of its objectives the reduction of carbon dioxide or other greenhouse gas emissions, where it imposes on the Contractor any liability to acquit carbon or greenhouse emissions units or permits or any tax on carbon or greenhouse gases or any other impost or charge based on carbon or other greenhouse gas emissions or it reduces any tax credit that would have otherwise been available in respect of the Works. Carbon Emissions Costs include costs whether direct or indirect incurred in undertaking an activity or implementing any changes intended to reduce or avoid any liability arising in respect of the work under the Contract under any such law to the extent that cost is referable to any such cost saving; and
 - (ii) Carbon Price Law means the *Clean Energy Act 2011* (Cth) and its related legislation regardless of whether that legislation has received Royal assent before the Commencement Date.
- (b) The Contractor warrants that the Contract Sum includes any Carbon Emissions Costs the Contractor may incur in connection with the work under the Contract and that no direction given under this Contract arising from any Carbon Price Law will entitle the Contractor to any adjustment to the Contract Sum or the Program provided that this clause 4.6(b) of these Special Conditions does not apply to any variation to the Works directed by the Principal's Contract Administrator arising from any requirement of any Carbon Price Law.

5. Electronic Swipe Card Entry

5.1 Swipe Card Requirements

- (a) All Personnel entering Site are required to comply with the Principal's site entry requirements.
- (b) Personnel who have received approval to enter site will receive a swipe card (**Swipe Card**) and Personnel who do not have a Swipe Card are not authorised to enter site.
- (c) The Contractor must ensure that all Personnel tag in and tag out using the Principal's electronic swipe card system at the start and end of their shift.
- (d) If Personnel fail to bring their Swipe Card, the Principal may refuse access to Site. The Principal is not liable for any travel costs or other costs associated with the Contractor Personnel being unable to attend work on Site.

5.2 Auditing Invoices Using Swipe Card Records

- (a) The Principal may use electronic swipe card access records (**Swipe Card Records**) to audit against amounts charged by the Contractor in respect to hours worked.
- (b) If the Swipe Card Records do not reconcile with the timesheets evidencing the amounts charged by the Contractor, the Swipe Card Records will be the definitive evidence of the actual hours worked. Any additional amounts charged that are not

evidenced by Swipe Card Records will be treated as an overpayment (**Overpayment**) to the Contractor.

- (c) Any Overpayment will be treated as debt due and payable to the Principal and may be deducted from monies owing to the Contractor in addition to any other remedies the Principal has under the Contract.

6. Contractor as Trustee

- 6.1 For the purposes of this clause, every reference to "Trustee" is a reference to each person who has entered into the Contract on behalf of a trust. Every reference to "Trust" is a reference to each trust to which that person is the trustee.
- 6.2 Each Trustee enters into the Contract both in its personal capacity and as trustee of the Trust.
- 6.3 The Trustee warrants to the Principal that:
 - (a) it has full, complete, valid and unfettered authority and power to enter into and comply with the Contract, and that entering into the Contract by the Trustee is in the due and proper administration of the Trust, and is for the benefit of the beneficiaries of the Trust and does not constitute a conflict of interest or duty or breach of trust;
 - (b) the performance by the Trustee of its obligations under the Contract as Contractor has been duly authorised in accordance with the terms of the Trust;
 - (c) it has a right to be fully indemnified, and no limitation or restriction exists in respect of the Trustee's rights to be indemnified, from the Trust assets in respect of the obligations incurred by the Trustee under the Contract as Contractor and the Trust fund is sufficient to satisfy that right of indemnity and all other indemnified obligations of the Trustee; and
 - (d) it is the sole trustee of the Trust and no action has been taken or proposed to remove it as Trustee or to terminate the Trust.
- 6.4 The Trustee must not so far as it is able to do so, without the prior written consent of the Principal permit any of the following:
 - (a) any variation, replacement or limitation of the terms of the deed constituting the Trust;
 - (b) its removal as Trustee or the appointment of another Trustee as Trustee of the Trust whether or not in conjunction with the Trustee; or
 - (c) any distribution, transfer or setting aside of any part of the income or capital of the Trust.

The following clause is intended to be included in small business contracts only:

7. Negotiation

- (a) In this clause 7, Key Terms means any term of the Contract which:
 - (i) defines the main subject matter of the Contract;
 - (ii) sets the upfront price payable under the Contract; or
 - (iii) is required or expressly permitted by Law.
- (b) The Contractor warrants and represents to the Principal that, as at the Execution Date:
 - (i) the Contractor was not, in effect, required either to accept or reject the terms of the Contract in the form in which they were presented, other than the Key Terms;

- (ii) the Principal has provided the Contractor with an effective opportunity to negotiate the terms of the Contract, other than the Key Terms;
- (iii) the terms of the Contract, other than the Key Terms, sufficiently take into account the specific characteristics of the Contract and the transaction which is the subject matter of the Contract;
- (iv) the Principal has provided the Contractor with a sufficient opportunity to review and object to each term of the Contract; and
- (v) the Contractor has obtained independent legal advice in relation to the Contract.

The following clause is for formatting guidance only and should be deleted prior to contract issue:

8. New Special Condition Heading (Style “SC1”)

8.1 Special Condition Sub-heading Bold (Style “SC2 Bold”)

8.2 Special Condition Sub-clause (Style “SC2”)

(a) Style “SC3”

(i) Style “SC4”

(A) Style “SC5”

(1) Style “SC6”

Note that new section breaks must not be inserted in the Special Conditions.

Part 3 – General Conditions

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1. Definitions and Interpretation

1.1 Definitions

In the Contract, unless the context otherwise requires:

Background Intellectual Property Rights means Intellectual Property Rights existing at the Commencement Date including work processes, proprietary programs, proprietary software, proprietary models and data bases, means and methods, standards, know-how and policies which may be used in the performance of the work under the Contract, and **Background Intellectual Property** has a corresponding meaning,

Business Day means a day which is not a Saturday, Sunday or bank or public holiday in the location of the Site;

Certificate of Final Completion means the certificate to be issued under clause 22.7;

Certificate of Practical Completion means the certificate to be issued under clause 20.5;

Claim means action, suit, proceeding or demand of any kind and any actual or alleged entitlement or right of any kind arising out of the Contract or a breach of it, or arising at common law, in equity or under any Law;

Code of Conduct means that document available at <http://www.newmont.com/about-us/governance-and-ethics/code-of-conduct-and-policies/>;

Commencement Date means the date specified in Part 5, Schedule A 'Contract Variables';

Commissioning Plan means a commissioning plan for the Works containing information required in the Scope of Works and clause 20.

Confidential Information means the Contract, and any information (in whatever form including any object, document, data, program, technique, system, process, or other confidential information, whether copy or original) or Materials which:

- (a) is marked as confidential;
- (b) is by its nature of a confidential nature; or
- (c) the Contractor or its Personnel ought reasonably to know to be confidential and which:
- (d) is disclosed to the Contractor or its Personnel by or on behalf of the Principal;
- (e) is generated by the Contractor or its Personnel in performing the work under the Contract; or
- (f) otherwise comes to the knowledge of the Contractor or its Personnel;

Construction Equipment means the plant, structures, systems, infrastructure, support facilities, utility systems and Temporary Works;

Construction Materials means the materials and equipment to be designed, fabricated, purchased, manufactured, installed, constructed or erected on Site by the Contractor forming part of the Works or the Temporary Works;

Contract means the agreement between the Contractor and the Principal which comprises the documents listed in Part 1, Formal Instrument of Agreement to which these general conditions are annexed;

Contract Sum means the aggregate of all sums calculated in accordance with Part 5, Schedule D 'Contract Sum' (excluding GST payable in accordance with clause 32.2) to be paid to the Contractor as adjusted in accordance with the Contract;

Contractor means the Party designated as the Contractor in Part 1 Formal Instrument of Agreement;

Contractor's Management Plan means the work methodology statement, health, safety, environmental and social responsibility management plans prepared by the Contractor in accordance with clause 25.1;

Contractor's Representative means the representative named in Part 5, Schedule A 'Contract Variables';

Date of Final Completion means the date certified by the Principal's Contract Administrator in a Certificate of Final Completion issued pursuant to clause 22.7 to be the date upon which Final Completion was achieved;

Date for Milestone Achievement means, in respect of each Key Milestone, the date set out in Part 5, Schedule A 'Contract Variables' and as extended or reduced in accordance with the relevant provisions of the Contract;

Date of Milestone Achievement means the date certified by the Principal's Contract Administrator in a Certificate of Milestone Achievement issued pursuant to clause 20.5 to be the date upon which a Key Milestone was achieved;

Date for Practical Completion means the date set out in Part 5, Schedule A 'Contract Variables' and as extended or reduced in accordance with the relevant provisions of the Contract;

Date of Practical Completion means the date certified by the Principal's Contract Administrator in a Certificate of Practical Completion issued pursuant to clause 20.5 to be the date upon which Practical Completion was achieved;

Deed of Release means the document in Part 5, Schedule F 'Deed of Release';

Defects means any:

- (a) defect, shrinkage, movement, error, omission, deficiency, or other imperfection in the Works in respect of, or arising from any cause including design, materials or workmanship;
- (b) aspect of the work under the Contract which is not in accordance with the Contract; and
- (c) physical damages to the Works resulting from the matters referred to in paragraphs (a) or (b) or the rectification of any of the matters referred to in paragraphs (a), (b) or (c).

Defects Liability Period means the period set out in Part 5, Schedule A 'Contract Variables';

Deliverables means all documents, materials, spare parts, data and other things described in the Scope of Work as being required to be provided to the Principal as part of the work under the Contract;

Dispute means any disagreement, difference of opinion or dispute between the parties arising out of or in relation to the Contract;

Existing Facilities mean any existing structures, utility systems, and other man made physical conditions within or adjacent to the Site;

Extension of Time has the meaning given in clause 20.3;

Final Completion means that the Works are complete and all of the following conditions have been achieved with respect to the Works:

- (a) Practical Completion for the Works has occurred;
- (b) Punch List items have been completed to the reasonable satisfaction of the Principal;
- (c) the Contractor has provided all required as-built documentation to the Principal, and has delivered all supplier/vendor drawings, data, certifications, warranties and equipment manuals to the Principal, and provided all other project documentation requested by the Principal;

- (d) All Performance Tests have been completed to the reasonable satisfaction of the Principal.
- (e) Provisional Acceptance if applicable has been certified; and
- (f) All Defects arising during the Defects Liability Period have been made good to the satisfaction of the Principal.

Force Majeure means an event beyond a person's reasonable control which by exercise of reasonable diligence could not have been prevented by that party and which could not have been specifically foreseen at the Commencement Date including:

- (a) act of God, including unusually severe weather that occurs at the affected location on average no more than once in every hundred year period, named cyclone, earthquake, fire, subsidence, wash-out, flood, tsunami, explosion, natural disaster or any land slide, mud slide or other subsidence not caused or contributed to by the Contractor;
- (b) any terrorism, insurrection, revolution or civil disorder, act of public enemies, malicious damage, sabotage, vandalism, war (whether declared or undeclared) or a military operation, blockade or riot;
- (c) any industrial dispute, strike, lock-out, ban, limitation or other industrial disturbances of any kind (provided that, where the Contractor claims an entitlement arising from Force Majeure, these industrial disturbances are not the fault of or contributed to by the Contractor),

but does not include:

- (d) any inability (for any reason whatsoever) to pay or make payment;
- (e) changed market conditions;
- (f) financial distress;
- (g) insufficient money to perform the work under the Contract;
- (h) shortage of labour materials, equipment or other resources;
- (i) where the Contractor claims an entitlement arising from Force Majeure, industrial disturbances the fault of or contributed to by the Contractor; or
- (j) events involving a previous or existing condition at or before the Commencement Date;

Government Agency includes any federal, state, territory or local government, or any ministry, department, court, commission, statutory body, 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 Contractor to perform its obligations under the Contract;

Incident means a notifiable event which occurs involving the Contractor and/or its provision of the work under the Contract which event is required at Law to be reported to the police, coroner, Worksafe or the state mining engineer and his inspectorate or any other relevant Government Agency;

Indigenous Relations Management Plan means the plan established pursuant to clause 25.4;

Intellectual Property Rights means all intellectual property rights and includes:

- (a) any patent, trade mark (whether registered or common law) copyright (including future copyright), Moral Rights, registered design or other design right and any corresponding property or right under the laws of any jurisdiction;

- (b) any right under the laws of Australia or of any other jurisdiction to apply for the grant or registration of a patent, trade mark copyright (including future copyright) Moral Rights, design or corresponding property or right; and
- (c) any rights in respect of an invention, discovery, trade secret, know-how, concept, idea, information (including confidential information), data, algorithm or formula,

and **Intellectual Property** has a corresponding meaning.

International Organisation means a public international organisation in which the United States participates pursuant to any treaty or under the authority of any Act of Congress authorising such participation or making an appropriation for such participation, and which will have been designated by the President of the United States through appropriate Executive order as being entitled to enjoy the privileges, exemptions, and immunities provided in United States Code No. 22;

Invoice has the meaning given in clause 30;

Key Milestones means the milestones identified as key milestones in Part 5, Schedule A 'Contract Variables';

Key Personnel means the positions in the Contractor's organisation identified in Part 5, Schedule A 'Contract Variables' as Key Personnel;

KPI means the key performance indicators set out in the Special Conditions, if applicable;

Latent Condition means physical conditions on the Site or its surroundings, including artificial things but excluding weather conditions, which differ materially and substantially from those physical conditions which should reasonably have been anticipated by a skilled, experienced and competent contractor at the Commencement Date;

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

Liabilities means liability, loss, damage (of any nature including aggravated and punitive), cost and expense (including all litigation costs and expenses on a full indemnity basis), 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;

Materials means all documents, data, programs, techniques, systems, processes, including working documents, test results, reports and papers (in any medium), and all information or data (in any medium) prepared or collected pursuant to the Contract by the Contractor, the Contractor's Personnel, agent, contractor or any other person arranged by the Contractor either at the Site or at any other premises, so long as the Intellectual Property Rights in them were generated in the course of providing the Works or utilising any of the resources of the Principal;

Milestone Achievement in respect of each Key Milestone has the meaning ascribed to it in the Scope of Work;

Moral Rights means rights of integrity of authorship, rights of attribution of authorship, rights not to have authorship falsely attributed and rights of a similar nature conferred by statute or otherwise anywhere in the world that may exist or that may come to exist in the future;

Nominated Subcontractor means any party appointed as a Subcontractor, for part of the work under the Contract, whom the Principal instructs the Contractor to employ as a Subcontractor;

Notice means any notice, approval, consent or other communication in connection with this Contract;

Notice of Default means a notice issued in accordance with clause 42.1;

Notice of Dispute means a notice issued in accordance with clause 45.1;

Notice of Termination means a notice issued pursuant to clause 41.1;

Official means any official or employee of any government, or any department, agency, or instrumentality thereof; any political party or official thereof; any candidate for political office; any official or employee of any International Organisation;

Owner has the meaning given in Part 5, Schedule A 'Contract Variables';

Owner Related Parties means the Principal, each Owner, all Related Bodies Corporate of each of them and all Personnel of each of them and their respective Related Bodies Corporate, including without limitation any person listed in Part 5, Schedule A 'Contract Variables'.

Parties means the parties named in the Part 1, Formal Instrument of Agreement;

Performance Tests means the performance tests if any described in the Scope of Work to be carried out when indicated in Part 5, Schedule A 'Contract Variables';

Personnel means:

- (a) in relation to the Contractor, any of its employees, officers, directors, Subcontractors (including Subcontractors' Personnel), agents and representatives involved either directly or indirectly in the provision of the Works;
- (b) in relation the Principal, the Owner or any of their respective Related Bodies Corporate, any of its employees, officers, directors, agents and representatives; and
- (c) in relation to a Subcontractor, any of its employees, agents or representatives involved either directly or indirectly in the provision of the Works;

Practical Completion means that stage in the execution of the work under the Contract when:

- (a) the Works are complete except for any items on the Punch List;
- (b) those tests which may be carried out before the Works reach Practical Completion have been carried out and passed to the Principal's Contract Administrator's satisfaction (including Performance Tests where these are to be provided prior to Practical Completion); and
- (c) documents and other information required under the Contract which, under the Scope of Work or in the opinion of the Principal's Contract Administrator, are required for the use, operation and maintenance of the Works have been supplied;

Principal means the Party designated as the Principal in Part 1 Formal Instrument of Agreement (including its permitted assigns);

Principal Provided Facilities means those facilities set out in Part 5, Schedule C;

Principal's Contract Administrator has the meaning given in clause 8;

Principal's Emergency Response Team has the meaning given in clause 12.3;

Principal's Standards and Procedures mean those standards, policies and procedures (or such other similar documents) published by the Principal as amended from time to time, including, but not limited to policies on the environment, health, safety and social responsibility aspects of the Principal's operations, and includes the policies and procedures set out in Part 6, Exhibits;

Principal's Supplied Materials means all equipment, machinery, apparatus, articles and all other things to be provided by the Principal in accordance with the Scope of Work for incorporation into or use in the Works or the work under the Contract;

Principal's Technical Representative has the meaning given in clause 8;

Privacy Statement means that document available at: <http://www.newmont.com/legal/default.aspx> or may be requested from the Principal's Privacy Officer who can be contacted at privacy.officer@newmont.com;

Program means the program (including Key Milestones) approved by the Principal to be used by the Contractor for purposes of controlling the work under the Contract as described in Clause 19;

Progress Claim means the claim referred to in clause 30;

Provisional Acceptance means that the Works are complete and accepted by the Principal and all of the following conditions have been achieved with respect to the Works:

- (a) Practical Completion for the Works has occurred;
- (b) Punch List items have been completed to the reasonable satisfaction of the Principal;
- (c) the Contractor has provided all required as-built documentation to the Principal, and has delivered all supplier/vendor drawings, data, certifications, warranties and equipment manuals to the Principal, and provided all other project documentation requested by Principal;
- (d) All Performance Tests have been completed to the reasonable satisfaction of the Principal,

Provisional Sum means the sum in respect of the work or item referred to in the Scope of Work as a provisional sum item or provisional sum works.

Punch List means the list, issued under clauses 20.5 and 22.6, of minor omissions and minor Defects:

- (a) which do not prevent the Works from being reasonably capable of being used for their intended purpose;
- (b) which the Principal's Contract Administrator determines the Contractor has reasonable grounds for not promptly rectifying; and
- (c) the rectification or any delay in the rectification of which will not:
 - (i) prejudice the convenient use of the Works; or
 - (ii) give rise to the risk of any adverse impact on the health or safety of any person, on the environment or on any equipment (whether or not that equipment forms part of the Works).

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

Rely Upon Information means the information listed in Part 5, Schedule I 'Rely Upon Information';

Scope of Work means the scope of work set out in Part 4, Scope of Work;

Security means the provision of any monies, performance bonds, guarantees or Unconditional Undertaking lodged with the Principal in accordance with clause 36;

Separable Portions means separate portions of the work under the Contract as described in clause 20.7.

Site means the area described generally in Part 5, Schedule A 'Contract Variables' and more precisely in the Scope of Work;

Subcontractor means any person engaged to perform any part of the work under the Contract on behalf of the Contractor and includes a Nominated Subcontractor and a subcontractor or supplier of any Subcontractor at any level, and the employees, agents, consultants and invitees of the Subcontractor;

Survey Marks means survey reference points and bench marks for horizontal and vertical survey control;

Suspension Notice means a written notice suspending performance of part or all the work under the Contract issued in accordance with clause 40.2;

Temporary Works means work used in carrying out and completing the Works, which is not included in the Works when completed;

Unconditional Undertaking means security referred to in clause 36 in the format presented in Part 5, Schedule K 'Form of Unconditional Undertaking' or as otherwise approved by the Principal's Contract Administrator;

Universal Declaration of Human Rights means that document available at <http://www.un.org/en/universal-declaration-human-rights/> (or any successor page);

Variation has the meaning given in clause 24.1(b);

Variation Proposal has the meaning given in clause 24.3(b);

Wilful Misconduct means any act or default by a party known by that party at the time of the act or default, to be wrong in the circumstances, but intentionally persisted with by that party or persisted with having reckless indifference as to the likely consequences of the act or default;

work under the Contract means the whole of the work which the Contractor is or may be required to carry out and complete under the Contract including procurement and construction, any design obligations, any Variations, the provision of Temporary Works and the Construction Equipment and attendant services as described in the Contract; and

Works means the whole of the work to be provided under the Contract as varied by Variations which the Contractor is required to hand over to the Principal, including the Deliverables.

1.2 Interpretation

In the Contract, unless the context otherwise requires:

- (a) a reference to any document is a reference to that document as varied, novated or replaced from time to time;
- (b) the singular includes the plural and vice versa;
- (c) a reference to a gender includes all genders;
- (d) the use of the word "including" does not limit what else might be included;
- (e) a reference to a thing includes all or any part of it;
- (f) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (g) a reference to a person or entity includes a natural person, a partnership, corporation, trust, association, unincorporated body, authority or other entity;
- (h) a reference to a party includes that party's legal personal representatives, successors and permitted assigns;
- (i) a term which purports to bind or benefit two or more persons binds or benefits them jointly and severally;
- (j) headings are for convenience only and are not intended to affect interpretation; a reference to a statute, ordinance, code or other law includes regulations and other instruments issued under it and consolidations, amendments,
- (k) re-enactments or replacements of any of them;
- (l) a reference to a body, other than a party to the Contract (including an institute, association or authority), whether statutory or not:
 - (i) which ceases to exist; or
 - (ii) whose powers or functions are transferred to another body,
- (m) is a reference to the body which replaces it or which substantially succeeds to its powers or functions;

- (n) any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not be employed in the interpretation of the Contract; and
- (o) unless otherwise stated all monetary amounts are in the currency of Australia.

2. Appointment

- (a) The Contractor represents and warrants to the Principal that it is sufficiently experienced, capable and qualified to provide the work under the Contract in accordance with the terms and conditions of the Contract.
- (b) In reliance of the representation in clause 2(a), the Principal appoints the Contractor to perform the work under the Contract and deliver the Works in accordance with the terms and conditions of the Contract.
- (c) Except to the extent that the Contract otherwise provides, the Contractor will supply at its cost everything necessary for the proper performance of the Contractor's obligations and discharge of the Contractor's liabilities under the Contract.

3. Accuracy of information

3.1 Contractor's investigation

The Contractor warrants and represents that it:

- (a) has informed itself of the nature of the Works, the work under the Contract, and materials, plant and equipment necessary for the supply of the Works, and of the conditions and Existing Facilities and services at the Site including that the Site may be on or adjacent to is an operational mine site which, in the normal course of business, contains certain physical conditions which are, by their inherent nature, dangerous, including blasting operations, open pits, high walls, heavy machinery and equipment, and chemical and industrial hazards;
- (b) is fully aware of and understands the risks associated with its provision of the work under the Contract at the Site and elsewhere;
- (c) has informed itself as to the availability of labour and accommodation required and all labour conditions and conditions of employment relevant to the provision of the work under the Contract both on and off the Site;
- (d) has informed itself of and understands the conditions and requirements imposed by Law and that it will comply with all Laws in force at all relevant times (including but not limited to such conditions and requirements imposed pursuant to relevant mining and environmental Law and any new or amended Law);
- (e) has informed itself of the environmental conditions and constraints at the Site; and
- (f) has examined all of the documents that form part of the Contract, which are referred to in the Contract or which have otherwise been provided to or come into the possession of the Contractor in relation to the Works and:
 - (i) has obtained a full understanding and knowledge of the nature, quality and scope of the work under the Contract and all obligations under the Contract as can be inferred from such documents;
 - (ii) is fully satisfied as to the correctness and completeness of such documents and that they are in all points fit and sufficient for their specified purpose and where no purpose is specified, fit for their ordinary purpose;
 - (iii) is fully satisfied that such documents do not contain any errors, omissions, deficiencies, inaccuracies, contradictions, ambiguities and/or discrepancies; and

- (iv) subject to clause 3.4 accepts all responsibility for such documents and for having properly evaluated all costs and contingencies for successfully performing and completing the work under the Contract and for fulfilling all its obligations under the Contract in accordance with them and agrees to bear all and any consequences resulting from its improper evaluation of them

3.2 No Relief

Failure by the Contractor to do all or any of the things it is deemed to have done under this clause 3 will not relieve the Contractor from any of its obligations under the Contract and will not provide the Contractor with any entitlement to any adjustment to the Contract Sum, any Extension of Time or any other claim against the Principal.

3.3 Principal not liable

Subject to clause 3.4 and except as and only to the extent expressly provided for in the Contract, the Principal is not liable for any Liabilities incurred or suffered by the Contractor as a result of its reliance in any way upon any information given to it by the Principal.

3.4 Rely Upon Information

- (a) Notwithstanding the other provisions of this clause 3, the Contractor will be entitled to rely on the Rely Upon Information but will remain responsible for:
 - (i) The verification of the adequacy, sufficiency and coherence of the information and data contained in the Rely Upon Information;
 - (ii) The interpretation of the information and data contained in the Rely Upon Information in view of its proper utilisation in the performance of the Works.
- (b) If there are any errors, omissions, inaccuracies and/or discrepancies in the Rely Upon Information:
 - (i) the Contractor will immediately notify the Principal's Technical Representative of the same confirming the impact this has on the work under the Contract; and
 - (ii) subject to full compliance with clause 24, the Contractor will be entitled to treat any change to the Works or the Rely Upon Information solely resulting from such errors, omissions, inaccuracies and/or discrepancies as a Variation.

4. Scope of Work suitable for construction

- (a) The Contractor warrants that it has reviewed, checked and carefully considered the design work and information provided by the Principal, and that all such information is proper, adequate and suitable to enable the Contractor to perform the work under the Contract. Nothing in this clause is intended to operate as a warranty as to the suitability of the design for its intended purpose.
- (b) The Contractor warrants that it has reviewed the Contract (including the Scope of Work) and will promptly notify the Principal's Technical Representative in writing if it becomes aware that any element of the Contract (including the Scope of Work) is not suitable, appropriate and/or adequate to enable the Contractor to perform its obligations under, and comply with, the Contract and all Laws and for it to give the warranties in clause 4(a) and clause 6.
- (c) The Contractor acknowledges that it will have no Claim against the Principal and its Related Bodies Corporate arising out of or in connection with the adequacy or suitability of the Scope of Work or the level of completeness of the design contained in it.

5. Provision of the Works

5.1 Superintendence

The Contractor will superintend the execution of all work under the Contract and have at all times a competent representative present on the Site and, if required by the Principal's Contract Administrator, at other places at which activities relating to the execution of the work under the Contract is taking place.

5.2 Performance by Contractor

The Contractor will carry out the work under the Contract and complete the Works in accordance with the Contract.

6. Contractor's Warranties

Without limiting the generality of clause 5.2, the Contractor warrants and represents to the Principal that the Contractor, including its Personnel:

- (a) will carry out the work under the Contract with due expedition in accordance with the terms of this Contract;
- (b) will at its cost obtain all Government Authorisations required to perform this Contract except those expressly required to be provided by the Principal;
- (c) will strictly comply with all Laws and Government Authorisations;
- (d) will complete the work under the Contract strictly in accordance with the Law and any prescribed restrictions specified in Part 5, Schedule A 'Contract Variables';
- (e) will provide the Works in accordance with the Program and provide the Deliverables (if any) to the Principal on or before the dates specified in the Program;
- (f) has read and understood the Principal's Standards and Procedures, including in respect of the access, drugs, alcohol, health, safety, community and the environment policies applicable to the Site and will comply with the same;
- (g) has read and understood Newmont's Code of Conduct, and, when the Contractor is engaged in activities on Site or on Newmont's behalf, the Contractor shall abide by the principles expressed in Newmont's Code of Conduct, to the extent applicable;
- (h) has read and understood Newmont's Supplier Code of Conduct, which is available under the About Us/ Governance and Ethics tabs at www.Newmont.com;
- (i) will furnish all Personnel, supervision and expertise necessary for the satisfactory provision of the Works other than the Principal Provided Facilities;
- (j) will ensure that the Works are provided in accordance with the standard expected of a contractor competent in constructing works of a similar nature, value, scope and complexity as the Works;
- (k) will execute and complete the Works in accordance with the Contract so that the Works when completed are free from Defects and of a quality and standard required by the Contract and to the extent a standard is not prescribed in the Contract, to a standard consistent with best industry standards for works of similar nature to the Works;
- (l) will ensure that the work under the Contract will be carried out 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 Scope of Work or, in the absence of such Scope of Work, in accordance with any applicable standards set by the Standards Association of Australia, including those set out in Part 5, Schedule A 'Contract Variables';
- (m) will ensure in relation to the provision of Construction Equipment:

- (i) the Construction Equipment will be of good quality and fit for its intended purpose;
 - (ii) any Construction Equipment used on Site will be in safe working condition, comply with all applicable Laws, meet the Principal's Site requirements and will be operated by suitably qualified and competent Personnel, to the satisfaction of the Principal;
 - (iii) the Construction Equipment will be free from defects in design, materials and workmanship;
 - (iv) the Construction Materials will be new, free from defects in design, quality and workmanship and compliant in all respects with the requirements of the Contract;
 - (v) it has good and marketable title to such Construction Materials and the Principal will receive title to the Construction Materials free of any charge or encumbrance; and
 - (vi) it will obtain, at its cost, all usual trade warranties, and any warranties specifically requested by the Principal and that at completion of the Works the Contractor will assign the benefit of these warranties to the Principal and provide copies of the warranties to the Principal; and
- (n) 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 Contractor has not withheld from the Principal any information concerning the Contractor, its experience or expertise which might reasonably be supposed to be material to the Principal in determining whether or not to engage the Contractor to provide the Works or the price at which or the terms on which the Principal would be prepared to engage the Contractor to provide the Works.

6.2 6.2 Principal's Reliance

The Contractor acknowledges that, in entering into the Contract, the Principal relied on the representations and warranties described in clause 6.

7. Compliance with Law

7.1 Compliance with Laws

The Contractor will and will ensure that its Personnel comply with all Laws, Government Authorisations and all directions and requirements of any Government Agency relating to its obligations under the Contract.

7.2 Failure to comply

Without limiting clause 34, as against the Principal, the Contractor is liable for and will indemnify, defend and hold harmless the Owner Related Parties against any Liability caused by, arising out of or in any way contributed to by:

- (a) a breach of any Law by the Contractor or its Personnel or any Subcontractor including failure to obtain and maintain all Government Authorisations required to enable the work under the Contract to be performed and the Works to be provided; or
- (b) the application of any Law, (including any workers compensation law which deems the Principal to be an employer of any of the Personnel) which makes the Principal liable for any loss arising out of the death or illness of or injury to any of the Contractor's Personnel or any employment benefits to which such Personnel are entitled which would, but for that particular provision of the Law, be the responsibility of the Contractor or a Subcontractor.

8. Principal's Technical Representative and Principal's Contract Administrator

8.1 Appointment

- (a) The Principal will appoint (or has appointed where such roles are attributed to individuals in Part 5, Schedule A 'Contract Variables') the:
 - (i) Principal's Technical Representative, to give instructions to the Contractor concerning the day to day operations, the Works and activities of the Contractor, as expressly provided for under the Contract; and
 - (ii) Principal's Contract Administrator to oversee the administration of the Contract, including:
 - (A) the issue of all Variations;
 - (B) the receipt and assessment of all Claims, including Claims for entitlements under the Contract;
 - (C) the receipt and release of Security.
- (b) The Principal may from time to time by notice in writing to the Contractor:
 - (i) revoke any appointment made pursuant to clause 8.1(a) and appoint another person as the Principal's Technical Representative or Principal's Contract Administrator as the case may be; and
 - (ii) delegate and revoke all or any of the authorities of the Principal's Technical Representative and/or Principal's Contract Administrator.

8.2 Instructions or directions

- (a) The Principal's Technical Representative is not entitled to perform any function of the Principal's Contract Administrator.
- (b) The Principal's Contract Administrator is not entitled to perform any function of the Principal's Technical Representative.
- (c) If the Contractor receives an instruction from the Principal's Technical Representative that it believes would entitle it to a Variation:
 - (i) It must immediately (and in any event within 12 hours) inform the Principal's Contract Administrator of the instruction and request a Variation;
 - (ii) it will only act on such instruction when it has been authorised in writing by the Principal's Contract Administrator unless the instruction requires the Contractor to take urgent action, in which case the Contractor must take the step described in clause 8.2(c)(i) immediately (and in any event within 12 hours) after taking that action.
- (d) Except as provided in clause 8.2(c) above, the Principal will not be bound by any instructions or directions given to the Contractor by:
 - (i) the appointed Principal's Technical Representative or Principal's Contract Administrator which are beyond its express authority to issue pursuant to this Contract; or
 - (ii) any person other than the appointed Principal's Technical Representative or Principal's Contract Administrator, or their delegates appointed in writing.
- (e) Any instructions or directions given to the Contractor by the Principal's Technical Representative or Principal's Contract Administrator which is within its express authority pursuant to this Contract will be deemed given by the Principal, and the Contractor will comply with the instruction or direction.

- (f) The duties of the Principal's Technical Representative are to watch and supervise the Works and to test and examine any materials to be used, or workmanship employed, in connection with the work under the Contract.
- (g) Neither the Principal's Technical Representative nor the Principal's Contract Administrator will have authority:
 - (i) to relieve the Contractor of any of his duties or obligations either under the Contract; or
 - (ii) except as expressly provided in the Contract, to order any Work involving delay or extra payment by the Principal or to make any change of or in the Works.
- (h) Failure of the Principal's Technical Representative or Principal's Contract Administrator to disapprove any workmanship or materials will not prejudice the power of the Principal thereafter to disapprove such workmanship or materials and to order it's pulling down, removal or breaking up.
- (i) If the Contractor is dissatisfied by reason of any decision of the Principal's Technical Representative or Principal's Contract Administrator it must refer the matter to the Principal by Notice of Dispute.

9. Contractor's Representative

9.1 Contractor's Representative

The Contractor will provide the name, address, email address, facsimile number and any other contact details of the Contractor's Representative for the receipt of Notices, orders and instructions, such Contractor's Representative to:

- (a) have the power to bind the Contractor in respect of all matters pertaining to the Contract;
- (b) be available at all times during and at the location of the performance of the work under the Contract;
- (c) provide technical advice to the Principal;
- (d) provide details supporting the Contractor's performance against agreed KPI criteria; and
- (e) communicate, discuss and resolve Contract issues on behalf of the Contractor,

and matters known to the Contractor's Representative are deemed known to the Contractor.

If the Principal makes a reasonable objection to the appointment of a representative, the Contractor will terminate the appointment and appoint another representative.

9.2 Change of Contractor's Representative

The Contractor may not revoke any appointment made pursuant to clause 9.1 otherwise than in accordance with the provisions of clause 10.2(c).

10. Contractor's Personnel

10.1 Contractor to notify

The Contractor will provide prior written notice to the Principal's Technical Representative of the full names and qualifications of all of the Personnel who will, or are likely to provide the work under the Contract or who may require access to the Site. At any time, upon request by the Principal, the Contractor will present a detailed list showing the names and titles of all its Personnel engaged in the Works, whether or not each is located at Site and any other information that may be required by the Principal which is related to Contractor's Personnel.

10.2 Contractor's Key Personnel

- (a) The Contractor will provide and employ in connection with the execution of the work under the Contract professionally and technically competent Key Personnel as set out in the Scope of Work and such skilled, semi-skilled and unskilled labour as necessary for the proper and timely performance of the work under the Contract.
- (b) the Contractor will ensure that:
 - (i) each of the Key Personnel are engaged in the provision of the work under the Contract in the capacity set out in the Scope of Work; and
 - (ii) always have employed during the performance of work under the Contract, persons in the positions of the Key Personnel as listed in Part 5, Schedule A 'Contract Variables'.
- (c) The Contractor may not substitute other Personnel for those designated as the Contractor's Representative or Key Personnel in the Contract without prior written authorisation from the Principal. Any such substitute Personnel will be equally or better qualified for the duties of the position. Prior to making any substitutions of Contractor's Representative or Key Personnel, the Contractor will give the Principal sixty (60) days advance written notice and will furnish a resume of the educational and work experience of such substitute Personnel.
- (d) The Principal's Contract Administrator will inform the Contractor of its approval or rejection of the substitute within thirty (30) days after receipt of the substitute's resume. The Contractor will endeavour to provide an uninterrupted transition between the Contractor's Representative or Key Personnel and their replacements

10.3 Objection to Personnel

- (a) The Principal's Technical Representative may reasonably object to the provision of the Works by, or refuse entry to the Site to any of the Personnel and may issue a notice of objection to the Contractor.
- (b) On receipt of a notice of objection from the Principal's Technical Representative, the Contractor will immediately remove or cause to be removed the relevant Personnel from the Site and from the provision of the work under the Contract and will replace such Personnel within 24 hours or as soon as practicable.
- (c) The Contractor's obligations will not be diminished, reduced or otherwise affected and the Contractor will not be entitled to any Claim or any change to the Program, Key Milestones or the Works because any Personnel is refused entry to the Site, required to leave the Site or removed from the provision of the work under the Contract.
- (d) Any Personnel who have been removed from the Site will not be again employed at the Site without the written permission of the Principal.
- (e) The costs for removal of such Personnel and for providing replacement Personnel will be at the Contractor's expense.

10.4 Harmonious labour relations

The Contractor is responsible for maintaining harmonious labour relations so that the Work is performed efficiently and without disruption at the Site.

11. On Site

11.1 Protection and interference

Without limiting its obligations in the Contract, at all time during the term of the Contract, the Contractor is responsible for the care of the work under the Contract and will:

- (a) take all steps to secure the relevant Site area and Works through the erection of barricades, guards, fencing, temporary roads, footpaths, warning signs, lighting, watching, traffic flagging, safety helmets and clothing and removal of obstructions;
- (b) in respect of unfixed items and things entrusted to the Contractor by the Principal for the purpose of carrying out the work under the Contract, things brought on the Site by Subcontractors for the Works, provide the storage and protection necessary to preserve these items;
- (c) after 6 p.m. at the Site on the Date of Practical Completion, remain responsible for the care of outstanding Works and items to be removed from the Site by the Contractor and be liable for damage occasioned by the Contractor in the course of completing outstanding work, completing the Punch List, carrying out Performance Tests, rectifying any Defects, or complying with any other obligations under the Contract; and
- (d) not at any time leave any Works Temporary Works or partly completed Works or Temporary Works in an unsafe condition or in a condition which may cause damage to other existing work, plant, machinery or equipment, but will continue that work until it is at a safe stage and will comply with all directions and instructions given by the Principal's Technical Representative in this regard (without in any way relieving the Contractor of responsibility in this regard). Any additional costs to the Contractor in this regard will be borne by the Contractor.

11.2 Care of Works and Principal Supplied Material

- (a) Notwithstanding that ownership of the Principal Supplied Material will, as between the Contractor and the Principal, remain with the Principal, the responsibility for care and custody of the Principal's Supplied Material together with the risk of loss or damage to the Works:
 - (i) transfers to the Contractor on delivery of Principal's Supplied Material to the Site; and
 - (ii) remains with the Contractor in accordance with clauses 11.2(c) and 11.2(d).
- (b) Notwithstanding the transfer of ownership of the Equipment, the responsibility for care and custody of the Works together with the risk of loss or damage to the Works remains with the Contractor in accordance with clauses 11.2(c) and 11.2(d).
- (c) The Contractor is responsible for the care and custody of the Works until 6.00pm on the Date of Practical Completion and will make good at its own cost any loss or damage that may occur to the Works from any cause whatsoever prior to that date. The Contractor is also responsible for any loss or damage to the Works caused by the Contractor or its Subcontractors in the course of any work performed under clause 11.1.
- (d) The Contractor is liable for any loss of or damage to any Construction Equipment, or any other property of the Contractor used or intended to be used for the purposes of the work under the Contract.

11.3 Assumption of Risk

Subject to the Contract, the Contractor assumes all risks associated with the performance by the Contractor of the work under the Contract and the presence of its Personnel, on and off the Site.

11.4 Access to Site and Works

- (a) The Principal will on the Commencement Date, or before such time as agreed between the Parties, provide non-exclusive access to the Site to enable the Contractor to carry out the Works, such access to be subject to the Contract.
- (b) The Principal and the Principal's Personnel may at any time have access to any part of the Site or Existing Facilities for any purpose.

- (c) The Contractor will permit the execution of work on the Site by persons engaged by the Principal and will cooperate with them and coordinate the Contractor's work under the Contract with their work and with the services of any consultants or other parties engaged in relation to the Works or the Site.
- (d) The Contractor will at all reasonable times give the Principal, the Principal's Technical Representative, the Principal's Contract Administrator and other persons authorised in writing by the Principal access to the work under the Contract at any place where the work is being carried out or materials are being prepared or stored.

11.5 Delivery of Materials

Until possession of the Site or part of the Site is given to the Contractor, the Contractor will not deliver materials to or perform Works on the Site or part of the Site, as the case may be, unless approval in writing is given by the Principal's Technical Representative

12. First Aid and Emergency Response Team

12.1 Principals First Aid Centre

Where a Principal's first aid centre is located on the Site it may be made available to the Contractor's Personnel who, while engaged in performing the work under the Contract, become ill or sustain an injury, provided that:

- (a) the nature of the treatment of the illness or injury to the Contractor's Personnel is not such as to require medical attention beyond the capabilities or experience of the first aid attendant (if available) of the Principal, in which case temporary emergency treatment only will be provided;
- (b) the Contractor indemnifies and agrees to defend and hold harmless the Owner Related Parties against any and all Liability whatsoever that may be brought against, suffered, sustained or incurred by any of them arising directly or indirectly from any treatment given or not given by the staff of the first aid centre to a Contractor's Personnel or arising from any other act or omission of such staff in regard to Works provided in respect of a Contractor's Personnel;
- (c) upon receipt of notice from the Principal of a claim or demand which if pursued may give rise to a Liability referred to in clause 12.1(b) the Contractor will undertake the defence or settlement of the claim or demand and will upon entry of a judgement make any and all payments necessary under that judgement;
- (d) while the staff of the first aid centre will maintain and make available to the Contractor (where permitted by Law) initial treatment records in respect of any treatment to a Contractor's Personnel, the Contractor will complete and otherwise deal with as necessary any necessary documentation with respect to worker's compensation claims or otherwise.

12.2 Evacuation from Site

If a Contractor's Personnel requires the services of a physician or hospital or is required to evacuate the Site, the Contractor will promptly (and in any event within the time period required by such provider) pay all charges including the cost of transport, whether by means of ambulance service or otherwise, directly to the provider of those services.

12.3 Emergency Response Team

- (a) If required by the Principal, the Contractor will:
 - (i) actively encourage its Personnel to join the Principal's Emergency Response Team;
 - (ii) provide a minimum of persons (as notified by the Principal acting reasonably) from its Personnel to actively participate in the Principal's Emergency Response Team;

- (iii) support those of the Contractor's Personnel who choose to join the Principal's emergency response team and permit those Personnel to take time off from work while on Site to participate in Emergency Response Team training and exercises; and
 - (iv) support and cooperate with training and exercises conducted by the Principal's Emergency Response Team on the Site.
- (b) The Principal will pay for the course fees for the Personnel in clause 12.1(a) to attend block training sessions.
- (c) Except as provided for in clause 12.3(b), the Contractor acknowledges that it has made allowance to cover all the requirements, including but not necessarily limited to, time, resources and costs associated with this clause 12.3.
- (d) Without limiting clause 34, the Contractor indemnifies the Owner Related Parties against any Liability (including in respect of workers' compensation) incurred by any Owner Related Party in respect of the participation by the Contractor's Personnel in the Principal's Emergency Response Team.

13. Subcontractors

13.1 Subcontracting

- (a) The Contractor will not subcontract the performance of all of its obligations under this Contract. The Contractor will not subcontract part of its obligations under the Contract without the prior written consent of the Principal's Contract Administrator, which consent may be withheld in his or her absolute discretion.
- (b) The Principal may, by notice from the Principal's Contract Administrator withdraw its permission to subcontract at any time and for any reason whatsoever, without penalty of any costs or delays. The Contractor will take immediate action to remove the affected Subcontractor or Subcontractors.
- (c) The Contractor will be fully responsible for the Works performed by any Subcontractors including any Nominated Subcontractors.

13.2 Contractor not relieved of Responsibilities

- (a) The Contractor is not relieved of any of its obligations pursuant to the Contract by reason of any subcontract agreement or arrangement it enters into with a Subcontractor including a Nominated Subcontractor.
- (b) The Contractor is responsible for the acts and omissions of any Subcontractor including any Nominated Subcontractor (including any subcontractor to a Subcontractor or to a Nominated Subcontractor) as if they were the acts of the Contractor, whether those acts or omissions were authorised by the Contractor or not.

13.3 Contract with Subcontractor

- (a) The Contractor will ensure that the terms and conditions of any subcontract arrangement entered into by the Contractor impose upon the Subcontractor:
 - (i) the same obligations and responsibilities as those imposed upon the Contractor by the Contract; and
 - (ii) provision that if the Contract is terminated or the work is taken out of the hands of the Contractor, the Contractor and the Subcontractor will, after the Principal, by the Principal's Contract Administrator, has directed them to do so, promptly and in any event within 5 Business Days of any such direction, execute a deed of novation in the form of **Part 5**, Schedule J 'Form of Novation Deed'. For the purpose of effecting such novation only, the Contractor hereby irrevocably appoints the Principal's Contract Administrator to be the Contractor's attorney with authority to execute such documents as

are necessary to give effect to the novation and to bind the Contractor accordingly.

- (b) Without limiting clause 13.3(a) the Contractor must supply the Principal with a copy of any subcontract, if directed to do so by the Principal

14. Liens and encumbrances

- (a) The Contractor will pay all of its Subcontractors, vendors, and suppliers in a timely manner to ensure that such entities do not place a lien or similar encumbrance on any of the Principal's property or facilities.
- (b) Without limiting clause 34, the Contractor will indemnify and keep indemnified the Principal in respect of all Claims, liens or other encumbrances in relation to wages due and payable by the Contractor to its Personnel or in respect of any Claims, liens or other encumbrances made by the Contractor's Personnel, Subcontractors' Personnel, manufacturers and suppliers.

15. Contract Documents

15.1 Documents from the Principal

- (a) Unless specified otherwise elsewhere in the Contract, the Principal will supply to the Contractor one copy of any drawings or other documents it is required to provide under the Contract.
- (b) Documents supplied to the Contractor by the Principal will remain the property of the Principal and will be returned by the Contractor to the Principal on demand in writing. The documents will not, without the prior written approval of the Principal, be used, copied or reproduced for any purpose other than the execution of the work under the Contract.

15.2 Documents from the Contractor

- (a) The Contractor will supply such drawings and other Materials as required by the Contract and on request from the Principal, the Principal's Technical Representative and/or the Principal's Contract Administrator provided that:
- (b) None of the Principal, the Principal's Technical Representative and the Principal's Contract Administrator will be bound to check the documents for errors, omissions or compliance with the requirements of the Contract;
- (c) an approval by the Principal, the Principal's Technical Representative and/or the Principal's Contract Administrator will not relieve the Contractor from responsibility for the Contractor's errors or omissions or compliance with the requirements of the Contract;
- (d) if the Contract provides that the Contractor will obtain a Principal's Technical Representative direction whether documents are suitable or are not suitable then within the time stated in Part 5, Schedule A 'Contract Variables' (or if no time is stated then within 14 days) after receipt of the documents, the Principal's Technical Representative will notify the Contractor that the documents are suitable or are not suitable;
- (e) if the Principal's Technical Representative notifies the Contractor that the documents are not suitable, the Principal's Technical Representative will give reasons why the documents are not suitable and the Contractor will submit new or amended documents for the Principal's Representative's direction under this clause 15.2;
- (f) the Principal's Technical Representative will not reject documents which are in accordance with the requirements of the Contract; and
- (g) Copies of documents supplied by the Contractor will be the property of the Principal.

- (h) Delays due to late or inadequate submission will not constitute grounds for extension of time.

15.3 Dimensions and discrepancies

- (a) When construing the documents which form the Contract the following rules of construction apply:
 - (i) in the event of any inconsistency between the documents which form the Contract, the documents comprising the Contract will be construed in the order of precedence referred to in the Formal Instrument of Agreement;
 - (ii) notwithstanding clause 15.3(a)(i):
 - (A) where inconsistent levels of quality are required, the higher level of quality will apply;
 - (B) figured dimensions will take precedence over scaled dimensions; and
 - (C) drawings made to larger scales will take precedence over drawings made to smaller scales;
- (b) where the requirements of quality or any aspect of the Works are not expressly specified or depicted, the quality will be consistent with the intended purpose of the Works or where no purpose is ascertainable, consistent with best industry practice;
- (c) drawings showing particular parts of the Works will take precedence over drawings for more general purposes;
- (d) Where the Contractor considers that there is any ambiguity or discrepancy between the documents comprising the Contract, it will promptly and in any event within 3 Business Days of discovering such ambiguity or discrepancy provide a Notice to the Principal's Technical Representative and the Principal's Technical Representative will give the Contractor a direction as to the interpretation to be followed; and
- (e) The Contractor will have no entitlement as a consequence of a direction given by the Principal's Technical Representative under this clause 15.3 which is consistent with the rules of construction in this clause 15.3.

15.4 Availability of documents

From the Commencement Date, one complete set of any drawings, specifications and other written information required to be provided under the Contract will be supplied by the Principal's Contract Administrator or the Contractor and will be kept by the Contractor at the Site or other location approved in writing by the Principal's Contract Administrator and will be available at all times for reference by the Principal's Contract Administrator, the Principal's Technical Representative, and any persons nominated in writing by them.

15.5 Delivery on completion

As a requirement of achieving Practical Completion, the Contractor will deliver to the Principal all documentation, Materials, information and data (the ownership and copyright in which will vest in the Principal) which will have been prepared by the Contractor pursuant to the Contract or in the performance of the work under the Contract

16. Survey Marks

16.1 Setting out the Survey Marks

The Principal will install clearly set out Survey Marks and will be responsible for all survey control and survey measurements.

16.2 Care of Survey Marks

The Contractor will keep in their true positions all Survey Marks and will be responsible for any required maintenance, repair or replacement of Survey Marks and survey controls. Only if the requirement for such maintenance, repair or replacement is caused by the Principal or its Personnel, the cost incurred by the Contractor in reinstating the Survey Mark will be borne by the Principal.

16.3 Errors in setting out

If the Contractor discovers an error in the position level, dimensions or alignment of any Survey Mark or Works the Contractor will immediately notify the Principal's Technical Representative and cease that part of the Works affected by the error until such time as the error is corrected or the Principal's Technical Representative directs otherwise.

16.4 Contractor's Setting Out Obligations

- (a) The Contractor will be responsible for the true and proper setting-out of the Works in relation to original points lines and levels of reference of the Survey Marks and for the correctness (subject to such Survey Marks) of the position levels dimensions and alignment of all parts of the Works and for the provision of all necessary instruments appliances and labour in connection therewith.
- (b) If at any time during the progress of the Works any error will appear or arise in the position levels dimensions or alignment of any part of the Works the Contractor on being required to do so by the Principal's Technical Representative will at his own expense rectify such error to the satisfaction of the Principal unless such error is based on incorrect data supplied in writing by the Principal in which case the expense of rectifying the same will be borne by the Principal.
- (c) The checking of any setting-out or of any line or level by the Principal will not in any way relieve the Contractor of his responsibility for the correctness thereof and the Contractor will carefully protect and preserve all bench-marks sight rails, pegs and other things used in setting out the Works.

17. Latent Conditions

17.1 Notification

- (a) If during the execution of the Works, the Contractor becomes aware of a Latent Condition, the Contractor will immediately, where possible before the Latent Condition is disturbed and in any event within 24 hours, provide written notice of the Latent Condition to the Principal's Contract Administrator.
- (b) Thereafter the Contractor will as soon as practicable and in any event within 5 Business Days of becoming aware of such Latent Condition provide to the Principal's Contract Administrator a statement in writing specifying:
 - (i) the Latent Condition encountered and in what respects it differs materially and substantially from that anticipated by the Contractor;
 - (ii) the additional work and additional resources which the Contractor estimates to be necessary to deal with the Latent Condition;
 - (iii) the time the Contractor anticipates will be required to deal with the Latent Condition and the expected delay in achieving the Date for Practical Completion and/or any Key Milestone;
 - (iv) the Contractor's estimate of the cost of the measures necessary to deal with the Latent Condition; and
 - (v) any other details reasonably required by the Principal's Contract Administrator.

17.2 Extension of Time and Cost

If a Latent Condition will cause the Contractor to:

- (a) delay Practical Completion or any Key Milestone;
- (b) carry out additional work; and/or
- (c) incur extra cost,

the effects of the Latent Condition will, subject to clause 17.3, be treated as a Variation.

17.3 Time Bars

- (a) An effect of a Latent Condition will not be treated as a Variation unless the Contractor has complied fully and strictly with clause 17.1.
- (b) In valuing any Variation caused by a Latent Condition, regard will not be had to the value of any additional work carried out, or extra cost incurred, more than 2 days before the date on which the Contractor gives the written notification required by clause 17.1(a).
- (c) In assessing the effect of a Latent Condition on the Date of Practical Completion and/or any Key Milestone, regard will not be had to the time if any between the date a reasonable Contractor would have become aware of the Latent Condition and the date, if later, on which the Contractor actually became aware of it.

18. Inspection and testing

18.1 Principal may inspect

The Principal may inspect any premises where the Works are being carried out or performed and the Contractor will ensure that the Principal is provided with reasonable access to such premises for this purpose.

18.2 Inspection does not relieve Contractor

Any inspection carried out by the Principal will not relieve the Contractor of its obligations contained in the Contract and will not amount to an acceptance of the Works by the Principal.

18.3 Quality of materials and workmanship and tests

All materials and workmanship will be of the respective kinds described in the Contract and in accordance with the Principal's Technical Representative's instructions and will be subjected from time to time to such tests as the Principal's Technical Representative may direct at the place of manufacture or fabrication or on the Site or at all or any of such places. The Contractor will provide such assistance, instruments, machines, Personnel and materials as are normally required for examining, measuring and testing any Works and the quality, weight or quantity of any material used and will supply samples of materials before incorporation in the Works for testing as may be selected and required by the Principal's Technical Representative.

18.4 Cost of samples

All samples will be supplied by the Contractor at his own cost if the supply thereof is clearly intended by or provided for in the Contract but if not then at the cost of the Principal.

18.5 Cost of tests

The cost of making any test will be borne by the Contractor if such test is clearly intended by or provided for in the Contract and (in the cases only of a test under load or of a test to ascertain whether the design of any finished or partially finished Works is appropriate for the purposes which it was intended to fulfil) is particularised in the Contract in sufficient detail to have enabled the Contractor to price or allow for the same in its tender for this Contract.

18.6 Cost of tests not provided for

If any test is ordered by the Principal which is either:

- (a) not so intended by or provided for in the Contract; or

- (b) is not particularised as provided for in clause 18.5; or
- (c) though so intended or provided for in the Contract, is ordered by the Principal to be carried out in a manner not so intended or provided for in the Contract;

then the additional cost of such test will be borne by the Contractor if the test shows the workmanship or materials not to be in accordance with the provisions of the Contract or the Principal's instructions, but otherwise by the Principal.

18.7 Examination of Works before covering up

No Works will be covered up or put out of view without the approval of the Principal's Technical Representative and the Contractor will afford full opportunity for the Principal's Technical Representative to examine and measure any Works which is about to be covered up or put out of view and to examine any foundations before permanent Works is placed thereon. The Contractor will as soon as practicable and in any event within 5 Business Days give notice to the Principal's Technical Representative and the Principal's Contract Administrator whenever any such Works or foundations is or are ready or about to be ready for examination and the Principal's Technical Representative will without unreasonable delay (unless the Principal considers it unnecessary and the Principal's Technical Representative advises the Contractor accordingly) attend for the purpose of examining and measuring such Works or of examining such foundations.

18.8 Uncovering and making openings

The Contractor will uncover any part or parts of the Works or make openings in or through the same as the Principal's Technical Representative may from time to time direct and will reinstate and make good such part or parts to the satisfaction of the Principal's Technical Representative. If any such part or parts have been covered up or put out of view after compliance with the requirements of clause 18.7 and are found to be executed in accordance with the Contract, the expenses of uncovering, making openings in or through, reinstating and making good the same will be borne by the Principal but in any other case all such expenses will be borne by the Contractor and will be recoverable from him by the Principal or may be deducted by the Principal from any monies due or which may become due to the Contractor.

18.9 Removal of improper Works and materials

The Principal's Technical Representative will during the progress of the Works have power to order in writing from time to time:

- (a) the removal and proper re-execution (not withstanding any previous test thereof or interim payment therefore) of any Works which in respect of materials or workmanship is not in the opinion of the Principal's Technical Representative in accordance with the Contract; and
- (b) the substitution of proper and suitable materials; and
- (c) the removal from the Site within such time or times as may be specified in the order of any materials which in the opinion of the Principal's Technical Representative are not in accordance with the Contract.

18.10 Remedies available to Principal

Notwithstanding the other provisions of this clause 18, if the Principal determines that the testing indicates a departure from the requirements or specifications (if applicable) set out in the Contract then, without limiting its rights, the Principal may do any or all of the following:

- (a) conduct re-testing or further additional testing of the inspected Works;
- (b) withhold payment for the work under the Contract or reduce payment in proportion to the diminished effectiveness in the Principal's operations;
- (c) reject the Works, by notice from the Principal's Technical Representative; or
- (d) direct the Contractor by notice from the Principal's Technical Representative to rectify the Works or repeat the work under the Contract without cost to the Principal.

19. Program

19.1 Program

- (a) If required by the Principal's Contract Administrator, within seven (7) days of the Commencement Date the Contractor will furnish a Program to the Principal's Technical Representative and the Principal's Contract Administrator, which:
 - (i) Unless otherwise agreed between the Parties in Part 5, Schedule H 'Programming and Reporting Requirements' is drawn as a critical path network in the form of a time scaled bar chart using an application approved by the Principal's Contract Administrator and showing, at least, the following:
 - (A) key dates including all Key Milestones, float, logic links and constraints;
 - (B) major activities in the work under the Contract, including all critical and non-critical activities and the critical path;
 - (C) the dates by which, or the times within which, key decisions regarding the Works are to be made and the various stages or portions of Works are to be carried out or completed;
 - (D) mobilisation on and off-site including clean up;
 - (E) latest date for receipt of any document, information or other thing required to be supplied or provided by the Principal, the Principal's Technical Representative or the Principal's Contract Administrator under the Contract; and
 - (F) public holidays or holidays applicable to the work under the Contract,
 - (ii) sets out information as required by the Principal in relation to the provision of the Works;
 - (iii) is consistent with any initial Program contained in the Scope of Work, the Dates for Milestone Achievement and any other requirements of the Contract (including any Principal's requirements notified to the Contractor in Part 5, Schedule H 'Programming and Reporting Requirements' or otherwise);
- (b) The provision of the Program by the Contractor does not relieve the Contractor of any obligations under the Contract including the obligation to not, without reasonable cause, depart from an earlier Program.
- (c) Unless the Principal's Contract Administrator rejects the Program provided by the Contractor pursuant to clause 19.1(a), within fourteen (14) days of its receipt by the Principal's Contract Administrator, the Contractor must comply with it in performing the work under the Contract unless and until clause 19.1(g) applies.
- (d) The Principal's Contract Administrator may at any time direct the Contractor to produce a revised Program within the time and in the form directed.
- (e) Any updated Program submitted to the Principal's Contract Administrator must:
 - (i) show all changes from the original Program and include a detailed schedule and activity list indicating the revisions to each activity and the critical path; and
 - (ii) be clearly and individually identified by sequential numbering and date of issue.
- (f) The Contractor will prepare and submit any Program or revised Program at its own cost.

- (g) Any revised Program provided by the Contractor will not be used as the Program unless it has been approved by the Principal's Contract Administrator in writing.
- (h) The Contractor will strictly adhere to the latest Program approved by the Principal's Contract Administrator.

19.2 Directions in relation to Program

- (a) Any approval of, failure to approve, comment on or failure to comment on any program or other document submitted by the Contractor will not of itself amount to or evidence the grant or approval of an extension of time or a waiver of the Contractor's obligations to achieve the dates described in the Contract or a direction to accelerate, and the Contractor represents and warrants that it will not place any such reliance on the Principal's or its Personnel's conduct as described in this clause 19.2(a).
- (b) The power of the Principal's Contract Administrator to require the Contractor to provide a Program, includes a power to direct:
 - (i) the Contractor to provide an updated Program where there has been a change in the Date for Practical Completion or where circumstances have occurred which have affected the progress of the Works; and
 - (ii) what form the Program will take, what information will be contained in it and the level of detail required of that information.

19.3 Recovery

- (a) If the Contractor is delayed in its performance of the work under the Contract such that performance against any Key Milestone will be delayed or is anticipated to be delayed, the Contractor will give prompt Notice to the Principal's Contract Administrator of such delay, setting forth the cause or reason for the delay and particulars as to the expected duration and the extent of any impact on the Program or cost of the Works.
- (b) Unless otherwise directed by the Principal's Contract Administrator, the Contractor will promptly and in any event within 5 Business Days prepare a proposed plan of recovery so that the delay to the Dates for Milestone Achievement is eliminated or, where this not possible, is minimised. The Principal's Contract Administrator may participate in the development of any such recovery plan and will either approve the Contractor's Proposed recovery plan or require the Contractor to implement and comply with any reasonable alternative plan it provides.
- (c) The Contractor will use all reasonable efforts to adhere to the implemented recovery plan. The Contractor will be responsible for its costs in implementing such recovery plan except where and to the extent the delay referred to in clause 19.3(a) is one for which the Contractor has been granted an Extension of Time.
- (d) Where the Contractor is entitled to recover its costs these will be valued in accordance with clause 24.5.

19.4 Other Programming and Reporting obligations

Notwithstanding the other obligations of this clause 19 the Contractor will at all times comply with any programming, reporting or other requirements contained in Part 5, Schedule H 'Programming and Reporting Requirements'.

20. Practical Completion

20.1 Time for Practical Completion

- (a) The Contractor will complete the Works by the time and Date for Practical Completion.
- (b) The Contractor will achieve each other Key Milestone by the relevant time and Date for Milestone Achievement.

20.2 Notification of delay

Immediately on it becoming evident to the Contractor that it has been or might be delayed in achieving Practical Completion or any of the other Key Milestones, the Contractor will give the Principal's Contract Administrator a Notice in writing confirming the cause of the delay, the date the delay might commence (or, if the delay has already commenced, the date the delay commenced), the estimated period of the delay and whether the Contractor anticipates it may make a claim for an Extension of Time in relation to that delay.

20.3 Extension of Time of Practical Completion

- (a) The Contractor will only be entitled to an Extension of Time by which the Date for Practical Completion or the Date for Milestone Achievement specified in the Contract is extended when:
 - (i) it can demonstrate that it has been delayed in achieving Practical Completion by the Date for Practical Completion or it has been delayed in any achieving any Key Milestone by the relevant Date for Milestone Achievement;
 - (ii) the delay was caused by a qualifying cause of delay as defined in clauses 20.3(b) and 20.3(c) below; and
 - (iii) it has given all notices strictly in accordance with the time and content requirements of clause 20.2 and this clause 20.3.
- (b) Subject to clause 20.3(c) the qualifying causes of delay are:
 - (i) an event of Force Majeure;
 - (ii) a direction for a Variation;
 - (iii) an order of a court which restrains the Contractor from or disrupts the Contractor in carrying out the Works (except where the order arises as a consequence of a breach of a legislative requirement by the Contractor to any person);
 - (iv) any act or omission of the Principal's Technical Representative, Principal's Contract Administrator, the Principal or any employee, consultant or agent of the Principal's Technical Representative, Principal's Contract Administrator or the Principal including one which is in breach of the Contract;
 - (v) the performance by the Contractor of works necessary to overcome any Latent Condition; or
 - (vi) any other cause which is expressly stated in the Contract to justify an Extension of Time.
- (c) The causes referred to in clause 20.3(b) will only be a qualifying cause of delay when:
 - (i) the cause was beyond the reasonable control of the Contractor;
 - (ii) the Contractor did not contribute to the cause; and
 - (iii) the Contractor has taken all reasonable steps to mitigate the effect of the delay.
- (d) Within 14 days of the date the qualifying cause of delay begins to cause delay to the Contractor's ability to achieve Practical Completion or any Key Milestone the Contractor will issue to the Principal's Contract Administrator a written claim for an Extension of Time which contains full details of all the facts and matters on which the claim is based including details of the cause of the delay, the date the delay commenced, the date that the delay ceased (or the estimated date the delay will cease if it is ongoing) and the claimed period of the Extension of Time.
- (e) Where the Contractor wishes to make a claim for an Extension of Time and it is actually delayed by one cause for a period of 14 days or more, the Contractor will give the Principal's Contract Administrator the following further written notices:

- (i) an updated notice complying with the requirements of clause 20.3(d) at the expiration of each additional period of 10 days for so long as the delay continues; and
 - (ii) within 7 days of the date that the delay ceases, a notice which contains details of the notices already provided by the Contractor in relation to that delay (by identifying number or date), and full details of all the facts and matters on which the claim is based, including the cause of the delay, the date that the delay commenced, the date that the delay ceased and the claimed period of the Extension of Time.
- (f) A delay by the Principal or the failure of the Principal's Contract Administrator to grant a reasonable Extension of Time will not cause the Date for Practical Completion or any Date for Milestone Achievement to be set at large.
- (g) When a delay caused by a non-qualifying cause of delay overlaps with a delay caused by a qualifying cause or causes of delay, then to the extent those delays are concurrent as determined by the Principal's Contract Administrator the Contractor will not be entitled to an Extension of Time for those qualifying causes of delay.
- (h) Within 28 days after receiving the Contractor's claim for an Extension of Time in respect of which the Contractor has an entitlement under this clause 20.3, the Principal's Contract Administrator will give to the Contractor a written direction evidencing the Principal's Contract Administrator's assessment of the Extension of Time to which the Contractor is entitled.
- (i) Notwithstanding that the Contractor is not entitled to or has not claimed an Extension of Time, the Principal's Contract Administrator may at any time and from time to time for any reason before issuing the Certificate of Final Completion direct an Extension of Time. The Principal's Contract Administrator is under no obligation to exercise this discretion fairly, reasonably, for the benefit of the Contractor or at all, including where the Contractor is delayed by any cause listed in clause 20.3(b) but has failed to claim an Extension of Time or to satisfy the requirements of clause 20.3.

20.4 Failure to Complete by the Date for Practical Completion or Key Milestone date

- (a) If the Contractor fails to reach Practical Completion by the Date for Practical Completion or if it fails to achieve a Key Milestone by the relevant Date for Milestone Achievement, then without limiting any of the Principal's rights or remedies, the Principal may take out of the hands of the Contractor the whole or part of the work remaining to be completed and may complete all or part of that work or may arrange for others to complete the work.
- (b) The Principal's Contract Administrator will ascertain the cost incurred by the Principal pursuant to clause 20.4(a) and will issue a certificate to the Contractor certifying the amount of the cost. If the amount certified is greater than the amount which would have been paid to the Contractor if the work had been completed by the Contractor, the difference will be a debt due by the Contractor to the Principal.

20.5 Certificate of Practical Completion

- (a) The Contractor will give the Principal's Contract Administrator:
 - (i) at least 14 days' written notification of the date upon which the Contractor anticipates that Practical Completion will be reached; and
 - (ii) at least 7 days written notification of the date upon which the Contractor anticipates that a Key Milestone will be achieved.
- (b) If the Principal's Contract Administrator notifies the Contractor that not all of such conditions have been met, then the Contractor will as soon as practicable undertake such action or work as necessary to meet such conditions and will then issue another notice pursuant to clause 20.5(a) to the Principal's Contract Administrator. Such procedures will be repeated until the Contractor achieves Practical Completion or the Key Milestone as the case may be. Any disagreement as to Practical Completion or achievement of a Key Milestone may be treated as a Dispute pursuant to clause 45.

- (c) When the Contractor is of the opinion that Practical Completion or a Key Milestone has been reached, the Contractor will in writing request the Principal's Contract Administrator to issue a Certificate of Practical Completion or a Certificate of Milestone Achievement as the case may be. Within 14 days of the receipt of this request, the Principal's Contract Administrator will give to the Contractor:
- (i) a Punch List and a Certificate of Practical Completion certifying the Date of Practical Completion, or a Certificate of Milestone Achievement (as the case may be); or
 - (ii) give the Contractor in writing the reasons for not issuing the relevant Certificate.
- The process under this clause 20.5(c) may be repeated until the relevant Certificate is issued.
- (d) If the Contractor has not made a request under clause 20.5(c) then, if the Principal's Contract Administrator is of the opinion that Practical Completion or a Key Milestone has been reached, the Principal's Contract Administrator may issue a Certificate of Practical Completion or a Certificate of Milestone Achievement.
- (e) For the avoidance of doubt Practical Completion may be achieved notwithstanding items of Works being incomplete if these are items that the Principal's Contract Administrator agrees may appear on the Punch List.
- (f) A Certificate of Milestone Achievement will not be issued in relation to a Key Milestone unless all items required to achieve the Key Milestone are complete and free from Defects irrespective of whether any incomplete or defective item for the Key Milestone would be deemed an item that may appear on the Punch List on Practical Completion.
- (g) The date stated in the Certificate of Practical Completion will be deemed to be the date on which the Contractor has achieved Practical Completion and the date stated in the Certificate of Milestone Achievement will be deemed to be the date on which the Contractor has achieved the relevant Key Milestone.
- (h) The issue of a Certificate of Practical Completion or Certificate of Milestone Achievement will not constitute approval of any work or other matter nor will it prejudice any claim by the Principal or the Contractor.
- (i) To the extent the Principal's Contract Administrator has issued a Certificate of Practical Completion for Works or portions of Works (or earlier termination of the Contract in accordance with clauses 41 or 42), the Principal will be solely responsible for the care, custody, control, operation and maintenance of such Works and bear the risk of loss, damage or destruction, subject to its rights against the Contractor. Following transfer of possession and control of any Works to the Principal, the Contractor will have reasonable access pursuant to the Principal's processes and procedures as will be notified to the Contractor from time to time to areas of such Works as necessary for the Contractor to complete any Works still remaining to be performed, including the Punch List items, and to perform any performance tests. If the Contractor's performance of its remaining work under the Contract requires a shutdown or reduction of the operation of the Existing Facilities, the Principal will schedule such work to eliminate or minimise any impacts on the operations of the Existing Facilities.
- (j) Upon the Date of Practical Completion the Contractor will give possession of the Site and the Works to the Principal and except for so much of the Site and the Works required by the Contractor to complete the remaining work under the Contract.
- (k) Within 14 days after the Date of Practical Completion, the Contractor will remove Temporary Works. The Principal's Contract Administrator may extend the time to enable the Contractor to perform its remaining obligations under the Contract.

20.6 Liquidated Damages

If liquidated damages are stated to apply as specified in Part 5, Schedule A 'Contract Variables', then the following will apply:

- (a) if the Contractor:
 - (i) fails to reach Practical Completion by the Date for Practical Completion; or
 - (ii) fails to achieve a Key Milestone by the Date for Milestone Achievement of the relevant Milestone,

the Contractor will immediately be indebted to the Principal for liquidated damages at the rate stated in Part 5, Schedule A 'Contract Variables'. This rate will apply for every day after the Date for Practical Completion or Date for Milestone Achievement as the case may be to and including the earlier of the Date of Practical Completion or Date of Milestone Achievement as the case may be and the date the Contract is terminated. The liquidated damages in Part 5, Schedule A 'Contract Variables' are a genuine pre-estimate of the Principal's loss or damage in respect of delay.
- (b) Nothing in clause 20.6(a) otherwise affects or limits the Principal's rights at law, provided that if the Contractor is liable for liquidated damages under clause 20.6(a) the Principal will not be entitled to claim damages at law in respect of the relevant period of delay.
- (c) The Contractor warrants to the Principal that, and acknowledges and agrees that, the liquidated damages calculated in accordance with this clause 20.6(a) are a reasonable and genuine pre-estimate of the loss and damage that may be suffered or incurred by the Principal as a result of the applicable circumstances described in clause 20.6(a).
- (d) The Contractor will not commence or bring any proceedings, or seek to rely on any argument that any liquidated damages calculated in accordance with clause 20.6(a) is a penalty or is otherwise invalid or unenforceable or that clause 20.6(a), or any part of it, is otherwise invalid or unenforceable.
- (e) If Part 5, Schedule A 'Contract Variables' is completed by words which indicate that liquidated damages will not apply (whether by the use of the words "nil", "not applicable" or otherwise), the Contractor will indemnify the Principal for any loss, damage, cost or expense suffered or incurred by the Principal by reason of the Contractor's delay in the execution of work under the Contract including the Contractor's failure to achieve Practical Completion by the Date for Practical Completion or to achieve a Key Milestone by the relevant Date for Milestone Achievement.
- (f) The Contractor's liability for any general law damages payable under clause 20.6(e) will:
 - (i) be payable by the Contractor as a debt due and immediately payable; and
 - (ii) not be limited to the liquidated damages rate that the Principal would otherwise have been entitled to recover from the Contractor.

20.7 Separable Portions

Where it is noted in Part 5, Schedule A 'Contract Variables' that the work under the Contract is to be divided into Separable Portions the following will apply:

- (a) The interpretations of:
 - (i) Date for Practical Completion;
 - (ii) Date of Practical Completion;
 - (iii) Practical Completion;
 - (iv) Certificate of Practical Completion, and
 - (v) clauses 19 and 36;

will apply separately to each Separable Portion and references to the Works or the work under the Contract will mean so much of those things as is comprised in the relevant Separable Portion.

- (b) The Contractor warrants that the performance of the work under the Contract will not be limited or negatively impacted in anyway by reason of:
 - (i) the work under the Contract being procured as Separable Portions; or
 - (ii) one Separable Portion impacting another.
- (c) In addition to any Separable Portions identified in Part 5, Schedule A 'Contract Variables', Separable Portions may be directed by the Principal's Contract Administrator, who will clearly identify for each, the:
 - (i) portion of the work under the Contract;
 - (ii) Date for Practical Completion; and
 - (iii) respective amounts for security, bonus, liquidated damages and delay damages (which, unless otherwise provided for in the direction, will be calculated pro-rata according to the ratio of the Principal's Contract Administrator's valuation of the Separable Portion to the Contract Sum).

21. Performance Testing and Provisional Acceptance

21.1 Application of this clause

This clause 21 applies if the Contract specifies in Part 5, Schedule A 'Contract Variables' Performance Tests and/or provides for Provisional Acceptance.

21.2 Commissioning Plan

- (a) If the Contract does not contain or provide for the Principal to provide a Commissioning Plan, by the date specified in the Program or if no date is specified no later than 120 days prior to the Date for Practical Completion, the Contractor will submit to the Principal's Technical Representative a Commissioning Plan in respect of the Works containing the information specified in the Scope of Work and otherwise providing in full detail the Contractor's plan, including a program, for the commissioning and Performance Testing of the Works.
- (b) The proposed Performance Testing prescribed by the Commissioning Plan will specify, as a minimum, the Performance Tests specified in the Contract.
- (c) The Principal's Technical Representative will review and approve the Commissioning Plan within a reasonable time and may reject it giving details of the reasons for rejection.
- (d) If the Commissioning Plan is rejected, the Contractor will submit a revised Commissioning Plan within 14 days thereafter.
- (e) The Contractor will repeat the process above until the Principal's Technical Representative approves the Commissioning Plan.
- (f) The Contractor acknowledges that any review, approval or comment by the Principal or failure to review, approve or comment in respect of the Commissioning Plan does not:
 - (i) relieve the Contractor from, or alter or affect, the Contractor's Liabilities or responsibilities whether under the Contract or otherwise according to Law; or
 - (ii) prejudice the Principal's rights against the Contractor whether under the Contract or otherwise according to Law.
- (g) The Contractor must commission the Works in accordance with the final Commissioning Plan and the Program.

21.3 Performance Tests

- (a) At the time specified in Part 5, Schedule A 'Contract Variables', the Principal will carry out the Performance Tests. The Principal's Technical Representative will give the Contractor reasonable notice of its intention to carry out the Performance Tests. Performance Testing by the Principal prior to Practical Completion does not amount to Practical Completion, entry into possession of the Works or otherwise affect in any way the Contractor's responsibility for the Works prior to Practical Completion.
- (b) The Contractor must attend, supervise and/or assist as required the Principal or the Principal's Technical Representative in testing the Works in accordance with the Performance Tests.
- (c) The Contractor must perform all rectification and other work required until the Works meet in full the Performance Tests.

21.4 Provisional Acceptance

- (a) Within 7 days after the Works achieve the Performance Tests to the satisfaction of the Principal's Technical Representative and/or the Contractor achieves all other requirements specified in the Contract prior to the issue of a Provisional Acceptance Certificate, the Principal's Contract Administrator will issue a Provisional Acceptance Certificate.
- (b) If the Contract prescribes that Provisional Acceptance is a condition precedent to any payment or the release of any Security, the Contractor will not be entitled to that payment or release of that Security until the Provisional Acceptance Certificate is issued
- (c) The issue of a Provisional Acceptance Certificate will not constitute approval of any work or other matter nor will it prejudice any claim by the Principal.
- (d) Any disagreement as to Provisional Acceptance may be treated as a Dispute pursuant to clause 45.

22. Defects Rectification and Final Completion

22.1 Warranty

Without limiting any other warranty in this Contract or implied by law, the Contractor warrants the Works against any Defects that arise in the Defects Liability Period.

22.2 Diligent Completion of Punch List and Defects

Between the Date of Practical Completion and the Date of Final Completion:

- (a) the Contractor will complete any Works which are outstanding on the date stated in the Certificate of Practical Completion, within such reasonable time as is instructed by the Principal;
- (b) the Contractor will execute all works required to remedy Defects, as may be notified by (or on behalf of) the Principal on or before the expiry date of the Defects Liability Period for the Works;
- (c) without limiting clause 21 if applicable, the Contractor will assist the Principal by performing all testing, commissioning and other work associated with completing the Works;
- (d) any Defects found must be repaired or replaced as soon as practicable at the Contractor's sole cost;
- (e) if a Defect is incapable of remedy then the Principal may, in its sole discretion, immediately suspend or terminate the Contract and require the Contractor and all of its Personnel to immediately leave the Site;
- (f) if requested to leave the Site pursuant to clause 22.2(e) the Contractor and the Contractor's Personnel must leave the Site with nothing more than their personal belongings and individual work tools; and

- (g) any Defect incapable of remedy will mean that the Contractor is in default of its obligations under the Contract in accordance with clause 24.

22.3 Notification of Defects

If a Defect appears or occurs, the Principal's Technical Representative will notify the Contractor accordingly.

22.4 Contractor's Obligations

- (a) Upon receipt of a Notice from the Principal's Technical Representative of any Defect in any Works during the Defects Liability Period, the affected items or parts will be redesigned, repaired or replaced as appropriate by the Contractor at no cost to the Principal prior to the expiration of the time specified in the notice.
- (b) If the Contractor fails to make the necessary redesign, repair or replacement within the time specified, the Principal may perform or cause to be performed such redesign, repair or replacement at the Contractor's risk and expense and any costs and expenses incurred by the Principal will be recoverable from the Contractor as a debt due and payable.

22.5 Extended Defects Liability Period

The work of rectification referred to in clauses 21 to 22.4 will be subject to a separate and additional Defects Liability Period, commencing from the notification by the Principal of acceptance of the work of rectification and extending for the Defects Liability Period.

22.6 Failure to reach Final Completion

- (a) The Contractor will on the Date of Practical Completion or as soon as practicable thereafter commence (unless already commenced) and diligently complete the items listed in the Punch List. If the Principal elects to complete an item on the Punch List, such item will be taken off the Punch List and deemed to no longer be the responsibility of the Contractor. Where the Principal has not elected to complete an item on the Punch List, and the Contractor has failed to complete such item within a reasonable time, then at the Contractor's expense and without releasing the Contractor of its obligations under the Contract, the Principal may have such items completed by itself or another contractor.
- (b) The Principal's Contract Administrator will ascertain the cost incurred by the Principal pursuant to clause 22.6(a) and will issue a certificate to the Principal and Contractor certifying the amount of the cost. If the amount certified is greater than the amount which would have been paid to Contractor if the work had been completed by the Contractor, the difference will be a debt due by the Contractor to the Principal.

22.7 Certificate of Final Completion

- (a) The Contractor will give the Principal's Contract Administrator at least 5 days written notification of the date upon which the Contractor anticipates that Final Completion will be reached.
- (b) If the Principal's Contract Administrator notifies the Contractor that not all of such conditions of Final Completion have been met, then the Contractor will as soon as practicable undertake such action or work as necessary to meet such conditions and will then issue another notice pursuant to clause 22.7(a) to the Principal. Such procedure will be repeated until the Contractor achieves Final Completion. Any disagreement as to Final Completion may be treated as a Dispute pursuant to clause 45.
- (c) When the Contractor is of the opinion that Final Completion has been reached, the Contractor will in writing request the Principal's Contract Administrator to issue a Certificate of Final Completion. Within 14 days of the receipt of this request, the Principal's Contract Administrator will give to the Contractor and to the Principal a Certificate of Final Completion, or give the Contractor in writing the reasons for not issuing the Certificate of Final Completion.

- (d) If the Contractor has not made a request under clause 22.7(c) then, if the Principal is of the opinion that Final Completion has been reached, the Principal's Contract Administrator may issue a Certificate of Final Completion.
- (e) The date stated on the Certificate of Final Completion will be deemed to be the date on which the Contractor has achieved Final Completion.

22.8 Final Certificate

- (a) Within 28 days after receiving a claim under clause 30.7, the Principal's Contract Administrator will issue to the Contractor a final payment release endorsed 'Final Certificate'.
- (b) In the certificate in clause 22.8(a) the Principal's Contract Administrator will certify the amount which in the Principal's opinion is finally due from the Principal to the Contractor or from the Contractor to the Principal under or arising out of the Contract.
- (c) Without prejudice to any of the Principal's rights under the Contract, unless the Contractor, either before the Final Certificate has been issued or not later than 15 days after its issue, serves a Notice of Dispute under clause 45.1(a):
 - (i) the Contractor releases the Principal from any Liability whatsoever in connection with the Contract, the Works and the work under the Contract; and
 - (ii) the Final Certificate will be evidence in any proceedings of whatsoever nature and whether under the Contract or otherwise between the parties arising out of the Contract, that any necessary effect has been given to all the terms of the Contract which require additions or deductions to be made to the Contract Sum.
- (d) The Final Certificate will not be evidence in any proceedings of whatsoever nature and whether under the Contract or otherwise between the parties arising out of the Contract that the work under the Contract has been completed in accordance with the terms of the Contract.
- (e) Within 14 days after the issue of a Final Certificate which certifies a balance owing by the Principal to the Contractor, and subject to the Contractor having submitted to the Principal a completed Deed of Release, the Principal will release to the Contractor, if any, retention moneys or security then held by the Principal.

23. Acceptance

Acceptance of Works or receipt of Deliverables or the Principal taking possession of the completed Works, as applicable, will not constitute a waiver of the indemnity provisions or of the Contractor's performance obligations set out in the Contract.

24. Variation of the Works

24.1 Directing Variations

- (a) The Contractor will not vary the work under the Contract unless and except as directed in writing pursuant to this clause 24.
- (b) The Principal's Contract Administrator may direct the Contractor to vary the work under the Contract including in any one or more of the following ways:
 - (i) a change to the Principal's requirements set out in the Scope of Work;
 - (ii) an increase, decrease or omission of any part of the work under the Contract including an omission of any part of the work under the Contract with a view to retaining a third party to perform it either prior to or after the Date of Practical Completion (with no liability to compensate the Contractor for any loss of profit);

- (iii) a change to the character or quality of any work under the Contract;
 - (iv) a change to the levels, lines, positions or dimensions;
 - (v) a requirement to carry out additional work;
 - (vi) to demolish or remove material or work no longer required by the Principal.
- ("Variation").

24.2 Notices

- (a) This clause 24.2 applies notwithstanding any other provision of the Contract to the contrary.
- (b) The Principal will only be liable to the Contractor for an amount calculated under clause 24.5 or for an Extension of Time for a Variation where either:
 - (i) the direction to perform the Variation given by the Principal's Contract Administrator is in writing, expressly states that the direction constitutes a direction for a Variation and identifies the work the subject of the direction; or
 - (ii) before performing the Variation and in any event within 7 days of receiving the direction to perform the Variation, the Contractor has given the Principal's Contract Administrator a notice in writing which identifies:
 - (A) the date the direction was given;
 - (B) whether the direction was given orally or in writing;
 - (C) the substance of the direction (if it was in writing a copy should be attached);
 - (D) the approximate cost of the Variation including a detailed breakdown calculated in accordance with clause 24.5; and
 - (E) whether a claim will be made for an Extension of Time as a consequence of the Variation and if so, an estimate of the duration of the potential Extension of Time; and
 - (F) the estimated impact (if any) on the Program, the Date for Practical Completion and the Key Milestones.
- (c) Except where the Contractor is entitled to make a claim under this clause 24, the Contractor will have no entitlement as a consequence of complying with a direction for a Variation.
- (d) Where the Contractor wishes to make a claim for an Extension of Time as a consequence of a Variation, in addition to the notices it is required to give under this clause, the Contractor will give all notices required under clause 20.2.

24.3 Proposed Variations

- (a) The Principal's Contract Administrator may give the Contractor written notice of a proposed Variation.
- (b) The Contractor will within the time specified in the notice or, if no time is specified, as soon as practicable after receiving such notice, notify the Principal's Contract Administrator whether the proposed Variation can be effected, together with, if it can be effected:
 - (i) the Contractor's estimate of the effect (if any) on the Program, the Milestones and the Date for Practical Completion;
 - (ii) a detailed breakdown of the price for which the Contractor would carry out the proposed Variation (including any delay or disruption costs which may be incurred by the Contractor as a consequence of the proposed Variation);

- (iii) the scope of the proposed Variation (including any drawings or technical details); and
- (iv) the expiry period for acceptance of the Variation proposal which will be not less than 7 days (or, for urgent work, such shorter time as the Principal's Contract Administrator may, in writing allow), from the date of receipt by the Principal's Contract Administrator of the Variation proposal,

("Variation Proposal").

- (c) Upon receipt of a Variation Proposal, the Principal's Contract Administrator may in his or her sole discretion do any one of the following:
 - (i) direct the Contractor to provide further information;
 - (ii) accept the Variation Proposal and give the Contractor a direction to carry out the Variation on the terms contained in the Variation Proposal in which case a valuation under clause 24.5 will not be made and the addition or deduction to the Contract Sum will be the amount contained in the Variation Proposal;
 - (iii) negotiate different terms with the Contractor upon which the Variation will be carried out;
 - (iv) give the Contractor a direction to carry out the Variation on the terms contained in the Contract; or
 - (v) reject the Variation Proposal, in which case the Principal may retain another person to carry out the Variation contemplated by the Variation Proposal.

24.4 Variations for convenience of contractor

If the Contractor requests the Principal's Contract Administrator to direct a Variation for the convenience of the Contractor, the Principal's Contract Administrator may in his or her absolute discretion accept or reject the request. The direction will be written and may be conditional. Unless the direction provides otherwise, the Contractor will be entitled to neither extra time nor extra money.

24.5 Pricing

The Principal's Contract Administrator will, as soon as possible, price each Variation using the following order of precedence:

- (a) prior agreement;
- (b) applicable rates or prices in the Contract;
- (c) rates or prices in the schedule of rates, to the extent that it is reasonable to use them; and
- (d) reasonable rates or prices, which will include a reasonable amount for profit and overheads,

and any deductions will include a reasonable amount for profit but not overheads.

The Contract Sum will be adjusted by that price.

24.6 Effect of Variation

No Variation of the Works will invalidate the Contract.

25. Health, Safety, Environment and Social Policies

25.1 Contractor's Management Plan

- (a) Prior to the Commencement Date or, if the Commencement Date is on or precedes the date of this Contract, as soon as possible thereafter the Contractor will carry out a

risk assessment on the Works and submit to the Principal a Contractor's Management Plan as determined by the Principal, such Contractor's Management Plan will at a minimum meet the Principal's Standards and Procedures and describe the proposed management/work processes to be established by the Contractor to reduce risks associated with or incidental or related to the Works.

- (b) The Principal will review the Contractor's Management Plan and may, at its absolute discretion:
 - (i) accept or reject the Contractor's Management Plan; or
 - (ii) require the Contractor to implement additional controls and procedures and amend the Contractor's Management Plan.
- (c) The Contractor will not provide the work under the Contract until it receives the Principal's written approval of the Contractor's Management Plan and will provide evidence of the ongoing compliance with the Contractor's Management Plan whenever requested by the Principal.
- (d) Where the Contractor engages a Subcontractor pursuant to the Contract, the Contractor will provide the Subcontractor with the Principal's Standards and Procedures and ensure that Subcontractor(s) comply with the Principal's Standards and Procedures.

25.2 Safety

Prior to, and while on the Site, and without limiting any other provision in the Contract, the Contractor will, and ensure that its Personnel:

- (a) at the Contractor's expense, successfully undergo or have undergone within one year prior to the Commencement Date, the Principal's induction training program and Site access requirements, as requested by the Principal's Standards and Procedures, and liaise with the Principal and develop safe working procedures;
- (b) comply with all applicable occupational health and safety requirements at Law and pursuant to the Principal's Standards and Procedures;
- (c) provide personal protective equipment in accordance with the Principal's Standards and Procedures, except to the extent the Principal provides such personal protective equipment as specified in the Principal's Provided Facilities;
- (d) if requested to do so by the Principal, participate in all meetings relevant to the Site which occur while the Contractor or any of its Personnel are on the Site;
- (e) in respect of any actual or potential complaint, incident, accident or spillage on or off Site of any material that is or may be considered by an individual or the community to be a nuisance, dangerous or hazardous to the environment:
 - (i) immediately provide a verbal report of such actual or potential event to the Principal;
 - (ii) demonstrate to the Principal's satisfaction that remedial action was immediately implemented to minimise the concern, hazard and/or pollution arising from the event;
 - (iii) within 24 hours submit to the Principal a written report in accordance with the Principal's Standards and Procedures detailing the event and the extent of the contribution to the event of the Contractor's Personnel; and
 - (iv) without limiting the above, immediately notify the Principal of any Incident and will make available to the Principal all relevant records, documents and personnel as the Principal will request to allow the Principal to carry out a full investigation of any such Incident.

25.3 Environment

The Contractor will, and will ensure that its Personnel:

- (a) comply with the Principal's Standards and Procedures as they relate to the environmental aspects or risks at the Site;
- (b) do not:
 - (i) destroy, clear or remove from the Site any native species of flora and fauna;
 - (ii) introduce any exotic species of flora and fauna to the Site;
 - (iii) disturb any native vegetation on the Site without the written permission of the Principal's Technical Representative; or
 - (iv) bring any pets, firearms, weapons, alcohol or drugs to the Site.
- (c) take all steps necessary to minimise any damage to or pollution or contamination of the environment when on the Site and to Existing Facilities, including the Principal's Provided Facilities and public roadways on the Site;
- (d) restrict movement on the Site to defined public roads;
- (e) wash down all vehicles and equipment for visual inspection for potential weed and soil borne or plant pathogens sources when arriving at Site;
- (f) transport, store and dispose of all hydrocarbons and chemicals in accordance with the Law, the Principal's Standards and Procedures and the terms of any Government Authorisations including the supply and use of appropriate packaging, bundling, waste disposal and spill clean up equipment;
- (g) identify and inform the Principal of all actual and potential waste streams and the proposed methods to arrange their complete management and removal from Site. All such methods will be approved by the Principal prior to the Commencement Date. The Principal may at its absolute discretion permit the Contractor to utilise Site disposal areas for inert waste;
- (h) compile and submit monthly data as and when requested by the Principal for use in the Principal's internal and external reporting requirements, including waste, hydrocarbon and energy consumption;
- (i) keep the Site clean and tidy and promptly remove rubbish and surplus material, including, for the avoidance of doubt, if the Contractor fails to comply with any this obligation, the Principal's Contract Administrator may, after the Principal's Contract Administrator has given reasonable notice in writing to the Contractor, have the work of cleaning and tidying up carried out by other persons and the reasonable cost incurred by the Principal in having the work so carried out may be recovered by the Principal as a debt due from the Contractor to the Principal. The rights given by this clause are in addition to any other right;
- (j) report all Incidents and leaks, spills, overflows, and malfunctions to the Principal immediately; and
- (k) comply with all Government Authorisations as they relate to the environmental aspects or risks at the Site.

25.4 Social Commitment and Community Relations

- (a) The Contractor will, if required by the Principal, in good faith and in consultation with the Principal, within 30 days of the Commencement Date or such longer period as the Principal may allow, prepare and seek the Principal's agreement to (in relation to which the Principal will act reasonably) an Indigenous Relations Management Plan consistent with the Principal's Standards and Procedures and which covers the:
 - (i) creation of business opportunities for indigenous people;
 - (ii) creation of employment opportunities for indigenous people;
 - (iii) promotion of cross cultural awareness;

- (iv) provision of education and skills training to indigenous people;
- (v) liaison with the Principal's Personnel responsible for indigenous matters and relevant indigenous and governmental organisations;
- (vi) key performance indicators and minimum standards of performance, suitable to measure the Contractor's performance of the Indigenous Relations Management Plan, including in respect of the level of indigenous employment, which if the Site is in Western Australia such key performance indicators will also include:
 - (A) use by the Contractor of best endeavours to employ indigenous people in accordance with the target percentage set by the Principal, of the total number of Contractor's Personnel from time to time;
 - (B) recruitment and adequate training of at least one indigenous person each year of the Contract as an apprentice or trainee;
 - (C) the giving of preference to indigenous bodies or groups where they are capable of carrying out the necessary work in a satisfactory and cost effective manner, when opportunities arise for the Contractor.
- (b) At quarterly intervals from the date of the Principal's agreement to the Contractor's Indigenous Relations Management Plan, the Contractor will give the Principal a report (in the form required by the Principal from time to time) on progress of the implementation of the Indigenous Relations Management Plan including a report on performance measured against the key performance indicators and minimum standards set in the Indigenous Relations Management Plan.
- (c) Notwithstanding that the Principal may not require an Indigenous Relations Management Plan under clause 25.4(a), the Contractor will report monthly, in the form required by the Principal, on the hiring and termination of any indigenous persons that comprise its Personnel.

25.5 Urgent protection

- (a) If urgent action is necessary to protect the Works, other property or people and the Contractor fails to take the action, in addition to any other remedies of the Principal, the Principal's Contract Administrator may take the necessary action. If the action was action which the Contractor should have taken at the Contractor's cost, the Principal's Contract Administrator will certify the cost incurred as moneys due from the Contractor to the Principal.
- (b) If time permits, the Principal's Contract Administrator will give the Contractor prior written notice of the intention to take action pursuant to this clause.

26. Business Ethics

26.1 Partnering against Corruption

The Contractor represents, warrants and covenants to the Principal, as of the date of this Contract and the date that each Invoice is submitted to the Principal, that in carrying out its responsibilities, neither the Contractor, nor any of its equity holders, beneficial owners, partners, officers, directors, Personnel or agents, will, directly or indirectly, offer, pay, promise to pay, or authorise the payment of any money, or offer, give, promise to give, or authorise the giving of anything of value to:

- (a) any Official for the purpose of:
 - (i) influencing any act or decision of that Official or inducing that Official to do or omit to do any act for the benefit of the Principal;
 - (ii) securing any improper advantage for the Principal; or

- (iii) inducing such Official to use his or its influence with a Government Agency thereof to improperly or illegally affect or influence any act or decision of such Government Agency; or
- (b) an officer, employee, agent, or representative of another company or organisation, with the intent to:
 - (i) influence or reward the recipient's action(s) with respect to his company's or organisation's business;
 - (ii) gain a commercial benefit to the detriment of the recipient's company or organisation; or
 - (iii) induce or reward the improper performance of the recipient's duties.

26.2 Universal Declaration of Human Rights

- (a) The Contractor commits to respect human rights in line with the Universal Declaration of Human Rights.
- (b) The Contractor represents and warrants to the Principal, as at the date of this Contract and the date that each invoice is submitted to the Principal, that no violation of the Universal Declaration of Human Rights exists in any of its or its Related Bodies Corporates' operations or, to its knowledge, within the operations of any of its or its Related Bodies Corporates' subcontractors and vendors.

26.3 Consequences of Breach

- (a) Notwithstanding any other provision of this Contract, the Principal may immediately suspend this Contract in the event that it receives information which, in its sole discretion, it determines to be evidence of a breach by the Contractor of any warranty given in this clause 26.
- (b) In the event of receipt of such evidence and/or such suspension, the Principal must consult with the Contractor and may thereafter immediately terminate this Contract if the Principal, in its sole discretion, is reasonably satisfied that such a breach has occurred.
- (c) In the event of termination under clause 26.3(b), the Principal has no liability to the Contractor under this Contract for any fees, reimbursements, or other compensation under this Contract or for any Claim resulting, directly or indirectly, from such termination, other than for Services satisfactorily performed prior to the termination date.

27. Records

The Contractor will:

- (a) maintain a true, correct and complete set of records, books and accounts, relating to the costs and expenses for which the Contractor seeks compensation or reimbursement prepared in accordance with generally accepted accounting principles and accounting standards in Australia;
- (b) if the Contract Sum is calculated on a cost reimbursable basis, the Contractor will maintain two true, correct and complete such sets of records, books and accounts referred to in clause 27(a); and
- (c) make them available at any time and at no cost to the Principal for audit, inspection, and copying by the Principal or its designated representative during the term of the Contract and for a period of five (5) years or as required by Law, whichever is the greater following any termination or completion of the Contract.

28. Intellectual Property Rights

28.1 Ownership of intellectual property rights

- (a) All right, title and interest in any Intellectual Property Rights, including in Materials, created under or developed or used by the Contractor or Principal or their respective Personnel (except under the licence granted under clause 28.1(c) in the course of performing its obligations under the Contract, will, at all times, remain the property of the Owner (or, where there is no separate Owner, the Principal).
- (b) Background Intellectual Property Rights of the Contractor that are not Deliverables and will not be disclosed in Deliverables or the Works will remain the sole and exclusive property of the Contractor. To the extent any Background Intellectual Property is disclosed in Deliverables or the Works, such Intellectual Property will become the property of the Owner (or, where there is no separate Owner, the Principal).
- (c) The Contractor grants to the Owner Related Parties a fully paid-up, irrevocable non-exclusive licence to use its Intellectual Property Rights for any purpose relating to the Works (including the completed Works) and/or the Site, such licence to be assignable and to include the right to grant sub-licences.
- (d) Except where stated (including as stated in clause 28.1(b) above), nothing in the Contract is intended to convey, grant or transfer any interest in a party's pre-existing Intellectual Property Rights.
- (e) The Contractor warrants that the use of any design, materials, documents and methods of working provided by the Contractor will not infringe any Intellectual Property Rights.

28.2 Moral rights

- (a) The Contractor grants, and must procure from any author of any works to be included in the Works ("**Author**"):
 - (i) to the extent permitted by law, an unconditional and irrevocable waiver of all Moral Rights in respect of such material to which the Author may be or become entitled, whether in Australia or overseas; and
 - (ii) a consent in writing authorising the Owner Related Parties, the Principal's licensees, successors in title and any other person authorised by the Principal, or by such a licensee or successor in title, to exercise all acts comprised in the copyright in the material including the use, dealing, reproduction, transmission, publication, exhibition or adaptation of that material.
- (b) The consent required in clause 28.2(a) must include consent by the Author to the use of the material in accordance with that clause in a form acceptable to the Principal.
- (c) The Contractor must:
 - (i) take steps so that the consent and waiver required under clause 28.2(a) is genuinely given and not obtained by duress or by the making of any false or misleading statement; and
 - (ii) produce all consents and waivers to the Principal upon receipt of a direction to do so.
- (d) The Contractor will indemnify the Owner Related Parties against any loss or damage, cost or expense which the Principal may suffer or incur as a result of any actual or alleged infringement of any Moral Rights arising out of or in connection with the Works.

28.3 Claim on Intellectual Property Rights

- (a) The Contractor will promptly do everything reasonably necessary at the Principal's request and cost to ensure that the Owner (or, where there is no Owner, the Principal) owns the Intellectual Property Rights set out in this clause 28 which for the avoidance of doubt includes assisting the Principal in any enforcement proceedings or assignment of the Principal's rights arising under the Contract.
- (b) The Contractor will indemnify the Owner Related Parties, including the Principal's Technical Representative and the Principal's Contract Administrator against any loss or damage, cost or expense which any Owner Related Party, including the Principal's Technical Representative or the Principal's Contract Administrator may suffer or incur as a result of any actual or alleged infringement of any Intellectual Property Rights arising out of or in connection with the work under the Contract or the Works

29. Contract Sum

29.1 Payment for Works

The Contractor is entitled to the Contract Sum from the Principal as calculated under the Contract.

29.2 Contract Sum Inclusive

- (a) All expenses incurred by the Contractor in relation to the provision of the Works will be deemed to be included in the Contract Sum and the Contract Sum includes any applicable taxes other than GST as provided for in clause 32.
- (b) Unless stated otherwise, all of the lump sums, rates, prices mark-ups and other things that comprise Contract Sum are fixed and are not subject to adjustment for rise and fall in the cost of labour, materials or any other items or for fluctuations in currency exchange rates.
- (c) Under no circumstances will the Contractor be entitled to an addition to the Contract Sum as a result of Works performed or actions taken that do not comply with the Contract, except as expressly provided in the Contract.

29.3 Provisional Sums

- (a) Subject to clause 29.3(b) each work or item described as a provisional sum item in the Scope of Work is included in the Contract, and the corresponding provisional sum amount allowed for the work or item is included in the Contract Sum.
- (b) For each provisional sum, the Principal's Contract Administrator must give the Contractor a written direction:
 - (i) to carry out the relevant work or item; or
 - (ii) not to carry out the work or item to which the provisional sum relates, and (where the Principal's Contract Administrator has given such a direction):
 - (A) the amount allowed for that work or item will be deducted from the Contract Sum; and
 - (B) the Contractor will have no entitlement arising out of or in any way in connection with the Contractor being directed not to carry out the work or item.
- (c) Where the Contractor is directed to proceed with a provisional sum work or item, it must, unless otherwise directed by the Principal's Contract Administrator, be carried out under subcontracts entered into by the Contractor as follows:
 - (i) the Contractor must invite tenders from at least 3 persons as proposed by the Contractor and approved by the Principal's Technical Representative and, without limitation to clause 13, on the terms of a subcontract containing similar terms to the Contract and approved by the Principal's Technical Representative;

- (ii) the Principal's Technical Representative will consider less than 3 tenders if at least 3 tenderers were invited to tender and the Contractor demonstrates that it has invited tenders from reputable tenderers which are likely to respond and less than 3 responded;
 - (iii) the Contractor must give the Principal's Technical Representative such details of each tender as the Principal's Technical Representative may require;
 - (iv) the Contractor must recommend to the Principal's Technical Representative which tenderer it believes should be accepted and, if this tenderer is not the lowest priced tenderer, it must give reasons why the lowest priced tenderer is not recommended; and
 - (v) the Contractor must then enter into a subcontract with a tenderer as agreed by the Contractor and the Principal's Technical Representative or, failing agreement, as directed by the Principal's Technical Representative.
- (d) After the Contractor enters into a subcontract for a provisional sum work or item under clause 29.3(b) the Contract Sum will, if the amount tendered by the tenderer with whom the Contractor is instructed to enter into the subcontract is more or less than the amount allowed in the Scope of Work for that work or item:
- (i) be adjusted by the amount of the difference, plus
 - (ii) where the amount tendered is more than the amount allowed in the Scope of Work for that work or item, an allowance for overhead and profit on the amount of the difference calculated by multiplying that difference by the percentage identified in the Scope of Work.
- (e) Where the Principal's Contract Administrator directs that a Provisional Sum work or item not be put out to tender and the Contractor carries out that Provisional Sum work or item, the work or item will be priced by the Principal's Contract Administrator in accordance with clause 24.5, and the difference between:
- (i) the amount priced by the Principal's Contract Administrator in accordance with clause 24.5; and
 - (ii) the amount allowed for that work or item in the Scope of Work,
- will be added to or deducted from the Contract Sum (as applicable).

30. Invoices and payments

30.1 Invoicing Instructions

The Contractor must:

- (a) electronically submit a draft progress claim (using the format in Part 5, Schedule E 'Format of Progress Claims') accompanied by the relevant supporting documentation within seven (7) days of completion of the Works, or within seven (7) days of the end of the preceding month; and
- (b) when the Principal's Contract Administrator has agreed to the amount of the draft progress claim in writing, the Contractor's Representative must submit the agreed progress claim with a corresponding Invoice that complies with clause 30.3.

30.2 Payment terms

- (a) Notwithstanding any other provision in this Contract, the Principal is not liable to make any payments to the Contractor unless the requirements of clause 30.1, 30.4 and 30.7 are met.
- (b) Subject to clause 30.6, payment will be made to the Contractor within forty-five (45) days of receipt of an approved Invoice submitted as required under this clause 30, provided that if the Principal pays the Invoice within ten (10) days of receipt, the

Principal will be entitled to a 2% (excluding GST) discount off the amount otherwise payable.

30.3 Approved form of Invoices

The Contractor must submit a written invoice (Invoice) to the Principal that:

- (a) complies with the requirements of clause 30; and
- (b) specifies the following information:
 - (i) the Contract number;
 - (ii) the Works provided during the preceding month and applicable rates (as stated in the Contract);
 - (iii) the amount due to the Contractor calculated in accordance with the Contract;
 - (iv) the Principal's name, address and Australian Business Number provided in Part 1, Formal Instrument of Agreement;
 - (v) the Contractor's invoice number (not more than 20 digits);
 - (vi) the invoice date;
 - (vii) that the invoice is a 'Tax Invoice'; and
 - (viii) any further verification or documentation as required by the Principal's Contract Administrator from time to time.

30.4 Submitting Invoices

- (a) The Invoice must comply with the requirements of clause 30.3.
- (b) To submit an Invoice to the Principal, it must be either emailed or faxed as set out below:
 - (i) E-mail: invoices@newmont.com (preferred method)
 - (ii) Fax: 1 800 258 415
- (c) Any changes to the Contractor's name or banking information must be advised in writing on Contractor letterhead and emailed to vendor.administrator@newmont.com and supported by a copy of a blank deposit slip or cheque slip.

30.5 No acceptance

Payments made are not evidence of acceptance of the work under the Contract or an admission of liability or evidence that the work under the Contract has been executed satisfactorily but are to be a payment on account only.

30.6 Dispute

If the Principal disputes any amount shown in a progress claim (or Invoice), it must notify the Contractor within twenty-one (21) days of receipt of the progress claim (or Invoice) and pay any amounts not in dispute in accordance with clause 30.2, provided that the payment by the Principal of any amount the subject of a disputed progress claim (or Invoice) is not to be considered as an acceptance of the amount in dispute or of the Principal's liability to make that payment.

30.7 Final progress claim or Invoice

- (a) Within twenty-eight (28) days of Final Completion, the Contractor must submit:
 - (i) the final progress claim and Invoice in accordance with this clause 30 (stating on the face of the Invoice that it is the 'Final Invoice'); and

- (ii) the Deed of Release.
- (b) Payment by the Principal pursuant to this clause 30 will not relieve the Contractor from performing any obligation under the Contract.

31. Deductions from payments

31.1 Deductions

The Principal may:

- (a) deduct from any moneys due or becoming due to the Contractor pursuant to clause 29 the following amounts (plus any GST in respect of such deductions payable in accordance with clause 32):
 - (i) all debts and moneys due from the Contractor or its Personnel to the Principal;
 - (ii) all Liabilities which the Principal may have paid, suffered or incurred and which or for which the Contractor or its Personnel is or are liable to bear, pay or reimburse to the Principal (including pursuant to any indemnity contained in the Contract); and
 - (iii) the Claimed cost of remedying any defective or damaged Construction Equipment or performance of the work under the Contract below a standard acceptable to the Principal; and
- (b) without prejudice to the Principal's rights pursuant to any other provision of the Contract, if the Contractor fails to perform any of its obligations under the Contract, without notice withhold payment of all or part of any amount payable to the Contractor under the Contract, until the matter has been remedied to the Principal's satisfaction.
- (c) For the avoidance of doubt, subject to Part 5, Schedule C 'Specified Site Requirements, Services and Facilities', the use of the Principal's Provided Facilities will be to the account of the Contractor and will be invoiced to the Contractor at cost, such cost to be determined by the Principal if not provided for in the Contract, and any amounts invoiced to the Contractor (plus GST) are a debt due and payable by the Contractor to the Principal.

31.2 No Set off by the contractor

The Contractor will not deduct any money due from the Principal to the Contractor under the Contract or otherwise from any money due, or which becomes due, from the Contractor to the Principal or any money of the Principal held by the Contractor.

31.3 Taxation withholding

The Principal is not liable to the Contractor and the Contractor will have no Claim against the Principal in respect of any sum payable to the Contractor, which the Principal has withheld from payment in accordance with any Law, until the Principal is released from or relieved of all liability pursuant to the Law in respect of the sum so withheld and is lawfully entitled to pay the sum to the Contractor, or which the Principal has paid in accordance with the provision of any Law to the person legally entitled to the sum.

31.4 Evidence of compliance

The Contractor will supply to the Principal, in the form and within time limits specified by a written notice from the Principal to the Contractor, the information necessary to enable the Principal to comply with any lawful request for such information from any government department having responsibility for assessment or collection of any taxes, imposts or other charges or in relation to the withholding obligations referred to in clause 31.3.

32. Taxes and the Goods and Service Tax

32.1 Definitions

Capitalised terms in this clause have the same meaning as given by *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

32.2 Adjustment for GST

- (a) All amounts specified in the Contract as being payable by either Party to the other are exclusive of any GST.
- (b) If a Supply under or in connection with the Contract constitutes a Taxable Supply, the Supplier may recover from the Recipient an amount on account of GST in addition to any payment or other consideration for the Supply. The additional amount is equal to the Value for the Supply multiplied by the prevailing GST rate.

32.3 Tax Invoice

If any Supply is a Taxable Supply, then notwithstanding any contrary provision in the Contract, the Recipient is not obliged to make any payment under the Contract unless the Supplier has provided a Tax Invoice in respect of the Taxable Supply attributable to that payment.

32.4 Reimbursable Costs

If the Contractor purchases or acquires a Taxable Supply for which it is entitled to be reimbursed by the Principal under the terms of the Contract, the Contractor agrees that the reimbursable amount will be reduced by the full amount of the Input Tax Credit to which the Contractor is entitled.

32.5 Payment of other taxes

Other than taxes, levels or duties assessed upon and attributable to the Principal under express provisions of controlling law or as otherwise specifically set forth in this Contract, the Contractor will pay or cause to be paid at the time when due and payable (and at the Contractor's own cost and the Contractor will have no claim against the Principal in respect of any sum paid):

- (a) all income, profit, gains, business privilege, occupational taxes, franchise or personal property taxes, levied on, assessed to or payable by the Contractor in relation to the provision of the Works;
- (b) all taxes, duties, fees or charges imposed on or payable in relation to the Contract or the provision of the Works including all sales, excise, Goods and Service Tax, value added, sale and use, consumption and use and other taxes, all stamp duties, customs and excise duties and other like duties;
- (c) all employment related taxes including payroll tax, fringe benefits tax and other taxes imposed on or payable by the Contractor in respect of the Contractor's Personnel;
- (d) all contributions or payments imposed on or payable by the Contractor in respect of the Contractor's Personnel pursuant to any Law or award or contract between the Contractor and a Contractor's Personnel or any trade union, association of employees or like associations of individuals in relation to labour procurement including contributions or payments in respect of wages, salaries or other emoluments, worker's compensation coverage, unemployment or sickness benefits or insurance, long service leave, old age or retirement benefits, superannuation, pensions, annuities and welfare funds;
- (e) all storage, licence, permit, registration or other like fees, charges or Government Authorisations payable in relation to the provision of the Works; and
- (f) any amounts payable with respect to any withholding and prescribed payment tax retention obligations in connection with the Contractor's Personnel imposed by Law; and
- (g) interest and/or penalties imposed with respect to any of the above.

33. Assignment

- (a) The Contractor will not assign or transfer all or any of the Contractor's rights or obligations under the Contract to any third party without the written consent of the Principal, such consent to be given or withheld by the Principal in its absolute discretion.
- (b) Any assignment or transfer by the Contractor pursuant to clause 33(a) will not take effect until the execution of an agreement acceptable to the Principal by the assignee agreeing to be bound by the obligations imposed under the Contract.
- (c) The Principal may assign or transfer all or any of the Principal's rights and obligations under the Contract to any third party without the consent of the Contractor.

34. Indemnity

34.1 Acknowledgement

The Contractor acknowledges that if it enters on to the Site, it does so at the Contractor's own risk. The Contractor will ensure that its Personnel are also aware that they enter onto the Site at their own or the Contractor's risk.

34.2 Indemnity

The Contractor will indemnify (and keep indemnified), defend and hold harmless all Owner Related Parties from and against all Liabilities that any Owner Related Party suffers, sustains or incurs, (including Claims made by third parties) arising from any one or more of the following:

- (a) the performance, non-performance or breach by the Contractor or its Personnel of any of the Contractor's obligations (including any warranty) under the Contract;
- (b) the negligent act or omission or Wilful Misconduct by the Contractor or its Personnel arising out of or in any way connected or related to the performance and non-performance of the Contract;
- (c) the entry onto and the activities undertaken on and in, the Site, by the Contractor and its Personnel;
- (d) the illness, injury or death of any of the Contractor's Personnel arising out of or in any way related to the Contract;
- (e) any Claim made against any Owner Related Party by any of the Contractor's Personnel in respect of any Law.

34.3 Limit on indemnity

The Contractor will not be obliged to indemnify, defend or hold harmless the Owner Related Parties for any Liability pursuant to clause 34.2 to the extent that the Liability arises directly from the Owner Related Party's Wilful Misconduct.

34.4 Entitlement to recover

It is not necessary for any Owner Related Party to incur expenses or make payment before enforcing the indemnity rights conferred by the Contract.

35. Insurance

35.1 Insurance

Where a Party is listed in Part 5, Schedule B "Insurances" as being responsible for maintaining an insurance it will at its own cost and expense procure and maintain, (and in the case of the Contractor will ensure that its Subcontractors procure and maintain at their own cost respectively), such insurance with an insurer or insurers acceptable to the Principal, for so long

the work under the Contract is being provided. If any of the insurances referred to below are to be maintained, then the following provisions shall apply to such insurances (as relevant):

- (a) **Public and Product Liability Insurance** covering liability relating to death, bodily injury, loss of property and damage to property for the amount in Part 5, Schedule B 'Insurance'.
- (b) The Public and Product Liability Insurance:
 - (i) will either include the Owner Related Parties as named insured parties on the insurance policy or note the Owner Related Parties' interest on the policy (and then contain a waiver of the insurer's rights of subrogation against the Owner Related Parties);
 - (ii) will not exclude Contractor's employees where the claimant under the policy is any of the Owner Related Parties; and
 - (iii) will (where applicable) provide an indemnity for activities underground for the use of unregistered mobile plant and equipment.
- (c) **Worker's Compensation Insurance** covering Liability, including any applicable worker's compensation legislation, to the Contractor's employees engaged in doing anything for the purpose of the performance of the Works or executing the Contractor's rights or obligations under the Contract, and to provide common law cover for not less than the amount in Part 5, Schedule B 'Insurance'.
- (d) **Motor vehicle Insurance** covering all motor vehicles, if any, operated by the Contractor in connection with the Works including:
 - (i) Comprehensive Motor Vehicle Insurance with a minimum liability for loss of or damage to property for the amount in the Part 5, Schedule B 'Insurance';
 - (ii) Compulsory Third Party Bodily Injury Indemnity Insurance as required by and provided with registration of the motor vehicle by the relevant Government Authority; and
 - (iii) to the extent that Compulsory Third Party Bodily Injury Indemnity Insurance is not available or applicable in the area in which the motor vehicle will be operated, insurance covering liability resulting from bodily injury to or the death of any person for not less than the amount in Part 5, Schedule B 'Insurance'.
- (e) **Professional Indemnity Insurance** where applicable, covering any Liability arising out of, or related to the Contractor giving the Principal professional advice or opinion in connection with the Works, such Liability cover to be for an amount not less than as stated in Part 5, Schedule B 'Insurance'.
- (f) **Contractor's/Construction All Risks Insurance** covering any physical loss or damage to the work under the Contract and the Works and naming the Contractor, its Subcontractors, and the Owner Related Parties as named insured parties and contain a waiver of the insurer's rights of subrogation against the Owner Related Parties.
- (g) **Marine & Cargo Insurance** covering any physical loss, damage or theft of any item in transit and naming the Contractor, its Subcontractors, and the Owner Related Parties as named insured parties.
- (h) **Inland Transport Insurance** covering any physical loss, damage or theft of any item in transit and naming the Contractor, its Subcontractors, and the Owner Related Parties as named insured parties.
- (i) Such other insurance as the Principal determines reasonably necessary.
- (j) Any insurances the Contractor is required to maintain by Law.

35.2 Period of insurance

Any policy of insurance taken out by the Contractor pursuant to this clause 35 that provides cover on the basis of claims made to the insurer during the period of currency will include a provision that the insured parties under the policy will be entitled to be indemnified by the insurer under that policy in respect of any claim or claims arising out of or in connection with the Contract for a period of not less than seven (7) years from the issue of the final certificate.

35.3 Proof of insurance

- (a) At least 5 Business Days prior to the Commencement Date, and thereafter within 10 Business Days of a request to do so, the Contractor will provide the Principal with a copy of all certificates of currency or underlying policy documents (as nominated by the Principal) for each insurance policy to be effected in accordance with the Contract signed by either the Contractor's insurer or insurance broker.
- (b) The Contractor will immediately notify the Principal of the cancellation or lapse of any insurance policy required pursuant to clause 35.1.

35.4 Grounds to refuse claim

The Contractor will not do, or cause or allow any Contractor's Personnel to do, any act or make any omission which may provide grounds for an insurer to refuse payment of any claim made under any insurance policy maintained in accordance with the Contract.

35.5 Failure to maintain insurance

If the Contractor or a Subcontractor fails to effect or to keep in force any of the insurance which is required by the Contract to be effected, then the Principal may, in addition to any other rights and remedies it may have:

- (a) procure and maintain in force any such insurance and pay any such premiums as may be necessary for that purpose and may recover as a debt due from the Contractor the amount so paid and the amount of any excess borne by the Principal or deduct such amounts from any monies due to the Contractor pursuant to the Contract; and/or
- (b) suspend payment of any monies due under the Contract until the Contractor fulfils its obligations under this clause 35.

35.6 Cross liability

Any insurance required to be effected in joint names in accordance with the Contract will include a cross liability clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons constituting the insured and for the purpose of which the insurer accepts the term 'insured' as applying to each of the persons constituting the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased thereby).

36. Security, Retention and Performance Bonds

The Contractor will provide the Principal with Security, retention and/or performance bond in accordance with this clause 36.

36.1 Purpose

Retention moneys and performance bonds are for the purpose of Security to ensure the due and proper performance of the Contract.

36.2 Provision of Retention and Performance Bonds

The amount of retentions and the amount of any performance bond to be provided as Security are detailed in Part 5, Schedule A 'Contract Variables'.

36.3 Form of Retention and Performance Bonds

Retention and performance bonds will be in the form of cash, or an Unconditional Undertaking.

36.4 Time for Lodgement of Security

Security will be lodged as set out in Schedule A 'Contract Variables', but in any event prior to any payment to the Contractor. The Principal may withhold payment until Security is lodged.

36.5 Conversion of Security

- (a) The Principal may at any time convert Security that does not consist of money whether or not it is entitled to exercise a right under the Contract.
- (b) The Contractor acknowledges that:
 - (i) the Principal has a right to convert Security which does not consist of money into money at any time; and
 - (ii) the Contractor has no entitlement to obtain an injunction or otherwise restrain:
 - (A) the Principal from converting any Security;
 - (B) (any issuer of any Security provided under this clause 36 from paying the Principal pursuant to that Security;
 - (C) the Principal from taking any steps for the purposes of making a demand under any such Security or receiving payment under any Security; or
 - (D) the Principal using the money received under any such Security.

36.6 Substitution of Unconditional Undertaking

- (a) The Contractor will be at liberty at any time to provide, in lieu of cash security, Unconditional Undertakings in the format approved by the Principal's Contract Administrator.
- (b) To the extent that such Unconditional Undertakings are provided, the Principal will not deduct retention moneys or performance bond moneys and will forthwith release such moneys withheld.

36.7 Reduction of Security

- (a) Upon issue of the Certificate of Practical Completion or, where applicable, the Provisional Acceptance Certificate, the Principal's entitlement to Security will be reduced to the percentage stated in the Schedule A 'Contract Variables' or, if no percentage is stated, to 50 per cent.
- (b) Subject to clause 36.7(a), if in the opinion of the Principal's Contract Administrator it is reasonable to further reduce the Principal's entitlement to Security, that entitlement will be reduced to the amount which the Principal's Contract Administrator determines to be reasonable.
- (c) The Principal will, within 14 days of the Principal's Contract Administrator making such a determination, release security in excess of the entitlement.
- (d) Even if the Principal is otherwise required to release Security, the Principal has a right to retain from the Security an amount sufficient to cover any outstanding Claim alleged by the Principal against the Contractor under or in connection with the Contract (whether or not that claim has at that time been liquidated).

36.8 Interest on Cash Moneys

The Principal will own any interest earned Security provided as money.

36.9 Recourse for Unpaid Moneys

Where, within the time provided by the Contract, or if no time is provided then within a reasonable time, the Contractor fails to pay the Principal an amount due and payable under the Contract, the Principal may have recourse to:

- (a) retention moneys; and
- (b) If those moneys are insufficient, to Security under the Contract;

and any deficiency remaining may be recovered by the Principal from the Contractor as a debt due and payable.

36.10 Parent Company Guarantee

- (a) Where noted as being applicable in Part 5, Schedule A 'Contract Variables' the Contractor will prior to the Commencement Date procure in favor of the Principal a parent company guarantee from the entity named in Part 5, Schedule A 'Contract Variables' or if no entity is so named from its ultimate parent company.
- (b) The parent company guarantee referred to in clause 36.10(a) shall be in the form contained in Part 5, Schedule L.

37. Personal Property Securities Act

37.1 Definitions

In this clause 37:

- (a) Financing Statement has the meaning in the PPS Act.
- (b) Perfect has the meaning in the PPS Act.
- (c) PPS Act means the Personal Property Securities Act 2009 (Cth).
- (d) Register has the meaning in the PPS Act.
- (e) Security Interest means a mortgage, charge, lien, pledge, security interest, title retention, preferential right, trust arrangement, encumbrance, contractual right of set off, any security arrangement in favour of any person or any security arrangement which is deemed to be a security interest for the purposes of the PPS Act.

37.2 Register of Security Interests

- (a) If the PPS Act applies to a Security Interest, the Contractor must at its own cost complete and lodge a Financing Statement with the Register or do all other things necessary to Perfect that Security Interest.
- (b) The Contractor must, upon demand and promptly no later than 7 days after causing a Financing Statement to be lodged with the Register, provide evidence satisfactory to the Principal that the Security Interest is registered on the Register or has otherwise been Perfected.
- (c) If the Contractor does not Register or otherwise Perfect a Security Interest within the time stipulated in this clause 37.2, the Principal is irrevocably appointed as the Contractor's attorney for the purposes of Registering or otherwise Perfecting that Security Interest. The Contractor must reimburse the Principal for any amount paid by the Principal in Registering or otherwise Perfecting a Security Interest.
- (d) The Contractor will pay all costs and expenses incurred in Registering or Perfecting a Security Interest.

38. Confidentiality and the media

38.1 Obligation of Confidentiality

The Contractor will:

- (a) hold in strict confidence all Confidential Information and not disclose or permit or cause the Confidential Information to be disclosed to any person other than any of its Personnel who require the Confidential Information for the purposes of providing the Works; and
- (b) not make use of the Confidential Information (including duplicating, reproducing, distributing, disseminating or directly or indirectly deriving information from the Confidential Information), except and solely to the extent necessary for the provision of the Works,

unless the Contractor has obtained the prior written consent of the Principal to do so (which consent may be withheld by the Principal in its discretion or given on such terms as it sees fit).

38.2 Sensitive Information

- (a) If the Contractor has any Confidential Information or other data owned by the Principal or its Related Bodies Corporate (collectively, **Sensitive Information**) on the Contractor's information technology systems, the Contractor must, for as long as any Sensitive Information resides on the Contractor's information technology system:
- (b) employ industry-standard firewall and encryption protection for its information technology systems; and
- (c) use commercially reasonable efforts to scan its information technology system for viruses and malware and promptly mitigate the effects of any viruses or malware detected.

38.3 Non disclosure

- (a) If the Contractor is required to disclose Confidential Information pursuant to any law, subpoena, judgement or court order, the Contractor will be entitled to do so if it first provides timely Notice to the Principal's Contract Administrator of the impending disclosure and the specified content of the Confidential Information to be disclosed so that the Principal may take such steps as it may deem reasonable to challenge or limit such disclosure. If the Principal takes any such steps to challenge or seek to limit any proposed disclosure then the Contractor will comply with all such reasonable and lawful directions of the Principal and will only disclose Confidential Information pursuant to a court order or binding legal determination made in response to any such challenge.
- (b) The Contractor may disclose Confidential Information to those professional advisers, officers, employees, and representatives of the Contractor, who in all such cases reasonably need to know such Confidential Information provided:
 - (i) the Contractor informs the receiving party of the confidential nature of the Confidential Information;
 - (ii) the disclosure is covered by a written non-disclosure agreement between the Contractor and the receiving party;
 - (iii) that non-disclosure agreement provides protection equivalent to that provided in this clause 38.2(b); and
 - (iv) the Contractor will remain liable for any disclosure by the receiving party as if it was disclosed by the Contractor itself in breach of this clause 38.

38.4 Indemnity

Without limiting clause 34, the Contractor indemnifies the Owner Related Parties, and will keep them indemnified, in respect of any Liabilities incurred or sustained by them resulting from a breach of this clause 38 by the Contractor or its Personnel.

38.5 Equitable relief

- (a) The Contractor acknowledges that the Confidential Information is an important asset of the Principal and/or its Related Bodies Corporate and that there is not an adequate

remedy at law for a breach by the Contractor of this clause 38 and the Principal and/or its Related Bodies Corporate will suffer irreparable harm as a result of such a breach.

- (b) The Contractor agrees that the Principal and/or its Related Bodies Corporate will be entitled to equitable relief, including temporary and permanent injunctive relief without the obligation of posting a bond (cash or otherwise), in the event of actual or threatened unauthorised disclosure or use of Confidential Information in breach of this clause 38.

38.6 Media

Except as required by any applicable Law or as otherwise permitted by the Contract, the Contractor may not make any public announcements or disclosures as to the Contract, or otherwise in relation to the subject matter of the Contract, without the prior written consent of the Principal. In this regard, no media release or public announcement will be made in relation to the existence of the Contract without the Principal's written approval and should such approval be given, then the wording of such release and the manner of publication will first be approved in writing by the Principal.

38.7 General

- (a) If requested by the Principal, whether prior to or after the expiry or earlier termination of the Contract, the Contractor will promptly and in any event within 5 Business Days deliver to the Principal all Confidential Information in the custody, possession or control of the Contractor or any of its Personnel.
- (b) The Contractor shall immediately notify the Principal if it becomes aware, or has reason to believe, that any breach of this clause 38 has occurred, that any unauthorised access to or use of, or any security breach relating to or otherwise affecting, any Sensitive Information has occurred, or that any Contractor's Personnel who has had access to Sensitive Information has breached or intends to breach the terms of this Contract.
- (c) The Contractor shall, at its own expense, cooperate with the Principal in investigating and responding to any breach of this clause 38.

39. Privacy

- (a) The Contractor agrees that:
 - (i) it will not disclose personal information to the Principal regarding its Personnel without first obtaining that person's consent to the disclosure and their express agreement to the Principal's Privacy Statement;
 - (ii) by submitting personal information to the Principal relating to its Personnel or causing any such person to seek access to any site of the Principal, it has warranted and represented to the Principal that it has complied with this clause 39;
 - (iii) it will ensure that its Subcontractors comply with this clause in respect of their Personnel as if they were the Contractor and will be liable for any failure of its Subcontractors to comply with this clause 39; and
 - (iv) without limiting clause 34 it will indemnify the Owner Related Parties against any liability, loss, damage, cost, expense, claim, suit, action, demand, proceeding, penalty and fine of any nature suffered, imposed or incurred as a result of a breach of this clause 39.
- (b) Where the Contractor is a natural person or is a partnership, joint venture or other unincorporated association comprised of natural persons, the Contractor acknowledges that it has (or each of them have) read and agreed to the Principal's Privacy Statement.

40. Suspension

40.1 Principal's right to suspend

The Principal may, at its sole discretion, suspend at any time the performance of all or any portion of the work under the Contract.

40.2 Notice to Contractor

The Contractor will be notified in writing by the Principal's Contract Administrator of any such suspension. The Suspension Notice may also designate the amount and type of plant and Construction Equipment to be committed to Work at the Site during the period of suspension. The Contractor will use its best efforts to utilise its Construction Equipment and Personnel in such a manner as to minimise costs associated with suspension.

40.3 Contractor to discontinue Works

Upon receipt of any Suspension Notice, the Contractor will, unless the Notice requires otherwise:

- (a) immediately discontinue the work on the date and to the extent specified in the Suspension Notice;
- (b) place no further orders or Subcontracts for plant or Construction Equipment with respect to suspended works other than to the extent required in the Suspension Notice;
- (c) immediately make every reasonable effort to obtain suspension upon terms satisfactory to the Principal of all Subcontracts, to the extent they relate to performance of works suspended; and
- (d) continue to protect and maintain the works, including those portions, which have been suspended.

40.4 Resumption of suspended Works

Upon receipt of a Notice from the Principal's Contract Administrator to resume the suspended works, the Contractor will immediately resume performance of the suspended works to the extent required in the Notice. The Contractor will submit to the Principal's Contract Administrator in writing its Claim for extra costs and revise the Program within thirty (30) calendar days after its receipt of a Notice to resume the suspended works.

40.5 Contractor's Claim for suspension

- (a) Subject to clause 40.8 the Principal's Contract Administrator will evaluate Contractor's Claim and, as full compensation for such suspension, make a reasonable adjustment to the Program and reimburse the following costs (excluding profits) reasonably incurred, without duplication of any item, to the extent that such costs directly resulted from such suspension:
 - (i) all reasonable costs associated with mobilisation and demobilisation of Construction Equipment and Personnel to and from the Site; and
 - (ii) reimburse the direct costs (excluding profits) of the Contractor for maintaining and protecting that portion of the Works at the Site upon which work had been suspended,
- (b) The Contractor will not be entitled to claim for any loss of profit, contract or opportunity resulting from any suspension of the whole or any part of the work under the Contract.

40.6 Effect of prolonged suspension

Notwithstanding the provisions of clause 40.5, should any suspension of work under the Contract directly result in the suspension of plant which was scheduled for shipment to the Site within two (2) months from the date of receipt of a Suspension Notice as shown in the Program, or the suspension exceeds a continuous period of one (1) month, the Principal and the

Contractor agree to consult each other to assess the impact of such suspension on the portion of suspended work under the Contract. For the suspended plant, the Principal will pay the Contractor reasonable costs of the portion of the plant completed, provided such costs were incurred prior to suspension and the Contractor agrees to provide an Unconditional Undertaking for such costs in a form acceptable to the Principal's Contract Administrator. For the remaining portions of Works, an adjustment for the costs of completed portions of the Works will be mutually agreed, provided such costs were incurred prior to suspension.

40.7 Protection and security of Works

The Contractor will, on the written Notice of the Principal's Contract Administrator, suspend the progress of the Works, or any part thereof, for such time or times and in such manner as the Principal may consider necessary.

40.8 No cost to Principal for certain suspensions

The Contractor will not be entitled to any additional payment or compensation from the Principal or an Extension of Time resulting from any suspension if it occurs in any of the following cases:

- (a) otherwise provided for or excluded under the other provisions of the Contract;
- (b) necessary by reason of some default on the part of the Contractor or those for which it is responsible including its employees, consultants, agents, Subcontractors and/or suppliers;
- (c) necessary for the contractually required performance of the Works;
- (d) caused by any event for which the Contractor has accepted responsibility under the Contract; and/or
- (e) necessary for the safe performance of the Works.

40.9 Contractor may not suspend

The Contractor will not suspend the provision any or all of the Works without the prior written consent of the Principal's Contract Administrator.

41. Termination at convenience

41.1 Termination with notice

Without prejudice to any of the Principal's other rights and powers under the Contract, the Principal may terminate the Contract at its discretion by issuing a Notice of Termination giving the Contractor thirty (30) days prior written notice of its intention to do so.

41.2 Contractor compensation

- (a) If the Principal terminates the Contract under this clause 41 then the Principal will be liable to pay the Contractor the total of:
 - (i) for work executed prior to the date of termination and for which the Contractor has not been paid, the amount which would have been payable for that work if the Contract had not been terminated and the Contractor had made a payment claim on the date of termination; and
 - (ii) subject to the obligation of the Contractor to mitigate its costs and expenses, the cost of materials reasonably ordered by the Contractor for the Works, which the Contractor is liable to accept, but only if the materials become the property of the Principal upon payment;up to a maximum amount of the balance of the Contract Sum unpaid at the date of termination and other amounts payable pursuant to the Contract at the date of termination.
- (b) The Contractor will not have any claim for damages, loss, expenses or costs, including loss of anticipated profits, loss of use and consequential loss, on account of or arising

out of the termination of the Contract by the Principal pursuant to this clause 41 other than specified in the Contract.

- (c) The amounts to which the Contractor is entitled under this clause 41 will be in full satisfaction and compensation of the Contractor in relation to the termination and the Contractor will have no other entitlement as a consequence of the termination under this clause 41 or in relation to carrying out the Works to the date of termination.
- (d) If the Principal terminates the Contract under clause 41.1 then clause 43 will apply.

42. Contractor Default

42.1 Default

- (a) If the Contractor breaches any term of the Contract, the Principal may serve a Notice of Default on the Contractor. The Notice of Default will:
 - (i) identify itself as a notice issued pursuant to this clause 42; and
 - (ii) state the breach that has been committed and either require the Contractor to remedy the breach within ten (10) days after service of the Notice of Default or state that the breach is incapable of remedy.
- (b) If the Contractor fails to remedy the breach by the end of the period required under clause 42.1(a)(ii) or it is incapable of remedy, then the Principal may by further written notice to the Contractor do one or more of the following:
 - (i) elect wholly or partly to suspend payment under the Contract until the breach has been remedied;
 - (ii) take such action as the Principal deems necessary to cure the breach including the right to have works completed by others pursuant to clause 42.3 (the cost of such action so taken by the Principal being recoverable from the Contractor as a debt due to the Principal by the Contractor); or
 - (iii) terminate the Contract either in whole or in part from a specified date set out in the written notice.

42.2 Immediate termination by the Principal

Notwithstanding any other provision in the Contract, the Principal may terminate the Contract with immediate effect by giving written notice to the Contractor if:

- (a) the Contractor ceases to carry on business; or
- (b) the Contractor disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business; or
- (c) the Contractor takes any step to enter into an arrangement or compromise with its creditors; or
- (d) the Contractor ceases to be able to pay its debts as they become due; or
- (e) any step is taken by a mortgagee or other encumbrancer to enter into possession or dispose of the whole or any part of the Contractor's assets or business; or
- (f) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person over the Contractor or the whole or any part of the Contractor's assets, business or undertaking; or
- (g) any other event occurs which is analogous with the events referred to in clauses 42.2(a) to 42.2(f) above.

If the Principal terminates the Contract under this clause 42.2, then clause 43 will apply.

42.3 Completion of works

- (a) If the Contractor fails to remedy a breach by the end of the period required under clause 42.1(a)(ii) or it is incapable of remedy or where the Contract has been terminated pursuant to clause 42.2 then the Principal may following service of a notice on the Contractor take out of the Contractor's hands the whole or any part of the Works remaining to be completed and suspend payment until it becomes due and payable pursuant to clause 42.3(c). In completing the work taken out of the Contractor's hands pursuant to this clause 42.3(a) the Principal may:
 - (i) use materials, equipment and other things intended for the Works; and
 - (ii) without payment of compensation to the Contractor:
 - (A) take possession of, and use, such of the Contractor's plant and other things on or in the vicinity of the Site as were used by the Contractor;
 - (B) contract with such of the Contractor's consultants and Subcontractors; and
 - (C) take possession of, and use, any design documents produced by or on behalf of the Contractor;

as are reasonably required by the Principal to facilitate completion of the Works or part thereof.
- (b) The Principal will maintain (and to the extent there is any surplus will return to the Contractor on the completion of the work taken out) any materials, equipment or plant it takes possession of pursuant to this clause 42.3.
- (c) The Principal's Contract Administrator will keep records of the cost of completing the works taken out of the Contractor's hand and when it has been completed will assess the cost thereby incurred and will certify as moneys due and payable accordingly the difference between that cost (showing the calculations therefor) and the amount which would otherwise have been paid to the Contractor if the work had been completed by the Contractor.
- (d) If the Contractor is indebted to the Principal, the Principal may retain any materials, equipment, plant or other things taken under clause 42.3(a) until the debt is satisfied. If after reasonable notice, the Contractor fails to pay the debt, the Principal may sell the such things and apply the proceeds to the satisfaction of the debt and the costs of sale. Any excess will be paid to the Contractor.

42.4 Preservation of rights

If the Contractor breaches (including repudiates) the Contract, nothing in this clause 42 will prejudice the right of the Principal to recover damages or exercise any other right or remedy.

42.5 Compensation

- (a) If the Principal terminates the Contract under this clause 42 then the Principal will not be liable to pay any moneys to the Contractor until the completion of any works taken out of the Contractor's hands pursuant to clause 42.3.
- (b) Subject to clause 42.3(a) and 42.3(c) if the Principal terminates the Contract under this clause 42 then the Principal will be liable to pay the Contractor the total of:
 - (i) for work executed prior to the date of termination and for which the Contractor has not been paid, the amount which would have been payable for that work if the Contract had not been terminated and the Contractor had made a payment claim on the date of termination; and
 - (ii) subject to the obligation of the Contractor to mitigate its costs and expenses, the cost of materials reasonably ordered by the Contractor for the Works, which the Contractor is liable to accept, but only if the materials become the property of the Principal upon payment;

up to a maximum amount of the balance of the Contract Sum (as it is adjusted pursuant to the Contract) unpaid at the date of termination and other amounts payable pursuant to the Contract at the date of termination.

- (c) The amount payable pursuant to clause 42.5(b) will be reduced by the cost of completing any works taken out of the Contractor's hands as assessed pursuant to clause 42.3(c).
- (d) The Contractor will not have any claim for damages, loss, expenses or costs, including loss of anticipated profits, loss of use and consequential loss, on account of or arising out of the termination of the Contract by the Principal pursuant to this clause 42 other than specified in the Contract.
- (e) The amounts to which the Contractor is entitled under this clause 42 will be in full satisfaction and compensation of the Contractor in relation to the termination and the Contractor will have no other entitlement as a consequence of the termination under this clause 42 or in relation to carrying out the Works to the date of termination.
- (f) If the Principal terminates the Contract under this clause 42 then clause 43 will apply.

43. Contractor's Obligations on Termination

On the date of termination specified in the Notice of Termination the Contract is terminated from such date as specified and the Contractor will:

- (a) immediately cease provision of the Works in accordance with, but only to the extent specified in, the Notice of Default;
- (b) immediately take all possible action to mitigate any Liabilities incurred by it as a result of such termination;
- (c) take reasonable action to reduce costs to the Principal;
- (d) immediately take all possible action to render the Works area and Site safe and ensure the safety of all Personnel;
- (e) immediately take all possible action to reduce any costs to the Principal incurred by it as a result of such termination;
- (f) offer the Principal first right of refusal to purchase any of the Contractor's Construction Equipment used for the purposes of the Contract to be purchased by the Principal at its depreciated value or such other value as agreed by the Parties;
- (g) assign to the Principal any license, permit, contract, purchase order or other agreement pertaining to the Works;
- (h) assign or novate its rights and obligations in a subcontract to the Principal or a nominee of the Principal and execute any documents required by the Principal to give effect to such assignment or novation (including execution of a deed of novation substantially in the form of Part 5, Schedule J 'Form of Novation Deed') if:
 - (i) the work is taken out of the hands of the Contractor or the Principal terminates the Contract for any reason; and
 - (ii) the Principal directs the Contractor to do so; and
- (i) provide to the Principal:
 - (i) any Materials produced by or on behalf of the Contractor in relation to the Works;
 - (ii) as built drawings for any completed part of the Works; and
 - (iii) where requested by the Principal's Technical Representative, as built drawings showing the Works as at the time of termination.

- (j) take any other action reasonably required by the Principal in relation to the termination.

44. Survival and essential terms

The provisions in clauses 22, 26, 28, 34, 35, 36, 37, 38, 39, 43 and 45 as well as any other provision which, by its general terms may be reasonably intended to survive, survive the expiration or termination of the Contract.

45. Dispute resolution

45.1 Notice of Dispute

- (a) Subject to clause 45.4, if a dispute between the Contractor and the Principal arises out of or in connection with the Contract then a Party may give the other Party a Notice specifying the Dispute and requiring its resolution under this clause 45. The Contractor must give its notice to the Principal's Contract Administrator.
- (b) During the existence of any Dispute, the Parties will continue to perform all of their obligations under the Contract without prejudice to their position in respect of such Dispute.

45.2 Time of Notice

The Contractor will 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 Principal's Contract Administrator. Where a Claim has been submitted to the Principal and has not been determined by the Principal's Contract Administrator within 28 days then the Claim will be deemed to have been rejected by the Principal at the end of that time and a Notice of Dispute may be given.

45.3 Escalation

- (a) If the Dispute remains unresolved 7 days after receipt of the Notice of Dispute, the Contractor's Representative will meet with the Principal's Technical Representative and Principal's Contracts Representative to resolve the Dispute.
- (b) If the Dispute is not resolved within 10 days after receipt of the Notice of Dispute, then the Dispute must be escalated to a senior manager of the Principal and a senior manager of the Contractor for resolution.
- (c) If the Dispute is not resolved within 20 days after receipt of the Notice of Dispute (or such longer period as the senior managers may agree), then either Party may commence legal proceedings in an appropriate court to resolve the matter.

45.4 Urgent interlocutory relief

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

45.5 Security of Payment Legislation

- (a) In this clause 45.5, "Security of Payment Act" means any legislation which provides for rapid interim adjudication of claims under construction contracts under a policy to promote security of payment.
- (b) If the Security of Payment Act applies:
 - (i) the Contractor must ensure that, within 24 hours after any notice is given or received under the Security of Payment Act by the Contractor or any Subcontractors, a copy of that notice is given to the Principal's Contract Administrator;

- (ii) the Principal's Contract Administrator will act as the Principal's agent for the purposes of issuing payment schedules pursuant to the Security of Payment Act;
- (iii) the parties agree that for the purpose of the Security of Payment Act the authorised nominating authority shall be one of:
 - (A) the Institute of Arbitrators and Mediators Australia; or
 - (B) LEADR.which persons may be amended as agreed by the parties in writing from time to time;
- (iv) if a Subcontractor becomes entitled to suspend work under a Subcontract pursuant to the Security of Payment Act because of a failure by the Contractor or any Subcontractors to pay moneys due and payable to the Subcontractor, the Contractor must provide the Principal's Contract Administrator with immediate notice of such suspension and the Principal may (in its absolute discretion) pay to the Subcontractor the amount owing to the Subcontractor in respect of that work, and any amount so paid by the Principal shall be a debt due and immediately payable from the Contractor to the Principal; and
- (v) the Contractor indemnifies the Principal against all damages, losses, costs and expenses suffered or incurred by the Principal as a result of the Contractor's failure to pay any Subcontractor.
- (c) Where the Construction Contracts Act 2004 WA applies to the Contract the provisions of this clause 45 do not prevent a party from seeking adjudication under the Construction Contracts Act 2004 (WA) in respect of a payment dispute as that term is defined in the *Construction Contracts Act 2004* (WA) where there is a statutory right to do so.
- (d) The adjudicator for any payment dispute under the *Construction Contracts Act 2004* (WA) will be appointed by the Institute of Arbitrators and Mediators Australia, WA Chapter.
- (e) Nothing in this clause 45.5 will prevent a party from contending that this agreement is not a construction contract as that term is defined in the *Construction Contracts Act 2004* (WA).

46. No Waiver

The failure of the Principal to enforce any breach by the Contractor of the Contract will not constitute a waiver of that or any subsequent breach, or of any other cause of termination.

47. Force Majeure

47.1 Notice

A Party will not be liable for any delay or failure to perform any of its obligations under the Contract where such delay or failure is caused by a Force Majeure (other than an obligation to pay money) if, as soon as possible after the beginning of the Force Majeure affecting the ability of the Party to perform any of its obligations under the Contract, it gives a notice to the other party that complies with clause 47.2.

47.2 Requirements of notice

A notice given under clause 47.1 will:

- (a) if issued by the Contractor, be addressed and given to the Principal's Contract Administrator;

- (b) specify the obligations the party cannot perform as a result of Force Majeure;
- (c) fully describe the Force Majeure;
- (d) estimate the time during which the Force Majeure will continue; and
- (e) specify the measures proposed to be adopted to remedy or abate the Force Majeure.

47.3 Continue with obligations

The party that is prevented from carrying out its obligations under the Contract as a result of Force Majeure will:

- (a) remedy the Force Majeure to the extent reasonably practicable (provided that the Principal is not obliged to settle any industrial disputes except in its absolute discretion) and resume performance of its obligations as soon as reasonably possible; and
- (b) take all action reasonably practicable to mitigate any Liabilities suffered by the other party as a result of its failure to carry out its obligations under the Contract.

47.4 Principal's Right To Alternate Sourcing

Where a Force Majeure prevents the Contractor from supplying Construction Equipment or undertaking the work under the Contract, the Principal may obtain Construction Equipment or undertake Works from another source at its own cost.

47.5 Amendment

An amendment to the Date for Practical Completion is the Contractor's sole remedy for any delays resulting from an event of Force Majeure, and, save in respect of the Contractor's reasonable demobilisation costs to the extent the Principal's Contract Administrator instructs the Contractor to demobilise from the Site, the Contractor is not entitled to payment for any damages, costs or expenses in connection with the event of Force Majeure.

47.6 Termination

- (a) If the Force Majeure continues for a continuous period of thirty (30) days or for successive periods totalling more than thirty (30) days in a total period of sixty (60) days the Principal may, in its absolute discretion, terminate the Contract by notice from the Principal's Contract Administrator in writing to the Contractor in accordance with clause 48.
- (b) In the event of termination under this clause, the Principal will not be liable to the Contractor for any fees, reimbursements or other Contract Sum (except for the Contract Sum for Works already rendered or Construction Equipment already provided to the Principal) any other loss, cost, claim or damage resulting, directly or indirectly, to the Contractor from such termination.

48. Notices

48.1 Form of Notices

A Notice will be in writing and will be taken to have been given if it is in writing and signed by or on behalf of the Party giving the Notice and is:

- (a) delivered personally
- (b) sent by ordinary pre-paid post to the other party at the address set out in the Schedule A 'Contract Variables' or another address advised in writing;
- (c) sent by facsimile transmission to the facsimile number specified in the Schedule A 'Contract Variables' or another facsimile number advised in writing; or
- (d) sent by e-mail, to the address in the Schedule A 'Contract Variables'.

48.2 Delivery of Notices

A Notice is deemed given and received if:

- (a) personally delivered, upon delivery;
- (b) mailed to an address in Australia, an actual delivery to the addressee as evidenced by Australia Post documentation or three (3) clear days after the date of posting (whether actually received or not), whichever is the earlier;
- (c) sent by facsimile, on the date and time of receipt of the completed facsimile transmission by the party sending the facsimile but only if the sending facsimile machine reports that the notice was sent in its entirety to the correct facsimile number; or
- (d) sent by e-mail, by the recipient confirming in writing the email was received.

49. Nature of Contract

49.1 Independent Contractor

The relationship between the Principal and the Contractor is that of principal and independent contractor. The Contractor is solely responsible for the satisfactory provision of the Works in accordance with the terms and conditions of the Contract.

49.2 No Agency

Without limiting the foregoing, the Contractor and its Personnel will not be treated as an agent, employee, or servant of the Principal for purposes of any Laws including without limitation, worker's compensation and employment taxes.

49.3 No authority to represent

The Contractor does not have any right or authority to represent the Principal in any matter whatsoever, including entering into agreements on behalf of the Principal or otherwise binding the Principal in any manner.

50. Severance

Each provision of the Contract is independent of each other provision. Any provision which is prohibited or unenforceable in any jurisdiction will be ineffective to the extent only of such prohibition or unenforceability and the other provisions will remain in force.

51. Counterparts

The Contract may be executed in any number of counterparts. All counterparts together will be taken to constitute one document and the Contract will come into effect on the last exchange of original, facsimile or electronic counterparts.

52. Costs

52.1 Each party to bear its own costs

Each party will bear its own costs arising out of:

- (a) the negotiation, preparation and execution of the Contract; and
- (b) except as expressly provided otherwise in the Contract, any transaction contemplated by the Contract.

52.2 Stamp duty

All stamp duty which may be payable in any relevant jurisdiction on or in connection with the Contract or other document related to the Contract will be borne by the Contractor.

53. Amendment

No amendment or variation of the terms and conditions of the Contract is valid or binding unless made in writing and signed by the Principal and Contractor.

54. Governing Law

The Contract is governed by the laws of Western Australia, save that Part 1F of the *Civil Liability Act 2002* (WA) is expressly excluded from the Contract. Each party irrevocably submits to the non-exclusive jurisdiction of the Courts exercising jurisdiction there in connection with matters concerning the Contract and waives any right to object to any proceedings being brought in those Courts.

Part 4 – Scope of Work

Deliverables:

Contractor's Key Personnel

Contractor's Key Personnel:		
- Supervising Engineers		
- Technical Assistants		
- Quality Control & Quality Assurance Engineers		
- Safety Engineers		

Program

Style "ScopeHead1"

(general text – Style "Body Text L1")

1.1 Style "ScopeHead2"

(general text – Style "Body Text L1")

(general text – Style "Body Text L1")

(general text – Style "Body Text L1")

1.2 (Style "ScopeIndentA")

Style "Body Text L2"

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SCHEDULE A – CONTRACT VARIABLES

This Schedule will be read as part of the Contract.

Contract Number:	
Commencement Date:	
Date(s) for Practical Completion (and time):	
[Separable Portions:]	
Not to Exceed Value:	
Site:	
Principal:	
Principal's Address:	
Principal's Technical Representative:	
Position:	
Phone:	
Fax:	
e-mail:	
Principal's Contract Administrator:	
Position:	
Phone:	
Fax:	
e-mail:	
Contractor:	
Contractor's Address:	
Contractor's Representative:	
Position:	
Phone:	
Fax:	
e-mail:	
Owner:	
Owner Related Parties:	The Owner [and <i>[insert names of other parties to be named as an insured party]]</i>
Key Personnel and their roles:	
Principal's nominated software package:	Primavera Project Planner, P3, version xx

[Key Milestones:]	
[Dates for Milestone Achievement:]	
Security/Retention/Performance Bond (as per clause 36):	
Performance Testing to be carried out:	[Prior to Practical Completion] [After Practical Completion]
Indigenous Relations Management Plan:	
Defects Liability Period:	
Restrictions to work conditions - as per clause 6(d):	
Additional Standards - as per clause 6(j)	National Standard for Construction Work [NOHSC:1016]
Time period for notifying whether documents are suitable or not suitable as per clause 15.2(c):	
Rate of Liquidated Damages – as per clause 20.6	
Performance Testing and/or Provisional Acceptance requirements – as per clause 21 (description and time of tests)	
Training and requirements - as per clauses 25.2 and 25.4:	
Date for lodgement of securities – as per clause 36.4	
Reduction of Security upon the issuance of Certificate of Practical Completion/Certificate of Provisional Acceptance (delete inapplicable) – as per clause 36.7:	

SCHEDULE B – INSURANCE

Public and Product Liability Insurance

Maintained by	Contractor
Insurer	
Policy Number	
Expiry	
Liability	Minimum value of [] million Dollars (\$[,000,000) in respect of any one incident and fifty thousand dollars (\$[],000) max deductible

Workers' Compensation Insurance

Maintained by	Contractor
Insurer	
Policy Number	
Expiry	
Liability	The statutory limit required in the jurisdiction where the Services are performed and employer's liability of not less than fifty million dollars (\$50,000,000) in Western Australia or two million dollars (\$2,000,000) in the Northern Territory

Motor Vehicle Insurance

Maintained by	Contractor
Insurer	
Policy Number	
Expiry	
Liability	Minimum value of five million dollars (\$5,000,000) in respect of one incident.

Professional Indemnity

Maintained by	Contractor
Insurer	
Policy Number	
Expiry	
Liability	Minimum value of [] million Dollars (\$[],000,000) in respect of any one incident and fifty thousand dollars (\$[],000) max deductible

Contractor's All Risks Insurance

Maintained by	[]
Insurer	
Policy Number	
Expiry	
Liability	

Marine and Cargo Insurance

Maintained by	[Contractor]
Insurer	
Policy Number	
Expiry	
Liability	\$[] Million (\$[],000,000) with five thousand dollars (\$[],000) max deductible

Inland Transport Insurance

Maintained by	Contractor
Insurer	
Policy Number	
Expiry	
Liability	\$[] Million (\$[],000,000) with five thousand dollars (\$[],000) max deductible

Note: the insurance requirements are to be reviewed on a contract by contract basis.

SCHEDULE C – SPECIFIED SITE REQUIREMENTS, SERVICE AND FACILITIES

	Principal Provided Facilities	Payable by
A		
B		
C		
F		
G		
H		
	Principal's Supplied Materials	Payable by
A		
B		
C		

SCHEDULE D – CONTRACT SUM

Exhibit 1 - Calculating Contract Sum

- (a) Schedules D, D1, D2 and D3:
- (b) will be read in conjunction with all of the other provisions of the Contract. The descriptions of the various items of work that appear will neither be construed as, nor accepted to be, the complete Scope of Work under the Contract;
- (c) set out the basis for Contract Sum and the preparation of Invoices in accordance with clause 30 of the General Conditions; and
- (d) may be used by the Principal in determining the value of any Variations made to the Contract pursuant to clause 24 of the General Conditions.

Exhibit 2 - Inclusive in Contract Sum

- (a) All amounts set out in Schedules D, D1 and D2 are:
 - (i) fixed;
 - (ii) not subject to adjustment for rise and fall;
 - (iii) exclusive of GST; and
 - (iv) are the sole bases for Contract Sum under the Contract.
- (b) The rates or lump sums include, but are not necessarily limited to, home office expenses, plant and equipment, light vehicles, tools, project management, site management, supervision, labour, travelling, accommodation and messing, materials, consumables, fuels, lubricants, overheads, taxes, profit and other things necessary for the performance of the Works, including general risks, liabilities and obligations set out in, or implied by, the Contract.

SCHEDULE D1, LUMP SUM CONTRACT SUM

Lump Sum Contract Sum

Item	Description	Unit	Estimated Quantity	Unit Rate AUD	Amount AUD
	LUMP SUM VALUE				

SCHEDULE D2, RATES/ LUMP SUM PAYMENTS

Table D.1 – Rates/Lump Sum Payments

Item	Description	Unit	Estimated Quantity	Unit Rate AUD	Amount AUD
	TOTAL PAYMENTS				

SCHEDULE D3 – ADJUSTMENT FOR VARIATIONS

When costs are a factor in any determination of a contract adjustment pursuant to clause 24 of the General Conditions 'Variation of the Works', the Contractor will propose or the Principal may direct upward or downward price adjustments using one of the following methods:

- (1) Using Lump Sum Pricing based on:
 - (a) Applicable components of the lump sum Contract price for work of like scope;
 - (b) Estimating a lump sum price for the Variation based on similar components of the Works;
 - (c) Estimating a lump sum price for the Variation, subject to negotiation; or,
 - (d) Unilaterally estimating a lump sum price for the Variation.
- (2) Using unit prices based on:
 - (a) Applicable unit prices from the Contract;
 - (b) Similar unit prices from the Contract, adjusted for the differing pricing content of the Variation work;
 - (c) Estimating a new unit price for the Variation, subject to negotiation; or,
 - (d) Unilaterally estimate a new unit price for the Variation work.
- (3) Using time rates based on:
 - (a) Applicable time rates from the Contract;
 - (b) Similar time rates from the Contract, adjusted for the differing pricing content of the Variation work;
 - (c) Estimating a new time rate for the Variation, subject to negotiation; or,
 - (d) Unilaterally estimating a new time rate for the Variation work.
- (4) Establishing separate cost accounting records, subject to daily end-of-the-day written approval by the Principal of all allocable costs on a time and materials ("Force Account") basis. Reimbursement of reasonable and approved incurred costs, plus specified rates for overhead and profit, as defined below, will be the basis for a Force Account adjustment of the Contract Sum.

When the Contractor is directed to propose price adjustments pursuant to 1b, 1c, 2b, 2c, 3b, and 3c above, the Contractor will provide cost breakdown information for the purpose of and in sufficient detail to permit analysis and negotiation including but not limited to labour categories, job-hours and rates, equipment and material quantities, sources and calculations, overhead costs and allocations, profit computations and reference data upon which estimates are based. If for any reason the Principal and the Contractor are unable to agree upon a Contract price adjustment, the Principal may determine the value of such Contract price adjustment using the methods described in 1d, 2d and 3d above using pricing from the Contract where applicable and by estimation of new prices for work for which applicable prices are not included in the Contract. If the Variation so requires, the Principal may require or allow that the pricing of such Variation may use any combination of the pricing methods described herein and the order of preference for such pricing will be the order of the pricing methods listed above.

In the event Variations are performed on a Force Account basis pursuant to paragraph (4) above, the Parties will agree in advance that pricing of such variation according to methods (1), (2) and/or (3) above is not practical or possible and, in such event, the Contractor will use the following methods to define allowable costs for such Variations.

(5) Direct Labour

Incurred direct labour wages for professional, technical, craft and manual labour for all classifications through lead engineer, foreman or equivalent are allowable for the period of performance of the Variation. General supervision and management above lead engineer, foreman or equivalent and indirect labour, e.g., surveyors, office personnel, timekeepers, maintenance personnel, and tools and equipment having a value of \$500 or less are not allowable

as direct costs but are recovered in the overhead and profit rates established by this Schedule D3. Payroll additives are allowable and include taxes, insurance premiums, paid absences, and social and retirement benefits required by law, labour agreements, published Contractor policies applying uniformly to the Contractor's Personnel or which are normal and customary. The Principal will have access to the Contractor's certified payroll records for verification of labour costs.

(6) Equipment

In respect of the leasing of Construction Equipment, facilities and vehicles, the Contractor may charge net rental costs plus 5% in respect of overhead and profit. This does not apply to tools and equipment which have an original purchase price of less than \$500 per item that are deemed to be included in the direct labour cost described in paragraph (1) above. If operating costs are not included in rental rates they are also allowable.

- (a) Reasonable equipment charges for approved Contractor-owned Construction Equipment having original purchase prices of more than \$500 each will also be allowed provided such charges are:
 - (i) Applicable contract unit rates;
 - (ii) Reasonable rental costs for similar equipment based upon calculated values allocating ownership costs over the useful life of the equipment plus operating costs such as fuel, oil, lubricants, and maintenance and a profit of ten percent (10%) on such costs, or
 - (iii) Appropriately discounted stand-by rates for idle time, reasonably required and authorised by the Principal in writing.
- (b) When the operated use of equipment is infrequent and, as determined by the Principal, such equipment need not remain at the Site continuously, charges will be limited to actual hours of use. Equipment not operating but retained at the Site at the Principal's direction will be charged at the stand-by rate.
- (c) For the cost of both rented and owned equipment to be allowable, the Principal must agree in writing, prior to such equipment being used, and that the individual pieces of equipment are needed, are appropriate for the Variation work, and that the mobilisation and demobilisation costs are allocable to the Variation and are acceptable. This is in addition to any daily end-of-day approval of operating time for such equipment.

(7) Materials

Approved incurred costs for material incorporated into the Variation or required for temporary construction facilities made necessary by the Variation will be allowable at net cost delivered to the Site based on receipted cost plus five percent (5%) overhead and profit for the Contractor.

(8) Subcontracts

Approved incurred costs for lower-tier Subcontracted tasks will be allowable plus five percent (5%) overhead and profit for the Contractor; provided that the Principal has approved the Subcontract pursuant to the Contract before any Subcontract work is performed.

(9) Overhead, Profit, and All Other Costs

- (a) In addition to the overhead and profit provided in (2) through (4) above, the Principal will also pay an amount equal to Fifteen percent (15%) of total direct labour as described in paragraph (1) above for Variations resulting in a Contract price adjustment, excluding this percentage mark-up, of less than \$20,000, or will pay Ten percent (10%) for changes resulting in adjustments of \$ 20,000 or more.
- (b) This amount will be deemed to be full consideration for all overhead, interest and profit, for all additional costs e.g., supervision and tools, and for all impacts of the Variation on all elements of the Works whether or not varied.

SCHEDULE E – FORMAT OF PROGRESS CLAIMS

[illegible]

SCHEDULE F – DEED OF RELEASE

In relation to Contract Number. (**Contract**) dated the _____ day of _____ 20____ and between (**Contractor**) and (**Principal**) the Contractor has agreed at the request of the Principal to execute a Release in favour of the Principal.

In this Deed expressions defined in the Contract will have the same meaning as given to them in the Contract.

In consideration of the issue of the Final Payment Invoice and the payment of all moneys due on the Final Payment Claim, the Contractor:

- (a) **WAIVES, RELEASES AND FOREVER DISCHARGES** the Principal from all Claims, whether known or unknown, which the Contractor has or might have or might assert against the Principal arising under, by virtue of or in connection with the Contract or out of or in connection with its performance; and
- (b) **INDEMNIFIES AND AGREES TO DEFEND AND HOLD HARMLESS** the Principal, its officers, employees, agents and contractors from and against all claims, whether known or unknown, by any Person arising from, by virtue of or connected with the Contract or out of or connected with its performance **SAVE AND EXCEPT** any moneys due upon the issue of the Final Payment Claim or such claims, if any, that may, with the consent of the Principal be specifically excepted from the terms of this release stated as follows:

.....
(If none, so state).....

DATED the.....day of.....2008.

EXECUTED by the **Contractor** under its common seal in accordance with its Constitution or in accordance with section 127 of the Corporations Act

.....

Signature of Director

.....

Signature of Director

.....

Name of Signatory

(Please Print in Block Letters)

.....

Name of Signatory

(Please Print in Block Letters)

SCHEDULE G, KEY PERFORMANCE INDICATORS

SCHEDULE H, PROGRAMMING AND REPORTING REQUIREMENTS

SCHEDULE I, RELY UPON INFORMATION

SCHEDULE J, FORM OF NOVATION DEED

[Date]

Contractor: Name

Novatee: Name

Subcontractor: Name

DEED OF SUBCONTRACTOR NOVATION

Date

Parties

Contractor: Name [] Contractor: ACN/ABN [] of: Contractor Address [] (**Contractor**)

Novatee: Name [] Novatee: ACN/ABN [] of Novatee: Address [] (**Novatee**)

Subcontractor: Name [] Subcontractor: ACN/ABN [] of Subcontractor: Address [] (**Subcontractor**)

Background

- A The Principal and the Contractor have entered into the Contract.
- B The Contractor and the Subcontractor have entered into the Subcontract.
- C Pursuant to the Contract, the Principal may require novation of the Contractor's interest in the Subcontract.
- D The Principal has notified the Subcontractor that the Contractor's interest in the Subcontract has been novated to the Novatee.
- E The parties wish to confirm the terms of the novation for the purpose of formality.

AGREED TERMS

1. INTERPRETATION

1.1 Definitions

In this document:

Principal means the person named in the **schedule**.

Contract means the contract between the Principal and the Contractor as described in the **schedule**.

Date of Novation means the date in the schedule.

Project means the project described in the **schedule**.

Subcontract means the subcontract between the Contractor and the Subcontractor as described in the **schedule**.

1.2 Construction

Unless expressed to the contrary, in this document:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) "includes" means includes without limitation;

- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (f) reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
 - (iii) a right includes a benefit, remedy, discretion and power;
 - (iv) time is to local time in [];
 - (v) this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties;
 - (vi) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmission; and
 - (vii) this document includes all schedules and annexures to it;
- (g) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded.

1.3 Headings

Headings do not affect the interpretation of this document.

2. NOVATION

The Contractor and the Subcontractor confirm that the Subcontract has been novated by the Contractor to the Novatee, effective from the Date of Novation.

3. SUBCONTRACT

[The subcontract between the Subcontractor and the Novatee will consist of the same documents that comprised the Subcontract.]

4. ADJUSTMENT OF RELATIONSHIPS

4.1 Release by Subcontractor

The Subcontractor releases the Contractor from all obligations and liabilities of the Contractor arising out of or in connection with the Subcontract, other than in respect of:

- (a) any claims made, work performed or equipment, materials or other items or services provided prior to the Date of Novation; or
- (b) any claims made by the Subcontractor against the Contractor for breach of the Subcontract or on any other basis arising out of or in connection with the Subcontract.

4.2 Warranty

The Subcontractor warrants to the Novatee that:

- (a) it has performed the work under the Subcontract in accordance with the Subcontract;
- (b) it must perform the remaining work under the Subcontract in accordance with the Subcontract; and
- (c) it is aware that the Novatee is and, if the Novatee is not the Principal, the Principal is relying on it to fulfil its obligations under the Subcontract as part of the successful completion of the Project being undertaken by the Principal.

4.3 Release of Novatee

The Principal and the Novatee will not be liable to the Subcontractor or to the Contractor in respect of:

- (a) any claims made, work performed or equipment, materials or other items or services provided by the Subcontractor in relation to the Project prior to the Date of Novation; or
- (b) any claims made or which may be made by the Subcontractor against the Contractor for breach of the Subcontract or on any other basis whatsoever arising out of or in connection with the Subcontract in relation to events which occurred or work which was performed prior to the Date of Novation.

5. MISCELLANEOUS

5.1 Duty

- (a) The Contractor as between the parties is liable for and must pay all duty (including any fine, interest or penalty except where it arises from default by the other party) on or relating to this document, any document executed under it or any dutiable transaction evidenced or effected by it.
- (b) If a party other than the Contractor pays any duty (including any fine, interest or penalty) on or relating to this document, any document executed under it or any dutiable transaction evidenced or effected by it, the Contractor must pay that amount to the paying party on demand.

5.2 Legal costs

Except as expressly stated otherwise in this document, each party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this document.

5.3 Amendment

This document may only be varied or replaced by a deed executed by the parties.

5.4 Waiver and exercise of rights

- (a) A single or partial exercise or waiver by a party of a right relating to this document does not prevent any other exercise of that right or the exercise of any other right.
- (b) A party is not liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

5.5 Rights cumulative

Except as expressly stated otherwise in this document, the rights of a party under this document are cumulative and are in addition to any other rights of that party.

5.6 Consents

Except as expressly stated otherwise in this document, a party may conditionally or unconditionally give or withhold any consent to be given under this document and is not obliged to give its reasons for doing so.

5.7 Further steps

Each party must promptly do whatever any other party reasonably requires of it to give effect to this document and to perform its obligations under it.

5.8 Governing law and jurisdiction

- (a) This document is governed by and is to be construed in accordance with the laws applicable in Western Australia.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Western Australia and any courts which have jurisdiction

to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

5.9 Liability

An obligation of two or more persons binds them separately and together.

5.10 Counterparts

This document may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

5.11 Entire understanding

- (a) This document contains the entire understanding between the parties as to the subject matter of this document.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this document are merged in and superseded by this document and are of no effect. No party is liable to any other party in respect of those matters.
- (c) No oral explanation or information provided by any party to another:
 - (i) affects the meaning or interpretation of this document; or
 - (ii) constitutes any collateral agreement, warranty or understanding between any of the parties.

5.12 Relationship of parties

This document is not intended to create a partnership, joint venture or agency relationship between the parties.

5.13 Assignment

- (a) A party must not assign or deal with any right under this document without the prior written consent of the other parties.

Any purported dealing in breach of this clause is of no effect.

Schedule

General Details

Date of Novation:

Principal:

Name:

ACN/ABN:

Description of Contract:

Description of Subcontract:

SCHEDULE K, FORM OF UNCONDITIONAL UNDERTAKING

Form of Unconditional Financial Undertaking

Details		
Bank	Name	
	ABN	
Principal	Name	
	ABN	
	Address	
Contractor	Name	
	ABN	
	Address	
Contract	Date	
	Description	
Amount		

The terms defined in the Details section above apply when used in this undertaking.

1. At the request of the Contractor and in consideration of the Principal accepting this undertaking by way of security to the Principal for the performance by the Contractor of its obligations under the Contract, the Bank undertakes unconditionally and irrevocably to pay the Principal on demand any sum or sums which may from time to time be demanded by the Principal to a maximum aggregate of the Amount.
2. This undertaking is to continue until the first to occur of the following:
 - (a) a written notification has been received from the Principal that such sum is no longer required by the Principal;
 - (b) this undertaking is returned to the Bank; or
 - (c) payment to the Principal by the Bank of the whole of the Amount.
3. The Bank must make payment of the Amount or any part or parts of the Amount to the Principal:
 - (a) immediately upon the Bank receiving at any place where the Bank carries on business a written demand from the Principal;
 - (b) so that it is immediately available and freely transferable in Australian dollars clear of and without any deductions;
 - (c) without reference by the Bank to the Contractor;
 - (d) despite any notice given to the Bank by the Contractor not to pay the Principal any part of the Amount; and

- (e) irrespective of the performance or non-performance by the Contractor or the Principal of the Contract in any respect.
4. The Bank acknowledges its obligations under this undertaking constitute direct primary, irrevocable and unconditional obligations. The Bank further acknowledges its obligations under this undertaking will not be abated, suspended, abrogated, varied, discharged or otherwise prejudiced or affected by any matter or thing which, in the absence of this provision, would or might have that effect, except for a discharge or amendment expressly made or agreed to in writing by the Principal.
 5. The Bank may at any time, without being required to do so, pay to the Principal the Amount less any amount or amounts it has previously paid under this undertaking and when it has done so the liability of the Bank under this undertaking will immediately cease and determine.
 6. The Principal may assign this undertaking to any person and upon receipt of notification to the Bank in writing, the Bank undertakes to make any payment claimed under this undertaking to the person specified in the notice which will constitute a full and valid discharge to the Bank in relation to the payment.
 7. If two or more persons are named as the Principal, this undertaking takes effect for the benefit of them jointly and a demand under this unconditional undertaking by any one or more of them is deemed to be a demand by both or all of them jointly.
 8. This unconditional undertaking is governed by and is to be construed in accordance with the laws of Western Australia.

Date

Parties

[INSERT PARENT COMPANY NAME] [INSERT ABN] of [INSERT ADDRESS] **(Guarantor)**

[INSERT RELEVANT NEWMONT COMPANY] LTD ABN [INSERT ABN] of [INSERT ADDRESS] **(Secured Party)**

Background

The Secured Party has entered into, or agreed to enter into, the Contract with the Contractor at the request of the Guarantor and subject to the condition that the Guarantor enters into this Deed.

AGREED TERMS

1. INTERPRETATION

1.1 Definitions

In this Deed:

Business Day means a day which is not a Saturday, Sunday or bank or public holiday in the location of the Site (as defined in the Contract);

Contract means the contract for [INSERT CONTRACT DETAILS] between the Secured Party and the Contractor dated on or around the date of this Deed and any agreement or instrument created under it.

Contractor means the Contractor under the Contract.

Insolvency means:

- (a) a person is or states that the person is unable to pay from the person's own money all the person's debts as and when they become due and payable;
- (b) the winding up, dissolution, provisional liquidation or administration of a corporation;
- (c) the appointment of a receiver, controller, administrator, provisional liquidator or liquidator to a corporation;
- (d) any arrangement (including a scheme of arrangement or deed of company arrangement), composition or compromise with, or assignment for the benefit of, all or any class of that person's creditors or members or a moratorium involving any of them; and
- (e) anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction.

Tax means a tax (including any tax in the nature of a goods and services tax), rate, levy, impost or duty (other than a tax on the net overall income of the Secured Party) and any interest, penalty, fine or expense relating to any of them.

1.2 Construction

Unless expressed to the contrary, in this Deed:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) "includes" means includes without limitation;
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (f) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes the person's legal personal representatives, successors, assigns and substitutes, including persons substituted by novation;
 - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
 - (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
 - (v) a right includes a benefit, remedy, discretion or power;
 - (vi) time is to local time in Perth, Western Australia;
 - (vii) "\$" or "dollars" is a reference to Australian currency;
 - (viii) this or any other deed or agreement includes the deed or agreement as novated, varied or replaced and despite any change in the identity of the parties;
 - (ix) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmissions;

any thing (including any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them; and

 - (x) this Deed includes all schedules and annexures to it;
- (g) if the date on or by which any act must be done under this Deed is not a Business Day, the act must be done on or by the next Business Day; and
- (h) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded.

1.3 Headings

Headings do not affect the interpretation of this Deed.

2. CONSIDERATION

The Guarantor acknowledges that:

- (a) it enters into this Deed in consideration of the Secured Party entering into the Contract at the Guarantor's request; and
- (b) the Secured Party relies on the guarantee and indemnity provided by this Deed in entering into the Contract.

3. GUARANTEE AND INDEMNITY

3.1 Guarantee and indemnity

The Guarantor:

- (a) unconditionally and irrevocably guarantees to the Secured Party on demand the due and punctual performance by the Contractor of its obligations under the Contract;
- (b) separately unconditionally and irrevocably indemnifies, and at all times keeps indemnified, the Secured Party against all demands, claims, suits, actions, damages, liabilities, losses, costs and expenses which may be made or brought against or suffered or incurred by the Secured Party in connection with a failure by the Contractor to duly and punctually perform its obligations or satisfy its liabilities under the Contract or as a result of the Contract being void, voidable or otherwise unenforceable; and
- (c) for the avoidance of doubt, acknowledges that the Contractor is jointly and severally liable to the Secured Party for the performance by all parties comprising the Contractor of all obligations under the Contract.

3.2 Separate and principal obligation

The indemnity contained in **clause 3.1(b)** is a separate and distinct obligation and will not be restrictively interpreted by reason of the guarantee set out in **clause 3.1(a)**. The Guarantor's liability under **clause 3.1(b)** is that of principal debtor.

4. LIABILITY UNAFFECTED BY OTHER EVENTS

4.1 Liability

The Guarantor shall not be discharged or released or excused from this Deed by:
any arrangement made between the Secured Party and the Contractor with or without the consent of the Guarantor;

- (a) any alteration, amendment or variation in the obligations assumed by the Contractor;
- (b) any forbearance, waiver or concession whether as to payment, time, performance or otherwise or failure or neglect to enforce any right or remedy against the Contractor;
- (c) any laches, acquiescence or other act, neglect, default, omission, fraud, duress, unconscionable conduct or mistake by the Secured Party, the Contractor or any other person;
- (d) the total, partial or conditional release or discharge of the Contractor's obligations or any security held for the performance of the Contractor's obligations;
- (e) the transfer, assignment or novation by any of the Secured Party or the Contractor of all or any of its rights or obligations under the Contract;

the occurrence of any substantial breach of the Contract applicable to the Contractor; or

any transaction or agreement between the Contractor and the Secured Party (including any collateral security) or any obligation owed by the Contractor to the Secured Party being void, voidable or otherwise unenforceable by the Secured Party or the Secured Party being otherwise prevented from requiring the Contractor to comply with its obligations.

4.2 No abrogation

The Guarantor and the Secured Party agree that the guarantee and indemnity given under this Deed will not be abrogated, prejudiced or affected by the existence or occurrence of any of the following events or states of affairs:

any lack of capacity or legal disability on the part of the Secured Party or the Contractor;

- (a) the insolvency or winding up of the Secured Party or the Contractor; or
- (b) the Secured Party agreeing to an assignment of the Contractor's property to a trustee for the benefit of its creditors or to a scheme of arrangement or other form of compromise or composition with the Contractor's creditors.

4.3 No prior enforcement

The Guarantor's obligations under this Deed are principal obligations and may be enforced against the Guarantor without the Secured Party first being required to exhaust any remedy it

may have against the Contractor or enforce any security it may hold relating to the provisions of the Contract.

4.4 Insolvency of Contractor

- (a) The Guarantor must not, until discharged from its obligations by the Secured Party in accordance with **clause 5**:
 - (i) directly or indirectly claim or receive the benefit of any distribution, dividend or payment; or
 - (ii) prove or claim for any distribution, dividend or payment in competition with the Secured Party,

in the Insolvency of the Contractor so as to diminish any distribution, dividend or payment which, but for that claim or proof, the Secured Party would be entitled to receive.

- (b) The Guarantor appoints the Secured Party to be its attorney with authority to:
 - (i) prove, in the name of the Guarantor, for all for which the Contractor is liable to the Guarantor;
 - (ii) retain and carry to a separate account and appropriate at the Secured Party's discretion any distribution, dividend or payment received thereunder towards performance of the Contract and neither the Secured Party nor any such attorney will be obliged to account to the Guarantor for any balance in such account the Guarantor has been discharged from its obligations by the Secured Party in accordance with **clause 5**; and
 - (iii) do anything and exercise all rights which the Guarantor could lawfully do or exercise in such Insolvency.

5. CONTINUING GUARANTEE AND INDEMNITY

- (a) This Deed:
 - (i) extends to cover the Contract as amended, varied or replaced, whether with or without the consent of the Guarantor; and
 - (ii) is a continuing guarantee and indemnity and, despite expiry or termination of the Contract, remains in full force and effect for only so long as the Contractor has any actual, contingent or prospective liability or obligation to the Secured Party under the Contract and until all of those liabilities or obligations have been fully discharged.
- (b) The Secured Party shall release the Guarantor from its obligations under this Deed once it is satisfied that all actual, contingent and prospective liabilities or obligations of the Contractor and the Guarantor have been fully discharged.

6. NO INDUCEMENTS

The Guarantor acknowledges that it has not entered into this Deed as a result of, or by reason of, any promise, representation, warranty, inducement or information of any nature given to it, the Guarantor or the Contractor or to any person on their respective behalf by, or on behalf of, the Secured Party.

7. LIMITATION OF LIABILITY

The obligations and liability of the Guarantor under this Deed shall not exceed the obligations and the aggregate liability of the Contractor under the Contract (assuming for the purposes of ascertaining the level of such liability that the Contract is valid, binding and enforceable in accordance with its terms).

8. NOTICES

A notice given under this Deed will be taken to be duly given or made:
in the case of delivery in person, when delivered;

- (a) in the case of delivery by post, two Business Days after the date of posting; and
- (b) in the case of fax, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax machine number or name of recipient and indicating that the transmission has been made without error.

However, if the result is that a notice would be taken to be given or made on a day that is not a business day in the place to which the notice is sent or is later than 4.00 pm (local time) it will be taken to have been duly given or made at 9.00 am on the next business day in that place.

9. MARSHALLING

The Secured Party is not obliged to marshal or appropriate in favour of the Guarantor or to exercise, apply, perfect or recover any encumbrance that the Secured Party holds at any time or any funds or property that the Secured Party may be entitled to receive or have a claim on.

10. VOID OR VOIDABLE TRANSACTIONS

If a claim that a payment or transfer to the Secured Party under the Contract or this Deed is void or voidable (including a claim under laws relating to liquidation, administration, insolvency or protection of creditors) is upheld, conceded or compromised then the Secured Party is entitled immediately as against the Guarantor to the rights to which it would have been entitled under this Deed as if the payment or transfer has not occurred.

11. THE GUARANTOR'S RIGHTS ARE SUSPENDED

As long as any obligation is required, or may be required, to be complied with in connection with this Deed, the Guarantor may not, without the Secured Party consent:

- (a) reduce its liability under this Deed by claiming that it or the Contractor or any other person has a right of set-off or counterclaim against the Secured Party;
- (b) exercise any legal right to claim to be entitled to the benefit of another guarantee, indemnity, mortgage, charge or other encumbrance given in connection with the Contract or any other amount payable under this Deed;
- (c) claim an amount from the Contractor under a right of indemnity; or
- (d) claim an amount in relation to this guarantee in the liquidation, administration or insolvency of the Contractor.

12. REPRESENTATIONS AND WARRANTIES

12.1 Representations and warranties

The Guarantor represents and warrants to the Secured Party that:
it has full corporate power to enter into and give effect to this Deed and to complete the transactions contemplated by this Deed;

- (a) it has taken all necessary action to authorise the execution, delivery and performance of this Deed;
- (b) at the date of this Deed, the execution, delivery and performance of this Deed by it does not contravene any contractual, legal or other obligations that apply to it;
- (c) on execution of this Deed, its obligations under this Deed will be valid, binding and enforceable;

- (d) its most recent audited accounts give a true and fair view of the matters with which they deal and there has been no subsequent change in its state of affairs which may have a material adverse effect on its financial condition, assets or business; and
- (e) the entry into and performance by it of its obligations under this Deed is for its commercial benefit and is in its commercial interests.

12.2 Continuing warranties and representations

Each warranty and representation set out in **clause 12.1** survives the execution of this Deed and is taken to be repeated with reference to the facts and circumstances existing on each day that the Secured Party makes a demand under this Deed.

13. GST

13.1 Definitions

Capitalised expressions which are not defined in this **clause 13** but which have a defined meaning in the GST Law have the same meaning in this **clause 13**.

In this **clause 13**:

“GST” means the goods and services tax as imposed by the GST Law including, where relevant, any related interest, penalties, fines or other charge arising directly as a result of a default by the Guarantor of an obligation under this Deed but does not include any interest or penalty, fine, or other charge imposed on the Secured Party after it has received the relevant guarantee or indemnity payment due under this Deed.

“GST Amount” means, in relation to a Payment, an amount arrived at by the multiplying the Payment (or the relevant part of a payment if only part of a Payment is the consideration for a Taxable Supply) by the prevailing rate of GST.

“GST Law” has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999*, or, if that Act is not valid or does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.

“Payment” means:

- (a) the amount of any monetary consideration (other than a GST Amount payable under this **clause 13**); and
- (b) the GST Exclusive Market Value of any non-monetary consideration,

paid or provided by the Guarantor for any Supply made under or in connection with this Deed and includes any amount payable by way of indemnity, reimbursement, compensation or damages.

13.2 Payment exclusive of GST

The parties agree that:

- (a) all Payments have been set or determined at an amount which is net of GST;
- (b) if the whole or any part of a Payment is the consideration for a Taxable Supply made by the Secured Party to the Guarantor, the GST Amount in respect of the Payment must be paid to the Secured Party as an additional amount, either concurrently with the Payment or as otherwise agreed in writing; and
- (c) the Secured Party will provide to the Guarantor a Tax Invoice, before any GST Amount is payable under this **clause 13**.

13.3 Adjustment

If a payment (including a Payment as defined in this **clause 13**) to the Secured Party is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred

by the Secured Party, then the payment will be reduced by the amount of any input tax credit to which the Secured Party is entitled for that loss, cost or expense.

14. GENERAL

14.1 Assignments and transfers

The Guarantor acknowledges and agrees that the Secured Party may assign, novate or otherwise transfer all or any part of its rights under this Deed, where the Contract is assigned, novated or otherwise transferred to the same party.

- (a) The Guarantor must not assign, novate or otherwise transfer all or any part of its rights or obligations under this Deed without the prior written consent of the Secured Party provided that such consent will not be unreasonably withheld where the Secured Party is reasonably satisfied that the proposed transferee has the capacity to meet the obligations of the Guarantor under this Deed.

14.2 Costs

The Guarantor agrees to pay or reimburse the Secured Party on demand for all costs, duties, fees, Taxes and charges which are payable in connection with this Deed or a payment or receipt or other transaction contemplated by it.

14.3 No merger

This Deed is in addition to and is not in any way prejudiced by any collateral security, judgment, order or other thing and the Secured Party's rights under this Deed will not merge with any collateral security, judgment, order or other thing.

14.4 Payments

The Guarantor agrees to make payments under this Deed:

- (a) on demand and at a place and in a manner reasonably required by the Secured Party;
- (b) in immediately available funds and without set-off, counter claim, or condition, unless required by law, deduction or withholding; and
- (c) in the currency in which the payment is due, and otherwise in Australian dollars, in immediately available funds.

14.5 No withholding

- (a) If:
 - (i) the Guarantor is required to make a deduction or withholding in respect of any Tax from any payment it is required to make under this Deed; or
 - (ii) the Secured Party is required to pay any Tax in respect of any payment made by the Guarantor under this Deed,then the Guarantor:
 - (iii) indemnifies the Secured Party against that Tax; and
 - (iv) must pay to the Secured Party an additional amount which the Secured Party determines to be necessary to ensure that the Secured Party receives when due a net amount (after payment of any Tax in respect of each additional amount) that is equal to the full amount it would have received had a deduction or withholding or payment of that Tax not been made.
- (b) If the Guarantor is required to make a deduction or withholding in respect of Tax from any payment to be made by it under this Deed, then:
 - (i) the Guarantor must pay the amount deducted or withheld to the appropriate government agency as required by applicable law; and

- (ii) the Guarantor must use reasonable endeavours to obtain official receipts or other documentation from that government agency and, within ten Business Days after receipt, the Guarantor must deliver them to the Secured Party.

14.6 Indemnities

Each guarantee and indemnity in this Deed:

- (i) is a continuing obligation despite any intervening payment, settlement or other thing;
 - (ii) extends to all of the obligations of the Contractor and the Guarantor;
 - (iii) is separate and independent from the other obligations of the parties; and
 - (iv) survives termination, completion or expiration of this Deed.
- (b) It is not necessary for a party to incur expense or to make any payment before claiming under a guarantee or enforcing a right of indemnity conferred by this Deed.

14.7 Severability

Each provision of this Deed is individually severable. If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction it is to be treated as being severed from this Deed in the relevant jurisdiction, but the rest of this Deed will not be affected. The legality, validity and enforceability of the provision in any other jurisdiction will not be affected.

14.8 Variation

No variation of this Deed will be of any force or effect unless it is in writing and signed by the Guarantor and the Secured Party.

14.9 Waivers

A waiver of any right, power or remedy under this Deed must be in writing signed by the party granting it. A waiver is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

- (a) The fact that a party fails to do, or delays in doing, something the party is entitled to do under this Deed does not amount to a waiver.

14.10 Liability

An obligation of two or more persons binds them separately and together.

14.11 Rights cumulative

The rights of the Secured Party under this Deed are cumulative and are in addition to any other of its rights.

14.12 Further assurances

The Guarantor must promptly execute all deeds and do all things that the Secured Party from time to time reasonably requires of the Guarantor to:

- (a) effect, perfect or complete the provisions of this Deed and any transaction contemplated by it; and
- (b) give to the Secured Party any collateral security agreed to be given by the Guarantor to the Secured Party.

14.13 Survival

Unless the Secured Party expressly agrees otherwise in writing, this Deed, and all obligations and liabilities under or arising out of this Deed, continue after termination or expiry of the Contract.

14.14 Governing law and jurisdiction

This Deed is governed by the laws of Western Australia. Each party irrevocably submits to the non-exclusive jurisdiction of the Courts exercising jurisdiction there in connection with matters concerning this Deed and waives any right to object to any proceedings being brought in those Courts.

Executed as a deed

Part 6 – Exhibits

FOR BODDINGTON

APPENDIX 1	IMS MANUAL
APPENDIX 2	PERSONAL PROTECTIVE EQUIPMENT
APPENDIX 3	ALCOHOL AND OTHER DRUG TESTING PROCEDURES
APPENDIX 4	FATIGUE MANAGEMENT GUIDELINES
APPENDIX 5	NBG SITE GOLDEN RULES
APPENDIX 6	TO BE PROVIDED BY THE TECHNICAL REPRESENTATIVE

FOR TANAMI

APPENDIX 1	IMS MANUAL
APPENDIX 2	PERSONAL PROTECTIVE EQUIPMENT
APPENDIX 3	ALCOHOL AND OTHER DRUG TESTING PROCEDURES
APPENDIX 4	TANAMI SAFETY POSTER
APPENDIX 5	TO BE PROVIDED BY THE TECHNICAL REPRESENTATIVE

Acknowledgement of receipt of Principal's Document 6 - Exhibits as on ____ day of _____, 20__.

.....

Signed by an authorised signatory of the Contractor.

Part 7 – Annexures